23-000047-0061

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 11084

FREYSSINET PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

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

ATTY. LUIS Z. CELESTINO
ATTY. NAPOLEON P. CAMPOS, JR.
Bureau of Internal Revenue - Revenue Region No. 5
Caloocan City Regional Office, Legal Division
No. 10 General Concepcion Street
Brgy. 134, Caloocan City, Metro Manila 1400

AVCD LAW & ASSOCIATES
Unit 10 Ground Floor
4408 Newton Plaza Mall
Old Sta. Mesa Street, Sta. Mesa
Manila

GREETINGS:

You are hereby notified by these presents that on **November 21, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **November 25, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

FREYSSINET PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 11084**
	Members:
- versus -	**BACORRO-VILLENA,** *Acting Chairperson, and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 21 2025, 3:30PM

x - x

DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review*[1] seeking the cancellation of the Warrant for Distraint and/or Levy (**WDL**) dated December 29, 2022, issued for the collection of alleged income tax (**IT**) and value-added tax (**VAT**) deficiencies totaling ₱33,653,303.96 for taxable year (**TY**) 2012.

THE PARTIES

Petitioner, Freyssinet Philippines, Inc., is a corporation duly formed and existing by virtue of the laws of the Republic of the Philippines, with office address at KM 52, Pungo, Calumpit, Bulacan.[2]

Respondent, the Commissioner of Internal Revenue (**CIR**), is vested with the authority, among others, to assess and collect all national internal revenue taxes, and to decide, approve, and grant tax protests. Respondent holds office at the 5th floor,

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1 Docket, pp. 6–26.

2 *Id.* at 174, *Joint Stipulation of Facts and Issues* (JSFI), I. Summary of Admitted Facts, par. 1; Docket, p. 191, Pre-Trial Order, III. Admitted Facts and Stipulation of Facts, par. 1.

Bureau of Internal Revenue (**BIR**) National Office Building, BIR Road, Diliman, Quezon City.[3]

THE FACTS AND PROCEEDINGS

On January 17, 2014, a Letter of Authority (**LOA**) No. eLA201100044287[4] was issued by OIC-Regional Director Gerardo R. Florendo of Revenue Region (**RR**) No. 5-Caloocan City, authorizing Revenue Officer (**RO**) Annabelle Delicana and Group Supervisor (**GS**) Vicente Reyes of Revenue District Office (**RDO**) No. 25A-Plaridel, Bulacan, to audit and examine petitioner's books of accounts and other accounting records for TY 2012. The LOA was received by a certain "Sg. Cabrera Bhen" on January 29, 2014.

On August 12, 2014, respondent issued Letter Notice (**LN**) No. 25A-RLFTRS-12-00-00097, stating that a computerized matching of information/data from withholding agents, payors, and payees/income recipients against petitioner's tax return declarations for TY 2012 revealed a 92.02% discrepancy in reported sales/revenues/receipts for both IT and VAT purposes. The LN was received by "S/G Mendoza CR" on September 10, 2014.[5] The alleged discrepancy was computed as follows:

	VAT	**Income Tax**
A. Gross Sales/Income Payment per Alphalists of payors to one & the same payee		₱44,733,214.50
B. Gross sales/Income/receipts per payee's returns filed	₱3,571,428.56	3,571,428.57
C. Discrepancy on gross sales/revenues/receipts (A-B)	₱41,161,758.94	₱41,161,758.93
D. Percentage (%) of discrepancy on sales/revenues/receipts (C/A)	92.02%	92.02%

On March 19, 2015, a Memorandum of Assignment (**MOA**)[6] was issued by Revenue District Officer Sulpicio M. Adapon of RDO No. 25A-Plaridel, Bulacan to RO Reynaldo D. Lojuco and GS Marita P. Panteriori, for "referral docket from RO Annabelle H. Delicana due to her Optional (Disability Retirement) effective January 1, 2015."

[3] *Id.* at 174. JSFI. I. Summary of Admitted Facts, par. 2; Docket, p. 191. Pre-Trial Order, III. Admitted Facts and Stipulation of Facts, par. 2.
[4] BIR Records, p. 1.
[5] *Id.* at 8.
[6] *Id.* at 46.

On December 16, 2015, a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (**NIRC**) of 1997, as amended (***Waiver***), was signed by an unnamed authorized representative of petitioner but was not signed by respondent. The waiver purportedly extended the period to assess and collect deficiency taxes for TY 2012 until December 31, 2017.[7]

On September 12, 2018, a Notice of Informal Conference[8] (**NIC**) was issued and allegedly received by petitioner through Mr. Pat Carlos on September 25, 2018.[9]

On June 2, 2021, a Notice of Discrepancy (**NOD**) was issued by Revenue District Officer Atty. Elmer F. Carolino (**RDO Carolino**) of RDO No. 25A-West Bulacan, and received by "Ernan S. Balingit – HR & Admin Supervisor – Frey-Fil Corp."[10]

On September 24, 2021, an MOA was issued by RDO Carolino to RO Flordeliza C. Lapira (**Lapira**) and GS Candida E. Labaya (**Labaya**) as "compliance with the review/reporting requirements of Assessment Division to replace the previously assigned [RO] Reynaldo Lojuco, who transferred to another district office."[11]

On March 24, 2022, LOA No. eLA201900000750[12] was issued by Regional Director Gerry O. Dumayas of RR No. 5-Caloocan City, authorizing RO Lapira and GS Labaya to audit and examine petitioner's books of accounts and other accounting records for TY 2012. The LOA was received by Michelle Kim B. Cruz on March 29, 2022.

On June 20, 2022, a Preliminary Assessment Notice (**PAN**)[13] was issued and served through registered mail under Registry Receipt No. RE 600 282 152 ZZ, on July 6, 2022. Petitioner's tax deficiency was computed as follows:[14]

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[7] *Id.* at 48.
[8] *Id.* at 168.
[9] *Id.* at 160. Letter dated October 8, 2018.
[10] *Id.* at 216.
[11] *Id.* at 224.
[12] *Id.* at 228.
[13] *Id.* at 266–268. Exhibit "P-4".
[14] *Id.* at 272. Affidavit of Service of Preliminary Assessment Notice (PAN).

Tax Type	Basic	Surcharge (50%)	20% Interest (Apr. 16, 2013-Dec. 31, 2017)	12% Interest (Jan. 1, 2018-May 31, 2022)	Total
IT	₱6,236,220.65	₱3,118,110.32	₱5,872,441.11	₱3,305,196.94	₱18,531,969.02
VAT	4,939,414.26	2,469,707.13	4,870,811.28	2,617,889.56	14,897,822.23
TOTAL	₱11,175,634.91	₱5,587,817.45	₱10,743,252.39	₱5,923,086.50	**₱33,429,791.25**

On August 22, 2022, a Formal Letter of Demand (**FLD**)[15] with Final Assessment Notice (**FAN**) assessing petitioner for alleged deficiency IT[16] and VAT[17] for TY 2012, was issued and served through registered mail under Registry Receipt No. RE 627 160 170 ZZ on September 23, 2022.[18] Petitioner was directed to pay its deficiency tax liabilities on September 21, 2022, broken down as follows:

Tax Type	Basic	Surcharge (50%)	20% Interest (Apr. 16, 2013-Dec. 31, 2017)	12% Interest (Jan. 1, 2018-July 31, 2022)	Total
IT	₱6,236,220.65	₱3,118,110.32	₱5,872,441.11	₱3,429,921.36	₱18,656,693.45[19]
VAT	4,939,414.26	2,469,707.13	4,870,811.28	2,716,677.84	14,996,610.51
TOTAL	₱11,175,634.91	₱5,587,817.45	₱10,743,252.39	₱6,146,599.20	**₱33,653,303.95**

On January 11, 2023, petitioner received the WDL dated December 29, 2022,[20] through its legal counsel, Atty. Peter S. Castillo II.[21] The WDL seeks to collect from petitioner the total IT and VAT deficiencies amounting to ₱33,653,303.96.[22]

On February 10, 2023, petitioner filed the instant *Petition for Review*.[23]

On April 24, 2023, respondent filed a *Motion for Extension of Time to File Answer to Petition for Review with Entry of Appearance as Counsel*.[24] The Court granted the motion on May 12, 2023, giving respondent a non-extendible period of thirty

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15 *Id.* at 274–275.
16 *Id.* at 277. Exhibit "P-5."
17 *Id.* at 276. Exhibit "P-6."
18 *Id.* at 279. Affidavit of Service of Final Assessment Notice (FAN)/Formal Letter of Demand (FLD).
19 0.01 difference.
20 BIR Records, p. 291. Exhibit "P-3"; Docket, p. 118, Exhibit "R-11".
21 Docket, pp. 7 & 8, *Petition for Review*, Timeliness of Filing the Petition, par. 1 & Statement of Facts, par. 1, respectively, vis-à-vis Docket, p. 85, *Answer with Special Affirmative Defenses*, par. 2.
22 0.01 difference.
23 *Supra* note 1.
24 Docket, pp. 79–81.

(30) days from April 23, 2023, or until May 23, 2023, to file his Answer.[25] On May 11, 2023, respondent filed his *Answer with Special Affirmative Defenses.*[26]

On June 7, 2023, respondent transmitted the *BIR Records* consisting of 427 pages.[27]

On June 28, 2023, the Court referred the case to the Philippine Mediation Center-Court of Tax Appeals (**PMC-CTA**) for mediation.[28] On July 10, 2023, the Court received PMC-CTA Form 6 – No Agreement to Mediate, indicating that the parties decided not to have their case mediated.[29] Consequently, the case was set for Pre-Trial Conference on October 12, 2023.[30] Thereafter, a Notice of Pre-Trial Conference was issued on July 21, 2023.[31]

Petitioner's Pre-Trial Brief was filed on October 6, 2023,[32] while the *Pre-Trial Brief for the Respondent* was filed on October 9, 2023.[33]

During the Pre-Trial Conference, the Court ordered:

1. Petitioner's counsel to submit a compliant Judicial Affidavit of Peter S. Castillo II (**Castillo**), as the submitted affidavit was not notarized and the documentary exhibits were alphabetically marked; and

2. Both parties to submit their Joint Stipulation of Facts and Issues (**JSFI**) within twenty (20) days.[34]

On November 3, 2023, petitioner filed a *Compliance,*[35] and both parties filed their JSFI.[36]

On January 11, 2024, the Court issued the Pre-Trial Order,[37] thereby terminating the pre-trial proceedings.

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[25] *Id.* at 119. Notice of Resolution.
[26] *Id.* at 84–94.
[27] *Id.* at 128–129. *Ex-Parte Manifestation and Compliance with Leave of Court.*
[28] *Id.* at 126. Notice of Resolution dated May 24, 2023.
[29] *Id.* at 133.
[30] *Id.* at 136. Resolution dated July 18, 2023.
[31] *Id.* at 137–139.
[32] *Id.* at 142–149.
[33] *Id.* at 150–154.
[34] *Id.* at 158–160 & 161–163. Minutes and Order of the Hearing held on October 12, 2023, respectively.
[35] *Id.* at 167–168.
[36] *Id.* at 174–177.
[37] *Id.* at 188–197.

During the trial, petitioner presented the testimony of its sole witness, Mr. Castillo, *ex parte*, due to the non-appearance of respondent despite notice.[38]

On March 11, 2024, petitioner filed a *Formal Offer of Evidence (**FOE**)*.[39] However, respondent failed to file a comment thereon.[40]

On April 23, 2024, the Court issued a Resolution admitting in evidence Exhibits "P-3", "P-4", "P-5", "P-6", "P-7", "P-9", and "P-9-1", except for Exhibits "P-1", "P-2", and "P-8", due to petitioner's failure to submit the duly marked exhibits and to identify them during the presentation of its witnesses. The Court also set the initial presentation of respondent's evidence for the testimonies of ROs Lapira and Sancho D. Maducdoc (**Maducdoc**) on June 25, 2024.[41]

On May 9, 2024, petitioner filed an *Omnibus Motion for Reconsideration (Of the Resolution Dated April 23, 2024)*,[42] to which respondent failed to file a comment[43] despite the Court's directive.[44]

On June 24, 2024, the Court granted petitioner's *Omnibus Motion for Reconsideration (Of the Resolution Dated April 23, 2024)*, set a Commissioner's Hearing on July 11, 2024 for the marking and comparison of petitioner's evidence, directed petitioner to submit its *Supplemental Formal Offer of Evidence (**SFOE**)* within five days from July 11, 2024, and cancelled respondent's presentation of evidence set on June 25, 2024 until further orders from the Court.[45]

On July 16, 2024, petitioner filed its *SFOE*.[46] Following the Court's directive,[47] respondent filed a *Comment/Opposition to Supplemental Formal Offer of Evidence* on August 9, 2024.[48]

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[38] *Id.* at 204–206 & 207–208, Minutes and Order of the Hearing held on February 27, 2024, respectively; 260–264, Judicial Affidavit of Peter S. Castillo II, Exhibit "P-9".
[39] *Id.* at 214–216.
[40] *Id.* at 217, Records Verification dated March 19, 2024.
[41] *Id.* at 227–228.
[42] *Id.* at 231–233.
[43] *Id.* at 238, Records Verification dated June 4, 2024.
[44] *Id.* at 237, Notice of Resolution dated May 23, 2024.
[45] *Id.* at 239, Notice of Resolution dated June 24, 2024.
[46] *Id.* at 247–249.
[47] *Id.* at 267-C, Notice of Resolution dated August 1, 2024.
[48] *Id.* at 268–270.

In its Resolution dated October 2, 2024, the Court admitted Exhibit "P-8" and denied admission of Exhibits "P-1" and "P-2" for failure to properly identify them. The Court then set respondent's presentation of evidence on November 12, 2024.[49]

Respondent's counsel presented ROs Lapira and Maducdoc as witnesses.[50] Thereafter, the Court gave respondent a non-extendible period of ten (10) days to file his FOE, and petitioner a non-extendible period of five days to file its comment or objection thereto.[51]

Instead of filing the FOE, respondent filed an *Urgent Motion to Set Commissioner's Hearing for the Respondent* on November 14, 2024,[52] to which petitioner filed a *Comment/Opposition to (Respondent's Urgent Motion to Set Commissioner's Hearing dated 14 November 2024)* on November 20, 2024.[53]

On November 22, 2024, respondent filed by accredited courier his FOE[54] but failed to file the electronic/soft copy thereof, as mandated by the Court's November 12, 2024 Resolution, which directed compliance with Court of Tax Appeals (**CTA**) *En Banc* Resolution No. 8-2024.[55]

In the interest of justice, the Court directed respondent to file *via* electronic mail (**e-mail**) a portable document format (**PDF**) copy of his FOE, within 24 hours from notice and held in abeyance the submission for resolution of respondent's *Urgent Motion to Set Commissioner's Hearing for the Respondent* and *Formal Offer of Evidence*, pending respondent's compliance therewith.[56] However, upon verification of the records, the Court found that respondent failed to transmit via e-mail the PDF copy of his FOE.[57] Consequently, the Court considered the same as not filed and deemed submitted for resolution respondent's *Urgent Motion to Set Commissioner's Hearing for the Respondent*.[58]

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49 *Id.* at 278–279.
50 *Id.* at 284–285, Order dated November 12, 2024.
51 *Id.*
52 *Id.* at 290–292.
53 *Id.* at 294–297.
54 *Id.* at 299–302.
55 *Id.* at 303, Records Verification dated November 25, 2024.
56 *Id.* at 305–306, Notice of Resolution dated January 16, 2025.
57 *Id.* at 321, Records Verification dated January 22, 2025.
58 *Id.* at 322, Notice of Resolution dated January 31, 2025.

On January 17, 2025, respondent filed his *Memorandum*.[59]

On February 20, 2025, the Court issued a Resolution denying respondent's *Urgent Motion to Set Commissioner's Hearing for the Respondent* for lack of merit and gave petitioner a non-extendible period of 30 days from notice to file its memorandum.[60] On March 25, 2025, petitioner filed its *Memorandum*.[61]

On April 21, 2025, this case was submitted for decision.[62]

THE ISSUE

As stipulated by the parties, the sole issue for resolution is:

> WHETHER OR NOT PETITIONER IS LIABLE TO PAY FOR THE ALLEGED DEFICIENCY INCOME TAX (IT) AND VALUE-ADDED TAX (VAT) IN THE AMOUNT OF ₱33,653,303.96, INCLUSIVE OF SURCHARGES AND INTERESTS FOR TAXABLE YEAR 2012.[63]

Petitioner's arguments:

Petitioner claims that no valid LOA was served upon it, as the LOA was allegedly delivered to an unauthorized person, an HR assistant, who had no authority over its tax matters. Citing *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*,[64] petitioner stresses that the absence of a properly served LOA constitutes a violation of its right to due process and renders the assessment null and void.

Petitioner further asserts that it did not receive an NOD or NIC prior to the issuance of the PAN, thereby violating its right to due process.

Petitioner also claims that the BIR's right to assess taxes for TY 2012 had already prescribed, as the FLD/FAN was mailed

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[59] *Id.* at 310–318.
[60] *Id.* at 332–333.
[61] *Id.* at 334–347.
[62] *Id.* at 351. Notice of Resolution.
[63] Docket. p. 191. Pre-Trial Order. IV. Issue/s To Be Tried or Resolved; Docket. p. 175. JSFI. II. Statement of the Issue.
[64] G.R. No. 244202. July 10. 2023 [Per J. Dimaampao. Third Division].

beyond the three (3)-year period provided under Section 203 of the NIRC of 1997, as amended.

Lastly, petitioner challenges the factual basis of the assessment, arguing that it was founded on unverified third-party information (**TPI**) that lacked the required sworn statements and confirmation requests, as required by BIR regulations and jurisprudence.

Respondent's arguments:

Respondent maintains that the tax assessments are valid and enforceable. He argues that the Court has no jurisdiction over the petition, which was allegedly filed out of time. He contends that petitioner failed to file a valid administrative protest within the prescribed 30-day period from receipt of the FLD/FAN, thereby rendering the assessments final, executory, and demandable.

Respondent further claims that the petition is premature, as it was not based on a decision of the CIR on a disputed assessment, but merely on the issuance of a WDL. He avers that the presumption of regularity in the performance of duties by the BIR personnel applies in this case.

THE COURT'S RULING

The Petition for Review was timely filed.

Before delving into the merits, the Court must first determine whether it has jurisdiction over petitioner's prayer for the cancellation of the WDL.

Section 7(a)(1) of Republic Act (**RA**) No. 1125,[65] as amended by RA No. 9282,[66] confers upon the Court jurisdiction over decisions of respondent, to wit:

SEC. 7. *Jurisdiction.* – The CTA shall exercise:

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

[66] 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.

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue** or other laws administered by the Bureau of Internal Revenue;[67] (Emphasis supplied)

The above provision clearly establishes that the CTA's exclusive jurisdiction is not confined to decisions of the CIR on assessments or refunds. It also encompasses "other matters" arising from the NIRC or related laws administered by the BIR.

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*,[68] the Supreme Court ruled that "[Section 7(1) of RA No. 1125] gives the CTA jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid."

Accordingly, this Court has jurisdiction to determine the validity of the WDL issued against petitioner.

Relatedly, Section 11 of RA No. 1125, as amended, prescribes the period for filing an appeal before the CTA, *viz.*:

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

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[67] Sec. 7(a)(1) of Republic Act (RA) No. 1125, as amended, is reproduced in Sec. 3(a)(1) of the Revised Rules of the Court of Tax Appeals (RRCTA):
SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue; (*Emphasis supplied*)

[68] G.R. No. 162852, December 16, 2004 [Per J. Ynares-Santiago, First Division], cited in *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital)*, G.R. No. 255473, February 13, 2023 [Per J. Singh, Third Division].

The afore-cited provisions are also provided in Section 3(a), Rule 4,[69] and Section 3(a), Rule 8[70] of the Revised Rules of the Court of Tax Appeals.

Based on the foregoing, the Court has exclusive jurisdiction to review a WDL by appeal, provided that the appeal is filed within 30 days from petitioner's receipt thereof.

In this case, respondent issued the assailed WDL on December 29, 2022,[71] seeking the collection of deficiency taxes amounting to ₱33,653,303.96, which petitioner received on January 11, 2023, through its legal counsel, Atty. Peter S. Castillo II.[72] Counting 30 days from receipt, petitioner had until February 10, 2023, to file a petition for review before this Court. Since the present *Petition for Review* was filed on February 10, 2023, it was timely filed, and the Court therefore assumes jurisdiction over this case.

Petitioner's right to due process was violated by the CIR's failure to prove proper service and receipt of PAN and FLD/FAN.

Petitioner contends that its right to due process was violated when the CIR failed to establish that the PAN and FLD/FAN were properly served and received.

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69 SEC. 3. *Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or <u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or <u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action;

70 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, ... may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

71 Exhibit "P-3", BIR Records, p. 291; Exhibit "R-11", Docket, p. 118.

72 *Supra* note 21.

Section 228[73] of the NIRC of 1997, as amended, mandates that the taxpayer be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment is void. To implement this due process requirement in the issuance of a deficiency tax assessment, the BIR issued Revenue Regulations (**RR**) No. 18-2013,[74] which amended RR No. 12-1999.[75]

Section 3.1.6 of RR No. 18-2013 prescribes the modes of service for notices, including service by registered mail to the taxpayer's registered or known address, with specific instructions to the postmaster and documentation requirements:

> 3.1.6 Modes of Service. — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
>
> ....
>
> (iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail. The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same, and such other relevant information. **The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute**

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[73] SEC. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:

....

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings. (Emphasis supplied)

[74] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

[75] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.

> **sufficient proof of <u>mailing</u> and shall be attached to the case docket**. (Emphasis supplied)

As proof of mailing, respondent attached registry receipts issued by the post office to the PAN and FLD/FAN, which form part of the BIR Records.

However, petitioner maintains that the PAN and FLD/FAN were improperly served in violation of its right to due process.

The records show that the PAN was issued on June 20, 2022, and served through registered mail on July 6, 2022, which gave petitioner 15 days from notice to pay its deficiency tax liabilities, while the FLD/FAN was issued on August 22, 2022, but mailed only on September 23, 2022, **after the due date** indicated therein (September 21, 2022).

Rule 131, Section 3(v)[76] of the Rules of Court provides that "a letter duly directed and mailed" is presumed to have been "received in the regular course of the mail[.]" However, this presumption is disputable and may be contradicted and overcome by evidence.[77]

During clarificatory questioning, the following exchange occurred:

JUSTICE DEL ROSARIO
Alright. You know, service of Preliminary Assessment Notice and Final Assessment Notice are vital in a case like this. So, you kindly clarify. You said you're aware that there was an attempt for you to serve personally the Final Assessment Notice. You yourself went to the office of the petitioner here?

MS. LAPIRA
Yes, your Honors, I went there.

JUSTICE DEL ROSARIO
And why is it that only the Security Guard was there? Are you saying that the office was closed and only a Security Guard was there?

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[76] SEC. 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

....

(v) That a letter duly directed and mailed was received in the regular course of the mail;

[77] *Id.*

MS. LAPIRA
Yes, your Honors. As far as what the Security Guard revealed, that it is the [sic] Freyssinet is already closed.

JUSTICE DEL ROSARIO
What do you mean closed, permanently closed already? Not operational? Is that the information given to you?

MS. LAPIRA
That was what the Guard said to me.

JUSTICE DEL ROSARIO
But observing the premises, did you not notice if there is really an ongoing operation?

MS. LAPIRA
There is nothing there, your Honors.

....

JUSTICE DEL ROSARIO
Is there a building inside?

MS. LAPIRA
Nothing more. I only saw the Guard House, your Honors.

JUSTICE DEL ROSARIO
Precisely. Is that the address of the taxpayer as represented in the BIR documents?

MS. LAPIRA
Yes, your Honors.

JUSTICE DEL ROSARIO
What's the address indicated? Where do you serve it?

MS. LAPIRA
It is [sic] address at Balagtas Bypass Road, Tiaong, Guiguinto, Bulacan, your Honors.

...

JUSTICE DEL ROSARIO
In so far as the records are concerned, you believe that the place where you visited is actually the office of the petitioner here?

MS. LAPIRA
Yes, your Honors, because there are some name and billboard there still but nobody is there.

JUSTICE DEL ROSARIO
And there's no building or structure except the Guard House?

MS. LAPIRA
Yes, your Honors. But the Guard said that they have office somewhere in Manila but I (interrupted)

JUSTICE DEL ROSARIO
After learning of the fact that there is an office in Manila, you did not try to exert more efforts to ensure that the notices coming from the BIR would be received by the petitioner?

MS. LAPIRA
Because, your Honors, even the Guard do not know where is the exact location of that office.

JUSTICE DEL ROSARIO
In Manila?

MS. LAPIRA
In Manila.

JUSTICE DEL ROSARIO
You did not search let's say the internet or any other means to really locate the petitioner?

MS. LAPIRA
No, your Honors.

JUSTICE DEL ROSARIO
When you sent the Notice via registered mail, you can anticipate that the petitioner here did not actually receive it? Because you're saying that the address to which you sent the notices is also the same address you visited and there's nobody in that place?

MS. LAPIRA
Yes, your Honors.[78] (Emphasis supplied)

Ms. Lapira admitted that when she attempted to serve the FLD/FAN personally at petitioner's registered address, she found only a security guard on the premises, who informed her that the company had closed and that its office was somewhere in Manila. Despite this information, she made no further effort to ascertain the exact location of the Manila office or to ensure that petitioner would properly receive the notices. She also confirmed that the notices were sent by registered mail to the same address where no operations were observed. Thus, she

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[78] TSN, November 12, 2024, RO Flordeliza C. Lapira, pp. 19-23.

anticipated that petitioner did not actually receive the mailed notices.

These circumstances not only contradict the presumption of regular receipt but also show that respondent failed to establish that the PAN and FLD/FAN were properly served and received by petitioner. Consequently, respondent fell short of complying with the due process requirements in the service of deficiency tax assessments under RR No. 12-1999, as amended.

In *Commissioner of Internal Revenue v. Villanueva, Jr.*,[79] the Supreme Court held that the mere presentation of registry receipts does not suffice to prove valid service:

> While the CIR presented a copy of the registry receipt of the FAN/FLD, it failed to identify or authenticate whether the signature appearing therein belongs to respondent or his authorized representative. In addition, **apart from the registry receipt, <u>no other independent and competent evidence</u> was presented by the CIR to prove respondent's actual receipt of the assessment notices**. Indeed, as ruled in *T Shuttle*, **mere presentation by the CIR of the registry receipts does not automatically prove actual receipt by the taxpayer. It must be clearly shown that the assessment notices were <u>properly served to and received by only the taxpayer or his or her duly authorized representative</u>**. This exacting standard guarantees the due process mandate that the taxpayer be informed of the basis of the assessment. (Emphases supplied)

Independent evidence includes authenticated signatures on registry return receipts showing such signatures were those of the taxpayer, or his, her, or its authorized representative/s[80] or certification from the Bureau of Posts[81] confirming delivery to the taxpayer or duly authorized representatives.

Here, respondent presented neither. Instead, his witness was uncertain as to whether petitioner actually received the notices. Ms. Lapira's testimony, coupled with the absence of registry return cards bearing the signatures of petitioner's authorized representatives or postal certification, shows that respondent failed to prove valid service of the PAN and FLD/FAN.

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79 G.R. No. 249540, February 28, 2024 [Per J. Caguioa, Third Division].

80 *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729 (Resolution), August 24, 2020 [Per J. Inting, Second Division].

81 *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*, G. R. No. 157064, August 7, 2006 [Per Chico-Nazario, First Division].

Accordingly, respondent's failure to discharge the burden of proving valid service renders the deficiency assessments void. Jurisprudence consistently requires strict compliance with the due process requirement under Section 228 of the NIRC of 1997, as amended; absent such compliance, the assessment cannot stand.[82]

Even if the FLD/FAN was properly served to and received by petitioner, it is nonetheless void for failure to state a valid demand for payment.

As pointed out earlier, respondent issued the FLD/FAN on August 22, 2022, but mailed it only on September 23, 2022, **after the due date** indicated therein (September 21, 2022) had already lapsed.

In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*,[83] the Supreme Court held that an assessment must contain both a computation of tax liabilities and a demand for payment within a prescribed period. The Supreme Court explained:

> **An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period.** It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. (Emphasis supplied)

Likewise, in *Commissioner of Internal Revenue v. Fitness by Design, Inc.* (***Fitness by Design***),[84] the Supreme Court reiterated that a final assessment notice must contain not only the amount of tax due but also a **definite due date** for payment:

> **A final assessment notice provides for the <u>amount</u> of tax due with a <u>demand</u> for payment.** ...

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[82] *Commissioner of Internal Revenue v. Maxicare Healthcare Corporation*, G.R. No. 261065, July 10, 2023 [Per J. Singh, Third Division], citing *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99, October 03, 2018 [Per J. Leonen, Third Division]; *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729 (Resolution), August 24, 2020 [Per J. Inting, Second Division].

[83] G.R. No. 128315, June 29, 1999 [Per J. Panganiban, Third Division]. See also *Tupaz v. Ulep, et al.*, G.R. No. 127777, October 1, 1999 [Per J. Pardo, First Division].

[84] G.R. No. 215957, November 9, 2016 [Per J. Leonen, Second Division].

> ....
>
> The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment." However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay**.
>
> ....
>
> **A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof."** This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."
>
> **The disputed Final Assessment Notice is not a valid assessment.**
>
> First, **it lacks the definite amount of tax liability** for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a "written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed." Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. Thus: ...
>
> Second, **there are no due dates in the Final Assessment Notice.** This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment: (Emphasis supplied; Citations omitted)

Consistent with the ruling in *Fitness by Design*, the Supreme Court has consistently nullified tax assessments that

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do not contain a definite due date[85] for payment, as such omission renders the demand legally ineffective.

In this case, the FLD/FAN cannot be considered a valid assessment for two reasons:

First, **the due date had already expired at the time of mailing**. The FLD/FAN indicated September 21, 2022 as the due date, yet it was mailed only on September 23, 2022. Compliance with such a demand was legally impossible, since a taxpayer cannot be compelled to pay on a date that had already lapsed before receipt. Thus, the supposed demand for payment was illusory and void.

Second, **the due date is a substantive requirement, not a mere formality**. As the Supreme Court stressed in *Fitness by Design*, the demand for payment must afford the taxpayer a real and fair opportunity to comply. A lapsed due date deprives the taxpayer of that opportunity and violates the due process guarantee enshrined in Section 228 of the NIRC of 1997, as amended.

Further, the importance of a valid due date is underscored in Section 249(C) of the NIRC, as amended, which governs the computation of delinquency interest. Without a due date, delinquency interest cannot be properly computed. Section 249(C) provides, in part:

> SEC. 249. – *Interest*. ...
>
> (C) Delinquency Interest. - In case of failure to pay:
>
> ....
>
> (3) A deficiency tax, or any surcharge or interest thereon **on the due date appearing in the notice and demand of the Commissioner**, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax. (Emphasis supplied)

Without a valid **prospective due date**, delinquency interest cannot be properly computed, as the law contemplates

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[85] *Republic v. First Gas Power Corporation*, G.R. No. 214933, February 15, 2022 [Per J. Y. Lopez, First Division]; *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729 (Resolution), August 24, 2020 [Per J. Inting, Second Division].

that such interest begins to run **after** a taxpayer has been duly notified and given the opportunity to pay.

Under the NIRC of 1997, as amended, an assessment is defined as a "written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed."[86] In *Fitness by Design*, the Supreme Court emphasized that a final assessment must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period." This "**specific period**" must refer to a **prospective or future due date** that provides the taxpayer with a real and fair opportunity to comply.

A due date that has already lapsed at the time of receipt defeats this purpose and violates the taxpayer's right to due process. Moreover, allowing a past due date would unjustly subject the taxpayer to interest before the taxpayer actually receives the assessment notice.

In sum, a valid tax assessment must be definite, demandable, and enforceable. A demand for payment that becomes impossible to comply with because the due date has already passed fails to meet both the statutory and jurisprudential requirements for a valid assessment. As such, the FLD/FAN issued in this case is void for lack of a valid and effective demand for payment.

The government's right to assess petitioner has prescribed.

Even assuming that the assessment notices were validly served and received by petitioner, the *Petition for Review* must still be granted on the ground of prescription.

Under Section 203 of the NIRC of 1997, as amended, the government's right to assess deficiency taxes prescribes in three years from the last day prescribed by law for filing the return, or from the date of actual filing, whichever comes later:

> SEC. 203. *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no

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[86] *Adamson v. Court of Appeals*, G.R. Nos. 120935 & 124557, May 21, 2009 [Per C. J. Puno, First Division].

> proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

However, Section 222(a) provides an exception: in cases of a false or fraudulent return with intent to evade tax, or failure to file a return, the BIR is given an extraordinary 10-year period to assess, counted from the discovery of the falsity, fraud, or omission:

> SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.-*
>
> (a) In the case of a **false or fraudulent return with intent to evade tax** or of **failure to file a return**, **the tax may be assessed**, or a proceeding in court for the collection of such tax may be filed without assessment, **at any time within ten (10) years after the discovery of the falsity, fraud or omission**: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. (Emphasis supplied)

From the foregoing, the extraordinary 10-year prescriptive period applies only to the following cases: (1) when a taxpayer files a false return with intent to evade tax; (2) when a taxpayer files a fraudulent return with intent to evade tax; and (3) when a taxpayer fails to file a return.[87]

In *McDonald's Philippines Realty Corporation v. Commissioner of Internal Revenue*,[88] (***McDonald's***) the Supreme Court, sitting *En Banc*, abandoned the definition of false return in *Aznar v. Court of Tax Appeals*[89] and ruled that, with respect to the application of the 10-year prescriptive period, it must be understood that only intentional errors in the return may justify the application of the extraordinary 10-year period; understatement or overstatement of income, sales or receipts by itself does not amount to a falsehood for purposes of extending the ordinary three-year assessment period.

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[87] *Commissioner of Internal Revenue v. Villanueva, Jr.*, G.R. No. 249540, February 28, 2024 [Per J. Caguioa, Third Division].

[88] G.R. No. 247737, August 8, 2023 [Per J. Inting, *En Banc*], cited in *Commissioner of Internal Revenue v. Villanueva, Jr.*, G.R. No. 249540, February 28, 2024 [Per J. Caguioa, Third Division].

[89] G.R. No. L-20569, August 23, 1974 [Per J. Esguerra, First Division].

Nevertheless, prescription being a matter of defense, the burden rests on the taxpayer to positively establish not only that the full period of limitation has expired but also the precise dates when it began to run and when it was fully accomplished.[90]

Here, petitioner did not formally offer in evidence its Annual Income Tax Return (**AITR**) and VAT returns for TY 2012.[91] Records, however, show that petitioner filed its AITR for TY 2012 on April 15, 2013.[92] Thus, absent valid grounds for the application of the 10-year period, respondent had only until April 15, 2016 to assess petitioner.

Meanwhile, with respect to VAT assessment, petitioner cannot invoke prescription as a defense because it failed to prove the actual filing of its VAT returns, and absent any presumption that the taxpayer duly filed its returns, the only conclusion is that no returns were filed, thereby giving the BIR 10 years to assess VAT.[93]

The Court now proceeds to determine whether respondent has a legal basis to apply the 10-year extraordinary prescriptive period for the assessment of taxes.

On August 22, 2022, respondent issued the FLD/FAN, imposing a 50% surcharge on petitioner pursuant to Section 248(B) of the NIRC of 1997, as amended, for allegedly failing to report sales, receipts, or income in an amount exceeding 30% of that declared per return.[94]

In *McDonald's*, the Supreme Court clarified that:

> ... ***falsity* and/or, *fraud with respect to any tax return* cannot be presumed** to the extent that these are relied upon **as grounds for the extension of the assessment period to 10 years**. In keeping with their duty to preserve due process in tax assessments, as enunciated in *BF Goodrich, Fitness by Design, Samar Electric, Asalus,* and *Spouses Magaan,* **the tax authorities bear the burden of establishing, with *clear and convincing proof,* the**

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[90] *Commissioner of Internal Revenue v. Marily Development Corporation*, G.R. No. 263794, April 2, 2025 [Per J. M.V. Lopez, Second Division], citing *Querol v. Collector of Internal Revenue*, G.R. No. L-16705, October 30, 1962 [Per J. J.B.L. Reyes, *En Banc*] & *AFP General Insurance Corp. v. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020 [Per J. Inting, Third Division].

[91] Docket, pp. 214–216, *Formal Offer of Evidence*.

[92] BIR Records, p. 43.

[93] See *Commissioner of Internal Revenue v. Marily Development Corporation*, G.R. No. 263794, April 2, 2025 [Per J. M.V. Lopez, Second Division].

[94] BIR Records, p. 274, Details of Discrepancy attached in the FLD/FAN.

> **existence of grounds warranting the application of the 10-year period.** (Emphasis supplied)

Indeed, the burden rests on the BIR to establish, with clear and convincing evidence, the existence of grounds warranting the application of the extraordinary 10-year prescriptive period for assessment, except in cases where there exists *prima facie evidence of falsity or fraud* under Section 248 (B):

> • *Exception — Prima Facie Evidence of a False or Fraudulent Return (30% Threshold)*
>
> The CIR may be relieved from the above-mentioned burden of proof when there is *prima facie evidence of falsity or fraud*, as defined under Section 248 (B) of the 1997 Tax Code.
>
> (1) The CIR ascertains that there is a *misstatement/misdeclaration* in the return, in particular,
>
> (a) an *understatement/underdeclaration* of sales, receipts, or income or
>
> (b) an *overstatement/overdeclaration* of expenses or other deductions, and
>
> (2) the misstatement is *substantial*, such that exceeds the corresponding amount declared in the return by 30%.
>
> ***30% threshold satisfied.*** There is *prima facie* evidence of falsity or fraud and the burden of proof shifts to the taxpayer. If the taxpayer fails to overcome the presumption, the *prima facie* evidence shall be sufficient to justify the application of the 10-year period.
>
> ***Taxpayer refutes presumption***. If the taxpayer is successful in overturning the presumption (*e.g.*, demonstrating that the misstatement as ascertained by the CIR had been inadvertent or attributable to a mistake or was not deliberate or willful on the part of the taxpayer), the CIR cannot rely on the presumption in proving the taxpayer's intent to evade.
>
> *ii. Due Process Requirements*
>
> (1) **First Due Process Requirement**. The *assessment notice* issued to the taxpayer must clearly state the following:

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(a) that extraordinary prescriptive period (not the basic three-year period) is being applied, and

(b) the bases of allegations of falsity or fraud, *e.g.*, if the CIR seeks to rely on the *presumption of falsity or fraud* particularly, the formal notice to the taxpayer *must set out the computation by which it ascertained that the misdeclaration in the return surpassed the 30% threshold.*

(2) **Second Due Process Requirement**. The tax authorities have not acted in a manner that is *inconsistent* with the invocation of the extraordinary prescriptive period or have otherwise misled the taxpayer that the basic period will be applied.

Following *McDonald's*, the Court must determine: *first*, whether the CIR could benefit from the presumption of falsity or fraud, and *second*, whether the CIR, in applying the extraordinary 10-year period, respected petitioner's due process rights.

First: Respondent cannot benefit from the presumption of falsity.

In the Details of Discrepancy attached to the FLD/FAN, respondent alleged that petitioner failed to reflect the correct amount of sales to Megaworld Corporation for TY 2012. Petitioner declared taxable income of ₱1,098,429.25 in its AITR/Financial Statement (**FS**). However, respondent found a discrepancy in sales amounting to ₱41,161,786.00. Applying the gross profit ratio of 55.65% from petitioner's FS, respondent computed undeclared income of ₱22,906,533.91, an amount exceeding the 30% threshold under Section 248(B).

However, when an assessment is based on TPI, ROs are required to prepare and send a confirmation request to the TPI source, or coordinate with the RDO having jurisdiction over the TPI source in the preparation and issuance of the confirmation request. If the TPI source agrees with the figures in the confirmation request, the RO must then obtain a sworn statement from the TPI source attesting to the veracity of the data provided. This procedure is mandated under Revenue Memorandum Order (**RMO**) No. 46-2004,[95] which reads:

[95] Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers, September 2, 2004.

III. PROCEDURES

....

Action on Protested LNs due to TPI discrepancy

The Revenue Officer assigned to handle the Letter Notice shall:

....

2. Require the taxpayer to execute a Sworn Statement (Annex A) attesting to the veracity of the schedules and authenticity of the documents presented/submitted.

3. Obtain Sworn Statements from TPI sources (Annexes "B" and "C") attesting to the veracity of the data provided.

3.1 If the TPI source is registered in the RDO/LTDO/LTAID having jurisdiction over the subject taxpayer, the RO shall:

3.1.1 Prepare "Confirmation Requests" (using the format prescribed in Annex "C" of RMO No. 30-2003 to be signed by the heads of the concerned RDO/LTDO/LTAID) for purposes of verifying the accuracy of the figures appearing in the DTCS.

3.1.2 If the TPI source agrees with the figures in the "Confirmation Requests" (CR), secure a Sworn Statement from the TPI source to allow the RO to build a case against the taxpayer.

3.2 If the TPI source is outside the jurisdiction of the RDO/LTDO/LTAID where the taxpayer is registered, the RO shall:

3.2.1 Coordinate with the RDO/LTDO/LTAID where the TPI source is registered, in order to:

a. Prepare a CR to be transmitted and signed by the RDO/LTDO/LTAID having jurisdiction over TPI source (CRs should be coursed thru the RDO/LTDO/LTAID where the taxpayer is registered);

b. Secure a sworn statement from the TPI source thru the RDO/LTDO/LTAID having jurisdiction over the same; and,

c. Assist the heads of the concerned RDO/LTDO/LTAID in the preparation of Monthly Status Report on Confirmation Requests

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> Transmitted (Annex "D") outside the RDO/LTDO/LTAID of the TPI source and submit the same to the SCG, for monitoring purposes.

An assessment must be based on **verified facts** and **substantiated by evidence**. Unverified TPI cannot serve as a proper factual basis for a tax assessment.[96] Without the necessary confirmation or verification pursuant to RMO Nos. 46-2004 and 13-2012, such as confirmation requests and sworn statements from TPI sources (if the TPI source responds), the data obtained from third-party matching remains unsubstantiated, rendering the assessment void for lack of factual and legal basis.

In the present case, while respondent invoked substantial underdeclaration based on alleged discrepancies with TPI, the BIR Records and the evidence presented do not show that the required verification procedures under RMO No. 46-2004 were followed. In the absence of such verification, the assessment lacks factual basis, and respondent cannot benefit from the presumption of falsity.

Second: Respondent failed to observe the requirements of due process.

As previously discussed, respondent failed to prove that petitioner received the assessment notices, which would have informed petitioner of the factual and legal bases of the deficiency taxes and of the alleged application of the extraordinary 10-year prescriptive period. Had petitioner been properly served with such notices, it would have been able to timely refute or protest the subject assessments.[97]

Further, in *McDonald's*, the Supreme Court emphasized that "due process in invoking the exceptional 10-year period not only *requires* the tax authorities to issue an *assessment notice* to provide clear and adequate information necessary in setting up the taxpayer's protest but also *disallows* the tax authorities from acting in a manner that is *inconsistent* with the invocation of the extraordinary prescriptive period or would otherwise mislead the taxpayer that the basic period will be applied."

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[96] *Commissioner of Internal Revenue v. MCC Transport Singapore Pte. Ltd.*, G.R. No. 255382 (Notice), June 28, 2021 [Per Resolution, Second Division].

[97] See *Commissioner of Internal Revenue v. Villanueva, Jr.*, G.R. No. 249540, February 28, 2024 [Per J. Caguioa, Third Division].

Here, the government's right to assess petitioner's tax liabilities for TY 2012 was expected to prescribe at the latest on April 15, 2016, three years from the filing of its AITR. To extend the period of assessment, petitioner executed a *Waiver* on December 16, 2015, thereby giving the CIR additional time to resolve the legal and factual issues involved in the audit.

This leads the Court to conclude that the CIR's subsequent invocation of the 10-year period was a mere afterthought. To proceed under the ordinary three-year period by executing a waiver, only to later invoke the ten-year period on the unfounded allegation that petitioner filed a false return, is an **arbitrary exercise of the power to assess.**[98]

Notably, respondent did not contest petitioner's assertion that the assessment had prescribed. Neither in its *Answer* nor in its *Memorandum* did respondent refute petitioner's claim that the government's right to assess had expired under the ordinary three (3)-year period. Respondent likewise failed to establish any factual or legal basis for the application of the extraordinary 10-year period.

In fine, the FLD/FAN is void for violation of petitioner's right to due process. Even assuming their validity, the government's right to assess petitioner's tax liabilities for TY 2012 has long prescribed. Respondent failed to prove falsity or fraud and did not comply with the due process requirements necessary to justify the application of the extraordinary ten (10)-year prescriptive period.

WHEREFORE, in light of the foregoing, the *Petition for Review* filed by Freyssinet Philippines, Inc. on February 10, 2023 is hereby **GRANTED**.

Accordingly, the Formal Letter of Demand with the corresponding Final Assessment Notices dated August 22, 2022, and the Warrant of Distraint and/or Levy dated December 29, 2022, for the alleged deficiency Income Tax and Value-Added Tax, including surcharge and interests in the aggregate amount of ₱33,653,303.96, covering taxable year 2012, are hereby **CANCELLED** and **SET ASIDE**.

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[98] See *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue*, G.R. No. 247737, August 8, 2023 [Per J. Inting, *En Banc*].

Respondent Commissioner of Internal Revenue, or any person acting on his behalf, is hereby **ENJOINED** and **PROHIBITED** from instituting, pursuing, or otherwise taking any action to collect the foregoing void assessments.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Acting Chairperson

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice