REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CENTRAL PANGASINAN ELECTRIC COOPERATIVE INC. (CENPELCO), represented by ENGR. RODRIGO F. CORPUZ, GENERAL MANAGER, *Petitioner,*	**CTA Case No. 10724** Members: **MANAHAN**, *Chairperson,* **REYES-FAJARDO**, *and* **ANGELES**, *JJ.*
-versus-	
THE BUREAU OF INTERNAL REVENUE (BIR), OFFICE OF THE REGIONAL DIRECTOR, REVENUE REGION NO. I, Represented by JOSEPHINE S. VIRTUCIO, OIC, Regional Director, *Respondent.*	Promulgated: OCT 22 2024 11:52 a.m.

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DECISION

ANGELES, *J.*:

THE CASE

Before this Court is a Petition for Review filed by CENPELCO (petitioner) against the BIR (respondent), praying that the Final Decision on Disputed Assessment (FDDA)[1] dated December 15, 2021 issued by respondent, be declared as null and void. The said FDDA demanded from petitioner payment for alleged income tax liabilities for taxable year (TY) 2016, in the aggregate amount of Forty Six Million, Seven Hundred Sixty Six Thousand, Three Hundred Forty Nine and 85/100 Pesos (₱46,766,349.85), inclusive of interest and surcharge.

[1] Exhibit "P-8", Docket – Vol. I, p. 54; Exhibit "R-10", BIR Records – Folder I, p. 461.

ANTECEDENT FACTS

Culled from the records are the following facts:

Petitioner is a non-stock and non-profit electric cooperative (EC) duly organized pursuant to Presidential Decree (PD) No. 269, otherwise known as the National Electrification Administration Decree, and registered with the National Electrification Administration (NEA).[2]

Respondent is the duly appointed Commissioner of the BIR (CIR), with the power to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (Tax Code), as amended, or other laws or portions thereof administered by the BIR.[3]

By virtue of a *Certificate of Franchise* issued by the NEA, petitioner is authorized to operate an electric light and power distribution service in San Carlos City and the municipalities of Aguilar, Alcala, Basista, Bautista, Bayambang, Binmaley, Bugallon, Labrador, Lingayen, Malasiqui, Mangatarem, Sual, Urbiztondo and Mangaldan, for a period of fifty (50) years from December 19, 1978.[4]

On March 26, 2018, the BIR Revenue Region No. 001, Calasiao, Pangasinan, issued *Letter of Authority* (LOA) No. LOA-004-2018-00000111 / eLA201200030049,[5] authorizing Revenue Officers (ROs) Claudio Jose Lorenzo Salvador, Karen Kaye Cruz and Abner Dela Cruz, and Group Supervisor (GS) Mary Faye Quinto of Revenue District Office (RDO) No. 004 – Calasiao, West Pangasinan, to examine the books of accounts and other accounting records of petitioner for the period January 1, 2016 to December 31, 2016.[6]

On April 30, 2018, petitioner received the *First Request for Presentation of Records* in relation to the said *LOA* dated March 26, 2018.[7]

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[2] Par. 2, *Petition for Review*, vis-à-vis Par. 1, *JSFI*, Docket – Vol. I, p. 7, and 297, respectively; Exhibit "P-1", Docket – Vol. I, p. 29.
[3] Par. 2, *JSFI*, Docket – Vol. I, p. 297.
[4] Exhibit "P-1", Docket – Vol. I, p. 29.
[5] Par. 3, *JSFI*, Docket – Vol. I, p. 298; Exhibit "R-1", BIR Records – Folder I, p. 1.
[6] Exhibit "R-1", BIR Records – Folder I, p. 1.
[7] Par. 4, *JSFI*, Docket – Vol. I, p. 298; Exhibit "R-2", BIR Records – Folder I, p. 2.

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On June 18, 2018, petitioner received the *Second and Final Notice Before Issuance of Sub-poena Duces Tecum.*[8]

On January 24, 2019, petitioner, through Rodrigo F. Corpuz, its General Manager and authorized representative at that time, signed a *Waiver of the Defense of Prescription Under Statute of Limitations of National Internal Revenue Code.*[9] The said *Waiver* extended the period of the BIR to assess and/or collect taxes from petitioner for the year 2016 until December 31, 2020.

On February 21, 2020, petitioner received the *Notice of Informal Conference* (NIC) which stated that based on the investigation of ROs Salvador and Cruz, petitioner was found to have deficiency income tax, Expanded Withholding Tax (EWT), Documentary Stamp Tax (DST), Withholding Tax on Compensation (WTC), and compromise penalty, in the total amount of ₱31,836,349.80, inclusive of legal increments.[10]

On November 26, 2020, the Regional Director (RD) of RR No. 1, Thelma S. Milabao, issued the *Preliminary Assessment Notice* (PAN)[11] which petitioner received on December 4, 2020.[12] Under the PAN, petitioner was assessed for deficiency income tax in the total amount of ₱46,285,461.93, inclusive of interest and surcharge.

On December 18, 2020, respondent received from petitioner a *Letter Reply* dated December 16, 2020, responding to the PAN and requesting for cancellation of the assessed income tax liability.[13]

Soon after, or on December 21, 2020, respondent through OIC-RD Josephine S. Virtucio, issued the *Formal Letter of Demand* (FLD) which assessed petitioner for deficiency income tax in the total amount of ₱46,766,349.85, inclusive of interest and surcharge.[14] Records show that petitioner received the FLD on December 23, 2020.[15]

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[8] Par. 5, *JSFI*, Docket – Vol. I, p. 298; Exhibit "R-3", BIR Records – Folder I, p. 3.
[9] Par. 6, *JSFI*, Docket – Vol. I, p. 298; Exhibit "R-4", BIR Records – Folder I, p. 194.
[10] Par. 7, *JSFI*, Docket – Vol. I, p. 298; Exhibit "R-5", BIR Records – Folder I, p. 238.
[11] Par. 8, *JSFI*, Docket – Vol. I, p. 298; Exhibit "R-7", BIR Records – Folder I, pp. 296 to 298.
[12] Exhibit "R-7", BIR Records – Folder I, pp. 296 to 298.
[13] Exhibit "P-4", Docket – Vol. I, p. 35.
[14] Par. 9, *JSFI*, Docket – Vol. I, p. 298; Exhibit "P-6", Docket – Vol. I, p. 39; Exhibit "R-8", BIR Records – Folder I, pp. 386 to 389.
[15] Exhibit "P-6", Docket – Vol. I, p. 39; Exhibit "R-8", BIR Records – Folder I, pp. 386 to 389.

Petitioner also received on even date a letter[16] dated December 21, 2020 signed by OIC-RD Virtucio, which reads as follows:

> Dear Mr. Corpuz:
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> This is with reference to your letter filed at this office on December 18, 2020, in reply to the Preliminary Assessment Notice ("PAN") issued on November 26, 2020, relative to the corporation's deficiency income tax payable totaling to P46,285,461.93 for taxable year 2016 pursuant to electronic Letter of Authority No. LOA-004-2018-00000111 SN: eLA201200030049 dated March 6, 2018.
>
> In connection herewith, please be informed that the said letter is considered as a response to the PAN and that according to Revenue Regulations ("RR") No. 18-2013, a request for reinvestigation or reconsideration may only be considered in a protest to a duly received Formal Letter of Demand and Final Assessment Notice ("FLD/FAN").
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> Nonetheless, you may choose to administratively protest the FLD/FAN within thirty (30) calendar days from your receipt of such FLD/FAN. You must however state in the protest letter (1) whether the request is a "request for reconsideration" or a "request for reinvestigation", if reinvestigation - specify therein the newly discovered or additional evidence you intend to present; (2) date of the assessment notice; and (3) the applicable law, rules and regulations, or jurisprudence on which the protest is based, otherwise, such will be considered void and without force and effect. These are based on the provisions of Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013.

On January 20, 2021, petitioner, through counsel, executed in Baguio City a *Notice of Appearance*[17] and *Request for Reconsideration* (protest to the FLD). Both were received by respondent on February 4, 2021.[18]

On 15 December 2021, respondent issued the FDDA[19] which denied petitioner's protest to the FLD on the ground that the same was filed out of time. The pertinent portion of the FDDA provides:

> In connection therewith, please be informed that pursuant to Revenue Regulations ("RR") No. 18-2013, as amended, the taxpayer

[16] Exhibit "P-5", Docket – Vol. I, p. 38.
[17] Par. 10, *JSFI*, Docket – Vol. I, p. 298; Exhibit "R-9", BIR Records – Folder I, p. 445.
[18] Par. 10, *JSFI*, Docket – Vol. I, p. 298; Exhibit "P-7", Docket – Vol. I, p. 43; Exhibit "R-9", BIR Records – Folder I, pp. 401 to 445.
[19] Par. 11, *JSFI*, Docket – Vol. I, p. 298; Exhibit "P-8", Docket – Vol. I, p. 54; Exhibit "R-10", BIR Records – Folder I, p. 461.

> or its authorized representative or tax agent may protest administratively against the ELD/FAN within thirty (30) days from the date of receipt thereof. **Since the FLD/FAN was served on December 23, 2020, CENPELCO had until January 22, 2021 to file a valid protest, however the corporation only filed its protest on February 4, 2021, which is already beyond the thirty-day period to file a protest. Therefore, since the period given by law to file a protest already lapsed, the assessments per FLD/FAN become final, executory and demandable.** (Emphasis supplied)

Following the above, respondent demanded from petitioner payment for alleged deficiency income tax in the amount of ₱46,766,349.85, inclusive of penalties. Petitioner received the FDDA on December 27, 2021.[20]

Aggrieved, petitioner filed the instant Petition on February 2, 2022.

PROCEEDINGS BEFORE THE COURT

After receiving Summons[21] and with the Court granting its Motion for Extension of Time to File Answer, [22] respondent filed its Answer on May 2, 2022.[23]

Thereafter, the case was referred to mediation in the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) pursuant to the Resolution dated May 17, 2022.[24] Following the Court's receipt of a Back to Court Notice[25] filed by the PMC-CTA, which stated that petitioner refused mediation, the case was set for Pre-Trial Conference.[26]

The Pre-Trial Conference was held on September 29, 2022.[27] Prior thereto, petitioner and respondent submitted their respective

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[20] Par. 11, *JSFI*, Docket – Vol. I, p. 298; Exhibit "P-8", Docket – Vol. I, p. 54.
[21] Docket – Vol. I, pp. 199 to 215.
[22] Docket – Vol. I, pp. 199 to 215.
[23] Docket – Vol. I, pp. 199 to 215.
[24] Docket – Vol. I, pp. 229 to 230.
[25] Docket – Vol. I, p. 231.
[26] Docket – Vol. I, p. 237.
[27] *Order* dated September 29, 2022, Docket – Vol. 1, pp. 273 to 275.

Pre-Trial Briefs on September 27, 2022.[28] Respondent also transmitted to the Court the BIR Records of this case.[29]

On October 27, 2022, the parties submitted their Joint Stipulation of Facts and Issues,[30] which the Court approved in the Resolution dated November 8, 2022.[31]

Trial ensued. On December 1, 2022, petitioner presented its sole witness, Mr. Melvin S. Navarro, Assistant Accountant of CENPELCO.[32] Petitioner filed its Manifestation with Formal Offer of Evidence on December 14, 2022,[33] while respondent filed its Comment thereto on January 3, 2023.[34] In the Resolution dated March 3, 2023, the Court admitted petitioner's exhibits. However, Exhibits "P-12" and "P-14" were not admitted for failure to present the originals for comparison. Exhibit "P-13" was likewise not admitted for not being found in the records of the case.[35]

On March 7, 2023, respondent presented ROs Claudio Jose Lorenzo A. Salvador and Kimberly S. Patayan.[36] Respondent filed its Formal Offer of Evidence on June 8, 2023,[37] to which petitioner did not file a comment.[38] In the Resolution dated September 15, 2023, the Court admitted all of respondents' exhibits, and gave the parties a period of thirty (30) days from notice to file their respective memorandum.[39]

Petitioner filed its Memorandum[40] on October 25, 2023, while respondent through a Manifestation[41] dated November 22, 2023, adopted the arguments stated in the Answer filed on May 2, 2022.

The case was then submitted for decision on December 1, 2023.[42]

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[28] Docket – Vol. I, pp. 241 to 246, 258 to 266.
[29] Docket – Vol. I, p. 278 to 281.
[30] Docket – Vol. I, pp. 297 to 302.
[31] Docket – Vol. I, pp. 304.
[32] Docket – Vol. I, pp. 317 to 319.
[33] Docket – Vol. I, pp. 346 to 354.
[34] Docket – Vol. I, pp. 355 to 358.
[35] Docket – Vol. I, pp. 361 to 363.
[36] Docket – Vol. I, pp. 364 to 364-C.
[37] Docket – Vol. I, pp. 389 to 397.
[38] *Records Verification Report* dated July 3, 2023, Docket – Vol. I, p. 399.
[39] Docket – Vol. I, pp. 404 to 405.
[40] Docket – Vol. I, pp. 406 to 429.
[41] Docket – Vol. I, pp. 431 to 434.
[42] Minute Resolution dated December 1, 2023, Docket – Vol. I, p. 435.

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ISSUE

As stipulated by the parties, the sole issue to be resolved by this Court is whether or not petitioner is liable to pay the assessed deficiency income tax in the aggregate amount of ₱46,766,349.85, plus 25% surcharge and 20% deficiency and delinquency interest for late payment.[43]

ARGUMENTS OF THE PARTIES

Petitioner's arguments

Petitioner disputes respondent's claim in the FDDA that its protest to the FLD was filed beyond the reglementary period, and that the same had become final and executory.[44] Petitioner argues that the filing of the protest to the FLD can be done by actual and physical delivery or through registered mail. In the latter mode, the date of mailing is the date of filing.[45] Petitioner further argues that nothing in BIR Revenue Regulations (RR) No. 18-13 says that in cases where the protest to the FLD is filed by way of registered mail, the same must be actually and physically received by the BIR on or before the 30th day from receipt of the FLD. Petitioner posits that what the said RR mandates is the filing of the protest on or before the 30-day period.[46]

Petitioner maintains that it received the FLD on December 23, 2020,[47] and had until January 22, 2021 to file a valid protest.[48] Petitioner filed its *Request for Reconsideration* by registered mail on January 21, 2021.[49] The fact that respondent actually received the *Request for Reconsideration* only on February 4, 2021 will not alter the fact that petitioner was able to beat the prescribed 30-day period.[50]

To support its position, petitioner cites *CIR vs. Lorenzo Shipping Corporation*[51] where the Court allegedly held that the date of the post office stamp on the envelope or the registry receipt is considered the

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[43] Pre-Trial Order dated December 9, 2022, Docket – Vol. 1, p. 329 to 341.
[44] Memorandum dated October 25, 2023, Docket – Vol. I, p. 408.
[45] Memorandum dated October 25, 2023, Docket – Vol. I, p. 409.
[46] Id.
[47] Memorandum dated October 25, 2023, Docket – Vol. I, p. 411.
[48] Memorandum dated October 25, 2023, Docket – Vol. I, p. 409.
[49] Id.
[50] Id.
[51] *CIR v. Lorenzo Shipping Corp.*, C.T.A. EB Case No. 1964, January 26, 2021.

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date of filing of a pleading sent by registered mail.[52] Petitioner also cites Section 3, Rule 13 of the Revised Rules of Civil Procedure, which provides for the filing pleadings and other court submission through registered mail.[53] Petitioner likewise presented a Registry Receipt[54] dated January 21, 2021, to prove that CENPELCO indeed filed a protest to the FLD through registered mail.[55]

With respect to the correctness of respondent's assessment, petitioner argues that under Section 39 of PD No. 269, ECs such as petitioner are not liable for income tax.[56] Petitioner contends that it has a permanent income tax exemption pursuant to item (1) of paragraph (a) of the said provision, which is separate and distinct from the tax exemptions under item (2) of the same provision. Petitioner avers that its contention is upheld in the cases of *ANECO v. CIR*[57] and *MORESCO v. CIR*.[58]

Petitioner further argues that BIR Ruling No. 746-18 dated April 30, 2018, and Fiscal Incentives Review Board (FIRB) Resolution No. 24-87, which the BIR made reference to in the FLD, are not sufficient legal basis to assess income tax against CENPELCO.[59] Petitioner explains that there is no basis for the BIR to circularize the import of *DORECO v. The Province of Davao*[60] vis-à-vis FIRB Resolution No. 24-87, to assess income tax because the *DORECO* case involved real property tax and not income tax.[61] Moreover, the said BIR Ruling is contrary to law since it was issued based on the wrong assumption that the tax exemptions under Section 39 of PD No. 269 have been effectively withdrawn by PD No. 1955 and Executive Order (EO) No. 93.[62]Furthermore, petitioner argues that the FIRB exceeded its authority in issuing FIRB Resolution No. 24-87.[63] Petitioner likewise argues that Republic Act (RA) No. 10531 (NEA Reform Act of 2013)[64]

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[52] Id.
[53] Memorandum dated October 25, 2023, Docket – Vol. I, p. 410.
[54] Exhibit "P-11", Docket – Vol. I, p. 38.
[55] Memorandum dated October 25, 2023, Docket – Vol. I, p. 410.
[56] Memorandum dated October 25, 2023, Docket – Vol. I, p. 413.
[57] *Agusan Del Norte Electric Cooperative, Inc. v. CIR*, C.T.A. Case No. 9376, August 5, 2019.
[58] *Misamis Oriental II Rural Electric Service Cooperative, Inc. v. CIR*, C.T.A. Case No. 10145, February 28, 2023.
[59] Memorandum dated October 25, 2023, Docket – Vol. I, p. 417.
[60] *Davao Oriental Electric Cooperative v. The Province of Davao*, G.R. No. 170901, January 20, 2009.
[61] Memorandum dated October 25, 2023, Docket – Vol. I, p. 418.
[62] Id.
[63] Memorandum dated October 25, 2023, Docket – Vol. I, p. 421.
[64] National Electrification Administration Reform Act of 2013 approved May 7, 2013.

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extended the tax exemption under RA No. 6938 (Cooperative Code of the Philippines),[65] to NEA-registered ECs.[66]

In addition to the above arguments, petitioner argues that being non-stock and non-profit, ECs such as itself are not taxable since any move to sustain their taxability would be an anathema to the purpose of PD No. 269. Lastly, petitioner argues that respondent failed to recognize that the rate methodology adopted by ECs for tariff determination, did not consider the collection from member consumers the payment of corporate income tax.[67]

Respondent's counter-arguments

Respondent counters that this Court has no jurisdiction over the instant Petition as the assessment against petitioner has already become final, executory and demandable. Respondent explains that petitioner had until January 22, 2021 to file its protest; however, a perusal of the records of the case would disclose that petitioner filed its protest only on February 4, 2021 which is clearly beyond the 30-day period allowed by law.[68]

Citing *Allied Banking Corporation v. CIR*,[69] respondent argues that the CTA being a court of special jurisdiction can take cognizance only of matters that are clearly within its jurisdiction. Respondent emphasizes that the decision contemplated in Section 7 of RA No. 9282, or the Act Expanding the Jurisdiction of the Court of Tax Appeals, is one rendered in a disputed assessment. Thus, it is primordial that the assessment be disputed first before seeking redress with the CTA.[70] Respondent posits that with the failure of petitioner to file a valid protest, the assessment became undisputed; hence, final and unappealable.[71]

Respondent also argues that the assessment is valid because the requirement of due process was properly complied with.[72]

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[65] Cooperative Code of the Philippines approved March 10, 1990.
[66] Memorandum dated October 25, 2023, Docket – Vol. I, p. 422.
[67] Memorandum dated October 25, 2023, Docket – Vol. I, p. 424.
[68] Answer dated May 2, 2022, Docket – Vol. I, p. 201.
[69] *Allied Banking Corporation v. CIR*, G.R. No. 175097, February 5, 2010.
[70] Answer dated May 2, 2022, Docket – Vol. I, p. 202.
[71] Answer dated May 2, 2022, Docket – Vol. I, p. 203.
[72] Answer dated May 2, 2022, Docket – Vol. I, pp. 203 to 205.

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Respondent likewise disagrees with petitioner's argument that it is not liable for deficiency income tax on the ground that it is exempt from income tax pursuant to the NEA Reform Act of 2013, in relation to PD No. 269. Respondent asserts that tax exemptions should be granted only by clear and unequivocal provision of law and cannot be extended by mere implication or inference.[73] Respondent elaborates on the laws and regulations relative to the matter,[74] including FIRB Resolution No. 24-87, and cites jurisprudence[75] recognizing the validity of the same.

Respondent also points out that in one case,[76] the Supreme Court held that tax exemptions of ECs were now withdrawn, and that this was confirmed by subsequent jurisprudence.[77] Accordingly, absent any showing that petitioner is registered with the Cooperative Development Authority (CDA) for TY 2016, petitioner does not enjoy tax privileges. As such, it is liable for the assessed deficiency income tax.[78]

RULING OF THE COURT

Before we discuss the substantive issues raised by the parties, we must first discuss the jurisdiction of the Court to take cognizance of this case.

It is well-entrenched in jurisprudence that the Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of matters that are clearly within its jurisdiction.[79]

Section 7 of R.A. No. 1125, as amended by R.A. No. 9282, enumerates the matters over which the Court can exercise its jurisdiction. Section 7 paragraph (a) of the said law, in particular, specifies the matters involving the CIR that are within the Court's exclusive appellate jurisdiction:[80]

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[73] Answer dated May 2, 2022, Docket – Vol. I, p. 205.
[74] Answer dated May 2, 2022, Docket – Vol. I, p. 205 to 208.
[75] *Maceda v. Macaraig, Jr.*, G.R. No. 88291, May 31, 1991; *DORECO v. The Province of Davao*, G.R. No. 170901, January 20, 2009.
[76] *Philippine Rural Electric Cooperatives Association (PHILRECA) v. Secretary of Interior and Local Government*, G.R. No. 143076, June 10, 2003.
[77] *City of Iriga v. Camarines Sur III Electric Cooperative, Inc. (CASURECO III)*, G.R. No. 192945, September 5, 2012.
[78] Answer dated May 2, 2022, Docket – Vol. I, p. 210.
[79] *Rizal Commercial Banking Corp. v. CIR*, G.R. No. 168498 (Resolution), April 24, 2007.
[80] *CIR v. Court of Tax Appeals-Third Division*, G.R. No. 239464, May 10, 2021.

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> SEC. 7. *Jurisdiction.* — The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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The foregoing provision is reiterated in Section 3 paragraph (a), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA):

> SEC. 3. *Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
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> (a) Exclusive original 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;
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Based on the aforementioned provisions, the CTA has exclusive appellate jurisdiction over decisions of the CIR in disputed assessments. In such cases, the crucial test in determining whether jurisdiction is conferred upon this Court is the timely filing of the protest; otherwise, there is no disputed assessment that is appealable to this Court.[81]

Section 228 of the Tax Code, as amended, provides the period within which an assessment may be validly protested:

> **SEC. 228. Protesting of Assessment.** - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:

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[81] *UPSI Property Holdings, Inc. v. CIR*, C.T.A. Case No. 8860, August 22, 2018.

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Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final. (Emphasis supplied)

Section 3.1.4 of RR No. 12-99, as amended by RR No. No. 18-13, implements Section 228 of the Tax Code as follows:

3.1.4 *Disputed Assessment.* — **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.** The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) *Request for reconsideration* — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

(ii) *Request for reinvestigation* — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

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If there are several issues involved in the FLD/FAN but the taxpayer only disputes or protests against the validity of some of the issues raised, the assessment attributable to the undisputed issue or issues shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax or taxes, inclusive of the applicable surcharge and/or interest.

If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the assessment attributable thereto shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto and a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest.

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For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

In sum, a taxpayer has thirty (30) days from the date of receipt of the FLD/FAN within which to file a protest with the BIR. Failure to file a protest in within the given period shall cause the assessment to become final, executory and demandable; hence, unappealable.

In *CIR vs. BPI*,[82] the Supreme Court elucidated the issue of jurisdiction of the CTA vis-à-vis the timely filing of a protest, *to wit*:

The inevitable conclusion is that BPI's **failure to protest the assessments within the 30-day period provided in the former Section 270 meant that they became final and unappealable. Thus, the CTA correctly dismissed BPI's appeal for lack of jurisdiction.** BPI was, from then on, barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits. (Emphasis supplied)

Likewise, in *Republic of the Philippines vs. Hizon*,[83] the Supreme Court ruled:

Sec. 229 of the Code mandates that a request for reconsideration must be made within 30 days from the

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[82] *CIR v. Bank of the Philippine Islands*, G.R. No. 134062, April 17, 2007.
[83] *Republic v. Hizon*, G.R. No. 130430, December 13, 1999.

> **taxpayer's receipt of the tax deficiency assessment, otherwise the assessment becomes final, unappealable and, therefore, demandable**... Even assuming that she first learned of the deficiency assessment on this date, **her request for reconsideration was nonetheless filed late since she made it more than 30 days thereafter.** Hence, her request for reconsideration did not suspend the running of the prescriptive period provided under §223(c). **Although the Commissioner acted on her request by eventually denying it on August 11, 1994, this is of no moment and does not detract from the fact that the assessment had long become demandable**. (Emphasis supplied)

In view of the foregoing rulings, petitioner must prove that it filed a valid protest to the FLD issued by respondent, within thirty (30) days from its receipt thereof. Otherwise, the FLD had become final and unappealable to this Court.

Based on the records of this case, the following timeline of events was established:

> **December 23, 2020** – Petitioner received the FLD dated December 21, 2020, issued by respondent for TY 2016.
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> Petitioner thus had until January 22, 2021 to file a valid protest.
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> **February 4, 2021** – Respondent received petitioner's *Request for Reconsideration* of the FLD, dated January 20, 2021.

Respondent argues that the Court has no jurisdiction over the instant Petition as petitioner failed to file its protest to the FLD within the 30-day period prescribed under Section 228 of the Tax Code. Respondent claims that based on its records, petitioner filed its protest to the FLD only on **February 4, 2021.** To prove petitioner's late filing, respondent presented the Notice of Appearance of petitioner's counsel, together with petitioner's *Request for Reconsideration*, both dated January 20, 2021, stamped received by the BIR on February 4, 2021.

Meanwhile, petitioner insists that it timely filed its protest to the FLD through registered mail. In its Petition for Review and Memorandum, under "Statement of Facts," petitioner claims that on **January 20, 2021**, it filed, through counsel, a *Request for*

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Reconsideration of the FLD.[84] However, the Court notes that under "Assignment of Errors" and "Arguments and Discussion" of the respective pleadings, petitioner states that it filed the said *Request for Reconsideration* by registered mail on **January 21, 2021.**[85] To prove that petitioner protested the FLD on time, it presented its *Request for Reconsideration* dated January 20, 2021, and Registry Receipt for Postal Mail dated January 21, 2021.

After a careful and judicious review of the respective allegations and evidence of the parties, the Court finds petitioner's protest to the FLD properly and timely filed.

Petitioner's Request for Reconsideration was properly filed through registered mail

The filing of a protest to the FLD/FAN through registered mail has time and again been recognized by the Tax Court in several cases.[86] Nonetheless, for clarity, we shall discuss the matter in full.

Section 2 of RR No. 18-13 provides for the governing rules on modes of service in assessments of national internal revenue taxes. The pertinent portion of the provision states:

> 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:
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> **(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

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[84] See Part II paragraph 8 of the Petition for Review dated January 20, 2022, Docket – Vol. I, p. 9; and Part I paragraph 6 of the Memorandum dated October 25, 2023, Docket – Vol. I, p. 407.
[85] See Part V paragraph 2 of the Petition for Review dated January 20, 2022, Docket – Vol. I, p. 11; and Part III paragraph 2 of the Memorandum dated October 25, 2023, Docket – Vol. 1, p. 409.
[86] *Lorenzo Shipping Corp. v. CIR*, C.T.A. Case No. 8694, June 28, 2018, as affirmed in *CIR v. Lorenzo Shipping Corp.*, C.T.A. EB Case No. 1964 (C.T.A. Case No. 8694), January 26, 2021; CIR *v. Professional Services, Inc.*, C.T.A. EB Case No. 409, January 8, 2009; *Asia International Auctioneers, Inc. v. CIR*, C.T.A. EB Case No. 276 (C.T.A. Case No. 7270), August 3, 2007.

available in the locality of the addressee, service may be done by ordinary mail.

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It can be gleaned from the foregoing provision that the service of assessment notices from the BIR to the taxpayer may be done by registered mail, subject to certain requirements. However, RR No. 18-13 is silent as to the modes of filing a protest to the FLD/FAN, or a response or reply to other assessment notices. In fact, there is no administrative rule which covers this matter.

On this note, Section 3, Rule 1 of the RRCTA provides:

> SECTION 3. Applicability of the Rules of Court. — The Rules of Court in the Philippines shall apply **suppletorily** to these Rules. (Emphasis supplied)

Further, Section 4, Rule 1 of the Rules of Court ("ROC"), as amended, likewise provides:

> Section 4. In what cases not applicable. - These Rules shall not apply to election cases, land registration, cadastral, naturalization and insolvency proceedings, and other cases not herein provided for, **except by analogy or in a suppletory character and whenever practicable and convenient.** (Emphasis supplied)

In *GSIS vs. Villaviza*,[87] the Supreme Court defined "suppletory" in the context of the immediately preceding provision as "supplying deficiencies." It means that the provisions in the ROC will be made to apply only where there is an insufficiency in the applicable rule.

Guided by the foregoing legal precepts, and given that there is nothing in the Tax Code nor in other applicable rules that provide for the manner of filing protests and other responses or replies to assessment notices issued by the BIR, the rule in the ROC on the manner of filing pleadings and other Court submission, shall apply to fill in the gap.

Section 3, Rule 13 of the ROC is reproduced hereunder:

[87] *Government Service Insurance System v. Villaviza*, G.R. No. 180291, July 27, 2010.

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> **Section 3.** *Manner of filing.* — The filing of pleadings and other court submissions shall be made by:
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> (a) Submitting personally the original thereof, plainly indicated as such, to the court;
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> **(b) Sending them by registered mail;**
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> (c) Sending them by accredited courier; or
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> (d) Transmitting them by electronic mail or other electronic means as may be authorized by the Court in places where the court is electronically equipped.
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Applying the above-cited provision to the filing of a protest or other submission to the BIR as sanctioned by law and the applicable rules, it becomes clear as day that such filing may be done through registered mail. Accordingly, petitioner's filing with the BIR of its *Request for Reconsideration* or protest to the FLD, through registered mail, was proper.

The question that remains is whether such filing was done in a timely manner.

Petitioner's Request for Reconsideration was timely filed

The second paragraph of Section 3, Rule 13 of the ROC provides that if a pleading is filed by registered mail, the date of mailing, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of filing. It does not matter when the court actually receives the mailed pleading.[88]

Moreover, Section 16 of the same *Rule* provides the manner by which the filing of a pleading shall be proved:

> **Section 16.** *Proof of filing.* — The filing of a pleading or any other court submission shall be proved by its existence in the record of the case.

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[88] *Russel v. Ebasan*, G.R. No. 184542 (Resolution), April 23, 2010.

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> (b) If the pleading or any other court submission was filed by registered mail, **the filing shall be proven by the registry receipt and by the affidavit of the person who mailed it, containing a full statement of the date and place of deposit of the mail in the post office in a sealed envelope addressed to the court, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) calendar days if not delivered.**

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In *Heirs of Timbao vs. Enojado,*[89] the Supreme Court explained that a pleading is deemed filed if the same exists in the records of the case; otherwise, it may be proved depending on the manner by which it was filed. In the case of filing by registered mail, two documents should be presented to prove the same: (1) the registry receipt and (2) the affidavit of the person who mailed the pleading.

However, if a pleading exists in the records of the case, it shall be deemed filed without need of further proof. In *Republic vs. Salinas,*[90] the Supreme Court clarified the import of Section 16, Rule 13 of the ROC, *to wit*:

> Gleaned from its unequivocal wordings, **the provision applies only when a pleading or any other court submission is claimed to have been filed, but for some reason, such document cannot be found in the records; hence, the need for proof of its filing. That is not the case here. The Republic's Notice of Appeal is existing on record, befogged only with doubts as to when it was filed.** In that respect, Section 3, Rule 13 of the Rules is *apropos, viz.*:

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> **Plainly, the pleading's filing date can be proved either by: (1) the post stamp on the envelope, which is considered part of the records; or (2) the registry receipt.** Thus, no grave abuse of discretion can be imputed to the RTC in considering the date stamped on the envelope of the Republic's Notice of Appeal, which was October 5, 2015, as the date of the pleading's filing. (Emphasis supplied).

[89] *Heirs of Timbao v. Enojado*, G.R. No. 200539, August 2, 2023.
[90] *Republic v. Salinas*, G.R. No. 238308 (Resolutions), October 12, 2022.

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A similar discussion can be found in *Heirs of Pama, Sr. vs. Heirs of Bautista,*[91] where the Supreme Court ruled that Section 16, Rule 13 of the ROC is limited to the issue of proof of filing, which is pertinent only when a pleading claimed to have been filed personally or by registered mail is not in the records. The relevant ruling provides:

> The CA committed no reversible error in ruling that the petitioners' MR was filed out of time. It correctly considered the date of mailing stamped on the MR's envelope in determining whether or not the pleading was timely filed. **When the dispute is on the date when a pleading should be deemed filed, Section 3, Rule 13 of the Rules of Court applies. It reads:**
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> The petitioners' reliance on Section 12, Rule 13 of the Rules of Court, as they argued that the date indicated in the registry receipt and affidavit of the person who did the mailing should be controlling, was misplaced. The said provision is limited to the issue of proof of filing, which is pertinent only when a pleading claimed to have been filed personally or by registered mail is not in the records. (Emphasis supplied).

In the instant case, there is no dispute that petitioner's *Request for Reconsideration* dated January 20, 2021 can be found in BIR's records of the case.[92] The parties even admitted in their Joint Stipulation of Facts and Issues that the said *Request for Reconsideration* was received by respondent on February 4, 2021.[93] Corollary, the applicable provision in this case is Section 3, Rule 13 of the ROC, and not Section 16 of the same. As such, in proving the exact date when the said *Request for Reconsideration* was filed by petitioner, it is the date shown on either (1) the post office stamp on the envelope, or (2) the registry receipt, that shall be considered.

As mentioned, respondent claims that petitioner filed its protest to the FLD on February 4, 2021, while petitioner equally claims that it filed such protest by registered mail on January 21, 2021.[94] In support of its claim, respondent presented petitioner's *Request for Reconsideration* stamped received by the BIR on February 4, 2021. As for petitioner, it presented a Registry Receipt with Tracking No. RE 466 352 321 ZZ, bearing the date January 21, 2021 stamped thereon.

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[91] *Heirs of Pama, Sr. v. Heirs of Bautista*, G.R. No. 226534 (Notice), January 31, 2018.
[92] Exhibit "R-9", BIR Records – Folder I, pp. 401 to 445.
[93] Par. 10, *JSFI*, Docket – Vol. I, p. 298; Exhibit "R-9", BIR Records – Folder I, p. 445.
[94] See Part V paragraph 2 of the Petition for Review dated January 20, 2022, Docket – Vol. I, p. 11; and Part III paragraph 2 of the Memorandum dated October 25, 2023, Docket – Vol. I, p. 409.

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A close scrutiny of the said Registry Receipt shows that a certain mail matter was indeed sent through registered mail on January 21, 2021. This is the same date when petitioner claims to have filed its *Request for Reconsideration* through registered mail, and this Registry Receipt is what petitioner claims to have been issued in relation to its *Request for Reconsideration*. On the other hand, respondent did not present any evidence to controvert petitioner's claim on the date it filed its *Request for Reconsideration* through registered mail. Respondent merely showed that it received the said *Request* on February 4, 2021.

In light of the foregoing findings, the Court is inclined to give more weight to the documentary evidence presented by petitioner, with the latter having sufficiently established by preponderant evidence that its protest to the FLD was filed on time, *i.e.*, before January 22, 2021 or the lapse of the 30-day reglementary period.

Considering the timely filing of petitioner's protest, the deficiency assessment issued by respondent was validly disputed. The Court, therefore, has jurisdiction over the instant Petition.

The assessment for TY 2016 is void for violating petitioner's due process rights

Petitioner argues that the issuance of the FLD is defective because respondent did not act on the merits of petitioner's protest to the PAN. Petitioner states that the BIR, through a mere one page letter dated December 21, 2020, merely explained to petitioner the remedy it could avail of once it receives a copy of the FLD.[95] Petitioner also points out that the letter of the BIR informing petitioner that it received the protest to the PAN was dated December 21, 2020, which is the same date of the issuance of the FLD. Petitioner states that this means the BIR was already decided to issue the FLD without first addressing the merits of petitioner's protest to the PAN.[96]

Respondent argues that the assessment is valid because the requirement of due process was properly complied with in issuing the assessment notices. Respondent states that it complied with Section 228 of the Tax Code as the NIC, PAN, FLD/FAN, and FDDA contained the facts and law on which the assessment was based. Respondent

[95] Memorandum dated October 25, 2023, Docket – Vol. I, p. 411.
[96] Memorandum dated October 25, 2023, Docket – Vol. I, p. 412.

further states that the chance afforded to petitioner is a clear opportunity to be heard and to refute the findings of the deficiency tax assessment; as such, procedural due process was satisfied.[97]

We agree with petitioner.

The pertinent portion of Section 228 of the Tax Code provides:

> **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: Provided, however, That a pre-assessment notice shall not be required in the following cases:
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> 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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Section 3.1.1 of RR No. 12-99, as amended by RR No. No. 18-13, implements the foregoing provision as follows:

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

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[97] Answer dated May 2, 2022, Docket – Vol. I, p. 204.

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If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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Based on the above-cited rules, as part of the taxpayer's due process rights in the issuance of a deficiency tax assessment, the same is granted a period of fifteen (15) days from receipt of the PAN to file a response thereto with the BIR. Likewise, the BIR is given a period of fifteen (15) days from receipt of such response to issue the FLD/FAN.

In the oft-cited case of *CIR vs. Avon Products Manufacturing, Inc.*,[98] the Supreme Court ruled that the PAN is a part of due process. It gives both the taxpayer and the CIR the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN. This purpose is not served when the BIR fails to consider the taxpayer's explanations. The Supreme Court held in this wise:

> The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments. There was clear inaction of the Commissioner at every stage of the proceedings.
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> Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal

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[98] *CIR v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

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> Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.
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> Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. **Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.**
>
> **The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. However, this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.**
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> It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.
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> **Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process.** The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.

A review of the foregoing ruling shows that the same is anchored on two cardinal rights provided by well-established jurisprudence relative to a litigant's right to due process in administrative proceedings: (1) that the party must not only be given an opportunity to present his case and to adduce evidence, but the tribunal must also consider the evidence presented; and (2) that the tribunal should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered.[99]

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[99] *Ang Tibay v. Court of Industrial Relations*, G.R. No. 46496, February 27, 1940.

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It thus becomes clear from the *Avon* case and *Ang Tibay* case that the requirement of administrative due process is not met sufficiently by the mere formal act of receiving a taxpayer's defenses submitted in writing. Administrative due process also requires judicious consideration of the matters raised therein, independent evaluation of the case, and due notification to parties of the reasons for judgment.[100]

In the instant case, a perusal of the records of this case reveals the following:

First, the PAN dated November 26, 2020 issued by respondent was received by petitioner on December 4, 2020. **Petitioner filed with the BIR a response to the PAN on December 18, 2020, which was a Friday. Then, on December 21, 2020 or the following Monday, respondent issued a letter acknowledging its receipt of petitioner's response to the PAN, and informing petitioner that the said response shall not be considered**, *viz.*:

> In connection herewith, please be informed that the said letter is considered as a response to the PAN and that according to Revenue Regulations ("RR") No. 18-2013, a request for reinvestigation or reconsideration may only be considered in a protest to a duly received Formal Letter of Demand and Final Assessment Notice ("FLD/FAN").

It is noteworthy that on the same day that the said letter of the BIR was issued, the FLD was also issued. Petitioner received both the letter and the FLD on December 23, 2020.

It is glaring from the above facts that the BIR did not consider the explanations of petitioner in its response to the PAN, not only based on the reason it gave for the denial of the same, *i.e.*, that a request for reinvestigation or reconsideration may only be considered in a protest to a FLD/FAN, but also based on the fact that both the letter and the FLD were issued on the next working day from petitioner's submission of its response to the PAN.

Second, the reason given for the denial of the response to the PAN has no basis in law.

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[100] *Abundance Providers and Entrepreneurs Corp. v. CIR*, C.T.A. Case No. 9407, July 14, 2023.

The pertinent portion of Section 3.1.4 of RR No. 18-13 is reproduced below:

> 3.1.4 *Disputed Assessment.* — **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.** The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
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> (i) *Request for reconsideration* — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) *Request for reinvestigation* — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
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While it is true that under RR No. 18-13 a request for reinvestigation or reconsideration may only be filed to dispute an assessment as contained in a FLD/FAN, such Rule does not proscribe, and even expressly allows the filing of a response to the PAN.

Third, the PAN dated November 26, 2020 and FLD dated December 21, 2020 are identical and have no substantial difference between them, except for a minor adjustment in the computation of deficiency interest.

With the foregoing observations, respondent evidently failed to consider any of the arguments raised by petitioner in its response to the PAN upon the issuance of the FLD/FAN. Respondent likewise failed to provide any valid legal basis for its denial of such arguments. Thus, following the pronouncements in the *Avon* case in relation to the *Ang Tibay* case, respondent failed to observe the due process rights of petitioner in issuing the assessment for TY 2016.

The filing of a response to the PAN prior to the issuance of the FLD/FAN cannot be a useless exercise. While the CIR remains to have the sole discretion whether or not to act favorably on the response/protest, it is nonetheless duty-bound to, at least, consider the taxpayer's defenses in resolving the case and provide clear reasons for its decision.[101] Providing the taxpayer with a copy of the PAN is meaningless to the concept of due process if, after all, his right to respond to it is ignored.[102]

Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99, as amended, is void and produces no effect.[103] Therefore, with respondent's failure to strictly comply with petitioner's due process rights in the issuance of the subject deficiency tax assessment, the same is null and void.

In light of the foregoing conclusion, the Court need not belabor to discuss the validity of the assessment nor other matters raised by the parties, as a void assessment bears no valid fruit.[104]

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. The FLD dated December 21, 2020 and FDDA dated December 15, 2021 covering taxable year 2016, are hereby declared **NULL** and **VOID**. Accordingly, the same are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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

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[101] *Abundance Providers and Entrepreneurs Corp. v. CIR*, C.T.A. Case No. 9407, July 14, 2023.
[102] *CIR v. Next Mobile, Inc.*, G.R. No. 232055 (Notice), April 27, 2022.
[103] *Prime Steel Mill, Inc. v. CIR*, G.R. No. 249153, September 12, 2022.
[104] *CIR v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CATHERINE T. MANAHAN
Associate Justice
Third Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice