22-000470-0054

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10991

BETHLEHEM HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

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

ATTY. LEONARDO B. USITA
Bureau of Internal Revenue-Revenue Region No.7B
25th Floor, The Podium West Tower
ADB Ave., Ortigas Center
Mandaluyong City

SALVADOR LLANILLO & MIJARES
Units 1706-1711, 17th Floor, Tower One & Exchange Plaza
Ayala Triangle, Ayala Avenue
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **November 18, 202,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **November 20, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

BETHLEHEM HOLDINGS, INC., *Petitioner*,	**CTA CASE NO. 10991**
	Members:
- versus -	**BACORRO-VILLENA**, *Acting Chairperson, and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	Promulgated: NOV 18 2025; 10:55AM

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DECISION

CUI-DAVID, J.:

In its *Petition for Review*[1] filed on September 27, 2022, and *Supplemental Petition for Review*[2] filed on November 3, 2023, petitioner Bethlehem Holdings, Inc. ("petitioner") prays that, after trial, judgment be rendered ordering the cancellation and withdrawal of the deficiency income tax assessment issued against it for taxable year (TY) 2011, in the total amount of ₱86,813,425.77, inclusive of interests and penalties.

THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with registered address at 3rd Floor, Globe Telecom Tower One, Pioneer Highlands, Pioneer corner Madison Streets, Barangka Ilaya 1550, Mandaluyong City.[3] It is a registered taxpayer of the Bureau of Internal Revenue (BIR), as shown by its Certificate of Registration OCN 3RC0000763671, bearing

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[1] Docket, pp. 8–34.
[2] *Id.* at 230–247.
[3] *Id.* at 439, *Joint Stipulation of Facts and Issues* (JSFI), par. 1.

Taxpayer Identification Number 006-731-601-000 issued on May 17, 2007.[4]

Respondent Commissioner of Internal Revenue (CIR or "respondent"), on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested under the appropriate laws with authority to carry out functions, duties, and responsibilities of said office, including *inter alia,* the power to decide disputed assessments and to cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations.[5]

THE FACTS AND THE PROCEEDINGS

On October 3, 2012, petitioner received at its registered principal office at Unit 507, The Taipan Place Condominium, F. Ortigas Jr. Rd., San Antonio, Ortigas Center, Pasig City, *Letter of Authority* (LOA) No. 43A-2012-00000889 dated September 28, 2012. The LOA authorized the examination of petitioner's books of accounts and accounting records for all internal revenue taxes for the period January 1 to December 31, 2011.[6]

On December 18, 2014, petitioner received a copy of respondent's *Preliminary Assessment Notice* (PAN), with attached *Details of Discrepancies,*[7] informing it of proposed assessments for deficiency income tax (IT), expanded withholding tax (EWT), and compromise penalty (CP) for TY 2011, in the aggregate amount of ₱51,261,885.13, inclusive of interest and CP.[8] In response, petitioner filed with the BIR a letter dated December 29, 2014 *(Reply to Preliminary Assessment Notice Assessment No. 043A-B187-111),*[9] on January 5, 2015.

On January 9, 2015, petitioner received respondent's *Formal Letter of Demand* (FLD), with attached *Details of Discrepancies* and *Assessment Notices* (collectively, the "FLD"),[10] in which it was requested to pay alleged deficiency IT, EWT, and

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[4] *Id.* at 439, JSFI, par. 2.
[5] *Id.* at 439–440, JSFI, Stipulation of Facts, par. 3.
[6] *Id.* at 440, JSFI, Stipulation of Facts, par. 4; Exhibit "P-3", BIR Records, p. 10.
[7] Exhibit "P-4", BIR Records, pp. 199–202.
[8] Docket, p. 440, JSFI, Stipulation of Facts, par. 5.
[9] Exhibit "P-5", Docket, pp. 551–565.
[10] Exhibit "P-6", Docket, pp. 566–573.

CP for TY 2011, in the aggregate amount of ₱52,248,870.53, inclusive of interest.[11]

On February 6, 2015, petitioner filed a protest against the FLD through a letter dated February 5, 2015 *(Protest to the Formal Letter of Demand and Final Assessment Notices No. 043A-B187-11 dated 09 January 2015)*, [12] praying for the cancellation and withdrawal of respondent's deficiency tax assessments for TY 2011.

On March 26, 2015, petitioner received from respondent a letter dated March 2, 2015,[13] stating that its case had been reassigned to Revenue Officer (RO) Renato M. Atos and Group Supervisor (GS) Roummel A. Bernos. In the same letter, petitioner was directed to submit all relevant supporting documents within sixty (60) days from the filing of its protest, or until April 6, 2015.

On May 27, 2015, petitioner received a letter dated May 12, 2015, from Revenue District Officer Josephine S. Virtucio,[14] informing it of the results of its request for re-investigation. The letter also stated that the case would be forwarded to the *Chief* of the *Assessment Division* for review of the *Final Decision on Disputed Assessment* (FDDA) which will be issued to it.

On July 9, 2015, petitioner filed a reply[15] to respondent's letter dated May 12, 2015.

Allegedly, after more than seven (7) years without any communication from respondent, petitioner was surprised to learn that its bank accounts with Banco De Oro had been frozen pursuant to a Warrant of Garnishment (WOG) dated August 19, 2022, issued for the collection of the alleged deficiency income tax liability for TY 2011, amounting to ₱86,813,425.77.[16] A copy of the WOG was furnished to petitioner by the bank on August 26, 2022.

On September 9, 2022, petitioner filed a letter[17] with the Regional Director of Revenue Region No. 7B, requesting the

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11 Docket. p. 440. JSFI. Stipulation of Facts. par. 6.
12 Exhibit "P-7". Docket. pp. 575–585.
13 Exhibit "P-8". Docket. p. 586.
14 Exhibit "P-9". Docket. pp. 587–588.
15 Exhibit "P-10". Docket. pp. 589–591.
16 Exhibit "P-11". Docket. p. 592.
17 Exhibit "P-12". Docket. pp. 594–600.

immediate cancellation and withdrawal of the WOG for having been allegedly issued in violation of its right to due process.

To preserve its right to challenge the WOG before the Court, petitioner filed the instant *Petition for Review (With Urgent Motion to Quash Warrant of Garnishment and Suspend Collection of Taxes)*[18] on September 27, 2022.

On October 19, 2022, during the hearing on the *Urgent Motion to Quash Warrant of Garnishment and Suspend Collection of Taxes (Urgent Motion)*, petitioner manifested that it had received a notice from the Bank of the Philippine Islands that the WOG had already been lifted. Petitioner, however, added that it still needs to verify the same. Hence, the Court granted petitioner a period of five (5) days from receipt of the confirmation from the BIR of such withdrawal, to manifest whether it would pursue resolution of its *Motion to Quash Warrant of Garnishment*. As regards its *Motion to Suspend Collection of Taxes*, petitioner presented Mr. James Kenneth Venta (Mr. Venta) as a witness, who testified on direct examination *via* a *Sworn Statement* marked as Exhibit "P-13."

On November 2, 2022, in compliance with the Court's directive, petitioner filed a *Manifestation*[19] stating that on October 27, 2022, it received formal notice of the actual lifting of the WOG from the BIR, without prejudice to the pursuit of other causes of action in the *Petition for Review*.

On even date, petitioner filed another *Manifestation*[20] stating that on October 26, 2022, it received a FDDA for TY 2011, which is the subject matter of the *Urgent Motion* filed by petitioner. It states that the FDDA was separate from the first FDDA that respondent allegedly sent to a wrong address. Further, petitioner denies having received the first FDDA and contests the same as having been issued in violation of the due process safeguards under Section 228 of the NIRC of 1997, as amended.

On November 28, 2022, petitioner filed an *Omnibus Motion With Leave of Court (I) To Recall Witness (II) To Admit Supplemental Sworn Statement; (III) To Set a Commissioner's Hearing; and (IV) To Defer the Filing of the Formal Offer of*

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[18] Docket. pp. 8–34.
[19] *Id.* at 122–124.
[20] *Id.* at 127–129.

Evidence (Omnibus Motion With Leave of Court).[21] Respondent was given ten (10) days from notice to file his comment thereto.[22]

On December 13, 2022, within the extension period granted by the Court,[23] respondent filed an *Answer,*[24] raising as a special and affirmative defense that the Court has no jurisdiction over the instant *Petition for Review,* for having been filed out of time.

On January 4, 2023, the Court issued a *Notice of Pre-Trial Conference,*[25] setting the case for *Pre-Trial Conference* on April 27, 2023, and directing the parties to file their respective pre-trial briefs at least three (3) days before the scheduled pre-trial.

On February 20, 2023, the Court granted petitioner's *Omnibus Motion With Leave of Court* and set the case for the presentation of petitioner's recalled witness, Mr. Venta, on May 4, 2023.[26]

On April 27, 2023, in open court, the scheduled Pre-Trial Conference was cancelled at the instance of petitioner's counsel. The hearing set on May 4, 2023, was likewise cancelled.[27]

On July 14, 2023, the Court issued a Resolution[28] resetting the Pre-Trial Conference to October 5, 2023.

On September 29, 2023, petitioner filed another *Omnibus Motion With Leave of Court (I) To Request Time to File Supplemental Petition for Review; and (II) To Defer Pre-Trial Conference.*[29]

On November 3, 2023, petitioner filed its *Supplemental Petition for Review.*[30]

In its Resolution dated November 15, 2023,[31] the Court, *inter alia*, granted petitioner's *Motion To Request Time to File Supplemental Petition for Review*, and directed respondent to file

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[21] *Id.* at 145–152.
[22] *Id.* at 166. Resolution dated December 15, 2022.
[23] *Id.* at 144. Order dated November 28, 2022.
[24] *Id.* at 167–170.
[25] *Id.* at 172–173.
[26] *Id.* at 177–179. Resolution dated February 20, 2023.
[27] *Id.* at 211–212. Order dated April 27, 2023.
[28] *Id.* at 217.
[29] *Id.* at 222–227.
[30] *Id.* at 230–247.
[31] *Id.* at 256–257.

a *Supplemental Answer* to petitioner's *Supplement Petition for Review*. The Court also set the Pre-Trial Conference to February 29, 2024.

On December 19, 2023, respondent filed his *Answer To Supplemental Petition for Review*.[32] Respondent's *Pre-Trial Brief* was filed *via* accredited courier on February 22, 2024;[33] while *Petitioner's Supplemental Pre-Trial Brief* was submitted on February 26, 2024.[34]

After the Pre-Trial Conference, the parties filed their *Joint Stipulation of Facts and Issues*[35] on March 25, 2024, based on which a *Pre-Trial Order*[36] was issued on May 14, 2024.

As the trial ensued, petitioner again presented the testimony of Mr. Venta.[37]

On June 3, 2024, petitioner filed its *Formal Offer of Evidence (with Motion to Set Additional Commissioner's Hearing)*. [38] In its Resolution dated September 6, 2024, the Court admitted all the evidence offered. [39]

When it was respondent's turn to present evidence, he manifested that he would no longer be presenting any witnesses.[40] In view thereof, the parties were given a period of thirty (30) days from notice to submit their respective memoranda.[41]

In compliance, petitioner submitted its *Memorandum* on November 4, 2024.[42] Respondent, however, failed to file his memorandum despite due notice. [43] Accordingly, in its *Resolution*[44] dated December 17, 2024, the Court deemed the instant case submitted for decision.

Hence, this Decision.

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32 *Id.* at 290–292.
33 *Id.* at 296–299.
34 *Id.* at 300–424.
35 *Id.* at 439–460.
36 *Id.* at 485–511.
37 Exhibits "P-13" and "P-16", Docket, pp. 35–46, and 153–156, respectively; Docket, pp. 513–514, Order dated May 22, 2024.
38 Docket, pp. 518–527.
39 *Id.* at 631–633.
40 *Id.* at 513–514, Order dated May 22, 2024.
41 *Id.* at 638, Notice.
42 *Id.* at 640–665.
43 *Id.* at 668, Records Verification dated November 18, 2024.
44 *Id.* at 669, Resolution dated December 17, 2024.

THE ISSUE

As agreed upon by the parties, the sole issue for this Court's resolution is:[45]

> WHETHER OR NOT RESPONDENT'S ASSESSMENT AND COLLECTION AGAINST PETITIONER OF ALLEGED DEFICIENCY TAXES FOR TAXABLE YEAR (TY) 2011, IN THE TOTAL AMOUNT OF ₱86,813,425.77 IS LEGAL AND VALID.

Petitioner's arguments:

Petitioner contends that: respondent failed to validly serve the first FDDA, thereby violating the former's right to due process; the second FDDA is void for being issued beyond the prescriptive period for collection of taxes; the issuance of a second FDDA to correct the procedural defects and infirmities present in the first FDDA is a violation of the taxpayer's right to due process; and the second FDDA is void since it did not constitute a final demand for payment and petitioner's tax liability remains indefinite.

Respondent's counter-arguments:

Respondent asserts that: the Court has no jurisdiction over the *Petition for Review*; petitioner belatedly filed its *Petition for Review* on September 27, 2022; the FDDA dated December 6, 2021 was served to petitioner via accredited courier on December 15, 2021; petitioner had allegedly until January 14, 2022 within which to file its *Petition for Review,* counting 30 days from receipt thereof; and upon lapse of the 30-day period, the assessment became final, demandable and executory, thereby divesting the Court of jurisdiction over the instant *Petition for Review*.

THE COURT'S RULING

The *Petition for Review* is impressed with merit.

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[45] Pre-Trial Order dated May 14, 2024, Docket, pp. 485-511.

The Court has jurisdiction to entertain the present appeal.

Before delving into the substantive issues, the Court shall first determine whether it has jurisdiction to entertain the present appeal.

Respondent argues that since the FDDA dated December 6, 2021 was served upon petitioner through private courier (LBC) on December 15, 2021, petitioner had 30 days therefrom, or until January 14, 2022, to file its *Petition for Review*. Hence, respondent contends that the filing of the present Petition for Review on September 27, 2022, was already late.

The Court does not agree.

Sections 7(a)(1) and (2), and 11 of Republic Act (RA) No. 1125,[46] as amended by RA No. 9282,[47] confer jurisdiction upon this Court relative to the decisions and inactions of the CIR involving disputed assessments, or other matters arising under the NIRC of 1997, as amended, *viz*:

> SEC. 7. *Jurisdiction*. – The CTA shall exercise:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue;
>
> (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;" *(Emphasis added)*
>
> ... ...

46 AN ACT CREATING THE COURT OF TAX APPEALS.

47 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue...may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein**. *(Emphasis supplied)*

From the foregoing, the appellate jurisdiction of this Court is not confined to the CIR's decisions on assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC, or related laws administered by the BIR.[48] Any party adversely affected by such decision or ruling may appeal to this Court within 30 days from receipt thereof.

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,*[49] the Supreme Court affirmed this view, holding that the CTA's jurisdiction likewise includes determining the validity of a Warrant of Distraint and/or Levy (WDL) or a waiver of the statute of limitations:

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

Similarly, in *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.,*[50] the Supreme Court ruled that when the Commissioner proceeds with distraint and levy or collection without categorically resolving a taxpayer's protest, such an act constitutes an implied denial appealable to the CTA within 30 days from notice of the warrant or suit:

> At any rate, in instances when the Commissioner, without categorically deciding the taxpayer's protest or request for reconsideration or reinvestigation, proceeds to distrain and levy or institutes an action for collection in the ordinary courts, this Court has considered this is an **<u>implied denial</u>**. **The taxpayer's remedy then was to appeal to the Court of Tax Appeals within 30 days from the date that it**

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48 *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010 [Per J. Leonardo-De Castro, First Division].

49 G.R. No. 162852, December 16, 2004 [Per J. Ynares-Santiago, First Division].

50 G.R. No. 225809, March 17, 2021 [Per J. Leonen, Third Division].

> **was notified of the warrant** or collection suit. *(Emphasis supplied)*

Although the cited cases refer to a WDL, the same principle applies to a WOG, since "*garnishment*" is likewise a summary administrative remedy for the collection of delinquent taxes, expressly recognized under Section 208 of the NIRC of 1997, as amended, which provides:

> SEC. 208. *Procedure for Distraint and Garnishment.* – ...
>
> **Bank accounts shall be garnished by serving a warrant of garnishment upon the taxpayer and upon the president, manager, treasurer or other responsible officer of the bank.** Upon receipt of the warrant of garnishment, the bank shall turn over to the Commissioner so much of the bank accounts as may be sufficient to satisfy the claim of the Government. *(Emphasis added)*

Thus, when the Commissioner issues a WOG without first resolving a taxpayer's protest or request for reconsideration, the taxpayer's proper remedy is likewise to appeal to this Court within 30 days from notice of such warrant.

In the present case, petitioner not only prays for the cancellation and withdrawal of the subject tax assessments but also seeks to quash the WOG[51] dated August 19, 2022.

While respondent asserts that the assessment has become final, executory, and demandable due to petitioner's failure to appeal within 30 days from the supposed service of the FDDA through accredited courier on December 15, 2021, petitioner categorically denies having received such FDDA prior to the filing of the present *Petition for Review.*

Apropos, in *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*,[52] the Supreme Court held that where the taxpayer denies receipt of an assessment, the burden shifts to the BIR to prove such receipt by **competent evidence**. Proof of mailing must consist of the registry receipt, the registry return card, or a certification from the Bureau of Posts. Self-serving notations by BIR personnel are insufficient:

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[51] Exhibit "P-11", Docket, p. 592.
[52] G.R. No. 202695, February 29, 2016 [Per J. Peralta, Third Division].

> **If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee**. Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. **It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.**
>
> To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the taxpayer or its authorized representative. And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention. **The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing. While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved**. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices. *(Emphasis and underscoring supplied)*

Consistent with the above ruling, the BIR must clearly and satisfactorily prove that the notice was properly mailed and received. However, in this case, respondent offered no proof of such service.

Section 3.1.7 of Revenue Regulations (RR) No. 12-99,[53] as amended by RR No. 18-2013[54] and renumbered by RR No. 7-2018,[55] implements Section 228 of the NIRC of 1997, as amended, and prescribes the valid modes of service of an FDDA. It provides:

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

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

[55] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> 3.1.7 ***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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> ... ...
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> (iv) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. **A copy of the notice may also be sent through reputable professional courier service.** If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.
>
> **The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the** person/barangay official/**professional courier service company who received the same and such other relevant information.** The registry receipt issued by the post office or **the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.** *(Emphasis supplied)*

Based on the foregoing, service of an FDDA *via* a reputable professional courier service is valid, provided that the server complies with the procedural requirements: (1) accomplishing the bottom portion of the notice; (2) executing a written report under oath detailing the manner, place, and date of service, the name of the courier company, and other relevant information; and (3) attaching the official receipt with identifiable transaction details to the case docket as proof of mailing.

In this case, despite petitioner's denial of receipt of the FDDA, respondent failed to present any evidence—such as a sworn report, courier receipt, or acknowledgment—that the FDDA was properly served to petitioner on December 15, 2021. On the contrary, petitioner established that it received the

FDDA only on October 26, 2022, [56] long after the issuance of the assailed WOG dated August 19, 2022.

Thus, while an FDDA was issued, the same was evidently not served to petitioner prior to the filing of the present *Petition for Review.* Consequently, it is as if no FDDA had been issued before such filing.

Counting 30 days from petitioner's receipt of the WOG on August 26, 2022, petitioner had until September 25, 2022 to file a *Petition for Review.* Since said date fell on a Sunday, and court operations were suspended the next day, September 26, 2022, pursuant to Supreme Court Memorandum Order No. 144-2022 due to Super Typhoon Karding, the filing deadline was extended to the next working day under Section 1, Rule 22 of the Rules of Court.[57]

The present *Petition for Review,* filed on September 27, 2022, was therefore timely. Accordingly, the Court has jurisdiction to hear and decide this case.

Now, on the merits.

There was a violation of due process in the issuance of the subject tax assessments.

Petitioner argues that the deficiency assessments issued against it are null and void for having been issued in violation of its right to due process. More particularly, petitioner claims that there are procedural defects and infirmities in the issuance of the FDDA.

The Court disagrees with petitioner's reasoning.

In *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,*[58] the Supreme Court ruled as follows:

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[56] Exhibit "P-15". Docket, p. 606–610.

[57] SECTION 1. How to compute time. — In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

[58] G.R. Nos. 215534 & 215557, April 18, 2016 [Per J. Mendoza, Second Division].

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> [I]t is clear that what is appealable to the CTA is the 'decision' of the CIR on disputed assessment and not the assessment itself.
>
> An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on its and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.
>
> **Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other**—unless the law or regulations otherwise provide. *(Emphasis supplied)*

Clearly, the decision of the CIR on a disputed assessment (*i.e.*, the FDDA) is distinct from the assessment itself. Consequently, the invalidity of an FDDA does not automatically render the underlying assessment void.

Applying the foregoing, the Court cannot sustain petitioner's claim that the assessment became void by reason of the invalidity of the FDDA, considering that the invalidity of one does not necessarily result in the invalidity of the other.

Be that as it may, the subject tax assessments are void, not because of the invalidity of the subject FDDA, but due to respondent's violation of petitioner's right to due process, particularly respondent's failure to consider the defenses and arguments raised in petitioner's *Reply to PAN* (*via* the letter dated December 29, 2014).

Section 228 of the NIRC of 1997, as amended, 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: xxx
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> ... ...

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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.** *(Emphasis added)*

Under the above provision, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.[59] The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[60] To be sure, the requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[61] Furthermore, it must be emphasized that failure to comply with Section 228 does not only render the assessment void but also finds no validation in any provision in the NIRC.[62]

To implement the said provision of Section 228, Section 3 of RR No. 12-99, as amended and renumbered, provides:

> SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –***
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
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> ... ...
>
> 3.1.2 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).
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> ... ...

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59 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018 [Per J. Leonen, Third Division].
60 *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 3, 2021 [Per J. Leonen, Third Division].
61 *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021 [Per J. Hernando, Second Division].
62 *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021 [Per J. Hernando, Second Division] citing *Commissioner of Internal Revenue v. Reyes*, 516 Phil. 176, 189 (2006) [Per C.J. Panganiban, First Division].

> 3.1.4 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the assessment shall be void*** (see illustration in ANNEX 'B' hereof).
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> ... ...
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> 3.1.6 *Final Decision on a Disputed Assessment (FDDA).* – **The decision of the Commissioner or his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void*** (see illustration in ANNEX 'C' hereof), and (ii) that the same is his *final* decision." *(Emphasis and underscoring added)*

The foregoing provisions require that the PAN, FLD/FAN, and FDDA, each state the facts and the law on which the assessment is based; otherwise, the FLD/FAN and/or FDDA shall be void for violation of due process.

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* (*Avon* case), [63] the Supreme Court emphasized that:

> **Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**
>
> ....

[63] G.R. Nos. 201398-99 & 201418-19, October 3, 2018 [Per J. Leonen, Third Division].

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 the best evidence obtainable, among others. **However, these powers must 'be exercised reasonably and [under] the prescribed procedure.' The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayer's constitutional rights.**

....

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

....

In *Ang Tibay v. The Court of Industrial Relations*,[64] this Court observed that **although quasi-judicial agencies 'may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.'** It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:

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

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[64] 69 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].

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

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

....

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

....

Administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and that the party be sufficiently informed of the reasons for its conclusions.

....

The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2[65] of Revenue Regulation No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, **Section 3.1.4 requires the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. Finally, Section 3.1.6 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. Failure to do so would invalidate the Final Decision on Disputed Assessment.**

[65] Now Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-2013.

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

....

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 Discrepancies attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.

....

It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusion are based, and those facts must appear in the record.**

....

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

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

....

In *Commissioner of Internal Revenue v. Reyes*,[66] **this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the**

[66] 516 Phil. 176 (2006) [Per C.J. Panganiban, First Division].

taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.

....

Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:[67]

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

... ***[The Commissioner of Internal Revenue's]*** **disregard of the standards and rules renders the deficiency tax assessments null and void.** *(Emphasis and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, respondent or his duly authorized representative is mandated to perform assessment functions in accordance with law, the BIR's own rules of procedure, and always with full regard to the basic tenets of due process. Due process requires that respondent and/or the BIR consider the defenses and evidence submitted by the taxpayer and render a decision based on these submissions.

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[67] 241 Phil. 829 (1988) [Per J. Cruz, First Division].

Furthermore, in case respondent or his duly authorized representative fails to observe due process, it shall have the effect of rendering the deficiency tax assessment void and without legal effect. Moreover, a significant part of the due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed, in writing, of the law and the facts on which the assessment is made. Such requirement must be reflected in the PAN, FLD/FAN, and FDDA. <u>Specifically, when respondent rejects the taxpayer's explanations, he must give some reason for doing so and the particular facts and law upon which his conclusion are based, and those facts must appear in the record</u>. As a corollary, the concerned taxpayer must *not* be left unaware of how respondent or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.

To stress, in case respondent or his duly authorized representative fails or effectively fails to observe the foregoing due process requirements, it shall have the effect of rendering the assessment and collection of the pertinent deficiency tax void.

In this case, as stated in the PAN dated December 18, 2014,[68] the BIR found the following amounts due from petitioner for TY 2011, in the aggregate amount of ₱51,261,885.13, inclusive of interest, to wit:

I. DEFICIENCY INCOME TAX		
Taxable Income per Income Tax Return (ITR)		₱
Add: Adjustments per Investigation:		
Undeclared Receipts	₱ 3,626,654.10	
Unsupported Interest Expense	106,613,192.00	
Income payments not subjected to withholding tax	871,969.55	₱ 111,111,815.65
Taxable income per investigation		**₱111,111,815.65**
Income Tax Due		**33,333,544.70**
Less: Allowed Tax Credits/Payments		
Prior Year's Excess tax credit	₱30,591,480.00	
Creditable withholding tax	14,148,920.00	
Payments		
Total	₱44,740,400.00	
Less: Excess tax credits to be carried over to succeeding period	42,530,623.00	
Excess MCIT over NIT to be carried over to succeeding period	2,209,777.00	

[68] Exhibit "P-4", BIR Records, pp. 199-202.

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			₱ – –
Deficiency Income Tax			**₱33,333,544.70**
Add: 20% Interest p.a. (4.17.12 to 12.17.14)			17,790,067.14*
TOTAL AMOUNT DUE			**₱51,123,611.84***
II. DEFICIENCY EXPANDED WITHHOLDING TAX			
	Amount	**Tax Rate**	**Tax Due**
Income payments to sub-contractors	₱689,744.56	2%	₱13,794.89
Rent Expense	182,224.99	5%	9,111.25
Deficiency Expanded Withholding Tax			₱ 22,906.14
Add: 20% Interest p.a. (1.17.12 to 12.17.14)			₱13,367.15*
TOTAL AMOUNT DUE			**₱36,273.29***
III. COMPROMISE PENALTY			
TOTAL AMOUNT DUE			**₱102,000.00**
* *Please note that the interest and the total amount due will have to be adjusted if paid before/beyond December 17, 2014*			

In its *Reply* to PAN dated December 29, 2014,[69] petitioner refuted the findings of the BIR relative to the foregoing, arguing, among others:

I. That the deficiency income tax assessment has no legal and factual basis; *first* - it has no undeclared receipts, *second* – petitioner's interest expense is fully supported and validly claimed as deduction for income tax purposes, *third* – all income payments claimed as deduction were properly subjected to withholding tax (rules); and

II. That the deficiency EWT assessment is bereft of factual and legal basis. Petitioner presented a reconciliation of the income payment per Financial Statements and per EWT Return. Allegedly, those accounted as not subjected to EWT pertain to income tax payments to General Professional Partnerships, dues to non-stock non-profit associations and purchase of materials/goods and used for office repairs.

However, an examination of the FLD with *Details of Discrepancies* dated January 9, 2015,[70] reveals that the assessments for deficiency income tax and EWT were retained, with only the interest amounts adjusted to reflect accrual until February 9, 2015, to wit:

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[69] Exhibit "P-5", Docket, pp. 551–565.
[70] Exhibit "P-6", Docket, pp. 566–573.

I. DEFICIENCY INCOME TAX			
Taxable Income per Income Tax Return (ITR)			₱
Add: Adjustments per Investigation:			
Undeclared Receipts	₱ 3,626,654.10		
Unsupported Interest Expense	106,613,192.00		
Income payments not subjected to withholding tax	871,969.55		₱ 111,111,815.65
Taxable income per investigation			**₱111,111,815.65**
Income Tax Due			**33,333,544.70**
Less: Allowed Tax Credits/Payments			
Prior Year's Excess tax credit	₱30,591,480.00		
Creditable withholding tax	14,148,920.00		
Payments			
Total	₱44,740,400.00		
Less: Excess tax credits to be carried over to succeeding period	42,530,623.00		
Excess MCIT over NIT to be carried over to succeeding period	2,209,777.00		₱
Deficiency Income Tax			**₱33,333,544.70**
Add: 20% Interest p.a. (4.17.12 to 2.9.15)			18,776,374.77*
TOTAL AMOUNT DUE			**₱52,109,919.47***
II. DEFICIENCY EXPANDED WITHHOLDING TAX			
	Amount	**Tax Rate**	**Tax Due**
Income payments to sub-contractors	₱689,744.56	2%	₱13,794.89
Rent Expense	182,224.99	5%	9,111.25
Deficiency Expanded Withholding Tax			₱ 22,906.14
Add: 20% Interest p.a. (1.17.12 to 2.9.15)			₱14,044.92*
TOTAL AMOUNT DUE			**₱36,951.06***
* *Please note that the interest and the total amount due will have to be adjusted if paid before/beyond February 9, 201[4]5*			

As to the assessment on compromise penalty amounting to ₱102,000.00, although it was not specifically stated in the FLD, it was included in the *Assessment Notice*[71] attached to the FLD.

A comparison of the PAN and the FLD with *Assessment Notices* shows that their contents are reproductions of each other, except for the adjusted interest amounts. It is apparent that respondent failed to provide any explanation for retaining the assessments despite petitioner's refutations.

To emphasize, pursuant to the *Avon* case, the concerned taxpayer must be fully apprised of the factual and legal bases of the assessments and must not be left unaware of how respondent or his authorized representatives appreciated the

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[71] Exhibit "P-6". Docket, p. 572.

explanations or defenses raised by petitioner in connection with the assessments. Correspondingly, as part of the due process requirement in the issuance of tax assessments, respondents must give reason(s) for rejecting petitioner's refutations, and must give the particular facts upon which the conclusions for assessing petitioner are based, and those facts must appear on record.

In *Avon*, the Supreme Court found a violation of the taxpayer's right to due process where the Details of Discrepancies attached to the PAN and the FLD with FANs failed to address the defenses and documents submitted by the taxpayer. The same deficiency is present in this case.

Here, the respondent failed to consider the defenses, explanation, and reconciliation submitted by petitioner in its *Reply to PAN.* Petitioner was left unaware of how the respondent or his duly authorized representatives appreciated the explanations or defenses raised therein. Again, when respondent rejects the taxpayer's explanations, he or she must provide reasons and cite the factual and legal bases for his conclusions, which must appear in the record.

In other words, the persuasiveness of the right to due process reaches both substantial and procedural rights, and **the failure of respondent to <u>strictly comply</u> with the requirements laid down by law and the BIR's own rules is a denial of the taxpayer's right to due process**.[72]

In view of the nullity of the subject tax assessments, as discussed above, the Court finds it unnecessary to address the remaining issues raised in the present case.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* and *Supplemental Petition for Review* filed by petitioner Bethlehem Holdings, Inc. are hereby **GRANTED.**

Accordingly, the Formal Letter of Demand and the accompanying Assessment Notices dated January 9, 2015, are hereby **CANCELLED** and **SET ASIDE**.

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[72] Refer to *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010 [Per J. Mendoza, Second Division] citing *Tupas, et al. v. Court of Appeals, et al.*, G.R. No. 89571, February 6, 1991 [Per J. Cruz, First Division].

Likewise, the Final Decision on Disputed Assessment dated December 6, 2021, which assessed petitioner for deficiency income tax in the total amount of ₱86,813,425.77, inclusive of interests for taxable year 2011, is hereby **REVERSED** and **SET ASIDE**.

Respondent Commissioner of Internal Revenue, or any person acting on his behalf, is hereby **ENJOINED** and **PROHIBITED** from instituting, pursuing, or otherwise taking any action for the collection of the foregoing void assessments.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the First Division Acting 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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice