22-000096-0056

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10796

MYSERV INTERNATIONAL INC. as represented by Ms. CECILIA O. TOLEDO,
Petitioner,

- versus -

CESAR R. DULAY, COMMISSIONER OF INTERNAL REVENUE, AND DEOGRACIAS T. VILLAR, JR., REGIONAL DIRECTOR OF REVENUE DISTRICT OFFICE 43-B,
Respondents.

NOTICE OF DECISION

To:

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

COMMISSIONER OF INTERNAL REVENUE
BIR National Office Building
Senator Miriam P Defensor-Santiago Ave.
Diliman, Quezon City

ATTY. OSCAR A. AGUILAR
ATTY. ROSE ANN O. TOLENTINO
Bureau of Internal Revenue
Legal Division, Revenue Region No.7B (East NCR)
25th Floor, The Podium West Tower
ADB Avenue, Ortigas Center, Mandaluyong City

MR. DEOGRACIAS T. VILLAR, JR.
Regional Director
Bureau of Internal Revenue
Revenue Disrict Office 43-B
Pasig City, Metro Manila

THE LAW FIRM OF FIEL BRILLANTE RONQUILLO TIBLE
Suite 1202, Tycoon Centre Building
Pearl Drive, Ortigas Center, Pasig City

GREETINGS:

You are hereby notified by these presents that on **July 16, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **July 17, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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FIRST DIVISION

MYSERV INTERNATIONAL, INC. as represented by **MS. CECILIA O. TOLEDO,**
Petitioner,

- versus -

CESAR* **R. DULAY, COMMISSIONER OF INTERNAL REVENUE, AND DEOGRACIAS T. VILLAR, JR., REGIONAL DIRECTOR**** **OF REVENUE DISTRICT OFFICE 43-B,**
Respondents.

CTA Case No. **10796**

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
JUL 18 2025; 3:30PM

x - x

DECISION

BACORRO-VILLENA, J.:

This resolves the Petition for Review[1] filed by petitioner MyServ International, Inc. (**petitioner**), as represented by Ms. Cecilia O. Toledo (**Toledo**), pursuant to Section 3(a)[2], Rule 8 in relation to Section

* Should be "Caesar."

** Should be "Revenue District Officer."

1 Filed on 02 March 2022, Division Docket, Volume I, pp. 7-55.

2 **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of

3(a)(1)[3], Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), assailing respondent Commissioner of Internal Revenue's (**respondent CIR**'s) Decision dated 19 January 2022[4] (**CIR Decision**), ordering the issuance of a Warrant of Distraint and/or Levy[5] (**WDL**) dated 18 June 2020 against petitioner to enforce payment of **₱302,149,900.41.** The amount allegedly represents petitioner's supposed deficiency income tax, value-added tax (**VAT**), expanded withholding tax (**EWT**) and compromise penalty for the calendar year (**CY**) ended 31 December 2009 (**2009**), broken down as follows:[6]

Tax Type/Fee	Basic	Interest	Compromise Penalty	Total
Income Tax	₱136,281,498.00	₱77,363,085.99	-	₱213,644,583.99
VAT	54,279,688.30	33,192,401.17	-	87,472,089.47
EWT	623,522.26	384,704.69	-	1,008,226.95
Compromise Penalty	-	-	₱25,000.00	25,000.00
Total				**₱302,149,900.41**

PARTIES OF THE CASE

Petitioner is a corporation duly organized under the laws of the Philippines with office address at No. 888 Luis Street corner Eusebio Avenue, San Miguel, Pasig City, and is primarily engaged in the business of sales and distribution of fast-moving consumer goods in Metro Manila.[7] It is registered with the Bureau of Internal Revenue (**BIR**) under Taxpayer's Identification Number (**TIN**) 218-581-435-000.[8]

Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

3 **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

4 Exhibit "P-1", Division Docket, Volume I, pp. 56-61.

5 Exhibit "R-15", id., Volume II, p. 837.

6 Exhibit "P-13", BIR Records, p. 607.

7 See Paragraph 1, I. Joint Stipulation of Facts, Joint Stipulation of Facts and Issue (JSFI), Division Docket, Volume III, p. 1060; BIR Records, p. 282.

8 Exhibit "R-2", id., Division Docket, Volume II, p. 843.

Respondent Caesar R. Dulay was the previous CIR of the BIR, the government agency charged with, among others, the responsibility of collecting all national internal revenue taxes.[9] He is represented by Revenue Region (**RevReg**) No. 7B-East National Capital Region (**NCR**) Legal Division with office at 25th Floor, The Podium West Tower ADB Avenue, Ortigas Centre, Mandaluyong City, where he may be served with summons and other court processes.[10]

On the other hand, respondent Deogracias T. Villar, Jr. (**Villar**) is the duly appointed Revenue District Officer (**RDOr**) of Revenue District Office (**RDO**) No. 43-B, Pasig City, and may be served with orders, decisions and other court processes at RDO No. 43-B, 2nd and 3rd floors, Rudgen Building, Shaw Blvd., Brgy. San Antonio, Pasig City.[11]

FACTS OF THE CASE

On 29 June 2010, petitioner received Letter of Authority (**LOA**) No. 200900030594[12], dated 24 June 2010, authorizing Revenue Officer (**RO**) Alan O. Bueno (**Bueno**) and Group Supervisor (**GS**) Maria Cecilia M. Masangya (**Masangya**) of RDO No. 43B, West Pasig – RevReg No. 7 – Quezon City to examine/audit petitioner's internal revenue taxes for the period 01 January 2009 to 31 December 2009.[13] Pursuant to Revenue Memorandum Order (**RMO**) No. 69-2010[14], the previously issued LA was converted to an electronic LOA (**eLA**) with serial number eLA201000025335 on 11 November 2010 and which petitioner received on 15 November 2012.[15] The eLA authorizes the same RO and GS to conduct the examination of petitioner's books of accounts and other accounting records.

In connection with the LOA and eLA, petitioner received the "First Request for Presentation of Records" dated 28 June 2010[16] (**First Request**) on 29 June 2010. However, due to petitioner's failure to

9 SECTION 2. *Powers and Duties of the Bureau of Internal Revenue.*
10 See Par. 2, I. JSFI, supra at note 7.
11 Par. 10, II. Parties, Petition for Review, supra at note 1.
12 Exhibit "R-2", supra at note 8.
13 Id.
14 Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment.
15 Exhibit "R-2-A", Division Docket, Volume II, p. 844.
16 Exhibit "R-2-B", id., pp. 845-846.

comply, a "Second Request for Presentation of Records" dated 15 July 2010[17] (**Second Request**) was issued and sent to petitioner *via* registered mail on 20 July 2010. However, despite these repeated requests, petitioner failed to submit its complete records. Consequently, on 13 August 2010, Officer-In-Charge (**OIC**)-RDOr Luis A. Alberto, Jr. (**Alberto**) issued a "Final Notice."[18]

On 07 March 2012, petitioner received a Notice of Informal Conference (**NIC**)[19] dated 24 February 2012, requiring petitioner to present in writing its objection/s against the initial report of OIC-RDOr Alberto and submit relevant documents, within fifteen (15) days from the receipt thereof.

In response to the NIC, petitioner filed a Letter dated 21 March 2012, which OIC-RDOr Alberto received on even date. It also submitted additional documents with explanation of the variances and exceptions noted in the initial report for income tax and EWT.[20] On 23 March 2012, petitioner submitted another reconciliation and additional documents for the deficiency VAT assessment.[21]

On 05 June 2012, OIC-RDOr Alberto issued an Amended Post Reporting Notice[22] reiterating the uncontroverted issues in the NIC. Petitioner requested for extension to respond on the Amended Post Reporting Notice, which OIC-RDOr Alberto denied on 05 July 2012.[23]

On 27 December 2012, respondent CIR, through OIC-Regional Director (**RD**) Jonas DP. Amora (**Amora**) issued a Preliminary Assessment Notice (**PAN**), which petitioner received on 08 January 2013.[24]

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17 Exhibit "R-3", id., p. 847.
18 Exhibit "R-4", id., p. 848.
19 Exhibit "R-5", Id., p. 849.
20 Exhibit "P-8", id., Volume I, pp. 84-89.
21 Exhibit "P-9", id., pp. 140-143.
22 Par. 26, Petition for Review, supra at note 1; Exhibit "R-6", id., Volume II, p. 850.
23 Exhibit "R-7", id., Volume II, p. 851.
24 Pars. 27 and 28, Petition for Review, supra at note 1; Exhibits "P-10" and "P-11", Division Docket, Volume I, pp. 146-155.

On 09 January 2013, petitioner filed its reply to the PAN which respondent CIR received on 16 January 2013.[25] Subsequently, on 17 January 2013, petitioner also received the Formal Letter of Demand (**FLD**)/Final Assessment Notice (**FAN**) dated 15 January 2013[26], with the following details:

Tax Type/Fee	Basic	Interest	Compromise Penalty	Total
Income Tax	₱136,281,498.00	₱77,363,085.99	-	₱213,644,583.99
VAT	54,279,688.30	33,192,401.17	-	87,472,089.47
EWT	623,522.26	384,704.69	-	1,008,226.95
Compromise Penalty	-	-	₱25,000.00	25,000.00
Total				**₱302,149,900.41**

In response to the FLD/FAN, petitioner filed its protest with annexes on 18 January 2013, requesting for reinvestigation.[27] Then, on 23 April 2013, OIC-RDOr Alberto allegedly informed petitioner to submit relevant supporting documents within sixty (60) days from the filing of the protest; otherwise, the assessment shall become final.[28]

On 13 June 2013, petitioner transmitted additional documents in support of its protest.[29] However, RD Romulo Aguila Jr. (**Aguila**), in a Letter dated 10 January 2020[30] (**RD Aguila's Letter**), informed petitioner that its request for reinvestigation was being denied on the ground that the protest allegedly failed to state the facts and/or law on which petitioner's request for reinvestigation was based. Petitioner received RD Aguila's Letter on 06 March 2020.[31]

Subsequently, on 18 June 2020, respondent CIR issued a WDL.[32] Dismayed, petitioner filed an administrative appeal before respondent CIR on 20 July 2020[33], invoking the following grounds: (1) petitioner's protest was not a *pro-forma* protest; (2) RD Aguila's Letter did not

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25 Exhibit "P-11", id.
26 Exhibit "R-9", id., Volume II, pp. 856-864; BIR Records, pp. 401-402.
27 Exhibit "P-12", id., Volume I, pp. 156-161; BIR Records, pp. 412-417.
28 Exhibit "R-10", id., Volume II, p. 865.
29 BIR Records, p. 472.
30 Exhibit "R-11", Division Docket, Volume II, p. 866.
31 Par. 35, Petition for Review, supra at note 1; Exhibit "P-13", BIR Records, p. 607.
32 Supra at note 5.
33 Exhibit "P-14", Division Docket, Volume I, pp. 185-192.

constitute the final decision appealable before respondent CIR; and (3) respondent CIR's right to collect had already prescribed.

On 31 January 2022[34], petitioner received respondent CIR's Decision dated 19 January 2022[35] denying petitioner's appeal and holding that RD Aguila's Letter constituted the final decision appealable either before respondent CIR or the Court of Tax Appeals (**CTA**). Respondent CIR further found that petitioner's subsequent administrative appeal (filed only on 20 July 2020 or 136 days from petitioner's receipt of the said letter) was well beyond the reglementary period of thirty (30) days. Consequently, respondent CIR ratiocinated that the deficiency tax assessments in question had attained finality and had become executory and demandable, by reason of petitioner's failure to interpose either an administrative or judicial appeal within the prescribed 30-day period from the receipt thereof.

PROCEEDINGS BEFORE THE COURT

Unsuccessful in its bid for reconsideration before respondent CIR, petitioner filed the instant Petition for Review[36] asking this Court to reverse respondent CIR's Decision.

In support of the petition, petitioner asserted that respondent CIR erred when he or she held that its protest letter was a *pro forma* protest, rendering thus the assessments undisputed. It avouched that its protest letter complied with all the requirements which makes a valid protest. It also contended that RD Aguila's Letter is not the final decision contemplated by Revenue Regulations (**RR**) No. 12-99[37], as amended by RR No. 18-13[38], that is administratively or judicially appealable.

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34 Par. 3, Petition for Review, supra at note 1; Par. 4, Supplemental JA of Cecilia O. Toledo, id., Volume II, p. 746.

35 Supra at note 4.

36 Supra at note 1.

37 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.

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

Petitioner added that even if the assessments had already attained finality, respondent CIR's right to collect had already prescribed. Going into the assessment items, petitioner claimed that it is not liable for the alleged deficiency taxes as provided under the FLD/FAN.

Initially, the case was raffled to the Court's Second Division. On 07 March 2022, summons was issued to respondents, directing them to file an Answer within 30 days from the date of receipt thereof, *i.e.*, 10 March 2022.[39]

On 07 April 2022, respondent CIR filed *via* LBC a "Motion for Extension of Time to File Answer".[40] In its Order dated 11 April 2022[41], the Court granted the said motion and thereby extended respondent CIR's deadline to file an Answer until 09 May 2022.

On 21 April 2022, petitioner filed an "Urgent Motion to Lift Warrant of Distraint & Levy and Garnishment and Urgent Motion for the Issuance of an Order to Suspend the Collection of Tax (with prayer for Issuance of Writ of Injunction)"[42] (**Motion to Suspend**). On 24 May 2022, respondents were given five (5) days from the date of receipt thereof to file their comment or opposition to the Motion to Suspend.[43]

Respondent CIR, in his or her "Comment/Opposition (Re: Petitioner's [Motion to Suspend])"[44] (**Comment**) dated 10 June 2022, asseverated that petitioner failed to establish that the government or its interests may be jeopardized if respondent CIR does his or her duty of collecting petitioner's tax liabilities and that there is extreme urgency necessitating the issuance of the suspension order.

During the hearing of petitioner's Motion to Suspend, petitioner presented Toledo who testified *via* her Supplemental Judicial Affidavit dated 20 April 2022.[45]

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39 Division Docket, Volume I, p. 194.
40 Id., pp. 513-515.
41 Id., Volume II, p. 516.
42 Id., pp. 693-713.
43 See Resolution dated 24 May 2022, id., p. 798.
44 Id., p. 801-810.
45 See Order dated 08 August 2022, id., pp. 935-936.

On the witness stand, Toledo, petitioner's Chief Operating Officer and Corporate Treasurer, declared that: (1) she deals or transacts with the BIR for and on behalf of petitioner; (2) petitioner received a copy of the Warrant of Garnishment (**WOG**) from one of its banks on 29 March 2022; (3) petitioner, on 30 March 2022 and 04 April 2022, sent letters to the BIR requesting for the suspension of the collection of its alleged tax liability due to the irreparable injury and detrimental effect it would suffer if the WOG were to be enforced; and (4) petitioner would suffer irreparable injury since the bank account subject of the WOG is being used as its payroll account and payment of taxes, mandatory contributions and suppliers, which may expose petitioner's officers to criminal liability, among those is the violation of Batas Pambansa (**BP**) Blg. 22.[46]

In her cross-examination, Toledo mentioned that petitioner could not afford to post a bond. During Toledo's redirect examination, she further clarified that she received the FLD/FAN on 17 January 2013.[47]

No re-cross examination followed.[48]

The Court directed petitioner to file its Formal Offer of Evidence (**FOE**) relative to its Motion to Suspend.[49] In compliance therewith, petitioner filed its "Petitioner's [FOE]"[50] on 15 September 2022, while respondent CIR filed his or her "Comment (Re: Petitioner's [FOE])"[51] *via* registered mail on 21 September 2022. Acting thereon, the Court admitted petitioner's FOE, except: (**a**) Exhibits "P-5", "P-6" and "P-7"[52], for failure to submit the duly marked exhibits; (**b**) Exhibit

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46 See Supplemental Judicial Affidavit of Cecilia O. Toledo dated 20 April 2022, Exhibit "P-36", id., pp. 743-755.

47 TSN dated 08 August 2022, pp. 11-12.

48 Id., p. 12.

49 See Order dated 08 August 2022, supra at note 45.

50 Division Docket, Volume III, pp. 961-983.

51 Id., pp. 1041-1042.

52

Exhibit No.	Description
"P-5"	Electronic Letter of Authority No. eLA- 43B-201000025335 dated 11 November 2010.
"P-6"	Letter from BIR RDO 43-B dated 23 June 2010.
"P-7"	Notice of Informal Conference dated 24 February 2012.

"P-9-A"[53], for failure to have the exhibit identified and for failure of the exhibit formally offered to correspond with the document marked; (**c**) Exhibits "P-12-A" to "P-12-F"[54], for failure to have the exhibits identified; (**d**) Exhibits "P-26", "P-27", "P-28", "P-29", "P-30", "P-31-A", "P-31-B", "P-31-C", "P-32-A", "P-33" and "P-34"[55], for failure to present the originals for comparison; and (**e**) Exhibits "P-31" and "P-32"[56], for failure of the exhibits formally offered and identified to correspond with the documents marked and for failure to present the originals for comparison.[57]

In the Resolution dated 16 March 2023, the Court granted petitioner's Motion to Suspend and dispensed with the bond requirement on the ground that respondent CIR failed to refute petitioner's protestation that it did not receive the subject WOGs.[58]

53

Exhibit No.	Description
"P-9-A"	4th Quarter 2009 VAT Return.

54

Exhibit No.	Description
"P-12-A"	Credit note issued to [p]etitioner dated 31 October 2009.
"P-12-B"	Details of [p]ayment made by [p]etitioner's insurance company dated March 2010.
"P-12-C"	Details of [p]ayment made by [p]etitioner's insurance company dated 17 February 2010.
"P-12-D"	Details of [p]ayment made by [p]etitioner's insurance company dated 31 March 2010
"P-12-E"	EWT of ENL
"P-12-F"	EWT of Lo Soleil

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Exhibit No.	Description
"P-26"	Photocopy of BIR 031122-141147-03434288.
"P-27"	Photocopy of BIR 052421-114553-02662225.
"P-28"	Photocopy of BIR 031422-171805-03443048.
"P-29"	Photocopy of [p]hotograph of the eight (8) BPI checks.
"P-30"	Photocopy of PHI 030922-161834-106593.
"P-31-A"	Photocopy of PGBG 031022-135327-02237790.
"P-31-B"	Photocopy of PGBG 031022-133941-02237461.
"P-31-C"	Photocopy of PGBG 031022-134046-02237494.
"P-32-A"	Photocopy of PGBG 031022-133443-02237377.
"P-33"	Photocopy of Promissory Notes dated 17 March 2022.
"P-34"	Photocopy of Promissory Note dated 25 March 2022.

56

Exhibit No.	Description
"P-31"	Photocopy of PGBG 031002-134150-02237527.
"P-32"	Photocopy of PGBG 031822-141219-02238067.

57 See Resolution dated 20 October 2022, Division Docket, Volume III, pp. 1045-1047.
58 Id., pp. 1095-1103.

Reverting to the main case, respondent CIR's Answer was eventually filed on 10 May 2022.[59] In his or her Answer, respondent CIR interposed the following special and affirmative defenses: (1) the Court has no jurisdiction over the case since the subject assessments had become final, executory and demandable following petitioner's failure to file a valid protest and for the belated filing of the administrative appeal before respondent CIR; (2) RD Aguila's Letter constitutes the final decision administratively appealable before respondent CIR or judicially appealable before this Court; (3) petitioner is liable for deficiency income tax, VAT, EWT and administrative penalties; and (4) petitioner failed to overturn the presumption of correctness and validity of the assessments.

Thereafter, the Pre-Trial Conference was set on 14 September 2022.[60] Petitioner filed its Pre-Trial Brief[61] on 04 August 2022. Since respondent CIR's Pre-Trial Brief was yet to be filed as of 14 September 2022, the Pre-Trial Conference was reset to 03 November 2022.[62] On even date, respondent CIR filed his or her Pre-Trial Brief.[63]

During the Pre-Trial Conference, the parties were granted a period of 30 days to file the Joint Stipulation of Facts and Issues (**JSFI**), or until 05 December 2022.[64] Accordingly, on 18 November 2022, they filed their JSFI[65], which the Court approved on 05 December 2022.[66] The pre-trial proceedings were then terminated accordingly.[67] Consequently, the Pre-Trial Order[68] was issued on 30 March 2023.

In the Resolution issued on 29 May 2023, the present case was transferred to the Court's First Division pursuant to Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court) dated 23 May 2023.[69]

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59 Id., Volume II, pp. 786-796.
60 Notice of Pre-Trial Conference dated 09 June 2022, id., pp. 799-800.
61 Id., pp. 871-932.
62 See Order dated 14 September 2022, id., Volume III, pp. 950-951.
63 Id., pp. 957-983.
64 See Order dated 03 November 2022, id., pp. 1049-1051.
65 Id., pp. 1060-1091.
66 See Resolution dated 05 December 2022, id., p. 1093.
67 Id.
68 Id., pp. 1105-1111.
69 Id., p. 1113.

In the trial that ensued subsequently, petitioner again presented Toledo. Petitioner manifested that it would no longer present Wenie Juliano-Erquiza[70] (**Erquiza**), Maria Joy Toledo and Divina Gracia Sumalinog[71] (**Sumalinog**), making Toledo as petitioner's lone witness.

On the witness stand, Toledo declared that: (**1**) petitioner received the eLA dated 11 November 2010 authorizing the examination of its books of accounts for all internal revenue taxes covering CY 2009; (2) on 08 January 2013, petitioner received a copy of the PAN dated 27 December 2012 where it was found that petitioner was allegedly liable for deficiency income tax, VAT, EWT, and CP totaling ₱302,149,900.41; (**3**) petitioner timely filed its reply to the PAN on 09 January 2013; (**4**) petitioner received a copy of the FLD/FAN dated 15 January 2013 echoing the deficiency assessments of the PAN on 17 January 2013; (**5**) petitioner timely filed its protest and requested for reinvestigation on the FLD/FAN; (**6**) on 06 March 2020, petitioner received a letter from the BIR dated 10 January 2020, several years after the issuance of the FAN/FLD dated 15 January 2013 where the request for reinvestigation was denied; (**7**) petitioner received a WDL dated 18 June 2020 on 20 July 2020; (**8**) petitioner timely filed an appeal before respondent CIR on 20 July 2020; (**9**) on 19 January 2022, respondent CIR affirmed the issuance of WDL to enforce the payment of petitioner's alleged deficiency taxes in the aggregate amount of ₱302,149,900.41; (**10**) as to the deficiency income tax assessment, significant amount arose from purchase returns and inventory adjustments due to Typhoon Ondoy that were supported by credit notes, insurance claims, and accounting records and qualify as casualty losses deductible under Section 34(D)[72] of the National Internal Revenue Code (**NIRC**) of 1997, as amended; (**11**) regarding the deficiency VAT assessment, the sale of fixed assets were not subject to VAT; and (**12**) as to the deficiency EWT assessment, the assessment encompasses transactions that are exempt from EWT, *e.g.*, professional fees paid to general professional partnerships (**GPPs**) and reimbursements.[73]

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70 See Minutes of Hearing dated 09 August 2023, id., pp. 1116-1116-B.

71 See Minutes of Hearing dated 07 September 2023, id., pp. 1126-1127.

72 SEC. 34. *Deductions from Gross Income.* – ...
(D) *Losses.* -

73 See Judicial Affidavit of Cecilia O. Toledo dated 01 April 2022, Exhibit "P-16", Division Docket, Volume I, pp. 356-373.

During her cross-examination, Toledo clarified that in her response to Question No. 15[74] of her Judicial Affidavit (**JA**) dated 01 April 2022, she referred to the return of stocks (liquor), valued at ₱240,181,279.17, to its only supplier, owing to the damage sustained during Typhoon Ondoy. She explained that this return was duly supported by a credit memo and reflected in the 2009 VAT Return and BIR Form No. 1702. Furthermore, in relation to her answer to Question No. 33[75], Toledo testified, as stated in the protest letter under "Purchases from Local Suppliers of Goods", paragraph B, petitioner had reported with the BIR the casualty losses it suffered arising from the typhoon. However, she clarified that said losses were subsequently indemnified by petitioner's insurance provider. The proceeds of the insurance checks were offset against the value of the damaged inventory. Consequently, petitioner refrained from declaring the loss anew, as it had already been recovered.[76]

No redirect examination followed.[77]

Pursuant to the Court's Order dated 07 September 2023[78], petitioner filed its FOE[79] on 26 September 2023. Pending resolution on petitioner's FOE, with respondent's "Comment (Re: Petitioner's [FOE])"[80] filed on 06 October 2023, respondent CIR's presentation of evidence, originally set on 22 November 2023, was reset to 06 February 2024.[81]

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74 15. Q: What was MyServ's response to the Notice of Informal Conference?
A: MyServ responded to the allegations as contained in the Notice of Informal Conference. ...
...
While there was a purchase return amounting to Two Hundred Forty Million One Hundred Eighty-One Thousand Two Hundred Seventy-Nine Pesos and 17/100 (Php 240,181,279.17) due to damage caused by Typhoon Ondoy. This was supported by 2009 VAT return and BIR Form 1702.

75 33. Q: How did you [know] that the signature is hers?
...
Manifestation: Your Honor, may we request that the Protest dated 18 January 2013 signed by Ms. Wenie J. Erguiza be marked as Exhibit "P-12". An original copy of the said exhibit is attached in the Petition for Review dated 02 March 2022.

76 TSN dated 09 August 2023, pp. 13-16.

77 Id., p. 16.

78 Division Docket, Volume III, pp. 1128-1129.

79 Id., pp. 1135-1158.

80 Id., pp. 1161.

81 See Order dated 17 November 2023, id., p. 1163.

On 12 January 2024, the Court issued a Resolution admitting all petitioner's evidence, except Exhibit "P-9-A"[82], for failure to identify properly.[83]

On 06 February 2024, respondent CIR offered the testimonies of his or her witnesses: GS Masangya and RO Eddie Mar I. Dela Torre (**Dela Torre**), who all testified *via* their judicial affidavits.[84]

On the witness stand, GS Masangya declared that: (1) the LOA, PAN, FLD/FAN was properly served on petitioner; (2) she conducted the examination of petitioner's books of accounts and other accounting records for CY 2009 pursuant to an LOA and eLA that were properly served on petitioner; (3) on 15 January 2013, RD Amora issued the FLD/FAN; (4) in relation to petitioner's request for reinvestigation, a letter was sent to petitioner on 23 April 2013 asking petitioner to submit all relevant supporting documents within sixty (60) days from the filing of the protest; and (5) on 10 January 2020, RD Aguila informed petitioner that, for failing to state the factual and legal bases of its request for reinvestigation, petitioner was deemed to have effectively failed to file a valid protest, thereby rendering the deficiency assessments final, executory and demandable.[85]

In her cross-examination, GS Masangya clarified that RD Aguila's Letter dated 10 January 2020[86] effectively denied petitioner's request for reinvestigation. She also mentioned that she could no longer recall whether a Final Decision on a Disputed Assessment (**FDDA**) was issued.[87]

No redirect examination followed.[88]

82

Exhibit No.	Description
"P-9-A"	4th Quarter 2008 VAT Return.

83 See Resolution dated 12 January 2024, Division Docket, Volume III, pp. 1168-1170.
84 See Order dated 06 February 2024, id., pp. 1172-1173.
85 See Judicial Affidavit of Maria Cecilia Masangya dated 05 July 2022, Exhibit "R-12", id., Volume II, pp. 823-828.
86 Supra at note 30.
87 TSN dated 06 February 2024, pp. 10-13.
88 Id., p. 13.

Upon the completion of GS Masangya's testimony, petitioner presented RO Dela Torre who testified that: (1) he was assigned to collect petitioner's deficiency taxes for CY 2009; (2) he served the WDL at petitioner's registered address on 18 June 2020; and (3) he served the Warrants of Garnishment (**WGs**) on petitioner's banks.[89]

During his cross-examination, RO Dela Torre confirmed that the FLD/FAN was served on petitioner on 17 January 2013. However, the WDL was issued and served only on 18 June 2020, *i.e.*, more than seven (7) years from the service of the FLD/FAN.[90]

No redirect examination followed.[91]

On 26 February 2024, respondent CIR filed his or her FOE[92] consisting of Exhibits "R-1" to "R-18", inclusive of sub-markings. On 07 March 2024, petitioner filed "Petitioner's Comment/Opposition to the [FOE] with Manifestation/Explanation."[93]

In the Resolution dated 06 May 2024[94], the Court admitted respondent's exhibits, except Exhibit "R-18-A"[95], for not being found in the records and granted the parties a period of 30 days within which to file their respective memoranda. Petitioner filed its Memorandum[96] on 19 June 2024. On the other hand, respondent CIR failed to file his or her memorandum within the 30-day period.[97] On 22 July 2024, the present case was submitted for decision.[98]

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89 See Judicial Affidavit of Eddie Mar I. Dela Torre dated 05 July 2022, Exhibit "R-13", Division Docket, Volume II, pp. 832-834.

90 TSN dated 06 February 2024, pp. 23-26.

91 Id., p. 26.

92 Division Docket, Volume III, pp. 1176-1180.

93 Id., pp. 1182-1187.

94 Id., pp. 1192-1194.

95

Exhibit No.	Description
"R-18-A"	Signature of Ms. Renne Louise Aspe.

96 Division Docket, Volume III, pp. 1195-1231.

97 See Records Verification dated 01 July 2024, id., p. 1233.

98 See Minute Resolution dated 22 July 2024, id., p. 1234.

ISSUES

As can be gleaned from the parties' JSFI[99], the issues for this Court's resolution are –

I.
WHETHER THE COURT OF TAX APPEALS HAS JURISDICTION OVER THE CASE.

II.
WHETHER PETITIONER MYSERV INTERNATIONAL, INC. IS LIABLE FOR DEFICIENCY INCOME TAX, VALUE-ADDED TAX (VAT), EXPANDED WITHHOLDING TAX (EWT) AND COMPROMISE PENALTY FOR CALENDAR YEAR (CY) 2009.

ARGUMENTS

In support of the instant petition, petitioner reiterates that: (1) RD Aguila's Letter did not constitute the final decision appealable before respondent CIR; (2) petitioner's protest was not a *pro-forma* protest; and (3) respondent CIR's right to collect had already prescribed. At the heart of its arguments lies the contention that the assessment had not attained finality since the BIR failed to issue a valid FDDA and RD Aguila's Letter, despite the indication that the same is the final decision of respondent CIR, was invalid for the said letter does not categorically state the facts and the law upon which the alleged final decision is made pursuant to RR No. 12-99[100], as amended by RR No. 18-13.[101] It merely recites the disallowance of the protest without any factual and/or legal explanation and thus constitutes a *pro forma* denial. Such is further laid bare by the testimony of GS Masangya, who could not recall the issuance of a proper FDDA.

Petitioner also invokes the statute of limitations to assert that the government's right to collect the alleged deficiency taxes has long prescribed. Anchoring its claim on Sections 203[102] and 222[103] of the NIRC

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[99] See supra at note 65.
[100] Supra at note 37.
[101] Supra at note 38.
[102] SEC. 203. *Period of Limitation Upon Assessment and Collection.*
[103] SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*

of 1997, as amended, petitioner contends that the BIR only had three (3) years from the issuance of FLD/FAN on 15 January 2013 to lawfully enforce collection, yet the BIR only responded to petitioner's request for reinvestigation on 10 January 2020 *i.e.,* nearly seven (7) years later. Petitioner alleges further that the intervening years saw no valid waiver of the prescriptive period, nor a written grant of petitioner's request for reinvestigation, that may suspend the running of the statute of limitations.

Substantively, petitioner asserts that it is not liable for its supposed deficiency taxes as provided for under the FLD/FAN. On respondent CIR's findings of deficiency income tax, it argues that a significant amount arose from purchase returns and inventory adjustments due to Typhoon Ondoy, supported by credit notes, insurance claims, and accounting records. These losses, according to petitioner, qualify as casualty losses deductible under Section 34(D)[104] of the NIRC of 1997, as amended. Similarly, it disputes the deficiency VAT assessment by asserting that certain transactions, including sale of fixed assets, were not subject to VAT, and that amended returns had already corrected earlier filing discrepancies. As for EWT, petitioner insists that the assessment encompasses transactions that are exempt from EWT. These include professional fees paid to GPPs and reimbursements.

Respondents counter petitioner's asseverations with a direct attack on the Court's jurisdiction over the case. According to respondents, the subject assessments had become final, executory and demandable after petitioner failed to file a valid protest and for its belated filing of the administrative appeal before respondent CIR. Respondents further assert that RD Aguila's Letter is the final decision administratively appealable before respondent CIR or judicially appealable before this Court.

Respondents maintain that petitioner is liable for deficiency income tax, VAT, EWT and administrative penalties since petitioner failed to overturn the presumption of correctness and validity of the assessments. Finally, respondents underscore that all presumptions are in favor of the correctness of tax assessments and failure on the part of petitioner to satisfactorily overcome the same would mean that the

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104 Supra at note 72.

presumption still stands. Consequently, the Court would be bound to uphold the assessments.

RULING OF THE COURT

The Court shall first discuss the twin issues of the validity of the protest letter and the belated filing of the administrative appeal before respondent CIR as their resolution is crucial in determining whether the subject deficiency assessments are still disputed, thereby falling within the special jurisdiction of this Court.

PETITIONER FILED A VALID PROTEST

At the outset, it should be emphasized that the CTA, being a court of special jurisdiction, can only take cognizance of matters which are clearly within its jurisdiction.[105] Section 7 of Republic Act (**RA**) No. 1125[106], as amended by RA 9282[107], provides:

> ...
> **Sec. 7.** *Jurisdiction.* — The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving <u>disputed</u> assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue **or other laws administered by the Bureau of Internal Revenue**;
>
> 2. **Inaction by the Commissioner of Internal Revenue in cases involving <u>disputed</u> assessments**, refunds of internal revenue taxes, fees or other charges, penalties in

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[105] *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, 25 March 2019 citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.

[106] AN ACT CREATING THE COURT OF TAX APPEALS.

[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 OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> relations thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**[.][108]

...

Respondent CIR insists that petitioner failed to file a valid protest against the FLD/FAN as it did not substantially comply with the requirements prescribed under RR No. 12-99[109], as amended by RR No. 18-13[110] since petitioner failed to specify the applicable law, rules and regulations and jurisprudence on which its protest is based.

Respondent CIR's postulation is devoid of legal mooring.

Section 228 of the NIRC of 1997, as amended, states:

...

> 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: ...
>
> ...
>
> **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.**
>
> 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.
>
> **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**

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108 Emphasis supplied and italics in the original text.
109 Supra at note 37.
110 Supra at note 38.

> **manner as may be prescribed by implementing rules and regulations**[.][111]
>
> ...

To implement the foregoing remedies afforded by the law, particularly the form and manner of filing of requests for reconsideration or reinvestigation, the BIR has issued RR No. 12-99[112], as amended by RR No. 18-13[113], which provides:

> ...
>
> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> ...
>
> 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:
>
> > (i) *Request for reconsideration* — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
> >
> > (ii) *Request for reinvestigation* — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> The taxpayer **shall** state in his protest **(i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.***
>
> If there are several issues involved in the FLD/FAN but the taxpayer only disputes or protests against the validity of some of the issues raised, the assessment attributable to the undisputed issue or issues

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111 Emphasis supplied and italics in the original text.
112 Supra at note 37.
113 Supra at note 38.

> shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax or taxes, inclusive of the applicable surcharge and/or interest.
>
> If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the assessment attributable thereto shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto and a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest.[114]
>
> ...

Applying the foregoing rules, the Supreme Court, in the case of *Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division, et al.*[115], emphatically underscored the paramount importance of a valid protest in establishing this Court's jurisdiction, to wit:

> ...
>
> Petitioner argues that the Court of Tax Appeals had no jurisdiction over respondent's Petition for Review because the assessment had attained finality before then.
>
> Section 228 of the National Internal Revenue Code states the procedure in protesting an assessment:
>
> ...
>
> Upon receipt of the audit results/assessment notices for Letter of Authority No. 116-2013-00000017, respondent, through Lee, replied with an April 29, 2015 letter which reads:
>
>> This is to submit copies of our protest to the Audit Result/Assessment Notices for Audit Result/Assessment Notices for Letter of Authority LOA-116-2013-00000017 for Citysuper, Incorporated TIN No.: 205-412-358 for the taxable year 2011.

114 Emphasis supplied and italics in the original text.
115 G.R. No. 239464, 10 May 2021; citations omitted, emphasis supplied and italics in the original text.

> Please be informed that we are in the process of compiling the necessary documentation to support our protest to said assessments, and will be requiring additional time to accomplish this.

Petitioner did not consider the April 29, 2015 letter as a valid protest, as it said in its July 13, 2015 response to respondent:

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

In particular, Arriola, the revenue officer, said that the April 29, 2015 letter failed to state the protest's nature, the date of the assessment notice, and the applicable law, rules and regulations, or jurisprudence on which the protest was based. Thus, to petitioner, respondent's failure to properly protest the assessment meant that it had attained finality.

Section 3.1.14 of Revenue Regulations No. 18-2013, amending Revenue Regulations No. 12-99, states what constitutes a valid protest:

> 3.1.4. *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> > (i) Request for reconsideration — refers to a plea of reevaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
> >
> > (ii) Request for reinvestigation — refers to a plea of reevaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> ***The taxpayer shall state in his protest (i) the nature of the protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.***
>
> ...
>
> **For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final.** The term "relevant supporting documents" refer to those documents necessary to support the legal and factual bases in disputing a - tax assessment as determined by the taxpayer. The sixty (60)[-]day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

> If the taxpayer failed to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

Nowhere in respondent's April 29, 2015 letter did it state the assessment notice's date and the applicable law, rules and regulations, or jurisprudence on which its protest was based. Attaching copies of the audit results/assessment notices is not stating the date of the assessment notice, any more than attaching copies of assailed judgments to a petition without stating them in the petition itself complies with the rule on statements of material dates.

While respondent's declaration that it was "in the process of compiling the necessary documentation to support [its] protest to said assessments" could imply that it was requesting a reinvestigation, its failure to explicitly state this means that petitioner had no way of knowing whether it should monitor the 60-day period stated in Revenue Regulations No. 18-2013.

Section 228 of the National Internal Revenue Code is clear. The administrative protest must be filed not only within the stated period, but also "in such form and manner as may be prescribed by implementing rules and regulations." Respondent's April 29, 2015 letter did not comply with the three requirements of Revenue Regulations No. 18-2013.

...

The foregoing judicial precedent clearly provides that to validly protest against a FLD/FAN, the following must be stated in the said protest: (*i*) the nature of the protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation; (*ii*) date of the assessment notice; and (*iii*) the applicable law, rules and regulations, or jurisprudence on which his protest is based. Failure to comply with these mandatory prerequisites renders the protest void and devoid of legal force and effect.

Measured against the foregoing legal yardstick, the Court could only rule that petitioner filed a **valid protest**. A perspicacious review of petitioner's protest letter[116] shows that: (1) it was a request for

[116] Supra at note 27.

reinvestigation; (2) it was a protest against the FLD/FAN dated 15 January 2013 which petitioner received on 17 January 2013; (3) it expressly mentioned Revenue Memorandum Order (**RMO**) No. 31-09[117] to argue that its casualty losses were duly accounted for in accordance with the prevailing rules and regulations; (4) it included reconciliation schedules to address the discrepancies noted in the FLD/FAN; (5) it contained an itemized statement of findings with which petitioner takes exception and squarely contests; and (6) it was timely filed on 18 January 2013[118], within the 30-day reglementary period from petitioner's receipt of the FLD/FAN, *i.e.*, 17 January 2013.[119]

PETITIONER TIMELY FILED AN ADMINISTRATIVE APPEAL BEFORE RESPONDENT COMMISSIONER OF INTERNAL REVENUE

Petitioner also contends that RD Aguila's Letter, despite the indication that the same is RD Aguila's final decision, was invalid for the said letter does not categorically state the facts and the law upon which the alleged final decision is made pursuant to RR No. 12-99[120], as amended by RR No. 18-13.[121] Consequently, petitioner asserts that without a validly issued FDDA, the 30-day reglementary period to administratively appeal before respondent CIR would have to be reckoned from petitioner's receipt of the WDL.

On the other hand, respondent CIR counters that RD Aguila's Letter constitutes the final decision, *i.e.*, administratively appealable before respondent CIR or judicially appealable before this Court, inasmuch as it bears the tenor of finality.

Petitioner's arguments are well-taken.

Section 228[122] of the NIRC of 1997, as amended, requires that a taxpayer must be informed in writing of the law and the facts on which

117 Policies and Guidelines for the Reporting of Casualty Losses.
118 Supra at note 27.
119 Supra at note 26.
120 Supra at note 37.
121 Supra at note 38.
122 Supra at pp. 18-19.

the assessment is made; otherwise, the assessment shall be void. In implementing the said Section, RR No. 12-99[123], as amended, reiterates the requirement that a taxpayer must be informed in writing of the law and the facts on which his tax liability was based, to wit:

> ...
> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
> ...
>
> 3.1.5 *Final Decision on a Disputed Assessment (FDDA).* — The decision of the Commissioner or his duly authorized representative shall state the (i) **facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based**, **<u>otherwise, the decision shall be void</u>** (see illustration in ANNEX "C" hereof), and **(ii) that the same is his final decision.**[124]
> ...

From the foregoing disquisition, it is evident that in order to have a valid FDDA, one must contain the facts and applicable law, rules and regulations and that the same is the final decision.

RD Aguila's Letter, which respondent CIR persistently characterizes as the FDDA (and "final decision" subject to appeal), is reproduced *verbatim* as follows[125]:

> ...
> Sir/Madam:
>
> This has reference to your protest letter requesting for reinvestigation on our assessment with the following details:

Assessment No.	Tax Type	Taxable Year	Basic	Surcharge	Interest	Compromise Penalty	Total
043A-B123-09	[Income Tax]	2009	₱136,281,498.00	-	₱77,363,085.99	-	₱213,644,583.99
043A-B123-09	V[A]T	2009	54,279,688.30	-	33,192,401.17	-	87,472,089.47
043A-B123-09	EWT	2009	623,522.26	-	384,704.69	-	1,008,226.95
043A-B123-09	[Compromise Penalty]	2009	-	-	-	₱25,000.00	25,000.00

[123] Supra at note 37.
[124] Emphasis supplied and italics in the original text.
[125] Exhibit "R-11", supra at note 30.

In this connection, please be informed that upon review of your protest, the original assessment shall be reiterated on the ground that the statements of facts and/or law which should be the basis of your request for reinvestigation was not categorically specified and properly documented. Hence, it is only a pro-forma protest as it failed to substantially comply with the requirements prescribed under Section 6 of Revenue Regulations No. 12-85 which provides for the procedure governing administrative protest of assessments issued by this Bureau. It is as if no protest was ever filed. Therefore, the assessment has become final and executory.

In view of the foregoing, we would like to inform you of your opportunity to settle the abovementioned delinquency taxes thru availment of the Tax Amnesty Program of 1019 (Republic Act No. 11213) as implemented by Revenue Regulations No. 4-2019, with the following tax amnesty rates:

- ✓ Delinquent accounts and assessment - 40% of the basic tax assessed
- ✓ Unremitted Withholding Taxes - 100% of the basic tax assessed

The availment of said program will require you to submit the following documentary requirements, to wit:

1. Certificate of Tax Delinquencies
2. Tax Amnesty Return on Delinquencies (BIR Form 2118-DA);
3. Acceptance Payment Form (BIR Form 0621-DA);

Furthermore, upon availment thereof, your delinquencies shall be considered settled, and the criminal case in connection therewith and its corresponding civil or administrative case, if applicable, shall be terminated. You shall be immune from all suits or actions, including the payment of said delinquency or assessment, as well as additions thereto, and from all appurtenant civil, criminal and administrative cases, and penalties under the 1997 Tax Code, as amended.

For complete procedures and guidelines, you may read the aforesaid revenue regulations in the BIR website www.bir.gov.ph or you may visit our Office: Assessment Division, Bureau of Internal Revenue, Roof Deck, Fisher Mall, Roosevelt Ave. Cor. Quezon Avenue, Q.C. or you may call at telephone number (8)863-4017 and look for RO Roan B. Bautista for your assistance.

We look forward to hearing from you soonest in order to assist you to get the full benefit of this program.

Very truly yours,

(Sgd.)
ROMULO L. AGUILA JR.
Regional Director

...

A careful perusal of the foregoing reveals that RD Aguila's Letter is devoid of facts, applicable law, rules and regulations, or jurisprudence on which such decision was based. RD Aguila incorrectly ruled that petitioner failed to file a valid protest, consequently making the deficiency assessments final and executory. As this Court has earlier established, petitioner seasonably filed a valid protest with factual and legal bases and the same should have been considered by RD Aguila in issuing such a letter.

The requirement that taxpayers be informed in writing of the factual and legal bases of a tax assessment finds its mooring in no less than the 1987 Constitution itself, which guarantees that no person shall be deprived of property without due process of law.[126]

As it stands, RD Aguila's Letter is not and cannot be considered a 'final decision' contemplated by Section 228 of the NIRC of 1997, as amended, and its implementing rules and regulations which intend to effectively inform petitioner as to its final tax liabilities after the supposed consideration of its arguments and supporting documents. Simply put, there was no valid FDDA.

In the seminal case of *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*[127], the Supreme Court emphasized that a void FDDA means that no decision was rendered by the CIR or his duly authorized representative:

> ...
>
> The CIR and Liquigaz are at odds with [regard] to the effect of a void FDDA. Liquigaz harps that a void FDDA will lead to a void assessment because the FDDA ultimately determines the final tax liability of a taxpayer, which may then be appealed before the CTA.

126 CONST., art. III, sec. 1.
127 G.R. No. 215534, 18 April 2016; citations omitted, emphasis and underscoring supplied.

On the other hand, the CIR believes that a void FDDA does not *ipso facto* result in the nullification of the assessment.

...

The difference is likewise readily apparent in Section 7 of R.A. 1125, as amended, where the CTA is conferred with appellate jurisdiction over the decision of the CIR in cases involving [a] disputed assessments, as well as inaction of the CIR in disputed assessments. From the foregoing, it is clear that what is appealable to the CTA is the "decision" of the CIR on [the] disputed assessment and not the assessment itself.

An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.

Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result [in] the invalidity of the other — unless the law or regulations otherwise provide.

...

The Court, however, finds that the CTA erred in concluding that the assessment on EWT and FBT deficiency was void because the FDDA covering the same was void. The assessment remains valid notwithstanding the nullity of the FDDA because as discussed above, the assessment itself differs from a decision on the disputed assessment.

As established, an FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. Therefore, it is <u>as if there was no decision rendered by the CIR</u>. It is tantamount to a denial by <u>inaction</u> by the CIR, which may still be appealed before the CTA and the assessment evaluated on the basis of the available evidence and documents. The merits of the EWT and FBT assessment should have been discussed and not merely brushed aside on account of the void FDDA.

...

Similarly, in this case, the invalid "final decision" of RD Aguila amounts to an inaction of respondent CIR's duly authorized representative on petitioner's protest.

It then follows that the subsequent WDL issued can be considered as an "implied denial" of petitioner's protest pending before respondent CIR's duly authorized representative. As held in the case of *Commissioner of Internal Revenue v. Algue, Inc., et al.*[128], the Supreme Court considered as an "implied denial" a circumstance where the CIR or his or her duly authorized representative, without categorically deciding the taxpayer's protest or request for reconsideration, proceeds with distraint and levy, such as the instant case. In such case, the taxpayer's remedy is to file an appeal (administratively before respondent CIR or judicially with this Court) within 30 days from the date that it was notified of the warrant.[129] Appeal to respondent CIR can be implied from Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-13, to wit:

> ...
>
> If the **protest is denied**, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) **elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision**. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.[130]
>
> ...

Accordingly, the WDL may be considered as "implied denial" of petitioner's protest appealable before respondent CIR. Consequently, since the WDL was issued on 18 June 2020[131], petitioner timely filed an administrative appeal before respondent CIR on 20 July 2020.[132]

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[128] G.R. No. L-28896, 17 February 1988.

[129] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 225809, 17 March 2021.

[130] Emphasis supplied.

[131] Supra at note 5.

[132] Exhibit "P-14", supra at note 33; Since the 30th day (*i.e.*, 18 July 2020) fell on a Saturday, the next working day is 20 July 2020.

Having established that the deficiency assessments remain disputed before respondent CIR, owing to petitioner's proper and timely resort to the available administrative remedies, the Court must now proceed to determine whether it validly acquired jurisdiction over the present case.

THE COURT OF TAX APPEALS (CTA) HAS JURISDICTION OVER THE INSTANT PETITION FOR REVIEW.

Section 11 of RA 1125, as amended by RA 9282, in relation to Section 3(a), Rule 8 of the RRCTA, provides for the period when the taxpayer may invoke the CTA's jurisdiction in order to question the validity of the WDL, to wit:

> ...
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by a decision, ruling** or inaction **of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA <u>within thirty (30) days</u> 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.**
>
> SEC. 3. *Who may appeal; period to file petition.* —
>
> (a) **A party adversely affected by a decision, ruling** or the inaction **of the Commissioner of Internal Revenue on disputed assessments** or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed <u>within thirty days</u> 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.[133]
>
> ...

[133] Italics in the original text, emphasis and underscoring supplied.

Accordingly, in case of the CIR's adverse decision or ruling, the taxpayer is given 30 days to file a Petition for Review with the CTA.

Here, it is undisputed that petitioner received respondent CIR's Decision on 31 January 2022[134], denying petitioner's appeal (which is the adverse decision appealable to this Court). It, thus, had 30 days from the said date, or until 02 March 2022, to file a Petition for Review with this Court. Clearly, petitioner timely filed the instant Petition for Review on 02 March 2022.[135]

Proceeding to the merits of the case and after a careful and thorough evaluation of the parties' respective evidence and the applicable laws, rules and regulations, the Court finds merit in the instant petition.

THE TAX ASSESSMENTS WERE ISSUED IN VIOLATION OF PETITIONER'S RIGHT TO ADMINISTRATIVE DUE PROCESS, RENDERING THE SAME NULL AND VOID.

The Supreme Court in the case of *Alliance for the Family Foundation, Philippines, Inc. (ALFI), et al. v. Hon. Janette L. Garin, et al.*[136], declared emphatically:

> ...
>
> Due process of law has two aspects: substantive and procedural due process. In order that a particular act may not be impugned as violative of the due process clause, **there must be compliance with both the substantive and the procedural requirements** thereof.
>
> Substantive due process refers to the intrinsic validity of a law that interferes with the rights of a person to his property. **Procedural due process**, on the other hand, **means compliance with the procedures or steps, even periods, prescribed by the statute**, in conformity with the standard of fair play and without arbitrariness on the part of those who are called upon to administer it.

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134 Supra at note 34.
135 Supra at note 1.
136 G.R. Nos. 217872 & 221866, 24 August 2016; Citations omitted and emphasis supplied.

> **Although administrative procedural rules are less stringent and often applied more liberally, administrative proceedings are not exempt from basic and fundamental procedural principles, such as the right to due process in investigations** and hearings.
>
> ...

Section 228 of the NIRC of 1997, as amended, lays down the due process requirements that must be met in the issuance of a deficiency tax assessment, to wit:

> ...
>
> **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...
>
> ...
>
> 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.**
>
> 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.
>
> ...

Meanwhile, RR No. 12-99[137], as amended, implementing the aforecited provision, details the prescribed procedures for the valid issuance of a PAN:

> ...
>
> Sec. 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 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Commissioner or his duly authorized

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137 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.

> 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.** ...
>
> **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice shall be issued** calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> If the taxpayer, **within fifteen (15) days** from date of receipt of the PAN, **responds** that he/it disagrees with the findings of deficiency tax or taxes, an **FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response**, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.[138]

...

Following the above-stated rules, the BIR is bound to observe **two (2) distinct procedural safeguards** before issuing an FLD/FAN. ***First,*** if the taxpayer does not respond to the PAN, the BIR must wait 15 days from the taxpayer's receipt of the notice before issuing an FLD/FAN to give the taxpayer time to draft a reply. ***Second,*** if the taxpayer does respond within 15 days, disputing the deficiency assessment, the BIR must issue the FLD/FAN within 15 days from the date of submission. The rationale for these safeguards is evident. Succinctly, one of the cardinal primary rights, which must be respected during administrative proceedings, is the party's right for its evidence to be considered by the administrative tribunal.[139] Thus, the BIR is duty-bound to consider first the taxpayer's response before issuing the FLD/FAN.

The Supreme Court had long since settled the mandatory nature of the issuance of the PAN and compliance with the due process requirements in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[140]:

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[138] Emphasis supplied and italics in the original text.

[139] See *Ang Tibay, represented by Toribio Teodoro, manager and proprietor, et al. v. The Court of Industrial Relations, et al.*, G.R. No. 46496, 27 February 1940.

[140] G.R. No. 185371, 08 December 2010; Citations omitted and italics in the original text.

> ...
>
> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence.
>
> ...
>
> From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities. The use of the word "*shall*" in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process.
>
> ...

Relevantly, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[141], the Supreme Court discussed the paramount importance of observing the period and the consequences of their non-observance and, thus, held:

> ...
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.
>
> ...
>
> ... Again, under Section 228 of the Tax Code and **Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to**

[141] G.R. Nos. 201398-99 & 201418-19, 03 October 2018; Citations omitted and emphasis supplied.

> **respond within 15 days from receipt of the Preliminary Assessment Notice**; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. ...
>
> ...
>
> However, within just two (2) weeks from receipt of Avon's protest letter, the Commissioner issued the Final Letter of Demand and Final Assessment Notices, reiterating the findings stated in the Preliminary Assessment Notice. ...
>
> ...
>
> **This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.**
>
> ...

The principles enunciated above as regards the observance of due process in the issuance of assessments to taxpayers was reiterated in the more recent case of *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)*[142], where the CIR issued the FLD/FAN to Nippo Metal without waiting for the lapse of the 15-day period to respond to the PAN. Therein, the Supreme Court held:

> ...
>
> Clearly, due process demands that the taxpayer receives the PAN **<u>and</u>** that he is given the opportunity to respond thereto. Moreover, in *CIR v. Avon Products Manufacturing, Inc.*, the Court even went beyond "opportunity to be heard" as an aspect of due process. In said case, the Court, reiterating *Ang Tibay v. The Court of Industrial Relations*, held that "[n]ot 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 [CIR] must consider the evidence presented***."
>
> ...
>
> ... **By disregarding the 15-day period provided by law, the CIR utterly deprived respondent of the opportunity to contest the PAN and present evidence in support thereto before an FLD/FAN was issued.**
>
> ...

142 G.R. No. 227616 (Notice), 19 June 2019; Citations omitted, italics, underscoring and emphasis in the original text and supplied.

In the case of *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*[143], citing *Commissioner of Internal Revenue v. Yumex Philippines Corporation*[144], the Supreme Court has held that the 15-day period provided under RR No. 12-99 for a taxpayer to reply to a PAN forms part and parcel of the due process requirement in the issuance of a deficiency tax assessment and the same must be strictly complied with; otherwise, the assessment becomes null and void.

The importance of the stage of the assessment process (leading to the issuance of the PAN) cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of a FAN.[145]

In the instant case, the following are the pertinent dates and events in determining whether there was a violation of petitioner's right to due process:

Date	Event
08 January 2013	Petitioner received the PAN dated 27 December 2012.[146]
09 January 2013	Petitioner filed its reply to the PAN *via* registered mail.[147]
15 January 2013	**Issue date of the FLD/FAN.**[148]
16 January 2013	Respondent CIR's authorized representative's actual receipt of petitioner's reply to the PAN.[149]
17 January 2013	Petitioner's receipt of the FLD/FAN.[150]
23 January 2013	**End of the 15-day period.**

From the foregoing, it becomes indisputably evident that respondent CIR, through his or her authorized representative, transgressed petitioner's right to due process when the FLD/FAN was prematurely issued on 15 January 2013.

143 G.R. No. 249153, 12 September 2022.
144 G.R. No. 222476, 05 May 2021.
145 *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, G.R. No. 244202, 10 July 2023.
146 Supra at note 24.
147 Supra at note 25.
148 Supra at note 26.
149 Supra at note 25.
150 Supra at note 26.

In contravention of the *first procedural safeguard* enshrined under RR No. 12-99, as amended, the FLD/FAN should not have been issued earlier than 23 January 2013—reckoned as the fifteenth (15^{th}) day following petitioner's receipt of the PAN.

Even assuming *arguendo*, the applicability of the *second procedural safeguard*, respondents would fare no better. Clearly, RR No. 12-99, as amended, further mandates that respondent CIR, or his or her duly authorized representative, must first consider the taxpayer's reply to the PAN (which was filed within the 15-day period) prior to the issuance of the FLD/FAN. Yet, the record is bare of any indication that such reply was received and reviewed **before the FLD/FAN was issued**. Quite the contrary, the FLD/FAN had already been issued even before respondent CIR's authorized representative actually received petitioner's reply to the PAN.

In *Commissioner of Internal Revenue v. Yumex Philippines Corporation*[151], the Supreme Court has consistently emphasized the importance of observing procedural due process:

> ...
>
> In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* (*Avon case*), the Court enjoined strict observance by the BIR of the prescribed procedure for issuance of the assessment notices with due regard for the taxpayers' constitutional rights. It is mandatory that the BIR not only inform the taxpayer through the PAN, FLD, and FAN of the facts, law and regulations, and jurisprudence on which the assessment against it is based, **but it must also accord the taxpayer the opportunity to be heard through the entire process**, *i.e.*, from tax investigation until tax assessment.
>
> ...

Based on the disquisitions above, the FLD/FAN issued on 15 January 2013, or only <u>seven (7) days</u> from petitioner's receipt of the PAN on 08 January 2013 and squarely within the 15-day period accorded to petitioner to respond, cannot be countenanced. More so, the FLD/FAN was issued prior to the actual receipt by respondent CIR's authorized representative of petitioner's reply to the PAN (which was made within the 15-day period). Such premature issuance patently

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[151] Supra at note 144; citation omitted, emphasis supplied and italics in the original text.

violates the procedural safeguards embodied in RR No. 12-99, as amended, and renders the FLD/FAN legally infirm and void.

While the government has an interest in the swift collection of taxes, the BIR 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.[152]

WHEREFORE, the foregoing premises considered, the present Petition for Review filed by petitioner MyServ International, Inc., as represented by Ms. Cecilia O. Toledo on 02 March 2022 is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue's notices and assessments are declared **VOID** and henceforth **CANCELLED**. Consequently, the Warrant of Distraint and/or Levy dated 18 June 2020 covering the assessed deficiency tax liabilities against petitioner for the calendar year 2009, in the aggregate amount of ₱302,149,900.41, inclusive of surcharge, interest and compromise penalty, is also **CANCELLED** and **SET ASIDE**.

Respondent Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from pursuing any action against petitioner MyServ International, Inc., as represented by Ms. Cecilia O. Toledo relative to the above-mentioned void assessments.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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152 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, supra at note 141.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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