REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 3135** (CTA Case No. 10347)
	Present:
- versus -	**RINGPIS-LIBAN,** *P.J.,* **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
REMA TIP TOP PHILIPPINES, INC., *Respondent.*	Promulgated: APR 10 2026 4:00

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed by petitioner Commissioner of Internal Revenue through registered mail on May 14, 2025, assailing the *Decision*[2] dated September 12, 2024 (assailed Decision) and the *Resolution*[3] dated March 28, 2025 (assailed Resolution), both rendered by this Court's *Second Division* (Court in Division) in CTA Case No. 10347 entitled "*Rema Tip Top Philippines, Inc. v. Commissioner of Internal Revenue.*" The dispositive portions of the assailed *Decision* and *Resolution* read as follows:

Assailed Decision:

> **WHEREFORE**, in view of the foregoing, the present *Petition for Review* is **GRANTED**. Accordingly, the Assessment Notices and Formal Letter of Demand, all dated January 13, 2020, assessing petitioner for deficiency income tax,

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[1] *En Banc (EB)* Docket, pp. 7-11.
[2] *Id.* at 15-28.
[3] *Id.* at 30-33.

> expanded withholding tax, improperly accumulated earnings tax, value-added tax, and compromise penalty in the aggregate amount of ₱21,818,644.73, inclusive of interests and penalties, for taxable year 2016 are **CANCELLED** and **SET ASIDE**. [Petitioner] is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount from [respondent].
>
> **SO ORDERED.**

Assailed Resolution:

> **WHEREFORE**, premises considered, [petitioner's] **Motion for Reconsideration (Decision dated 12 September 2024)** is **DENIED** for lack of merit.
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> **SO ORDERED.**

Petitioner prays that the assailed *Decision* and *Resolution* be reversed and set aside, and that a new one be entered denying respondent's original *Petition for Review*[4] for utter lack of merit.

THE PARTIES[5]

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR) who holds office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City. He is vested with the authority to administer and enforce all laws pertaining to internal revenue taxes and has jurisdiction to decide on disputed tax assessments in accordance with law and the rules and regulations thereto.

Respondent Rema Tip Top Philippines, Inc. (respondent), is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Unit 502, Richmonde Plaza Ortigas, San Miguel Ave., Brgy. San Antonio, Ortigas Center, Pasig City 1605.

THE FACTS AND THE PROCEEDINGS

The factual antecedents, as found by the Court in Division, are as follows:

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4 Division Docket – Vol. I, pp. 6-50.
5 *EB* Docket, p. 8. *Petition for Review*, The Parties.

THE ANTECEDENTS
PROCEEDINGS AT THE ADMINISTRATIVE LEVEL

On January 10, 2020, [respondent] received the *Preliminary Assessment Notice* (PAN) dated December 23, 2019 together with the attached *Details of Discrepancies.*

Immediately, on January 13, 2020, [petitioner] issued the *Assessment Notices* (ANs) and the *Formal Letter of Demand* (FLD) which were received by [respondent] on January 14, 2020.

On January 24, 2020, [respondent] filed, via registered mail, its *Reply to the Preliminary Assessment Notice dated 23 December 2019 issued pursuant to eLA No. 201500054013 (LOA No. 043-2017-00000217) for the Tax Audit of Rema Tip Top Philippines, Inc. for Taxable Year 2016.*

Thereafter, on February 13, 2020, [respondent] filed its *Request for Reinvestigation on the Final Assessment Notices/Formal Letter of Demand issued pursuant to eLA No. 201500054013 (LOA No. 043-2017-00000217) for the Tax Audit of Rema Tip Top Philippines, Inc. for Taxable Year 2016.*

PROCEEDINGS BEFORE THE COURT IN DIVISION

[Respondent] filed the present *Petition for Review* on September 10, 2020 alleging respondent's inaction on its *Request for Reinvestigation.*

[Petitioner] posted his *Answer* on December 3, 2020.

The *BIR Records* for this case was transmitted by [petitioner] on February 2, 2021.

The Pre-Trial Conference was initially set on May 4, 2021, but was reset to, and eventually held on, February 8, 2022. Prior thereto, the *Pre-Trial Brief* of [respondent] and *[Petitioner's] Pre-Trial Brief* were separately filed on February 7, 2022.

On March 10, 2022, the parties filed their *Joint Stipulation of Facts and Issues*, which was admitted and approved by the Court in its Resolution dated March 18, 2022, thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated April 18, 2022 was subsequently issued.

Trial then ensued, with the parties presenting and offering their respective testimonial and documentary evidence.

[Respondent] offered the testimony of its Director and Chief Finance Officer, Ms. Jennilyn U. Gaanan.

> On June 13, 2022, [respondent] filed its *Formal Offer of Documentary Exhibits*. [Petitioner] failed to file his comment thereto. In the Resolution dated September 14, 2022, the Court admitted [respondent's] evidence.
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> For his part, [petitioner] offered the testimony of Revenue Officer (RO) Danny Rodrigo.
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> On December 14, 2022, *[Petitioner's] Formal Offer of Evidence* was filed. [Respondent] filed its *Comment to [Petitioner's] Formal Offer of Evidence* on December 20, 2022. In the Resolution dated February 2, 2023, the Court admitted [petitioner's] offered exhibits.
>
> [Respondent] posted its *Memorandum* on April 20, 2023 while [petitioner] failed to submit his memorandum.
>
> This case was submitted for decision on September 12, 2023. (Citations omitted)

On September 12, 2024, the Court in Division rendered the assailed *Decision* granting respondent's *Petition for Review*. In finding for respondent and ordering the cancellation and setting aside of the tax assessments issued against it, the Court in Division held that petitioner's failure to comply with the statutory and procedural due process requirements in the issuance of deficiency tax assessments against respondent rendered the same void.

Specifically, the Court in Division found that petitioner prematurely issued the Assessment Notices (ANs) and the Formal Letter of Demand (FLD) without waiting for the lapse of the fifteen (15)-day period from respondent's receipt of the Preliminary Assessment Notice (PAN).

Petitioner thereafter filed a *Motion for Reconsideration (Decision dated 12 September 2024)*[6] on October 3, 2024, which the Court in Division denied in the equally assailed *Resolution* dated March 28, 2025.

Petitioner then filed a *Motion for Extension of Time to File Petition for Review*[7] on April 25, 2025, which the Court *En Banc* granted, allowing filing until May 14, 2025 in a *Minute Resolution*[8] dated April 28, 2025.

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[6] Division Docket – Vol. 2, pp. 814-816.
[7] *EB* Docket, pp. 1-3.
[8] *Id.* at 5.

On May 21, 2025, the Court *En Banc* received petitioner's *Petition for Review* filed through registered mail on May 14, 2025. Respondent filed its *Comment (Re: Petition for Review dated 14 May 2025)*[9] through registered mail on June 23, 2025. The Court *En Banc* noted the *Comment* and submitted the instant case for decision in a *Resolution* dated July 16, 2025.

Hence, this Decision.

ASSIGNMENT OF ERROR

Petitioner assigns the following error allegedly committed by the Court in Division:

> THE HONORABLE COURT ERRED IN RULING THAT THE CIR VIOLATED PETITIONER'S *[sic]* RIGHT TO DUE PROCESS FOR FAILURE TO WAIT FOR THE LAPSE OF THE FIFTEEN (15)-DAY PERIOD FROM PETITIONER'S [sic] RECEIPT OF THE PAN BEFORE ISSUING THE FLD.

Petitioner's arguments:

In support of the *Petition for Review*, petitioner contends that due process, as a constitutional precept, does not always require a trial-type proceeding. He contends that due process is satisfied when a person is notified of the charge against him and is given an opportunity to explain or defend himself.

Petitioner submits that respondent was notified of the assessment and given ample time and opportunity to file a protest against the PAN. Thus, petitioner maintains that there was no violation of respondent's right to due process that would warrant the cancellation of the deficiency assessments.

Respondent's arguments:

In its *Comment (Re: Petition for Review dated 14 May 2025)*, respondent counters that the *Petition for Review* must be denied for lack of merit.

According to respondent, under applicable law and jurisprudence, petitioner's failure to observe the mandated 15-

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[9] *Id.* at 38-44.

day period to protest the PAN before issuing the Formal Assessment Notice (FAN) constitutes a violation of the taxpayer's right to due process, thereby rendering the resulting assessment void.

Respondent also points out that petitioner failed to raise any substantial ground that would merit a reversal of the assailed *Decision* and *Resolution* of the Court in Division.

THE COURT *EN BANC'S* RULING

Before addressing the merits of the case, the Court *En Banc* must first determine whether the present *Petition for Review* was timely filed.

The present Petition for Review was seasonably filed. Accordingly, the Court En Banc validly acquired jurisdiction over the same.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

> **SEC. 3**. *Who may appeal; period to file petition.* —
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> . . . .
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> (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. (Emphasis supplied)

Records show that petitioner received the assailed *Resolution* denying his *Motion for Reconsideration* through the Office of the Solicitor General (OSG) on April 21, 2025, and through the BIR on April 14, 2025.[10] Thus, petitioner had 15

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[10] *Id* at 29, *Notice of Resolution*.

days from April 21, 2025, or until May 6, 2025, to file a *Petition for Review* before the Court *En Banc.*

On April 25, 2025, petitioner filed a *Motion for Extension of Time to File Petition for Review,*[11] seeking an additional 15 days from April 29, 2025, or until May 14, 2025, to file the *Petition for Review.* Said *Motion* was granted by the Court *En Banc* in a *Minute Resolution*[12] dated April 28, 2025.

Considering that the *Petition for Review* was filed through registered mail on May 14, 2025, well within the extended period granted by the Court, the same is deemed timely filed. Hence, the Court *En Banc* properly acquired jurisdiction over the *Petition.*

Now, on the merits of the instant *Petition for Review.*

A judicious examination of petitioner's arguments set forth in his *Petition for Review* reveals that they are essentially the same contentions previously raised in his *Motion for Reconsideration (Decision dated 12 September 2024)* filed before the Court in Division. These arguments were already thoroughly discussed and passed upon in the assailed *Decision* dated September 12, 2024, and reiterated in the assailed *Resolution* dated March 28, 2025.

Nevertheless, to reinforce and clarify the findings of the Court in Division, the salient points shall be discussed anew.

The Court in Division did not err in holding that petitioner violated respondent's right to due process by issuing the ANs/FLD without awaiting the lapse of the 15-day period from respondent's receipt of the PAN.

Section 228 of the NIRC of 1997, as amended, provides:

> SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the

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[11] *Id.* at 1-3.
[12] *Id.* at 5.

taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:

. . . .

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. (Emphasis supplied)

Corollary thereto, Section 3.1.1 of Revenue Regulations (RR) No. 12-99,[13] as amended by RR No. 18-13,[14] provides:

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

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

3.1.1 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX "A" hereof).

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

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[13] SUBJECT: Implementing the Provision of the National Internal Revenue Code of 1997 Governing the Rules of 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.

[14] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

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

The foregoing provisions clearly mandate that the taxpayer must be given 15 days from receipt of the PAN within which to respond. Only upon the lapse of this period, without any response from the taxpayer, who is then deemed in default, may the BIR validly issue the FLD/FAN.

In the instant case, the Court *En Banc* concurs with the Court in Division's finding that respondent's right to due process was violated.

As the records reveal, respondent received the PAN dated December 23, 2019 on January 10, 2020. Thus, respondent had 15 days, or until January 25, 2020, within which to respond thereto.

However, prior to the lapse of the 15-day period within which respondent can respond to the PAN, the BIR issued the ANs and FLD on January 13, 2020, or barely three (3) days from respondent's receipt of the PAN. Notably, the BIR did not even await respondent's reply before issuing the ANs and FLD. Stated plainly, the FAN was issued by the BIR before the lapse of the statutory period within which respondent could file a reply to the PAN.

As earlier quoted, Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended by RR No. 18-13, particularly Section 3.1.1 thereof, prescribes a 15-day period from receipt of a PAN within which a taxpayer may respond. Indubitably, the right of the taxpayer to respond to the PAN is an essential component of the due process requirement in the issuance of a deficiency tax assessment. By disregarding respondent's opportunity to be heard and to present its position or argument against the PAN, the BIR clearly violated respondent's right to due process under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended by RR No.

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18-13. Indeed, procedural due process is not satisfied by merely issuing a PAN without giving the taxpayer a real chance to respond within the period provided by law.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc. (Metro Star),*[15] the Supreme Court emphasized the importance of complying with the requirement to send a PAN to the taxpayer as an integral part of due process in the issuance of a deficiency tax assessment. It then declared that the CIR's failure to strictly comply with the requirements laid down by law and its own rules constitutes a denial of *Metro Star's* right to due process. Simply providing the taxpayer with a copy of the PAN is meaningless to the concept of due process if the taxpayer's statutory right to respond thereto within the prescribed period is disregarded.

Although respondent was later able to contest the FAN, such opportunity does not cure the **fatal defect** that attended its issuance **before** the lapse of the period to respond to the PAN.

In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue,* [16] the Supreme Court ruled that the opportunity to protest a formal assessment does not rectify the denial of statutory and procedural due process that occurred prior to its issuance. In that case, the Supreme Court stressed that the exercise of the power of taxation must always be tempered by fairness and circumspection, *viz.*:

> In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. **While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued**. Respondent must be more circumspect in the exercise of his functions, as this Court aptly held in *Roxas v. Court of Tax Appeals*:
>
>> The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the "hen that lays the golden egg." And, in the order to maintain the general public's trust and confidence in the Government

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[15] G.R. No. 185371, December 8, 2010 [Per J. Mendoza, Second Division].
[16] G.R. No. 172598, December 21, 2007 [Per J. Velasco, Jr., Second Division].

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> this power must be used justly and not treacherously. (Emphasis supplied)

It bears noting that in numerous cases,[17] the Supreme Court has consistently declared void any assessment issued in violation of the due process requirement mandated by law.

All told, given the palpable violation of respondent's right to procedural due process pursuant to Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended by RR No. 18-13, the subject ANs and FLD — being fatally infirm — must be declared void. Their cancellation and setting aside are therefore warranted.

WHEREFORE, premises considered, the *Petition for Review* filed by the Commissioner of Internal Revenue is **DENIED**, for lack of merit. The assailed *Decision* dated September 12, 2024, and the *Resolution* dated March 28, 2025, both issued by this Court's Second Division in CTA Case No. 10347, are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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17 *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)*, G.R. No. 227616, June 19, 2019 [Notice, Second Division]; *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398 *et al.*, October 3, 2018 [Per J. Leonen, Third Division]; *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 27, 2017 [Per J. Leonen, Third Division].

MARIA ROWENA G. MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice