22-000147-0055

REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

## FIRST DIVISION

**CTA CASE NO. 10824**

**OILINERS 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. ALBERT C. ARPON**
**ATTY. CARL FITRI A. HUSSIN**
**ATTY. JOCELYN P. LUMBRES**
Bureau of Internal Revenue - Revenue Region 8A
36/F, Legal Division, Export Bank Plaza Bldg.
313 Sen. Gil Puyat Avenue cor. Chino Roces Avenue, Makati City

**BRITANICO SARMIENTO & RINGLER LAW OFFICES**
7th Floor, First E-Bank Condo Corp. Building
(Formerly Banco De Oro Plaza)
8737 Paseo de Roxas, Makati City

***GREETINGS:***

You are hereby notified by these presents that on **November 19, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **November 20, 2024.**

**Atty. Margarette Y. Guzman**
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

# FIRST DIVISION

**OILINERS INC.,**
Petitioner,

**CTA CASE NO. 10824**

Members:

- versus -

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

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

Promulgated:
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# DECISION

***BACORRO-VILLENA, J.:***

At bar is a Petition for Review[1] filed by petitioner Oiliners Inc. (**petitioner**) against respondent Commissioner of Internal Revenue (**respondent/CIR**) pursuant to Section 3(a)[2], Rule 8[3] in relation to

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[1] Filed on 31 March 2022, Division Docket, Volume I, pp. 6-22.

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

[3] PROCEDURE IN CIVIL CASES.

Section 3(a)(1)[4], Rule 4[5] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It prays that judgment be rendered ordering the cancellation and withdrawal of the Final Decision on Disputed Assessment (**FDDA**), dated 22 February 2022[6], that respondent issued against petitioner. The FDDA was a result of the examination of the latter's books of accounts and other accounting records for the calendar year (**CY**) ended 31 December 2012.

## PARTIES TO THE CASE

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines and is primarily engaged in the business of domestic shipping operations.[7] Its principal office is located at 7th Floor, BDO Plaza, 8737 Paseo de Roxas, Makati City.[8]

Respondent, on the other hand, is the CIR who is charged with, among others, the duty of assessing and collecting internal revenue taxes, fees or other charges, penalties imposed under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof, administered by the Bureau of Internal Revenue (**BIR**). In the present case, he or she is represented by the Legal Division of Revenue Region No. 8A – Makati City, which is located at 36th Floor, Exportbank Plaza Building, Sen. Gil Puyat Avenue corner Chino Roces Avenue, Makati City.[9]

## FACTS OF THE CASE

On 20 November 2013, the BIR issued a Letter of Authority (**LOA**) with Reference No. LOA-050-2013-00000348[10] (SN: eLA201100054428) through then Regional Director (**RD**) of Revenue Region No. 8A- Makati

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4 **SEC. 3**. *Cases within the jurisdiction of the Court in Division*. – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

5 JURISDICTION OF THE COURT.

6 Exhibit "P-1", Division Docket, Volume I, pp. 24-26.

7 Exhibit "P-2", id., p. 28.

8 Id.

9 Par. 4, Respondent's Answer, id., pp. 178-179.

10 Exhibits "P-4" and "R-1", BIR Records, p. 2.

City, Nestor S. Valeroso. The LOA authorized Revenue Officer (**RO**) Gene Etorma (**Etorma**) and Group Supervisor (**GS**) Eulogina Lacson (**Lacson**), to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period 01 January 2012 to 31 December 2012.

Pursuant thereto, on 28 December 2015, the Bureau of Internal Revenue (**BIR**) issued a Preliminary Assessment Notice (**PAN**) with Details of Discrepancies, through then RD Jonas DP. Amora.[11] It assessed petitioner with alleged deficiency Income Tax (**IT**), Expanded Withholding Tax (**EWT**), Documentary Stamp Tax (**DST**), aggregating ₱4,947,105.87, inclusive of interest and surcharges, to wit:

| Tax Type | Basic Tax Due | Surcharge | Interest | Total Due |
|---|---|---|---|---|
| IT | ₱2,753,017.30 | ₱ - | ₱1,519,062.15 | ₱4,272,079.45 |
| EWT | 187,648.84 | - | 112,794.94 | 300,443.78 |
| DST | 201,760.00 | 50,440.00 | 122,382.64 | 374,582.64 |
| **Total** | **₱3,142,426.14** | **₱50,440.00** | **₱1,754,239.73** | **₱4,947,105.87** |

Thereafter, on 14 January 2016[12], the BIR purported to have issued a Formal Assessment Notice with Details of Discrepancies and Assessment Notices (**FLD/FAN**).[13] It demanded anew the payment of the same basic tax deficiencies as stated in the PAN, this time totaling ₱4,997,040.31 (as adjusted for incremental interest), broken down as follows:

| Tax Type | Basic Tax Due | Surcharge | Interest | Total Due |
|---|---|---|---|---|
| IT | ₱2,753,017.30 | ₱ - | ₱1,562,808.72 | ₱4,315,826.02 |
| EWT | 187,648.84 | - | 115,776.76 | 303,425.60 |
| DST | 201,760.00 | 50,440.00 | 125,588.69 | 377,788.69 |
| **Total** | **₱3,142,426.14** | **₱50,440.00** | **₱1,804,174.17** | **₱4,997,040.31** |

Petitioner purportedly received a copy of the said FLD/FAN on 13 January 2016[14], while respondent claimed to have served the same on

[11] Exhibit "R-3", id., pp. 286-289.
[12] Par. 3, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume I, p. 295.
[13] Exhibits "R-4" to "R-4-m", BIR Records, pp. 300-303 and 536-540.
[14] Exhibit "P-6-1", Division Docket, Volume I, p. 452.

15 January 2016.[15] Accordingly, on 12 February 2016, petitioner filed with the BIR its Letter-Protest.[16]

On 14 October 2021, petitioner received a new LOA dated 08 October 2021, with Reference No. LOA-050-2021-00000245[17] (SN: eLA201700044932), through then RD Maridur V. Rosario. The new LOA authorized RO Hector Armada and GS Ryan Dagalangit to continue the audit of petitioner's books of accounts for CY 2012, indicating that the previous handling RO and GS had been reassigned to another district office.

On 03 March 2022, petitioner received the FDDA dated 22 February 2022.[18] It stated that it considered petitioner's arguments in its Letter-Protest, in effect dropping the finding on deficiency DST and reducing the findings on IT and EWT, as summarized below:

| Tax Type | Basic Tax Due | Interest | Total Due |
|---|---|---|---|
| IT | ₱2,233,548.49 | ₱3,245,192.97 | ₱5,478,741.46 |
| EWT | 169,703.23 | 254,936.10 | 424,639.33 |
| **Total** | **₱2,403,251.72** | **₱3,500,129.07** | **₱5,903,380.79** |

Thus, on 31 March 2022, within the thirty (30)-day period to appeal the CIR's decision to this Court under Section 228[19] of the NIRC of 1997, as amended, petitioner filed the instant Petition for Review.[20] The case was initially raffled to this Court's First Division.

15 Supra at note 13.

16 See Exhibit "P-1", Division Docket, Volume I, p. 24.

17 Exhibits "P-8" and "R-6", BIR Records, p. 542.

18 Exhibit "P-1", supra at note 6.

19 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: ...

...

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**[.] (Emphasis supplied)

20 Supra at note 1.

## PROCEEDINGS BEFORE THIS COURT

On 11 April 2022, the Court served Summons[21] on respondent, requiring the latter to submit an Answer within 30 days from service. Respondent received the said Summons on 12 April 2022.

On 11 May 2022, respondent filed a "Motion for an Extension of Time to File Answer"[22], requesting an additional period of 30 days to file an Answer. The Court granted the same in the Resolution dated 01 June 2022[23], giving respondent 30 days from 12 May 2022, or until 13 June 2022, to file an Answer. The same Resolution also ordered respondent to elevate the BIR Records for the present case. In compliance therewith, on 14 June 2022, respondent transmitted the BIR Records, consisting of one (1) folder with 609 pages.[24]

Thereafter, on 10 June 2022, respondent filed his or her Answer[25] through registered mail. Therein, respondent essentially cited the following special and affirmative defenses: (1) respondent's period to assess had not yet prescribed; (2) the BIR had fully complied with the due process requirements in issuing the present assessment; and, (3) petitioner was duly informed of the assessment's factual and legal bases.[26]

In the Resolution dated 24 June 2022[27], the Court noted respondent's filing of the Answer and the transmittal of the BIR Records. It then directed the parties to appear before the Philippine Mediation Center - Court of Tax Appeals (**PMC-CTA**) for mediation proceedings on

21 Division Docket, Volume I, p. 165.
22 Id.., pp. 168-170.
23 Id., p. 174.
24 Id., p. 176.
25 Id., pp. 178-189.
26 Id., pp. 179-186.
27 Id., pp. 262-263.

01 August 2022, pursuant to Parts I.1.A[28] and II[29] of A.M. No. 11-1-5-SC-PHILJA or the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.

The mediation meeting proceeded as scheduled, but the parties later decided not to have their case mediated before the PMC-CTA.[30] On 01 August 2022, the PMC-CTA forwarded a Report stating that the conciliation proceedings failed.[31] The Court noted the same in its Resolution dated 18 August 2022[32], and accordingly set the Pre-Trial Conference on 29 September 2022. In relation thereto, on 25 August 2022, the Court issued a Notice of Pre-Trial Conference.[33] Accordingly, on 08 September 2022, ahead of the Pre-Trial Conference, respondent filed his or her Pre-Trial Brief.[34] Meanwhile, on 19 September 2022, petitioner filed its Pre-Trial Brief.[35]

During the Pre-Trial proper[36], the Court set schedules for the presentation of the parties' witnesses and the marking of their documentary exhibits. It likewise ordered the parties to file their Joint Stipulation of Facts and Issues (**JSFI**) within 30 days, or until 31 October 2022. Accordingly, on 28 October 2022, the parties filed their JSFI.[37] On

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28 I. *Coverage*
I.1. The following cases may be referred to mediation:
A. *Cases within the jurisdiction of the Divisions*
1. Decisions of the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC), or other laws administered by the Bureau of Internal Revenue (BIR);
2. Inaction by the CIR in cases involving disputed assessments, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR, where the NIRC provides a specific period for action, in which case the inaction shall be deemed a denial upon the lapse of said period[.]

29 II. *Referral to Mediation*
The referral to mediation shall be made after the filing of the Comment in cases pending with the Court *En Banc* and, before or during the pre-trial for cases pending with the Court in Division.
A Resolution (FORM NO. 1) shall be issued by the Court *En Banc* or in Division, referring the covered civil case to mediation and requiring the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) at a specified date and time. Said Resolution shall suspend the proceedings for the duration of the period of mediation stated in Section VIII below.

30 Id., p. 264.

31 Id.

32 Id., p. 266.

33 Id., pp. 267-267E.

34 Id., pp. 268-279.

35 Id., pp. 283-287.

36 See Minutes of the Hearing and Order, both dated 29 September 2022, id., pp. 291-291B and 292-292B, respectively.

37 Id., pp. 295-297.

the same day, petitioner filed a Motion for Suspension of Collection of Tax[38] (**Motion to Suspend**).

In the Resolution dated 10 November 2022[39], the Court noted the parties' JSFI and petitioner's Motion to Suspend. It gave respondent five (5) days to comment on the said Motion, and set the same for hearing on 24 November 2022.

During the 24 November 2022[40] hearing, petitioner presented Genda P. Abrahan (**Abrahan**) as its lone witness. Abrahan was also to be presented as petitioner's sole witness for the reception of evidence in chief. Through her Judicial Affidavit[41], Abrahan mainly testified as to the damage that petitioner was set to suffer if the collection efforts were to proceed against it. According to her, petitioner filed the Motion to Suspend to protect its interests. She testified that a Warrant of Distraint/Levy (**WDL**) dated 23 September 2022 was served on petitioner on 03 October 2022, ordering it to pay the sum of ₱5,903,380.79 (or the amount *per* FDDA). She claimed it was issued in violation of petitioner's right to due process and the same amounted to an unjust execution of an erroneous judgment. In support of petitioner's clamor for the grant of the Motion to Suspend, she testified that its denial would put petitioner in a position where it would be unable to meet its current obligations and regular expenditures. She also recounted her participation in the administrative proceedings for the CY 2012 assessment. Notably, during the said hearing, respondent manifested that a Warrant of Garnishment (**WOG**) had been issued against petitioner.

Upon the completion and termination of Abrahan's testimony, the court directed petitioner to file its Formal Offer of Evidence (**FOE**) and respondent to comment thereon, within five (5) days from receiving a copy.

On 28 November 2022, pending the resolution of petitioner's Motion to Suspend, petitioner filed a "Motion to Dispense with the Bond".[42] Therein, it manifested that its banks had informed it of the

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[38] Id., pp. 300-310.
[39] Id., p. 420.
[40] See Order dated 24 November 2022, pp. 479-480.
[41] Exhibit "P-8", id., pp. 352-362.
[42] Petitioner's *Manifestation and Motion to Dispense with the Bond* dated 28 November 2022, id., pp. 482-487.

ongoing collection efforts from the BIR (through a WOG) and that its funds had consequently been put on hold, although funds were yet to be transferred out. It warned that, absent its funds from the bank, it may not be able to comply with the expected bond requirements from an order suspending the collection of taxes from it.

On 29 November 2022, petitioner filed its FOE[43] in connection with the hearing for its Motion to Suspend. Meanwhile, respondent filed his or her "Comment/Opposition (on [Motion to Suspend])"[44] on 29 November 2022. On 01 December 2022, he or she then filed a "Comment (on Petitioner's [FOE] on the [Motion to Suspend])".[45] However, respondent failed to comment on petitioner's latter Motion to Dispense with the Bond.[46] On 06 January 2023, the Court submitted all of the foregoing for resolution.[47]

In the Resolution dated 27 January 2023[48], the Court admitted all of petitioner's offered Exhibits, except for one offered as Exhibit "P-9", a photocopy of the WOG issued against petitioner (for failing to present the original for comparison). Finding merit in petitioner's arguments, it then granted petitioner's Motion to Suspend and Motion to Dispense with the Bond. It likewise lifted and voided the WDL and WOG, which were later on confirmed to have indeed been issued in connection with the deficiency assessment (subject of the present case).[49] Finally, it restrained the BIR from carrying out any further collection efforts on the basis of the assessment in the instant case.

Subsequently, the Court also issued a Resolution dated 06 February 2023[50] setting petitioner's initial presentation of evidence in chief on 18 April 2023. Consequently, it postponed respondent's turn to present evidence until further notice.

Disagreeing with the Court's actions, respondent filed a Motion for Reconsideration[51] (**MR**) on 16 February 2023 stating that the Court's

[43] Id., Volume II, pp. 527-533.
[44] Id., pp. 516-526.
[45] Id., pp. 602-604.
[46] See Records Verification dated 06 December 2022, id., p. 600.
[47] See Resolution dated 06 January 2023, id., pp. 608-609.
[48] Id., pp. 612-620.
[49] See page 7.
[50] Id., p. 625.
[51] Id., pp. 626-631.

Resolution dated 27 January 2023[52] was contrary to law and jurisprudence. Respondent disagrees that petitioner's due process rights were violated and interposes that the posting of a bond is a prerequisite to suspending collection (and thus should not be dispensed with). On 22 February 2023, petitioner filed its Comment[53] thereon.

In the *interim*, the Court issued the Pre-Trial Order dated 27 February 2023.[54] On 01 March 2023, the Court noted respondent's MR and petitioner's Comment thereon, submitting both for resolution.[55]

In the Resolution dated 17 March 2023[56], the Court denied respondent's MR for lack of merit. It emphasized that it *preliminarily* found that petitioner's due process rights were violated when respondent issued the FLD/FAN within the fifteen (15)-day period to respond to the PAN. The Court was unconvinced of respondent's assertion regarding petitioner's supposed receipt of the PAN on 29 December 2015 (which was purportedly supported by an LBC Official Receipt (**OR**) that was not offered in evidence). Respondent's insistence stemmed from the possibility, when taken in conjunction with other assumptions, that the FLD/FAN would have been issued beyond 15 days from petitioner's receipt of the PAN.

On 18 April 2023, trial ensued as scheduled, with petitioner again presenting and offering the testimony of its lone witness, Abrahan, its authorized representative.[57]

On the witness stand, Abrahan identified the exhibits she had referred to in her Judicial Affidavit.[58] These exhibits mainly dealt with the BIR documents issued to petitioner over the course of the examination of its books (from the LOA to the FDDA). Relative thereto, she testified that she was in charge of petitioner's general accounting processes, making her privy to the events surrounding the administrative proceedings relative to petitioner's CY 2012 assessment. She likewise

52 Supra at note 48.
53 Petitioner's *Comment/Opposition (to Motion for Reconsideration dated 15 February 2023)* dated 22 February 2023, id., pp. 633-642.
54 Id., pp. 685-695.
55 See Minute Resolution dated 01 March 2023, id., p. 696.
56 Id., pp. 702-706.
57 See Order dated 18 April 2023, id., pp. 708-709.
58 Exhibit "P-9", id., Volume I, pp. 91-99.

testified on the events that transpired prior to the filing of the instant Petition and her role in the proceedings leading to the eventual issuance of the FDDA against petitioner. She attested that petitioner caused the filing of the present Petition as it viewed the assessment to be erroneous. For one, she pointed out that items allegedly flagged for non-withholding were actually not the proper subject of withholding taxes to begin with.[59]

During her cross-examination, Abrahan declared that she was not aware whether any of petitioner's corporate officers and directors represent the latter in Court (in other cases).[60] No redirect examination followed.[61]

On 26 April 2023, petitioner filed its FOE.[62] On 02 May 2023, respondent filed his or her Comment thereto.[63] In its Resolution dated 26 May 2023[64], the Court admitted all of petitioner's offered exhibits, except for its offered Exhibit "P-7", a photocopy of its Letter-Protest to the FLD/FAN (for failing to present the original for comparison). In the same Resolution, respondent's evidence was set to be presented on 09 August 2023.

During the hearing of 09 August 2023, RO Etorma took the witness stand as respondent's lone witness.[65]

RO Etorma testified, by way of his Judicial Affidavit[66] that, at the time the examination of petitioner's book for CY 2012 took place, he served as RO III at Revenue District Office No. 50, South Makati. He confirmed that LOA No. 050-2013-00000348 was issued to him and GS Lacson for the examination of petitioner's accounting records for CY 2012. He recalled the circumstances surrounding the examination, including his personal service of the LOA and FLD/FAN, though the PAN was sent through mail. He likewise detailed that he conducted the audit examination then subsequently prepared a Memorandum Report on 30 September 2015 outlining petitioner's deficiency assessments for the

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59 Id.
60 TSN dated 18 April 2023, pp. 18-20.
61 Id.
62 Id., pp. 735-740.
63 Respondent's "*Comment (on Petitioner's Formal Offer of Evidence)*" dated 02 May 2023, pp. 819-820.
64 Id., pp. 844-845.
65 See Order dated 09 August 2023, id., pp. 847-848.
66 Exhibit "R-9", id., Volume I, pp. 244-257.

subject CY and recommending that a PAN be issued. He further pointed out that petitioner's failure to file a reply to the PAN prompted the issuance of the FLD/FAN after the lapse of the 15-day period to respond. He testified as well that petitioner protested the FLD/FAN, which was duly considered in the FDDA that later followed. However, in the *interim*, he had been transferred to a different BIR District Office. Nevertheless, he was able to attest to the FDDA's service on petitioner. He likewise summarized the findings *per* the FDDA.

On cross-examination, he recounted his personal service of the LOA and FLD/FAN. He then confirmed that an LBC OR (submitted as evidence to support the service to petitioner of the PAN) did not outright specify what "documents" were contained in the delivery packet. While he agreed with petitioner's counsel that his primary responsibilities included ensuring the LOA, PAN, and FLD/FAN were properly served on the taxpayer, he clarified that it was not his immediate responsibility, but that of the BIR's Assessment Division, to serve the PAN.[67]

During the redirect examination, while respondent's counsel attempted to elicit from RO Etorma the authority that gave approval to his Memorandum Reports that resulted in the issuance of the PAN, the Court sustained an objection thereto as the same are clearly gleaned from the documentary evidence on record.[68]

Having no witnesses left to present, the Court directed respondent to file his or her FOE within ten (10) days, or until 21 August 2021. In turn, it gave petitioner ten (10) days from receiving a copy thereof, to file its Comment. Finally, it gave each of the parties 30 days to file their Memoranda from receiving a copy of the Court's later resolution acting on respondent's FOE.[69]

On 11 August 2023, respondent filed an "Omnibus Motion to Defer Filing of [FOE] and for the Re-Opening of Respondent's Presentation of Evidence and Recall [RO Etorma]"[70] (**Omnibus Motion**) dated 11 August 2023. Therein, respondent prayed for time to rectify RO Etorma's Judicial Affidavit (wherein the evidence he identified did not match the exhibits

67 TSN dated 09 August 2023, pp. 18-34.
68 Id., pp. 34-35.
69 See Order dated 09 August 2023, supra at note 65.
70 Id., pp. 851-853.

marked), upon learning that the sequence of its markings (on respondent's documentary exhibits to be offered) were adjusted during the Commissioner's Hearing as they were found to be noncompliant. In the Resolution dated 17 August 2023[71], the Court partially granted the said Omnibus Motion, deferring the filing of respondent's FOE. However, it dispensed with the need to recall the witness and amend his Judicial Affidavit and instead ordered the re-marking of respondent's documentary evidence to match the existing Judicial Affidavit. The Court then gave respondent ten (10) days to file his or her FOE.

On 23 August 2023, respondent filed his or her FOE.[72] On 04 September 2023, petitioner filed its Comment thereon.[73] In the Resolution dated 27 September 2023[74], the Court admitted all of respondent's offered exhibits. The same Resolution reiterated its directive of ordering the parties to file their respective memoranda.[75] In compliance, respondent and petitioner each filed a Memorandum on 27 October 2023[76] and 31 October 2023[77], respectively. Accordingly, in its Resolution dated 22 November 2023[78], the Court noted the parties' Memoranda and submitted the case for decision.

## ISSUE

As the parties so stipulated during the Pre-Trial, the following issue was for this Court's determination —

> WHETHER PETITIONER OILINERS INC. IS LIABLE FOR DEFICIENCY INCOME TAX (IT) AND EXPANDED WITHHOLDING TAX (EWT) IN THE AGGREGATE AMOUNT OF ₱5,903,380.79, INCLUSIVE OF INTEREST, FOR THE CALENDAR YEAR (CY) ENDED 31 DECEMBER 2012.

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71 Id., pp. 927-928.
72 Id., pp. 938-946.
73 Petitioner's "Comment/Opposition (Re: Formal Offer of Evidence dated 22 Aug 2023)" dated 04 September 2023, id., pp. 948-959.
74 Id., pp. 966-967.
75 Id.
76 Id., pp. 991-1004.
77 Id., pp. 968-989.
78 Id., p. 1008.

## ARGUMENTS OF THE PARTIES

In support of its petition, petitioner argues that respondent violated its due process rights, when the former failed to observe the 15-day reglementary period for it to respond to the PAN. It alleges that it received the PAN in the present case on 07 January 2013, followed by the FLD/FAN on 13 January 2013, or merely six (6) days later.

Additionally, contrary to respondent's claim that it received the PAN on 29 December 2015, petitioner points out that the LBC OR that respondent presented does not indicate when petitioner received the documents nor even what documents are contained therein. Petitioner dismisses the arguments surrounding the LBC receipt as baseless, unsupported assumptions.

Lastly, petitioner argues that respondent's right to assess EWT from January to November of CY 2012 had already prescribed by the time the assessment was issued.

On the other hand, respondent counters that there is no violation of petitioner's rights to due process after the PAN was served on petitioner through LBC. He or she avers that, in the absence of any holidays or work suspensions, it was to be expected in the *ordinary course of business* that LBC was able to deliver the PAN to petitioner on the day after its actual mailing, as was indicated in LBC's OR.

Respondent adds that with the PAN duly served, petitioner's failure to reply thereto triggered the issuance of the FLD/FAN fifteen (15) days later.

Moreover, respondent contends that his or her right to assess petitioner could not have prescribed (as petitioner insisted) since it had three (3) years from the filing of petitioner's final adjustment return to assess any internal revenue taxes in connection with the taxable year in question.

Finally, respondent maintains that petitioner is liable for the deficiency IT and EWT, as set forth in the PAN, FLD/FAN, and FDDA, the factual and legal bases of which were clearly laid out therein.

## RULING OF THE COURT

Before delving into the merits of the case, We find it propitious to first verify whether this Court has jurisdiction over the instant petition.

THE COURT OF TAX APPEALS HAS JURISDICTION OVER THE PRESENT PETITION FOR REVIEW.

The Court of Tax Appeals (**CTA**), being a court of special jurisdiction, can only take cognizance of matters that are clearly within its jurisdiction.[79]

Section 11 of the Republic Act (**RA**) No. 1125, as amended by RA 9282, in relation to Section 3(a), Rule 8 of the RRCTA, provides for the proper period during which petitioner may invoke the CTA's jurisdiction in order to question respondent's decision, to wit:

> ...
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by a decision, ruling** or inaction **of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA <u>within thirty (30) days</u> after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**
>
> ...
>
> SEC. 3. *Who may appeal; period to file petition.* —
>
> (a) **A party adversely affected by a decision, ruling** or the inaction **of the Commissioner of Internal Revenue on disputed assessments** or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed <u>within thirty days</u> after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner

[79] *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, 12 March 2014.

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.[80]

...

Accordingly, in case of the CIR's adverse decision or ruling, the taxpayer is given 30 days to file a petition for review with the CTA. Here, petitioner received the FDDA on 03 March 2022.[81] Counting 30 days therefrom, petitioner had until 02 April 2022 to file its judicial appeal. Clearly, petitioner timely filed the instant Petition for Review on 31 March 2022. That said, this Court has jurisdiction over the case.

We then proceed with a discussion of the merits of the case.

After an assiduous review of the case records and the parties' arguments, this Court finds that the present petition is impressed with merit.

THE DEFICIENCY ASSESSMENTS SHOULD BE CANCELLED AS THEY WERE ISSUED IN VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS.

We preface our disquisitions with the Supreme Court's pronouncements in *Alliance for the Family Foundation, Philippines, Inc. (ALFI), et al. v. Hon. Janette L. Garin, et al.*[82], where it declared emphatically:

...

Due process of law has two aspects: substantive and procedural due process. In order that a particular act may not be impugned as violative of the due process clause, **there must be compliance with both the substantive and the procedural requirements** thereof.

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80 Italics in the original text, emphasis and underscoring supplied.

81 Exhibit "P-1", supra at note 6.

82 G.R. No. 217872, 24 August 2016; Citations omitted and emphasis supplied.

Substantive due process refers to the intrinsic validity of a law that interferes with the rights of a person to his property. **Procedural due process**, on the other hand, **means compliance with the procedures or steps, even periods, prescribed by the statute**, in conformity with the standard of fair play and without arbitrariness on the part of those who are called upon to administer it.

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

...

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

...

**Sec. 228.** *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings...

...

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

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

...

Meanwhile, BIR Revenue Regulations (**RR**) No. 12-99[83], implementing the aforecited provision, details the prescribed procedures for the valid issuance of a PAN:

[83] 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.

...

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:

3.1.2 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Assessment Division or 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**, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based... **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 assessment notice shall be caused to be issued by the said Office**, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.[84]

...

Following the above-stated rules, respondent or his or her duly authorized representative is **required** to issue a PAN against the taxpayer whenever there is a finding of any deficiency tax due. The taxpayer is then given 15 days, counted from its receipt thereof, to respond. The taxpayer's failure to respond within the period prescribed results in the taxpayer being considered in default, leading to the issuance of the FLD/FAN.

The Supreme Court had long since settled the mandatory nature of the issuance of the PAN and compliance with the due process requirements in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[85]:

...

Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly

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84 Emphasis supplied and italics in the original text.

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

> with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence.
>
> ...
>
> From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities. The use of the word "*shall*" in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. ...
>
> ...

Relevantly, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[86], the Supreme Court discussed the paramount importance of observing the period and the consequences of their non-observance and, thus, held:

> ...
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.
>
> ...
>
> ... Again, under Section 228 of the Tax Code and **Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice**; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. ...
>
> ...

86 G.R. Nos. 201398-99, 03 October 2018; Citations omitted and emphasis supplied.

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

The principles enunciated above as regards the observance of due process in the issuance of assessments to taxpayers was reiterated in the more recent case of *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)*[87], where the CIR issued the FLD/FAN to Nippo Metal without waiting for the lapse of the 15-day period to respond to the PAN. Therein, the Supreme Court held:

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

Additionally, jurisprudence is replete with cases holding that if the taxpayer denies having received an assessment from the BIR, it is incumbent upon the sender to prove by competent evidence that the

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

notice was indeed received by the addressee.[88] Thus, in such instances, the burden of proof that such notice of assessment was actually received by the concerned taxpayer, **in the manner and on the date asserted by the BIR**, is shifted to the latter.

Premised on the foregoing discussions, We thus synthesize the parties' arguments alongside the evidence available on record.

*i.* PETITIONER RECEIVED THE PAN ON 07 JANUARY 2016

In the present case, petitioner contends that respondent violated its due process rights when the BIR failed to observe the mandatory fifteen (15)-day period given to taxpayers to file a reply to the PAN.

Petitioner claims that it only actually received the PAN on 07 January 2016.[89] However, the BIR supposedly issued the FLD/FAN on 14 January 2016, then personally served the same to petitioner on 15 January 2016, or only seven (7) days later — well within the 15-day period.

Respondent counters that the mandatory 15-day period had been duly observed, with the PAN allegedly having been served to petitioner on 29 December 2015, as purportedly indicated in the LBC OR.[90] Respondent presented the said receipt, which likewise indicated that the delivery would be made to petitioner at its registered business address at 7th Floor, Banco De Oro Plaza, 8737 Paseo De Roxas, Bel-Air, Makati City.

Moreover, an examination of respondent's original, official copy of the PAN[91] in the BIR Records does not yield any proof of service nor receipt. Neither were there any other supplemental documents supporting such fact, beyond the LBC OR.

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88 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, supra at note 85; *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 157064, 07 August 2006; See *Estate of the Late Juliana Diez Vda. De Gabriel v. Commissioner of Internal Revenue*, G.R. No. 155541, 27 January 2004.

89 Exhibit "P-5", Division Docket, Volume I, p. 442.

90 Exhibit "R-3-1", BIR Records, p. 289A.

91 Exhibit "R-3", supra at note 11.

Section 3.1.6 of RR No. 12-99[92], as amended by RR No. 18-2013[93], reads, in part, as follows:

> ...
>
> SECTION 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:
> ...
>
> 3.1.6 *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 sufficient proof of mailing and shall be attached to the case docket.**[94]
>
> ...

As can be gleaned from the foregoing provisions, one of the recognized modes of service of a PAN is through a reputable professional courier service. In such case, as with any other permitted mode of service, the server bears the duty of accomplishing the bottom portion of the same notice and making a written report under oath before a Notary Public or any person authorized to administer oaths

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[92] Supra at note 83.

[93] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment; emphasis supplied.

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

under Section 14[95] of the NIRC of 1997, as amended. Additionally, the official receipt issued by the professional courier company, containing sufficiently identifiable details of the transaction, must be attached to the case docket.

In the instant case, respondent only presented the OR issued by LBC, which indicates "*Delivery Date: 12/29/2015*", to prove that petitioner received the PAN on the said date. Respondent supports his or her position by declaring that there are disputable presumptions that "the ordinary course of business has been followed" and "things happened according to the ordinary course of nature and ordinary habits of life." Respondent proffers the conclusion that since the PAN was transmitted to LBC (for mailing) on 28 December 2015, it logically follows that the PAN was delivered to petitioner on 29 December 2015.

We disagree with respondent.

*Firstly*, an OR for courier services *alone* is not sufficient proof the subject parcel was received. It must be noted that an OR is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.[96]

As earlier stated, the LBC OR presented by respondent does not, on its face, indicate any information that can constitute proof of delivery nor receipt. It is, at best, proof of mailing, but not proof of delivery. In fact, the same LBC OR indicates overleaf in its terms and conditions:

> ...
> 7. **Proof of Delivery (POD) will be available only upon Shipper's request.** Retrieval of the POD shall be within seven (7) days at the accepting branch. Otherwise, the POD copy shall be disposed.

---

95 SEC. 14. *Authority of Officers to Administer Oaths and Take Testimony.* - The Commissioner, Deputy Commissioners, Service Chiefs, Assistant Service Chiefs, Revenue Regional Directors, Assistant Revenue Regional Directors, Chiefs and Assistant Chiefs of Divisions, Revenue District Officers, special deputies of the Commissioner, internal revenue officers and any other employee of the Bureau thereunto especially deputized by the Commissioner shall have the power to administer oaths and to take testimony in any official matter or investigation conducted by them regarding matters within the jurisdiction of the Bureau.

96 *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, 31 August 2005.

> 8. **Shipper agrees that he is obliged to verify the status of delivery of the shipment within seven (7) days from date of acceptance of shipment. If shipment is undelivered, the shipper has to claim it within the period of thirty (30) days from date of acceptance.** Otherwise, LBC is authorize[d] to dispose of the shipment in a manner it sees fit.[97]
>
> ...

LBC designates a distinct document as Proof of Delivery (**POD**) and places upon the shipper the obligation to obtain the same, as well as to verify the status of the shipment's delivery. Notably, the POD, or any equivalent document, is absent from the case docket or the BIR Records for the present case. Moreover, operating against the supposed disputable presumptions respondent insinuated were in play, LBC requires that the shipper act first (by reporting a claim) in the event of non-delivery.

*Secondly*, presumptions are subject to controversion and direct denial, in which case **the burden is shifted** to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee on the said date.[98]

*Thirdly*, the "delivery date" reflected on the OR represents only the expected date of delivery as it is issued at the time the parcel is dropped-off with the professional courier service, such as LBC. This is distinct from the actual date of delivery contemplated under Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-2013, to wit:

> ...
>
> 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

[97] Exhibit "R-3-a", BIR Records, p. 289; Emphasis supplied.

[98] See *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729 (Resolution), 24 August 2020.

> 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).
>
> If the taxpayer fails to respond within **fifteen (15) days from <u>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.
>
> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.[99]
>
> ...

*Lastly*, but most importantly, respondent's LBC OR fell short of what is required under RR No. 12-99[100], as amended. The regulations require not only an OR but also a written report under oath by the server, and that the authorized representative of the taxpayer who received the notice be identified on the PAN.[101]

As early as petitioner's Letter-Protest, the BIR had already been made aware of the former's dispute regarding the timing of its receipt of the PAN in relation to their perceived early issuance of the FLD/FAN.[102] In respondent's Memorandum, the authority of the party that affixed the signature and stamp signifying petitioner's receipt was likewise put into question, even though the copies of the PAN and FLD/FAN bearing the same acknowledgments were attached to the same Letter-Protest. However, the FDDA was issued with the aforementioned matters unacknowledged and unaddressed, confining discussions therein strictly to the amounts of the imputed deficiency tax liabilities.

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99 Italics in the original text, emphasis and underscoring supplied.

100 Supra at note 83.

101 See *Mannasoft Technology Corp. v. Commissioner of Internal Revenue*, G.R. No. 244202, 10 July 2023.

102 Copy of Petitioner's Letter-Protest, BIR Records, pp. 318-343.

As it stands, respondent failed to discharge the burden of proof necessary to establish that petitioner received the PAN on 29 December 2015, and *not* on 07 January 2016. Relative thereto, petitioner's witness, Abrahan, on cross-examination, testified as follows:[103]

> ...
> ATTY. LUMBRES:
>
> ...
> Q. You mentioned in your answer to Question No. 17 that petitioner's right to due process was violated, it was not given an opportunity to reply and protest **the Preliminary Assessment Notice dated December 28, 2015 that it received on January 7, 2016**. So, the question is the receipt of the Preliminary Assessment Notice. Did you receive personally such Preliminary Assessment Notice?
>
> MS. ABRAHAN:
>
> A. No. I haven't received personally the document but it was our staff who received it.
>
> ATTY. LUMBRES:
>
> **Q. Did you see the staff who received that Preliminary Assessment Notice?**
>
> MS. ABRAHAN:
>
> **A. Yes.**
>
> ATTY. LUMBRES:
>
> Q. On that day?
>
> MS. ABRAHAN:
>
> A. Yes.
>
> ATTY. LUMBRES:
>
> Q. You **vouch on that answer**, Ms. Witness?

[103] TSN dated November 24, 2022, p. 15.

MS. ABRAHAN:

**A. Yes.**[104]

...

As can be gleaned from the foregoing, Abrahan corroborated petitioner's proof of receipt — the stamped acknowledgment[105], confirming that petitioner received the PAN on 07 January 2016.

In attacking petitioner's alleged date of receipt as supported by its own evidence, respondent is equally bound to proffer his or her own interposed alternative date of receipt. Mere allegation of the fact is not evidence of it. Verily, the party who asserts, not he who denies, must prove.[106]

*ii.* RESPONDENT DID NOT COMPLY WITH THE MANDATORY 15-DAY PERIOD

In the case of *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*[107], citing *Commissioner of Internal Revenue v. Yumex Philippines Corporation*[108], the Supreme Court has held that the 15-day period provided under RR No. 12-99 for a taxpayer to reply to a PAN forms part and parcel of the due process requirement in the issuance of a deficiency tax assessment and the same must be strictly complied with; otherwise, the assessment becomes null and void.

The importance of the PAN stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of a FAN.[109]

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104 Emphasis supplied.
105 Exhibit "P-5", supra at note 89.
106 *Far East Bank & Trust Company v. Robert Mar Chante, a.k.a. Robert Mar G. Chan*, G.R. No. 170598, 09 October 2013.
107 G.R. No. 249153, 12 September 2022.
108 G.R. No. 222476, 05 May 2021.
109 *Mannasoft Technology Corp. v. Commissioner of Internal Revenue*, supra at note 101.

In the instant case, the records show that petitioner received the PAN on 07 January 2016. This gave petitioner until 22 January 2016, to file a reply to the PAN.

However, respondent issued the FAN on 14 January 2016, prematurely and within the mandatory 15-day period. Clearly, respondent violated petitioner's right to due process by issuing a FAN without even awaiting its reply to the PAN, or at least, the lapse of the period provided for the filing thereof.

In the case at bar, it is glaringly evident that respondent was unable to disprove the fact of petitioner's belated receipt of the PAN. In consideration of respondent's myriad of opportunities to proffer arguments and documentation in support of his or her own claim, the latter had consistently failed to do so.

Considering the state of the BIR's records made available to this Court, the BIR's omission of its obligation to keep track of matters material to the observance of the due process requirements must be underscored.

Upon a closer review of the BIR's docket for the administrative proceedings, the BIR was able to meticulously keep track of key events pertinent to the conduct of the investigation relating to the present assessment case but notably neglected to retain information considered crucial for the protection of the taxpayer, *i.e.*, the circumstances of the latter's receipt of the PAN and FLD/FAN.

Relatedly, petitioner had also alleged in its petition that it had received the FAN on 13 January 2016, though the same was dated (and thus supposedly issued on) 14 January 2016.[110] In any case, petitioner later on manifested in the parties' JSFI that the BIR had issued the FLD/FAN on 14 January 2016. Indeed, the discrepancies involving the issuance and receipt of the FLD/FAN raises more questions, though it is noted that the FLD/FAN would have still been issued well within the 15-day period to respond to the PAN, whether it were issued on the 13th or the 14th of January 2016.

110 Par. 13, Petition for Review, supra note 1 at p. 9.

In *Commissioner of Internal Revenue v. Yumex Philippines Corporation*[111], the Supreme Court has consistently emphasized the importance of observing procedural due process:

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

Based on the disquisitions above, the FAN issued on 14 January 2016, or only 7 days from petitioner's receipt of the PAN on 07 January 2016 (and still within petitioner's 15-day period to respond) could not be sanctioned. The 15-day period granted to a taxpayer to reply to the PAN before a FAN is issued is mandatory.

For failing to afford petitioner due process, respondent's assessment of the latter is *inescapably void*. Consequently, the Court deems it unnecessary to further thresh out the items comprising the assessment.

**WHEREFORE**, the foregoing premises considered, the instant Petition for Review filed by petitioner Oiliners Inc. on 31 March 2022 is hereby **GRANTED**. Accordingly, the Preliminary Assessment Notice dated 28 December 2015, Formal Assessment Notice dated 14 January 2016, and Final Decision on Disputed Assessment dated 22 February 2022 – all issued against petitioner Oiliners Inc. for assessed deficiency internal revenue taxes in the calendar year ended 31 December 2012, are declared **VOID**.

Consequently, respondent Commissioner of Internal Revenue or any person duly acting on his or her behalf is **ENJOINED** from pursuing any actions against petitioner Oiliners Inc. relative to herein case.

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111 Supra at notes 108.

**SO ORDERED.**

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

**LANEE S. CUI-DAVID**
Associate Justice

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
Presiding Justice