REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

FIFTH LEG DATA PRODUCTION, INC., Petitioner,	**CTA CASE NO. 11941**
	Members:
- versus -	**MODESTO-SAN PEDRO,** *Chairperson, and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 06 2026 4:04 p.m.

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RESOLUTION

Before this Court is petitioner's **Motion for Summary Judgment (Motion)** filed on December 4, 2025, with respondent's **Comment/Opposition (To Petitioner's Motion for Summary Judgment)** filed through registered mail on December 17, 2025.

On May 23, 2025, petitioner filed the instant *Petition for Review*, praying for the Court to (1) grant said *Petition* and declare null and void respondent's Decision dated January 14, 2025, which ordered petitioner to pay the total amount of ₱9,422,066.44, representing deficiency income tax, expanded withholding tax (EWT), withholding tax on compensation (WTC) and compromise penalty (CP) for fiscal year (FY) ended June 30, 2014, inclusive of increments; (2) cancel said assessments; and, (3) order respondent and his agents to cease and desist from collecting the subject deficiency taxes.[1]

Respondent then filed his *Answer* on August 12, 2025.[2]

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[1] Docket, pp. 7 to 35.
[2] *Id.* at 425 to 448.

On December 4, 2025, petitioner filed the present *Motion for Summary Judgment*,[3] with respondent's *Comment/Opposition (To Petitioner's Motion for Summary Judgment)* filed on December 17, 2025 which the Court received on December 23, 2025.[4]

In the *Motion*, petitioner prays that for Court to render a summary judgment granting the *Petition for Review* dated May 21, 2025, and a Decision: (1) declaring the assessments issued against the petitioner for deficiency income tax, EWT, WTC and CP for the FY ended June 30, 2014, in the amount of ₱9,422,066.44, inclusive of interests and penalties, void and/or invalid for having been issued in violation of petitioner's right to due process; and, (2) cancelling said assessments.

Citing Sections 1 and 3, Rule 35 of the Rules of Court, petitioner contends that a party may move for summary judgment in his favor when there is no genuine issue as to any material fact and that such movant is entitled to a judgment as a matter of law. Petitioner posits that a "genuine issue" requires the existence of an issue of fact which calls for the presentation of evidence, as distinguished from an issue which is fictitious or contrived, an issue that does not constitute a genuine issue for trial. Accordingly, petitioner argues that a summary judgment is proper even if the pleadings, on their face, appear to raise issues, if the affidavits, depositions, and admissions presented by the moving party show that such issues are not genuine.

Petitioner further maintains that, although some facts alleged in its *Petition for Review* were denied in respondent's *Answer* dated August 12, 2025, the *Judicial Affidavit of Mr. Jon Patrick A. Wendt* and the documentary evidence attached thereto collectively show that there is no genuine issue raised with respect to facts essential to declare the deficiency tax assessments issued against petitioner as invalid. Petitioner, thus, claims that it is entitled, as a matter of law, to a summary judgment declaring the assessments void and of no effect whatsoever.

Petitioner asserts, among others, that respondent violated its right to due process when the latter did not fully consider the arguments and supporting documents submitted by petitioner in its protest to the Preliminary Assessment Notice (PAN) on July 4, 2017, and instead, simply reiterated the PAN findings in the Final Letter of Demand and Final Assessment Notice (FLD/FAN) without providing any explanation as to why petitioner's arguments were not considered acceptable. Presenting a comparison of the FLD/FAN and the PAN, petitioner shows that the former is a replica of the latter, differing only in the amount of interest due, *viz*:

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[3] Docket, pp. 463 to 481.
[4] *Id.* at 583 to 594.

Tax Type	PAN *Basic Tax Due*	FAN *Basic Tax Due*
IT	₱4,824,196.33	₱4,824,196.33
VAT	2,679.55	2,679.55
EWT	544,569.92	544,569.92
WTC	695,211.55	695,211.55
Total	**₱6,066,657.35**	**₱6,066,657.35**

Petitioner avers that respondent acknowledged the receipt of the Protest to the PAN only after the latter had already issued the FLD.

Petitioner submits that the Bureau of Internal Revenue's (BIR's) disregard of its right to due process rendered the FLD/FAN null and void, and of no force and effect. Petitioner adds that the fact that the Final Decision on Disputed Assessment (FDDA) subsequently reduced the assessments did not cure the defective FLD considering that the FDDA did not explain why the remaining assessment items in the FLD were reiterated.

Petitioner emphasizes that in the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.* (*Avon* case),[5] the Supreme Court held that the respondent must respect petitioner's right to due process all throughout the administrative stage. The said ruling has allegedly been reiterated in the recent case of *E.E. Black Ltd (Philippine Branch) vs. Commissioner of Internal Revenue*,[6] where this Court held that an incomplete or insufficient explanation as to the factual and legal bases of an assessment does not meet the standards of due process, and an assessment is considered void unless respondent complies with all the requirements of due process.

On the other hand, in his *Comment/Opposition*, respondent disputes that, rather than raising a purely legal issue, petitioner sought a definitive ruling on matters that necessarily required the examination and appreciation of evidence; and, the present *Motion* failed to meet the required standard. Purportedly, the adequacy of petitioner's explanations is a factual matter that requires the evaluation of the contents, credibility, and probative value of the documents and explanations submitted.

Respondent likewise asserts that the issue of whether the BIR duly evaluated the protest could not be resolved without reviewing the administrative record and assessing the actions taken by the BIR in light of the evidence presented, which were not abstract legal questions but factual matters requiring evidentiary scrutiny. The claim that due process is violated ostensibly entails an inquiry into the totality of the proceedings,

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[5] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[6] CTA EB No. 1611, January 22, 2019.

including the opportunities afforded to petitioner to be heard and to submit evidence, as well as the manner by which the BIR acted on the protest, and such determination is inherently factual and cannot be resolved through summary judgment.

Given the existence of genuine issues on material facts, respondent maintains that the case must proceed to trial or further proceedings, where evidence may be properly received and evaluated; thus, summary judgment – being appropriate only where facts are undisputed – is procedurally improper and legally unwarranted.

Respondent points out that petitioner's *Motion* sought to dispense with trial and prematurely curtail the judicial process, despite the presence of genuine issues of material fact. Allegedly, petitioner's claim that there is "no genuine issue", is demonstrably false; and that at the very least, the following material factual issues would remain strongly disputed: (1) whether petitioner's protest to the PAN meaningfully refuted the audit findings; (2) whether the documents submitted were complete, credible, and legally sufficient; (3) whether the BIR's affirmance of the PAN findings was the result of arbitrariness or of reasoned evaluation; and, (4) whether due process was satisfied when the proceedings are viewed in their entirety. Respondent contends that these are not hypothetical or contrived issues, but go to the very heart of the controversy and cannot be resolved without trial.

Respondent further argues that, while summary judgment is applicable where no genuine issue of material facts exists, the rule does not apply where the resolution of the case depends on: (i) evaluation of evidence; (ii) assessment of the sufficiency of explanations; and, (iii) determination of whether administrative discretion was properly exercised. Respondent claims that petitioner's *Motion* is not grounded on the absence of factual issues, but on an artificial rebranding of disputed facts as "pure questions of law".

Respondent avers that petitioner was accorded its right to due process and the latter's allegation that the FLD/FAN was merely a replica of the PAN differing only in the amount of interest due, was legally and factually baseless, as such argument effectively demanded that the BIR should alter its findings regardless of merit, which was absurd and legally untenable. Respondent further emphasizes that the BIR, as an administrative agency, is tasked with evaluating protests and assessing taxes based on the evidence and explanations submitted, and by allowing petitioner's argument to prevail would undermine the agency's discretion and require it to disregard its independent evaluation, even where the assessment is correct and duly supported by evidence.

Respondent maintains that the fact that the BIR ultimately sustained its findings did not equate to arbitrariness, and that there was no legal requirement for the FAN to be materially different from the PAN. If the taxpayer failed to sufficiently refute the findings in the PAN, the BIR is allegedly within its discretion to uphold those findings and reflect them in the FAN.

Applying the case of *Ang Tibay vs. The Court of Industrial Relations* ,[7] (Ang Tibay Case) respondent avers that, considering that the contentions of petitioner in assailing the validity of the tax assessments issued against it were not supported by substantial evidence, which means such relevant evidence as may be reasonably accepted as adequate to support a conclusion, then, the BIR's decision to maintain said assessments is justified and the same cannot be construed as a violation of petitioner's right to administrative due process. Respondent further alleges that petitioner did not attach any documents to support the claims or arguments raised in its Reply to the PAN.

According to respondent, unlike in the *Avon* case, petitioner was given opportunity to explain or present its side throughout the investigation process of tax assessment, specifically, to file a reply to the PAN, file a protest to the FAN through a request for reinvestigation, and to submit supporting documents in support of its protest. Respondent further notes that petitioner's request for reinvestigation against the FAN was given due course in this case after petitioner submitted documents in support thereof.

On petitioner's *Motion*, respondent argues that nullification of a tax assessment would be an extreme remedy requiring clear, unequivocal proof of due process violation, which petitioner offered none. Respondent posits that what petitioner truly sought would be to avoid trial, evade scrutiny of its books, and escape defending the merits of the assessment; and that summary judgment, in this context, would short-circuit the judicial process by depriving the respondent of the opportunity to present evidence and fully test petitioner's claims.

Respondent further stresses that granting summary judgment in this case would require the Court to assume facts not in evidence, weigh the contested matters without the benefit of a trial, and disregard the well-established presumption of regularity in tax assessments, of which such approach would be procedurally improper and legally unsound as it would deprive the parties the opportunity to fully present and evaluate evidence on the genuine issue of material fact that remains in dispute.

We resolve.

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

Sections 1 and 3, Rule 35 of the Revised Rules of Court, as amended, provide:

> **SECTION 1.** *Summary judgment for claimant.* - A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his or her favor upon all or any part thereof."
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> **SEC. 3.** *Motion and proceedings thereon.* - The motion shall cite the supporting affidavits, depositions or admissions, and the specific law relied upon. The adverse party may file a comment and serve opposing affidavits, depositions, or admissions within a non-extendible period of five (5) calendar days from receipt of the motion. Unless the court orders the conduct of a hearing, judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.
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> Any action of the court on a motion for summary judgment shall not be subject of an appeal or petition for *certiorari*, prohibition or *mandamus*. (*Underscoring supplied*)

Summary judgment may be validly rendered when these twin elements are present: (a) there must be no genuine issue as to any material fact, except for the amount of damages; and, (b) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law.[8] A genuine issue refers to a question of fact which calls for the presentation of evidence.[9]

Further, summary judgment or accelerated judgment is a device for weeding out sham claims or defenses at an early stage of the litigation, thereby avoiding the expense and loss of time involved in a trial. The very object is to separate what is formal or pretended in denial or averment from what is genuine and substantial, so that only the latter may subject a suitor "to the burden of trial". In conducting the hearing, the purpose of the judge is not to try the issue, but merely to determine whether there is a meritorious issue to be tried. Where a motion is made for summary judgment, such motion is not directed to the pleadings and deals only with the question of whether there are triable issues of facts and where such issue exists summary judgment must be denied. Summary judgment should not be granted where it fairly appears that there is a triable issue to be tried. The Court should not pass on questions of credibility or weight of evidence, and that the summary judgment procedure "should not be perverted to the trial of disputed

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[8] *Republic of the Philippines vs. Datuin, et. al.*, G.R. No. 224076, July 28, 2020.

[9] *Id.*

questions of fact upon affidavits". The test, therefore, of a motion for summary judgment is - whether the pleadings, affidavits and exhibits in support of the motion are sufficient to overcome the opposing papers and to justify a finding as a matter of law that there is no defense to the action or the claim is clearly meritorious.[10]

Moreover, the crucial question in a motion for summary judgment is whether the issues raised in the pleadings are genuine or fictitious, as shown by affidavits, depositions or admissions accompanying the motion. A genuine issue means an issue of fact which calls for the presentation of evidence as distinguished from an issue which is fictitious or contrived so as not to constitute a genuine issue for trial.[11]

In the case of *Aniceto Calubaquib, et al. vs. Republic of the Philippines*[12], citing the case of *Viajar vs. Estenzo*[13], the Supreme Court explained when summary judgments are proper, to wit:

> Relief by summary judgment is intended to expedite or promptly dispose of cases **where the facts appear undisputed and certain from the pleadings, depositions, admissions and affidavits**. But if there be a doubt as to such facts and there be an issue or issues of fact joined by the parties, neither one of them can pray for a summary judgment. **Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial.**
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> An examination of the Rules will readily show that a summary judgment is by no means a hasty one. It assumes a scrutiny of facts in a summary hearing after the filing of a motion for summary judgment by one party supported by affidavits, depositions, admissions, or other documents, with notice upon the adverse party who may file an opposition to the motion supported also by affidavits, depositions, or other documents x x x. In spite of its expediting character, relief by summary judgment can only be allowed after compliance with the minimum requirement of vigilance by the court in a summary hearing considering that this remedy is in derogation of a party's right to a plenary trial of his case. At any rate, **a party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is so patently unsubstantial as not to constitute a genuine issue for trial, and any doubt as to the existence of such an issue is resolved against the movant.** *(Emphasis added)*

Applying the foregoing to the present case, a perusal of the parties' respective pleadings, affidavits, and attached exhibits show that petitioner satisfied the twin elements to render a summary judgment.

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[10] *Natalia Realty Corporation. vs. Protacio Ranchu Vallez, et al.*, G.R. Nos. 78290-94, May 23, 1989 citing the case of *Estrada vs. Consolacion*, et al., G.R. No. L-40948, June 29, 1976.
[11] *Spouses Evangelista vs. Mercator Finance Corp., et al.*, G.R. No. 148864, August 21, 2003.
[12] G.R. No. 170658, June 22, 2011.
[13] G.R. No. L-43882, April 30, 1979.

An examination of respondent's *Answer vis-à-vis* with petitioner's allegations in the *Petition for Review* reveals the following admissions by both parties, to wit:

	Petition for Review		***Answer***
5.	On 18 May 2016, Respondent issued Letter of Authority No. eLA201200036108 addressed to Petitioner, with attached Checklist of Requirements, authorizing Revenue Officer Rodjyl Joseph Arboleda and Group Supervisor Emmanuel Obsequio to examine Petitioner's books of accounts for all internal revenue taxes for the period July 1, 2013 to June 30, 2014.[14]	10.	Respondent *admits* the allegations in **paragraph 5** of the Petition, confirming that Letter of Authority (LOA) No. ELA201200036108 was issued on May 18, 2016, authorizing the designated Revenue Officer and Group Supervisor to examine the petitioner's books of accounts and all internal revenue tax liabilities for the period from July 1, 2013 to June 30, 2014.
7.	On 19 June 2017, Petitioner received a Preliminary Assessment Notice dated 15 June 2017 against Petitioner for deficiency 2014 IT, VAT, EWT, DST and CP in the aggregate amount of ₱8,887,156.76, inclusive of increments, broken down as follows:[15]	12.	Respondent *admits* the allegations in **paragraph 7** regarding the issuance of a Preliminary Assessment Notice (PAN) on June 15, 2017, and receipt thereof by petitioner on June 19, 2017.
8.	**On 4 July 2017, Petitioner filed a Protest Letter dated 4 July 2017 with the Office of the Regional Director of BIR Revenue Region No. 8 to contest the PAN;**[16]	13.	Respondent *admits* the allegations in **paragraph 8**, specifically that the petitioner filed a Protest to the PAN on July 4, 2017.
9.	**On 7 July 2017, Petitioner received Assessment Notices dated 5 July 2017 (BIR Form 1708) issued by respondent** dated 5 July 2017 assessing petitioner for deficiency 2014 IT, EWT, WC and CP in the aggregate amount of ₱8,956,964.86, inclusive of increments, broken down as follows:[17]	14.	Respondent *admits* the allegations in **paragraph 9**, regarding the issuance of Assessment Notices on July 5, 2017.
10.	**On 31 July 2017, Petitioner received a letter dated 26 July 2017 from the BIR in reply to Petitioner's PAN Protest. The letter informed**	15.	Respondent *admits* the allegations in **paragraph 10**, affirming the issuance of the BIR's letter dated July 26, 2017.

[14] Par. 5, *Petition for Review*, Docket, p. 8, *vis-à-vis* Par. 10, *Answer*, Docket, p. 427.
[15] Par. 7, *Petition for Review*, Docket, p. 8, *vis-à-vis* Par. 12, *Answer*, Docket, p. 427.
[16] Par. 8, *Petition for Review*, Docket, p. 8, *vis-à-vis* Par. 13, *Answer*, Docket, p. 427.
[17] Par. 9, *Petition for Review*, Docket, p. 8, *vis-à-vis* Par. 14, *Answer*, Docket, p. 427.

Petition for Review		*Answer*	
	Petitioner that a Formal Letter of Demand has been issued and that Petitioner may protest the Final Assessment Notice within 30 days from receipt of the same.[18]		
11.	On 4 August 2017, Petitioner, through undersigned counsel, filed a Protest Letter dated 3 August 2017 with the Office of the Regional Director of BIR Revenue Region No. 8 to contest the FAN.[19]	16.	Respondent *admits* the allegations in **paragraph 11**, confirming that a Protest to the FAN was filed by petitioner on August 4, 2017.
12.	Subsequently, Petitioner received a letter dated 30 August 2017 signed by the Regional Director of BIR Revenue Region No. 8 informing Petitioner that its request for reinvestigation had been granted and that the entire case docket will be forwarded to RDO No. 47 for evaluation and other appropriate action.[20]	17.	Respondent *admits* the allegations in **paragraph 12**, stating that petitioner's request for reinvestigation was granted and the case docket was transmitted to Revenue District Office (RDO) No. 47 – East Makati.
13.	On 1 March 2019, Petitioner received a Final Decision on Disputed Assessment and Amended Assessment Notices all dated 26 February 2019 from BIR Revenue Region No. 8, assessing petitioner for deficiency 2014 IT, VAT, EWT, WC and CP in the aggregate amount of ₱9,422,066.44, inclusive of increments, broken down as follows:[21]	18.	Respondent *admits* the allegations in **paragraph 13**, acknowledging the issuance of the Final Decision on Disputed Assessment (FDDA) dated February 26, 2019, which was received by petitioner on March 1, 2019.
14.	On 29 March 2019, the Petitioner, through undersigned counsel, filed an appeal dated 29 March 2019 with the Office of the Respondent and requested for a reconsideration of the findings of Revenue Region No. 8 under the FDDA pursuant to Sec. 3.1.5 of RR	19.	Respondent *admits* the allegations in **paragraph 14**, confirming the petitioner's filing of an appeal through a Request for Reconsideration with the Office of the Commissioner on March 29, 2019.

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18 Par. 10, *Petition for Review*, Docket, p. 9, *vis-à-vis* Par. 15, *Answer*, Docket, p. 427.
19 Par. 11, *Petition for Review*, Docket, p. 9, *vis-à-vis* Par. 16, *Answer*, Docket, p. 427.
20 Par. 12, *Petition for Review*, Docket, p. 9, *vis-à-vis* Par. 17, *Answer*, Docket, p. 427.
21 Par. 13, *Petition for Review*, Docket, p. 9, *vis-à-vis* Par. 18, *Answer*, Docket, p. 428.

Petition for Review	*Answer*
Revenue Regulation No. 12-1999, as amended.[22]	
15. On 18 June 2019, Petitioner received a letter dated 6 May 2019 signed by the Regional Director of BIR Revenue Region No. 8 informing Petitioner that the entire docket of the case will be forwarded to the Chief-Appellate Division, Legal Service for evaluation and other appropriate action.[23]	20. Respondent *admits* the allegations in **paragraph 15**, that the BIR stated the entire case docket was forwarded to the Chief of the Appellate Division, Legal Service.
16. On 24 April 2025, the Petitioner received the Respondent's Decision dated 14 January 2025 on its Appeal dated March 29, 2025.[24]	21. Respondent *admits* the allegations in **paragraph 16**, relating to the issuance of a Decision by the Office of the Commissioner dated January 14, 2025.

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, reads in part:

> Section 228. *Protesting of Assessment.* – **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings**:
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> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
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> **Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings**. *(Emphases added)*

Based on the above-cited provision, the taxpayers must be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.[25] The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[26] To be sure, the

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22 Par. 14, *Petition for Review*, Docket, p. 10, *vis-à-vis* Par. 19, *Answer*, Docket, p. 428.
23 Par. 15, *Petition for Review*, Docket, p. 10 vis-à-vis Par. 20, *Answer*, Docket, p. 428.
24 Par. 16, *Petition for Review*, Docket, p. 10 vis-à-vis Par. 21, *Answer*, Docket, p. 428.
25 *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
26 *Commissioner of Internal Revenue vs. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.

requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[27] Furthermore, it must be emphasized that failure to comply with Section 228 of the NIRC of 1997, as amended, does not only render the assessment void but also finds no validation in any provision of the law.[28]

In the *Avon* case,[29] the Supreme Court, citing the *Ang Tibay* case,[30] held that due process requires not only the mere opportunity to be heard. It imposes upon the BIR the correlative duty to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity:

> **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.**
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> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**
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> In *Ang Tibay v. The Court of Industrial Relations*, this Court observed that **although quasi-judicial agencies 'may be said to be free from the rigidity of certain procedural requirements, it does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.'** It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:
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> (1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.
> **(2) The administrative tribunal or body must consider the evidence presented.**
> (3) There must be evidence supporting the tribunal's decision.
> (4) The evidence must be substantial or 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'

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[27] *Commissioner of Internal Revenue vs. Unioil Corporation,* G.R. No. 204405, August 4, 2021.
[28] *Ibid.*, citing *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 191 (2006).
[29] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[30] G.R. No. 46496, February 27, 1940.

(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.
(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.
(7) **The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.**

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The last requirement relating to the form and substance of the decision is the decision-maker's *'duty to give reason'* to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker.

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

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

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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 conclusion are based, and those facts must appear in the record.**

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

> This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.
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> In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. Her **disregard of the standards and rules renders the deficiency tax assessments null and void**. xxx. *(Emphases and underscoring supplied)*

Based on the foregoing, respondent or his duly authorized representative is mandated to perform assessment functions in accordance with, and strict adherence to, law, with their own rules of procedure, and always with regard to the basic tenets of due process. Due process requires respondent and/or the BIR to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.

In his *Answer*, respondent argues that Section 228 of the NIRC of 1997, as amended, does not require the BIR to issue a separate written explanation for rejecting the taxpayer's reply to the PAN before issuing the FAN. Purportedly, what the law requires is for the taxpayer to be notified of the proposed assessment, that is the PAN, and given an opportunity to respond thereto within 15 days from receipt, in which petitioner was allegedly clearly afforded and availed of. Respondent contends that the right to due process does not guarantee a favorable outcome, but merely a fair opportunity to be heard, which petitioner allegedly undeniably received. He further argues that there is no legal requirement that the FAN be materially different from the PAN if the taxpayer fails to sufficiently refute the findings in the PAN as the BIR is within its discretion to uphold those findings and reflect them in the FAN.

At the outset, the Court cannot subscribe to respondent's arguments that petitioner was afforded due process merely because it was given an opportunity to refute the assessments. The reiteration of the PAN to the FAN/FLD cannot, by itself, be taken to mean that petitioner's reply was without merit, in the absence of any showing that such reply or protest was duly considered and evaluated by respondent.

While the Court agrees with respondent that it is not obliged to accept petitioner's explanations when unsupported with documentary evidence, and that it is within its sole discretion on whether or not to act favorably on the protest, respondent is nonetheless duty-bound to, at least, consider the taxpayer's defenses and to provide clear reasons for its decision. Thus, even assuming arguendo that petitioner's reply is unmeritorious, respondent must nonetheless explain why the same was rejected.

Jurisprudence[31] is clear that the PAN is part and parcel of due process. It provides both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN. This purpose, however, is not served if the BIR fails to consider the taxpayer's explanations.

In the instant case, the admissions made by petitioner and respondent in their respective pleadings of the material facts in this case clearly show that there is no more genuine issue that requires further presentation of evidence.

The Court particularly notes that the PAN was issued on June 15, 2017, which was received by petitioner on June 19, 2017. Within the prescribed 15-day period, petitioner filed its protest on **July 4, 2017**. Yet, the FAN/FLD were issued on **July 5, 2017**, merely one day thereafter, without any indication that petitioner's protest to PAN was ever considered.

More significantly, respondent failed to address any of the refutations raised by petitioner in its protest to the PAN. Noteworthy, the details of discrepancies attached to the FAN/FLD merely reiterated what were indicated in the details of discrepancies attached to the PAN, and the FAN/FLD reflects the same basic tax due as that reflected in the PAN, only with updated amounts corresponding interest.

In *Commissioner of Internal Revenue vs. Maxicare Healthcare Corporation*,[32] the Supreme Court emphasized that the Commissioner of Internal Revenue's (CIR's) issuance of essentially identical assessment notices which made no reference to or rebuttal of the taxpayer's submissions, indicates that the CIR failed to consider or appreciate the evidence submitted by the taxpayer and this omission deprived that taxpayer of due process which necessarily rendered the assessments against it null and void.

The Court further observes that respondent acknowledged receipt of petitioner's protest to the PAN only after the issuance of the FAN/FLD, as shown by its letter dated July 26, 2017. Moreover, a close reading of the said letter reveals that it merely acknowledged receipt of the reply to the PAN, noted that it would form part of the tax docket, and informed petitioner that a FAN had already been issued and that it could still

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[31] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018; *Commissioner of Internal Revenue vs. Yumex Philippines Corporation*, G.R. No. G.R. No. 222476, May 5, 2021.

[32] G.R. No. 261065, July 10, 2023.

nonetheless file its protest against the FAN within 30 days from receipt. The relevant portion of the letter states:

> This has reference to the letter dated July 4, 2017 which we received on the same date, filed on your behalf by your representative, **ROMULO MABANTA BUENAVENTURA SAYOC & DE LOS ANGELES ATTORNEYS-AT-LAW**, relative to our Preliminary Assessment Notice (PAN) dated June 15, 2017 covering deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, Withholding Tax on Compensation and Compromise Penalty in the amount of P7,012,927.60, P4,011.25, P818,496.05, P1,048,721.86 and P3,000.00, inclusive of increments, for the fiscal year ending June 30, 2014.
>
> In reply, we hereby acknowledge your letter and the same shall form part of the tax docket. However, pursuant to Section 3.1.1 of Revenue Regulations (RR) No. 18-2013, **Formal Assessment Notice (FAN) dated July 5, 2017 has been issued covering the above deficiency taxes.**
>
> Nevertheless, please be informed that you may still file your protest against our FAN within thirty (30) days from receipt thereof in accordance with Section 228 of the National Internal Revenue Code to contain the following data in accordance with Revenue Regulations Nos. 12-85 and 12-99 as amended by RR 18-2013:
>
> xxx xxx xxx

Evidently, respondent neither awaited petitioner's protest to the PAN nor considered the arguments raised therein. The inevitable conclusion, therefore, is that petitioner's right to due process, as recognized under Section 228 of the NIRC of 1997, as amended, vis-à-vis Section 3.1.4 of Revenue Regulations No. 12-99, as amended, was violated by respondent. As a result, the subject deficiency tax assessments have been rendered void.

To emphasize, pursuant to the *Avon* case, the concerned taxpayer must be fully apprised of the factual and legal bases of the assessments, and must not be left unaware on how respondent or his authorized representative appreciated the explanations or defenses raised by petitioner in connection with the assessments.

Settled is the rule that an assessment issued in violation of the right of the taxpayer to due process are null and void and bears no valid fruit.[33] To emphasize, where the petitioner or his duly authorized representative fails or effectively fails to observe the due process requirements prescribed by law and jurisprudence, such omission shall have the effect of rendering the assessment of the alleged deficiency tax void.

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[33] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

Considering that the material facts relevant to the proper disposition of the issues in this case are undisputed, leaving no genuine issues of fact which would require presentation of evidence in full blown trial, the Court shall grant the instant *Motion*.

ACCORDINGLY, in light of the foregoing considerations, petitioner's **Motion for Summary Judgment** is **GRANTED**.

Consequently, the assessment for petitioner's income tax, expanded withholding tax, withholding tax on compensation and compromise penalty for the fiscal year ended June 30, 2014 is hereby **CANCELLED** and **SET ASIDE**. Respondent is hereby **ENJOINED** and **PROHIBITED** from collecting said taxes.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice