REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

JOSELITO B. YAP, *Petitioner,*	**CTA Case No. 10063**
- versus -	Members: **DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
BUREAU OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** NOV 29 2022 ; 3:34 p.m.

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DECISION

REYES-FAJARDO, J.:

This is a *Petition for Review* filed by petitioner Joselito B. Yap against respondent Bureau of Internal Revenue (BIR) on April 11, 2019, praying that judgment be rendered declaring the assessment notices and preliminary collection letter (PCL) notices for taxable years (TY) 2011, 2012, and 2013, null and void.[1]

THE PARTIES

Petitioner is the proprietor of JAPI Enterprises and is engaged in transportation/trucking services.[2] Respondent is a government agency charged with the assessment and collection of internal revenue taxes.[3]

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[1] Statement of the Case, Pre-Trial Order dated March 11, 2020, Docket – Vol. I, p. 398.
[2] Par. 1, *Petition for Review,* Docket – Vol. I, p. 10.
[3] Section 2, National Internal Revenue Code of 1997, as amended.

FACTS

On June 10, 2014, respondent issued electronic *Letters of Authority* (LOA) No. 015-2014-00000015 for TY 2011, LOA No. 015-2014-00000014 for TY 2012, and LOA No. 015-2014-00000013 for TY 2013,[4] covering the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes including documentary stamp tax and other taxes.[5]

On January 15, 2015, respondent issued *Preliminary Assessment Notices* (PANs) for the following TYs with the corresponding deficiency taxes, inclusive of interest and surcharge:[6]

TAXABLE YEAR	INCOME TAX	VAT	REG. FEE	SUB-TOTAL
2011	₱55,637,931.60	₱21,512,240.11	0.00	₱ 77,150,171.71
2012	8,721,834.25	3,030,712.16	0.00	11,752,546.41
2013	59,944,686.44	22,930,594.93	756.11	82,876,037.48
TOTAL				**₱171,778,755.60**

On January 23, 2015, petitioner filed its reply to the PAN (Legal Petition Notice (LPN) dated January 21, 2015) for TYs 2011,[7] 2012,[8] and 2013.[9]

On June 22, 2015, respondent issued *Formal Assessment Notices and Formal Letters of Demand* (FAN/FLD) for the following TYs with the corresponding deficiency taxes, inclusive of interest and surcharge:[10]

TAXABLE YEAR	INCOME TAX	VAT	REG. FEE	SUB-TOTAL
2011	₱57,990,104.32	₱22,392,903.29	0.00	₱80,383,007.61
2012	9,130,424.68	3,174,014.56	0.00	12,304,439.24
2013	63,128,303.40	24,116,530.78	800.00	87,245,634.18
TOTAL				**₱179,933,081.03**

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4 Par. 2, Joint Stipulation of Facts, *JSFI*, Docket - Vol. I, p. 347.
5 Exhibits "P-1", "P-2", and "P-3", Docket - Vol. I, pp. 432-434.
6 Par. 3, Joint Stipulation of Facts, JSFI, Docket - Vol. I, p. 347.
7 Exhibit "R-9", BIR Records Folder 1, pp. 144 to 147.
8 Exhibit "R-31", BIR Records Folder 2, pp. 194 to 197.
9 Exhibit "R-51", BIR Records Folder 3. pp. 159 to 162.
10 Par. 4, Joint Stipulation of Facts, *JSFI*, Docket - Vol. I, p. 348.

On July 24, 2015, petitioner filed protests/requests for reinvestigation (LPN dated July 11, 2015) for TYs 2011, 2012, and 2013.[11]

On September 22, 2015, petitioner filed supplemental protests for TYs 2011 and 2012 (LPN dated September 18, 2015), and 2013 (LPN dated September 19, 2015) (collectively, LPN dated September 18/19, 2015).[12]

On May 24, 2018, respondent issued a letter granting petitioner's requests for reinvestigation for TYs 2011, 2012, and 2013.[13]

On September 4, 2018, petitioner received respondent's letter dated July 30, 2018, informing him of his alleged failure to submit relevant supporting documents within sixty (60) days from the filing of his protests; and his cases have become final, executory, and demandable, therefore due for collection enforcement.[14]

On October 9, 2018, petitioner received respondent's letter dated September 27, 2018, informing him that his motion for reinvestigation was not pursued.[15]

On April 4, 2019, petitioner received copies of respondent's Preliminary Collection Letter (PCL) Notices dated April 4, 2019 for TYs 2011, 2012, and 2013.[16]

The *Petition for Review* was filed on April 11, 2019.[17]

Respondent filed an *Answer* on July 23, 2019.[18]

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[11] Exhibit "P-10" Docket - Vol. I, pp. 465-477; Par. 4, *Answer*, Docket - Vol. I, p. 191 and Par. 15, *Answer*, Docket - Vol. I, p. 195, in relation to Section 4 of Rule 129 of the Rules of Court, as amended by A.M. No. 19-08-15-SC.

[12] Exhibit "P-15", Docket - Vol. I, pp. 510-514; Exhibit "R-57", BIR Records Folder 3-A pp. 191-195; *Resolution dated July 15, 2021*, Docket- Vol. 2, pp. 752-753.

[13] Par. 5, Joint Stipulation of Facts, *JSFI*, Docket - Vol. I, p. 348.

[14] Par. 6, Joint Stipulation of Facts, *JSFI*, Docket - Vol. I, p. 348.

[15] Par. 7, Joint Stipulation of Facts, *JSFI*, Docket - Vol. I, p. 348.

[16] Par. 8, Joint Stipulation of Facts, *JSFI*, Docket - Vol. I, p. 348.

[17] *Petition for Review*, Docket - Vol. I, pp. 10 to 18.

[18] *Answer*, Docket - Vol. I, pp. 190 to 208.

On July 29, 2019, the Court referred the case to mediation in the Philippine Mediation Center - Court of Tax Appeals (PMC-CTA). [19] On September 9, 2019, the PMC-CTA issued a report stating that the parties decided not to undergo mediation.[20]

The Pre-Trial Conference was held on November 21, 2019.[21]

On November 13, 2019, respondent filed a *Pre-Trial Brief*,[22] while petitioner's *Pre-Trial Brief* was filed on November 15, 2019.[23]

On November 15, 2019, respondent transmitted the *BIR Records*.[24]

On December 11, 2019, the parties posted their *Joint Stipulation of Facts and Issues*,[25] which this Court approved on January 16, 2020.[26] On March 11, 2020, the *Pre-Trial Order* was issued.[27]

Petitioner presented documentary evidence and the testimony of Amarie Duque, Compliance Officer of JAPI Enterprises.[28] *Petitioner's Formal Offer of Evidence* was filed on October 7, 2020;[29] while respondent filed a *Comment/Opposition (to Petitioner's Formal Offer of Evidence) with Manifestation* on November 19, 2020.[30] On December 1, 2020, the Court admitted petitioner's offered exhibits, except for Exhibits "P-11" to "P-14", "P-16", "P-18" and "P-19", for failure to present the originals for comparison, as detailed below:[31]

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19 *Resolution dated July 29, 2019*, Docket - Vol. I, pp. 211 to 212.
20 *No Agreement to Mediate (PMC-CTA Form 6)*, Docket - Vol. I, p. 214.
21 *Notice of Pre-Trial Conference*, Docket - Vol. I, pp. 219 to 220; *Minutes of the Hearing* and *Order* dated November 21, 2019, Docket - Vol. I, pp. 330 to 334.
22 *Respondent's Pre-Trial Brief*, Docket - Vol. I, pp. 223 to 230.
23 *Pre-Trial Brief*, Docket - Vol. I, pp. 318 to 327.
24 *Compliance*, Docket - Vol. I, p. 325 to 327.
25 *JSFI*, Docket - Vol. I, pp. 347 to 357.
26 *Resolution dated January 16, 2020*, Docket - Vol. I, p. 361.
27 *Pre-trial Order*, Docket - Vol. I, pp. 398 to 411.
28 Exhibit "P-24", Docket - Vol. I, pp. 306 to 317; Minutes of the hearing held on, and Order dated, March 10, 2020, Docket - Vol. I, pp. 384 to 387.
29 *Petitioner's Formal Offer of Evidence*, Docket - Vol. I, pp. 426 to 431.
30 *Comment / Opposition (to Petitioner's Formal Offer of Evidence with Manifestation)*, Docket - Vol. I, pp. 673 to 676.
31 *Resolution dated December 1, 2020*, Docket - Vol. II, pp. 680 to 681.

Exhibit No.	Description
"P-11" (common exhibit/ R-37 to R-37-A)[32]	Legal Petition Notice dated 11 July 2015 (for Taxable Year 2012)
"P-12"	Legal Petition Notice dated 11 July 2015 (for Taxable Year 2013)
"P-13"	Legal Petition Notice dated 18 September 2015 (for Taxable Year 2011)
"P-14"	Legal Petition Notice dated 18 September 2015 (for Taxable Year 2012)
"P-16"	Letter from Respondent dated 24 May 2018
"P-18"	Legal Petition Notice dated 6 September 2018
"P-19"	Letter dated 27 September 2018

Respondent offered the testimonies of the following Revenue Officers (RO): (1) Pamela Español, [33] (2) Zarah Rosanna M. Dumaga,[34] and (3) Elizabeth Soriano.[35] *Respondent's Formal Offer of Evidence* was filed on March 17, 2021.[36] Petitioner posted his *Comments/Objections (Re: Respondent's Formal Offer of Evidence dated 16 March 2021)* on May 24, 2021.[37] On July 15, 2021, the Court admitted respondent's offered exhibits, except for Exhibits "R-13", "R-37", and "R-37-A", for respondent's failure to have the documents marked, and Exhibit "R-56-B", for respondent's failure to identify the same, to wit:[38]

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32 Par. 4, *Answer*, Docket - Vol. I, p. 191 and Par. 15, *Answer*, Docket - Vol. I, p. 195, in relation to Section 4 of Rule 129 of the Rules of Court, as amended by A.M. No. 19-08-15-SC ("Section 4. Judicial admissions. - An admission, oral or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that the imputed admission was not, in fact, made."), provide:

> *"4. Except the facts that petitioner filed a protest/request for reinvestigation on 24 July 2015 and that respondent issued a letter dated 30 July 2018 which he* ***ADMITS****, respondent* ***SPECIFICALLY DENIES*** *the allegations contained in paragraph 18, 20, 29 and 31 under the caption "Arguments/Grounds for Allowance of the Petition" for being false, the truth of the matter being that as discussed in respondent's affirmative defenses.*
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> ...
>
> *15. As admitted by petitioner, he received the Formal Letters of Demand (FLDs) and Final Assessment Notices (FANs) for taxable years 2011, 2012 and 2013, on 25 June 2015. He filed his protest to the FLDs and FANs on 24 July 2015 through Legal Petition Notices (LPNs) dated 15 July 2015."*

33 Exhibit "R-72", Docket - Vol. I, pp. 245 to 258; Minutes of the hearing held on, and Order dated, January 21, 2021, Docket - Vol. II, pp. 682 to 688.

34 Exhibit "R-73", Docket - Vol. I, pp. 281 to 294; Minutes of the hearing held on, and Order dated, January 21, 2021, Docket - Vol. II, pp. 682 to 688.

35 Exhibit "R-70", Docket - Vol. I, pp. 263 to 276; Minutes of the hearing held on, and Order dated, March 2, 2021, Docket - Vol. II, pp. 689 to 695.

36 *Respondent's Formal Offer of Evidence*, Docket - Vol. II, pp. 696 to 729.

37 *Comments / Objections (Re: Respondent's Formal Offer of Evidence dated 16 March 2021)*, Docket - Vol. II, pp. 732 to 746.

38 *Resolution dated July 15, 2021*, Docket - Vol. II, pp. 752 to 753.

Exhibit No.	Description
"R-13"	Letter dated 14 April 2015
"R-37"[39]	Legal Petition Notice dated July 11, 2015 (for Taxable Year 2012) (Common Exhibit - P-11 of Petitioner)
"R-37-A"	First paragraph under the caption "What I Understood" of the Legal Petition Notice dated July 11, 2015
"R-56-B"	Audit Result/ Assessment Notice (BIR Form 0401) with Assessment No. R3-Rf-015-002

On October 31, 2021, respondent's *Memorandum* was filed,[40] while petitioner's *Memorandum* was posted on November 15, 2021.[41]

The case was submitted for decision on December 16, 2021.[42]

ISSUES

The parties agreed that the issues to be tried or resolved are as follows:

1. Whether or not the Honorable Court has jurisdiction over the instant case.

2. Should the Court assume jurisdiction over the case, whether or not petitioner is liable for the payment of deficiency income tax and value-added tax for taxable year 2011 in the aggregate amount of ₱80,383,007.61, deficiency income tax and value-added tax for taxable year 2012 in the aggregate amount of ₱12,304,439.24, and deficiency income tax, value-added tax and registration fee for taxable year 2013 in the aggregate amount of ₱87,245,634.18, plus surcharges and interests.[43]

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39 *Supra* note 32.
40 *Memorandum*, Docket - Vol. II, pp. 754 to 775.
41 *Memorandum*, Docket - Vol. II, pp. 781 to 796.
42 *Resolution dated December 16, 2021*, Docket - Vol. II, p. 799.
43 Joint Statement of Issues to be Tried or Resolved, *JSFI*, Docket - Vol. I, p. 348.

RULING

The *Petition for Review* is granted.

The Court has jurisdiction over cases involving disputed assessments, the Petition having been filed within thirty (30)-days from receipt of respondent's final decision.

The taxpayer may challenge a deficiency tax assessment in the periods fixed under Section 228 of the National Internal Revenue Code (NIRC), as amended, following the remedies under Revenue Regulations (RR) No. 18-2013,[44] to wit:

> 3.1.4 Disputed Assessment. - The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> (i) Request for reconsideration- refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) Request for reinvestigation- refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
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> The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.*

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44 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

...

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

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

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner."

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request for reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: **(i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.**

If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's

> denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.
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> If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; **or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.**
>
> It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other.[45]

Under the aforeqouted provisions, the Commissioner or his duly authorized representative has one hundred eighty (180) days from submission of supporting documents within which to act upon or resolve the protest that the taxpayer filed. If the Commissioner or his duly authorized representatives denies the protest, in whole or in part, within the said 180-day period, the taxpayer has thirty days (30) from receipt of the denial within which to appeal to the CTA.

In case of inaction throughout the 180-day period, the taxpayer has two options under RR No. 12-99, as amended by RR No. 18-2013, to wit: (1) appeal to the Court in Division within thirty (30) days from March 20, 2016, which is the last day of the one hundred eighty (180)-day period; or (2) await the final decision on disputed assessment (FDDA) of respondent and appeal such decision to this Court within thirty (30) days from receipt.

In the case of petitioner's protest in the present case, respondent allowed the one hundred eighty (180)-day period to lapse without any action.

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45 Boldfacing supplied.

If we recall, on July 24, 2015, petitioner filed protests/requests for reinvestigation (LPN dated July 11, 2015) for TYs 2011, 2012, and 2013.[46] On September 22, 2015, petitioner submitted supplemental protests (LPN dated September 18/19, 2015)[47] for TYs 2011, 2012, and 2013.[48] Thus, respondent has one hundred eighty (180) days from petitioner's submission of documents or until March 20, 2016 to act on petitioner's requests for reinvestigation.

Counting from the petitioner's filing of its supplemental protest (LPN dated September 18/19, 2015) on September 22, 2015, the one hundred eighty (180)-day period lapsed without any action on the part of respondent.

Petitioner did not avail of the first option to file an appeal within thirty (30) days from the lapse of the one hundred eighty (180)-day period under RR No. 12-99. It instead chose the second option to await for the final decision on disputed assessment (FDDA).

This is where petitioner and respondent diverge. On one hand, petitioner considered the PCL Notices for TYs 2011, 2012, and 2013[49] received on April 4, 2019 as the FDDA which is the decision appealable to the Court in Division while respondent asserts the letter dated July 30, 2018, received on September 4, 2018 constitutes the FDDA appealable to the Court in Division.[50]

If petitioner is sustained, the thirty (30)-day period to file the appeal should be reckoned on April 4, 2019, the time petitioner received the PCL Notices for TYs 2011, 2012, and 2013.[51] In this case, the Petition for Review filed on April 11, 2019 was well-filed within the thirty (30)-day period. If respondent is to be followed, the thirty (30)-day period to appeal with this Court should be reckoned from receipt of the letter dated July 30, 2018, on September 4, 2018, in which

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46 Exhibit "P-10" Docket - Vol. I, pp. 465-477; Par. 4, *Answer*, Docket - Vol. I, p. 191 and Par. 15, *Answer*, Docket - Vol. I, p. 195, in relation to Section 4 of Rule 129 of the Rules of Court, as amended by A.M. No. 19-08-15-SC.
47 The Judicial Affidavits of the respective ROs for TYs 2011 and 2012 have identified the BIR Record which contains the supplemental protests (LPN dated September 18, 2015) of petitioner (Exhibit "R-69-A", BIR Records Folder 1-A, pp. 218-222; Exhibit "R-70-a", BIR Records Folder 2-A, pp. 235-239).

48 Exhibit "P-15", Docket - Vol. I, pp. 510-514; Exhibit "R-57", BIR Records Folder 3-A pp. 191-195; *Resolution dated July 15, 2021*, Docket- Vol. 2, pp. 752-753.

49 Par. 3 to 4, *Petition for Review*, Docket - Vol. I, p. 10.

50 Par. 3, *Answer*, Docket - Vol. I, p. 192.

51 Par. 3 to 4, *Petition for Review*, Docket - Vol. I, p. 10.

case the Petition for Review filed on April 11, 2019, was filed out of time.

Therefore, whether the PCL Notices or the letter received on September 4, 2019, may be considered as the FDDA which is the decision appealable to the Court in Division is a pivotal issue in the determination of the Court in Division's jurisdiction.

We sustain petitioner. The PCL Notices for TYs 2011, 2012, and 2013[52] received on April 4, 2019 are considered the FDDA or the decision appealable to the Court in Division. Thus, the thirty (30)-day period to appeal with this Court should be reckoned from the receipt of the PCL Notices, i.e., April 4, 2019, and not from the date petitioner received the letter dated July 30, 2018, i.e., September 4, 2018. The Petition for Review was therefore timely filed on April 11, 2019.

A letter may be considered the Commissioner's final decision on a disputed assessment, if it communicates to the taxpayer in clear and unequivocal language what constitutes the Commissioner's final determination of the disputed assessment. the Supreme Court explained the requirement in *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue (Oceanic)*,[53] to wit:

> We laid down the rule that **the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment**, thus:
>
> ...we deem it appropriate to state that the Commissioner of Internal Revenue **should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer** constitutes his final determination on the disputed assessment, as contemplated by Sections 7 and 11 of Republic Act No. 1125, as amended. **On the basis of his statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the**

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[52] Par. 3 to 4, *Petition for Review,* Docket – Vol. I, p. 10.

[53] *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, The Court of Tax Appeals, and the Court of Appeals,* G.R. No. 148380, December 9, 2005 as cited in *Ten-Four Readymix Concrete, Inc. v. Commissioner of Internal Revenue,* CTA EB No. 2311 (CTA Case No. 10081), January 25, 2022.

> **taxpayer would be able to determine when his right to appeal to the tax court accrues.**
>
> The rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment - and, consequently, the collection of the amount demanded as taxes - by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the Commissioner from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action.[54]

It is clear that the letter received on September 4, 2018 did not communicate respondent's final determination on the disputed assessment in clear and unequivocal language. Instead, the letter from Regional Director Thelma S. Milabao of Revenue Region No. 03, Tuguegarao City dated July 30, 2018 informed petitioner that he failed to submit relevant supporting documents within sixty (60) days from filing of the protest.[55] The letter[56] provides:

> Please be informed that pertinent portion of Section 228 of the Tax Code and Section 3.1.5 of RR No. 12-99 specifically provides that -
>
> > *"If the protest is denied in whole and in part or is not acted upon within one hundred eighty (180) days from submission of document, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision or from the lapse of one hundred (sic) (180) day period; otherwise, <u>the decision shall become final, executory and demandable."</u>*
>
> Moreover, RR No. 18-2013 further clarified by Revenue Memorandum Circular No. 11-2014 provides that -
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> > *"...the taxpayer shall submit all the relevant supporting documents in support of his protest within sixty (60) days from date of filing [his/her] protest, otherwise, the <u>assessment shall become final."</u>*

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54 Boldfacing supplied.
55 Par. 16 to 17, *Answer*, Docket - Vol. I, p. 192.
56 Exhibit "P-17", Docket - Vol. I, p. 517.

After further evaluation made by the investigating office and considering that you failed to submit relevant documents within sixty (60) days from filing of protest, your cases have become final, executory and demandable pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997 as implemented by Revenue regulation (RR) Nos. 12-99 and 18-2013.

Hence, due for collection enforcement.

(Sgd.)
THELMA S. MILABAO
Regional Director

It is true that the September 4, 2018 letter as aforequoted, states that the assessments against petitioner have become final, executory, and demandable due to petitioner's failure to submit relevant documents. However, in *Commissioner of Internal Revenue v. First Express Pawnshop Co., Inc.,*[57] the Supreme Court ruled that an assessment cannot be rendered final, executory, and demandable by respondent's mere declaration that a taxpayer has failed to submit relevant supporting documents, to wit:

> **The term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer.** The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.
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> . . .
>
> Respondent has complied with the requisites in disputing an assessment pursuant to Section 228 of the Tax Code. Hence, the tax assessment cannot be considered as final, executory and demandable.[58]

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57 G.R. No. 172045-46, June 16, 2009 as cited in *8196 Convenience Corporation v. Commissioner of Internal Revenue,* CTA Case No. 9818, June 14, 2022 and *Commissioner of Internal Revenue v. Bisazza Philippines, Inc.,* CTA EB No. 1870 (CTA Case No. 9372), September 2, 2019.

58 Boldfacing supplied.

RR No. 18-2013, which was issued by respondent and was cited in the letter received by petitioner on September 4, 2018, likewise define "relevant supporting documents" in similar terms, as follows:

> For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of [the taxpayer's] protest within sixty (60) days from date of filing of [the taxpayer's] letter of protest, otherwise, the assessment shall become final. The term *"relevant supporting documents"* refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer... Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

Even granting that petitioner failed to submit relevant supporting documents, his failure to submit additional documents in support of his protests would only render the assessments final as defined by RR No. 18-2013, which means that the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence. This would result in the denial of the request for reinvestigation and consequently, the issuance of the FDDA against the taxpayer.[59]

The PCL Notices, on the other hand, reiterated the tax deficiency assessments of petitioner and requested the payment thereof. It indicated that if payment of the deficiency taxes be not made, respondent will be *"constrained to enforce the collection thereof [through] the Administrative Summary remedies provided for by law, without further notice,"* similarly as in *Oceanic*,[60] to wit:

> In this case, the letter of demand dated January 24, 1991, unquestionably constitutes the final action taken by the Bureau of Internal Revenue on petitioner's request for reconsideration when it **reiterated the tax deficiency assessments due from petitioner, and requested its payment. Failure to do so would result in the "issuance of a warrant of distraint and levy to enforce its collection without further notice."** In addition, the letter contained a notation

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59 RR No. 18-2013 as cited in *Commissioner of Internal Revenue v. Max's Sta. Mesa, Inc.*, CTA EB No. 2036 (CTA Case No. 8786), June 8, 2021.

60 *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, The Court of Tax Appeals, and the Court of Appeals*, G.R. No. 148380, December 9, 2005 as cited in *Ten-Four Readymix Concrete, Inc. v. Commissioner of Internal Revenue*, CTA EB No. 2311 (CTA Case No. 10081), January 25, 2022.

indicating that petitioner's request for reconsideration had been denied for lack of supporting documents.[61]

For this reason, the PCL Notices are respondent's decision to the disputed assessments. In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (Avon),*[62] the Supreme Court ruled that the Collection Letter may be considered respondent's decision and therefore the reckoning point of the thirty (30)-day period to appeal with this Court, to wit:

> This Court holds that the Collection Letter dated July 9, 2004 constitutes the final decision of the Commissioner that is appealable to the Court of Tax Appeals. **The Collection Letter dated July 9, 2004 demanded from Avon the payment of the deficiency tax assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice.** The Collection Letter was purportedly based on the May 27, 2004 Memorandum of the Revenue Officers stating that Avon "failed to submit supporting documents within [the] 60-day period." **This Collection Letter demonstrated a character of finality such that there can be no doubt that the Commissioner had already made a conclusion to deny Avon's request and she had the clear resolve to collect the subject taxes.**[63]

Similarly, the tenor of the PCL Notices in this case, was of finality and was an unequivocal demand of payment since respondent would be constrained to enforce administrative summary remedies in case of petitioner's failure to do so. This is also inferred in the warning of respondent in the PCL Notices that failure to pay the deficiency taxes due would result in the accumulation of delinquency interest.

The Court has jurisdiction over other matters.

In any case, even if the PCL Notices are not to be regarded as the final decision of the respondent, the PCL Notices constitute an act of respondent as "other matters" arising under the NIRC, as amended, which may be the subject of an appropriate appeal before the Court of

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61 Boldfacing supplied.

62 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. / Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue,* G.R. Nos. 201398-99 / G.R. Nos. 201418-19, October 3, 2018.

63 Boldfacing supplied.

Tax Appeals,[64] as provided in *Philippine Journalists, Inc. v. Commissioner of Internal Revenue.*[65]

This Court has appellate jurisdiction not only on "decisions of" or "inaction by" the Commissioner of Internal Revenue in cases involving disputed assessments but also on "other matters" arising under the NIRC, as amended and related laws administered by the BIR pursuant to Section 7(a)(1) and (2), and 11 of R.A. No. 1125,[66] as amended by R.A. No. 9282,[67] to wit:

> 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 of action, in which case the inaction shall be deemed a denial;
>
> ...
>
> 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

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64 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. / Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue,* G.R. Nos. 201398-99 / G.R. Nos. 201418-19, October 3, 2018.

65 G.R. No. 162852, December 16, 2004.

66 An Act Creating the Court of Tax Appeals (CTA).

67 An Act Expanding the Jurisdiction of the Court of Tax Appeals, Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of RA No. 1125, as amended, Otherwise Known as The Law Creating CTA, and for Other Purposes.

ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.[68]

The assessments for taxable year 2011, 2012 and 2013 are void for violation of petitioner's right to due process.

There was improper service of the LOA and the assessment notices.

Petitioner avers that the assessments are void since there was a violation of his right to due process. Petitioner alleges that the LOA and FAN/FLD (collectively, BIR Notices) were received by persons who are not employees of JAPI Enterprises and that the LOA and FAN/FLD were not served at JAPI Enterprise's registered address.[69]

Respondent submits that petitioner implicitly admitted the receipt of the LOA and the assessment notices as evidenced by the LPNs filed and that the authority of the persons who received the same were never assailed in the administrative level by petitioner. Thus, petitioner is allegedly now estopped from denying their authority.[70]

The Court disagrees with respondent.

This Court litigates *de novo* and, thus, is not bound by the issues raised by the parties during the administrative proceedings but may also rule upon related issues necessary to achieve an orderly disposition of the case. [71]

The general rule that appeals can only raise questions of law or fact that (a) were raised in the court below and (b) are within the issues framed by the parties therein, admits of the following exceptions: (1) in the interest of substantial justice, matters of record having some

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68 Boldfacing supplied.
69 *Petition for Review,* Docket - Vol. I, p. 16.
70 *Answer,* Docket - Vol. I, pp. 196 to 202.
71 *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.,* G.R. No. 183408, July 12, 2017; *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.,* G.R. No. 163835, July 7, 2010; Section 1, Rule 14 of A.M. No. 05-11-07-CTA (Revised Rules of the Court of Tax Appeals).

bearing on the issue submitted which the parties failed to raise or the lower court ignored and (2) questions involving matters of public importance.[72]

This case qualifies for the application of the exceptions to the general rule.

First, the issue of the alleged improper service of the BIR Notices is a matter of record. The LOA, PAN, FAN/FLD, and other documentary evidence, as well as the testimonies of the witnesses of both parties, were all submitted and formed part of the records of this case, which this Court examined to determine if there was improper service and consequently deprivation of due process. The interest of substantial justice compels this Court to revisit these pieces of evidence to determine if petitioner was deprived of due process. Second, the issue of the alleged violation of due process is a matter of public importance since a taxpayer cannot be held liable under a void assessment.[73]

According to the testimony of petitioner's Compliance Officer Amarie Duque, the service was improper on the following grounds:

(1) there was no personal service to petitioner;

(2) the LOA was not served to petitioner's registered address;

(3) the alleged recipient of the LOA was neither an authorized representatives nor an employee of petitioner.

Amarie Duque testified,[74] to wit:

> 10. Q: Did petitioner personally receive these Letters of Authority (LOAs)?

72 *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010.

73 *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

74 Exhibit "P-24", *Judicial Affidavit*, Docket - Vol. I, pp. 306 to 317.

A: No, ma'am.

11. Q: Who received these LOAs?

A: Ms. Dolly Cruz, ma'am.

12. Q: Who is this Dolly Cruz?

A: She is the daughter of petitioner, but she is not connected with JAPI Enterprises.

13. Q: Where were these LOAs served?

A: They were served at Jowell's Autoparts Inc. located at Emergency Rd., District I, Cauayan City, Isabela.

14. Q: Are you telling this Honorable Court that the BIR served these LOAs not in your registered address in Prenza Highway, District I, Cauayan City, Isabela?

A: Yes, ma'am. It was not served to registered address of our office in Prenza Highway, District I, Cauayan City, Isabela?

...

24. Q: Did you personally receive these Letters of Authority(sic) (FLDs)?

A: No, ma'am.

25. Q: Who received these FLDs?

A: Ms. Marivic Rumbaoa.

26. Q: Who is this Ms. Marivic Rumbaoa?

A: She is an accounting officer of Jowelle's Autoparts Inc.

27. Q: Is she an employee of petitioner?

A: No, ma'am.

28. Q: Where were these FLDs served?

A: They were served at Jowell's Autoparts Inc. located at Emergency Rd., District I, Cauayan City, Isabela.

If the taxpayer denies having received an assessment or the LOA, as in this case, from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that the LOA was indeed received by the addressee.[75] In this case, the burden of proof was shifted to respondent to prove that the LOAs were served in accordance with the procedure prescribed by law and regulations. In this case, the Court finds that respondent failed to establish the proper service of the LOAs.

Revenue Audit Memorandum Order (RAMO) No. 1-00[76] provides that on the first opportunity of the Revenue Officer (RO) to have personal contact with the taxpayer, the RO should present the LOA to the taxpayer.

Revenue Memorandum Order (RMO) No. 19-15[77] clarifies the service requirement of the electronic LOA. It requires the RO assigned to present or serve the electronic LOA to the taxpayer or the taxpayer's representative in accordance with Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013.

In the case of notices, Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013 mandates the mode of service to the taxpayer should be by personal service, i.e., that the notice be served on the party himself at his registered or known address or wherever he may be found, to wit:

> **SEC. 3 Due Process Requirement in the Issuance of a Delinquency Tax Assessment. -**
>
> ...
>
> **3.1.6** *Modes of Service.* — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
>
> (i) The notice shall be served through **personal service** by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known address* shall

75 *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016.

76 Subject: Updated Handbook on Audit Procedures and Techniques Volume I (Revision — Year 2000)

77 Subject: BIR Audit Program.

mean a place other than the registered address where business activities of the party are conducted or his place of residence.

In case personal service is not practicable, the notice shall be served by substituted service or by mail.

(ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:

The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

"Disinterested witnesses" refers to persons of legal age other than employees of the Bureau of Internal Revenue.

Revenue Memorandum Circular (RMC) No. 11-14[78] which clarifies the due process requirement in RR No. 12-99, as amended by

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[78] Clarifying Certain Issues Relative to Due Process Requirement in the Issuance of a Deficiency Tax Assessment Pursuant to RR 12-99, as amended by RR 18-2013

RR No. 18-2013 provides that the notice (i.e., PAN, FAN/FLD, FDDA) *"shall first be served to the taxpayer's registered address before the same may be served to the taxpayer's known address, or in the alternative, may be served to the taxpayer's registered address and known address simultaneously."* In *Estate of the Late Juliana Diez Vda. De Gabriel v. Commissioner of Internal Revenue*,[79] it was ruled that it is a requirement of due process that the notice be sent to the taxpayer and not to a disinterested party; that it must be served on and received by the taxpayer.

In case personal service is not practicable, as in the case when the party is not present at the registered or known address, the notice shall be served by substituted service. In other words, substituted service may be resorted to only if there was proof that personal service was not practicable.

In the present case, respondent failed to establish that personal service was not practicable to justify the ROs resort to substituted service. Respondent failed to adduce evidence that the ROs attempted to serve the LOAs first to petitioner himself at JAPI Enterprises' registered address or were simultaneously served at Jowelle's Autoparts where petitioner also allegedly conducts business.

Contrary to RO Pamela Español's statement during her cross-examination that the LOA for **TY 2011** was served at petitioner's registered address at **Prenza Highway**, District I, Cauayan City, Isabela, her Progress Report dated July 4, 2014[80] addressed to the Regional Director does not state the complete address where the LOA for TY 2011 was served. More so, it was stated that the same was *"received by the authorized representative of Jowelle's Autoparts, Inc."* and not JAPI Enterprise, Dolly Yap-Cruz, to wit:

> Submitted is the progress report of verification on the internal revenue tax liabilities for taxable year 2011 of Joselito B. Yap with business address at **<u>District I, Cauayan City, Isabela</u>** pursuant to Electronic Letter of Authority No. 015-2014-00000015 dated June 10, 2014.
>
> The Letter of Authority (LA) and First Notice/Checklist of Required documents for audit were personally **<u>served at the business address stated above</u>** on June 13, 2014. These were duly

[79] G.R. No. 155541, January 27, 2004.
[80] Exhibit "R-4", BIR Records Folder 1, p. 74.

> received on said date **by the authorized representative of Jowelle's Autoparts, Inc. in the Person of Mrs. Dolly Yap-Cruz**...[81]

Similarly, RO Zarah Rosana Dumaga's Progress Report dated July 7, 2014[82] for **TY 2012**, states that the LOA and First Notice/Checklist of Required documents for audit were personally served at the business address at District I, Cauayan City, Isabela on June 13, 2014 and were received on said date by the "*authorized representative of Jowelle's Autoparts, Inc.,*" Dolly Yap-Cruz.

The Progress Report of RO Lavella Tolentino dated July 7, 2014[83] for TY 2013, states that the LOA and First Notice/Checklist of Required documents for audit were personally served at Prenza Highway, District I, Cauayan City, Isabela and were received on June 13, 2014 by Dolly Yap-Cruz.

Considering the discrepancy between the testimonies and the Progress Reports of the assigned ROs as to the place and authority of the personnel who received the LOAs, the Court shall give weight to the Progress Reports of ROs Pamela Español and Zarah Dumaga rather than their testimonies. [84]

Assuming arguendo that there were attempts at personal service and the same was not practicable, still, there was improper substituted service. Respondent's assertion that Dolly Yap-Cruz and Marivic Rumbaoa have apparent authority to receive the BIR notices is also incorrect.

The doctrine of apparent authority provides that even if no actual authority has been conferred on an agent, his or her acts, as long as they are within his or her apparent scope of authority, bind the principal. Apparent authority is determined by the acts of the principal and not by the acts of the agent.[85] Article 1869 of the Civil Code[86] states that agency may be implied from the acts of the principal, from his

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81 Boldfacing supplied.
82 Exhibit "R-26", BIR Records Folder 2, pp. 53 to 54.
83 Exhibit "R-43", BIR Records Folder 3, pp. 4 to 5.
84 See *Dick L. Go v. Court of Appeals and Security Bank & Trust Company,* G.R. No. 112550, February 5, 2001, wherein the Court ruled that in weighing evidence, documentary evidence prevails over testimonial evidence.
85 *Violeta Tudtud Banate, et al. v. Philippine Countryside Rural Bank (Liloan, Cebu), Inc. and Teofilo Soon, Jr.,* G.R. No. 163825, July 13, 2010.
86 Republic Act No. 386.

silence or lack of action, or his failure to repudiate the agency, *knowing* that another person is acting on his behalf without authority.

Pertinently, the law makes no presumption of agency and proving its existence, nature, and extent is incumbent upon the person alleging it.[87] It is incumbent upon respondent to prove that Dolly Yap-Cruz and Marivic Rumbaoa are employees or officers of petitioner and/or JAPI Enterprises. They failed to provide proof that petitioner committed any acts that would induce belief that Dolly Yap-Cruz and Marivic Rumbaoa have authority to receive BIR Notices on behalf of petitioner. In addition, the statements in the LPN Notices[88] which state that on a certain date, petitioner received the corresponding letters / assessment notices from respondent cannot be considered as petitioner's implicit admission since the LPN Notices neither mentioned that the BIR Notices were received from the respondent through an authorized representative nor were the same validly served upon petitioner by respondent.

With respect to the receipt of the LOA for **TY 2013,** the Progress Report of RO Lavella Tolentino regarding the service of the LOA failed to convince this Court that Dolly Yap-Cruz was authorized by petitioner to receive the LOA, considering the LOAs for TY 2011, 2012, and 2013 were served **all at the same time,** including nine (9) other LOAs for other taxpayers.[89]

Likewise, as to the service of the PAN for **TYs 2011, 2012, and 2013,** which were received by Dolly Yap-Cruz, respondent similarly failed to present proof that she is an employee of JAPI Enterprise or authorized by the petitioner to receive the same.

The same may be said for the FAN/FLD for **TYs 2011, 2012, and 2013** which were received by Marivic Rumbaoa, accounting officer of Jowelle's Autoparts Inc. Respondent failed to present proof that she is also an employee of JAPI Enterprise or authorized by the petitioner to receive the said FAN/FLD.

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87 *Yun Kwang Byun v. Philippine Amusement and Gaming Corporation,* G.R. No. 163553, December 11, 2009.

88 Exhibit "R-51", BIR Records Folder 3. pp. 159 to 162; Exhibit "P-10" Docket - Vol. I, pp. 465-477; Par. 4, *Answer,* Docket - Vol. I, p. 191 and Par. 15, *Answer,* Docket - Vol. I, p. 195, in relation to Section 4 of Rule 129 of the Rules of Court, as amended by A.M. No. 19-08-15-SC.

89 Transcript of Stenographic Notes (TSN), pp. 9 to 13, January 21, 2021.

Finally, in *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation,*[90] it has been held that an assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. Verily, to enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer.

More importantly, tax collection must be preceded by a valid assessment to allow the taxpayer to protest the assessment, present their case, and adduce supporting evidence.[91] An assessment becoming final, executory, and demandable is premised on the validity of the assessment.[92]

Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process. The essential nature of taxes for the existence of the State grants government with vast remedies to ensure its collection. However, taxpayers are guaranteed their fundamental right to due process of law, as articulated in various ways in the process of tax assessment. After all, the State's purpose is to ensure the well-being of its citizens, not simply to deprive them of their fundamental rights.[93]

Since respondent was unable to present sufficient evidence to prove that the LOA, PAN, and FAN/FLD for TYs 2011, 2012, and 2013, were properly served and received by petitioner or by its authorized representative/s, there are no valid assessments, consequently, the PCL Notices are void. A void assessment bears no valid fruit.[94]

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[90] G.R. No. 128315 June 29, 1999.

[91] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

[92] *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020.

[93] *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G. R. No. 215957, November 9, 2016.

[94] *Commissioner of Internal Revenue v. Azucena T. Reyes; Azucena T. Reyes v. Commissioner of Internal Revenue,* G.R. Nos. 159694 & 163581, January 27, 2006.

There was failure to inform the taxpayer of the legal and factual bases of the assessments.

Respondent argues that petitioner was not denied of his right to due process because he was given full opportunity to be heard since he was able to file his protests to the assessments.[95]

The Court disagrees.

A fair and reasonable opportunity to explain one's side is one aspect of due process[96] and another aspect is the due consideration given by the decision-maker to the arguments and evidence submitted by the affected party.[97] In this case, the petitioner was left unaware on how the respondent appreciated the arguments and defenses raised in connection with the assessment, as in the case *Avon*.[98] Respondent did not apprise petitioner the factual and legal bases of its conclusion or decision after petitioner submitted his protests and supplemental protests. Instead, respondent issued the PCL Notices, without any explanation on how respondent considered or appreciated petitioner's arguments and evidence.

In *Avon*, the Supreme Court expounded that the right to be heard means that the Commissioner consider the arguments and evidence submitted, to wit:

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

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[95] *Answer*, Docket - Vol. I, pp. 201-202.

[96] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. / Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 201398-99 / G.R. Nos. 201418-19, October 3, 2018 citing *Ray Peter O. Vivo v. Philippine Amusement and Game Corporation (PAGCOR)*, G.R. No. 187854, November 12, 2013.

[97] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. / Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 201398-99 / G.R. Nos. 201418-19, October 3, 2018.

[98] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. / Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 201398-99 / G.R. Nos. 201418-19, October 3, 2018.

> **Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.**
>
> In *Edwards v. McCoy:*
>
> > The object of a hearing is as much to have evidence considered as it is to present it. The right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.
>
> In *Ang Tibay,* this Court similarly ruled that "[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts ***but the tribunal must consider the evidence presented."***
>
> ...

In this case, it is evident that respondent merely reiterated in the PCL Notices the deficiency taxes due as found in the PAN and the FAN/FLD. Moreover, there was no other communication from respondent to petitioner that was presented as evidence indicating the particular factual and legal bases upon which the respondent's conclusion and decision are based in connection with the assessments issued against petitioner. Petitioner was thus left unaware on how respondent appreciated his arguments and evidence submitted in its protest and supplemental protest, in violation of petitioner's right to due process, thereby rendering the subject assessments void.

Consequently, the Court finds it no longer necessary to discuss the other issues raised.

WHEREFORE, in view of the foregoing, the instant *Petition for Review* is **GRANTED.**

Accordingly, the PANs dated January 15, 2015, FAN/FLD dated June 22, 2015 and PCL notices dated April 4, 2019 for taxable years 2011, 2012 and 2013 are hereby **CANCELLED** and **SET ASIDE**.

Respondent, respondent's representatives, agents, or other persons acting in respondent's behalf are **ENJOINED** from enforcing the collection of the deficiency taxes inclusive of surcharge, interest, and penalty under the respective FAN/FLD issued on June 22, 2015 for TYs 2011 (Assessment Nos. R3-IT-015-0190 and R3-VT-015-019), 2012 (Assessment Nos. R3-IT-015-022 and R3-VT-015-022), and 2013 (Assessment Nos. R3-IT-015-016, R3-VT-015-016, and R3-RF-015-002) and the PCL Notices dated April 4, 2019 issued against petitioner.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

(With due respect, see Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

JOSELITO B. YAP, *Petitioner,*	**CTA CASE NO. 10063**
	Members:
- versus -	**DEL ROSARIO,** *P.J. & Chairperson* **MANAHAN,** and **REYES-FAJARDO,** *JJ.*
BUREAU OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 29 2022 ; 3:34 p.m.

x- x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I am constrained to withhold my assent to the *ponencia* of my distinguished colleague in granting the Petition for Review.

The *ponencia* declared that the assessments for taxable years 2011, 2012 and 2013 are void for violation of petitioner's right to due process considering that there was improper service of the Letter of Authority (LOA) and the assessment notices. The *ponencia* rejected respondent's contention that the petitioner is already estopped from denying the authority of the persons who received the LOA and the assessment notices as such issue was never assailed in the administrative level by petitioner.

A perusal of the records disclose that petitioner questioned the validity of the assessment on aforestated ground in his Petition for Review *albeit* he never raised such issue in the administrative level.

In ***Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.***,[1] the Supreme Court had the occasion to rule that the failure of a taxpayer to raise the validity of waivers in the administrative level precludes such issue from being raised before the Court of Tax

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[1] G.R. No. 227544, November 22, 2017.

Appeals in a subsequent Petition for Review. Noting my humble opinion therein, the Supreme Court opined:

> "However, Presiding Justice Roman G. Del Rosario (Justice Del Rosario) in his Separate Concurring Opinion in the Court of Tax Appeals June 7, 2016 Decision, found that respondent is estopped from claiming that the waivers were invalid by reason of its own actions, which persuaded the government to postpone the issuance of the assessment. He discussed:
>
>> In the case at bar, respondent performed acts that induced the BIR to defer the issuance of the assessment. Records reveal that to extend the BIR's prescriptive period to assess respondent for deficiency taxes for taxable year 2004, respondent executed two (2) waivers. The first Waiver dated October 2007 extended the period to assess until June 20, 2008, while the second Waiver, which was executed on June 2, 2008, extended the period to assess the taxes until November 30, 2008. As a consequence of the issuance of said waivers, petitioner delayed the issuance of the assessment.
>>
>> Notably, when respondent filed its protest on November 26, 2008 against the Preliminary Assessment Notice dated November 11, 2008, it merely argued that it is not liable for the assessed deficiency taxes and did not raise as an issue the invalidity of the waiver and the prescription of petitioner's right to assess the deficiency taxes. In its protest dated December 8, 2008 against the FAN, respondent argued that the year being audited in the FAN has already prescribed at the time such FAN was mailed on December 2, 2008. Respondent even stated in that protest that it received the letter (referring to the FAN dated November 28, 2008) on December 5, 2008, which accordingly is five (5) days after the waiver it issued had prescribed. The foregoing narration plainly does not suggest that respondent has any objection to its previously executed waivers. By the principle of estoppel, respondent should not be allowed to question the validity of the waivers
>
> xxx xxx xxx
>
> Nonetheless, respondent's acts also show its implied admission of the validity of the waivers. *First,* respondent never raised the invalidity of the Waivers at the earliest opportunity, either in its Protest to the PAN, Protest to the FAN, or Supplemental Protest to the FAN. It thereby impliedly recognized these Waivers' validity and its representatives' authority to execute them. Respondent only raised the issue of these Waivers' validity in its Petition for Review filed with the Court of Tax Appeals. In fact, as pointed out by Justice Del Rosario, respondent's Protest to the FAN clearly recognized the validity of the Waivers."

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Applying by analogy the declaration in the foregoing case, the principle of estoppel applies in this case as the issue of improper service of the LOA and assessment notices was not timely raised in the administrative level which, to my mind, is fatal.

Besides, even if we are to excuse the aforesaid infirmity, the records clearly show that petitioner expressly admitted the receipt of the Preliminary Assessment Notice (PAN), Assessment Notices/Formal Letter of Demand in his Legal Petition Notices filed before the BIR in relation to the issued LOAs for taxable years 2011, 2012, and 2013, *viz.*:

> *Legal Petition Notice dated January 21, 2015 to the PAN (requesting extension of time to file a preliminary protest) for the 2011 tax assessment*
>
> "Last January 19, 2015, **I received** a Preliminary Assessment Notice with the same dated January 15, 2015 signed by the Regional Director Marina De Guzman on January 16, 2015; anent the issued Letter of Authority for Taxable Year 2011."[2]
>
> *Legal Petition Notice dated January 21, 2015 to the PAN (requesting extension of time to file a preliminary protest) for the 2012 tax assessment*
>
> Last January 19, 2015, **I received** a Preliminary Assessment Notice with the same dated January 15, 2015 signed by the Regional Director Marina De Guzman on January 16, 2015; anent the issued Letter of Authority for Taxable Year 2012."[3]
>
> *Legal Petition Notice dated January 21, 2015 to the PAN (requesting extension of time to file a preliminary protest) for the 2013 tax assessment*
>
> Last January 19, 2015, **I received** a Preliminary Assessment Notice with the same dated January 15, 2015 signed by the Regional Director Marina De Guzman on January 16, 2015; anent the issued Letter of Authority for Taxable Year 2013."[4]
>
> *Legal Petition Notice dated July 11, 2015 for the 2011 tax assessment:*
>
> "On June 25, 2015, **I received** a Formal Letter of Demand and Assessment Notice dated June 22, 2015 signed by the Regional Director

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[2] BIR Records Folder No. 1, p.146.
[3] BIR Records Folder No. 2, p. 197.
[4] BIR Records Folder No. 3, p. 162.

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> Marina De Guzman; anent the issued Letter of Authority for Taxable Year 2011."[5]
>
> *Legal Petition Notice dated September 18, 2015 for the 2012 tax assessment:*
>
> "On June 25, 2015, **I received** a Formal Letter of Demand and Assessment Notice dated June 22, 2015 signed by the Regional Director Marina C. De Guzman; anent the issued Letter of Authority for Taxable Year 2012."[6]
>
> *Legal Petition Notice dated September 19, 2015 for the 2013 tax assessment:*
>
> "On June 25, 2015, **I received** a Formal Letter of Demand and Assessment Notice dated June 22, 2015 signed by the Regional Director Marina C. De Guzman; anent the issued Letter of Authority for Taxable Year 2013."[7] *(Boldfacing supplied)*

Since petitioner categorically admitted the receipt of the PAN, and the Assessment Notices/FLD in his Legal Petition Notices before the administrative level, I submit that petitioner's right to due process was not violated. Simply put, there is no basis to hold that the assessments issued against petitioner are void for having been issued in violation of his right to due process.

All told, I VOTE for the Court to determine/resolve the case on the merits.

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] Exhibit R-17-A; BIR Records (Exhibit R-69-A), p. 213.
[6] BIR Records Folder No. 2-A, p. 239.
[7] Exhibit R-57-A, BIR Records Folder No. 3-A, p. 195.