CTA Form No. 8

21-000464-0085

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10688

FIRST TELECOM PHILIPPINES, INC.,
Petitioner,

\- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

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

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. MARVEEN B. DE LA PAZ
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

DU-BALADAD AND ASSOCIATES
20th Floor, Chatham House
Rufino corner Valero Streets
Salcedo Village, Makati City

GREETINGS:

You are hereby notified by these presents that on **December 17, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **December 18, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

FIRST TELECOM PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 10688**
	Members:
-versus-	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: DEC 17 2024; 2:35PM

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DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Review* ("**Petition**") filed on November 29, 2021, by petitioner First Telecom Philippines, Inc. ("**Petitioner**") against respondent Commissioner of Internal Revenue ("**CIR**" or "**Respondent**"). The *Petition* challenges the Final Decision on Disputed Assessment (**FDDA**) dated November 29, 2021, which assessed petitioner for deficiency Income Tax (**IT**), Value-Added Tax (**VAT**), Expanded Withholding Tax (**EWT**), Improperly Accumulated Earnings Tax (**IAET**) and compromise penalties amounting to ₱1,261,778,003.74, inclusive of penalties and interests, for taxable year (**TY**) 2012.

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office located at 2-D Ison Building, 1 MC Ison Street corner Rizal Avenue, Dolores, Taytay, Rizal.[1] It is registered with the Bureau of

[1] Docket – Vol. I, pp. 7–80, Petition for Review, par. 1; Exhibit "P-1", Docket – Vol. I, p. 190.

Internal Revenue (**BIR**) and holds Tax Identification Number (**TIN**) 005-694-880-000.[2]

Respondent is the chief of the BIR, the government agency vested with the authority to administer and enforce national internal revenue taxes, including, among others, the assessment and collection of all internal revenue taxes, fees, and charges.[3]

THE FACTS

On February 9, 2015, respondent issued Letter of Authority (**LOA**) No. AUDM50/005009/2015/ SN: eLA201200042160 authorizing Revenue Officers (**ROs**) Arnaldo Ancheta and Tito Monforte, as well as Group Supervisor (**GS**) Allan Maniego, to examine petitioner's books of accounts and other accounting records covering TY 2012.[4]

Subsequently, on June 13, 2016, petitioner received from respondent a Reassignment Notice signed by Cesar D. Escalada (**Escalada**), Chief of the Regular Large Taxpayers Audit Division (**RLTAD**)-I. The notice authorized ROs Jennifer L. Almedilla, Vivien C. Guillermo, and Ferly Ann P. Montalban, along with GS Marivic P. Bautista, to continue the examination of petitioner's books of accounts and other accounting records for all internal revenue tax liabilities for TY 2012.[5]

During the examination, petitioner executed three (3) *Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code* (**Waivers**):[6]

Waiver	Date executed	Period of extension
First Waiver[7]	October 22, 2015	Until December 31, 2016
Second Waiver[8]	August 22, 2016	Until June 30, 2017
Third Waiver[9]	May 22, 2017	Until December 31, 2017

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[2] Docket – Vol. VIII, pp. 4092–4169, Petitioner's Memorandum, par. 7; Exhibit "P-3", Docket – Vol. I, p. 209.
[3] Docket – Vol. VII, pp. 3247–3280, Joint Stipulation of Facts and Issues (JSFI), Summary of Admitted Facts, par. 2; Exhibit "P-4", Docket – Vol. I, p. 210.
[4] Docket – Vol. VII, pp. 3247–3280, JSFI, Summary of Admitted Facts, par. 3; Exhibit "P-4", Docket – Vol. I, p. 210.
[5] Docket – Vol. VII, pp. 3247–3280, JSFI, Summary of Admitted Facts, par. 4; Exhibit "P-5", Docket – Vol. I, p. 211.
[6] The Court notes that par. 5, Summary of Admitted Facts, Joint Stipulation of Facts and Issues, Docket – Vol. VII, pp. 3247–3280, is inconsistent with par. 52, Petitioner's Memorandum, Docket – Vol. VIII, pp. 4092–4169. The JSFI only mentions the First Waiver and the Third Waiver. However, respondent's evidence shows that a Second Waiver was executed.
[7] Exhibit "P-6", Docket – Vol. I, p. 212.
[8] Exhibit "R-8", BIR Records, p. 297.
[9] Exhibit "P-7", Docket – Vol. I, p. 213.

On December 7, 2017, petitioner received a Preliminary Assessment Notice (**PAN**) of even date, assessing petitioner for alleged deficiency taxes, penalties, and interest for TY 2012 in the total amount of ₱1,152,202,270.70 with the following breakdown: [10]

Income tax	₱ 140,152,726.45
VAT	1,011,269,167.30
EWT	32,061.90
IAET	598,315.05
Compromise Penalties	150,000.00
Total	**₱1,152,202,270.70**

Petitioner filed a *Reply* to the PAN on December 22, 2017[11], with the following breakdown:

On December 28, 2017, petitioner received a Formal Letter of Demand with attached Details of Discrepancies and Assessment Notice (**FAN/FLD**), also dated December 28, 2017, signed by Teresita M. Angeles, the Assistant Commissioner and Officer-in-Charge (**OIC**) of the Large Taxpayers Service of the BIR. The FAN/FLD assessed petitioner for alleged deficiency taxes, penalties, and interest for TY 2012 in the total amount of ₱1,152,202,270.70, with the following breakdown:[12]

Income tax	₱ 140,152,726.45
VAT	1,011,269,167.30
EWT	32,061.90
IAET	598,315.05
Compromise Penalties	150,000.00
Total	**₱1,152,202,270.70**

In response, petitioner filed a *Protest* to the FAN/FLD on January 26, 2018.[13]

On October 29, 2021, petitioner received the FDDA, also dated October 29, 2021. The FDDA assessed petitioner for alleged deficiency taxes, penalties, and interest for TY 2012 in

[10] Docket – Vol. VII, pp. 3247–3280, JSFI, Summary of Admitted Facts, par. 6; Exhibit "P-8", Docket – Vol. I, pp. 214–224.
[11] Exhibit "P-9", Docket – Vol. I, pp. 225–233, with annexes.
[12] Docket – Vol. VII, pp. 3247-3280, JSFI, Summary of Admitted Facts, par. 7; Exhibit "P-10", Docket – Vol. I, pp. 274–289.
[13] Exhibit "P-11", Docket – Vol. I, pp. 290–298, with annexes.

the total amount of ₱1,261,778,003.74, with the following breakdown:[14]

Income tax	₱ 76,985,201.01
VAT	1,183,872,609.93
EWT	38,491.92
IAET	731,700.88
Compromise penalties	150,000.00
Total	**₱1,261,778,003.74**

Petitioner filed a *Motion for Reconsideration* against the FDDA on November 12, 2021.[15] On January 5, 2022, petitioner received a *Letter Reply* from respondent denying its *Motion for Reconsideration.*[16]

PROCEEDINGS BEFORE THE COURT

On November 29, 2021, petitioner filed a *Petition for Review (with Urgent Motion to Suspend the Collection of Tax and Dispense with Payment of Bond).*[17]

Summons was issued to respondent on December 6, 2021,[18] and the hearing for petitioner's *Urgent Motion to Suspend the Collection of Tax and Dispense with Payment of Bond* (***Urgent Motion***) was set for March 2, 2022.[19]

On March 2, 2022, petitioner's *Urgent Motion* was heard where petitioner's witness, Mr. Ulysses Lao (**Mr. Lao**), completed his testimony.[20] Meanwhile, on March 15, 2022, respondent filed his *Answer.*[21]

In relation to the *Urgent Motion*, petitioner filed its *Formal Offer of Evidence* on March 28, 2022,[22] which the Court resolved on April 21, 2022.[23] Subsequently, petitioner[24] and respondent[25] submitted their respective *Memoranda* on the *Urgent Motion* on May 19, 2022, and May 20, 2022, respectively.

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[14] Docket – Vol. VII, pp. 3247–3280, JSFI, Summary of Admitted Facts, par. 8; Exhibit "P-12", Docket – Vol. I, pp. 339–353, with annexes.
[15] Exhibit "P-13", Docket – Vol. I, pp. 359–382.
[16] BIR Records, p. 1119-B.
[17] Docket – Vol. I, pp. 7–80, with annexes.
[18] Docket – Vol. VI, p. 2563.
[19] *Id.* at 2565.
[20] *Id.* at 2568.
[21] *Id.* at 2607–2637.
[22] *Id.* at 2659–2680, with annexes.
[23] Docket – Vol. VII, pp. 3001–3004, Resolution dated April 21, 2022.
[24] *Id.* at 3099–3141.
[25] *Id.* at 3142–3151.

On July 25, 2022, petitioner's *Urgent Motion* was partially granted.[26] The Court ordered the suspension of tax collection by respondent, provided that petitioner post a cash or surety bond equivalent to the basic deficiency tax claimed, amounting to ₱529,448,623.23. In response, petitioner filed a *Motion for Partial Reconsideration* on August 10, 2022,[27] which the Court granted on September 20, 2022.[28] Accordingly, the Court's order requiring petitioner to post a cash or surety bond was recalled and set aside. Respondent filed a *Motion for Reconsideration* on October 11, 2022,[29] which the Court denied on February 10, 2023.[30]

On October 26, 2022,[31] respondent filed his Compliance, submitting to the Court the entire BIR Records, consisting of one thousand one hundred twenty-seven (1,127) pages in one (1) folder.

As the parties failed to mediate,[32] pre-trial proceeded. The parties filed their *Joint Stipulation of Facts and Issues* (**JSFI**) on November 17, 2022.[33] The pre-trial was terminated on January 10, 2023,[34] and the *Pre-Trial Order* was issued on January 31, 2023.[35]

The trial proceeded.

During the trial, petitioner presented the following witnesses: **Mr. Lao**, its Treasurer;[36] Ms. Gina Hernandez (**Ms. Hernandez**), its External Accounting Consultant;[37] Ms. Ma. Jaimita P. Sabido (**Ms. Sabido**), Vice President for Channel Development Capabilities Support of Smart Communications Inc., petitioner's supplier;[38] Mr. Clark Vincent M. Zara (**Mr. Zara**), the Assistant Vice President and Center Head of Tax Compliance and Reporting at Smart Communications, Inc.,[39] and Mr. Raymund J. Manaig (**Mr. Manaig**), the Court-appointed Independent Certified Public Accountant (**ICPA**).[40]

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26 *Id.* at 3154–3163.
27 *Id.* at 3164–3178.
28 *Id.* at 3190–3195, Resolution dated September 20, 2022.
29 *Id.* at 3196–3202.
30 *Id.* at 3352–3355, Resolution dated February 10, 2023.
31 *Id.* at 3224–3226.
32 *Id.* at 3181, No Agreement to Mediate.
33 *Id.* at 3247–3280.
34 *Id.* at 3323.
35 *Id.* at 3332–3346.
36 *Id.* at 3348–3349, Order dated February 8, 2023.
37 *Id.* at 3366–3367, Order dated March 8, 2023.
38 Docket – Vol. VIII, p. 4066.
39 Docket – Vol. I, pp. 142–160.
40 Docket – Vol. VII, pp. 3450–3483.

On May 9, 2023, petitioner filed its *Formal Offer of Evidence (with Motion to Correct Description of Documentary Exhibits),*[41] which the Court resolved on June 29, 2023.[42] Subsequently, on July 26, 2023, petitioner filed an *Omnibus Motion for Reconsideration (Re: Resolution dated June 29, 2023) (with Motion to Correct Description of Documentary Exhibits and Motion to Recall Petitioner's Witness and Independent Certified Public Accountant).*[43] which the Court partially granted on October 13, 2023.[44] However, petitioner's *Motion to Recall Petitioner's Witness and Independent CPA* was denied for lack of merit. On November 6, 2023, petitioner filed its *Tender of Excluded Evidence,*[45] which the Court noted in a Minute Resolution dated November 23, 2023.[46]

On January 17, 2024,[47] respondent's counsel presented RO Jennifer A. Potot (**RO Potot**), who testified by way of her judicial affidavit.

Respondent submitted his *Formal Offer of Evidence* on January 26, 2024,[48] which the Court resolved on May 6, 2024.[49]

Petitioner filed its *Memorandum* on June 10, 2024,[50] while respondent failed to file a memorandum.[51]

On July 1, 2024, the case was submitted for decision.[52]

THE ISSUE

The parties stipulated the following issue for this Court's resolution, *viz.*:[53]

> Whether or not petitioner is liable for the alleged deficiency income tax, VAT, EWT, IAET, and compromise penalties for taxable year 2012 in the total amount of One Billion Two Hundred Sixty-One Million, Seven Hundred Seventy-Eight Thousand Three Pesos and 74/100

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[41] Docket – Vol. VIII, pp. 3506–3548, with annexes.
[42] *Id.* at 4009–4013.
[43] *Id.* at 4017–4033.
[44] *Id.* at 4049–4056.
[45] *Id.* at 4057–4065.
[46] *Id.* at 4066.
[47] *Id.* at 4071–4072.
[48] *Id.* at 4074–4079.
[49] *Id.* at 4090–4091, Resolution dated May 6, 2024.
[50] *Id.* at 4092–4169.
[51] *Id.* at 4171, Records Verification dated June 20, 2024.
[52] *Id.* at 4172.
[53] Docket – Vol. VII, pp. 3247–3280, JSFI, Statement of the Issue to be Resolved.

₱1,261,778,003.74 inclusive of interest and penalties; and

Whether or not respondent's right to assess petitioner for internal revenue taxes for taxable year 2012 has prescribed.

PETITIONER'S ARGUMENTS

In its *Petition for Review* and *Memorandum*, petitioner argues that the assessment is void due to respondent's alleged violation of petitioner's right to due process.[54] Petitioner states that respondent's right to assess has already prescribed, asserting that the PAN and FAN/FLD were issued beyond the three-year prescriptive period.[55] Petitioner further claims that the issuance of three (3) Waivers of the Statute of Limitations "did not validly extend the right of the BIR to assess petitioner" as the waivers were issued after the lapse of the prescriptive period and they did not expressly provide for the kind and amount of tax due.[56]

Petitioner also challenges the authority of the BIR officers who conducted the audit. It asserts that ROs Almedilla, Guillermo, and Montalban, as well as GS Bautista, acted solely under a Reassignment Notice issued by the Chief of the RLTAD, which is not equivalent to a valid LOA.[57]

Petitioner argues that respondent failed to fulfill his duty to provide reasons for upholding the assessment, citing *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* (*Avon*). [58] Petitioner particularly points out that the amounts of the EWT and IAET assessment remained unchanged in the PAN, FAN/FLD, and FDDA. It also states that the IT and VAT assessments in the PAN and FAN/FLD were identical, despite petitioner filing a *Reply* to the PAN and a *Protest* to the FAN/FLD. According to petitioner, there is no showing that respondent considered petitioner's *Reply* to the PAN.[59]

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[54] Docket – Vol. VIII, pp. 4092–4169, Petitioner's Memorandum, pars. 43–44.
[55] *Id.* at 4092–4169, Petitioner's Memorandum, pars. 45–51.
[56] *Id.* at pars. 52–68.
[57] *Id.* at pars. 69–93.
[58] G.R. No. 201398-99 & 201418-19, October 3, 2018 [Per J. Leonen, Third Division].
[59] Docket – Vol. VIII, pp. 4092–4169, Petitioner's Memorandum, pars. 94–106.

Petitioner also argues that (1) there is no valid demand to pay the alleged deficiency tax in the FDDA, as the due date provided in the FDDA was dated before the issuance of the said FDDA;[60] (2) the FDDA was improperly served as it was received by a certain Ms. Yehlen Oracion, who is not an employee of petitioner;[61] and (3) the investigation did not follow BIR's General Audit Procedures and Documentation (**GAPD**).[62]

On substantive matters, petitioner argues as follows:

> (1) It has reconciled the unrecorded sales based on the comparison of Summary Alphalist of Withholding Tax (**SAWT**) and sales invoices;[63]
>
> (2) The assessment based on the comparison of Audit Information, Tax Exemption and Incentives Division (**AITEID**) data, and sales invoices issued should be cancelled because unverified third-party information has no probative value;[64]
>
> (3) It properly substantiated its alleged unsubstantiated purchases;[65]
>
> (4) It fully complied with withholding requirements;[66]
>
> (5) The disallowance of excess tax credit is improper as it is beyond the scope of the audit;[67]
>
> (6) Its invoices and official receipts supporting its claim for VAT input are compliant with BIR invoicing requirements;[68]
>
> (7) The imposition of output VAT and the disallowance of input VAT on disallowed purchases constitutes prohibited double taxation;[69] and
>
> (8) It is not liable for deficiency IAET as respondent failed to take into account petitioner's appropriations for the reasonable needs of its business.[70]

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[60] *Id.* at pars. 107–118.
[61] *Id.* at pars. 119–128.
[62] *Id.* at pars. 129–137.
[63] *Id.* at pars. 142–161, 200-203.
[64] *Id.* at pars. 162–181, 204–206.
[65] *Id.* at pars. 182–189, 207–210.
[66] *Id.* at pars. 190–192; 224–227.
[67] *Id.* at pars. 192–197.
[68] *Id.* at pars. 211–216.
[69] *Id.* at pars. 217–223.
[70] *Id.* at pars. 228–237.

RESPONDENT'S ARGUMENTS

In his *Answer*, respondent contends that the issues regarding the RO's authority and the alleged non-revalidation of the LOA were not raised by petitioner at the administrative level. Thus, petitioner could no longer raise the issues due to laches.[71] Respondent further contends that an LOA is not required when an audit investigation is conducted by the Office of the CIR.[72] He also maintains that even assuming an LOA is necessary, the audit investigation was done pursuant to a valid LOA as "the non-issuance of new LOA in case the Revenue Officers named therein are transferred or reassigned does not invalidate the assessment."[73]

Respondent also states that (1) the issuance of the FAN/FLD was not premature, as there is no 60-day period granted by regulations for petitioner to submit relevant supporting documents in relation to the filing of its *Reply* to the PAN;[74] (2) the assessment notices attached to the FDDA have stated and definitely set the due date for the payment of the deficiency tax liabilities;[75] and (3) even if the FDDA was invalid, such does not invalidate the assessment.[76]

On the issue of prescription, respondent argues that petitioner executed valid waivers.[77]

Regarding the substantive matters, respondent reiterates his findings in the FDDA, which identified unrecorded sales, unsubstantiated purchases, non-withholding of taxes, and improperly accumulated taxable income.[78]

THE COURT'S RULING

The instant *Petition for Review* is impressed with merit.

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[71] Docket – Vol. VI, pp. 2607–2637, Answer, pars. 7–14.
[72] *Id.* at pars. 15–18.
[73] *Id.* at pars. 19–36.
[74] *Id.* at pars. 37–44.
[75] *Id.* at pars. 45–57.
[76] *Id.* at pars. 58–62.
[77] *Id.* at pars. 63–70.
[78] *Id.* at pars. 71–81.

The Court has jurisdiction over the instant case.

Before delving into the merits of the case, the Court must first determine whether it has jurisdiction to take cognizance of this case.

Section 7(a)(1) and (2) of Republic Act (**RA**) No. 1125,[79] as amended by RA No. 9282,[80] grants this Court jurisdiction over decisions and inactions of respondent, to wit:

> SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the <u>[CIR]</u> in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the [CIR] in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; *[Emphasis supplied.]*

Moreover, Section 11 of RA No. 1125, as amended by RA No. 9282, prescribes the period for filing an appeal with this Court, as follows:

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

[79] An Act Creating the Court of Tax Appeals, June 16, 1954.
[80] 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 of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

The above provisions are likewise provided under Section 3(a)(1)(2), Rule 4,[81] and Section 3(a), Rule 8[82] of the Revised Rules of the Court of Tax Appeals (RRCTA).

Based on the foregoing, this Court has exclusive jurisdiction to review, by appeal, any decision, ruling, or inaction of respondent. The appeal must be filed by the affected taxpayer or, as described in RA No. 9282, the party adversely affected within thirty (30) days from receipt of the decision or ruling or after the expiration of the period prescribed by law for action.

In this case, the FDDA dated October 29, 2021, was received by petitioner on the same date.[83] Consequently, petitioner had 30 days from October 29, 2021, or **until November 28, 2021**, to file a *Petition for Review*. As the said date fell on a Sunday, petitioner timely filed its *Petition for Review* on the next working day, **November 29, 2021**.[84]

The Court, therefore, holds that it has jurisdiction over this case.

The assessment is void for violating petitioner's right to administrative due process.

After thoroughly reviewing the parties' arguments, evidence, and applicable laws, rules, and jurisprudence, the Court finds the assessment void for violating petitioner's right to administrative due process. ***First***, the audit was conducted by ROs who lacked the proper authority to *continue* the audit investigation of petitioner. ***Second***, respondent issued the

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81 *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original 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 <u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: ...

82 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 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.

83 Docket, p. 417, JSFI, Admitted Facts, par. 21; Exhibit "P-7", Docket, pp. 143–146.

84 *Supra* note 17.

FAN/FLD without considering petitioner's arguments and evidence submitted in response to the PAN.

1. The audit was conducted by unauthorized revenue officers.

The power to assess necessarily includes the authority to examine taxpayers to determine the correct amount of tax due.[85] Verily, the law vests the BIR with general powers in relation to the assessment and collection of all internal revenue taxes.[86] However, only the CIR or his duly authorized representative may authorize the examination of a taxpayer and issue an assessment. Section 6(A) of the NIRC of 1997, as amended, provides as follows:

> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. [*Emphasis supplied*]

Section 10 (c) of the NIRC of 1997, as amended, provides:

...

> SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the **Revenue Regional Director shall**, within the region and district offices under his jurisdiction, among others:
>
> ...
>
> (c) **Issue Letters of Authority** for the examination of taxpayers within the region. (*Emphasis supplied*)

An LOA is the authority given to the appropriate RO assigned to perform assessment functions. It empowers or enables said RO to examine the books of account and other accounting records of a taxpayer for the purpose of collecting

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85 *AFP General Insurance Corporation v. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020 [Per J. Inting, Third Division].

86 *Id.*

the correct amount of tax.[87] The issuance of an LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.[88] Section 13 of the NIRC of 1997, as amended, emphasizes this requirement, stating that only ROs with an LOA issued by the appropriate official may conduct such examinations:

> SEC. 13. *Authority of a Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **<u>pursuant to a Letter of Authority issued by the Revenue Regional Director</u>**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself. [*Emphasis and underscoring supplied.*]

The Supreme Court, in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.* (*McDonald's* case),[89] elucidates that the issuance and receipt of an LOA by the taxpayer are vital to ensure compliance with due process, as they inform the taxpayer of the identity and authority of the ROs conducting the audit to examine the former's books of accounts, *viz.*:

> **<u>To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA</u>**. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the

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87 *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].

88 *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021 [Per J. Lopez, J., Third Division].

89 *Id.*

names of the authorized revenue officers. In other words, **identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment**. [*Emphasis and underscoring supplied.*]

In the present case, respondent issued LOA No. AUDM50/005009/2015/ SN: eLA201200042160, authorizing **ROs Ancheta, Monforte, and GS Maniego** to examine petitioner's books of accounts and other accounting records for all internal revenue taxes covering TY 2012.[90]

However, BIR Records reveal that the actual audit and investigation of petitioner's books of accounts were conducted by **ROs Potot, Montalban, Guillermo, and GS Bautista** – none of whom were named in the LOA.

The participation of these unauthorized ROs is evident in their signing of documents, such as the *Memorandum* dated May 5, 2017, recommending the issuance of a subpoena *duces tecum;* [91] the *Memorandum* dated November 22, 2017, recommending the issuance of the PAN; [92] and the *Memorandum* dated December 27, 2017, recommending the issuance of the FAN/FLD.[93]

Petitioner also highlighted this irregularity in its *Memorandum*,[94] citing the explicit involvement of ROs Potot, Montalban, Guillermo, and GS Bautista in the audit despite not being named in the LOA, *viz.*:

> 82. The above-mentioned GS and ROs prepared and signed the memoranda and audit reports recommending the issuance of assessment notices to Petitioner, to wit:

Document	Officers who signed	Officers named in the LOA
Memorandum recommending the issuance of Subpoena Duces Tecum	GS Marivic P. Bautista RO Jennifer A. Potot RO Vivien C. Guillermo RO Ferly Ann P. Montalban	GS Allan Maniego RO Arnaldo Ancheta RO Tito Monforte
Memorandum recommending the issuance of PAN		

[90] Docket – Vol. VII, pp. 3247–3280, JSFI, Summary of Admitted Facts, par.3; Exhibit "P-5", Docket – Vol. I, p. 211.
[91] BIR Records, pp. 321–323.
[92] *Id.* at 412–419.
[93] *Id.* at 490–491.
[94] Docket – Vol. VIII, pp. 4092–4169.

BIR Forms 0500 (Revenue Officer's Reports)		
Memorandum recommending the issuance of FLD		
BIR Forms 0500 (Revenue Officer's Reports)		
Memorandum recommending the issuance of FDDA	GS Ferly Ann P. Montalban RO Jennifer A. Potot	
BIR Forms 0500 (Revenue Officer's Reports)		

83. Based on the above table, none of the revenue officers and group supervisors who signed the memoranda and reports were authorized in the LOA issued to Petitioner. [*Citations omitted.*]

The above was further corroborated by RO Potot herself in her *Judicial Affidavit*,[95] where she confirmed her involvement in the audit without a valid LOA bearing her name, *viz.*:

7. Q: As a Revenue Officer, what are your functions and duties?

A: My duties, among others, include, the investigation/examination of all internal revenue tax cases and I perform other duties and functions that may be assigned by higher authorities from time to time.

8. Q: Are you familiar with the present case?

A: Yes.

9. Q: Why are you familiar with the case?

A: **I was assigned to continue the conduct of audit and investigation of First Telecom Philippines, Inc., under a previously issued Letter of Authority (LOA) against the petitioner in this case, for taxable year 2012**.

10. Q: You mentioned of a previously issued Letter of Authority, I am now showing this document entitled Letter of Authority No. LOA-116-2015-00000009 / SN: eLA201100087020 dated 04 February 2015, found in page 173, of the BIR Records marked as Exhibit "R-1", for the respondent. What relation does this document have to the Letter of Authority that you mentioned?

[95] Exhibit "R-13", Docket – Vol. VII, pp. 3217–3223.

> A: This is the same LOA I mentioned.
>
> 11. Q: After the issuance of the LOA, what happened next, if any?
>
> A: Request letters for submission of documents pertinent to the subject audit examination were sent to petitioner.
>
> ...
>
> 14. Q: You also mentioned that you were assigned to continue the audit and investigation of petitioner. What is your authority to continue the conduct of audit and investigation on petitioner, if any?
>
> A: **<u>My authority is vested by the Memorandum of Assignment (MOA) which was made known to petitioner through a Reassignment Notice</u>**.
>
> 15. Q: I am now showing documents entitled Memorandum of Assignment No. LOA-116-2016-1235 dated 2 May 2016 and Reassignment Notice dated 13 June 2016, found in pages 300 and 301, respectively of the BIR Records marked as Exhibits "R-2" and "R-3", respectively for the respondent. What relation do these documents have to the Memorandum of Assignment and Reassignment Notice that you mentioned?
>
> A: These are the same MOA and Reassignment Notice that I mentioned.
>
> 16. Q: After being authorized to conduct the audit examination of petitioner for taxable year 2012, what happened next if any?
>
> A: I prepared a Memorandum stating the factual antecedents that transpired prior to the reassignment of the case and a recommendation for issuance of a subpoena duces tecum. [*Emphasis and underscoring supplied.*]

Respondent claims that the issuance of the Reassignment Notice sufficiently confers authority to **ROs Potot, Montalban, Guillermo,** and **GS Bautista** to conduct the audit.

The Court disagrees.

The issue is not novel. Part C, Item V of Revenue Memorandum Order (**RMO**) No. 43-1990[96] explicitly requires the issuance of a *new* LOA whenever a case is reassigned or transferred to different ROs. The provision states:

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[96] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, September 20, 1990.

> **<u>Any</u> re-assignment/transfer** of cases to another RO(s), and revalidation of L/As which have already expired, **<u>shall</u> require the issuance of a new L/A**, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As. (*Emphasis supplied*)

The above requirement aims to protect taxpayers' right to due process by ensuring they are informed of any changes in the officers conducting the audit.

Moreover, the Reassignment Notice dated June 13, 2016, was signed by Cesar D. Escalada, the Chief of the Regular Large Taxpayers Audit Division. However, Sections 6, 10, and 13 of the NIRC of 1997, as amended, provide that only the CIR or his duly authorized representatives - such as Regional Directors or other high-ranking officials - may issue the authority to examine a taxpayer.

Sections D(4) of RMO No. 43-90 dated September 20, 1990[97] and Item II (2) of RMO No. 29-07 dated September 26, 2007[98] further clarify:

> **<u>RMO No. 43-1990</u>**
>
> D. Preparation and issuance of L/As.
>
> ...
>
> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, the **<u>only</u>** BIR officials authorized to issue and sign Letters of Authority are the **Regional Directors**, the **Deputy Commissioners** and the **Commissioner**. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority** but only upon prior authorization by the Commissioner himself. (*Emphasis supplied)*
>
> **<u>RMO No. 29-07</u>**
>
> II. AUDIT POLICIES AND GUIDELINES.
>
> ...
>
> 2. **<u>All</u>** Letters of Authority (LOAs) shall be issued and approved by the **Assistant Commissioner/Head Revenue Executive Assistants.** (*Emphasis supplied*)

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97 SUBJECT: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

98 SUBJECT: Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.

Based on the foregoing, a Division Chief at the Large Taxpayers Service, such as Cesar D. Escalada, is *not* among the officials authorized to sign an LOA or any equivalent document (i.e., Deputy Commissioners, the Regional Directors, Assistant Commissioner/Head Revenue Executive Assistants at the Large Taxpayer Service, and such other officials as may be authorized by the CIR). Thus, the reassignment notice signed by Escalada cannot serve as a substitute for the required LOA.

Respondent also asserts that an LOA is unnecessary when the audit is conducted by the Office of the CIR. [99]

This argument is untenable.

Section 6(A) of the NIRC of 1997, as amended, and pertinent jurisprudence[100] make no distinction between audits conducted by the CIR's office and those by other BIR offices. Unless the CIR himself performs the audit, a valid LOA is indispensable.

In the absence of a valid LOA authorizing **ROs Potot, Montalban, Guillermo**, and **GS Bautista** to conduct the audit, the assessment is fatally flawed. This procedural defect violates the statutory and due process requirements under the NIRC of 1997, as amended, and renders the assessment null and void.

The issuance of an LOA is not a mere procedural formality but a substantive requirement to safeguard taxpayers' rights to due process. In this case, the failure to issue a new LOA following the reassignment of ROs undermines the legitimacy of the audit and invalidates the resulting assessment.

Accordingly, the Court holds that the assessment is void and cannot be enforced.

2. Respondent issued the FAN/FLD without considering petitioner's arguments and evidence against the PAN.

Petitioner argues that respondent failed to comply with the duty to provide the reason for upholding the assessment, citing the *Avon* case. [101] Specifically, petitioner highlights that the

[99] Docket – Vol. VI, pp. 2607–2637, Answer, pars. 15–18.
[100] *Supra* note 87.
[101] *Supra* note 58.

amounts for EWT and IAET assessments remained unchanged in the PAN, FAN/FLD, and FDDA. It also states that the IT and VAT assessments remained the same in the PAN and FAN/FLD, despite petitioner's submission of a *Reply* and *Protest*. According to petitioner, there is no showing that its *Reply* to the PAN was given due consideration.[102]

The Court agrees with petitioner's contention.

Section 228 of the NIRC of 1997, as amended, reads, in part, as follows:

> 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.** [*Emphasis supplied*]

To implement Section 228 of the NIRC of 1997, as amended, Section 3 of Revenue Regulations (RR) No. 12-1999,[103] as amended by RR No. 18-2013,[104] specifies the *due process requirement* in the issuance of a deficiency tax assessment as follows:

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

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102 Docket – Vol. VIII, pp. 4092–4169, Petitioner's Memorandum, pars. 94–106.

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

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

> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the assessment shall be void*** (see illustration in ANNEX 'B' hereof).
>
> ... ...
>
> 3.1.5 *Final Decision on a Disputed Assessment (FDDA).* – The decision of the Commissioner or his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void* (see illustration in ANNEX 'C' hereof), and (ii) that the same is his final decision. (*Emphasis supplied*)

Based on the foregoing, it is explicitly required that the taxpayer be informed in writing of the law and the facts on which the assessment is made. RR No. 12-1999, as amended by RR No. 18-2013, prescribes that the FAN/FLD and FDDA must state, among other things, the facts and the law on which the assessment is based as part of due process in the issuance of tax assessments; otherwise, the FAN/FLD and/or FDDA shall be void.

The requirement to inform the taxpayer of the factual and legal bases of the assessment is **mandatory** and cannot be presumed. The law imposes a substantive, not merely a formal requirement.[105] As a requirement of due process, this rule allows the taxpayer to make an effective protest.[106]

In the *Avon* case,[107] the Supreme Court emphasized that a taxpayer must not only be afforded the opportunity to present their defenses and evidence but that the Commissioner and his subordinates must also give *due consideration* to these, *viz.*:

> **Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their**

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105 *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021 [Per J. Hernando, Second Division].
106 *Commissioner of Internal Revenue v. Spouses Magaan*, G.R. No. 232663, May 3, 2021 [Per J. Leonen, Third Division].
107 *Supra* note 58.

own rules of procedure, and always with regard to the basic tenets of due process.

The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**

... ...

The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. ... **The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayer's constitutional rights.**

... ...

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

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

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

... ...

The second to the sixth requirements refer to the party's "inviolable rights applicable at the deliberative stage." **The decision-maker must consider the totality of the evidence presented as he or she decides the case.**

... ...

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

... ...

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

... ...

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

... ...

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

Nr

In the instant case, respondent issued a PAN dated December 7, 2017, which petitioner received on the same day, assessing it for deficiency taxes, penalties, and interest for TY 2012 in the total amount of ₱1,152,202,270.70.[108] In its *Reply* to the PAN dated December 22, 2017,[109] petitioner raised legal and factual arguments, citing pertinent provisions of the law, jurisprudence, and revenue regulations, and even submitted supporting documents. However, just six days later,[110] on December 28, 2017,[111] it received a copy of the FAN/FLD with *Details of Discrepancies*, which merely reiterated the findings and deficiency tax assessments stated in the PAN with *Details of Discrepancies* without addressing petitioner's arguments or evidence.

A side-by-side comparison of the PAN and FAN/FLD, alongside their respective *Details of Discrepancies*, shows that they are *identical*. Further, the FAN/FLD does not acknowledge the existence of petitioner's *Reply* to the PAN, let alone indicate that its arguments and evidence were considered. This lack of acknowledgment undermines petitioner's right to due process, as it was denied a fair opportunity to explain or defend itself effectively.

As established in the *Avon* case,[112] while the CIR is not obliged to accept the taxpayer's explanation, it is imperative that the former provide the *particular facts* upon which his conclusion is based, and these facts must appear on record.[113] The right to be heard, which includes the right to present evidence, is meaningless if the CIR can simply ignore the evidence without reason.[114] Respondent's failure to give due consideration to petitioner's defenses, explanations, and supporting documents when he concluded in the FAN/FLD that petitioner had deficiency tax liabilities could hardly be considered substantial compliance with the due process requirement.

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108 Docket – Vol. VII, pp. 3247–3280, JSFI, Summary of Admitted Facts, par. 6; Exhibit "P-8", Docket – Vol. I, pp. 214–224.
109 Exhibit "P-9", Docket – Vol. I, pp. 225–233, with annexes.
110 December 23 and 24 fell on weekends, and December 25 is a regular holiday.
111 Docket – Vol. VII, pp. 3247–3280, JSFI, Summary of Admitted Facts, par. 7; Exhibit "P-10", Docket – Vol. I, pp. 274–289.
112 *Supra* note 58.
113 *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021 [Per J. Hernando, Second Division], citing *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018 [Per J. Leonen, Third Division].
114 *Id.*

In the more recent case of *Commissioner of Internal Revenue v. Next Mobile, Inc. (Next Mobile* case*),*[115] the Supreme Court *reiterated* its ruling in the *Avon* and *Ang Tibay* cases that "not 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."***

Indeed, the right to protest a PAN carries with it the BIR's corresponding duty to consider the taxpayer's response, and the issuance of a FAN/FLD without even hearing the side of the taxpayer is anathema to the cardinal principles of due process.

Although the FDDA later partially granted petitioner's *Protest* to the FAN/FLD by reducing the IT assessment from ₱140,152,726.45 to ₱76,985,201.01, it does not remedy the procedural and substantive defects that occurred during the earlier stages. As ruled by the Supreme Court in the *Next Mobile* case, such "***does not denigrate the fact that it was deprived of statutory and procedural due process,***" *viz.:*[116]

> ..., that Next Mobile was able to timely file a protest to the FAN is of no moment. '**Such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued**.' It is a settled rule that tax assessment issued in violation of the right of the taxpayer to due process are null and void and bears no fruit. [*Emphasis supplied*]

Respondent's failure to uphold petitioner's fundamental right to due process under Section 228 of the NIRC of 1997, as amended and implemented by RR No. 12-1999 and RR No. 18-2013, renders the FAN/FLD null and void.

As the assessment has already been declared null and void, the Court finds it unnecessary to address the other issues raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the Formal Letter of Demand with Final Assessment Notices dated December 28, 2017, are **CANCELLED** and **SET ASIDE**. The Final Decision on Disputed Assessment dated October 29, 2021, assessing petitioner First Telecom Philippines, Inc. for

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115 G. R. No. 232055 (Notice), April 27, 2022 [Per Resolution, Third Division].
116 *Id.*

deficiency income tax, value-added tax, expanded withholding tax, improperly accumulated earnings tax, penalties, and interest for taxable year 2012, is **REVERSED** and **SET ASIDE**.

Furthermore, respondent is **ENJOINED** and **PROHIBITED** from enforcing the collection of the subject deficiency taxes against petitioner.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
JEAN MARIE A. BACORRO-VILLENA
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