CTA Form No. 8

22-000011-0046

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10721

REDENTOR AGPULDO TAGALA, as the proprietor of 7th CONCEPT TRADING / 7C CONSTRUCTION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

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

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. BRYAN ANTHONY C. DIEGO
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

AGUINALDO & AGUINALDO-BALUYA LAW OFFICES
2/F, RFC Mall, Brgy. Molino II
Bacoor City, Cavite 4102

GREETINGS:

You are hereby notified by these presents that on **March 11, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 13, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

REDENTOR AGPULDO TAGALA, as the proprietor of 7TH CONCEPT TRADING / 7C CONSTRUCTION, Petitioner,	**CTA CASE NO. 10721**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 11 2025; 3:30PM

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Redentor Agpuldo Tagala (**petitioner**) against respondent Commissioner of Internal Revenue (**respondent/CIR**) pursuant to Section 3(a)[2], Rule 8[3]

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1 Filed on 02 February 2022, Division Docket, pp. 6-24.

2 **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.

3 PROCEDURE IN CIVIL CASES.

in relation to Section 3(a)(1)[4], Rule 4[5] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). Petitioner, as proprietor of 7th Concept Trading / 7C Construction, prays that judgment be rendered ordering the cancellation and withdrawal of the Final Decision on Disputed Assessment (**FDDA**), dated 15 December 2021[6], that respondent issued against him. There, respondent demands payment of his alleged tax deficiencies aggregating ₱10,108,681.35, comprised of Income Tax (**IT**), Value-Added Tax (**VAT**), and Miscellaneous Tax amounting to ₱5,210,592.63, ₱4,828,088.72, and ₱70,000.00, respectively. The FDDA's issuance results from the examination of the latter's books of accounts and other accounting records for the taxable period from 01 January 2016 to 31 December 2016, or the calendar year (**CY**) 2016, for brevity.

PARTIES TO THE CASE

Petitioner is the sole proprietor of the businesses 7th Concept Trading and 7C Construction, duly organized under the laws of the Philippines.[7] His businesses' principal office address is at Block 29, Lot 3, Brookside Lane, Arnaldo Highway, Brgy. San Francisco, Gen. Trias, Cavite 4107 (and previously at Brgy. Pacifico, Marcos, Ilocos Norte 2907).[8]

Respondent, on the other hand, is the CIR who is charged with, among others, the duty of assessing and collecting internal revenue taxes, fees or other charges, penalties imposed under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof, administered by the Bureau of Internal Revenue (**BIR**). He or she holds office at the BIR National Office Building, Sen. Miriam P. Defensor-Santiago Avenue, Diliman, Quezon City.

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4 **SEC. 3**. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(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 other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

5 JURISDICTION OF THE COURT.

6 Exhibit "P-1" / "R-12", BIR Records, pp. 301-302.

7 See Parties' "Joint Submission (of the admitted/stipulated facts and issues to be resolved" (JSFI), Division Docket, p. 181.

8 Id.

FACTS OF THE CASE

On 10 September 2018, the BIR's Revenue District 001 – Laoag City, Ilocos Norte of Revenue Region 001 – Calasiao, Pangasinan issued a Letter of Authority (**LOA**) with Reference No. LOA-001-2018-00000216[9] (SN: eLA201200027570) through then Officer-in-Charge (**OIC**) Regional Director (**RD**) Clavelina S. Nacar (**Nacar**). The LOA authorized then Revenue Officer (**RO**) Au-Jane Marie Malana (**Malana**) and Group Supervisor (**GS**) Ruby Retamal (**Retamal**), to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for CY 2016. On 24 September 2018, RO Malana served the said LOA to one Genalyn T. Abe-Abe (**Abe-Abe**).

On 12 October 2018, RO Malana served the First Notice dated 11 October 2018[10] with an attached Checklist of Requirements[11], again to Abe-Abe. Later, on 15 November 2018, she served the "Second and Final Notice Before Issuance of Subpoena *Duces Tecum*"[12], still to Abe-Abe.

On 21 December 2018, RO Malana submitted a memorandum[13] to OIC Revenue District Officer (**RDO**) Helen H. Leaño (**Leaño**), recommending the issuance of a subpoena *duces tecum* (**SDT**) to compel petitioner to transmit the documents needed for the audit, citing the latter's failure to submit the documents required in the two preceding notices. RDO Leaño concurred and eventually recommended to RD Nacar to issue an SDT.

On 16 January 2019, RD Nacar issued the SDT No. RR1-04-2019-315[14] directing petitioner to appear before the BIR on 30 January 2019 to submit his records and supporting documentation, in connection with his operations for CY 2016.

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9 Exhibit "P-5" / Exhibit "R-1", BIR Records, p. 1A.
10 Exhibit "P-7" / Exhibit "R-3", id., p. 3.
11 Exhibit "P-6" / Exhibit "R-2", id., p. 2.
12 Exhibit "P-8" / Exhibit "R-4", id., p. 4.
13 Exhibit "R-5", id., pp. 5-6.
14 Exhibit "P-10" / Exhibit "R-6", id., pp. 7A-8.

On 30 January 2019 (the date indicated in the SDT), a meeting in the BIR's offices transpired, with RO Malana and one Julia Divina P. Martin (**Martin**) in attendance.[15] Martin purported to represent petitioner and came armed with a notarized Special Power of Attorney[16] (**SPA**) supposedly authorizing her to represent petitioner in submitting documents in relation to the SDT. She did not submit any documents during the meeting but she filed a letter-request dated 29 January 2019[17] asking to allow petitioner to transmit the documents at a later date, as the same were still being gathered and collated.

As an offshoot to this case, Prosecutor Robelita D. Fanglayan filed an Information dated 05 August 2019[18] before the Municipal Trial Court (**MTC**) of Calasiao, Pangasinan, accusing petitioner of the crime of Failure to Obey Summons.[19] As petitioner represents, on 24 June 2019, he received a subpoena from the Office of the Provincial Prosecutor of the Department of Justice – National Prosecution Service (**DOJ-NPS**) in Dagupan City. Among its attachments were copies of the BIR's pertinent issuances which he, according to petitioner, had only then seen for the first time.[20] The criminal case eventually proceeded and the MTC of Calasiao, Pangasinan rendered a Decision dated 01 October 2021[21], acquitting petitioner of the offense charged.

Still lacking substantial access to petitioner's records, the audit team continued with the examination in accordance with the "Best Evidence Obtainable Rule".[22]

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15 See "Minutes of the Meeting", Exhibit "P-11", Division Docket, p. 267.
16 Exhibit "P-12", id., p. 268.
17 Exhibit "P-13", id., p. 269.
18 Exhibit "P-3", id., p. 236.
19 **SEC. 266.** *Failure to Obey Summons.* – Any person who, being duly summoned to appear to testify, or to appear and produce books of accounts, records, memoranda or other papers, or to furnish information as required under the pertinent provisions of this Code, neglects to appear or to produce such books of accounts, records, memoranda or other papers, or to furnish such information, shall, upon conviction, be punished by a fine of not less than Five thousand pesos (₱5,000) but not more than Ten thousand pesos (₱10,000) and suffer imprisonment of not less than one (1) year but not more than two (2) years.
20 Paragraph I., Petition for Review, Division Docket, p. 13.
21 Exhibit "P-3-A", id., pp. 238-250.
22 Item 34, "Judicial Affidavit of Group Supervisor Au-Jane Marie A. Malana", Exhibit "R-14", id., p. 149; 2nd Indorsement dated 04 June 2019 issued by Regional Director (RD) Thelma S. Milabao (Milabao), BIR Records, p. 16.

On 09 August 2019, petitioner executed an SPA in favor of Abe-Abe, authorizing her to receive all communications, summons, and correspondence in his behalf.[23]

On 10 September 2019, the BIR served on petitioner, through Abe-Abe, a Notice of Informal Conference (**NIC**) dated 20 August 2019.[24] The NIC stated that the investigation of petitioner under the present LOA for CY 2016 uncovered deficiency taxes due from it, as computed and detailed in an Audit Sheet attached thereto. Accordingly, it invited petitioner to air his side of the case within ten (10) days from the NIC's receipt.

On 16 September 2019, petitioner authorized Rolando S. Conte (**Conte**) to represent him and his businesses before the BIR.[25] The next day, bearing petitioner's authorization, Conte appeared before the BIR and filed a letter-request, asking that the scheduled NIC be pushed back to 01 October 2019 to enable him to better study petitioner's case.

On 01 October 2019, the NIC proceeded as rescheduled. Petitioner and Conte met with RO Malana to discuss the case. In connection with the conference, petitioner claimed to have brought volumes of documents and schedules to disprove the BIR's findings, only to be "outrightly discarded and not given due recognition".[26] On the other hand, RO Malana states that petitioner did not submit any evidence to support the defenses he raised.[27] She declared that petitioner only presented a "two-page legal paper" reconciliation, against which she insisted should be supported by the actual, original source documents.[28] Petitioner further interposed that they were advised during the meeting to simply wait for the issuance of the Preliminary Assessment Notice (**PAN**) and Formal Letter of Demand with Assessment Notices (**FAN/FLD**), then protest the same.

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[23] Par. 23, Petitioner's Request for Reconsideration dated 19 December 2019, Exhibit "P-4", Division Docket, p. 256; Copy of the Special Power of Attorney (SPA) dated 09 August 2019, BIR Records, p. 140.

[24] Exhibit "P-15" / Exhibit "R-7", BIR Records, pp. 80-81.

[25] See Authorization Letter, Exhibit "P-16", Division Docket, p. 273.

[26] Par. p., Petition for Review, id, p. 14.

[27] Item 37, "Judicial Affidavit of Group Supervisor Au-Jane Marie A. Malana", Exhibit "R-14", id., p. 149.

[28] Memorandum prepared by Revenue Officer (RO) Au-Jane Marie A. Malana addressed to Revenue District Officer (RDO) Helen H. Leaño dated 14 January 2020, BIR Records, pp. 279-281.

As a result of the audit team's investigation, RO Malana recommended the issuance of a PAN through a Memorandum dated 02 October 2019.[29]

Pursuant thereto, on 28 October 2019, the BIR issued the PAN with attached Details of Discrepancies.[30] It assessed petitioner with alleged deficiency IT, VAT, and Miscellaneous Tax, aggregating ₱10,042,736.87, inclusive of interest and compromise penalties, to wit:

Tax Type	Basic Tax Due	Interest	Compromise	Total Due
IT	₱3,774,143.34	₱1,401,706.50	-	₱5,175,849.84
VAT	3,389,468.34	1,407,418.69	-	4,796,887.03
Miscellaneous	-	-	₱70,000.00	70,000.00
Total	**₱7,163,611.68**	**₱2,809,125.19**	**₱70,000.00**	**₱10,042,736.87**

On 12 November 2019, RO Malana served the said PAN to Abe-Abe.[31] Petitioner opted not to reply to the PAN.[32] Thus, on 28 November 2019, the BIR issued the FLD/FAN with an attached Details of Discrepancies.[33] It demanded anew the payment of the same basic tax deficiencies as stated in the PAN, this time totaling ₱10,108,681.35 (as adjusted for incremental interest), broken down as follows:

Tax Type	Basic Tax Due	Interest	Compromise	Total Due
IT	₱3,774,143.34	₱1,436,449.29	-	₱5,210,592.63
VAT	3,389,468.34	1,438,620.38	-	4,828,088.72
Miscellaneous	-	-	₱70,000.00	70,000.00
Total	**₱7,163,611.68**	**₱2,875,069.67**	**₱70,000.00**	**₱10,108,681.35**

Petitioner received a copy of the said FLD/FAN through Abe-Abe on 03 December 2019.[34] Accordingly, on 19 December 2019, petitioner filed with the BIR its Letter-Protest.[35] Therein, he requested for the

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29 Exhibit "R-8", id., p. 86.
30 Exhibit "P-18" / Exhibits "R-9" and "R-9-A", id., pp. 96-101.
31 Id., p. 99.
32 Par. q., Petition for Review, Division Docket, p. 14.
33 Exhibit "P-19", BIR Records, pp. 115-117; Exhibits "R-10" and "R-10-A", BIR Records, pp. 118-123.
34 Id., p. 121.
35 Exhibit "P-4", id., pp. 269-276.

reconsideration of the assessment, asserting that he should not be assessed any deficiency taxes as the BIR violated his due process rights.

In a letter dated 26 December 2019, RD Thelma S. Milabao (**Milabao**) informed petitioner that his Request for Reconsideration would be acted upon.[36] As a result, the docket for his case was returned to the audit team for further examination and verification. In a Memorandum[37] of even date, RD Milabao directed RDO Leaño to look into petitioner's Letter-Protest. Towards this end, RO Malana submitted her Memorandum dated 14 January 2020[38] to RDO Leaño. In the said Memorandum, she explained that she was still of the position that petitioner was to be held liable for the assessed deficiency taxes and thus recommended the issuance of an FDDA.

Much later, on 15 December 2021, OIC-RD Josephine S. Virtucio (**Virtucio**) issued the subject FDDA[39] maintaining the assessed deficiency taxes in their same, full amounts aggregating ₱10,108,681.35, as set forth in the FLD/FAN, then requested taxpayer to pay the same immediately upon receipt.

The BIR Records show that RO Malana served the copy of the FDDA to petitioner *via* substituted service to one Divina Malvar (**Malvar**) in the presence of two (2) disinterested witnesses on 28 December 2021.[40] The BIR's documentation indicates that Malvar was apparently a Barangay Kagawad and Officer-of-the-Day at Barangay Pacifico (where petitioner's businesses were supposedly located) while the witnesses Erlinda Dela Cruz and Myrna Sebastian were supposedly Barangay Health Workers.[41]

On 29 December 2021, petitioner got hold of a copy of the FDDA from Abe-Abe who sent the same through courier. Thus, on 02 February

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36 BIR Records, p. 277.
37 Id., p. 278.
38 Exhibit "R-11", id., pp. 279-284.
39 Supra at note 6.
40 BIR Records, p. 301.
41 Affidavit of Service of Final Decision on Disputed Assessment dated 03 January 2022 and Report on Personal/Substituted Service dated 03 January 2022, id., pp. 304 and 302-A, respectively.

2022, pursuant to Section 228[42] of the NIRC of 1997, as amended, petitioner filed the instant Petition for Review.[43] The case was initially raffled to this Court's Second Division.

PROCEEDINGS BEFORE THE SECOND DIVISION

On 07 February 2022, the Second Division served Summons[44] on respondent, requiring the latter to submit an Answer within 30 days from service. Respondent received the same on 18 February 2022.[45] On 18 March 2022, however, respondent filed a "Motion for Extension of Time to File Answer"[46] asking for an additional thirty (30) days to file an Answer, which the Second Division granted in the Order dated 21 March 2022.[47]

On 19 April 2022, respondent filed his or her Answer[48], essentially citing the following special and affirmative defenses: (1) the BIR did not violate petitioner's due process rights; (2) the factual and legal bases of the deficiency taxes assessed were valid; (3) the non-revalidation of the LOA does not invalidate the assessments; (4) the BIR validly served the LOA and the issuances that followed and accorded due process; and (5) petitioner is liable for the assessed IT, VAT, and Miscellaneous Tax.[49]

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42 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: ...

...

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. ...

...

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 supplied)

43 Supra at note 1.

44 Division Docket, p. 102.

45 Id.

46 Id., pp. 104-107.

47 Id., p. 109.

48 Id., pp. 110-126.

49 Id.

With the filing of respondent's Answer, the Second Division set the Pre-Trial Conference on 20 June 2022.[50] Accordingly, on 01 June 2022, respondent filed his or her Pre-Trial Brief.[51] On the same day, responded transmitted to the Court the BIR Records[52] (a folder with 314 pages), and filed an Offer of Testimony of GS Malana[53] (with the latter's Judicial Affidavit attached). Meanwhile, on 06 June 2022, petitioner filed his Pre-Trial Brief.[54]

Later, the scheduled Pre-Trial Conference to 13 October 2022 was pushed back because of official court events.[55] Prior thereto, on 20 September 2022, petitioner's counsel, in an Urgent Motion to Reset Hearing[56], expressed unavailability due to pre-existing Court commitments and prayed for the Court to reschedule the Pre-Trial Conference once more. The Court granted the same in the Resolution dated 22 September 2022[57], resetting the Pre-Trial Conference on 01 December 2022.

Still later, after some postponements, the Pre-Trial Conference proceeded as rescheduled. The Second Division set schedules for mediation proceedings, the presentation of each party's witness, and the marking of their documentary exhibits.[58] It likewise ordered the parties to file their Joint Stipulation of Facts and Issues (**JSFI**) until 16 January 2023. In compliance with the Court's directives, the parties filed their JSFI[59] on 14 December 2022. Thus, in the Resolution dated 04 January 2023[60], the Second Division admitted and approved the parties' JSFI, then deemed the Pre-Trial terminated. Later, on 31 January 2023, it issued the Pre-Trial Order.[61]

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50 Id., pp. 132-133.
51 Id., pp. 134-138.
52 Id., pp. 154-156.
53 Id., pp. 141-143.
54 Id., pp. 159-163.
55 See Notice of Resetting dated 09 June 2022 and 30 August 2022, id., pp. 165 and 166, respectively.
56 Id., pp. 167-168.
57 Id., p. 171.
58 See Minutes of the Hearing and Order, both dated 01 December 2022, id., pp. 173 and 174-175, respectively.
59 See Parties' Joint Submission (of the admitted/stipulated facts and issues to be resolved) dated 13 December 2022, id., pp. 181-185.
60 Id., p. 187.
61 Id., pp. 189-193.

On 08 March 2023, as the Court directed, the parties appeared before the Philippine Mediation Center - Court of Tax Appeals (**PMC-CTA**) for mediation proceedings, pursuant to Parts I.1.A[62] and II[63] of A.M. No. 11-1-5-SC-PHILJA or the Interim Guidelines for Implementing Mediation in the CTA.[64] On even date, the PMC-CTA forwarded a Report stating that the conciliation proceedings failed.[65] The Second Division noted the same in its Resolution dated 14 March 2023 then trial thus ensued.[66]

On 29 May 2023, pursuant to CTA Administrative Circular No. 01-2023 dated 23 May 2023, the present case was transferred to this Court's First Division, which continued to hear the same.[67] As a consequence of the transfer, the Court reset the hearing scheduled for the presentation of petitioner's witness to 29 August 2023.[68]

PROCEEDINGS BEFORE THE FIRST DIVISION

On 29 August 2023[69], trial proceeded with petitioner presenting Conte as his first and only witness.

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62 I. *Coverage*
I.1. The following cases may be referred to mediation:
A. *Cases within the jurisdiction of the Divisions*
1. Decisions of the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC), or other laws administered by the Bureau of Internal Revenue (BIR);
2. Inaction by the CIR in cases involving disputed assessments, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR, where the NIRC provides a specific period for action, in which case the inaction shall be deemed a denial upon the lapse of said period[.]

63 II. *Referral to Mediation*
The referral to mediation shall be made after the filing of the Comment in cases pending with the Court *En Banc* and, before or during the pre-trial for cases pending with the Court in Division.
A Resolution (FORM NO. 1) shall be issued by the Court *En Banc* or in Division, referring the covered civil case to mediation and requiring the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) at a specified date and time. Said Resolution shall suspend the proceedings for the duration of the period of mediation stated in Section VIII below.

64 Division Docket, p. 194.

65 Id.

66 Id., p. 196.

67 Reorganizing the Divisions of the Court.

68 See Notice of Resetting dated 06 July 2023, Division Docket, p. 205.

69 See Minutes of the Hearing and Order, both dated 29 August 2023, id., pp. 207-207B and 208-210, respectively.

On the witness stand, Conte identified the exhibits he had referred to in his Judicial Affidavit.[70] He narrated that Abe-Abe received the LOA and the notices that followed leading to the 30 January 2019 meeting set in the SDT. He made reference to copies of the said issuances that Abe-Abe signed. He represented that petitioner later learned of the meeting from his relatives, prompting him to visit the BIR offices on 21 February 2019, where he was supposedly shown the BIR's initial findings[71] (but was not provided with a hard copy thereof, though he was able to capture a snapshot).

In the course of his testimony, Conte also stated that petitioner again appeared before the BIR on 28 February 2019, in the hope that the case would be settled at the RDO's level but was unable to meet the amount that the BIR specified. Conte further discussed that the BIR later criminally charged petitioner for the latter's failure to obey the SDT, and that court proceedings ensued before the MTC of Calasiao, Pangasinan leading to an eventual Decision acquitting petitioner. He cited that, in connection with the criminal case, petitioner first learned and received copies of the BIR notices issued thus far when the Prosecutor's Office summoned him to appear before it. As to the administrative proceedings, Conte stated that Abe-Abe received an NIC on 10 September 2019, inviting him to present his side and refute the BIR's initial findings in a computation sheet attached thereto. He testified that it was at this point that petitioner engaged his services for representation, and that on 16 September 2019, petitioner authorized him through a letter which he later presented to the BIR. As he recounted, he and petitioner later appeared before the BIR in the informal conference of 01 October 2019, where their attempts to refute the findings were treated coldly and the volumes of documents and schedules they brought (to support their arguments) were disregarded. He further declared that, during the said conference, RO Malana advised them to wait for the PAN and FAN, then protest the same. Still later, Conte affirmed that petitioner opted not to reply to the PAN but timely filed a Letter-Protest against the FLD/FAN, which ultimately led to the issuance of the FDDA. He emphasized that improper service (and at times to unknown individuals) in each step of the proceedings in the administrative level amounts to violations upon petitioner's rights to due process.

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70 Exhibit "P-20", Judicial Affidavit of Rolando S. Conte, id., pp. 90-101.

71 Exhibit "P-14", id., pp. 270-271.

In his cross-examination, Conte clarified that petitioner commissioned his services and representation only after the supposed audit and investigation proper had already concluded. He explained that, towards this end, petitioner authorized him through a letter to appear before the BIR. According to Conte, he transmitted to the BIR a copy of the letter (authorizing him to represent petitioner). When inquired about the extent of his participation in the examination of petitioner's records, Conte replied that he did his own review and concluded that there was no actual examination to speak of, as the LOA had never been served on petitioner. Nevertheless, he confirmed that after being authorized by petitioner, his participation consisted of preparing the protest to the FAN (on petitioner's behalf).[72] No redirect examination followed.[73]

Consequently, during his appearance in Court, petitioner asked for a Commissioner's Hearing to enable him to rectify provisional markings on evidence he had previously presented. The Court, in the interest of justice, obliged and set the same on 14 September 2023.[74]

With Conte being petitioner's last witness, the First Division then gave petitioner ten (10) days from the scheduled Commissioner's Hearing, or until 25 September 2023, to file his Formal Offer of Evidence (**FOE**). Correspondingly, respondent was given ten (10) days from receiving a copy of the FOE to file a Comment thereon. The First Division also set the hearing for respondent's initial presentation of evidence on 08 November 2023.[75]

On 18 September 2023, petitioner filed his FOE[76], offering Exhibits "P-1" through "P-20-A", inclusive of sub-markings. On 28 September 2023, respondent filed his or her Comment[77] thereto. Accordingly, on 08 November 2023, the First Division admitted all but one of petitioner's offered exhibits, namely, Exhibit "P-2-A"[78] (for failing to present the original for comparison).[79]

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72 TSN dated 29 August 2023, pp. 12-16.
73 Id., p. 22.
74 Supra at note 69.
75 Supra at note 69.
76 Division Docket, pp. 223-228.
77 Respondent's "Comment (Re: Formal Offer of Evidence dated 15 September 2023)", id., pp. 304-307.
78 Copy of petitioner's Voter's ID with specimen signatures, Exhibit "P-2-A", id., p. 232.
79 See Resolution dated 08 November 2023, id., pp. 313-316.

On the same day, the hearing for the presentation of respondent's lone witness proceeded as scheduled, with GS Malana (then RO) taking the witness stand.[80]

By way of her Judicial Affidavit[81], GS Malana testified that: (1) her group conducted the examination of petitioner's books of accounts for the CY 2016; (2) she and GS Retamal derived their authority to audit and investigate petitioner's records from LOA No. 001-2018-00000216 (SN: eLA201200027570); (3) she is privy to the circumstances surrounding the investigation from the issuance of the LOA until the SDT and the later NIC; (4) during the NIC, petitioner did not submit any evidence to support his defenses, prompting her to recommend the issuance of the PAN, then subsequently the FLD/FAN; and (5) she was unconvinced with petitioner's arguments in his Letter-Protest, leading her to recommend the issuance of the FDDA with the assessment fully intact.

During her cross-examination, GS Malana claimed that she served the LOA to petitioner's sister, Abe-Abe, at the address which simultaneously serves as petitioner's business and residential address, *per* the latter's BIR registration. She did the same with the Checklist of Requirements and the First and Second Notices, and later on the SDT. Further, she attested that Abe-Abe made no mention of petitioner's change of residence to Cavite throughout the instances she had been serving the aforementioned issuances.

Subsequent in her testimony, GS Malana also denied the initial computation that petitioner alleged and simply referred to the one attached to the later-issued NIC as their team's preliminary findings. She stressed that the investigation only proceeded when petitioner failed to comply with the SDT, prompting her to continue the examination guided by the "Best Evidence Obtainable Rule". As to the FDDA, GS Malana affirmed that she served the same through substituted service to the Barangay Kagawad of Barangay Pacifico, Marcos, Ilocos Norte, pursuant to petitioner's registered residence and business address. She recalled that petitioner executed an SPA on 09 August 2019 to authorize Abe-Abe to receive the next notices in his behalf. GS Malana added that she

80 See Order dated 08 November 2023, id., pp. 318-319.
81 Exhibit "R-14", Judicial Affidavit of GS Au-Jane Marie A. Malana, id., pp. 145-153.

likewise served the FDDA on petitioner through mail sent to his Cavite address. She confirmed that she became aware that petitioner changed residences to Cavite after the issuance of the SDT.[82]

No redirect examination followed, but the Court interposed a few clarificatory questions.[83] In response, GS Malana explained that petitioner actually received the PAN on 12 November 2019, the date she served it on Abe-Abe (by personal service) who petitioner authorized to receive the same by petitioner's SPA. Moreover, she verified that an informal conference was indeed held (pursuant to the NIC), wherein petitioner appeared and she discussed with him the findings in the computation accompanying the NIC. Finally, reiterating that petitioner did not present any evidence, she confirmed that she recommended the issuance of the PAN and subsequently the FLD/FAN, which she similarly served personally to Abe-Abe.

Having no witnesses left to present, the First Division directed respondent to file his or her FOE within ten (10) days, or until 20 November 2023. In turn, it gave petitioner ten (10) days from receiving a copy thereof, to file his Comment. Finally, it gave each of the parties 30 days to file their Memoranda from receiving a copy of the Court's later resolution acting on respondent's FOE.[84]

Before the hearing concluded, petitioner's counsel moved that petitioner's offered Exhibit "P-2-A"[85] be admitted. Absent any objections from respondent's counsel, the First Division granted the same, thereby admitting petitioner's Exhibit "P-2-A" into evidence.[86]

Later, on 15 November 2023, respondent filed his or her FOE.[87] On 20 November 2023, petitioner filed his Comment thereto.[88] In the Resolution dated 12 January 2024[89], the First Division admitted all of respondent's offered exhibits.

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82 TSN dated 08 November 2023, pp. 7-18.
83 Id., p. 19-23.
84 Supra at note 80.
85 Supra at note 78.
86 Supra at note 80.
87 Division Docket, pp. 321-326.
88 Petitioner's "Comments on Respondent's Formal Offer of Evidence" dated 17 November 2023", id., pp. 332-334.
89 Id., pp. 339-340.

The same Resolution reiterated its directive of ordering the parties to file their respective memoranda.[90] As compliance with the directive, on 13 February 2024, respondent filed a Manifestation[91] stating that he or she would be adopting the arguments in the previously-filed Answer as his or her Memorandum. Meanwhile, petitioner filed his Memorandum[92] on 27 February 2024. Accordingly, in its Resolution dated 12 March 2024[93], the First Division noted petitioner's Memorandum and respondent's Manifestation then submitted the case for decision.

ISSUES

As the parties so stipulated during the Pre-Trial, the following issues were laid out for this Court's determination —

I.

WHETHER THE DEFICIENCY TAX ASSESSMENT ISSUED AGAINST PETITIONER REDENTOR AGPULDO TAGALA FOR THE CALENDAR YEAR (CY) ENDED 31 DECEMBER 2016 SHOULD BE CANCELLED ON THE GROUND THAT HIS DUE PROCESS RIGHTS WERE VIOLATED; AND,

II.

WHETHER PETITIONER REDENTOR AGPULDO TAGALA IS LIABLE FOR DEFICIENCY INCOME TAX (IT), VALUE-ADDED TAX (VAT), AND MISCELLANEOUS TAX OR COMPROMISE PENALTIES, IN THE AGGREGATE AMOUNT OF ₱10,108,681.35, INCLUSIVE OF INTEREST, FOR THE CALENDAR YEAR (CY) ENDED 31 DECEMBER 2016.

ARGUMENTS OF THE PARTIES

In support of his petition, petitioner foremost argues that the BIR arrived at the amounts laid out in the assessment arbitrarily. He points out that the BIR made different findings on separate occasions, both of which were before petitioner was even able to present any of its records. Petitioner also laments over the BIR's supposed disregard of the original documents he attempted to present during the NIC. As petitioner

90 Id.
91 Id., pp. 341-343.
92 Id., pp. 347-362.
93 Id., p. 365.

recounts, the BIR insisted on the "50% Disallowance" without due regard to supporting documents he presented to substantiate the expenses he claimed in his Annual Income Tax Return (**ITR**). According to petitioner, the BIR informed him that his case was "already endorsed" for the issuance of a PAN. For petitioner, the NIC was useless and was only held to "simulate" due process.

Petitioner adds that the BIR imputed undeclared sales figures and disallowed input tax claims without explaining how it deemed such items unreported and disallowable. Inversely, petitioner contends that he had sufficiently rebutted the said findings during the NIC and later through his Letter-Protest, though the BIR overlooked all of his defenses.

As to procedure, petitioner points out that the BIR unlawfully served the LOA on his sister, Abe-Abe, who was not authorized to accept the same (as he had already been residing in Cavite by then). He posits that the BIR had information from its database on the addresses of his other businesses, yet the prosecution neglected to show that the BIR made any effort to attempt service at such alternative locations. He insists that the LOA should be rendered invalid for having been wrongfully served. Further, he points out that the same should apply to the Checklist of Requirements, First and Second Notices, and the SDT, all of which were similarly served on Abe-Abe. Additionally, he emphasizes that the BIR's failure to revalidate the subject LOA led to its expiry, and consequently, its invalidity. Petitioner likewise assails the validity of the FDDA's service, interposing that it had been served on an unknown, unauthorized person.

Petitioner also rejects the BIR's reliance on supposedly spurious documents, namely: (1) the first SPA showing that petitioner authorized Martin to handle matters pertinent to the SDT; (2) the letter-request addressed to the RD asking if petitioner may transmit supporting documents at a later date; and (3) the purported minutes of the SDT meeting. He denies having executed the said SPA and the letter-request.

On the other hand, respondent counters he or she did not violate petitioner's due process rights. Respondent asserts that the audit team assigned considered all the supporting documentation they had on hand, as well as petitioner's Letter-Protest. He or she clarifies that the

FAN reiterates the assessment indicated in the PAN after a finding that petitioner failed to present any credible evidence to overturn the assessment.

Respondent maintains that petitioner had been provided every opportunity to refute the assessment, hence petitioner cannot argue that he had not been fully informed of the factual and legal bases of the assessment made against him after being able to intelligently protest the same. As regards the supposed non-revalidation of the LOA, respondent insists that this could not invalidate the assessment. Similarly, he or she believes that the BIR properly served the LOA and the relevant notices that followed, sufficiently affording petitioner due process.

Finally, respondent maintains that petitioner is liable for the deficiency IT, VAT, and compromise penalties, as were set forth in the PAN, FLD/FAN, and FDDA. According to respondent, his or her assessments are made in accordance with the prevailing laws and rules and are presumed to be correct and made in good faith, while the taxpayer bears the burden to prove otherwise.

RULING OF THE COURT

Before delving into the merits of the case, We find it propitious to first determine whether this Court has jurisdiction over the instant petition.

THE COURT OF TAX APPEALS HAS JURISDICTION OVER THE PRESENT PETITION FOR REVIEW.

The CTA, being a court of special jurisdiction, can only take cognizance of matters that are clearly within its jurisdiction.[94]

Section 11 of the Republic Act (**RA**) No. 1125, as amended by RA 9282, in relation to Section 3(a), Rule 8 of the RRCTA, provides for the

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94 *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, 12 March 2014.

proper period during which petitioner may invoke the CTA's jurisdiction in order to question respondent's decision, to wit:

> ...
>
> 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**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA <u>within thirty (30) days</u> 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.**
>
> ...
>
> 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 <u>within thirty days</u> 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.[95]
>
> ...

Accordingly, in case of the CIR's adverse decision or ruling, the taxpayer is given 30 days to file a Petition for Review with the CTA. Here, petitioner admits he received the FDDA on <u>29 December 2021</u>.[96] Counting 30 days therefrom, petitioner originally had until <u>28 January 2022</u> to file his judicial appeal.

Relevantly, on 10 January 2022, in response to challenges brought by COVID-19 pandemic and super typhoon "Odette", the Supreme

95 Italics in the original text, emphasis and underscoring supplied.

96 Paragraph s., part II, Petition for Review, Division Docket, p. 14.

Court issued Administrative Circular (**AC**) No. 01-2022.[97] The said AC extended the filing periods of all pleadings and court submissions falling due in the month of January 2022 until 01 February 2022. In consideration thereof, the end of petitioner's period to file his Petition for Review would instead fall on 01 February 2022. However, such date coincides with the celebration of Chinese New Year, which was designated as a special non-working day pursuant to Proclamation No. 1236, s. 2021.[98] Petitioner thus had until Wednesday, 02 February 2022, or the next working day, to file his Petition. Clearly then, petitioner timely filed the instant Petition for Review on **02 February 2022.**[99]

We then proceed with a discussion of the merits of the case.

After an assiduous review of the case records and the parties' arguments, this Court finds petitioner's arguments bereft of merit. Nonetheless, a review of each item of respondent's assessment exposes grounds warranting its partial cancellation.

THE LETTER OF AUTHORITY (LOA) WAS VALIDLY SERVED ON PETITIONER.

Under the NIRC of 1997, as amended, it is the CIR who principally exercises the power to make assessments. The same law, however, also delegates this power to the Revenue Regional Directors (**RRDs**). The NIRC of 1997, as amended, provides:

> ...
>
> **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> *(A) Examination of Returns and Determination of Tax Due.* After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the**

[97] RE: EXTENSION OF THE DEADLINES FOR THE FILING OF ANY AND ALL PLEADINGS AND OTHER COURT SUBMISSIONS FALLING DUE IN THE MONTH OF JANUARY 2022 IN ALL COURTS.
[98] DECLARING THE REGULAR HOLIDAYS AND SPECIAL (WORKING/NON-WORKING) DAYS FOR THE YEAR 2022.
[99] Supra at note 1.

> **correct amount of tax, notwithstanding any law requiring the prior authorization of any government agency or instrumentality**: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> ...
>
> **SEC. 10.** *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, **the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others**:
>
> (a) Implement laws, policies, plans, programs, rules and regulations of the department or agencies in the regional area;
>
> **(b)** Administer and enforce internal revenue laws, and rules and regulations, **including the assessment and collection of all internal revenue taxes, charges and fees;**
>
> (c) **Issue Letters of Authority** for the examination of taxpayers within the region[.][100]
>
> ...

While the CIR and the RRDs may perform assessments themselves by the express authority of the NIRC of 1997, as amended, assessments are usually carried out by ROs by way of delegation. This delegation is in the form of an LOA.

The LOA is the authority given to the appropriate RO assigned to perform assessment functions.[101] It empowers or enables said RO to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[102] An RO may only examine taxpayers, in the course of carrying out, in conformance to or agreement with, or according to, a validly issued LOA.[103] Stated differently, under the NIRC of 1997, as amended, the investigatory powers of the ROs flow from the LOA, which is the

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100 Emphasis supplied and italics in the original text.

101 *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, 14 May 2021.

102 *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.

103 *Republic of the Philippines v. Robiegie Corporation*, G.R. No. 260261, 03 October 2022.

statutorily designated means by which the CIR delegates its investigative powers to the BIR ROs.[104]

Section 13 of the NIRC of 1997, as amended, provides:

> ...
>
> **SEC. 13.** *Authority of a Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself.[105]
>
> ...

In relation to the foregoing, the substance of the subject LOA (*i.e.*, the grant of authority to the RO and GS named therein) *per se*, *vis-à-vis* the officers' degree of participation in the petitioner's audit are not strictly in question. Petitioner, however, disputes the LOA's manner of service.

Petitioner posits that respondent's LOA is void for the latter's failure to *properly* serve the same. Petitioner relies on his assertion that Abe-Abe, the recipient of the LOA, was not an authorized person to receive such correspondences on petitioner's behalf. He anchors his argument upon his representations that: (1) Abe-Abe had no authority to receive summons or processes addressed to him; (2) Abe-Abe was not a manager, officer, nor person-in-charge in his businesses; (3) his businesses in the subject case (namely, 7th Concept Trading and 7C Construction) had ceased operations since August 2017, or more than a year prior to the service of the LOA on 24 September 2018; (4) there was no business to tend to at the old business address when the LOA was being served; and (5) he was already residing in Cavite City during the LOA's service.

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104 Id.

105 Emphasis supplied and italics in the original text.

Petitioner's contentions deserve scant consideration.

At the onset, it is important to note that the BIR and its officers are bound to perform their duties in accordance with law and especially with their own rules of procedure.[106]

Respondent, in arguing in favor of the validity of the LOA's service, cites Revenue Memorandum Circular (**RMC**) No. 110-20[107] issued on 24 September 2020. While the said RMC predates the issuance of the LOA in the present case, it references the earlier Revenue Memorandum Order (**RMO**) No. 19-2015[108] issued on 15 September 2015. Similar to the more recent RMC No. 110-20, RMO No. 19-2015 adopts the same modes of service (as designed for the PAN, FLD/FAN, and FDDA) under Revenue Regulations (**RR**) No. 18-13[109] for serving an LOA.

Particularly, RMO No. 19-2015 states:

> ...
>
> 23. The RO assigned to the case shall present or serve the eLA to the taxpayer or his representative in accordance with Section 3.1.6 of RR No. 12-99 as amended by RR No. 18-2013.
>
> ...

As referenced therein, RR No. 18-13, which amends RR No. 12-99[110], outlines the applicable modes of service in this wise:

> ...
>
> 3.1.6 *Modes of Service.* — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:

---

106 See *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 and 201418-19, 03 October 2018.

107 Clarifications on the Proper Modes of Service of an Electronic Letter of Authority.

108 BIR Audit Program.

109 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

110 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.

(i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

In case personal service is not practicable, the notice shall be served by substituted service or by mail.

(ii) **Substituted service can be resorted to when the party is not present at the registered or known address** under the following circumstances:

The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

> "*Disinterested witnesses*" refers to persons of legal age other than employees of the Bureau of Internal Revenue.
>
> (iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.
>
> The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.
>
> Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer.[111]
>
> ...

As can be gleaned from the foregoing, the BIR is able to resort to substituted service when the taxpayer is not present at the "**registered address**" or "**known address**". In this context, "**known address**" refers to either: (1) a place *other than the "registered address"* where business activities of the taxpayer are conducted, or (2) his **place of residence**. A plain reading of the issuance thus presents the conclusion that "**registered address**" pertains to the taxpayer's registered business address. The RR further specifies that if the "**known address**" is the **place of residence**, substituted service can be made by leaving the LOA with **a person of legal age residing therein.**

[111] Emphasis supplied and italics in the original text.

In the case at bar, it is undisputed that the BIR, through then RO Malana, served the subject LOA No. LOA-001-2018-00000216 (SN: eLA201200027570)[112] through personal service to Abe-Abe, a person of legal age residing at petitioner's registered residence and business address. Further, at the time the LOA was being served, the BIR had not been privy to the closure of petitioner's businesses in Ilocos Norte, nor his change of residence.

Indeed, RO Malana manifested that she relied on the information available to the BIR at the time:

...

ATTY. AGUINALDO:

How are you, Ma'am? We meet again.

Q: You made mention of a certain LOA, Letter of Authority. Can you tell us, it is very crucial, did you serve this LOA to start your examination with the petitioner himself?

MS. MALANA:

A: **I served the Letter of Authority through substituted service.**

ATTY. AGUINALDO:

Q: And by substituted service, you mean that it was not personally handed to petitioner himself, Mr. Redentor Agpuldo Tagala?

MS. MALANA:

A: **If personal service is not practicable, substituted service may be done through, and served to [his] sister Ms. Genalyn Abe Abe, Sir.**

ATTY. AGUINALDO:

Q: So, it was served to his sister at the place of business per record of Mr. Tagala. Is that what you mean?

---

112 Supra at note 9.

MS. MALANA:

A: **The place of business and also the residential address of the petitioner Mr. Redentor Tagala, Sir.**

ATTY. AGUINALDO:

Q: Can you show to us that indeed that is the residential address of Mr. Tagala, or is it only the business address of Mr. Tagala?

...

MS. MALANA:

A: **The business address and residential address** *per* system **of the Bureau as registered by Mr. Redentor Tagala is the same.** It's Barangay Pacifico, Marcos, Ilocos Norte, Sir.

ATTY. AGUINALDO:

Q: But you served this on the person, you served this on Ms. Abe Abe not because she is an employee, but because she is a resident of that place, correct?

MS. MALANA:

A: As provided by Revenue Regulation 18-2013, if personal service is not practicable, Sir, then the Letter of Authority may be served through substituted service wherein if in the place of business, it may be left to the clerk or the person having charge thereof, or **in case of residential address, the Letter of Authority may be left to a person of legal age and a resident therein, in which Ms. Genalyn T. Abe Abe [is] of legal age, and suitable description and also a resident therein, Sir.**

...

MS. MALANA:

A: **She is of legal age and a resident at the residential address registered by Mr. Redentor Tagala.**

...

MS. MALANA:

It was only made to known to me that Mr. Redentor Tagala was a resident of Cavite after the issuance of the SDT, Sir. After which, he executed a Special Power of Attorney

> dated August 9, 2019 to Ms. Genalyn T. Abe Abe in which the next notices were served to her.[113]
>
> ...

RO Malana's statements align with those of petitioner, in his own testimony that formed part of the records of this case:

> ...
>
> The accused's sole testimony was presented for the defense.
>
> **REDENTOR A. TAGALA**, a 48 year-old Architect-Contractor, and a resident of Block 29, Lot 3, Brookeside Lane, Arnaldo Highway, Brgy. San Francisco Gen. Trias, Cavite, Philippines 4107. He is the accused in this case. He has never seen the purported LOA in its original form (ELA). He was unaware of the purported LOA (eLA), the Checklist of Requirements, the First Notice, the Second and Final Notice, the Memorandum to Verify Records to be Submitted, or the Subpoena Duces Tecum until he received on June 24, 2019 the Complaint of BIR with the Prosecutor's Office attaching said documents. All of these documents appear to have been served while he was already residing and conducting business in Cavite, since August of 2017, and were "served" on his sister Ms. Abe-Abe, who is not under his employ because he ceased business activities in Brgy. Pacifico at the time, and the location was not his but hers. ...
>
> ...
>
> He confirmed during cross-examination that he is a registered taxpayer for fiscal year 2016 with Revenue District Office No. I in Laoag City, Ilocos Norte. <u>His BIR registered address is Brgy. 2 Pacifico Marcos, Ilocos Norte. The same address is registered with the Internal Revenue Service as both his residential and business address. He has been residing in Cavite since August 2017, but he has never updated his address with BIR. His sister, Genalyn T. Abe, resides at his registered address as well. He did not notify the BIR of his change of address because he did not anticipate the BIR serving letters at his Cavite address.</u>[114]
>
> ...

As petitioner has set forth above, he relocated both his businesses and residence prior to the service of the subject LOA in 2018, but he did *not* notify the BIR of any such changes. In addition to the circumstances

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[113] TSN dated 08 November 2023, pp. 7-10 and 18; Emphasis supplied.

[114] Exhibit "P-3-A", Division Docket, pp. 242-243; Underscoring supplied and emphasis in the original text.

that petitioner has presented thus far, RO Malana's narrations lend further credence to her chosen course of action:

> ...
>
> On cross-examination, she stated that apart from his sister, Ms. Abe Abe, she did not discover any other person in Barangay Pacifico, Marcos, Ilocos Norte, particularly the accused, his family, or his employees. **Ms. Genalyn T. Abe Abe informed her that Mister Tagala was in Cavite because his other Cavite branch had closed. He was in the process of closing his Cavite branch at the time. She made no mention of the length of Mr. Tagala's stay in Cavite, She asked her several times for Mister Tagala's contact number and mailing address, but Ms. Genalyn T. Abe Abe would always tell her that she does not know Mister Tagala's address or mailing address in Cavite, and she refused to give Mister Tagala's contact number.** Despite the fact that she had no way of knowing whether he would appear or not, she served the subpoena on Ms. Abe Abe. Due to the fact that Mister Tagala was not at his registered business or residential address and Ms. Abe Abe was unable to obtain Mister Tagala's mailing address in Cavite or his cellphone number. she resorted to substituted service, which means that she is to serve the Letter of Authority, the notices, and the SDT on the person residing at his residence. A shop was located in the warehouse where Mister Tagala's business was located. At the back, was a palay business, and it is here that she asked a person who pointed her to Ms. Abe Abe.[115]
>
> ...

Likewise, Conte's declarations (petitioner's tax agent and representative) further bolster RO Malana's reliance on petitioner's address on record:

> ...
>
> 8. Q. Relevant to this case, can you tell us the antecedent facts that led to the dispute in the assessment?
>
>   A. Basically, Mr. Tagala's opposition to the tax deficiency assessment is presented in his PROTEST-LETTER of December 19, 2021 *(Exhibit "P-4")*. The dispute started from the invalid substituted service or tender of the LOA to the sister of Mr. Tagala, Ms. Genalyn T. Abe Abe, at a place in Brgy. Pacifico, Marcos, Ilocos Norte. Though it was the residence of Ms. Abe Abe, Mr. Tagala no longer holds business there since August of

115 Id., p. 240; Emphasis supplied.

> 2017, and Ms. Abe Abe was not under his employ nor has he authorized her to accept notices/letters for him. The BIR RR-01 RD-OIC issued Letter of Authority LOA-001-2018-00000216 SN: eLA201200027570 *(Exhibit "P-5")* on September 10, 2018, along with a "CHECKLIST OF REQUIREMENTS" *(Exhibit "P-6")*, both served/tendered to Ms. Abe Abe on September 24, 2018. Unfortunately, Ms. Abe Abe did not know the value of the documents she received, and **she could not forward the same to Mr. Tagala, as she did not know where he was residing in Cavite.**
>
> ...
>
> 9. Q. After receiving the LOA and Checklist, what happed next?
>
> A. Ms. Genalyn T. Abe Abe continued receiving, even without authority, the succeeding 1st Notice for Presentation of Records on October 12,2018 *(Exhibit "P-7")* and the 2nd and Final Notice on November 15, 2018 *(Exhibit "P-8")*, dated October 11, 2018 and November 15, 2018, respectively. She was hoping her brother Redentor would pass by so she could hand over the notices, but he never came by, thus, the notices remained with her unacted upon.[116]
>
> ...

The Court is not unaware of the case of *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*[117], where the Supreme Court underscored that actual knowledge of the new address should take precedence over the registered address (despite the absence of a formal written notice of the taxpayer's change of address) in sending out notices in order to meet the minimum due process requirements, to wit:

> ...
>
> The above documents, all of which were accomplished and signed by officers of the BIR, clearly show that respondent's address is at Carmelray Industrial Park, Canlubang, Calamba, Laguna.
>
> The CTA also found that BIR officers, at various times prior to the issuance of the subject FAN, conducted examination and investigation of respondent's tax liabilities for 1999 at the latter's new address in Laguna as evidenced by the following, in addition to the abovementioned records:
>
> ...

116 Exhibit "P-20", id., pp. 92-93; Emphasis supplied and italics in the original text.

117 G.R. No. 198677, 26 November 2014; Citations omitted, emphasis and underscoring supplied.

> Moreover, the CTA found that, based on records, the RDO sent respondent a letter dated April 24, 2002 informing the latter of the results of their investigation and inviting it to an informal conference. Subsequently, the RDO also sent respondent another letter dated May 30, 2002, acknowledging receipt of the latter's reply to his April 24, 2002 letter. **These two letters were sent to respondent's new address in Laguna. Had the RDO not been informed or was not aware of respondent's new address, he could not have sent the said letters to the said address.**
>
> Furthermore, petitioner should have been alerted by the fact that prior to mailing the FAN, petitioner sent to respondent's old address a Preliminary Assessment Notice but it was "returned to sender." This was testified to by petitioner's Revenue Officer II at its Revenue District Office 39 in Quezon City. **Yet, despite this occurrence, petitioner still insisted in mailing the FAN to respondent's old address.**
>
> Hence, despite the absence of a formal written notice of respondent's change of address, **the fact remains that petitioner became aware of respondent's new address as shown by documents replete in its records.** As a consequence, the running of the three-year period to assess respondent was not suspended and has already prescribed.
>
> ...
>
> ... To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. **<u>In the instant case, respondent has not properly been informed of the basis of its tax liabilities</u>**. Without complying with the unequivocal mandate of **first informing the taxpayer of the government's claim, there can be no deprivation of property**, because no effective protest can be made.
>
> ...

However, the wisdom behind the doctrine in the above case cannot be applied in petitioner's case. It is abundantly clear that RO Malana did not know and could not have known of petitioner's new address (nor the other nuances of his present conundrum) that would have prompted her to approach the service of the LOA differently.

Considering the foregoing, RO Malana could not be faulted for resorting to substituted service (*i.e.*, leaving the LOA with a person of legal age residing in the taxpayer's residence after a finding that the taxpayer was not present therein). The facts strongly demonstrate that RO Malana served the LOA in line with the procedure prescribed under RMO No. 19-2015, in relation to RR No. 18-13. Petitioner, thus, could not stand to benefit from what he imputes to be the BIR's lapse when the conditions giving rise thereto are of his own making.

Assuming *ex gratia in argumenti* that there had been procedural lapses in the LOA's service, it is undisputed that petitioner had been apprised of the LOA (albeit, *by his manifestations*, through only a photocopy thereof) prior to the issuance of the PAN and FLD/FAN, and before the audit team so authorized could examine petitioner's books of accounts (though the facts would then show that they would either way not be able to do so later on).

The records undisputably show that, with a copy of the LOA and knowledge of its substance and the circumstances he is in, petitioner would later appear before the BIR for the NIC.[118] After the BIR had failed to secure access to his books of accounts despite its issuance of an SDT, the scheduled NIC served as the first opportunity for petitioner to actually present his records for BIR's examination (if petitioner's pertinent narration of facts were to be taken at face). As the BIR Records would support, the actual assessment (in the form of a PAN) would only come thereafter, pursuant to RO Malana's recommendation subsequent to the NIC.[119]

An RO not armed with a valid LOA usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer.[120] An LOA, as an aspect of administrative due process, is intended to apprise taxpayers of the ROs who are duly authorized to conduct the examination and assessment.[121] The same had been sufficiently satisfied in this instance, thus cannot be used as a ground to nullify the present assessment.

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118 Supra at note 26.
119 Exhibit "R-8", supra at note 29.
120 *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, 10 May 2021.
121 Id.

THE NON-REVALIDATION OF THE LETTER OF AUTHORITY (LOA) AFTER 120 DAYS DID NOT AFFECT ITS VALIDITY.

In attacking the LOA's validity, petitioner also alludes to this Court's rulings in the cases of *GS MTE Grains Corporation v. Commissioner of Internal Revenue*[122] and *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corporation.*[123] Petitioner claims that, like in the afore-cited cases, the LOA became invalid through its expiry following the assigned RO failure to have the same revalidated, after conducting the audit for more than 120 days after its issuance.

Both cases cite the BIR's General Audit Procedures and Documentation (**GAPD**) as the basis of the requirement:

> ...
>
> 6. How much time does a Revenue Officer have to conduct an audit? A Revenue Officer is allowed only one hundred twenty (120) days from the date of receipt of a Letter of Authority by the Taxpayer to conduct the audit and submit the required report of investigation. If the Revenue Officer is unable to submit his final report of investigation within the 120-day period, he must then submit a Progress Report to his Head of Office, and surrender the Letter of Authority for revalidation.
>
> ...

Notably, the Court *En Banc* had already clarified, in the appealed case of *Commissioner of Internal Revenue v. GS MTE Grains Corporation*[124], that the erring RO in such instances only becomes exposed to administrative sanctions and does not affect the validity of the assessment stemming from his or her investigation.

The case in question references RMO No. 12-2007[125] issued on 03 July 2007 (as the applicable issuance to the taxable period discussed therein), which provides:

---

122 CTA Case No. 8837, 19 March 2018.
123 CTA EB No. 1535, 04 January 2018.
124 CTA EB No. 1958, 06 July 2020.
125 2007 Audit Program for Revenue District Offices.

> ...
>
> The revalidation of LA shall give rise to the extension of the period within which the concerned RO shall submit the required report of investigation to higher authorities for review and approval without the imposition of applicable administrative sanctions. <u>Failure on the part of the RO to request for revalidation or the expiration of the "revalidation period" does not nullify the LA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued.</u> However, this shall be considered as a ground for the imposition of disciplinary action and demerit in the performance rating of the concerned RO, including the reassignment of the case to another RO.[126]
>
> ...

In the Petition, apart from the two (2) cases, petitioner anchors his reliance on the revalidation requirement in RMO No. 38-88[127] issued on 24 August 1988.

Truth to tell, as early as 2010, the BIR had already done away with the revalidation requirement. RMO No. 44-2010[128] issued on 12 May 2010 superseded RMC No. 23-2009[129], an earlier issuance that still includes the said requirement:

> ...
>
> 8. Beginning June 1, 2010, the rule on the need for revalidation of LAs for failure of the revenue officials to complete the audit within the prescribed period shall be withdrawn. Accordingly, there is no need for revalidation of the LA even if the prescribed audit period has been exceeded. However, the failure of the RO to complete the audit within the prescribed period shall be subject to the applicable administrative sanctions.
>
> ...

In any case, a plain reading of the pertinent portion of the GAPD (or any portion, in fact) would not yield any mention that the LOA is invalidated should the RO neglected to undergo its revalidation. The same can be said for RMO No. 38-88 (which petitioner cites). Neither is such rule set forth anywhere within the NIRC of 1997, as amended.

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126 Underscoring supplied.
127 Guidelines on Revalidation of Letters of Authority.
128 Electronic Issuance of Letters of Authority.
129 Reiteration of Policies and Procedures Relative to Revalidation of Letters of Authority, Issuance of Subpoena Duces Tecum, and Review of Cases by the Assessment Division.

In connection therewith, the Supreme Court later elucidated, in the case of *AFP General Insurance Corporation v. Commissioner of Internal Revenue*[130], the distinction between the requirement of revalidating an LOA that is unserved, as opposed to revalidating it after service, due to the lapse of the 120-day reglementary period:

> ...
>
> In the exercise of the power to assess and collect taxes, the BIR has the commensurate duty to uphold a taxpayer's fundamental right to due process. Thus, its authority must be understood to take effect only after the CIR or his duly authorized representative *issues an LOA* and the designated revenue officer *serves it* upon the intended taxpayer. That a LOA remains unserved signifies that the tax authorities have yet to formally apprise the taxpayer and, consequently, have not commenced actual audit.
>
> Read in these lights, the rules clearly impose a *30-day expiration period for service*. Upon expiration, the LOA becomes *wholly unenforceable*, inasmuch as it cannot be served without revalidation upon the taxpayer who, in turn, has the right to refuse the same.
>
> The revalidation requirement involving an *unserved LOA* is imposed on the revenue officer because he/she exclusively derives authority therefrom. It is intended to *reconfirm his/her designation* as the BIR personnel duly authorized (by the CIR) to examine the taxpayer's books and *extend the period of service*. Otherwise, his/her subsequent presence in a taxpayer's premises for a supposed tax audit shall be illegitimate.
>
> ...
>
> *Revalidating a served LOA in connection with the "120-day rule."*
>
> ...
>
> RMO 43-64, read together with RMO 38-88, discredits AGIC's claim.
>
> The issuance confirms that a revenue officer assigned to an audit is *duty-bound* to render an investigation report within 120 days from the LOA's issuance. The *120-day period for rendering an investigation report* was intended as an internal efficiency measure: to expedite the conduct of audits and ensure that BIR examiners regularly report open investigations and their progress.

---

130 G.R. No. 222133, 04 November 2020; Citations omitted, emphasis supplied, italics and underscoring in the original text.

Nonetheless, the revenue officer may validly request for LOA revalidation, which shall be supported by a progress report and an enumeration of reasons to justify his request.

The superior officer or the Division Chief/Revenue District Officer (RDO) shall review the request. If justified, he/she shall recommend the LOA's revalidation and endorse the request to the CIR/his duly authorized representative for the latter's approval.

Without revalidation, the LOA shall be considered void and the assigned revenue officer is "prohibited from *further* investigation and contact with the taxpayer." The revalidation requirement here is aimed at *reconfirming* the revenue officer's authority and *extending the period of audit*. It contemplates a *served LOA* and *an on-going audit investigation*. Stated differently, the revenue officer was already authorized to commence an audit only that he was unable to conclude it within 120 days.

Given this context, it is clear that failure to comply with the 120-day rule does not void LOA *ab initio*. The expiration of the 120-day period merely renders an LOA *unenforceable*, inasmuch as the revenue officer must first seek ratification of his *expired authority to audit* to be able to validly continue investigation beyond the first 120 days.

That the revenue officer is unable to conduct *further* investigation does not invalidate his/her authority during the first 120 days or the procedures he/she had already performed within that period. He/she may instead render a report based on the results of his/her initial investigation from which an assessment may be legitimately issued.

In any case, AGIC does not even allege facts showing that the assigned revenue officers continued with their audit investigation beyond the first 120 days after issuance/service of the LOA. Failure to revalidate the LOA in accordance with the 120-day rule shall only be an issue in cases where tax authorities proceeded with an extended audit without first seeking the requisite revalidation. Furthermore, even if the Court assumes that the BIR illegally extended their investigation, AGIC could have also resisted further investigation as early as the 121st day after the LOA's issuance/service if it truly believed that the assigned revenue officers no longer possessed the requisite authority. That it kept silent about the supposed violation and complained only when it was already found liable for deficiency taxes, once again, only show that it acquiesced to the BIR's extended audit, if any.

> **Based on the foregoing, absent any showing that the failure to revalidate resulted in a violation of AGIC's right to due process, the Court upholds the subject LOA's validity.**
>
> ...

As the records bear, petitioner is only putting the matter forward as an issue for the first time in its Petition before this Court. There is no indication that it raised the matter in the informal conference (where he first supposedly actually participated in the administrative proceedings) nor is it mentioned in his Letter-Protest to the FLD/FAN (which, according to the records, is the next and last instance of his participation before the case eventually reached this Court).

In the absence of any showing that the failure to revalidate resulted in a violation of his due process rights in the administrative proceedings, the non-revalidation should not serve to nullify the resulting assessment. In parallel with the above-discussed case, the fact that petitioner allowed the proceedings at the BIR level to conclude before objecting to the perceived irregularity only before this Court supports the notion that such invocation is a mere afterthought to hopefully avoid tax liability.

THE MANNER OF SERVICE OF THE FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) DOES NOT *IPSO FACTO* AFFECT THE VALIDITY OF THE ASSESSMENT.

Apart from the LOA, petitioner likewise contests the FDDA.

It is worth noting that while petitioner admits receiving a copy of the FDDA, he has also challenged the validity of its service[131]:

> ...
>
> Even at this time, it should be noted that the **FDDA *(Exhibit "P-1")*** was ***invalidly served (by substituted service* or *tender)*** on unknown person, **DIVINA MALVAR**, whose authority to receive was not even explained. And even if the service/tender was attested by two (2) barangay officials, this would not cure the defect. Yet, without

131 Petition for Review, supra at note 1, pp. 9 and 14.

conceding to the invalidity of the service, the petitioner comes to this Honorable Court to disprove the deficiency assessment of the respondent.

...

s. On December 19, 2019, Mr. Tagala filed PROTEST-LETTER (Request for Reconsideration; *Exhibit "P-4"*) to the FAN/FLD (*Exhibit "P-19"*), then on December 29, 2021, he received by LBC Courier from his sister Ms. Genalyn Abe Abe the FDDA (*Exhibit "P-1"*) dated December 15, 2021, earlier served/tendered by RO Malana on December 28, 2021 to an unknown individual DIVINA MALVAR. The FDDA demanded for total deficiency taxes of P10,108,681.35.

...

The parties' respective assertions *vis-à-vis* the evidence available on record show that RO Malana served the FDDA on Malvar in the presence of two (2) disinterested witnesses on 28 December 2021.[132] The "Acknowledgement of Receipt" portion on the last page of the FDDA likewise bears Malvar's name and position as Barangay Kagawad in the appropriate field for "Printed Name and Position of Brgy. Official."

Based on the facts as established from the records of this case, by this date, RO Malana had already learned that petitioner earlier changed his residence to Cavite.[133] Additionally, she testified that she served the FDDA both through substituted service (to the aforementioned barangay official) and through mail to petitioner's Cavite address.

However, as to evidence, there is nothing in the records to support RO Malana's claim that she had mailed to petitioner a copy of the FDDA (nor did she mention this fact in her proofs of service). Consequently, as part of petitioner's admissions, he confirmed receipt (on the day following the substituted service to the barangay official) of a copy of the FDDA supposedly sent to him by his sister, Abe-Abe, through LBC. Notably, there is also no evidence of Abe-Abe's mailing of the FDDA. What is undisputed is that petitioner got his hands on the FDDA on 29 December 2021.

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132 Supra at notes 40 and 41.
133 Supra at note 82.

As RO Malana set forth in her Affidavit of Service of the FDDA[134], she served the FDDA by substituted service "since the subject taxpayer was not around his registered business address which is also his residential and last known address". The facts thus far would indeed align with petitioner's absence in the Ilocos Norte address, given that he had already been residing in his Cavite address. Contrary to RO Malana's statements, however, the Ilocos Norte was then no longer petitioner's last known address.

RR No. 18-13[135], as discussed further above, lays down the permitted modes of service for an FDDA. It provides that in case personal service is **not practicable**, the notice shall be served by substituted service or by mail. The relevant rules for substituted service and service by mail are as follows:

> ...
>
> 3.1.6 *Modes of Service.* — The notice (PAN/FLD/FAN/**FDDA**) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
>
> ...
>
> (ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:
>
> ...
>
> If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.
>
> If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.
>
> ...

134 Supra at note 41.
135 Supra at note 109.

> *"Disinterested witnesses"* refers to persons of legal age other than employees of the Bureau of Internal Revenue.
>
> (iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.
>
> The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/ professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.
>
> Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer.
>
> ...

Pertinently, in her affidavit, RO Malana does not account for Abe-Abe nor Conte, petitioner's appointed tax agent and representative. There is also no indication in the records that Abe-Abe no longer resides at the Ilocos Norte Address. There is likewise no suggestion as to Conte's whereabouts, or whether he was even in a position to receive the FDDA.

RO Malana's actions in serving the FDDA thus elicits the conclusion that she deemed personal service as **not practicable** (be it to petitioner's Ilocos Norte or Cavite address), opting to resort to substituted service (and by her own manifestations, through mail). A perusal of the FDDA shows that, *strictly as to the procedure for substituted service to a barangay official*, RO Malana had sufficiently complied with the corresponding procedure under RR No. 18-13. The same cannot be said for her supposed service of the FDDA by mail, which is not supported by any evidence.

Absent any actual arguments from the parties as to the practicability of personal service, the Court is not well-positioned to scrutinize RO Malana's judgment on the matter. The BIR, acting as a single agency, could very well coordinate and deputize the service to petitioner in Cavite, though a reading of the regulation does not render the more convenient alternative illogical, where mailing an FDDA from Ilocos Norte to Cavite definitely leans more into practicality.

Nevertheless, petitioner only questioned the FDDA's service to Malvar and did not inquire into the possibility of service to Abe-Abe or Conte (notwithstanding possible issues stemming from the latter's authorization only by a signed letter[136]). In any case, the Supreme Court had the occasion to distinguish the CIR's final decision (by virtue of an FDDA) from an assessment (as laid out in the PAN and FLD/FAN) in the case of *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*[137] where it held:

> ...
> *A void FDDA does not ipso facto render the assessment void*
> ...
>
> In resolving the issue on the effects of a void FDDA, it is necessary to **differentiate an "assessment" from a "decision."** In *St. Stephen's Association v. Collector of Internal Revenue,* the Court has long recognized that a "decision" – differs from an "assessment," to wit:
>
>> In the first place, we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it, and that consequently, the period of thirty days prescribed by Section II of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. Where a taxpayer questions an assessment and asks the Collector to

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136 Exhibit "P-16", supra at note 25.

137 G.R. Nos. 215534 and 215557, 18 April 2016; Citations omitted, emphasis supplied and italics in the original text.

> reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a "disputed assessment" that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, in accordance with paragraph (1) of Section 7, Republic Act No. 1125, conferring appellate jurisdiction upon the Court of Tax Appeals to review "*decisions* of the Collector of Internal Revenue in cases involving *disputed assessment...*"

The difference is likewise readily apparent in Section 7 of R.A. 1125, as amended, where the CTA is conferred with appellate jurisdiction over the decision of the CIR in cases involving disputed assessments, as well as inaction of the CIR in disputed assessments. **From the foregoing, it is clear that what is appealable to the CTA is the "decision" of the CIR on disputed assessment and not the assessment itself.**

An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. **As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer.** Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.

Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other— unless the law or regulations otherwise provide.

...

The Court, however, finds that the CTA erred in concluding that the assessment on EWT and FBT deficiency was void because the FDDA covering the same was void. **The assessment remains valid notwithstanding the nullity of the FDDA because as discussed above, the assessment itself differs from a decision on the disputed assessment.**

As established, an FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. Therefore, it is as if there was no decision rendered by the CIR. It is tantamount to a denial by inaction by the CIR, which may still be appealed before the CTA and the assessment evaluated on the basis of the available evidence and documents. The merits of the EWT and

> FBT assessment should have been discussed and not merely brushed aside on account of the void FDDA.
>
> ...
>
> To recapitulate, **a "decision" differs from an "assessment" and failure of the FDDA to state the facts and law on which it is based renders the decision void—but not necessarily the assessment**. Tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided.
>
> ...

Clearly, a decision on a disputed assessment is distinct from the assessment that preceded it. For argument's sake, in consideration of the foregoing, possible defects in the FDDA's service should not operate to nullify an otherwise valid assessment. Indeed, the Court *En Banc* has consistently ruled that a decision on a disputed assessment differs from the assessment itself; hence, the invalidity of one does not necessarily result to that of the other.[138]

In the case at bar, having ruled in favor of the legitimacy of the administrative proceedings subsequent to the LOA's issuance, the validity of the PAN and FLD/FAN, *in light of any possible due process violations such as those that could arise from their form and/or service,* are not in dispute. Additionally, as would be discussed further below, the PAN and FLD/FAN sufficiently set forth the assessment's factual and legal bases (at least to the extent that it would be upheld).

Having disposed of the issues surrounding the validity of the assessment, the Court shall now discuss the validity of the items comprising the assessment, namely: IT, VAT, and Compromise Penalties, in *seriatim* and *per* item.

We preface these ensuing disquisitions with Our observation following a thorough examination of petitioner's Letter-Protest[139] to the

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[138] See *Commissioner of Internal Revenue v. Rieckermann Philippines, Inc.*, CTA EB No. 2704, 13 May 2024; *Commissioner of Internal Revenue v. RCL Feeders Phils., Inc.*, CTA EB No. 2772, 29 April 2024; *Commissioner of Internal Revenue v. Titanium Corp.*, CTA EB No. 2502, 13 February 2023; *Commissioner of Internal Revenue v. Philsaga Mining Corp.*, CTA EB No. 2262, 23 September 2021.

[139] Supra at note 35.

FLD/FAN, and his Petition for Review[140] and Memorandum[141] filed before this Court.

While petitioner vigorously assailed the procedural aspects of the administrative proceedings at the BIR level, none between petitioner's Letter-Protest and pleadings filed before this Court specifically tackle the findings in the assessment, *apart from pointing out the assessment's supposed arbitrariness and lack of explanation.* In the same vein, petitioner had not offered any evidence rebuking the said findings on their merits.[142] Similarly, the BIR Records does not appear to be populated with any submissions of relevant supporting documentation from petitioner.

To recap, there is no evidence on record hinting on any rebuttal against the items of the assessment during the NIC or petitioner's (or his representatives) purported meetings with the BIR's officers, and petitioner did not file a reply to the PAN.[143] While there is a letter-request dated 29 January 2019 (appearing to be signed by petitioner) asking to allow him to transmit supporting documents at a later date or 08 February 2019 (filed by Martin when she attended the meeting for the SDT on petitioner's behalf), petitioner himself denied even executing the document and attributed his signature therein to a forgery.[144] Neither does it appear that petitioner (or his representatives) eventually transmitted any supporting documentation pursuant thereto.

DEFICIENCY INCOME TAX (IT) FOR THE CALENDAR YEAR (CY) 2016

In assessing petitioner for the alleged deficiency IT, respondent calculated the total deficiency IT payable in the PAN and FLD/FAN in this wise:

140 Supra at note 1.
141 Supra at note 92
142 Supra at note 76.
143 Supra at note 32.
144 Exhibit "P-13", supra at note 17.

Taxable Net Income *per* Return			₱	779,560.00
Add: Audit Adjustments				
Income from undeclared sales *per* preprocessed data	₱	2,311,142.68		
Disallowed Purchases / Expenses - Best Evidence Obtainable Rule		9,483,056.13		11,794,198.81
Taxable Net Income *per* Audit			₱	**12,573,758.81**
Income Tax Due *per* Audit			₱	3,988,602.82
Less: Supported Tax Payments				
Income Tax Payments	₱	27,986.56		
Creditable Income Tax Withheld		186,472.92		214,459.48
Basic Deficiency Income Tax			₱	3,774,143.34

Petitioner's taxable net income *per* return, income tax payments, and creditable income tax withheld (**CWTs**) claimed are traceable to copies of his Annual ITR[145] found in the BIR Records, all of which are duly accounted for in the foregoing computation.

As shown above, the deficiency IT that respondent assessed is comprised of two (2) distinct items, namely: (1) undeclared income from undeclared sales *per* preprocessed data, and (2) expenses disallowed pursuant to an assessment based on the "Best Evidence Obtainable" rule.

(i) UNDECLARED INCOME FROM UNDECLARED SALES *PER* PREPROCESSED DATA - ₱2,311,142.68

Breaking down the assessment item further, respondent determined the existence of undeclared income from supposed undeclared sales and computed[146] the same as follows:

Undeclared receipts from Integrated Micro-electronics Inc.	₱	3,224,285.50
VAT-able undeclared receipts from preprocessed data		15,428,625.42
Undeclared receipts *per* Reconciliation		18,652,910.92
Less: COS using COS ratio		16,341,768.24
Undeclared income arising from undeclared receipts *per* preprocessed data	₱	2,311,142.68

145 BIR Records, pp. 57-64.
146 BIR Records, pp. 80 and 89.

It appears that respondent discovered undeclared sales, and reduced the same by an amount corresponding to petitioner's average cost (by utilizing a COS ratio of 87.6097%[147]) which he or she derives from petitioner's gross receipts from contracts and the related cost of services.[148]

Apart from alleging that the undeclared sales originated from "verification of the preprocessed data", the PAN, FLD/FAN, their respective Details of Discrepancies (including the Schedule of Undeclared Sales), and respondent's Answer[149] do not further detail the nature of the findings nor shed light on how they came about. Particularly, respondent neglected to sufficiently exhibit how his or her officers collated the "preprocessed data", which came to be the basis of the deficiency IT item.

As it would appear from an evaluation of the pertinent documents in the BIR Records, the "preprocessed data" resembles what would be system-generated outputs from the BIR's matching of third-party information (**TPI**). Loosely interpreted, another taxpayer's declarations (on its sales and purchases) are attributed to the taxpayer being audited (*i.e.,* the third party's purchases that it represents to have purchased from the taxpayer under audit should have been declared as the latter's sales).

Verily, when an assessment is based on TPI, the investigating RO is required to prepare and send a confirmation request to the taxpayer serving as the TPI's source, or coordinate with the Revenue District Office having jurisdiction over the TPI source for the preparation and issuance of a confirmation request. In the event that the TPI source affirms amounts (in its reply to the confirmation request) aligning with the TPI, the RO must then obtain its sworn statement attesting to the veracity of the data provided.

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147 Petitioner's total cost of services from contracts (₱14,515,284.49) divided by his contract gross receipts (₱16,568,115.80). Petitioner's total cost of services is composed of Materials, Labor, and Overhead amounting to ₱11,204,977.89, ₱2,982,260.00, and ₱328,046.60, respectively.

148 Notes 8 and 9, Notes Accompanying the Financial Statements, Audited Financial Statements (AFS) of 7th Concept Trading / 7C Construction (Redentor A. Tagala - Proprietor) for CY 2016, BIR Records, p. 44.

149 Supra at note 48.

Such is the requirement under RMO No. 46-04[150], which reads:

...
III. PROCEDURES
...

Action on Protested LNs due to TPI discrepancy

The Revenue Officer assigned to handle the Letter Notice shall:
...

2. Require the taxpayer to execute a Sworn Statement (Annex A) attesting to the veracity of the schedules and authenticity of the documents presented/submitted.

3. Obtain Sworn Statements from TPI sources (Annexes "B" and "C") attesting to the veracity of the data provided.

    3.1 If the TPI source is registered in the RDO/LTDO/LTAID having jurisdiction over the subject taxpayer, the RO shall:

        3.1.1 Prepare "Confirmation Requests" (using the format prescribed in Annex "C" of RMO No. 30-2003 to be signed by the heads of the concerned RDO/LTDO/LTAID) for purposes of verifying the accuracy of the figures appearing in the DTCS.

        3.1.2 If the TPI source agrees with the figures in the "Confirmation Requests" (CR), secure a Sworn Statement from the TPI source to allow the RO to build a case against the taxpayer.

    3.2 If the TPI source is outside the jurisdiction of the RDO/LTDO/LTAID where the taxpayer is registered, the RO shall:

        3.2.1 Coordinate with the RDO/LTDO/LTAID where the TPI source is registered, in order to:

            a. Prepare a CR to be transmitted and signed by the RDO/LTDO/LTAID having jurisdiction

[150] Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers. Italics in the original text.

over TPI source (CRs should be coursed thru the RDO/LTDO/LTAID where the taxpayer is registered);

b. Secure a sworn statement from the TPI source thru the RDO/LTDO/LTAID having jurisdiction over the same; and,

c. Assist the heads of the concerned RDO/LTDO/LTAID in the preparation of Monthly Status Report on Confirmation Requests Transmitted (Annex "D") outside the RDO/LTDO/LTAID of the TPI source and submit the same to the SCG, for monitoring purposes.

...

Relatedly, RMO No. 13-2012[151] states:

...

9. **Send a Confirmation Request from TPI sources** attesting to the veracity of the data included in the LN package (Annexes "I" and "I-1").

If no response from the TPI source after the lapse of five (5) days from service of Confirmation Request, the RO may consider the data in the LN package to be true and correct. However, if there is/are TPI source/s located outside of the jurisdiction of the investigating office, the RO shall send the Confirmation Request to the taxpayer through registered mail with Registered Return Card and wait for the lapse of ten (10) days after mailing thereof before proceeding to the next step.[152]

...

In *Commissioner of Internal Revenue v. MCC Transport Singapore PTE. LTD.*[153], the Supreme Court held that unverified TPI may not validly serve as the factual basis of a tax assessment. The Supreme Court ruled thusly:

---

[151] Revised Guidelines and Procedures in Handling Letter Notices Generated Through Third-Party Information Data Matching with Tax Returns.

[152] Emphasis supplied.

[153] G.R. No. 255382 (Notice), 28 June 2021; Citation omitted, emphasis supplied and italics in the original text.

> ...
>
> Even assuming that the said RMO [No. 13-2012] is applicable, the same likewise provides that the Confirmation Requests sent out to third parties by registered mail must be supported by registered return cards, which were not submitted as evidence in this case. Consequently, **the CTA *EB* was correct in not relying on the third-party information since unverified data cannot be considered as proper factual bases for the assessment against respondent**. In order to be valid, an assessment must be based on actual facts supported by credible evidence. Related thereto, the CTA *EB* was also correct in finding that petitioner failed to prove that respondent filed false or fraudulent returns.
>
> ...

In the instant assessment, there is nothing in the BIR Records nor the evidence presented by either party that would adequately demonstrate that the preprocessed data underwent any such verification as described above.

As the foregoing disquisitions mandate, an assessment must be based on verified facts and substantiated by evidence. Without the necessary confirmation or verification pursuant to RMO Nos. 46-04 and 13-2012 (*i.e.* confirmation requests and sworn statements from the TPI's sources), data obtained in this manner remains **unsubstantiated**, rendering the assessment item **void for lack of factual and legal basis.**

Assuming *arguendo* that verification had been done or was not necessary, the assessment item must still be struck down for respondent's failure to reliably inform taxpayer of its nature and basis. Section 228[154] of the NIRC of 1997, as amended, and its implementing rule and regulation, Section 3 of RR No. 12-99[155], mandate the contents for an assessment: "[t]he taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void".[156]

Accordingly, the assessment item for deficiency VAT similarly based on preprocessed data is likewise void for lack of factual and legal basis.

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154 SEC. 228. *Protesting of Assessment.*
155 Supra at note 110.
156 *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, 04 August 2021.

(ii) EXPENSES DISALLOWED PURSUANT TO AN ASSESSMENT BASED ON THE "BEST EVIDENCE OBTAINABLE" RULE - ₱9,483,056.13

Per the PAN and FLD/FAN, respondent disallowed 50% of petitioner's expenses declared in his Audited Financial Statements (**AFS**) and claimed as deductions in his Annual ITR.

Account Name	*Amounts per FS*[157]	*50% Disallowance*
Purchases (Cost of Sales)	₱2,841,447.71	₱1,420,723.86
Materials	11,204,977.89	5,602,488.95
Labor	2,982,260.00	1,491,130.00
Overhead	328,046.60	164,023.30
Salaries	350,000.00	175,000.00
Repairs and Maintenance	225,141.80	112,570.90
Taxes and Licenses	104,660.00	52,330.00
Electricity and Water	177,955.08	88,977.54
Gas and Oil	260,623.35	130,311.68
Transportation and Travel	140,288.00	70,144.00
Representation	92,290.00	46,145.00
Supplies	34,237.10	17,118.55
Insurance	24,651.23	12,325.62
Miscellaneous	63,948.00	31,974.00
Interest Expense	135,585.50	67,792.75
		₱9,483,056.13

The above listing excludes Depreciation[158], then includes Purchases in place of Cost of Sales. Notably, petitioner's Cost of Sales *per* AFS amounts to ₱2,846,413.91, which is greater than the amount reported as Purchases. Thus, for purposes of this deficiency assessment, the ceiling for petitioner's possible basic deficiency tax liability from this line item would be the lower amount, or ₱2,841,447.71. The remaining line items all match the amounts *per* petitioner's Notes to Financial Statements (**NFS**).

The Details of Discrepancies (attached to either the PAN or the FLD/FAN) explains the assessment item[159] as follows:

---

157 Notes 8, 9 and 10, Notes Accompanying the Financial Statements, supra at note 148.

158 Depreciation *per* AFS: ₱66,200.00, id.

159 Exhibit "R-10-A", BIR Records, p. 120.

> ...
>
> 2. *Disallowances based on Best Evidence Obtainable Rule* – Investigation report disclosed that you had failed to comply with the documentary requirements being requested to conduct the audit. Subpoena Duces Tecum (SDT No. RR1-04-2019-015) was then issued on January 16, 2019 since no compliance was made despite service of the First and Second & Final Notices for presentation of records. After the issuance of SDT, no documents were still submitted. Hence, the assessment based on best evidence obtainable pursuant to Section 6 (B) of the said NIRC, as amended, is warranted. The 50% disallowance of the claimed deductions for cash purchases and operating expenses is based on Section 2.4 (c) of Revenue Memorandum Circular ("RMC") No. 23-2000 since the exact amount of the deductions could not be ascertained due to the absence of documentary evidence to support such claimed expense deductions.
>
> ...

We find respondent's findings here proper. As such, the corresponding assessment is **affirmed** (at its original amount, in consideration of the observed exception in the amount of Purchases in relation to Cost of Sales.) A plain reading of the statement of its legal and factual basis likewise confirms that the same is complete and sufficiently understandable.

Upon thorough inspection of the copy of petitioner's Annual ITR available in the BIR Records, most line items were claimed in the same, full amounts as allowable itemized deductions.

Exceptions consist of: (1) the earlier noted "Depreciation"[160] item, which formed part of petitioner's deductions but is excluded from the assessment item; and (2) the amount pertaining to "Cost of Sales"[161], wherein the assessment item erroneously included "Purchases of Merchandise"[162] in its place.

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160 Item 10, Schedule 6, Ordinary Allowable Itemized Deductions, Petitioner's Annual ITR for CY 2016, id., p. 57.

161 Item 5, Schedule 4A, Cost of Sales (For those engaged in Trading), id., p. 59.

162 Item 2, Schedule 4A, id.

As to the remaining line items, as mentioned, petitioner claimed his "Cost of Sales"[163], and "Direct Charges" for (1) "Salaries, Wages, and Benefits"; (2) "Materials, Supplies, and Facilities"; and (3) "Others" for overhead, in his "Total Cost of Sales/Services"[164] as deductions from Net Sales and Receipts to arrive at his Gross Income.[165] The further remaining line items consisting of his operating expenses formed part of his Ordinary Allowable Itemized Deductions.[166] Clearly, petitioner had claimed in his Annual ITR the deductions that the assessment item sought to disallow.

Assessments based on "Best Evidence Obtainable Rule", and in particular, the application of the "50% Rule" find basis in RMC No. 23-2000[167] issued on 27 November 2000:

> ...
>
> 2.3 *Assessment Based on Best Evidence Obtainable. —* ***An assessment based on best evidence obtainable is justified when any of the grounds provided by law is clearly established*** *viz:*
>
> 1. **The report or records requested from the taxpayer are not forthcoming i.e. the records are lost; refusal of the taxpayer to submit such records;**
>
> 2. The reports submitted are false, incomplete or erroneous.
>
> **In every case where a taxpayer is ordered to be examined and he** refuses or **fails to submit his records giving rise to the issuance of a *subpoena duces tecum* pursuant to RMO No. 35-90, the assessment shall only be issued after a criminal case has been instituted for failure to obey summons.**
>
> **After filing of the complaint against the taxpayer for violation of the *Subpoena Duces Tecum*, the Legal Division/Prosecution Division shall immediately return the docket of the case to the concerned Revenue Officer.**

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163 Supra at note 161.
164 Item 27, Schedule 4, Cost of Sales/Services, BIR Records, p. 58.
165 Item 56, Part IV, Computation of Income Tax – REGULAR RATE, id., p. 62.
166 Item 57, Part IV, Computation of Income Tax – REGULAR RATE, id., p. 62; Schedule 6, Ordinary Allowable Itemized Deductions, id., p. 57.
167 Existing Revenue Procedures on the Assessment of Deficiency Internal Revenue Taxes Based on the "Best Evidence Obtainable".

The Revenue Officer shall, upon receipt of the docket, immediately proceed to determine the taxpayer's deficiency internal revenue tax liability in accordance with the "Best Evidence Obtainable."

2.4 *Existing Revenue Procedures and Jurisprudence Governing Assessment Based on the Best Evidence Obtainable.* — Provided hereunder are the existing revenue procedures and jurisprudence governing issuance of a deficiency tax assessment based on the best evidence obtainable:

...

(c) ***Assessment Based on Estimate; 50% Rule, in the Absence of Receipts to Prove Actual Amount of Expense Deduction.*** — The Court held in the Mariano Zamora case that, **if there is a showing that expenses have been incurred but the exact amount thereof cannot be ascertained due to absence of documentary evidence, it is the duty of the BIR to make an estimate of the deduction that may be allowable in computing the taxpayer's taxable income, bearing heavily against the taxpayer whose inexactitude is of his own making. That disallowance of 50% of the taxpayer's claimed deduction is valid.**

"It is alleged by Mariano Zamora that the CTA erred in disallowing P10,478.50 as promotion expenses incurred by his wife for the promotion of the Bay View Hotel and Farmacia Zamora. He contends that the whole amount of P20,957.00, as promotion expenses in his 1951 income tax returns, should be allowed and not merely one-half of it or P10,478.50, on the ground that, while not all the itemized expenses are supported by receipts, the absence of some supporting receipts has been sufficiently and satisfactorily established. For, as alleged, the said amount of P20,957.00 was spent by Mrs. Esperanza A. Zamora (wife of Mariano), during her travel to Japan and the United States to purchase machinery for a new Tiki-Tiki plant, and to observe hotel management in modern hotels. The CTA, however, found that for said trip, Mrs. Zamora obtained only the sum of P5,000.00 from the Central Bank and that in her application for dollar allocation, she stated that she was going abroad on a combined medical and business trip, which facts were not denied by Mariano Zamora. No evidence had been submitted as to where Mariano had obtained the amount in excess of P5,000.00 given to his wife which she spent abroad. No explanation had been made either that the statement contained in Mrs. Zamora's application for dollar allocation that she was going abroad on a combined medical and

> business trip, was not correct. The alleged expenses were not supported by receipts. Mrs. Zamora could not even remember how much money she had when she left abroad in 1951, and how the alleged amount of P20,957.00 was spent.
>
> Section 30 of the Tax Code provides that in computing net income, there shall be allowed as deductions all the ordinary and necessary expenses paid or incurred during the taxable year, in carrying on any trade or business (Vol. 4, Mertens, Law of Federal Income Taxation, sec. 25.03, p.307). Since promotion expenses constitute one of the deductions in conducting a business, same must satisfy these requirements. **Claims for the deduction of promotion expenses or entertainment expenses must also be substantiated or supported by record showing in detail the amount and nature of the expense incurred** (N.H. Van Sicklen, Jr. vs. Comm. of Int. Rev., 33 BTA 544). Considering, as heretofore stated, that the application of Mrs. Zamora for dollar allocation shows that she went abroad on a combined medical and business trip, not all of her expenses came under the category of ordinary and necessary expenses; part thereof constituted her personal expenses. **There having been no means by which to ascertain which expense was incurred by her in connection with the business of Mariano Zamora and which was incurred for her personal benefit, the Collector and the CTA in their decisions, considered 50% of the said amount of P20,957.00 as business expense and the other 50%, as her personal expense.** *We hold that said allocation is very fair to Mariano Zamora, there having been no receipt whatsoever, submitted to explain the alleged business expenses, or proof of the connection which said expenses had to the business or the reasonableness of the said amount of P20,957.00. While in situations like the present, absolute certainty is usually not possible, the CTA should make as close an approximate as it can, bearing heavily, if it chooses, upon the taxpayer whose inexactness is of his own making.*"[168]

...

It is well-settled that presumptions favor the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration of all the facts to which their attention was called.[169]

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168 Citations omitted; emphasis supplied and italics in the original text.

169 *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc., and The Court of Tax Appeals,* G.R. No. L-68230, 25 November 1986.

An assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. In such instances, the burden of proof falls upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[170]

In the present case, the BIR's conformity with the procedure stated in RMC No. 23-2000 is laid out above and is sufficiently documented.

As gathered from the RMC, in every case where a taxpayer is ordered to be examined and he or she refuses or fails to submit records giving rise to the issuance of an SDT, the assessment shall only be issued **after a criminal case has been instituted for failure to obey summons**. It is undisputed that an SDT had been issued, and that petitioner was later on criminally charged for Failure to Obey Summons.[171] To recall, petitioner, would later on be acquitted of the same.[172]

The RMC further requires that the audit docket be reverted to the assigned RO, who shall, **upon receipt, immediately proceed to determine the taxpayer's deficiency internal revenue tax liability in accordance with the "Best Evidence Obtainable Rule"**. As found in the BIR Records, in a "2nd Indorsement" dated 04 June 2019[173] signed by RD Milabao, the records were ordered to be returned to the RDO with the information "that a criminal case has already been filed against the subject taxpayer before the Office of Provincial Prosecutor for failure to obey summons."

The indorsement likewise includes an instruction to "[p]lease issue an assessment based on best evidence obtainable rule". Indeed, on 27 June 2019, RO Malana submitted a Memorandum[174] addressed to the RD, manifesting her compliance and reporting her findings, which includes the herein finding of disallowed expenses.

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170 *Ferdinand R. Marcos II v. Court of Appeals, et al.*, G.R. No. 120880, 05 June 1997.
171 Supra at notes 18 and 19.
172 Supra at note 21.
173 BIR Records, p. 16.
174 Id., pp. 79-81.

As to petitioner's supposed failure to submit his records, the BIR had presented a multitude of occasions to do so, both before and after it issued the SDT. While it could be argued that petitioner was in no position and could thus not be expected to submit supporting documents before he became aware of the administrative proceedings, petitioner had multiple opportunities to present the documentation required by the audit team.

First, he participated in the NIC and met with the BIR on multiple occasions before the PAN had been issued. *Second,* he had a chance to reply to the PAN, though he opted not to do so. *Third,* he had a similar platform available when protesting the FLD/FAN. *Fourth,* petitioner could have opted to file an administrative appeal before the CIR, which he understandably did not take, opting to file a judicial appeal upon receiving the FDDA. *Fifth,* he had the opening to raise his defenses in his Petition for Review. *Finally,* he had his turn to present evidence during trial before this Court. Petitioner chose to solely attack his perceived infirmities in the issuance of the assessment and not address the same on its merits.

Relevantly, petitioner had repeatedly manifested (in his Letter-Protest to the FLD/FAN, multiple times in his Petition for Review, and later in his Memorandum), that he attended the NIC where "attempts to refute the RO's findings met some cold treatment, and where **volumes of documents and schedules** brought in by Mr. Tagala to disprove the examination findings were outrightly discarded and not given due recognition."[175]

As it stands, in the absence of any evidence to support its claims, petitioner's clamors constitute **bare allegations**. None of the documents and schedules that petitioner mentioned were ever presented to this Court. Neither is there any form of transmittal or equivalent document that would prove any attempt from petitioner to deliver the same to the BIR.

175 Supra at note 26.

Settled is the rule that bare allegations will not suffice without proof.[176] It is hornbook doctrine that mere allegations do not constitute proof. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[177] Needless to say, it is the duty of the person who asserts something to produce evidence in order to prove it — which, unfortunately, petitioner failed to do in this case.

Surely, petitioner's bare allegations without corroborating evidence cannot overturn the presumption of correctness of the assessment. In *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*[178], the Supreme Court ruled:

> ...
> As a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. **If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties.** This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," *i.e.*, without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. ***Hence, the determination by the CTA must rest on all***

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[176] *Ma. Ana Consuelo A.S. Madrigal v. Department of Justice, et al.*, G.R. No. 168903, 18 June 2014.

[177] *Government Service Insurance System v. Prudential Guarantee and Assurance, Inc., et al.*, G.R. No. 165585, 20 November 2013.

[178] G.R. No. 136975, 31 March 2005; Citations omitted, emphasis supplied and italics in the original text.

the evidence introduced and its ultimate determination must find support in credible evidence.

...

Moreover, for the sake of argument, even if We were to honor and lend weight to petitioner's bare allegations, We would either way be unable to cancel the assessment item outright. Petitioner would still be compelled to substantiate his expenses. His failure to proffer the necessary evidence prevents the cancellation of the BIR's findings.

Jurisprudence has long held that under Section 8[179] of RA 1125[180], this Court is described as a court of record. Given that cases filed with this Court are *litigated de novo*, party litigants must prove every minute aspect of their cases.

To summarize thus far, petitioner is liable to pay the updated basic deficiency IT in the amount of **₱3,034,577.68**, computed as follows:

Taxable Net Income *per* Return			₱	779,560.00
Add: Audit Adjustments				
Income from undeclared sales *per* preprocessed data		-		
Disallowed Purchases / Expenses - Best Evidence Obtainable Rule	₱	9,483,056.13		9,483,056.13
Taxable Net Income *per* Audit			**₱**	**10,262,616.13**
Income Tax Due *per* Audit[181]			₱	3,249,037.16
Less: Supported Tax Payments				
Income Tax Payments	₱	27,986.56		
Creditable Income Tax Withheld		186,472.92		214,459.48
Basic Deficiency Income Tax			₱	**3,034,577.68**

179 Sec. 8. *Court of record; seal; proceedings.* — **The Court of Tax Appeals shall be a court of record** and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence. (Emphasis supplied)

180 AN ACT CREATING THE COURT OF TAX APPEALS.

181 ₱125,000 plus 32% of the excess of the Taxable Net Income *per* Audit of ₱10,262,616.13 over ₱500,000.00.

DEFICIENCY VALUE-ADDED TAX (VAT) FOR THE CALENDAR YEAR (CY) 2016

Meanwhile, in assessing petitioner for the alleged deficiency VAT, respondent calculated the total deficiency VAT payable in the PAN and FLD/FAN as follows:

	Exempt	*Zero-Rated*	*VATable*
Sales *per* Return	₱3,348,722.25	-	₱16,568,115.80
Add: Adjustments			
Undeclared sales from preprocessed data	-	₱3,224,285.50	15,428,625.42
Total			₱31,996,741.22
Output tax due (12%)			₱3,839,608.95
Less: Input Taxes			
Input tax claimed *per* returns		₱1,868,374.00	
Add: Input tax from purchases *per* preprocessed data		330,322.71	
Total available input tax		₱2,198,696.71	
Less: Input tax attributed to exempt sales		(314,139.50)	
Disallowed input tax		(1,554,234.50)	330,322.71
VAT Due			₱3,509,286.24
Less: Supported VAT payments			119,817.90
Basic VAT deficiency			₱3,389,468.34

Petitioner's reported sales and VAT payments can be traced to copies of his VAT returns[182] available in the BIR Records.

The items comprising the VAT deficiency assessment are: (1) additional output tax due arising from undeclared sales from preprocessed data (with a corresponding input tax credit allowed from purchases noted from preprocessed data); and (2) disallowed input tax claims due to non-substantiation. Each assessment item is discussed consecutively below:

[182] BIR Records, pp. 17-34.

(i) ADDITIONAL OUTPUT TAX DUE FROM UNDECLARED SALES *PER* PREPROCESSED DATA - ₱15,428,625.42 x 12%

(ii) ADDITIONAL CLAIMABLE INPUT TAX FROM PURCHASES *PER* PREPROCESSED DATA - ₱330,322.71

Echoing Our pronouncements further above, preprocessed data is deemed **unsubstantiated**, rendering the assessment item **void for lack of factual and legal basis.**

Notably, in assessing petitioner, respondent opted to include an additional input tax credit pertaining to "purchases *per* preprocessed data":

> ...
> 2. *Input Tax Allowed* – investigation report disclosed that the **input tax appearing in the preprocessed data on purchases was allowed per audit amounting to P330,322.71.** However, the input tax claimed per VAT returns amounting to P1,868,374.00 was disallowed per audit due to non-substantiation pursuant to Sections 106 and 108 of the said NIRC, as amended, as implemented by RR No. 16-2005, as amended.[183]
> ...

The same must similarly be cancelled, as it shares the nature of the "sales from preprocessed data."

(iii) DISALLOWED INPUT TAX CLAIMS DUE TO NON-SUBSTANTIATION - ₱1,554,234.50

(iv) INPUT TAX ATTRIBUTABLE TO EXEMPT SALES REMOVED FROM TOTAL AVAILABLE INPUT TAX - ₱314,139.50

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183 Exhibit "R-10-A", BIR Records, p. 120; Emphasis supplied and italics in the original text.

As clarified in the Details of Discrepancies, respondent disallowed petitioner's claimed input tax credits, pursuant to Sections 106[184] and 108[185] of the NIRC of 1997, as amended:

> ...
>
> 2. *Input Tax Allowed* – investigation report disclosed that the input tax appearing in the preprocessed data on purchases was allowed per audit amounting to P330,322.71. However, the **input tax claimer per VAT returns amounting to <u>P1,868,374.00</u> was disallowed per audit due to non-substantiation pursuant to <u>Sections 106 and 108</u> of the said NIRC, as amended, as implemented by RR No. 16-2005, as amended.**[186]
>
> ...

In reading respondent's basis for the disallowance, it can be observed that he or she cited the incorrect provisions, Sections 106 and 108, instead of the more relevant Sections 110 and 113.

Additionally, there is a mismatch in amount between the face of the FLD/FAN which shows a disallowance amounting to ₱1,554,234.50 and the description in the Details of Discrepancies which indicates the amount of ₱1,868,374.00. Meanwhile, the difference of ₱314,139.50, pertaining to input tax attributable to exempt sales that was removed from the Total Available Input Tax, remained unaddressed in the Details of Discrepancies.

Nevertheless, this Court sustains the BIR's finding here. While the Details of Discrepancies points to the incorrect legal provisions, the nature of the finding is sufficiently explained. The nature of the finding is very easily inferred from the face of the FLD/FAN *vis-à-vis* the Details of Discrepancies, especially to a taxpayer that regularly files VAT returns.

Specifically, Item 18 in the Monthly VAT Declaration (BIR Form No. 2550-M) or Item 22 in the Quarterly VAT Return (BIR Form No. 2550Q) pertains to "Total Available Input Tax", which would generally

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184 SEC. 106. *Value-added Tax on Sale of Goods or Properties.*

185 SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.*

186 Supra at note 183; Italics in the original text, emphasis and underscoring supplied.

include the taxpayer's available Input Tax from its Current Transactions for the applicable period.

On the other hand, Item 20C in the Monthly VAT Declaration (or Item 23C in the Quarterly VAT Return) under the subheading of "Less: Deductions from Input Tax" pertains to "Input Tax allocable to Exempt Sales". This item is supported by Schedule 5 attached to the VAT return when a taxpayer reports "Exempt Sales/Receipts" (under Item 18).

A perusal of the copies of petitioner's VAT returns for CY 2016 reveals that he does, in fact, reported "Exempt Sales/Receipts" but neglected to accomplish and attach Schedule 5 and include an input tax deduction for "Input Tax allocable to Exempt Sales" (with the designated field reflecting the amount of 0.00 across his VAT returns).

It is readily discernible that: (1) the amount of ₱1,868,374.00 refers to petitioner's aggregated input tax credits claimed; (2) the amount of ₱314,139.50[187] refers to an amount of input tax attributable to exempt sales, which petitioner neglected to deduct from his total available input tax; and (3) the amount of ₱1,554,234.50[188] represents the remainder, which respondent is disallowing for lack of substantiation. Needless to say, while the entire amount of ₱1,868,374.00 is disallowable for the same reason, it would not be logical nor proper to disallow the same amount twice. The inevitable conclusion is that the inconsistencies are mere consequences of the mathematical presentation laid out on the face of the FLD/FAN.

Sections 110 (A)[189] and 113 (A)[190] and (B)[191] of the NIRC of 1997, as amended, and as implemented by Sections 4.110-1, 4.110-8 and 4.113.1 (A) and (B) of RR No. 16-2005[192], explicitly state that any input tax may be

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187 Input tax claimed *per* VAT returns (₱1,868,374.00) multiplied by the ratio of Total Exempt Sales *per* VAT returns (₱3,348,722.25) to Total Sales *per* VAT returns (or the sum of Total Exempt Sales of ₱3,348,722.25, Total Zero-rated Sales amounting to ₱0.00, and Total VATable Sales of ₱16,568,115.80).

188 ₱1,868,374.00 less ₱314,139.50.

189 SEC. 110. *Tax Credits.* –
(A) *Creditable Input Tax.*

190 SEC. 113. *Invoicing and Accounting Requirements for VAT Registered Persons.* –
(A) *Invoicing Requirements.*

191 SEC. 113. *Invoicing and Accounting Requirements for VAT Registered Persons.* –
(B) *Information Contained in the VAT Invoice or VAT Official Receipt..*

192 Consolidated Value-Added Tax Regulations of 2005.

creditable against the output tax provided that the same is supported by a VAT invoice (*for purchases of goods*) or a VAT official receipt (**OR**) (*for purchases of services*) containing the required information under the VAT law and regulations.

As petitioner did not submit the corresponding VAT invoices or ORs, as the case may be, the disallowance of the input tax of ₱1,554,234.50 shall be retained.

Similarly, as it is evident from the returns that petitioner neglected to deduct input tax allocable to exempt sales (and proceeded to erroneously claim his input taxes in full), the removal of the ₱314,139.50 from petitioner's available or allowable input tax is also sustained. Approached alternatively, petitioner would not have been able to 'deduct' the amount from its input tax claims if they were not claimable in the first place, and the entire ₱1,868,374.00 originally claimed is disallowable for non-substantiation. All told, the full amount of ₱1,868,374.00 must be upheld in its entirety.

However, on another note, when respondent issued the FAN on **28 November 2019**[193] (which petitioner received on 03 December 2019[194]), respondent's right to assess petitioner for deficiency VAT for the first to third quarters of CY 2016 *had already prescribed*:

Period covered (VAT for CY 2016)	Date of actual filing	Last day prescribed by law to file the return[195] [196] [197]	Last day to assess under Section 203[198] of the NIRC
1st Quarter	18 April 2016[199]	25 April 2016	25 April 2019
2nd Quarter	25 July 2016[200]	25 July 2016	25 July 2019

[193] Exhibit "P-19", supra at note 33.
[194] Supra at note 34.
[195] Section 114(A), NIRC of 1997.
[196] Section 58(A), NIRC of 1997; Cf.: Section 2.58(A)(2), Revenue Regulations (RR) No. 2-98.
[197] Section 81, NIRC of 1997; Cf.: Section 2.81, RR No. 2-98.
[198] **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. (Emphasis supplied)
[199] BIR Records, p. 32.
[200] Id., p. 27.

Period covered (VAT for CY 2016)	Date of actual filing	Last day prescribed by law to file the return[195] [196] [197]	Last day to assess under Section 203[198] of the NIRC
3rd Quarter	18 October 2016[201]	25 October 2016	25 October 2019
4th Quarter	16 January 2017[202]	25 January 2017	25 January 2020

Accordingly, only the assessments for deficiency VAT for the 4th quarter of CY 2016 was issued within the three (3)-year prescriptive period allowed by law.

In the remaining items in the deficiency VAT assessment, namely: (1) disallowed input tax claims due to non-substantiation; and (2) input tax attributable to exempt sales removed from total available input tax, the BIR based its findings upon the amounts claimed in the VAT returns. The portion attributable to the remaining portion *not prescribed*, or the 4th quarter of CY 2016, is readily determinable from the Quarterly Return for the 4th quarter[203]:

<u>**4th Quarter, CY 2016**</u>	
Exempt Sales/Receipts (Item 18) [A]	₱1,017,922.80
VATable Sales/Receipts (Item 15A)	9,027,615.80
Total Sales/Receipts for the Quarter (Item 19A) [B]	**₱10,045,538.60**
Total Available Input Tax (Item 22) [C]	₱1,047,767.25
Less: Input Tax allocable to Exempt Sales, as computed (Item 23C) [D = C x A/B]	**106,171.13**
Input tax claims disallowable due to non-substantiation	**₱941,596.12**

Thus, after cancelling the *prescribed* portions, only the remainder composed of: (1) disallowed input tax claims due to non-substantiation amounting to **₱941,596.12**; and (2) input tax attributable to exempt sales removed from total available input tax amounting to **₱106,171.13**, shall be upheld.

Having addressed all the VAT findings in assessment, petitioner's deficiency VAT liability shall be updated. Petitioner should be held liable for basic deficiency VAT in the amount of ₱1,047,749.25, computed as follows:

201 Id., p. 21.
202 Id., p. 17.
203 Id.

		Exempt	Zero-Rated	VATable
Sales *per* Return		₱3,348,722.25	-	₱16,568,115.80
Add: Adjustments				
	Undeclared sales from preprocessed data	-	-	-
Total				₱16,568,115.80
Output tax due (12%)				₱1,988,173.90
Less:	Input Taxes			
	Input tax claimed *per* returns		₱1,868,374.00	
	Add: Input tax from purchases *per* preprocessed data		-	
	Total available input tax		₱1,868,374.00	
	Less: Input tax attributed to exempt sales		(106,171.13)	
	Disallowed input tax		(941,596.12)	820,606.75
VAT Due				₱1,167,567.15
Less: Supported VAT payments				119,817.90
Basic VAT deficiency				**₱1,047,749.25**

INVALID COMPROMISE PENALTIES FOR THE CALENDAR YEAR (CY) 2016

Finally, in the PAN and FLD/FAN, respondent assessed "Miscellaneous Tax" totaling ₱70,000.00, for petitioner's alleged failure to pay certain information returns, to wit:

Failure to Comply/File certain Information Returns	
Compliance requirements on Philippine Financial Reporting Standards (PFRS) under RR 7-2007	₱10,000.00
Non filing of 1st-4th Quarter Summary List of Sales and Purchases	25,000.00
Non-filing of BIR Form 1604CF and Alphalist of Employees	25,000.00
Non-filing of BIR Form 1604E and Annual Alphalist of Payees	5,000.00
Non-filing of Summary Alphalist of Withholding Taxes	5,000.00
Deficiency Miscellaneous Tax	**₱70,000.00**

In evaluating the composition of the assessment item, it can be understood that the "Miscellaneous Tax" assessed is actually a tabulation of Compromise Penalties. *Per* the Details of Discrepancies, the legal and factual basis of the penalties in question are as follows:

...

1. *Failure to File Certain Information/Returns* – Documentary requirements on Philippine Financial Reporting Standards (PFRS) under Revenue Rogulation (RR) No. 7-2007, 1st – 4th

> Quarter Summary List of Sales and Purchases, BIR Form 1604CF with Annual Alphalist of Employees, BIR Form 1604E with Annual Alphalist of Payees and Quarterly Summary Alphalist of Withholding Taxes were not filed/submitted at the time prescribed by prevailing tax rules and regulations. Compromise penalties were then suggested for such failure based on Section 250 of the said NIRC, as amended, and Revenue Memorandum Order No. 7-2015, in lieu of criminal prosecution.

...

The nature of a compromise penalty is explained in the case of *Commissioner of Internal Revenue v. Armando L. Abad, et al.*[204]:

> ...
> [A] compromise implies **agreement**. One party cannot impose it upon the other. If an offer of compromise is rejected by the taxpayer, as in this case, the Commissioner of Internal Revenue should file a criminal action if he believes that the taxpayer is criminally liable for violation of the tax law as the only way to enforce a penalty. A penalty can be imposed only on a finding of criminal liability.
> ...

Clearly, there can be no compromise if there is no agreement between the parties. A compromise penalty *cannot* be imposed or collected without the agreement or conformity of the taxpayer.[205] A compromise, after all, by its nature, is *mutual* in essence.[206] It cannot be imposed in the absence of a preceding agreement. Thus, the fact that the taxpayer **protested the assessment** only signifies that there was no agreement to speak of.[207]

As such, absent any showing of petitioner's accedence to a compromise, the Compromise Penalties or "Miscellaneous Tax" must be withdrawn.

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204 G.R. No. L-19627, 27 June 1968; Citation omitted and emphasis supplied.

205 *Wonder Mechanical Engineering Corporation v. The Hon. Court of Tax Appeals, et al.*, G.R. No. L-22805 & L-27858, 30 June 1975.

206 *Dr. Felisa L. Vda. De San Agustin v. Commissioner of Internal Revenue*, G.R. No. 138485, 10 September 2001.

207 *Manila Bankers' Life Insurance Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 199729-30 and 199732-33, 27 February 2019.

In consideration of all the foregoing, after covering all the assessment's items, petitioner's basic tax liabilities are summarized below:

Tax Type	Basic Tax Due *per* FLD/FAN	Compromise *per* FLD/FAN	Basic Tax Due, as recomputed	Compromise, as recomputed
IT	₱3,774,143.34	-	₱3,034,577.68	-
VAT	3,389,468.34	-	1,047,749.25	-
Miscellaneous	-	₱70,000.00	-	-
Total	**₱7,163,611.68**	**₱70,000.00**	**₱4,082,326.93**	-

WHEREFORE, premises considered, the Petition for Review filed on 02 February 2022 by petitioner Redentor Agpuldo Tagala, as the proprietor of 7th Concept Trading / 7C Construction, is hereby **PARTIALLY GRANTED**. As a result, the assessments for deficiency income tax and value-added tax shall be **ADJUSTED**. Meanwhile, the assessment for deficiency miscellaneous tax or compromise penalties are **CANCELLED**.

Accordingly, petitioner Redentor Agpuldo Tagala is **ORDERED TO PAY** respondent Commissioner of Internal Revenue the amounts of **₱4,919,840.24** and **₱1,744,602.96**, representing deficiency income tax and value-added tax, respectively, inclusive of the 20% deficiency interest imposed thereon under Section 249(B) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (**TRAIN Law**) and as implemented by Revenue Regulations No. 21-2018[208], respectively, computed until 29 December 2021, as determined below:

	IT	VAT	Total
Basic tax due	₱3,034,577.68	₱1,047,749.25	₱4,082,326.93
Deficiency Interest (20%) until 31 December 2017			
IT - 16 April 2017 to 31 December 2017 (Basic IT due x 20% x 259 days / 365 days)	430,660.61		430,660.61
VAT - 26 January 2013 to 31 December 2017 (Basic VAT due x 20% x 339 days / 365 days)		194,623.01	194,623.01

208 Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law).

	IT	VAT	Total
Deficiency Interest (12%) from 01 January 2018[209] to 29 December 2021[210]			
IT – 01 January 2018 to 29 December 2021 (Basic IT due x 12% x 1,458 days / 365 days)	1,454,601.95		1,454,601.95
VAT – 01 January 2018 to 29 December 2021 (Basic VAT due x 12% x 1,458 days / 365 days)		502,230.71	502,230.71
Total Amount Due as of 29 December 2021	**₱4,919,840.24**	**₱1,744,602.96**	**₱6,664,443.21**

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of 12%[211], computed from 30 December 2021 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by the TRAIN Law, on said deficiency taxes based the following principal amounts:

Income Tax	₱4,919,840.24
Value-Added Tax	₱1,744,602.96

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice

209 Id.

210 Petitioner received a copy of the FDDA on 29 December 2021, supra at note 96. Deadline for payment indicated as "immediately upon receipt hereof" stated in the FDDA, Exhibit "P-1" / "R-12", BIR Records, supra at note 6.

211 Supra at note 208.

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