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

## SPECIAL SECOND DIVISION

**NEUFTECH PHILIPPINES INC.,**
*Petitioner,*

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA CASE NO. 10442**

*Members:*

**BACORRO-VILLENA**, *Acting Chairperson, and* **CUI-DAVID**, *JJ.*

Promulgated:

MAY 29 2024

4:10 p.m.

x- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -x

# DECISION

***CUI-DAVID, J.:***

Before this Court is a *Petition for Review* filed on February 28, 2022, by petitioner Neuftech Philippines, Inc. [1] ("**Petitioner**"), against respondent Commissioner of Internal Revenue ("**CIR**" or "**Respondent**"), under Section 7 of Republic Act ("**RA**") No. 1125,[2] as amended by RA No. 9282,[3] seeking to declare as void respondent's Formal Letter of Demand and Assessment Notices dated June 6, 2019, and Warrant of Distraint and/or Levy dated November 11, 2020.

---

[1] Docket, pp. 6 to 20.
[2] An Act Creating the Court of Tax Appeals, June 16, 1954.
[3] 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, ...

## THE PARTIES

Petitioner Neuftech Philippines, Inc. is an existing and duly organized corporation under Philippine laws with principal address at B-11 Regalena Bldg. 9049 National Highway, Brgy. Turbina, Calamba City.[4]

Respondent is the Commissioner of Internal Revenue vested by law to enforce and implement the provisions of the National Internal Revenue Code (NIRC), as amended, as well as related statutes and their implementing rules and regulations. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[5]

## THE FACTS

On March 8, 2018, respondent issued a *Letter of Authority* (LOA) No. 056-2018-00000097 (SN: eLA201200047177), authorizing Revenue Officer (RO) Benjamin Karlo Reyes and Group Supervisor Michele Delos Santos of Revenue District Office No. 056 to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period April 1, 2015 to March 31, 2016.[6]

Thereafter, on April 2, 2019, respondent issued a *Preliminary Assessment Notice* (PAN) with *Details of Discrepancies*,[7] informing petitioner that after investigation, deficiency income tax, improperly accumulated earnings tax (IAET), and compromise penalty are due, in the total amount of ₱16,499,053.61, for the subject period, broken down as follows:

| Tax Type | Basic Tax | Increments | | Total |
|---|---|---|---|---|
| | | **Interest** | **Surcharge** | |
| Income tax | ₱6,721,232.97 | ₱2,961,761.95 | ₱3,360,616.49 | ₱13,043,611.41 |
| IAET | 2,226,015.40 | 647,922.95 | 556,503.85 | 3,430,442.20 |
| Compromise penalty | | | | 25,000.00 |
| | | | **TOTAL** | **₱16,499,053.61** |

On April 22, 2019, petitioner filed a *reply* to the PAN *via* the letter of even date.[8]

[4] Par. 1, Joint Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 242.
[5] Par. 2, Joint Stipulation of Facts, JSFI, Docket, p. 242.
[6] Par. 4, Joint Stipulation of Facts, JSFI, Docket, pp. 242 to 243.
[7] Exhibit "P-5", Docket, p. 29 to 34; and Exhibits "R-5" and "R-5-a", BIR Records, pp. 189 to 194. Refer also to par. 5, Joint Stipulation of Facts, JSFI, Docket, p. 243.
[8] Exhibit "P-5-a", Docket, pp. 325 to 327.

On June 13, 2019, respondent issued a *Formal Letter of Demand* (FLD) dated June 6, 2019, with *Details of Discrepancies* and *Assessment Notices* (FAN), [9] assessing petitioner of deficiency income tax, IAET, and compromise penalty, in the total amount of ₱16,684,371.96, computed as follows:

| Tax Type | Basic Tax | Increments | | Total |
|---|---|---|---|---|
| | | **Interest** | **Surcharge** | |
| Income tax | ₱6,721,232.97 | ₱3,100,974.34 | ₱3,360,616.49 | ₱13,182,823.80 |
| IAET | 2,226,015.40 | 694,028.91 | 556,503.85 | 3,476,548.16 |
| Compromise penalty | | | | 25,000.00 |
| | | | **TOTAL** | **₱16,684,371.96** |

On July 8, 2019, petitioner filed a *protest* letter in the nature of a request for reinvestigation.[10] Within sixty (60) days, or on September 5, 2019, petitioner submitted another expansion plan and historical analysis of its income declared per 1702 with copies of its BIR Forms Nos. 1702 and 1601-F[11].[12]

On June 22, 2020, petitioner received a *Final Decision on Disputed Assessment* (FDDA) dated March 9, 2020,[13] finding it liable for deficiency income tax, IAET, interests to the said taxes, and compromise penalty in the total amount of ₱17,549,190.92, as follows:

| Tax Type | Basic Tax | Increments | | Total |
|---|---|---|---|---|
| | | **Interest** | **Surcharge** | |
| Income tax | ₱6,721,232.97 | ₱3,750,632.14 | ₱3,360,616.49 | ₱13,832,481.60 |
| IAET | 2,226,015.40 | 909,190.07 | 556,503.85 | 3,691,709.32 |
| Compromise penalty | | | | 25,000.00 |
| | | | **TOTAL** | **₱17,549,190.92** |

The FDDA was issued by Regional Director Ricardo B. Espiritu (RD Espiritu).

On July 1, 2020, petitioner filed an *Appeal for Reconsideration* of the FDDA before respondent's office.[14]

---

[9] Exhibit "P-6", Docket, p. 36; and Exhibits "R-6", "R-6-A", "R-7", "R-7-a", and "R-7-B", BIR Records, pp. 202 to 210. Refer also to par. 6, Joint Stipulation of Facts, JSFI, Docket, p. 243.
[10] Exhibit "P-7", Docket, pp. 37 to 38; and Exhibit "R-8", BIR Records, pp. 325 to 326.
[11] Exhibits "P-8", "P-9-A" to "P-9-I", Docket, pp. 39 to 53, and 55 to 83, respectively.
[12] Par. 12, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket, pp. 8 and 172, respectively.
[13] Exhibit "P-10", Docket, pp. 84 to 87; and Exhibit "R-10", BIR records, pp. 345 to 348. Refer also to par. 7, Joint Stipulation of Facts, JSFI dated April 18, 2022, Docket, p. 243.
[14] Exhibit "P-11", Docket, pp. 88 to 89.

On December 4, 2020, petitioner received a copy of the WDL dated November 11, 2020,[15] enforcing collection of the deficiency taxes and compromise penalty for the fiscal year ending March 31, 2016.

## PROCEEDINGS BEFORE THE COURT

On January 4, 2021, petitioner filed the present *Petition for Review*, incorporating a *Motion to Suspend Collection of Taxes.*[16] The case was initially raffled to this Court's Third Division.

Respondent filed his *Comment and Opposition (Re: Petitioner's Motion to Suspend Collection of Taxes)* and *Supplement to the Comment and Opposition dated 27 January 2021 (Re: Petitioner's Motion to Suspend Collection of Taxes),*[17] on January 27, 2021, and February 5, 2021, respectively.

At the hearing held for the *Motion to Suspend Collection of Taxes* on February 3, 2021, petitioner presented various documentary evidence, which its witness, Ms. Maria Rebecca C. Del Corro, identified.[18]

On February 8, 2021, petitioner submitted its *Formal Offer of Evidence (Re: Motion to Suspend of Collection of Taxes),*[19] to which respondent filed a *Comment (Re: Petitioner's Formal Offer of Evidence in relation to Motion to Suspend Collection of Taxes)* on February 15, 2021.[20] In the Resolution dated March 12, 2021,[21] the Court admitted petitioner's exhibits, but denied its *Motion to Suspend Collection of Taxes* for lack of merit.

Within the extended period,[22] respondent filed his *Answer (Re: Petition for Review dated 30 December 2020)* on March 23, 2021.[23]

---

[15] Par. 8, Joint Stipulation of Facts, JSFI, Docket, p. 243; and Exhibit "P-2", Docket, p. 24.
[16] Docket, pp. 6 to 20.
[17] Docket, pp. 141 to 144.
[18] Exhibit "P-6-TRO", Docket, pp. 100 to 106; Minutes of the hearing held on, and Order dated, February 3, 2021, Docket, p. 136 to 138.
[19] Docket, pp. 146 to 150.
[20] Docket, pp. 152 to 154.
[21] Docket, pp. 165 to 171.
[22] *Motion for Extension of Time to File Answer*, Docket, pp. 158 to 160; Resolution dated February 24, 2021, Docket, p. 163.
[23] Docket, pp. 172 to 184.

In the Resolution dated June 9, 2021,[24] the Court referred the case to the Philippine Mediation Center Unit – Court of Tax Appeals (PMC-CTA) for possible mediation on July 13, 2021. However, the parties decided not to have their case mediated by the PMC-CTA.[25]

The Court set the Pre-Trial Conference on December 1, 2021,[26] which was reset to March 29, 2022.[27] Prior thereto, petitioner's *Pre-Trial Brief* was filed on November 26, 2021,[28] while *Respondent's Pre-Trial brief* was filed on December 14, 2021.[29]

In the meantime, respondent transmitted the *BIR Records* of the case on December 13, 2021.[30]

On April 18, 2022, the parties posted their *Joint Stipulation of Facts and Issues*,[31] which the Court admitted and approved in the Resolution dated April 21, 2022.[32] Thereafter, the Court issued the Pre-Trial Order dated May 5, 2022.[33]

The trial proceeded, with the parties presenting and offering their respective testimonial and documentary evidence.

Petitioner presented and offered the testimonies of the following: (1) Ms. Ma. Teresita Buccat, [34] Accounting Consultant, and (2) Ms. Maria Rebecca Del Corro,[35] Treasurer.

In the Order dated June 30, 2022, [36] the case was transferred to the Second Division of this Court.

On September 6, 2022, petitioner filed its *Formal Offer of Exhibits*,[37] to which respondent filed his *Comment (Re: Formal Offer of Exhibits dated 06 September 2022)* on September 20,

[24] Docket, pp. 193 to 194.
[25] No Agreement to Mediate dated July 28, 2021, Docket, p. 195.
[26] Resolution dated October 11, 2021, Docket, pp. 199 to 200.
[27] Notice of Resetting dated November 18, 2021, Docket, p. 201; Minutes of the hearing held on, and Order dated, March 29, 2022, Docket, pp. 237, and 240 to 241, respectively.
[28] Docket, pp. 202 to 210.
[29] Docket, pp. 230 to 234.
[30] Respondent's *Compliance* dated December 13, 2021, Docket, pp. 226 to 228.
[31] Docket, pp. 242 to 247.
[32] Docket, p. 249.
[33] Docket, pp. 251 to 258.
[34] Exhibit "P-19", Docket, pp. 267 to 280; Minutes of hearing held on, and Order dated, June 15, 2022, Docket, pp. 266 to 266-b.
[35] Exhibit "P-21", Docket, pp. 281 to 293; Minutes of hearing held on, and Order dated, August 22, 2022, Docket, pp. 314 to 316.
[36] Docket, p. 306.
[37] Docket, pp. 317 to 324.

2022.[38] In the Resolution dated October 12, 2022,[39] the Court admitted petitioner's offered exhibits, *except* for (1) Exhibit "P-9" for failure to present the original for comparison and (2) Exhibits "P-12" and "P-16" for failure to have the exhibits identified.

For his part, respondent presented and offered the testimony of RO Benjamin Karlo L. Reyes.[40]

On December 12, 2022, respondent filed his *Formal Offer of Evidence,*[41] to which petitioner filed its *Comments/ Objections (Re: Respondent's Formal Offer of Evidence dated 12 December 2022)* on December 28, 2022.[42]

In the Resolution dated January 31, 2023,[43] the Court admitted all respondent's offered exhibits. In the same Resolution, the parties were given thirty (30) days to submit their memoranda.

On March 3, 2023, respondent filed his *Memorandum.*[44] Considering the same and the Report of the Judicial Records Division dated March 7, 2023, the Court submitted this case for decision on March 17, 2023.[45]

On April 5, 2023, petitioner filed a Motion to Admit Memorandum, with an attached *Memorandum* dated March 3, 2023.[46]

On May 2, 2023, the *Motion to Admit* was granted.[47] Accordingly, petitioner's Memorandum was admitted, and the present case was submitted anew for decision.

Hence, this *Decision.*

---

[38] Docket, pp. 356 to 359.
[39] Docket, pp. 364 to 365.
[40] Exhibit "R-12", Docket, pp. 216 to 225; Minutes of the hearing on, and Order dated, December 1, 2022, Docket, pp. 366 to 367.
[41] Docket, pp. 368 to 374.
[42] Docket, pp. 392 to 398.
[43] Docket, pp. 401 to 402.
[44] Docket, pp. 413 to 426.
[45] Docket, p. 429.
[46] Docket, pp. 431 to 451.
[47] Docket, p. 430.

## THE ISSUE

The parties submitted the following issue for this Court's resolution, *viz.*:[48]

> "WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX, IMPROPERLY ACCUMULATED EARNINGS TAX, AS WELL AS COMPROMISE PENALTY IN THE AGGREGATE AMOUNT OF SEVENTEEN MILLION FIVE HUNDRED FORTY-NINE THOUSAND ONE HUNDRED NINETY & 92/100 PESOS (P17,549,190.92), FOR THE FISCAL YEAR ENDING 31 MARCH 2016."[49]

## PETITIONER'S ARGUMENTS

Petitioner argues that the assessment is void for violating its right to due process as the PAN, FLD, and FDDA contain the same findings, except for the amount of interest because respondent did not consider the defenses in its *reply* to the PAN and *protest* to the FLD; that the claimed charitable contributions did not exceed the allowable deductions as prescribed by Section 34(H)(1) and (2) of the NIRC; that the accumulated earnings and profits were properly appropriated for future expansion; and that there is no discrepancy on the balance of net income using retained earnings in the method of computation against the amount of declared net income in the Annual Income Tax Return.

## RESPONDENT'S ARGUMENTS

Respondent contends that the FLD was issued in accordance with law, jurisprudence, and relevant administrative issuances; that the assessment has bases in both fact and law; that petitioner's charitable contributions exceeded the allowable deductions under the NIRC; and that petitioner is liable for IAET.

## THE COURT'S RULING

Before proceeding further, the Court shall first determine whether it has jurisdiction over the instant case.

---

[48] *JSFI*, Issue/s Stipulated by the Parties, *supra* at note 31.
[49] Joint Statement of Issue to be Tried or Resolved, JSFI, Docket, p. 244.

***The Court has jurisdiction over the instant case.***

Section 7(a)(1) and (2) of RA No. 1125, as amended by RA No. 9282, confers jurisdiction to this Court relative to decisions and inactions of respondent, to wit:

> SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** ..., 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**, ..., or **other matters** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, ...; *[Emphasis supplied]*

Moreover, Section 11 of RA No. 1125, as amended by RA No. 9282, provides the period for filing an appeal before the CTA, *viz.*:

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

The above provisions are likewise provided under Section 3(a)(1) and (2), Rule 4[50] of the RRCTA, which states that the Court has jurisdiction over *one*, the CIR's decision or inaction involving disputed assessments (*first part*); and *two,* other matters arising under the NIRC of 1997, as amended (*second part*), among others.

---

[50] *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, ... 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, ... or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, ...

In relation to the *first part* of Section 7 (a) (1) and (2) of RA No. 1125, as amended, there must first be a disputed assessment for the decision or inaction of the CIR or his duly authorized representative to be raised on appeal before the Court. [51] To properly dispute an assessment, a valid administrative protest by the taxpayer must be made pursuant to Section 228 of the NIRC of 1997,[52] as amended.[53]

Correspondingly, Revenue Regulations ("**RR**") No. 12-1999, [54] as amended by RR No. 18-2013, [55] provides the procedure for *protesting* the assessment and *appealing* respondent's decision or inaction on the *protest* or *administrative appeal* to the CTA.

Section 3.1.4 of RR No. 12-1999,[56] as amended, in part, provides as follows:

> 3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent **may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof**. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> ... ... ...
>
> If the ***protest*** is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may ***either***: (i) **appeal to the Court of Tax Appeals (CTA)** within thirty (30) days from date of receipt of the said decision; or (ii) **elevate his protest** through request for reconsideration **to the Commissioner** within thirty (30) days from date of receipt of the said decision. ...
>
> ... ... ...

---

[51] See *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,* G.R. No. 215534, April 18, 2016.
[52] Tax Reform Act of 1997.
[53] Section 228. Protesting of Assessment. – . . .
Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. ...
If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.
[54] 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, September 6, 1999.
[55] Amending Certain Sections of Revenue Regulations No. 12-99, November 28, 2013.
[56] *Supra* at note 54.

> If the ***protest*** or ***administrative appeal***, as the case may be, **is denied**, in whole or in part, by the Commissioner, **the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision**. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA. *[Emphasis supplied]*

Based on the foregoing, a taxpayer must file a protest within thirty (30) days from receipt of the FLD/FAN. If the taxpayer's protest is denied, in whole or in part, by the Commissioner's duly authorized representative, as in this case, the taxpayer may either: (a) appeal to the CTA within 30 days from the date of receipt of the said decision; or (b) elevate his protest through a request for reconsideration to the Commissioner within 30 days from date of receipt of the decision of the Commissioner's duly authorized representative.

Anent the *second part* of the provision, the term "other matters" has been ruled to include, but not limited to, a review of the CIR's authority and decision to compromise, [57] a prescription of the CIR's right to collect taxes, [58] and **a determination of the validity of a WDL**.[59]

In the case of *Philippine Journalists, Inc. v. Commissioner of Internal Revenue (Philippine Journalists)*, [60] the Supreme Court ruled that the CTA's jurisdiction is not limited to the CIR's decisions on disputed assessments or refunds, as the *second part* of the provision covers other cases arising from the NIRC or related laws administered by the BIR. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the WDL issued by the BIR is valid.

In *Commissioner of Internal Revenue v. Bank of the Philippine Islands (BPI)*, [61] the Supreme Court declared that the CTA has jurisdiction to determine the propriety of a WDL, as the law expressly vests the CTA with authority to take cognizance of "other matters" arising from the NIRC.

---

[57] *Philippine National Oil Company v. Court of Appeals, et al.*, and *Philippine National Bank v. Court of Appeals, et al.*, G.R. Nos. 109976 and 112800, April 26, 2005.

[58] *Commissioner of Internal Revenue v. Court of Tax appeals Second Division*, G.R. No. 258947, March 29, 2022; *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

[59] *La Flor Dela Isabela, Inc. c. Commissioner of Internal Revenue*, G.R. No. 202105, April 28, 2021; *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

[60] G.R. No. 162852, December 16, 2004.

[61] G.R. No. 227049, September 16, 2020.

In the recent case of *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital),*[62] the Supreme Court echoed the CTA's jurisdiction to determine the validity of the WDL, *viz.*:

> As explained by the Court in *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division,* the exclusive appellate jurisdiction of the CTA Division is not limited to cases involving decisions of the CIR or matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR**. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine the validity of the warrant of distraint and levy.** [*Emphasis supplied*]

In the instant case, petitioner received respondent's FDDA dated March 9, 2020, on June 22, 2020, [63] signed by RD Espiritu as the CIR's duly authorized representative, finding it liable for deficiency income tax, IAET, in the total amount of ₱17,549,190.92, including compromise penalty and increments.[64] Petitioner then sought reconsideration of the FDDA with respondent by filing an *Appeal for Reconsideration* dated June 29, 2020, on July 1, 2020.[65] However, pending appeal, petitioner received the WDL dated November 11, 2020,[66] enforcing collection of the alleged deficiency taxes and compromise penalty. This prompted petitioner to file the instant *Petition for Review,* praying that this Court declares as void respondent's FLD/FAN dated June 6, 2019, and WDL dated November 11, 2020.

In *Light Rail Transit Authority v. Bureau of Internal Revenue* (*LRTA*),[67] the Supreme Court ruled that the period to file a petition for review with the Court may not be reckoned from receipt of the WDL issued pending a taxpayer's appeal of the FDDA with the CIR since the WDL is not a "final decision," *viz.*:

> Subsection 3.1.5 of Revenue Regulations No. 12-1999 is clear that **if the protest is elevated to the respondent [CIR], "the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.**" The [FDDA] was

[62] G.R. No. 255473, February 13, 2023.
[63] Exhibit "P-10", Docket, pp. 84 to 87; and Exhibit "R-10", BIR records, pp. 345 to 348. Refer also to par. 7, Joint Stipulation of Facts, JSFI dated April 18, 2022, Docket, p. 243.
[64] Exhibit "P-7", Docket, pp. 37 to 38; and Exhibit "R-8", BIR Records, pp. 325 to 326.
[65] Exhibit "P-11, Docket, pp. 88 to 89.
[66] Par. 8, Joint Stipulation of Facts, JSFI, Docket, p. 243; and Exhibit "P-2", Docket, p. 24.
[67] G.R. No. 231238, June 20, 2022.

timely elevated to the Commissioner; hence, it never became final, executory, and demandable.

> **Neither can the 30-day period for filing a petition for review be reckoned from petitioner's receipt of any of the following issuances:** the Preliminary Collection Letter, the Final Notice Before Seizure**, the Warrant of Distraint and/or Levy,** the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 Letter dropping the request for reconsideration of the Warrant of Distraint and/or Levy. **Like the Final Decision on Disputed Assessment, all of these were not <u>final decisions</u> on the appeal by the [CIR]. They remained tentative given the pendency of the petitioner's appeal with the Office of the Commissioner.** More importantly, all of these were issued on the premise that "delinquent taxes" exist, an incorrect premise. **<u>To repeat, the assessment was still pending appeal with the Office of the Commissioner when these issuances were made</u>.** The Preliminary Collection Letter, the Final Notice Before Seizure, **the Warrant of Distraint and/or Levy**, the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 denying the request for reconsideration all **emanated from a non-demandable assessment. As such, all were void and should be of no force and effect.** [*Emphasis and underscoring supplied*]

Following the Supreme Court's pronouncement in *LRTA*, when the taxpayer files an appeal with the CIR requesting a reconsideration of the FDDA issued by the CIR's duly authorized representative, the taxpayer must await the CIR's "final decision" on the appeal and elevate it to the CTA within 30 days from receipt thereof.

Further, the 30 days for filing a petition for review cannot be reckoned from the taxpayer's receipt of the **WDL**, and others issued on the premise that "delinquent taxes" exist. Any summary collection remedies under the NIRC of 1997, as amended — such as issuing a Warrant of Distraint and/or Levy (WDL) — would be tentative and, thus, cannot be construed as the CIR's "final decision" appealable to the CTA, given the pendency of the administrative appeal.

Notably, one of the reliefs sought by petitioner in this case is for the Court to declare the WDL issued by RD Espiritu during the pendency of the administrative appeal null and void.

Given the recent case of *Manila Doctors Hospital*, which reiterated and emphasized the CTA's jurisdiction to determine the validity and propriety of the WDL, the Court finds that even if petitioner's *Appeal for Reconsideration* of the FDDA is still pending before the CIR, and there is no "final decision" yet on the disputed assessment following *LRTA*, this Court can still assume jurisdiction over this case.

Accordingly, this Court has jurisdiction over "other matters" arising under the NIRC and, resultingly, the instant *Petition for Review.* This Court also notes that the instant petition was timely filed on January 4, 2021,[68] which is within 30 days from petitioner's receipt of the challenged WDL on December 4, 2020.

***The FLD and FAN are void because they were issued in violation of petitioner's right to due process.***

Intrinsic to the Court's determination of the propriety of the WDL is its determination of the validity and finality of the assessment.

Petitioner claims that the assessment is void for being issued in violation of its right to due process. In its *Memorandum*,[69] petitioner contends:

> 18. Notably, the arguments and discussions of Petitioner in its reply to PAN have not been properly addressed in the FLD. Worse, the arguments and discussions of Petitioner in its Protest to FLD was again not considered or even addressed in the FDDA. This amounts to violation of Petitioner's right to due process that happened already. [sic]
>
> ...
>
> 20. Squarely fitting the case of Unioil and Avon, Petitioner was not apprised of the legal and factual bases of the assessment issued against it. Petitioner timely filed its reply to the PAN even submitting supporting documents thereto, but Respondent did not examine the same and proceeded to issue the FLD and the FDDA with the same findings initially laid down in the PAN, except as to the amounts of interests.

[68] The 30th day, January 3, 2021, fell on a Sunday.
[69] Memorandum, Docket, pp. 434 to 451.

The Court finds merit in petitioner's contention.

Section 228 of the NIRC of 1997, as amended, mandates petitioner to inform the taxpayer in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. It states, in part:

> SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: 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**. [*Emphasis supplied*]

Relative thereto, Section 3 of Revenue Regulations (RR) No. 12-99,[70] as amended by RR No. 18-13,[71] implements Section 228, and specifies the *due process requirement* in the issuance of a deficiency tax assessment, to wit:

> SEC. 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 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. **It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based** ...
>
> ... ... ...

[70] 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.
[71] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — **The Formal Letter of Demand and Final Assessment Notice (FLD/FAN)** shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes **shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be <u>void</u>** ... [*Emphasis supplied*]

Based on the foregoing, it is expressly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made.[72] RR No. 12-99, as amended by RR No. 18-13, 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.

In the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* (*Avon*),[73] which cited the landmark case of *Ang Tibay v. Court of Industrial Relations* (*Ang Tibay*),[74] the Supreme Court emphasized that the taxpayer must not only be given an opportunity to present its defenses and evidence but also that the Commissioner and his/her subordinates must give *due consideration* to these. Failure to do so constitutes a violation of the taxpayer's right to due process, *viz.*:

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

[72] *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.
[73] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.
[74] G.R. No. 46496, February 27, 1940.

> **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.
>
> ... ... ...
>
> 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**. [*Citations omitted; emphasis supplied*]

The foregoing doctrinal pronouncement affirms that the issuance of a PAN is a part of due process; that the issuance thereof gives both the taxpayer and the BIR the opportunity to settle the case at the earliest possible time without the need for issuance of a FAN or to reduce the assessment at the earliest opportunity; that this purpose is not served in case the BIR fails to consider the taxpayer's explanations or arguments before the FAN is issued; that **the failure of the BIR to give due consideration to the said explanations or arguments is a deplorable transgression of the taxpayer's right to due process**; and that the disregard by the BIR of the standards and rules renders the deficiency tax assessment null and void.

In the instant case, respondent issued against petitioner a PAN dated April 2, 2019, finding petitioner liable for deficiency IT and IAET in the amount of ₱16,499,053.61, including compromise penalty, surcharges, and interests.

Petitioner filed a *reply* to the PAN in a letter dated April 22, 2019, citing the provisions of the NIRC and BIR issuances and documents such as the Certificate of Donation, historical analysis of retained earnings, and business expansion plan, among others.

Subsequently, on June 13, 2019, respondent issued the FLD against petitioner, which merely reiterated the deficiency IT and IAET assessments in the PAN, except for certain adjustments in the computation of interest, without considering petitioner's arguments and the documents referred to in the *reply* to the PAN.

Petitioner then filed a *protest* to the FLD through a letter dated July 8, 2019, reiterating its *reply* to the PAN and submitting another expansion plan and historical analysis of its income declared per BIR Form No. 1702 with copies of BIR Forms Nos. 1702 and 1601-F.

On June 22, 2020, petitioner received the FDDA dated March 9, 2020, with the same deficiency tax assessments as those in the FLD and PAN, except for the interest amounts.

In summary, a comparison of the figures and findings in the PAN,[75] FLD/FAN,[76] and the FDDA[77] reveals a striking similarity. Juxtaposing the PAN and FLD/FAN indicates that no *reply* was considered, while juxtaposing the FLD/FAN and FDDA suggests that no *protest* was taken into account.

Respondent's lone witness, RO Benjamin Karlo L. Reyes, confirmed that the BIR did not give credit to petitioner's arguments and documents supporting its *reply* to the PAN and *protest* to the FLD, i.e., Certificate of Donation, historical analysis, and business expansion, *viz.*:[78]

---

[75] *Supra* at note 7.
[76] *Supra* at note 9.
[77] *Supra* at note 13.
[78] Transcript of Stenographic Notes during the hearing on December 1, 2022, pp. 6 to 11.

Q: The basic deficiency income tax in the Preliminary Assessment Notice, it is in the same of the FLD, correct?

A: Yes, except for the interest. It's just a reiteration.

Q: Going back to your Answer earlier, Mr. Witness, you mentioned that a tax payer or the petitioner, if they filed a response to the Preliminary Assessment Notice, it will no longer be considered, is that correct?

A: Yes Mam.

Q: They just wait for the FLD?

A: To be served.

Q: So if there is a response to the Preliminary Assessment Notice, it will not be considered by the Bureau of Internal Revenue, is that correct?

A: It will be considered after you protested for the Formal Letter of Demand. Of course, it will be consolidated in the docket.

Q: How about for the basic of the IAET, it is also the same?

A: Yes.

Q: In the Preliminary Assessment Notice and the FLD, same amount?

A: Yes.

Q: And the compromise penalty imposed, the same?

A: Yes.

Q: In this FLD, Mr. Witness, does it mention any Certificate of Donation submitted by petitioner?

ATTY. DIEGO: Objection, your Honors, the documents already speaks for itself.

JUSTICE UY: Let the witness answer unless you can stipulate on the document.

ATTY. DAYRIT: If the good counsel would be willing to stipulate that the FLD does not mention **any Certificate of Donation, the historical analysis and business expansion**.

A: For the donation, it's already filed in the Income Tax Return.

JUSTICE UY: The question is does it mention, yes or no?

A: No, your Honors.

ATTY. DAYRIT: As stipulated?

ATTY. DIEGO: Yes, your Honors, stipulated.

...

Q: And in this FDDA, the amount of basic deficiency income tax is also the same as in the FLD, correct?

A: Yes, same amount.

Q: Also the same amount for the basic IAET?

A: Yes.

Q: And same amount of compromise penalty imposed?

A: Yes.

Q: So you would agree with me, Mr. Witness, that the basic amount of assessed deficiency income tax, IAET and compromise penalty input did not change from the Preliminary Assessment Notice to the FLD and to the FDDA even after the protest was evaluated, correct?

A: Yes.

ATTY. DAYRIT: If willing to stipulate with counsel also that the FDDA likewise does not mentioned **any Certificate of Donation, historical analysis and business expansion**?

ATTY. DIEGO: Stipulated, your Honors.

ATTY. DAYRIT: Mr. Witness, you may refer to the FDDA and FLD, will you agree with me that the explanations in the Details of Discrepancies in the FLD and the explanation in the FDDA are the same?

A: Yes, Attorney. [*Emphasis supplied*]

As pronounced in *Avon*, the CIR is not obliged to accept the taxpayer's explanation. Nonetheless, it is imperative that he give the *particular facts* upon which his conclusion is based, and these facts must appear in the record.[79]

[79] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021, citing *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.[80]

Respondent's failure to give due consideration to petitioner's defenses, explanations, and supporting documents when he concluded in the FLD/FAN that petitioner had deficiency tax liabilities could hardly be considered substantial compliance with the due process requirement.

In the more recent case of *Commissioner of Internal Revenue v. Next Mobile, Inc. (Next Mobile* case*),*[81] the Supreme Court *reiterated* its ruling in the *Avon* and *Ang Tibay* cases that "not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts, ***but the tribunal must consider the evidence presented.***"

Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the NIRC of 1997, as amended, and implemented by RR No. 12-1999 and RR No. 18-2013, is *void and produces no effect.*[82] A void assessment bears no valid fruit.[83]

In light of the invalidity of the assessment, the WDL issued against petitioner is likewise void.

**WHEREFORE**, premises considered, the instant *Petition for Review* is **GRANTED**.

Accordingly, the FLD/FAN dated June 6, 2019, the FDDA dated March 9, 2020, and the WDL dated November 11, 2020, issued by respondent CIR against petitioner Neuftech Philippines Inc. for deficiency income taxes and improperly accumulated earnings taxes, including the compromise penalty, surcharges, and interests, covering the fiscal year ending March 31, 2016, are **CANCELLED** and **SET ASIDE**.

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

---

[80] *Id.*
[81] G. R. No. 232055 (Notice), April 27, 2022.
[82] *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue*, G.R. No. 249153, September 12, 2022.
[83] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023; *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

**SO ORDERED.**

**LANEE S. CUI-DAVID**
Associate Justice

*WE 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 Acting Chairperson

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ROMAN G. DEL ROSARIO**
Presiding Justice