

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

EN BANC

**COMMISSIONER OF INTERNAL
REVENUE,**

Petitioner,

- versus -

**ATLAS PRECISION
ENVIRONMENT CORPORATION,**

Respondent.

X -----X

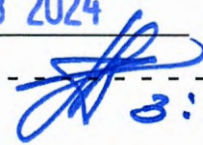
CTA EB NO. 2686
(CTA Case No. 9043)

Present:

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

Promulgated:

FEB 13 2024


3:29 p.m.

DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*¹ filed by petitioner Commissioner of Internal Revenue through registered mail on September 13, 2022, assailing the Decision² dated March 30, 2022 (assailed Decision) and the Resolution³ dated July 28, 2022 (assailed Resolution), rendered by this Court's Third Division and Special Third Division (Court in Division) in CTA Case No. 9043 entitled "*Atlas Precision Environment Corporation v. Commissioner of Internal Revenue.*" The dispositive portion of the assailed Decision and Resolution read as follows:



¹ *En Banc (EB)* docket, pp. 6-23.

² *EB* docket, pp. 32-48.

³ *EB* docket, pp. 50-52.

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Assailed Decision dated March 30, 2022:

WHEREFORE, premises considered, the present *Petition for Review* is **GRANTED**. Accordingly, the FLD/FAN dated June 27, 2014 holding petitioner liable for deficiency VAT for taxable period January 1, 2013 to June 30, 2013, in the total amount of P1,793,914.51, is **CANCELLED and WITHDRAWN**; and the FDDA dated April 13, 2015 is **REVOKED and SET ASIDE**.

SO ORDERED.

Assailed Resolution dated July 28, 2022:

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

SO ORDERED.

Petitioner prays that the aforesaid Decision and Resolution be reversed and set aside and that a new one be rendered ordering respondent Atlas Precision Environment Corporation to pay the amount of Php1,893,011.21 (inclusive of interest), as deficiency value-added tax (VAT) for the period January 1, 2013 to June 30, 2013, plus surcharge and interests until full payment 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 with the authority to, *inter alia*, decide on administrative protest/s filed against Final Assessment Notice (FAN) under Section 228 of the NIRC of 1997, as amended. 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 Building, 313 Sen. Gil Puyat Avenue, Makati City.⁴

Respondent Atlas Precision Environment Corporation is a corporation duly organized and existing under Philippine laws, with Certificate of Registration No. AS-095-011762. It is registered with the BIR as a VAT entity,⁵ with Tax Identification

⁴ The Parties, *Petition for Review*. EB docket, p. 7.

⁵ Par. 2, *Stipulation of Facts, Joint Stipulation of Facts, Issues and Exhibits* (JSFIE), Division docket - Vol. 4, p. 1595.

DECISION

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Number (TIN) 004-656-080-000, and address at 322 3/F Mile Long Building, Amorsolo St., Legaspi Village, Makati City.⁶ It is engaged in the supply, installation, maintenance of computer support systems, telecommunication systems, premise wiring systems, access floor system, system furniture, design and construction.⁷

THE FACTS AND THE PROCEEDINGS

The relevant facts,⁸ as narrated by the Court in Division in the assailed Decision, are as follows:

In the course of its business, [respondent] received the Letter of Authority (LOA) No. LOA-V08-2013-00000479 (SN: eLA201100053240) dated October 11, 2013, on October 14, 2013.

On May 19, 2014, [petitioner] served on [respondent], the Preliminary Assessment Notice (PAN) of even date. On May 30, 2014, [respondent] disputed the PAN by filing a letter-protest with BIR's Revenue Region No. 8-Makati, based on the following grounds, to wit:

- 1) First, all VAT payments due on sales invoices issued from 1 January 2013 to 30 January 2013 have been actually fully paid;
- 2) Second, appropriate VAT payments have been made on the supposed unqualified zero-rated sale as shown in its 22 October 2013 and 18 November 2013 VAT return, extinguishing its tax liability;
- 3) Third, the government sales close to expense should be P2,178.26 only and not P3,292.56;
- 4) Fourth, the alleged unsupported input tax in the amount of P103,498.85 is actually supported by receipts which was presented during audit, and evidenced by the actual receipts attached to the letter-request;
- 5) Fifth, contrary to the claim of [petitioner] that [respondent] failed to pay the corresponding taxes due within the prescribed reglementary period, the VAT payments were made in

⁶ Par. 2, *Petition for Review* vis-à-vis Par. 1, *Answer*. Division docket - Vol. 1. p. 10, and Division docket - Vol. 2. p. 918, respectively.

⁷ Par. 4, *Stipulation of Facts*, JSFIE. Division docket - Vol. 4, p. 1595.

⁸ See Note 2 at 27-30.

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accordance with Section 114 of the NIRC, and Revenue Regulations No. 16-2005;

- 6) Lastly, contrary to the claim of the [petitioner], excess input carried over for June 2013 in the amount of P32,840.30 was carried over to the succeeding period in accordance with Section 110 (B) of the NIRC.

On June 30, 2014, [respondent] received from [petitioner] a Formal Letter of Demand with Formal Assessment Notice (FLD/FAN) dated June 27, 2014, assessing [respondent] the amount of P1,494,193.02, plus interest of P298,019.87, and late increment of P1,701.62, or in the aggregate amount of P1,793,914.51.

Thereafter, on July 30, 2014, [respondent], through counsel, contested the FLD/FAN by a protest-letter dated 25 July 2014, invoking the same arguments raised in the letter disputing the PAN.

Subsequently, in response to [respondent's] protest-letter, Regional Director Jonas DP. Amora issued the letter dated February 10, 2015, informing [respondent] that its request for reinvestigation was favorably granted, and requesting the payment of deficiency VAT in the amount of P1,832,093.71, inclusive of interest.

[Respondent] then filed an administrative appeal (letter dated March 12, 2015) on March 16, 2015, seeking the partial reconsideration of the assessment against petitioner.

On April 13, 2015, [respondent] received [petitioner's] FDDA, partially granting the protest, but still finding [respondent] liable for alleged basic deficiency VAT, plus penalties, in the total amount of P1,893,011.21.

[Respondent] filed the present Petition for Review on May 13, 2015.

In his *Answer*⁹ posted on September 4, 2015, petitioner interposed as *Special and Affirmative Defenses* that: (i) respondent was assessed pursuant to Sections 106 and 108 of the NIRC of 1997, as amended, as petitioner's examination of respondent's sales/receipts per issued invoices and official receipts as against the income declared per VAT returns, disclosed a discrepancy in the amount of Php11,503,346.83; (ii) assessment is *prima facie* presumed correct and made in good faith; hence, the taxpayer has the duty to prove otherwise; and (iii) taxes are important because it is the lifeblood of the

⁹ Division docket, pp. 77-88.

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government, and so should be collected without unnecessary hindrance.

The trial ensued, during which both parties presented documentary and testimonial evidence supporting their respective claims.

On March 30, 2022, the Court in Division rendered the assailed Decision granting respondent's *Petition for Review*. The Court in Division ruled that petitioner violated respondent's administrative due process rights, rendering the assessment void. The Court in Division explained that the BIR merely reiterated the same findings as stated in the PAN without giving any reason for rejecting the refutations and explanations made by respondent in its letter protest dated May 30, 2014. For the Court in Division, this is a clear violation of respondent's right to administrative due process as respondent was left unaware of how petitioner or the BIR appreciated the explanations or defenses it raised against the subject PAN.

Not satisfied, petitioner moved for reconsideration but was denied in the equally assailed Resolution of July 28, 2022.

Undeterred, petitioner filed a *Motion for Extension of Time to File Petition for Review*¹⁰ through registered mail on August 30, 2022, praying that the Court *En Banc* grants him an extension of fifteen (15) days from August 31, 2022, or until September 15, 2022, to file his *Petition for Review*, which the Court *En Banc* deemed granted in the *Minute Resolution*¹¹ dated September 15, 2022.

On September 15, 2022, the Court *En Banc* received petitioner's *Petition for Review* filed *via* registered mail on September 13, 2022. Subsequently, in the Resolution¹² dated October 4, 2022, the Court *En Banc* directed respondent to file a comment within ten (10) days from notice.

Respondent filed its *Comment/Opposition (to Petitioner's Petition for Review, dated 09 September 2022)*¹³ on October 21, 2022, which the Court *En Banc* noted in the December 5, 2022 Resolution.¹⁴ In the same Resolution, the Court *En Banc*

¹⁰ *EB* docket, pp. 1-4.

¹¹ *EB* docket, p. 54.

¹² *EB* docket, pp. 56-57.

¹³ *EB* docket, pp. 58-79.

¹⁴ *EB* docket, pp. 82-83.

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referred the instant case to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for mediation pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals*.

On February 22, 2023, the instant case was submitted for decision considering the report of the PMC-CTA dated December 21, 2022, stating that the parties have decided not to have their case mediated.¹⁵

Hence, this Decision.

THE ISSUE

The lone issue raised by petitioner for resolution is:

WHETHER OR NOT THE SPECIAL THIRD DIVISION OF THIS HON. COURT ERRED IN ORDERING THE CANCELLATION AND WITHDRAWAL OF THE BIR ISSUED FLD/FAN DATED JUNE 27, 2014, AND FDDA DATED APRIL 13, 2015, DEMANDING FROM HEREIN RESPONDENT TO PAY THE TOTAL AMOUNT OF P1,793,914.51, REPRESENTING ITS DEFICIENCY VALUE-ADDED TAX FOR TAXABLE PERIOD COVERING JANUARY 1, 2013 TO JUNE 30, 2013 FOR ALLEGED VIOLATION OF RESPONDENT'S RIGHTS TO ADMINISTRATIVE DUE PROCESS.

Petitioner's Arguments:

Petitioner submits that the ratiocination of the Court in Division in ordering the cancellation and withdrawal of the subject deficiency tax assessment issued against respondent is misplaced, erroneous, and bereft of factual and legal basis.

Petitioner asserts that there was no violation of respondent's administrative due process rights. According to him, respondent's *Letter Protest* against the subject PAN was not accompanied by supporting documents. Only on July 30, 2014, when respondent filed its *Letter Protest* against the subject FLD/FAN, did it submit supporting documents, which were reconsidered by petitioner when he issued the subject FDDA. Hence, for petitioner, the case of *Commissioner of Internal*

¹⁵ EB docket, pp. 86-87.

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*Revenue v. Avon Products Manufacturing, Inc.*¹⁶ (*Avon case*) is inapplicable since it is not in all fours with the instant case.

Further, petitioner points out that “just because respondent was able to file a protest against a PAN, without the necessary supporting documents, and that the BIR was not able to incorporate its denial of the protest in the FLD/FAN, the subject FLD/FAN dated June 27, 2014 will be voided.” For respondent, such a decision of the Court in Division, if not corrected, will be detrimental to all subsequent tax assessments issued by petitioner, since any FLD/FAN will be easily voided and brushed aside if it does not include any discussions of the protest to PAN filed by a taxpayer, even if the same was based on mere conjectures and not supported by evidence. Moreover, protest to PAN is optional and not mandatory, pursuant to Revenue Memorandum Order (RMO) No. 26-2016, dated June 13, 2016.

Petitioner likewise asserts that “the FLD/FAN need just be based on the facts and laws upon which the assessment is made.” According to petitioner, the *Details of Discrepancies* attached to the PAN and FLD/FAN clearly show the facts and laws upon which the deficiency VAT assessment issued against respondent was based. Hence, for petitioner, he substantially complied with the prescribed due process requirements in issuing deficiency tax assessment under Section 228 of the NIRC of 1997, as amended.

In closing, petitioner asserts that the FLD/FAN dated June 27, 2014, is *prima facie* presumed correct and made in good faith. Hence, respondent must prove otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

Respondent’s Arguments:

In its *Comment/Opposition*, respondent submits that petitioner’s claim that there must be a “*clear inaction of the CIR at every stage of the proceeding*” for the *Avon case* to apply is not only erroneous and baseless but a gross misapplication of the said case. According to respondent, nowhere in the *Avon case* did the Supreme Court require a clear inaction of the CIR at every stage of the proceedings for a violation of due process

¹⁶ G.R. Nos. 201398-99, October 3, 2018.



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to materialize. On the contrary, the Supreme Court emphasized the need for the CIR to observe administrative due process in the entire proceedings of the investigation and assessment.

By claiming that clear inaction should be apparent in every step of the proceeding, petitioner would like this Court to turn a blind eye to petitioner's failure to respect respondent's right to due process, particularly respondent's right to be given a reasonable opportunity to present its side and be given the facts and basis for the denial of such position. If petitioner were to be believed, all procedural mechanisms in favor of the taxpayer may be disregarded for as long as petitioner explains itself in the end. According to respondent, this view not only denies outright the taxpayer's right to due process but also misleads the taxpayer into thinking it was being heard. Hence, for respondent, the mere failure of petitioner to address its arguments by repeating his assessment already constituted a failure to observe due process.

Respondent likewise submits that petitioner similarly misapplied to the instant case the requirements of due process as enumerated in *Ang Tibay v. The Court of Industrial Relations*¹⁷ (*Ang Tibay* case). Allegedly, the "*failure of respondent to submit/present documents in support of its defenses against the said PAN is clearly contradictory to the number one fundamental requirements of due process in administrative proceedings, as enunciated in 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.'*"

For respondent, this is a gross misapprehension of the ruling of the Supreme Court in the *Ang Tibay* case. Respondent explains that such fundamental requirements of due process were not enumerated to regulate the actions of parties appearing before an administrative or investigative body. Instead, the requirements outlined in the case refer to "*primary rights which must be respected.*" Respondent clarifies that the phrasing of the first requirement in the *Ang Tibay* case certainly signifies that the taxpayer has *the right to submit* evidence supporting its case and not that the taxpayer *must first be able to submit* evidence to support its case. This, according to respondent, is obvious in the second sentence thereof, which states: "*the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play.*" Respondent added

¹⁷ G.R. No. L-46496, February 27, 1940.

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that this was illustrated in *Mendoza v. Comelec*,¹⁸ where the Supreme Court ruled that the first requirement refers to the party's right to be heard.

Also, petitioner's insistence that respondent failed to provide supporting documents is not only irrelevant but blatantly incorrect and misleading. As can be gleaned from the records of the instant case, respondent protested the PAN dated May 19, 2014. In support of the grounds raised in its protest to the PAN, respondent referred to the following documents:

ANNEX	DESCRIPTION
"A"	Itemized list of official receipts issued during the covered period, from 01 January 2013 to 30 June 2013, showing the date in which VAT Output was paid.
"A-series"	The covered official receipts and their respective sales invoices, including the VAT returns filed showing that all VAT payments due on official receipts issued from 01 January 2013 to 30 June 2013 have been fully paid.
"B"	Itemized list of sales invoices issued during the covered period, from 01 January 2013 to 30 June 2013, showing the date in which VAT Output was paid.
"B-series"	The covered sales invoices and VAT returns filed showing that all the VAT payments due on sales invoices issued from 01 January 2013 to 30 June 2013 have been fully paid.
"C"	Respondent's VAT returns on 22 October 2013 and 18 November 2013 show the actual payment of the VAT liabilities.
"D"	The correct and proper disallowed amount.
"E" and "E-series"	The official receipts the [respondent] allegedly failed to present but were readily available.
"F" and "F-series"	The sales invoice Nos. 3014, dated 06 May 2013, and 3041, dated 07 June 2013, and their corresponding Tax Returns, the Output taxes of which have been paid within the reglementary period when such sales invoices were issued.
"G" and "G-series"	The VAT Returns for June 2013 and July 2013.

Assuming that it failed to provide supporting documents, respondent argues that petitioner did not even question or mention this in the FLD/FAN. For respondent, petitioner's act of belatedly raising this allegation shows that it was a mere afterthought. It added that if the BIR truly respected respondent's rights to due process, petitioner should have raised this issue in his FLD/FAN. Better yet, the lack of supporting documents could have been indicated as a ground to deny respondent's protest to the PAN. However, petitioner

¹⁸ G.R. No. 188308, October 15, 2009.

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opted to disregard the alleged lack of evidence and merely reiterated his position from the PAN.

Anent petitioner's contention that an action against its letter-protest dated May 30, 2014 is not required under certain BIR rules and regulations, respondent submits that the same contradicts established jurisprudence and renders respondent's right to due process nugatory. According to respondent, Section 228 of the NIRC of 1997 and Revenue Regulations (RR) No. 12-99 speak of the taxpayer's right to respond to the PAN. Though the law and the regulation do not expressly state that BIR must act upon the protest filed by the taxpayer, a careful reading of the law and regulation would only yield to a conclusion to the contrary since (i) by requiring a "preassessment notice," there is clear intention under the law that the initial assessment (PAN) be different from a final assessment (FAN); (ii) there would be no sense to require the taxpayer to respond to the "preassessment notice" if it will only be set aside; and (iii) the law would make no sense if the BIR would not be expected to act upon a taxpayer's protest given that it speaks of default.

As regards petitioner's claim that he complied with the requirements of due process under Section 228 of the NIRC of 1997 and RR No. 12-99, since the "Details of Discrepancies attached to the subject PAN dated May 19, 2014 and the FLD/FAN dated 27 June 2014 showed the facts and the laws upon which the deficiency tax assessments were based," respondent believes otherwise.

According to respondent, due process is not only complied with by showing the facts and the laws upon which the assessment was based. Substantial compliance with due process requirements would mean that the FAN must also include the facts, laws, rules, and jurisprudence upon which the *denial* of the taxpayer's response was made. In the instant case, however, petitioner merely used the facts and the law from the Details of Discrepancies and reproduced them in the FLD/FAN. At most, petitioner merely acknowledged respondent's Letter-Protest dated May 30, 2014, without further commenting on or considering the contents therein. In fact, according to respondent, petitioner even admitted to using the 15-day deadline as an excuse to issue the FLD/FAN.



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Lastly, while respondent agrees with petitioner that assessments are generally presumed correct and made in good faith, it submits that such contention does not apply in the instant case. In the case of *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*,¹⁹ the Supreme Court ruled that the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. According to respondent, the assessment issued against it is patently arbitrary and capricious when petitioner failed to issue a valid FAN containing the necessary law and facts upon which the denial of its letter protest was made.

THE COURT EN BANC'S RULING

The present Petition for Review was seasonably filed; hence, the Court En Banc has jurisdiction over the same.

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

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals states:

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

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 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*]

¹⁹ G.R. No. 136975. March 31, 2005.

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Records show that petitioner received the assailed Resolution on August 16, 2022.²⁰ Thus, petitioner had fifteen (15) days from August 16, 2022 or until August 31, 2022 to file his *Petition for Review* before the Court *En Banc*.

On August 30, 2022, petitioner filed through registered mail a *Motion for Extension of Time to File Petition for Review*,²¹ asking for an additional period of fifteen (15) days from August 31, 2022 or until September 15, 2022, to file his *Petition for Review*.

Considering that petitioner's *Motion for Extension of Time to File Petition for Review* was deemed granted per *Minute Resolution* dated September 15, 2022, the filing of petitioner's *Petition for Review* via registered mail on September 13, 2022, was on time. Accordingly, the Court *En Banc* has jurisdiction to take cognizance of the present *Petition*.

We shall now ascertain the merits of the instant *Petition for Review*.

After carefully reviewing the parties' arguments and the case records, the Court *En Banc* finds no reason to reverse or set aside the assailed Decision and Resolution of the Court in Division.

Records reveal that the Court in Division had thoroughly and exhaustively resolved the issues raised in the present *Petition*, which are mere rehash or restatement of the issues presented by petitioner in his *Motion for Reconsideration*²² in the appealed case, CTA Case No. 9043. Nonetheless, We shall address petitioner's issues and arguments in this case to underscore the salient points of the Court in Division's ruling.

This Court's Third Division and Special Third Division did not err in ordering the cancellation and withdrawal of the FLD/FAN and revocation of the FDDA.



²⁰ Notice of Resolution. *EB Docket*, p. 49.

²¹ *EB docket*, pp. 1-3.

²² Dated May 4, 2022; *Division docket* - Vol. 8, pp. 3297-3308.

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The subject deficiency VAT assessment is void because petitioner failed to comply with the due process requirement.

Petitioner maintains that he observed procedural and substantial due process in issuing the subject assessment. To reiterate, petitioner claims that “just because a taxpayer was able to file a protest against a PAN, without the necessary supporting documents, and that the BIR was not able to incorporate its denial of the protest in the FLD/FAN, the subject FLD/FAN will be voided.” Petitioner added that an administrative protest to the PAN is optional and not mandatory, and failure to consider the protest is not a violation of respondent’s right to due process. Moreover, petitioner claims that the right to due process in administrative proceedings merely requires notice and an opportunity to be heard, which respondent was duly afforded.

The Court *En Banc* is not convinced.

Section 228 of the NIRC of 1997, as amended, mandates petitioner to inform the taxpayer in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. It states, in part:

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 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:

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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.²³ 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.

The use of the word 'shall' in Section 228 of the NIRC of 1997, as amended, and RR No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him or her is mandatory. This is an essential requirement of due process and applies to the PAN, FLD with FAN, and the FDDA.²⁴

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.²⁵

²³ *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.

²⁴ *Id.*

²⁵ *Lourdes College v. Commissioner of Internal Revenue*, G.R. No. 226210, January 18, 2021.

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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, the Supreme Court underscored that the taxpayer must not only be given an opportunity to present its defenses and evidence but also that the Commissioner and his/her subordinates must give *due consideration* to these. The Commissioner is not obliged to accept the taxpayer's explanations, but when he or she rejects these explanations, he or she must give some reason for doing so. Failure to do so constitutes a violation of the taxpayer's right to due process, *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.**

... ..

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



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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.

... ..

Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.

... ..

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*)



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The foregoing doctrinal pronouncement affirms that the issuance of a PAN is a part of due process, that the issuance thereof allows both the taxpayer and the BIR to settle the case at the earliest possible time without the need for issuance of a FAN or to reduce the assessment at the earliest opportunity; that this purpose is not served in case the BIR fails to consider the taxpayer's explanations or arguments in the FAN; that the failure of the BIR to give due consideration to the said explanations or arguments is a deplorable transgression of the taxpayer's right to due process; and that the disregard by the BIR of the standards and rules renders the deficiency tax assessment null and void.

Here, the Court in Division correctly observed that:

In the present case, the CIR issued a PAN against [respondent] on May 19, 2014. In reply to the same PAN, [respondent] filed its *letter-protest* dated May 30, 2014, with BIR's Revenue Region No. 8-Makati, requesting for the revocation and cancellation thereof, and raising the following arguments, to wit:

- 1) *First*, all VAT payments due on sales invoices issued from 1 January 2013 to 30 January 2013 have been actually fully paid;
- 2) *Second*, appropriate VAT payments have been made on the supposed unqualified zero-rated sale as shown in its 22 October 2013 and 18 November 2013 VAT return, extinguishing its tax liability;
- 3) *Third*, the government sales close to expense should be P2,178.26 only and not P3,292.56;
- 4) *Fourth*, the alleged unsupported input tax in the amount of P103,498.85 is actually supported by receipts which was presented during audit, and evidenced by the actual receipts attached to the letter-request;
- 5) *Fifth*, contrary to the claim of [petitioner] that [respondent] failed to pay the corresponding taxes due within the prescribed reglementary period, the VAT payments were made in accordance with Section 114 of the NIRC, and Revenue Regulations (RR) No. 16-2005;
- 6) *Lastly*, contrary to the claim of the [petitioner], excess input carried over for June 2013 in the amount of P32,840.30 was carried over to the succeeding period in accordance with Section 110 (B) of the NIRC.



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On June 30, 2014, [respondent] received the FLD/FAN dated June 27, 2014. Notably, **the VAT assessment in the said FLD/FAN is exactly the same as those stated in the PAN dated May 19, 2014.** The only difference between the said PAN and the subject FLD/FAN is that the amounts of interest were adjusted. The basic tax due remained the same. **In other words, the BIR merely reiterated the same findings as stated in the said PAN, without giving any reason for rejecting the above-stated refutations and explanations made by [respondent] in its letter-protest dated May 30, 2014.** Consequently, [respondent] was left unaware on how [petitioner] or the BIR appreciated the explanations or defenses [respondent] raised against the subject PAN, in clear violation of its right to administrative due process, thereby rendering the subject VAT assessment void.

Similar to the *Avon* case, upon receipt of the PAN, respondent submitted a *Letter-Protest* dated May 30, 2014 and supporting documents to the BIR to explain and request for the cancellation of the assessment. Nonetheless, the BIR issued the FLD/FAN with Details of Discrepancies dated June 27, 2014, which is a complete replica of the PAN, save for adjustments in the amounts of interest and penalty imposed, *viz.:*

	PAN				FAN			
VALUE-ADDED TAX								
Vatable Receipts per return			₱	10,380,099.18			₱	10,380,099.18
Add: Income not subjected to VAT (Schedule 1)				11,503,346.83				11,503,346.83
Unqualified Zero Rated Sales				58,333.34				58,333.34
Sales Receipts subject to VAT			₱	21,941,779.35			₱	21,941,779.35
Output Tax Due			₱	2,633,013.52			₱	2,633,013.52
Less: Input Tax during the year			₱	809,089.77			₱	809,089.77
Less: Input Taxes - Govt. sales closed to expense (Schedule 2)	₱	3,292.56			₱	3,292.56		
Unsupported Input Taxes (Schedule 3)		103,498.85				103,498.85		
Excess Input Tax Carried Over to Succeeding Period		32,840.31		139,631.72		669,458.05		32,840.31
VAT Payable			₱	1,963,555.47			₱	1,963,555.47
Less: Payments per returns/audit				469,362.45				469,362.45
Basic Tax Due			₱	1,494,193.02			₱	1,494,193.02
Add: Interest (7.26.13 to 6.13.14) - PAN (7.26.13 to 7.25.14)- FAN				263,632.96				298,019.87
TOTAL AMOUNT DUE			₱	1,757,825.98			₱	1,792,212.89
Increments on late remittance of VAT								

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Basic Tax Due (Schedule 3)				P	1,373.03					P	1,373.03
Add: Interest					296.99						328.59
TOTAL AMOUNT DUE				P	1,670.02					P	1,701.62

Simply put, the BIR merely reiterated in the FLD/FAN and the attached Details of Discrepancies its findings in the PAN without any comment or discussion of respondent's arguments so that respondent may know the reasons for rejecting its refutations and explanations in the *Letter-Protest*. As pointed out by respondent, the FLD/FAN merely acknowledged the filing of respondent's *Letter-Protest*,²⁶ to wit:

This has reference to your letter dated May 30, 2014 duly received by this office on even date, relative to our Preliminary Assessment Notice (PAN) dated May 19, 2014 covering deficiency Value-Added Tax (VAT) amounting to P1,759,496.00, inclusive of statutory increments, for the period January 1, 2013 to June 30, 2013 under Letter of Authority (LOA) No. LOA-V08-2013-00000479/SN: eLA201100053240 dated October 11, 2013.

In reply, we hereby acknowledge your letter and that shall form part of the tax docket. However, we regret to inform you that we cannot delay the due process requirement in the issuance of a deficiency tax assessment pursuant to Section 3.1.1 of Revenue Regulation (RR) No. 18-2013, which states that "If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties."

Hence, this Formal Assessment Notice (FAN) has been issued to protect the interest of the government. Nevertheless, you may still file a valid protest against this FAN within thirty (30) days from receipt hereof in accordance with the provisions of Revenue Memorandum Circular (RMC) No. 39-2013. (Boldfacing supplied)

It is evident from the above-quoted FLD/FAN that petitioner had no intention to address respondent's arguments in its *Letter-Protest* to the PAN. Thus, We sustain the Court in Division's ruling that "[respondent] was left unaware on how [petitioner] or the BIR appreciated the explanations or defenses petitioner raised against the subject PAN, in clear violation of

²⁶ BIR Records (Exhibit "R-4"), pp. 140 to 145.

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its right to administrative due process, thereby rendering the subject VAT assessment void.”

Indeed, the Commissioner is not obliged to accept respondent’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.²⁷

The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.²⁸ His failure to give due consideration to respondent’s defenses, explanations, and supporting documents when he concluded respondent’s VAT liability in the FLD/FAN could hardly be considered substantial compliance with the due process requirement.

In the more recent case of *Commissioner of Internal Revenue v. Next Mobile, Inc. (Next Mobile case)*,²⁹ the Supreme Court *reiterated* its ruling in the *Avon* and *Ang Tibay* cases that “not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts **but the tribunal must consider the evidence presented.**”

The Supreme Court likewise ruled in the *Next Mobile* case that:

Finally, that Next Mobile was able to timely file a protest to the FAN is of no moment. **‘Such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued.’** It is a settled rule that tax assessments issued in violation of the right of the taxpayer to due process are null and void and bears no fruit.

Petitioner’s failure to give *due consideration* to respondent’s explanations or defenses in its *Letter-Protest* to the PAN and his inability to provide the reason/s for rejecting said explanations or defenses and the facts upon which his conclusions are based constitute a violation of respondent’s right to due process. Respondent’s filing of a Protest Letter

²⁷ *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021, citing *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

²⁸ *Id.*

²⁹ G. R. No. 232055 (Notice), April 27, 2022.

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dated July 25, 2014, against the FLD/FAN, invoking the same arguments raised in its *Letter-Protest* to the PAN, *does not denigrate the fact that it was deprived of statutory and procedural due process.*³⁰

Petitioner's disregard of the due process standards and rules under Section 228 of the NIRC of 1997, as amended and implemented by RR No. 12-1999 and RR No. 18-2013, renders the deficiency VAT assessment null and void. A void assessment bears no valid fruit.³¹


All told, We find no reversible error on the part of the Court in Division that would warrant the grant of the instant *Petition for Review*.

WHEREFORE, premises considered, the *Petition for Review* filed by the Commissioner of Internal Revenue is **DENIED** for lack of merit. Accordingly, the assailed Decision dated March 30, 2022, and the Resolution dated July 28, 2022, in CTA Case No. 9043, are **AFFIRMED**.

SO ORDERED.


LANEE S. CUI-DAVID
Associate Justice

We Concur:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN RINGPIS-LIBAN
Associate Justice

³⁰ *Id.*

³¹ *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767.

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CATHERINE T. MANAHAN
Associate Justice

ON LEAVE
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


HENRY S. ANGELES
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

RM