

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

EN BANC

**COMMISSIONER OF
INTERNAL REVENUE,**
Petitioner,

CTA EB NO. 2502
(CTA Case No. 9644)

Present:

- versus -

**DEL ROSARIO, PJ,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, JJ.**

TITANIUM CORPORATION,
Respondent.

Promulgated:

FEB 13 2023

11:30 am

X - - - - - X

DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*¹ filed by petitioner Commissioner of Internal Revenue *via* registered mail on July 14, 2021, assailing the Decision² dated November 11, 2020 (assailed Decision), and the Resolution³ dated June 1, 2021 (assailed Resolution), both rendered by this Court's Third Division (Court in Division) in CTA Case No. 9644 entitled *Titanium Corporation vs. Commissioner of Internal Revenue*. The dispositive portions of the assailed Decision and Resolution read as follows:

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¹ *En Banc (EB)* docket, pp. 7-23.

² *EB* docket, pp. 27-48.

³ *EB* docket, pp. 50-55.

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Decision dated November 11, 2020:

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the FDDA dated June 29, 2017 is **WITHDRAWN** and **SET ASIDE**. Moreover, the FLD/FAN dated December 17, 2014 is **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Resolution dated June 1, 2021:

WHEREFORE, premises considered, respondent's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

Petitioner prays that the assailed Decision and Resolution be reversed and set aside; and that a new one be rendered ordering respondent to pay the amounts of ₱4,564,266.07, ₱4,192,229.01, and ₱459,750.09 (inclusive of interest), as deficiency Income Tax (IT), Value-Added Tax (VAT), and Expanded Withholding Tax (EWT), respectively, for the taxable year 2011, plus the accrued 25% surcharge for the late payment and 20% annual interest from July 31, 2017 until fully paid under Sections 248 and 249 of the National Internal Revenue Code (NIRC) of 1997, as amended.

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR), vested by law to implement and enforce the provisions of the NIRC of 1997, as amended, and other tax laws. He holds office at the Bureau of Internal Revenue (BIR), National Office Building, BIR Road, Diliman, Quezon City, and may be served with summons and other legal processes through his counsel, with office address at the Legal Division, Revenue Region 8B-South NCR, 2/F BIR Bldg., Sen. Gil Puyat Avenue, Makati City.⁴



⁴ Par. 1, The Parties, Petition for Review, *EB* docket, p. 8.

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On the other hand, respondent Titanium Corporation is a domestic corporation duly organized under Philippine laws, with principal office address at 733 Wood Street Malibay, Pasay City.⁵ It was registered with the BIR on June 8, 1996 and was issued Tax Identification No. 000-826-366-000.⁶

THE FACTS

On November 16, 2012, petitioner, through BIR-Revenue District No. 51 – Pasay City, issued a Letter of Authority (LOA) with No. LOA-051-2012-00000369 / SH: eLA201100013570, authorizing Revenue Officer (RO) Marilyn D. Guerzon and Group Supervisor (GS) Arnaldo Rase to conduct a tax audit of respondent for possible deficiency internal revenue tax liabilities for the taxable year ended December 31, 2011.⁷

Thereafter, or on November 28, 2014, respondent received the Preliminary Assessment Notice (PAN) dated November 24, 2014, assessing it of deficiency internal revenue taxes for the Calendar Year (CY) 2011.⁸

On December 12, 2014, respondent filed its *Reply* dated December 12, 2014.⁹

On December 17, 2014, respondent received a copy of the Formal Assessment Notice (FLD/FAN) dated December 17, 2014, assessing it of deficiency internal revenue taxes for the taxable year ended December 31, 2011, in the aggregate amount of ₱7,801,037.24, including deficiency interest.¹⁰

Respondent protested the FLD/FAN on January 9, 2015.¹¹

On July 6, 2017, respondent received the Final Decision on Disputed Assessment (FDDA) dated June 29, 2017, finding it liable for deficiency IT, VAT, and EWT, for the taxable year

⁵ Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Division docket — Vol. 1, p. 251.

⁶ Par. 2, Petition for Review, vis-à-vis Par. 1, Answer, Division docket — Vol. 1, pp. 11 and 214, respectively.

⁷ Par. 3, Admitted Facts, JSFI, Division docket — Vol. 1, pp. 251 to 252; Exhibit "P-35", Division docket — Vol. 2, p. 393; Exhibit "R-2", BIR Records, p. 2.

⁸ Par. 6, Admitted Facts, JSFI, Division docket — Vol. 1, p. 252; Exhibit "P-38", Division docket — Vol. 2, pp. 897 to 902.

⁹ Par. 7, Admitted Facts, JSFI, Division docket — Vol. 1, p. 252; Exhibits "P-39" and "R-7", BIR Records, pp. 463 to 467.

¹⁰ Par. 8, Admitted Facts, JSFI, Division docket — Vol. 1, p. 252; Exhibits "P-40" and "R-8", BIR Records, pp. 428 to 431.

¹¹ Exhibits "P-41" and "R-9", BIR Records, pp. 468 to 472.

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2011, in the aggregate amount of ₱9,216,245.17,¹² broken down as follows:

Type	Basic	Interest	Total
Income Tax	₱2,223,054.60	₱2,341,211.47	₱4,564,266.07
VAT	1,998,646.28	2,193,582.73	4,192,229.01
EWT	218,614.88	241,135.21	459,750.09
TOTAL			₱9,216,245.17

On August 7, 2017, respondent elevated the case before the Court in Division *via* a *Petition for Review*,¹³ praying that after due proceedings, judgment be rendered ordering petitioner to cancel the assessment issued against it for the taxable year 2011 for lack of legal and factual bases.

In his *Answer*¹⁴ filed on October 13, 2017, petitioner interposed as a defense, among others, that the due process mandated under Section 228 of the NIRC of 1997, as amended, was implemented in the issuance of the PAN, FLD/FAN, and FDDA, and respondent was duly appraised of the factual and legal basis thereof through the issuance of the Details of Discrepancies attached to the PAN, FLD/FAN and FDDA which were issued in accordance with existing law and regulations; and that the assessments are *prima facie* presumed correct and made in good faith and the taxpayer has the duty of proving otherwise.

During the trial, respondent presented (1) Mr. Melvin G. Ribot, its Tax Specialist; and (2) Mr. Garry S. Pagaspas, the Court-commissioned Independent Certified Public Accountant (ICPA), as witnesses in support of its case.

Thereafter, or on November 28, 2018, respondent filed its *Formal Offer of Evidence*,¹⁵ which the Court in Division partly granted in the Resolution¹⁶ dated February 19, 2019. On February 26, 2019, respondent moved for reconsideration,¹⁷ which the Court granted, *albeit* partially, in the Resolution¹⁸ dated June 13, 2019.

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¹² Par. 9, Admitted Facts, JSFI, Division docket — Vol. 1, p. 252; Exhibit "P-43", Division docket — Vol. 1, pp. 32 to 38; Exhibit "R-14", BIR Records, pp. 529 to 533.
¹³ Division docket — Vol. 1, pp. 10 to 31.
¹⁴ Division docket — Vol. 1, pp. 214 to 225.
¹⁵ Division docket — Vol. 3, pp. 1071 to 1444; Docket — Vol. 4, pp. 1445 to 1944; Division docket — Vol. 5, pp. 1945 to 2346.
¹⁶ Division docket — Vol. 6, pp. 2409 to 2452.
¹⁷ Division docket — Vol. 6, pp. 2457 to 2461.
¹⁸ Division docket — Vol. 6, pp. 2502 to 2506.

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On June 18, 2019, respondent filed a *Tender of Excluded Evidence*,¹⁹ which the Court in Division granted in the Resolution²⁰ dated September 13, 2019.

Petitioner presented ROs Marilyn D. Guerzon and Milan S. Madarang, as witnesses to prove his defense.

There being no other witnesses to present, petitioner rested his case and filed his *Formal Offer of Evidence*²¹ on July 15, 2019.

In the Resolution²² of October 24, 2019, the Court in Division resolved to admit all petitioner's documentary exhibits.

On November 11, 2020, the Court in Division rendered the assailed Decision ordering the cancellation of petitioner's deficiency tax assessments for being conducted without authority and violating respondent's right to due process of law.

Aggrieved, petitioner sought reconsideration, but the same was denied in the equally assailed Resolution dated June 1, 2021. Hence, petitioner elevated his case before the Court *En Banc* by way of a *Petition for Review* posted on July 14, 2021, and received by the Court on July 16, 2021.

On October 21, 2021, the Court *En Banc* issued a Resolution²³ directing respondent to file its *Comment* to petitioner's *Petition for Review* within ten (10) days from notice.

Respondent filed its *Comment (To Petition for Review dated July 21, 2021)*²⁴ via electronic mail on November 8, 2021, and by personal service on November 10, 2021.

On December 7, 2021, a Resolution²⁵ was issued referring the instant case for mediation in the *Philippine Mediation Center – Court of Tax Appeals* (PMC-CTA) under Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals*.



¹⁹ Division docket — Vol. 6, pp. 2510 to 2514.

²⁰ Division docket — Vol. 6, pp. 2537 to 2538.

²¹ Division docket — Vol. 6, pp. 2520 to 2528.

²² Division docket — Vol. 6, pp. 2540 and 2541.

²³ *EB* docket, pp. 58-60.

²⁴ *EB* docket, pp. 62-82.

²⁵ *EB* docket, pp. 697-698.

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On February 22, 2022, the instant case was submitted for decision in view of respondent's refusal to have the present case mediated by the PMC-CTA as per the *Back to Court* dated January 3, 2022 submitted by the latter.²⁶

Hence, this Decision.

THE ISSUES

Petitioner submits the following issues for the Court *En Banc*'s consideration:

- A. WHETHER OR NOT THE THIRD DIVISION OF THIS HONORABLE COURT GRAVELY ERRED IN CANCELLING, WITHDRAWING, AND SETTING ASIDE THE BIR ISSUED FLD/FAN DATED DECEMBER 17, 2014 AND FDDA DATED JUNE 29, 2017 TO HEREIN RESPONDENT, FOR ITS DEFICIENCY INCOME TAX, VALUE-ADDED TAX AND EXPANDED WITHHOLDING TAX FOR CY 2011; and
- B. WHETHER OR NOT RESPONDENT IS LIABLE TO PAY ITS DEFICIENCY INCOME TAX, VALUE-ADDED TAX, AND EXPANDED WITHHOLDING TAX FOR CY 2011.

Petitioner submits that he disagrees with the ratiocination of the Court in Division because the record allegedly shows that respondent's arguments in its protest were duly considered, negating any violation of respondent's right to due process.

As indicated in the PAN dated November 24, 2014, petitioner points out the alleged significant findings of the BIR on the deficiency internal revenue taxes of respondent for the taxable year 2011. While petitioner did not dispute that respondent filed its *Reply* dated December 12, 2014 against the PAN, petitioner however, claims that respondent failed to submit/present any relevant document in support of its defenses against the deficiency tax findings of the BIR, specifically on its deficiency IT, VAT, EWT, Withholding Tax on Compensation (WTC), and Documentary Stamp Tax (DST) assessments for CY 2011.



²⁶ *EB* docket, pp. 702-703.

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For petitioner, such failure of respondent to submit/present documents in support of its defenses against the PAN is contradictory to one of the fundamental requirements of due process in administrative proceedings, as enunciated in the *Ang Tibay* case, that “the party interested or affected must be able to present his or her own case and submit evidence in support of it.”

Petitioner also argues that in the case of *RCBC vs. CIR*,²⁷ the Supreme Court, citing *Estares vs. CA*,²⁸ declared that the essence of due process in taxation is the reasonable opportunity to be heard and submit any evidence one may have in support of one’s defense. Applying the same in the present case, petitioner asserts that the Details of Discrepancies attached to the PAN dated November 24, 2014 and FLD/FAN dated December 17, 2014, clearly show the facts and laws upon which the 2011 deficiency tax assessments issued against respondent were based.

Further, petitioner emphasizes that the BIR acted on respondent’s protest letters and, as a result thereof, the BIR reduced respondent’s deficiency IT and EWT; cancelled the assessed deficiency WTC and DST, but sustained the assessed VAT for the taxable year 2011 for failure to substantiate the same. Hence, petitioner submits that the ruling in *CIR vs. Avon Products Manufacturing, Inc.*²⁹ (*Avon case*), as cited by the Court in Division, is not in all fours in the case at bar and thus inapplicable.

Petitioner likewise asserts that a new LOA addressed to the RO who conducted the reinvestigation after a letter protest has been filed against the FLD/FAN is not necessary for purposes of recommending an FDDA, citing the case of *Sabre Travel Network (Philippines), Inc. (formerly, Abacus Distribution Systems Philippines, Inc.) vs. CIR*.³⁰ According to petitioner, under Revenue Memorandum Order (RMO) No. 69-2010, there is no requirement for the issuance of a new LOA for protested cases/cases of reinvestigation as there was already an existing LOA issued to the RO who conducted the original investigation.



²⁷ G.R. No. 168498, June 16, 2006.

²⁸ G.R. No. 144755, June 8, 2005.

²⁹ G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

³⁰ CTA Case No. 9532, October 25, 2019.

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In closing, petitioner contends that the deficiency IT, VAT, and EWT assessments issued against respondent for the taxable year 2011 are *prima facie* presumed correct and made in good faith, and that respondent has the duty of proving otherwise; in the absence of proof of any irregularities in the performance of official duties, the said deficiency tax assessments of respondent for the taxable year 2011 should not be disturbed.

By way of *Comment (To Petition for Review dated July 12, 2021)*, respondent counters that the assignment of error alleged by petitioner in his appeal is without factual basis. According to respondent, an examination of its *Reply* dated December 12, 2014 will show that it discussed in detail its factual and legal basis against the BIR's assessments under the 2011 PAN and submitted supporting documents to explain the basis of the protest, such as reconciling schedules, *alphalist*, tax returns, and audited financial statements. Thus, far from petitioner's bare assertion in his appeal, respondent submits that it presented factual arguments and documents in the form of reconciling schedules to dispute the basis of the BIR's assessments.

Further, respondent contends that the 2011 FLD/FAN was not invalidated for the failure of petitioner to state the facts and the law on which the assessments are based but rather, for the failure of petitioner to consider respondent's submissions before issuing the deficiency tax assessments, in violation of respondent's right to due process. As the Court in Division elucidated in its assailed Decision, the BIR merely replicated in the FLD/FAN the deficiency findings under the PAN without giving any reason for rejecting the explanations made by respondent in its *Reply* to the 2011 PAN. The petitioner is bound to provide respondent's submission the required genuine consideration, but he did not. Instead, petitioner went ahead and blindly issued the 2011 FLD/FAN without even looking at respondent's submissions against the 2011 PAN. For this reason, respondent asserts that the *Avon* case finds direct application in the instant case.

Petitioner's claim that the BIR reduced the assessments under the 2011 FDDA and as such, due process was accorded to respondent, is *non sequitur*. According to respondent, the tax audit process consists of distinct stages. The duty of the BIR to conduct a genuine investigation during the PAN stage is separate from its duty to do the same for the FLD/FAN stage.



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Respondent pointed out that in the *Memorandum* dated July 28, 2014, the investigating RO already resolved to issue both PAN and FLD/FAN, even though respondent's right to submit its *Reply* to the 2011 PAN has not lapsed. For respondent, the resolution of the BIR to issue the 2011 FLD/FAN even before respondent has filed its *Reply* to the 2011 PAN is a gross violation, if not an outright denial, of respondent's right to due process in the conduct of tax assessments.

Citing the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,³¹ respondent contends that a valid LOA is required before an RO can audit the taxpayer at any stage of the administrative proceedings. According to respondent, the provision under RMO No. 69-2010 relied upon by petitioner that requires only a Memoranda of Assignment (MOA) in cases of reinvestigation is void as it is contrary to Section 6 of the NIRC of 1997, as amended.

RULING OF THE COURT EN BANC

The Court *En Banc* finds no merit in the *Petition for Review*.

The instant Petition for Review was filed on time.

Before delving into the merits of the case, the Court *En Banc* shall determine whether the present *Petition for Review* was timely filed.

Records show that petitioner received the assailed Resolution on June 15, 2021. Under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA),³² petitioner had fifteen (15) days from June 15, 2021, or until June 30, 2021, to file his *Petition for Review* before the Court *En Banc*.



³¹ G.R. No. 222743, April 5, 2017.

³² SEC. 3. *Who may appeal; period to file petition.* — ...

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

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On June 17, 2021, petitioner filed through registered mail a *Motion for Extension of Time to File Petition for Review*,³³ asking for an additional period of fifteen (15) days from June 30, 2021, or until July 15, 2021, to file his *Petition for Review*. Said motion was granted in the *Minute Resolution*³⁴ dated July 14, 2021.

Considering that the present *Petition* was filed through registered mail on July 14, 2021, within the extended period granted by the Court, the same was timely filed.

The Court shall now proceed to determine the merits of the case.

The Court in Division did not err in voiding the FLD/FAN as a consequence of the violation of respondent's right to due process.

Section 228 of the NIRC of 1997, as amended, provides for the procedure in issuing tax assessments as well as in protesting the same, *viz.*:

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

... ..

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

Relative thereto, Section 3 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, implements and specifies the *due process requirement* in the issuance of a deficiency tax assessment, to wit:

SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

³³ EB docket, pp. 1-3.

³⁴ EB docket, p. 6.



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3.1.1 *Preliminary Assessment Notice (PAN)*. — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. **It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based ...**

3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN)*. — **The Formal Letter of Demand and Final Assessment Notice (FLD/FAN)** shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes **shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void** ... (*Emphasis supplied*)

Based on the foregoing, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.³⁵ RR No. 12-99, as amended by RR No. 18-2013, prescribes that the FLD/FAN must state, among others, the facts and the law on which the assessment is based as part of due process in the issuance of tax assessments; otherwise, the FLD/FAN shall be void.

A party's fundamental right to due process includes the right to be informed of the various issues involved in a proceeding and the reasons for the decision rendered by the quasi-judicial agency.³⁶

It is well to note that the Supreme Court has consistently nullified tax assessments that were issued in violation of the taxpayer's right to due process. In the *Avon case*,³⁷ the Supreme Court stressed that the taxpayer must not only be allowed to present its defenses, explanations, and supporting documents, but the Commissioner and their subordinates must give *due consideration* to these, in making their conclusions on the taxpayers' liabilities, and sufficiently inform the taxpayer of the

³⁵ *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. No. 201398-99 and 201418-19, October 3, 2018, citing *Ang Tibay v. The Court of Industrial Relations*, G.R. No. L-46496, February 27, 1940.

³⁶ *Lourdes College v. Commissioner of Internal Revenue*, G.R. No. 226210, January 18, 2021.

³⁷ See Note 29, *Supra*.

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reasons for their conclusions. In the same case, the Supreme Court declared the FLD/FAN null and void because of the BIR's total disregard of due process when it failed to fully apprise the taxpayer of the legal and factual bases of the assessment issued against it despite the latter's defenses and submission of supporting documents, *viz.*:

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.

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.**

... ..

The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. ... **The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayers' constitutional rights.**

... ..

In carrying out these quasi-judicial functions, the Commissioner is required to "investigate facts or ascertain the existence of facts, hold hearings, **weigh evidence, and draw conclusions from them** as basis for their official action and exercise of discretion in a judicial nature." **Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons.**

... ..



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In *Ang Tibay v. The Court of Industrial Relations*, this Court observed that **although quasi-judicial agencies "may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character."** It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:

(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.

(2) **The administrative tribunal or body must consider the evidence presented.**

... ..

(7) **The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.**

... ..

The second to the sixth requirements refer to the party's "inviolable rights applicable at the deliberative stage." The decision-maker must consider the totality of the evidence presented as he or she decides the case.

The last requirement relating to the form and substance of the decision is the decision-maker's "'duty to give reason' to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker."

... ..

"[A] fair and reasonable opportunity to explain one's side" is one aspect of due process. Another aspect is the due consideration given by the decision-maker to the arguments and evidence submitted by the affected party.

... ..

In *Alliance for the Family Foundation, Philippines, Inc. v. Garin*, this Court held that the Food and Drug Administration failed to observe the basic requirements of due process when it did not act on or address the oppositions submitted by petitioner Alliance for the Family Foundation, Philippines, Inc.,



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Administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and that the party be sufficiently informed of the reasons for its conclusions.

... ..

The facts demonstrate that Avon was deprived of due process. It was not fully apprised of the legal and factual bases of the assessments issued against it. **The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.

... ..

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

Indeed, **the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.** (*Citations omitted; emphases supplied*)

In the present case, respondent received a copy of the PAN dated November 24, 2014, on November 28, 2014. Under



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Section 3.1.2³⁸ of RR No. 12-99,³⁹ respondent had fifteen (15) days, or until December 13, 2014, to file a reply against the PAN.

On December 12, 2014, respondent filed with the BIR its *Reply*⁴⁰ to the PAN and submitted supporting documents. It manifested in the *Reply* its willingness to sit down and discuss the matter with the BIR. However, five (5) days later, or on December 17, 2014, respondent received the FLD/FAN with Details of Discrepancies,⁴¹ which merely reiterated the assessments and findings in the PAN. The fatal infirmity that attended in the issuance of the FLD/FAN is the fact that the BIR did not address respondent's arguments and consider the supporting documents attached to its Reply.

Like the *Avon case*, herein respondent was left unaware of how petitioner or his authorized representatives appreciated respondent's explanations or defenses in connection with the assessments.

Due process requires the BIR 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.

It is true that the Commissioner is not obliged to accept the taxpayer's explanations; however, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.⁴²

Here, a review of the breakdown of the deficiency IT, VAT, EWT, WTC, and DST, including the Details of Discrepancies in the PAN and FLD/FAN, shows that they are *identical*.⁴³

³⁸ 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 (see illustration in ANNEX A hereof). 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.

³⁹ *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*.

⁴⁰ Also dated December 12, 2014.

⁴¹ Also dated December 17, 2014.

⁴² *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

⁴³ Below is the comparative details of discrepancies of PAN and FAN:

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PRELIMINARY ASSESSMENT NOTICE (PAN)

I. INCOME TAX

Undeclared Income from Unaccounted Expense, P2,667,418.00

Verification disclosed that there are some income payments that were not explained or accounted in your FS/ITR. Said amount was considered undeclared source of income as cited the case of Perez vs. CTA and CIR L-9193 dated May 29, 1957 for it has been held that unreflected sources of funds not accounted for in the taxpayer's tax returns led to the inference that part of his income had not been reported, subject to income tax rate of 32% pursuant Section 27 of the Tax Code in relation with Section 32 of the same code, as amended.

Schedule 1:

Expenses/Income payments		per ITR	per Alphalist	Discrepancy
Purchase of services				
DC-Outside Services	P	3,987,489.00		
DC-Repairs & Maintenance		2,260,252.00		
Outside Services		2,123,646.00		
Communication & Facilities		1,575,199.00		
Advertising		379,493.00		
Insurance		152,688.00		
Repairs & Maintenance		111,135.00		
Representation & Entertainment		34,622.00		
Total		10,624,524.00	13,291,942.00	(2,667,418.00)

Disallowed expenses for non-withholding, P5,034,931.00

Verification disclosed that you have not withheld the appropriate withholding tax due on your income payments enumerated hereunder. Section 34 (K) of the NIRC, as amended, expressly provides that "... any amount paid or payable which is otherwise deductible from, or taken into account in computing the gross income or for which depreciation or amortization maybe allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section of this Code..." Hence, the aforementioned expenses have been disallowed pursuant to the above provision of the law.

Schedule 2:

Expenses /Income Payments	Per FS/ITR	Per Alphalist/ Returns filed	Discrepancy	Rate	EWT Due
Management Fees	1,200,000.00	47,555.00	1,152,445.00	15%	172,866.75
Director Fees	214,321.00	144,000.00	70,321.00	15%	10,548.15
Purchase of Goods					
DC-Materials, suppliers & facilities	4,251,682.00				
DC-Others	1,779,925.00				
Office supplies	151,592.00				
Others	140,575.00				
Subtotal	6,323,774.00	2,511,609.00	3,812,165.00		38,121.65
Total	7,738,095.00	2,703,164.00	5,034,931.00		221,536.55

Note: Once the corresponding withholding tax has been paid, said income payment will be allowed as deductions from gross income pursuant to Section 6 of Revenue Regulation (RR) No. 14-2002 amending Section 2.58.5 of RR 2-98.

Salaries and Wages not subjected to withholding tax, P1,393,335.89

Reconciliation of Salaries and Wages and Other Benefits per ITR/Financial Statements vs. amount subjected to withholding tax per returns filed disclosed that there were salaries not subjected to withholding tax amounting to P1,393,335.89. Hence, this amount was disallowed as deduction from gross income for income tax purposes pursuant to Sec. 34 (K) of the NIRC, as amended.

FINAL ASSESSMENT NOTICE (FAN)

Undeclared Income from Unaccounted Expense, P2,667,418.00

Verification disclosed that there are some income payments that were not explained or accounted in your FS/ITR. Said amount was considered undeclared source of income as cited the case of Perez vs. CTA and CIR L-9193 dated May 29, 1957 for it has been held that unreflected sources of funds not accounted for in the taxpayer's tax returns led to the inference that part of his income had not been reported, subject to income tax rate of 32% pursuant Section 27 of the Tax Code in relation with Section 32 of the same code, as amended.

Schedule 1:

Expenses/Income payments		per ITR	per Alphalist	Discrepancy
Purchase of services				
DC-Outside Services	P	3,987,489.00		
DC-Repairs & Maintenance		2,260,252.00		
Outside Services		2,123,646.00		
Communication & Facilities		1,575,199.00		
Advertising		379,493.00		
Insurance		152,688.00		
Repairs & Maintenance		111,135.00		
Representation & Entertainment		34,622.00		
Total		10,624,524.00	13,291,942.00	(2,667,418.00)

Disallowed expenses for non-withholding, P5,034,931.00

Verification disclosed that you have not withheld the appropriate withholding tax due on your income payments enumerated hereunder. Section 34 (K) of the NIRC, as amended, expressly provides that "... any amount paid or payable which is otherwise deductible from, or taken into account in computing the gross income or for which depreciation or amortization maybe allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section of this Code..." Hence, the aforementioned expenses have been disallowed pursuant to the above provision of the law.

Schedule 2:

Expenses /Income Payments	Per FS/ITR	Per Alphalist/ Returns filed	Discrepancy	Rate	EWT Due
Management Fees	1,200,000.00	47,555.00	1,152,445.00	15%	172,866.75
Director Fees	214,321.00	144,000.00	70,321.00	15%	10,548.15
Purchase of Goods					
DC-Materials, suppliers & facilities	4,251,682.00				
DC-Others	1,779,925.00				
Office supplies	151,592.00				
Others	140,575.00				
Subtotal	6,323,774.00	2,511,609.00	3,812,165.00		38,121.65
Total	7,738,095.00	2,703,164.00	5,034,931.00		221,536.55

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Schedule 3:		
Salaries and Wages per Income Tax Return	P	6,069,817.00
Less: Salaries and Wages per Alphabetical List/1604CF		4,676,481.11
Salaries and wages not subjected to withholding tax	P	<u>1,393,335.89</u>
Note: Once the corresponding withholding tax has been paid, said income payment will be allowed as deductions from gross income pursuant to Section 2.58.5 of Revenue Regulations No. 14-2002, as amended.		
<u>Excess Minimum Corporate Income Tax (MCIT) Carried Over to Succeeding Period, P356,888.00</u> – The minimum corporate income tax paid was not allowed as tax credit against the computed deficiency income tax, considering that the said amount shall be carried over and credited against the normal income tax for the three (3) immediately succeeding taxable year in compliance with the provision imposed under Section 27 € (2) of the Tax Code.		

Schedule 3:		
Salaries and Wages per Income Tax Return	P	6,069,817.00
Less: Salaries and Wages per Alphabetical List/1604CF		4,676,481.11
Salaries and wages not subjected to withholding tax	P	<u>1,393,335.89</u>
Note: Once the corresponding withholding tax has been paid, said income payment will be allowed as deductions from gross income pursuant to Section 2.58.5 of Revenue Regulations No. 14-2002, as amended.		
<u>Excess Minimum Corporate Income Tax (MCIT) Carried Over to Succeeding Period, P356,888.00</u> – The minimum corporate income tax paid was not allowed as tax credit against the computed deficiency income tax, considering that the said amount shall be carried over and credited against the normal income tax for the three (3) immediately succeeding taxable year in compliance with the provision imposed under Section 27 € (2) of the Tax Code.		

II. VALUE-ADDED TAX

Receipts not subjected to VAT, P2,870,297.84 – Comparison of gross receipts computed based on the data reported per Financial Statements as against the amount of receipts subjected to VAT per returns showed that there are receipts not subjected to VAT amounting to P2,870,297.84. Section 105 of the NIRC states that “Any person who, in the course of trade or business, sells, barter, exchanges, leases goods or properties, renders services, and pay any person who imports goods is subject to the value-added tax (VAT) imposed in Sections 106 and 108 of this Code which is ten percent (10%) (now twelve percent (12%) pursuant to RA 9337) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.”		
Schedule 4:		
Revenue per FS/ITR	P	45,388,367.00
Add: AR beg (net of VAT)	P	3,344,124.11
Less: AR end (net of VAT)		<u>5,567,463.39</u>
Adjusted Gross Receipts per Audit		43,165,027.72
Less: Exempt sales		<u>27,870,043.17</u>
Vatable receipts per investigation		15,294,984.55
Less: Receipts per VAT returns		<u>12,424,686.71</u>
Receipts not subjected to VAT	P	<u>2,870,297.84</u>
<u>Undeclared Income from unaccounted expenses, P2,667,418.00</u> – As previously discussed above under income tax the unaccounted expense are also subject to VAT under Title IV, Section 105 and 108 of the NIRC, as amended.		
<u>Disallowed input tax allocated to exempt sales, P1,334,120.37</u> – Verification disclosed that failed to allocate input tax on your exempt sales of P27,870,043.17 hence input tax in the amount of P1,334,120.37 allocated to exempt sales has been disallowed as computed below pursuant to Section 4.110-4(2). “If any input tax cannot be directly attributed to either a VAT taxable or VAT –exempt transaction, the input tax shall be pro-rated to the VAT taxable and VAT –exempt transactions and only the vatable portion pertaining the transaction subject to VAT may be recognized for the input tax credit.”		
Schedule 5:		
Total Available Input Tax	P	1,928,881.83
Multiplied by the Ratio of Exempt Sales		69.165480%
Input Tax Attributable to Exempt sales	P	<u>1,334,120.37</u>

Receipts not subjected to VAT, P2,870,297.84 – Comparison of gross receipts computed based on the data reported per Financial Statements as against the amount of receipts subjected to VAT per returns showed that there are receipts not subjected to VAT amounting to P2,870,297.84. Section 105 of the NIRC states that “Any person who, in the course of trade or business, sells, barter, exchanges, leases goods or properties, renders services, and pay any person who imports goods is subject to the value-added tax (VAT) imposed in Sections 106 and 108 of this Code which is ten percent (10%) (now twelve percent (12%) pursuant to RA 9337) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.”		
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Receipts not subjected to VAT	P	<u>2,870,297.84</u>
<u>Undeclared Income from unaccounted expenses, P2,667,418.00</u> – As previously discussed above under income tax the unaccounted expense are also subject to VAT under Title IV, Section 105 and 108 of the NIRC, as amended.		
<u>Disallowed input tax allocated to exempt sales, P1,334,120.37</u> – Verification disclosed that failed to allocate input tax on your exempt sales of P27,870,043.17 hence input tax in the amount of P1,334,120.37 allocated to exempt sales has been disallowed as computed below pursuant to Section 4.110-4(2). “If any input tax cannot be directly attributed to either a VAT taxable or VAT –exempt transaction, the input tax shall be pro-rated to the VAT taxable and VAT –exempt transactions and only the vatable portion pertaining the transaction subject to VAT may be recognized for the input tax credit.”		
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Multiplied by the Ratio of Exempt Sales		69.165480%
Input Tax Attributable to Exempt sales	P	<u>1,334,120.37</u>

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Note: Ratio of Exempt Sales = <u>Exempt Sales/receipts = 27,870,043.17 =</u> 69.165480% Gross Sales/Receipts 40,294,729.88	
Input Tax on Capital Goods Deferred to Succeeding Period, P13,176.37 – The input tax on Capital Goods deferred to succeeding period amounting to P13,176.37 was not applied against the allowable input tax in computing deficiency value added tax since this shall spreads evenly over the month of acquisition and the fifty-nine (59) succeeding months pursuant to Section 110(A) of the Tax Code, as amended.	
Input Tax Carried Forward to Succeeding Period/Quarter, P1,943,723.89 – The excess input tax amounting to P1,943,723.89 was not applied against the allowable input tax in computing deficiency value added tax since this shall be carried over to the next succeeding period/quarter(s) as provided under Section 110(B) of the Tax Code, as amended.	

Note: Ratio of Exempt Sales = <u>Exempt Sales/receipts = 27,870,043.17 =</u> 69.165480% Gross Sales/Receipts 40,294,729.88	
Input Tax on Capital Goods Deferred to Succeeding Period, P13,176.37 – The input tax on Capital Goods deferred to succeeding period amounting to P13,176.37 was not applied against the allowable input tax in computing deficiency value added tax since this shall spreads evenly over the month of acquisition and the fifty-nine (59) succeeding months pursuant to Section 110(A) of the Tax Code, as amended.	
Input Tax Carried Forward to Succeeding Period/Quarter, P1,943,723.89 – The excess input tax amounting to P1,943,723.89 was not applied against the allowable input tax in computing deficiency value added tax since this shall be carried over to the next succeeding period/quarter(s) as provided under Section 110(B) of the Tax Code, as amended.	

III. EXPANDED WITHHOLDING TAX

Basic expanded withholding tax due P221,536.55 – Since you have failed to withhold/remit the correct withholding tax due on your income payments previously disallowed as deductions from gross income, you are still liable to pay the deficiency withholding tax pursuant to Section 2.57.1 of Revenue Regulations No. 2-98, as amended.	Basic expanded withholding tax due P221,536.55 – Since you have failed to withhold/remit the correct withholding tax due on your income payments previously disallowed as deductions from gross income, you are still liable to pay the deficiency withholding tax pursuant to Section 2.57.1 of Revenue Regulations No. 2-98, as amended.
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IV. WITHHOLDING TAX ON COMPENSATION

Basic Withholding Tax on Compensation due, P176,256.99 – Since you have failed to withhold/remit the corresponding withholding tax on the Salaries and Wages previously disallowed from gross income (refer to Schedule 3), you are still liable to pay the withholding tax on compensation, pursuant to Sec. 79 (A) of the Tax Code and implemented under Sec 2.78 of the Revenue Regulation 2-98.	
Schedule 6	
Salaries and Wages not subjected to withholding tax (Schedule 3)	P 1,393,335.89
Multiplied by Average Withholding Tax Rate *	12.65%
Basic Deficiency Withholding Tax Due	P 176,256.99
*Tax Due per Alphalist	P 467,262.55
Divided by Taxable Salaries per Alphalist	3,694,965.37
Average Withholding Tax Rate	12.65%

Basic Withholding Tax on Compensation due, P176,256.99 – Since you have failed to withhold/remit the corresponding withholding tax on the Salaries and Wages previously disallowed from gross income (refer to Schedule 3), you are still liable to pay the withholding tax on compensation, pursuant to Sec. 79 (A) of the Tax Code and implemented under Sec 2.78 of the Revenue Regulation 2-98.	
Schedule 6	
Salaries and Wages not subjected to withholding tax (Schedule 3)	P 1,393,335.89
Multiplied by Average Withholding Tax Rate *	12.65%
Basic Deficiency Withholding Tax Due	P 176,256.99
*Tax Due per Alphalist	P 467,262.55
Divided by Taxable Salaries per Alphalist	3,694,965.37
Average Withholding Tax Rate	12.65%

V. DOCUMENTARY STAMP TAX (DST)

Basic Documentary Stamp Tax due, P189,006.00 – Verification disclosed that you failed to pay the documentary stamp tax on your advances which purported to be loans pursuant to Section 179 of the National Internal Revenue Code as established in the case of CIR vs. Filinvest Devt. Corp. <i>Section 179, Stamp on Debt Instruments.</i> “On every original issue of debt instrument, there shall be collected a documentary stamp tax of one peso (P1.00) on each two hundred pesos (P200.00) or fractional thereof, of the issue price of any such debt instrument...”	Basic Documentary Stamp Tax due, P189,006.00 – Verification disclosed that you failed to pay the documentary stamp tax on your advances which purported to be loans pursuant to Section 179 of the National Internal Revenue Code as established in the case of CIR vs. Filinvest Devt. Corp. <i>Section 179, Stamp on Debt Instruments.</i> “On every original issue of debt instrument, there shall be collected a documentary stamp tax of one peso (P1.00) on each two hundred pesos (P200.00) or fractional thereof, of the issue price of any such debt instrument...”
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Except for specific adjustments in the computation of interest, no substantial difference exists between the two notices.

Notably, petitioner failed to consider respondent’s arguments in its *Reply* to the PAN without any explanation, as the Details of Discrepancies attached to the FLD/FAN is a replica of the Details of Discrepancies attached to the PAN.⁴⁴ Petitioner’s disregard of respondent’s due process right rendered the subject tax assessments null and void.

As regards petitioner’s protestation that the due process requirement in the issuance of deficiency tax assessments was complied with since respondent was able to file its protest letters to both PAN and FLD/FAN, the Court *En Banc* is not convinced.

The fact that respondent was able to file its *Reply* to PAN and *Protest* to the FLD/FAN is of no moment and does not denigrate the fact that petitioner violated respondent’s due process right. In *Commissioner of Internal Revenue v. Yumex Philippines Corporation*,⁴⁵ the Supreme Court explained:

In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, the BIR ignored RR No. 12-99 and did not issue to the taxpayer, Pilipinas Shell Petroleum Corporation (PSPC), **a notice for informal conference and a PAN as required**; and as a result, deprived PSPC of due process in contesting the formal assessment levied against it. The Court pronounced therein that “[w]hile **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.**” The Court once more reminded the BIR to be more circumspect in the exercise of its functions as the power of taxation is also sometimes called the power to destroy and, therefore, should be exercised with caution to minimize injury to the proprietary rights of the taxpayer. (*Emphasis supplied*)

Considering the foregoing, the Court *En Banc* finds no reason to reverse or modify the Court in Division’s ruling, *viz.*:

Schedule 7				Schedule 7			
Nature /Transaction	Amount	Rate	DST Due	Nature /Transaction	Amount	Rate	DST Due
Due to related parties	P 37,801,189.00	P1.00/P200.00 or fractional part	P 189,006.00	Due to related parties	P 37,801,189.00	P1.00/P200.00 or fractional part	P 189,006.00

⁴⁴ *Id.*
⁴⁵ G.R. No. 222476, May 5, 2021.

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However, in the FLD/FAN dated December 17, 2014, which assessed [Respondent] with deficiency internal revenue taxes for the taxable year ended December 31, 2011, in the total aggregate amount of P7,801,037.24, including deficiency interest, the BIR merely reiterated the same findings as stated in the said PAN, without giving any reason for rejecting the explanations made by [Respondent] in its Reply dated December 12, 2014. In other words, the BIR did not give the particular facts upon which his or her conclusion in the FLD/FAN are based. Consequently, [Respondent] was left unaware on how [Petitioner] or the BIR appreciated the explanations or defenses raised against the subject PAN, in clear violation of [Respondent's] right to administrative due process, thereby rendering the subject tax assessments void. (Citations omitted; emphasis supplied)

The FDDA is void not because the Revenue Officer who conducted the reinvestigation of respondent's tax liabilities was not duly authorized through a validly issued LOA but as a consequence of a void assessment.

Well-established is the rule that an LOA is necessary for a revenue officer to examine a taxpayer's books of accounts and other accounting records to collect the correct amount of tax or to recommend the assessment of any deficiency tax due. Sections 6 and 13 of the 1997 NIRC, as amended, provide thus:

SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. — (A) Examination of Returns and Determination of Tax Due — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative **may authorize the examination of any taxpayer and the assessment of the correct amount of tax:** Provided, however; That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. ... (Boldfacing and underscoring supplied)

Sec. 13. Authority of a Revenue Officer. — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, under a Letter of Authority issued by the Revenue Regional**



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Director, examine taxpayers within the jurisdiction of the district in order **to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself. *(Boldfacing and underscoring supplied)*

Clearly, there must be a grant of authority *via* an LOA before any revenue officer may conduct an examination or recommend the issuance of a tax assessment. In the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,⁴⁶ the Supreme Court held that an LOA is required before a revenue officer can examine a taxpayer's books of accounts, and the absence thereof renders the subsequently issued assessment void.

In the instant case, records reveal that the authority to examine and assess the respondent's books of accounts emanated from LOA No. LOA-051-2012-00000369/eLA201100013570⁴⁷ dated November 16, 2012, issued by Regional Director Nestor S. Valeroso of Revenue Region 8-Makati City. The said LOA authorized RO Marilyn D. Guerzon and GS Arnaldo Rase of Revenue District Office No. 51-Pasay City to examine respondent's books of accounts and other accounting records for all internal revenue taxes from January 1, 2011 to December 31, 2011.

As found by the Court in Division, it was indeed RO Guerzon who conducted the audit/examination of respondent's books of accounts and subsequently recommended the issuance of the PAN⁴⁸ dated November 24, 2014, and FLD/FAN⁴⁹ dated December 17, 2014, per *Memorandum Report*⁵⁰ dated July 28, 2018. Hence, the assessment was issued under a valid LOA.

While the law requires explicitly an LOA to be given to the appropriate revenue officer before *an examination of a taxpayer and the assessment of the correct amount of tax*⁵¹ may be had, the law does not explicitly require the same before

⁴⁶ G.R. No. 222743, April 5, 2017.

⁴⁷ Exhibit P-35, Division docket – Vol. 2, p. 893.

⁴⁸ Exhibit P-38, Division docket – Vol. 2, pp. 897 to 902.

⁴⁹ Exhibit P-46, Division docket – Vol. 2, pp. 936 to 937.

⁵⁰ Exhibit R-6, BIR Records, pp. 399 to 400.

⁵¹ SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. — (A) Examination of Returns and Determination of Tax Due — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax. ... *(Boldfacing and underscoring supplied)*



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reinvestigation and for the purpose of recommending the issuance of FDDA.

In *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*,⁵² the Supreme Court held that the issuance of an LOA before examination and assessment is a requirement of due process, *viz.*:

The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, We have ruled that the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued. In that case, We have stated that "[d]ue process demands ... that after [a Letter Notice] has serve its purpose, **the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner.** Unfortunately, this was not done in this case." The result of the absence of a LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process.

... The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct **the examination and assessment**; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted **the examination and assessment**, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized **to conduct the examination and assessment**, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment. (*Emphasis supplied*)

It is clear from the above pronouncements of the Supreme Court and as mandated under Sections 6 and 13 of the NIRC of 1997, as amended, that the requirement for the issuance of an LOA, pertains to such stage where the RO and GS would conduct an examination or continue the audit investigation of the taxpayer's books of account *and* recommend the issuance

⁵² G.R. No. 242670, May 10, 2021.



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of deficiency tax assessments. It does not contemplate a situation where Assessment Notices, *i.e.*, PAN and FLD/FAN, had already been issued and the reinvestigation is being conducted to recommend the issuance of an FDDA that embodies the decision of the CIR or his duly authorized representative on the taxpayer's administrative protest to the FLD/FAN.

It bears to emphasize that an FDDA is not an assessment but a decision of the CIR or his duly authorized representative on the protest to the FLD/FAN. In the case of *Commissioner of Internal Revenue vs. Liguiaz Philippines Corporation*,⁵³ the Supreme Court clarified that an assessment is different from an FDDA, *viz.*:

In resolving the issue on the effects of a void FDDA, it is necessary to differentiate an 'assessment' from a 'decision.' In *St. Stephen's Association v. Collector of Internal Revenue*, the Court has long recognized that a 'decision' — differs from an 'assessment,' to wit: ...

The difference is likewise readily apparent in Section 7 of R.A. 1125, as amended, where the CTA is conferred with appellate jurisdiction over the decision of the CIR in cases involving disputed assessments, as well as inaction of the CIR in disputed assessments. **From the foregoing, it is clear that what is appealable to the CTA is the 'decision' of the CIR on disputed assessment and not the assessment itself.**

... ..

Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other — unless the law or regulations otherwise provide.

... ..

To recapitulate, **a 'decision' differs from an 'assessment' and failure of the FDDA to state the facts and law on which it is based renders the decision void — but not necessarily the assessment.** Tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided." (*Citations omitted; emphasis supplied*)



⁵³ G.R. Nos. 215534 & 215557, April 18, 2016.

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Hence, considering that an assessment is different from a decision, a new or separate LOA is not necessary to authorize other Revenue Officers to conduct a reinvestigation and recommend the issuance of an FDDA.

Moreover, under RMO No. 69-2010,⁵⁴ an MOA shall be issued for protested cases/cases for reinvestigation; and RMO No. 08-06⁵⁵ provides that protested cases under re-investigation shall not be assigned to the same RO who handled the original investigation.

Records reveal that an MOA⁵⁶ dated March 2, 2015, was issued referring the case to RO Milan S. Madarang and GS Nerissa B. Ty for “*reinvestigation per protest letter/request for investigation filed by the subject taxpayer.*” Under the said MOA, RO Madarang conducted the reinvestigation and prepared an updated *Memorandum* report recommending the issuance of the FDDA.

Given the foregoing, the subject FDDA issued upon RO Milan S. Madarang’s recommendation should not be invalidated for the RO’s alleged lack of authority to conduct the respondent’s reinvestigation. Nonetheless, the FDDA is void due to a void assessment.

As settled earlier, the Court in Division did not err in voiding the FLD/FAN issued in violation of respondent’s right to administrative due process. A void assessment bears no valid fruit.⁵⁷ Consequently, the FDDA issued based on a void assessment is likewise void.

WHEREFORE, premises considered, the *Petition for Review* filed by the Commissioner of Internal Revenue on July 14, 2021, is **DENIED** for lack of merit. Accordingly, the Decision and Resolution promulgated on November 11, 2020, and June 1, 2021, respectively, by the Court’s Third Division, are **AFFIRMED**.

hmv

⁵⁴ Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment," August 11, 2010.

⁵⁵ Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS), February 1, 2006.

⁵⁶ Exhibit R-10, MOA No. MOA0512012LOA3422, BIR Records, p. 487.

⁵⁷ *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. No. 159694 & G.R. No. 163581, January 27, 2006, 382 SCRA 480; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 647; *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014, 743 SCRA 126; *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014, 744 SCRA 474.

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SO ORDERED.


LANEE S. CUI-DAVID
Associate Justice

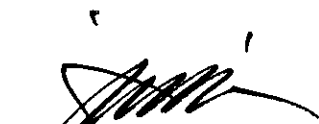
We Concur:

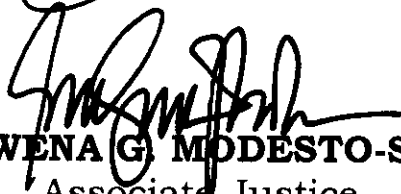

ROMAN G. DEL ROSARIO
Presiding Justice

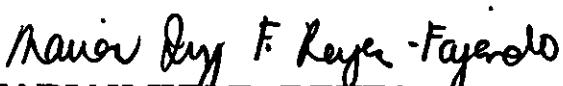

ERLINDA P. UY
Associate Justice


MA. BELEN RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA G. MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

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CERTIFICATION

Pursuant to Section 13, Article VIII 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.



ROMAN G. DEL ROSARIO

Presiding Justice

