REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

RUEL E. ORDUÑA, doing business under the name and style, **GRUPO ENTABLADO STAGE BUILDERS,** *Petitioner,*	**CTA EB NO. 2669** (CTA Case No. 9619)
	Present:
-*versus*-	**DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 10 2024 1:30pm

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DECISION

ANGELES, *J.*:

Before the Court *En Banc* is a *Petition for Review*[1] seeking the reversal of the Decision and Resolution, dated March 16, 2021 and May 25, 2022, respectively, which dismissed CTA Case No. 9619 for lack of jurisdiction; and, praying for the cancellation and setting aside of the assessments and Warrant of Distraint and/or Levy (WDL), for taxable year 2012.

FACTS

The CTA 3rd Division narrated the facts, as follows:

> Petitioner is formerly doing business under the name and style of Grupo Entablado Stage Builders, duly registered with the Bureau of Internal Revenue (BIR) since 1997 under TIN 131-971-938-000, and with the Department of Trade and Industry until the cancellation of the said Business Name on September 5, 2016; and

[1] EB Docket, pp. 25-37.

with principal address at No. 40 M.H. Del Pilar, Pinagbuhatan, Pasig City, Philippines.

Respondent is the Commissioner of Internal Revenue (CIR), who is the head of the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes.

On October 31, 2013, BIR Revenue Region No. 7 (RR 7), Revenue District No. 43B-West Pasig issued Letter of Authority No. 43B-2013-00000702 dated October 31, 2013, authorizing Revenue Officer (RO) Genaro Guevarra and Group Supervisor (GS) Onofre De Guzman to examine petitioner's books of accounts and other accounting records for all internal revenue taxes including documentary stamp tax (DST) and other taxes for the period January 1, 2012 to December 31, 2012.

On December 21, 2015, respondent through Regional Director (RD) Alfredo V. Misajon of RR 7 issued the *Preliminary Assessment Notice (PAN)* with *Details of Discrepancies* on December 17, 2015, assessing petitioner for deficiency income tax, value-added tax (VAT) and expanded withholding tax (EWT), including increments for TY 2012 in the aggregate amount of P10,844,379.91.

On January 11, 2016, respondent through RD Alfredo V. Misajon, issued the *Formal Letter of Demand* (FLD) with *Assessment Notices* (FAN) and *Details of Discrepancies*, assessing petitioner for deficiency income tax, VAT and EWT including increments for TY 2012 in the aggregate amount of P10,962,817.48, broken down as follows:

Tax Type	Total
Income Tax	P 9,274,250.88
Value-Added Tax	1,244,768.52
Expanded Withholding Tax	443,798.08
	P 10,962,814.48

On June 1, 2016, respondent through Chief of Collection Division, Alice S.A. Gonzales, issued the *Final Notice Before Seizure* (FNBS) against petitioner requesting the settlement of the following tax liabilities:

Assessment #		Basic Tax Due	Interest	Total
043B-B073-12	IT	P 5,924,223.96	P3,350,026.92	P9,274,250.88
043B-B073-12	VT	773,477.20	471,291.32	1,244,768.52
043B-B073-12	WE	274,832.54	168,965.54	443,798.08
			TOTAL	**P10,962,817.48**

On August 10, 2016, petitioner filed a *Reply Letter* dated August 10, 2016, stating that he is not aware of any tax liability or tax audit for TY 2012; and denying the receipt of the Assessment/Demand Letter indicated in the FNBS.

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> On November 7, 2016, respondent through Chief of Collection Division, Alice S.A. Gonzales, issued the subject WDL No. RR7-2016-10-24-895 in view of petitioner's alleged failure and refusal to pay the subject deficiency taxes for TY 2012.
>
> On November 8, 2016, petitioner filed a *Letter Reply*, appealing for the immediate lifting and withdrawal of the WDL and reiterating that he did not receive the assessment notice covering deficiency taxes for TY 2012.[2] (*citations omitted*)

On June 21, 2017, petitioner filed his *Petition for Review* (original Petition) with the CTA Division, which was subsequently docketed as CTA Case No. 9619, praying that the WDL and the assessments for taxable year 2012, in the amount of Php 10,962,817.48, be lifted and set aside.

After trial, the CTA 3rd Division rendered the assailed Decision on March 16, 2021, as follows:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**[3]

The CTA 3rd Division found that petitioner failed to timely file an appeal of the WDL to CTA, thus, it did not acquire jurisdiction over the case.

Petitioner's *Motion for Reconsideration (Re: Decision promulgated on 16 March 2021)* was denied for lack of merit in the Resolution dated May 25, 2022.[4]

Still aggrieved, petitioner filed the instant *Petition for Review* (instant Petition) on August 31, 2022, praying for the reversal of the Decision and Resolution of the CTA Division in CTA Case No. 9619; for the cancellation of the assessments against petitioner under Assessment/Demand Letter 043B-B073-12; and, for the lifting and cancellation of the WDL issued against petitioner.

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[2] Division Decision, dated March 16, 2021, EB Docket, pp. 51-53.
[3] Division Decision, Dated March 16, 2021, EB Docket, p. 62.
[4] EB Docket, pp. 65-68.

Despite notice,[5] respondent failed to file a comment on the instant Petition.[6] The case was referred to mediation,[7] which was unsuccessful.[8]

On November 7, 2023, the case was submitted for decision.[9]

ISSUES

Petitioner submits that:

> THE HONORABLE THIRD DIVISION GRAVELY ERRED IN RULING THAT THE INSTANT PETITION FOR REVIEW OF THE PETITIONER WAS FILED OUT OF TIME, AND CONSEQUENTLY IT HAS NO JURISDICTION TO ENTERTAIN THE SAME.[10]

Petitioner states that the CTA Division erred in dismissing the case for lack of jurisdiction. Petitioner cites *Manuel B. Palaganas v. Commissioner of Internal Revenue*[11] (Palaganas case) to argue that the pivotal issue to be resolved is whether petitioner received the assessment notices because if not, a void assessment bears no valid fruit.

Petitioner reiterates that, similar to the *Palaganas* case, he did not receive any assessment or demand letter prior to the Final Notice Before Seizure (FNBS). Thus, there was a clear violation of his right to due process and he cannot be made liable for such void assessments. A void assessment bears no valid fruit.

RULING OF THE COURT

The Court *En Banc* finds the instant Petition bereft of merit.

The instant Petition was timely filed.

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[5] EB Docket, pp. 100-101.
[6] Records Verification dated November 4, 2022, EB Docket, p. 102.
[7] Resolution dated January 27, 2023, EB Docket, pp. 104-105.
[8] Mediator's Report dated November 6, 2023, EB Docket, unpaginated.
[9] Resolution dated November 7, 2023, EB Docket, pp. 116-117.
[10] Petition for Review, EB Docket, p. 30.
[11] CTA Case No. 8394, September 17, 2014.

Petitioner received a copy of the assailed Resolution, dated May 25, 2022, on August 1, 2022.[12]

Petitioner had fifteen (15) days from such receipt or until August 16, 2022 within which to file a Petition for Review, pursuant to the Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b).[13]

On August 12, 2022, petitioner filed a *Motion for Extension of Time (Re: filing of Petition for Review)*,[14] praying for an additional fifteen (15) days from August 16, 2022, or until August 31, 2022, to file his Petition for Review. The extension was granted in the Minute Resolution, dated August 12, 2022.[15]

On August 31, 2022, petitioner timely filed the instant Petition.

There is no compelling reason to reverse or modify the findings of the CTA Division.

The CTA Division dismissed petitioner's original Petition on the ground of lack of jurisdiction, after finding that petitioner failed to timely file an appeal, or to file an appeal within thirty (30) days from receipt of the WDL.

We affirm.

The period for appealing to the CTA is set forth in Section 11 of Republic Act No. (RA 1125), as amended by RA 9282, which states:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA**

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[12] EB Docket, p. 64.

[13] Rule 8 Procedure in Civil Cases

Sec. 3. *Who may appeal; period to file petition.*

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[14] EB Docket, pp. 1-4.

[15] EB Docket, p. 98.

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> **within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **within thirty (30) days from the receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: *Provided, however,* That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc.*
>
> xxx xxx xxx (*Emphasis supplied*)

This is implemented in Section 3, Rule 8 of the Revised Rules of the CTA (RRCTA), which states:

> RULE 8
> PROCEDURE IN CIVIL CASES
>
> xxx xxx xxx
>
> SEC. 3. *Who may appeal; period to file petition.* –
>
> (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes. (*Emphasis supplied*)

Thus, a taxpayer has thirty (30) days after receipt of a decision or ruling on disputed assessments within which to file an appeal with the CTA.

The question that remains is whether the WDL is a subject matter that is within the jurisdiction of the CTA.

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In Section 7(a)(1) of RA 1125, as amended, the CTA's jurisdiction is partly stated, as follows:

> SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of 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**; (*Emphasis supplied*)

The same is also stated in Section 3(a)(1), Rule 4 of the RRCTA:

> SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of 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**; (*Emphasis supplied*)

Based on the foregoing, the jurisdiction of the CTA is not limited to decisions of the CIR involving disputed assessments, but also includes "*other matters*" arising under the NIRC or other laws administered by the BIR.[16]

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*,[17] the Supreme Court held that the appellate jurisdiction of the CTA encompasses the determination of whether the WDL issued by the BIR is valid, to wit:

> The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. **The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue**. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the warrant of**

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[16] Division Decision, EB Docket, p. 59.
[17] G.R. No. 162852, December 16, 2004.

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> **distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected. (*Emphasis supplied*)

Thus, petitioner could appeal the WDL to the CTA, and the CTA has jurisdiction over such matter, subject to the timely filing of a petition for review, pursuant to Sec. 11 of RA 1125, as amended, and Section 3(a), Rule 8 of the RRCTA, both earlier quoted.

Unfortunately, petitioner failed to timely file his original Petition with the CTA Division. The WDL in this case was served to petitioner on November 7, 2016.[18] Petitioner had thirty (30) days therefrom or until December 7, 2016, to appeal to the CTA. However, petitioner filed the original Petition with the CTA Division only on June 21, 2017, or more than seven (7) months after his receipt of the subject WDL. Thus, the original Petition was clearly filed out of time.

As petitioner failed to offer a plausible explanation or justifiable reason for its extreme delay in taking the proper action against the WDL, the Court *En Banc* finds no cogent reason to relax the applicable rules.

The Court *En Banc* likewise finds no merit to petitioner's argument that the Court should apply the *Palaganas* case where the pivotal issue should be the validity of the assessment. The CTA Division correctly held that CTA decisions do not constitute binding precedents.[19]

The WDL constitutes constructive and final denial of a protest, from which the 30-day period to appeal to the CTA should be reckoned.[20] Thus, due to petitioner's failure to timely appeal the WDL with the CTA Division, the CTA Division was bereft of jurisdiction and rightly dismissed the case.

As often stated, the right to appeal is not a constitutional right but a mere statutory privilege. As such, anyone who seeks to invoke such privilege must comply with the applicable rules; otherwise, the right to appeal is forfeited.[21]

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[18] Exhibit "P-6", Division Docket, p. 27.
[19] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[20] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 225809, March 17, 2021.
[21] *Agravante v. Commission on Elections, et al.*, G.R. No. 264029, August 8, 2023.

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WHEREFORE, the instant *Petition for Review* is **DENIED** for lack of merit. The Decision and Resolution, dated March 16, 2021 and May 25, 2022, respectively, in CTA Case No. 9619 are **AFFIRMED**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

(With due respect, see Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

RUEL E. ORDUÑA, doing business under the name and style, GRUPO ENTABLADO STAGE BUILDERS,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2669
(CTA Case No. 9619)

Present:

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

Promulgated:
OCT 10 2024 1:30pm

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I submit that, by all means, in every instance and at all times, a void assessment should never be dignified by the Court nor be the subject of a lawful execution as in the present case.

Government should not be allowed to benefit from a void assessment

While there is no denying that petitioner failed to elevate the Warrant of Distraint and/or Levy (WDL) within the reglementary period of appeal to the Court of Tax Appeals (CTA), questions still remain: *(i)* Will such omission make a patently void assessment upon which the WDL was issued, valid and enforceable? *(ii)* Should the Court allow the government to benefit from an assessment that is fraught with fatal infirmities?

The disquisition in *Rene H. Imperial et al. vs. Hon. Edgar L. Armes, Presiding Judge of Branch 4, Regional Trial Court, 5th Judicial Region, Legazpi City et al. ("Imperial"),*[1] on the effect of a void judgment is enlightening:

> "**A void judgment is no judgment at all in legal contemplation**. In *Canero v. University of the Philippines* we held that-
>
> > x x x A void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. **It has no legal or binding effect or efficacy <u>for any purpose or at any place.</u>** It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there was no judgment. x x x
> >
> > xxx
> >
> > ***Effects of a void judgment***
> >
> > *xxx*
> >
> > Our ruling in *Gonzales* v. *Solid Cement Corporation* is more unequivocal. In this case, we found that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction, therefore acting outside the contemplation of law. **Hence, even when the period to assail the CA decision had already lapsed, we ruled that it did not become final and immutable. <u>A void judgment never becomes final.</u>** xxx"
> >
> > xxx, our ruling in *Banco Español-Filipino* v. *Palanca* on the effects of a void judgment has reappeared consistently in jurisprudence touching upon the matter. In this case, we said that **a void judgment is 'a lawless thing, which can be treated as an outlaw and slain at sight, or ignored <u>wherever and whenever it exhibits its head</u>**.' In concrete terms, this means that a void judgment creates no rights and imposes no duties. Any act performed pursuant to it and any claim emanating from it have no legal effect. xxx (*Boldfacing and underscoring supplied; citations omitted*)

Just like in *Imperial*, a seemingly "final" judgment that is intrinsically void can neither be given the status of finality nor

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[1] G.R. Nos. 178842 and 195509, January 30, 2017.

any binding effect, which scenario is no different from an assessment that is patently void.

In *Imaginet International, Inc. vs. Commissioner of Internal Revenue*[2] (*"Imaginet"*), the CTA ruled that it has no jurisdiction over Imaginet International, Inc.'s (*IMI*) Petition for Review as the Formal Assessment Notice (FAN) against it became final, executory, and demandable. The Supreme Court, however, overturned the CTA's ruling and held that the CTA is not precluded from taking cognizance of the case as the assessment against IMI was void, *viz.:*

> "Here, RO Lopez and GS Carcellar were merely clothed with authority to audit the books and accounts of Imaginet through a MOA that was issued by Teodoro G. Galicia, a revenue district officer of Revenue District Office (RDO) No. 49 – North Makati. The LOA was not amended or modified to include their names. Thus, the authority under which RO Lopez and GS Carcellar continued the audit or investigation was not pursuant to the statutory power of the CIR or his or her duly authorized representative.
>
> Considering the foregoing, discussion, the assessment issued against Imaginet is void. In this sense, **it cannot be the subject of a lawful execution even if Imaginet filed its protest one day beyond the prescriptive period.** This procedural lapse does not preclude this Court from ruling on the substantive issues raised in this case as these go into intrinsic validity of the assessment itself. Similar to a void judgment, a void assessment produces no legal effect and does not attain finality." (*Boldfacing supplied*)

Note that irrespective of whether a protest was made one day late or one year late, the fact remains that the assessment has attained finality. Yet, the Supreme Court in *Imaginet* emphasized that a void assessment cannot be the subject of a lawful execution. In other words, the Commissioner of Internal Revenue (CIR) may not institute its collection remedies (such as the issuance of a WDL and a Warrant of Garnishment) based on a void assessment.

Juxtaposed to the present case, it behooves the Court to first determine whether the assessment issued against petitioner is valid before ruling on the propriety of the issuance of the WDL.

I find that the documents submitted in evidence clearly disclose that the assessment issued by the CIR is null and void.

Section 228 of the NIRC of 1997, as amended, provides the procedure in issuing and protesting an assessment:

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[2] G.R. No. 263245, November 20, 2023 (Resolution).

> "**SEC. 228.** *Protesting of Assessment.* —
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing **of the law and the facts on which the assessment is made**; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, **the Commissioner or his duly authorized representative shall <u>issue an assessment</u> based on his findings.**" *(Boldfacing and underscoring supplied)*

To implement the provisions of Section 228, *supra*, Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013, states:

> "*3.1.3 Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand **<u>and</u>** Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN **calling for payment** of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; **otherwise, the assessment shall be void** (see illustration in ANNEX "B" hereof)." (*Boldfacing supplied*)

A formal letter of demand **<u>AND</u>** an assessment notice are indispensable in the assessment of a taxpayer. **The use of the word "shall" in Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013, indicates the mandatory nature of the requirement**.[3]

A close perusal of the Formal Letter of Demand (FLD)[4] and Assessment Notices[5] reveals that both simply requested petitioner to pay his aforesaid deficiency tax liabilities in a duly authorized agent bank in which he is enrolled using the electronic BIR Payment Form (eBIR Form 0605) **within the time as shown in the enclosed assessment notice**, *viz.*:

[3] *Commissioner of Internal Revenue vs. Enron Subic Power Corporation*, G.R. No. 166387, January 19, 2009.
[4] Exhibit "R-12", BIR Records, pp. 342 to 343.
[5] Exhibits "R-9", "R-10", and "R-11", BIR Records, pp. 346, 345, and 344, respectively.

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REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Revenue Region No. 7 - Quezon City

EXHIBIT R-12
RESPONDENT

Demand No. 043B-B073-12
Date Issued JAN 11 2016
Due Date of Interest FEB 11 2016

FORMAL LETTER OF DEMAND

Mr. RUEL E. DRDUNA (GRUPO ENTABLADO STAGE BUILDERS)
No. 40 M. H. Del Pilar, Pinagbuhatan
Pasig City
TIN 131-971-938-000

Sir:

Please be informed that after investigation there has been found due from you deficiency **Income Tax, Value-Added Tax and Expanded Withholding Tax** for the **taxable year 2012**, to wit:

I. INCOME TAX

Taxable Income per Income Tax Return (ITR)			P	510,432.00
Add: Adjustments per investigation:				
Salaries, wages & other benefits not subjected to WT (Schedule 1)	P	828,526.00		
Unaccounted expense (Schedule 2)		5,921,496.45		
Unsupported expense (Schedule 3)		3,175,780.07		
Disallowed Expenses due to Non-Withholding (Schedule 4)		8,437,046.54		18,362,849.06
Adjusted Taxable Income			P	18,873,281.06
Income Tax Due			P	6,004,449.94
Less Tax Credits and Payments per ITR/ITS				
Income tax payments	P	2,171.27		
Creditable tax withheld		125,958.63		
Total		128,129.90		
Less: Unsupported creditable tax withheld		47,903.92	P	80,225.98
Deficiency Income Tax			P	5,924,223.96
Add: Interest (4/16/13 to 2/11/16)				3,350,026.92
TOTAL AMOUNT DUE			**P**	**9,274,250.88**

II. VALUE-ADDED TAX

Vatable Sales per Returns			P	20,068,519.09
Add: Adjustments per investigation				
Revenues/receipts not subjected to VAT (Schedule 5)	P	524,146.91		
Unaccounted expense (Schedule 2)		5,921,496.45		6,445,643.36
Adjusted Vatable Sales			P	26,514,162.45
Output Tax Due (12%)			P	3,181,699.49
Less Allowed Tax Credits/Payments				
Input tax on current purchases	P	2,072,896.52		
Payments		335,325.77		2,408,222.29
Deficiency Value-Added Tax			P	773,477.20
Add: Interest (1/26/13 to 2/11/16)				471,291.32
TOTAL AMOUNT DUE			**P**	**1,244,768.52**

III. EXPANDED WITHHOLDING TAX

Basic Tax Due (Schedule 6)	P	274,832.54
Add: Interest (1/10/13 to 2/11/16)		168,965.54
TOTAL AMOUNT DUE	**P**	**443,798.08**

Printed Name & Signature

Designation

1-11-16
Date

[illegible] that the interest and the total amount due will have to be adjusted if paid after the date specified therein.

The complete details covering the aforementioned discrepancies established during the investigation of this case are [illegible] in the accompanying **ANNEX-A** of this letter.

The twenty percent (20%) interest per annum has been imposed pursuant to the provisions of Section 249 (B) of the NIRC, as amended.

In view thereof, you are requested to pay the aforementioned deficiency tax liabilities in **a duly authorized agent bank in which you are enrolled using the electronic BIR Payment Form (eBIR Form 0605)** within the time as shown in the enclosed assessment notice. Afterwards, submit proof of payment thereof to the Office of The Regional Director, this Region, located at 6th Floor, BIR Bldg., [illegible] Ave. Cor. Sct. Santiago, Quezon City for updating of your records and cancellation of the herein [illegible] assessment.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue
By

ALFREDO V. MISAJON
Regional Director

Printed Name & Signature

Designation

Date

[illegible] PCA ADR
[illegible] 1201 LOA-43B-2013-00/00702 dated October 31, 2013

The enclosed Assessment Notices, however, conspicuously left blank the space provided for that would have indicated the <u>due date</u> within which the tax deficiency should be paid, *viz.*:

<u>Assessment Notice for Income Tax</u>

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

EXHIBIT ___

RESPONDENT

1708 ASSESSMENT NOTICE

Demand No. 043B-B073-12
Assessment No.

	131-971-938	JAN 11 2016	2012
	RUEL E. ORDUNA (GRUPO ENTABLADO STAGE BUILDERS)		
	No. 40 M.H del Pilar, Pinagbuhatan, Pasig City		

DETAILS OF ASSESSMENT

CHECK KIND OF TAX		PARTICULARS	AMOUNT
X INCOME	CAPITAL GAINS	1. TAX DUE	P 5,924,223.96
WITHHOLDING	DOC STAMPS	2. ADD: SURCHARGE (25%)	
VAT	FRINGE BENEFIT	INTEREST FEB 11 2016	3,350,026.92
PERCENTAGE	Registration Fee	COMPROMISE PENALTY	
ESTATE	OTHERS	3. TOTAL AMOUNT PAYABLE	P 9,274,250.88

PLEASE PRESENT THIS NOTICE TO THE NEAREST REVENUE DISTRICT OFFICE OR OTHER DULY AUTHORIZED ISSUING OFFICE FOR THE ISSUANCE OF PAYMENT FORM (BIR FORM NO. 0605) AND PAY THE TOTAL AMOUNT PAYABLE ON OR BEFORE ______ TO ANY ACCREDITED BANK WHERE YOU ENROLLED OR TO THE CHIEF, ASSESSMENT DIVISION, 5th FLOOR, RR # 7, QUEZON CITY

IMPORTANT

IF YOU DISAGREE WITH THIS ASSESSMENT, FILE YOUR PROTEST IN WRITING (<u>WITH FACTUAL & LEGAL BASES</u>) WITH THE COMMISSIONER OF INTERNAL REVENUE OR WITH THE AUTHORIZED BIR OFFICIAL WITHIN THIRTY (30) DAYS FROM RECEIPT HEREOF. OTHERWISE, THE SAME BECOMES FINAL AND UNAPPEALABLE PURSUANT TO THE PERTINENT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

FAILURE TO PAY THIS ASSESSMENT ON TIME WILL FURTHER SUBJECT THE TOTAL AMOUNT DUE TO ADDITIONAL PENALTIES FOR LATE PAYMENT

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE

RECOMMENDING APPROVAL	APPROVED:
ANALYN S. CHU OIC-Asst. Chief, Assessment Division	ALFREDO V. MISAJON Regional Director

* Please see attached Formal Letter of Demand for the factual and legal bases of assessment.

*You may file your protest in writing (with legal and factual bases) to the Regional Director, 6th Floor, BIR Building, Quezon Avenue cor. Sct. Santiago, Quezon City
*Please attach photocopy of this notices to you protest letter.

Printed Name & Signature

Designation

1-11-16
Date

Assessment Notice for VAT

BIR FORM NO. 1708

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

EXHIBIT "P-10"
RESPONDENT

1708 **ASSESSMENT NOTICE**

Demand No. 043B-B073-12
Assessment No.

Taxpayer Identification Number			
131-971-938	JAN 11 2016	2012

Name of Taxpayer: RUEL E. ORDUNA (GRUPO ENTABLADO STAGE BUILDERS)

Address: No. 40 M.H del Pilar, Pinagbuhatan, Pasig City

MAR 2016

DETAILS OF ASSESSMENT

CHECK KIND OF TAX		PARTICULARS	AMOUNT
INCOME	CAPITAL GAINS	TAXABLE	P 773,477.20
WITHHOLDING	DOC. STAMPS	SURCHARGE (25%)	
X VAT	FRINGE BENEFIT	INTEREST FEB 1 2016	471,291.32
PERCENTAGE	Registration Fee	COMPROMISE PENALTY	
ESTATE		TOTAL AMOUNT PAYABLE	P 1,244,768.52

PLEASE PRESENT THIS NOTICE TO THE NEAREST REVENUE DISTRICT OFFICE OR OTHER DULY AUTHORIZED ISSUING OFFICE FOR THE ISSUANCE OF PAYMENT FORM (BIR FORM NO. 0605) AND PAY THE TOTAL AMOUNT PAYABLE ON OR BEFORE TO ANY ACCREDITED BANK WHERE YOU ENROLLED OR TO THE CHIEF, ASSESSMENT DIVISION, 5th FLOOR, RR # 7, QUEZON CITY

IMPORTANT

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FAILURE TO PAY THIS ASSESSMENT ON TIME WILL FURTHER SUBJECT THE TOTAL AMOUNT DUE TO ADDITIONAL PENALTIES FOR LATE PAYMENT

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE

RECOMMENDING APPROVAL:	APPROVED:
ANALYN S. CHU OIC-Asst. Chief, Assessment Division	ALFREDO V. MISAJON Regional Director

* Please see attached Formal Letter of Demand for the factual and legal bases of assessment.

*You may file your protest in writing (with legal and factual bases) to the Regional Director, 5th Floor, BIR Building, Quezon Avenue cor. Sct. Santiago, Quezon City
*Please attach photocopy of this notices to you protest letter.

Printed Name & Signature

Designation

Date

Assessment Notice for EWT

BIR FORM NO. REVISED FEBRUARY 1994

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

EXHIBIT R-11
RESPONDENT

1708 ASSESSMENT NOTICE

Demand No. 043B-B073-12
Assessment No.

TAXPAYER IDENTIFICATION NUMBER	131-971-938	JAN 21 2016	2012
NAME OF TAXPAYER	RUEL E. ORDUNA (GRUPO ENTABLADO STAGE BUILDERS)		
ADDRESS	No. 40 M.H del Pilar, Pinagbuhatan, Pasig City		
OTHER ADDRESS			

MAR 7 2016

[ ] RETURN FILED [ ] AFTER PRE-AUDIT [ ] AFTER AUDIT [ ] AFTER PRE-AUDIT
[ ] NO RETURN FILED

DETAILS OF ASSESSMENT

CHECK KIND OF TAX		PARTICULARS	AMOUNT
[ ] A INCOME	[ ] F CAPITAL GAINS	1. TAX DUE	P 274,832.54
[X] B WITHHOLDING EWT	[ ] G DOC. STAMPS	2. ADD: SURCHARGE (25%)	
[ ] C VAT	[ ] H FRINGE BENEFIT	INTEREST FEB 1 2016	168,965.54
[ ] D PERCENTAGE	[ ] I Registration Fee	COMPROMISE PENALTY	
[ ] E ESTATE	[ ] OTHERS Compromise	3. TOTAL AMOUNT PAYABLE	P 443,798.08

PLEASE PRESENT THIS NOTICE TO THE NEAREST REVENUE DISTRICT OFFICE OR OTHER DULY AUTHORIZED ISSUING OFFICE FOR THE ISSUANCE OF PAYMENT FORM (BIR FORM NO. 0605) AND PAY THE TOTAL AMOUNT PAYABLE ON OR BEFORE ________ TO ANY ACCREDITED BANK WHERE YOU ENROLLED OR TO THE CHIEF, ASSESSMENT DIVISION, 5th FLOOR, RR # 7, QUEZON CITY

IMPORTANT

IF YOU DISAGREE WITH THIS ASSESSMENT, FILE YOUR PROTEST IN WRITING (WITH FACTUAL & LEGAL BASES) WITH THE COMMISSIONER OF INTERNAL REVENUE OR WITH THE AUTHORIZED BIR OFFICIAL WITHIN THIRTY (30) DAYS FROM RECEIPT HEREOF. OTHERWISE, THE SAME BECOMES FINAL AND UNAPPEALABLE PURSUANT TO THE PERTINENT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

FAILURE TO PAY THIS ASSESSMENT ON TIME WILL FURTHER SUBJECT THE TOTAL AMOUNT DUE TO ADDITIONAL PENALTIES FOR LATE PAYMENT.

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE

RECOMMENDING APPROVAL:	APPROVED:
ANALYN S. CHU OIC-Asst. Chief, Assessment Division	ALFREDO V. MISAJON Regional Director

(per RMO 37-94)

* Please see attached Formal Letter of Demand for the factual and legal bases of assessment

*You may file your protest in writing (with legal and factual bases) to the Regional Director, 4th Floor, BIR Building, Quezon Avenue cor. Sct. Santiago, Quezon City
*Please attach photocopy of this notices to you protest letter.

Yvonne Perez
Printed Name & Signature

Clerk Staff
Designation

1-4-16
Date

In *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*,[6] the Supreme Court invalidated an assessment after noting its failure to state the due date for the payment of the tax liabilities:

> xxx
>
> "**<u>The disputed Final Assessment Notice is not a valid assessment.</u>**
>
> xxx
>
> Second, **there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:**
>
> > In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.* (Emphasis in the original)
>
> However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained unaccomplished.**
>
> Contrary to petitioner's view, **April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.**
>
> Compliance with Section 228 of the National Internal Revenue Code is a substantative requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation." (*Boldfacing and underscoring supplied*)

The requirement to indicate a fixed and definite period or a date certain within which a taxpayer must pay the assessed deficiency tax liabilities is indispensable to the validity of the assessment. Otherwise stated, an assessment *sans* a categorical demand for payment within a **<u>specific date or period</u>** is, in legal contemplation, void.

Incidentally, while the following entry appears on the upper right hand corner of the FLD – **"Due Date: February 10, 2016"**, said information appears too equivocal *sans* any statement that it is the due date for payment. Truth to tell, such entry may even refer to the

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[6] G.R. No. 215957, November 9, 2016.

due date when the FLD and Assessment Notice should be released to the taxpayer. Besides, a close scrutiny of the FLD reveals that the interest was computed until February 11, 2016. **It is certainly incongruous for the BIR to compute the interest until February 11, 2016 if February 11, 2016 refers to the due date for payment.**

The FLD and Assessment Notices in this case, being void, bear no fruit[7] and may be slain at sight. In consequence, the issuance of the WDL may not be justified. *Ex turpi causa non oritur action ("No action can arise from an illegal act").* An intrinsically void assessment may neither attain finality nor be the subject of a lawful execution.

The validity of an assessment is indispensable in determining whether the government may enforce collection of alleged tax deficiencies based on such assessment. In the language of *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*:[8]

> "In the normal course of tax administration and enforcement, the BIR must first make an **assessment** then enforce the **collection** of the amounts so assessed. 'An assessment is not an action or proceeding for the collection of taxes. x x x It is **a step preliminary, but essential to** warrant distraint, if still feasible, and, also, to establish a cause for judicial action.' The BIR may summarily enforce collection only when it has accorded the **taxpayer administrative due process**, **<u>which vitally includes the issuance of a valid assessment.</u>** A valid assessment sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf." (*Additional boldfacing and underscoring supplied*)

Since the assessments involved in the present controversy are undisputedly fraught with fatal infirmities, the Court should not allow the government to benefit therefrom. **Like a void judgment, a void assessment produces no legal effect; it never attains finality and – akin to an outlaw – it should be slain <u>whenever</u>** or **<u>wherever</u> it exhibits its head.**[9]

Court has inherent power to do justice

Court possesses certain inherent powers which is said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such

[7] *Metro Star Superama, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185371, December 8, 2010.
[8] G.R. No. 197945, July 9, 2018.
[9] *Supra* Note 1.

powers as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.[10]

In the exercise of said inherent powers, every regularly constituted court has the power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction.[11]

On this basis, I submit that the Court may take cognizance of the present controversy and by doing so, this Court may exercise its power to do all things reasonably necessary to render justice. Truth to tell, the present case may be treated as an action based on **law** *i.e.*, **petitioner's enforcement of a right anchored on the provision of Section 228 of the National Internal Revenue Code of 1997, as amended, *vis-à-vis* the Supreme Court's pronouncement in *Imaginet* and *Pilipinas Shell* which prescribes in ten (10) years under Article 144 of the Civil Code of the Philippines**.

Finally, I am aware that acts of the government are presumed to have been done lawfully and regularly. Yet, it is precisely the existence of this presumption which abusive and powerful officials may use as a weapon to initiate burdensome and baseless demands that exhaust a taxpayer's trust in the government and the rule of law.

To allow execution of a void assessment is as mischievous as it is appalling. Illustratively, unscrupulous BIR officials may issue a Preliminary Assessment Notice and a Formal Assessment Notice and send them intentionally to a taxpayer's *wrong* address. Thereafter, a corresponding WDL is issued upon the taxpayer and sent to the latter's *correct* address. This scheme may conveniently be resorted to in situations where the period of assessment has already *prescribed* so much so that the only way to collect is through a WDL with a hidden aspiration that the taxpayer would be unable to go to court on time to assail such irregular procedure. Supposed the taxpayer failed to assail the WDL (which is patently void), will the taxpayer be left without any remedy and the Court powerless to provide any relief?

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[10] *The City of Manila vs. Hon. Caridad H. Grecia-Cuerdo*, G.R. No. 175723, February 4, 2014.
[11] *Id.*

On the other hand, should the taxpayer be able to invoke the Court's jurisdiction on time, the government would lose nothing as the assessment, having already prescribed, may not after all be collected. But what is worse is the potential for corrupt officials to engage in devious arrangement for the taxpayer to "come across" for possible compromise, knowing full well that the assessment is of doubtful validity.

All told, I VOTE TO:

1. **GRANT** the present Petition for Review filed by petitioner;

2. **REVERSE** and **SET ASIDE** the assailed Decision and Resolution of the CTA Third Division, entitled "*Ruel E. Orduña, doing business under the name and style, Grupo Entablado Stage Builders. vs. Commissioner of Internal Revenue*", docketed as CTA Case No. 9619;

3. **CANCEL** and **SET ASIDE** the Formal Letter of Demand and the Assessment Notices, all dated January 11, 2016; and,

4. **ENJOIN** the Commissioner of Internal Revenue or any person acting on his behalf from proceeding with the collection of the taxes subject of the present case.

ROMAN G. DEL ROSARIO
Presiding Justice