REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

GOLDXTREME TRADING CO., *Petitioner,*	**CTA CASE NO. 10129**
	Members:
-versus-	**BACORRO-VILLENA**, *Acting Chairperson, and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 07 2023

x- -x

3:35 p.m.

DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review* filed by Goldxtreme Trading Co.[1] ("**Petitioner**"), under Section 3(a)(1), Rule 4[2] of the Revised Rules of the Court of Tax Appeals[3] ("**RRCTA**"), which seeks to appeal the denial by the Commissioner of Internal Revenue ("**Respondent**" or "**CIR**") through an undated *Letter* received on 24 June 2019, of its *Protest* to the *Formal Letter of Demand* ("**FLD**") dated 20 December 2018, which assessed petitioner for deficiency income tax ("**IT**"), value-added tax ("**VAT**"), expanded withholding tax ("**EWT**"), interest, and compromise penalty in the aggregate amount of ₱233,254,172.68 for taxable year ended 31 December 2015.

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[1] Petition for Review with Annexes, Docket, Vol. I, pp. 10-252.
[2] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.
[3] A.M. No. 05-11-07-CTA.

THE PARTIES

Petitioner Goldxtreme Trading Co. is a partnership duly organized under Philippine laws with principal place of business at 2nd Floor Calubad Bldg., No. 474 EDSA, Brgy. 87, Caloocan City 1400.[4] Petitioner was organized to primarily engage in the business of wholesale and retail sales of such products as gold jewelry but not limited to products such as fashion accessories, cellphone, loads, prepaid cards, scents and other related products.[5]

Petitioner is registered with the Bureau of Internal Revenue ("**BIR**") on 30 April 2015 and was issued a Tax Identification Number ("**TIN**") 008-975-272-000 and BIR Certificate of Registration with OCN4RC0000877733.[6]

Respondent is the duly appointed CIR vested by law to implement and enforce the provisions of the National Internal Revenue Code ("**NIRC**"), and other tax laws. He may be served with summons and other processes at the 5th Floor, BIR National Office, Agham Road, Diliman, Quezon City.[7]

THE FACTS

On 7 October 2016, petitioner received from respondent Letter of Authority No. LOA-027-2016-00000155 dated 5 October 2016 ("**First LOA**")[8] authorizing Revenue Officer ("**RO**") Julie Kaw and Group Supervisor ("**GS**") Alfredo Pagdilao Jr. to examine petitioner's books of accounts and other financial records for deficiency internal revenue taxes for taxable year ending 31 December 2015.[9]

On 27 September 2018, petitioner received from respondent a Preliminary Assessment Notice ("**PAN**")[10] dated 12 September 2018, issued pursuant to the First LOA, which assessed petitioner deficiency IT, VAT, EWT, and miscellaneous tax with interest and penalties for taxable year ending 31 December 2015 in the aggregate amount of ₱223,943,374.47.[11]

[4] Par. 1, Petition for Review, Docket, Vol. I, p. 10.
[5] Par. 11, *id.*, p. 12.
[6] Par.12, *id.*, p. 13.
[7] Par. 2, *id.*, p.11.
[8] Exhibit "P-8", Docket, Vol. II, p. 572.
[9] Par. 18, Docket, Vol. I, p.13; Par. 2, Joint Stipulation of Facts and Issues (JSFI), Docket, Vol. I, p. 420.
[10] Exhibit "P-13", Docket, Vol. II, pp. 596-598.
[11] Par. 19, Docket, Vol. I, pp. 13-14.

On 12 October 2018, petitioner filed with respondent a *Letter*[12] asking for an additional period of fifteen (15) days to file its *Reply* to PAN.[13] On 26 October 2018, petitioner filed its *Reply* to PAN also dated 26 October 2018.[14]

After the filing of *Reply*, petitioner was allegedly informed by respondent that the tax audit investigation for this case was transferred to a new set of ROs, under RO Ana Carmela Pimentel and GS Rozenn G. Novilla.[15]

Petitioner was provided by the BIR a copy of Letter of Authority No. LOA-027-2018-00000301 dated 18 June 2018 ("**Second LOA**") authorizing RO Ana Carmela Pimentel and GS Rozenn G. Novilla to examine petitioner's books of accounts and other accounting records for taxable year 2015.[16] The BIR informed petitioner that the Second LOA was served through registered mail.[17]

In a *Certification* issued by the Caloocan Central Post Office on 6 December 2018,[18] it was certified that the mail matter containing the Second LOA was received by a certain Nins de Guzman on 11 July 2018.[19]

On 27 November 2018, petitioner received from respondent an FLD dated 16 November 2018 with attached Details of Discrepancies and Assessment Notices ("**FAN**").[20] Under the FLD, the BIR assessed petitioner of deficiency IT, VAT, EWT, miscellaneous tax, and administrative penalties for taxable year ended 31 December 2015, in the total aggregate amount of Two Hundred Thirty Three Million Two Hundred Fifty Four Thousand One Hundred Seventy Two Pesos & 68/100 (₱233,254,172.68), broken down as follows:

Type	Basic	Interest	Total
Income Tax	₱144,549,468.03	₱63,818,590.13	₱208,368,058.16
Value-added Tax	15,682,890.73	7,621,884.89	23,304,775.62
WT - Expanded	913 401.89	448,937.01	1,362,338.90
Miscellaneous Tax	219,000.00		219,000.00
		Total	₱233,254,172.68

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[12] Annex "N", Docket, Vol. I, p. 227.
[13] Par. 20, Docket, Vol. I, p. 14.
[14] Exhibit "P-17", Docket, Vol. II, pp. 601-604.
[15] Par. 22, Petition for Review, Docket, Vol. I, p. 14.
[16] Exhibit "P-9", Docket, Vol. II, p. 573.
[17] Petition for Review, par. 23, p. 5; Docket, Vol. I, p. 14.
[18] Exhibit "P-10", Docket, Vol. II, p. 575.
[19] Par. 24, Petition for Review, Docket, Vol. I, p. 14.
[20] Par. 3, JSFI, Docket, Vol. I, p. 420; Exhibit "P-18", Docket, Vol. II, p. 605-612.

On 21 December 2018, petitioner filed its *Protest* to the FLD dated 20 December 2018.[21]

On 11 February 2019, petitioner received from the BIR a *Letter* dated 23 January 2019 informing petitioner that its request for reinvestigation pursuant to the *Protest* has been given due course and requiring petitioner to submit the *Supporting Documents* within sixty (60) days from the date of filing of the *Protest*, or until 19 February 2019.[22]

On 19 February 2019, petitioner filed the required *Supporting Documents* with the BIR.[23]

On 20 March 2019, petitioner received from the BIR another *Letter* dated 8 March 2019 informing petitioner that its *Request for Reinvestigation* has been forwarded to the district office for re-investigation and directing it to submit the pertinent documents in support of the *Protest* within sixty (60) days from the date of filing the *Protest*.[24]

On 4 April 2019, petitioner received from the BIR a *Letter* dated 29 March 2019 informing petitioner that its *Protest* and the attachments had been forwarded to Revenue District Office No. 27 on 31 January 2019 for reinvestigation.[25]

On 8 May 2019, petitioner again received from the BIR a *Letter* dated 2 May 2019 informing petitioner that the BIR has not yet received any documentary evidence in support of its *Protest* and reiterating the submission of *Supporting Documents* for its *Protest*.[26]

On 24 May 2019, petitioner sent a *Letter* dated 23 May 2019 to the BIR stating that it submitted the *Supporting Documents* on 19 February 2019, within sixty (60) days from the filing of the *Protest*.[27]

On 24 June 2019, petitioner received an undated *Letter*[28] from the BIR denying its *Protest*. The undated *Letter of Denial* was signed by BIR Revenue District Officer ("**RDO**") Miguel B.

[21] Par. 26, Petition for Review, Docket, Vol. I, p. 15; Exhibit "P-21", Docket, Vol. II, pp. 616-631.
[22] Par. 4, JSFI, Docket, Vol. I, p. 421; Annex "R", Docket, Vol. I., p. 241.
[23] Par. 7, JSFI, Docket, Vol. I, p. 421; Exhibit "P-22", Docket, Vol. II, pp. 632-635.
[24] Par. 5, JSFI, Docket, Vol. I, p. 421; Exhibit "P-23", Docket, Vol. II, p. 691.
[25] Par. 6, JSFI, Docket, Vol. I, p. 421; Exhibit "P-24", Docket, Vol. II, p. 692.
[26] Exhibit "P-25", Docket, Vol. II, p. 693.
[27] Exhibit "P-26", Docket, Vol. II, pp. 694-695.
[28] Exhibit "P-27", Docket, Vol. II, p. 696.

Morada, Jr. of the BIR Revenue Region No. 5 - Caloocan City.[29] The letter states:

> "However, the documents submitted was a mere reiteration of your previous letter dated February 9, 2019, which was only to dispute a certain legality on the issuance of the Letter of Formal Demand. In connection thereto, please be informed that we have referred your concern to the Chief, Legal Division of this Region.
>
> With respect to our tax assessment, we regret to inform your good office that you failed to comply with the submission of any documentary evidence necessary to conduct the reinvestigation or re-evaluation of your books of accounts and accounting records.
>
> In line with this, **the assessment on the Letter of Formal Demand is deemed final and executory** and that **the case will be forwarded to Chief, Collection Division of this Region for enforcement**." [*Emphasis and underscoring supplied.*]

PROCEEDINGS BEFORE THE COURT

Petitioner filed the instant *Petition for Review*[30] on 23 July 2019.

On 6 August 2019, *Summons* dated 29 July 2019[31] was received by respondent.[32] Respondent filed a *Motion for Extension of Time to File Answer*, which was granted by the Court in an *Order* dated 27 August 2019.[33]

On 19 September 2019, respondent filed his *Answer*.[34]

On 24 September 2019, a *Notice of Pre-Trial Conference* was issued by this Court, scheduling the pre-trial conference on 10 October 2019.[35]

On 2 October 2019, respondent filed his *Pre-Trial Brief*,[36] while petitioner filed its *Pre-Trial Brief* on 25 November 2019.[37]

[29] Par. 8, JSFI, Docket, Vol. I, p. 421.
[30] Docket, Vol. I, pp. 10-58.
[31] *Id.*, p. 258.
[32] *Id.*, p. 259.
[33] *Id.*, p. 260.
[34] *Id.*, pp. 261-273.
[35] *Id.*, pp. 256-257.
[36] *Id.*, pp. 274-278.
[37] *Id.*, pp. 368-377.

Respondent offered the testimony of RO Julie R. Kaw, Revenue Officer II – Assessment of Revenue District Office No. 27;[38] RO Gerald N, Dytioco, Revenue Officer I, Assessment Division, Revenue Region No. 5;[39] and RO Karen Fae N. Cacayuran, Revenue Officer I, VAT Audit Section, Revenue Region No. 5.[40]

On 1 October 2019, petitioner filed an *Omnibus Motion* dated 27 September 2019, praying for this Court to direct respondent to forward the BIR Records of the case and to reset the pre-trial conference to an appropriate later date.[41]

On 8 October 2019, petitioner filed a *Reply [to Respondent's Answer dated September 16, 2019]* dated 4 October 2019.[42]

The Pre-Trial Conference was held on 10 October 2019.[43] Accordingly, an *Order*[44] and a *Resolution*[45] were issued by the Court on the same day referring the case to the Philippine Mediation Center Unit – Court of Tax Appeals (**"PMC-CTA"**) for mediation. However, the PMC-CTA stated that the parties decided not to have their case mediated on a *No Agreement to Mediate* form dated 12 November 2019.[46]

Respondent then forwarded the BIR Records on 13 November 2019.[47]

On 3 December 2019, petitioner filed a *Motion* praying that it be allowed to submit the judicial affidavits of its witnesses until 4 January 2020.

The case was set for pre-trial on 5 December 2019.[48] The pre-trial was held on the set date.[49]

On 19 December 2019, petitioner filed its *Motion for Commissioning of Independent CPA*, praying that Mr. Michael

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[38] Judicial Affidavit of Julie R. Kaw, Exhibit "R-19", pp. 282-285.
[39] Judicial Affidavit of Gerald N. Dytioco, Exhibit "R-21", pp. 299-301.
[40] Judicial Affidavit of Karen Fae N. Cacayuran, Exhibit "R-20", pp. 310-313.
[41] Docket, Vol. I, pp. 330-332.
[42] *Id.*, pp. 334-353.
[43] Minutes of the hearing held on 10 October 2019; Docket, Vol. I, p. 355.
[44] Docket, Vol. I, p. 356.
[45] *Id.*, p. 359.
[46] *Id.*, p. 364.
[47] Compliance, Docket, Vol. I, pp. 360-363.
[48] Resolution, Docket, Vol. I, p. 380.
[49] Minutes of the hearing held on 5 December 2019; Docket, Vol. I, p. 384.

L. Aguirre be appointed as independent CPA (**"ICPA"**).[50] The *Motion* was subsequently granted by the Court.[51]

Upon *Order* of the Court,[52] the parties filed their *Joint Stipulation of Facts and Issues* (**"JSFI"**) dated 16 December 2019.[53] The said JSFI was approved by the Court in its *Pre-Trial Order* dated 7 January 2020.[54]

The *Commissioner's Report* dated 27 January 2020,[55] 29 January 2020,[56] 3 February 2020,[57] and 2 March 2020[58] were issued.

Trial proceeded.

Petitioner presented witnesses Ms. Luningning G. De Guzman[59] and Mr. Giovanni P. Evangelista[60] on 5 February 2020, witness Gavino M. Tan[61] on 3 June 2020, witness Rommel E. Tan[62] on 1 July 2020, and its last witness, Mr. Michael L. Aguirre,[63] the commissioned ICPA, on 12 October 2020.

On 30 June 2020, the ICPA transmitted to the Court his Report[64] with a *Judicial Affidavit* attached.[65]

Petitioner filed its *Formal Offer of Evidence* (**"FOE"**) on 16 November 2020. Respondent failed to file his comment on petitioner's FOE.[66] Acting on petitioner's FOE, the Court promulgated a *Resolution* dated 17 February 2021,[67] which denied admission of certain exhibits of petitioner. From this, petitioner filed a *Motion for Partial Reconsideration* on 17 March 2021.[68] Despite the Court's *Resolution* dated 22 March 2021 ordering respondent to comment,[69] respondent failed to file his

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[50] Docket, Vol. I, pp. 386-388.
[51] Order dated 5 February 2020, Docket, Vol. I, p. 506-507.
[52] Order dated 5 December 2019, Docket, Vol. I, p. 385.
[53] Docket, Vol. I, pp. 420-428.
[54] *Id.*, pp. 462-469.
[55] *Id.*, pp. 485-487.
[56] *Id.*, pp. 489-493.
[57] *Id.*, pp. 495-499.
[58] *Id.*, pp. 509-510.
[59] Exhibit "P-33," Judicial Affidavit of Luningning G. De Guzman, Docket, Vol. I, pp. 470-475.
[60] Exhibit "P-34," Judicial Affidavit of Giovanni P. Evangelista, Docket, Vol. I, pp. 429-434.
[61] Exhibit "P-35," Judicial Affidavit of Gavino M. Tan, Docket, Vol. I, pp. 477-483.
[62] Exhibit "P-34," Judicial Affidavit of Rommel E. Tan, Docket, Vol. II, pp. 700-712.
[63] Exhibit "P-37," Judicial Affidavit of Michael L. Aguirre, Docket, Vol. II, pp. 777-803.
[64] Transmittal, Docket, Vol. II, pp. 715-716; ICPA Report, Docket, Vol. II, pp. 806-833.
[65] Docket, Vol. II, pp. 719-745.
[66] Records Verification dated 16 December 2020, Docket, Vol. II, p. 837.
[67] Docket, Vol. II, pp. 841-872.
[68] *Id.*, pp. 876-887.
[69] *Id.*, p. 889.

comment.[70] The Court, in its *Resolution* dated 30 September 2021, partially granted petitioner's *Motion for Partial Reconsideration.*[71] With the partial grant, petitioner filed a *Tender of Excluded Evidence* dated 7 February 2022,[72] which was noted by the Court in a *Resolution* dated 2 March 2022.[73]

Respondent presented his witness RO Julie B. Kaw[74] on 10 March 2021,[75] and witnesses ROs Karen Fae N. Cacayuran[76] and Gerald N. Dytioco[77] on 25 October 2021.[78]

Respondent filed his FOE on 27 October 2021,[79] to which petitioner filed its *Comment* on 17 November 2021.[80] The Court admitted respondent's exhibits in a *Resolution* dated 14 December 2021.[81]

Petitioner's *Memorandum* was posted on 17 March 2022[82] while respondent's *Memorandum* was filed on 28 February 2022.[83]

The case before the Court was deemed submitted for decision on 22 March 2022.[84]

Hence, this Decision.

THE ISSUES

The issues to be resolved, as agreed by the parties in the JSFI,[85] are as follows:

1. WHETHER OF NOT THE LETTERS OF AUTHORITY ISSUED FOR THE 2015 TAX AUDIT INVESTIGATION [sic] WAS PROPERLY SERVED BY RESPONDENT ON PETITIONER.

[70] Records Verification dated 12 July 2021, Docket, Vol. II, p. 890.
[71] Docket, Vol. II, pp. 892-917.
[72] *Id.*, pp. 933-935.
[73] *Id.*, p. 937.
[74] Exh. "R-19," Judicial Affidavit of Julie K. Kaw, Docket, Vol. I, p. 282.
[75] Minutes of the hearing dated 10 March 2021, Docket, Vol. II, p. 873.
[76] Judicial Affidavit of Karen Fae N. Cacayuran, Docket, Vol. I, pp. 310-313.
[77] Judicial Affidavit of Gerald N. Dytioco, Docket, Vol. I, pp. 299-302.
[78] Order dated 25 October 2021, Docket, Vol. II, p. 918.
[79] Docket, Vol. II, p. 919-925.
[80] *Id.*, p. 926-929.
[81] *Id.*, p. 931-932.
[82] *Id.*, p. 950-999.
[83] *Id.*, p. 938-948.
[84] Resolution dated 22 March 2022, Docket, Vol. II, p. 1001.
[85] *Supra* at note 53.

2. WHETHER OR NOT THE DEFICIENCY TAX ASSESSMENTS ISSUED BY THE RESPONDENT AGAINST PETITIONER FOR TAXABLE YEAR ENDED DECEMBER 31, 2015 ARE VOID FOR FAILURE TO CONDUCT THE REQUIRED INFORMAL CONFERENCE.

3. WHETHER OR NOT THE PRELIMINARY ASSESSMENT NOTICE DATED SEPTEMBER 12, 2018, IS VOID FOR HAVING BEEN ISSUED PURSUANT TO A RECALLED LETTER OF AUTHORITY.

4. WHETHER OR NOT THE FORMAL LETTER OF DEMAND DATED NOVEMBER 16, 2018 IS VOID FOR HAVING BEEN ISSUED IN VIOLATION OF DUE PROCESS AND ISSUED BEYOND THE PRESCRIPTIVE PERIOD.

5. WHETHER OR NOT THE UNDATED LETTER WHICH DENIED PETITIONER'S PROTEST TO THE 2015 FORMAL LETTER OF DEMAND IS VOID DUE [sic] THE FAILURE OF THE BIR TO EXAMINE THE SUPPORTING DOCUMENTS SUBMITTED BY PETITIONER IN ITS PROTEST.

6. WHETHER OR NOT PETITIONER [sic] THE FORMAL LETTER OF DEMAND DATED NOVEMBER 16, 2018 IS CORRECT IN HOLDING THAT DEFICIENCY INCOME TAX, VALUE-ADDED TAX, WITHHOLDING TAX - EXPANDED AND THE RELATED DEFICIENCY INTEREST AND COMPROMISE PENALTY FOR TAXABLE YEAR ENDED DECEMBER 31, 2015.

PETITIONER'S ARGUMENTS

Petitioner's *Memorandum*[86] raised the following:

a. The 2015 FLD and 2015 Final Decision on Disputed Assessment ("**FDDA**") are void for having been issued pursuant to an expired LOA;

b. The 2015 PAN, 2015 FLD, and 2015 FDDA are void for lack of the required Notice for Informal Conference;

c. The 2015 PAN and 2015 FLD are void for not having been validly served on petitioner;

d. The 2015 PAN, 2015 FLD, and 2015 FDDA are void for having been issued pursuant to an audit conducted by an unauthorized person;

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[86] *Supra* at note 82.

e. The 2015 FLD and 2015 FDDA are void for having been issued beyond the prescriptive period allowed by law;

f. Petitioner is not liable for deficiency income tax on disallowed expenses in the amount of ₱446,877,100.00;

g. Petitioner is not liable for deficiency income tax on disallowed rental expense in the amount of ₱38,000.00;

h. Petitioner is not liable for deficiency income tax on disallowed marketing expense in the amount of ₱4,343,640.92;

i. Petitioner is not liable for deficiency income tax and value-added tax on undeclared income on security & contractor/services, professional fee, commission, and on mineral products;

j. Petitioner is not liable for deficiency VAT on sales per percentage tax returns;

k. Petitioner is not liable for deficiency VAT on understated sales.

l. Petitioner is not liable for deficiency withholding tax – expanded for taxable year 31 December 2015.

m. Petitioner is not liable for compromise penalty in the amount of ₱219,000.

Petitioner contends that the service of the *Second LOA* is invalid considering that the LOA was served to a certain Nins de Guzman not under the employ of petitioner.[87] According to petitioner, when the *Second LOA* was subsequently served to it, such LOA has long expired.[88]

Petitioner likewise assails the validity of the assessment due to an alleged lack of a Notice of Informal Conference. Petitioner points that there is no proof on record that the Notices for Informal Conference were actually received by petitioner.[89]

[87] Docket, Vol. II, p. 961; Memorandum, par. 49.
[88] *Id.*, p. 964; Memorandum, par. 52.
[89] *Id.*, p. 966; Memorandum, par. 55.

In the same vein, petitioner argues against the validity of the PAN and FLD as these were not served on petitioner or its duly authorized representative.[90]

Further, petitioner assails the validity of the PAN, FLD, and FDDA because such have been issued pursuant to an audit conducted by an unauthorized person. Petitioner points to the cross-examination of respondent's witnesses wherein it was allegedly revealed that the BIR officers who drafted and issued the PAN, FLD, and FDDA were not any of the officers identified in the LOAs received by petitioner.[91]

Petitioner likewise posits that the period for respondent to assess has already prescribed.[92]

In relation to the deficiency income tax assessment against petitioner arising from its alleged unsubstantiated purchase of gold, petitioner submits that these are substantiated and are necessary and ordinary expenses as testified by the ICPA.[93] According to petitioner, the assessment pertaining to disallowed rental expense must likewise be cancelled because it is based on speculation and conjecture.[94] The same is true with the disallowance of respondent pertaining to petitioner's marketing expense, which, according to petitioner, has been found by the ICPA to have been subjected to proper withholding.[95]

Petitioner further alleges that it is not liable for deficiency income tax and VAT on undeclared income on security and contractor/services, professional fees, commissions, and on mineral products. According to petitioner, respondent failed to provide petitioner the basis of his computation, which makes the assessment void for failure to inform the taxpayer of the law and the facts on which the assessment is made.[96] Nevertheless, petitioner argues that it subjected its expense to withholding tax.[97]

[90] *Id.*, p. 973; Memorandum, par. 62.
[91] *Id.*, p. 974; Memorandum, pars. 65-67.
[92] *Id.*, pp. 980-983; Memorandum, pars. 71-75.
[93] *Id.*, pp. 983-985; Memorandum, pars. 76-81.
[94] *Id.*, p. 985; Memorandum, par. 83.
[95] *Id.*, pp. 987-988; Memorandum, par. 89.
[96] *Id.*, pp. 988-990; Memorandum, pars. 91-95.
[97] *Id.*, p. 991; Memorandum, par. 96.

Additionally, petitioner contends that it is not liable for deficiency VAT on sales per percentage tax returns. According to petitioner, it exceeded the VAT threshold in the month of May 2015, and thus, its obligation to pay VAT only arose in the next month, June 2015.[98]

Similarly, petitioner argues that it is not liable for deficiency VAT on alleged understated sales since the assessment is void for being based on mere presumptions.[99] Petitioner follows the same argumentation in assailing respondent's assessment pertaining to deficiency EWT.[100]

RESPONDENT'S ARGUMENTS

Respondent argues that petitioner has already admitted receipt of the LOA. He further adds that the *Second LOA* was issued merely to revalidate the *First LOA*. It is respondent's theory that the *Second LOA* did not serve to revoke the *First LOA*, but merely to revalidate such due to the Revenue Travel Assignment Order ("**RTAO**") issued to the previous revenue officer.[101]

Respondent also argues that a Notice of Informal Conference is not required because the taxable year being audited is 2015. According to respondent, it is Revenue Regulations ("**RR**") No. 18-2013[102] that will apply, which does not require a Notice of Informal Conference.[103]

Further, respondent contends that the assessment has become final and executory for petitioner's failure to submit the required documents.[104]

Finally, respondent refutes petitioner's contentions that the assessment lacks legal and factual bases. Respondent points out that the FLD/FANs provide such.[105]

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[98] *Id.*, p. 993; Memorandum, par. 103.
[99] *Id.*, p. 994; Memorandum, pars. 109-110.
[100] *Id.*, p. 995; Memorandum, par. 112.
[101] Respondent's Memorandum; Division Docket, p. 941.
[102] Amending Certain Sections of Revenue Regulations No. 12-99 relative to the due process requirement in the issuance of a deficiency tax assessment, 28 November 2013.
[103] *Id.*, pp. 941-943.
[104] *Id.*, p. 945.
[105] *Id.*, pp. 945-946.

RULING OF THE COURT

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

The Court has jurisdiction over the present Petition.

Before We proceed to the merits of the case, We shall first determine whether this Court has jurisdiction over the instant *Petition.*

Section 7 (a) (1) and (2) of Republic Act ("**R.A.**") No. 1125,[106] as amended by R.A. No. 9282,[107] states:

> 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;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or ***other matters*** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, ...; [*Emphasis and underscoring supplied.*]

The jurisdiction of this Court is not solely limited to matters directly related to assessments or refunds of internal revenue taxes. The Court is also empowered to take cognizance of ***other matters*** arising under the NIRC of 1997, as amended and related laws administered by the BIR, as affirmed by the Supreme Court in *Philippine Journalist, Inc. v. Commissioner of Internal Revenue,*[108] to wit:

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[106] An Act Creating the Court of Tax Appeals, 16 June 1954.
[107] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, 30 March 2004.
[108] G.R. No. 162852, 16 December 2004.

> The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. **The second part of the provision covers *other cases* that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue.** The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected. [*Emphasis and underscoring supplied.*]

In the instant case, petitioner seeks to appeal respondent's denial of its *Protest* to the FLD through the undated *Letter of Denial (Denial Letter)* signed by RDO Miguel B. Morada, Jr. of the BIR Revenue Region No. 5- Caloocan City. The parties **admitted** in their JSFI that the said undated *Letter* **denied** petitioner's *Protest.*[109]

Even without the admission in the JSFI, it bears stressing that the tenor of the *Denial Letter* is impressed with finality. We quote:

> In line with this, **the assessment on the Letter of Formal Demand is deemed final and executory** and that **the case will be forwarded to Chief, Collection Division of this Region for enforcement**." [*Emphasis and underscoring supplied.*]

Accordingly, petitioner herein cannot be faulted to assume that the *Denial Letter* is the final decision of respondent in relation to its *Protest.*

Under Section 228 of the NIRC of 1997, as amended, if the *Protest* is denied, in whole or in part, the taxpayer adversely affected by the decision of the CIR or his duly authorized representative may appeal to the Court of Tax Appeals ("**CTA**") within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory, and demandable. Furthermore, Section 11 of R.A. No. 1125,[110] as amended, in relation to Section 3(a), Rule 8 of the RRCTA,[111]

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[109] Par. 8, JSFI, Docket, Vol. I, p. 421; Exh. "P-27," *id.*, p. 696.
[110] *Supra* at note 106.
[111] Section 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.

provides that any party adversely affected by the decision of the CIR may file an appeal with the CTA within 30 days after the receipt of such decision.

Following this, petitioner had thirty (30) days from receipt of the undated *Denial Letter* on 24 June 2019,[112] or until 24 July 2019, to file a *Petition for Review* before the CTA.

As petitioner timely filed the *Petition* on 23 July 2019,[113] this Court properly assumed jurisdiction over the present case.

In any case, even if the *Denial Letter* is not to be regarded as respondent's final decision on petitioner's *Protest* to the FLD because of the issuance of an FDDA[114] after the filing of the present *Petition,* this Court still has jurisdiction to determine the propriety of the issuance of such *Denial Letter.*[115] The said letter can also qualify as a decision relating to *other matters* arising under the NIRC, as amended, *i.e.*, submission of supporting documents within sixty (60) days from the filing of Protest, in case of a request for reinvestigation, which may be the subject of an appeal appropriate before this Court under Section 7(a)(1)[116] of R.A. No. 1125, as amended.

Having established that the instant case falls under the Court's jurisdiction, We shall now determine the issues raised in the Petition.

The Second LOA was not properly served by respondent on petitioner.

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax[117] or to recommend the

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[112] *Id.*, p. 696, Exh. "P-27."
[113] *Supra* at note 30.
[114] FDDA dated 9 August 2019; Exh. "R-18" and "R-18a," *id.* p. 923; BIR Records, pp. 542-551.
[115] The Denial Letter partly states that petitioner *"failed to comply with the submission of any documentary evidence necessary to conduct the reinvestigation;"* hence, *"the assessment on the Letter of Formal Demand is deemed final and executory"* and petitioner's case will be *"forwarded to the Chief, Collection Division for enforcement."*
[116] Section 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
[117] Commissioner of Internal Revenue v. Sony Philippines, Inc., G.R. No. 178697, 17 November 2010, 649 SCRA 519-537.

assessment of any deficiency tax due.[118] The issuance of an LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representative.[119] This is explicitly provided under Sections 6(A) and 13 of the NIRC of 1997, as amended, *viz.*:

> *Section 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* -
>
> (A) Examination of Return and Determination of Tax Due. After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax,** notwithstanding any law requiring the prior authorization of any government agency or instrumentality: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. ...
>
> *Section 13. Authority of a Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself. [*Emphasis and underscoring supplied.*]

The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality.[120]

Based on the afore-quoted provisions, unless authorized by the CIR himself or by his duly authorized representative through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.[121] Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment.[122] In the absence of such an authority, the assessment or examination is a nullity.[123]

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[118] Section 13, NIRC of 1997, as amended.
[119] *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, 10 May 2021.
[120] *Id.*
[121] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, 5 April 2017.
[122] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.
[123] *Id.*

Additionally, Revenue Memorandum Order ("**RMO**") No. 43-1990[124] provides that all audit investigations should be conducted by BIR revenue officers under an LOA, to wit:

> C. Other policies for issuance of L/As.
>
> 1. All audits/investigations, whether field audit or office audit, **__should__ be conducted under a Letter of Authority**. ... [*Emphasis and underscoring supplied.*]

Moreover, Revenue Audit Memorandum Order ("**RAMO**") No. 1-2000[125] requires that an LOA must be served or presented to the taxpayer *within thirty (30) days* from the date of issuance; otherwise, it becomes *null and void*, unless revalidated.[126]

It is well-settled that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation. A plain reading of the above-stated BIR issuances shows that the service of the LOA within the said 30-day period is mandatory.

In this case, petitioner's receipt of the *First LOA* is undisputed, and no issues were raised as to the validity of its issuance and service. The parties stipulated that petitioner received from respondent the *First LOA* dated 5 October 2016 authorizing RO Kaw and GS Pagdilao, Jr. to examine petitioner's books of accounts for taxable year ending 31 December 2015.[127]

The issue lies in the validity of the service of the *Second LOA*[128] dated 18 June 2018. Records reveal that petitioner was informed and provided with a copy of the *Second LOA* only when it filed its *Reply* to PAN on 26 October 2018, or sixty-nine (69) days after its issuance. Petitioner inquired and learned from the BIR that the Second LOA was served by registered mail. Upon verification from the Caloocan Central Post Office, it learned that the mail matter containing the *Second LOA* was

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[124] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, 20 September 1990.
[125] Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000), 17 March 2000.
[126] 2. *Serving of Letter of Authority*

... ...

2.3 A Letter of Authority **must be served or presented to the taxpayer *__within 30 days__* __from its date of issue__; otherwise __it becomes null and void__, unless revalidated**. The taxpayer has the right to refuse its service if presented beyond the 30-day period depending on the policy set up by management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words 'Revalidated on __________' on the face of the copy of the Letter of Authority issued." [*Emphasis and underscoring supplied*]

[127] JSFI, par. 2; Docket, Vol. I, p. 420.
[128] With LOA No. 027-2018-00000301.

delivered on 11 July 2018 at No. 42 Bronze Street, Barangay Tugatog, Malabon City,[129] and received by a certain Nins de Guzman, [130] which turned out to be Ms. Luningning De Guzman.

Ms. Luningning De Guzman testified on 5 February 2020 by way of her *Judicial Affidavit* executed on 20 December 2018 [131] that she is not an employee or authorized representative of petitioner, *viz.*:

> 9. T. Nasaan ka noong July 11, 2018?
>
> S: Ako po ay nasa bahay nila Mr. Gavino Tan at nagtatrabaho gumagawa ng siomai.
>
> 10. T: Maliban sa paggawa mo ng siomai noong araw na iyon, may matatndaan [sic] ka pa ba na naganap noong araw na iyon?
>
> S: May dumating po na isang kartero at sinabi na may liham syang dala para sa GOLDXTREME.
>
> 11. T: Bakit mo alam na may dumating na kartero na may dalang liham para sa GOLDXTREME?
>
> S: Ako po ang sumagot sa gate at ako ang nakausap ng kartero. Siya po ay nagpakilala sa akin at sinabing may ipapa-receive siya sa akin na liham para sa GOLDXTREME.
>
> 12. T: Anong nangyari ng dumating ang kartero?
>
> S: Tinanggap ko po ang liham.
>
> 13. T: Bakit mo tinanggap kung nakapangalan yun sa GOLDXTREME?
>
> S: Sinabi ko po sa kartero na hindi ako tiga GOLDXTREME. Sabi sa akin, hindi naman daw kailangan, basta i-receive ko na lang. Noong una po ayaw kong tanggapin yun dokumento, pero pinilit po ako nung kartero. Kaya tinanggap ko na lang po para matapos na. Marami rin po akong kailangan tapusin ng araw na iyon sa trabaho ko.

[129] Exhibits "P-10" and "P-10-1," Docket, Vol. II, pp. 575-576; Q18/A18, Judicial Affidavit of Luningning G. De Guzman, Docket, Vol. I, pp. 470-475.
[130] Exhibit "P-33," Judicial Affidavit of Luningning G. De Guzman, Docket, Vol. I, pp. 470-475.
[131] *Supra* at note 59.

14. T: Ikaw ba ay may pinirmahan?

    S: Opo.

15. T: Anong dokumento iyon?

    S: Hindi ko po alam. Hindi ko po natatandaan.

16. T: Empleyado ka ba ng Goldxtreme?

    S: Hindi po.

17. T: Ikaw ba ay binigyan ng kapangyarihan na tumanggap ng dokumento ng GOLDXTREME?

    S: Hindi po.

18. T: Saan nangyari itong insidente na ito?

    S: Sa 42 Bronze Street Barangay Tugatog Malabon City.

... ...

21. T: Pagkatapos mo tanggapin ang dokumento, anong ginawa [sic] mo?

    S: Iniwan ko po yung sulat sa may lamesa malapit sa pinto ng bahay nila Mr. Gavino Tan.

22. T: Pagkatapos mo iwan ang sulat, ano ang nagyari [sic] sa sulat na yon?

    S: Hindi ko na po alam.

23. T: Hindi mo ba sinabihan sila Mr. Gavino Tan?

    S: Hindi napo. [sic] Inisip ko na makikita naman nila yung sulat sa may pinto. Bumalik na po ako sa aking trabaho.

On cross-examination,[132] Ms. De Guzman testified as follows:

ATTY. CORRO:
Puwedeng matingnan yong kasagutan nyo sa tanong No. 8. Sa pagtatrabaho mo sa pagawaan ng siomai, ilang beses sa isang lingo ka nasa No. 42 Bronze St. Barangay Tugatog, Malabon City?

[132] Page 15, Transcript of Stenographic Notes during the hearing on February 5, 2020.

WITNESS:
Bale six (6) days po.

ATTY. CORRO:
... Tama ba ako na ang pagawaan ng siomai at opisina ng Goldxtreme ay pareho ng address kung saan ginagawa ang siomai?

WITNESS:
Hindi.

The above testimony of Ms. De Guzman and the *Certification* issued by the Caloocan Central Post Office show that the *Second LOA* was ***not*** served at petitioner's registered address or principal place of business at 2nd Floor Calubad Bldg., No. 474 EDSA, Brgy. 87, Caloocan City 1400.[133] Further, the mail was addressed to "Gold Extreme Trading Co. c/o Mr. Rommel Tan," but it was Ms. Luningning De Guzman, who was neither an employee nor an authorized representative of petitioner, who received the *Second LOA*.

Mr. Rommel Tan, petitioner's Managing Partner and the addressee of the mail containing the *Second LOA*, testified on 1 July 2020 by way of his *Judicial Affidavit*[134] that no one from Goldxtreme received the *Second LOA* and that the first time he heard of this LOA was when it was mentioned in the FLD, *viz.*:

21.Q: Who from GOLDXTREME received the new LOA (***Exhibit "P-9"***)?
A: Actually Sir, we didn't know at the time. No one from GOLDXTREME received the BIR's new LOA (*Exhibit "P-9"*). The first time we heard of this LOA was when it was mentioned in the FLD (***Exhibit "P-18"***).

22. Q: What did you do, if any?
A: In order to clarify this, we secured from the Philippine Post Office two (2) Certifications, one dated December 6, 2018 and another December 3, 2019, on who received the BIR's new LOA (***Exhibit "P-9"***). Under the said Certifications, we were informed that the new LOA was received by Nins De Guzman. These Certifications were earlier marked as our ***Exhibit "P-10" and "P-10-1"***.

23. Q: Who is this Nins De Guzman?
A: This Nins De Guzman is Ms. Luningning De Guzman. **She was not an employee of GOLDXTREME.** Rather, she was employed as a siomai-maker at the same siomai

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[133] Exhibits "P-1" and "P-2," Docket, Vol. II, pp. 516-523.
[134] Exhibits "P-34," Docket, Vol. II, pp. 700-712.

> business where Mr. Evangelista was employed. Ms. De Guzman made siomai for my father's business, and Mr. Evangelista was her supervisor.
>
> ... ...
>
> 33. Q: What is your basis in saying that the new LOA (***Exhibit "P-9"***) was served on an unauthorized person?
> A: As I mentioned earlier, the new LOA (***Exhibit "P-9"***), which was the basis of the FLD (***Exhibit "P-18"***), was served by the BIR on registered mail to a Nins De Guzman.
>
> Nins De Guzman, who is actually Ms. Luningning De Guzman, who, like Mr. Evangelista, was not an employee or authorized person of GOLDXTREME. Thus, the new LOA (***Exhibit "P-9"***) was not properly served, and the FLD (***Exhibit "P-18"***) issued pursuant thereto is void. [*Emphasis supplied.*]

Respondent's counsel did not cross-examine Mr. Rommel Tan.[135]

It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.[136]

Here, Mr. Rommel Tan explicitly denied receipt of the *Second LOA* addressed to him. Thus, the burden of proof was shifted to respondent to prove by competent evidence that the subject LOA was indeed received by the addressee or any of petitioner's duly authorized representatives in accordance with the procedure prescribed by law and regulations. However, respondent did not present evidence to controvert the testimonies of Ms. De Guzman and Mr. Tan. Neither did respondent refute, in his *Answer* or *Memorandum,* the fact that the concerned ROs of the BIR failed to serve, by personal service or registered mail, the *Second LOA* to petitioner or its duly authorized representative, within the required period.

The service of the LOA to an unauthorized person renders the assessment void. Similarly, the service of the LOA to the taxpayer beyond 30 days from its issuance renders the subject LOA and the resulting assessments void.

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[135] Page 6, Transcript of Stenographic Notes during the hearing on July 1, 2020.
[136] *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*, G.R. No. 202695, February 29, 2016, citing *CIR v. Metro Star Superama, Inc.*, 652 Phil. 172, 181 (2010).

Considering the foregoing, this Court finds the receipt of the *Second LOA* by Ms. De Guzman to be an invalid service. Moreover, the subsequent service of the same LOA to petitioner on 26 October 2018, or sixty-nine (69) days after the date of its issuance, was likewise invalid, for failure to observe the 30-day mandatory period under RAMO No. 1-2000.[137]

A void LOA makes the authority of the revenue officers named therein non-existent and not legally binding. Such being the case, RO Ana Carmela Pimentel and GS Rozenn G. Novilla are deemed to have no authority at all to carry out the examination of the books of accounts and other accounting records of petitioner for all internal revenue taxes for taxable year 2015.

Consequently, the FLD/FANs issued pursuant to the *Second LOA* are null and void and could not be enforced against petitioner.

Nonetheless, even if the *Second LOA* was validly served on petitioner, the PAN and FLD/FANs are still void on account of respondent's failures to comply with the due process requirement in the issuance of deficiency tax assessments, as discussed below.

The PAN and FLD/FANs are void because of respondent's numerous violations of the due process requirement in the issuance thereof.

Section 228 of the NIRC of 1997, as amended, provides for the procedure in issuing tax assessments as well as in protesting the same, *viz.*:

> 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**: Provided, however, that a pre-assessment notice shall not be required in the following cases:
>
> ... ...
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**

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[137] *Supra* at note 125.

> 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**. [*Emphasis supplied.*]

To implement the provisions of Section 228 of the NIRC of 1997, as amended, RR No. 12-1999[138] was issued, which was amended by RR No. 18-2013[139] and further amended by RR No. 7-2018.[140]

RR No. 12-1999, as amended, provides:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
> 3.1.1 **Notice for Informal Conference.** — … .
> 3.1.2 **Preliminary Assessment Notice (PAN).** — … .
> 3.1.4 **Formal Letter of Demand and Final Assessment Notice (FLD/FAN).** — … . [*Emphasis supplied.*]

Failure to observe the above due process requirement renders the assessment void.

a. Respondent failed to conduct an informal conference.

RR No. 12-1999, as amended,[141] required the BIR to issue a notice and conduct an informal conference as a due process requirement in the issuance of a deficiency tax assessment.[142] Section 3.1.1 of RR No. 12-1999 partly reads:

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

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[138] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, 6 September 1999.
[139] Amending Certain Sections of Revenue Regulations No. 12-99, 28 November 2013.
[140] Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, 22 January 2018.
[141] RR No. 12-99 was issued on 6 September 1999.
[142] *Supra* at note **Error! Bookmark not defined.**.

> 3.1.1. ***Notice for Informal Conference.*** — The Revenue Officer who audited the taxpayer's records ***shall***, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, ... the taxpayer shall be informed, in writing, ... of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference", in order to afford the taxpayer with an opportunity to present his side of the case. **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default**, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, **for appropriate review and issuance of a deficiency tax assessment, if warranted**. ... . [*Emphasis and underscoring supplied.*]

However, the requirement to issue a Notice of Informal Conference was *removed* in RR No. 18-2013 issued on 28 November 2013,[143] by *deleting* Section 3.1.1 thereof. Section 2 of RR No. 18-2013 provides:

> **SECTION 2. Amendment**. — Section 3 of RR 12-99 is hereby amended by *deleting* Section 3.1.1 thereof which provides for the preparation of a *Notice of Informal Conference*, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities. Section 3 of RR 12-99 shall now read as follows: ... [*Emphasis and underscoring supplied.*]

Nonetheless, the said requirement was *restored* in RR No. 7-2018 issued on 22 January 2018,[144] by *adding* Section 3.1.1 thereof. RR No. 7-2018 now requires the RO to issue the Notice of Informal Conference and conduct the conference prior to the issuance of a PAN, if warranted, to afford the taxpayer an opportunity to present his side, *viz.*:

> **SECTION 2. Amendment**. - Section 3 of RR 12-99, as amended by RR No. 13-18, is hereby amended by *adding* Section 3.1.1 providing for the preparation of a *Notice of Informal Conference*, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities. The pertinent provisions of Section 3 of RR 12-99 shall now read as follows.

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[143] *Supra* at note 139.
[144] *Supra* at note 140.

> **SECTION. 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –**
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> 3.1.1 **Notice for Informal Conference.** - The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. **If the taxpayer is not amenable, ... the taxpayer shall be informed, in writing, ...** of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, **for the purpose of "Informal Conference,"** in order **<u>to afford the taxpayer with an opportunity to present his side of the case</u>**.
>
> The Informal Conference shall in no case extend beyond thirty (30) days from receipt of the notice for informal conference. If it is found that the taxpayer is still liable for deficiency tax or taxes after presenting his side, and the taxpayer is not amenable, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case within seven (7) days from the conclusion of the Informal Conference to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative for issuance of a deficiency tax assessment.... . [*Emphasis and underscoring supplied.*]

In the instant case, respondent claims that a Notice of Informal Conference is not required, considering that the taxable year being audited is 2015. Respondent further claims that for the 2015 audit, RR No. 18-2013, which does not require the BIR to conduct an informal conference, is the applicable issuance.[145]

The Court does not agree.

RR No. 7-2018 was issued on *22 January 2018*. From the facts, respondent issued the First LOA on *5 October 2016*,[146] and the PAN on *12 September 2018*.[147]

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[145] *Id.*, pp. 941-943.
[146] Exhibit "P-8", Docket, Vol. II, p. 572.
[147] Exhibit "P-13", Docket, Vol. II, pp. 596-598.

Although RR No. 7-2018 is silent as to the periods within which a Notice of Informal Conference must be sent to the taxpayer or as to which taxable year it covers, it is certain that the informal conference must be conducted *before* the issuance of deficiency tax assessment if warranted.

Here, the issuance of the PAN was still pending when RR No. 7-2018 took effect on 16 February 2018.[148] In fact, the PAN was issued barely seven (7) months after the effectivity of the said regulation. Hence, We rule that the requirement to issue the notice of informal conference under RR No. 7-2018 applies to the present case.

Moreover, respondent's claim that an informal conference is not required in this case is belied by the BIR records and evidence which show that on 7 February 2018, the BIR sent by registered mail two (2) letters dated 26 January 2018 inviting petitioner for a *preliminary conference*. The letters were sent to petitioner through Mr. Gavino Tan at No. 84 Bronze St. Tugatog, Malabon City[149] and Mr. Rommel Enriquez Tan at No. 42 Bronze St. Tugatog, Malabon City.[150] None was sent to petitioner's registered address at 2nd Floor Calubad Bldg., No. 474 EDSA, Brgy. 87, Caloocan City 1400. Certainly, the BIR would not have sent those notices if it was not required to hold an informal conference.

We shall now proceed to determine whether the requirement was complied with by respondent.

Petitioner denied receipt of the said notices of informal conference.[151] Further, Mr. Rommel Enriquez Tan testified[152] that he did not receive the said 26 January 2018 letter, *viz.:*

> 31. Q: What is your basis in saying that 2015 assessment of the BIR against GOLDXTREME violated the company's right to due process?
>
> A: I have many grounds Sir. First, the PAN (***Exhibit "P-13"***) and FLD (***Exhibit "P-18"***) were not properly served on GOLDXTREME. This is the same error when the new LOA (***Exhibit "P-9"***) was served on an unauthorized

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[148] Fifteen (15) days after its publication in Manila Bulletin on 1 February 2018.
[149] Exhibit "P-29," Division Docket, Vol. II, page 697; BIR Records, pp. 203-204.
[150] Exhibit "P-30," Division Docket, Vol. II, page 698; BIR Records, pp. 203-204.
[151] Paragraph 55, Memorandum, Division Docket, Vol. II, pp. 17-18.
[152] Exhibits "P-34," Docket, Vol. II, pp. 700-712.

person. **Also, the BIR failed to conduct the required Notice for Informal Conference.**

...

34.Q: You earlier stated that the BIR did not conduct a Notice for Informal Conference. What is your basis for saying so?

A: I was involved in this assessment from the start, from the issuance of the LOA. I cannot recall that GOLDXTREME ever received an invitation to Informal Conference from the BIR. As I mentioned earlier, after the first LOA, the next document we received from the BIR was the PAN (***Exhibit "P-13"***).

...

36.Q: You earlier mentioned that you were not invited by the BIR to an Informal Conference. Mr. witness, I am showing you two (2) Letters in the BIR Records, both dated January 26, 2018. One was addressed to GAVINO M. TAN, which I have already marked as ***Exhibit "P-29" and "P-29-1"***. The other is addressed to you, ROMELL ENRIQUEZ TAN, which I already marked as ***Exhibit "P-30" and "P-30-1"***. Can you look at these Letters and confirm to whom these are addressed to?

A: The Letter you marked as ***Exhibit "P-29"*** is addressed to GOLDXTREME under GAVINO M. TAN, my father.

On the other hand, the Letter you marked as ***Exhibit "P-30"*** is addressed to GOLDXTREME under my name.

37.Q: Can you read these letters and tell us what this is all about?
A: In these Letters, it appears that the BIR invited me and my father in our capacities as Partners of GOLXTREME for a Preliminary Conference in relation to the 2015 tax audit of the GOLDXTREME.

38.Q: These Letters were served via registered mail. Can you confirm if you received any of these Letters?

A: No Sir, I do not recall receiving these Letters. Otherwise, I would have availed of the opportunity to confer with the BIR on the 2015 assessment. [*Emphasis and underscoring supplied.*]

In view of petitioner's denial of due receipt of the mailed notices, the burden was shifted to respondent to prove otherwise. However, records reveal that respondent did nothing to disprove petitioner and Mr. Rommel Tan alleged non-receipt of the said notices.

In fact, while notices for informal conference were issued, no actual conference was conducted by the BIR prior to the issuance of the PAN on 12 September 2018.[153]

The Supreme Court has consistently nullified tax assessments that were issued in violation of the taxpayer's right to due process.

In *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp. (Shell case),* [154] the Supreme Court ruled, among others, that the taxpayer was deprived of due process when the Commissioner **failed to issue a notice of informal conference** as required by RR No. 12-1999, in relation to Section 228 of the Tax Code; hence, the assessment was void, *viz.*:

> And *finally*, the Court found in the *2007 Shell Case* that respondent Shell's right to due process was violated. **Petitioner did not issue a Notice of Informal Conference (NIC)** and Preliminary Assessment Notice (PAN) to respondent Shell, in violation of the formal assessment procedure required by Revenue Regulations No. (RR) 12-99. Petitioner merely relied on the DOF Center's findings supporting the cancellation of respondent Shell's TCCs. **Thus, the Court voided the assessment dated November 15, 1999 issued by the CIR against herein respondent Shell**. [*Emphasis and underscoring supplied.*]

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[155] and *Avon Products Manufacturing, Inc. v. The Commissioner of Internal Revenue (Avon case),* [156] the Supreme Court enjoined strict observance by the BIR of the prescribed procedure for the issuance of the assessment notices with due regard for the taxpayers' constitutional rights, *viz.*:

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

[153] Par. 57, Memorandum, Docket, Vol. II, p.968.
[154] G.R. Nos. 197945 & 204119, July 9, 2018.
[155] G.R. Nos. 201398-99, October 3, 2018.
[156] G.R. Nos. 201418-19, October 3, 2018.

> **<u>The Notice of Informal Conference</u> and the Preliminary Assessment Notice are a <u>part of due process</u>.**[157] They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. However, this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.
>
> ... ...
>
> In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue,* this Court ruled, among others, **that the taxpayer was deprived of due process when the Commissioner failed to issue a notice of informal conference and** a Preliminary Assessment Notice as required by Revenue Regulations No. 12-99, in relation to Section 228 of the Tax Code. Hence, the assessment was void. [*Emphasis and underscoring supplied.*]

It bears to emphasize that tax assessments issued in violation of the due process rights of a taxpayer are null and void.[158] As such, the PAN and FLD/FANs subject of the instant case are null and void for having been issued by the BIR without the required informal conference, in violation of petitioner's due process rights.[159]

The fact that petitioner was able to file a *Reply* to the PAN, and *Protest* to the FLD, does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment [160] and present its side during the informal conference before the PAN was issued.

b. Respondent failed to serve the PAN and FLD/FANs to petitioner or its duly authorized representative.

Section 3.1.6 of RR No. 12-1999,[161] as amended, provides the proper procedures to be observed when *serving* the

[157] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172, 186-187, 2010 cited in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.
[158] *Id.*
[159] Under RR No. 12-99, as amended by RR No. 18-2013, and further amended by RR No. 7-2018, in relation to Section 228 of the Tax Code.
[160] *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*, G.R. No. 172598, December 21, 200, cited in *Commissioner of Internal Revenue v. Yumex Philippines Corp., G.R. No. 222476, May 5, 2021.*
[161] *Supra* at note 138.

assessment notices such as PAN, FLD/FANs, and FDDA by personal service, by substituted service or by mail, *viz.*:

> **SEC. 3. Due Process Requirement in the Issuance of a Delinquency Tax Assessment. —**
>
> ... ...
>
> 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:
>
> (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 a place where business activities of the party are conducted, the notice may be left 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.
>
> If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.
>
> Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the

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> bottom portion of the notice, as well as the names, official position and signatures of the witnesses. ...
>
> (iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

In addition, Revenue Memorandum Circular ("**RMC**") No. 11-2014[162] clarified that:

> (6) The notice (PAN/FLD/FAN/FDDA) **shall *first* be served to the taxpayer's registered address** before the same may be served to the taxpayer's known address, or in the alternative, may be served to the taxpayer's registered address *and* known address simultaneously. [*Emphasis and underscoring supplied.*]

Based on the foregoing, substituted service or service by mail may be resorted to only if there was proof that personal service was not practicable.

In *Estate of the Late Juliana Diez Vda. De Gabriel v. Commissioner of Internal Revenue*,[163] it was ruled that *due process* requires that the notice (of assessment) must be served on and received by the taxpayer; that the notice be sent to the taxpayer, and not merely to a disinterested party.

Thus, it is not enough that the notice was sent to petitioner by respondent. It is imperative that the taxpayer **actually received** the said tax assessment notice.

In the present case, respondent failed to establish that the concerned ROs attempted to serve first the PAN[164] and FLD/FANs[165] to petitioner's registered address at *2nd Floor Calubad Bldg., No. 474 EDSA, Brgy. 87, Caloocan City 1400*,[166] before the said assessment notices were served at *No. 42 Bronze St.*, and *No. 84 Bronze St., Tugatog, Malabon City.*

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[162] Clarifying Certain Issues Relative to Due Process Requirement in the Issuance of a Deficiency Tax Assessment Pursuant to RR 12-99, as amended by RR 18-2013.
[163] G.R. No. 155541, January 27, 2004.
[164] Exhibit "P-13," Docket, Vol. II, p. 596.
[165] Exhibit "P-18," Docket, Vol. II, Pp. 605-612; Attachments to Exhibit "P-22," Docket, Vol. II, pp. 636-643.
[166] Exhibits "P-1" and "P-2," Docket, Vol. II, pp. 516-523.

Clearly, the PAN and FLD/FANs were served in violation of the due process requirement under Section 3.1.6 of RR No. 12-1999,[167] as amended by RR No. 18-2013,[168] and clarified by RMC No. 11-2014.[169]

Adding to the fact that the assessment notices were served in an improper address was the fact that these notices were received by the wrong person. The BIR served the PAN and the FLD/FANs on Mr. Giovanni Evangelista, who was neither an employee nor an authorized representative of petitioner ,[170] *viz.:*

> 9. T: Ano po yun dokumento na natanggap nyo mula sa BIR?
>
> S: Sa aking pagkaka-alala, ako po ay nakatanggap ng dalawang dokumento sa BIR para po sa GOLDXTREME...
>
> 10.T: Kung maipapakita ko sa iyo ang dokumentong ito, matatandaan mo ba?
>
> S: Opo, makikilala ko naman po.
>
> 11.T: Meroon akong pinapakita sa iyong dokumento na Preliminary Assessment Notice dated September 12, 2018. Ito ay may mark ana ***Exhibit "P-13"***. Ano po ang kaugnayan ng dokumentong ito sa mga dokumentong natanggap mo?
>
> S: Isa po ito dun sa mga dokumento na aking natanggap mula sa BIR.
>
> 12. T: Sa bandang ibaba ng dokumentong ito ay may pirmang "GIO EVANGELISTA" at may petsang September 27, 2018. Sino itong GIO EVANGELISTA na ito?
>
> S: Ako po iyang Gio Evangelista na iyan. Nickname ko po iyong Gio.
>
> 13. T: Kanino ba naka-tukoy yung sulat?
>
> S: Sa GOLDXTREME po.
>
> 14. T: Ano ang kaugnayan mo sa Goldxtreme?
>
> S: Wala po.

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[167] *Supra* at note 138.
[168] *Supra* at note 102.
[169] *Supra* at note 162.
[170] Exhibit "P-34," Judicial Affidavit of Giovanni P. Evangelista, Docket, Vol. I, pp. 429-434.

15. T: Bakit mo tinanggap ang sulat na para sa Goldxtreme?

    S: Sa totoo po, hindi ko na naiisip na hindi ko na dapat tinanggap. Nagmamadali po kasi ako dahil marami akong kino-coordinate ng delivery ng siomai ng araw na iyon. Patapos na po kasi ng hapon, marami kaming order. Dapat po kasi matapos naming lahat nung araw rin na iyon, para madeliver sa supplier. So nung dumating yung mga tiga-BIR, ako po yung unang kinausap nila, pinirmahan ko na lang po para matapos na at makabalik ako sa trabaho ko.

16. T: Saan nangyari itong insidente na ito?

    S: Sa 42 Bronze Street Barangay Tugatog Malabon City. Bahay po iyon ni Mr. Gavino Tan.

17. T: Bakit ka nandoon?

    S: Kasi po doon po yung pagawaan ng siomai sa bahay ni Mr. Gavino Tan.

18. T: Anong pangalan nung mga nagpa-receive sa iyo ng dokumento noong September 27, 2018?

    S: Hindi ko na po maalala. Basta po naalala ko tiga BIR sila.

19. T: Pagkatapos mo tanggapin ang dokumento, anong ginawa mo?

    S: Noong bandang gabi, ako po ay nakapahinga. Tsaka ko po naisip na dapat tiga-Goldxtreme ang nag-receive. Kaya po noong sumunod na araw, tinawagan ko po si Ms. Anabella C. Degenion. Sya po ay empleyado ng GOLDXTREME na madalas umorder sa akin ng siomai. Ako po ay nakipagkita sa kanya at kay Ms. Raquel De Dios at aking iniabot yung sulat na natanggap ko noong nakaraang araw.

20. T: Anong nangyari noong inabot mo yung sulat kay Ms. Anabella C. Degenion at Ms. Raquel De Dios?

    S: Pinagalitan po ako ni Ms. Raquel. Sinabihan nya ako na sa susunod, wag ako tatanggap ng kahit na anong sulat o dokumento para sa GOLDXTREME, kasi hindi naman ako empleyado ng GOLDXTREME. Dapat daw tiga-GOLDXTREME ang tatanggap.

21. T: Meron ako ngayon na pinapakitang isa pang dokumento sa iyo. Ito ay nag-ngangalang *Formal Letter of Demand* dated November 16, 2018, na may marking ***Exhibit "P-18"***. Meron ulit taong pumirma at tumanggap nito. Kaninong pirma ito?

S: Sa akin po. Ako po ang tumanggap nyan noong November 27, 2018.

22.T: Akala ko ba hindi ka empleyado ng GOLDXTREME. Akala ko sinabihan ka na ni Ms. Raquel De Dios na wag ka tatanggap ng kahit na anong dokumento para sa GOLDXTREME. Bakit mo tinanggap ito?

S: Natakot po kasi ako.

23. T: Bakit ka natakot?

S: Sabi po kasi ng BIR na tatawag sila ng baranggay kapag hindi i-receive yung dokumento nila. Natakot po ako na baka ma-reklamo ako sa baranggay kapag hindi ko i-receive yung gusto nilang pa-receive. Sinabihan ko naman agad sila Ms. Raquel.

24. T: Kelan mo sinabihan ang GOLDXTREME?

S: Yung sumunod na araw po ng November 28, 2018. Kinuha po nila sa akin yang dokumento na iyan.

25. T: Ano na ang nangyari sa mga dokumento na tinanggap mo?

S: Hindi ko na po alam. Nabigay ko na po kay Ms. Raquel lahat, hindi ko na po alam ang nangyari pagkatapos noon.

Not being an employee or duly authorized representative of petitioner, the service of the PAN and the FLD/FANs on Mr. Evangelista does not constitute a valid service of assessment notices under RR No. 12-9999, as amended.

It bears reiterating that the assessment notices must not only be sent to the taxpayer. It is imperative that the taxpayer actually received the same.

In this case, respondent's failure to serve the PAN and the FLD/FANs on petitioner or his duly authorized representative renders the same null and void.

c. Respondent issued the FLD/FANs without taking into consideration petitioner's arguments and submissions in its Reply to the PAN.

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Section 228 of the NIRC of 1997, as amended, mandates the BIR to inform the taxpayer in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.[171]

Relative thereto, RR No. 12-1999, as amended, prescribes that the FLD/FAN must state, among others, the facts and the law on which the assessment is based as part of due process in the issuance of tax assessments; otherwise, the FLD/FAN shall be void.

The use of the word 'shall' in Section 228 of the NIRC of 1997, as amended, and in RR No. 12-1999 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him or her, is mandatory. This is an essential requirement of due process and applies to the PAN, FLD with FAN, and the FDDA.[172]

A party's fundamental right to due process includes the right to be informed of the various issues involved in a proceeding, and the reasons for the decision rendered by the quasi-judicial agency.[173]

In the oft-cited *Avon case*,[174] the Supreme Court declared the FLD/FAN null and void by reason of the BIR's total disregard of due process when it failed to fully apprise the taxpayer of the legal and factual bases of the assessment despite the latter's defenses and submission of supporting documents, *viz.*:

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

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[171] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. No. 201398-99 and 201418-19, October 3, 2018, citing *Ang Tibay v. The Court of Industrial Relations*, G.R. No. L-46496, February 27, 1940.
[172] *Id.*
[173] *Lourdes College v. Commissioner of Internal Revenue*, G.R. No. 226210, January 18, 2021.
[174] G.R. Nos. 201398-99 & 201418-19, October 3, 2018, *supra* at notes 155 and 156.

First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from ₱15,700,000.00 to ₱62,900,000.00, **without any discussion or explanation on the merits of Avon's explanations**.

Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. **There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.**

... ...

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

Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. **The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.**

In *Edwards v. McCoy*:

> The object of a hearing is as much to have evidence considered as it is to present it. The right to adduce evidence, **without the corresponding duty on the part of the board to consider it, is vain**. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.

In *Ang Tibay*, this Court similarly ruled that "[n]ot only must the party be given an opportunity to present his case

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> and to adduce evidence tending to establish the rights which he asserts *but* ***the tribunal must consider the evidence presented.***"
>
> ... ...
>
> Similarly, in this case, despite Avon's submission of its explanations and pieces of evidence to the assessments, **the Commissioner failed to acknowledge these submissions and instead issued *identical* Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices**, and Collection Letter, the latter being premised on Avon's alleged failure to submit supporting documents to its protest. Had the Commissioner performed her functions properly and considered the explanations and pieces of evidence submitted by Avon, this case could have been settled at the earliest possible time.
>
> ... ...
>
> The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect. ... . [*Emphasis and underscoring supplied, citation omitted.*]

Records show that on 27 September 2018, petitioner received a copy of the PAN with Details of Discrepancies indicating that upon investigation, it was found to have deficiency IT, VAT, EWT, and miscellaneous tax, in the aggregate amount of ₱223,943,374.47, inclusive of penalties and increments for the taxable year ended 31 December 2015.[175]

On 26 October 2018, after requesting a 15-day extension, petitioner filed its *Reply* to the PAN, seeking clarification of the assessments, and submitting reconciliations and schedules to dispute the assessment.

Subsequently, petitioner received a copy of the FLD with Details of Discrepancies dated 16 November 2018. As discussed, the FLD was served on Mr. Giovanni Evangelista, who was not an employee of petitioner.[176] Nevertheless, on 21 December 2018, petitioner filed its *Protest* to the FLD, stating that the *Protest* is in the nature of a request for reinvestigation, and asking for the re-evaluation of the assessment on the basis of additional evidence and arguments, as well as the

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[175] Par. 10, Memorandum, Docket, Vol. II, p.952.
[176] Par. 16, Memorandum, Docket, Vol. II, p.952; Par. 3, JSFI, Docket, Vol. I, p. 420;

documents submitted in its Reply to the PAN but *were not considered* by the BIR in the issuance of the FLD.[177]

A review of the PAN and FLD/FANs shows that they are identical.[178] Except for certain adjustments in the computation

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[177] Part B, Protest to the FLD, Exhibit "P-21-1", Docket, Vol. II, p. 617.

[178] **DETAILS OF DISCREPANCIES**

<table>
<tr><th>PAN</th><th>FAN/FLD</th></tr>
<tr><td>INCOME TAX
Verification disclosed that Purchase of Gold amounting to P446,877,100.00 were unsupported, hence disallowed under Section 34 of the NIRC.

Verification disclosed that income payments – Rental Expense amounting to P38,000.00 and Professional Entertainers under marketing expense amounting to P4,343,640.92 were not subjected to expanded withholding tax, hence disallowed pursuant to RR 12-2013.</td><td>INCOME TAX
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<tr><td>VALUE ADDED TAX
Sales for the month of May amounting to P106,540,200.00 was subjected to Percentage Tax by the company, this sales already exceeds the threshold of vatable sales hence should be subjected to value added tax pursuant to Sec. 106 of the Tax Code.

Verification disclosed that Sales per Value Added Tax Return and Percentage Return exceeds the financial statement figures by P329,800.00, hence deficiency vat was assessed pursuant to Sec. 106 of the tax code.

Input taxes amounting to P2,835,642.92 were disallowed for being unsupported and non- validation since the company failed to submit summary lists of purchases/services with claimed input taxes, hence deficiency value added tax was assessed in pursuant to Sec. 110 of the NIRC.</td><td>VALUE ADDED TAX
Sales for the month of May amounting to P106,540,200.00 was subjected to Percentage Tax by the company, this sales already exceeds the threshold of vatable sales hence should be subjected to value added tax pursuant to Sec. 106 of the Tax Code.

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<tr><td>INCOME TAX AND VALUE ADDED TAX
Verification disclosed that the following accounts per BIR 1604E and Financial Statements disclosed that the income payments exceeds that of the financial statements resulting to undeclared source of income, hence assessed of deficiency income and value added tax pursuant to Section 27 and 106 of the tax code, respectively.

<table>
<tr><th></th><th>Per BIR 1604E</th><th>Per FS</th><th>Undeclared Income</th></tr>
<tr><td>Contractor /Services</td><td>2,843,463.55</td><td>893,269.00</td><td>1,950,194.55</td></tr>
<tr><td>Professional Services</td><td>7,776,377.40</td><td>6,170,253.00</td><td>1,606,124.40</td></tr>
<tr><td>Commission</td><td>540,915,888.89</td><td>536,954,389.00</td><td>3,961,499.89</td></tr>
<tr><td>Mineral Products</td><td>469,932,100.00</td><td>446,877,100.00</td><td>23,055,000.00</td></tr>
</table></td><td>INCOME TAX AND VALUE ADDED TAX
Verification disclosed that the following accounts per BIR 1604E and Financial Statements disclosed that the income payments exceeds that of the financial statements resulting to undeclared source of income, hence assessed of deficiency income and value added tax pursuant to Section 27 and 106 of the tax code, respectively.

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</table></td></tr>
<tr><td>EXPANDED WITHHOLDING TAX
Verification disclosed that income payments were not subjected to appropriate expanded withholding. Thus, deficiency expanded withholding tax were assessed pursuant to Section 57(B) of the NIRC of 1997 and Revenue Regulation 2-98, as amended.</td><td>EXPANDED WITHHOLDING TAX
Verification disclosed that income payments were not subjected to appropriate expanded withholding. Thus, deficiency expanded withholding tax were assessed pursuant to Section 57(B) of the NIRC of 1997 and Revenue Regulation 2-98, as amended.

Interest of twenty percent (20%) per annum was imposed for failure to pay the correct tax on time pursuant to Sec. 249 of the Tax Code.

Interest of 12% was imposed pursuant to Sec. 75 of R.A. 10963, amending Sec. 249 of the NIRC.</td></tr>
<tr><td>MISCELLANEOUS TAX
Compromise Penalty were imposed for failure to file listings/information returns pursuant to Sections 250 & 255 of the same tax code and Revenue Memorandum Order 7-2015.</td><td></td></tr>
</table>

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of interest and compromise penalties, no substantial difference exists between the two notices.

Notably, this points the Court to the conclusion that respondent failed to consider petitioner's arguments in its *Reply* to the PAN without providing any reason, as the assessed amounts and the Details of Discrepancies in the FLD are replica of those in the PAN.

Similar to the *Avon* case, there was no discussion in the FLD about respondent's findings and the reasons for rejecting petitioner's refutations and explanations in its Reply to the PAN. Thus, petitioner was left unaware of how respondent, or his authorized representatives, appreciated its explanations or defenses against the PAN.

It is true that the Commissioner is not obliged to accept the taxpayer's explanations; however, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.[179]

The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.[180]

Respondent's disregard of the due process standards and rules under RR No. 12-1999, as amended, and his failure to sufficiently inform petitioner of the reasons for his conclusions in the FLD/FANs under Section 228 of the 1997 NIRC, as amended, render the same null and void.

d. The undated letter which denied petitioner's protest to the FLD/FANs, is void for having been issued in violation of the due process requirement.

The Court further notes that not only did the BIR fail to observe the due process requirement in the issuance of the PAN and FLD/FANs under RR No. 12-1999, as amended, the BIR

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[179] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021.
[180] *Id.*

again violated petitioner's right to due process when the subject *Denial Letter* was issued without considering the *Supporting Documents* that petitioner filed in relation to its request for reinvestigation.

A perusal of the BIR records shows that on 21 December 2018, the BIR received petitioner's *Protest* to the FLD;[181] on 19 February 2019, exactly within sixty (60) days from the filing of the *Protest* which is in the nature of a request for reinvestigation, petitioner filed its *Supporting Documents*; on 8 May 2019, petitioner received a *Letter*[182] that the BIR has not yet received any documentary evidence in support of its *Protest*;[183] on 24 May 2019, petitioner informed[184] the BIR that it submitted the *Supporting Documents* on 19 February 2019, within sixty (60) days from the filing of the *Protest.*[185] Among the *Supporting Documents* submitted by petitioner are:

1. *Certification* issued by the Caloocan Central Post Office dated 6 December 2018;
2. Petitioner's 2015 withholding tax returns (BIR Form No. 1601-E)
3. Petitioner's 2015 monthly VAT declarations and quarterly VAT returns (BIR Form No. 2550-M and 2550-Q)
4. Petitioner's 2015 Annual Information Return of Creditable Income Taxes Withheld (Expanded)/ Income Payments Exempt from Withholding Taxes (BIR Form No. 1604-E)
5. Petitioner's Audited Financial Statements
6. Schedule of Marketing Expenses
7. Schedule of Professional Services
8. Schedule of Security Services
9. Schedule of Rental Expenses
10. Schedule of Commission
11. Schedule of Buyback

However, despite petitioner's submission of the said *Supporting Documents* not only once but twice, on 19 February 2019 and on 24 May 2019, the undated letter of RDO Miguel B. Morada, Jr. still maintains that petitioner failed to comply with the submission of *any* documentary evidence necessary to conduct the reinvestigation;[186] that the FLD is already deemed

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[181] BIR Records, p. 468.
[182] BIR *Letter* dated 2 May 2019, BIR Records, p. 471.
[183] Exhibit "P-25", Docket, Vol. II, p. 693.
[184] Through a letter dated 23 May 201, BIR Records, p. 534.
[185] Exhibit "P-26", Docket, Vol. II, pp. 694-695.
[186] Exhibit "P-27", Docket, Vol. II, p. 696.

final and executory; and that the case would be forwarded to the Revenue Region's Collection Division for enforcement.

In the *Avon case*,[187] the Supreme Court emphasized that the taxpayer must not only be given an opportunity to present its defenses, explanations, and supporting documents, but the Commissioner and their subordinates must give *due consideration* to these, in making their conclusions on the taxpayers' liabilities, and sufficiently inform the taxpayer of the reasons for their conclusions.

In *Ang Tibay*,[188] cited in *Avon case*, the Supreme Court similarly ruled that "not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts *but the tribunal must consider the evidence presented.*"

Applying the ruling in *Avon* and *Ang Tibay* to the instant Petition, there is no question that the subsequently issued *Denial Letter* is void for having been issued by the BIR without considering petitioner's defenses, explanations, and supporting documents, in palpable violation of petitioner's right to due process.

Due process is the very essence of justice itself.[189] While "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude.[190] Even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[191]

However, even if respondent or his duly authorized representative considers petitioner's arguments and documents in the *Denial Letter*, the Court is still constrained to rule against its validity as such *Undated Letter* results from void assessments.

As settled earlier, respondent's multiple violations of petitioner's right to due process under Section 228 of the NIRC of 1997, as amended, and RR No. 12-1999 as amended, render

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[187] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.
[188] *Ang Tibay v. The Court of Industrial Relations*, G.R. No. L-46496, February 27, 1940.
[189] Macias vs. Macias, G.R. No. 149617, 3 September 2003, 457 SCRA 463-471.
[190] Commissioner of Internal Revenue vs. Metro Star Superama, Inc., G.R. No. 185371, 8 December 2010, 652 SCRA 172-188.
[191] Commissioner of Internal Revenue vs. Algue, Inc., G.R. No. L-28896, 17 February 1988, 241 SCRA 829-836.

the subject assessments, *i.e.*, PAN, FLD and FANs, null and void.

Void assessments bear no valid fruit.[192] As such, We shall no longer belabor to discuss the issue on prescription, even if We find that portions of the assessment have prescribed[193] under Section 203 of the NIRC of 1997, as amended,[194] and the substantive issues pertaining to the amount assessed because any further discussion on the matter would be an exercise in futility.

WHEREFORE, in light of the foregoing, the instant Petition for Review is **GRANTED**.

Accordingly, respondent's undated *Letter of Denial*, received by petitioner on 24 June 2019, is **REVERSED** and **SET ASIDE**; the tax assessments covering petitioner's TY 2015 for the alleged deficiency IT, VAT, EWT, and interests and surcharges thereon, are **CANCELLED** and **SET ASIDE**.

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[192] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. No. 159694 & G.R. No. 163581, January 27, 2006, 382 SCRA 480; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 647; *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014, 743 SCRA 126; *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014, 744 SCRA 474.

[193] The assessments for deficiency VAT for the 2nd and 3rd quarters of TY 2015 and deficiency EWT for the months of May 2015 to October 2015 had already prescribed, as shown in the table below:

Exhibit No.	Period	Date filed	Last day to file Return	Last day to Assess	Date of Receipt of FLD and assessment notices[193]
Annual Income Tax Return					
"P-3-A-ICPA"	TY 2015	Apr. 15, 2016	Apr. 15, 2016	Apr. 15, 2019	Nov. 27, 2018
Quarterly VAT Returns					
"P-5-1"[193]	2nd Quarter of 2015	Jul. 21, 2015	Jul. 27, 2015	Jul. 27, 2018	
"P-5-4"[193]	3rd Quarter of 2015	Oct. 22, 2015	Oct. 26, 2015	Oct. 26, 2018	Nov. 27, 2018
	4th Quarter of 2015	Feb. 21, 2016	Jan. 25, 2016	Feb. 21, 2019	
Monthly EWT Returns[193]					
"P-6"	May 2015	Aug. 27, 2015	Jun. 10, 2015	Aug. 27, 2018	
"P-6-1-1"	June 2015	Aug. 27, 2015	Jul. 10, 2015	Aug. 27, 2018	
"P-6-2"	July 2015	Aug. 10, 2015	Aug. 10, 2015	Aug. 10, 2018	
"P-6-3"	August 2015	Sept. 10, 2015	Sept. 10, 2015	Sept. 10, 2018	Nov. 27, 2018
"P-6-4"	September 2015	Oct. 9, 2015	Oct. 12, 2015	Oct. 12, 2018	
"P-6-5"	October 2015	Nov. 10, 2015	Nov. 10, 2015	Nov. 12, 2018	
"P-6-6"	November 2015	Dec. 9, 2015	Dec. 10, 2015	Dec. 10, 2018	
"P-6-7"	December 2015	Jan. 15, 2016	Jan. 15, 2016	Jan. 15, 2019	
**Petitioner was registered with the BIR only on April 30, 2015 per Certificate of Registration (BIR Form No. 2303) bearing OCN4RC0000871800.*[193]					

[194] 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.

Further, respondent is **ENJOINED** from proceeding with the collection of taxes in the above-captioned case.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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
Special 2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Special 2nd 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