REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

<u>*Second Division*</u>

LAKESIDE FOOD & BEVERAGES CORP., *Petitioner,*	**CTA CASE NO. 10627**
	Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:
	SEP 17 2025 4:05 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This Petition for Review ("Petition")[1] prays that the Court (i) reverse and set aside respondent's Assailed Decision;[2] and (ii) cancel and set aside the alleged income tax and value-added tax ("VAT") (inclusive of interest and penalties) assessed against petitioner in the amount of Php2,500,509.20.

The Parties

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at Purok 4 Barangay Makiling, Calamba City, Laguna.[3] It is a registered taxpayer with the Bureau of Internal Revenue ("BIR") with Certificate of Registration Number OCN: 1RC0000149723 and Tax Identification Number ("TIN") 203-579-211-000.[4]

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[1] Records, Vol. 1, pp. 6-30.
[2] *Id,* pp. 34-37
[3] *Id.,* p. 7.
[4] Exh. "P-4", *id.,* p. 447.

Respondent Commissioner of Internal Revenue ("CIR") is the head of the Bureau of Internal Revenue ("BIR"), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees, and charges.[5]

The Facts

The controversy began when respondent issued Letter of Authority ("LOA") No. 056-2012-00000081, dated 05 October 2012, against petitioner for a tax investigation covering the taxable period from January 1, 2011 to December 31, 2011.[6] In the said LOA, Revenue Officer ("RO") Mayeth Rada and Group Supervisor ("GS") Levi Visaya of Revenue District No. 056 were authorized to audit and examine petitioner's books of accounts and other accounting records for the said taxable period to determine all types of internal revenue taxes. This was received through Ms. Concepcion P. Arceno, former Accounting Head of petitioner, on October 15, 2012.[7]

Subsequently, respondent issued to petitioner a Letter Notice No. 056-RLF-11-00-00077, dated January 13, 2014, which indicated that petitioner has undeclared sales amounting to PhP8,647,913.86 in taxable year 2011.[8]

Following the audit and examination conducted by RO Rada and GS Visaya, a Preliminary Assessment Notice ("PAN"), dated December 10, 2014, was issued against petitioner.[9] Thereafter, an Additional PAN was issued on December 18, 2014.[10]

On January 29, 2015, petitioner received a Formal Letter of Demand / Final Assessment Notice ("FLD/FAN"), dated January 8, 2015, with details of discrepancies on income tax and VAT.[11] The FLD/FAN particularly found petitioner liable for deficiency income tax and VAT in the total amount of ₱2,500,509.20, inclusive of interest and penalties for the taxable year ("TY") 2011.

An additional FLD/FAN, dated January 21, 2015, was thereafter issued by respondent to inform petitioner of the imposition of compromise penalties amounting to Php41,000.00 for the late payment of income tax and VAT, pursuant to *Sec. 255 of the National Internal Revenue Code ("NIRC"), as implemented by Revenue Memorandum Order No. ("RMO") 19-2007.*[12]

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5 See Stipulated Facts, Pre-Trial Order, Records, Vol. II, p. 1011.
6 Exh. "R-1", BIR Records, p. 1.
7 *Ibid.*
8 Exh. "R-10", BIR Records, p. 568
9 Exh. "R-3", *id.*, p. 546
10 Exh. "R-4", *id.*, p. 547
11 Exh. "R-5", *id.*, pp.548-550
12 Exh. "R-6", *id.*, pp. 555-556

On February 9, 2015, petitioner filed with the BIR's Revenue Region No. 9 a Protest Letter, dated February 6, 2016.[13] In said letter, petitioner questioned the assessment done by the ROs and requested for the reinvestigation of the 2011 Letter Notice.

Petitioner received a Final Decision on Disputed Assessment ("FDDA"), dated August 11, 2015, issued by Regional Director Jose N. Tan of the BIR's Revenue Region No. 9 on September 8, 2015. The FDDA upheld the income tax and VAT assessments against petitioner in the amount of Php2,500,509.20, inclusive of interest and penalties.[14]

In response, petitioner filed with the CIR on September 23, 2015 a Letter Request for Reconsideration, dated September 17, 2015, requesting for reconsideration of the FDDA.[15] Attached thereto was a letter from Ms. Cynthia M. Baroy, Chief Financial Officer of Ginebra San Miguel Inc. declaring that their VATable purchases from petitioner for TY 2011 amounted to only PhP46,999,301.93.[16]

On July 6, 2021, petitioner received the Assailed Decision issued by the CIR which upheld the FDDA and demanded from petitioner the payment of the alleged deficiency taxes in the amount of Php2,500,509.20, including additional interests that may have accrued until full payment.[17]

Accordingly, petitioner filed the instant Petition on October 25, 2021.[18]

On February 2, 2022, respondent filed its Answer.[19]

On February 16, 2022, respondent submitted the Offer of Testimony of Revenue Attorney Jan Michael Rivera,[20] dated February 15, 2022, along with his Judicial Affidavit.[21]

Petitioner then filed its Reply to respondent's claims in the Answer, dated February 2, 2022, on March 1, 2022.[22]

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13 Exh. "P-17".
14 Exh. "P-18".
15 Exh. "P-19", Records, Vol. I, p.775.
16 Exh "P-10", *id.*, p.486
17 Annex "A", Petition, *id.*, pp. 34-37.
18 *Id.*, pp. 6-396.
19 Records, Vol. II, pp. 804-818.
20 *Id*, pp.789-792
21 *Id.*, pp. 793-799.
22 *Id*, pp. 820-832.

On May 16, 2022, respondent filed its Pre-Trial Brief, dated May 16, 2022.[23] Similarly, petitioner filed its Pre-Trial Brief, dated May 20, 2022, on even date.[24]

The Pre-Trial Conference ensued on October 27, 2022.[25]

On November 28, 2022, the parties submitted their Joint Stipulation of Facts and Issues.[26] On January 31, 2023, a Pre-Trial Order was issued by this Court governing the proceedings of the present case.[27]

Thereafter, trial proceedings were conducted by this Court.

On April 28, 2023, petitioner filed its Formal Offer of Evidence, dated April 28, 2023.[28] In its July 11, 2023 Resolution, this Court admitted all the exhibits offered by petitioner.[29]

Respondent thereafter filed his Formal Offer of Evidence, dated July 21, 2023 on July 26, 2023.[30] All pieces of evidence offered by respondent were eventually admitted through a Resolution, dated October 12, 2023.[31]

Afterwards, both parties submitted their respective Memoranda. Hence, this Decision.

The Issue[32]

Based on the Pre-Trial Order, the following lone issue is for resolution by this Court:

> WHETHER PETITIONER IS LIABLE FOR THE ALLEGED DEFICIENCY INCOME TAX AND VALUE-ADDED TAX (INCLUSIVE OF INTEREST AND PENALTIES) FOR TAXABLE YEAR 2011 IN THE AMOUNT OF TWO MILLION FIVE HUNDRED THOUSAND FIVE HUNDRED NINE PESOS AND TWENTY CENTAVOS.

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[23] *Id,* pp 850-854.
[24] *Id,* pp 856-876.
[25] *Id.,* pp. 933-934.
[26] *Id.,* pp. 970-979.
[27] *Id.,* pp. 1010-1018.
[28] Records, Vol. III, pp. 1696-1723.
[29] *Id,* pp. 1814-1816.
[30] *Id,* pp. 1817-1823.
[31] Records, Vol. IV, pp. 2452-2453.
[32] See Issues, Pre-Trial Order, Records, Vol. II, pp. pp. 1010-1018.

Arguments of the Parties

Petitioner's Arguments[33]

Petitioner avers the following in its Memorandum:

a) Petitioner never received any PAN before it received the FLD/FAN, and none of the exceptions when a PAN may be dispensed with apply in this case. Thus, the deficiency tax assessment is void due to failure by the petitioner to receive the PAN.

b) Pursuant to *Section 228 of the NIRC,* a taxpayer must be informed in writing of the law and the facts on which an assessment is made, failing which, the assessment shall be void.

c) In response to respondent's claim that petitioner is barred by laches from raising the issue of the lack of PAN when it did not raise the same at the administrative level, the Supreme Court has consistently ruled that just like estoppel, laches cannot validate an act that contravenes law or public policy.

d) Respondent neither presented nor offered any pieces of evidence to prove that (1) a PAN was served to petitioner prior to serving the FLD/FAN; and (2) petitioner actually received the PAN allegedly served.

e) Respondent averred that a PAN was issued and served to petitioner but was bereft of any mention on how these were supposedly served on petitioner.

f) Respondent did not offer the alleged PAN, alleged additional PAN, and BIR Records to prove the alleged service of the same on petitioner.

g) Respondent cannot rely on the disputable presumption that a mailed letter is received in the ordinary course of mail as substitute for proof of receipt by petitioner of the alleged PAN and alleged additional PAN because (1) Respondent failed to present any evidence of the "basic facts" for the presumption to arise and, in any case, (2) such presumption has been neutralized by petitioner's direct denial of the receipt of such assessment notices.

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[33] Records, Vol. 5, pp. 2789-2840.

h) The Supreme Court explained in *Commissioner of Internal Revenue v. Villanueva, Jr.*[34] that a direct denial by the taxpayer of receipt of assessment notices obliges the BIR to prove that such notices were actually received by the addressee, through the presentation of pieces of evidence, including (1) registry receipt issued by the Philippine Post Office, (2) registry return card signed by the taxpayer or the latter's authorized representative, (3) certification issued by the Philippine Post Office, and (4) other pertinent documents that is executed with the Philippine Post Office's intervention. Moreover, the presentation of registry receipts must be accompanied by an authentication or identification that the signature appearing therein is the taxpayer's or his or her authorized representative's to sufficiently prove actual receipt by the taxpayer.

i) Respondent based the deficiency tax assessment on mere presumptions and unverified third party-information, in violation of the law and the rules he himself promulgated, thereby rendering the assessment devoid of factual and legal bases.

j) In assessing petitioner with alleged deficiency income tax and VAT, respondent alleged that petitioner had undeclared taxable income and undeclared sales based on data generated from the BIR's RELIEF program. Under said program, respondent matched information by third-party sources against the data declared by petitioner in its tax returns. Thus, petitioner submits that the deficiency tax assessment is void for being based on mere presumptions and unverified third-party information, in violation of the law and rules respondent himself promulgated.

k) The Supreme Court, in a number of cases, has held that assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be, and that in order to stand the test of judicial scrutiny, the assessment must be based on actual facts.

l) Respondent violated the procedures under *RMO 46-04* and *RMO 13-12* – a rule he himself promulgated – on how to secure and verify third-party information sources.

m) Respondent violated Petitioner's constitutional right to due process by its failure to strictly observe the law and the rules governing the examination and assessment of taxpayers. *y*

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[34] G.R. No. 249540, February 28, 2024.

n) Respondent is duty-bound to strictly observe (1) the procedural requirements and formal notices required in the conduct of an examination of a taxpayer; (2) the formal requirement to state the factual and legal bases for an assessment; and (3) the formal and procedural requirements for the use of third-party information in conducting an examination of a taxpayer.

Respondent's Counter-Arguments[35]

Respondent points out that the issue on the non-receipt of PAN was never raised by petitioner in the administrative level. Instead, petitioner for the first time on appeal attacked the validity of the assessment on the ground that petitioner did not receive the PAN. Thus, respondent insists that petitioner should not be allowed to raise for the first time on appeal questions which were not raised at the administrative forum as it will violate the rules of exhaustion of administrative remedies and doctrine that new issues cannot be raised for the first time on appeal.

Respondent further argues that there was no violation of petitioner's right to due process since a PAN was issued and duly served to petitioner.

Finally, respondent posits that the additional taxable income and undeclared sales of petitioner based on BIR's RELIEF is not without basis. Hence, petitioner should be held liable for deficiency income tax and VAT on the undeclared sales. In addition, respondent claims that the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the CIR is wrong, but also that he is right.

In this case, respondent firmly believes that petitioner failed to overturn the presumption of correctness and validity of assessments. Hence, where evidence to the contrary is wanting, the presumption in favor of the correctness of tax assessments must stand.

The Ruling of the Court

The Petition *is impressed with merit.*

The Court has jurisdiction over the present Petition.

Jurisdiction by this Court over the instant case is conferred by *Section 7 (1) of RA 1125*, to wit: ᵽ

[35] *Id.*, pp. 2753-2766.

> *SEC. 7. Jurisdiction.* - The Court of Tax Appeals shall exercise 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 imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue;
> (Italics and emphasis, Ours.)

As clearly provided above, this Court has exclusive appellate jurisdiction over decisions by the CIR involving disputed assessments. In the present case, petitioner is appealing the Assailed Decision issued by respondent affirming the deficiency tax assessments contained in the FDDA. As such, it is a decision by the CIR over a deficiency tax assessment. Thus, this Court has undoubted jurisdiction over the instant case.

Now, the question that should be determined is whether petitioner timely filed its judicial appeal. Under *Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals*, "[a] party adversely affected by a decision... of the Commissioner of Internal Revenue... may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision."

In the case at bar, petitioner unquestionably received the Assailed Decision on July 6, 2021.[36] Following this, petitioner had thirty (30) days upon learning of the receipt of the Assailed Decision, or until August 5, 2021 within which to file a judicial appeal before this Court. However, under *Supreme Court Administrative Circular No. 56-2021,*[37] *as amended by Supreme Court Office of the Court Administrator ("OCA") Circular Nos. 114-2021,*[38] *117-2021,*[39] *120-2021,*[40] *and 128-2021,*[41] the reglementary periods for the filing of pleadings and motions before the Courts in the National Capital Region from August 2021 to October 17, 2021 were suspended and resumed only on October 18, 2021. Pursuant to *Supreme Court Administrative Circular No. 83-2021,*[42] in relation to *Supreme Court Administrative Circular No. 72-2021,*[43] the "period for filing and service shall resume seven (7) calendar days from October 20, 2021. Accordingly, petitioner had until October 27, 2021 within which to file an appeal before this Court. As petitioner filed the instant Petition on October 25, 2021, this Court properly assumed jurisdiction over the present case.

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36 Annex "A", Petition, Records, Vol. I, pp. 34-37.
37 Court Operations on August 2-20, 2021, July 30, 2021.
38 Court Operations Starting August 23, 2021, August 20, 2021.
39 Reiteration of OCA Circular No. 114-2021, dated August 20, 2021, August 28, 2021.
40 Addendum to OCA Circular No. 119-2021, September 8, 2021.
41 Court Operations Beginning October 18, 2021, October 14, 2021.
42 Court Operations Beginning October 20, 2021 until October 29, 2021, October 18, 2021.
43 Court Operations Beginning September 16, 2021, September 15, 2021.

A PAN must be actually received by a taxpayer.

Petitioner posits that it did not receive a PAN for the instant assessment. On the other hand, respondent insists that a PAN was issued and duly served to petitioner. This Court finds for petitioner.

It is undeniable that a PAN is a mandatory requirement of due process in tax assessment proceedings. It offers an opportunity for a taxpayer to contest a pre-assessment before the BIR issues a final assessment. Thus, a PAN must be actually received by a taxpayer. Further, the taxpayer must be given a right to respond (*i.e.,* a reasonable period to respond) to a PAN before a final assessment is issued against him or her.

In *Commissioner of Internal Revenue v. Yumex Philippines Corporation,*[44] the Supreme Court reiterated the importance of a PAN as part and parcel of due process in tax assessment proceedings, *viz.*:

> Proceeding to the issue of violation of respondent's due process, Sec. 228 of the NIRC mandates petitioner to inform the taxpayer in writing of the law and the facts on which the assessment is made; otherwise, the assessment is void. Said provision reads:
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>> SECTION 228. Protesting of Assessment. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:
>>
>> . . . .
>>
>> 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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> To implement the procedural and substantive rules on assessment of national internal revenue taxes, the BIR issued RR No. 12-99, Sec. 3 of which provides:
>
>> SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —

[44] G.R. No. 222476, May 5, 2021.

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 Notice for informal conference. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

3.1.2 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Assessment Division or 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, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based. . . 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 assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

. . . .

3.1.4 Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand 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 formal letter of demand and assessment notice shall be void. . . The same shall be sent to the taxpayer only by registered mail or by

> personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

Clearly from the aforequoted provisions, the taxpayer has fifteen (15) days from date of receipt of the PAN to respond to the said notice. Only after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN.

. . . .

Per the evidence on record, the BIR issued a PAN dated December 16, 2010, which it posted by registered mail the next day, December 17, 2010. It then issued and mailed the FLD/FAN on January 10, 2011. Although posted on different dates, the PAN and FLD/FAN were both received by the Post Office of Dasmariñas, Cavite, on January 17, 2011, and served upon and received by respondent on January 18, 2011. Under the circumstances, respondent was not given any notice of the preliminary assessment at all and was deprived of the opportunity to respond to the same before being given the final assessment.

In Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (Avon case), the Court enjoined strict observance by the BIR of the prescribed procedure for issuance of the assessment notices with due regard for the taxpayers' constitutional rights. It is mandatory that the BIR not only inform the taxpayer through the PAN, FLD, and FAN of the facts, law and regulations, and jurisprudence on which the assessment against it is based, but it must also accord the taxpayer the opportunity to be heard through the entire process, i.e., from tax investigation until tax assessment. Pertinent portions of the Avon Case are reproduced below:

> The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts, to issue a subpoena, and to assess based on best evidence obtainable, among others. However, these powers must "be exercised reasonably and [under] the prescribed procedure." The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayers' constitutional rights.
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> . . . .
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> 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 of Revenue

> Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.
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> "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.
>
> On the other hand, the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment. Under Section 3.1.1 of Revenue Regulations No. 12-99, the taxpayer is given 15 days from receipt of the Notice for Informal Conference to respond; otherwise, he or she will be considered in default and the case will be referred to the Assessment Division for appropriate review and issuance of deficiency tax assessment, if warranted. Again, under Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of demand and Final Assessment Notices will be issued. After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals.

The Court, in Commissioner of Internal Revenue v. Metro Star Superama, Inc., stressed the importance of the PAN, in particular, as a substantive, and not just a formal, due process requirement, thus:

> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence.

. . . .

From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities. The use of the word "shall" in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.

. . . .

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while 'taxes are the lifeblood of the government,' the power to tax has its limits, in spite of all its plenitude. Hence in Commissioner of Internal Revenue v. Algue, Inc., it was said —

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.

. . . .

It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion

> that it is an arbitrary method of exaction by those in the seat of power.
>
> 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.

> That respondent was able to file a protest to the FLD/FAN is of no moment. In Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue, the BIR ignored RR No. 12-99 and did not issue to the taxpayer, Pilipinas Shell Petroleum Corporation (PSPC), a notice for informal conference and a PAN as required; and as a result, deprived PSPC of due process in contesting the formal assessment levied against it. The Court pronounced therein that '[w]hile PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued.'The Court once more reminded the BIR to be more circumspect in the exercise of its functions as the power of taxation is also sometimes called the power to destroy and, therefore, should be exercised with caution to minimize injury to the proprietary rights of the taxpayer.

The issuance of a PAN is thus not just a formal but a substantive requirement. Without it, a taxpayer is not given an opportunity to have its case heard, regardless of whether or not it actually filed a protest, resulting in a violation of its due process rights.

Applying this to the case at bar, petitioner's right to due process was clearly violated when it did not receive a PAN for the instant assessment.

As duly shown by the BIR Records, particularly, respondent's offered evidence: Exhibits "R-3"[45] and "R-4",[46] a PAN and an additional PAN were issued on December 10, 2014 and December 18, 2014, respectively, pre-assessing petitioner with deficiency income tax and VAT. However, neither petitioner nor respondent provided evidence such as a written report of service of the PAN to actually show that such PAN or additional PAN had indeed been served upon petitioner in its registered business address at Makiling, Calamba City, Laguna 4027, and if the same were actually served upon petitioner, the manner of service thereof. This clearly shows that petitioner was not actually served with a PAN.

That respondent failed to serve a PAN to petitioner was in fact elicited from respondent's own witness, Jan Michael Rivera, when the latter was placed on the witness stand on July 11, 2023,[47] *viz.*:

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45 BIR Records, pp. 544-546.
46 *Id.,* p. 547.
47 TSN, dated July 11, 2023, pp. 5-9.

Q: Mr. Witness, we are showing you pages 545 to 546 of the BIR records which is marked as Exhibit "R-3". Mr. Witness, this is the same preliminary notice that you are referring to in your Judicial Affidavit, correct?

A: Yes.

Q: Atty. Rivera, will you agree that on its face there is no proof of receipt of the PAN by Lakeside?

A: Minsan po kasi may ibang attachment kapag na-mail. So, on its face wala sa PAN na ito.

Q: We are showing you the Letter of Authority on page 1 of the BIR records marked as Exhibit "R-10" and the duly authorized representative of Lakeside is Ms. Concepcion Arseno, correct?

A: Yes.

Q: And then going back to the PAN, Ms. Arseno signature does not appear on PAN, correct?

ATTY. BAYONA: Objection, your Honors, the document speaks for itself.

JUSTICE LIBAN: He is on cross. He is just verifying whether or not there is a signature. Anyway, if there is no signature you can explain during your re-direct.

ATTY. BAYONA: Yes, your Honors.

ATTY. CASTILLO: I will repeat the question. Ms. Arseno signature does not appear on the PAN, correct?

A: On the face of the PAN, yes.

Q: Infact [sic] there is no name and signature of Lakeside or its authorized representative on the face of the PAN, correct?

A: Yes.

Q: And you will agree with me there is absolutely nothing in the records of the BIR which indicate that Lakeside ever received the PAN, correct?

A: I would have to check the records regarding the receipt of the PAN.

Q: Mr. Witness, would you be able to point or identify in the BIR records?

JUSTICE LIBAN: Let him see the records.

JUSTICE SAN PEDRO: Let the records reflect that the witness is going through the entire BIR records.

A: Please repeat the question.

ATTY. CASTILLO: Mr. Witness, so you will agree that there is absolutely nothing in the BIR records which indicate that Lakeside ever received the PAN, correct?

JUSTICE LIBAN: You cannot find any?

A: None, your Honors.

JUSTICE LIBAN: Okay, answer.

A: Yes.

ATTY. CASTILLO: Mr. Witness, we are showing page 547 of the BIR records which marked as Exhibit "R-4". This is the same additional PAN dated December 18, 2014 that you are referring to in your Judicial Affidavit, correct?

A: Yes.

Q: Mr. Witness, please examine the additional PAN?

A: Yes.

Q: Mr. Witness, please examine the additional PAN. Will you agree with me that on its face there is no proof of receipt of the additional PAN by Lakeside?

A: Yes.

Q: And infact [sic] on its there is no signature by Ms. Arseno or any authorized representative from Lakeside, correct?

A: Yes.

Q: And you will agree with me that there is absolutely nothing in the records of the BIR which indicate that Lakeside ever received the additional PAN, correct?

A: Yes.

As respondent failed to properly serve the PAN to petitioner, he violated the latter's right to due process. the deficiency tax assessments against petitioner are consequently null and void for having been issued in violation of said due process requirements under the law.

<u>Once receipt of the PAN is denied by the taxpayer, it becomes incumbent upon respondent to prove by preponderance of evidence that the PAN was actually received by the taxpayer.</u>

Once receipt of the assessment notices is denied and controverted by the taxpayer, the burden of proof is shifted to the CIR to prove through a preponderance of evidence that the taxpayer, or his or her authorized representative, indeed received the subject assessment notices. This was categorically declared by the Supreme Court in *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*,[48] to wit:

> As can be gleaned from the [*Section 228 of the NIRC* and *Section 3 of RR No. 12-99]*, service of the PAN or the FAN to the taxpayer may be made by registered mail. Under Section 3(v), Rule 131 of the Rules of Court, there is a disputable presumption that 'a letter duly directed and mailed was received in the regular course of the mail.' However, the presumption is subject to controversion and direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee.
>
> In view of respondent's categorical denial of due receipt of the PAN and the FAN, the burden was shifted to the CIR to prove that the mailed assessment notices were indeed received by respondent or by its authorized representative.

In the present case, petitioner has unequivocally denied receipt of the PAN. Accordingly, the burden to prove that the PAN was received by petitioner is shifted to respondent.

As duly examined by this Court, respondent failed to provide convincing proof that the PAN was indeed received by the petitioner. Instead of presenting proof of actual receipt of the PAN, respondent merely argued that petitioner should not be allowed to raise for the first time on appeal questions which were not raised at the administrative forum as it would violate the rules of exhaustion of administrative remedies and doctrine that new issues cannot be raised for the first time on appeal. This, however, does not suffice to discharge such burden of proof. In any event, as cases before this Court are litigated *de novo*, We are not precluded from entertaining arguments or even evidence not raised at the administrative level.[49] Consequently, there is no evidence that the PAN was actually received by petitioner or its authorized representative. Y

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[48] Resolution, G.R. No. 240729, 24 August 2020.

[49] *Commissioner of Internal Revenue v. Nanox Philippines, Inc.*, G.R. No. 230416 (Notice), May 5, 2021; *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*, G.R. Nos. 206079-80 & 206309, January 17, 2018.

What is more, respondent did not just fail to discharge his burden to prove that petitioner actually received a PAN. His own witness, as shown above, even admitted that there was no proof of such receipt.

Failure to prove that the PAN was indeed received by petitioner renders the instant assessment null and void. Without proof of receipt, the PAN is deemed not received by petitioner. Hence, petitioner's right to be informed of the assessments issued against it has been violated.

Given the above discussions, the Court deems it unnecessary to tackle the other issues raised in the Petition.

ACCORDINGLY, in light of the foregoing considerations, the instant Petition is **GRANTED**. The PAN, FLD/FAN, FDDA, and Assailed Decision issued against petitioner are declared **NULL AND VOID**. Accordingly, the deficiency income tax and VAT assessments issued against petitioner for the taxable year 2011, in the aggregate amount of Php2,500,509.20, inclusive of surcharge, interest and/or compromise penalty are hereby **CANCELLED** and **SET ASIDE**. Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

On leave
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

A T T E S T A T I O N

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.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice
Acting Chairperson

C E R T I F I C A T I O N

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

ROMAN G. DEL ROSARIO
Presiding Justice