REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ALAN U. CHAN,
Respondent.

CTA EB NO. 2988
(CTA Case No. 10034)

Present:

RINGPIS-LIBAN, *P.J.,*
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:

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DECISION

RINGPIS-LIBAN, *P.J.*:

The Case

Before the Court *En Banc* is a *Petition for Review* filed by the Commissioner of Internal Revenue (CIR) pursuant to Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended (RRCTA).[1] Petitioner seeks the

[1] SEC. 3. *Who may appeal; period to file petition. –*

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before reversal of the January 9, 2024 decision of the Special Second Division of the Court of Tax Appeals (CTA), which cancelled and set aside the CIR's *Formal Letter of Demand* (FLD) dated November 17, 2015, and the *Warrant of Distraint and/or Levy* (WDL) dated December 17, 2018, covering taxable year 2011 for the alleged deficiency Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT), and compromise penalties, including interests and surcharges.

The Parties

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of his office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code.[2]

Respondent Alan U. Chan (taxpayer) is of legal age, Filipino, married, and with address at Estacio Village, Libertad, Butuan City.[3] He was engaged in the business of dealership of Pilipinas Shell Petroleum in Butuan City, which business was the subject of tax audit for taxable year (TY) 2011.[4]

The Facts

Proceedings at the Administrative Level

On December 12, 2012, respondent taxpayer received a *Letter of Authority* (LOA) No. 103-2012-00000037 dated November 26, 2012, issued by BIR Revenue District Office (RDO) No. 103, Butuan City authorizing Revenue Officer (RO) Eliezer Deligero and Group Supervisor Lisa Tomaneng to examine the taxpayer's books of accounts and other accounting records for TY 2011.[5]

On February 9, 2015, the taxpayer received a *Preliminary Assessment Notice* (PAN) dated February 4, 2015 (First PAN). With this, he filed a Letter (Re: Response to PAN dated 4 February 2015) dated February 20, 2015, signed by Atty. Simon Peter S. Jalad (Atty. Jalad) with the BIR on February 24, 2015.[6]

the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Rules of Court, Rule 42, sec. 1a*)

[2] *Petition for Review, Rollo*, p. 10.
[3] January 9, 2024 Decision, *Rollo*, p. 57.
[4] Exhibit P-1, *Judicial Affidavit* of Alan U. Chan, Docket, Vol. I, p. 153.
[5] *Id.*
[6] *Id.*

On August 27, 2015, the taxpayer received another PAN dated August 24, 2015 (Second PAN). In reply, he filed a *Letter (Re: Response to PAN dated 24 August 2015)* dated September 7, 2015, signed by Atty. Jalad, with the BIR on September 10, 2015.[7]

On October 5, 2015, a *Memorandum* signed by Atty. Nestor T. Escalona, OIC-Chief of the Legal Division, and Atty. Nasser Tangcor, OIC-Regional Director, referring to a protest by the taxpayer on the PAN, was issued. In the *Memorandum*, Atty. Escalona found the *Letter (Re: Response to PAN dated 24 August 2015)* dated September 7, 2015 untenable.[8]

On November 17, 2015, an FLD signed by Atty. Tangcor was issued, which sought to collect the deficiency income tax (IT), value-added tax (VAT), and expanded withholding tax (EWT), inclusive of interests and surcharges and exclusive of compromise penalties, for taxable year (TY) 2011:[9]

	Income Tax	VAT	EWT
First quarter	₱ 501,949.97	₱ 246,532.94	
Second quarter	427,671.55	1,359,312.64	
Third quarter	377,964.12	405,705.11	
	₱ 1,307,585.64	₱ 2,011,550.69	₱ 21,909.43
Total			**₱ 3,341,045.76**

On February 14, 2017, a *Final Reminder* signed by Revenue District Officer Lordel T. Monteclaro (RDO Monteclaro) was issued, seeking the collection of the taxes and penalties indicated in the FLD, to which the taxpayer filed a *Letter (Re: Final Reminder for Alan U. Chan in relation to 2011 Tax Audit)* dated March 1, 2017, signed by Atty. Jalad.[10]

On March 7, 2017, a *Letter* signed by RDO Monteclaro was issued, forwarding to the taxpayer certified true copies of certain documents, including the FLD.[11]

[7] *Id.*
[8] *Rollo*, p. 58.
[9] *Id.*
[10] *Id.*
[11] *Id.*

On March 14, 2017, a *Protest with Request for Reconsideration and Reinvestigation* (Protest) dated March 10, 2017, was filed with the BIR, stating that the taxpayer only received on March 7, 2017 a copy of the FLD dated 17 November 2015, after receiving the *Final Reminder* on February 22, 2017.[12]

On October 10, 2017, the taxpayer filed a *Letter (Re: Request to Resolve Protest with Request for Reconsideration and Reinvestigation)* on an even date with the BIR.[13]

On October 12, 2017, a *Letter* signed by RDO Monteclaro was issued informing the taxpayer that the BIR treated the assessment as "final and executory" and such has been classified as a delinquent account on November 16, 2015.[14]

On November 8, 2017, the taxpayer filed an *Appeal* before the BIR Commissioner.[15]

On July 3, 2018, a *Memorandum* signed by Atty. Escalona recommended initiating summary remedies to collect, considering that the assessment has become final and executory.[16]

On January 9, 2019, a WDL dated December 17, 2018, signed by Regional Director Jose Eric Furia (RD Furia), was served to the taxpayer. Upon receipt, the taxpayer filed a *Letter* dated January 10, 2019 addressed to RD Furia, asserting that the WDL was prematurely issued.[17]

On February 6, 2019, a *Letter* dated February 4, 2019, signed by RD Furia, was received by the taxpayer stating that the assessment had become final and executory.[18]

Proceedings Before the Court A Quo

Aggrieved, on February 26, 2019, the taxpayer filed a *Petition for Review (with Motion for Suspension of Collection of Taxes under Rule 10 of AM No. 05-11-07-CTA)* with the court *a quo*.[19]

[12] *Id.*
[13] *Rollo*, p. 59.
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*

On March 5, 2019, *Summons* was issued by the court *a quo*.[20]

On March 18, 2019, the taxpayer filed a *Motion to Admit Amended Petition for Certiorari* [sic] with an attached *Amended Petition for Review (with Motion for Suspension of Collection of Taxes under Rule 10 of A.M. No. 05-11-07-CTA)*.[21]

On March 21, 2019, the CIR filed his *Motion for Extension of Time to File Answer*.[22]

The Court granted the taxpayer's *Motion to Reset Hearing* and *Motion to Admit Amended Petition for Certiorari* [sic] on March 22, 2019, and the CIR's *Motion for Extension of Time to File Answer* on March 26, 2019.[23]

On March 28, 2019, the taxpayer filed his *Judicial Affidavit*, which was noted in a *Minute Resolution* dated March 29, 2019.[24]

On April 1, 2019, the taxpayer filed a *Motion for Leave to Admit Second Amended Petition for Review* with the attached *Second Amended Petition for Review*, which the court *a quo* granted in a *Resolution* dated April 8, 2019.[25]

On April 16, 2019, the CIR filed his *Urgent Motion for Second Extension of Time to File Answer*, which the court *a quo* granted in a *Resolution* dated April 29, 2019.[26]

On May 10, 2019, the CIR filed an *Answer (with Opposition to Motion for Suspension of Collection of Taxes)*.[27]

On May 14, 2019, the taxpayer filed a *Formal Offer of Exhibits (with re-marking of exhibits)*.[28]

On May 20, 2019, the Court promulgated a *Resolution* noting respondent CIR's *Answer (with Opposition to Motion for Suspension of Collection of*

[20] *Id.*
[21] *Id.*
[22] *Rollo*, p. 60.
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*

Taxes) and ordering the taxpayer to file an additional copy of his *Formal Offer of Exhibits (with re-marking of exhibits).*[29]

On May 21, 2019, respondent CIR filed a *Motion to Defer Transmittal of BIR Records*, which the court *a quo* granted in a *Resolution* dated May 27, 2019.[30]

On June 4, 2019, respondent filed a *Manifestation with Motion for Extension to File Comment on Petitioner's Formal Offer of Exhibits* (FOE), which the court *a quo* noted and granted on June 6, 2019.[31]

On February 6, 2020, the court *a quo* denied the taxpayer's *Motion for Suspension of Collection of Taxes.*[32]

The CIR's *Pre-Trial Brief* was filed on June 29, 2020 and *Amended Pre-Trial Brief* was filed on September 7, 2020. The CIR's *Ex-Parte Compliance*, with attached BIR Records consisting of one (1) folder, pages 1 to 1,083, was also filed with the court *a quo.*[33]

On October 14, 2020, the taxpayer filed his *Judicial Affidavit* and his *Pre-Trial Brief*, which the court *a quo* noted in a *Minute Resolution* dated October 15, 2020.[34]

On December 11, 2020, both parties filed a *Joint Stipulation of Facts and Issues* (JSFI), which the court *a quo* approved in a *Resolution* dated December 18, 2020.[35]

On January 19, 2021, the *Pre-Trial Order* was issued terminating the pre-trial.[36]

Trial ensued.[37]

On February 17, 2021, the taxpayer testified on direct examination by way of *a Judicial Affidavit.*[38]

[29] *Id.*
[30] *Id.*
[31] *Rollo*, p. 60.
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.*

The taxpayer filed his FOE on March 4, 2021 while the CIR filed his *Comment (on Petitioner's Formal Offer of Evidence dated 26 February 2021)* on March 10, 2021. The FOE was resolved on June 30, 2021.[39]

On April 27, 2022, the CIR presented RO Deligero and RO Edna E. Makiling, who testified on direct examination by way of their *Judicial Affidavits.* On May 25, 2022, the CIR continued the presentation of evidence by presenting Chief RO Lisa Tomaneng and RO Felma Baguhin, who testified on direct examination by way of their *Judicial Affidavits.*[40]

The CIR filed a *Formal Offer of Evidence* on June 29, 2022. On August 9, 2022, the court *a quo* received the taxpayer's *Comment/Opposition (to Respondent's FOE).* On September 1, 2022, the court *a quo* resolved the CIR's FOE.[41]

The CIR filed a *Memorandum* on October 12, 2022, while the taxpayer filed his *Memorandum (for Petitioner Alan U. Chan)* on December 28, 2022.[42]

The case was submitted for decision on November 7, 2022, and submitted anew for decision on January 12, 2023, following the belated receipt of the taxpayer's *Memorandum.*[43]

On January 9, 2024, the court *a quo* decided the case in favor of the taxpayer, thus: [44]

> "The principle of due process furnishes a standard to which governmental action should conform in order to impress it with the stamp of validity. Fidelity to such standards must be the overriding concern of government agencies. While indeed the government has an interest in the swift collection of taxes, its assessment and collection should be exercised justly and fairly and always in strict adherence to the requirements of the law and of the BIR's own rules.
>
> All told, the cancellation of the deficiency income tax, value-added tax, and expanded withholding tax assessments, including the compromise penalties for TY 2011 against petitioner, is proper.
>
> **WHEREFORE**, in light of the foregoing, the instant *Petition for Review* is **GRANTED**. Accordingly, respondent's Formal Letter of Demand dated November 17, 2015, and the Warrant of Distraint and/or Levy dated December 17, 2018, covering taxable year 2011 for the alleged deficiency

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[39] *Rollo,* pp. 61-62.
[40] *Rollo,* p. 62.
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Rollo,* pp. 85-86.

IT, VAT, EWT, and compromise penalties, including interests and surcharges, are **CANCELLED** and **SET ASIDE**.

Further, respondent is **ENJOINED** from proceeding with the collection of taxes in the above-captioned case.

SO ORDERED."

On February 2, 2025, the CIR filed a *Motion for Reconsideration (Re: Decision promulgated on 9 January 2024)* with the taxpayer's *Comment/Opposition (to Motion for Reconsideration)* filed on February 29, 2024.[45]

On August 15, 2024, the court *a quo* denied the CIR's motion for lack of merit.[46]

Proceedings before the Court En Banc

On September 4, 2024, the CIR filed a *Motion for Extension of Time to File Petition for Review*.[47]

On September 6, 2024, the Court issued a *Minute Resolution*, which granted the CIR a non-extendible period of fifteen (15) days from September 5, 2024 or until September 20, 2024 to file a *Petition for Review*.[48]

On September 20, 2024, the CIR filed a *Petition for Review*.[49]

On October 3, 2024, the Court issued a *Minute Resolution*, which directed the taxpayer to file a comment on the CIR's *Petition for Review* within a non-extendible period of ten (10) calendar days from receipt.[50]

On October 28, 2024, the taxpayer filed by registered mail a *Comment/Opposition (To Petitioner's Petition for Review)*. This was noted in a *Minute Resolution* dated November 13, 2024, which also required the taxpayer to submit additional six (6) copies of the pleading filed.[51]

On December 10, 2024, the taxpayer filed by registered mail a *Manifestation of Compliance*.[52]

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[45] *Rollo*, p. 89.
[46] *Rollo*, p. 94.
[47] *Rollo*, pp. 1-4.
[48] *Rollo*, p. 8.
[49] *Rollo*, pp. 9-46.
[50] *Rollo*, p. 158.
[51] *Rollo*, p. 177.
[52] *Rollo*, pp. 179-180.

In a *Minute Resolution* dated January 30, 2025, the Court noted both the *Comment/Opposition (To Petitioner's Petition for Review)* and the *Manifestation of Compliance* and then submitted the case for decision.

Petitioner CIR's Arguments / Issues / Assignment of Errors[53]

Petitioner CIR assails the decision, seeks its reversal and assigns the following errors:

I. The Honorable Court in Division erred in ruling that it has jurisdiction over the instant case.

II. Without admitting the Honorable Court's jurisdiction, it erred in ruling that the CIR's right to assess and collect has already prescribed.

III. Without again submitting to the Honorable Court's jurisdiction, the CIR's basic right to fair play and due process was violated when it considered an allegation that was never raised in the taxpayer's protest and petition.

IV. With all due respect, the Honorable Court in Division erred in enjoining the CIR from collecting the assessed deficiency taxes.

Respondent Taxpayer's Arguments

In his *Comment/Opposition (To Petitioner's Petition for Review)*, respondent taxpayer counters that the court *a quo* correctly assumed jurisdiction over his appeal considering that he received the *Formal Letter of Demand* (FLD) only on March 7, 2017, which prompted him to file a *Protest with Request for Reconsideration and Reinvestigation* on March 14, 2017. He, therefore, had the right to wait for the final decision on his protest which came in the form of a letter dated October 12, 2017 and which he received on October 23, 2017, where the BIR relayed that his case had become final and executory. Since under the Tax Code the taxpayer had an option to wait for the resolution of his protest beyond the 180-day period, then the appeal to the CIR on November 8, 2017 was still within the reglementary period. The filing of the petition with the court *a quo* should be reckoned from the time he received Regional Director Furia's *Letter* dated February 4, 2019 since it was the final decision of his appeal to the CIR.[54]

The taxpayer further states that the court *a quo* correctly ruled that the BIR's right to assess and collect the alleged deficiency taxes had prescribed.[55] As to the waiver, the taxpayer states that it had to comply with the substantive requirements of Revenue Memorandum Order No. 20-90 and Revenue

[53] *Petition for Review, Rollo,* p. 16.
[54] *Rollo,* pp. 167-168.
[55] *Rollo,* p. 167.

Delegation Authority Order No. 05-01, which were the pertinent regulations at that time. The CIR's reliance on Revenue Memorandum Circular No. 141-2019 was misplaced since it was issued only recently and, thus, inapplicable to this case.[56]

Finally, he states that the court *a quo* correctly upheld his right to due process, which was infringed upon by the CIR's improper service of the FLD and the failure to serve a *Final Assessment Notice* (FAN).[57] The failure to discuss the merits of his *Responses* to PAN and *Protests* is tantamount to a denial of due process. It is a requirement of due process that the taxpayer be informed of how his tax liability was computed, with an explanation of the factual and legal reasons for arriving at such amount. The BIR cannot simply reiterate its previous findings and computation and just leave it at that without any justification on why the issues raised were not considered.[58]

<u>The Ruling of the Court *En Banc*</u>

The petition lacks merit.

The Petition for Review with the Court* En Banc *was timely filed.

Before the Court sets out to discuss the merits of the petition, it is important to dispense with its jurisdictional aspect.

Petitioner CIR received a copy of the assailed decision through the Office of the Solicitor General (OSG) on January 22, 2024.[59] Under Rule 15 Section 1 of the RRCTA,[60] the CIR had fifteen (15) days to file a motion for reconsideration of the decision, or until February 6, 2024. The CIR filed a *Motion for Reconsideration (Re: Decision promulgated on 09 January 2024)* on February 2, 2024.[61]

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[56] *Rollo*, p. 169.
[57] *Rollo*, p. 167.
[58] *Rollo*, p. 172.
[59] *Notice of Decision*, Division Docket, Vol. III, p. 952.
[60]

RULE 15

MOTION FOR RECONSIDERATION OR NEW TRIAL

SECTION 1. *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court. He shall file a motion for reconsideration or new trial within fifteen days from the date he received notice of the decision, resolution or order of the Court in question. (RCTA, Rule 13, sec. 1a)

[61] Division Docket, Vol. III, p. 985.

This petition was filed under Section 18 of RA 1125, as amended by RA 9282. Section 18 of RA 1125, as amended by RA 9282[62] in relation to Rule 8 Section 3(b) of the 2005 RRCTA,[63] provides that a party may appeal resolution of a division of the Court on a motion for reconsideration, by filing a petition for review or a motion for extension of time to file the petition with the Court *En Banc* within fifteen (15) days from receipt of the questioned resolution.

On September 6, 2024, the CIR's counsel, the OSG, received the August 15, 2024 *Resolution*, which denied petitioner's *Motion for Reconsideration (Re: Decision promulgated on 09 January 2024)*.[64] The CIR, therefore, had fifteen (15) days from September 6, 2024 or until September 23, 2024[65] to file a petition or a motion for an extension to file a petition. On September 4, 2024, the CIR filed a *Motion for Extension of Time to File Petition for Review*.[66]

On September 6, 2024, the Court issued a *Minute Resolution*, which granted the CIR a non-extendible period of fifteen (15) days from September 5, 2024 or until September 20, 2024 to file a *Petition for Review*.[67]

On September 20, 2024, the CIR filed a *Petition for Review*.[68]

Accordingly, the *Petition for Review* was filed within the reglementary period. The Court *En Banc* can take cognizance of the present case.

Findings of facts of the court* a quo *will not be disturbed absent a showing of grave abuse of discretion.

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[62] SECTION 18. *Appeal to the Court of Tax Appeals En Banc.* — No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*.

[63] SEC. 3. *Who may appeal; period to file petition.* —

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[64] *Notice of Resolution*, Division Docket, Vol. III, p. 1056.
[65] The original deadline fell on September 21, 2024, a Saturday.
[66] *Rollo*, pp. 1-4.
[67] *Rollo*, p. 8.
[68] *Rollo*, pp. 9-46.

In its petition, the CIR once again raised and discussed the issues of *jurisdiction,*[69] *prescription,*[70] and *violation of due process*[71] --- matters that were all squarely addressed in the assailed decision.[72] These issues necessarily hinge on the appreciation facts established during trial before the court *a quo*. Significantly, the CIR does *not* dispute these facts; rather, the CIR explicitly *adopts* the factual findings of the court *a quo*[73] and incorporated them into the petition now under consideration by the Court.

In *Heirs of Teresita Villanueva, et al. v. Heirs of Petronila Syquia Mendoza, et al.*,[74] the Supreme Court ruled that:

> "Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not simply be ignored. Absent any clear showing of abuse, arbitrariness, or capriciousness committed on the part of the lower court, its findings of facts are binding and conclusive upon the Court. The reason for this is because the trial court was in a much better position to determine which party was able to present evidence with greater weight." *(Underscoring added)*

More specifically, in *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (Formerly Mirant (Phils.) Energy Corporation*,[75] the Supreme Court ruled that the findings of facts of the CTA, acting as a trier of facts, are accorded with the highest degree of respect:

> "With regard to the second requirement, it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties. Consequently, we adopt the findings of the CTA in Division, which the CTA *En Banc* cited, as follows." *(Underscoring added)*

Thus, in the absence of any evidence to the contrary, this Court will *not* disturb the facts that have been settled by the court *a quo*.

What remains for the Court to do is to reiterate the holding in the assailed decision.

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[69] *Rollo*, pp. 16-21.
[70] *Rollo*, pp. 21-29.
[71] *Rollo*, pp. 29-39.
[72] Please refer to the discussion on *jurisdiction, Rollo*, pp. 65-77; on *prescription, Rollo*, pp. 78-83; and, on *violation of due process, Rollo*, pp. 83-85.
[73] *Rollo*, p. 11.
[74] G.R. No. 209132, June 05, 2017.
[75] G.R. No. 188016, January 14, 2015.

The court* a quo *validly assumed jurisdiction over the case based on Section 7(a)(1) of RA 1125, as amended.

The CIR advances the view that the court *a quo* erred in ruling that it had jurisdiction over the case filed. Specifically, the CIR states that the protested assessment had attained finality when the taxpayer did *not* file an appeal with the CTA or with the CIR within 30 days from the lapse of the 180-day period when the RDO should have acted on his protest. In the alternative, even if the taxpayer timely filed his appeal with the CIR, the case filed with the court *a quo* was still time-barred. The CIR elaborates, "[h]aving filed his Appeal to [*sic*] the Office of the Commissioner on 8 November 2017, and having noted that the Commissioner did not act on his appeal, respondent [taxpayer] should have filed a petition for review after the lapse of thirty (30) days counted from the expiration of one hundred eighty (180) days from the filing of his appeal, or until 06 June 2018, failing such, the contest assessment shall [*sic*] become final, executory, and demandable. It is clear that no such petition was filed. It was only on 22 February 2019 [*sic*][76] when respondent filed a petition for review in the Court of Appeals [*sic*]. As such, it is respectfully submitted that the instant [*sic*] petition was filed out of time."[77]

This view is *not* new and was fully addressed in the assailed decision.[78] In agreement with the court *a quo*'s conclusion that it had jurisdiction to hear the petition filed by the taxpayer, the Court quotes the relevant text of the assailed decision:

> "The Court finds respondent's [CIR] argument without merit and agrees with petitioner [taxpayer] that the instant Petition for Review was filed on time.
>
> Section 228 of the NIRC of 1997, as amended, prescribes the procedure and the period for protesting assessment, *viz.*:
>
>> **Section 228.** *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: ...
>>
>> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>>
>> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

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[76] The petition was filed on February 26, 2019, *see* Docket, Vol. I, p. 10.
[77] *Petition for Review, Rollo,* pp. 19-20.
[78] *Rollo,* pp. 64-65.

> 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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

Correspondingly, Revenue Regulations ('RR') No. 12-1999, as amended by RR No. 18-2013, provides the procedure for protesting the assessment and for *appealing* respondent's decision or inaction on the protest or *administrative appeal* to the CTA, viz.:

xxx xxx xxx

There is nothing in Section 228 of the NIRC of 1997, as amended, and RR No. 12-1999, as amended, which provides for a separate 180-day period for the CIR's representative to act on the protest and another 180-day period for the CIR to decide the appeal on the decision rendered by the CIR's authorized representative for the purpose of computing the 30-day period within which to appeal to the CTA.

In the instant case, respondent [CIR] maintains that the protested assessment has attained finality because petitioner [taxpayer] did not appeal to the CTA within 30 days after the lapse of the 180 days, reckoned from the filing of petitioner's [taxpayer's] Protest on March 14, 2017. The 180-day period expired on September 10, 2017; thus, according to respondent [CIR], petitioner had 30 days therefrom, or until October 10, 2017, to appeal to the CTA. Respondent [CIR] claims that instead of filing an appeal to the CTA, petitioner [taxpayer] opted to send a letter dated October 10, 2017, to RR No. 17 and RDO 103, Butuan City, requesting the said offices to resolve his protest.

Under the circumstances, the Court finds that petitioner [taxpayer] chose to 'await the final decision' of the CIR's duly authorized representative on his protest pursuant to Section 3.1.4 of RR No. 12-1999, as amended, which implements Section 228 of the NIRC of 1997, as amended. Sectiou 3.1.4 states that petitioner may either:

(i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or
(ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

It bears to note that 'awaiting the final decision' is an alternative course of action available to the taxpayer, like petitioner [taxpayer], in case there is inaction on the protest by the CIR's duly authorized representative within the prescribed 180-day period.

Subsequently, RDO 103 issued a letter dated October 12, 2017, informing petitioner [taxpayer] that his tax case has become final and executory with the issuance of the FLD. Petitioner [taxpayer] treated the letter he received on October 23, 2017, as a denial of his protest. Following this, petitioner [taxpayer] elevated his protest to the Office of the Commissioner on November 8, 2017, within 30 days from receipt of the denial letter, also pursuant to Section 3.1.4 as previously quoted.

Notwithstanding the pendency of the administrative appeal, a WDL dated December 17, 2018, was served by the BIR to petitioner [taxpayer] on January 9, 2019. Upon receipt of the WDL, petitioner [taxpayer] filed a Letter dated January 10, 2019, addressed to RD Furia, invoking that the WDL was prematurely issued given the pendency of his Appeal with the Office of the Commissioner and requesting the RD to recall the WDL since the assessment has not become final and executory.

In response, petitioner [taxpayer] received on February 6, 2019 a Letter dated February 4, 2019, signed by RD Furia, stating that the assessment had become final and executory and that the subject WDL is valid and legal.

On February 26, 2019, within 30 days from receipt of the said Letter, petitioner [taxpayer] filed the instant Petition for Review. We find that petitioner properly reckoned the 30 days to appeal to the CTA from his receipt of the said Letter on February 6, 2019.

In *Light Rail Transit Authority v. Bureau of Internal Revenue* (LRTA case), the Supreme Court ruled that the Regional Director's June 30, 2014 Letter denying LRTA's May 6, 2011 appeal to the Office of the Commissioner was the final decision on the protest that is appealable to the CTA. In this case, LRTA chose to wait for the CIR's ruling on its appeal on the denial of its protest; thus, according to the Supreme Court, the 30 days could not be counted from the issuance of the PCL, FNBS, or WDL for being issued while the assessment was still pending appeal with the Office of the Commissioner." (*Underscoring supplied; citations and other text formatting omitted*)

Indeed, the case of *Light Rail Transit Authority v. Bureau of Internal Revenue*[79] is germane to this case. In *LRTA*, the Supreme Court held that the BIR's issuances, including a WDL, were *void and without effect* as they stemmed from a non-demandable assessment, *given that the assessment was still pending appeal with the CIR*:

"Decisions of the Commissioner in cases involving disputed assessments" mean decisions of the Commissioner on the protest to the assessment, not the assessment itself. The protest may either be a request for reconsideration or a request for reinvestigation, and the decision on the protest, which may also be rendered by a duly authorized representative of the Commissioner— must be final, i.e., not merely tentative in character.

Apart from decisions on disputed assessments, inactions of the respondent Commissioner in cases involving disputed assessments may likewise be appealed. This is to empower taxpayers who, under the old Tax Code, can be 'held hostage by the Commissioner's inaction on [their] protest.'

In the case of a decision on the protest, the appeal must be filed 30 days from receipt of the adverse decision. On the other hand, in the case of inaction on the protest, this Court held in *Rizal Commercial Banking Corporation*

[79] G.R. No. 231238, June 20, 2022.

v. Commissioner of Internal Revenue and *Lascona Land Co., Inc. v. Commissioner of Internal Revenue* that a taxpayer may either:

(1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessment; or

(2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision. This is true even if the 180-day period for the Commissioner to act on the disputed assessment had already expired.

These options are mutually exclusive and resort to one bars the application of the other.

Here, there was inaction on the part of the respondent on the petitioner's appeal of the Final Decision on a Disputed Assessment. And under the circumstances, this Court finds that the petitioner [taxpayer] genuinely chose to await the Commissioner's final decision on its appeal. To our mind, the option was made in good faith, not as an afterthought or "legal maneuver" to claim that the assessment had not yet become final. This is shown by the petitioner's [taxpayer] replies to the Revenue District Officer when the latter issued the Preliminary Collection Letter and Final Notice Before Seizure. In both reply letters, petitioner said that "it will act on the matter as soon as we receive the Commissioner's decision on our appeal." Indeed, petitioner [taxpayer] filed the Petition for Review with the Court of Tax Appeals only after the issuance of the June 30, 2014 Letter that decided its May 6, 2011 appeal to the Office of the Commissioner.

Furthermore, considering that petitioner [taxpayer] awaited the decision of the Commissioner on its appeal, it is immaterial that it filed its Petition for Review beyond the 180-day period for respondent [CIR] to act on disputed assessments. As held in *Lascona*:

> ...when a taxpayer protest[s] an assessment, he [or she] naturally expects the [Commissioner] to decide either positively or negatively. A taxpayer cannot be prejudiced if he [or she] chooses to wait for the final decision of the [Commissioner] on the protested assessment. More so, because the law and jurisprudence have always contemplated a scenario where the [Commissioner] will decide on the protested assessment.

Contrary to the ruling of the Court of Tax Appeals *En Banc*, the Final Decision on Disputed Assessment cannot be considered as the decision appealable to the Court of Tax Appeals under Section 7 (a) (1) of Republic Act No. 1125, as amended. This interpretation will render nugatory the remedy of appeal to the Office of the Commissioner of Internal Revenue of the denial of protest issued by his or her duly authorized representative, a remedy which was properly and timely availed of by petitioner [taxpayer]. xxx.

xxx xxx xxx

Subsection 3.1.5 of Revenue Regulations No. 12-99 is clear that if the protest is elevated to the respondent Commissioner of Internal Revenue, "the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner." The Final Decision on Disputed Assessment was timely elevated to the Commissioner; hence, it never became final, executory, and demandable.

Neither can the 30-day period for filing a petition for review be reckoned from petitioner's [taxpayer] receipt of any of the following issuances: the Preliminary Collection Letter, the Final Notice Before Seizure, the Warrant of Distraint and/or Levy, the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 Letter dropping the request for reconsideration of the Warrant of Distraint and/or Levy. Like the Final Decision on Disputed Assessment, all of these were not final decisions on the appeal by the Commissioner of Internal Revenue. They remained tentative given the pendency of the petitioner's appeal with the Office of the Commissioner. More importantly, all of these were issued on the premise that "delinquent taxes" exist, an incorrect premise. To repeat, the assessment was still pending appeal with the Office of the Commissioner when these issuances were made. The Preliminary Collection Letter, the Final Notice Before Seizure, the Warrant of Distraint and/or Levy, the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 denying the request for reconsideration all emanated from a non-demandable assessment. As such, all were void and should be of no force and effect." (*Underscoring supplied; citations and other text formatting omitted*)

In 2025, the Supreme Court reiterated its holding in *LRTA* above and ordered the refund of erroneously collected income tax in *Commissioner of Internal Revenue v. Stradcom Corp.* It held that resort to summary administrative remedies such as the issuance of a WDL must be based on a tax delinquency arising from a final and executory assessment:[80]

"As discussed above, a delinquent tax liability likewise arises from a deficiency assessment that has become final and executory. In this case, however, there was no LOA that preceded the issuance of the WDL and WOG. Furthermore, the due process requirements for the issuance of a valid tax assessment were not observed.

xxx xxx xxx

RMO No. 39-07 provides that a WDL and WOG can be issued only if the CIR or Regional Director has issued a final decision on the disputed assessment, or the CTA has upheld the assessment. Since neither of these conditions was satisfied, the issuance of the WDL and WOG was premature and unlawful." (*Underscoring supplied*)

As far as the taxpayer was concerned, the issuance of the WDL was *not* the act of the CIR that prompted an appeal to the court *a quo* considering that it was premature and unlawful. Clearly, the taxpayer was within his right to wait for the CIR's decision before it decided to appeal the same to the court *a quo.*

[80] G.R. No. 255520, April 21, 2025.

An LOA is the source of BIR revenue officer's investigatory powers, without which the assessment is void.

The assessment suffers from another infirmity.

The facts are well-established. When the CIR issued LOA-103-2012-00000037 dated November 26, 2012 against the taxpayer, it specifically authorized RO Eliezer Deligero.[81] Then the CIR issued a *Memorandum of Assignment* dated March 5, 2015, which reassigned the investigation to RO Roseller Leonero.[82] *No new LOA was issued for the new RO*. After the reassignment, a second PAN was received by the taxpayer on August 27, 2015.

In *Republic v. Robiegie Corp.*,[83] the Supreme Court recently *invalidated* the assessments against a taxpayer as they were based on an unauthorized investigation into its account. In *Robiegie*, although an LOA was issued to examine the taxpayer, this tax audit was reassigned to another examiner through a *Memorandum Referral* only. The Supreme Court affirmed the rulings of both the CTA in Division and *En Banc*, both of which invalidated the assessments, thus:

> "The necessity of a validly issued LOA for the valid conduct of a taxpayer investigation by an RO is a well-settled doctrine embodied in our statutory and case law. In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, which involved a deficiency value-added tax assessment in the context of the BIR's electronic 'no-contact-audit approach,' we discussed the dual function of an LOA as the modality for the delegation of the CIR's investigatory power and as a manifestation of due process:
>
> xxx xxx xxx
>
> Considering that an LOA clothes the appropriate revenue officer with the authority to assess and examine the books of account and records of a taxpayer, such power is necessarily subject to reasonable limitations. <u>In particular, Section C (5) of RMO NO. 43-90, specifically requires that any re-assignment/transfer of cases to another RO shall require the issuance of a new LOA</u>:
>
> C. Other policies for issuance of L/As.
>
> xxx xxx xxx
>
> 5. <u>Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A</u>, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.

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[81] Exhibit R-52, *Judicial Affidavit of Chief Revenue Officer Lisa Tomaneng*, Docket, Vol. II, p. 555.
[82] *Id.*, Docket, Vol. II, p. 556; Exhibit R-17, *Memorandum of Assignment*, Docket, Vol. III, pp. 886 and 903.
[83] G.R. No. 260261, October 3, 2022.

Just last year, in *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, which also involved the reassignment of a deficiency tax investigation to another RO without the issuance of a new LOA, we nullified the Formal Letter of Demand and Assessment Notice issued against the taxpayer on the basis of such investigation, thus:

> A perusal of the records of the case discloses that electronic LOA SN: eLA201000017400 LOA-039-2010-00000072 issued against petitioner specifically authorized revenue officer Cacdac and group supervisor Andaya, to examine the books of accounts of petitioner for taxable year 2009[.] x x x
>
> xxx xxx xxx
>
> However, it appeared that Cacdac was not the revenue officer who actually conducted the audit of petitioner's books of accounts. It was revenue officer Bagauisan who audited petitioner by virtue of a memorandum of assignment signed by revenue district officer Nacar[.] x x x
>
> xxx xxx xxx
>
> The reassignment of the examination of petitioner's books of accounts pursuant to electronic LOA SN: eLA201000017400 LOA-039-2010-00000072 from revenue officer Cacdac to revenue officer Bagauisan necessitates the issuance of a new LOA. This is clear under Revenue Memorandum Order (RMO) No. 43-90 or 'An Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit,' x x x
>
> xxx xxx xxx
>
> Here, there was no new LOA issued naming Bagauisan as the new revenue officer who would conduct the examination of petitioner's books of accounts. The authority of Bagauisan is anchored only upon the memorandum of assignment signed by revenue district officer Nacar.
>
> Section 13 of the NIRC requires that a revenue officer must be validly authorized before conducting an audit of a taxpayer:
>
> xxx xxx xxx
>
> Thus, revenue officer Bagauisan is not authorized by a new LOA to conduct an audit of petitioner's books of accounts for taxable year 2009.
>
> xxx xxx xxx
>
> Here, as comprehensively discussed, there was no new LOA issued by the CIR or his duly authorized representative giving revenue officer Bagauisan the power to conduct an audit on petitioner's books of accounts for taxable year 2009. The importance of the lack of the revenue officer's authority to

> conduct an audit cannot be overemphasized because it goes into the validity of the assessment. The lack of authority of the revenue officers is tantamount to the absence of a LOA itself which results to a void assessment. Being a void assessment, the same bears no fruit.
>
> This Court was more emphatic in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp. (McDonald's)*, which opens with this categorical declaration:
>
>> The practice of reassigning or transferring revenue officers originally named in the Letter of Authority (LOA) and substituting or replacing them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the Commissioner of Internal Revenue (CIR) or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing Bureau of Internal Revenue (BIR) rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his duly authorized representative to examine the taxpayer's books of accounts.
>
> In that case, the RO authorized to investigate the accounts of McDonald's Philippines Realty Corporation through a validly issued LOA was transferred to another assignment; and the investigation was reassigned to another RO through a referral memorandum, without the issuance of a new LOA. We likewise invalidated the resultant assessment and demand:" *(Underscoring supplied; citations omitted)*

In this case as in *Robiegie*, the lack of authority of the RO is tantamount to the absence of a LOA itself which results to a *void assessment.* A void assessment bears no fruit.

The court* a quo *correctly found that the CIR's right to assess was barred by prescription.

Even assuming for the sake of argument that the assessment was validly issued, it is still barred by prescription.

Under Section 203 of the Tax Code, as amended, assessments for deficiency taxes should be issued within three years from the last day prescribed by law to file the tax return, or the actual date of filing of such return, whichever comes later:

> "**SECTION 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 (3)-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."

By exception, the three-year period to assess may be extended, such as in the case of a false or fraudulent return, non-filing of a return, or when there is a valid waiver between the taxpayer and the BIR. Section 222 (a) establishes the ten-year extraordinary period of assessment, while Section 222 (b) authorizes the extension of the original three-year prescriptive period upon the execution of a *valid* waiver.

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

The court *a quo* applied the three-year prescription against the CIR because it found that the CIR did *not* invoke the extended ten-year period and no *valid* waiver of the defense of prescription had been executed:

> "Based on the records, We find no indication that respondent invoked the ten-year prescriptive period, and no valid waiver of the defense of prescription had been executed. While a *Waiver of the Defense of Prescription under the Statute of Limitations (Waiver)* had been formally offered and admitted as part of respondent's [CIR] evidence, the same is defective and ineffectual because it did not indicate the date of acceptance by the BIR and there is no proof that petitioner [taxpayer] was furnished a copy thereof."

The CIR assails this finding and states that there was in fact a *valid* waiver, which extended the right to assess against the taxpayer.[84] The CIR cites Revenue Memorandum Circular No. 141-2019,[85] which prescribes the guidelines for the execution of waivers and reiterates Revenue Memorandum Order No. 14-2016[86] and *no longer* requires the date of acceptance by the BIR officer. The CIR

[84] *Petition for Review, Rollo*, pp. 21-23.
[85] Reiterating the Salient Points Arising from RMO No. 14-16 on the Proper Execution of Waivers of the Defense of Prescription and Providing an Illustration of the Basic Requirements thereof.
[86] Guidelines for the Execution of Waivers from the Defense of Prescription Pursuant to Section 222 of the National Internal Revenue Code of 1997, As Amended.

contends that, since the taxpayer's waiver was valid, it extended the three-year period and the CIR could still assess TY 2011.

The Court is *not* convinced.

The 2016 and 2019 revenue issuances relied upon by the CIR cannot apply retroactively to a waiver that was notarized in 2014.[87] As a general rule, any revocation, modification or reversal of any of the rules and regulations or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers.[88]

The court *a quo*, therefore, correctly ruled that the three-year prescription barred the assessment on TY 2011.

Finally, an assessment that fails to observe the due process requirements is a patent nullity.[89]

First, the assailed decision found that there was no showing that the CIR validly served the FLD and the FANs through personal service, substituted service, or registered mail, as required under Revenue Regulations No. (RR) 18-2013.[90]

It further noted that a review of the BIR records failed to establish that copies of the FLD and FANs were ever served upon the taxpayer. Also absent were the required "accomplishment at the bottom portion of the assessment notice" and the "written report under oath stating the manner, place, and date of service," among other mandatory details under the same regulations. The taxpayer learned of the issuance of an FLD only upon receipt of a *Final Reminder* on February 22, 2017, after which he requested copies of the relevant documents. As reiterated, on March 7, 2017, RDO Monteclaro furnished him with certified true copies of the requested records, including the FLD.

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[87] Exhibit R-12, BIR Records, pp. 446-447.

[88] Section 246 of the Tax Code states:

> Sec. 246. *Non-Retroactivity of Rulings.* — Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
> (c) Where the taxpayer acted in bad faith.

[89] *Commissioner of Internal Revenue v. Stradcom Corporation*, G.R. No. 255520, April 21, 2025.
[90] *Decision, Rollo*, pp. 84-86.

The taxpayer maintained that he received the FLD only on March 7, 2017. The court *a quo* ruled that the CIR neither refuted this assertion nor presented evidence proving that the original FLD and FANs were served at the taxpayer's registered or known address—whether by personal service, substituted service, or mail—prior to that date. Moreover, a review of the March 7, 2017 letter shows that the FANs relating to deficiency income tax, VAT, and EWT were *not* among the certified true copies furnished to him.

Second, Section 228 of the Tax Code mandates that the taxpayer "shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[91] the Supreme Court declared that tax assessments issued in violation of the due process rights of the taxpayer as null and void. The case ordered strict observance by the BIR of the prescribed procedure for issuance of the assessment notices with due regard for the taxpayer's constitutional rights. It said that it is mandatory that the BIR *not only inform* the taxpayer through the PAN, FLD, and FAN of the facts, law and regulations, and jurisprudence on which the assessment against him is based, *but it must also accord the taxpayer the opportunity to be heard through the entire process*, i.e., from tax investigation until tax assessment:

> "The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts, to issue a subpoena, and to assess based on best evidence obtainable, among others. However, these powers must 'be exercised reasonably and [under] the prescribed procedure.' The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayers' constitutional rights.
>
> xxx xxx xxx
>
> The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. <u>Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void</u>. Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. <u>Failure to do so would invalidate the Final Decision on Disputed Assessment</u>.
>
> <u>'The use of the word 'shall' in Section 228</u> of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 <u>indicates that the requirement of informing the taxpayer of the legal and factual bases of the</u>

[91] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

> assessment and the decision made against him [or her] is mandatory.' This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment." (*Underscoring supplied*)

Without proper service of FANs, the taxpayer's protest in Section 228 was made impossible. How could the taxpayer have mounted a robust defense against an assessment without first knowing, through the FANs, what it was the CIR was trying to assess from him?

Section 228 of the Tax Code, therefore, requires that the taxpayer must *first* be *informed* that he is liable for deficiency taxes through the sending of a FANs. He must be informed of the facts and the law supporting the assessment. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection, with the issuance of a WDL, 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.[92]

As correctly held by the court *a quo*, proper service of assessment notices is an *indispensable* component of due process. The CIR's failure to validly serve the FLD and FANs constitutes a violation of the taxpayer's constitutional and statutory right to due process, thereby rendering the entire assessment null and void.

Third, neither the taxpayer's subsequent receipt of the FLD without the FANs nor the opportunity to file a protest can cure the fundamental defect arising from respondent's failure to effect proper service. The fact that the taxpayer was able to submit a *Protest with Request for Reconsideration and Reinvestigation* does not cure the denial of procedural due process. Tax assessments issued in violation of a taxpayer's right to due process are void and produce no legal effect.

In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*,[93] the BIR ignored RR No. 12-99 and did not issue a *Notice of Informal Conference* and a *PAN* as required. As a result, the Supreme Court ruled that the taxpayer was *deprived of due process* in contesting the formal assessment levied against it. The Court pronounced in that case that "[w]hile PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued." The Supreme Court, therefore, canceled the assessment and declared it without force and effect for lack of legal basis.

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[92] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 08, 2010.
[93] G.R. No. 172598, December 21, 2007.

All told, petitioner failed to raise any issue that has successfully convinced the Court to modify or reverse the assailed Decision and Resolution of the court *a quo*. The findings of fact of said court are *not* to be disturbed unless clearly shown to be unsupported by substantial evidence.[94]

ACCORDINGLY, the *Petition for Review* is **DENIED** for lack of merit. The assailed Decision and Resolution of the court *a quo* are hereby **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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[94] *Commissioner of Internal Revenue v. Union Shipping Corporation and The Court of Tax Appeals*, G.R. No. L-66160, May 21, 1990.

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice