REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1881 (CTA CASE No. 9169)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
ORIENTAL ASSURANCE CORPORATION, *Respondent.*	Promulgated: JUL 05 2019 3:27 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on November 15, 2018, is a Petition for Review for the Court *En Banc* under *Section 4(b), Rule 8*[1] *of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended,* of the Decision, in the case entitled *Oriental Assurance Corporation vs. the Commissioner of Internal Revenue,* docketed as CTA Case

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[1] SEC. 4. *Where to appeal; mode of appeal.* –

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> (b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

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No. 9169, dated January 12, 2018,[2] and the Resolution dated June 11, 2018,[3] both rendered by the Former Second Division of this Court, the dispositive portions of which read as follows:

CTA Case No. 9169:
Decision dated January 12, 2018:

"**WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The FDDA issued by respondent against petitioner for TY 2013 covering deficiency DST is **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **FORTY-SEVEN MILLION ONE HUNDRED FORTY-FOUR THOUSAND THREE HUNDRED TWENTY-SEVEN PESOS AND SEVENTY CENTAVOS (₱47,144,327.70)** representing the sum of the basic deficiency DST for TY 2013 in the amount of ₱37,715,462.16 and the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997 as amended in the amount of ₱9,428,865.54 as shown below:

Basic Deficiency DST	₱ 37,715,462.16
Add: 25% surcharge	9,428,865.54
Total	**₱47,144,327.70**

In addition, petitioner is hereby **ORDERED TO PAY:**

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency DST of ₱37,715,462.16 computed from January 5, 2014 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱47,144,327.70 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from September 16, 2015 until full payment thereof

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[2] Penned by former Associate Justice Caesar A. Casanova, concurred in by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Catherine T. Manahan, *En Banc* Docket, pp. 22-44.
[3] *Ibid.*, pp. 45-57.

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pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

CTA Case No. 9169:
Resolution dated June 11, 2018:

"**WHEREFORE**, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 12 January 2018)** and petitioner's **Partial Motion for Reconsideration (Of the Decision, dated 12 January 2018)** are **DENIED** for lack of merit.

SO ORDERED."

The facts of the case, as recited by the former Second Division in its Decision, read as follows:

"Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with corporate office address located at 2/F OAC Building, San Miguel Avenue, Ortigas Center, Pasig City, Metro Manila, and with corporate tax identification number (TIN) 000-798-742.

Respondent is the duly appointed Commissioner of Internal Revenue, who has the authority, among others, to assess and collect all internal revenue taxes, fees and charges, grant refunds, and abate tax liability.

On September 9, 2014, respondent issued a Letter of Authority LOA-125-2014-00000120, which was received by petitioner on September 26, 2014. The same authorized revenue officers to conduct an examination on petitioner's books of accounts and other accounting records for all internal revenue taxes, including documentary stamp tax and other taxes, covering the period of January 1, 2013 to December 31, 2013. As a result, respondent found discrepancy from the reconciliation of the DST due on the latter's direct premiums as reported in the annual statement filed with the Insurance Commission (IC) against the DST utilization, as captured in the Bureau of Internal Revenue (BIR) eDST system; thus, the former issued a Letter of Notice (LN) No. 125-DS-2014-000016 to inform petitioner of such discrepancy. Subsequently, a Memorandum dated November 11, 2014 was made recommending the issuance and approval of a Preliminary Assessment Notice (PAN).

On November 19, 2014, petitioner received a PAN dated November 18, 2014 with Details of Discrepancies, assessing it for the alleged deficiency DST due on accumulated direct premiums per IC Report for TY 2013 in the amount of ₱276,335,075.10, computed as follows:

Details		Amount
Direct Premium per IC report	₱	751,086,843.00
DST Due (Section 184 of the Tax Code)		93,885,855.50
Add: DST Payable, beginning balance per IC report		138,221,812.00
Less: eDST System		1,195,803.00
Deficiency DST Due		230,911,864.50
Add: Interest 20%		45,423,210.60
Total Amount Due	₱	276,335,075.10

Consequently, petitioner requested for reconsideration and reinvestigation on the aforesaid PAN on December 3, 2014.

As recommended by the investigating revenue officers, a Formal Letter of Demand (FLD) was issued on April 22, 2015 which petitioner received on even date, assessing the latter for deficiency DST, to wit:

Details		Amount
Direct Premium per IC report	₱	751,086,843.00
DST Due (Section 184 of the Tax Code)		93,885,855.50
Add: DST Payable, beginning balance per IC report		138,221,812.00
Less: eDST System		1,195,803.00
Deficiency DST Due		230,911,864.50
Add: Interest 20%		64,528,795.01
Total Amount Due	₱	295,440,659.51

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As such, petitioner moved for reconsideration and investigation on May 21, 2015. Then, petitioner filed a supplemental to the motion for reconsideration on May 29, 2015.

Upon recommendation, respondent issued a Final Decision on Disputed Assessment (FDDA) with Details of Discrepancies on September 10, 2015, which was received by petitioner on September 16, 2015, reducing the assessment for deficiency DST in the amount of ₱125,601,369.77 for TY 2013, computed as follows:

Details		Amount
Direct Premium per IC report	₱	751,086,843.00
DST Due (Section 184 of the Tax Code)		93,885,855.50
Less: eDST System		1,195,803.00
Deficiency DST Due		92,690,052.50
Add: Interest 20%		32,911,317.27
Total Amount Due	₱	125,601,369.77

Thus, petitioner filed this Petition for Review on October 15, 2015 xxx

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In the Petition for Review, petitioner contends that the subject FDDA was devoid of factual and legal basis, and was issued arbitrarily which completely disregarded its right to substantive due process. Accordingly, since respondent failed to act on its letters request for reconsideration and reinvestigation, petitioner was deprived of its right to due process. Petitioner further explains that respondent opted to issue the subject FDDA without a formal audit and/or thorough consideration of the former's documentary evidence.

On the other hand, respondent posits that both substantial and procedural due process were observed in issuing the assessment. Respondent claims that petitioner was informed of the factual and legal bases of the assessment on the ground that the PAN, FLD, Final Assessment Notice (FAN), and FDDA did not only indicate the deficiency tax involved and interest due

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thereon but also sufficiently stated the facts, the law, rules and regulations on which the assessment was based. Respondent points out that he considered petitioner's request for reconsideration, and as a result, the deficiency DST assessment was reduced from ₱347,801,740.91 to ₱125,601,369.77." (Citations omitted.)

The former Second Division partially granted Oriental Assurance Corporation (OAC)'s Petition for Review. It ruled that the FDDA contained factual and legal basis on which the said decision was based and that the Commissioner of Internal Revenue (CIR) considered OAC's request for reconsideration since the amount of the deficiency documentary stamp tax (DST) was reduced.

OAC alleges that the CIR failed to appreciate the former's reinstated and cancelled policies. According to OAC, the corresponding DSTs on the reinstated policies were already collected and remitted in year 2012 but due to incomplete submission of pertinent requirements, the said policies were finalized instead in the first quarter of 2013.

On the other hand, the cancelled policies allegedly refer to the policy which was not issued at all because OAC and its prospective client failed to reach an agreement.

Meanwhile, the CIR avers that mere perusal of the IC report, which was submitted by OAC itself and also formed part of the BIR records, would readily reveal that the reinstated and cancelled policies did not form part of the premiums declared in the IC report.

The Former Second Division ruled that since the required report on the gross premium for purposes of DST includes all those received by non-life insurance companies in line of business without any deduction for returns and cancellations, in line with Section 184 of the National Internal Revenue Code (NIRC) of 1997,[4] thus, the gross

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[4] "**SEC. 184. Stamp Tax on Policies of Insurance Upon Property.** - On all policies of insurance or other instruments by whatever name the same may be called, by which insurance shall be made or renewed upon property of any description, including rents or profits, against peril by sea or on inland waters, or by fire or lighting, there shall be collected a documentary stamp tax of Fifty centavos

premium that OAC reported in the IC Report includes returns and cancellation.

Consequently, applying the cases of *Philippine Home Assurance Corporation vs. Court of Appeals, et al.*[5] and *Commissioner of Internal Revenue vs. Manila Bankers' Life Insurance Corporation*,[6] wherein the Supreme Court ruled that the DSTs must be paid upon the issuance of the instruments, without regard to whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable, the Former Second Division considered the cancelled policies of OAC as void contracts and are subject to DST.

As regards OAC's reinstated policies, the Independent Certified Public Accountant (ICPA) has stated in his Report that the corresponding DSTs were collected, paid, and remitted to the Bureau of Internal Revenue (BIR) in 2012 but the insurance policies were finalized and filed within the first quarter of TY 2013.

The Former Second Division ruled that despite absence of any proof of ICPA that DSTs were indeed collected, paid, and remitted in 2012, since the subject assessment notice covers only TY 2013, the amount representing the premium for the reinstated policies should be deducted.

Lastly, with the submission of the DST Returns (BIR Form No. 2000), OAC has proven that it paid the aggregate amount of ₱18,000,000.00 for its DST due for TY 2013. In sum, the DST liability of OAC was computed as follows:

Details		Amount
Direct Premium per IC report	₱	751,086,843.00
Less: Premium for Reinstated Policies		305,363,145.71
Adjusted Direct Premium per IC Report		445,723,697.29
DST Rate		₱.50/₱4.00

(₱0.50) on each Four pesos (₱4.00), or fractional part thereof, of the amount of premium charged: *Provided, however*, That no documentary stamp tax shall be collected on reinsurance contracts or on any instrument by which cession or acceptance of insurance risks under any reinsurance agreement is effected or recorded."

[5] G.R. No. 119446, January 21, 1999.

[6] G.R. No. 169103, March 16, 2011.

DST Due		55,715,462.16
Less: DST Payment		18,000,000.00
DST Still Due		37,715,462.16
Add: 25% surcharge		9,428,865.54
Total	**₱**	**47,144,327.70**

Both parties filed their respective Motions for Reconsideration.[7] The Former Second Division denied both motions, ruling that contrary to the CIR's claim, OAC was able to present Summary of Reinstated Policies for calendar year 2013, Reinstated Policies for calendar year 2013, as well as testimonial evidence of its witnesses to prove that its reinstated policies are not subject to DST. Based on the above documents, the ICPA found that portion of the Direct Premium per IC report assessed by respondent pertains to OAC's reinstated policies with direct written premium amounting to ₱305,363,145.71. Considering that the DST due for such policies issued on 2012 accrued during the taxable year 2012, and not during the taxable year assessed which is 2013, the same should not have been covered by the subject assessment.

The CIR then filed its Petition for Review[8] on July 19, 2018.

In his Petition for Review, the CIR assails that since there was an FDDA rendered due to failure to produce evidence, OAC cannot submit thereafter evidence it did not submit in the administrative level and that the Court in Division is confined to a more limited issue of whether the denial of the protest was proper based only on the evidence submitted before the administrative level.

Moreover, the CIR insists that it was OAC itself that declared the premiums written and earned in the IC report. Considering that such were written for TY 2013, the DST due therein is for TY 2013 and as proof that the ₱305,363,145.71 policies were issued in TY 2013, the same was captured in OAC's eDST system covering TY 2013. Also, the former Second Division itself admitted OAC alleged accrual of such in TY 2012 without presenting any proof of payment.

[7] Division Docket, Vol. II, pp. 709-721.
[8] *En Banc* Docket, pp. 7-19.

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On the other hand, in its Amended Comment,[9] OAC insists that the Court in Division has jurisdiction to decide over the case based on the evidence it submitted before the Court and that it is correct in ruling that the reinstated policy is not subject to a new DST. Also, OAC insists that the cancelled policies are not subject to DST.

This Court rules.

As to the issue of deciding the case based on evidence not submitted in the administrative level, it must be emphasized that Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) provides categorically that the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (*trial de novo*) where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration.[10]

Moreover, even on the assumption that the evidence were not presented before the administrative level, in the case of *Commissioner of Internal Revenue vs. Philippine Bank of Communications*,[11] citing the case of *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*,[12] the Court *En Banc* ruled that the failure to submit documents in the administrative level is not fatal to the case in judicial level, as such are litigated *de novo* and decided based on what has been presented and formally offered by the parties during the trial. This Court is authorized to receive evidence, summon witnesses, and give both parties, the Government and the taxpayer, opportunity to present and argue their sides, so that the true and correct amount of the tax to be collected, may be determined and decided.[13]

As to the contention of the CIR that despite absence of proof of DST for reinstated policies in TY 2012, the former

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[9] *En Banc* Docket, pp. 72-79.
[10] *Commissioner of Internal Revenue vs. Union Cement Corporation*, CTA EB Case No. 895, March 22, 2013.
[11] CTA EB Case No. 933 (CTA Case No. 7915), October 7, 2013.
[12] CTA EB Case No. 775 (CTA Case No. 7828), July 24, 2012.
[13] *Collector of Internal Revenue vs. Batangas Transportation Company & Laguna-Tayabas Bus Company*, G.R. No. L-9692, January 6, 1958.

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Second Division concluded that such have accrued in TY 2012. The former Second Division had already explained in detail such allegation in the assailed Resolution. As correctly ruled by the former Second Division, no other than Section 184[14] of the NIRC itself and Revenue Memorandum Order No. 48-99[15] specifically state that the required report on the gross premium for purposes of documentary stamp tax includes all those received by non-life insurance companies in line of business without any deduction for returns and cancellations.

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[14] *Supra,* note 4.

[15] June 15, 1999 REVENUE MEMORANDUM ORDER NO. 48-99
SUBJECT: Amending Paragraph III (C)(S)(B)(iii)(a) of RMO No.66-98 Entitled 'Prescribing the Policies and Procedures for Processing and Monitoring of Tax Payments from Insurance Companies'
TO All Revenue Officers and Other Concerned

Scope:

Revenue Memorandum Order No. 66-98 was promulgated to simplify and strengthen the monitoring of tax payments due from insurance companies in coordination with the Insurance Commission. For purpose of monitoring the documentary stamp tax payments by insurance companies on non-life insurance policies, paragraph III(C)(S)(B)(iii)(a) of RMO 66-98 provides as follows:

> 'iii. Documentary stamp tax – monthly
>
> a) Gross premiums (net of returns and cancellations) received for the month by non-life insurance companies in all line of business'

The documentary stamp tax on non-life insurance policies is governed by Section 184 of the National Internal Revenue Code of 1997 which provides that the documentary stamp tax on non life insurance policies shall be computed based on the amount of premium charged (i.e., without any deduction), as follows:

xxx xxx xxx

The above proviso of RMO 66-98 can possibly result to erroneous monitoring of DST payments by insurance companies on non-life insurance contracts considering that, while under Section 184 of the Code, the DST is computed based on the total amount of premium charged, hence, without any deduction for returns and cancellation, the above proviso of the RMO, however, may possibly be interpreted as allowing deduction of such returns and cancellation for purposes of computing the DST on non-life insurance contract.

Amendments:

In view of the foregoing, paragraph III (C)(S)(B)(iii)(a) of RMO No. 66-98 is hereby amended to read as follows:

> 'iii. Documentary stamp tax - monthly:
>
> a) Gross premiums charged for the monthly by non-life insurance companies in all line of business"' (Emphasis supplied)

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OAC was also able to present its Summary of Reinstated Policies for calendar year 2013, Reinstated Policies for calendar year 2013, as well as testimonial evidence of its witnesses to prove that its reinstated policies are not subject to DST.

Based on the exhibits submitted by OAC, particularly Exhibits "P-4" and series, each policy has a schedule, indicating therein that the policy was issued in 2012 with the corresponding DST paid for each policy, and an endorsement thereafter, stating therein that the policy has been reinstated in 2013. Thus, this negates the CIR's allegation that the conclusion of the Court in Division that DST on reinstated policies were paid in 2012 is baseless.

Reinstated policies are those policies where the applicant signed the insurance application form, paid the premium, received the policy, but the insurance policyholder did not utilize the policy for the year it was issued. Without objecting to such description by OAC, there is no new contract involved that must be subject of DST anew. More importantly, since the assessment is on OAC's 2013 alleged deficiency DST, the tax liability on reinstated policies, which should accrue in 2012, cannot be the subject of the assailed assessment.

As these are the only issues appealed before this Court *En Banc via* Petition for Review, no other issues are to be resolved by this Court.

WHEREFORE, premises considered, the Petition for Review filed by the Commissioner of Internal Revenue is hereby **DENIED.** The assailed Decision and Resolution dated January 12, 2018 and June 11, 2018, respectively, in CTA Case No. 9169 are hereby **AFFIRMED WITH MODIFICATIONS** in the computation of deficiency interest and delinquency interest in view of the effectivity of Republic Act No. 10963 (TRAIN Law) on January 1, 2018 and the issuance of Revenue Regulation No. 21-2018[16] and shall read as follows:

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[16] Regulations Implementing Section 249 (Interest) of the National Internal Revenue Code (NIRC) of 1997, as amended under Section 75 of the Republic Act (RA) No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN Law)".

"**WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The FDDA issued by respondent against petitioner for TY 2013 covering deficiency DST is **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **ONE HUNDRED FOUR MILLION SEVEN HUNDRED TWENTY TWO THOUSAND SEVEN HUNDRED FIFTY SEVEN PESOS AND NINETY-SEVEN CENTAVOS (₱104,722,757.97)** inclusive of the 25% surcharge and deficiency and delinquency interests imposed under Sections 248(A)(1)(3) and 249(B) and (C) of the NIRC of 1997, as amended, respectively computed until December 31, 2017 as follows:[17]

Basic Deficiency Tax	₱	37,715,462.16
25% surcharge		9,428,865.54
20% Deficiency Interest		
January 6, 2014 to September 16, 2015 (619 days) (basic tax x .20 x (619/365 days))		12,792,258.12
Total Amount due as of September 16, 2015		**59,936,585.82**
Add:		
20% Deficiency Interest		
September 17, 2015 to December 31, 2017 (837 days) (basic tax x .20 x (837/365 days))		17,297,447.58
20% Delinquency Interest		
September 17, 2015 to December 31, 2017 (837 days) (total amount due as of September 16, 2015 x .20 x (837/365 days))		27,488,724.57
Total Amount due as of December 31, 2017	**₱**	**104,722,757.97**

In addition, Oriental Assurance Corporation is liable to pay delinquency interest at the rate of 12% on the total unpaid basic deficiency tax, surcharge and deficiency interest as of September 16, 2015 amounting to ₱59,936,585.82, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN)."

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[17] Section 6 of Revenue Regulations No. 21-2018 dated September 14, 2018.

WE CONCUR:

(See Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(On Official Business)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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 En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus –

ORIENTAL ASSURANCE CORPORATION,
Respondent,

CTA EB NO. 1881
(CTA Case No. 9169)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

JUL 05 2019 3:27pm

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I dissent in the *ponencia* of my esteemed colleague, the Honorable Associate Justice Cielito N. Mindaro-Grulla, which affirms with modification the assailed Decision and Resolution of the Court in Division.

It is my humble view that the Formal Letter of Demand[1] (FLD) and the attached Audit Result/Assessment Notice (FAN)[2], both dated April 22, 2015, are void for their **failure to demand payment of the tax due within a specific period**. Hence, the Petition for Review filed by Oriental Assurance Corporation in CTA Case No. 9169 should have been granted and the aforesaid FLD and FAN should have been declared null and void.

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[1] Exhibit "R-5.".
[2] Exhibit "R-5-a".

A perusal of the FLD and the FAN issued against respondent reveals that they failed to demand payment of the tax due within a specific period. While the FLD states that the deficiency tax should be paid within the period indicated in the FAN, notably, **the <u>spaces for the due dates</u> in the FAN were conspicuously left blank,** *viz.*:

RM NO. **0401**
REVISED: June, 1996

REPUB LIPINAS
KAGAW NANALAPI
KAWANIH S INTERNAS

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EXHIBIT
" R-5-a "
RESPONDENT

RETURN PERIOD TY 2013		ASSESSMENT NUMBER DS-125-000010-R-15-194 DATE ISSUED APR 22 2015
TIN: NAME: ADDRESS:	006-796-742-000 ORIENTAL ASSURANCE CORPORATION No. 27 2nd Flr., OAC Bldg., San Miguel Avenue, Ortigas Center, Pasig City	

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS:

TAX TYPE:	PARTICULARS	AMOUNT	
Documentary Stamp Tax			
BASED ON/REASON:		Basic	230,911,864.60
		Surcharge	
Sec. 184 of the NIRC,		Interest	64,528,795.01
RR No. 7-2009, RMC No. 61-2010		Compromise	
		Total	295,440,659.61
DUE DATE:			

IMPORTANT
PLEASE REFER AT THE BACK
OF THIS NOTICE
FOR FURTHER INSTRUCTIONS

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

By:

NESTOR S. VALEROSO
OIC-Assistant Commissioner
Large Taxpayers Service

OOL
MLY
MAAP
RBT
HTTB

ORIENTAL ASSURANCE CORP
RECEIVED
APR 22 2015
RECEIVED BY

PLEASE CUT HERE

BIR
FORM NO. **0401**
REVISED: June, 1996

REPUB LIPINAS
KAGAW NANALAPI
KAWANIH S INTERNAS

OCN

RETURN PERIOD TY 2013		BCS NUMBER (TO BE FILLED UP BY BIR)
TIN:	006-796-742-000	FOR FILING OF PROTEST
NAME:	ORIENTAL ASSURANCE CORPORATION	☐ I/WE DISAGREE TO THE ABOVE FINDINGS. (SUBMIT LETTER OF PROTEST)
TAX TYPE:	Documentary Stamp Tax	
AMOUNT PAYABLE:	295,440,659.61	TAXPAYER'S SIGNATURE OVER PRINTED NAME
DUE DATE:		POSITION/TITLE

DETAILS OF PAYMENT (Applicable only for deficiency assessment)					TO BE FILLED UP BY BIR
PARTICULARS	DRAWEE BANK/AGENCY	NUMBER	DATE	AMOUNT	
CASH					AUDITED BY:
CHECK					
TAX DEBIT MEMO					DATE:
OTHERS					

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Since the FAN did not indicate the due date when the deficiency tax must be paid, no proper demand thereof within a specific period was made.

In ***Commissioner of Internal Revenue vs. Fitness By Design,***[3] the Supreme Court emphasized that a FAN without a definite due date for payment is not valid because it negates the demand for payment. Pertinent parts of the Supreme Court's ruling in ***Fitness By Design*** are quoted hereunder:

> **"The disputed Final Assessment Notice is not a valid assessment.**
>
> xxx xxx 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.
>
> 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."

In other words, a final assessment notice must not only indicate the legal and factual bases of the assessment **but must also state a clear and categorical demand for payment of the computed tax liabilities within a specific period**. Absent a valid demand, as in this case, the FAN is fatally infirm. Being a void assessment, the FAN bears no fruit[4] and must be slain at sight.

While the issue on the invalidity of the FAN was not raised by the parties, the CTA has the authority to rule on the same. In

[3] G.R. No. 215947, November 9, 2016.
[4] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010.

Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,[5] the Supreme Court, citing Section 1, Rule 4 of A.M. No. 05-11-07- CTA, or the Revised Rules of the Court of Tax Appeals, categorically declared that the CTA can resolve an issue which was not raised by the parties, *viz.*:

> "**On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.**
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, **the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:
>
> > SECTION 1. *Rendition of judgment.* - x xx
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."

Based on the foregoing, this Court is well within its authority to consider in its decision the issue on the invalidity of the FAN, albeit the parties had not raised the same in their pleadings or memoranda.

In view of its intrinsic invalidity, the assessment should be declared null and void in its entirety.

All told, I vote to: i) **DENY** the Petition for Review filed by petitioner Commissioner of Internal Revenue; ii) **REVERSE** and **SET ASIDE** the assailed Decision dated January 12, 2018 and Resolution dated June 11, 2018 of the Court in Division; and, (iii) **CANCEL** the Formal Letter of Demand and attached Audit Result/Assessment Notice, both dated April 22, 2015, for being void.

ROMAN G. DEL ROSARIO
Presiding Justice

[5] G.R. No. 183408, July 12, 2017.