REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CHERIE MARIE T. CHAN,
Petitioner,

- versus -

COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10640

Members:

MANAHAN, *Chairperson,*
REYES-FAJARDO, and
ANGELES, *JJ.*

Promulgated:

JUL 26 2024
3:06 p.m.

x- -x

DECISION

REYES-FAJARDO, ***J.*:**

Under consideration is the Petition for Review dated August 23, 2021,[1] filed by Cherie Marie T. Chan against the Commissioner of the Bureau of Internal Revenue (BIR), which aims to nullify: (1) the Preliminary Assessment Notices (PAN) dated October 13, 2020 and March 12, 2021; (2) the Formal Letters of Demand (FLD) dated November 9, 2020 and May 3, 2021; and (3) the Final Decision on Disputed Assessment dated July 23, 2021, imposing deficiency Value-Added Tax (VAT) amounting to ₱4,572,117.97 against the former, covering Taxable Year (TY) 2017.

[1] Docket, pp. 6-25.

FACTS

Petitioner Cherie Marie T. Chan is of legal age, married, and with address at 180 Roberto St., Estacio Village, Libertad, Butuan City.[2]

Respondent is the duly appointed Commissioner of Internal Revenue vested under the law with the authority to carry out the functions, duties, and responsibilities of said office, including *inter alia*, the power to assess and collect all national internal revenue taxes, fees, and charges.[3]

On March 13, 2020, petitioner received a Letter of Authority (LOA) eLA201600067787 dated March 5, 2020, issued by Regional Director Jose Eric C. Furia (RD Furia), authorizing Revenue Officer Francesca Grace Racho (RO Racho) and Group Supervisor Edito JR Vertical (GS Vertical), to conduct audit and examination of her books of account and other accounting records covering TY 2017.[4]

On October 20, 2020, petitioner received RD Furia's PAN dated October 13, 2020, with Details of Discrepancies, containing the proposed deficiency Income Tax (IT), VAT, and annual registration fee (ARF) for TY 2017, in the total amount of ₱4,514,033.15, inclusive of surcharges, interests, and compromise penalties.[5]

On November 4, 2020, petitioner filed with the BIR, the Letter dated October 31, 2020, embodying her response on the PAN.[6]

On November 16, 2020, petitioner received RD Furia's FLD dated November 9, 2020, assessing the former for deficiency IT, VAT, and ARF for TY 2017, amounting to ₱4,492,631.28, inclusive of surcharges, interests, and compromise penalties.[7]

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2 Par. 3, Petition for Review, vis-à-vis par. 1, Answer. *Id.* at pp. 6-7, and 219, respectively.
3 Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI). *Id.* at p. 381.
4 Exhibit "P-1," *id.* at p. 27; and Exhibit "R-1," BIR Records (Exhibit "R-12"), p. 280.
5 Exhibits "P-2" and "P-2-1," Docket, pp. 29-32; and Exhibits "R-5" and "R-5-1," BIR Records (Exhibit "R-12"), pp. 536-539.
6 Exhibit "P-3." Docket, pp. 33-37.
7 Exhibits "P-6" and "P-6-1," Docket, pp. 52-55; and Exhibits "R-6" and "R-6-1," BIR Records (Exhibit "R-12"), pp. 568-569.

On December 11, 2020, petitioner filed with the BIR, a Letter of even date, encapsulating her protest with request for reconsideration against RD Furia's FLD dated November 9, 2020.[8]

On March 23, 2021, petitioner received a PAN (After Reconsideration) dated March 12, 2021, issued by Regional Director Atty. Nuzar N. Balatero, CESO VI (RD Balatero), containing the projected deficiency IT, VAT, and ARF for TY 2017, in the total amount of ₱4,532,422.86, inclusive of surcharges, interests, and compromise penalties.[9]

On April 7, 2021, petitioner filed with the BIR, a Letter dated April 5, 2021, seeking: (1) reconsideration of the findings in the PAN (After Reconsideration); and (2) the BIR's acknowledgment regarding her full and complete payment of IT and VAT liabilities for TY 2017.[10]

On May 24, 2021, petitioner received RD Balatero's FLD (After Reconsideration) dated May 3, 2021, assessing the former for deficiency IT, VAT, and ARF for TY 2017, amounting to ₱4,547,154.21, inclusive of surcharges, interests, and compromise penalties.[11]

On June 1, 2021, petitioner paid the deficiency IT and ARF, amounting to ₱18,036.24, inclusive of surcharges, interests, and compromise penalties.[12]

On June 21, 2021, petitioner file a Letter dated June 14, 202[1], seeking reconsideration of the FLD dated May 3, 2021.[13]

On August 5, 2021, petitioner received[14] RD Balatero's: (1) Letter dated July 2, 2021, finding her request for reconsideration dated June 14, 2021 without merit;[15] and (2) FDDA dated July 23, 2021

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8 Exhibit "P-7." Docket, pp. 56-61.

9 Exhibits "P-4" and "P-4-1," Docket, pp. 45-47; and Exhibits "R-8" and "R-8-1," BIR Records (Exhibit "R-12"), pp. 633-635.

10 Exhibit "P-5." Docket, pp. 48-51.

11 Exhibits "P-8" and "P-8-1," Docket, pp. 62-64; and Exhibits "R-9" and "R-9-1," BIR Records (Exhibit "R-12"), pp. 667-669.

12 Exhibits "P-9" and "P-9-1." Docket, pp. 65-68.

13 Exhibit "P-10." *Id.* at pp. 69-70. Said letter was dated "June 14, 2020."

14 Par. 18, Petition for Review. *Supra* note 2. See also Answer to Question No. 35 of the Amended Judicial Affidavit of Cherie Marie T. Chan dated September 23, 2022, Docket, pp. 371-372.

15 Exhibit "P-11." Docket, pp. 71-73.

enclosed therein, informing her that it is RD Balatero's final decision on the matter.[16]

On October 27, 2021, petitioner filed a Petition for Review,[17] docketed as CTA Case No. 10640, to which respondent posted his Answer[18] on January 31, 2022.

On September 21, 2022, pre-trial conference was held. There, the parties were directed to submit their Joint Stipulation of Facts and Issues, embodying the issue of whether petitioner is liable for the assessed deficiency VAT in the amount of ₱4,572,117.97 for TY 2017, inclusive of surcharge, interest, and compromise penalty. Further, their respective schedule for the marking of documents, and presentation of their respective evidence were, as well, set.[19]

On October 21, 2022, the parties filed their Joint Stipulation of Facts and Issues,[20] which was approved, *via* Resolution[21] dated November 3, 2022.

On December 28, 2022, the Pre-Trial Order was issued.[22]

Trial followed.

Petitioner presented her own testimony, in support of her cause.[23]

On December 13, 2022, petitioner filed her Formal Offer of Exhibits,[24] *sans*[25] respondent's comment.

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16 Exhibit "P-12." *Id.* at p. 74.
17 *Supra* note 2.
18 Docket (Vol. I), pp. 219-223.
19 Order dated September 21, 2022. *Id.* at pp. 347-349.
20 *Id.* at pp. 381-385.
21 *Id.* at p. 389.
22 *Id.* at pp. 434-481.
23 Exhibit "P-16." *Id.* at pp. 361-378. Identified in the hearing held on November 29, 2022, *id.* at pp. 416-419.
24 *Id.* at pp. 421-429.
25 Records Verification dated January 6, 2023. *Id.* at p. 482.

Under Resolution dated February 8, 2023, the pieces of evidence offered by petitioner were admitted, except for Exhibit "P-12-1."[26] The latter rested her case.

Respondent presented RO Racho as witness.[27]

On April 24, 2023, respondent filed his Formal Offer of Evidence,[28] to which petitioner filed her Comment/Opposition[29] on May 10, 2023.

Meanwhile, CTA Case No. 10640 was transferred, from the First Division, to the Third Division of the Court.[30]

By Resolution dated July 5, 2023, the pieces of evidence offered by respondent were admitted.[31]

On August 10, 2023, CTA Case No. 10640 was submitted[32] for decision considering: (1) Memorandum (For Petitioner Cherie Marie T. Chan), filed through accredited courier on August 4, 2023;[33] and (2) respondent's Memorandum, filed on August 7, 2023.[34]

ISSUE

Is petitioner liable for the assessed deficiency VAT in the amount of ₱4,572,117.97 for TY 2017, inclusive of surcharge, interest, and compromise penalty?[35]

ARGUMENTS

Petitioner states that of the ₱26,406,371.00 worth of purchases declared in her 2017 Audited Financial Statements, only ₱1,873,932.44

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26 *Id.* at pp. 489-491.
27 Exhibit "R-13," *id.* at pp. 291-300. Identified in hearing held on April 12, 2023. See Order of even date, *id.* at pp. 493-494.
28 *Id.* at pp. 496-501.
29 *Id.* at pp. 503-504.
30 Notice dated May 29, 2023. *Id.* at p. 509.
31 *Id.* at pp. 512-513.
32 Minute Resolution dated August 10, 2023. *Id.* at p. 543.
33 *Id.* at pp. 514-529.
34 *Id.* at pp. 532-541.
35 *Supra* note 20.

were considered by the BIR's FDDA as *valid* purchases. According to her, the disallowances it made on said purchases are erroneous because:

> *First.* She may not be faulted on her suppliers' supposed neglect in completing the information in the VAT invoice/ official receipt (OR);
>
> *Second.* The BIR erred in relying on Sections 237 and 238 of the NIRC, as amended, as bases of such disallowances, because the penalties referred to therein are imposed upon the issuer of the VAT invoice/OR, and *not* on the person to whom the VAT invoice/OR was issued;
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> *Third.* Assuming she was tasked to complete the information in the VAT invoice/OR, she already rectified the suppose deficiencies by submission thereof, together with the complete details with the BIR; and
>
> *Fourth.* Despite advancing the immediately preceding points with the BIR through various stages of the assessment process, the BIR simply ignored and failed to tackle the same in the PAN, FLD, and FDDA.

Capping up her contentions, petitioner concludes that the invalidation of the deficiency VAT assessment, including the corresponding surcharge, interest, and compromise penalty for TY 2017 is in order.

In repudiation, respondent ripostes that his imposition of deficiency VAT assessment, and ARF for TY 2017 against petitioner is justified because: (1) the latter failed to overturn the presumption of correctness of tax assessment; (2) her purchases were disallowed because of non-compliant VAT invoice/OR; and (3) she failed to pay the ARF for said year.

RULING

We grant the Petition.

First, do we have jurisdiction over CTA Case No. 10640?

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Yes.

Section 7, in relation to Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282 pertinently 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 Code or other laws administered by the Bureau of Internal Revenue;
>
> ...
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* - **Any party adversely affected by a decision**, ruling or inaction **of the Commissioner of Internal Revenue, ... may file an appeal with the CTA within thirty (30) days after the receipt of such decision** or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> ...[36]

Indeed, a party aggrieved by the decision of respondent or his duly authorized representative[37] on a disputed assessment may seek recourse before the Court of Tax Appeals, within thirty (30) days from receipt thereof. This matches with the period to appeal endowed to the taxpayer, in impugning respondent or his duly authorized representative's decision on disputed assessment, under Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended:

> Section 228. *Protesting of Assessment.* — ...
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> ...
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> **If the protest is denied in whole or in part**, or is not acted upon within one hundred eighty (180) days from submission of

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36 Boldfacing ours.

37 See *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*, G.R. No. 208731, January 27, 2016.

> documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[38]

Here, petitioner received RD Balatero's FDDA on August 5, 2021.[39] The thirty (30)-day period to appeal commenced on August 5, 2021, and was halted on August 21, 2021, as all courts in the National Capital Region were physically closed because Metro Manila had been placed under Modified Enhanced Community Quarantine (MECQ). Office of the Court Administrator (OCA) Circular No. 114-2021 confirmed:

OCA Circular No. 114-2021	August 20, 2021	RE: Court Operations Starting 23 August 2021	Considering that the National Capital Region (NCR) has been placed under Modified Enhanced Community Quarantine (MECQ) beginning 21 August 2021, upon instructions of Chief Justice Alexander G. Gesmundo and pursuant to Administrative Circular (AC) No. 56-2021, dated 30 July 2021, all courts in the NCR, except the Supreme Court, shall be **PHYSICALLY CLOSED** to court users for the duration of the MECQ. ... The time for filing and service of pleadings and motions during this period is **SUSPENDED** and shall resume after seven (7) calendar days counted from the first day of the physical reopening of the relevant court.

From August 21, 2021, the period to file and serve, among others, pleadings were on hold. This continued until the Supreme

38 Boldfacing ours.
39 *Supra* note 15.

Court (SC)'s issuance of Administrative Circular (AC) No. 83-2021, whereby: (1) the suspension of filing and service of, among others, pleadings were lifted; and (2) the resumption thereof, on October 27, 2021. These observations are collectively embodied on the following issuances issued by the OCA and SC:

ISSUANCE	DATE OF ISSUE	SUBJECT	PERTINENT CONTENT
OCA Circular No. 117-2021	August 28, 2021	RE: Reiteration of OCA Circular No. 114-2021, Dated 20 August 2021	Considering that the National Capital Region (NCR) and other identified areas shall remain under Modified Enhanced Community Quarantine (MECQ) until 7 September 2021, upon instructions of Chief Justice Alexander G. Gesmundo, OCA Circular No. 114-2021, dated 20 August 2021, is hereby reiterated. All courts in the NCR and identified areas under MECQ, except the Supreme Court, shall be **PHYSICALLY CLOSED** to court users for the duration of the MECQ. ... The time for filing and service of pleadings and motions during this period is **SUSPENDED** and shall resume after seven (7) calendar days counted from the first day of the physical reopening of the relevant court.
OCA Circular No. 119-2021	September 7, 2021	RE: Court Operations Beginning 8 September 2021	In view of the continued surge of confirmed COVID-19 cases in different variants, and considering that the proposed granular or localized lockdown will be pilot-tested in the National Capital Region (NCR) which is on Alert Level 4 (except the City of Manila), upon instructions of Chief Justice Alexander

			G. Gesmundo, **ALL COURTS** in the NCR, except the Supreme Court, shall remain **PHYSICALLY CLOSED** to court users until 30 September 2021, notwithstanding the NCR will be under General Community Quarantine (GCQ) beginning 8 September 2021. … The time for filing and service of pleadings and motions during this period is **SUSPENDED** and shall resume after seven (7) calendar days counted from the first day of the physical reopening of the relevant court, …
AC No. 72-2021	September 15, 2021	RE: Court Operations Beginning 16 September 2021	Notwithstanding that the National Capital Region (NCR) will be under General Community Quarantine (GCQ) with Alert Level 4 beginning 16 September 2021, **ALL COURTS** in the NCR will continue to remain **PHYSICALLY CLOSED** to court users until further notice. … The time for filing and service of pleadings and motions during this period **REMAINS SUSPENDED** and shall resume after seven (7) calendar days counted from the first day of the physical reopening of the relevant court, unless otherwise expressly ordered by the relevant court which shall consider the physical closure of the courts and the granular lockdowns in the different areas.
AC No. 75-2021	October 1, 2021	RE: Court Operations Beginning 4 October 2021	Notwithstanding any modification of the alert level guidelines in the

			National Capital Region (NCR), all appellate collegiate courts within the NCR, except the Supreme Court, shall, beginning 4 October 2021 until further notice, remain **PHYSICALLY CLOSED** to court users EXCEPT for urgent matters where in-court hearings may be deemed necessary, at the sound discretion of the Presiding Justice or the Chairpersons of the different divisions. ... The time for filing and service of pleadings and motions during this period shall **REMAIN SUSPENDED** until further notice.
AC No. 83-2021	October 18, 2021	RE: Court Operations Beginning October 20, 2021 until October 29, 2021	Considering that the National Capital Region (NCR) has been placed under Alert Level 3 of the IATF's COVID-19 Alert Levels System, **all appellate collegiate courts within the NCR,** beginning October 20, 2021 until October 29, 2021, may conduct in-court proceedings on urgent matters and on other matters as may be determined by the presiding justice or the chairpersons of the different divisions, but in-court attendance shall be limited to lawyers, parties, and witnesses required to participate in-court. All others who are not required to be in-court but wish to observe the proceedings may do so through videoconferencing, subject to existing guidelines. The suspension of the

			time for filing and service of pleadings and motions, regardless of the alert level or community quarantine, is **LIFTED.** Pursuant to Administrative Circular No. 72-2021, the period for filing and service shall resume seven (7) calendar days from October 20, 2021. …

Looking back, from petitioner's receipt of RD Balatero's FDDA on August 5, 2021, until suspension of the filing and service of pleadings on August 21, 2021, sixteen (16) days of the thirty (30)-day period to appeal were consumed. Counting the remaining fourteen (14) days from the resumption of the filing and service thereof on October 27, 2021, petitioner had until November 11, 2021 to appeal before the Court. Therefore, the timely filing of the Petition for Review on October 27, 2021,[40] resulted in the Court's acquisition of jurisdiction over CTA Case No. 10640.

Now, is petitioner liable for the assessed deficiency VAT in the amount of ₱4,572,117.97 for TY 2017, inclusive of surcharge, interest, and compromise penalty?

No.

Section 228 of the NIRC, as amended, provides in part:

> SEC. 228. *Protesting of Assessment.* — …
>
> …
>
> **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.**
>
> …[41]

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40 Docket, p. 6.

41 Boldfacing supplied.

Ang Tibay v. Court of Industrial Relations (Ang Tibay)[42] explained that among the components for administrative due process are: *one*, the administrative tribunal or body must consider the evidence presented; and *two*, the administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.

These two (2) components of administrative due process culled from *Ang Tibay* were applied in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (Avon).*[43] There, Avon Products Manufacturing, Inc. (APMI) advanced before the BIR, its defenses on the initial findings of the examining revenue officers, informal conference, PAN, and FAN. However, the BIR failed to give explanation or discussion on APMI's defenses in various segments of the assessment process. *Avon* decreed that the BIR flouted APMI's right to due process:

> 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.
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> 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.
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> **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**

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[42] G.R. No. L-46496, February 27, 1940.

[43] G.R. Nos. 201398-99, October 3, 2018.

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.

Upon receipt of the Final Assessment Notices, Avon resubmitted its protest and submitted additional documents required by the revenue examiners, including the original General Ledger for 1999. As testified by Avon's Finance Director, Mildred C. Emlano, the Bureau of Internal Revenue examiners were convinced with Avon's explanation during the meeting on August 4, 2003, particularly, that there was no underdeclaration of sales. Still, the Commissioner merely issued a Collection Letter dated July 9, 2004, demanding from Avon the payment of the same 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. This Collection Letter was based on the May 27, 2004 Memorandum of the Revenue Officers stating that "[Avon] failed to submit supporting documents within 60-day period." This inaction on the part of the Bureau of Internal Revenue and its agents could hardly be considered substantial compliance of what is mandated by Section 228 of the Tax Code and the Revenue Regulation No. 12-99.

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.[44]

More recently, *Commissioner of Internal Revenue v. Unioil Corporation (Unioil)*[45] condensed the dictum in *Avon* as follows:

> What we can refract from our ruling in Avon Products is that the CIR, in exercising its power to assess and collect taxes if these are owed, ought to give due consideration to the arguments and evidence submitted by the affected party.

Here, the PAN dated October 13, 2020[46] reveals the BIR's proposed deficiency IT, VAT, and ARF covering TY 2017 against petitioner, totaling ₱4,514,033.15, inclusive of surcharges, interests, and compromise penalties, summarized as follows:

Tax Type	Basic	Surcharge	Interest	Compromise Penalty	Total
IT	₱ 75,170.25	₱ 18,792.56	₱ 22,946.47	₱ 15,000.00	₱ 131,909.28
VAT	2,742,367.00	685,591.75	910,391.80	40,000.00	4,378,350.55
ARF	1,000.00	250.00	523.32	2,000.00	3,773.32
Total	**₱ 2,818,537.25**	**₱704,634.31**	**₱ 933,861.59**	**₱ 57,000.00**	**₱ 4,514,033.15**

Petitioner registered her response on the PAN on November 4, 2020, ventilating her refutations against the findings of the BIR's proposed deficiency tax assessments and fee for TY 2017.[47]

Yet, without batting an eye, the BIR issued the FLD dated November 9, 2020,[48] reiterating the findings in the PAN, save for adjustment in the amount of interest on the 2017 deficiency taxes and fee:

Tax Type	Basic	Surcharge	Interest	Compromise Penalty	Total
IT	₱ 75,170.25	₱ 18,792.56	₱ 23,895.87	₱ 15,000.00	₱ 132,858.68
VAT	2,742,367.00	685,591.75	945,027.90	40,000.00	4,412,986.55
ARF	1,000.00	250.00	535.95	2,000.00	3,785.95

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44 Boldfacing supplied.
45 G.R. No. 204405, August 4, 2021.
46 *Supra* note 5.
47 *Supra* note 6.
48 *Supra* note 7.

Total	₱ 2,818,537.25	₱704,634.31	₱ 969,459.72	₱ 57,000.00	₱ 4,549,631.18

We underscore that the BIR's repetition of the PAN's results in the FLD dated November 9, 2020 failed to accompany the reasons why petitioner's defenses in her response on the PAN were without merit. In fact, the BIR did not even bother to mention in said FLD and concomitant Details of Discrepancies, petitioner's letter-response on the PAN. This offends the latter's right to due process. The infraction does not end there.

Specifically, instead of fixing the wanton inattention exhibited by the BIR in addressing petitioner's defenses in the PAN, it turned deaf on petitioner's defenses a *second time* around.

The FLD dated November 9, 2020 was protested by petitioner, through a Letter[49] filed on December 11, 2020. The BIR then issued the PAN (After Reconsideration) dated March 12, 2021, [50] encapsulating the projected deficiency IT, VAT, and ARF covering TY 2017 against her, as follows:

Tax Type	Basic	Surcharge	Interest	Compromise Penalty	Total
IT	₱ 8,120.54	₱ 2,030.14	₱ 2,882.36	₱ 1,000.00	₱ 14,033.04
VAT	2,742,367.00	685,591.75	1,046,607.89	40,000.00	4,514,566.64
ARF	1,000.00	250.00	573.18	2,000.00	3,823.18
Total	₱ 2,751,487.54	₱687,871.89	₱ 1,050,063.43	₱ 43,000.00	₱ 4,532,422.86

Via letter dated April 5, 2021, [51] petitioner sought reconsideration of the proposed deficiency taxes and fee covering TY 2017 found in the PAN (After Reconsideration), among others.

Yet *again*, in the FLD (After Reconsideration) dated May 3, 2021,[52] petitioner was assessed for deficiency IT, VAT, and ARF, inclusive of surcharges, interests, and compromise penalties covering TY 2017, as follows:

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49 *Supra* note 8.
50 *Supra* note 9.
51 *Supra* note 10.
52 *Supra* note 11.

Tax Type	Basic	Surcharge	Interest	Compromise Penalty	Total
Income Tax	₱ 8,120.54	₱ 2,030.14	₱ 3,047.31	₱ 1,000.00	₱ 14,197.99
VAT	2,742,367.00	685,591.75	1,104,159.22	40,000.00	4,572,117.97
Annual Registration Fee	1,000.00	250.00	588.25	2,000.00	3,838.25
Total	₱ 2,751,487.54	₱687,871.89	₱ 1,107,794.78	₱ 43,000.00	₱ 4,590,154.21

We point out that the amount of deficiency basic IT, VAT, and ARF, and compromise penalty in the FLD (After Reconsideration) dated May 3, 2021 and the PAN (After Reconsideration) dated March 12, 2021 are the same, without any justification why petitioner's position in her April 5, 2021 Letter [response on the PAN (After Reconsideration)] is wanting in basis. In fact, said letter-response was not even mentioned in the FLD (After Reconsideration) and its corresponding Details of Discrepancies.

Tallying our findings, respondent and his subordinates fell short in its responsibility to give reason for snubbing petitioner's defenses in the PAN, and in the PAN (After Reconsideration), as commanded by Section 228 of the NIRC, as amended, as interpreted in *Avon* and *Unioil*, thereby transgressing the latter's right to due process *twice*. Indeed, "... [respondent], in exercising its power to assess and collect taxes if these are owed, ought to give due consideration to the arguments and evidence submitted by the affected party."[53]

In closing, the deficiency tax assessments for TY 2017 issued by the BIR against petitioner are null. Being so, collection thereof on her for said year is no longer possible. To stress, a void assessment bears no valid fruit.[54]

WHEREFORE, the Petition for Review dated August 23, 2021, filed by Cherie Marie T. Chan is **GRANTED**. Accordingly, the Bureau of Internal Revenue's Formal Letters of Demand dated November 9, 2020 and May 3, 2021, and Final Decision on Disputed Assessment dated July 23, 2021, all issued against petitioner, are **CANCELLED** and **SET ASIDE**.

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53 See *Commissioner of Internal Revenue v. Unioil Corporation, supra* note 45.

54 *Ibid.*

Respondent, his representatives, agents, or other persons acting in his behalf, are **PROHIBITED** from collecting on petitioner, the assessed deficiency VAT in the amount of ₱4,572,117.97 for TY 2017, inclusive of surcharge, interest, and compromise penalty.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

HENRY S. ANGELES
Associate Justice

ATTESTATION

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

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the 1987 Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice