REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

GLEND AGNES LLANTADA (SERVIPLUS MEDICAL EQUIPMENT SERVICES & SUPPLY), *Petitioner,*	**CTA CASE NO. 10468**
	Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 2 6 2024 4:10 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The *Petition for Review* filed on February 18, 2021, prays for the lifting or cancellation of the *Warrant of Distraint and/or Levy* (WDL) issued by the respondent Commissioner of Internal Revenue (CIR), and further prays, that the *Letter of Authority* (LOA) and *Formal Letter of Demand* (FLD) be declared void.[1]

THE PARTIES

Petitioner Glend Agnes Llantada is of legal age, married, Filipino citizen, with postal address at Unit 1A GV Square Bldg. Casa Milan, Commonwealth, Quezon City and was the sole proprietor of Serviplus Medical Equipment Services & Supply.[2]

Respondent is the government official responsible for the assessment and collection of all national internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties and fines connected with such taxes.

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[1] Summary of the Case, Pre-Trial Order dated April 8, 2022, Docket, p. 270.
[2] Par. 1, Joint Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 262.

Respondent holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[3]

THE FACTS

Respondent issued to petitioner a Letter of Authority (LOA) with SN: eLA201500079628 / LOA-028-2018-00000120 dated April 25, 2018, covering the period January 1, 2015 to July 19, 2016,[4] authorizing Revenue Officer Ademar Balan and Group Supervisor (GS) Kelly Chong of Revenue District No. 28 – Novaliches, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes including documentary stamp tax and other taxes (miscellaneous), for the period from January 1, 2015 to July 19, 2016.[5]

Respondent found petitioner liable for deficiency taxes and compromise penalty in the aggregate amount of ₱7,620,157.95 through the *Preliminary Assessment Notice* (PAN) *(Part I)* with *Details of Discrepancy*, and PAN *(Part II)*, all dated May 17, 2019,[6] which were received by petitioner on May 27, 2019, the details of which are as follows:[7]

Tax Type and Year	Basic Tax Due	20% Interest	12% Interest	Total
Income tax – 2015	₱3,249,684.69	₱1,112,905.72	₱581,203.88	₱4,943,794.29
Value-added tax (VAT) – 2015	1,202,187.61	465,065.45	215,010.43	1,882,263.49
Expanded withholding tax (EWT) – 2015	2,938.62	1,152.91	525.57	4,617.10
Income tax – 2016	14,287.43	4,892.95	2,555.30	21,735.68
VAT – 2016	474,494.78	88,399.03	84,863.07	647,756.88
EWT – 2016	697.00	93,168.85	124.66	93,990.51
Compromise Penalty – 2015				1,000.00
Compromise Penalty – 2016				25,000.00
Total	**₱4,944,290.13**	**₱1,765,584.91**	**₱884,282.91**	**₱7,620,157.95**

On June 10, 2019, petitioner filed the *Reply to Preliminary Assessment Notice (PAN)* dated June 4, 2019.[8]

However, respondent still found petitioner liable for deficiency taxes and compromise penalty in the aggregate amount of ₱7,665,672.50 through the *Formal Letter of Demand* (FLD) *(Part I)*, with *Details of Discrepancy* and FLD *(Part*

[3] Par. 2, Joint Stipulation of Facts, JSFI, Docket, p. 262.
[4] Par. 3, Joint Stipulation of Facts, JSFI, Docket, p. 262.
[5] Exhibits "P-2" and "R-5", Docket, pp. 22 and 390, respectively.
[6] Par. 4, Joint Stipulation of Facts, JSFI, Docket, p. 263.
[7] Exhibits "P-3", "R-9" and "R-9-A", Docket, pp. 23 to 30 and 404 to 411, respectively.
[8] Exhibit "P-4", Docket, pp. 31 to 33; BIR Records (Exhibit "R-1"), pp. 553 to 555.

II), all dated June 17, 2019,[9] which were received by petitioner on June 19, 2019, the details of which are as follows:[10]

Tax Type and Year	Basic Tax Due	20% Interest	12% Interest	Total
Income tax – 2015	₱3,249,684.69	₱1,112,905.72	₱611,118.79	₱4,973,709.20
VAT – 2015	1,202,187.61	465,065.45	226,077.14	1,893,330.20
EWT – 2015	2,938.62	1,152.91	552.62	4,644.15
Income tax – 2016	14,287.43	4,892.95	2,686.82	21,867.20
VAT – 2016	474,494.78	88,399.03	89,231.02	652,124.83
EWT – 2016	697.00	93,168.85	131.07	93,996.92
Compromise Penalty – 2015				1,000.00
Compromise Penalty – 2016				25,000.00
Total	**₱4,944,290.13**	**₱1,765,584.91**	**₱929,797.46**	**₱7,665,672.50**

On July 16, 2019, petitioner filed the protest letter dated July 15, 2019, requesting that the proposed deficiency tax assessment, together with interests, be recomputed and reinvestigated.[11]

Respondent again found petitioner liable for deficiency taxes, but in the reduced aggregate amount of ₱4,342,320.67 through the *Final Decision on Disputed Assessment* (FDDA) with *Details of Discrepancy* dated December 17, 2019,[12] which was received by petitioner on December 18, 2019,[13] the details of which are as follows:

Tax Type and Year	Basic Tax Due	20% Interest	12% Interest	Total
Income tax – 2015	₱1,597,221.82	₱546,993.77	₱392,260.18	₱2,536,475.77
VAT – 2015	582,514.03	225,345.15	143,059.06	950,918.24
EWT – 2015	2,938.62	1,152.91	721.69	4,813.22
Income tax – 2016	14,287.43	4,892.95	3,508.84	22,689.22
VAT – 2016	558,899.33	104,123.71	137,259.55	800,282.59
EWT – 2016	697.00	273.45	171.18	1,141.63
Compromise Penalty – 2015				1,000.00
Compromise Penalty – 2016				25,000.00
Total	**₱2,756,558.23**	**₱882,781.94**	**₱676,980.50**	**₱4,342,320.67**

On January 17, 2020, petitioner filed before the Office of the Regional Director of BIR Revenue Region No. 7A - Quezon City, a *Request for Reconsideration* of the FDDA dated January 16, 2020.[14]

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[9] Par. 5, Joint Stipulation of Facts, JSFI, Docket, p. 263.
[10] Exhibits "P-5", "R-10" and "R-10-A", Docket, pp. 34 to 42 and 412 to 425, respectively.
[11] Exhibit "P-6", Docket, pp. 43 to 51; BIR Records (Exhibit "R-1"), pp. 567 to 571.
[12] Par. 6, Joint Stipulation of Facts, JSFI, Docket, p. 263.
[13] Exhibits "P-7" and "R-11", Docket, pp. 52 to 63, and 433 to 444, respectively.
[14] Par. 7, Joint Stipulation of Facts, JSFI, Docket, p. 263; Exhibits "P-8" and "R-12", Docket, pp. 332 to 340 and 445 to 453, respectively.

On June 26, 2020, respondent issued his *Decision*, denying the *Request for Reconsideration* of petitioner, and demanding payment of his deficiency taxes.[15]

On January 19, 2021, respondent issued against petitioner the WDL No. RR7A-01-08-2021-0009,[16] which was received on even date, the details of which are as follows:[17]

ASSESSMENT/DEMAND NO.	DATE ISSUED	KIND OF TAX	YEAR	AMOUNT
028-2019-B014 - January 1, 2015 to July 19, 2016 (FDDA)	December 17, 2019	Income tax	2015	₱2,536,475.77
		VAT	2015	950,918.24
		Income tax	2016	22,689.22
		VAT	2016	800,282.59
		Compromise Penalty	2016	26,000.00
TOTAL				**₱4,362,365.82**[18]

The present *Petition for Review* was filed on February 18, 2021.[19] The case was initially raffled to this Court's Second Division.

On May 20, 2021, respondent filed an *Answer*,[20] interposing the following special and affirmative defenses, to wit: (1) petitioner was audited pursuant to a valid audit program under Revenue Memorandum Order (RMO) No. 19-2015; (2) the assessments issued against the petitioner for the deficiency income tax, VAT liabilities and compromise penalty have factual and legal bases; (3) the assessments issued against petitioner have become final, executory, and demandable; (4) respondent's right to assess the deficiency taxes has not yet prescribed pursuant to a validly executed waiver of statute of limitations; and (5) tax assessments are presumed to be correct.

The Pre-Trial Conference was initially set on June 21, 2021,[21] but upon petitioner's *Motion to Reset Pre-Trial Conference* filed on June 18, 2021,[22] was reset to July 19, 2021.[23] During the hearing held on July 19, 2021, the parties were ordered to appear before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) for mediation proceedings on August 18, 2021, while the Pre-Trial was cancelled.[24] On October 21, 2021, the Court received the *Back To Court* of even date from the PMC-CTA, stating that mediation was refused by

[15] Par. 8, Joint Stipulation of Facts, JSFI, Docket, p. 263; Exhibit "P-9", Docket, pp. 73 to 76.
[16] Par. 9, Joint Stipulation of Facts, JSFI, Docket, p. 263.
[17] Exhibit "P-1", Docket, p. 21.
[18] The correct total is actually **₱4,336,365.82**.
[19] Docket, pp. 6 to 20.
[20] Docket, pp. 90 to 101.
[21] Notice of Pre-Trial Conference dated May 24, 2021, Docket, pp. 131 to 132.
[22] Docket, pp. 135 to 137.
[23] Minutes of hearing held on, and Order dated, June 21, 2021, Docket, pp. 241 to 242.
[24] Minutes of hearing held on, Order and Resolution dated, July 19, 2021, Docket, pp. 246 to 247 and 251, respectively.

petitioner.[25] In the Resolution dated November 18, 2021,[26] the Court noted the same, and the Pre-Trial Conference was set on January 19, 2022.

Thereafter, the Pre-Trial Conference was reset to, and held on, March 16, 2022.[27] Prior thereto, petitioner's *Pre-Trial Brief* and *Respondent's Pre-Trial Brief* were both filed on June 18, 2021.[28]

On April 4, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[29] which was approved and adopted by the Court in the Pre-Trial Order dated April 8, 2022,[30] thereby deeming the termination of the Pre-Trial.

Pursuant to the Order dated June 30, 2022,[31] the present case was transferred to the Third Division of this Court.

Trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

Respondent transmitted the *BIR Records* of the present case on October 10, 2022, consisting of 1045 pages in one (1) folder.[32]

In the Notice of Resolution dated June 14, 2023,[33] the present case was transferred back to the Second Division of this Court.

Respondent's *Memorandum* was filed on June 26, 2023,[34] while petitioner's *Memorandum* was posted on June 30, 2023.[35]

The present case was considered submitted for decision on July 28, 2023.[36]

THE ISSUE

As stipulated by the parties, the sole issue for the Court's determination is as follows:

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[25] Docket, p. 252.
[26] Docket, pp. 257 to 258.
[27] Notice of Resetting dated February 9, 2022, Docket, p. 259; Minutes of hearing held on, and Order dated, March 16, 2022, Docket, pp. 260 to 261.
[28] Docket, pp. 143 to 149, and 150 to 155, respectively.
[29] Docket, pp. 262 to 268.
[30] Docket, pp. 270 to 274.
[31] Docket, p. 288.
[32] *Compliance* dated October 10, 2022, Docket, pp. 321 to 323.
[33] Docket.
[34] Docket, pp. 483 to 496.
[35] Docket, pp. 497 to 513.
[36] Resolution dated July 28, 2023, Docket, p. 516.

> "WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX, VALUE ADDED TAX, AND COMPROMISE PENALTY IN THE AGGREGATE AMOUNT OF **Four Million Three Hundred Sixty-Two Thousand Three Hundred Sixty-Five and 82/100 Pesos (₱4,362,365.82)** INCLUSIVE OF DEFICIENCY INTEREST AND DELINQUENCY INTEREST AS PROVIDED FOR IN THE NIRC, OF 1997, AS AMENDED."[37]

Petitioner's arguments:

Petitioner argues that the reply to the PAN was not considered by the BIR in violation of due process because it did not even comment or address the defenses and documents submitted by the former; that the *Request for Reconsideration* with respondent was filed on time while respondent failed to show that it served petitioner with a copy of the *Decision* dated June 26, 2020; that the LOA issued to petitioner covered more than one taxable year, contrary to BIR RMO No. 43-90 as well as existing jurisprudence; that the BIR's period to assess petitioner had already prescribed; that petitioner's allegedly executed waiver is void; and that petitioner is not liable for alleged deficiency income tax, VAT, EWT, and compromise penalty.

Respondent's counter-arguments:

Respondent contends that petitioner is liable to pay deficiency taxes in the aggregate amount of ₱4,336,365.82 for taxable period January 1, 2015 to July 19, 2016; that the LOA covering the taxable year 2015 and the short-term period of January 1, 2016 to July 19, 2016 was issued in accordance with RMO No. 19-2015; and that respondent's right to assess the deficiency taxes has not yet prescribed pursuant to a validly executed waiver of statute of limitations.

THE COURT'S RULING

The present *Petition for Review* has merit.

The Court has jurisdiction over the case; and the Petition for Review was timely filed.

Respondent maintains that the assessments issued against the petitioner has become final, executory, and demandable for petitioner's failure to file a

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[37] Joint Statement of Issue To Be Tried or Resolved, JSFI, Docket, p. 263.

Request for Reconsideration against the FDDA within thirty (30) days from receipt of the same before the Office of the Commissioner. Respondent stresses that the *Request for Reconsideration* was filed before the Office of the Regional Director and not before the Office of the Commissioner, hence, the assessment issued against petitioner, as shown in the FDDA, has already become final, executory, and demandable.

On the other hand, petitioner claims that records would clearly prove that respondent's Office received the *Request for Reconsideration* on January 17, 2020 at 2:45 p.m. as evidenced by the stamp of respondent's office. Petitioner claims that a copy of the *Request for Reconsideration* was submitted with the Office of the Regional Director, but such office was only copy furnished with the document and after furnishing said office, petitioner proceeded to file with the Office of respondent.

Section 228 of the National Internal Revenue Code (NIRC) of 1997 reads:

> "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: 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." *(Emphasis added)*

Implementing the above-quoted Section 228, Section 3 of Revenue Regulations (RR) No. 12-99,[38] as amended by RR No. 18-2013,[39] provides, in part, as follows:

"SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

xxx xxx xxx

3.1.4 *Disputed Assessment.* — xxx

xxx xxx xxx

If the <u>protest is denied</u>, in whole or in part, by the <u>Commissioner's duly authorized representative</u>, 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) <u>elevate his protest through request for reconsideration 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 and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

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

[39] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> **If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision.** Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA." *(Emphases and underscoring added)*

In this case, there is no dispute that the FDDA dated December 17, 2019 rendered by Mr. Albino M. Galanza, OIC-Regional Director, was received by petitioner on December 18, 2019.[40] Hence, petitioner has the option to either appeal to this Court or respondent within thirty (30) days from receipt of the said FDDA, or until January 17, 2020, petitioner opted to file an administrative appeal with respondent.

There is also no dispute that petitioner timely filed a *Request for Reconsideration* of the FDDA on January 17, 2020.[41] However, respondent claims that the *Request for Reconsideration* was filed before the Office of the Regional Director and not before the Office of the Commissioner, while petitioner claims that it filed the *Request for Reconsideration* with the Office of the Commissioner, and copy furnished to the Office of the Regional Director.

Upon examination of Exhibit "R-12",[42] or the subject *Request for Reconsideration* as offered in evidence by respondent, it indeed bears the stamped received of the Office of the Regional Director on January 17, 2020. The said request was also stamped with "1st Indorsement JAN 17 2020 Forwarded Referred to the Assessment Division for appropriate action" and stamped received by "BIR RR#7 – Q.C. Assessment Division" on January 20, 2020.

Exhibit "P-8",[43] or the subject *Request for Reconsideration* as offered in evidence by petitioner, actually bears three (3) stamped received from the following offices, to wit:

1. Stamped Received by BIR Office of the Commissioner on January 17, 2020 at 2:45 p.m. with the name "Lesley Aninzo" written thereon;
2. Stamped Received by BIR RR No. 7 – Quezon City Assessment Division on January 17, 2020 at 3:18pm; and

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[40] Exhibits "P-7" and "R-11", Docket, pp. 52 to 63 and 433 to 444, respectively; Par. 15, *Petition for Review*, Docket, p. 10; Sixth paragraph, Statement of Facts, respondent's *Memorandum*, Docket, p. 484.
[41] Par. 7, Joint Stipulation of Facts, JSFI, Docket, p. 263; Exhibits "P-8" and "R-12", Docket, pp. 332 to 340 and 445 to 453, respectively.
[42] Docket, pp. 445 to 453.
[43] Docket, pp. 332 to 340.

3. Stamped Received by Revenue Region No. 7A, Quezon City Office of the Regional Director on January 17, 2020 at 3:21.

which correspond with the addressee of such request, to wit:

1. BIR Chief;
2. Regional Director (RD) Albino M. Galanza; and
3. Chief Assessment Division (CAD) Tita M. Sadsad.

Moreover, the subject *Request for Reconsideration* also stated that:

"On December 18, 2019, I received a Final Decision on Disputed Assessment (FDDA) which is dated on December 17, 2019 and signed by the RD.

A. It gave me 30 days to either settle its mentioned deficiency taxes or elevate my protest to the Office of the BIR Chief."

Petitioner's witness, Ms. Fatima G. Calabiao, likewise confirmed that petitioner filed the *Request for Reconsideration* with the Office of the Commissioner.[44]

There is thus no doubt that petitioner's *Request for Reconsideration*, was indeed timely filed with the Office of the Commissioner.

As to the timeliness of filing of the *Petition for Review* before this Court, Sections 7(a)(1) and 11 of Republic Act (RA) No. 1125,[45] as amended by RA No. 9282,[46] provide as follows, to wit:

"SECTION 7. *Jurisdiction.* – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **<u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" *(Emphases and underscoring added)*

[44] Exhibit "P-14" (Q&A No. 39), Docket, p. 311; TSN at the hearing held on October 4, 2022, p. 12.
[45] AN ACT CREATING THE COURT OF TAX APPEALS.
[46] 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 OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> "SECTION 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** xxx **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." (*Emphases added*)

Based on the foregoing provisions, the appellate jurisdiction of this Court is *not* limited to cases which involve decisions of respondent on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR.[47] The wording of the provision is clear and simple.[48]

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,*[49] the Supreme Court held as follows, to wit:

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the <u>warrant of distraint and levy</u> issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected." *(Emphasis and underscoring added)*

Clearly, the validity of a WDL is an issue that falls under "*other matters arising from the National Internal Revenue Code*" that is within the jurisdiction of this Court to decide upon. Considering that in the present *Petition for Review*, what is being primarily assailed is the WDL issued by respondent, the same then can be taken cognizance of by this Court.

Moreover, petitioner alleges that it received the WDL on January 19, 2021 and it was only on February 4, 2021 that petitioner received the *Decision* dated June 26, 2020 of the respondent denying the *Request for Reconsideration.*[50] Petitioner's witness, Ms. Calabiao, explained that petitioner did not receive a copy of the *Decision*, and only obtained a copy thereof when they personally

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[47] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.
[48] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.
[49] G.R. 162852, December 16, 2004.
[50] Pars. 17 to 18, *Petition for Review*, Docket, p. 11.

went to the BIR after receiving a copy of the WDL.[51] This fact was not refuted by the respondent.

Thus, petitioner has thirty (30) days from receipt of the said WDL No. RR7A-01-08-2021-0009 on January 19, 2021,[52] or until February 18, 2021, within which to file its appeal before this Court. Correspondingly, the filing of the present *Petition for Review* on February 18, 2021[53] was timely made.

Even if We consider the *Petition for Review* as an appeal from the adverse decision of the respondent, this petition was still filed on time. Petitioner received the *Decision* of respondent dated June 26, 2020 denying the *Request for Reconsideration* on February 4, 2021.[54] Hence, petitioner had thirty (30) days from February 4, 2021, or until March 6, 2021, within which to file the appeal before this Court. The filing of the present *Petition for Review* on February 18, 2021[55] was way before March 6, 2021.

The LOA issued against petitioner covering the period January 1, 2015 to July 19, 2016 is valid pursuant to RMO No. 19-2015.

Petitioner argues that the issued LOA covered more than one (1) taxable year, contrary to RMO No. 43-90 as well as existing jurisprudence. Petitioner claims that the BIR should have issued two (2) separate LOAs if it wanted to audit for more than one (1) taxable year, yet it chose to cut short the procedures laid down by law and jurisprudence thereby unduly burdening petitioner who was then already in the process of closing the sole proprietorship. Hence, the LOA is void.

On the other hand, respondent stresses that pursuant to RMO No. 19-2015, a mandatory audit of petitioner's internal revenue taxes for taxable year 2015, including the short-term period beginning on January 1, 2016 up to July 19, 2016, is necessary for the issuance of tax clearance in connection with petitioner's application for retirement/cessation of business.

The Court agrees with respondent.

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[51] Exhibit "P-14" (Q&A No. 45), Docket, pp. 311 to 312.
[52] Exhibit "P-1", Docket, p. 21; Par. 7, *Petition for Review*, Docket, p. 8; Exhibit "P-11" (Q&A No. 45), Docket, p. 83; Exhibit "P-14" (Q&A No. 43), Docket, p. 311.
[53] Docket, pp. 6 to 20.
[54] Exhibit "P-9", Docket, pp. 73 to 76; Par. 18, *Petition for Review*, Docket, p. 11; Exhibit "P-11" (Q&A No. 50), Docket, p. 84; Exhibit "P-14" (Q&A Nos. 44 and 45), Docket, pp. 311 to 312.
[55] Docket, pp. 6 to 20.

In this case, petitioner filed an *Application for Registration Information Update* (BIR Form No. 1905)[56] with respect to the closure of petitioner's business before Revenue District Office No. 28, Novaliches, Quezon City on July 18, 2016.

At the time of the filing of the said *Application for Registration Information Update* on July 18, 2016,[57] RMO No. 19-2015[58] is the relevant issuance of the BIR providing policies, guidelines and procedures to be observed in the audit/investigation of tax returns.

In relation thereto, Section III (8) of RMO No. 19-2015 provides that "[a]s a general policy, the simultaneous investigation of all liabilities of the taxpayer shall be followed. One (1) eLA shall be issued for each taxable year or period to include all internal revenue tax liabilities of the taxpayer, except when a specific tax type had been previously examined xxx."

However, Section III (10.2) of the same RMO clearly provides an exception, to wit:

> "10.2 In the issuance of eLA covering the audit of tax liabilities of taxpayers **<u>retiring from business</u>, one (1) eLA shall be issued for the audit/investigation of the internal revenue tax liabilities <u>covering the immediately preceding year and the short term period</u>**. However, the RO assigned to the case shall prepare two (2) separate reports, one for the immediately preceding year, and another on the results of the audit/investigation for the short term period." (*Emphasis and underscoring added*)

Based on the foregoing provision, the issuance of an LOA covering the immediately preceding year and the short period return for taxpayers retiring from business is sanctioned by RMO No. 19-2015. The RO assigned to the present case prepared separate audit reports for taxable period 2015 and 2016.[59] Correspondingly, the subject LOA is valid.

The Waiver of the Statute of Limitations executed by petitioner is valid.

Petitioner also argues that the BIR's period to assess had already prescribed and the allegedly executed waiver is void; while respondent counters

[56] Exhibit "R-4", Docket, pp. 388 to 389.
[57] *Id.*
[58] SUBJECT: BIR Audit Program.
[59] Exhibits "P-7" to "P-7-F", Docket, pp. 396 to 402.

that the right to assess the deficiency taxes has not yet prescribed pursuant to a validly executed waiver of the statute of limitations.

Again, the Court agrees with respondent.

Section 203 of the NIRC of 1997 reads as follows:

> "SEC. 203. *Period of Limitation upon Assessment and Collection.* — **Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return,** and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That **in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day**." *(Emphases and underscoring added)*

Under the foregoing provision, internal revenue taxes must be assessed within three (3) years counted from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. This mandate governs the question of prescription of the government's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation. Hence, an assessment notice issued after the three (3)-year prescriptive period is not valid and effective.[60]

However, an exception to the three (3)-year prescriptive period on the assessment of taxes is Section 222(b) of the NIRC of 1997, which provides as follows:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> xxx xxx xxx
>
> (b) **If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.** The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

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[60] *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.),* G.R. No. 212825, December 7, 2015.

xxx xxx xxx." *(Emphasis added)*

The above provision authorizes the extension of the original three-year period by the execution of a valid waiver, where the taxpayer and the BIR agreed in writing that the period to issue an assessment and collection of taxes due is extended to an agreed upon date.[61] To be sure, it must be emphasized that a *Waiver of the Defense of Prescription* is a bilateral agreement between a taxpayer and the BIR to extend the period of assessment and collection to a certain date.[62]

Records show that petitioner executed a *Waiver of the Defense of Prescription Under the Statute of Limitation of The National Internal Revenue* on December 6, 2018, giving the BIR a period of assessment and/or collection until June 30, 2019, which was accepted by GS Kelly C. Chong of RDO No. 28 – Novaliches on December 18, 2018.[63]

At the time of the execution of the said *Waiver of the Defense of Prescription Under the Statute of Limitation of The National Internal Revenue* on December 6, 2018,[64] RMO No. 14-2016[65] is the relevant issuance of the BIR setting forth the guidelines in the execution of waivers from the defense of prescription under Section 222 of the NIRC of 1997, as amended, amending RMO No. 20-90[66] and Revenue Delegation Authority Order (RDAO) No. 05-01,[67] to wit:

> "III. Guidelines
>
> 1. The waiver *may be, but not necessarily*, in the form prescribed by RMO No. 20-90 or RDAO No. 05-01. **The taxpayer's failure to follow the aforesaid forms does not invalidate the executed waiver, for as long as the following are complied with:**
>
> a) The Waiver of the Statute of Limitations under Section 222 (b) and (d) shall be **executed before the expiration of the period to assess or to collect taxes**. **The date of execution shall be specifically indicated in the waiver;**

[61] *Commissioner of Internal Revenue vs. FMF Development Corporation*, G.R. No. 167765, June 30, 2008.
[62] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[63] Exhibit "R-8", Docket, p. 403.
[64] *Id.*
[65] SUBJECT: Guidelines for the Execution of Waivers from the Defense of Prescription Pursuant to Section 222 of the National Internal Revenue Code of 1997, as Amended.
[66] SUBJECT: Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.
[67] SUBJECT: Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations.

b) **The waiver shall be signed by the taxpayer himself or his duly authorized representative.** In the case of a corporation, the waiver must be signed by any of its responsible officials;

c) **The expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription should be indicated.**

2. **Except for waiver of collection of taxes** which shall indicate the particular taxes assessed, **the waiver need not specify the particular taxes to be assessed nor the amount thereof, and it may simply state "all internal revenue taxes"** considering that during the assessment stage, the Commissioner of Internal Revenue or her duly authorized representative is still in the process of examining and determining the tax liability of the taxpayer.

3. Since the taxpayer is the applicant and the executor of the extension of the period of limitation for its benefit in order to submit the required documents and accounting records, the taxpayer is charged with the burden of ensuring that the waivers of statute of limitation are validly executed by its authorized representative. The authority of the taxpayer's representative who participated in the conduct of audit or investigation shall not be thereafter contested to invalidate the waiver.

4. **The waiver <u>may be</u> notarized. However, it is sufficient that the waiver is in writing as specifically provided by the NIRC, as amended.**

5. Considering that the waiver is a voluntary act of the taxpayer, the waiver shall take legal effect and be binding on the taxpayer upon its execution thereof.

6. It shall be the <u>duty of the taxpayer to submit</u> **its duly executed waiver to the Commissioner of Internal Revenue or official/s previously designated in existing issuances or the concerned revenue district officer or <u>group supervisor as designated in the Letter of Authority</u>**/Memorandum of Assignment **who shall then <u>indicate acceptance by signing the same</u>. Such waiver shall be executed and duly accepted prior to the expiration of the period to assess or to collect. <u>The taxpayer shall have the duty to retain a copy of the accepted waiver</u>.**

7. Note that there shall only be **two (2) material dates** that need to be present on the waiver:

a) The **date of execution of the waiver by the taxpayer** or its authorized representative; and

b) The **expiry date of the period the taxpayer waives the statute of limitations**.

8. Before the expiration of the period set on the previously executed waiver, the period earlier set may be extended by subsequent written waiver made in accordance with this Order." (*Emphases and underscoring added*)

Under RMO No. 14-2016, it is sufficient that the waiver is in writing, and the waiver *may be* notarized. The use of the word 'may' is ordinarily construed as permissive or directory, indicating that a matter of discretion is involved. Thus, the word 'may,' when used in a statute, does not generally suggest compulsion.[68] Hence, notarization is not a requirement for the waiver's validity. Furthermore, a GS as designated in the LOA is authorized to indicate his/her acceptance by signing the waiver. Moreover, the taxpayer shall have the duty to retain a copy of the accepted waiver.

Hence, it is of no moment if petitioner never appeared before a notary public with regard to the execution of the subject waiver as notarization is not required. Petitioner itself admitted that he executed a waiver but was merely received by an employee.[69] However, RMO No. 14-2016 provides that it is the *duty of the taxpayer* to submit its duly executed waiver to respondent or official/s previously designated in existing issuances or the concerned revenue district officer or group supervisor as designated in the Letter of Authority. Nevertheless, an examination of petitioner's Exhibit "P-10",[70] shows that the employee who received the same is actually "Ademar Balan", or the Revenue Officer designated in the LOA and it was eventually received by GS Kelly C. Chong. As testified to by GS Chong, she received the waiver on December 18 [, 2018].[71]

Contrary to petitioner's allegation that the CIR or its duly authorized representatives failed to indicate the date of acceptance in the waiver,[72] an examination of the subject waiver[73] shows that below the signature of GS Kelly C. Chong is the date "DEC 18 2018", which can be considered as the date of acceptance of the waiver.

Although respondent's witness, GS Chong, claims that a copy of the notarized waiver with her signature thereon was given to petitioner by her

[68] *Office of the Ombudsman vs. Court of Appeals and Macabulos*, G.R. No. 159395, May 7, 2008.
[69] Exhibit "P-11" (Q&A No. 10), Docket, p. 80; Exhibit "P-10", Docket, p. 77.
[70] Docket, p. 77.
[71] TSN at the hearing held on February 15, 2023, p. 8.
[72] Par. 42, petitioner's *Memorandum*, Docket, p. 510.
[73] Exhibit "R-8", Docket, p. 403.

examiner,[74] there is no proof to substantiate such claim. Even the copy of the waiver presented by respondent has no acknowledgment receipt from the petitioner.[75] Nevertheless, RMO No. 14-2016, provides that the taxpayer shall have the duty to retain a copy of the accepted waiver. Hence, petitioner should have followed up on whether the waiver was accepted or not and requested for a copy of the accepted waiver.

It is noted that the PAN and FLD issued against petitioner state:

> "PERIOD OF PRESCRIPTION
>
> Since you/your authorized representative had executed a waiver of the defense of prescription under the statute of limitations prescribed in Sections 203 and 222, and other related provisions of the NIRC of 1997, as amended, on December 6, 2018 and have consented to the assessment and/or collection of tax or taxes of said year which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by said sections of the National Internal Revenue Code but not later than June 30, 2019, the period of prescription, therefore, is suspended from the date of execution up to June 30, 2019."[76]

Despite the above statement appearing on the PAN and FLD, petitioner did not controvert the same in the *Reply to Preliminary Assessment Notice (PAN)* dated June 4, 2019,[77] nor in the protest letter to the FLD dated July 15, 2019.[78] Petitioner only raised the issue of the waiver's validity in the *Petition for Review*[79] filed with this Court.

In *Commissioner of Internal Revenue vs. Transition Philippines, Optical, Inc.*,[80] the Supreme Court held that the taxpayer has impliedly recognized the waivers' validity as it never raised the invalidity of the waivers at the earliest opportunity, to wit:

> "Indeed, the Bureau of Internal Revenue was at fault when it accepted respondent's Waivers despite their non-compliance with the requirements of RMO No. 20-90 and RDAO No. 05-01.

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[74] TSN at the hearing held on February 15, 2023, p. 9.
[75] Exhibit "R-8", Docket, p. 403.
[76] Exhibits "P-3" and "R-9", Docket, pp. 28 and 409, respectively; Exhibits "P-5" and "R-10", Docket, pp. 39 and 417, respectively.
[77] Exhibit "P-4", Docket, pp. 31 to 33.
[78] Exhibit "P-6", Docket, pp. 43 to 51.
[79] Pars. 28 to 34, *Petition for Review*, Docket, pp. 14 to 15.
[80] G.R. No. 227544, November 22, 2017.

> Nonetheless, **respondent's acts also show its implied admission of the validity of the waivers. *First*, respondent never raised the invalidity of the Waivers at the earliest opportunity, either in its Protest to the PAN, Protest to the FAN, or Supplemental Protest to the FAN. It thereby impliedly recognized these Waivers' validity** and its representatives' authority to execute them. **Respondent only raised the issue of these Waivers' validity in its Petition for Review filed with the Court of Tax Appeals**. xxx" (*Emphasis added*)

Hence, petitioner is estopped from claiming that the waiver is invalid.

In any event, even granting that the subject *Waiver* is invalid, it should be noted that petitioner did not present in evidence the relevant Income Tax Returns and VAT Returns showing the actual date of filing and payment thereof. This is significant for purposes of determining the prescriptive period to assess. Hence, the Court cannot determine if respondent's right to assess has indeed prescribed.

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

Petitioner further argues that the reply to the PAN was not considered by the BIR in violation of due process because it did not even comment on or address the defenses and documents submitted by the former. Petitioner points out that the amount of the alleged assessments remained unchanged from the PAN to the FLD, which is in violation of due process.

On this matter, the Court agrees with petitioner.

Section 228 of the NIRC of 1997 reads, in part, 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.**
>
> xxx xxx xxx." *(Emphasis added)*

Under the foregoing provision, 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.[81] The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[82] To be sure, the requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[83] Furthermore, it must be emphasized that failure to comply with Section 228 does not only render the assessment void, but also finds no validation in any provision in the Tax Code.[84]

To implement the above-quoted Section 228, Section 3 of RR No. 12-99, as amended by RR No. 18-2013, provides, in part, as follows:

> "SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –***
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> 3.1.1 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).
>
> xxx xxx xxx
>
> 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 <u>shall state the facts, the law</u>, rules and regulations, or jurisprudence <u>on which the assessment is</u>**

[81] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.,* G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[82] *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan,* G.R. No. 232663, May 3, 2021.
[83] *Commissioner of Internal Revenue vs. Unioil Corporation,* G.R. No. 204405, August 4, 2021.
[84] *Id.,* citing *Commissioner of Internal Revenue vs. Reyes,* 516 Phil. 176, 189 (2006).

based, _otherwise, the assessment shall be void_ (see illustration in ANNEX 'B' hereof).

xxx xxx xxx

3.1.5 *Final Decision on a Disputed Assessment (FDDA).* – The decision of the Commissioner or his duly authorized representative shall state the (i) 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), and (ii) that the same is his *final* decision." *(Emphases and underscoring added)*

The foregoing provision prescribe, as part of due process in the issuance of tax assessments, that the PAN, FLD/FAN and FDDA must, respectively, state, among others, the facts and the law on which the assessment is based; otherwise, the FLD/FAN and/or FDDA shall be void.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.* ("*Avon* case"),[85] 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

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

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

In carrying out these quasi-judicial functions, the Commissioner is required to 'investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.' **Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons.**

xxx xxx xxx

In *Ang Tibay v. The Court of Industrial Relations*,[86] this Court observed that **although quasi-judicial agencies 'may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.'** It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:

(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.
(2) **The administrative tribunal or body must consider the evidence presented.**
(3) There must be evidence supporting the tribunal's decision.
(4) The evidence must be substantial or 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'
(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.

[86] 62 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].

(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.

(7) **The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.**

xxx xxx xxx

The last requirement relating to the form and substance of the decision is the decision-maker's *'duty to give reason'* to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker.

xxx xxx xxx

Administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, 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

The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2[87] of Revenue Regulation 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[88] requires 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[89] specifically requires that the decision

[87] Now Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-2013.
[88] Now Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013.
[89] Now Section 3.1.5 of RR No. 12-99, as amended by RR No. 18-2013.

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.

'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.' This is an essential requirement of due process and applies to the Preliminary Assessment Notice, **Final Letter of Demand with the Final Assessment Notices**, and the Final Decision on Disputed Assessment.

xxx xxx xxx

The facts demonstrate that Avon was deprived of due process. **It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.

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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 conclusion are based, and those facts must appear in the record.**

xxx xxx xxx

The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter **null and void, and of no force and effect.**

This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.

xxx xxx xxx

In *Commissioner of Internal Revenue v. Reyes*,[90] **this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.**

xxx xxx xxx

Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:[91]

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
>
> xxx xxx xxx
>
> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate...that the law has not been observed.** (Emphasis supplied)

xxx. ***[The Commissioner of Internal Revenue's]* <u>disregard of the standards and rules renders the deficiency tax assessments null and void</u>.** xxx." *(Emphases and underscoring added)*

[90] 516 Phil. 176 (2006) [Per C.J. Panganiban, First Division].
[91] 241 Phil. 829 (1988) [Per J. Cruz, First Division].

Based on the foregoing jurisprudential pronouncements, the CIR or its duly authorized representative is mandated to perform assessment functions in accordance with, and strict adherence to, law, with their own rules of procedure, and always with regard to the basic tenets of due process. And due process requires respondents and/or BIR to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.

A significant part of the due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed, in writing, of the law and of the facts on which the assessment is made. Such requirement must be embodied in the PAN, FLD/FAN, and FDDA. Specifically, when the CIR rejects the taxpayer's explanations, it must give some reason for doing so and the particular facts and law upon which its conclusion are based, and those facts must appear in the record. As a corollary, the concerned taxpayer must ***not*** be left unaware on how the CIR or its duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment. In case the CIR or its duly authorized representative 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, as stated in the PAN dated May 17, 2019,[92] the BIR found the following as due from petitioner for taxable period January 1, 2015 to July 19, 2016, to wit:

Tax Type and Year	Basic Tax Due	20% Interest	12% Interest	Total
Income tax – 2015	₱3,249,684.69	₱1,112,905.72	₱581,203.88	₱4,943,794.29
VAT – 2015	1,202,187.61	465,065.45	215,010.43	1,882,263.49
EWT – 2015	2,938.62	1,152.91	525.57	4,617.10
Income tax – 2016	14,287.43	4,892.95	2,555.30	21,735.68
VAT – 2016	474,494.78	88,399.03	84,863.07	647,756.88
EWT – 2016	697.00	93,168.85	124.66	93,990.51
Compromise Penalty – 2015				1,000.00
Compromise Penalty – 2016				25,000.00
Total	**₱4,944,290.13**	**₱1,765,584.91**	**₱884,282.91**	**₱7,620,157.95**

In the *Reply to Preliminary Assessment Notice (PAN)*,[93] petitioner made certain refutations against the findings of the BIR relative to the foregoing deficiency taxes. N

[92] Exhibits "P-3", "R-9" and "R-9-A", Docket, pp. 23 to 30 and 404 to 411, respectively.
[93] Exhibit "P-4", Docket, pp. 31 to 33; BIR Records (Exhibit "R-1"), pp. 553 to 555.

However, in the FLD dated June 17, 2019,[94] petitioner was still assessed of the following deficiency tax liabilities, to wit:

Tax Type and Year	Basic Tax Due	20% Interest	12% Interest	Total
Income tax – 2015	₱3,249,684.69	₱1,112,905.72	₱611,118.79	₱4,973,709.20
VAT – 2015	1,202,187.61	465,065.45	226,077.14	1,893,330.20
EWT – 2015	2,938.62	1,152.91	552.62	4,644.15
Income tax – 2016	14,287.43	4,892.95	2,686.82	21,867.20
VAT – 2016	474,494.78	88,399.03	89,231.02	652,124.83
EWT – 2016	697.00	93,168.85	131.07	93,996.92
Compromise Penalty – 2015				1,000.00
Compromise Penalty – 2016				25,000.00
Total	**₱4,944,290.13**	**₱1,765,584.91**	**₱929,797.46**	**₱7,665,672.50**

While the *aggregate* amount of taxes being assessed increased, a comparison of the figures stated in the PAN dated May 17, 2019, and the foregoing figures would reveal that the respective amounts of basic taxes, 20% interest and compromise penalty remain unchanged. In other words, respondent BIR merely adjusted the 12% interest being imposed. In fact, the *Details of Discrepancies* attached to the said FLD merely reiterated or copied *verbatim* what are indicated in the *Details of Discrepancies* attached to the PAN. In addition, it is noteworthy that in the said FLD, respondent BIR did not address any of the refutations made by petitioner in the *Reply to Preliminary Assessment Notice (PAN)* —an indication that respondent BIR did not consider the same when it issued the subject FLD.

Thus, the inevitable conclusion is that petitioner's right to due process, as recognized under Section 228 of the NIRC of 1997, vis-à-vis Sections 3.1.1 and 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013, was violated by respondent. As a consequence of such violation, the said deficiency tax assessments are rendered void.

Tax assessments issued in violation of the due process rights of a taxpayer are null and void.[95] Furthermore, a void assessment bears no valid fruit.[96] Such being the case, the subject tax assessments cannot be enforced against petitioner, and respondent CIR has no right to collect the same.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the WDL No. RR7A-01-08-2021-0009 dated January 19, 2021 issued against petitioner is **CANCELLED** and **SET ASIDE.**

[94] Exhibits "P-5", "R-10" and "R-10-A", Docket, pp. 34 to 42 and 412 to 425, respectively.
[95] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, supra.
[96] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

Moreover, while the LOA with SN: eLA201500079628 / LOA-028-2018-00000120 dated April 25, 2018 is valid, the FLD *(Parts I and II)*, with *Details of Discrepancy*, all dated June 17, 2019, is likewise **CANCELLED** and **SET ASIDE**, for being void.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice