Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. Nos. 201398-99**
-versus-	
AVON PRODUCTS MANUFACTURING, INC., Respondent.	
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AVON PRODUCTS MANUFACTURING, INC., Petitioner,	**G.R. Nos. 201418-19**
	Present:
-versus-	PERALTA, *J., Chairperson,* LEONEN, REYES, A., JR. GESMUNDO,* and REYES, J., JR., *JJ.*
	Promulgated:
THE COMMISSIONER OF THE INTERNAL REVENUE, Respondent.	October 3, 2018

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*On official business.

DECISION

LEONEN, *J.*:

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.

These consolidated cases assail the Court of Tax Appeals En Banc November 9, 2011 Decision[1] and April 10, 2012 Resolution[2] in CTA EB Case Nos. 661 and 663. The assailed Decision denied the respective Petitions for Review by the Commissioner of Internal Revenue (Commissioner)[3] and of Avon Products Manufacturing, Inc. (Avon),[4] and affirmed the Court of Tax Appeals Special First Division May 13, 2010 Decision.[5] The assailed Resolution denied the Commissioner's Motion for Reconsideration[6] and Avon's Motion for Partial Reconsideration.[7]

Avon filed its Value Added Tax (VAT) Returns and Monthly Remittance Returns of Income Tax Withheld for the taxable year 1999 on the following dates:

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1 *Rollo* (G.R. Nos. 201398–99), pp. 49–93. The Decision was penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez (with Separate Conccuring Opinion), and Amelia R. Cotangco-Manalastas. Associate Justice Esperanza R. Fabon-Victorino was on wellness leave.

2 Id. at 104–115. The Resolution was penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, and Amelia R. Cotangco-Manalastas. Presiding Justice Ernesto D. Acosta was on leave.

3 Id. at 116–142.

4 *Rollo* (G.R. Nos. 201418–19), pp. 529–560.

5 *Rollo* (G.R. Nos. 201398–99), pp. 143–181. The Decision, docketed as CTA Case No. 7038, was penned by Presiding D. Acosta and concurred in by Associate Justice Lovell R. Bautista. Associate Justice Caesar A. Casanova was on leave.

6 Id. at 193–215.

7 *Rollo* (G.R. Nos. 201418–19), pp. 113–128.

Return	Date Filed
3rd Quarter VAT Return	October 25, 1999
4th Quarter VAT Return	January 25, 2000

Monthly Remittance Return of Income Taxes Withheld	Expanded	Compensation
January	February 25, 1999	February 25, 1999
February	March 25, 1999	March 25, 1999
March	April 26, 1999	April 26, 1999
April	May 25, 1999	May 25, 1999
May	June 25, 1999	June 25, 1999
June	July 26, 1999	July 26, 1999
July	August 25, 1999	August 25, 1999
August	September 27, 1999	September 27, 1999
September	October 25, 1999	October 25, 1999
October	November 25, 1999	November 25, 1999
November	December 27, 1999	December 27, 1999
December	January 25, 2000	January 25, 2000[8]

Avon signed two (2) Waivers of the Defense of Prescription dated October 14, 2002 and December 27, 2002,[9] which expired on January 14, 2003 and April 14, 2003, respectively.[10]

On July 14, 2004, Avon was served a Collection Letter[11] dated July 9, 2004. It was required to pay ₱80,246,459.15[12] broken down as follows:

KIND OF TAX	YEAR	BASIC TAX	INTEREST	COMPROMISE	TOTAL AMOUNT
Income Tax	1999	22,012,984.19	13,207,790.51	25,000.00	35,245,774.70
Excise Tax	1999	913,514.87	658,675.57	73,200.00	1,645,390.44
VAT	1999	20,286,033.82	13,254,677.47	50,000.00	33,590,711.29
Withholding Tax on Compensation	1999	4,702,116.38	3,040,229.28	45,000.00	7,787,345.66
Expanded Withholding Tax	1999	1,187,610.88	764,626.18	25,000.00	1,977,237.06
TOTAL		₱49,102,260.14	₱30,925,999.01	₱218,200.00	**₱80,246,459.15**[13]

8 *Rollo* (G.R. Nos. 201398–99), p. 52.
9 Id. at 52 and 71.
10 Id. at 356.
11 *Rollo* (G.R. Nos. 201418–19), p. 189.
12 Id.
13 Id.

These deficiency assessments were the same deficiency taxes covered by the Preliminary Assessment Notice[14] dated November 29, 2002, received by Avon on December 23, 2002.[15]

On February 14, 2003, Avon filed a letter dated February 13, 2003 protesting against the Preliminary Assessment Notice.[16]

Without ruling on Avon's protest, the Commissioner prepared the Formal Letter of Demand[17] and Final Assessment Notices,[18] all dated February 28, 2003, received by Avon on April 11, 2003. Except for the amount of interest, the Final Assessment Notices were the same as the Preliminary Assessment Notice.[19]

In a letter[20] dated and filed on May 9, 2003, Avon protested the Final Assessment Notices. Avon resubmitted its protest to the Preliminary Assessment Notice and adopted the same as its protest to the Final Assessment Notices.[21]

A conference was allegedly held on June 26, 2003 where Avon informed the revenue officers that all the documents necessary to support its defenses had already been submitted. Another meeting was held on August 4, 2003, where it showed the original General Ledger Book as previously directed by the revenue officers. During these meetings, the revenue officers allegedly expressed that they would cancel the assessments resulting from the alleged discrepancy in sales if Avon would pay part of the assessments.[22]

Thus, on January 30, 2004, Avon paid the following portions of the Final Assessment Notices:

a) Disallowed taxes and licenses/Fringe Benefit Tax adjustment – ₱153,559.37; and

b) Withholding Tax on Compensation – Late Remittance – ₱32,829.28[23]

However, in a Memorandum dated May 27, 2004, the Bureau of

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14 Id. at 190–202.
15 *Rollo* (G.R. Nos. 201398–99), p. 53.
16 Id.
17 *Rollo* (G.R. Nos. 201418–19), pp. 203–206.
18 Id. at 207–211.
19 *Rollo* (G.R. Nos. 201398–99), p. 53.
20 *Rollo* (G.R. Nos. 201418–19), p. 212, with Protest Letter dated February 13, 2003 (pp. 214–221).
21 *Rollo* (G.R. Nos. 201398–99), p. 59.
22 *Rollo* (G.R. Nos. 201418–19), pp. 15–17.
23 *Rollo* (G.R. Nos. 201398–99), p. 59.

Internal Revenue's officers recommended the enforcement and collection of the assessments on the sole justification that Avon failed to submit supporting documents within the 60-day period as required under Section 228 of the Tax Code.[24]

The Large Taxpayers Collection and Enforcement Division thereafter served Avon with the Collection Letter dated July 9, 2004.[25] Avon asserted that even the items already paid on January 30, 2004 were still included in the deficiency tax assessments covered by this Collection Letter.[26]

In a letter[27] to the Deputy Commissioner for Large Taxpayers Service dated and filed on July 27, 2004, Avon requested the reconsideration and withdrawal of the Collection Letter. It argued that it was devoid of legal and factual basis, and was premature as the Commissioner of Internal Revenue had not yet acted on its protest against the Final Assessment Notices.[28]

The Commissioner did not act on Avon's request for reconsideration. Thus, Avon was constrained to treat the Collection Letter as denial of its protest.[29]

On August 13, 2004, Avon filed a Petition for Review before the Court of Tax Appeals.[30] On August 24, 2004, it filed an Urgent Motion for Suspension of Collection of Tax.[31]

On May 13, 2010, the Court of Tax Appeals Special First Division rendered its Decision,[32] partially granting Avon's Petition for Review insofar as it ordered the *cancellation of the Final Demand and Final Assessment Notices* for deficiency excise tax, VAT, withholding tax on compensation, and expanded withholding tax. However, it ordered Avon to *pay deficiency income tax in the amount of ₱357,345.88 including 20% deficiency interest* on the total amount due pursuant to Section 249, paragraphs (b) and (c)(3) of the Tax Code. The Court of Tax Appeals Special First Division also made the following pronouncements:[33]

> a) There was no deprivation of due process in the issuance by the CIR of the assessment for deficiency income tax, deficiency excise tax, deficiency VAT, deficiency final withholding tax on compensation and deficiency expanded withholding tax against AVON for the latter was

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24 Id.
25 Id. at 60.
26 *Rollo* (G.R. Nos. 201418–19), pp. 18–19.
27 Id. at 340–343.
28 *Rollo* (G.R. Nos. 201398–99), p. 60.
29 Id.
30 *Rollo* (G.R. Nos. 201418–19), pp. 344–368.
31 Id. at 369–377.
32 Id. at 150–188.
33 Id. at 61.

afforded an opportunity to explain and present its evidence;

b) The Waivers of the Statute of Limitations executed by AVON are invalid and ineffective as the CIR failed to provide [AVON] a copy of the accepted Waivers, as required under Revenue Memorandum Order No. 20-90. Hence, the assessment of AVON's deficiency VAT, deficiency expanded withholding tax and deficiency withholding tax on compensation is considered to have prescribed;

c) AVON's failure to submit the relevant documents in support of its protest did not make the assessment final and executory;

d) As to assessment on AVON's deficiency Income Tax,

(1) there was no undeclared sales/income in the amount of P62,911,619.58 per ITR for the taxable year 1999;

(2) AVON's liability for disallowed taxes and licenses and December 1998 Fringe Benefit Tax payment adjustment in the amount of P152,632.10 and P927.27, respectively, or a total of P153,559.37 is extinguished in view of the payment made;

(3) The discrepancy between Ending Inventories reflected in Balance Sheet and Cost of Sales represents variance/adjustments on standard cost to actual cost allocated to ending inventories and not under-declaration as alleged by CIR;

(4) AVON's claimed tax credits in the amount of P203,645.89 was disallowed as the same was unsupported by withholding tax certificates as required under Section 2.58.3 (B) of Revenue Regulations No. 2-98. However, the amount of P140,505.28 was upheld as a proper deduction from its 1999 income tax due; and

e) As to assessment on AVON's deficiency excise tax, the same is deemed cancelled and withdrawn in view of its Application for Abatement over its deficiency excise tax assessment for the year 1999 and its corresponding payment.[34]

The dispositive portion of the Court of Tax Appeals Special First Division May 13, 2010 Decision read:

WHEREFORE, the Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is ORDERED TO CANCEL/WITHDRAW the Final Demand and Final Assessment Notices: (1) Assessment No. LTAID-ET-99-00011 for deficiency Excise Tax, (2) Assessment No. LTAID-II-VAT-99-00017 for deficiency Value Added Tax, (3) Assessment No. LTAID-II-WTC-9900002 for deficiency Withholding Tax on Compensation – Under Withholding and Later Remittance, and (4) Assessment No. LTAID-EWT-99-00010 for deficiency Expanded Withholding Tax.

However, petitioner is ORDERED TO PAY respondent the

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[34] Id. at 61–63; *rollo* (G.R. Nos. 201398–99), pp. 62–64.

> deficiency Income Tax under Assessment No. LTAID-II-IT-99-00018 in the amount of P357,345.88 for taxable year 1999.
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> In addition, petitioner is liable to pay: i) a deficiency interest on the deficiency basic income tax due of P100,761.01 at the rate of 20% per annum from January 31, 2004 until fully paid pursuant to Section 249(B) of the 1997 NIRC and ii) a delinquency interest on the total amount due (inclusive of the deficiency interest) at the rate of 20% per annum from July 24, 2004 until fully paid pursuant to Section 249(C)(3) of the 1997 NIRC.
>
> SO ORDERED.[35]

The parties' Motions for Partial Reconsideration were denied in the July 12, 2010 Resolution.[36] Both parties filed their respective Petitions for Review before the Court of Tax Appeals En Banc.[37]

In its assailed November 9, 2011 Decision,[38] the Court of Tax Appeals En Banc denied the respective Petitions of the Commissioner and Avon, and affirmed the Court of Tax Appeals Special First Division May 13, 2010 Decision. It held that the Waivers of the Defense of Prescription were defective, thereby rendering the assessment of Avon's deficiency VAT, expanded withholding tax, and withholding tax on compensation to have prescribed.[39] It further ruled that contrary to the Commissioner's argument, the requirement under Revenue Memorandum Order No. 20-90 to furnish the taxpayer with copies of the accepted waivers was not merely formal in nature, and non-compliance with it rendered the Waivers of the Defense of Prescription invalid and ineffective.[40]

On the issue of jurisdiction, the Court of Tax Appeals En Banc held that under Section 228 of the Tax Code, the taxpayer has two (2) options in case of inaction of the Commissioner on disputed assessments. The first option is to file a petition with the Court of Tax Appeals within 30 days from the lapse of the 180-day period for the Commissioner to decide. The second option is to await the final decision of the Commissioner and appeal this decision within 30 days from its receipt. Here, Avon opted for the second remedy by filing its petition on July 14, 2004, within 30 days from receipt of the July 9, 2004 Collection Letter, which also served as the final decision denying its protest. Hence, the Court of Tax Appeals En Banc ruled that it had jurisdiction over the case.[41]

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35 *Rollo* (G.R. Nos. 201418–19), p. 187.

36 Id. at 521–528. The Resolution, docketed as CTA Case No. 7038, was signed by Presiding Justice Ernesto D. Acosta, and Associate Justices Lovell R. Bautista and Caesar A. Casanova.

37 *Rollo* (G.R. Nos. 201398–99), p. 64.

38 *Rollo* (G.R. Nos. 201418–19), pp. 48–92.

39 Id. at 64; *rollo* (G.R. Nos. 201398-99), p. 65.

40 *Rollo* (G.R. Nos. 201418–19), p. 68; *rollo* (G.R. Nos. 201398–99), p. 69.

41 *Rollo* (G.R. Nos. 201418–19), p. 77; *rollo* (G.R. Nos. 201398–99), p. 78.

The Court of Tax Appeals En Banc further affirmed the Court of Tax Appeals Special First Division's factual findings with regard to the cancellation of deficiency tax assessments[42] and disallowance of Avon's claimed tax credits.[43]

Finally, the Court of Tax Appeals En Banc rejected Avon's contention regarding denial of due process. It held that Avon was accorded by the Commissioner a reasonable opportunity to explain and present evidence.[44] Moreover, the Commissioner's failure to appreciate Avon's supporting documents and arguments did not *ipso facto* amount to denial of due process absent any proof of irregularity in the performance of duties.[45]

In its April 10, 2012 Resolution,[46] the Court of Tax Appeals En Banc denied the Commissioner's Motion for Reconsideration and Avon's Motion for Partial Reconsideration. It held that the "RCBC case,"[47] cited by the Commissioner, was not on all fours with, and therefore not applicable as *stare decisis* in this case. Instead, the ruling in *CIR v. Kudos Metal Corporation,*[48] precluding the Bureau of Internal Revenue from invoking the doctrine of estoppel to cover its failure to comply with the procedures in the execution of a waiver, would apply.[49]

Hence, the present Petitions via Rule 45 were filed before this Court.

In her Petition,[50] docketed as G.R. Nos. 201398-99, the Commissioner asserts that Avon is estopped from assailing the validity of the Waivers of the Defense of Prescription as it has paid the other assessments that these waivers covered. It also avers that Avon's right to appeal its protest before the Court of Tax Appeals has prescribed and that the assessments have attained finality. Finally, it states that Avon is liable for the deficiency assessments.[51]

Avon, in its separate Petition,[52] docketed as G.R. Nos. 201418-19, argues that the assessments are void *ab initio* due to the failure of the Commissioner to observe due process.[53] It maintains that from the start up

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42 *Rollo* (G.R. Nos. 201418–19), pp. 78–85; *rollo* (G.R. Nos. 201398–99), pp. 79–86.
43 *Rollo* (G.R. Nos. 201418–19), pp. 86–87; *rollo* (G.R. Nos. 201398–99), pp. 87–88.
44 *Rollo* (G.R. Nos. 201418–19), p. 89; *rollo* (G.R. Nos. 201398–99), p. 90.
45 *Rollo* (G.R. Nos. 201418–19), p. 90; *rollo* (G.R. Nos. 201398–99), p. 91.
46 *Rollo* (G.R. Nos. 201418–19), pp. 101–112.
47 *Rollo* (G.R. Nos. 201398–99), p. 110. Footnote 11 provided the citation *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue,* CTA EB No. 83, July 27, 2005 (CTA Case No. 6201).
48 634 Phil. 314 (2010) [Per J. Del Castillo, Second Division].
49 *Rollo* (G.R. Nos. 201418–19), pp. 109–110.
50 *Rollo* (G.R. Nos. 201398–99), pp. 10–46.
51 Id. at 21.
52 *Rollo* (G.R. Nos. 201418–19), pp. 10–43.
53 Id. at 23.

to the end of the administrative process, the Commissioner ignored all of its protests and submissions.[54]

The Petitions were consolidated on July 4, 2012.[55] The Commissioner and Avon subsequently submitted their respective Memoranda[56] in compliance with this Court's June 5, 2013 Resolution.[57]

The issues for this Court's resolution are:

First, whether or not the Commissioner of Internal Revenue failed to observe administrative due process, and consequently, whether or not the assessments are void;

Second, whether or not Avon Products Manufacturing, Inc., by paying the other tax assessments covered by the Waivers of the Defense of Prescription, is estopped from assailing their validity;

Third, whether or not Avon Products Manufacturing, Inc.'s right to appeal its protest before the Court of Tax Appeals has already prescribed; and whether or not the assessments against it for deficiency income tax, excise tax, value-added tax, withholding tax on compensation, and expanded withholding tax have already attained finality; and

Finally, whether or not Avon Products Manufacturing, Inc. is liable for deficiency income tax, excise tax, value-added tax, withholding tax on compensation, and expanded withholding tax for the taxable year 1999.

I.A

Avon asserts that the deficiency tax assessments are void because they were made without due process[58] and were not based on actual facts but on the erroneous presumptions of the Commissioner.[59]

It submits that a fundamental part of administrative due process is the administrative body's due consideration and evaluation of all the evidence submitted by the affected party. With regard to tax assessment and collection, Section 228 of the Tax Code and Revenue Regulations No. 12-99

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54 Id. at 33.
55 Id. at 813.
56 *Rollo* (G.R. Nos. 201398–99), pp. 344–376 (CIR's Memorandum) and pp. 377–472 (Avon's Memorandum).
57 Id. at 330–331.
58 Id. at 399.
59 Id. at 430.

prescribe compliance with due process requirements through all the four (4) stages of the assessment process, from the preliminary findings up to the Commissioner's decision on the disputed assessment.[60]

Avon claims that from the start up to the end of the administrative process, the Commissioner ignored all of its protests and submissions to contest the deficiency tax assessments.[61] The Commissioner issued identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letters without considering Avon's submissions or its partial payment of the assessments. Avon asserts that it was not accorded a *real* opportunity to be heard, making all of the assessments null and void.[62]

Avon's arguments are well-taken.

The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code.[63] 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,[64] to issue a subpoena,[65] and to assess based on best evidence obtainable,[66] among others. However, these powers must "be exercised reasonably and [under] the prescribed procedure."[67] The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules,[68] 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.

Quasi-judicial power has been described as:

> Quasi-judicial or administrative adjudicatory power on the other hand is the power of the administrative agency to adjudicate the rights of persons before it. ***It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law***. The administrative body exercises its quasi-

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60 Id. at 403.
61 *Rollo* (G.R. Nos. 201418–19), p. 33.
62 *Rollo* (G.R. Nos. 201398–99), p. 416.
63 TAX CODE, sec. 2.
64 TAX CODE, sec. 5(B).
65 TAX CODE, sec. 5(C).
66 TAX CODE, sec. 6(B).
67 *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, 738 Phil. 335, 353 (2014) [Per J. Peralta, Third Division].
68 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172, 184 (2010) [Per J. Mendoza, Second Division].

> judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, ***where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it***.[69] (Emphasis supplied, citations omitted)

In carrying out these quasi-judicial functions, the Commissioner is required to "investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature."[70] 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.[71]

In *Ang Tibay v. The Court of Industrial Relations,*[72] 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."[73] 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.
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> (2) **The administrative tribunal or body must consider the evidence presented.**

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69 Concurring Opinion of J. Bellosillo in *Commissioner of Internal Revenue v. Court of Appeals,* 329 Phil 987,1018 (1996) [Per J. Vitug, First Division].

70 Id.

71 *Mabuhay Textile Mills Corp. v. Ongpin,* 225 Phil 383, 393 (1986) [Per J. Gutierrez, Jr., First Division], *citing Bacus v. Ople,* 217 Phil. 670 (1984) [Per J. Cuevas, Second Division].

72 69 Phil. 635 (1940) [Per J. Laurel, En Banc].

73 Id. at 641.

(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."[74]

(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.**[75]

Mendoza v. Comelec[76] explained that the first requirement is the party's substantive right at the *hearing stage* of the proceedings, which, in essence, is the opportunity to explain one's side or to seek a reconsideration of the adverse action or ruling.

It was emphasized, however, that the mere filing of a motion for reconsideration does not always result in curing the due process defect,[77] "especially if the motion was filed precisely to raise the issue of violation of the right to due process and the lack of opportunity to be heard on the merits remained."[78]

The second to the sixth requirements refer to the party's "inviolable rights *applicable at the* **deliberative stage.**"[79] The decision-maker must consider the totality of the evidence presented as he or she decides the case.[80]

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74 Id. at 642.

75 *See Ang Tibay v. The Court of Industrial Relations,* 69 Phil. 635, 642–644 (1940) [Per J. Laurel, En Banc].

76 618 Phil 706 (2009) [Per J. Brion, En Banc].

77 In *Vivo v. Philippine Amusement and Gaming Corp.,* 721 Phil 34, 42–43 (2013) [Per J. Bersamin, En Banc], *citing Gonzales v. Civil Service Commission,* 524 Phil 271 (2006) [Per J. Corona, En Banc] and *Autencio v. Mañara,* 489 Phil 752 (2005) [Per J. Panganiban, Third Division], this Court held that "any defect in the observance of due process is cured by the filing of a motion for reconsideration, and that denial of due process cannot be successfully invoked by a party who was afforded the opportunity to be heard."

78 *See Fontanilla v. Commissioner Proper,* G.R. No. 209714, June 21, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/209714.pdf> 9 [Per J. Brion, En Banc]; *Office of the Ombudsman v. Reyes,* 674 Phil 416 (2011) [Per J. Leonardo-De Castro, First Division].

79 *Mendoza v. Commission on Elections,* 618 Phil. 706, 727 (2009) [Per J. Brion, En Banc].

80 Id.

The last requirement relating to the form and substance of the decision is the decision-maker's "*'duty to give reason'* to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker."[81]

The *Ang Tibay* safeguards were subsequently "simplified into four basic rights,"[82] as follows:

> (a) [T]he right to notice, be it actual or constructive, of the institution of the proceedings that may affect a person's legal right; (b) reasonable opportunity to appear and defend his rights and to introduce witnesses and relevant evidence in his favor; (c) *a tribunal so constituted as to give him reasonable assurance of honesty and impartiality*, and one of competent jurisdiction; and (d) a finding or decision by that tribunal supported by substantial evidence presented at the hearing or at least ascertained in the records or disclosed to the parties.[83] (Emphasis supplied)

Saunar v. Ermita[84] 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. In this regard, this Court held that *Ang Tibay* did not necessarily do away with the conduct of hearing and a party may invoke its right to a hearing to thresh out substantial factual issues, thus:

> A closer perusal of past jurisprudence shows that the Court did not intend to trivialize the conduct of a formal hearing but merely afforded latitude to administrative bodies especially in cases where a party fails to invoke the right to hearing or is given the opportunity but opts not to avail of it. In the landmark case of *Ang Tibay, the Court explained that administrative bodies are free from a strict application of technical rules of procedure and are given sufficient leeway. In the said case, however, nothing was said that the freedom included the setting aside of a hearing but merely to allow matters which would ordinarily be incompetent or inadmissible in the usual judicial proceedings.*
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> In fact, the seminal words of *Ang Tibay manifest a desire for administrative bodies to exhaust all possible means to ensure that the decision rendered be based on the accurate appreciation of facts. The Court reminded that administrative bodies have the active* **duty to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy**. As such, it would be more in keeping with administrative due process that the conduct of a

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81 Id.

82 *Tolentino v. Commission on Elections,* 631 Phil 568, 589 (2010) [Per J. Bersamin, En Banc].

83 *Singson v. National Labor Relations Commission,* 340 Phil 470, 475 (1997) [Per J .Puno, Second Division], *citing Air Manila, Inc. v. Balatbat*, 148 Phil. 502 (1971) [Per J. Reyes, En Banc].

84 G.R. No. 186502, December 13, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/december2017/186502.pdf> [Per J. Martires, Third Division].

hearing be the general rule rather than the exception.

. . . .

> To reiterate, due process is a malleable concept anchored on fairness and equity. The due process requirement before administrative bodies are not as strict compared to judicial tribunals in that it suffices that a party is given a reasonable opportunity to be heard. Nevertheless, such "reasonable opportunity" should not be confined to the mere submission of position papers and/or affidavits and the parties must be given the opportunity to examine the witnesses against them. The right to a hearing is a right which may be invoked by the parties to thresh out substantial factual issues. It becomes even more imperative when the rules itself of the administrative body provides for one. While the absence of a formal hearing does not necessarily result in the deprivation of due process, it should be acceptable only when the party does not invoke the said right or waives the same.[85] (Emphasis supplied)

In *Saunar,* this Court held that the petitioner in that case was denied due process when he was not notified of the clarificatory hearings conducted by the Presidential Anti-Graft Commission. Under the Presidential Anti-Graft Commission's Rules, in the event that a clarificatory hearing was determined to be necessary, the Presidential Anti-Graft Commission must notify the parties of the clarificatory hearings. Further, "the parties shall be afforded the opportunity to be present in the hearings without the right to examine witnesses. They, however, may ask questions and elicit answers from the opposing party coursed through the [Presidential Anti-Graft Commission]."[86] This Court held that the petitioner in *Saunar* was not treated fairly in the proceedings before the Presidential Anti-Graft Commission because he was deprived of the opportunity to be present in the clarificatory hearings and was denied the chance to propound questions through the Presidential Anti-Graft Commission against the opposing parties.

"[A] fair and reasonable opportunity to explain one's side"[87] 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.

Baguio Country Club Corp. v. National Labor Relations Commission[88] precisely involved the question of the denial of due process for failure of the labor tribunals to consider the evidence presented by the employer. The labor tribunals unanimously denied the employer's application for clearance to terminate the services of an employee on the

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85 Id. at 11–14.
86 Id. at 14.
87 *Vivo v. Philippine Amusement and Gaming Corp.*, 721 Phil. 34, 43 (2013) [Per J. Bersamin, En Banc].
88 204 Phil 194 (1982) [Per J. Gutierrez, Jr., First Division].

ground of insufficient evidence to show a just cause for the employee's dismissal, and ordered the reinstatement of the employee with backwages.

This Court held that *"[t]he summary procedures used by the [labor tribunals] were too summary to satisfy the requirements of justice and fair play."*[89] It noted the irregular procedures adopted by the Labor Arbiter. First, "[he] allowed a last minute position paper of [the] respondent . . . to be filed and without requiring a copy to be served upon the Baguio Country Club and without affording the latter an opportunity to refute or rebut the contents of the paper, [and] forthwith decided the case."[90] Second, "the petitioner specifically stressed to the arbiter that it was 'adopting the investigations which were enclosed with the application to terminate, which are now parts of the record of the Ministry of Labor, as part and parcel of this position paper.'"[91] But the Labor Arbiter, instead of calling for the complete records of the conciliation proceedings, "denied the application for clearance on the ground that all that was before it was a position paper with mere quotations about an investigation conducted . . ."[92] This Court held that the affirmance by the Commission of the decision of the Labor Arbiter was a denial of the elementary principle of fair play.

> [I]t was a denial of elementary principles of fair play for the Commission not to have ordered the elevation of the entire records of the case with the affidavits earlier submitted as part of the position paper but completely ignored by the labor arbiter. Or at the very least, the case should have been remanded to the labor arbiter consonant with the requirements of administrative due process.
>
> The ever increasing scope of administrative jurisdiction and the statutory grant of expansive powers in the exercise of discretion by administrative agencies illustrate our nation's faith in the administrative process as an efficient and effective mode of public control over sensitive areas of private activity. Because of the specific constitutional mandates on social justice and protection to labor, and the fact that major labor-management controversies are highly intricate and complex, the legislature and executive have reposed uncommon reliance upon what they believe is the expertise, the rational and efficient modes of ascertaining facts, and the unbiased and discerning adjudicative techniques of the Ministry of Labor and Employment and its instrumentalities.
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> . . . .
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> The instant petition is a timely reminder to labor arbiters and all who wield quasi-judicial power to ever bear in mind that evidence is the means, sanctioned by rules, of ascertaining in a judicial or quasi-judicial proceeding, the *truth* respecting a matter of fact . . . The object of evidence is to establish the truth by the use of *perceptive and reasoning faculties* . . . The statutory grant of power to use summary procedures should heighten a

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89 Id. at 197.
90 Id. at 198.
91 Id. at 200.
92 Id.

> concern for due process, for judicial perspectives in administrative decision making, and for maintaining the visions which led to the creation of the administrative office.[93]

In *Alliance for the Family Foundation, Philippines, Inc. v. Garin*,[94] this Court held that the Food and Drug Administration failed to observe the basic requirements of due process when it did not act on or address the oppositions submitted by petitioner Alliance for the Family Foundation, Philippines, Inc., but proceeded with the registration, recertification, and distribution of the questioned contraceptive drugs and devices. It ruled that petitioner was not afforded the *genuine opportunity to be heard.*

Administrative due process is anchored on fairness and equity in procedure.[95] 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.[96] Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions,[97] and that the party be sufficiently informed of the reasons for its conclusions.

I.B

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:

> Section 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment 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
> (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

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93 Id. at 200–202.

94 G.R. Nos. 217872 & 221866, August 24, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/217872.pdf> [Per J. Mendoza, Second Division] and G.R. Nos. 217872 & 221866, April 26, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/april2017/217872.pdf> [Per J. Mendoza, Special Second Division].

95 *Saunar v. Ermita,* G.R. No. 186502, December 13, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/december2017/186502.pdf> [Per J. Martires, Third Division]; Concurring Opinion of J. Brion in *Perez v. Philippine Telegraph and Phone Company*, 602 Phil. 522, 545 (2009) [Per J. Corona, En Banc].

96 *Gutierrez v. Commission on Audit,* 750 Phil. 413, 430 (2015) [Per J. Leonen, En Banc].

97 Id. at 431.

same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) 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.

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

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

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

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

Section 3 of Revenue Regulations No. 12-99[98] prescribes the due process requirement for the four (4) stages of the assessment process:

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

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

3.1.1 *Notice for informal conference.* — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, **the taxpayer shall be informed, in writing,** by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) **of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal**

[98] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty (1999).

Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

3.1.2 *Preliminary Assessment Notice (PAN).* — **If after review and evaluation** by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, **the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN)** for the proposed assessment, **showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based . . . If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default,** in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

. . . .

3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand 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 formal letter of demand and assessment notice shall be void* . . .**

3.1.5 *Disputed Assessment.* — **The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. . . .**

. . . .

The taxpayer shall submit the required 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, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

. . . .

> 3.1.6 *Administrative Decision on a Disputed Assessment.* — **The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void* . . . in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his *final decision.*** (Emphasis supplied)

The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.

"The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory."[99] This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.

On the other hand, the taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment. Under Section 3.1.1 of Revenue Regulations No. 12-99, the taxpayer is given 15 days from receipt of the Notice for Informal Conference to respond; otherwise, he or she will be considered in default and the case will be referred to the Assessment Division for appropriate review and issuance of deficiency tax assessment, if warranted. Again, under 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

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[99] *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.*, 784 Phil. 874, 888 (2016) [Per J. Mendoza, Second Division].

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.

Avon asserts feigned compliance by the Bureau of Internal Revenue officials and agents of their duties under the law and revenue regulation.[100] It adds that the administrative proceeding conducted by the Bureau of Internal Revenue was "a farce," an idle ritual tantamount to a denial of its right to be heard.[101] It specifies the Bureau of Internal Revenue's inaction throughout the proceedings as follows:

First, during the informal conference, Avon orally rebutted and submitted a written Reply[102] dated November 26, 2002, with attached supporting documents, to the summary of audit findings of the Bureau of Internal Revenue. Revenue Examiner Enrico Z. Gesmundo (Gesmundo), on cross-examination, admitted receiving its Reply with the appended documents and that this Reply should be the basis of the Preliminary Assessment Notice.[103]

However, the Commissioner issued the Preliminary Assessment Notice dated November 29, 2002, which simply reiterated the rebutted audit findings.[104] The alleged under-declared sales was increased by more than 300% based on the alleged sales discrepancy in the Third Quarter VAT Return *vis à vis* Financial Statement, without justifiable reason and despite clean opinion of Avon's external auditor on its financial statements.[105]

Second, in its protest letter to the Preliminary Assessment Notice, Avon explained the error in the presentation of export sales in the Third Quarter VAT Return. That is, instead of presenting the total sales for the third quarter alone, the presentation was a cumulative or year-to-date sales presentation. Avon appended copies of the Third Quarter VAT Return and the General Ledger Pages of Export Sales to its protest letter to prove the cumulative presentation of its sales. The Bureau of Internal Revenue Examiners accepted their explanation during their meeting.[106]

However, within just two (2) weeks from receipt of Avon's protest letter, the Commissioner issued the Final Letter of Demand and Final Assessment Notices, reiterating the findings stated in the Preliminary

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[100] *Rollo* (G.R. Nos. 201398–99), p. 401.
[101] Id. at 413.
[102] *Rollo* (G.R. No. 201418–19), pp. 720–724.
[103] *Rollo* (G.R. Nos. 201398–99), p. 405, *rollo* (G.R. Nos. 201418–19), pp. 293–294.
[104] *Rollo* (G.R. Nos. 201418–19), p. 197.
[105] *Rollo* (G.R. Nos. 201398–99), pp. 405–406.
[106] Id. at 407.

Assessment Notice.[107] The Bureau of Internal Revenue chose to ignore Avon's explanations and refused to cancel the assessments unless Avon would agree to pay the other deficiency assessments.[108]

Third, since the Final Assessment Notices merely reiterated the findings in the Preliminary Assessment Notice, Avon resubmitted its protest letter and supporting documents. During the conference with the revenue officers on August 4, 2003, Avon explained that it had already submitted all the reconciliation, schedules, and other supporting documents. It also submitted additional documents as directed by the revenue officers on June 26, 2003,[109] and presented the original General Ledger Book for 1999 for comparison by the Bureau of Internal Revenue's officers with the copies previously submitted. Again, Avon explained the alleged sales discrepancy to the revenue officers, who were convinced that there was no under-declaration of sales, and that the sales discrepancy between the Annual Income Tax Return and Quarterly VAT Return was merely due to erroneous presentation of sales in the Third Quarter VAT Return.[110]

By this time, hoping that the Commissioner would cancel the deficiency income and VAT assessments arising from the alleged sales discrepancy, Avon informed the Bureau of Internal Revenue examiners that it would make a partial payment of the assessments, which it did.[111]

Fourth, however, the Commissioner issued the Collection Letter[112] dated July 9, 2004 without deciding on the protest letter to the Final Assessment Notices. Once again, she failed to even comment on the arguments raised or address the documents submitted by Avon. Even the amounts supposedly paid by Avon were not deducted from the amount demanded in the Collection Letter. To justify its issuance, the Commissioner falsely alleged Avon of failing to submit its supporting documents.[113]

Fifth, Avon filed a request for withdrawal of the Collection Letter, but it was likewise ignored.[114]

Finally, the documents which reveal the events after the filing of the protest to the Final Assessment Notices on May 9, 2004 were missing from the Bureau of Internal Revenue Records.[115] These were (a) the handwritten Minutes of the Bureau of Internal Revenue/Taxpayer Conference on June 26,

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107 Id. at 408.
108 Id. at 409.
109 Id. at 386.
110 Id. at 409–410.
111 Id. at 410.
112 *Rollo* (G.R. Nos. 201418–19), p. 189.
113 *Rollo* (G.R. Nos. 201398–99), p. 411.
114 Id. at 412.
115 Id. at 414.

2003; (b) Avon's letter[116] dated August 1, 2003, with supporting documents, received by Revenue Officer Gesmundo on August 4, 2003, showing Avon's submission of the documents required by the Revenue Officers during the June 26, 2003 meeting; and (c) the two (2) Bureau of Internal Revenue Tax Payment Confirmations dated January 30, 2004, and Payment Forms called Bureau of Internal Revenue Form No. 0605.[117]

Avon further submits that the presumption of correctness of the assessments cannot apply in the face of compelling proof that they were issued without due process. It adds that "[h]ad the administrative process been conducted with fairness and in accordance with the prescribed procedure, [it] need not have incurred [filing fees and other litigation expenses to defend against a bloated deficiency tax assessment]."[118]

Against these claims of Avon, the Commissioner did not submit any refutation either in her Comment[119] or Memorandum,[120] and even in her pleadings before the Court of Tax Appeals. Instead, she could only give out a perfunctory resistance that "tax assessments . . . are presumed correct and made in good faith."[121]

The Court of Tax Appeals ruled that the difference in the appreciation by the Commissioner of Avon's supporting documents, which led to the deficiency tax assessments, was not violative of due process. While the Commissioner has the duty to receive the taxpayer's clarifications and explanations, she does not have the duty to accept them on face value.[122]

This Court disagrees.

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[123] 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.

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116 *Rollo* (G.R. Nos. 201418–19), pp. 328–339.
117 Id. at 803–809.
118 *Rollo* (G.R. No. 201398–99), p. 416.
119 *Rollo* (G.R. Nos. 201418–19), pp. 869–899.
120 *Rollo* (G.R. No. 201398–99), pp. 344–376.
121 Id. at 372.
122 *Rollo* (G.R. No. 201418–19), p. 168.
123 Id. at 194–202.

First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference,[124] the Preliminary Assessment Notice was issued. The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from ₱15,700,000.00 to ₱62,900,000.00,[125] without any discussion or explanation on the merits of Avon's explanations.

Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents,[126] 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.

Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.

The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process.[127] They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. However, this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.

Upon receipt of the Final Assessment Notices, Avon resubmitted its protest and submitted additional documents required by the revenue examiners, including the original General Ledger for 1999. As testified by Avon's Finance Director, Mildred C. Emlano, the Bureau of Internal Revenue examiners were convinced with Avon's explanation during the meeting on August 4, 2003, particularly, that there was no underdeclaration of sales.[128] Still, the Commissioner merely issued a Collection Letter dated July 9, 2004, demanding from Avon the payment of the same deficiency tax assessments with a warning that should it fail to do so within the required

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[124] Id. at 767.
[125] Id. at 770.
[126] Id. at 775.
[127] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172, 186–187 (2010) [Per J. Mendoza, Second Division].
[128] *Rollo* (G.R. Nos. 201418–19), pp. 30–31.

period, summary administrative remedies would be instituted without further notice.[129] This Collection Letter was based on the May 27, 2004 Memorandum of the Revenue Officers stating that "[Avon] failed to submit supporting documents within 60-day period."[130] This inaction on the part of the Bureau of Internal Revenue and its agents could hardly be considered substantial compliance of what is mandated by Section 228 of the Tax Code and the Revenue Regulation No. 12-99.

It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals.[131] 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.[132] The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.

In *Edwards v. McCoy*:[133]

> The object of a hearing is as much to have evidence considered as it is to present it. The right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.[134]

In *Ang Tibay*, this Court similarly ruled that "[n]ot 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.***"[135]

Furthermore, in *Mendoza v. Commission on Elections*,[136] this Court explained:

> [T]he last requirement, relating to the form and substance of the decision of a quasi-judicial body, further complements the hearing and decision-making due process rights and is similar in substance to the constitutional

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129 *Rollo* (G.R. Nos. 201418–19), p. 189.
130 Id. at 810.
131 Id. at 168.
132 *Ginete v. Court of Appeals,* 357 Phil. 36, 56 (1998) [Per J. Romero, Third Division].
133 22 Phil. 598 (1912) [Per J. Moreland, First Division].
134 Id. at 600–601.
135 69 Phil. 635, 642 (1940) [Per J. Laurel, En Banc].
136 618 Phil. 706 (2009) [Per J. Brion, En Banc].

> requirement that a decision of a court must state distinctly the facts and the law upon which it is based. **As a component of the rule of fairness that underlies due process, this is the "duty to give reason" to enable the affected person to understand how the rule of fairness has been administered in his case, to expose the reason to public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker.**[137] (Emphasis supplied, citation omitted)

In *Villa v. Lazaro*,[138] this Court held that Anita Villa (Villa) was denied due process when the then Human Settlement Regulatory Commission ignored her submission, not once but thrice, of the official documents certifying to her compliance with the pertinent locational, zoning, and land use requirements, and plans for the construction of her funeral parlor. It imposed on Villa a fine of ₱10,000.00 and required her to cease operations on the spurious premise that she had failed to submit the required documents. This Court found the Commissioner's failure or refusal to even acknowledge the documents submitted by Villa indefensible. It further held that the defects in the administrative proceedings "translate to a denial of due process against which the defense of failure to take timely appeal will not avail."[139]

Similarly, in this case, despite Avon's submission of its explanations and pieces of evidence to the assessments, the Commissioner failed to acknowledge these submissions and instead issued identical Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and Collection Letter, the latter being premised on Avon's alleged failure to submit supporting documents to its protest. Had the Commissioner performed her functions properly and considered the explanations and pieces of evidence submitted by Avon, this case could have been settled at the earliest possible time. For instance, all the evidence needed to settle the issue on under-declared sales, which constituted the bulk of the deficiency tax assessments, have been submitted to the Bureau of Internal Revenue. Indeed, from these same submissions, the Court of Tax Appeals concluded that there was no under-declaration of sales. As aptly pointed out by Avon, "The [Commissioner could not] feign simple mistake or misappreciation of the evidence . . . because [the issue was] plain and simple."[140]

Moreover, the Court of Tax Appeals erroneously applied the "presumption of regularity" in sustaining the Commissioner's assessments.

The presumption that official duty has been regularly performed is a disputable presumption under Rule 131, Section 3(m) of the Rules of Court.

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[137] Id. at 727.
[138] *Villa v. Lazaro*, 267 Phil. 39 (1990) [Per J. Narvasa, First Division].
[139] Id. at 51.
[140] *Rollo* (G.R. Nos. 201398–99), p. 413.

As a disputable presumption —

> [I]t may be accepted and acted on where there is no other evidence to uphold the contention for which it stands, or one which may be overcome by other evidence . . .
>
> The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty.[141] (Citation omitted)

In *Sevilla v. Cardenas,*[142] this Court refused to apply the "presumption of regularity" when it noted that there was documentary and testimonial evidence that the civil registrar did not exert *utmost efforts* before certifying that no marriage license was issued in favor of one of the parties.

This Court also refused to apply the presumption of regularity in *Bank of the Philippine Islands v. Evangelista,*[143] where the process server failed to show that he followed the required procedures:

> We cannot sustain petitioner's argument, which is anchored on the presumption of regularity in the process server's performance of duty. The Court already had occasion to rule that "[c]ertainly, it was never intended that the presumption of regularity in the performance of official duty will be applied even in cases where there is no showing of substantial compliance with the requirements of the rules of procedure." Such presumption does not apply where it is patent that the sheriff's or server's return is defective. Under this circumstance, respondents are not duty-bound to adduce further evidence to overcome the presumption, which no longer holds.[144] (Citations omitted)

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.

I.C

The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect.

This Court has, in several cases, declared void any assessment that

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141 *Sevilla v. Cardenas,* 529 Phil 419, 433 (2006) [Per J. Chico-Nazario, First Division].
142 529 Phil 419 (2006) [Per J. Chico-Nazario, First Division].
143 441 Phil 445 (2002) [Per J. Panganiban, Third Division].
144 Id. at 454.

failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12–99.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[145] this Court held that failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void. This Court explained:

> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence.[146] (Citation omitted)

In *Commissioner of Internal Revenue v. Reyes,*[147] this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.

In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue,*[148] this Court ruled, among others, that the taxpayer was deprived of due process when the Commissioner failed to issue a notice of informal conference and a Preliminary Assessment Notice as required by Revenue Regulation No. 12-99, in relation to Section 228 of the Tax Code. Hence, the assessment was void.

Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:[149]

> 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.

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145 652 Phil. 172 (2010) [Per J. Mendoza, Second Division].
146 Id. at 184.
147 516 Phil. 176 (2006) [Per C.J. Panganiban, First Division].
148 565 Phil. 613 (2007) [Per J. Velasco, Jr., Second Division].
149 241 Phil. 829 (1988) [Per J. Cruz, First Division].

. . . .

> 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.**[150] (Emphasis supplied)

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. This Court, nonetheless, proceeds to discuss the points raised by the Commissioner pertaining to estoppel and prescription.

II

As a general rule, petitioner has three (3) years from the filing of the return to assess taxpayers. Section 203 of the Tax Code provides:

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

An exception to the rule of prescription is found in Section 222, paragraphs (b) and (d) of the same Code, *viz*:

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[150] Id. at 830–836.

> Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —
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> . . . .
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> (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. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> . . . .
>
> (d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

Thus, the period to assess and collect taxes may be extended upon the Commissioner and the taxpayer's written agreement, executed before the expiration of the three (3)-year period.

In this case, two (2) waivers were supposedly executed by the parties extending the prescriptive periods for assessment of income tax, VAT, and expanded and final withholding taxes to January 14, 2003, and then to April 14, 2003.[151]

The Court of Tax Appeals, both the Special First Division and En Banc, declared the two (2) Waivers of the Defense of Prescription defective and void, for the Commissioner's failure to furnish signed copies of the Waivers to Avon, in violation of the requirements provided in Revenue Memorandum Order No. 20-90.[152]

Indeed, a Waiver of the Defense of Prescription is a bilateral agreement between a taxpayer and the Bureau of Internal Revenue to extend the period of assessment and collection to a certain date. "The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the document but of the acceptance by the [Bureau of Internal Revenue] and the perfection of the agreement."[153]

However, the Commissioner in this case contends that Avon is

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[151] *Rollo* (G.R. No. 201398–99), p. 356.
[152] *Rollo* (G.R. No. 201418–19), p. 171.
[153] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,* 488 Phil 218, 235 (2004) [Per J. Ynares-Santiago, First Division].

estopped from assailing the validity of the Waivers of the Defense of Prescription that it executed when it paid portions of the disputed assessments.[154] The Commissioner invokes the ruling in *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*,[155] which allegedly must be applied as *stare decisis*.[156]

The Commissioner's contention is untenable.

Rizal Commercial Banking Corporation is not on all fours with this case. The estoppel upheld in that case arose from the benefit obtained by the taxpayer from its execution of the waiver, in the form of a drastic reduction of the deficiency taxes, and the taxpayer's payment of a portion of the reduced tax assessment. In that case, this Court explained that Rizal Commercial Banking Corporation's partial payment of the revised assessments effectively belied its insistence that the waivers were invalid and the assessments were issued beyond the prescriptive period. Thus:

> Estoppel is clearly applicable to the case at bench. RCBC, through its partial payment of the revised assessments issued within the extended period as provided for in the questioned waivers, impliedly admitted the validity of those waivers. Had petitioner truly believed that the waivers were invalid and that the assessments were issued beyond the prescriptive period, then it should not have paid the reduced amount of taxes in the revised assessment. RCBC's subsequent action effectively belies its insistence that the waivers are invalid. The records show that on December 6, 2000, upon receipt of the revised assessment, RCBC immediately made payment on the uncontested taxes. Thus, RCBC is estopped from questioning the validity of the waivers. To hold otherwise and allow a party to gainsay its own act or deny rights which it had previously recognized would run counter to the principle of equity which this institution holds dear.[157] (Citation omitted)

Here, Avon claimed that it did not receive any benefit from the waivers.[158] On the contrary, there was even a drastic increase in the assessed deficiency taxes when the Commissioner increased the alleged sales discrepancy from ₱15,700,000.00 in the preliminary findings to ₱62,900,000.00 in the Preliminary Assessment Notice and Final Assessment Notices. Furthermore, Avon was compelled to pay a portion of the deficiency assessments "in compliance with the Revenue Officer's condition in the hope of cancelling the assessments on the non-existent sales discrepancy."[159] Under these circumstances, Avon's payment of an insignificant portion of the assessment cannot be deemed an admission or

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154 *Rollo* (G.R. No. 201398–99), pp. 358–360.
155 672 Phil. 514 (2011) [Per J. Mendoza, Third Division].
156 *Rollo* (G.R. No. 201398–99), p. 361.
157 *Rizal Commercial Banking Corp. v. Commissioner of Internal Revenue*, 672 Phil. 514, 527 (2011) [Per J. Mendoza, Third Division].
158 *Rollo* (G.R. No. 201398–99), p. 419.
159 Id. at 422.

recognition of the validity of the waivers.

On the other hand, the Court of Tax Appeals' reliance on the general rule enunciated in *Commissioner of Internal Revenue v. Kudos Metal Corporation*[160] is proper. In that case, this Court ruled that the Bureau of Internal Revenue could not hide behind the doctrine of estoppel to cover its failure to comply with its own procedures. "[A] waiver of the statute of limitations [is] a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations [and thus, it] must be carefully and strictly construed."[161]

III

The Commissioner of Internal Revenue in this case asserts that since Avon filed its protest on May 9, 2003, it only had 30 days from November 5, 2003, i.e., the end of the 180 days, or until December 5, 2003 within which to appeal to the Court of Tax Appeals. As Avon only filed its appeal on August 13, 2004, its right to appeal has prescribed.[162]

Avon counters that it acted in good faith and in accordance with Rule 4, Section 3 of the Revised Rules of the Court of Tax Appeals and jurisprudence when it opted to wait for the decision of the Commissioner and appeal it within the 30-day period.[163] "The Collection Letter, albeit void, constitutes a constructive denial of Avon's protest and is the final decision of the [Commissioner] for purposes of counting the reglementary 30-day period to appeal[.]"[164] Since Avon received the Collection Letter on July 14, 2004, its Petition for Review was timely filed on August 13, 2004.[165] At any rate, Avon argues that the issue on the timeliness of its appeal was raised by the Commissioner only in its Motion for Reconsideration of the Court of Tax Appeals En Banc November 9, 2011 Decision, and a belated consideration of this matter would violate its right to due process and fair play.[166]

The issue on whether Avon's Petition for Review before the Court of Tax Appeals was time-barred requires the interpretation and application of Section 228 of the Tax Code, *viz:*

> Section 228. *Protesting of Assessment.* —
> . . . .

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160 634 Phil. 314 (2010) [Per J. Del Castillo, Second Division].
161 Id. at 329.
162 *Rollo* (G.R. No. 201398–99), p. 367.
163 Id. at 428.
164 Id. at 425.
165 Id.
166 Id. at 429.

> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> **If the protest is denied in whole or in part, *or is not acted upon within one hundred eighty (180) days from submission of documents*, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals *within thirty (30) days* from receipt of the said decision, or *from the lapse of the one hundred eighty (180)-day period;* otherwise, the *decision* shall become final, executory and demandable.** (Emphasis supplied)

Section 228 of the Tax Code amended Section 229[167] of the Old Tax Code[168] by adding, among others, the 180-day rule. This new provision presumably avoids the situation in the past when a taxpayer would be held hostage by the Commissioner's inaction on his or her protest. Under the Old Tax Code, in conjunction with Section 11 of Republic Act No. 1125, only the decision or ruling of the Commissioner on a disputed assessment is appealable to the Court of Tax Appeals. Consequently, the taxpayer then had to wait for the Commissioner's action on his or her protest, which more often was long-delayed.[169] With the amendment introduced by Republic Act

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[167] *People v. Sandiganbayan*, 504 Phil. 407 (2005) [Per J. Panganiban, Third Division] contains a legislative history of this provision in its footnote no. 9 as follows:
"Sec. 229 was originally found in the NIRC of 1977, which was codified by and made an integral part of Presidential Decree (PD) No. 1158, otherwise known as 'A Decree to Consolidate and Codify all the Internal Revenue Laws of the Philippines.'
When the NIRC of 1977 was amended by PD 1705 on August 1, 1980, Sec. 229 was restated as Sec. 16(d). On January 16, 1981, PD 1773 further amended Sec. 16 by eliminating paragraph (d) and inserting its contents between Secs. 319 and 320 as a new Sec. 319-A. PD 1994 then renumbered Sec. 319-A as Sec. 270 on January 1, 1986; and on January 1, 1988, Sec. 270 was again renumbered as Sec. 229 and rearranged to fall under Chapter 3 of Title VIII of the NIRC by Executive Order (EO) No. 273, otherwise known as 'Adopting a Value-Added Tax, Amending for this Purpose Certain Provisions of the National Internal Revenue Code, and for other purposes.'
At present, Sec. 229 has been amended as Sec. 228 by RA 8424, otherwise known as the 'Tax Reform Act of 1997.'"
Section 229 of the Old Tax Code provides:
Sec. 229. Protesting of assessment. — When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.
Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulation within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.
If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable.

[168] Pres. Decree No. 1158 (1977), as amended by Executive Order No. 273.

[169] For instance, in *Commissioner of Internal Revenue v. Isabela Cultural Corporation (ICC),* 413 Phil. 376 (2001) [Per J. Panganiban, Third Division], Isabela Cultural Corporation received an assessment letter dated February 9, 1990 stating that it had deficiency income taxes due; and it subsequently filed its motion for reconsideration on March 23, 1990. In support of its request for reconsideration, it sent to the Bureau of Internal Revenue additional documents on April 18, 1990. The next communication

No. 8424, the taxpayer may now immediately appeal to the Court of Tax Appeals in case of inaction of the Commissioner for 180 days from submission of supporting documents.

Republic Act No. 9282, or the new Court of Tax Appeals Law, which took effect on April 23, 2004, amended Republic Act No. 1125 and included a provision complementing Section 228 of the Tax Code, as follows:

> Section 7. *Jurisdiction.* — The CTA shall exercise:
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> (a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:
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> . . . .
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**[.] (Emphasis supplied)

Under Section 7(a)(2) above, it is expressly provided that the "inaction" of the Commissioner on his or her failure to decide a disputed assessment within 180 days is "deemed a denial" of the protest.

In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*,[170] this Court, by way of an *obiter*, ruled as follows:

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that Isabela Cultural Corporation received was already the Final Notice Before Seizure dated November 10, 1994, or more than four (4) years later. Isabela Cultural Corporation filed a petition for review with the Court of Tax Appeals alleging that the Final Notice of Seizure was the Commissioner's final decision. The Court of Tax Appeals dismissed the petition. On appeal, this Court ruled that a final demand from the Commissioner reiterating the immediate payment of a tax deficiency previously made is tantamount to a denial of the protest. Such letter amounts to a final decision on a disputed assessment and is thus appealable to the Court of Tax Appeals.

In *Commissioner of Internal Revenue v. Union Shipping Corp.*, 264 Phil 132 (1990) [Per J. Paras, Second Division], Union Shipping Corporation (Union Shipping) was assessed deficiency income taxes in a letter dated December 27, 1974. On January 10, 1975, Union Shipping protested the assessment. Without ruling on the protest, the Commissioner served a Warrant of Distraint and Levy on November 25, 1976. Union Shipping reiterated its request for reinvestigation of the assessment and for reconsideration of the Warrant. Without again acting on this request, the Commissioner filed a collection suit before the Court of First Instance of Manila. Summons was received by Union Shipping on December 28, 1978. On January 10, 1979, Union Shipping filed a petition for review with the Court of Tax Appeals. The Commissioner raised prescription, contending that the petition was filed beyond 30 days from receipt of the Warrant on November 25, 1976. Ruling in favor of Union Shipping, this Court observed that since the Commissioner did not rule on Union Shipping's motion for reconsideration, the latter was left in the dark as to which action of the Commissioner was the decision appealable to the Court of Tax Appeals. "Had [the Commissioner] categorically stated that he denies [Union Shipping's] motion for reconsideration and that his action constitutes his final determination on the disputed assessment, [it] without needless difficulty would have been able to determine when his right to appeal accrues and the resulting confusion would have been avoided."

[170] 550 Phil 316 (2007) (Resolution) [Per J. Ynares-Santiago, Third Division].

> In case the Commissioner failed to act on the disputed assessment within the 180-day period from the date of submission of documents, a taxpayer can either: 1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or 2) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision. However, these options are mutually exclusive, and resort to one bars the application of the other.[171]

In *Rizal Commercial Banking Corporation*, the Commissioner failed to act on the disputed assessment within 180 days from date of submission of documents. Thus, Rizal Commercial Banking Corporation opted to file a Petition for Review before the Court of Tax Appeals. Unfortunately, it was filed more than 30 days following the lapse of the 180-day period. Consequently, it was dismissed by the Court of Tax Appeals for late filing. Rizal Commercial Banking Corporation did not file a Motion for Reconsideration or make an appeal; hence, the disputed assessment became final and executory.

Subsequently, Rizal Commercial Banking Corporation filed a petition for relief from judgment on the ground of excusable negligence, but this was denied by the Court of Tax Appeals for lack of merit. This Court affirmed the Court of Tax Appeals. It further held that even if the negligence of Rizal Commercial Banking Corporation's counsel was excusable and the petition for relief from judgment would be granted, it would not fare any better because its action for cancellation of assessments had already prescribed since its Petition was filed beyond the 180+30-day period stated in Section 228.

Rizal Commercial Banking Corporation then filed a Motion for Reconsideration. Denying the motion, this Court held that it could not anymore "claim that the disputed assessment is not yet final as it remained unacted upon by the Commissioner; that it can still await the final decision of the Commissioner and thereafter appeal the same to the Court of Tax Appeals."[172] Since it had availed of the first option by filing a petition for review because of the Commissioner's inaction, although late, it could no longer resort to the second option.

Rizal Commercial Banking Corporation referred to Rule 4, Section 3(a)(2) of the 2005 Revised Rules of the Court of Tax Appeals, or the 2005 Court of Tax Appeals Rules, which provides:

> Section 3. *Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:

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[171] Id. at 324–325.
[172] Id. at 325.

> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
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> . . . .
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> (2) **Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code or other applicable law provides a specific period for action**: *Provided*, that **in case of disputed assessments, the inaction of the Commissioner of Internal Revenue** within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code **shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court** and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that **should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules**; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code[.] (Emphasis supplied)

In *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*,[173] this Court reaffirmed *Rizal Commercial Banking Corporation, viz*:

> In arguing that the assessment became final and executory by the sole reason that petitioner failed to appeal the inaction of the Commissioner within 30 days after the 180-day reglementary period, respondent, in effect, limited the remedy of Lascona, as a taxpayer, under Section 228 of the NIRC to just one, that is — to appeal the inaction of the Commissioner on its protested assessment after the lapse of the 180-day period. This is incorrect.
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> . . . .
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> [W]hen the law provided for the remedy to appeal the inaction of the CIR, it did not intend to limit it to a single remedy of filing of an appeal after the lapse of the 180-day prescribed period. Precisely, when a taxpayer protested an assessment, he naturally expects the CIR to decide either positively or negatively. A taxpayer cannot be prejudiced if he chooses to wait for the final decision of the CIR on the protested assessment. More

[173] 683 Phil 430 (2012) [Per J. Peralta, Third Division].

> so, because the law and jurisprudence have always contemplated a scenario where the CIR will decide on the protested assessment.[174]

This Court, nonetheless, stressed that these two (2) options of the taxpayer, i.e., to (1) file a petition for review before the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or (2) to await the final decision of the Commissioner on the disputed assessment and appeal this final decision to the Court of Tax Appeals within 30 days from receipt of it, "*are mutually exclusive and resort to one bars the application of the other.*"[175]

Rule 4, Section 3(a)(2) of the 2005 Court of Tax Appeals Rules clarifies Section 7(a)(2) of Republic Act No. 9282 by stating that the "deemed a denial" rule is only for the "purposes of allowing the taxpayer to appeal" in case of inaction of the Commissioner and "does not necessarily constitute a formal decision of the Commissioner." Furthermore, the same provision clarifies that the taxpayer may choose to wait for the final decision of the Commissioner even beyond the 180-day period, and appeal from it.

The 2005 Court of Tax Appeals Rules were approved by the Court En Banc on November 22, 2005, in A.M. No. 05-11-07-CTA, pursuant to its constitutional rule-making authority.[176] Under Article VIII, Section 5, paragraph 5 of the 1987 Constitution:

> Section 5. **The Supreme Court shall have the following powers:**
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> . . . .
>
> (5) **Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts**, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. **Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.** (Emphases supplied)

In *Metro Construction, Inc. v. Chatham Properties, Inc.*,[177] this Court held:

> There is no controversy on the principle that the right to appeal is statutory. However, the mode or manner by which this right may be

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[174] Id. at 440–441.
[175] Id. at 441.
[176] CONST., art. VIII, sec. 5(5).
[177] 418 Phil 176 (2001) [Per C.J. Davide, Jr., First Division].

> exercised is a question of procedure which may be altered and modified provided that vested rights are not impaired. The Supreme Court is bestowed by the Constitution with the power and prerogative, *inter alia*, to promulgate rules concerning pleadings, practice and procedure in all courts, as well as to review rules of procedure of special courts and quasi-judicial bodies, which, however, shall remain in force until disapproved by the Supreme Court. This power is constitutionally enshrined to enhance the independence of the Supreme Court.[178] (Citation omitted)

Carpio-Morales v. Court of Appeals[179] elucidated that while Congress has the authority to establish the lower courts, including the Court of Tax Appeals, and to define, prescribe, and apportion their jurisdiction, the authority to promulgate rules of procedure is exclusive to this Court:

> **A court's exercise of the jurisdiction it has acquired over a particular case conforms to the limits and parameters of the rules of procedure duly promulgated by this Court.** In other words, procedure is the framework within which judicial power is exercised. In *Manila Railroad Co. v. Attorney-General,* the Court elucidated that "[t]he power or authority of the court over the subject matter existed and was fixed before procedure in a given cause began. **Procedure does not alter or change that power or authority; it simply directs the manner in which it shall be fully and justly exercised.** To be sure, in certain cases, if that power is not exercised in conformity with the provisions of the procedural law, purely, the court attempting to exercise it loses the power to exercise it legally. This does not mean that it loses jurisdiction of the subject matter."
>
> While the power to define, prescribe, and apportion the jurisdiction of the various courts is, by constitutional design, vested unto Congress, **the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts belongs exclusively to this Court.** (Emphasis in the original, citations omitted)[180]

Section 228 of the Tax Code and Section 7 of Republic Act No. 9282 should be read in conjunction with Rule 4, Section 3(a)(2) of the 2005 Court of Tax Appeals Rules. In other words, the taxpayer has the option to either elevate the case to the Court of Tax Appeals if the Commissioner does not act on his or her protest, or to wait for the Commissioner to decide on his or her protest before he or she elevates the case to the Court of Tax Appeals. This construction is reasonable considering that Section 228 states that the *decision* of the Commissioner not appealed by the taxpayer becomes final, executory, and demandable.

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178 Id. at 205.
179 772 Phil. 672 (2015) [Per J. Perlas-Bernabe, En Banc].
180 Id. at 732–733.

IV

In this case, Avon opted to wait for the final decision of the Commissioner on its protest filed on May 9, 2003.

This Court holds that the Collection Letter dated July 9, 2004 constitutes the final decision of the Commissioner that is appealable to the Court of Tax Appeals.[181] The Collection Letter dated July 9, 2004 demanded from Avon the payment of the deficiency tax assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice.[182] The Collection Letter was purportedly based on the May 27, 2004 Memorandum of the Revenue Officers stating that Avon "failed to submit supporting documents within 60-day period."[183] This Collection Letter demonstrated a character of finality such that there can be no doubt that the Commissioner had already made a conclusion to deny Avon's request and she had the clear resolve to collect the subject taxes.

Avon received the Collection Letter on July 14, 2004. Hence, Avon's appeal to the Court of Tax Appeals filed on August 13, 2004 was not time-barred.

In any case, even if this Court were to disregard the Collection Letter as a final decision of the Commissioner on Avon's protest, the Collection Letter constitutes an act of the Commissioner on "other matters" arising under the National Internal Revenue Code, which, pursuant to *Philippine Journalists, Inc. v. CIR*,[184] may be the subject of an appropriate appeal before the Court of Tax Appeals.

On a final note, the Commissioner is reminded of her duty enunciated in Section 3.1.6 of Revenue Regulations No. 12-99 to render a final decision on disputed assessment. Section 228 of the Tax Code requires taxpayers to exhaust administrative remedies by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment. Exhaustion of administrative remedies is required prior to resort to the Court of Tax Appeals precisely to give the Commissioner the opportunity to "re-examine

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[181] *See Oceanic Wireless Network Inc. v. Commissioner of Internal Revenue,* 513 Phil 317 (2005) [Per J. Azcuna, First Division] where this Court ruled that a demand letter may be considered the final decision on a disputed assessment, if the language used or the tenor of it shows a character of finality, which is tantamount to a rejection of the request for reconsideration.

Also in *Commissioner of Internal Revenue v. Isabela Cultural Corporation,* 413 Phil. 376 (2001) [Per J. Panganiban, Third Division], this Court considered the "Final Notice Before Seizure" as the Bureau of Internal Revenue's final decision on a disputed assessment, and thus, appealable to the Court of Tax Appeals.

[182] *Rollo* (G.R. No. 201418–19), p. 189.

[183] Id. at 810.

[184] 488 Phil. 218 (2004) [Per J. Ynares-Santiago, First Division].

its findings and conclusions"[185] and to decide the issues raised within her competence.[186]

Paat v. Court of Appeals[187] wrote:

> This Court in a long line of cases has consistently held that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction then such remedy should be exhausted first before court's judicial power can be sought. The premature invocation of court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or *estoppel* the case is susceptible of dismissal for lack of cause of action. **This doctrine of exhaustion of administrative remedies was not without its practical and legal reasons, for one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that the courts of justice for reasons of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case.**[188] (Emphasis supplied, citations omitted)

Taxpayers cannot be left in quandary by the Commissioner's inaction on the protested assessment. It is imperative that the taxpayers are informed of the Commissioner's action for them to take proper recourse to the Court of Tax Appeals at the opportune time.[189] Furthermore, this Court had time and again expressed the dictum that "the Commissioner should always indicate to the taxpayer in clear and unequivocal language what constitutes his [or her] final determination of the disputed assessment. That procedure is demanded by the pressing need for fair play, regularity and orderliness in administrative action."[190]

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.

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185 *Ruivivar v. Office of the Ombudsman,* 587 Phil. 100, 113 (2008) [Per J. Brion, Second Division].

186 *See Aguinaldo Industries Corp. v. Commissioner of Internal Revenue,* 197 Phil. 822 (1982) [Per J. Plana, First Division].

187 334 Phil 146 (1997) [Per J. Torres, Jr., Second Division].

188 Id. at 152–153.

189 *Lascona Land Co., Inc. v. Commissioner of Internal Revenue,* 683 Phil 430, 441–442 (2012) [Per J. Peralta, Third Division].

190 *Advertising Associates, Inc. v. Court of Appeals,* 218 Phil. 730, 730–736 (1984) [Per J. Aquino, Second Division] *citing Surigao Electric Co., Inc. vs. Court of Tax Appeals*, L-25289, 156 Phil. 517 (1974) [Per J. Castro, First Division].

WHEREFORE, the Petition of the Commissioner of Internal Revenue in G.R. Nos. 201398–99 is **DENIED.** The Petition of Avon Products Manufacturing, Inc. in G.R. Nos. 201418–19 is **GRANTED.** The remaining deficiency Income Tax under Assessment No. LTAID-II-IT-99-00018 in the amount of ₱357,345.88 for taxable year 1999, including increments, is hereby declared **NULL and VOID** and is **CANCELLED.**

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice
Chairperson

ANDRES B. REYES, JR.
Associate Justice

On official business
ALEXANDER G. GESMUNDO
Associate Justice

JOSE C. REYES, JR.
Associate Justice

ATTESTATION

I attest 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.

DIOSDADO M. PERALTA
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.

TERESITA J. LEONARDO-DE CASTRO
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
DEC 20 2018