REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

JOHN V. OLEGARIO, Petitioner,	**CTA CASE NO. 10967** [RTC Civil Case No. R-QZN-21-08820-CV]
	Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 18 2024

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court are (a) a Petition for Review, filed on September 1, 2022; and (b) a Motion to Dismiss, filed on November 17, 2022.

Petitioner seeks the reversal of the Preliminary Assessment Notice ("PAN"), dated July 26, 2021, the Formal Letters of Demands and Final Assessment Notices ("FLD/FAN"), dated September 15, 2021, and January 5, 2022, and the Decision on Protest for Reinvestigation ("Administrative Decision"), dated November 25, 2021. He also seeks to have respondent's right to assess him for deficiency Value-Added Tax ("VAT") and Income Tax ("IT") for taxable year ("TY") 2018 declared prescribed.

Respondent seeks the dismissal of the instant Petition on the ground of lack of jurisdiction.

The Parties[1]

Petitioner is the registered sole proprietor of JBBC Hardware and General Merchandise.

Respondent is the Commissioner of Internal Revenue ("CIR") of the Bureau of Internal Revenue ("BIR"), the government agency tasked, among others, to collect internal revenue taxes.

The Facts

On August 20, 2019, petitioner received a Letter of Authority, dated August 14, 2019, authorizing Revenue Officer Olivier E. Perez and Group Supervisor Eleuteria Sagun to examine petitioner's books of accounts and other records for all internal revenue taxes for TY 2018.[2]

The BIR then issued a Notice of Discrepancy on February 10, 2021. Petitioner received this on March 2, 2021.[3]

On July 29, 2021, petitioner personally received the assailed PAN, dated July 26, 2021.[4]

Then, on September 21, 2021, petitioner received the first assailed FLD/FAN with Details of Discrepancies, issued by Regional Director Jethro M. Sabriaga, all dated September 15, 2021 ("1st FLD/FAN").[5] Aggrieved, petitioner filed a Protest for Reinvestigation, dated September 28, 2021 ("1st Protest").[6]

Petitioner then personally received a Letter on December 3, 2021. The Letter was issued on November 25, 2021, by Revenue District Officer Gerardo C. Utanes of Revenue District Office No. 34, and denied his 1st Protest.[7]

However, on December 6, 2021, petitioner received a Notice, dated October 20, 2021, from Regional Director Sabriaga, informing him that his 1st Protest would be forwarded to Revenue District Office No. 34 and giving him 30 days within which to file additional supporting documents. Petitioner also received a Follow-Up Letter, dated December 21, 2021, from Revenue

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1 Pre-Trial Order, p. 2, *Rollo* Vol. 1, p. 612.
2 *Id.*
3 *Id.*
4 Pre-Trial Order, p. 3, *id.* at 613.
5 *Id.*
6 Petition for Review, p. 4, *id.* at 9.
7 Pre-Trial Order, p. 3, *id.* at 613.

District Officer Utanes, on December 24, 2021. Petitioner responded with a Reply Letter on January 4, 2022.[8]

Petitioner then received, on January 7, 2022, another FLD/FAN with Details of Discrepancies, issued by Regional Director Sabriaga, all dated January 5, 2022 ("2nd FLD/FAN").[9] Not content with the findings therein, petitioner filed another Protest for Reinvestigation, dated February 3, 2022 ("2nd Protest").[10]

Petitioner received another Letter on March 2, 2022, informing him that his tax docket had once again been forwarded to Revenue District Office No. 34. This was followed by a Letter, issued by Revenue District Officer Utanes on July 18, 2022, which petitioner personally received on July 22, 2022.

Aggrieved, petitioner filed the instant Petition on September 1, 2022. Respondent filed an Answer with Motion to Dismiss on November 17, 2022. The Motion to Dismiss has yet to be resolved, hence its inclusion in the subject matter of this Decision

After a full-blown trial, during which petitioner[11] and respondent[12] presented a single witness each, the Court ordered both parties to file their respective Memoranda.[13] Petitioner failed to file any Memorandum,[14] while respondent filed his Memorandum on February 20, 2024.[15] The case was then submitted for decision on May 14, 2024.[16]

Hence, this Decision.

The Issues

The following are the issues to be resolved by this Court:

I. Whether this Court has jurisdiction over this case; and

II. Whether petitioner is liable for deficiency VAT and IT for TY 2018.

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8 *Id.*
9 *Id.*
10 Petition for Review, p. 7, *id.* at 12.
11 Minutes of the Hearing, held on May 2, 2023, *id.* at 622.
12 Minutes of the Hearing, held on September 12, 2023, *Rollo* Vol. 2, p. 654.
13 Resolution, dated January 19, 2024, *id.* at 704-705.
14 Records Verification, dated May 9, 2024, *id.* at 706.
15 *Id.* at 668-701.
16 *Id.*, unpaginated.

Arguments of the Parties

Petitioner raises the following arguments:

I. Respondent violated petitioner's right to due process by failing, in the PAN, FLDs/FANs, and Administrative Decisions, to identify specific reasons for (1) disallowing the receipts being claimed as expenses constituting valid deductions for IT; (2) disallowing the supporting documents for claiming valid input tax; and (3) rejecting arguments raised by petitioner in its Protests for Reinvestigation;[17]

II. Respondent also violated petitioner's right to due process by prematurely issuing the FLDs/FANs and Administrative Decisions;[18] and

III. Respondent's right to assess the subject taxes has prescribed.[19]

Respondent counters the above in this wise:

I. The Court lacks jurisdiction over this case as the Petition for Review was filed late;[20]

II. The contention that petitioner's February 3, 2022, protest was not acted upon is without merit;[21]

III. Petitioner's right to due process was not violated;[22] and

IV. Respondent's right to assess the subject taxes has not yet prescribed.[23]

The Ruling of the Court

Before looking into the substance of the parties' respective arguments, the Court must first tackle the issue of jurisdiction and, in doing so, resolve respondent's Motion to Dismiss.

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[17] Petition for Review, pp. 5-6 & 8-11, *Rollo* Vol. 1, pp. 10-11 & 16-19.
[18] Petition for Review, pp. 11-14, *id.* at 16-19.
[19] Petition for Review, pp. 14-16, *id.* at 19-21.
[20] Memorandum, pp. 4-9, *Rollo* Vol. 2, pp. 689-694.
[21] Memorandum, pp. 9-10, *id.* at 694-695.
[22] Memorandum, pp. 10-12, *id.* at 695-697.
[23] Memorandum, pp. 12-14, *id.* at 697-699.

The Administrative Decision was not a valid Decision on a disputed assessment; the Petition for Review was filed on time

Under *Republic Act No. 1125, as amended*, this Court has jurisdiction over appeals from the Decisions of the CIR on disputed assessments and on the CIR's inaction on such disputes:

> 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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> (2) *Inaction* by 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, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;
>
> . . . .
>
> (Italics supplied.)

This jurisdiction can be traced back to *Section 228 of the National Internal Revenue Code of 1997, as amended* ("*NIRC*"), the final two paragraphs of which read:

> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> *If the protest is* ***denied in whole or in part****, or* ***is not acted upon within one hundred eighty (180) days from submission of documents***, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals, within thirty (30) days from *receipt of the said decision*, or from *the lapse of the one hundred eighty (180)-day period*; otherwise, the decision shall become final, executory and demandable.
> (Emphasis and italics supplied.)

Notably, the above sets certain prescriptive periods for the raising of a judicial appeal: either 30 days from a taxpayer's receipt of the CIR's Decision or 30 days from the lapse of 180-day period given to the CIR for acting on administrative protests. These periods are reinforced by *Rule 8, Section 3(a) of the Revised Rules of the Court of Tax Appeals, as amended*:

> SEC. 3. Who may appeal; period to file petition. —
>
> (a) *A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments* or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction *may appeal to the Court by petition for review filed* ***within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments***. . . .
>
> (Emphasis and italics supplied.)

Here, petitioner filed his 2nd Protest on February 3, 2022. He then received the Administrative Decision of Revenue District Officer Utanes on July 22, 2022. Drawing from this latter fact, respondent insists that petitioner failed to file the instant Petition within 30 days from receipt of the Administrative Decision. Given this late filing, the Court supposedly lacks jurisdiction over the case and should simply dismiss it.

Respondent is mistaken.

Under *Section 4 of the NIRC*, the CIR has the power to decide on disputed assessments:

> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

The CIR, however, can also delegate said power to a subordinate, pursuant to *Section 7 of the NIRC*:

> SEC. 7. Authority of the Commissioner to Delegate Power. — *The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials* ***with the rank equivalent to a division chief or higher***, subject to such limitations and restrictions as may be imposed under rules and regulations to be

promulgated by the Secretary of Finance, upon recommendation by the Commissioner: ....

....

(Emphasis and italics supplied.)

Importantly, the CIR's powers can be delegated only to subordinates with a position of "division chief or higher," meaning that the CIR's power to decide on disputed assessments cannot be validly delegated to a BIR official of a rank lower than that of a division chief.

Here, the Administrative Decision which denied petitioner's 2nd Protest was issued by *Revenue District Officer* Utanes. A Revenue District Officer is not equivalent to or higher than a division chief.[24] As such, the Administrative Decision received by petitioner on July 22, 2022, *cannot* be considered respondent's Decision on the assessment disputed by petitioner through its 2nd Protest. Indeed, as no decision was issued by respondent himself or by any subordinate to which he could validly delegate such power, respondent effectively failed to act on the disputed assessment within the 180-day period.

It is consequently *not* the 30-day period from receipt of the CIR's Decision that is applicable here. The CIR or any of his duly authorized representatives did *not* issue a decision which petitioner could have received. Rather, what is applicable here is the 180+30-day period, *i.e.*, petitioner had 30 days from the lapse of the 180-day period within which to file the instant Petition.

Petitioner filed his 2nd Protest on February 3, 2022. Respondent CIR, or any BIR official with a rank of division chief or higher, thus had until August 2, 2022, within which to act upon said 2nd Protest. Said date passed with no reply from either respondent or any of his duly authorized representatives, giving petitioner until September 1, 2022, within which to raise a judicial appeal. He filed the instant Petition on that exact date.

Consequently, the instant Petition was filed on time, and this Court properly acquired jurisdiction over this case. Respondent's Motion to Dismiss, as a result, lacks merit and cannot be granted.

With the issue of jurisdiction resolved, the Court may now look into the merits of the case.

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[24] *Revenue Memorandum Order No. 001-18*, March 6, 2018.

The 1st FLD/FAN was prematurely issued, rendering the assessment void

Petitioner raises a variety of challenges to the validity of the assessment against him. Among these is the contention that respondent prematurely issued the 1st FLD/FAN on September 21, 2021.

We agree.

Section 228 of the NIRC provides certain rules for protesting preassessment notices and issuing final assessments:

> SEC. 228. Protesting an 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 taxpayer shall be informed in writing of the law and the facts upon 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 respondent to said notice.* ***If the taxpayer fails to respond****, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.*
> (Emphasis and italics supplied.)

The above is implemented by *Revenue Regulations* ("*RR*") *No. 12-99, as amended by RR No. 18-13. Section 3.1.1* of the same gives taxpayers 15 days from receipt of a PAN within which to reply.

This 15-day grace period for replying to the PAN is of utmost importance. In *Prime Steel Mill v. Commissioner of Internal Revenue*[25] ("*Prime Steel*") the Supreme Court, drawing from *Commissioner of Internal Revenue v. Yumex Philippines Corp.*,[26] nullified an assessment where the CIR issued the FLD/FAN before the lapse of the 15-day period:

> In the very recent case of Commissioner of Internal Revenue v. Yumex Philippines, Corp., the Court had occasion to state that the 15-day period provided under Revenue Regulations No. 12-99 for a taxpayer to reply to a PAN should also be strictly observed by the BIR. *The Court highlighted that "[o]nly after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN."*

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[25] G.R. No. 249153, September 12, 2022.
[26] G.R. No. 222476, May 5, 2021.

> While Yumex rests on slightly different factual circumstances, it may nevertheless apply analogously to the case at bench. *There can be no substantial compliance with the due process requirement when the BIR completely ignored the 15-day period by issuing the FAN and FLD even before petitioner was able to submit its Reply to the PAN.*
>
> As the Court also held in Yumex, "*[t]hat [the taxpayer] was able to file a protest to the FLD/FAN is of no moment.*" "*Sec. 3.1.2 of RR No. 12-99 explicitly grants the taxpayer fifteen (15) days from receipt of the PAN to file a response.*"
>
> In the same vein, it is beside the point that petitioner weas able to submit a "well-prepared protest letter." The fact remains that *respondent violated petitioner's right to due process by issuing a FAN without even awaiting its reply to the PAN.*
>
> 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 is void and produces no effect.
> (Citations omitted; italics supplied.)

Grounding the above, the Supreme Court has long held that "the persuasiveness of the right to due process," especially in relation to *Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-13*, "reaches both substantial and procedural rights."[27] As such, the grace period for replying to a PAN *must* be respected. The issuance of a FLD/FAN before either the filing of the taxpayer's reply to the PAN or the lapse of the 15-day grace period is enough to violate said taxpayer's right to due process and consequently nullify the assessment. This is true even if the taxpayer is able to intelligently protest the assessment afterwards as "[t]here can be no substantial compliance with the due process requirement when the BIR completely ignore[s] the 15-day period."[28]

Here, respondent ignored the grace period for replying to a PAN. He thereby violated petitioner's right to due process.

To recall, petitioner personally received the assailed PAN on July 29, 2021. This would normally give him until August 13, 2021, within which to reply to said PAN. However, on August 6, 2021, the BIR issued *Revenue Memorandum Order* ("*RMO*") *No. 92-21*. In response to the Enhanced Community Quarantine ("ECQ") and Modified Enhanced Community Quarantine ("MECQ") in effect at the time in the National Capital Region, the BIR extended the deadline for, among others, replying to a PAN, setting it to "15 days from the lifting of the ECQ and/or MECQ."

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[27] *Commissioner of Internal Revenue v. Metro Star Superama*, G.R. No. 185371, December 8, 2010.
[28] *Supra* note 25.

The MECQ in effect during this period was eventually lifted on September 16, 2021, with the implementation of the Alert-Level System for General Community Quarantines.[29] Considering *RMC No. 92-21*, then, petitioner had 15 days from September 16, 2021, or until October 1, 2021, within which to reply to the assailed PAN.

Petitioner would not, however, be given the opportunity to fully enjoy this extended period. To recall, he received the 1st FLD/FAN on September 21, 2021, only five days after the lifting of the MECQ. Indeed, the FLD/FAN were dated September *15*, 2021, meaning that respondent issued these *before* the MECQ had ended, despite his own circular extending the period for replying to PANs.

Tellingly, respondent is silent on the premature issuance of the 1st FLD/FAN. He only specifically addresses the charge that he failed to state the law and facts upon which his assessment was based. Further, he does so only by invoking "substantial compliance" with due process requirements and observing that petitioner was able to protest the assessment.[30] Following *Prime Steel*, however, neither of these can correct non-compliance with the grace period provided *Section 228 of the NIRC* and *Section 3.1.1. of RR No. 12-99, as amended by RR No. 18-13.*

From the above, respondent clearly disregarded the 15-day period mandated by law and by his own implementing regulations. While the 1st FLD/FAN were issued after 15 days from petitioner's receipt of the PAN, *RMC No. 92-21* extended this period to beyond the lifting of the MECQ, as discussed. As such, petitioner still had a right to protest the PAN even beyond the regular 15-day period. This right was violated by respondent's premature issuance of the FLD/FAN.

Following *Prime Steel*, the violation of petitioner's right to due process, the denial of its right to protest the PAN issued against it, renders the entire assessment void and without force or effect. The instant Petition must consequently be granted.

The Court need not discuss the other arguments raised by either party, considering the full nullity of the assessment.

ACCORDINGLY, the Motion to Dismiss, filed on November 17, 2022, is hereby **DENIED** for lack of merit.

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[29] *Guidelines on the Pilot Implementation of Alert Levels System for COND-19 Response in the National Capital Region*, September 13, 2021.
[30] *Supra* note 22.

However, the Petition for Review, filed on September 1, 2022, is hereby **GRANTED**. The Preliminary Assessment Notice, dated July 26, 2021, the Formal Letters of Demands and Final Assessment Notices, dated September 15, 2021, and January 5, 2022, and the Decision on Protest for Reinvestigation ("Administrative Decision"), dated November 25, 2021, are hereby **CANCELLED**. The assessment against petitioner for alleged deficiency VAT and IT for TY 2018 is declared **NULL** and **VOID**.

Respondent and his agents are **ENJOINED** and **PROHIBITED** from collecting any amount in relation to the void assessment.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice