

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ORTIZ MEMORIAL
CHAPEL, INC.,
Petitioner,

CTA EB NO. 2651
(CTA Case No. 9805)

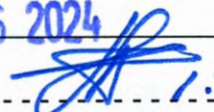
Present:

- versus -

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

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:

DEC 06 2024

1:35 p.m. x

x-----x

DECISION

FERRER-FLORES, J.:

Before this Court is a *Petition for Review* filed on July 21, 2022 by the **Ortiz Memorial Chapel, Inc. (OMCI/petitioner)** against the **Commissioner of Internal Revenue (CIR/respondent)** appealing the *Decision* dated March 10, 2022 (**assailed Decision**)¹ and *Resolution* dated June 8, 2022 (**assailed Resolution**)² rendered by the Second Division of this Court.

¹ Penned by Associate Justice Juanito C. Castañeda, Jr, with Separate Concurring Opinions by Associate Justice Jean Marie A. Bacorro-Vilena and Associate Justice Lane S. Cui-David; *Rollo*, pp. 44 to 76.

² *Rollo*, pp. 39 to 42.

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The dispositive portions of the assailed Decision and assailed Resolution read as follows:

Assailed Decision

WHEREFORE, premises considered, the present *Petition for Review* is **DISMISSED** for this Court's lack of jurisdiction.

SO ORDERED.

Assailed Resolution

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (to the Decision of the Honorable Court-Second Division promulgated dated 10 March 2022) is **DENIED** for lack of merit.

SO ORDERED.

THE PARTIES

Petitioner OMCI is a corporation organized and existing under the laws of the Philippines, with office address at Balzain Highway, Balzain, Tuguegarao City, Cagayan, as represented by its president, Mr. Ronald Ortiz.

Respondent is the duly appointed CIR empowered, among others, to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties in relation thereto, and other matters arising from the implementation of the National Internal Revenue Code (NIRC) of 1997, as amended, and other laws administered by the Bureau of Internal Revenue (BIR). His office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.³

THE ANTECEDENT FACTS

As found by the Court in Division, the facts are as follows:⁴

On July 24, 2013, the BIR issued *Letter of Authority* (LOA) SN: eLA201000008746/LOA-013-2013-00000066, authorizing Revenue Officer Hanilaine Pe and Group Supervisor Elda Bernadette Calimag of Revenue District No. 013-Tuguegarao, Cagayan, to examine its books of accounts and other accounting records for all internal revenue taxes, including DST, and other taxes for the period from January 1, 2011 to

³ *Parties, Petition for Review, Rollo*, pp. 12.

⁴ *Antecedents (Administrative Level)*, Decision dated March 10, 2022, *Rollo*, pp. 45 to 47; citations omitted.

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December 31, 2011, pursuant to Sections 6 (A) and 10 (C) of NIRC of 1997, as amended.

Thereafter, on August 19, 2013, the BIR issued a *Second Notice*, requesting the submission of pertinent records/documents for the correct determination of its internal revenue tax liabilities for taxable year 2011.

On September 4, 2013, petitioner then sent a *Letter of Extension* to the BIR, requesting for an extension of fifteen (15) days to provide the necessary documents.

Petitioner again sent a *Letter* to the BIR on October 1, 2013, informing the latter that the pertinent documents were in the possession of a certain Dominador Furigay, the former Secretary of the petitioner, and requested another ten (10) days to submit documents.

On October 11, 2013, the BIR issued the *Final Notice* requesting petitioner to submit its Book of Accounts necessary in the conduct of audit.

The BIR further issued the *Letter* dated September 11, 2014, informing petitioner of the result of the investigation covering its 2011 internal revenue tax liabilities in the amount of ₱2,919,432.79, representing deficiencies on income tax, VAT, withholding tax and registration fee, inclusive of legal increments.

On October 29, 2014, a Waiver of the Defense of Prescription under the *Statute of Limitation of the National Internal Revenue Code* was executed by petitioner's representative, and was accepted by the BIR.

The BIR issued the *Letter* dated January 28, 2015, informing petitioner of the result of the investigation. As a result, the proposed assessment of tax liability amounting to ₱3,604,875.19 which represents the VAT deficiency, inclusive of legal increments.

On July 30, 2015, the *Preliminary Assessment Notice (PAN)* with *Details of Discrepancies* was issued to petitioner, informing the result of the investigation. The BIR disclosed that there has been found due from petitioner an aggregate amount of ₱6,784,128.85 as deficiency income, VAT, DST and registration fee, inclusive of surcharge and interest.

On October 30, 2015, the *Formal Letter of Demand (FLD)*, with *Details of Discrepancies*, was issued to petitioner informing the latter with the result of the investigation. The BIR disclosed that there has been found due from the corporation an aggregate amount of ₱6,939,944.15 as deficiency income tax, VAT, DST, and registration fee, inclusive of legal increments.

Subsequently, on February 4, 2016, the *Preliminary Collection Letter* was issued to petitioner.

On February 23, 2016, the BIR issued the *Final Notice Before Seizure*, giving petitioner the last opportunity to make the necessary settlement of all its tax liabilities; otherwise, the BIR shall serve and execute the *Warrant of Distrainment and/or Levy* to enforce the collection of its account.

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The *Warrant of Distrain and/or Levy* was then issued against petitioner on April 15, 2016, which the latter received on April 19, 2016.

Petitioner then sent its *Letter-Protest* to the BIR on February 7, 2017.

On March 2, 2018, petitioner sent another *Letter-Protest* dated February 23, 2018.

On March 12, 2018, petitioner received the *Letter* dated March 3, 2018 issued by the BIR, through Regional Director Thelma S. Milabao, stating that petitioner failed to file a protest within the reglementary period provided by law, and thus, the tax assessment against it has already become final, executory and demandable.

THE PROCEEDINGS BEFORE THE COURT IN DIVISION

As detailed in the assailed Decision, the proceedings before the Court in Division are as follows:

Petitioner filed the present *Petition for Review* on April 11, 2018. The case was initially raffled to this Court's First Division.

Respondent filed his *Answer* on August 2, 2018, interposing the following special and affirmative defenses, to wit: (1) the Court has no jurisdiction over the instant petition, and the assessment against petitioner has already become final, executory and demandable; (2) the requirement of due process was properly complied with in issuing the formal letter of demand; (3) the imposition of fifty percent (50%) surcharge has bases; (4) assuming that the three-year period to assess is applicable, the assessment has not yet prescribed since petitioner executed a valid waiver; (5) the assessment has bases both in fact and in law; (6) petitioner is liable for surcharge and interest; and (7) the assessment issued against petitioner is valid and lawful.

The Pre-Trial Conference was initially set on October 4, 2018. *Petitioner's Pre-Trial Brief* was filed on September 24, 2018, while *Respondent's Pre-Trial Brief* was submitted on December 5, 2018.

This case was transferred to this Court's Second Division, pursuant to the Order dated September 26, 2018, thereby cancelling the scheduled Pre-Trial Conference. The said Conference was reset to December 6, 2018, and further reset to January 31, 2019.

At the hearing held on January 31, 2019, the Court ordered the parties to immediately proceed and to personally appear or through their authorized representative at the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA), on February 19, 2019, with or without the presence of their counsel/s, for mediation proceedings. However, there was an unsuccessful mediation per the undated *Mediation Report* issued by the Appellate Mediator, Retired Justice Oswaldo D. Agcaoili.

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The Pre-Trial Conference was then set anew to be held on April 11, 2019. However, the same was reset to, and held on, May 23, 2019.

Respondent transmitted the *BIR Records* on May 28, 2019.

On June 6, 2019, the parties presented their *Joint Stipulation of Facts and Issues* (JSFI). In the Pre-Trial Order dated June 14, 2019, the Court approved and adopted the said JSFI, and deemed the termination of the pre-trial.

Trial then ensued.

During trial, petitioner presented documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Ronald Ortiz, President and member of the Board of Directors of petitioner; and (2) Mr. Nelson Ortiz, Corporate Secretary and member of the Board of Directors of petitioner.

Petitioner posted its *Formal Offer of Exhibits* on November 4, 2019.

Respondent then filed his *Manifestation/Comment (on Petitioner's Formal Offer of Evidence)* on November 25, 2019.

In the Resolution dated December 11, 2019, the Court admitted petitioner's Exhibits "P-1", "P-2", "P-3A", "P-3B", "P-3C", "P-3D", "P-4", "P-4A", "P-4B", "P-5", "P-9", "P-13", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-24", "P-27", "P-36", "P-36A", "P-37" and "P-37A"; but *denied* the following:

1. Exhibits "P-3", "P-7", "P-8", "P-10", "P-11", "P-12", "P-14" and "P-22", for failure to present their originals for comparison;
2. Exhibits "P-6", "P-34", "P-34A", "P-34B", "P-34C" and "P-35", for failure to have the exhibits identified and to present their originals for comparison; and
3. Exhibits "P-23", "P-25", "P-26", "P-28", "P-29", "P-30", "P-31", "P-32" and "P-33", for failure to have the exhibits identified.

Petitioner then posted its *Motion for Reconsideration (To the Resolution of the Honorable Court dated 11 December 2019)* on January 29, 2020. Respondent filed his *Comment (On Petitioner's Formal Offer of Evidence)* on February 19, 2020.

In the Resolution dated June 8, 2020, the Court partially granted petitioner's *Motion for Reconsideration*, and admitted Exhibits "P-7" and "P-12"; but still *denied* the following:

1. Exhibits "P-3", "P-8", "P-10", "P-11" and "P-14", for failure to present their originals for comparison;
2. Exhibits "P-6", "P-34", "P-34A", "P-34B" and "P-34C", for failure to have the exhibits identified and to present their originals for comparison; and

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3. Exhibits "P-23", "P-25", "P-28", "P-29", "P-30", "P-31", "P-32" and "P-33", for failure to have the exhibits identified.

During the hearing held on October 5, 2020, respondent's counsel manifested that his intended witness, Ms. Hanilaine Pe is in Nueva Vizcaya, and cannot attend the hearing due to travel restrictions as a result of the COVID-19 pandemic. In this regard, respondent dispensed with the presentation of Ms. Hanilaine Pe. In lieu thereof, both parties' counsels agreed to stipulate on the documents to be identified by Ms. Hanilaine Pe. Petitioner's counsel, on the other hand, moved for the reconsideration of its denied exhibits "P-28" to "P-32", inclusive. Considering the objection interposed by the respondent, manifesting that while the documents were indicated to be certified true copies, there was no signature appended to attest to the fact that said documents were certified true copies, the oral motion for reconsideration was denied, for failure of petitioner to identify the same.

Respondent filed his *Formal Offer of Evidence* on October 15, 2020. Petitioner posted its *Comment (To Respondent's Formal Offer of Evidence)* on October 22, 2020. In the Resolution dated December 21, 2020, the Court admitted Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9" and "R-10"; but *denied* Exhibit "R-11", for failure to present the original for comparison.

Respondent's *Memorandum* was filed on February 9, 2021; while petitioner's *Memorandum* was posted on March 25, 2021.

On June 7, 2021, this case was considered submitted for decision.

xxx xxx xxx (*Citations omitted*)

On March 10, 2022, the Court in Division rendered the assailed Decision dismissing OMCI's original *Petition for Review* (original *Petition*) on the ground of lack of jurisdiction. In the assailed Decision, the Court held that the *Letter-Protest* dated February 7, 2017 and *Letter-Protest* dated February 23, 2018 failed to conform with Revenue Regulations (RR) No. 12-1999 which rendered the same void. It follows then that the assessment was not disputed or protested; thus, there is no appealable decision (on disputed assessment) to speak of. Thus, the *Letter* dated March 8, 2018 (***BIR Letter***) issued by the BIR, cannot be considered as respondent's final decision on a disputed assessment.⁵

Aggrieved, petitioner filed its *Motion for Reconsideration* on March 25, 2022,⁶ *sans* comment of the respondent.⁷

⁵ Assailed Decision dated March 10, 2022, *Rollo*, pp. 44 to 76.

⁶ Division Docket – Vol. II, pp. 640 to 651.

⁷ Records Verification dated May 17, 2022 issued by the Judicial Records Division of this Court, Division Docket – Vol II, p. 656.

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On June 8, 2022, the Court in Division promulgated the assailed Resolution, denying petitioner's *Motion for Reconsideration* for lack of merit.⁸

Hence, the instant *Petition for Review*.

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On June 28, 2022, petitioner filed via registered mail its *Motion for Extension of Time To File Petition for Review*, which was received by the Court on July 8, 2022, seeking an additional fifteen (15) days from July 10, 2022, or until July 25, 2022, to file a *Petition for Review*.⁹ The Court *En Banc* granted the same on July 12, 2022.¹⁰

On July 21, 2021, petitioner filed the instant *Petition for Review*.¹¹

Finding that the attached *Verification and Certification of Non-Forum Shopping* is incomplete and that the required *Affidavit of Service* was not attached to the *Petition*, the Court issued an order requiring petitioner to submit said documents.¹² Petitioner filed via registered mail its *Compliance* therewith on September 12, 2022.

On October 24, 2022, the Court noted petitioner's *Compliance* and ordered respondent to file his comment on the present *Petition for Review*.¹³

Respondent filed his *Comment/Opposition* via registered mail on November 18, 2022, which was received by the Court on November 29, 2022.¹⁴

On January 27, 2023, the Court noted respondent's *Comment/Opposition* and referred the case to mediation at the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA).¹⁵

⁸ Assailed Resolution dated June 8, 2022, *Rollo*, pp. 39 to 42.

⁹ *Rollo*, pp. 1 to 4.

¹⁰ Minute Resolution dated July 12, 2022; *Rollo*, p. 10.

¹¹ *Rollo*, pp. 11 to 35.

¹² Minute Resolution dated August 16, 2022; *Rollo*, p. 155.

¹³ Resolution dated October 24, 2022, *Rollo*, pp. 167 to 168.

¹⁴ *Rollo*, pp. 169 to 183.

¹⁵ Resolution dated January 27, 2023, *Rollo*, pp. 186 to 188.

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The Court then received a report on May 11, 2023 from the PMC-CTA stating that the parties decided not to have their case mediated.¹⁶

On June 7, 2023, this Court submitted the case for decision.¹⁷

THE ISSUES

In the instant *Petition for Review*, petitioner raised the following issues:

- A. Whether or not the assessment has become final and executory;
- B. Whether or not petitioner OMCI's Waiver of the Statute of Limitations was validly executed;
- C. Whether or not the failure of the respondent to strictly comply with due process requirements prescribed under Section 228 of the NIRC of 1997, as amended, and RR No. 12-1999,¹⁸ as amended by RR No. 18-2013, was tantamount to petitioner's denial of due process; and,
- D. Whether or not the Court *a quo* has the authority to rule upon the other issues related to the case.

THE ARGUMENTS

Petitioner argues that the *Preliminary Assessment Notice (PAN)* and *Formal Letter of Demand (FLD)* are void; thus, the assessment against it never became final and executory. The assessment bears no fruit for being allegedly void. Petitioner maintains that respondent failed to comply with the requirements of Section 228 of the NIRC of 1997, as amended, particularly, to inform the taxpayer in writing of the facts, jurisprudence and law on which the assessment was based. Petitioner also avers that the assessment was based on presumptions and not rooted on petitioner's income tax return (ITR).

Petitioner also assails the validity of the execution of the Waiver of the Statute of Limitations (Waiver). The copy of the BIR-accepted *Waiver* was only furnished to the petitioner after it requested for a copy of the same. Petitioner also claims that the signature of Mr. Nelson Ortiz on the face of the BIR-accepted waiver signifying petitioner's receipt thereof was not the true and genuine signature of the recipient. Thus, the same did not bind the

¹⁶ PMC-CTA Form 6 - *No Agreement to Mediate*; *Rollo*, p. 196.

¹⁷ Minute Resolution dated June 7, 2023, *Rollo*, p. 194.

¹⁸ 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.

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petitioner. Considering such irregularity, petitioner concludes that prescription has already set in.

Petitioner further contends that respondent's failure to comply with the due process requirements under Section 228 of the NIRC of 1997, as amended, and the related rules and regulations is a denial of OMCI's right to due process. As such, even with petitioner's failure to timely protest the assessment, the assessment should have been declared void in accordance with the prevailing jurisprudence on the matter.

Finally, petitioner posits that the Court *a quo* has authority to rule upon those issues necessary to achieve an orderly disposition of the case.

On the other hand, respondent counters that the Court in Division is correct in stating that it has no jurisdiction over the original *Petition*. Respondent alleges that OMCI received the *FLD* on November 14, 2015 served by registered mail as evidenced by Registry Return Receipt (RRR) No. RD 500 268 498 ZZ. As such, it had thirty (30) days therefrom to file its protest. No such protest was filed by petitioner within the time provided under the NIRC of 1997, as amended, rendering the assessment final and executory. Consequently, there was no disputed assessment over which the Court can take jurisdiction. Respondent also claims that the due process requirements were complied with and that the assessment has not yet prescribed in view of the validly executed Waiver.

THE RULING OF THE COURT *EN BANC*

The *Petition for Review* lacks merit.

The present Petition for Review was timely filed; thus, the Court En Banc has jurisdiction over the Petition.

Section 3(b) of Rule 8 of the Revised Rules of the CTA (RRCTA) provides:

Sec. 3. Who may appeal; period to file petition. — xxx xxx xxx

- (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

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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*)

Based on the foregoing, petitioner had fifteen (15) days from receipt of the assailed Resolution within which to file his Petition for Review.

Records show that the assailed Resolution of the Court in Division, which was served through registered mail on June 8, 2022, was received by petitioner on June 25, 2022.¹⁹ Petitioner, thus, had fifteen (15) days from such receipt, or until **July 10, 2022**, to file its Petition for Review.

On June 28, 2022, respondent filed a *Motion for Extension of Time To File Petition for Review*²⁰ seeking an additional period of fifteen (15) days from July 10, 2022, or until July 25, 2022, which was granted by this Court.²¹

Hence, petitioner timely filed the instant *Petition for Review* on **July 21, 2022**.²²

That having been settled, the Court shall now proceed to the merits of the case.

The assessment has become final and executory; hence, the Court in Division has no jurisdiction over the original Petition.

The Court in Division, in denying the original *Petition*, held that there was no disputed assessment to be assailed considering that the *BIR Letter* dated March 3, 2018 cannot be deemed a “final decision” as there was no valid protest to speak of. Consequently, the Court has no jurisdiction to entertain the original *Petition*.

In the present Petition, OMCI insists that the assessments are void for respondent’s failure to comply with the due process requirements under Section 228 of the NIRC of 1997, as amended; thus, the assessment never attained finality. ¶

¹⁹ Registry Return Receipt, Division Docket – Vol. II, p. 657 (dorsal portion).

²⁰ *Rollo*, pp. 1 to 4.

²¹ Minute Resolution dated July 12, 2022; *Rollo*, p. 10.

²² *Rollo*, p. 11.

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On the other hand, respondent claims that the Court in Division was correct when it ruled that it has no jurisdiction over the original *Petition*. According to the respondent, since petitioner failed to file a protest against the *FLD*, the assessment became final and executory; thus, there was no disputed assessment over which the Court in Division can take jurisdiction.

We find that the Court in Division did not err when it found that it has no jurisdiction over the original *Petition*.

Due process requirements in relation to tax assessments are enshrined in Section 228 of the NIRC of 1997, as amended, to wit:

SECTION 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:

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xxx

xxx

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

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

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

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. xxx (*Emphasis and underscoring supplied*)

In relation thereto, Section 3 of RR No. 12-1999, as amended, which implements the above provision, provides for the forms of protesting an assessment and the period within which a taxpayer may file its protest. We quote:

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

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

xxx

xxx

xxx

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* (see illustration in ANNEX "B" hereof).

3.1.4 *Disputed Assessment*. — **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.**

The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) *Request for reconsideration* — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

(ii) *Request for reinvestigation* — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both. (*Emphasis supplied*)

From the foregoing, it is evident that, upon issuance of the FLD/FAN, the taxpayer may protest the same administratively within thirty (30) days from receipt thereof.

In this case, after the issuance of the *LOA* and the *PAN*, *sans* any reply/protest on the *PAN*, respondent issued the *FLD* on October 30, 2015. Between February 2016 to April 2016, respondent issued the various demands to pay, namely, *Preliminary Collection Letter* (*PCL*) dated February 4, 2016, *Final Notice Before Seizure* (*FNBS*) dated February 23, 2016, and *Warrant of Distraint and/or Levy* (*WDL*) dated April 15, 2016. Thereafter, petitioner wrote BIR two (2) letters, namely, *Letter-Protest* dated February 7, 2017 and *Letter-Protest* dated February 23, 2018. On March 12, 2018, petitioner received the *BIR Letter* dated March 3, 2018, which denied its *Letter-Protest* dated February 23, 2018.

A perusal of the records of the case reveals that petitioner admitted to have received the *FLD*. 4

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In the Judicial Affidavit of Mr. Ronald Ortiz,²³ petitioner's president, he testified on the events which led to the filing of the first *Letter-Protest* dated February 7, 2017, to wit:

Q75: What happened next, if there is any?

A75: **The Corporation received FORMAL LETTER OF DEMAND (FLD) dated October 30, 2015** informing that the Corporation has Tax Liability in the aggregate amount of SIX MILLION NINE HUNDRED THIRTY-NINE THOUSAND NINE HUNDRED FORTY-FOUR PESOS AND 15/100 (PHP 6, 939,944.15) as deficiency Income, VAT, Documentary Stamp Tax and Registration Fee, inclusive of legal increments.

Q78: Have you made payments of the said amount?

A78: No Attorney.

Q79: What happened next, if there is any?

A79: The Bureau issued **Final Notice before Seizure, Warrant of Distraint and/or Levy dated April 15, 2016.**

xxx xxx xxx

Q82: Was the Bureau able to levy or seized any of your properties?

A82: No Attorney.

Q83: What happened next, if there is any?

A83: A letter dated February 01 2017 from the Legal Division of the was received by the OMCI requiring it to pay the SIX MILLION NINE HUNDRED THIRTY-NINE THOUSAND NINE HUNDRED FORTY-FOUR PESOS AND 15/100 (PHP 6,939,944.15)

Q84: Have you made payment?

A84: No Attorney, **instead we protested the said Letter.**

Q85: Do you have the copy of the Letter?

A85: Yes Attorney

(Witness handed documents)

Q86: You handed to me "**Letter**" dated **February 07, 2017**, I will mark this document as EXHIBIT "S" and attach the same to your judicial affidavit, do you affirm and confirm my action?

A86: Yes Attorney

Q88: What happened next if there is any?

A88: The OMCI again sent a **letter to the Bureau dated February 23, 2018.** *(Emphasis and underscoring supplied)*

As can be gleaned from Mr. Ronald Ortiz' testimony, from the time petitioner received the *FLD* dated October 30, 2015, it was only on **February 7, 2017** that petitioner filed a letter protesting the subject assessment. While

²³ Exhibit "P-36", *Judicial Affidavit of Ronald Ortiz*, Division Docket – Vol. I, pp. 198 to 212.

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Mr. Ronald Ortiz did not mention the exact date when the *FLD* was received, his testimony nonetheless shows that the first *Letter-Protest* was filed only after respondent initiated collection measures.

A question now arises on when the 30-day period to file a protest commenced inasmuch as there is no clear date of petitioner's receipt of the *FLD*. The Court observes, however, that the fact of petitioner's receipt of the *FLD* was uncontroverted.

Respondent alleged that the *FLD* was duly served and received by the petitioner on **November 14, 2015**²⁴ citing the RRR number.²⁵ On the other hand, an examination of the *FNBS* dated February 23, 2016 reveals that the same was received by Mr. Nelson S. Ortiz on **February 26, 2016**.²⁶

Accordingly, counting thirty (30) days from the alleged date of receipt of the *FLD* on November 14, 2015, petitioner had until December 14, 2015 to file its protest thereto. Clearly, the *Letter-Protest* dated February 7, 2017 was filed out of time.

From the foregoing, it can be concluded that petitioner did receive the *FLD* but did not act on the same until it filed its *Letter-Protest* dated February 7, 2017.

Even if we are to reckon the 30-day period to file a protest from its receipt of the *FNBS* on February 26, 2016, the *Letter-Protest* dated February 7, 2017 was still filed beyond the said period.

Thus, the assessment has indeed attained finality when petitioner, despite receipt of the *FLD*, failed to file a protest within the period prescribed under the law, rules and regulations.

Notwithstanding the foregoing, petitioner posits that the Supreme Court has cancelled assessments because the taxpayer was not accorded due process despite the taxpayer's failure to timely protest the assessment. Petitioner claims that the *PAN* and *FLD* are void for failure to indicate the law and the facts on which the assessment is made. Despite the lack of a timely filed protest, petitioner insists that the Court should have taken cognizance of the case and ruled on the issue of the validity of the assessment.

²⁴ Respondent's *Comment/Opposition, Rollo*, p. 170.

²⁵ Respondent referenced RRR No. RD 500 268 498; however, the actual RRR found in pages 165 to 166 of the *BIR Records* was not offered as evidence.

²⁶ Exhibit "R-7", *BIR Records*, pp. 198 to 212.

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The Court is not unaware of the pronouncements of the Supreme Court wherein assessments were cancelled even if the taxpayer failed to timely file a protest. However, we find herein petitioner's reliance on the same misplaced. As will be discussed below, the circumstances in said cases do not squarely fit the facts of the present case. We compare the said jurisprudential pronouncements vis-à-vis the present case.

In *Commissioner of Internal Revenue vs. Azucena T. Reyes*,²⁷ the assessment was cancelled, despite the lack of a protest, as the taxpayer therein was not informed in writing of the law and the facts on which the assessment of estate taxes had been made. The taxpayer was merely *notified* of the CIR's findings without specifying the factual and legal bases thereon.²⁸ In the present case, a cursory reading of the *PAN* and *FLD* would show that the factual bases for the amounts (e.g., *Financial Statements, Certificate of Property Holdings*, etc.) and the legal bases [e.g., Section 32 of the NIRC, Revenue Audit Memorandum Order (RAMO) No. 1-2000, etc.] were stated in their respective *Details of Discrepancies*.

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,²⁹ the assessment was again cancelled, despite the lack of protest, as the due process violation therein was the non-receipt of the *PAN*; hence, the taxpayer therein was not ever apprised of the assessment and the bases thereof. In the present case, the receipt of the *PAN* and *FLD* was undisputed. What petitioner herein assails is the non-compliance with the factual and legal bases requirement; however, as earlier discussed, such requirement was substantially complied with.

In *Commissioner of Internal Revenue vs. T Shuttle Services, Inc.*,³⁰ the Supreme Court affirmed the ruling of the CTA cancelling the assessments for failure of the CIR to prove that the *PAN* and the *FAN* were properly and duly served upon and received by T Shuttle, notwithstanding the lack of protest to the *FAN*. In the present case, there was no issue raised on the service or receipt of the *PAN* and *FLD* which would have prevented the petitioner from filing a protest. In fact, the receipt of the notices was uncontroverted.

In *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corp.*,³¹ the CIR did not issue at all an assessment against the taxpayer therein

²⁷ G.R. Nos. 159694 & 163581, January 27, 2006.

²⁸ The old due process requirement under former Section 229 of the NIRC, prior to its amendment by Republic Act (R.A.) No. 8424, to merely notify the taxpayer of the CIR's findings was changed in 1998 to informing the taxpayer of not only the law, but also of the facts on which an assessment would be made; otherwise, the assessment itself would be invalid. (*Commissioner of Internal Revenue vs. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006)

²⁹ G.R. No. 185371, December 8, 2010.

³⁰ G.R. No. 240729 (Resolution), August 24, 2020.

³¹ G.R. Nos. 197945 & 204119, July 9, 2018.

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prior to his issuance of the 1998 and 2002 Collection Letters; hence, taxpayer therein was not informed of the legal and factual bases of the assessment against it. In the present case, the *PAN* and *FLD* were issued to and received by the petitioner sufficiently informing OMCI of the legal and factual bases of the assessment.

In *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*,³² Fitness by Design assailed the FAN for failing to allege the factual basis for the application of the 10-year prescriptive period in cases of fraud assessment. The FAN therein was issued almost eight (8) years from when Fitness by Design filed its ITR. However, the Supreme Court found the assessment void for failure to sufficiently inform the taxpayer of the bases of the assessment (i.e., allegations of fraud committed by respondent therein) so as to aid it in filing an effective protest. Here, the CIR did not invoke the extraordinary prescriptive period which necessitated allegations of fraud. On the contrary, the legal and factual legal bases to support the assessment was sufficiently alleged in the *PAN* and *FLD* which would have allowed the petitioner to file an effective protest.

In fine, the Court in Division committed no reversible error in dismissing OMCI's original *Petition*, inasmuch as the assessment has become final and executory and, therefore, the Court did not acquire jurisdiction to take cognizance of the same. To stress, by way of reiteration, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.³³

WHEREFORE, premises considered, petitioner Ortiz Memorial Chapel, Inc.'s *Petition for Review* is **DENIED** for lack of merit. The assailed *Decision* dated March 10, 2022 and assailed *Resolution* dated June 8, 2022 rendered by the Second Division of this Court in CTA Case No. 9805 are **AFFIRMED**.

SO ORDERED.


CORAZON G. FERRER-FLORES
Associate Justice

³² G.R. No. 215957, November 9, 2016.

³³ *Escandor vs. Carpio-Morales, et. al.*, G.R. No. 223743. August 17, 2022, citing the case of *Velasquez, Jr. vs. Lisondra Land, Inc.*, G.R. No. 231290, August 27, 2020.

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WE CONCUR:



ROMAN G. DEL ROSARIO

Presiding Justice



MA. BELEN M. RINGPIS-LIBAN

Associate Justice



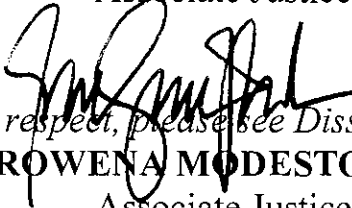
CATHERINE T. MANAHAN

Associate Justice

ON OFFICIAL BUSINESS

JEAN MARIE A. BACORRO-VILLENA

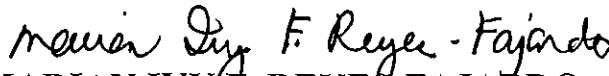
Associate Justice



With due respect, please see Dissenting Opinion

MARIA ROWENA MODESTO-SAN PEDRO

Associate Justice



MARIAN IVY F. REYES-FAJARDO

Associate Justice

ON OFFICIAL BUSINESS

LANEE S. CUI-DAVID

Associate Justice



HENRY S. ANGELES

Associate Justice

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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.



ROMAN G. DEL ROSARIO

Presiding Justice

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

En Banc

**ORTIZ MEMORIAL CHAPEL,
INC.,**

Petitioner,

**CTA *EB* NO. 2651
(CTA Case No. 9805)**

Members:

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

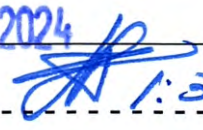
- versus -

**COMMISSIONER OF
INTERNAL REVENUE,**

Respondent.

Promulgated:

DEC 06 2024


1:35p.m.

x-----x

DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

With all due respect to my esteemed colleagues, I dissent on the finding that the Court in Division has no jurisdiction over the original petition for review considering that the assessment has become final and executory. I stress that the Court of Tax Appeals (“CTA”) always has the authority to rule on the validity of an assessment.

The Court’s Second Division ruled to dismiss the case for lack of jurisdiction mainly due to petitioner’s failure to timely file a protest against the assessment, thereby rendering it final and executory pursuant to *Section 228 of the National Internal Revenue Code, as amended (“NIRC”), and Revenue Regulations (“RR”) No. 12-99, as amended by RR No. 18-13.*

On the other hand, petitioner insists that the Court should have resolved the issue of respondent's violation of its right to due process since an assessment that is void bears no fruit.

Indeed, I find that the Court in Division erred in dismissing the case outright by the mere fact that no timely and valid protest was filed against the Final Assessment Notice ("FAN"), without considering petitioner's arguments on the violation of its right to due process.

In a number of cases, the Supreme Court has voided an assessment despite a failure of the taxpayer to timely protest the same.

In fact, the present case is similar to *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*,¹ where the assessment was invalidated by the Supreme Court for violation of the taxpayer's right to due process (*i.e.* when the assessment was issued by revenue officer without a Letter of Authority) despite the case having been dismissed by the CTA for lack of jurisdiction due to the taxpayer's failure to file a protest against the FAN.

Meanwhile, in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,² ("Metro Star"), the CTA, as upheld by the Supreme Court, gave due course to the petition despite the taxpayer's failure to timely file a protest against FAN due to the apparent violation of its right to due process when it did not receive the Preliminary Assessment Noticer ("PAN").

In both cases, the Supreme Court ruled that an assessment, despite a failure to timely file a protest, which should have deprived the CTA of its jurisdiction, is nevertheless rendered void for violation of the taxpayer's right to due process.

To be certain, I do not disregard the procedures laid down by *Section 228 of the Tax Code*, as implemented by *RR 12-99, as amended*, which provides that an assessment may be protested administratively by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment.

Indeed, to protest an assessment is a condition *sine qua non* in order for it to be considered disputed, which gives the CTA jurisdiction over the same; for when a taxpayer files a petition for review before the CTA without validly contesting the assessment with the Commissioner of Internal Revenue, the appeal is premature, and the CTA has no jurisdiction.³

¹ G.R. No. 241848, May 14, 2021.

² G.R. No. 185371, December 8, 2010.

³ *Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division*, G.R. No. 239464, May 10, 2021.

However, it is a different matter when there is an apparent violation of a taxpayer's right to due process in the course of issuing an assessment against it. Accordingly, when a taxpayer's right to due process is not observed, the assessment is rendered void. There being no assessment to begin with, nothing can attain finality, since a void assessment bears no fruit.

In *Metro Star*, the Supreme Court emphatically stated that it is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. "In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual," for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude.

Indeed, the Supreme Court has consistently ruled in favor of the taxpayer and prioritized the protection of its right to due process over mere failure to comply with the procedures. As ruled in *Metro Star*, 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 the taxpayer's right to due process.

Guided by the foregoing principles, this Court must protect the taxpayer's rights to due process. If there is a blatant violation thereof, the Court should protect the taxpayer and ward off any abuse committed by respondent and his authorized officers.

In this case, petitioner, from the time it filed its original petition for review before the Court in Division, has asserted that its right to due process was violated when the PAN and FLD issued against it by respondent failed to state the facts, laws, and jurisprudence upon which it is based, contrary to the mandate of *Section 228 of the NIRC*, as implemented by *RR 12-99, as amended*.

Given this assertion, the Court in Division should have ruled on the same and determined whether there was a valid assessment to protest or dispute in the first place instead of dismissing petitioner's case outright for failure to timely file a protest.

An assessment which does not provide the facts and laws upon which it is based is void for violation of the taxpayer's right due process. Consequently, a void assessment cannot become final and executory.

As stated, petitioner vehemently asserts that its right to due process was violated when the PAN and FLD failed to provide the facts and laws upon which the assessments against it were made.

Section 228 of the NIRC provides that 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.

The foregoing is implemented by *RR No. 12-99, as amended by RR No. 18-13*, particularly *Section 3.1.3* thereof, which states that 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.*

In *Commissioner of Internal Revenue v. Enron Subic Power Corporation*⁴ (“*Enron*”), the High Court explained that *Section 228 of the NIRC* requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of [*Section*] *228 of the NIRC* and *RR No. 12-99* would be rendered nugatory. The alleged “factual bases” in the advice, preliminary letter, and “audit working papers” did not suffice. In the High Court’s words, “[t]here was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice. . . . In view of the absence of a fair opportunity for Enron to be informed of the legal and factual bases of the assessment against it, the assessment in question was void.”

Enron was upheld by *Commissioner of Internal Revenue v. Fitness By Design, Inc.*⁵ (“*Fitness By Design*”) in this wise:

. . . . The requirement enables the taxpayer to make an effective protest or appeal of the assessment or decision.

⁴ G.R. No. 166387 (Resolution), January 19, 2009.

⁵ G.R. No. 215957, November 9, 2016.

The rationale behind the requirement that taxpayers should be informed of the facts and the law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law. *Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.*

The purpose of the written notice requirement is to aid the taxpayer in making a reasonable protest, if necessary. *Merely notifying the taxpayer of his or her tax liabilities without details or particulars is not enough.* (Italics, Ours)

A revisit of the assessments issued to petitioner for the taxable year (“TY”) 2011 shows that it failed to satisfy the requirement of *Section 228 of the NIRC and RR No. 12-99*. In particular, with respect to deficiency income tax, value-added tax (“VAT”), and documentary stamp tax (“DST”), the following assessment items as stated in the Details of Discrepancies⁶ attached to the PAN and as reiterated in the FLD are as follows:

INCOME TAX

Undeclared Income totaling to P6,833,750.06 arising from the following, pursuant to RAMO 1-2000 and Section 32 of the National Internal Revenue Code (NIRC) of 1997, to wit:

-Unreported Professional Fees (PF) and Security Services expense amounting to P72,000.00 and P6,000.00, respectively.

-Undervaluation of reported properties amounting to P6,755,750.06, computed as follows:

Total FMV of declared properties per Certificate of Property Holdings	10,507,970.00
Less: Reported/Financial Statements	
Land	(200,000.00)
Property, Plant & Equipment	(3,552,219.94)
Undervaluation of properties	<u>6,755,750.06</u>

Unsupported expenses determined per audit in the aggregate amount of P423,659.73, hence disallowed pursuant to Section 34(A)(1)(b) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Taxes and licenses	34,377.89
Light/Water	57,099.97
Fuel/Transportation	146,549.87
Communication	108,452.00
Miscellaneous Expenses	77,180.00
Total	<u>423,659.73</u>

VALUE-ADDED TAX

Undeclared Income totaling to P6,833,750.06, as explained above.

DOCUMENTARY STAMP TAX

Failure to impose the corresponding DST on the Due to Officers account, treated as payable per audit amounting to P505,200.00, a violation of Section 179 of the same Code.

As for income tax, the main legal basis of respondent in assessing petitioner's alleged undeclared income is *Revenue Audit Memorandum Order (“RAMO”) No. 1-2000*, or the *“Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000)”* with *Section 32 the NIRC*.

⁶ Exhibits “P-15” to “P-16”, Division Docket – Vol. I, pp. 75 to 83; Exhibits “R-5” to “R-6”, BIR Records, pp. 120 to 123 and 131 to 135, respectively.

Said RAMO merely provides guidelines and methods on the conduct of the audit of a taxpayer. Out of all the methods enumerated therein, both the PAN and FLD are silent as to which particular method was used in the audit of petitioner's books and the justification or explanation as to why respondent resorted to such method. It must be noted that the methods prescribed in *RAMO No. 1-2000* provide various grounds for usage and uses different data base points and computations in order to arrive at a particular assessment finding. In order to obtain a proper understanding of the nature of the finding, it is imperative that respondent explain which method was used and why it was resorted to. It cannot be merely inferred from a mere showing of the computation of the assessment.

As for VAT, it merely referred to the computation of the alleged undeclared income in the income tax assessment without stating the particular legal basis to justify how said amount is also subject to VAT.

Lastly, the computation details of the other assessment items (*i.e.* unsupported expenses and DST) were determined by the mere mention of "per audit" without laying down, even in brief, *how* the amounts were arrived at (*i.e.* the documents compared to arrive at the particular finding). To my mind, it is not even a computation—it is merely a listing of the accounts and amounts without explanation as to how such amounts were arrived at.

Accordingly, while on its face the assessment appears to have provided the factual and legal bases thereof, I find the same to be insufficient to comply with the mandate of *Section 228 of the NIRC*. As explained in *Fitness By Design*, the purpose of said requirement is to enable the taxpayer to make an effective protest or appeal of the assessment or decision. Here, petitioner's deficiency tax assessments lack such comprehensive explanation as they merely provided a very general/broad legal basis and loosely used the term "per audit" in laying down the facts. Clearly, it is insufficient to enable petitioner to make an effective protest.

The failure of the assessment against petitioner to provide the factual and legal bases upon which it is based as mandated by *Section 228 of the NIRC* and *RR No. 12-99* is undeniably a violation of its right to due process.

To reiterate, the persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of [respondent] to strictly comply with the requirements laid down by law and its own rules is a denial of [petitioner's] right to due process.⁷ Thus, respondent's failure to state the facts and the law on which the assessment was made, as required by *Section 228 of the NIRC* and *RR No. 12-99*, is undeniably a violation of its right to due

⁷ Commissioner of Internal Revenue v. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.

process and renders the assessment made by respondent against petitioner for TY 2011 void.

A void assessment bears no fruit.⁸ As such, it can never attain finality or become executory. We cannot countenance respondent's violation of a taxpayer's right to due process by the mere invocation of technicality of rules (*i.e.* failure to timely file a protest against the assessment). The paramount purpose of the *NIRC* and its implementing *RR No. 12-99, as amended*, is to afford the taxpayer its rights to due process on assessment cases. As such, if there is a blatant violation thereof, the Court must protect the taxpayer and ward off any abuse committed by respondent and his authorized officers.

An assessment issued beyond the three-year prescriptive period is likewise void.

With respect to the other assessment items in the PAN, which was retained in the FLD, this Court finds the same to be likewise void for being issued beyond the three-year prescriptive period under *Section 203 of the NIRC*:⁹

- 1.) Penalties for late filing of VAT Returns for the months of January and May 2011 and for the 1st and 2nd quarters; and
- 2.) Registration fee amounting ₱500.00.

The following shows the prescriptive periods within which to assess the foregoing:

	Due Date for Filing/Payment	End of Three-Year Period to Assess
Monthly VAT Return for January 2011	February 21, 2011 ¹⁰	February 20, 2014
Monthly VAT Return for May 2011	June 20, 2011	June 20, 2014
1 st Quarter VAT Return ending March 2011	April 25, 2011	April 25, 2014

⁸ *Commissioner of Internal Revenue v. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.

⁹ Section 203. *Period of Limitation Upon Assessment and Collection*. – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

¹⁰ February 20, 2011 fell on a Sunday.

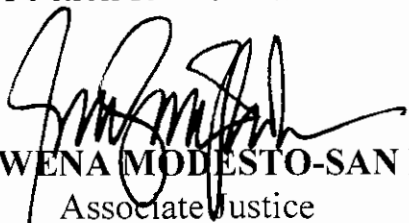
2 nd Quarter VAT Return ending June 2011	July 25, 2011	July 25, 2014
Registration fee	January 31, 2011 ¹¹	January 31, 2014

The FLD was issued only in October 30, 2015, which is evidently beyond the three-year period to assess the foregoing items. Further, even without belaboring the validity of the Waiver of the Defense of Prescription under the Statute of Limitation of the National Internal Revenue Code (“Waiver”),¹² it is notable that it was executed only on October 29, 2014, which is also already beyond the foregoing three-year period. Consequently, no period to assess was effectively extended with respect to the foregoing items.

There is also no justification to apply the exceptions under *Section 222 of the NIRC* with respect to the foregoing items as there were no allegations of failure to file/pay, falsity, or fraud on the same.

Verily, the subject assessments are void for being barred by prescription.¹³

All told, I vote to grant the instant Petition for Review.


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

¹¹ Section 236. *Registration Requirements.* –

(B) *Annual Registration Fee.* – An annual registration fee in the amount of Five hundred pesos (P500) for every separate or distinct establishment or place of business, including facility types where sales transactions occur, shall be **paid upon registration and every year thereafter on or before the last day of January:** (*Emphasis, Ours*)

¹² Exhibits “P-13” and “R-4”, Docket – Vol. I, p. 70.

¹³ *Commissioner of Internal Revenue v. Villanueva, Jr.*, G.R. No. 249540, February 28, 2024.