CTA Form No. 8

22-000436-0054

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10973

JUDY BAUTISTA LEE,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

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

ATTY. DAYNE B. MEDINA
ATTY. SHEEHERAZADEE A. LABOR-MORAN
ATTY. JUFFERSON D. VIERNES
Bureau of Internal Revenue
Legal Division, Revenue Region No.7A - Quezon City
Room 516, Roof Deck, Fisher Mall
Fernando Poe Jr., Avenue corner Quezon Avenue
Quezon City

GIALOGO & ASSOCIATES
Suite C530, Cityland Pasong Tamo
2210 Don Chino Roces Avenue
Makati City

GREETINGS:

You are hereby notified by these presents that on **November 18, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **November 20, 2025.**

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

JUDY BAUTISTA LEE, Petitioner,	**CTA CASE NO. 10973**
	Members:
- versus -	**BACORRO-VILLENA,** *Acting Chairperson, and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 18 2025, 4:30PM

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Judy Bautista Lee (**petitioner/Lee**), pursuant to Rule 8, Section 3(a)[2] in relation to Rule 4, Section 3(a)(1)[3] of the Revised Rules of the Court of Tax Appeals

[1] Filed on 07 September 2022, Division Docket, Volume I, pp. 6-33.

[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 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[.]

(**RRCTA**). The petition seeks to cancel and set aside the Warrant of Distraint and/or Levy (**WDL**) No. RR7A-08-04-2022-2316 (dated 05 August 2022)[4] which respondent Commissioner of Internal Revenue (**respondent/CIR**) issued to collect petitioner's alleged deficiency income tax (**IT**) and value-added tax (**VAT**) assessments in the aggregate amount of ₱42,089,525.56 for taxable year (**TY**) 2016 as contained in the Final Decision on Disputed Assessment[5] (**FDDA**) issued on 10 May 2022.

PARTIES OF THE CASE

Petitioner is the sole proprietor of a business engaged in selling car accessories with principal office located at No. 155 UP Banawe, 1113 Doña Josefa, Quezon City.[6] She is registered with the Bureau of Internal Revenue (**BIR**) with Tax Identification Number (**TIN**) 104-005-409-000.[7]

Respondent, on the other hand, is the duly appointed CIR vested with authority to carry out the functions, duties, and responsibilities of the said office, including the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by BIR.

FACTS OF THE CASE

On 19 October 2018, respondent issued Letter of Authority (**LOA**) No. LOA-039-2018-00001000/eLA201600017600[8] (**first LOA**), authorizing Revenue Officer (**RO**) Angel Rabago, Jr. (**Rabago**) and Group Supervisor (**GS**) Maricar Favis (**Favis**) of Revenue District Office (**RDO**) No. 039-South Quezon City, to examine petitioner's books of accounts for IT and VAT for the period of 01 January 2016 to 31 December 2016, or TY 2016. Christine Ngo (**Ngo**), who allegedly claimed to be petitioner's daughter, received the LOA (with the Checklist of Requirements[9]) on 26 October 2018.[10]

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[4] Exhibit "R-13", BIR Records, p. 474.
[5] Exhibit "R-11", id., pp. 459-459a.
[6] Paragraph (**Par.**) 3.1, Petition for Review, supra at note 1, p. 7.
[7] Par. 1.2, Joint Stipulation of Facts and Issues (**JSFI**), Division Docket, Volume I, p. 358.
[8] Exhibit "R-1", BIR Records, p. 19.
[9] BIR Records, p. 18.
[10] See receiving notation on the lower portion of the Letter of Authority (**LOA**), supra at note 8.

Thereafter, or on 26 November 2018, respondent sent the First (1st) Notice[11] to remind petitioner to submit the documentary requirements needed for the conduct of audit and/or investigation on her books.

Later, or on 04 March 2019, respondent issued the Notice of Informal Conference[12] (**NIC**) declaring the initial findings as indicated in the attached Annex "A".[13] The NIC was sent to petitioner through registered mail.[14] The NIC and Annex "A" provide the computation of the alleged deficiency IT and VAT based on petitioner's supposed undeclared sales, allegedly discovered during a computer matching with third parties. In response, petitioner executed an "Affidavit of Explanation Re: Denial of Sales"[15] where she explained that contrary to the NIC's claims, her business did not make huge sales, nor were there purchases made from her company. Respondent received the said affidavit on 28 March 2019.[16]

Based on the BIR Records, respondent issued the Preliminary Assessment Notice (**PAN**) dated 23 October 2019[17], with Details of Discrepancies.[18] The PAN assessed petitioner with IT deficiency of ₱17,191,557.49 and VAT deficiency of ₱18,910,273.34, both inclusive of surcharges, deficiency interests, and delinquency interests. Allegedly, petitioner, through Ngo, also received the PAN on even date.[19] The records do not yield that a reply thereto was made.

On 18 November 2019, respondent issued the Formal Assessment Notice[20] (**FAN**) with Details of Discrepancies[21] and Assessment Notices[22] (**ANs**). There, respondent found petitioner liable for the same IT and VAT deficiencies, with adjustments on the penalty interests. The ANs indicated that petitioner should pay the said liabilities on or before

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[11] BIR Records, p. 20.
[12] Exhibit "R-4", id., p. 224.
[13] Annex "A", Division Docket, Volume I, p. 331.
[14] See Registry Receipt attached on the Notice for Informal Conference (**NIC**), supra at note 12.
[15] BIR Records, p. 279.
[16] See receiving stamp on the Affidavit of Explanation Re: Denial of Sales, id.
[17] Exhibit "R-6" id., pp. 351-352.
[18] Id., pp. 349-350.
[19] See receiving notations on the Preliminary Assessment Notice (PAN), supra at note 17; and Details of Discrepancies, supra at note 18.
[20] Exhibit "R-8", BIR Records, pp. 358-359.
[21] Id., pp. 356-357.
[22] Exhibits "R-8-1" and "R-8-2", id., pp. 360-361.

17 December 2019.[23] On the face of the FAN, Details of Discrepancies and ANs, Ngo received them on 20 November 2019.[24]

On 17 December 2019, petitioner filed her Protest[25] to the FAN (**Protest**) where she also requested the return of the assessment docket to RDO No. 039 for further reinvestigation. Petitioner also claimed that she did not have any sales transactions with any of the customers that the BIR had claimed to have discovered during the latter's computerized matching with third parties.

Acting on petitioner's Protest, respondent, through Regional Director Albino M. Galanza (**RD Galanza**), granted her request for the return of the case docket to RDO No. 039. Likewise, RD Galanza directed petitioner to submit to the said RDO the necessary supporting documents within sixty (60) days from the filing of the Protest.[26]

On 04 March 2021, petitioner, through her bookkeeper, Maila Loreta P. Quicho (**Quicho**), submitted a schedule of sales relevant to TY 2016.[27]

On 09 March 2022, respondent issued LOA No. LOA-039-2022-00000254/eLA201900003422[28] (**second LOA**), authorizing RO Terence Jesus Cabasal (**Cabasal**) and GS Arnel De Jesus (**De Jesus**) of RDO No. 039 to conduct the audit of petitioner's books for TY 2016. Similarly, based on the notation on the second LOA, Ngo received the same on 11 March 2022.[29]

On 16 May 2022, petitioner herself received the FDDA dated 10 May 2022[30], with Details of Discrepancies.[31] The FDDA declared that despite respondent's grant of the request for reinvestigation, she failed to present any supporting documents to verify her claim. Thus, respondent reiterated the IT and VAT deficiency assessments and

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23 Id.
24 See receiving notations on the Formal Assessment Notice (FAN), Details of Discrepancies, and Assessment Notices (ANs), supra at notes 20, 21 and 22, respectively.
25 BIR Records, p. 372-374.
26 See Letter dated 15 January 2020, id., p. 376.
27 Id., pp. 397-432a.
28 Exhibit "P-1" / "R-10", id., p. 451.
29 Id.
30 Supra at note 5.
31 BIR Records, p. 459b.

demanded petitioner to pay a total of ₱42,089,525.56, consisting of ₱20,077,639.08 IT deficiency and ₱22,011,886.48 VAT deficiency.

Later, or on 14 June 2022, petitioner filed a Request for Reconsideration to the FDDA[32] stating that: (*i*) her right to due process was violated since she did not receive the PAN; and (*ii*) the tax assessments have no factual basis since she categorically denied the alleged customers and sales transactions which the BIR allegedly discovered during the computer matching. Moreover, petitioner asserted that the Details of Discrepancies attached to the FAN and FDDA lacked the material information (for the assessments), thus effectively denying her the opportunity to prepare a comprehensive protest. Petitioner further contended that she had already submitted a schedule of sales for TY 2016 to prove the sales transactions she had made during the subject audit period.

On 05 August 2022, respondent issued WDL No. RR7A-08-04-2022-2316[33] to collect the alleged IT and VAT liabilities from petitioner. On 09 August 2022, upon claim that the latter refused to personally receive the WDL, the same was served constructively on her.[34]

Alarmed by the issuance of the WDL, on 22 August 2022, petitioner transmitted a letter of even date[35] addressed to RD Mahinardo G. Mailig (**RD Mailig**) and Chief of Collection Division, Alice Gonzales (**Gonzales**), requesting for the WDL's cancellation and lifting on the ground that it was issued prematurely.

On 07 September 2022, petitioner filed before this Court the instant Petition for Review.[36] The case was raffled to the Second Division[37] and was docketed as CTA Case No. 10973. Thereafter, the Court ordered respondent to file an answer to the petition.[38]

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32 Attached as Annex "G" to the Petition for Review, Division Docket, Volume I, pp. 49-53.
33 Supra at note 4.
34 See Memorandum for the Chief of Collection Division dated 10 August 2022, BIR Records, p. 475.
35 See Request to Cancel and/or Lift the Warrant of Distraint and Levy issued in relation to the Final Decision on Disputed Assessment for the year ended December 31, 2016, id., pp. 487-490.
36 Supra at note 1.
37 Then composed of (Ret.) Associate Justice Erlinda P. Uy as Chairperson, Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.
38 See Summons dated 15 September 2022, Division Docket, Volume I, p. 115.

On 14 October 2022, petitioner filed a "Motion to Suspend Collection of Tax and Dispense with the Deposit or Surety Bond"[39] (**Motion to Suspend**). She claimed that the tax assessment against her is void since the third-party information (**TPI**) on which it was based is neither confirmed nor validated with the alleged sources. She went on to assert that a collection of the assessed tax deficiency will be detrimental to her business considering that her total current assets as of 31 December 2021 was only ₱2,908,145.00, an amount significantly lower than her supposed tax liability. Moreover, petitioner pointed out that the tax deficiency assessment is not yet delinquent after she timely availed the remedies to contest them. Lastly, due to the invalidity of the assessment, she also prayed for the dispensation of the bond requirement.

On 19 October 2022, respondent filed a "Motion for Extension of Time to file Answer".[40] Therein, he or she averred that the Answer could not be prepared because the BIR records were yet to be transmitted to the case's handling lawyers. Without opposition from petitioner, the Court gave respondent an additional thirty (30) days, or until 18 November 2022 to file his or her Answer.[41] Subsequently, in a Resolution dated 20 October 2022[42], the Court also directed respondent to comment on the Motion to Suspend. While the said motion was still being set for hearing and had yet to be resolved, the Court also enjoined respondent from collecting petitioner's supposed tax deficiency.

During the hearing on petitioner's Motion to Suspend, petitioner presented her witness, Iluminada A. Sebial (**Sebial**), who testified through her Judicial Affidavit[43] that: (1) she was engaged as an independent auditor to examine petitioner's financial statement, books of accounts and related documents concerning petitioner's business, Evergood General Merchandising; (2) based on petitioner's latest Audited Financial Statement (**AFS**) for the period ending 31 December 2021[44], she reported the following: (*i*) Revenue of ₱2,246,975.00; (*ii*) Net Income after Tax of ₱82,606.00; (*iii*) current assets (comprised mostly of inventories) of ₱2,908,145.00; and (*iv*) non-current assets of ₱9,125.00;

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39 Id., pp. 117-133.
40 See Answer, id., pp. 202-204.
41 See Resolution dated 03 November 2022, id., p. 215; see also See Comment (To Respondent's Motion for Extension of Time to file Answer dated October 18, 2019), id., pp. 208-210.
42 Id., pp. 206-207.
43 Exhibit "P-1-1-1", id., pp. 147-151.
44 Exhibit "P-1-Motion", id., pp. 226-239.

and (3) compared to the alleged tax deficiency assessment of ₱42,089,525.56 being collected, petitioner's total assets of ₱2,917,270.00 is significantly lower, thus it will greatly affect her ability to operate the business and meet her financial obligations.

Asked if petitioner owned other businesses (since an AFS under the business name Bee Sin Canvass Store was also attached to her Judicial Affidavit), Sebial replied that she was not aware of petitioner's other businesses.[45]

As there were no other witnesses to present, on 08 November 2022, petitioner filed the Formal Offer of Exhibits[46] (**FOE for Motion**) and offered Exhibits "**P-1-Motion**" to "**P-3-Motion**", inclusive of the sub-markings.

Meanwhile, after failing to attend the hearing and to comment on the FOE on the Motion to Suspend, respondent manifested that he or she will no longer present any witness.[47] Thereafter, on 18 November 2022, respondent filed his or her Answer and countered that petitioner's case should be dismissed for having been filed prematurely.[48] According to respondent, petitioner previously filed a Request for Reconsideration (to the FDDA) on 14 June 2022. Applying Section 3.1.4[49] of Revenue Regulations (**RR**) No. 18-2013[50], respondent had 180 days from the filing of the said Request for Reconsideration, or until <u>11 December 2022</u>, to act on the same. However, petitioner filed the instant petition on <u>07 September 2022</u>, in clear disregard of the 180-day prescriptive period. Petitioner then failed to exhaust her administrative remedies and should not be granted any judicial relief.

In a Resolution dated 16 March 2023[51], the Court admitted petitioner's offered exhibits. Likewise, the Court granted petitioner's Motion to Suspend and dispensed the posting of the bond. The Court resolved in this wise:

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45 See Order dated 03 November 2022, id., pp. 218-219.
46 Division Docket, Volume I, pp. 222-225.
47 See Compliance filed on 10 November 2022, id., pp. 241-242; see also See Records Verification dated 18 November 2022, id., p. 248.
48 See Answer, id., pp. 243-247.
49 3.1.4 *Disputed Assessment.*
50 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.
51 Id., pp. 250-262.

...

Upon review of petitioner's arguments and evidence, which respondent did not controvert, the Court finds the suspension of the collection of taxes warranted.

Petitioner's witness Iluminada A. Sebial, the *Independent Auditor*, testified by way of a Judicial Affidavit, that petitioner is financially incapable of settling the assessed deficiency taxes being collected by the BIR[.]

...

When the Court propounded clarificatory questions on Ms. Sebial as to the prejudice or jeopardy to petitioner if the collection of taxes by the BIR would be pursued, she testified that the business would close.

...

In moving for the dispensation of the required cash or surety bond, petitioner claims that the method employed by the CIR in the collection of tax is patently violative of the law. For one, the deficiency tax assessments heavily relied on the Summary List of Purchases allegedly submitted by petitioner's customers without the required confirmation or certification from third-party information sources to validate said transactions. For another, the PAN was not served to her in violation of her right to due process. Moreover, the issuance of the WDL is premature as the tax assessment is not yet delinquent. And finally, prescription has partially set in with regard to the alleged deficiency VAT.

All these considered, the Court opines that petitioner was able to prove, ***at least preliminarily***, that the method employed by the BIR in the collection of the alleged deficiency tax assessments is not sanctioned by law.

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From the above disquisition, without entirely going into the merits of the case, We find petitioner's arguments **meritorious** insofar as they support its prayer for the dispensation of the bond.[52]

...

Thereafter, the pre-trial conference was set on 26 September 2023.[53] In the *interim*, pursuant to Administrative Circular No. 01-2023[54] dated 23 May 2023, the case was transferred to the First Division.[55] Subsequently, on 10 August 2023, respondent elevated the BIR

52 Citations omitted; italics and emphasis in the original.
53 Notice of Pre-Trial Conference dated 26 May 2023, id., pp. 263-264.
54 Reorganizing the Divisions of the Court.
55 See Minute Resolution dated 29 May 2023, id., p. 265.

Records.[56] Afterwards, petitioner filed her Pre-Trial Brief[57] on 21 September 2023, while respondent filed his or her Pre-Trial Brief[58] on 22 September 2023.

During the pre-trial conference, the Court granted the parties a period of twenty (20) days to file the Joint Stipulation of Facts and Issues[59] (**JSFI**). Accordingly, on 16 October 2023, they filed their JSFI.[60] In the Pre-Trial Order of 29 November 2023[61], the Court adopted the JSFI and terminated the pre-trial.

In the trial that ensued subsequently, petitioner testified through her Judicial Affidavit[62] and declared that: (1) she received the LOA which informed her that her books and other accounting records for TY 2016 will be the subject of an audit; (2) thereafter, she received the FAN, Details of Discrepancies and ANs that demanded the payment of IT and VAT deficiencies; (3) apart from the mentioned documents, she did not receive any other prior notices from the BIR or respondent; (4) in response to the FAN, she filed a Protest to contest the assessment against her; (5) thereafter, she received the FDDA to which a Request for Reconsideration was also filed; (6) despite her contention that the assessment lacked factual basis, respondent still issued the WDL; and (7) in addition to the request to cancel and/or lift the WDL, she filed the instant petition to appeal the CIR's denial of her Request for Reconsideration (to the FDDA) and the issuance of the WDL.

On cross-examination, petitioner recalled that respondent issued a resolution on her Request for Reconsideration (to the FDDA). She also confirmed that the instant petition was filed on 07 September 2022.[63] On redirect examination, petitioner declared that she received the second LOA after filing the Request for Reconsideration.[64]

No re-cross examination was conducted.[65]

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56 See Compliance dated 10 August 2023, id., pp. 276-277.
57 Pre-Trial Brief [For Petitioner Judy Bautista Lee], id., pp. 282-307.
58 Respondent's Pre-Trial Brief, id., pp. 308-315.
59 See Order dated 26 September 2023, id., pp. 354-356.
60 Id., pp. 358-364.
61 Id., pp. 375-383.
62 Exhibit "P-9", Judicial Affidavit [of Petitioner Judy Bautista Lee], id., pp. 69-74.
63 TSN dated 29 November 2023, pp. 7-9.
64 Id., p. 10.
65 Id., p. 11.

After the Court discharged petitioner as witness, she was given ten (10) days to file her FOE. Similarly, respondent was given the same period to comment thereon.[66] Before filing the FOE, on 07 December 2023, petitioner filed an "Urgent Motion for Additional Commissioner's Hearing and Extension of Time to File the [FOE] (for Petitioner Judy Bautista Lee)"[67] (**Urgent Motion**) for the purpose of marking the certified true copy of Exhibit "**P-6**" since the same was provisionally marked. Despite her Urgent Motion and request for additional time, on 11 December 2023, petitioner still filed her "[FOE] (For Petitioner Judy Bautista Lee)".[68]

In a Minute Resolution of 19 December 2023[69], the Court granted the Urgent Motion and set a Commissioner's Hearing. There, Exhibit "**P-6**" was marked as 'Certified True Copy'.[70] Thus, on 23 February 2023, petitioner filed a "Motion to Admit the Attached Amended [FOE] with Attachments (For Petitioner Judy Bautista Lee)"[71] (**Amended FOE**), consisting of Exhibits "**P-1**" to "**P-9**", inclusive of sub-markings.[72]

On 04 March 2024, respondent filed his or her "Comment/ Opposition to the Petitioner's Amended [FOE]"[73] and interposed objection to the offered exhibits as being self-serving. In the Resolution

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66 See Order dated 29 November 2023, Division Docket, Volume I, pp. 385-386.
67 Id., pp. 390-393.
68 Id., pp. 394-399.
69 Id., pp. 440-A-440-B.
70 See Commissioner's Report (On Exhibits Marked for Petitioner) dated 06 February 2024, id., pp. 445-446.
71 Id., pp. 450-459.
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Exhibit	Description
"P-1"	Letter of Authority No. 039-2022-00000254 dated March 09, 2022, received by Petitioner on March 11, 2022 consisting of 1 page
"P-2"	Formal Assessment Notice with Details of Discrepancy dated November 18, 2019 consisting of 4 pages
"P-3"	Assessment Notice for Income Tax ("IT") dated November 18, 2019 consisting of 1 page
"P-4"	Assessment Notice for Value Added Tax ("VAT") dated November 18, 2019 consisting of 1 page
"P-5"	Final Decision on Disputed Assessment with details of Discrepancy dated May 10, 2022 consisting of 3 pages
"P-6"	Request for Reconsideration dated June 10, 2022, received by the BIR on June 14, 2022 consisting of 6 pages
"P-7"	Warrant of Distraint and/or Levy dated August 05, 2022 consisting of 1 page
"P-8"	Request to Cancel and/or Lift the Warrant of Distraint and/or Levy dated August 22, 2022 consisting of 15 pages
"P-9"	Judicial Affidavit of Judy Bautista Lee consisting of 6 pages
"P-9-1"	Signature above the name Judy Bautista Lee

73 Division Docket, Volume I, pp. 499-502.

dated 26 April 2024[74], the First Division admitted all of petitioner's exhibits.

For respondent's part, RO Rabago was presented as witness and he testified through his Judicial Affidavit[75] where he declared that: (1) he is the authorized BIR personnel (through the first LOA) who conducted an audit on petitioner's books for IT and VAT for TY 2016; (2) after examination, respondent issued the NIC which contained the findings of tax deficiency; (3) although petitioner filed an affidavit denying the findings in the NIC, she failed to attach supporting documents thereto; (4) he recommended the PAN's issuance which petitioner duly received through an authorized person, Ngo, petitioner's own daughter; (5) he also recommended the issuance of the FAN and ANs, which Ngo also received; and (6) the PAN's and FAN's receipts were evidenced by Ngo's signatures as shown on every page of the PAN[76], FAN[77] and their attached Details of Discrepancies[78], and also in the corresponding Affidavits of Service[79] executed relative thereto.

On cross-examination, Rabago confirmed that the Summary List of Purchases (**SLP**) of petitioner's alleged customers was not attached to the Details of Discrepancies of the FAN. When asked of the procedures governing the certifications from TPI sources, RO Rabago stated that they sent confirmation letters but only one (1) or two (2) sources replied. As for the PAN, he pointed out that Ngo herself had voluntarily and openly claimed that she is petitioner's daughter (without him asking for proof of identity).[80]

On redirect examination, RO Rabago said that although the SLP was not attached to the notices sent to petitioner, it still formed part of the BIR Records.[81] On re-cross examination, he restated that although the SLP was not attached to the FAN, petitioner was expected to have

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74 Id., Volume II, pp. 510-511.

75 Exhibit "R-15", Sworn Statement of Angel B. Rabago, Jr. to Questions Propounded by Atty. Jufferson D. Viernes, id., Volume I, pp. 318-326.

76 Exhibit "R-6", supra at note 17.

77 Exhibit "R-8", supra at note 20.

78 Supra at notes 18 and 21.

79 Exhibit "R-7", Affidavit of Service of Preliminary Assessment Notice dated 23 October 2019, BIR Records, p. 354; Exhibit "R-9", Affidavit of Service of Final Assessment Notice dated 20 November 2019, id., p. 362.

80 TSN dated 25 June 2024, pp. 7-14.

81 Id., pp. 14-15.

become aware of it since she needed the SLP to reconcile it with her sales transactions.[82]

When the Court again inquired about the confirmation letters, RO Rabago reiterated that these were sent to petitioner's customers with big purchases. However, as he earlier mentioned, only one (1) or two (2) responded to the letters.[83]

With no other witnesses to present, respondent proceeded with the filing of his or her FOE on 01 July 2024.[84] In the FOE, respondent offered Exhibits "**R-1**" to "**R-15**", inclusive of sub-markings.[85] Over petitioner's objections[86], the First Division admitted all of respondent's exhibits. Thereafter, it directed the parties to file their Memoranda within 30 days from notice thereof.[87]

In compliance, petitioner filed her Memorandum[88] on 14 October 2024 while respondent filed his or her Memorandum[89] on 21 October 2024. Subsequently, the case was submitted for decision.[90]

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82 Id., pp. 15-16.
83 Id., pp. 16-19.
84 See Respondent's Formal Offer of Evidence (FOE), id., pp. 521-526.
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Exhibit	Description
R-1	Letter of Authority with Letter of Authority No. (LOA) No. LOA-039-2018-00001000/SN: eLA201600017600 dated October 19, 2018
R-2	Revenue Officer's Audit Report on Income Tax dated
R-3	Revenue Officer's Audit Report on Value Added Tax
R-4	Notice of Informal Conference dated March 04, 2019
R-5	Memorandum Report dated June 07, 2019
R-6	Preliminary Assessment Notice (PAN) with Details of Discrepancies issued on October 23, 2019
R-7	Affidavit of Service of Preliminary Assessment Notice (PAN) with Details of Discrepancies dated October 23, 2019
R-8	Formal Assessment Notice (FAN) with Details of Discrepancies issued on November 18, 2019
R-8-1	Assessment Notice for Income Tax
R-8-1	Assessment Notice for Value-Added Tax
R-9	Affidavit of Service dated November 20, 2019
R-14	BIR tax docket of JUDY BAUTISTA LEE for the taxable year 2016
R-15	Judicial Affidavit of Mr. Angel B. Rabago, Jr.
R-15-1	Name and Signature of Mr. Angel B. Rabago, Jr.

86 See Comment [To Respondent's Formal Offer of Evidence dated July 01, 2024], Division Docket, Volume II, pp. 555-566.
87 See Resolution dated 06 September 2024, id., pp. 573-574.
88 Id., pp. 579-634.
89 Id., pp. 636-641.
90 See Minute Resolution dated 18 November 2024, id., p. 646.

ISSUES

As the parties so stipulated in their JSFI, the issue for this Court's resolution is —

> WHETHER PETITIONER JUDY BAUTISTA LEE IS LIABLE TO PAY THE ALLEGED DEFICIENCY TAXES CONSISTING OF INCOME TAX (IT) AND VALUE-ADDED TAX (VAT) INCLUDING THE PENALTIES THERETO IN THE AGGREGATE AMOUNT OF ₱42,089,525.56 ASSESSED FOR TAXABLE YEAR (TY) 2016.[91]

ARGUMENTS

Contrary to respondent's claims that the instant petition has been filed prematurely and that the Court has no jurisdiction over it, petitioner asserts the opposite. Citing *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*[92] (**Hambrecht**), she insists that the Court of Tax Appeals (**CTA**) has jurisdiction to review by appeal "other matters" arising under the NIRC or other laws administered by the BIR such as the WDL. Here, the Petition for Review was filed on 07 September 2022, or 30 days from the receipt of the WDL on 09 August 2022.

As for the substantive issues, petitioner reiterates that the tax assessment against her is void for respondent's failure to secure confirmation from the TPI sources. According to her, respondent's assessment was based merely on the SLP of her alleged customers which revealed that she had undeclared sales (for TY 2016) in the total amount of ₱82,668,009.81. The said sales then were imposed with both IT and VAT. However, apart from the alleged SLP, respondent had no other verified source (like certifications and confirmations from the third-party sources).

Petitioner submits further that under Revenue Memorandum Order (**RMO**) No. 46-2004[93], ROs are required to obtain sworn

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91 See Issue/s To be Tried or Resolved, Pre-Trial Order, id., Volume I, supra at note 61, p. 379.

92 G.R. No. 169225, 17 November 2010.

93 Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers.

statements from third-party sources if discrepancy arises from data matching processes. However, in this case, the assigned RO and GS failed to obtain them. As RO Rabago himself admitted in court, only one (1) or two (2) of the supposed TPI sources replied to the confirmation letters that the BIR had sent. Hence, with this, the subject tax assessment is indubitably a result of an unsupported audit and/or examination.

Petitioner adds that the FAN lacks the definite amount of tax liability due to the statement that the interest and total amount would still have to be adjusted if paid after the intended due date. Citing *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[94] (**Fitness by Design**), petitioner states that a tax amount is indefinite if the same is still subject to modification depending on the date of payment, such as this case.

Additionally, petitioner points out that the assessment for the alleged VAT deficiencies for TY 2016 has already prescribed. Under Section 203[95] of the NIRC of 1997, as amended, the BIR has three (3) years from after the last day (prescribed for filing the return) to conduct an assessment on the said taxes. Here, for the first (1st), second (2nd) and third (3rd) quarters of TY 2016, the last dates prescribed for filing were on 25 April 2016, 25 July 2016 and 25 October 2016, respectively. Counting three (3) years therefrom, the last day to assess the relevant VAT were on 25 April 2019, 25 July 2019 and 25 October 2019, respectively. However, as the FAN was only issued on 18 November 2019, the VAT assessment related to the three (3) quarters of TY 2016 has thus prescribed.

Petitioner also maintains that her right to due process was violated when the FAN, ANs and FDDA were issued before she even had the PAN. According to her, she did not personally receive the PAN and the signature appearing on the PAN itself is not hers. She also insists that there could not have been a valid substituted service (of the PAN)

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94 G.R. No. 215957, 09 November 2016.

95 **SEC. 203.** *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

since respondent failed to prove that: (*i*) personal service was not practicable; and (*ii*) the notice was received by a person having charge of the place where the business is located, as mandated by Section 3.1.6[96] of RR No. 18-2013. Likewise, respondent did not ensure that the actual recipient, Ngo, was indeed her daughter as the serving officer did not bother to ask for proof of identification.

Lastly, petitioner emphasizes that respondent has failed to inform her of the factual and legal bases for the deficiency tax assessment. Conspicuously, in the notices and in the Details of Discrepancies, respondent did not attach the SLP of the supposed customers, that listed the transactions, which petitioner allegedly did not declare as her 'Sales' for TY 2016. Thus, without the material data, it was impossible for her to intelligibly contest the assessment.

Respondent, on the other hand, reiterates the sole argument in his or her Answer — the instant case has been prematurely filed since petitioner failed to first exhaust the administrative remedies available to her. According to respondent, petitioner should have waited for the 180 days from the filing of the Request for Reconsideration (to the FDDA) on 14 June 2022, or until 11 December 2022 to lapse before filing a judicial appeal. As the instant petition was filed three (3) months earlier, the case should be dismissed outright for lack of jurisdiction.

RULING OF THE COURT

Before the Court proceeds to discuss the merits of the case, it deems propitious to first determine the timeliness of petitioner's judicial appeal as this is determinative of the Court's valid exercise of jurisdiction.

THE COURT HAS JURISDICTION OVER
THE INSTANT PETITION FOR REVIEW.

It bears stressing that the CTA, being a special court, can take cognizance only of matters that are clearly within its jurisdiction. In

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96 3.1.6 *Modes of Service.*

relation to this, Section 7 of Republic Act (**RA**) No. 1125[97], as amended by RA 9282[98], specifically 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**[.][99]
>
> ...

The above provision is implemented by Section 3(a)(1), Rule 4 of the RRCTA which states:

> ...
>
> 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**[.][100]
>
> ...

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97 AN ACT CREATING THE COURT OF TAX APPEALS.

98 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.

99 Emphasis supplied and italics in the original text.

100 Emphasis supplied and italics in the original text.

Based on the foregoing provisions, 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.[101]

In *Hambrecht*[102], the Supreme Court explained that the term "other matters" is defined by the qualifying phrase that follows it, *i.e*, pertaining to cases arising under the NIRC or other laws administered by the BIR. The relevant parts state –

> ...
>
> Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term "other matters" can be supported or even deduced. What is rather clearly apparent, however, is that the term "other matters" is limited only by the qualifying phrase that follows it.
>
> Thus, on the strength of such observation, we have previously ruled **that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR).**
>
> ...

In the same case, the Supreme Court also clarified that as long as a party is adversely affected by a decision or ruling of the CIR, the former may file an appeal before the CTA within 30 days from the receipt of the said ruling or decision, to wit –

> ...
>
> Likewise, the first paragraph of Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, belies petitioner's assertion as the provision is explicit that, **for as long as a party is adversely affected by any decision, ruling or inaction of petitioner, said party may file an appeal with the CTA within 30 days from receipt of such decision or ruling. The wording of the provision does not take into account the CIR's restrictive interpretation as it clearly provides that the mere existence of an adverse decision, ruling or inaction along with the timely**

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101 *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.*, G.R. No. 258947, 29 March 2022.

102 Supra at note 92; Citation omitted, emphasis supplied and italics in the original text.

> **filing of an appeal operates to validate the exercise of jurisdiction by the CTA.**[103]
>
> ...

In the case of *Commissioner of Internal Revenue v. Pacific Hub Corporation*[104], the Supreme Court enumerated the instances deemed to be "other matters" that the Court can take cognizance of —

> ...
>
> Indeed, a plain reading of the provision yields the inevitable conclusion that the CTA has the power to review not only matters arising or incidental to tax assessments or refunds, but also to *any* case arising from the application of the provisions of the Tax Code or other tax laws that are administered by the BIR. In fact, the Court has affirmed the CTA's "other matters" jurisdiction over cases involving: (*a*) the determination of whether the right of the CIR to collect the validly assessed tax has prescribed; (*b*) **cases seeking the cancellation and withdrawal of a warrant of distraint and/or levy**; (*c*) cases seeking a determination of the validity of waivers of the statute of limitations as well as the proper availment of tax amnesty; and (*d*) cases on the proper exercise of the CIR's power to compromise delinquent accounts and to grant an informer's reward.
>
> From the foregoing, it becomes evident that the determination of whether the CIR has properly exercised the powers granted to it by the Tax Code may likewise fall under the CTA's "other matters" jurisdiction.
>
> ...

Taking cue from the foregoing cases, petitioner thus seeks to nullify the WDL issued against her.[105] She reckoned the prescriptive period to file the instant petition from the receipt of the said WDL on 09 August 2022. As the issue involving the cancellation and/or withdrawal of the WDL is considered as "other matters" (which this Court can take cognizance of), We deem that this case was filed on time on 07 September 2022.[106] We reckon the counting of the prescriptive period from the receipt date (of 09 August 2022); counting 30 days therefrom, petitioner had until 08 September 2022 to file her judicial appeal.

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103 Id.; Citation omitted and emphasis supplied.

104 G.R. No. 252944, 27 November 2024; Citations omitted, emphasis supplied and italics in the original text.

105 See second prayer in the Petition for Review, supra at note 1, p. 30.

106 See note 1.

Incidentally, We find no merit in respondent's insistence that petitioner should have waited for the lapse of the 180-day period from the filing of the Request of Reconsideration (to the FDDA) to file an appeal. As *Hambrecht*[107] underscored, any party may file an appeal with the CTA as long as such party is adversely affected by the CIR's decision, ruling or inaction. The appeal may be filed within 30 days from receipt of such decision or ruling.

PETITIONER DULY RECEIVED THE PRELIMINARY ASSESSMENT NOTICE (PAN).

In the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[108], the Supreme Court declared that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.

Here, petitioner argues that she did not personally receive the PAN. She further contends that respondent failed to comply with the requirements of a valid substituted service. As a result, the *onus probandi* has shifted to respondent to prove, by competent evidence, that the PAN was duly served on and was indeed received by the addressee, or petitioner in this case.

A perusal of the proffered documentary evidence reveals that the BIR had ably shown that the PAN was served on petitioner by resorting to substituted service (through Ngo).

Section 3.1.6 of RR No. 18-2013 declares the proper procedure for resorting to substituted service in case personal service is not practicable, to wit –

> ...
>
> 3.1.6 *Modes of Service.* - The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:

[107] Supra at note 92.

[108] G. R. No. 157064, 07 August 2006.

(i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

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

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

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

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.[109]

...

From the above, substituted service may be accomplished by leaving a copy of the notice at the taxpayer's registered address with his or her clerk or with the person who is in charge thereof.

The case records contradict petitioner's claim that she did not receive the PAN and that there was no valid substituted service on Ngo.

First, in the JSFI, petitioner stipulated on respondent's issuance of the first LOA, FAN, ANs and second LOA –

...

I. <u>STIPULATION OF FACTS</u>

...

1.3 On October 19, 2018, respondent issued Letter of Authority (LOA) LOA-039-2018-00000-1000. ...

1.4 On November 18, 2019, respondent issued FORMAL ASSESSMENT NOTICE (FAN) with DETAILS OF DISCREPANCY (DOD) and ASSESSMENT NOTICES for IT and VAT.

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109 Italics and emphasis in the original text and supplied.

1.5 On March 09, 2022, respondent issued Letter of Authority LOA-039-2022-00000254.[110]

...

A thorough examination of the relevant notices shows that it was *Ngo who duly received them as indicated by the latter's handwritten notation and signatures on the face of the notices, e.g., on the receipt portion of the first LOA*[111]*, and in every page of the FAN*[112]*, the attached Details of Discrepancies*[113] *and the ANs.*[114] Thus, with the stipulation on the issuance and existence of the said notices, petitioner had admitted that she had duly received them through Ngo.

Second, apart from the stipulation (of the existence of the notices) in the JSFI, it is also evident that *petitioner had responded or replied to the notices that Ngo received*. Based from the records, she submitted documents[115] as requested in the first LOA and also filed a Protest[116] to contest the deficiency assessment in the FAN and ANs. Moreover, she affirmed the existence of the second LOA by including it as an allegation in her petition.[117]

Third, petitioner did not question the receipt of the mentioned notices (first LOA, FAN, ANs and second LOA) although they were similarly received by Ngo. Petitioner also did not contest the identity of Ngo when she received the other notices. Petitioner's inconsistent stance renders her claim doubtful.

Fourth, a simple side-by-side comparison of Ngo's signatures appearing on the PAN, first LOA, FAN, ANs and second LOA reveals a glaring similarity thereof. Even petitioner herself did not deny that the signature on the PAN was Ngo's. There is thus no point in dispelling Ngo's authority to receive the PAN when her receipt of the other BIR issuances was never questioned.

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110 Supra at note 60, pp. 358-359.
111 Exhibit "R-1", supra at note 8.
112 Exhibit "R-8", supra at note 20.
113 Supra at note 21.
114 Exhibits "R-8-1" and "R-8-2", supra at note 22.
115 See the submissions of documents, BIR Records, pp. 21-223.
116 Supra at note 25.
117 See par. 4.7, Statement of Facts, Petition for Review, supra at note 1, p. 8.

In the case of *Serconsision R. Mendoza v. Aurora Mendoza Fermin*[118], the Supreme Court declared that while resort to handwriting experts is useful, it is not indispensable in examining or comparing handwriting. In fact, a judge should exercise an independent examination in determining the authenticity or genuineness of the signatures under scrutiny. Given this legal parameter, the Court could only conclude that Ngo duly received the PAN, in addition to her receipt of the first LOA, FAN, ANs and second LOA.

THE FORMAL ASSESSMENT NOTICE (FAN) CONTAINS A DEFINITE AMOUNT OF TAX LIABILITY.

The Court could not also subscribe with petitioner's stance, citing *Fitness by Design,* that the deficiency tax assessments are void since the tax liability set forth therein remains indefinite.

The factual *milieu* of the instant case is not in all fours with *Fitness by Design* as to warrant the latter's application to the case at bar. In *Fitness by Design*[119], the Supreme Court noted that the amount in the FAN remained indefinite as the same was subject to modification, depending on the date of the taxpayer's payment. We quote the wordings in the FAN, as follows:

> ...
>
> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249(B) of the [National Internal Revenue Code], as amended. **Please note, *however, that the interest and the total amount due will have to be adjusted <u>if paid prior or beyond April 15, 2004</u>*.**
>
> ...

The Supreme Court also emphasized that the FAN there did not contain due dates, thus, it held:

---

118 G.R. No. 177235, 07 July 2014.

119 Supra at note 94; Emphasis and underscoring in the original text and italics supplied.

> ...
>
> Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:
>
>> In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.*
>
> However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remain unaccomplished**.[120]
>
> ...

On the contrary, the pertinent portion of the FAN in the case at bar reads:

> ...
>
> *Please note that the interest and the total amount due will have to be adjusted if paid after the date specified herein.*[121]
>
> ...

In herein case, the FAN sent to petitioner clearly shows the *interest*, which forms part of the *total amount due*, will only be adjusted if the taxpayer pays *after* the deadline or due date provided (which is 17 December 2019[122]). Insofar as the total amount indicated in the FAN is concerned, it is undeniable that **the amounts of deficiency IT and VAT plus their corresponding interests are definite and certain on the due date provided therein**. This remains to be the fact despite a warning from the BIR that additional interest (consequently affecting the total amount due) shall continue to accrue *after* the due date. It is then not fair to fault the BIR for reminding the taxpayer of the consequences of a delayed settlement.

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120 Supra at note 94; Citations omitted, italics in the original text, emphasis and underscoring supplied.

121 Supra at note 20; Italics in the original text and underscoring supplied.

122 Supra at note 22.

In determining the validity of the assessment, what is crucial is the definiteness of the amount indicated in the FAN with respect to the deadline or due date provided. If the FDDA satisfies substantially both requirements, then the FDDA could not be considered wanting nor the assessment be deemed as void. While it is true that the computation of interest may not yet appear definite, the same is only logical as BIR could not reasonably be expected to know or foresee when the taxpayer will actually settle the tax obligation. Therefore, to set aside the entire assessment on the basis of the indefiniteness not of the amount of deficiency taxes *but of the interest* that may accrue (*after* the deadline of payment) is in discord with the wisdom behind the Supreme Court's pronouncement in *Fitness by Design*.

THE DEFICIENCY TAX ASSESSMENTS ARE VOID FOR WANT OF CREDIBLE EVIDENCE TO SUPPORT THE FINDINGS.

Finally, We agree with petitioner's contention that the subject items of the tax assessment are void for respondent's failure to secure the confirmation of the TPI sources.

Respondent discovered the undeclared sales (of ₱82,668,010.07) from the computerized matching conducted by the National Office on the alleged purchases declared by her customers vis-à-vis the declared sales in her VAT returns and as shown in BIR's Integrated Tax System (**ITS**).[123] Based on the Details of Discrepancies, the alleged undeclared sales was reduced by an amount corresponding to petitioner's average cost (by utilizing a Cost of Sales [COS] ratio of 65.03%[124]) to derive the undeclared income.

From an evaluation of the pertinent documents in the BIR Records, respondent's data resemble what would be system-generated outputs from the BIR's matching of TPI. Loosely interpreted, another taxpayer's declarations (on its sales and purchases) are attributed to the taxpayer being audited (*i.e.*, the third party's purchases that it represents

123 See Memorandum for the Regional Director dated 10 September 2018, BIR Records, p. 16.

124 Petitioner's total Sales is ₱2,715,471.00 and the Cost of Sales (COS) is ₱1,765,902.00. To get the COS ratio, we divide the COS/Sales.

to have purchased from the taxpayer under audit should have been declared as the latter's sales).

RMO No. 46-2004[125] provides:

...
III. PROCEDURES
...

Action on Protested LNs due to TPI discrepancy

The Revenue Officer assigned to handle the Letter Notice shall:
...

2. Require the taxpayer to execute a Sworn Statement (Annex A) attesting to the veracity of the schedules and authenticity of the documents presented/submitted.

3. Obtain Sworn Statements from TPI sources (Annexes "B" and "C") attesting to the veracity of the data provided.

    3.1 If the TPI source is registered in the RDO/LTDO/LTAID having jurisdiction over the subject taxpayer, the RO shall:

        3.1.1 Prepare "Confirmation Requests" (using the format prescribed in Annex "C" of RMO No. 30-2003 to be signed by the heads of the concerned RDO/LTDO/LTAID) for purposes of verifying the accuracy of the figures appearing in the DTCS.

        3.1.2 If the TPI source agrees with the figures in the "Confirmation Requests" (CR), secure a Sworn Statement from the TPI source to allow the RO to build a case against the taxpayer.

    3.2 If the TPI source is outside the jurisdiction of the RDO/LTDO/LTAID where the taxpayer is registered, the RO shall:

        3.2.1 Coordinate with the RDO/LTDO/LTAID where the TPI source is registered, in order to:

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[125] Supra at note 93.

a. Prepare a CR to be transmitted and signed by the RDO/LTDO/LTAID having jurisdiction over TPI source (CRs should be coursed thru the RDO/LTDO/LTAID where the taxpayer is registered);

b. Secure a sworn statement from the TPI source thru the RDO/LTDO/LTAID having jurisdiction over the same; and,

c. Assist the heads of the concerned RDO/LTDO/LTAID in the preparation of Monthly Status Report on Confirmation Requests Transmitted (Annex "D") outside the RDO/LTDO/LTAID of the TPI source and submit the same to the SCG, for monitoring purposes.

...

Verily, from the foregoing, when an assessment is based on TPI, the investigating RO is required to prepare and send a confirmation request to the taxpayer serving as the TPI's source or coordinate with the Revenue District Office having jurisdiction over the TPI source for the preparation and issuance of a confirmation request. In the event that the TPI source affirms amounts (in its reply to the confirmation request) aligning with the TPI, the RO must then obtain its sworn statement attesting to the veracity of the data provided.

Relatedly, RMO No. 13-2012[126] which lays down the guidelines and procedures in handling Letter Notices (**LNs**) generated through TPI data matching programs states:

...

IV. GUIDELINES AND PROCEDURES

...

D. *Investigating Offices*

...

9. **Send a Confirmation Request from TPI sources** attesting to the veracity of the data included in the LN package (Annexes "I" and "I-1").

---

126 Revised Guidelines and Procedures in Handling Letter Notices Generated Through Third-Party Information Data Matching with Tax Returns.

> If no response from the TPI source after the lapse of five (5) days from service of Confirmation Request, the RO may consider the data in the LN package to be true and correct. **However, if there is/are TPI source/s located outside of the jurisdiction of the investigating office, the RO shall send the Confirmation Request to the taxpayer through registered mail with Registered Return Card and wait for the lapse of ten (10) days after mailing thereof before proceeding to the next step.** The RO shall recommend the issuance of an eLA and the filing of a perjury case against the TPI source for declaring overstated purchases/understated sales. In case the TPI source/s is/are located outside of the jurisdiction of the investigating office, the RO shall recommend to the concerned RD/ACIR-LTS the issuance of eLA and the filing of a perjury case against the TPI source for declaring overstated purchases/understated sales.
>
> **If the TPI source did not agree with the discrepancy reflected in the LN (DTCSR/DIRIM/DWAPR), he/she/it must be required to execute a Sworn Statement to that effect and state his/her/its true and correct sales/purchases** (Annexes "J" and "J-1").[127]

...

As can be gleaned from the foregoing, if the TPI source is outside the jurisdiction of the investigating or sending office, the BIR confirmation requests must be duly supported by a registered return card.

Here, the case records reveal that although various confirmation requests[128] were sent to TPI through registered mail; respondent, nonetheless, failed to secure the TPI's sworn statements which would have confirmed the alleged discrepancies. RO Rabago's testimony during his cross-examination tells –

> ...
> ATTY. CARU[N]GAY:
> Q. So, in the Details of Discrepancies attached to the [FAN] which you identified in your J.A. the alleged undeclared sales arose from the matching of the third-party data or the data from the alleged customers of the petitioners. Were you able to receive any confirmation or certification from the third-party sources?

[127] Emphasis supplied and italics in the original text.
[128] BIR Records, pp. 228-257.

MR. RABAGO:
A. I think, just small percentage.

ATTY. CARU[N]GAY:
Q. What proof, if any, do you have that you received the third-party confirmation?

MR. RABAGO:
A. **I think, it's in the docket, part of the docket, ma'am. I think, it's only one. I can remember it's only one or two.**[129]

...

A perusal of the docket reveals that indeed, only one (1) TPI source replied to BIR's confirmation requests. This single reply was without a sworn statement as required by the pertinent BIR issuances. Moreover, the records are not yielding proof on which TPI source did the reply come from. Thus, consequently, the reply could not ably confirm the alleged discrepancies in petitioner's sales.

Furthermore, there are no registered return cards attached to the confirmation requests for the TPI sources that are outside RDO No. 039's jurisdiction, such as those located in Manila[130], Cagayan de Oro[131], Cebu[132], Valenzuela[133], Palawan[134], Ilocos Sur[135], Rizal[136], Nueva Ecija[137], Aklan[138], Bulacan[139], Laguna[140], Pangasinan[141] and Caloocan.[142] Simply put, there is nothing in the BIR Records nor in the evidence presented by either party that adequately demonstrates that the data (from the computer matching) underwent any such verification as described above.

In *Commissioner of Internal Revenue v. MCC Transport Singapore PTE. LTD.*[143], the Supreme Court held that unverified TPI may not validly

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[129] TSN dated 25 June 2024, p. 12; Emphasis supplied.
[130] BIR Records, pp. 229, 245, 250, 254, 257.
[131] Id., p. 256.
[132] Id., pp. 251, 255.
[133] Id., p. 253.
[134] Id., p. 252.
[135] Id., pp. 247, 249.
[136] Id., pp. 230, 232, 248.
[137] Id., p. 246.
[138] Id., pp. 237, 244.
[139] Id., pp. 228, 233, 234, 241, 243.
[140] Id., pp. 231, 235, 240.
[141] Id., p. 239.
[142] Id., p. 238.
[143] G.R. No. 255382 (Notice), 28 June 2021; Citation omitted, emphasis supplied and italics in the original text.

serve as the factual basis of a tax assessment. The Supreme Court ruled thusly:

> ...
> Even assuming that the said RMO [No. 13-2012] is applicable, the same likewise provides that the Confirmation Requests sent out to third parties by registered mail must be supported by registered return cards, which were not submitted as evidence in this case. Consequently, **the CTA *EB* was correct in not relying on the third-party information since unverified data cannot be considered as proper factual bases for the assessment against respondent**. In order to be valid, an assessment must be based on actual facts supported by credible evidence. Related thereto, the CTA *EB* was also correct in finding that petitioner failed to prove that respondent filed false or fraudulent returns.
> ...

From the foregoing disquisitions, an assessment must henceforth be based on verified facts and substantiated by evidence. Without the necessary confirmation or verification pursuant to RMO Nos. 46-2004 and 13-2012 (*i.e.* sworn statements from the TPI's sources and the registered return cards), data obtained in this manner remains **unsubstantiated**, rendering the assessment items **void for lack of factual and legal basis**.

Moreover, the Court could only deem that respondent failed to comply with his or her own regulations, thus resulting in an assessment that is not supported by *verified* information. In *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*[144], the Supreme Court ruled that for an assessment to stand judicial scrutiny, it must be based on facts supported by credible evidence. We quote:

> ...
> We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima*

[144] G.R. No. 136975, 31 March 2005; Citations omitted, italics in the original, emphasis and underscoring supplied.

> *facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax-initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," *i.e.*, without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. ***<u>Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.</u>***
>
> ...
>
> Thus, the computations of the EIIB and the BIR on the quantity and costs of the importations of the respondent in the amount of P105,761,527.00 for 1987 have no factual basis, hence, arbitrary and capricious. **The petitioner cannot rely on the presumption that she and the other employees of the BIR had regularly performed their duties. As the Court held in *Collector of Internal Revenue v. Benipayo*, in order to stand judicial scrutiny, <u>the assessment must be based on facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.</u>**
>
> ...

While it is axiomatic that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on *actual* facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.[145]

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[145] *Collector of Internal Revenue (now Commissioner) v. Alberto D. Benipayo*, G.R. No. L-13656, 31 January 1962.

Considering that the whole tax assessments are void for want of factual basis and credible evidence, We shall no longer dwell on the other issues.

WHEREFORE, premises considered, the Petition for Review filed by petitioner Judy Bautista Lee on 07 September 2022 is hereby **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated 10 May 2022 holding petitioner liable for deficiency income tax (IT) and value-added tax (VAT) in the aggregate amount of ₱42,089,525.56, for taxable year (TY) 2016, is **CANCELLED** and **SET ASIDE**. In addition, the Warrant of Distraint and/or Levy No. RR7A-08-04-2022-2316 dated 05 August 2022 is hereby **LIFTED**.

Consequently, respondent Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
First Division Acting Chairperson

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice