REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

REMA TIP TOP PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 10347** Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 12 2024 4:30 p.m.

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DECISION

***FERRER-FLORES, J.*:**

This *Petition for Review* prays for the Court to render judgment ordering respondent **Commissioner of Internal Revenue** (respondent/CIR) to cancel the assessments issued against petitioner **Rema Tip Top Philippines, Inc.** for deficiency income tax (IT), expanded withholding tax (EWT), improperly accumulated earnings tax (IAET), value-added tax (VAT), and compromise penalty in the aggregate amount of **₱21,818,644.73**, inclusive of interests and penalties, for taxable year (TY) 2016.[1]

THE PARTIES

Petitioner Rema Tip Top Philippines, Inc. is a corporation duly organized and existing under Philippine laws.[2] It is registered with the Bureau of Internal Revenue (BIR), with address at Unit 502, Richmonde

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[1] Statement of the Case, Pre-Trial Order dated April 18, 2022, Docket – Vol. I, p. 394.

[2] Exhibit "P-4", Docket – Vol. 2, pp. 527 to 537.

Plaza Ortigas, San Miguel Ave., Brgy. San Antonio, Ortigas Center, Pasig City 1605.[3]

Respondent is the CIR who is the officer duly appointed and empowered by law to act on claims for refund or credit, with office address at the BIR, National Office Building, Diliman, Quezon City.[4]

THE ANTECEDENTS (ADMINISTRATIVE LEVEL)

On January 10, 2020, petitioner received the *Preliminary Assessment Notice* (PAN) dated December 23, 2019 together with the attached *Details of Discrepancies*.[5]

Immediately, on January 13, 2020, respondent issued the *Assessment Notices* (ANs) and the *Formal Letter of Demand* (FLD) which were received by petitioner on January 14, 2020.[6]

On January 24, 2020, petitioner filed, via registered mail, its *Reply to the Preliminary Assessment Notice dated 23 December 2019 issued pursuant to eLA No. 201500054013 (LOA No. 043-2017-00000217) for the Tax Audit of Rema Tip Top Philippines, Inc. for Taxable Year 2016*.[7]

Thereafter, on February 13, 2020, petitioner filed its *Request for Reinvestigation on the Final Assessment Notices / Formal Letter of Demand issued pursuant to eLA No. 201500054013 (LOA No. 043-2017-00000217) for the Tax Audit of Rema Tip Top Philippines, Inc. for Taxable Year 2016*.[8]

THE PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* on September 10, 2020[9] alleging respondent's inaction on its *Request for Reinvestigation*.[10]

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3 Exhibit "P-5", Docket – Vol. 2, p. 538.
4 Paragraph 1.01, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 378.
5 Exhibit "P-6", Docket – Vol. 2, pp. 539 to 549; Exhibit "R-4", BIR Records (Folder F1/F2), pp. 991 to 1001.
6 Exhibit "P-1", Docket – Vol. 2, pp. 430 to 446; Exhibit "R-5", BIR Records (F1/F2), pp. 935 to 950. Refer also to Exhibit "P-16", Docket – Vol. 2, pp. 662 to 677.
7 Exhibit "P-7", Docket – Vol. 2, pp. 552 to 576.
8 Exhibit "P-2", Docket – Vol. 2, pp. 447 to 480.
9 Docket – Vol. I, pp. 6 to 50.
10 Paragraph 3, Nature and Timeliness of the Petition, *Petition for Review*, Docket – Vol. I, p. 7.

Respondent posted his *Answer* on December 3, 2020.[11]

The *BIR Records* for this case was transmitted by respondent on February 2, 2021.[12]

The Pre-Trial Conference was initially set on May 4, 2021,[13] but was reset to,[14] and eventually held on, February 8, 2022.[15] Prior thereto, the *Pre-Trial Brief* of petitioner and *Respondent's Pre-Trial Brief* were separately filed on February 7, 2022.[16]

On March 10, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[17] which was admitted and approved by the Court in its Resolution dated March 18, 2022,[18] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated April 18, 2022 was subsequently issued.[19]

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

Petitioner offered the testimony of its Director and Chief Finance Officer, Ms. Jennilyn U. Gaanan.[20]

On June 13, 2022, petitioner filed its *Formal Offer of Documentary Exhibits*.[21] Respondent failed to file his comment thereto.[22] In the Resolution dated September 14, 2022,[23] the Court admitted petitioner's evidence.

For his part, respondent offered the testimony of Revenue Officer (RO) Danny Rodrigo.[24]

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11 Docket – Vol. I, pp. 329 to 334.
12 Letter dated February 2, 2021 of respondent's counsel, Atty. Leonardo B. Usita, Docket – Vol. 1, p. 343.
13 Notice of Pre-Trial Conference dated December 28, 2020, Docket – Vol. I, pp. 337 to 338.
14 Notice of Resetting dated November 23, 2021, Docket – Vol. I, p. 345
15 Minutes of the hearing held on, and Order dated, February 8, 2022, Docket – Vol. I, pp. 374 to 377.
16 Docket – Vol. I, pp. 347 to 359, and 364 to 367, respectively.
17 Docket – Vol. I, pp. 378 to 384.
18 Docket – Vol. I, p. 388.
19 Docket – Vol. I, pp. 394 to 399.
20 Exhibit "P-17", Docket – Vol. 2, pp. 678 to 699; Minutes of the hearing held on, and Order dated, May 12, 2022, Docket – Vol. I, pp. 411 to 413.
21 Docket – Vol. 2, p. 418 to 429.
22 Records Verification Report dated August 18, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 701.
23 Docket – Vol. 2, p. 704.
24 Exhibit "R-6", Docket – Vol. 2, pp. 709 to 713; Minutes of the hearing held on, and Order dated, November 23, 2022, Docket – Vol. 2, pp. 716, and 719 to 720, respectively.

On December 14, 2022, *Respondent's Formal Offer of Evidence* was filed.[25] Petitioner filed its *Comment to Respondent's Formal Offer of Evidence* on December 20, 2022.[26] In the Resolution dated February 2, 2023,[27] the Court admitted respondent's offered exhibits.

Petitioner posted its *Memorandum* on April 20, 2023[28] while respondent failed to submit his memorandum.[29]

This case was submitted for decision on September 12, 2023.[30]

THE STIPULATED ISSUE

The stipulated issue to be resolved by the Court is:

> Whether or not petitioner is liable for deficiency IT, EWT, IAET, VAT, and compromise penalty for TY 2016 in the aggregate amount of Twenty-One Million Eight Hundred Eighteen Thousand Six Hundred Forty-Four and 73/100 Pesos (₱21,818,644.73).[31]

Petitioner's arguments:

Petitioner argues that it is not liable for deficiency IT, EWT, IAET, VAT, and compromise penalty, for TY 2016 in the aggregate amount of ₱21,818,644.73. It avers that the assessment is void for failure of respondent to comply with the procedural requisites under the National Internal Revenue Code (NIRC) of 1997, as amended, and for failure to afford petitioner its right to due process by issuing the FLD before the end of the fifteen (15)-day period to respond to the PAN. It likewise posits that the deficiency tax assessments and the imposition of compromise penalty of ₱40,000.00 are without basis in fact and in law.

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25 Docket – Vol. 2, pp. 722 to 725.
26 Docket – Vol. 2, pp. 728 to 731.
27 Docket – Vol. 2, p. 738.
28 Docket – Vol. 2, pp. 739 to 790.
29 Records Verification Report dated August 30, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 796.
30 Minute Resolution dated September 12, 2023, Docket – Vol. 2, p. 797.
31 Statement of the Issues, JSFI, Docket – Vol. I, pp. 378 to 379.

Respondent's counter-arguments:

In his *Answer*, respondent counters that the Court has no jurisdiction over petitioner's appeal. Even assuming that the Court has jurisdiction over petitioner's appeal, the tax assessments are presumed to be correct. Respondent also claims that there is presumption of regularity in the performance of the RO's investigation.

THE RULING OF THE COURT

The Court finds merit in the *Petition for Review*.

The Court has jurisdiction over the present case.

Section 228 of the NIRC of 1997, as amended, provides as follows:

> 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: xxx
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted;** otherwise, the assessment shall become final.
>
> **If the protest** is denied in whole or in part, or **is not acted upon <u>within one hundred eighty (180) days from submission of documents</u>, the taxpayer adversely affected by the** decision or **inaction may appeal to the Court of Appeals within thirty (30) days** from receipt of the said decision, or **from the lapse of the one hundred eighty (180)-day period**; otherwise, the decision shall become final, executory and demandable. (Boldfacing and underlining supplied)

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Based on the foregoing provisions, a tax assessment may be protested within thirty (30) days from receipt thereof; and, within sixty (60) days from the filing of the protest, all relevant supporting documents shall have been submitted. In case respondent or his duly authorized representative fails to act on the said protest within a period of one hundred eighty (180) days from the said submission of documents, the inaction shall be appealable to this Court, within thirty (30) days from the lapse of the 180-day period.

In implementing Section 228 of the NIRC of 1997, as amended, Section 3 of Revenue Regulations (RR) No. 12-99,[32] as amended by RR No. 18-2013,[33] and as renumbered by RR No. 7-2018,[34] clarifies the reckoning of the 180-day period, to wit:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
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> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
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> xxx xxx xxx
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> 3.1.4 *Disputed Assessment.* – The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
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> (i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of 3 additional evidence. It may involve both a question of fact or of law or both.
>
> **(ii) <u>Request for reinvestigation</u> — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation.**
>
> **The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present <u>if it is a request for reinvestigation</u>,** (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his

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32 SUBJECT: 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 Extrajudicial Settlement of a Taxpayer's Criminal Violation of the code through payment of a Suggested Compromise Penalty.

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

34 SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

protest is based, otherwise, his protest shall be considered *void and without force and effect*.

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For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term *'relevant supporting documents'* refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term 'the assessment shall become final' shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

xxx xxx xxx

<u>**If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted**</u> from the date of filing of the protest in case of a request for reconsideration; or <u>**from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation**</u>**, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period;** or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment. (Boldfacing and underlining supplied)

Based on the foregoing provisions, unlike requests for reconsideration, requests for reinvestigation entail the submission of relevant supporting documents within sixty (60) days from the filing of such protest, and the date of such submission is the reckoning date of the 180-day period under Section 228 of the NIRC of 1997, as amended, within which the CIR's duly authorized representative is required to act on the protest. It is only after the lapse of the said 180-day will the thirty (30)-day period to appeal before the CTA begin to run.

Corollarily, Sections 7(a)(1) and (2), and 11 of Republic Act (R.A.) No. 1125,[35] as amended by R.A. No. 9282,[36] confer the jurisdiction of the Court relative to the decisions and <u>inactions</u> of respondent and state the manner of appeal, to wit:

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

[36] 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.

> SEC. 7. *Jurisdiction.* – **The CTA shall exercise:**
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided:**
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, 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;
>
> (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 other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial**;" *(Emphases and underscoring added)*
>
> xxx xxx xxx
>
> 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.** (Boldfacing and underlining supplied)

The decisions, rulings or inaction of respondent are necessary in order to vest this Court with jurisdiction to entertain the appeal, provided it is filed within thirty (30) days after the receipt of such decision or ruling, or within thirty (30) days after the expiration of the 180-day period fixed by law for respondent to act on the disputed assessments. This thirty (30)-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive this Court of its jurisdiction to entertain and determine the correctness of the assessment. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.[37]

The Court notes that petitioner filed a *Request for Reinvestigation*.[38] What is peculiar is the fact that petitioner did not submit additional supporting documents within the sixty (60) days from the filing of its Request for Reinvestigation. Nevertheless, we have observed that petitioner attached a number of documents thereto;[39] thus, for purposes of counting

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37 *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.

38 Exhibit "P-2", Docket – Vol. 2, pp. 447 to 480.

39 Annexes "A" to "F", Exhibit "P-2", Docket – Vol. 2, pp. 481 to 522.

the thirty (30)-day period to file an appeal to this Court, the same commenced from the lapse of the 180 days from the filing of the Request for Reinvestigation on February 13, 2020. Counting 180 days from February 13, 2020, the CIR had until August 11, 2020 to act on the Request for Reinvestigation. Since respondent took no action on petitioner's protest as of August 11, 2020, the thirty (30)-day period, within which petitioner must file its petition for review with the Court, commenced to run which ended on September 10, 2020. Consequently, when petitioner filed the instant *Petition for Review* on September 10, 2020, the same was still within the required thirty (30)-day prescriptive period. The Court had, therefore, acquired jurisdiction over the present appeal.

The CIR violated petitioner's right to due process for failure to wait for the lapse of the fifteen (15)-day period from petitioner's receipt of the PAN before issuing the FLD.

Petitioner contends that the ANs and FLD are void. It argues that the respondent failed to comply with the procedural requisites under the NIRC of 1997, as amended. It likewise avers that respondent failed to observe petitioner's right to due process by issuing the ANs and the FLD before the end of the fifteen (15)-day period to respond to the PAN.

The above arguments of petitioner are impressed with merit.

Once again, we revisit Section 228 of the NIRC of 1997, as amended, with respect to the issuance of the assessment, which provides:

> **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 preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> 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, <u>the taxpayer shall be required to respond to said notice</u>. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.**

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Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

xxx xxx xxx (Boldfacing and underlining supplied)

In relation thereto, Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-13, provides the taxpayer an opportunity to respond to the PAN for a period of fifteen (15) days from receipt thereof, to quote:

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**, at least by registered mail, **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 (see illustration in ANNEX "A" hereof).

<u>**If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN**</u>**, 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.

<u>**If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings**</u> of deficiency tax or taxes, <u>**an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response**</u>, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties. (Boldfacing and underlining supplied)

Based on the afore-quoted law and regulation, a taxpayer is given a period of fifteen (15) days from receipt of the PAN to file a reply. In case the taxpayer opts not to file a reply, it shall be considered in default; and, as a consequence, the FLD/FAN shall be issued by the CIR or his duly authorized representative calling for the payment of the deficiency tax liability, inclusive of the applicable penalties. However, in the instance when the taxpayer responds within the fifteen (15)-day period from the receipt of the PAN, the FLD or Final Assessment Notice (FAN) shall only be issued within fifteen (15) days from the submission of the reply. Therefore, it is only when the taxpayer responds or fails to respond within or after fifteen (15) days from receipt of the PAN, respectively, shall the FLD and AN be issued.

Records show that petitioner received the PAN dated December 23, 2019 on January 10, 2020. Counting fifteen (15) days from the receipt, petitioner had until January 27, 2020[40] within which to file its reply to the PAN. Petitioner timely filed its reply on January 24, 2020.[41]

The CIR, however, issued the ANs and FLD on January 13, 2020 and received by petitioner on January 14, 2020, or merely four (4) days after it received the PAN on January 10, 2020. Clearly, the ANs and FLD were prematurely issued, thereby depriving petitioner of the opportunity to reply and be heard on the PAN, in violation of the due process requirement in issuing tax assessments.

The PAN is an important part of due process. It gives both the taxpayer and respondent the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN.[42]

The procedural due process is not satisfied with the mere issuance of a PAN sans any intention on the part of the BIR to actually consider the taxpayer's position on the proposed assessment.[43] The importance of the observance of this due process right in the issuance of a tax assessment was elucidated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[44] and *Avon Products Manufacturing, Inc. vs. The Commissioner of Internal Revenue*,[45] in this wise:

> Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.

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40 January 25, 2020 being a Saturday.
41 Exhibit "P-7", Docket – Vol. 2, pp. 552-616.
42 *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G. R. No. 227544, November 22, 2017, citing *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
43 *Commissioner of Internal Revenue vs. Tektite Insurance Brokers, Inc.*, CTA EB No. 2443, June 20, 2022. With entry of Judgment dated March 17, 2023.
44 G.R. Nos. 201398-99, October 3, 2018.
45 G.R. Nos. 201418-19, October 3, 2018.

> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.
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> xxx xxx xxx
>
> This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.[46]

Similarly, the Supreme Court in the case of *Commissioner of Internal Revenue vs. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)*,[47] emphasized that the taxpayer must be given an opportunity to respond to the PAN, to wit:

> Clearly, **due process demands that the taxpayer receives the PAN and that he is given the opportunity to respond thereto**. xxx.
>
> In this case, the records show that respondent received the PAN on February 5, 2009. However, without waiting for the lapse of the 15-day period, the CIR already issued the FLO/FAN. By disregarding the 15-day period provided by law, the CIR utterly deprived respondent of the opportunity to contest the PAN and present evidence in support thereto before an FLO/FAN was issued.
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> In *CIR v. Metro Star Superama, Inc.*, the Court emphasized that the **PAN is part of due process. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules, as in this case, is a denial of the taxpayer's right to due process**. (Boldfacing supplied)

In fact, this Court has consistently nullified tax assessments that were issued in violation of the taxpayer's right to due process with similar factual milieu as in the case at bar.[48]

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46 Citations omitted.

47 G.R. No. 227616, June 19, 2019.

48 To name a few: *Commissioner of Internal Revenue vs. Oriental Assurance Corp.*, CTA EB No. 1716 (CTA Case No. 8817), August 6, 2019 [With Supreme Court Entry of Judgment dated July 28, 2021]; *Manila Medical Services, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8867, May 9, 2019 [With Writ of Execution dated March 26, 2024]; and, *Getz Pharma (Phils.), Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8728, March 12, 2019 [With Writ of Execution dated February 16, 2023].

While it may be said that petitioner was given the opportunity to contest the assessment when it protested the ANs, such will not cure the infirmity of respondent's failure to give petitioner the initial opportunity to respond to the PAN. In *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*,[49] the Supreme Court ruled in favor of the taxpayer on account of the non-compliance of the CIR with the statutory and procedural due process which renders the final assessment notice void. Pertinent portions of which read as follows:

> In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. **While PSPC indeed protested the formal assessment. such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued**. Respondent must be more circumspect in the exercise of his functions, as this Court aptly held in Roxas v. Court of Tax Appeals:
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> > The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the "hen that lays the golden egg." And, in the order to maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously. (Boldfacing supplied)

Prescinding from the foregoing discussions, this Court finds that the subject deficiency tax assessments are void for failure of the respondent to observe statutory and procedural due process in the issuance thereof.

WHEREFORE, in view of the foregoing, the present *Petition for Review* is **GRANTED**. Accordingly, the Assessment Notices and Formal Letter of Demand, all dated January 13, 2020, assessing petitioner for deficiency income tax, expanded withholding tax, improperly accumulated earnings tax, value-added tax, and compromise penalty in the aggregate amount of ₱21,818,644.73, inclusive of interests and penalties, for taxable year 2016 are **CANCELLED** and **SET ASIDE**. Respondent is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount from petitioner.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

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[49] G.R. No. 172598, December 21, 2007.

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Official Business)

MARIA ROWENA MODESTO-SAN PEDRO
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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division 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.

ROMAN G. DEL ROSARIO
Presiding Justice