REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 3051** (CTA Case No. 10349)
	Present:
- versus -	**RINGPIS-LIBAN,** *P.J.,* **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
MARINA SQUARE PROPERTIES, INC., *Respondent.*	Promulgated: MAY 2 1 2026 4:25 p.m.

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DECISION

ANGELES, J.:

Before this Court of Tax Appeals (CTA) *En Banc* (Court *En Banc*) is a *Petition for Review*[1] filed on December 19, 2024, pursuant to Section 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended[2] (RRCTA). Petitioner seeks the reversal and setting aside of the ***Decision*** dated April 11, 2024[3] (assailed Decision) and the

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[1] *En Banc* (EB) Docket, pp. 1 to 12.

[2] Revised Rules of the Court of Tax Appeals (RRCTA), Section 4(b) provides:

SECTION 4. *Where to appeal; mode of appeal.* —

x x x

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on appeal. *(n)*

[3] EB Docket, pp. 20 to 44. The Resolution was penned by Associate Justice Corazon G. Ferrer-Flores, and concurred in by Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro.

Resolution dated November 12, 2024[4] (assailed Resolution), both rendered by the Special Third Division of this Court (Court in Division) in CTA Case No. 10349, the dispositive portions of which respectively read:

Decision dated April 11, 2024:

"**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the subject deficiency income tax, expanded withholding tax, withholding tax on compensation, value-added tax and documentary stamp tax assessments, including the imposed surcharge, interests, and compromise penalties, in the aggregate amount of **P801,308,250.45**, for taxable year 2014, are **CANCELLED and WITHDRAWN**.

Moreover, the Formal Letter of Demand dated October 26, 2017 and the Final Decision on Disputed Assessment dated July 30, 2020 issued by the Bureau of Internal Revenue against petitioner are **REVERSED** and **SET ASIDE**.

SO ORDERED."[5]

Resolution dated November 12, 2024:

"**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration (re: Decision dated 11 April 2024)** is **DENIED** for lack of merit.

SO ORDERED."[6]

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR) vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said Office, including *inter alia,* the power to decide disputed assessments and to cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, and rules and regulations.[7]

Respondent is a corporation organized and existing under the laws of the Philippines, with principal office at 17/F New Coast Hotel

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[4] *Id.* at 46 to 52. The Resolution was penned by Associate Justice Corazon G. Ferrer-Flores, and concurred in by Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro.
[5] *Id.* at 43.
[6] *Id.* at 52.
[7] *Id.* at 21; citations omitted.

Manila, 1588 M.H. del Pilar Street cor. Pedro Gil, Malate, Manila. It is registered with the Bureau of Internal Revenue (BIR).[8]

FACTS OF THE CASE

The facts of the present case were set forth by the Court in Division in the assailed Decision, as follows:[9]

> [Herein Petitioner] issued the *Letter of Authority* (LOA) No. LOA-201200042292, dated March 3, 2016, authorizing Revenue Officers (ROs) Christina Lati and Ryan Loon, and Group Supervisor (GS) Merly Santiago of Revenue District Office (RDO) No. 126-Regular LT Division III, to examine [herein respondent] books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2014 to December 31, 2014. The said LOA was received by [respondent] on March 14, 2016.
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> Thereafter, [petitioner] issued the *Preliminary Assessment Notice* (PAN), dated July 11, 2017, against [respondent] proposing for deficiency income tax, EWT, WTC, VAT, and DST for TY 2014 in the aggregate amount of P660,004,224.90, inclusive of surcharge and interest. The said PAN was received by [respondent] on July 11, 2017.
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> On July 26, 2017, [respondent] filed a written reply to the PAN (letter of even date) in which it prayed for the cancellation and withdrawal of the proposed assessments on the ground that they are devoid of any legal and factual bases.
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> [Petitioner] then issued the *Formal Letter of Demand* (FLD) dated October 26, 2017, in which [petitioner] requested [respondent] to pay deficiency income tax, EWT, WTC, VAT, and DST for TY 2014 in the aggregate amount of P686,961,529.88, inclusive of surcharge and interest. In addition, [petitioner] imposed a compromise penalty in the amount of P160,700.00, for [respondent]'s alleged failure to pay the correct amount of income tax, EWT, WTC, VAT, and DST for the same TY. The said FLD was received by [respondent] on October 26, 2017.
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> On November 23, 2017, [respondent] filed with the BIR its *Request for Reinvestigation* (protest letter of even date), praying for the cancellation of [petitioner]'s assessments. [Respondent] submitted to the BIR certain documents in support of its administrative protest on January 22, 2018.
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> Subsequently, [petitioner] issued a *Final Decision on Disputed Assessment* (FDDA), denying [respondent]'s administrative protest. In this FDDA, [petitioner] requested [respondent] to pay the assessments for alleged deficiency income tax, EWT, WTC, VAT, and DST for taxable year 2014, in the aggregate amount of P801,308,250.45, inclusive of surcharge, interest and compromise

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[8] *Id.* at 20 to 21; citations omitted.
[9] *Id.* at 21 to 25; citations omitted.

penalties. The said FDDA was received by [respondent] on August 13, 2020.

On September 11, 2020, [respondent] filed its *Petition for Review*.

Thereafter, on January 29, 2021, [petitioner] filed his *Answer*.

In the Resolution dated February 3, 2021, the Court referred the case to mediation in the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) and the parties were ordered to immediately proceed and to personally appear or through their authorized representative. The parties, however, decided not to have their case mediated by the PMC-CTA.

Thereafter, in its Resolution dated June 23, 2021, in view of the failure of the parties to enter into mediation, the Court set the Pre-Trial Conference on October 7, 2021, which proceeded as scheduled. Prior thereto, the *[Respondent]'s Pre-Trial Brief* was sent to the Court via electronic mail on October 4, 2021, while the *[Petitioner]'s Pre-Trial Brief* was submitted on October 5, 2021.

[Petitioner] transmitted the *BIR Records* of the present case on October 26, 2021.

On November 15, 2021, the parties filed their *Joint Statement of Facts and Issues*, which was admitted and approved in the Resolution dated November 23, 2021, deeming the termination of the Pre-Trial. The Pre-Trial Order dated January 5, 2022 was subsequently issued.

Trial then ensued, with both parties presenting their respective testimonial and documentary evidence.

[Respondent] offered the testimonies of the following individuals, namely: (1) Ms. Violeta R. Gallardo, [respondent]'s Chief Accountant; and (2) Ms. Anselma P. Maliwat, the Court-commissioned Independent Certified Public Accountant (ICPA).

The *Report* of the ICPA was submitted on February 3, 2022.

On February 16, 2022, [respondent] filed a *Motion to Amend Pre-Trial Order*, to which [petitioner] failed to file his comment.

[Respondent] filed its *Formal Offer of Evidence with Motion for Leave of Court to Present Additional Evidence* on March 17, 2022. [Petitioner] filed his *Comment (on [Respondent]'s Formal Offer of Evidence with Motion to Recall Witness)* on March 21, 2022. In the Resolution dated April 22, 2022, the Court admitted [respondent]'s offered exhibits and granted [respondent]'s *Motion for Leave of Court to Present Additional Evidence*. Accordingly, [respondent] was allowed to recall Ms. Gallardo as its witness for the presentation of additional evidence. [Respondent] then recalled to the witness stand Ms. Gallardo.

Thereafter, [respondent] filed on August 16, 2022 its *Supplemental Formal Offer of Evidence*. [Petitioner] filed his *Comment (on [Respondent]'s Supplemental Formal Offer of Evidence)* on August

> 17, 2022. In the Resolution dated September 14, 2022, the Court partially granted [respondent]'s *Motion to Amend Pre-Trial Order*, and admitted [respondent]'s offered exhibits. Consequently, the Amended Pre-trial Order, incorporating the changes requested in paragraphs (2) and (4) of [respondent]'s motion, was issued on September 22, 2022.
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> For his part, petitioner offered the testimony of RO Christina Lati.
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> *[Petitioner]'s Formal Offer of Evidence* was filed on December 1, 2022, to which [respondent] filed its *Comment (Re: [Petitioner]'s Formal Offer of Evidence)* on December 12, 2022. In the Resolution dated February 2, 2023, the Court admitted [petitioner]'s offered exhibits.
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> On March 9, 2023, [respondent] filed its *Memorandum*, while [petitioner] submitted his *Memorandum* on March 16, 2023.
>
> The present case was submitted for decision on April 11, 2023.

On April 11, 2024, the Court in Division rendered the assailed Decision,[10] partially granting the *Petition for Review*.[11]

Aggrieved, petitioner filed a *Motion for Reconsideration (Re: Decision dated 11 April 2024)*[12] on May 03, 2024. However, in the assailed Resolution,[13] the Court in Division denied the *Motion* for lack of merit.

Thereafter, petitioner instituted the instant *Petition for Review*,[14] which was personally and electronically filed on December 19,[15] and 21,[16] 2024, respectively.

In a Minute Resolution dated January 24, 2025,[17] the Court directed respondent to file its comment on the *Petition for Review* within ten (10) days from notice.

Complying therewith, respondent personally and electronically filed its *Comment (Re: Petition for Review)*[18] (*Comment*) on February 14,[19] and 17,[20] 2025, respectively.

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[10] *Id.* at 20 to 44; Division Docket – Vol. IV, pp. 1659 to 1683.
[11] Division Docket – Vol. I, pp. 6 to 39.
[12] Division Docket – Vol. IV, pp. 1684 to 1691.
[13] EB Docket, pp. 46 to 52.
[14] *Id.* at 1 to 12.
[15] *Id.* at 1.
[16] *Id.* at 53.
[17] *Id.* at 54.
[18] *Id.* at 55 to 71.
[19] *Id.* at 55.
[20] *Id.* at 73.

Subsequently, in a Minute Resolution dated March 04, 2025,[21] the Court noted respondent's *Comment*, and referred the case to mediation before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA).

On April 22, 2025, the PMC-CTA informed the Court that the parties failed to reach an agreement during mediation.[22] The same was duly noted by the Court in its Minute Resolution dated May 21, 2025,[23] wherein the case was likewise deemed submitted for decision.

Meanwhile, respondent's counsel personally and electronically filed a *Withdrawal of Appearance*[24] on September 30,[25] and October 01,[26] 2025, respectively, which the Court noted in its Minute Resolution dated October 10, 2025.[27]

Thereafter, respondent's new counsels of record personally and electronically filed their *Entry of Appearance with Notice of Appearance*[28] on November 06,[29] and 11,[30] 2025, respectively. The Court likewise noted the same in its Minute Resolution dated November 19, 2025.[31]

ASSIGNMENT OF ERRORS

Petitioner submits the following assignment of errors[32] for the resolution of the Court *En Banc*:

> THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT [PETITIONER]'S RIGHT TO ASSESS [RESPONDENT]'S DEFICIENCY EWT, WTC, VAT, AND DST FOR TY 2014 HAD ALREADY PRESCRIBED.
>
> THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT [PETITIONER]'S ASSESSMENTS AGAINST [RESPONDENT] FOR DEFICIENCY INCOME TAX, EWT, WTC, VAT, AND DST FOR TY 2014 IN THE AGGREGATE AMOUNT

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[21] *Id.* at 74.
[22] *Id.* at 75.
[23] *Id.* at 76.
[24] *Id.*, unpaginated.
[25] *Id.*, unpaginated.
[26] *Id.*, unpaginated.
[27] *Id.*, unpaginated.
[28] *Id.*, unpaginated.
[29] *Id.*, unpaginated.
[30] *Id.*, unpaginated.
[31] *Id.*, unpaginated.
[32] *Id.* at 3.

OF PHP801,308,250.45, INCLUSIVE OF SURCHARGE, INTEREST, AND COMPROMISE PENALTIES, IS VOID.

ARGUMENTS OF THE PARTIES

Petitioner's arguments

First, petitioner maintains that the subject assessment was issued well within the applicable prescriptive period. Petitioner argues that respondent substantially underdeclared its taxable income by more than thirty percent (30%) of the amount reported in its Income Tax Return (ITR), thereby giving rise to a *prima facie* presumption of a false return under the law. According to petitioner, respondent failed to overcome such presumption; hence, the extraordinary ten (10)-year prescriptive period for the assessment and collection of deficiency taxes properly applies.

Second, petitioner contends that no violation of respondent's right to due process attended the issuance of the subject assessment. In support thereof, petitioner avers that the Preliminary Assessment Notice (PAN), Formal Letter of Demand (FLD) and Final Assessment Notices (FANs), as well as the Final Decision on Disputed Assessment (FDDA), substantially complied with the requirements prescribed under Section 228 of the NIRC of 1997, as amended.

Respondent's counter-arguments

First, respondent, for its part, counters that the deficiency value-added tax (VAT) assessments covering the first three (3) quarters of taxable year (TY) 2014, as well as the deficiency expanded withholding tax (EWT) and withholding tax on compensation (WTC) assessments for the period January to September 2014, are already barred by prescription. Respondent asserts that the extraordinary ten (10)-year prescriptive period under Section 222(b) of the NIRC of 1997, as amended, finds no application in the instant case.

Respondent explains that the petitioner's reliance on the alleged substantial underdeclaration reflected in respondent's ITR is misplaced, considering that the corresponding income tax assessment was admittedly issued within the ordinary three (3)-year prescriptive period, and is not the assessment being assailed on prescription grounds in the present controversy. Consequently, such alleged underdeclaration in the ITR bears no relevance to petitioner's claim that the assessments pertaining to other tax types remain timely issued.

At any rate, respondent posits that petitioner failed to adduce competent evidence establishing that respondent's VAT, EWT, and WTC returns for TY 2014 were false or fraudulent, as required by prevailing jurisprudence for the extraordinary ten (10)-year prescriptive period to validly apply.

Second, respondent maintains that the deficiency tax assessments issued against it are null and void for having been made in violation of its constitutional and statutory right to due process.

RULING OF THE COURT *EN BANC*

The *Petition for Review* is devoid of merit.

The Court En Banc has jurisdiction over the instant Petition.

Before delving into the merits, the Court *En Banc* shall first determine whether it is properly vested with authority to take cognizance of the present *Petition.*

Section 2(a)(1), Rule 4 of the RRCTA provides in part:

> SEC. 2. *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
>
> (a) **Decisions or <u>resolutions on motion for reconsideration</u> or new trial <u>of the Court in Division</u>** in the exercise of its exclusive appellate jurisdiction over:
>
> (1) Cases arising from administrative agencies — **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x (Emphases and underscoring supplied)

In the case at bar, the *Petition*[33] seeks a review of the assailed Decision and Resolution of the Court in Division in CTA Case No. 10349, which granted respondent's *Petition for Review,*[34] and, thereafter, denied petitioner's *Motion for Reconsideration (Re: Decision dated 11 April 2024)*[35] for lack of merit. Accordingly,

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33 *Id.* at 1 to 12.
34 Division Docket – Vol. I, pp. 6 to 39.
35 Division Docket – Vol. IV, pp. 1684 to 1691.

appellate jurisdiction over the subject matter properly lies with the Court *En Banc*.

Moreover, the *Petition* was filed in accordance with Section 3(b), Rule 8 of the RRCTA, which states:

> Sec. 3. *Who may appeal; period to file petition.* — x x x
>
> (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 **<u>within fifteen days</u> 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. *(Rules of Court, Rule 42, sec. 1a)* (Emphases and underscoring supplied)

The records disclose that petitioner and the Office of the Solicitor General received copies of the assailed Resolution on December 04, 2024,[36] and January 06, 2025,[37] respectively.

The instant *Petition for Review*,[38] having been filed on December 19, 2024,[39] was thus seasonably filed within the reglementary period. Consequently, jurisdiction is properly vested in the Court *En Banc*.

With the question of jurisdiction thus settled, the Court now proceeds to resolve the substantive issues, namely: *(1)* whether the Court in Division erred in holding that petitioner's right to assess and collect the alleged deficiency taxes for TY 2014 has partially prescribed; and *(2)* whether the subject tax assessments are void for having been issued in violation of respondent's constitutional right to due process.

The Court in Division did not err in holding that petitioner's right to assess and collect deficiency taxes for TY 2014 had partially prescribed.

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36 *Id.* at 1711.
37 *Ibid.*
38 EB Docket, pp. 1 to 12.
39 *Id.* at 1.

While the NIRC of 1997, as amended, vests upon the CIR the authority to assess taxpayers,[40] such power is not unbridled. It is circumscribed by a clear statutory limitation. As a general rule, the CIR may only assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the return or from the date of actual filing thereof, whichever is later, pursuant to Section 203 of the NIRC of 1997, as amended, *viz.*:

> Section 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 x x x 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.

By way of exception, Section 222 of the same Code authorizes the extension of the prescriptive period for assessment in cases involving *(1)* false, or *(2)* fraudulent returns, or *(3)* failure to file a return, thus:

> Section 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.
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> x x x

From the foregoing, it is evident that, as a general rule, and in the absence of a showing that the return is false or fraudulent as pertinent herein, the CIR must assess within three (3) years. The burden to invoke the extraordinary ten (10)-year period rests upon compliance with the stringent conditions under Section 222 of the NIRC of 1997, as amended.

Here, petitioner anchors his position on Section 248(B) of the NIRC of 1997, as amended,[41] contending that *prima facie* evidence of

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[40] National Internal Revenue Code (NIRC) of 1997, as amended, Title I, Section 6.
[41] NIRC of 1997, as amended, Section 248(B) provides:

a false return exists where there is a substantial underdeclaration of taxable sales, receipts, or income exceeding thirty percent (30%). Petitioner asserts that respondent's declared loss of ₱1,778,726.00 is starkly inconsistent with its determined taxable income of ₱948,846,305.38, thereby allegedly surpassing the statutory threshold of substantial underdeclaration. On this basis, petitioner argues that the presumption of falsity arises, the burden of proof shifts to respondent, and, the latter having purportedly failed to rebut the same, the extraordinary ten (10)-year prescriptive period should apply.

We are not persuaded.

In *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue*,[42] the Supreme Court harmonized the prevailing jurisprudence on the application of the extraordinary ten (10)-year prescriptive period under Section 222(a) of the NIRC of 1997, as amended, and definitively articulated the controlling requisites as well as the attendant due process requirements for its valid invocation. It held, in essence, that:

F. Summary: Conditions for a Valid Extension of Assessment Period in Case of a False Return

i. Requisites under Section 222 (a) of the 1997 Tax Code

- *General Rule — Proof of False or Fraudulent Return*

> Pursuant to Section 222 (a) of the 1997 Tax Code, the extraordinary 10-year assessment period may apply in case the taxpayer: (1) filed a false return, (2) filed a fraudulent return, or (3) failed to file a return.

Section 248. *Civil Penalties.* –

x x x

(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: Provided, further, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.

[42] G.R. No. 247737, August 08, 2023 [Per J. Inting, *En Banc*].

A fraudulent return "implies intentional or deceitful entry with intent to evade the taxes due," while a false return simply "implies deviation from the truth, whether intentional or not."

It must be stressed, however, that a false return within the meaning of Section 222 (a) does not refer to false returns in general. To be sure, the extraordinary 10-year assessment period applies to a *false return* when:

(1) the return contains an error or misstatement, and

(2) such error or misstatement was *deliberate or willful.*

Consequently, the Court's ruling in *Aznar* which applied the extraordinary 10-year assessment period under Section 222 (a) to false returns in general, *i.e.*, regardless of whether the deviation is intentional or not, is abandoned.

It shall be the CIR's burden to establish the existence of the above-enumerated statutory requisites with clear and convincing evidence.

- *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
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> (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. (Emphases in the original; citation omitted)

Verily, a "false return" within the contemplation of Section 222(a) of the NIRC of 1997, as amended, does not refer to any and all inaccuracies, but only to those involving a misstatement that is deliberate and willful. Fraudulent returns, on the other hand, necessarily involve intent to evade tax. Thus, the CIR must, as a general rule, establish by clear and convincing evidence both *(1)* the existence of a misstatement in the return, and *(2)* that such misstatement was intentional or willful.

However, where the CIR establishes a *prima facie* evidence of falsity or fraud under Section 248(B) of the NIRC of 1997, as amended—*i.e.*, a substantial understatement or overstatement exceeding thirty percent (30%)—the presumption arises and the burden shifts to the taxpayer to rebut the same. Even then, the invocation of the extraordinary period must strictly comply with due process requirements, namely: *(i)* the assessment notice must clearly state that the ten (10)-year prescriptive period is being applied, and set forth the factual and legal bases therefor, including the computation of the thirty percent (30%) threshold; and *(ii)* the tax authorities must not act in a manner inconsistent with such invocation.

Measured against these standards, petitioner's position is untenable.

First, petitioner failed to discharge the requisite burden. It did not sufficiently allege, must less prove, that the returns subject of the disputed EWT, WTC, VAT, and DST assessments contained deliberate or willful misstatements. Neither did petitioner establish *prima facie* evidence of falsity or fraud under Section 248(B) of the NIRC of 1997, as amended, particularly a substantiated thirty percent (30%) threshold excess with respect to said tax liabilities. At most, petitioner's allegations of substantial underdeclaration pertained solely to respondent's taxable income—an issue distinct from, and not determinative of, the prescription of the subject EWT, WTC, VAT, and DST assessments as ruled by the Court in Division.

Second, the mandatory due process requirements were likewise not observed. Neither the PAN nor the FLD/FANs expressly stated that the extraordinary ten (10)-year prescriptive period was being applied, nor did they set forth the factual and legal bases for any finding of falsity or fraud.

Notably, although respondent raised in its Protest by way of a Request for Reinvestigation[43] the issue of prescription of certain assessments, petitioner failed to address the same in the FDDA. It was only belatedly, and for the first time in his *Answer*,[44] that petitioner invoked the application of the extraordinary ten (10)-year period, thereby revealing that such theory was a mere afterthought.

This belated invocation is fatal, as it effectively deprived respondent of the opportunity to timely contest the basis for the extraordinary prescriptive period at the administrative level, in clear violation of the fundamental requirements of due process.

In view of the foregoing, it is clear that petitioner had no valid basis to invoke the ten (10)-year prescriptive period. Accordingly, the general three (3)-year prescriptive period necessarily governs petitioner's authority to assess respondent. Thus, as correctly found by the Court in Division, the assessments covering *(1)* the first three (3) quarters for VAT, *(2)* January to September 2014 for EWT, and *(3)* January to September 2014 for WTC, had already prescribed. Thus:

> *Value-Added Tax*
>
> Respondent's right to assess deficiency VAT for the first three (3) quarters of TY 2014 had prescribed. Section 114 (A) of the NIRC of 1997, as amended, mandates the time of filing of quarterly VAT returns:
>
> > SEC. 114. *Return and Payment of Value-Added Tax.* —
> >
> > (A) *In General.* — **Every person liable to pay the value-added tax imposed under this Title**

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[43] Division Docket – Vol. III, pp. 1233 to 1254, Exhibits "P-7" and "P-8."

[44] Division Docket – Vol. I, pp. 435 to 454.

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shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis. *(Emphasis supplied)*

Petitioner filed its Quarterly VAT Returns for TY 2014 as shown below, *vis-à-vis* the date when the FAN was received:

Quarter	Quarterly Return Due	Quarterly Return Filed	End of 3 years	Receipt of FLD
1st	25 Apr 2014	24 Apr 2014	25 Apr 2017	27 Oct 2017
2nd	25 Jul 2014	24 Jul 2014	25 Jul 2017	27 Oct 2017
3rd	25 Oct 2014	23 Oct 2014	25 Oct 2017	27 Oct 2017
4th	25 Jan 2015	25 Jan 2015	25 Jan 2018	27 Oct 2017

Expanded Withholding Tax and Withholding Tax on Compensation

Similarly, respondent's right to assess petitioner's EWT from January to September of TY 2014 had prescribed. Section 58 (A) of the NIRC of 1997, as amended, provides:

SEC. 58. *Returns and Payment of Taxes Withheld at Source.* —

(A) *Quarterly Returns and Payments of Taxes Withheld.* — Taxes deducted and withheld under Section 57 by withholding agents shall be covered by a return and paid to, except in cases where the Commissioner otherwise permits, an authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located.

The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers.

The return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made: *Provided*, That the Commissioner, with the approval of the

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> **Secretary of Finance, may require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the government.** *(Emphasis supplied)*

Corollary thereto, Section 5 of Revenue Regulations (RR) No. 17-2003, which amended Section 2.58 of RR 02-98, provides:

> SECTION 5. *Returns and Payments of Taxes Withheld at Source.* — Section 2.58 of Revenue Regulations No. 2-98, as amended, is hereby further amended to read as follows:
>
> Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.
>
> (A) *Monthly return and payment of taxes withheld at source.*
>
> xxx xxx xxx
>
> (2) WHEN TO FILE —
>
> (a) For both large and non-large taxpayers, **the withholding tax return, whether creditable or final** (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) **shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year**; *and except for the final capital gains tax on the sale or other onerous disposition of real property considered as capital asset which must be taken/withheld from the seller by the buyer and remitted within thirty (30) days from the date of notarization of the transfer document to the collecting agent of the RDO having jurisdiction over the place where the property is located.*
>
> *Nonetheless, in case of disposition of real property classified as capital asset by an individual to the government, the tax to be imposed shall be determined either under the normal income tax rate imposed in Sec. 24(A) or under a final capital gains tax of six percent (6%) imposed under Sec. 24(D)(1) of the Code, at the option of the taxpayer-seller. Thus, if the seller chooses the first option, the buyer does not have to withhold the six percent (6%) final capital gains tax but no Certificate Authorizing Registration shall be issued for the transaction until the seller or the buyer shows the seller's filed income tax return reflecting the result of the subject real estate transaction.*

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> (b) **With respect, however, to taxpayers, whether large or non-large, who availed of the electronic filing and payment system (EFPS), the deadline for electronically filing the applicable withholding tax returns and paying the taxes due thereon via the EFPS shall be five (5) days later than the deadlines set above,** *unless the EFPS regulations provide for different deadline dates and except for the final capital gains tax on the sale, barter or exchange of real property where the law fixes a definite deadline for the payment thereof." (Emphasis supplied)*

Pursuant to the foregoing, petitioner filed its Monthly Remittance Returns for TY 2014 as shown below, *vis-à-vis* the date when the FAN was received:

Month	**Monthly Return Due**	**BIR Form No. 1601-E Filed/Paid**	**End of 3 years**	**FLD Received**
Jan 2014	15 Feb 2014	11 Feb 2014	15 Feb 2017	27 Oct 2017
Feb 2014	15 Mar 2014	13 Mar 2014	15 Mar 2017	27 Oct 2017
Mar 2014	15 Apr 2014	10 Apr 2014	15 Apr 2017	27 Oct 2017
Apr 2014	15 May 2014	10 May 2014	15 May 2017	27 Oct 2017
May 2014	15 Jun 2014	11 Jun 2014	15 Jun 2017	27 Oct 2017
Jun 2014	15 Jul 2014	11 Jul 2014	15 Jul 2017	27 Oct 2017
Jul 2014	15 Aug 2014	12 Aug 2014	15 Aug 2017	27 Oct 2017
Aug 2014	15 Sep 2014	10 Sep 2014	15 Sep 2017	27 Oct 2017
Sep 2014	15 Oct 2014	11 Oct 2014	15 Oct 2017	27 Oct 2017
Oct 2014	15 Nov 2014	11 Nov 2014	15 Nov 2017	27 Oct 2017
Nov 2014	15 Dec 2014	11 Dec 2014	15 Dec 2017	27 Oct 2017
Dec 2014	20 Jan 2015	13 Jan 2015	20 Jan 2018	27 Oct 2017

In the same manner, respondent's right to assess petitioner of deficiency WTC for the months of January to September 2014 had prescribed as shown below:

Month	**Monthly Return Due**	**BIR Form No. 1601-C Filed/Paid**	**End of 3 years**	**FLD Received**
Jan 2014	15 Feb 2014	08 Feb 2014	15 Feb 2017	27 Oct 2017
Feb 2014	15 Mar 2014	10 Mar 2014	15 Mar 2017	27 Oct 2017
Mar 2014	15 Apr 2014	9 Apr 2014	15 Apr 2017	27 Oct 2017
Apr 2014	15 May 2014	7 May 2014	15 May 2017	27 Oct 2017
May 2014	15 Jun 2014	5 Jun 2014	15 Jun 2017	27 Oct 2017
Jun 2014	15 Jul 2014	9 Jul 2014	15 Jul 2017	27 Oct 2017
Jul 2014	15 Aug 2014	8 Aug 2014	15 Aug 2017	27 Oct 2017
Aug 2014	15 Sep 2014	6 Sep 2014	15 Sep 2017	27 Oct 2017
Sep 2014	15 Oct 2014	9 Oct 2014	15 Oct 2017	27 Oct 2017
Oct 2014	15 Nov 2014	10 Nov 2014	15 Nov 2017	27 Oct 2017
Nov 2014	15 Dec 2014	9 Dec 2014	15 Dec 2017	27 Oct 2017
Dec 2014	20 Jan 2015	9 Jan 2015	20 Jan 2018	27 Oct 2017[45]

[45] EB Docket, pp. 27 to 30; Emphases in the original.

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While the remaining assessments were held not yet barred by prescription, the Court finds that these must nevertheless be set aside, as they likewise suffer from fatal infirmities for having been issued in violation of respondent's right to due process, as shall be hereafter discussed.

The subject assessments are, in any event, void ab initio for having been issued in violation of respondent's right to due process.

Section 228 of the NIRC of 1997, as amended, is unequivocal in mandating that a taxpayer must be duly informed in writing of the law and the facts on which an assessment is based; otherwise, the assessment is void. Corollary thereto, RR No. 12-99,[46] as amended by RR No. 18-13,[47] prescribes the due process requirements governing the issuance of a PAN and a FAN, as follows:

> SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> 3.1.1 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based xxx.
>
> If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> If the taxpayer, **within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of**

[46] 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, Revenue Regulations No. 12-99, September 06, 1999.

[47] Amending Certain Sections of Revenue Regulations No. 12-99, Revenue Regulations No. 18-13, November 28, 2013.

> **<u>the taxpayer's response</u>**, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> x x x
>
> 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 <u>shall</u> state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *<u>otherwise, the assessment shall be void</u>*** x x x. (Emphases and underscoring supplied)

As may be gleaned from the foregoing provisions, the taxpayer is afforded fifteen (15) days from receipt of the PAN within which to submit a written reply. Thereafter, the FLD/FAN must be issued within fifteen (15) days from the filing of such response. This prescribed period necessarily presupposes that, in the issuance of the FLD/FAN, the BIR has duly considered the taxpayer's response, including the arguments and supporting documents presented in reply to the PAN. Equally imperative, the FLD/FAN must explicitly set forth the factual and legal bases of the assessment, with due reference to the applicable laws, rules, regulations, or jurisprudence upon which they are anchored. The omission to do so constitutes a fatal defect that renders the assessment void in violation of the taxpayer's fundamental right to due process.

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[48] the Supreme Court emphasized that the BIR's failure to properly consider and evaluate the taxpayer's defenses—evidenced by the **issuance of assessment notices that merely reproduced prior findings without addressing the taxpayer's arguments**—constitutes a clear and unmistakable violation of the taxpayer's right to due process. Thus:

> **The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayers' constitutional rights.**
>
> x x x
>
> The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail

[48] G.R. Nos. 201398-99, 201418-19, October 03, 2018 [Per J. Leonen, Third Division].

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the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, **Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void.** x x x

"The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] 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 [or her] is mandatory." **This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.**

x x x

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.** x x x

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, <u>merely reiterating the assessments in the Preliminary Assessment Notice</u>.** 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 <u>Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply</u> and protest.**

x x x

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

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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 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.
>
> x x x
>
> **The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect.** (Emphases and underscoring supplied; citations omitted)

Applying the foregoing standards, the Court finds that petitioner failed to comply with the requirements of law and due process.

In this case, a judicious examination of the FLD/FANs[49] readily discloses that the findings and conclusions therein are mere reiterations of those stated in the PAN,[50] bereft of any acknowledgment, discussion, or evaluation of the factual and legal defenses raised by petitioner in its Reply to PAN.[51]

This conclusion is further reinforced by a side-by-side comparison of the assessments, which reveals that the amounts of **basic deficiency tax** assessments reflected in the FLD/FANs[52] are identical—save for the income tax component—to those set forth in the PAN,[53] as shown below.

PAN and Details of Discrepancies[54]		**FLD/FANs and Details of Discrepancies**[55]	
Income Tax	₱284,653,891.61	Income Tax	₱282,473,375.00
EWT	322,944.44	EWT	322,944.44
WTC	1,615.08	WTC	1,615.08
VAT	166,096,339.58	VAT	166,096,339.58
DST	1,384,585.00	DST	1,384,585.00
Compromise Penalties	160,700.00	Compromise Penalties	160,700.00

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49 Division Docket – Vol. III, pp. 1218 to 1232, Exhibit "P-6;" Exhibits "R-5," "R-5-A," and "R-5-B."
50 *Id.* at 1195 to 1201, Exhibit "P-4;" Bureau of Internal Revenue (BIR) Records, pp. 168 to 173, Exhibit "R-3."
51 Division Docket – Vol. III, pp. 1202 to 1217, Exhibit "P-5."
52 *Id.* at 1218 to 1232, Exhibit "P-6;" Exhibits "R-5," "R-5-A," and "R-5-B."
53 *Id.* at 1195 to 1201, Exhibit "P-4;" BIR Records, pp. 168 to 173, Exhibit "R-3."
54 *Ibid.*
55 *Id.* at 1218 to 1232, Exhibit "P-6;" Exhibits "R-5," "R-5-A," and "R-5-B."

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Notably, with respect to income tax, there appears a discrepancy in the amount of ₱2,180,516.61, which, as reflected in the Details of Discrepancies[56] attached to the FLD,[57] corresponds to the reduced figure for "Income payments not subject to Expanded Withholding Tax." Save for this adjustment, the explanations contained in the PAN,[58] as well as in the FLD[59] and its accompanying Details of Discrepancies,[60] remain substantially unchanged.

Significantly, notwithstanding the said downward adjustment in income payments not subjected to EWT, the corresponding EWT liability was left untouched at ₱322,944.44. This circumstance shows that petitioner merely corrected a computational or arithmetical error in "Schedule A"[61] of its EWT assessment, without, however, addressing respondent's arguments in its Reply to PAN[62] as to why it should not, in any event, be held liable for EWT arising from the adjusted amount of ₱2,258,922.65.

Accordingly, the adjustment relating to "Income payments not subject to Expanded Withholding Tax" in the Details of Discrepancies[63] attached to the FLD[64] remains deficient in compliance with due process, as it fails to explain why respondent's arguments in its Reply to PAN[65] were found unmeritorious.

Another notable variation between the findings reflected in the PAN,[66] and those stated in the FLD/FANs and its accompanying Details of Discrepancies[67] lies in the additional statement introduced in the VAT portion, to wit: "Further verification disclosed that you failed to comply with the provisions of the invoicing requirement pursuant to Sections 113(A)(1) which states that 'A VAT-registered person shall issue a VAT invoice for every sale or exchange of goods or properties' and 113(B)(2)(c) which states that 'If the sale is subject to zero percent (0%) value added tax, the term zero-rate sale' shall be written or printed prominently on the invoice or receipt."[68]

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56 *Id.* at 1222 to 1223.
57 *Id.* at 1218 to 1221.
58 *Id.* at 1198 to 1199.
59 *Id.* at 1218 to 1219.
60 *Id.* at 1222 to 1223.
61 *Id.* at 1216.
62 *Id.* at 1202 to 1217, Exhibit "P-5."
63 *Id.* at 1222 to 1223.
64 *Id.* at 1218 to 1219.
65 *Id.* at 1202 to 1217, Exhibit "P-5."
66 *Id.* at 1195 to 1201, Exhibit "P-4;" BIR Records, pp. 168 to 173, Exhibit "R-3."
67 Division Docket – Vol. III, pp. 1218 to 1232, Exhibit "P-6;" Exhibits "R-5," "R-5-A," and "R-5-B."
68 *Id.* at 1224.

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However, this additional allegation similarly fails to address, much less meaningfully engage, the factual and legal arguments raised by respondent in its Reply to PAN.[69]

Time and again, this Court has been called upon to reaffirm the enduring and time-honored doctrine of **administrative due process**, as enunciated in the seminal case of *Ang Tibay v. Court of Industrial Relations*,[70] which, among others, mandates, that "not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal ***must consider*** the evidence presented."

Indeed, due process is not satisfied by the mere ceremonial or mechanical grant of an opportunity to be heard. It imposes on the administrative authority, such as the BIR, the duty to **actually and conscientiously** evaluate the evidence and arguments submitted before it. The right to be heard necessarily includes a correlative obligation on the part of the adjudicator to meaningfully consider what has been submitted, for due process is neither an empty ritual nor a mere formality, but a living guarantee of fairness and reason, to be fulfilled only through a faithful, deliberate, and thorough engagement with the taxpayer's claims and defenses.

It bears emphasis that the decisive consideration in this case is the palpable absence of any indication that the BIR gave due regard, much less thoughtful consideration, to the respondent's arguments and supporting documents. This omission is fatal, as it effectively reduces the filing of the Reply to PAN into a hollow formality devoid of substantive value, if not an exercise of futility.

The reiteration of findings in the FLD/FANs[71] unmistakably reveals that the assessments were effectively predetermined, issued without waiting for, or genuinely evaluating, respondent's explanations and documents. Such a procedural shortcut strikes at the very core of administrative due process and runs counter to the clear intent of the law and rules—that the taxpayer must not only be afforded the opportunity to be heard, but that the taxing authority must, in good faith and with genuine deliberation, consider the defenses raised before rendering an assessment.

To sustain the validity of the FLD/FANs[72] in this case, as compliant with Section 228 of NIRC of 1997, as amended, and RR No.

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[69] *Id.* at 1202 to 1217, Exhibit "P-5."
[70] G.R. No. 46496, February 27, 1940 [Per J. Laurel, En Banc].
[71] *Id.* at 1218 to 1232, Exhibit "P-6;" Exhibits "R-5," "R-5-A," and "R-5-B."
[72] *Ibid.*

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12-99,[73] as amended by RR No. 18-13,[74] would be to reduce the PAN stage into a mere procedural charade—an empty ritual devoid of substantive significance and stripped of legal consequence. Such a construction would undermine the very purpose of the PAN requirement, which is not only to safeguard the taxpayer's constitutional right to due process, but also to enable the BIR to re-evaluate, and, if warranted, rectify any errors in its preliminary findings before proceeding with the issuance of the FLD/FANs.

Verily, had respondent's arguments and supporting documents in its Reply to PAN[75] been duly considered, the dispute could have been resolved at the earliest possible stage—whether through the withdrawal or modification of the assessments, or through an amicable settlement—thereby obviating the need for prolonged administrative and judicial proceedings and sparing both the government and the taxpayer the unnecessary expenditure of time, effort, and resources.

In fact, the Supreme Court, in underscoring the pivotal role of the PAN in the BIR's audit process, has held:

> 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.**[76] (Emphasis supplied; citations omitted)

In this case, however, petitioner not only did not meaningfully address respondent's arguments at the PAN stage, but also persisted with the same unexamined findings in the FDDA,[77] thereby compounding the violation of due process.

In fine, the Court finds that petitioner blatantly disregarded respondent's right to administrative due process, as shown by the

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[73] *Supra* note 44.
[74] *Supra* note 45.
[75] Division Docket – Vol. III, pp. 1202 to 1217, Exhibit "P-5."
[76] *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017 [Per J. Leonen, Third Division].
[77] Division Docket – Vol. I, pp. 415 to 424, Exhibit "P-9;" BIR Records, pp. 377 to 379, Exhibit "R-7."

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issuance of the FDDA,[78] and FLD/FANs and their Details of Discrepancies,[79] which are substantially identical to the previously issued PAN,[80] and more importantly, by petitioner's failure to consider the arguments and supporting documents submitted by respondent in its Reply to PAN[81] and Protest.[82] Consequently, the subject assessments are void *ab initio*.

Corollarily, the FDDA,[83] being not only independently infirm for violation of respondent's right to due process but also a mere offshoot of a void assessment, cannot stand on its own and is likewise null and void, without force or effect in law.

Having thus declared the assessments void, the Court need not belabor the issue of respondent's alleged tax liability, as it is axiomatic that a void assessment bears no valid fruit.[84]

WHEREFORE, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated April 11, 2024, and the assailed Resolution dated November 12, 2024, are hereby **AFFIRMED**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

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78 *Ibid.*
79 *Id.* at 1218 to 1232, Exhibit "P-6;" Exhibits "R-5," "R-5-A," and "R-5-B."
80 *Id.* at 1195 to 1201, Exhibit "P-4;" BIR Records, pp. 168 to 173, Exhibit "R-3."
81 Division Docket – Vol. III, pp. 1202 to 1217, Exhibit "P-5."
82 *Id.* at 1233 to 1254, Exhibits "P-7" and "P-8."
83 *Id.* at 1202 to 1217, Exhibit "P-5."
84 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 08, 2010 [Per J. Mendoza, Second Division].

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

Inhibited
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
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