REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

ALTIMAX BROADCASTING CO., INC.,
Respondent.

CTA EB No. 2932
(CTA Case No. 10285)

Present:

RINGPIS-LIBAN, *P.J.*
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, *JJ.*

Promulgated:
FEB 10 2026 3:05pm

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DECISION

ANGELES, *J.*:

THE CASE

Before the Court *En Banc* is a *Petition for Review*[1] filed by petitioner, the Commissioner of Internal Revenue (CIR), seeking to reverse and set aside the Decision dated February 27, 2024 (assailed Decision),[2] which declared null and void the Preliminary Assessment Notice (PAN), Formal Letter of Demand/Final Assessment Notice (FLD/FAN), and Final Decision on Disputed Assessment (FDDA) issued against respondent, Altimax Broadcasting Co., Inc., for calendar year (CY) 2011. Petitioner likewise assails the Resolution dated May 27, 2024 (assailed Resolution),[3] which denied petitioner's *Motion for Reconsideration*, promulgated by this Court's Special Third Division (Court in Division) in CTA Case No. 10285.

[1] *Petition for Review*, EB Docket, pp. 4 to 12.
[2] Decision dated February 27, 2024, EB Docket, pp. 15 to 35; Docket (CTA Case No. 10285) – Vol. 2, pp. 730 to 750.
[3] Resolution dated May 27, 2024, EB Docket, pp. 37 to 38; Docket (CTA Case No. 10285) – Vol. 2, pp. 776 to 777.

THE PARTIES

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency tasked to, among others, collect all national internal revenue taxes. As the CIR, petitioner has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code of 1997, as amended (Tax Code), or other laws or portions thereof administered by the BIR.[4]

Respondent is a domestic corporation with the primary purpose to own, acquire, carry on, lease, maintain and operate the business of television and radio network broadcasting of all kinds and types (such as but not limited to VHF-TV, UHF-TV, AM radio, FM radio, direct to user broadcast via satellite, HDTV, CATV, LMDS, MMDS) using microwave, satellite, or whatever means in including the use of any and all new technologies in television and broadcast systems, religious, educational, and commercial.[5]

ANTECEDENT FACTS

The relevant facts as found by the Court in Division are as follows:[6]

> BIR-Revenue District Office No. 43A issued a Letter of Authority ("LOA"), with LOA No. 43A-2012-00001050, dated October 23, 2012, which authorized Group Supervisor ("GS") Roummel A. Bernos and Revenue Officer ("RO") Teresita A. Florendo to conduct the audit and investigation of petitioner's books of accounts for calendar year ("CY") 2011.
>
> The ROs then proceeded with the audit of petitioner. On February 4, 2013, respondent issued a Notice of Informal Conference against petitioner informing the latter of discrepancies noted in the audit that may result in the assessment of deficiency income tax. After petitioner presented additional documents to the BIR, the latter, on June 11, 2013, issued an Amended Notice of Informal Conference, for the assessment of petitioner's deficiency income tax and VAT.
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> On June 28, 2013, petitioner filed a Reply to the Amended Notice of Informal Conference alleging that the proposed assessment lacks basis considering that the management fees they claimed as a deduction from taxable income, and from which input taxes have

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[4] Petition for Review, EB Docket, unpaginated.
[5] *Id.*, p. 5.
[6] EB Docket, pp. 15 to 23.

been incurred, is an ordinary and necessary expense, arose in the course of petitioner's trade or business and unquestionably a regular activity conducted in pursuit of petitioner's commercial or economic activity, and as such, should be properly allowed as an ordinary and necessary expense to be used as a deduction to taxable income, and from which input taxes incurred must be allowed as a deduction to output taxes.

Afterwards, respondent issued a Preliminary Assessment Notice ("PAN"), dated 8 January 2015, with Assessment Notice No. 43A-B224-11, according to which, petitioner is allegedly liable for deficiency income tax and VAT, inclusive of interest, in the amount of Php39,000,251.78 and Php12,486,843.33, respectively. Particularly, the PAN contained the following details:

xxx xxx xxx

DETAILS OF DISCREPANCIES
Assessment No. 043A-B224-11

I. DEFICIENCY INCOME TAX

a. Disallowed Management fees expense (P68,630,523.00) - Verification disclosed that management fees amounting to P68,630,523.00 is not necessary expense and not related to the nature of your business transaction, thus, disallowed as deductions from your gross income pursuant to Sections 32 and 50 of the Tax Code of 1997, as amended.

Management fees	P68,630,523.00
Disallowed Management fees expense	P68,630,523.00

b. Disallowed prior year's excess tax credits (P3,881,688.00) Verification disclosed that you failed to substantiate prior year's excess credits, hence, disallowed pursuant to RR No. 4-2002, as amended.

II. DEFICIENCY VALUE-ADDED TAX

Disallowed Input tax (P8,235,662.76) – Verification disclosed that input VAT in connection to the disallowed Management fees expenses, as discussed in Item I.a above, was disallowed pursuant to Section 110(A) of the Tax Code of 1997, as amended.

> Pursuant to the provisions of Section 228 of the National Internal Revenue Code of 1997 and its implementing Rules and Regulations, you are hereby given the opportunity to present in writing (factual and legal basis) your side of the case within thirty (30) days from receipt hereof, otherwise, our said deficiency taxes assessment shall become final, executory, and demandable.

On 22 January 2015, petitioner filed before the BIR its Reply to the PAN contesting the income tax and VAT assessments contained therein. This Reply was only referred to the BIR Revenue Region No. 7's Assessment Division on 23 January 2015.

Further, the Reply stated that management fees paid by petitioner to Bethlehem Holdings, Inc. constitute an ordinary and necessary expense. Thus, the same must be allowed as a deduction to taxable income for purposes of determining the income tax due to petitioner.

Moreover, the Reply noted that the management fees were incurred in the course of petitioner's trade or business. As such, any input tax due from the management fees must be allowed as a credit to petitioner's output tax.

To support these contentions, petitioner cited various jurisprudence and presented documentary evidence in the Reply.

On January 23, 2015, respondent issued a Formal Letter of Demand ("FLD") with corresponding Final Assessment Notices ("FAN") assessing petitioner once more of deficiency income tax and VAT, inclusive of interest, in the amounts of Php39,919,215.22 and Php12,772,702.38, respectively, and thereby retaining his assessments contained in the PAN, which were only increased by additional interest.

The FLD specifically provided, as follows:

xxx xxx xxx

DETAILS OF DISCREPANCIES

I. DEFICIENCY INCOME TAX

> a. Disallowed Management fees expense (P68,630,523.00) - Verification disclosed that management fees amounting to P68,630,523.00 is not necessary expense and not related to the nature of your business transaction, thus, disallowed as deductions from your gross income pursuant to Sections 32 and 50 of the Tax Code of 1997, as amended.

Management fees	P68,630,523.00
Disallowed Management fees expense	P68,630,523.00

b. Disallowed prior year's excess tax credits (P3,881,688.00) Verification disclosed that you failed to substantiate prior year's excess credits, hence, disallowed pursuant to RR No. 4-2002, as amended.

II. DEFICIENCY VALUE-ADDED TAX

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Pursuant to the provisions of Section 228 of the National Internal Revenue Code of 1997 and its implementing Rules and Regulations, you are hereby given the opportunity to present in writing (factual and legal basis) your side of the case within thirty (30) days from receipt hereof, otherwise, our said deficiency taxes assessment shall become final, executory, and demandable.

On February 25, 2015, petitioner filed its Protest to the FLD/FAN seeking the reinvestigation of the assessments contained therein. Petitioner likewise submitted relevant supporting documents within sixty (60) days from submission of the Protest.

A Memorandum of Assignment was then issued transferring the dockets of the instant case to RO Verjun Solomon Catapia to perform the reinvestigation requested in the Protest.

On February 27, 2020, petitioner received a copy of the FDDA, dated February 26, 2020, assessing petitioner with deficiency income tax and VAT in the total amount of Php69,785,169.96, inclusive of interest.

Accordingly, petitioner filed the instant Petition on June 25, 2020, with the Judicial Affidavit of its witness, Mr. James Kenneth Venta.

On September 16, 2020, this Court issued Summons to respondent to file an Answer to the Petition.

On December 2, 2020, respondent filed through registered mail his Answer, before elevating the entire BIR Records appurtenant to the case on December 11, 2020.

In a Resolution, dated January 4, 2021, the case was referred to mediation.

On March 4, 2021, the Philippine Mediation Center reported that the case was unsuccessfully mediated.

In a Resolution, dated March 10, 2021, this Court issued a Notice of Pre-Trial Conference setting the Pre-Trial on July 8, 2021.

On July 1, 2021, respondent filed his Pre-Trial Brief. Respondent also submitted the Judicial Affidavit of his witness, GS Roummel A. Bernos, on same date.

Meanwhile, petitioner filed its Pre-Trial Brief on July 2, 2021.

Pre-Trial ensued on July 8, 2021.

On July 28, 2021, petitioner filed a Motion to Commission an Independent Certified Public Accountant ("ICPA"), attaching thereto the Judicial Affidavit of its proposed ICPA, Glenn Ian D. Villanueva, attesting to his competence as an ICPA and submitting documents in support thereof. Mr. Villanueva was commissioned as the ICPA for the instant case on October 5, 2021.

On November 9, 2021, the parties submitted their Joint Stipulation of Facts and Issue which then terminated the Pre-Trial. Thereafter, a Pre-Trial Order was issued by the Court on November 24, 2021. An Amended Pre-Trial Order was subsequently issued on March 14, 2022, after petitioner requested that certain corrections be made on the original Pre-Trial Order.

Trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.[7]

Both parties filed their respective memoranda and the case was submitted for resolution.[8]

On February 27, 2024, the Court in Division promulgated the assailed Decision,[9] the dispositive portion of which reads:

> **FOR THESE REASONS**, the instant Petition for Review is **GRANTED**. The PAN, FLD/FAN and FDDA issued against petitioner are declared **NULL AND VOID**. Accordingly, the deficiency income tax and VAT assessments issued against petitioner for CY 2011, in the aggregate amount of Php69,785,169.96, inclusive

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[7] *Supra* note 6.
[8] *Id.*
[9] *Supra* note 2.

of interest, are hereby **CANCELLED** and **SET ASIDE**, and respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

The Court in Division ruled in favor of respondent, finding that petitioner violated respondent's right to due process for his failure to consider the arguments raised by respondent in its reply to PAN. The Court in Division further observed that the BIR issued identical assessments for income tax and value-added tax (VAT) in both the PAN and FLD/FAN. Thus, the Court in Division granted respondent's petition for review and declared the assessments issued against it as null and void.

On March 22, 2024, petitioner filed a *Motion for Reconsideration*[10] seeking the reversal of the assailed Decision. Respondent filed its *Comment*[11] thereto on April 15, 2024.

Thereafter, on May 27, 2024, the Court in Division rendered the assailed Resolution,[12] denying petitioner's *Motion for Reconsideration.*

Hence, the present Petition.

PROCEEDINGS BEFORE THE COURT *EN BANC*

On June 18, 2024, petitioner filed a *Motion for Extension of Time to File Petition for Review.*[13]

In the Resolution dated June 21, 2024,[14] the Court granted said motion.

On July 3, 2024, petitioner filed the present *Petition.*[15]

On July 26, 2024, the Court issued a Resolution directing respondent to file its comment to the present petition.[16]

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[10] Docket (CTA Case No. 10285) - Vol. 2, pp. 751 to 756.
[11] *Id.*, pp. 760 to 772.
[12] *Supra* note 3.
[13] EB Docket, pp. 1 to 2.
[14] *Id.*, p.3.
[15] *Supra* note 1.
[16] EB Docket, p. 42.

Thereafter, on August 8, 2024, respondent filed its *Comment.*[17] Subsequently, on August 13, 2024, respondent filed a *Manifestation*[18] informing the Court of its counsel's new address.

On October 9, 2024, the Philippine Mediation Center Unit – CTA notified the Court that the parties decided not to have their case mediated.[19]

In the Resolution dated November 19, 2024,[20] the case was submitted for decision.

ASSIGNMENT OF ERRORS

Petitioner assigns the following error allegedly committed by the Court in Division, to wit:[21]

> "The Honorable Special Third Division erred in granting the Petition for Review filed by the Respondent declaring the PAN, FLD/FAN and FDDA null and void thereby cancelling and setting aside the deficiency income tax and VAT assessments issued against petitioner for CY 2011, in the aggregate amount of Php69,785,169.96, inclusive of interest."

ARGUMENTS OF THE PARTIES

Petitioner's arguments

Petitioner contends that the Court in Division erred in declaring the PAN, FLD/FAN, and FDDA as null and void. Petitioner maintains that respondent was informed, as early as the informal conference stage, that the assessment arose from the disallowance of the management fees paid by respondent to Bethlehem Holdings Inc. (BHI), which were claimed as deductible expenses. Petitioner further asserts that respondent's protest was duly considered and resolved in the FDDA. Hence, petitioner submits that respondent's right to due process was not violated.[22]

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[17] EB Docket, pp. 43 to 56.
[18] EB Docket, pp. 58 to 60.
[19] EB Docket, p. 62.
[20] EB Docket, p. 63.
[21] Ground for the Petition, Petition for Review, EB Docket, p. 7.
[22] EB Docket, pp. 8 to 10.

Petitioner further argues that the management fees claimed by respondent do not qualify as ordinary and necessary business expenses. Petitioner points out that: (1) respondent's sources of income are passive in nature; (2) respondent failed to submit to petitioner the details of the management fees paid to BHI; and (3) the services rendered by BHI for respondent were not among the registered activities in BHI's articles of incorporation.[23]

Respondent's counter-arguments

Respondent points out that the arguments raised by petitioner are the same arguments raised in his Motion for Reconsideration. Furthermore, it asserts that petitioner did not raise any new arguments warranting the reversal of the assailed Decision and the assailed Resolution.[24]

Respondent maintains that the Court in Division correctly ruled that its right to due process was violated. It argues that petitioner's argument that respondent's protest was considered in the FDDA is completely unrelated to the Court in Division's finding that the FAN/FLD did not consider respondent's arguments in its Reply to PAN. Respondent further points out that the FLD/FAN was issued and served on January 23, 2015, only one day after respondent filed its Reply to PAN on January 22, 2015. Respondent asserts that this demonstrates that petitioner did not consider its Reply to PAN and that the issuance of the FLD/FAN was merely perfunctory. It likewise emphasizes that the PAN and the FAN/FLD contained identical Details of Discrepancies (DOD), further evidencing petitioner's failure to consider respondent's Reply to PAN.[25]

Respondent further argues that Section 228 of the Tax Code and Revenue Regulation (RR) No. 12-99, as amended, mandates that the assessment shall state the facts and the laws upon which the assessment is made, and that failure to do so makes the assessment void. It asserts that petitioner's mere citation of Sections 32 and 50 of the Tax Code as the basis for disallowing management fees as deductions from gross income does not satisfy the requirements under Section 228 of the Tax Code and RR No. 12-99, as amended. Accordingly, respondent submits that the Court in Division correctly held that its right to due process was violated.[26]

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[23] EB Docket, pp. 9 to 11.
[24] EB Docket, p. 44.
[25] *Id.*, pp. 45 to 49.
[26] *Id.*

Respondent posits that even assuming *arguendo* that its right to due process was not violated, the assessment remains erroneous. Respondent contends that the management fees paid to BHI were incurred pursuant to its provisional authority and Articles of Incorporation (AOI), and were therefore expenses incurred in the course of its trade or business, qualifying as ordinary and necessary expenses under Section 34(A) of the Tax Code.[27]

RULING OF THE COURT

The Court denies the Petition for Review.

The present Petition for Review was filed on time.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> **RULE 8**
> **PROCEDURE IN CIVIL CASES**
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> xxx xxx xxx
>
> SEC. 3. Who may appeal; period to file petition. –
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> xxx xxx xxx
>
> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Emphasis supplied)

In *National Power Corporation v. National Labor Relations Commission*,[28] the Supreme Court clarified that when the government is represented by the Office of the Solicitor General (OSG), the period to appeal an adverse decision must be reckoned from the date of receipt by the OSG, not by its deputized counsel. The Court explained:

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[27] EB Docket, pp. 51 to 54.
[28] G.R. No. 90933-61, May 29, 1997.

> Although jurisprudence regarding mandatory service of orders and decision on the OSG and not merely to its deputized special attorneys, pertain to court cases involving land registration and naturalization, the same rule should be observed in cases before the Labor Arbiter and the NLRC. **The underlying justification for compelling service of pleadings, orders, notices and decisions on the OSG as principal counsel is one and the same.** As the lawyer for the government or the government corporation involved, the OSG is entitled to the service of said pleadings and decisions, whether the case is before the courts or before a quasi-judicial agency such as respondent commission. Needless to say, a uniform rule for all cases handled by the OSG simplifies procedure, prevents confusion and thus facilitates the orderly administration of justice.
>
> From the foregoing, we conclude that service of the Labor Arbiter's decision on the deputized special attorney is insufficient and not valid and binding on the Solicitor General, who was himself entitled to such service. **The period to appeal an adverse decision should be reckoned from the date the OSG, and not the deputized lawyer, received a copy of the decision.** Since service was not made on the OSG, the period to file an appeal was suspended and did not commence to run. The appeal memorandum, having been filed on July 17, 1989, it was filed on time and should have been entertained by the NLRC. Consequently, respondent Commission committed grave abuse of discretion when it promulgated its decision on October 6, 1989 dismissing petitioner's appeal for having been filed late. (Emphasis supplied)

Applying the foregoing doctrine, the period to appeal an adverse decision or resolution of the CTA must likewise be computed from the date of receipt of the OSG.

In this case, records show that the OSG received the assailed Resolution on June 5, 2024.[29] Consequently, pursuant to Section 3(b), Rule 8 of the RRCTA, petitioner had fifteen (15) days therefrom, or until June 20, 2024, within which to file his Petition for Review.

On June 18, 2024, petitioner filed a *Motion for Extension of Time to File Petition for Review*.[30] In the Resolution dated June 21, 2024,[31] the Court granted petitioner a non-extendible period of fifteen (15) days from June 18, 2024, or until July 3, 2024, within which to file his Petition for Review.

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[29] Docket (CTA Case No. 10285) – Vol. II, p. 776.
[30] EB Docket, pp. 1 to 2.
[31] *Id.*, p. 3.

On July 3, 2024, petitioner filed the present *Petition*.[32] Thus, the same was filed on time.

The Court in Division correctly held that respondent's right to due process was violated.

Petitioner argues that as early as the informal conference, respondent was informed of the disallowance of the management fees it paid to BHI. Petitioner further asserts that the FDDA allegedly took into consideration respondent's defenses in its protest. Hence, petitioner concludes that respondent's right to due process was not violated.

Petitioner's contentions are without merit.

Section 228 of the Tax Code explicitly mandates that the taxpayer be informed in writing of the law and the facts on which the assessment is made. Failure to comply with this requirement renders the assessment void. The reason for requiring that taxpayers be informed in writing of the facts and law on which the assessment is made is the constitutional guarantee that no person shall be deprived of his property without due process of law.[33]

This due process requirement is reiterated and implemented under RR No. 12-99, as amended, which provides:

> Section 3. 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 void.

In *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*,[34] the Supreme Court emphasized that:

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[32] *Supra* note 1.
[33] *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*, G.R. No. 215534, April 18, 2016.
[34] *Id.*

> The use of the word "shall" in Section 228 of the NIRC and in RR No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him is mandatory.
>
> To rule otherwise would tolerate abuse and prejudice. Taxpayers will be unable to file an intelligent appeal before the CTA as they would be unaware on how the CIR or his authorized representative appreciated the defense raised in connection with the assessment.

Similarly, in *Commissioner of Internal Revenue v. Avon Products Manufacturing Inc.*,[35] where the BIR failed to address the taxpayer's defenses in its reply to the PAN and merely reiterated the findings of the PAN in the FLD/FAN, the Supreme Court explained:

> The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. **The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.
>
> 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.**
>
> Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.
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> xxx xxx xxx
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> **Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable**

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[35] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

> **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. (Emphasis supplied)

Based on the foregoing, jurisprudence is clear that due process requires the BIR to meaningfully address the taxpayer's defenses raised in its reply to the PAN in issuing the FLD/FAN. The mere reiteration of earlier findings in the FLD/FAN without addressing the taxpayer's defenses in its reply to PAN constitutes a violation of due process and renders the assessment void.

In the present case, as correctly held by the Court in Division, respondent's right to due process was violated. Similar to the *Avon* case, a perusal of the DOD attached to the FLD dated January 23, 2015 reveals that it merely reiterated the assessments contained in the PAN dated January 8, 2015, without addressing the defenses respondent raised in its Reply to the PAN:

PAN dated January 8, 2015	**FLD dated January 23, 2015**
I. DEFICIENCY INCOME TAX a. Disallowed Management fees expense (P68,630,523.00) - Verification disclosed that management fees amounting to P68,630,523.00 is not [sic] necessary expense and not related to the nature of your business transaction, thus, disallowed as deductions from your gross income pursuant to Sections 32 and 50 of the Tax Code of 1997, as amended. Management fees P68,630,523.00 Disallowed Management fees expense P68,630,523.00 b. Disallowed prior year's excess tax credits (P3,881,688.00) Verification disclosed that you failed to substantiate prior year's excess credits, hence, disallowed pursuant to RR No. 4-2002, as amended. II. DEFICIENCY VALUE-ADDED TAX	I. DEFICIENCY INCOME TAX a. Disallowed Management fees expense (P68,630,523.00) - Verification disclosed that management fees amounting to P68,630,523.00 is not [sic] necessary expense and not related to the nature of your business transaction, thus, disallowed as deductions from your gross income pursuant to Sections 32 and 50 of the Tax Code of 1997, as amended. Management fees P68,630,523.00 Disallowed Management fees expense P68,630,523.00 b. Disallowed prior year's excess tax credits (P3,881,688.00) Verification disclosed that you failed to substantiate prior year's excess credits, hence, disallowed pursuant to RR No. 4-2002, as amended. II. DEFICIENCY VALUE-ADDED TAX

Disallowed Input tax (P8,235,662.76) – Verification disclosed that input VAT in connection to the disallowed Management fees expenses, as discussed in Item I.a above, was disallowed pursuant to Section 110(A) of the Tax Code of 1997, as amended. Pursuant to the provisions of Section 228 of the National Internal Revenue Code of 1997 and its implementing Rules and Regulations, you are hereby given the opportunity to present in writing (factual and legal basis) your side of the case within thirty (30) days from receipt hereof, otherwise, our said deficiency taxes assessment shall become final, executory, and demandable.	Disallowed Input tax (P8,235,662.76) – Verification disclosed that input VAT in connection to the disallowed Management fees expenses, as discussed in Item I.a above, was disallowed pursuant to Section 110(A) of the Tax Code of 1997, as amended. Pursuant to the provisions of Section 228 of the National Internal Revenue Code of 1997 and its implementing Rules and Regulations, you are hereby given the opportunity to present in writing (factual and legal basis) your side of the case within thirty (30) days from receipt hereof, otherwise, our said deficiency taxes assessment shall become final, executory, and demandable.

As correctly observed by the Court in Division, other than the amount of interest and surcharges, the DOD attached to the FLD contains identical assessment as to the alleged deficiency income tax and VAT in the PAN.

Petitioner's own witness, Group Supervisor Roummel A. Bernos, categorically admitted during cross-examination that the FLD did not consider respondent's arguments and merely reiterated the assessments contained in the PAN:[36]

Atty. Bernil: Now, on Question 30 of you Affidavit, you answered that the petitioner filed a reply to the PAN contesting the assessment, is this correct?

Witness: Yes, Ma'am.

xxx xxx xxx

Atty. Bernil: So, this is a Reply to the Preliminary Assessment Notice in the BIR Records, so what date was the reply to the PAN was [sic] received by the BIR? Based on the stamp received.

Witness: January 22, 2015.

Atty Bernil: xxx So, thereafter, you mentioned that the petitioner's reply to the PAN was denied through the issuance of the FAN/FLD, is this correct?

[36] Transcript of Stenographic Notes, October 4, 2022, pp. 11 to 14.

Witness:	Yes, Ma'am. There was an FLD.
Atty. Bernil:	This was on question 31. On Question 31 of your Affidavit, you answered that the FLD was issued on January 23, 2015 to the petitioner's registered address and received on the same day, is this correct?
Witness:	Yes, it is.
Atty. Bernil:	xxx So, is it correct to say that they issued the FAN and FLD was issued [sic] one day after the receipt of the Reply to the PAN?
Witness:	Yes, attorney.
Atty. Bernil:	**In [sic] FLD, were there any references as to how the arguments of the petitioner and the reply to PAN was decided?**
Witness:	**No, there is no argument but this is only a reiteration of the PAN or the Preliminary Assessment Notice.**
Atty. Bernil:	**So the FLD is the reiteration of the PAN?**
Witness:	**Yes.**
Atty. Bernil:	**So, it is correct to say that it is completely identical except for the surcharges and interest?**
Witness:	**Yes, Ma'am.** (Emphasis supplied)

It is true that the Commissioner is not obliged to accept the taxpayer's explanations.[37] However, when he or she rejects these explanations, he or she must give some reason for doing so.[38] He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.[39]

In this case, petitioner clearly failed to address the defenses raised by respondent in its Reply to the PAN when the FLD was issued. The FLD contained no explanation as to why respondent's position that the management fees it paid to BHI were ordinary and necessary expenses was rejected. Instead, as admitted by petitioner's own witness, the FLD merely reiterated the assessments contained in the PAN.

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[37] *Supra* note 35.
[38] *Id.*
[39] *Id.*

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Notably, respondent filed its Reply to PAN on January 22, 2015.[40] On the other hand, the FLD was issued on January 23, 2015 or merely one day after respondent filed its reply to PAN.[41] This circumstance further bolsters the conclusion that petitioner did not meaningfully consider the defenses respondent raised in its Reply to the PAN.

In *Commissioner of Internal Revenue v. Transitions Optical Philippines Inc.*,[42] the Supreme Court underscored the critical role of the PAN stage in the BIR's audit process, to wit:

> A PAN merely informs the taxpayer of the initial findings of the Bureau of Internal Revenue. It contains the proposed assessment, and the facts, law, rules, and regulations or jurisprudence on which the proposed assessment is based. It does not contain a demand for payment but usually requires the taxpayer to reply within 15 days from receipt. Otherwise, the Commissioner of Internal Revenue will finalize an assessment and issue a FAN.
>
> **The PAN is a part of due process. It gives both the taxpayer and the Commissioner of Internal Revenue the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN.** (Emphasis supplied)

Administrative due process, as laid down by the Supreme Court in the landmark case of *Ang Tibay v. The Court of Industrial Relations*,[43] requires administrative tribunals to consider the evidence presented and to render decisions in a manner that sufficiently informs the parties of the issues involved and the reasons for the decision.

Here, however, the FLD merely reiterated the assessments stated in the PAN, without any reference to respondent's Reply to PAN. This demonstrates petitioner's failure to consider the evidence and explanations submitted by respondent. Worse, respondent was left completely in the dark as to why its explanation that the management fees paid to BHI constituted ordinary and necessary business expenses was rejected.

It is of no moment that petitioner subsequently addressed the defenses raised by respondent in its protest to the FLD in the FDDA. This does not cure the violation of respondent's right to due process committed when petitioner failed to consider the evidence and arguments raised by respondent in its Reply to PAN.

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[40] Exhibit "P-5," (CTA Case No. 10285) – Vol. I, pp. 546 to 552.
[41] Exhibit "P-6," (CTA Case No. 10285) – Vol. I, pp. 553 to 554.
[42] G.R. No. 227544, November 22, 2017.
[43] G.R. No. 46496, February 27, 1940.

Due process requires the BIR to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.[44] Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.[45]

All told, the Court in Division correctly ruled that respondent's right to due process was violated when petitioner failed to consider respondent's Reply to PAN in the issuance of the FLD.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. Accordingly, the Decision and Resolution, dated February 27, 2024 and May 27, 2024, respectively, in CTA Case No. 10285 are **AFFIRMED**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[44] *Supra* note 35.
[45] *Id.*

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice