REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

RCL FEEDERS PHILS., INC.,
Respondent.

CTA *EB* NO. 2772
(CTA Case No. 9917)

Present:

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

Promulgated:
APR 29 2024 4:20pm

x - x

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 July 12, 2023, praying for the Court to reverse and set aside the Decision[2] dated February 1, 2023 (assailed Decision) and the Resolution[3] dated June 1, 2023 (assailed Resolution), both rendered by this Court's First Division (Court in Division) in CTA Case No. 9917 entitled "*RCL Feeders Phils., Inc. v. Commissioner of Internal Revenue.*" The dispositive portion of the assailed Decision and Resolution read as follows:

Assailed Decision dated February 1, 2023:

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. The subject tax assessments issued against petitioner for deficiency IT, VAT,

[1] *En Banc (EB)* Docket, pp. 6-26.
[2] *Id.*, pp. 29-50.
[3] *Id.*, pp. 52-54.

EWT, and WTC, and compromise penalty plus penalties and interests, for taxable year 2009, in the total amount of P6,691,793.38, are **CANCELLED** and **SET ASIDE**.

Accordingly, the FAN dated June 27, 2013, the FDDA dated October 11, 2016, and the Decision dated July 23, 2018 rendered by then Commissioner Caesar R. Dulay, affirming the assessed deficiency internal revenue taxes for the year 2009, all issued against petitioner, are hereby **WITHDRAWN**.

SO ORDERED.

Assailed Resolution dated June 1, 2023:

WHEREFORE, petitioner's *Motion for Reconsideration (of the Decision dated 01 February 2023)* is hereby **DENIED** for lack of jurisdiction.

SO ORDERED.

THE PARTIES

Petitioner is the Commissioner of Internal Revenue (CIR), charged with the duty of assessing and collecting internal revenue taxes. 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 counsels, with office address at Legal Division, BIR Region No. 8A – Makati City, 36th Floor, Export Bank Plaza Bldg., Sen. Gil Puyat Avenue, corner Chino Roces Avenue, Makati City.[4]

Respondent RCL Feeders Phils., Inc. (RCLFPI) is a domestic corporation duly organized and registered under the laws of the Republic of the Philippines, with principal office address at Suite 10-A Ayala Life FGU Center, 6811 Ayala Avenue, Makati City, Philippines. It may be served with legal processes at 20th Floor, Chatham House, Rufino corner Valero Streets, Salcedo Village, Makati City.[5]

THE FACTS

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

[4] *EB* Docket, p. 7.
[5] *Id.*, pp. 7-8.

A *Letter of Authority* (LOA) dated May 13, 2010, with No. LOA 200900003898, was issued by the BIR, authorizing Revenue Officers (ROs) Jumaimah Bagul and Kadapi Manarondong/Group Supervisor (GS) Josephine Elarmo, to examine the books of accounts and other accounting records of [respondent] for all internal revenue taxes, for the period from January 1, 2009 to December 31, 2009. Subsequently, an electronic LOA dated September 22, 2010 (SN: eLA 201000003968/LOA-050-2010-00000101) was issued by the BIR, authorizing again RO Bagul and GS Elarmo, to examine the same books and records of [respondent] for all internal revenue taxes, and for the same period.

On June 11, 2013, [respondent] received the *Preliminary Assessment Notice* (PAN) issued by [petitioner] on even date, and signed by then Regional Director (RD) Nestor S. Valeroso, finding [respondent] liable for deficiency internal revenue taxes, as follows: IT amounting to P1,155,567.73, VAT amounting to P3,372,691.50, EWT amounting to P72,511.92, WTC amounting to P376,283.45, and compromise penalty amounting to P8,000.00, or for a total of P4,985,054.60, for taxable year (TY) 2009.

Thereafter, on June 25, 2013, [respondent], through its representative, Mr. Nolan F. Cabradilla, filed its *Reply* to the PAN, which was received on June 26, 2013 by [petitioner].

On June 27, 2013, [respondent] received the *Formal Assessment Notice* (FAN), issued by [petitioner] on even date, and signed again by RD Valeroso, finding [respondent] liable for deficiency internal revenue taxes as follows: income tax amounting to P1,167,146.57, VAT amounting to P3,398,072.34, EWT amounting to P73,217.29, WTC amounting to P379,943.80, and compromise penalty amounting to P8,000.00, or for a total of P5,026,380.00, for TY 2009.

Subsequently, on July 22, 2013, [respondent] filed a protest letter to the FAN, which was duly received by [petitioner] on July 25, 2013.

[Petitioner] sent a letter to [respondent] on August 27, 2013, requiring the latter to submit necessary documents to support its claim/disagreement to Revenue District Office (RDO) No. 050-South Makati, within sixty (60) days from date of filing of protest pursuant to Section 3.1.5 of Revenue Regulations (RR) No. 12-99.

On October 20, 2016, [respondent] received the *Final Decision on Disputed Assessment* (FDDA) dated October 11, 2016, which was signed by then RD Jonas DP. Amora, finding [respondent] liable for deficiency internal revenue taxes as follows: income tax amounting to P1,633,773.62, VAT

> amounting to P4,420,920.40, EWT amounting to P101,643.66, WTC amounting to P527,455.70, and compromise penalty amounting to P8,000.00, or for a total of P6,691,793.38, for TY 2009.
>
> On November 10, 2016, [respondent] filed its *Motion for Reconsideration* to [petitioner], which was received by the latter on November 11, 2016, for the reconsideration of the assessment of the alleged deficiency internal revenue taxes for the year 2009.
>
> On August 1, 2018, [respondent] received the *Decision* rendered by then Commissioner Caesar R. Dulay, affirming the assessed deficiency internal revenue taxes for the year 2009.
>
> On August 31, 2018, [respondent] filed the instant *Petition for Review.*

In his *Answer*[6] filed through registered mail on November 12, 2018, petitioner interposed the following special and affirmative defenses, to wit: (1) the assessment is valid and has complied with the General Audit Procedures and Documentation; (2) the period to assess and collect petitioner's income tax (IT), expanded withholding tax (EWT), withholding tax on compensation (WTC), and value-added tax (VAT) liabilities has not yet prescribed; (3) the assessment is valid because the facts and the law are clearly stated in all the *Assessment Notices* issued by respondent; and (4) petitioner is liable for the deficiency IT, EWT, WTC, and VAT liabilities, and compromise penalties.

After the *Pre-trial Conference*, the parties filed their *Joint Stipulation of Facts and Issues*[7] (JSFI), based on which a *Pre-Trial Order*[8] was issued on August 5, 2019.

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

On February 1, 2023, the Court in Division rendered the assailed Decision granting respondent's *Petition for Review.* In finding in favor of respondent, the Court in Division ruled that Revenue Officer (RO) Raul M. Aquino was not authorized under a Letter of Authority (LOA) to conduct a reinvestigation of

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[6] Division Docket, Vol. I, pp. 106-115.
[7] *Id.*, Vol. I, pp. 338-345.
[8] *Id.*, Vol. I, pp. 370-380.

respondent. Hence, the resulting tax assessments are void. The Court in Division also ruled that petitioner violated respondent's right to administrative due process for failure to state the facts and the law on which the assessments are made. The Court in Division explained that as part of the due process requirement in the issuance of tax assessments, the petitioner must give reason(s) for rejecting respondent's explanations and must give the particular facts upon which the conclusions for assessing respondent are based, and those facts must appear on the record.

Not satisfied, petitioner moved for reconsideration,[9] but the same was denied in the equally assailed Resolution of June 1, 2023, based on jurisdictional ground. According to the Court in Division, the filing of petitioner's *Motion for Reconsideration (of the Decision dated 01 February 2023)* on March 2, 2023, was already time-barred. Hence, the assailed Decision had already attained finality.

Undeterred, petitioner filed a *Motion for Extension of Time to File Petition for Review*[10] on June 26, 2023, praying before this Court *En Banc* for an extension period of fifteen (15) days from June 28, 2023, or until July 13, 2023, to file his *Petition for Review*, which the Court *En Banc* granted in the *Minute Resolution*[11] dated June 27, 2023.

On July 19, 2023, the Court *En Banc* received petitioner's *Petition for Review* filed *via* registered mail on July 12, 2023. As such, in the *Minute Resolution*[12] dated August 10, 2023, the Court *En Banc* required respondent to file its comment thereto within ten (10) days from notice.

Considering the filing of respondent's *Comment (On Petitioner's Petition for Review dated July 11, 2023)*[13] on August 24, 2023, the instant case was submitted for decision on September 12, 2023.

Hence, this Decision.

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[9] *Id.*, Vol. III, pp. 1557-1570.
[10] *EB* Docket, pp. 1-3.
[11] *Id.*, p. 5.
[12] *Id.*, p. 60.
[13] *Id.*, pp. 61-78.

THE ASSIGNMENT OF ERRORS

Petitioner assigns the following errors allegedly committed by the Court in Division, to wit:

A. THE CTA IN DIVISION ERRED IN DECLARING THAT PETITIONER'S MOTION FOR RECONSIDERATION (OF THE DECISION DATED FEBRUARY 01, 2023) DATED FEBRUARY 27, 2023, WAS TIME-BARRED.

B. THE CTA IN DIVISION ERRED IN DECLARING THAT THE SUBJECT TAX ASSESSMENTS IS VOID.

***Petitioner's Arguments*:**

Petitioner avers that in denying his Motion for Reconsideration, the Court in Division ruled that "*the records of the instant case reveal that [petitioner] received the Assailed Decision, through the Bureau of Internal Revenue (BIR)-NOB-Litigation Division, on February 3, 2023.*" Hence, counting 15 days from then, the filing of his Motion for Reconsideration on March 2, 2023, was time-barred.

Petitioner disagrees with the above ratiocination, arguing that in the Resolution dated September 17, 2020, the Court in Division stated that all notices should be addressed to the Legal Division of the BIR Revenue Region No. 8A – Makati City. In fact, according to petitioner, as early as the filing of his *Answer*, it was manifested that petitioner is being represented by the Legal Division of BIR Revenue Region No. 8A – Makati City.

Petitioner avers that a perusal of the Notice of Decision reveals that it was received by the BIR Revenue Region No. 8A – Makati City on February 13, 2023. Hence, counting the 15-day reglementary period from February 13, 2023, petitioner submits that he timely filed his Motion for Reconsideration *via* registered mail on February 27, 2023, which the Court in Division received on March 2, 2023.

Petitioner also asserts that a valid LOA was issued authorizing the examination of respondent's books of accounts and other accounting records for taxable year 2009. According to petitioner, the law expressly grants the Revenue Regional Director the power to authorize the examination of taxpayers within its regional jurisdiction and make the assessment of the correct amount of tax.

Petitioner further argues that the principle laid down in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[14] *(McDonald's case)* is not applicable in the instant case. He explains that in the *McDonald's case*, the Memorandum of Assignment (MOA) was issued due to the transfer of assignment by the revenue officer named in the LOA while the investigation and examination of the books of accounts and other accounting records of *McDonald's* was still ongoing, and the Formal Letter of Demand was not yet issued. In contrast with this case, the MOA authorizing RO Raul M. Aquino to reinvestigate the tax assessment of respondent was issued: (1) after the issuance of the Final Assessment Notice (FAN); (2) when respondent requested for a reinvestigation of its tax deficiencies for taxable year 2009; and (3) not due to the transfer of assignment of the revenue officers named in the LOA.

Lastly, petitioner asserts that he fully complied with the due process requirement under Section 228 of the Tax Code, as amended, as implemented by Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, when he issued the subject Preliminary Assessment Notice (PAN), the FAN, and the Final Decision on Disputed Assessment (FDDA). According to petitioner, the BIR records clearly show that respondent was fully apprised of the legal and factual bases on how and why petitioner has arrived at his finding and conclusions assessing respondent of deficiency income tax and value-added tax for taxable year 2009 and was duly afforded an opportunity to controvert such findings when respondent was able to file a *Reply* against the PAN, a *protest* against the FAN, and a *Motion for Reconsideration* against the FDDA. Hence, for petitioner, there was no deprivation of administrative due process in the issuance of the FAN and FDDA.

Respondent's Counter-arguments:

By way of *Comment*, respondent counters that petitioner's *Motion for Reconsideration* was filed out of time. According to respondent, Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that any aggrieved party may seek a reconsideration of any court decision within 15 days from the date of receipt of the notice of the decision. In the case of *Abbot Laboratories Philippines, Inc. v. Abbot Laboratories Employees Union*,[15] the Supreme Court has already ruled that

[14] G.R. No. 242670, May 10, 2021.
[15] G.R. No. 131374, January 26, 2000.

"*failure to avail of the correct remedy within the period provided by law, the decision has become final and executory.*" For respondent, the Court in Division correctly ruled that petitioner's filing of his *Motion for Reconsideration* on March 2, 2023, was already time-barred for failure to avail of the correct remedy within the period provided by law.

Respondent likewise counters that the subject tax assessments are void (i) for lack of authority of the revenue officers who conducted the actual examination of its books of accounts and other accounting records and (ii) for violation of its right to administrative due process.

According to respondent, the Court in Division correctly ruled that a reinvestigation is in effect a continuation of the examination and audit which necessitates the issuance of a new LOA. In the instant case, no new LOA was issued in favor of the RO to whom the reinvestigation has been re-assigned or transferred. Further, the Court in Division is correct in holding that due process requires the petitioner to give reason(s) for rejecting respondent's explanations and must give the particular facts upon which the conclusions for assessing respondent are based. Respondent emphasizes that the findings in the PAN, FAN, and FDDA are mere carbon copies since petitioner did not provide any explanation as to the appreciation of its arguments and documents submitted therein.

THE COURT EN BANC'S RULING

The instant *Petition for Review* is without merit.

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 RRCTA states:

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

Records show that petitioner received the assailed Resolution dated June 1, 2023, which denied his *Motion for Reconsideration (of the Decision dated 01 February 2023)* on June 13, 2023.[16] Thus, petitioner had fifteen (15) days from June 13, 2023, or until June 28, 2023, to file his *Petition for Review* before the Court *En Banc*.

On June 26, 2023, petitioner filed a *Motion for Extension of Time to File Petition for Review*,[17] asking for an additional period of fifteen (15) days from June 28, 2023, or until July 13, 2023, to file his *Petition for Review*. Said *Motion* was granted by the Court *En Banc* in a *Minute Resolution*[18] dated June 27, 2023.

Considering that the present *Petition for Review* was filed *via* registered mail on July 12, 2023, within the extended period granted by the Court, the same was timely filed. Hence, the Court *En Banc* has jurisdiction over the same.

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

Petitioner's Motion for Reconsideration (of the Decision dated 01 February 2023) was filed on time.

Section 5, Rule 14 of the RRCTA provides that the Clerk of Court or Division Clerk of Court shall serve notice of the Court's decision or resolution upon the parties or their counsel, furnishing them with certified true copies thereof.[19]

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[16] Notice of Resolution, *En Banc* Docket, p. 51.
[17] *EB* Docket, pp. 1-3.
[18] *EB* Docket, p. 5.
[19] SEC. 5. Promulgation and notice of decision and resolution.- The Clerk of Court or Deputy Clerk of Court shall have the direct responsibility for the promulgation of the decision and resolution of the Court. ...

Moreover, Section 2, Rule 13 of the Rules of Court, as amended, which has suppletory application to the RRCTA, provides for the service of court processes as follows, to wit:

> Section 2. *Filing and service, defined.* – Filing is the act of submitting the pleading or other paper to the court.
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> Service is the act of providing a party with a copy of the pleading or **any other court submission**. **If a party has appeared by counsel, service upon such party shall be made upon his or her counsel, unless service upon the party and the party's counsel is ordered by the court**. Where one counsel appears for several parties, such counsel shall only be entitled to one copy of any paper served by the opposite side.
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> Where several counsels appear for one party, such party shall be entitled to only one copy of any pleading or paper to be served upon the lead counsel if one is designated, or upon any one of them if there is no designation of a lead counsel. [*Emphasis supplied*]

In *Francis C. Cervantes v. City Service Corporation, et al.*,[20] the Supreme Court emphasized that where a party appears by an attorney in an action or proceeding in a court of record, all notices required to be given therein *must* be provided to the attorney of record, *viz.*:

> ..., service means the delivery or communication of a pleading, notice or some other paper in a case, to the opposite party so as to charge him with receipt of it and subject him to its legal effect. The purpose of the rules on service is to make sure that the party being served with the pleading, order or judgment is duly informed of the same so that he can take steps to protect his interests; *i.e.*, enable a party to file an appeal or apply for other appropriate reliefs before the decision becomes final.
>
> The rule is —
>
> **where a party appears by attorney** in an action or proceeding in a court of record, **all notices** required to be given therein ***must* be given to the attorney of record**; and **service of the court's order upon any person other than the counsel of record is not legally effective and binding upon the party, nor may it start the corresponding reglementary period for the subsequent**

Promulgation consists of the filing of the decision or resolution with the Clerk of Court or Division Clerk of Court, who shall forthwith annotate the date and the time of receipt and attest to it by signing thereon. **The Clerk of Court or Division Clerk of Court shall serve notice of such decision or resolution upon the parties or their counsel, furnishing them with certified true copies thereof.**

[20] G.R. No. 191616, April 18, 2016.

> **procedural steps that may be taken by the attorney.** Notice should be made upon the counsel of record at his exact given address, to which notice of all kinds emanating from the court should be sent in the absence of a proper and adequate notice to the court of a change of address.
>
> When a party is represented by counsel of record, service of orders and notices must be made upon said attorney; and notice to the client and to any other lawyer, not the counsel of record, is not notice in law. [*Emphasis supplied*]

Stated simply, when a party is represented by counsel of record, service of notices, decisions, and resolutions must be made upon said attorney, and the service on any person other than the counsel of record is not legally effective, nay, binding on the party; nor may it start the corresponding reglementary period for the subsequent procedural steps which may be taken by the attorney. [21]

Here, the Court in Division noted in its Resolution dated September 17, 2020, that all pleadings, notices, orders, resolutions, and *decision* of the Court in Division shall be addressed to petitioner's counsel at **Legal Division, BIR Revenue Region 8A – Makati City, 2/F BIR Regional Office Bldg., 313 Sen. Gil Puyat Avenue, Makati City**. The pertinent portion of the Resolution reads:

> The appearance of Atty. Arlene R. Garcia-Andal as [petitioner's] counsel is **WITHDRAWN**. Henceforth, all pleadings, notices, orders, resolutions and decision of this Court in relation to the above-captioned case shall be addressed to [petitioner's] new counsel, **Atty. Norwidad R. Solaiman**, Legal Division, Bureau of Internal Revenue (BIR Revenue Region 8A – Makati City, 2/F BIR Regional Office Bldg., 313 Sen. Gil Puyat Avenue, Makati City. [*Emphasis supplied*]

Nonetheless, in the assailed Resolution of June 1, 2023, the Court in Division reckoned the 15-day reglementary period to file a motion for reconsideration under Section 1, Rule 15 of the RRCTA *not* from receipt of the assailed Decision by petitioner's counsel of record[22] *on February 13, 2023*, but from receipt of petitioner, through the BIR-NOB-Litigation Division,[23] *on February 3, 2023*, to wit:

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[21] *Tan, et al. v. Dagpin*, G.R. No. 212111, January 15, 2020; and *Cervantes v. City Service Corp.*, G.R. No. 191616, April 18, 2016.
[22] The Legal Division, BIR Revenue Region 8A, Makati City.
[23] The BIR National Office Building (NOB), BIR Road, Diliman, Quezon City.

> In the instant motion, [petitioner] avers that he received the Assailed Decision on February 13, 2023. However, the records of the instant case reveal that **[petitioner] received the Assailed Decision, through the Bureau of Internal Revenue (BIR)-NOB-Litigation Division, on February 3, 2023**.
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> In accordance with the abovementioned provision of the RRCTA, [petitioner] had fifteen (15) days from receipt of notice of said decision from **February 3, 2023 or until February 18, 2023** within which to file his motion for reconsideration. Thus, [petitioner's] *Motion for Reconsideration (of the Decision dated 01 February 2023)* dated February 27, 2023, which was filed on March 2, 2023, was time-barred. [*Emphasis supplied*]

Following the *dictum* that *when a counsel of record represents a party, service of orders and notices must be made upon such counsel*, the 15-day period for filing a motion for reconsideration should be reckoned from the receipt of a copy of the assailed Decision by petitioner's counsel of record on February 13, 2023. Thus, counting 15 days from February 13, 2023, petitioner had until February 28, 2023 to file his motion for reconsideration. Evidently, **the filing of petitioner's *Motion for Reconsideration (of the Decision dated 01 February 2023)* through registered mail on February 27, 2023,**[24] and received by the Court in Division on March 2, 2023, **is on time**.

Having determined that petitioner's *Motion for Reconsideration (of the Decision dated 01 February 2023)* was seasonably filed, the assailed Decision has not yet attained finality.

After the issuance of FAN, an LOA is not necessary to authorize Revenue Officer Raul M. Aquino to reinvestigate respondents' deficiency tax assessments.

Assuming that an LOA is required to conduct a reinvestigation, its absence would only invalidate the FDDA issued after the reinvestigation.

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[24] Division Docket, p. 1572.

In the assailed Decision, the Court in Division ruled as follows:

> A reinvestigation, once granted by [petitioner], involves the re-evaluation of an assessment on the basis of newly discovered or additional evidence of the concerned taxpayer. thus, it is, in effect, a continuation of the examination and audit of the latter which necessitates the issuance of a new LOA, in case the RO, who would conduct such reinvestigation, is different from the one(s) named in the previously-issued LOA. In other words, the new RO would be acting as a substitute or replacement of those named in the said LOA.
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> ... ...
>
> Such being the case, considering that RO Raul M. Aquino was merely armed with an MOA, the reinvestigation conducted by him is tainted with illegality since no new LOA was issued in the said RO's favor.
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> ... ...
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> Consequently, the resulting tax assessments are void.

The *ponencia* in *esse* declares that the Assessment Notices (FANs) subject of the present case are void as the revenue officer who conducted the **reinvestigation** of respondent's deficiency tax assessments was not armed with a valid LOA.

We differ.

Indeed, the NIRC of 1997, as amended, requires authority from the CIR or from his duly authorized representatives before an examination of a taxpayer may be made.[25] Section 6 thereof provides:

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

[25] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

Relatedly, Section 13 of the NIRC of 1997, as amended, states:

> Sec. 13. Authority of a Revenue Officer. — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself. [*Emphasis supplied*]

While the law explicitly requires an LOA to be addressed to a revenue officer before an examination of a taxpayer and recommendation of an assessment may be had, the law does not specifically require the same for purposes of recommending a final decision on a disputed assessment.

Needless to say, the requirement for the issuance of an LOA by the Commissioner or his duly authorized representative, as mandated under Sections 6 and 13 of the NIRC of 1997, as amended, pertains to such stage where the RO and GS would conduct an audit of the books of accounts and other accounting records of the taxpayer after the filing of the latter's tax returns, and recommend the issuance of a PAN, and FAN. It does not envision a situation where a **reinvestigation** will have to be conducted to come up with a *decision* on the *Protest* to the FAN or Assessment Notice by way of an FDDA.

Moreover, even **assuming that an LOA is required to conduct the reinvestigation, its absence would only invalidate the resulting *decision*, such as the FDDA**. For sure, the disquisition of the Supreme Court in the case of *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*[26] (*Liquigaz case*) is most enlightening, to wit:

> "A void FDDA does not *ipso facto* render the assessment void.
>
> ... ...

[26] G.R. Nos. 215534 & 215557, April 18, 2016.

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

> In the first place, we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it, and that consequently, the period of thirty days prescribed by section II of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a 'disputed assessment' that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, in accordance with paragraph (1) of section 7, Republic Act No. 1125, conferring appellate jurisdiction upon the Court of Tax Appeals to review 'decisions of the Collector of Internal Revenue in cases involving disputed assessment. . .'

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

An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. **As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer**. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.

> **Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other — unless the law or regulations otherwise provide**.
>
> ... ...
>
> The Court, however, finds that the CTA erred in concluding that the assessment on EWT and FBT deficiency was void because the FDDA covering the same was void. **The assessment remains valid notwithstanding the nullity of the FDDA because as discussed above, the assessment itself differs from a decision on the disputed assessment**.
>
> As established, an FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. Therefore, it is as if there was no decision rendered by the CIR. It is tantamount to a denial by inaction by the CIR, which may still be appealed before the CTA and the assessment evaluated on the basis of the available evidence and documents. The merits of the EWT and FBT assessment should have been discussed and not merely brushed aside on account of the void FDDA.
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> ... ...
>
> To recapitulate, **a 'decision' differs from an 'assessment' and failure of the FDDA to state the facts and law on which it is based renders the decision void — but not necessarily the assessment**. Tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided." [*Citations omitted and emphasis supplied*]

Clearly, a decision on a disputed assessment *differs* from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other.

In the instant case, it is undisputed that RO Jumaimah Bagul examined respondent's books of accounts and other accounting records and **recommended the issuance of the PAN and FANs under a validly issued LOA**. However, respondent protested the FANs on July 25, 2013.

Pursuant to Revenue Memorandum Order (RMO) No. 69-2010,[27] an MOA shall be issued for protested cases or cases for **reinvestigation**. Further, RMO No. 08-06 [28] provides that protested cases under re-investigation shall not be assigned to the same RO who handled the original investigation. Hence, the reinvestigation of petitioner's protest letter was referred to a different revenue officer, specifically RO Raul M. Aquino.

Revenue District Officer Maridur V. Rosario, who issued the MOA No. RR8-050-MOA-PRO-093013-03(FAN) dated September 30, 2013, authorizing RO Raul M. Aquino to conduct the "reinvestigation," is not among those "authorized representative" contemplated under Section 6 of the NIRC of 1997, as amended, who may authorize the examination of any taxpayer and the assessment of the correct amount of tax. However, the same should not invalidate the FAN and Assessment Notices *previously* issued against respondent. For one, the FDDA, which was issued upon the recommendation of RO Raul M. Aquino, is **not** an assessment but a decision on a disputed assessment. For another, and following the *dictum* enunciated in *Liquigaz*, a void FDDA does not *ipso facto* render the assessment void.

Hence, even if RO Raul M. Aquino was not duly authorized by an LOA to conduct the reinvestigation of respondent, the same would only render the FDDA void but not the FAN and Assessment Notices duly issued under a valid LOA.

Nevertheless, even if the FANs were issued pursuant to a valid LOA, they are still void for having been issued in violation of respondent's right to due process.

Let it be emphasized that 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.[29] The Supreme Court has consistently nullified tax assessments that violated the taxpayer's right to due process.

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[27] "Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment." August 11, 2010.
[28] "Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS)," February 1, 2006.
[29] *Lourdes College v. Commissioner of Internal Revenue*, G.R. No. 226210, January 18, 2021.

In the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*[30] (*Avon case*) cited in the assailed Decision, 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 party be sufficiently informed of the reasons for its conclusions.

[30] G.R. Nos. 201398-99 and 201418-19. October 3. 2018.

... ...

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; emphasis supplied*]

The foregoing doctrinal pronouncement affirms that the issuance of a PAN is a part of due process; that the issuance thereof gives both the taxpayer and the BIR the opportunity 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 before the FAN is issued; 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.

In the instant case, the Court in Division correctly ruled that:

> In this case, as stated in the PAN dated June 11, 2013, the BIR found the following as due from [respondent] for TY ending December 31, 2009, to wit:
>
> | | Basic | Surcharge | Interest | Total |
> |---|---|---|---|---|
> | Income Tax | P704,379.13 | - | P451,188.60 | P1,155,567.73 |
> | VAT | 1,544,001.50 | P772,000.75 | 1,056,689.25 | 3,372,691.50 |
> | EWT | 42,909.94 | - | 29,601.98 | 72,511.92 |
> | WTC | 222,670.98 | - | 153,612.47 | 376,283.45 |
> | Total | P2,513,961.55 | P772,000.75 | P1,691,092.30 | P4,977,054.60 |
>
> In its Reply to the PAN, [respondent] made explanations regarding each of the said deficiency taxes.
>
> However, in the FAN dated June 27, 2013, [respondent] was still assessed of the following tax liabilities, to wit:
>
> | | Basic | Surcharge | Interest | Total |
> |---|---|---|---|---|
> | Income Tax | P704,379.13 | - | P462,767.44 | P1,167,146.57 |
> | VAT | 1,544,001.50 | P772,000.75 | 1,082,070.09 | 3,398,072.34 |
> | EWT | 42,909.94 | - | 30,307.35 | 73,217.29 |
> | WTC | 222,670.98 | - | 157,272.82 | 379,943.80 |
> | Total | P2,513,961.55 | P772,000.75 | P1,732,417.70 | P5,018,380.00 |
>
> While the total amount of taxes being assessed increased, a comparison of the figures stated in the PAN dated June 11, 2013, and the foregoing figures would reveal that the respective amounts of basic taxes, and surcharge due remain unchanged. In other words, the BIR merely adjusted the interests being imposed. Moreover, it is noteworthy that in the said FAN, the BIR did not address any of the explanations made by petitioner in its *Reply* to the PAN — an indication that the BIR did not consider the same when it issued the subject FAN.
>
> Furthermore, it is noted that on July 22, 2013, petitioner filed a protest letter to the FAN, again reiterating its explanations, apparently because the same were not addressed in the same FAN.

In response to petitioner's protest, the FDDA dated October 11, 2016 was issued by the BIR. However, just like in the FAN dated June 27, 2013, the BIR merely adjusted the interests being imposed, and again failed to consider petitioner's explanations, viz.:

	Basic	Surcharge	Interest	Total
Income Tax	P704,379.13	-	P929,394.49	P1,633,773.62
VAT	1,544,001.50	P772,000.74	2,104,918.18	4,420,920.40
EWT	42,909.94	-	58,733.72	101,643.66
WTC	222,670.98	-	304,784.72	527,455.70
Total	P2,513,961.55	P772,000.74	P3,397,831.11	P6,683,793.38

To emphasize, pursuant to the *Avon* case, the concerned taxpayer must be fully apprised of the factual and legal bases of the assessments, and must not be left unaware on how respondent or her authorized representatives appreciated the explanations or defenses raised by petitioner in connection with the assessments.

Correspondingly, as part of the due process requirement in the issuance of tax assessments, the respondent must give reason(s) for rejecting petitioner's explanations, and must give the particular facts upon which the conclusions for assessing petitioner are based, and those facts must appear on record. The respondent has obviously not observed such requirement in the issuance of the subject FAN, and the subject FDDA.[31]

Similar to the *Avon* case, petitioner did not address any of the explanations made by respondent in its *Reply* to the PAN.

A perusal of the records reveals that on *June 11, 2013*, respondent received the PAN issued by petitioner on an even date. Within 14 days, or on June 25, 2013, respondent filed its *Reply* to the PAN, which petitioner received on June 26, 2013. On *June 27, 2013,* respondent received the FAN issued by petitioner on an even date. These circumstances indicate that petitioner had no intention to address respondent's arguments in its *Reply* when petitioner issued the FAN barely one (1) day after receiving respondent's *Reply.*

Petitioner merely reiterated in the FANs with *Details of Discrepancies* [32] his findings in the PAN with *Details of Discrepancies,*[33] save for adjustments in the interest imposed, without any comment or discussion of respondent's arguments

[31] *Assailed Decision* of February 1, 2023, pp. 19-21.
[32] BIR Record - Folder 1, pp. 1248, 1246, and 1245.
[33] BIR Record - Folder 1, pp. 1294, 1293, and 1292.

so that respondent may know the reasons for rejecting its refutations and explanations in the *Reply*.

Indeed, petitioner is not obliged to accept respondent's explanations; however, when he rejects these explanations, he must give some reason for doing so. He must give the particular facts upon which his conclusions are based, and those facts must appear in the record.[34]

The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.[35] Petitioner's failure to give due consideration to respondent's defenses, explanations, and supporting documents when he concluded in the FAN that respondent had deficiency tax liabilities 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*),*[36] 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."***

Indeed, the right of a taxpayer to protest the PAN carries with it the correlative duty on the part of the BIR to consider the response thereto, and the issuance of the FAN without even hearing the side of the taxpayer is anathema to the cardinal principles of due process. Right to due process is the opportunity to be heard. However, such an opportunity would be wasted if the reply or protest to assessments submitted to the BIR is not considered. It is an empty and meaningless exercise if the BIR does not even consider the same.

To repeat, as part of the due process requirement in the issuance of tax assessments, petitioner must give the reason/s for rejecting respondent's explanations and the particular facts upon which his conclusions are based, which must appear on the record. Respondent's filing of a Protest Letter against the FANs on July 22, 2013, invoking the same arguments raised in

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[34] *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.
[35] *Id.*
[36] G. R. No. 232055 (Notice), April 27, 2022.

its *Reply* to the PAN, ***does not denigrate the fact that it was deprived of statutory and procedural due process.***[37] As ruled by the Supreme Court in the *Next Mobile* case:

> ..., 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 assessment issued in violation of the right of the taxpayer to due process are null and void and bears no fruit.

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 FAN and Assessment Notices null and void.

The CIR's right to assess petitioner of its internal revenue taxes has prescribed.

At this juncture, it is also worth noting that the period for assessing respondent's deficiency taxes for taxable year 2009 has prescribed.

In the instant case, respondent claims that the right of petitioner to assess it for alleged deficiency taxes for taxable year 2009 was already prescribed when the FAN and Assessment Notices were issued on June 27, 2013.

We agree.

Section 203 of the NIRC of 1997, as amended, provides for a period of three (3) years for the BIR to assess internal revenue taxes, counted from the last day prescribed by law for the filing of the return or from the day the return was filed, whichever comes later. Consequently, any assessment issued after the expiration of such period is no longer valid and effective.

By way of an exception, Section 222 of the NIRC of 1997, as amended, provides:

> Sec. 222. Exceptions as to the Period of Limitation of Assessment and Collection of Taxes. -

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[37] *Id.*

> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.
>
> xxx xxx xxx

In *SMI-Ed Philippines Technology, Inc. v. Commissioner of Internal Revenue*,[38] the Supreme Court explained the primary reason behind the prescriptive period on the CIR's right to assess or collect internal revenue taxes, that is, to safeguard the interests of taxpayers from unreasonable investigation. Accordingly, the Government must assess internal revenue taxes on time so as not to indefinitely extend the period of assessment and deprive the taxpayer of the assurance that it will no longer be subject to further investigation for taxes after a reasonable period expires.

To implement the foregoing provisions, the BIR issued RMO No. 20-90 on April 4, 1990, which provides the guidelines for the proper execution of the *Waiver of Statute of Limitations* under the NIRC. It holds that a valid waiver of the statute of limitations must be: (a) in writing; (b) agreed to by both the Commissioner and the taxpayer; (c) issued before the expiration of the ordinary prescriptive periods for assessment and collection; and (d) for a definite period beyond the ordinary prescriptive period for assessment and collection.[39]

Parenthetically, Revenue Delegation Authority Order (RDAO) No. 05-01, dated August 2, 2001, authorized subordinate Bureau officials to sign the waivers and introduced a new waiver form. It also provided the following procedures for the proper execution of a valid waiver, to wit:

> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after _____ 19 ____," which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled-up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by

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[38] 746 Phil. 607 (2014).
[39] *La Flor Dela Isabela, Inc. v. CIR*, G.R. 202105, April 28, 2021, citing *BPI v. CIR*, G.R. No. 139736, October 17, 2005.

the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR, or the revenue official authorized by him, must sign the waiver, thereby indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, has been duly notarized, and was executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and the date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy, to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.[40]

These requirements are mandatory and must be strictly followed.[41] The Supreme Court did not hesitate to strike down and invalidate waivers that failed to strictly comply with the provisions of RMO No. 20-90 and RDAO No. 05-01.

In the more recent case of *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue*,[42] the periods for the CIR to assess or collect the alleged deficiency taxes were not extended, and the assessments issued were considered void and of no legal effect because of defects in the waiver. Thus:

> "Applying Section 222 (b) in relation with Section 203 of the NIRC, as well as the applicable BIR issuances, namely, RMO 20-90 and RDAO 05-01, and the relevant jurisprudence, We find that the waivers subject of this case failed to strictly comply with the requirements under the law.

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[40] *La Flor Dela Isabela, Inc. v. CIR*, G.R. No. 202105, April 28, 2021 citing *CIR v. Systems Technology Institute, Inc.*, G.R. No. 220835, July 26, 2017.
[41] *Id.*
[42] G.R. No. 202105, April 28, 2021.

> First, the first and fourth waivers . . . **failed to specify the date of acceptance by the CIR or his duly authorized representative** for the purpose of determining whether the said waivers were validly accepted before the expiration of the original three-year period and the period agreed upon in case of subsequent agreement.
>
> Second, all five waivers were signed by Cesar C. Maranan (Maranan), the Accounting Manager of petitioner La Flor. . . . **No notarized written authority was attached to the waivers authorizing Maranan to sign the waivers for and on behalf of La Flor**. Neither was there any evidence showing that Maranan was among the responsible officials of petitioner La Flor authorized by its by-laws to execute a waiver.
>
> Third, even assuming that the first three waivers were validly executed and that Maranan had authority to sign the waivers on behalf of petitioner, the fourth Waiver was executed and notarized only on January 6, 2004, clearly beyond the expiry of the third waiver on December 31, 2003. The fourth waiver did not also indicate the date of acceptance by the CIR or his duly authorized representative. It bears noting that both the execution and the acceptance of the subsequent waiver should be made before the expiration of the period of prescription or before the lapse of the period agreed upon in the prior or preceding waiver. Patently, the fourth Waiver was executed and accepted on January 6, 2004, or beyond the period agreed upon by La Flor and the CIR in the third Waiver, i.e., until December 31, 2003.
>
> Consequently, with the nullity of the fourth waiver, the execution and acceptance of the fifth waiver on November 4, 2004 were not valid since there was no more period to extend for which the CIR could assess La Flor's internal revenue taxes for taxable year 1999. Section 222(b) of the NIRC is explicit that the period agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon." (*Boldfacing supplied*)

Applying Section 222(b), in relation to Section 203 of the NIRC of 1997, as amended, as well as RMO No. 20-90, RDAO No. 05-01, and the relevant jurisprudence, We find the *Waiver*[43] executed by Mr. Jesus B. Sedano suffers from the following defects:

1. Mr. Jesus B. Sedeno signed the *Waiver* without the notarized written authority from the corporation's Board of Directors. It bears emphasizing that RDAO No. 05-01 directs the authorized revenue official to ensure that the

[43] Exhibit P-6, Division Docket, p. 862.

waiver is duly accomplished and signed by the taxpayer or his authorized representative, before affixing his signature to signify his acceptance of the same; and in case the authority is delegated by the taxpayer to a representative, as in this case, the concerned revenue official shall see to it that such delegation is in writing and duly notarized.

2. Respondent's copy of the *Waiver* failed to indicate the date of acceptance by the CIR or his duly authorized representative for the purpose of determining whether the acceptance was made before the expiration of the original three-year period.

3. The *Waiver* was not properly notarized as the person(s) who appeared before the Notary Public was left blank.

Considering the foregoing defects in the *Waiver* executed by the parties, the period for petitioner to assess respondent for deficiency taxes for taxable year 2009 was not extended until June 30, 2013. Hence, the FAN and Assessment Notices, all issued on June 27, 2013, are void and of no legal effect as they were issued beyond the three-year period to assess, *i.e.*, April 15, 2013.

All told, even if the FAN and Assessment Notices were issued pursuant to a valid LOA, the same are still void for having been issued (i) in violation of respondent's right to due process and (ii) beyond the three-year prescriptive period to assess.

WHEREFORE, premises considered, the *Petition for Review* filed by the Commissioner of Internal Revenue is **DENIED** for lack of merit.

Accordingly, the Decision dated February 1, 2023, is **AFFIRMED** on the grounds stated herein.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

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