Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**G.R. No. 261065**
	Present:
	CAGUIOA, *J.*, Chairperson,
	INTING,
	GAERLAN,
- versus -	DIMAAMPAO, and
	SINGH, *JJ.*
	Promulgated:
MAXICARE HEALTHCARE CORPORATION, *Respondent.*	July 10, 2023

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D E C I S I O N

SINGH, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 (the **Petition**) filed by petitioner Commissioner of Internal Revenue (**CIR**) assailing the Decision,[2] dated November 25, 2021, of the Court of Tax Appeals *En Banc* (**CTA *En Banc***) in CTA EB No. 2325, as well as the Resolution,[3] dated April 26, 2022, of the CTA *En Banc* in the same case, which denied the CIR's Motion for Reconsideration. The CTA *En Banc*

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1 *Rollo*, pp. 11-23.

2 Id. at 31-42, Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro, and Marian Ivy F. Reyes-Fajardo.

3 Id. at 44-47.

Decision affirmed the Decision,[4] dated January 16, 2020, as well as the Resolution,[5] dated July 21, 2020, of the Court of Tax Appeals First Division (**CTA First Division**) in CTA Case No. 9246.

The CTA First Division Decision withdrew and set aside the Final Decision on the Disputed Assessment (**FDDA**), dated December 9, 2015, issued by the CIR against respondent Maxicare Healthcare Corporation (**Maxicare**), and also cancelled and set aside the Formal Letter of Demand (**FLD**) and Final Assessment Notice (**FAN**), both dated October 8, 2015, assessing Maxicare for deficiency value-added tax (**VAT**) and compromise penalty for calendar year 2012, on the ground that the CIR had violated Maxicare's right to due process.

The Facts

Maxicare is a domestic corporation organized primarily for the purpose of operating a prepaid group practice health care delivery system or a health maintenance organization.[6]

On August 28, 2014, the CIR issued Letter of Authority No. 126-2014-00000060, authorizing the examination of Maxicare's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2012 to December 31, 2012.[7]

On August 27, 2015, Maxicare received a Preliminary Assessment Notice (**PAN**), dated August 25, 2015, which assessed it for deficiency VAT for calendar year 2012 in the amount of ₱618,251,527.72, inclusive of penalties and surcharges.[8]

On September 14, 2015, Maxicare protested the PAN through a letter, dated September 10, 2015.[9]

On October 15, 2015, Maxicare received the FLD and FAN, both dated October 8, 2015, finding it liable for deficiency VAT in the amount of

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4 Id. at 48-70. Penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan.
5 Id. at 71-75.
6 Id. at 48-56, CTA First Division Decision.
7 Id. at 49, CTA First Division Decision.
8 Id.
9 Id.

₱419,774,484.21, inclusive of penalties and surcharges, for calendar year 2012.[10]

On November 9, 2015, Maxicare filed a letter, dated November 6, 2015, with the CIR, protesting the FLD/FAN.[11]

Thereafter, the CIR issued the FDDA, dated December 9, 2015, which Maxicare received on December 21, 2015, reiterating the assessment of deficiency VAT and compromise penalty for the year 2012.[12]

Thus, on January 20, 2016, Maxicare filed a Petition for Review with the CTA, which was docketed with the CTA First Division as CTA Case No. 9246.[13]

The Ruling of the CTA First Division

The dispositive portion of the CTA First Division Decision,[14] dated January 16, 2020, reads:

> **WHEREFORE,** the instant *Petition for Review* filed by petitioner Maxicare Healthcare Corporation is hereby **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated December 9, 2015 issued against petitioner is **WITHDRAWN** and **SET ASIDE**. Furthermore, the Formal Letter of Demand and Final Assessment Notice, both dated October 8, 2015, assessing petitioner for deficiency Value-Added Tax and Compromise Penalty for calendar year 2012, are likewise **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED**.[15] (Emphasis in the original)

The CTA First Division ruled that the CIR had violated Maxicare's right to due process, as the CIR failed to give Maxicare the opportunity to submit relevant supporting documents within 60 days from the filing of its protest to the FLD/FAN, which protest was a request for reinvestigation, as mandated by Section 228 of the National Internal Revenue Code of 1997, as amended (**NIRC**), and Revenue Regulations (**RR**) No. 12-99, as amended, which implements Section 228 of the NIRC.[16]

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10 Id. at 49, CTA First Division Decision.
11 Id.
12 Id. at 50.
13 Id.
14 Id. at 48-70.
15 Id. at 69-70.
16 Id. at 58-62.

The CTA First Division found that as the FDDA was issued prior to the lapse of the 60-day period which Maxicare had to file its supporting documents, then the FDDA was issued prematurely and in violation of Maxicare's due process rights.

The CTA First Division held pertinently:

> The record shows that on November 9, 2015, or within the 30-day period from receipt of the FAN/FLD, petitioner filed a letter protest dated November 6, 2015 explicitly requesting for a reinvestigation of its tax case. The relevant portion of the said letter protest reads as follows:
>
> > Considering the clarifications made, **we request for reinvestigation of the BIR assessment of deficiency VAT for 2012**, and the cancellation and/or withdrawal of the FAN and the FLD for being without basis in fact and in law. **We shall submit within sixty (60) days from the date of filing hereof the pertinent supporting documents** and additional explanations on the foregoing items in the assessment.
>
> Hence, petitioner had 60 days from the filing of such letter protest or until January 8, 2016 to submit relevant supporting documents. Respondent however in haste issued the assailed FDDA on December 9, 2015 without allowing the 60-day period to lapse thereby preventing petitioner from submitting relevant supporting documents for purposes of reinvestigation of its tax case in clear violation of its right to due process.
>
> Respondents blatant disregard of petitioner's right to due process rendered the subject deficiency tax assessments null and void. As such, the said deficiency tax assessments bear no valid fruit.
>
> In view thereof, the Court finds it unnecessary to address or resolve the other issues raised by the parties.[17] (Emphasis in the original; citations omitted)

The CTA First Division, in a Resolution,[18] dated July 21, 2020, denied the CIR's Motion for Reconsideration of the January 16, 2020 Decision for lack of merit. In the Resolution, the CTA First Division held:

> As declared by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.*, the BIR is mandated to perform its assessment functions in accordance with law, and strict adherence thereto, with their own rules of procedure, and always with regard to the basic tenets of due process. Failure of the BIR to observe due process shall render the deficiency tax assessment void, and of no force and effect.[19]

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17 Id. at 68-69, Decision
18 Id. at 71-75.
19 Id. at 74-75.

Dissatisfied, the CIR filed a Petition for Review with the CTA *En Banc*, assailing the CTA First Division's Decision and Resolution.[20]

The Ruling of the CTA En Banc

The CTA *En Banc*, in its Decision,[21] dated November 25, 2021, affirmed the CTA First Division's Decision and Resolution.

The dispositive portion of the November 25, 2021, Decision is as follows:

> **WHEREFORE**, premises considered, the Petition for Review filed with the Court *En Banc* on September 04, 2020 is **DENIED** for lack of merit. Accordingly, the January 16, 2020 Decision and July 21, 2020 Resolution in CTA Case No. 9246 are **AFFIRMED**.
>
> Consequently, Petitioner is **ENJOINED** and **PROHIBITED** from collecting against Respondent the amounts representing the assessed deficiency VAT which was set aside and cancelled by this Court.
>
> **SO ORDERED**.[22] (Emphasis in the original)

The CTA *En Banc* ruled in the following manner:

> We echo the First Division's ruling that part of the due process requirement to be observed in the issuance of a deficiency tax assessment is that the taxpayer, after filing a protest embodying a request for investigation, must be given a period of sixty (60) days within which to submit all relevant supporting documents in support thereof. This is found in Section 228 of the NIRC of 1997, as amended, and Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013[.]
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> x x x x
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> In the instant case, a careful scrutiny of the records show that Respondent indicated in its protest to the FLD/FAN that it would furnish Petitioner with supporting documents, to wit:
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> x x x x
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> Clearly, Respondent's manifestation of its intention to submit supporting documents in its protest only goes to show that Respondent is seeking a reinvestigation of its tax assessment on the basis of additional evidence to be presented.

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20 Id. at 48-70 & 71-75.
21 Id. at 31-42.
22 Id. at 40-41.

> **With Petitioner's issuance of the FDDA on December 09, 2015, before the lapse of the sixty (60) day period or mere thirty (30) days after the filing of the protest to the FLD/FAN, Respondent was essentially precluded from its right to submit supporting documents in support of its protest. This is in violation of the law which categorically grants the taxpayer a definite period within which to substantiate its administrative protest of the deficiency tax assessment issued against him. Such period cannot be dispensed with or waived by the taxing authority as the same is part and parcel of the due process requirement in the issuance of deficiency tax assessments.**
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> x x x x
>
> **By failing to wait for the submission of the supporting documents to the protest to the FLD/FAN, Petitioner unduly deprived the taxpayer of a real opportunity to be heard and thereby failing to satisfy the due process requirement under the law. The FDDA was issued having been based only on a partially completed protest and without an examination of Respondent's relevant supporting documents.**[23] (Emphasis supplied; citations omitted)

In a Resolution,[24] dated April 26, 2022, the CTA *En Banc* denied the CIR's Motion for Reconsideration of the November 25, 2021 Decision for lack of merit.

Hence, this Petition, where the CIR alleges that the CTA *En Banc* erred in ruling that the CIR had violated the due process rights of Maxicare, and that, consequently, the FLD/FAN and FDDA are void.[25]

The Issue

Did the CTA *En Banc* err in ruling that the CIR had violated Maxicare's right to due process as would render the FLD/FAN and FDDA void?

The Ruling of the Court

The Court denies the Petition for failure to show that the CTA *En Banc* erred in issuing the assailed Decision and Resolution.

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23 Id. at 40, Decision
24 Id. at 44-47.
25 Id. at 16.

The CTA *En Banc* did not err in its rulings. The facts of the case clearly demonstrate the CIR's manifest violation of the due process rights of Maxicare.

Both the CTA First Division and the CTA *En Banc* cite Section 228 of the NIRC, as amended, as well as Section 3.1.4 of RR No. 12-99, as amended, as the legal basis for the appropriate conditions of due process that should have been afforded Maxicare.

For reference, Section 228 of the NIRC provides:

> **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:
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> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
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> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
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> (d) When the excise tax due on excisable articles has not been paid; or
>
> (e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**

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

Meanwhile, Section 3.1.3 and the pertinent portions of 3.1.4 of RR No. 12-99, as amended by RR No. 18-13, provide:

> **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.
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> **3.1.4** ***Disputed Assessment.*** — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
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> (i) **Request for reconsideration** — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) **Request for reinvestigation** — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
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> The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.*
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> x x x x
>
> For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term "relevant supporting documents" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from

> disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied. (Emphasis in the original; underscoring supplied)

In its Petition, the CIR admits that Section 228 of the NIRC and RR No. 12-99 are indeed applicable to the case.[26]

Before proceeding, the Court finds that this case presents an opportune moment to correct an erroneous statement made in a prior Minute Resolution of the Court.

It is certainly well-established that minute resolutions do not set general precedent, and on this, the Court has held:

> The binding nature of a minute resolution and its ability to establish a lasting judicial precedent have already been settled in *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*. There, the Court explained that a minute resolution constitutes *res judicata* only insofar as it involves the "same subject matter and the same issues concerning the same parties." However, it will not set a binding precedent "if other parties or another subject matter (even with the same parties and issues) is involved."[27] (Citations omitted)

However, the Court is cognizant that such minute resolutions are still made available to the public, and so correcting a clearly mistaken statement of law will hopefully forestall any improper reliance on the same.

The pertinent portion of the Minute Resolution in *Commissioner of Internal Revenue v. Roca Security and Investigation Agency, Inc.* (***Roca***)[28] reads:

> As correctly held by the CTA *En Banc*, the Final Assessment Notice *(FAN)* issued by the Commissioner of Internal Revenue *(CIR)* is void as it violates respondent's right to due process. **Section 228 of the National Internal Revenue Code *(NIRC)* gives the taxpayer being assessed a period of sixty (60) days from the date of filing a protest assailing the Preliminary Assessment Notice *(PAN)* within which to submit relevant supporting documents.** In this case, the respondent filed its protest on April 18, 2013. It had sixty (60) days from that date, or until June 17, 2013, to present its relevant documents to support its protest against the PAN. Clearly, the FAN issued by the CIR on April 12, 2013 and received by respondent only on April 19, 2013 violated the latter's right to due process

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26 Id. at 17-18, Petition for Review on *Certiorari*.

27 *Del Rosario v. ABS-CBN Broadcasting Corp.*, G.R. Nos. 202481, 202495, 202497, 210165, 219125, 222057, 224879, 225101 & 225874, September 8, 2020.

28 G.R. No. 241338 April 10, 2019 (Notice).

> as the latter had only one (1) day (instead of 60 days) to present its relevant documents in support of its protest. **Besides, the 60-day period to protest alluded to in Section 228 of the NIRC refers to one made against the PAN and *not* the FAN as the CIR insists,** as only upon expiration of the said period does a contested assessment "become final." Therefore, the CTA *En Banc* properly found the CIR to have violated the statutory guidelines in terms of affording respondent taxpayer the right to due process.[29] (Emphasis in supplied; citations omitted)

The glaring error in the foregoing passage is evident, as the Minute Resolution in *Roca* states incorrectly that the 60-day period for the submission of the relevant supporting documents is to be reckoned from the filing of the protest to the PAN, and not to the FAN.

The Court here thus takes the opportunity to state definitively that the reckoning point of the 60-day period for the submission of relevant supporting documents is from the filing of the administrative protest to the FLD/FAN, when such protest constitutes a request for reinvestigation, and *not* from the response or reply to the PAN.

The Decisions of the CTA First Division and the CTA *En Banc* in this case patently evince that the CTA is of the same understanding on this point. In fact, even the CIR in this case likewise accedes to this view.

Certainly, nothing less than a plain reading of Section 228 of the NIRC, together with RR No. 12-99, which implements it, firmly anchors this interpretation.

The directly pertinent portion of Section 228 of the NIRC provides:

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

At first glance, it would appear that there is ambiguity in the foregoing passage, as the "assessment" mentioned seems capable of being read as referring to either the PAN *or* the FAN. However, this ambiguity is more

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[29] Id. at 18, Petition for Review on *Certiorari*.

apparent than real when Section 228 is read in its entirety, and any possible confusion is remedied definitively once RR No. 12-99 is taken into account.

RR No. 12-99 is far more categorical in the language it employs, and it unequivocally refers to the 60-day period for submission of relevant supporting documents as running from the filing of a protest in the form of a request for reinvestigation against an FLD/FAN. Again, and for clarity:

> **3.1.4 Disputed Assessment.** — The taxpayer or its authorized representative or tax agent **may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt** thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
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> x x x x
>
> (ii) **Request for reinvestigation** — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> x x x x
>
> **For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest**, otherwise, the assessment shall become final. The term "relevant supporting documents" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. (Emphasis supplied)

While it is already clear that it is the administrative protest to the FLD/FAN to which the 60-day period for submission of relevant supporting documents applies, it is in fact just as clear that this 60-day period cannot be mistaken as referring to the PAN. Thus, for the avoidance of doubt, the provisions of RR No. 12-99 as regards the PAN are as follows:

> **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.
>
> **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued** calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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

3.1.2 *Exceptions to Prior Notice of the Assessment.* — Pursuant to Section 228 of the Tax Code, as amended, a PAN shall not be required in any of the following cases:

(i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or
(ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
(iii) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
(iv) When the excise tax due on excisable articles has not been paid; or
(v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries, and spare parts, has been sold, traded or transferred to non-exempt persons.

In the above-cited cases, a FLD/FAN shall be issued outright.
(Additional emphasis supplied)

It is evident from the foregoing that the PAN corresponds with the "preassessment notice" mentioned in Section 228 of the NIRC, and to which "the taxpayer shall be required to respond," which "response" shall be "[w]ithin a period to be prescribed by implementing rules and regulations." It is also clear that there are cases in which a PAN will not be required to issue, but an FLD/FAN will always be issued regardless of whether it is preceded by a PAN or not.

Further, as can be seen from the above-quoted Section 3.1.1 of RR No. 12-99, the period for a response to a PAN is set at 15 days, as Section 228 of the NIRC allowed such period to be set by the implementing rules and regulations, and again, RR No. 12-99 implements Section 228. On the contrary, Section 228 of the NIRC explicitly sets the period for an "administrative protest of the assessment" at 30 days, and this same period is reiterated in Section 3.1.4 of RR. No. 12-99 which refers specifically to the protest to an FLD/FAN. Further still, it is the protest to the FLD/FAN which can take the form of either a request for reconsideration or a request for reinvestigation, and it is the latter which carries with it the 60-day period to submit relevant supporting documents—such an option is *not* explicitly provided with regard to the response to the PAN.

It is thus abundantly clear that Section 228, when read together with RR No. 12-99 which implements it, can be properly read in only one way as regards the 60-day period for submission of relevant supporting documents: that this period refers to the protest to the FLD/FAN when the same is a request for reinvestigation and not the response to the PAN.

As a final word on this issue, the Court has repeatedly affirmed, in a number of full Decisions, the foregoing interpretation.

In *Allied Banking v. Commissioner of Internal Revenue*,[30] the Court expressly stated: "to be clear, we are not disregarding the rules of procedure under Section 228 of the NIRC, as implemented by Section 3 of BIR Revenue Regulations No. 12-99. **It is the Formal Letter of Demand and Assessment Notice that must be administratively protested or disputed within 30 days, and not the PAN.**"[31]

In *Commissioner of Internal Revenue v. Liquigaz Phils. Corp.*,[32] the Court held that "Section 228 of the NIRC should not be read restrictively as to limit the written notice only to the assessment itself. **As implemented by RR No. 12-99, the written notice requirement for both the FLD and the FAN is in observance of due process — to afford the taxpayer adequate opportunity to file a protest on the assessment.**"[33]

Meanwhile, in the oft-cited case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc* (***CIR v. Avon***),[34] the Court outlined the process in contesting assessments, and the "protest" to which relevant supporting documents may be included is clearly the protest to the FAN:

> [U]nder Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, **the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice**; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. **After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest**, and subsequently, to appeal his or her protest to the Court of Tax Appeals.[35] (Emphasis supplied)

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30 625 Phil. 530 (2010).
31 Id. at 543-544. Emphasis supplied.
32 784 Phil. 874 (2016).
33 Id. at 888. Emphasis supplied.
34 841 Phil. 114 (2018).
35 Id. at 146.

And most recently, in *Commissioner of Internal Revenue v. Court of Tax Appeals*,[36] the Court implicitly reiterated this understanding when it linked the administrative protest under Section 228 to the taxpayer's protest letter:

> Nowhere in respondent's April 29, 2015 letter did it state the assessment notice's date and the applicable law, rules and regulations, or jurisprudence on which its protest was based. Attaching copies of the audit results/assessment notices is not stating the date of the assessment notice, any more than attaching copies of assailed judgments to a petition without stating them in the petition itself complies with the rule on statements of material dates.
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> While respondent's declaration that it was "in the process of compiling the necessary documentation to support [its] protest to said assessments" could imply that it was requesting a reinvestigation, its failure to explicitly state this means that petitioner had no way of knowing whether it should monitor the 60-day period stated in Revenue Regulations No. 18-2013.
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> **Section 228 of the National Internal Revenue Code is clear. The administrative protest must be filed not only within the stated period, but also "in such form and manner as may be prescribed by implementing rules and regulations." Respondent's April 29, 2015 letter did not comply with the three requirements of Revenue Regulations No. 18-2013.**[37] (Emphasis supplied)

It is hoped that the foregoing discussion now obviates any doubt that the submission of relevant supporting documents follows the administrative protest to challenge the FLD/FAN, when such protest takes the form of a request for reinvestigation, and not the response to the PAN, as was incorrectly enunciated in *Roca*.

Returning now to the Petition, the CIR also no longer reiterates its argument that the protest filed by Maxicare against the FLD/FAN was merely a request for reconsideration and not for reinvestigation, as this was already thoroughly debunked by both the CTA First Division in its Resolution and the CTA *En Banc* in its Decision, where they referred to the explicit language of Maxicare's protest letter to the FLD/FAN.[38]

Instead, the CIR adamantly asserts that Section 228 of the NIRC and RR No. 12-99 are merely rules of procedure and should not be applied strictly and rigidly so as to defeat substantial justice, stating that "[i]n the instant case, petitioner may have issued the FDDA before the lapse of the 60 days given to

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36 G.R. No. 239464, May 10, 2021.

37 Id.

38 *Rollo*, p. 18, Petition for Review on *Certiorari*.

respondent to submit additional documents. However, this fact cannot overshadow the evidence that respondent is clearly liable for deficiency taxes. x x x Substantial justice and its preference over procedural rules should govern in the instant case and that respondent should be ordered to pay the taxes due as reflected in the FDDA."[39]

The CIR also argues that Maxicare was not actually deprived of due process as the essence of due process in administrative proceedings is merely the opportunity to be heard, and Maxicare was given such opportunity when it was able to file its protest to the FLD/FAN, and which the CIR, after hearing the same, found wanting, stating: "[i]n the instant case, respondent was given the opportunity to protest the FLD/FAN as evidenced by its Letter Protest dated November 9, 2015. Thereafter, petitioner properly considered respondent's protest and, finding no sufficient basis to modify the FLD/FAN, **timely** issued the FDDA."[40]

The CIR's contentions miserably fail to persuade. As aptly observed by the CTA First Division in its Decision, the Court has already had occasion to rule definitively on the need for procedural rules to be strictly adhered to in the collection of taxes as a necessary check on the exercise of the government's power of taxation.[41]

The Court, in *CIR v. Avon*,[42] held:

> The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts, to issue a subpoena, and to assess based on best evidence obtainable, among others. **However, these powers must "be exercised reasonably and [under] the prescribed procedure." 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.**
>
> The Commissioner exercises administrative adjudicatory power or quasi-judicial function in adjudicating the rights and liabilities of persons under the Tax Code.
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> x x x x

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39 Id. at 18, Petition for Review on *Certiorari*
40 Id. at 18-19. Emphasis supplied.
41 Id. at 62-68, CTA First Division Decision.
42 841 Phil. 114 (2018).

Tax investigation and assessment necessarily demand the observance of due process because they affect the proprietary rights of specific persons.

This Court has stressed the importance of due process in administrative proceedings:

> The principle of due process furnishes a standard to which governmental action should conform in order to impress it with the stamp of validity. Fidelity to such standard must of necessity be the overriding concern of government agencies exercising quasi-judicial functions. Although a speedy administration of action implies a speedy trial, speed is not the chief objective of a trial. Respect for the rights of all parties and the requirements of procedural due process equally apply in proceedings before administrative agencies with quasi-judicial perspective in administrative decision making and for maintaining the vision which led to the creation of the administrative office.

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

> **(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.**
>
> (2) The administrative tribunal or body must consider the evidence presented.
>
> (3) There must be evidence supporting the tribunal's decision.
>
> (4) The evidence must be substantial or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."
>
> (5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.
>
> (6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.
>
> (7) The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.
>
> x x x x

***Saunar v. Ermita* expounded on *Ang Tibay* by emphasizing that while administrative bodies enjoy a certain procedural leniency, they are nevertheless obligated to inform themselves of all facts material and relevant to the case, and to render a decision based on an accurate appreciation of facts**.

x x x x

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

x x x x

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.

x x x x

Section 228 of the Tax Code, as implemented by Revenue Regulations No. 12-99, provides certain procedures to ensure that the right of the taxpayer to procedural due process is observed in tax assessments, thus:

x x x x

Section 3 of Revenue Regulations No. 12-99 prescribes the due process requirement for the four (4) stages of the assessment process:

x x x x

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.

x x x x

Here, contrary to the ruling of the Court of Appeals, the presumption of regularity in the performance of the Commissioner's official duties cannot stand in the face of positive evidence of irregularity or failure to perform a duty.

x x x x

This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.

x x x x

Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:

> **Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
>
> ... ...
>
> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.
>
> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate . . . that the law has not been observed.**

In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in *Ang Tibay* and subsequent cases, and of the Commissioner's own rules of procedure. Her disregard of the standards and rules renders the deficiency tax assessments null and void.

x x x x

While indeed the government has an interest in the swift collection of taxes, its assessment and collection should be exercised justly and fairly, and **always in strict adherence to the requirements of the law and of the**

Bureau of Internal Revenue's own rules.[43] (Emphasis supplied; citations omitted)

The foregoing passages enunciated by the Court establish in no uncertain terms the clear necessity for the strict observance of procedural rules by the CIR to safeguard the due process rights of the concerned parties. As applied here, these reveal just how far the CIR's acts have fallen short, not only of the jurisprudential standard for due process in administrative proceedings, but also of the explicit procedure laid down by the very law and regulations that the CIR is mandated to observe.

In *CIR v. Avon*, the Court emphasized that as the CIR clearly failed to consider or appreciate the evidence submitted by Avon, which was shown by the CIR's issuance of essentially identical assessment notices which made no reference to or rebuttal of Avon's submissions, Avon was therefore deprived of due process and the assessments against it were necessarily null and void. In this case, it can be argued that the violation of due process is even more egregious as Maxicare was denied even the opportunity to *present* its evidence as would afford it a genuine opportunity to be heard, despite the clear procedural rules giving it a 60-day period within which to provide relevant supporting documents pursuant to its request for reinvestigation.

All told, as the denial of due process in this case is manifestly evident, and was clearly recognized by the CTA First Division and wholly affirmed by the CTA *En Banc*, there can be no finding of reversible error on the part of the CTA *En Banc* that would warrant the grant of the Petition.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED.** The Decision of the Court of Tax Appeals *En Banc*, dated November 25, 2021, and its Resolution, dated April 26, 2022, both in CTA EB No. 2325 (CTA Case No. 9246), are **AFFIRMED**.

SO ORDERED.

MARIA FILOMENA D. SINGH
Associate Justice

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[43] Id. at 133-174

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

ATTESTATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice