**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***THIRD DIVISION***

| | |
|---|---|
| **UNITED GRAPHIC PRINTING CORPORATION,** *Petitioner,* | **CTA Case No. 10610** Members: |
| -*versus*- | **MANAHAN**, *P.J., Chairperson,* **REYES-FAJARDO**, *and* **ANGELES**, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: OCT 31 2024 11:55 a.m. |

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# DECISION

**MANAHAN, *J.*:**

This resolves petitioner United Graphic Printing Corporation's (UGPC's) *Petition for Review*[1] filed via email on August 9, 2021 and personally served on October 21, 2021, assails the Decision dated June 14, 2021, handed down by the Commissioner of Internal Revenue, finding liable for deficiency Income Tax (IT), Value-Added Tax (VAT), and Expanded Withholding Tax (EWT) covering Taxable Year (TY) 2010.

## THE PARTIES

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at UGEC Corp. Center, Dasmariñas Technopark, Governor's Drive, Dasmariñas, Cavite.[2]

Respondent is the duly appointed Commissioner of Internal Revenue, with authority, among others, to issue and decide on disputed tax assessments with office address at the

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[1] Docket, CTA Case No. 10610, pp. 11-41.
[2] *Id.*, Par. 1.a., Facts, Joint Stipulation of Facts and Issues (JSFI), p. 358.

Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[3]

## THE FACTS

On March 27, 2012, Regional Director Jose N. Tan (RD Tan) issued Letter of Authority (SN: eLA201000080829 / LOA-54A-2012-00000052), authorizing Revenue Officer (RO) Alfred Amatorio and Group Supervisor Nena Joyce Geston of Revenue District Office No. 54A – Trece Martires City, South Cavite, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2010 to December 31, 2010.[4]

On April 3, 2015,[5] petitioner received RD Tan's Preliminary Assessment Notice (PAN) dated February 12, 2015, with attached Details of Discrepancies, containing the proposed deficiency IT, VAT, and EWT assessments against it for TY 2010, in the total sum of ₱23,792,025.44, broken down as follows:[6]

| Tax Type | Basic | 50% Surcharge | Interest | Total |
|---|---|---|---|---|
| Income tax | ₱ 3,163,260.03 | ₱ 1,581,630.02 | ₱ 2,424,877.14 | ₱ 7,169,767.19 |
| VAT | 7,001,648.57 | 3,500,824.28 | 5,674,212.73 | 16,176,685.58 |
| EWT | 192,397.99 | 96,199.00 | 156,975.68 | 445,572.67 |
| **Total** | **₱ 10,357,306.59** | **₱ 5,178,653.30** | **₱ 8,256,065.55** | **₱23,792,025.44** |

On April 10, 2015,[7] petitioner received RD Tan's Formal Letter of Demand dated March 31, 2015,[8] with Assessment Notices (FLD/FAN),[9] assessing the former for deficiency IT, VAT, and EWT, in the total amount of ₱24,030,385.36, broken down as follows:

| Tax Type | Basic | 50% Surcharge | Interest | Total |
|---|---|---|---|---|
| Income tax | ₱ 3,163,260.03 | ₱ 1,581,630.02 | ₱ 2,497,675.45 | ₱ 7,242,565.50 |
| VAT | 7,001,648.57 | 3,500,824.28 | 5,835,346.56 | 16,337,819.41 |
| EWT | 192,397.99 | 96,199.00 | 161,403.46 | 450,000.45 |
| **Total** | **₱ 10,357,306.59** | **₱ 5,178,653.30** | **₱ 8,494,425.47** | **₱24,030,385.36** |

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[3] Docket, Par. 1.b, Facts, JSFI, p. 358.
[4] BIR Records (Exhibit "R-13"), Folder 1, Exhibit "R-1." p. 7.
[5] Docket, Exhibit "P-1" (Q&A No. 40). p. 227.
[6] BIR Records (Exhibit "R-13"), Folder 1, Exhibits "P-32," and "R-6" and "R-6-1." pp. 118-121.
[7] Docket, Exhibit "P-1" (Q&A Nos. 42 and 54), pp. 228 and 231, respectively; Transcript of Stenographic Notes (TSN) during the Hearing held on November 22, 2022, p. 20.
[8] BIR Records (Exhibit "R-13"), Folder 1, Exhibits "P-36" and "P-36-1," and "R-7" and "R-7-1." pp. 122-125.
[9] Docket, Exhibits "P-33," "P-34," and "P-35," pp. 458-460; BIR Records (Exhibit "R-13"), Folder 1, Exhibits "R-8," "R-8-1," and "R-8-2," pp. 126-127 and unpaginated, respectively.

On May 11, 2015, petitioner filed its administrative protest on RD Tan's FLD/FAN, through a letter dated May 8, 2015.[10]

On April 6, 2017, petitioner received[11] Regional Director Romulo L. Aguila, Jr. (RD Aguila Jr.)'s Final Decision on Disputed Assessment (FDDA) dated February 14, 2017, denying its administrative protest on the FLD/FAN. Accordingly, the deficiency IT, VAT, and EWT assessments issued against petitioner, for TY 2010, in the total sum of ₱24,030,385.36 were upheld.[12]

On May 4, 2017, petitioner filed a Letter dated May 2, 2017, impugning RD Aguila Jr.'s FDDA before respondent.[13]

On July 9, 2021, petitioner received respondent's Decision dated June 14, 2021, sustaining the deficiency taxes embodied in RD Aguila Jr.'s FDDA. Additionally, respondent demanded petitioner to pay said taxes, plus increments that have accrued thereon until the actual date of payment.[14]

On August 9, 2021, petitioner filed through electronic mail,[15] its Petition for Review docketed as CTA Case No. 10610, followed by a hard copy thereof filed on October 21, 2021. Said case was initially raffled before the Court's First Division.[16]

On May 6, 2022, respondent filed his Answer (Re: Petition for Review dated 06 August 2021).[17]

On September 8, 2022, pre-trial conference was held. There, the parties were directed to submit their Joint Stipulation of Facts and Issues, embodying the following issues: (1) whether the Court has jurisdiction over this case; and (2) whether petitioner is liable for deficiency IT, VAT, and EWT covering TY 2010. Further, their respective schedule for the

[10] BIR Records (Exhibit "R-13"), Exhibits "P-37" and "P-37-1." Folder 1, pp. 133-140.
[11] *Id.*, per petitioner's Letter dated May 2, 2017, addressed to respondent, pp. 440-447.
[12] *Id.*, Exhibit "R-9." Folder 1, p. 400 (consisting of 3 pages).
[13] *Supra* note 10.
[14] Docket, Exhibit "P-45." pp. 47-51.
[15] *Id.*, pp. 6-10.
[16] *Id.* at pp. 11-41.
[17] *Id.* at pp. 257-279.

marking of documents, and presentation of their respective evidence were, as well, set.[18]

On October 10, 2022, the parties filed their Joint Stipulation of Facts and Issues,[19] which was approved *via* Resolution[20] dated October 18, 2022. This led to the issuance[21] of the Pre-Trial Order on December 16, 2022.

Trial followed.

Petitioner presented its authorized representative Baby Christeene F. Mendoza as witness.[22]

On December 7, 2022, petitioner filed its Formal Offer of Evidence,[23] which was met by respondent's Comment filed on December 12, 2022.[24]

Under Resolution dated February 9, 2023, the pieces of evidence offered by petitioner were admitted, except for Exhibits "P-38" and "P-38-1."[25] The latter rested its case.

Respondent presented:[26] (1) RO Alfred G. Amatorio;[27] and (2) RO Mary Rose L. Guevarra,[28]as witnesses.

On May 26, 2023, respondent filed his Formal Offer of Evidence,[29] to which petitioner lodged its Comments on June 8, 2023.[30]

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[18] *Id.,* Order dated September 8, 2022, pp. 341-343.
[19] Docket, at pp. 358-360.
[20] *Id.* at p. 365.
[21] *Id.* at pp. 471-489.
[22] *Id.*, Exhibit "P-1", pp. 210-240; Docket, Order dated November 22, 2022, pp. 383-385; Refer also to Resolution dated January 18, 2023, which corrected the second paragraph in page 2 of said Order, pp. 503-505.
[23] *Id.* at pp. 392-407.
[24] *Id.* at pp. 463-466.
[25] *Id.* at pp. 513-519.
[26] *Id.,* Order dated April 18, 2023, pp. 523-525.
[27] *Id.*, Exhibit "R-14", pp. 316-323.
[28] *Id.*, Exhibit "R-15", pp. 307-311.
[29] *Id.* at pp. 544-552.
[30] *Id.* at pp. 556-559.

Meanwhile, through Notice of Resolution dated May 29, 2023, CTA Case No. 10610 was transferred, from the First Division, to the Third Division of the Court.[31]

By Resolution dated July 14, 2023, the pieces of evidence offered by respondent were admitted.[32] The latter rested his case.

On September 26, 2023, CTA Case No. 10610 was submitted[33] for decision considering: (1) petitioner's Memorandum filed on August 22, 2023;[34] and (2) respondent's Manifestation, saying that he is adopting his Answer as Memorandum filed on September 14, 2023.[35]

## ISSUE

As stipulated by the parties, the following issues for this Court's resolution are as follows:[36]

1. Whether or not the Honorable Court of Tax Appeals has jurisdiction over the instant case; and

2. Whether or not petitioner is liable to pay for deficiency IT, VAT, and EWT in the total amount of Php24,030,385.36 for the taxable year 2010.

### Petitioner's Arguments

Petitioner maintains that the timely filing of its Petition for Review resulted in the Court's acquisition of jurisdiction over CTA Case No. 10610.

Petitioner further argues that respondent's deficiency tax assessments for TY 2010, issued by respondent are void because the BIR's right to assess said taxes for such year is time-barred by the statute of limitations.

Assuming, the BIR timely assessed deficiency taxes against it, petitioner nevertheless insists that the final

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[31] *Id.* at p. 554.
[32] Docket, at pp. 562-563.
[33] *Id.*, Minute Resolution dated September 26, 2023. p. 588.
[34] *Id.* at pp. 564-582.
[35] *Id.* at pp. 584-586.
[36] *Id.*, Order dated September 8, 2022, pp. 341-343.

assessment is void because: (1) the FAN for IT failed to contain the date of its issuance and corresponding due date for payment; (2) the FAN for VAT and EWT were issued three (3) days prior to its receipt of the PAN, and were served, seven (7) days after its receipt of the PAN, violative of its right to due process; and (3) the due dates in the FAN for VAT and EWT are vague.

Petitioner also contends that the imposition of 50% surcharge, along with the findings of deficiency IT, VAT, and EWT for TY 2010 lacks legal and factual basis.

**Respondent's Arguments**

Respondent argues that the Court lacks jurisdiction over CTA Case No. 10610 because the BIR's final assessment did not become a disputed assessment, for petitioner's failure to file a valid administrative protest.

Granting the Court validly acquired jurisdiction over CTA Case No. 10610, respondent ripostes that petitioner is liable for the BIR's deficiency IT, VAT, and EWT assessments covering TY 2010 since: (1) said tax assessments were timely made within the ten-year extraordinary prescriptive period to assess internal revenue taxes, pursuant to Section 222(a) of the 1997 National Internal Revenue Code (NIRC), as amended; and (2) said findings were in consonance with prevailing law, rules and regulations, as well as pertinent jurisprudence.

**RULING OF THE COURT**

*There is a valid protest, hence, there is a disputed assessment which is within the jurisdiction of this Court.*

Sections 7(a)(1) and 11 of Republic Act (RA) No. 1125[37], as amended by RA No. 9282[38], provide as follows:

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[37] AN ACT CREATING THE COURT OF TAX APPEALS.
[38] 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

"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 relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

xxx xxx xxx

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* - **Any party adversely affected by a decision, ruling** or inaction of the Commissioner of Internal Revenue xxx **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.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx." *(Emphasis supplied)*

Based on the foregoing, it is clear that the concerned taxpayer or party adversely affected by respondent's decision may file an appeal with this Court within thirty (30) days after the receipt of such notice.

In the instant case, petitioner grounded its appeal on respondent's Decision dated June 14, 2021 which petitioner received on July 9, 2021.

Applying the abovementioned provisions, petitioner had thirty (30) days from July 9, 2021 or until August 8, 2021 within which to file such appeal.

However, under Supreme Court (SC) Administrative Circular No. 56-2021 dated July 30, 2021, all courts were physically closed from August 2, 2021 and the filing of pleadings was suspended. It was only under SC Administrative Circular

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KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

No. 83-2021 dated October 18, 2021 that the suspension of the filing of pleadings was lifted and the litigants were granted seven (7) calendar days from October 20, 2021 to file their required pleadings. Thus, the physical filing of the instant petition was filed on time.

The respondent, on the other hand, argues that the Court lacks jurisdiction over the case because the BIR's final assessment did not become a disputed assessment, for petitioner's failure to file a valid administrative protest.

Respondent alleges that it failed to specify the relevant additional documents which petitioner intends to present in the said protest. Hence, it is an invalid protest.

A thorough and incisive reading of the protest letter dated May 8, 2015 reveals that such is one of a request for reinvestigation of the subject assessment. The letter in its penultimate paragraph undertook to submit additional documents within a period of sixty (60) days from its filing to the concerned Revenue District Office (RDO) on May 11, 2015.[39]

Said documents were submitted under letters dated August 6, 2015, September 22, 2015, October 12, 2015, November 6, 2015, January 27, 2016, and June 9, 2016 in support of its protest.[40]

The case of *Commissioner of Internal Revenue v. Wyeth Suaco Laboratories, Inc. and the Court of Tax Appeals*[41] is instructive, to wit:

> "Although the protest letters prepared by SGV & Co. in behalf of private respondent did not categorically state or use th words "reinvestigation" and "reconsideration," the same are to be treated as letters of reinvestigation and reconsideration. By virtue of these letters, the Bureau of Internal Revenue ordered its Manufacturing Audit Division to review the assessment made. Furthermore, private respondent's claim that it did not seek reinvestigation or reconsideration of the assessments is belied by the subsequent correspondence or letters written by its officers, as shown above."

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[39] *Id.*, Folder 1 of 5, p. 133.
[40] Docket, Vol 1, Exhibit "AS", p. 156.
[41] G.R. No. 76281, September 30, 1991.

Furthermore, the letter in the cited case of *Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division and City Super, Incorporated*[42] which glaringly did not substantially comply with the requisites of Section 3.1.4(i) of Revenue Regulations (RR) No. 18-2013, to wit:

> "The requisite information and conditions prescribed under the provisions of Section 6 in relation to Section 228 of the Tax Code, as amended, as implemented by Revenue Regulations No. 18-2013, for filing a valid protest were not met, as enumerated hereunder, to wit:
>
> Your letter dated, April 29, 2015, failed to indicate/state the following:
>
> a. Name and address of the taxpayer;
>
> b. The nature of the protest, since the letter merely contained a statement that the subject taxpayer was in the process of compiling documents for eventual presentation to the bureau;
>
> c. The assessment number, date of receipt of assessment notice and formal letter of demand;
>
> d. The itemized statement of findings to which the taxpayer agrees and schedule of adjustments to which the taxpayer does not agree;
>
> e. A statement of the facts, applicable law, rules and regulations or jurisprudence in support of the protest.
>
> Premised on the foregoing, a collection letter shall be issued against Citysuper, Inc.; calling for payment of the aforesaid deficiency assessments on Income Tax, VAT, Withholding tax on Compensation, EWT and DST for taxable year 2011."

pales in comparison to the protest letter of petitioner in the instant case. These deficiencies are not present in petitioner's protest letter as it raised valid legal, jurisprudential and factual defenses in support thereof.

*The PAN and FLD/FAN were issued beyond the prescriptive period to assess.*

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[42] G.R. No. 239464, May 10, 2021.

The Court shall first resolve whether respondent's right to assess petitioner for deficiency taxes for CY 2010 has already prescribed.

Section 203 of the 1997 NIRC, as amended, mandates that internal revenue taxes must be assessed within three (3) years reckoned from the period fixed by law for filing of the tax return or the actual date of filing, whichever comes later, thus:

> 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.

In relation thereto, Section 77(B)[43] of the 1997 NIRC, as amended, provides that the Annual Corporate Income Tax Return shall be filed on or before April 15 of the following year, for those adopting the calendar year period.

As for VAT returns, Section 114(A)[44] of the 1997 NIRC, as amended, and Section 4.114-1(A) of Revenue Regulations (RR) No. 16-2005 provide that Quarterly VAT Returns shall be filed within twenty-five (25) days following the close of each taxable quarter.

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[43] SEC. 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* –
xxx
(B) *Time of Filing the Income Tax Return.* – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

[44] SEC. 114. *Return and Payment of Value-added Tax.* –

(A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis.
xxx

On the other hand, Sections 2.58(A)(2)(a)[45] and 2.81[46] of RR No. 02-98, as amended by RR No. 06-01 and RR No. 17-03, require the filing of the expanded withholding tax and withholding tax on compensation returns within ten (10) days after the end of each month for the months of January to November, while the withholding tax return for the month of December shall be filed on or before January 15 of the following year.

Below is the summary of the dates of filing of petitioner's relevant returns and the corresponding dates within which respondent should assess petitioner for deficiency income tax, VAT, and EWT for taxable year 2010:

| **ANNUAL INCOME TAX RETURN** | | |
|---|---|---|
| **Year** | **Last Day to File Return** | **Last Day to Assess** |
| 2010 | April 15, 2011 | April 15, 2014 |

| **VAT** | | |
|---|---|---|
| **Quarter 2010** | **Last Day to File Return** | **Last Day to Assess** |
| 1st | April 26, 2010[47] | April 26, 2013 |
| 2nd | July 26, 2010[48] | July 26, 2013 |
| 3rd | October 26, 2010[49] | October 26, 2013 |
| 4th | January 25, 2011 | January 25, 2014 |

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45 SEC. 2.58. *Returns and Payment of Taxes Withheld at Source.* –

(A) *Monthly return and payment of taxes withheld at source.* –
(1) xxx
(2) WHEN TO FILE –

(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year; xxx

46 SEC. 2.81. *FILING OF RETURN AND PAYMENT OF INCOME TAX WITHHELD ON COMPENSATION (FORM NO. 1601).* – Every person required to deduct and withhold the tax on compensation, including large taxpayers as determined by the Commissioner, shall make a return and pay such tax on or before the 10th day of the month following the month in which withholding was made to any authorized agent bank within the Revenue District Office (RDO) or in places where there are no agent banks, to the Revenue District Officer of the City or Municipality where the withholding agent/employer's legal residence or place of business or office is located; provided, however, that taxes withheld from the last compensation (December) for the calendar year shall be paid not later than January 15 of the succeeding year; xxx

47 April 25, 2010 fell on a Sunday.

48 July 25, 2010 fell on a Sunday.

49 October 25, 2010 was declared a special non-working holiday.

| EWT RETURNS | | |
|---|---|---|
| **Period** | **Last Day to File Return** | **Last Day to Assess** |
| January 2010 | February 10, 2010 | February 10, 2013 |
| February 2010 | March 10, 2010 | March 10, 2013 |
| March 2010 | April 12, 2010[50] | April 12, 2013 |
| April 2010 | May 10, 2010 | May 10, 2013 |
| May 2010 | June 10, 2010 | June 10, 2013 |
| June 2010 | July 12, 2010[51] | July 12, 2013 |
| July 2010 | August 10, 2010 | August 10, 2013 |
| August 2010 | September 10, 2010 | September 10, 2013 |
| September 2010 | October 11, 2010[52] | October 11, 2013 |
| October 2010 | November 10, 2010 | November 10, 2013 |
| November 2010 | December 10, 2010 | December 10, 2013 |
| December 2010 | January 17, 2011[53] | January 17, 2014 |

In this case, the PAN dated February 12, 2015 and FLD/FAN dated March 31, 2015 were received by petitioner on April 3, 2015 and April 10, 2015, respectively. Based on the above table, the PAN and FLD/FAN were issued beyond the three-year prescriptive period to assess for deficiency income tax, VAT, and EWT.

Contrastingly, respondent argues that tax assessments were timely made within the ten-year extraordinary prescriptive period to assess internal revenue taxes under Section 222(a) of the 1997 NIRC, as amended.

However, respondent failed to elaborate said argument and to identify any fraudulent action committed by petitioner to apply Section 222 of the 1997 NIRC, as amended, except for citing that the FLD imposes 50% surcharge and 20% interest under Sections 248(B) and 249(B) of the same law.

In the case of *Mcdonald's Philippine Realty Corporation v. Commissioner of Internal Revenue*,[54] the Supreme Court laid down the rule when respondent alleges fraud against any taxpayer, to wit:

> "Tax assessments are presumed correct under the law and issued in the regular performance the tax authorities' duty. As a consequence, it is incumbent upon the taxpayer to dispute such correctness and regularity.
>
> Similarly, *tax returns* are presumed to have been prepared and filed by the *taxpayer* in good faith, in observance

[50] April 10, 2010 fell on a Saturday.
[51] July 10, 2010 fell on a Saturday.
[52] October 10, 2010 fell on a Sunday.
[53] January 15, 2011 fell on a Saturday.
[54] G.R. No. 247737, August 8, 2023.

> of the ordinary course of business, and in compliance with the applicable rules and regulations.
>
> Thus, it must be understood that *falsity* and/or *fraud with respect to any tax return* cannot be presumed to the extent that these are relied upon as grounds for the extension of the assessment period to 10 years. In keeping with their duty to preserve due process in tax assessments, as enunciated in *BF Goodrich, Fitness by Design, Samar Electric, Asalus*, and *Spouses Magaan*, **the tax authorities bear the burden of establishing, with clear and convincing proof, the existence of grounds warranting the application of the 10-year period.**"

The failure of respondent to provide any indication of clear and convincing proof of fraud or falsity on petitioner's tax return shall fall the subject assessment within the ambit of the three (3)-year prescriptive period to assess. Thus, the subject assessment was already prescribed when such was issued.

*The subject assessment is null and void.*

Based on the records of this case, the PAN dated February 12, 2015 and FLD/FAN dated March 31, 2015 were received by petitioner on April 3, 2015 and April 10, 2015, respectively.

It appears that the FLD/FAN was issued within the prescriptive period to file a reply to the PAN, hence, respondent violated petitioner's right to due process.

Paragraph 3.1.1 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, provides:

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

payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties."

As shown above, taxpayers are given a fifteen (15)-day prescriptive period to file a Reply from the time of the receipt of said PAN and the non-observance of such period is considered a violation of the right of such taxpayer to due process as held in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[55] to wit:

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

xxx xxx xxx

On the other hand, the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment. Under Section 3.1.1 of Revenue Regulations No. 12-99, the taxpayer is given 15 days from receipt of the Notice for Informal Conference to respond; otherwise, he or she will be considered in default and the case will be referred to the Assessment Division for appropriate review and issuance of deficiency tax assessment, if warranted. Again, under Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, **the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued.** After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals.

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

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[55] G.R. Nos. 201398-99 and 201418-19, October 03, 2018.

are based, and those facts must appear in the record. (*Emphasis supplied*)

In the instant case, it appears that respondent has no intention to consider any explanation for the PAN from petitioner when it issued the FLD/FAN within the 15-day period to respond without waiting the required petitioner's reply to the PAN.

Considering that the subject assessment was already prescribed and that the FLD/FAN was null and void due to respondent's violation of petitioner's right to due process, this Court will no longer discuss the other issues raised by the parties.

**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the PAN dated February 12, 2015, FLD/FAN dated March 31, 2015, FDDA dated February 14, 2017, and Decision dated June 14, 2021 are **CANCELLED** and **SET ASIDE**.

**SO ORDERED.**

Catherine T. Manahan

**CATHERINE T. MANAHAN**
Associate Justice

**WE CONCUR:**

Marian Ivy F. Reyes-Fajardo
*(Please see Dissenting Opinion)*
**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

**HENRY S. ANGELES**
Associate Justice

## ATTESTATION

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

**CATHERINE T. MANAHAN**
Associate Justice
Chairperson

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
Presiding Justice

REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

**THIRD DIVISION**

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| **UNITED GRAPHIC PRINTING CORPORATION,** *Petitioner,* | **CTA Case No. 10610** |
| | Members: |
| - versus - | **MANAHAN**, *Chairperson*, **REYES-FAJARDO**, and **ANGELES**, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: OCT 31 2024 11:55 a.m. |

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## DISSENT

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

With due respect, I differ from the majority's conclusion that the Court of Tax Appeals (CTA) in Division acquired jurisdiction over CTA Case No. 10610. Bear in mind:

**First.** Petitioner failed to file a valid administrative protest on Regional Director Jose N. Tan (RD Tan)'s Formal Letter of Demand dated March 31, 2015 and its corresponding final assessment notices (FLD/FAN).

To recall, petitioner's appeal was triggered by its receipt of respondent's Decision dated June 14, 2021,[1] upholding Regional Director Romulo L. Aguila, Jr. (RD Aguila, Jr.)'s Final Decision on Disputed Assessment (FDDA). Undeniably, petitioner is invoking the CTA's jurisdiction over respondent's decision on disputed assessment found in Section 7(a)(1) of Republic Act (RA) No. 1125,[2] as amended by RA No. 9282, which reads:

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1 Par. 1, Petition for Review in CTA Case No. 10610. Docket, pp. 11-12.

2 An Act Creating the Court of Tax Appeals.

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;

...[3]

Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals[4] clarified that the CTA in Division has jurisdiction over respondent or his authorized representative's decision involving disputed assessments, among others.[5] For the decision of respondent or his duly authorized representatives to be elevated on appeal before the CTA in Division, there must first be a disputed assessment.[6] To correctly dispute a final assessment, a valid administrative protest by the taxpayer must be made pursuant to Section 228 of the 1997 National Internal Revenue Code, as amended, which states:

Section 228. *Protesting of Assessment.* — ...

...

If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

**Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.**

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3 Boldfacing supplied.

4 A.M. No. 05-11-07-CTA.

5 SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* - The Court in Divisions shall exercise:
(a) Exclusive 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; (Boldfacing supplied)

6 See *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,* G.R. No. 215534, April 18, 2016.

> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[7]

*Commissioner of Internal Revenue v. Court of Tax Appeals – Third Division and Citysuper Incorporated (Citysuper)*[8] in turn elucidated that the validity of the administrative protest requires confluence of two (2) conditions, namely: *first,* it must be filed within thirty (30) days from the receipt of the final assessment; and *second,* it must be in such form and manner as may be prescribed by implementing rules and regulations. Subsection 3.1.4 of Revenue Regulations (RR) No. 18-2013, reiterated the period to file, as well as prescribed the form and manner of an administrative protest:

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

Of the two (2) conditions for the validity of an administrative protest enjoined by *Citysuper,* the *second* condition was not met. Petitioner's administrative protest failed to conform with the rules

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[7] Boldfacing supplied.
[8] G.R. No. 239464, May 10, 2021.

and regulations as to the form and manner thereof under subsection 3.1.4 of RR No. 18-2013.

Specifically, petitioner received[9] the FLD[10] and FAN[11] on April 10, 2015. Counting thirty (30) days therefrom, petitioner had until May 11, 2015[12] to file an administrative protest thereto; thus, it *timely* protested the FLD/FAN on May 11, 2015.[13]

So too did petitioner's administrative protest contain: (1) date of issuance and receipt of the FLD/FAN on March 31, 2015 and April 10, 2015, respectively; and (2) legal and factual grounds in support thereof, *i.e.*, prescription of tax assessments, lack of legal and factual basis on the imposition of the 50% surcharge, the VAT assessment is based on presumptions, and *not* facts, and the whole assessment lacks merit. Yet, said administrative protest *failed* to explicitly specify therein, the type of administrative protest, *i.e.*, request for reinvestigation or request for reconsideration.[14] It means that such protest failed to comply with the form and manner thereof, as required by Section 228 of the NIRC, as amended, in relation to subsection 3.1.4 of RR No. 18-2013. Following *Citysuper*, the tax assessments here were *not* transmuted into disputed assessments, resulting in our lack of jurisdiction over CTA Case No. 10610.

**Second.** Petitioner elected, but failed to file a valid administrative appeal before respondent.

*Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*[15] explained that the FDDA rendered by respondent's authorized representative may be elevated to respondent, by way of an administrative appeal; or with the CTA, within thirty (30) days from receipt thereof. Should the taxpayer opt for administrative appeal, respondent may only entertain the same upon stern adherence with

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9 Exhibit "P-1" (Q&A Nos. 42 and 54). Docket, pp. 228 and 231, respectively.

10 Exhibits "P-36" and "P-36-1," and "P-7" and "P-7-1." Folder 1, BIR Records (Exhibit "R-13"), pp. 122-125.

11 Exhibits "P-33," "P-34," and "P-35," Docket, pp. 458-460; and Exhibits "R-8," "R-8-1," and "R-8-2," Folder 1, BIR Records (Exhibit "R-13"), pp. 126-127 and unpaginated, respectively.

12 The 30th day, *i.e.*, May 10, 2015, fell on a Sunday.

13 Exhibits "P-37" and "P-37-1." Folder 1, BIR Records (Exhibit "R-13"), pp. 133-140.

14 *Ibid.*

15 G.R. No. 221780, March 25, 2019. *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue*, G.R. No. 208731, January 27, 2016.

subsection 3.1.4 of RR No. 18-2013, the relevant portion of which reads:

> 3.1.4 Disputed Assessment. –
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> ...
>
> **If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may** either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or **(ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.**
>
> ...[16]

On April 6, 2017, petitioner received[17] RD Aguila Jr.'s FDDA,[18] denying its administrative protest. Counting thirty (30) days therefrom, petitioner had until May 8, 2017[19] to lodge an appeal before respondent; hence, its Letter dated May 2, 2017 challenging said FDDA before respondent was seasonably[20] registered on May 4, 2017. However, petitioner wrote in said Letter, what was proscribed to be done by subsection 3.1.4 of RR No. 18-2013—requesting respondent to forward the case docket to Revenue District Office (RDO) No. 54A for the conduct of a reinvestigation.[21] Though the same Letter mentioned that the FDDA should be reconsidered, the nature thereof is one for reinvestigation by petitioner's plea to transmit the case docket to said RDO. After all, such move was possibly aimed at taking another shot, at examining the bulk of supporting documents [22] on the administrative protest on the FLD/FAN, previously and belatedly[23] submitted by petitioner.

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16 Boldfacing supplied.

17 Per petitioner's Letter dated May 2, 2017, addressed to respondent. BIR Records (Exhibit "R-13"), pp. 440-447.

18 Exhibit "R-9." Folder 1, BIR Records (Exhibit "R-13"), p. 400 (consisting of 3 pages).

19 The last day for petitioner to file an administrative appeal, *i.e.*, May 6, 2017, fell on a Saturday.

20 Letter dated May 2, 2017. Folder 1, BIR Records (Exhibit "R-13") pp. 439-447.

21 Last paragraph of Letter dated May 2, 2017. *Id.* at p. 439.

22 Petitioner's Letters dated August 6, 2015, September 22, 2015, October 12, 2015, November 6, 2015, and June 9, 2016. Exhibits "P-39" to "P-44-1," Folder 1, BIR Records (Exhibit "R-13"), pp. 367-372.

23 Under Section 228 of the NIRC, as amended, petitioner had 60 days from filing of its administrative protest on May 11, 2015, or *until* July 10, 2015 to submit documents in support thereof.

*Sans* a valid administrative appeal (request for reconsideration) filed by petitioner before respondent, the 2010 deficiency taxes found in RD Aguila Jr.'s FDDA attained incontestability. Judicial re-examination on the propriety thereof is no longer feasible.

**ACCORDINGLY**, I **VOTE** to **DISMISS** CTA Case No. 10610, on jurisdictional ground.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice