22-000299-0064

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10898

REBECCA D. DUKA, OWNER/SOLE PROPRIETOR OF DUKA GENERAL MERCHANDISE, as represented by GIL D. DUKA AND/OR CELIA D. DUKA,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE AND ROZIL R. LOZARES, REGIONAL DIRECTOR OF REVENUE REGION NO. 10, LEGAZPI CITY,
Respondents.

NOTICE OF DECISION

To:

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

ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. NIKI BERYL B. DELA CRUZ
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Bldg.
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

PILOTIN LAW OFFICE
Unit 1, Block 15, Lot 9, Avenida Street
Bahayang Pag-asa Subdivision
Phase 8, Barangay Magdalo, Imus City, Cavite

GREETINGS:

You are hereby notified by these presents that on **April 15, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 21, 2025.**

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

REPUBLIC OF THE PHILIPPINES
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FIRST DIVISION

REBECCA D. DUKA, OWNER/SOLE PROPRIETOR OF DUKA GENERAL MERCHANDISE, as represented by **GIL D. DUKA AND/OR CELIA D. DUKA,** Petitioner,	CTA Case No. **10898**
	Members:
	DEL ROSARIO, *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
- versus -	
CAESAR R. DULAY, COMMISSIONER OF INTERNAL REVENUE, AND ROZIL R. LOZARES, REGIONAL DIRECTOR OF REVENUE REGION NO. 10, LEGAZPI CITY, Respondents.	Promulgated: APR 15 2025; 2:20PM

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Rebecca D. Duka (**petitioner**), as represented by Gil D. Duka and/or Celia D. Duka, pursuant to Section 3(a)[2], Rule 8 in relation to Section 3(a)(1)[3],

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[1] Filed on 23 June 2022, Division Docket, Volume I, pp. 7-41.

[2] **SEC. 3.** *Who may appeal; period to file petition. —*
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision

Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), seeking the reversal of respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) Final Decision on Disputed Assessment (**FDDA**) dated 09 March 2022[4], which affirms respondent's Formal Letter of Demand (**FLD**)/Final Assessment Notice (**FAN**) dated 13 October 2021.[5] The FLD/FAN found petitioner liable for deficiency taxes in the total amount of **₱69,938,123.84** for the calendar year (**CY**) ended 31 December 2018 (**2018**), broken down as follows:

Tax Type/Fee	Basic	Surcharge		Interest	Total
		50%	25%		
Income Tax	₱1,629,792.67	₱814,896.33	-	₱393,323.30	₱2,838,012.30
Value-Added Tax (**VAT**)	35,707,953.73	17,853,976.86	₱17,847.08	13,497,606.51	67,077,384.18
Expanded Withholding Tax (**EWT**)	12,907.47	-	3,226.87	4,943.56	21,077.9
Registration Fee (**RF**)	1,000.00	-	250.00	399.46	1,649.46
TOTAL					**₱69,938,123.84**

PARTIES OF THE CASE

Petitioner Rebecca D. Duka is the owner of a sole proprietorship duly organized and registered with the Department of Trade and Industry (**DTI**) under the trade name of Duka General Merchandise (**DGM**), with principal office address at Cabid-an, Sorsogon City,

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or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

3 **SEC. 3**. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

4 Exhibit "P-5", Division Docket, Volume II, p. 587; Exhibit "R-17", BIR Records, p. 1174.

5 Exhibit "P-1", id., pp. 537-547; Exhibits "R-12" and "R-13", id., pp. 802-814.

Philippines, and primarily engaged in the retail business. It is registered with the Bureau of Internal Revenue (**BIR**) under Taxpayer's Identification Number (**TIN**) 113-473-014-000. Petitioner may be served with summons and other court processes at Unit 3F #95 Avenida Rizal, Bahayang Pag-asa Subd., Molino V, Bacoor City, Cavite.[6]

Respondent Caesar R. Dulay was the previous CIR of the BIR, the government agency charged with, among others, the responsibility of collecting all national internal revenue taxes. He may be served with orders and other court processes at Litigation Division, Room 703, BIR National Office Building, BIR Road, Diliman, Quezon City.[7]

On the other hand, respondent Rozil R. Lozares (**Lozares**) is the duly appointed Regional Director (**RD**) of Revenue Region (**RevReg**) No. 10, Legazpi City, who issued the assailed FDDA and FLD/FAN.[8]

FACTS OF THE CASE

On 24 January 2020, petitioner received Letter of Authority (**LOA**) No. 068-2020-00000025 (electronic LOA No. 201600012327)[9], dated 23 January 2020, authorizing Revenue Officer (**RO**) Precious Diolata (**Diolata**) and Group Supervisor (**GS**) Princini Parco (**Parco**) of Revenue District Office (**RDO**) No. 68, Sorsogon, Sorsogon- RevReg No. 10 – Legazpi City to examine/audit petitioner's internal revenue taxes for the period 01 January 2018 to 31 December 2018.[10]

In connection with the LOA, petitioner received the "First Request for Presentation of Records" dated 27 January 2020 (**First Request**)[11] on 29 January 2020. However, due to petitioner's failure to comply, a "Second Request for Presentation of Records" dated 13 February 2020 (**Second Request**)[12] was issued. Petitioner received

6 See Par. 3, III. The Parties, Petition for Review, supra at note 1; I. Admitted Facts, Joint Stipulation of Facts and Issue (JSFI), Division Docket, Volume II, p. 961.
7 Id.
8 Supra at notes 4 and 5.
9 Exhibit "R-1", BIR Records, p. 1.
10 Id.
11 Exhibit "R-2", id., p. 2.
12 Exhibit "R-4", id., p. 6.

the same on 19 February 2020. However, despite these repeated requests, petitioner failed to submit her complete records. Consequently, on 10 March 2020, petitioner received the "Final Notice" dated 06 March 2020.[13]

Subsequently, on 11 January 2021, petitioner was served with a Subpoena *Duces Tecum* (**subpoena**) for her to produce specific records at respondent RD Lozares' office on 22 January 2021.[14] These records included: (1) Acknowledgment Receipts; (2) Order Slips; (3) Purchase Orders; (4) Check Vouchers; (5) Sales Invoices; and (6) Delivery Receipts.[15] In response, on 25 January 2021, petitioner submitted an Affidavit, dated 11 August 2020[16], stating that she could not locate and produce the Sales Invoices for CY 2018 despite her best efforts to locate them. She further stated that the same documents were deemed lost and irretrievable.[17]

On 28 April 2021, petitioner received a Notice of Discrepancy (**NOD**) of even date[18], requiring her to appear before respondent RD Lozares for a Discussion of Discrepancy. Petitioner subsequently met with RO Diolata on 10 May 2021 to discuss the audit findings.[19]

Following the Discussion of Discrepancy, on 17 May 2021, RO Diolata issued a Memorandum recommending the issuance of a Preliminary Assessment Notice (**PAN**).[20] Then, on 24 September 2021, petitioner received the PAN dated 17 September 2021[21], along with the attached Details of Discrepancies of her alleged deficiency Income Tax, VAT, EWT, and RF for CY 2018, inclusive of interest in the aggregate amount of ₱69,938,123.84.

On 11 October 2021, petitioner filed her "Reply (to [PAN]" (**Reply**), *via* registered mail, which respondent RD Lozares received on

13 Exhibit "R-5", id., p. 7.
14 Exhibit "R-6", id., p. 665.
15 Id.
16 Id., p. 671.
17 Id.
18 Id., p. 680.
19 Id., pp. 701-702.
20 Exhibit "R-8", id., pp. 725-730.
21 Exhibit "R-11", id., pp. 791-798.

22 October 2021.[22] Subsequently, on 27 October 2021, petitioner received the FLD/FAN dated 13 October 2021[23], which detailed the following:

Tax Type/Fee	Basic	Surcharge		Interest	Total
		50%	25%		
Income Tax	₱1,629,792.67	₱814,896.33	-	₱393,323.30	₱2,838,012.30
VAT	35,707,953.73	17,853,976.86	₱17,847.08	13,497,606.51	67,077,384.18
EWT	12,907.47	-	3,226.87	4,943.56	21,077.9
RF	1,000.00	-	250.00	399.46	1,649.46
TOTAL					**₱69,938,123.84**

On 25 November 2021, petitioner received a Letter dated 17 November 2021[24] from respondent RD Lozares, informing the latter that, by the time her Reply had been received, the FLD/FAN had already been issued. The Letter further advised petitioner to file a protest against the issued FLD/FAN within thirty (30) days from receipt.[25] In compliance, on 26 November 2021, petitioner filed a "Re: Request for Reinvestigation on the [FLD]" with Annexes (**Protest Letter**).[26]

On 22 January 2022, petitioner received the approval of her request for reinvestigation, as stated in her Protest Letter, and was instructed to further submit additional relevant supporting documents within sixty (60) days from the filing of the Protest Letter.[27] Pursuant thereto, petitioner submitted her additional supporting documents on 25 January 2022.[28]

However, on 17 February 2022, RO Diolata observed that the additional documents merely contained transmittals of documents previously submitted before the issuance of the FLD/FAN.[29] Consequently, RO Diolata recommended the issuance of an FDDA.[30]

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22 Id., pp. 817-830.
23 Supra at note 5.
24 Exhibit "R-14", BIR Records, pp. 831-832.
25 Id.
26 Id., pp. 1130-1146.
27 Exhibit "R-15", id., p. 1148.
28 Id., pp. 1159-1161
29 Exhibit "R-16", id., p. 1163.
30 Id.

On 16 March 2022, petitioner received the FDDA dated 09 March 2022[31], which denied her request for reinvestigation. The FDDA also reiterated a demand for the payment of the assessed deficiency taxes in the aggregate of ₱69,938,123.84, plus compromise penalty of ₱38,000.00.

Aggrieved, petitioner filed her "Motion/Request for Reconsideration" (**MR**) dated 12 April 2022 with respondent CIR on 13 April 2022.[32] However, notwithstanding the pending MR before respondent CIR, petitioner, on 24 May 2022, received a Warrant of Distraint and/or Levy (**WDL**) dated 13 May 2022.[33]

PROCEEDINGS BEFORE THE COURT

Undeterred, on 23 June 2023[34], petitioner filed the present Petition for Review together with an "Urgent Motion to Suspend the Collection of Tax and Dispensing with the Bond Requirement" (**Motion to Suspend**), contesting the deficiency tax assessments issued for CY 2018. She asserted that the assessments were erroneous, lacking factual and legal basis, and that due process was not observed in its conduct. Petitioner also argued that there were violations in the issuance of the Preliminary and Final Assessment Notices and that the assessment period had already prescribed. Initially, it was raffled to the Court's Second Division. On 27 June 2022, summons was issued to respondents, directing them to file an Answer within 30 days from the date of receipt thereof, *i.e.*, 01 July 2022.[35] On 04 July 2022, respondents were given five (5) days from the date of receipt thereof to file their comment or opposition to the Motion to Suspend.[36]

During the hearing of petitioner's Motion to Suspend, petitioner presented the following witnesses who all testified *via* their respective

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31 Supra at note 4.
32 Exhibit "P-6", Division Docket, Volume II, p. 588.
33 Exhibit "P-8", id., p. 777.
34 Supra at note 1.
35 Division Docket, Volume I, p. 391.
36 Resolution dated 04 July 2022, id., p. 393.

judicial affidavits, namely: Loreto Carpio (**Carpio**), Joanne D. De Keyser (**De Keyser**) and Gil D. Duka (**Duka**).[37]

On the witness stand, Carpio, petitioner's Bookkeeper, declared that: (1) he safekeeps petitioner's business records, prepares and files the necessary BIR tax returns; (2) petitioner filed the correct amount of sales as generated by petitioner's Point-of-Sale (**POS**) System during CY 2018; (3) DGM was not one of the top withholding agents in 2018 as they have not received a notice to that effect from the BIR; and (4) he received the WDL.[38]

No cross-examination followed.[39]

Upon the completion of Carpio's testimony, petitioner presented De Keyser, DGM's Cashier. She testified that: (1) she had been an employee of DGM since 2010 and one of her duties was to reconcile the money received from sales against the generated Closing Report from the POS System to generate the Z-Reading report; (2) she also recorded the sales in petitioner's Sales Book; and (3) petitioner reported the correct sales for CY 2018.[40]

Again, no cross-examination was conducted.[41]

Lastly, petitioner presented Duka, petitioner's authorized representative and DGM's Operations Manager. On the witness stand, he declared that: (1) he managed DGM's day-to-day operations, including the preparation and filing of BIR returns; (2) DGM reported the correct sales in petitioner's CY 2018 Annual Income Tax Return (**AITR**) and VAT returns; (3) BIR's findings were not supported by details, preventing petitioner from preparing an intelligent response and supporting documents, specifically *per* BIR's assessment, DGM has total sales of ₱735,771,442.96 and exempt sales in the amount of

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37 See Order dated 18 July 2022, id., pp. 412-413.
38 See Judicial Affidavit of Loreto Carpio dated 22 June 2022, Exhibit "P-89", id., pp. 384-390.
39 See Order dated 18 July 2022, supra at note 37.
40 See Judicial Affidavit of Joanne D. De Keyser dated 20 June 2022, Exhibit "P-90", Division Docket, Volume I, pp. 379-383.
41 See Order dated 18 July 2022, supra at note 37.

₱51,247,909.20, as allegedly shown in petitioner's Z-Reading report; however, the date of the Z-Reading was not provided making it impossible for petitioner to effectively refute it; (4) the observations *per* PAN and FLD/FAN were identical and failed to take account petitioner's Reply; (5) the WDL was issued despite the pendency of an MR with respondent CIR; and (6) as of 31 December 2020, DGM had ceased operations, with a net worth of only ₱7,609,074.00.[42]

In his cross-examination, Duka mentioned that the Z-Reading report mentioned in Question No. 29[43] of his Judicial Affidavit comes from DGM's POS system.[44] However, during Duka's redirect examination, he further clarified that the alleged day reading of ₱735,771,442.96 of DGM's sales for CY 2018 comes from the BIR as shown in the PAN and FLD/FAN and is not the same as the amounts or totals in the DGM's own Z-Reading report.[45] He further stated that there were no attachments regarding the amounts reflected in the PAN and FLD/FAN leaving him and petitioner clueless as to where to trace the amounts used by respondents.[46]

No re-cross examination followed.[47]

The Court directed petitioner to file her formal offer in support of the Motion to Suspend.[48]

On 18 July 2022, respondents filed their Comment/Opposition[49] and averred that: (1) petitioner failed to show the existence of her clear

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42 See Amended Judicial Affidavit of Gil D. Duka dated 12 July 2022, Exhibit "P-91", Division Docket, Volume I, pp. 397- 409.

43 29. Q: What are these items?
A: In the assessment, the BIR alleged that per Z-Reading report, DGM [had] total sales in the amount of P735,771,442.96, and exempt sales in the amount of P51,247,909.20. But we cannot make our own validation because we do not know where they got the said amounts, the date of the Z-Reading was not provided in the NOD, PAN and FAN. As a matter of fact, the alleged sales [are] not the same as the alleged Z-Reading sales in the NOD.

44 TSN dated 18 July 2022, pp. 21-22.

45 Id., pp. 22-23.

46 Id.

47 Id., p. 23.

48 See Order dated 18 July 2022, Division Docket, Volume I, pp. 412-413.

49 See Comment/Opposition (Re: Petitioner's Urgent Motion to Suspend Collection of Tax and Dispensing with the Payment of Bond), id., pp. 414-426.

and unmistakable right which petitioner seeks to protect; (2) petitioner failed to prove that the collection of taxes would jeopardize her interest as she failed to present her current Audited Financial Statements (**AFS**); (3) the suspension or undue delay of the collection of taxes would surely be prejudicial to the government's interest; (4) suspension of collection of tax without any cash deposit or bond is reserved only for extreme situations, *e.g.,* patent violation of the law; and (5) the instant assessment and collection efforts are presumed correct and made in good faith and, thus, there is no basis to exempt petitioner from posting the required bond or paying the cash deposit.

On 25 July 2022, petitioner filed a "Motion to Allow Additional Commissioner's Hearing (with Manifestation)"[50] (**Motion to Allow Additional CH**), asking the Court for another Commissioner's Hearing to allow petitioner to secure a faithful reproduction of the original documents submitted before another division of the Court and for the marking of the PAN and Closure Order dated 14 October 2020.

On 29 July 2022, respondent CIR filed a "Motion for Extension of Time to File Answer".[51] In its Resolution dated 11 August 2022[52], the Court granted the said motion and thereby extended respondent CIR's deadline to file an Answer until 29 August 2022.

On 02 August 2022, petitioner filed *via* LBC a "Motion to Admit Reply on Respondent's Opposition."[53]

Respondent CIR's Answer was eventually filed on 30 August 2022.[54] In his or her Answer, respondent CIR interposed the following special and affirmative defenses: (1) considering that there was a discrepancy of more than 30% between the sales reported *per* petitioner's returns and sales generated *per* POS System, there is a *prima facie* evidence of false or fraudulent return, citing the case of

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[50] Id., pp. 431-433.
[51] Id., pp. 451-454.
[52] Id., pp. 468-469.
[53] Id., pp. 456-458.
[54] Id., pp. 477-499.

Commissioner of Internal Revenue v. Asalus Corporation[55] (**Asalus**); (2) applying the ten (10)-year extraordinary prescriptive period, respondent CIR's right to assess had not yet prescribed; (3) petitioner's right to procedural due process was satisfied since petitioner was able to refute the assessments when she filed protest to PAN and FLD/FAN; (4) the WDL constitutes as denial of petitioner's MR; (5) petitioner is liable for deficiency income tax, VAT, EWT, RF and administrative penalties; and (6) petitioner failed to overturn the presumption of correctness and validity of the assessments.

On 07 September 2022, respondent CIR filed a "Motion to Defer Transmittal of BIR Records".[56] Since the BIR Records would still be utilized in the preparation of the judicial affidavits of respondent CIR's witness, the Court granted the same in its Resolution dated 19 September 2022.[57]

In another Resolution dated 12 September 2022[58], the Court granted petitioner's "Motion to Allow Additional Commissioner's Hearing", which hearing was set on 22 September 2022. Petitioner was then given an additional period of five (5) days therefrom to file the Formal Offer of Evidence (**FOE**), or until 27 September 2022.

Subsequently, on 21 September 2022, petitioner filed a "Reply on Respondent's Answer (with Objection on the presentation of Witnesses and Documentary Evidence)" *via* LBC, which the Court received on 22 September 2022.[59]

Later, petitioner filed her "[FOE] (On Motion to Lift [WDL]"[60] on 27 September 2022 while respondent CIR filed his or her "Comment (on Petitioner's [FOE])"[61] on 29 September 2022. Acting thereon, the Court admitted petitioner's FOE.[62] Also in the same Resolution, the

55 G.R. No. 221590, 22 February 2017.
56 Division Docket, Volume I, pp. 501-504.
57 Id., pp. 514-515.
58 Id., pp. 507-512.
59 Id., pp. 516-522.
60 Id., Volume II, pp. 524-536.
61 Id., pp. 882-884.
62 See Resolution dated 06 January 2023, id., pp. 912-926.

Court granted petitioner's Motion to Suspend and dispensed with the bond requirement.[63]

Thereafter, the Pre-Trial Conference was set on 22 February 2023.[64] Respondent CIR filed his or her Pre-Trial Brief[65] on 15 February 2023, while petitioner filed her Pre-Trial Brief[66] on 16 February 2023.

During the pre-trial conference, the parties were granted a period of 30 days to file the Joint Stipulation of Facts and Issues[67] (**JSFI**), or until 24 March 2023. Upon petitioner's motion[68], the aforementioned date was extended until 31 March 2023.[69] Accordingly, on 31 March 2023, they filed their JSFI[70], which the Court approved on 14 April 2023. The pre-trial proceedings were then terminated accordingly.[71]

In the Pre-Trial Order issued on 08 May 2023[72], it was noted that petitioner had adopted the testimonies of Duka, Carpio and De Keyser during the hearing on the Motion to Suspend and offer Jelson B. Vargas (**Vargas**) as additional witness. Likewise, respondents opted not to conduct further cross-examination on the three (3) witnesses already presented during the motion hearing.

On 24 May 2023, petitioner filed a "Motion (To Amend/Correct Pre-Trial Order)"[73] to amend the sole issue of the instant case[74], which the Court approved on 26 May 2023.[75] In the Resolution issued on

63 Id.
64 Notice of Pre-Trial Conference dated 12 October 2022, id., pp. 904-905.
65 Id., pp. 927-931.
66 Id., pp. 933-945.
67 See Order dated 22 February 2023, id., pp. 952-954.
68 Motion to Extend the Filing of JSFI dated 23 March 2023, id., 955-957.
69 See Resolution dated 31 March 2023, id., p. 960.
70 Id., pp. 961-969.
71 See Resolution dated 14 April 2023, id., p. 973.
72 Id., pp. 977-984.
73 Id., pp. 985-987.
74 Changed from "[w]hether or not petitioner is liable for deficiency Income Tax, [VAT], [EWT] and Compromise Penalties, in the aggregate amount of Php69,976,123.84, ***plus*** interests and surcharges, for taxable year 2018" to "[w]hether or not petitioner is liable for deficiency Income Tax, [VAT], [EWT] and Compromise Penalties, in the aggregate amount of Php69,976,123.84, ***inclusive*** of interests and surcharges, for taxable year 2018", as the amount already includes the alleged interests and surcharges.
75 See Resolution dated 26 May 2023, Division Docket, Volume II, p. 990.

29 May 2023, the present case was transferred to the Court's First Division pursuant to Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court) dated 23 May 2023.[76]

Still later, on 25 July 2023, petitioner filed an "*Ex Parte* Motion for Issuance of Subpoena *Ad Testificandum*"[77] (**subpoena**) against her additional witness, Vargas. In its Resolution dated 02 August 2023[78], the Court granted the Motion and issued the subpoena against Vargas and reset the presentation of Vargas' testimony on 04 October 2023.[79]

In compliance with the subpoena, petitioner submitted Vargas' Judicial Affidavit dated 25 September 2023.[80]

In the trial that ensued subsequently, petitioner presented Vargas, as her additional witness.

On the witness stand, Vargas, the Head of Information Technology Officer and Systems Administrator of Basebyte Software Management and Consultancy Services (**Basebyte**), declared that: (1) Basebyte is BIR registered and accredited system provider; (2) Basebyte was the system provider of DGM from 2010 to 2021; (3) the POS System of DGM reported correct sales as shown in the upper portion of the Z-Reading report; (4) DGM did not tamper with the POS System; and (5) DGM reported the correct sales for CY 2018.[81]

In his cross-examination, Vargas explained that Basebyte mistakenly configured the POS system to display the accumulated centralized sales and not the stand-alone accumulated sales of each specific POS machine. This error was discovered when the BIR conducted an audit of petitioner's books in 2020. He also mentioned

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76 Id., p. 991.
77 Id., pp. 992-994.
78 See Resolution dated 02 August 2023, id., pp. 1002-1003.
79 Id.
80 See Judicial Affidavit of Jelson B. Vargas dated 25 September 2023, Exhibit "P-92", id., pp. 1008-1017.
81 Id.

that petitioner had employed the same system from 2010-2020 but never reported the said error.[82]

During Vargas' redirect examination, he clarified that despite the error persisting from 2010-2020, the Z-Reading report was not entirely unreliable. He explained that while the incorrect figures appeared at the bottom of the report, the Gross Sales and Net Sales at the top correctly reflected the daily stand-alone sales of each POS machine.[83]

No re-cross examination followed.[84]

Pursuant to the Court's Order dated 04 October 2023[85], petitioner filed her FOE[86] on 09 October 2023 for additional evidence. With respondent's "Comment (on Petitioner's [FOE])"[87] filed on 10 October 2023, petitioner's FOE was thereafter submitted for resolution.[88]

On 01 December 2023, the Court issued a Resolution admitting petitioner's additional evidence.[89] In the same Resolution, the Court set the initial presentation of respondent's evidence on 18 January 2024.

On 18 January 2024, respondent CIR offered the testimony of his or her lone witness, RO Diolata, who testified *via* her judicial affidavit.[90]

On the witness stand, RO Diolata declared that: (1) she conducted the examination of petitioner's books of accounts and other accounting records for CY 2018 pursuant to an LOA that was properly served to petitioner; (2) the NOD, PAN, FLD/FAN and FDDA were

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[82] TSN dated 04 October 2023, pp. 10-16.
[83] Id., pp. 16-17.
[84] Id., p. 17.
[85] Division Docket, Volume II, pp. 1026-1027.
[86] Id., pp. 1029-1032.
[87] Id., pp. 1034-1036.
[88] See Minute Resolution dated 18 October 2023, id., p. 1038.
[89] See Resolution dated 01 December 2023, id., pp. 1042-1043.
[90] See Order dated 18 January 2024, id., pp. 1045-1046.

properly served to petitioner; (3) before the FLD/FAN was served, she received petitioner's Reply, however since the FLD/FAN had been issued, they suggested to petitioner to just file a protest to the FLD/FAN; and (4) she recommended for the issuance of the FDDA to deny petitioner's request for reinvestigation since the documents submitted by petitioner were the same documents submitted prior to the issuance of the FLD/FAN.[91]

In her cross-examination, RO Diolata explained that: (1) the Reply was not considered when the FLD/FAN was prepared because the FLD/FAN had already been issued by the time respondent RD Lozares received the Reply, though the FDL/FAN had not yet been served to petitioner; and (2) the amounts used in the PAN and FLD/FAN were derived from the Z-Reading reports retrieved through a Mission Order that is separate and distinct from the LOA in the instant case.[92]

During RO Diolata's redirect examination, she clarified that: (1) she had not received the Reply when she recommended the issuance of the FLD/FAN, which is why the FLD/FAN and the PAN are identical; and (2) she recommended the denial of petitioner's request for reinvestigation since no new documents were introduced by petitioner.[93]

In her re-cross examination, she further stated that she informed petitioner of the issuance of the FLD/FAN and suggested that a protest to the FLD/FAN be filed within 30 days from the receipt thereof.[94]

On 26 January 2024, respondent CIR filed his or her FOE[95] consisting of Exhibits "R-1" to "R-18", inclusive of sub-markings. On 15 February 2024, petitioner filed *via* LBC her "Comment on Respondent's [FOE])".[96]

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91 See Judicial Affidavit of [RO] Precious G. Diolata dated 23 September 2022, Exhibit "R-19", id., pp. 891-902.
92 TSN dated 18 January 2024, pp. 22-41.
93 Id., pp. 42-44.
94 Id., pp. 44-49.
95 Division Docket, Volume II, pp. 1048-1063.
96 Id., pp. 1065-1067.

In the Resolution dated 05 April 2024[97], the Court admitted respondent's exhibits and granted the parties a period of 30 days within which to file their respective memoranda. Respondent CIR filed his or her Memorandum[98] on 10 May 2024. On the other hand, petitioner filed her Memorandum[99] on 21 May 2024 *via* LBC. On 31 May 2024, the present case was submitted for decision.[100]

ISSUE

As can be gleaned from the parties' JSFI[101], the sole issue for this Court's resolution is –

> WHETHER PETITIONER REBECCA D. DUKA IS LIABLE FOR DEFICIENCY INCOME TAX, VALUE-ADDED TAX (VAT), EXPANDED WITHHOLDING TAX (EWT) AND COMPROMISE PENALTIES, IN THE AGGREGATE AMOUNT OF ₱69,976,123.84, INCLUSIVE OF INTERESTS AND SURCHARGES, FOR CALENDAR YEAR (CY) 2018.

ARGUMENTS

In the instant Petition for Review, petitioner challenges the validity of the assessments on the following grounds: (1) due process violations; (2) lack of factual and legal bases in the assessment; and (3) premature enforcement of collection remedies. Petitioner cries foul over the fact that respondents initiated collection remedies, including the issuance of a WDL, before the tax assessments had attained finality. Petitioner contends that the MR on the FDDA was still pending when respondents proceeded with the collection, thereby depriving petitioner of her right to due process. According to petitioner, tax liability cannot be considered delinquent unless the assessments have become final and executory, which were not the case.

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97 Id., pp. 1080-1081.
98 Id., pp. 1082-1107.
99 Id., pp. 1109-1135.
100 See Minute Resolution dated 31 May 2024, id., p. 1137.
101 See supra at note 70.

Furthermore, petitioner argues that respondents failed to properly consider the evidence she presented, including reconciliations, affidavits, and other supporting documents, all of which refuted the alleged tax deficiencies. Respondents' findings, particularly those concerning undeclared sales, were claimed to be without basis in fact or law. Petitioner points to discrepancies in respondent's sales computations, particularly the reliance on erroneous POS System data, and asserts that these inconsistencies were neither explained nor substantiated. Additionally, the computation of interest and penalties was allegedly conducted arbitrarily, with no clear justification provided.

Petitioner further asserts that the assessments lacked specific legal and factual bases. Respondents did not adequately inform petitioner of the specific factual bases of the assessments, preventing her from tracing the amounts that respondents used. Consequently, petitioner claims that she was deprived of the opportunity to effectively challenge the assessments, thus violating fundamental principles of fairness and due process.

Lastly, petitioner challenges the imposition of a compromise penalty absent a mutual agreement between her and the BIR.

Respondents counter that the tax assessments issued against petitioner are valid, supported by factual and legal bases, and were conducted in accordance with due process. Central to respondents' position is the finding that petitioner substantially under-declared her sales by more than 30%. According to respondents, this matter created a *prima facie* evidence of a false or fraudulent return under Section 248(B)[102] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

Respondents further assert that an audit of the petitioner's books of accounts revealed a discrepancy of ₱197,640,576.17 between reported and actual sales. Citing *Asalus* as precedent, respondents contend that when a taxpayer significantly under-declares sales, there is a

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102 SEC. 248. *Civil Penalties.*

presumption of falsity, shifting the burden to the taxpayer to prove the correctness of their returns. Since petitioner allegedly failed to provide sufficient rebuttal evidence, the assessments are presumed accurate.

Moreover, respondents maintain that the assessments were properly done and issued using the best evidence obtainable, as allowed under Section 6[103] of the NIRC of 1997, as amended. However, despite multiple requests and the issuance of a subpoena, petitioner allegedly still failed to submit complete records necessary for the audit, justifying the assessments based on available data.

Respondents similarly refute petitioner's claim that the tax assessments had prescribed, arguing that under Section 222(a) of the NIRC of 1997, as amended, the ten (10)-year prescriptive period applies in cases of false or fraudulent returns. Given the substantial under-declaration of sales, respondents insist that petitioner's returns were false, making the assessments well within the allowable period.

Respondents further argue that the assessments were properly communicated to petitioner, with the PAN and FLD/FAN providing adequate factual and legal explanations as required under Section 228[104] of the NIRC of 1997, as amended. Due process does not necessitate a detailed discussion of the assessments' basis but only requires that the taxpayer be sufficiently informed, which was accomplished through the issued notices. Moreover, respondents reject petitioner's claim that her protest and supporting evidence were ignored, asserting that all submitted documents were duly reviewed but the same failed to persuade respondents to warrant the removal of the subject assessment item/s.

On the issue of the WDL, respondents argue that the issuance of the WDL constituted a constructive denial of petitioner's MR. Citing *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.* (**SEGI**)[105], in instances where the CIR proceeds with tax collection

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103 SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.*

104 SEC. 228. *Protesting of Assessment.*

105 G.R. No. 225809, 17 March 2021.

measures without explicitly ruling on a taxpayer's protest, such action is deemed an implied denial. Finally, respondents underscore that all presumptions are in favor of the correctness of tax assessments and failure on the part of petitioner to satisfactorily overcome the same would mean that the presumption still stands. Consequently, the Court would be bound to uphold the assessments.

RULING OF THE COURT

Before delving into the merits of the case, We shall first resolve whether this Court has jurisdiction over the instant petition.

THE COURT OF TAX APPEALS (CTA) HAS JURISDICTION OVER THE INSTANT PETITION FOR REVIEW.

At the outset, it should be emphasized that the CTA, being a court of special jurisdiction, can only take cognizance of matters which are clearly within its jurisdiction.[106] Section 7 of Republic Act (**RA**) No. 1125[107], as amended by RA 9282[108], provides:

> ...
>
> **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 **or other laws administered by the Bureau of Internal Revenue;**

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106 *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, 25 March 2019 citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.

107 AN ACT CREATING THE COURT OF TAX APPEALS.

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

> 2. **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relations 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**[.][109]
>
> ...

Taking cue from the foregoing, the Court in Division's appellate jurisdiction is not limited to cases involving decisions of the CIR in relation to disputed assessments or refunds. The second portion of Section 7(a)(1) and (2) of RA 1125, as amended by RA 9282, clearly covers "other matters" arising under the NIRC of 1997, as amended, or other laws administered by the BIR.

The CTA's "other matters" jurisdiction includes the determination of the validity of the WDL, as ruled by the Supreme Court in the case of *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue*[110] (**La Flor**), citing *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[111], to wit:

> ...
>
> In *Philippine Journalists*, **we ruled that the CTA's appellate jurisdiction is not limited to cases involving decisions of the CIR on matters relating to assessments or refunds. Section 7(a)(2) of RA 9282 also covers "other matter[s] arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue." <u>Clearly, the CTA has jurisdiction to determine whether the WDL issued by the BIR is valid</u>** and rule on the validity of the five waivers of the statute of limitations and La Flor's application for tax amnesty under RA 9480.
>
> ...

109 Emphasis supplied and italics in the original text.
110 G.R. No. 202105, 28 April 2021; italics in the original text, emphasis and underscoring supplied.
111 G.R. No. 162852, 16 December 2004.

In the recent case of *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (***Manila Doctors Hospital***)*[112], the Supreme Court reiterated the CTA's jurisdiction to determine the validity of a WDL, *viz*:

> ...
>
> Contrary however to the CIR's argument, Section 7(a)(1) of Republic Act No. (**RA**) 1125, as amended by RA 9282, which confers upon the CTA the jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, but also "other matters" arising under the NIRC:
>
> > 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[.]
>
> As explained by the Court in *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division*, the exclusive appellate jurisdiction of the CTA Division is not limited to cases involving decisions of the CIR or matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine the validity of the warrant of distraint and levy.**
>
> ...

Considering that the issuance of a WDL falls under the CTA's jurisdiction to review "other matters arising under the NIRC", this Court can take cognizance of this case.

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112 G.R. No. 255473, 13 February 2023; citations omitted, italics and emphasis in the original text and supplied.

Notwithstanding the foregoing, the Supreme Court, in the case of *Commissioner of Internal Revenue v. Algue, Inc., et al.*[113], considered as an implied denial a circumstance where the CIR, without categorically deciding the taxpayer's protest or request for reconsideration, proceeds with distraint and levy or institutes an action for collection in the ordinary courts, such as the instant case. In such case, the taxpayer's remedy is to file an appeal with the CTA within 30 days from the date that it was notified of the warrant or collection suit.[114] Accordingly, the WDL may be considered as the final decision of the CIR appealable before the CTA.

Section 11 of the RA 1125, as amended by RA 9282, in relation to Section 3(a), Rule 8 of the RRCTA, provides for the period when the taxpayer may invoke the CTA's jurisdiction in order to question the validity of the WDL, to wit:

> ...
> 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**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA <u>within thirty (30) days</u> after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**
>
> SEC. 3. *Who may appeal; period to file petition.* —
>
> (a) **A party adversely affected by a decision, ruling** or the inaction **of the Commissioner of Internal Revenue on disputed assessments** or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed <u>within thirty days</u> after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for

113 G.R. No. L-28896, 17 February 1988.
114 *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 225809, 17 March 2021.

> refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.[115]
>
> ...

Accordingly, in case of the CIR's adverse decision or ruling, the taxpayer is given 30 days to file a Petition for Review with the CTA.

Here, it is undisputed that petitioner received the WDL on 24 May 2022 (which is the adverse decision appealable to this Court).[116] She thus had 30 days from the said date, or until 23 June 2022, to file a Petition for Review with the CTA. Clearly, petitioner timely filed the instant Petition for Review on 23 June 2022.[117]

Proceeding to the resolution of the substantial issues raised, and after a careful and thorough evaluation of the parties' respective evidence and the applicable laws, rules and regulations, the Court finds merit in the instant petition.

THE TAX ASSESSMENTS WERE ISSUED IN VIOLATION OF PETITIONER'S RIGHT TO ADMINISTRATIVE DUE PROCESS, RENDERING THE SAME NULL AND VOID.

Petitioner argues that respondents failed to properly consider the evidence she presented, including reconciliations, affidavits, and other supporting documents, all of which refuted the alleged tax deficiencies. In fact, respondents issued identical PAN and FLD/FAN.

Respondents, on the other hand, reject petitioner's claim, asserting that all submitted documents were duly reviewed but the same failed to persuade them.

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115 Italics in the original text, emphasis and underscoring supplied.

116 Supra at note 33.

117 Supra at note 1.

Petitioner's arguments are well-taken.

Section 228 of the NIRC of 1997, as amended, as implemented by Revenue Regulations (**RR**) No. 12-99[118], as amended by RR No. 18-13[119], outlines the due process requirements for the issuance of deficiency tax assessments.

Section 228 of the NIRC of 1997, as amended, states:

> ...
>
> SEC. 228. *Protesting of Assessment*. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings[.]
>
> ...
>
> **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.**[120]
>
> ...

Relevant portions of Section 3 of RR No. 12-99, as amended, state:

> ...
>
> SEC. 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** —
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:

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

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

120 Italics in the original text and emphasis supplied.

> 3.1.1 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof).
>
> If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> If the taxpayer, within **fifteen (15) days from date of receipt of the PAN, <u>responds</u> that he/it disagrees with the findings of deficiency tax or taxes**, an **FLD/FAN shall be issued within fifteen (15) days from <u>filing/submission</u> of the taxpayer's response**, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.[121]
>
> ...

In the landmark case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[122] (**Avon**), citing *Ang Tibay, represented by Toribio Teodoro, manager and proprietor, and National Workers' Brotherhood v. The Court of Industrial Relations and National Labor Union, Inc.*[123], the Supreme Court highlighted the paramount importance of administrative due process in the conduct of tax assessments, declaring in no uncertain terms:

> ...
>
> The *Ang Tibay* safeguards were subsequently "simplified into four basic rights," as follows:
>
> (a) [T]he right to notice, be it actual or constructive, of the institution of the proceedings that may affect a person's legal right; (b) **reasonable opportunity to appear and defend his rights and to introduce witnesses and relevant evidence in his favor**; (c) *a*

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[121] Italics in the original text, emphasis and underscoring supplied.

[122] G.R. Nos. 201398-99, 03 October 2018; citations omitted, italics and emphasis in the original text and supplied, and underscoring supplied.

[123] G.R. No. 46496, 27 February 1940.

tribunal so constituted as to give him reasonable assurance of honesty and impartiality, and one of competent jurisdiction; and (d) a finding or decision by that tribunal supported by substantial evidence presented at the hearing or at least ascertained in the records or disclosed to the parties.

...

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.

...

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 facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, **did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments. There was clear inaction of the Commissioner at every stage of the proceedings.**

First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from P15,700,000.00 to P62,900,000.00, without any discussion or explanation on the merits of Avon's explanations.

Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.

Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.

The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the **opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice.** However, **this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.**

...

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.

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*."**

...

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

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

...

In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. **Her disregard of the standards and rules renders the deficiency tax assessments null and void.**

...

In the case at bar, it is undisputed that the PAN and the FLD/FAN are identical. In fact, RO Diolata testified that:[124]

...

ATTY. PILOTIN

Q So therefore, the findings in **FLD are exactly the same in the PAN** because the reply or explanation was not reconsidered?

...

JUSTICE DAVID

Well, we overruled the objection, witness may answer if she knows. Anyway, you can do that by just merely looking at the PAN and [comparing] it with the FAN or FLD. Also, what is your answer Ms. Diolata?

MS. DIOLATA

A **Yes po.**

ATTY. PILOTIN

Q Yes, it's the **same findings and the total tax deficiency in the PAN and the FAN**?

MS. DIOLATA

A **Yes po.**[125]

...

RO Diolata explained that while petitioner responded within the fifteen (15)-day reglementary period to respond, respondents only received the Reply **after the issuance of the FLD/FAN but <u>before</u>** its service to petitioner. As a result, respondents advised petitioner to just file a protest to the FLD/FAN.[126]

The violation of petitioner's right to due process is further exacerbated by RO Diolata's explanation. Under Section 3 of RR

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[124] Supra at note 92, pp. 28-29.

[125] Emphasis supplied.

[126] Supra at note 24.

No. 12-99, as amended, the BIR is bound to observe two distinct procedural safeguards before issuing an FLD/FAN. *First*, if the taxpayer does not respond to the PAN, the BIR must wait 15 days from the taxpayer's receipt of the notice before issuing an FLD/FAN to give the taxpayer time to draft a reply. *Second*, if the taxpayer does respond within 15 days, disputing the deficiency assessment, the BIR must issue the FLD/FAN within 15 days from the date of submission. The rationale for this rule is not difficult to discern as one of the cardinal primary rights which must be respected during administrative proceedings is the party's right for its evidence to be considered by the administrative tribunal.[127] Thus, the BIR is duty-bound to consider first the taxpayer's response before issuing the FLD/FAN.

In its common acceptation, the word "respond" means "to react in response".[128] Clearly, when petitioner mailed her Reply on 11 October 2021, it was well within the 15-day reglementary period to respond.[129] Consequently, the second safeguard should be made applicable. Thus, respondent RD Lozares should have waited first for petitioner's Reply and issued the FLD/FAN within 15 days from the receipt of the Reply, *i.e.*, **22 October 2021.**[130] Here, the FLD/FAN was issued on **13 October 2021**[131] or only after two (2) days from the mailing of the Reply **but before the receipt of the Reply**. Clearly, the second safeguard was disregarded.

In the case of *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*[132], citing *Commissioner of Internal Revenue v. Yumex Philippines Corporation*[133], the Supreme Court has held that **the 15-day period provided under RR 12-99, as amended, (*albeit* pertaining to the first safeguard) for a taxpayer to reply to a PAN forms part and parcel of the due process requirement in the issuance of**

127 *Ang Tibay, represented by Toribio Teodoro, manager and proprietor, and National Workers' Brotherhood v. The Court of Industrial Relations and National Labor Union, Inc.*, supra at note 123.

128 See also Merriam-Webster Dictionary, "respond," available at <https://www.merriam-webster.com/ dictionary /respond> (last accessed on 26 March 2025).

129 Since the fifteenth day (*i.e.*, 09 October 2021) fell on a Saturday, the next working day is 11 October 2021.

130 Supra at note 22.

131 Supra at note 5.

132 G.R. No. 249153, 12 September 2022.

133 G.R. No. 222476, 05 May 2021.

deficiency tax assessments and the same must be strictly complied with; otherwise, the assessment becomes null and void. Clearly, respondents prioritized the swift issuance of the FLD/FAN over petitioner's fundamental right to due process.

Furthermore, the disregard of petitioner's pieces of evidence and arguments before the BIR is further exemplified by the summary dismissal of petitioner's request for reinvestigation as can be inferred from the following excerpts of the FDDA[134] and Memorandum prepared by RO Diolata:[135]

> ...
>
> **FINAL DECISION ON DISPUTED ASSESSMENT**
>
> ...
>
> In reply, please be informed that after careful evaluation of the facts of the case and the laws applicable thereto, we regret to inform you that your request for reinvestigation is hereby **DENIED** for it is bereft of any legal and factual basis and for your **failure to introduce newly found evidence to support your protest.** Pursuant to Revenue Regulations No. 18-2013, a valid protest against the FLD/FAN shall state (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.
>
> ...
>
> **MEMORANDUM FOR:**
> **The Revenue District Officer**
> This District
>
> **RE: REBECCA DOMASIAN DUKA**
> Request for Reinvestigation
> LOA-068-2020-00000025 dated January 23, 2020
> MOA No.: MOA0682020LOA46760
>
> **Maam:**
> ...

[134] Supra at note 4; emphasis in the original text and supplied.
[135] Supra at note 29; emphasis in the original text and supplied.

A letter dated January 25, 2022 was received by this office pertaining to their request for reinvestigation. However, the letter contains only [a] transmittal of documents already submitted to us prior to the issuance of Final Assessment Notice (FAN)/Formal Letter of Demand (FLD). On February 08, 2022, the subject taxpayer's representatives, through a text message, requested for a conference to discuss their protest. On February 16, 2022 the meeting took place at the office of the Revenue District Officer. During the conference, audit findings such as undeclared sales per POS, undeclared sales to government, disallowance of expenses, [under-withholding] of expenses and other findings were discussed.

It is worthy to note, however, that the letter dated January 25, 2022 only contains **transmittal of documents already in our possession and does not contain any new additional documents or newly discovered evidence**, contrary to the provision of Section 228 of the National Internal Revenue Code (NIRC), as amended and relevant revenue regulations on protesting an assessment.

In view of the foregoing, it is respectfully recommended that the request for reinvestigation **BE DENIED** and that this case be forwarded to the Regional Director, Revenue Region No. 10 through the Assessment Division for issuance of **Final Decision on Disputed Assessment (FDDA)** and if circumstances warrant for filing of a **RATE** case.

...

A meticulous scrutiny of the documents RO Diolata mentioned (that were already submitted and "considered" by respondents *vis-à-vis* the assessment items from NOD to PAN to FLD/FAN) reveals that there was no clear explanation on record as to why petitioner's arguments and pieces of documents were rejected. More troubling is the unexplained increase in the underdeclared sales and disallowed expenses from the NOD to the FLD/FAN, despite petitioner's submission of supporting documents, to wit:

Documents submitted by petitioner[136]	**Date submitted**	**Assessment Items**		
		NOD (issued on 28 April 2021)[137]	**PAN (issued on 21 September**	**FLD/FAN (issued on 13 October**

[136] Supra at note 28.
[137] Supra at note 18.

			2021)[138]	**2021)**[139]
Original copies of subsidiary sales journal and other documents	27 July 2020 and 12 August 2020	*Underdeclared sales –* ₱197,640,576.17	*Underdeclared sales –* ₱260,705,523.48	*Underdeclared sales –* ₱260,705,523.48
Original copies of purchase documents such as official receipts, invoices, purchase journal and disbursement books	20 July 2020 and 27 July 2020	*Disallowed Expenses –* ₱1,209,628.00	*Disallowed Expenses –* ₱1,512,035.00	*Disallowed Expenses –* ₱1,512,035.00
Proof of payment of RF for DGM's main office, warehouse, rental and lotto branches	22 May 2020	-	*Unpaid RF –* ₱1,000.00	*Unpaid RF –* ₱1,000.00

Petitioner cannot be faulted for resubmitting the same documents during the reinvestigation as she was never informed why her initial submissions were deemed insufficient. Despite mentioning the same arguments in the Reply and reiterating them in the Protest, respondents ignored petitioner's pleas. Even when the same documents were resubmitted during the reinvestigation, respondents summarily dismissed them once again, demonstrating a clear violation of petitioner's right to due process. This failure to consider petitioner's pieces of evidence amounts to an outright denial of her right to be heard, rendering the assessment procedurally defective and legally untenable.

138 Supra at note 21.

139 Supra at note 5.

While the government has an interest in the swift collection of taxes, the BIR and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.[140]

WHEREFORE, the foregoing premises considered, the present Petition for Review filed by petitioner Rebecca D. Duka on 23 June 2022 is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue's notices and assessments are declared **VOID** and henceforth **CANCELLED**. Consequently, the Warrant of Distraint and/or Levy dated 13 May 2022, covering the assessed deficiency tax liabilities against petitioner for the calendar year 2018, in the aggregate amount of ₱69,976,123.84, inclusive of surcharge, interest and compromise penalty, is also **CANCELLED** and **SET ASIDE**.

Respondent Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from pursuing any action against petitioner Rebecca D. Duka relative to the above-mentioned void assessments.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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140 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, supra at note 122.

LANEE S. CUI-DAVID
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice