REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1716** (CTA Case No. 8817)
- versus -	Present: **DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
ORIENTAL ASSURANCE CORPORATION, Respondent.	Promulgated: AUG 06 2019 9:37a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] dated February 23, 2017 ("Assailed Decision") and Resolution[2] dated September 14, 2017 ("Assailed Resolution") of the Court of Tax Appeals ("CTA") Second Division ("Second Division"), cancelling the Formal Letter of Demand ("FLD") and Warrant of Garnishment issued by Petitioner against Respondent on June 29, 2010 and April 30, 2014, respectively.

The Facts

The facts as found by the Second Division are as follows:

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1 Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Caesar A. Casanova and Catherine T. Manahan concurring. Docket, pp. 1736-1752.

2 Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Caesar A. Casanova and Catherine T. Manahan concurring. *Id.*, pp. 1832-1838.

"[Respondent] is a corporate entity engaged in insurance business, which is duly represented by Mr. Domingo N. Cotoco. It is classified as a large taxpayer.

[Petitioner] is the duly appointed Commissioner of Internal Revenue, who is charged with, among other powers and duties, the responsibility of collecting national internal revenue taxes, and holding an office at the Bureau of Internal Revenue (BIR) National Office, Diliman, Quezon City.

On June 15, 2010, [Respondent] received the Preliminary Assessment Notice (PAN) dated June 15, 2010, assessing it for deficiency documentary stamp tax (DST) for calendar year (CY) 2007 in the amount of [Php]72,656,907.28. Fourteen (14) days thereafter, [Petitioner] sent a Formal Letter of Demand (FLD) dated June 29, 2010, assessing [Respondent] for deficiency DST in the amount of [Php]73,055,974.87.

In response to the FLD, [Respondent] filed a Letter dated September 29, 2010 with [Petitioner] on October 5, 2010, manifesting its willingness to settle the tax liability through a Compromise Agreement on the ground of doubtful validity. [Respondent] likewise sent a Letter dated June 4, 2012 to [Petitioner] inquiring the status of the former's request for a compromise settlement.

Then, out of the total DST liability of [Php]60,622,895.38, [Respondent] paid the amount of [Php]12,069,671.00. The balance of [Php]48,553,224.38 was the subject of a compromise offer between [Respondent] and [Petitioner].

[Petitioner] signed the Payment Form (BIR Form 0605) representing the compromise amount of 40% of [Respondent]'s DST liability, which was equivalent to [Php]19,421,289.75. [Respondent] paid the said amount of [Php]19,421,289.75.

However, [Respondent] received on September 17, 2013 a Notice of Denial dated March 20, 2013. Thus, [Respondent] filed with [Petitioner] a Request for Reconsideration and Clarification of the said Notice of Denial on the grounds of erroneous computation of the tax base, which included the following: (1) reinsurance contracts or on any instrument by which cession or acceptance of insurance risk under any reinsurance agreement is effected or recorded; (2) increased coverage; and (3) cancelled policies which should not be subjected to the imposition of DST.

On April 30, 2014, [Petitioner] issued a Warrant of Garnishment against [Respondent].

On May 13, 2014, [Respondent] filed this Petition for Review with Prayer for Temporary Restraining Order and/or Preliminary Mandatory Action to Recall Warrant of Garnishment and Prohibition of Collection."[3]

The Ruling of the Second Division

On February 23, 2017, the Second Division promulgated the Assailed Decision granting the Petition for Review, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, this Petition for Review is **GRANTED**. Accordingly, the Formal Letter of Demand and Warrant of Garnishment issued against [Respondent] are declared **NULL** and **VOID**.
>
> **SO ORDERED.**"[4]

The Assailed Decision cancelled the FLD and Warrant of Garnishment issued by Petitioner against Respondent for denial of due process. Respondent's right to due process was violated when Petitioner hastily issued the FLD, that is, fourteen (14) days after Respondent received the Preliminary Assessment Notice ("PAN") dated June 15, 2010 which is contrary to Section 3.1.2 of Revenue Regulations ("RR") No. 12-99.

Aggrieved, Petitioner filed a "Motion for Reconsideration"[5] on March 14, 2017 *via* registered mail, which the Second Division denied in the Assailed Resolution on September 14, 2017, thus:

> "**WHEREFORE**, premises considered [Petitioner's] Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED.**"[6]

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3 *Id.*, pp. 1737-1738.
4 *Id.*, p. 1751.
5 *Id.*, pp. 1753-1767.
6 *Id.*, p. 1838.

In denying Petitioner's Motion for Reconsideration, the Second Division reiterated its finding that the FLD was void for it was issued within the fifteen-day period mandated by law within which to protest the PAN. Moreover, the Court did not deviate from the issues stipulated by the parties. One of the issues in the case is whether there is legal basis for Respondent's assertion regarding the doubtful validity of the assessment that would warrant the approval of the compromise. A void assessment cannot be used as a basis for the perfection of a tax compromise. Thus, it was imperative to determine whether or not the assessment was valid or not, to be considered a subject for compromise agreement.

On October 03, 2017, Petitioner filed a "Motion for Extension of Time to Petition for Review"[7], which the Court granted in a Minute Resolution[8] dated October 05, 2017.

On October 20, 2017, Petitioner timely filed the present "Petition for Review"[9].

On January 11, 2018, the Court issued a Resolution[10] which ordered Respondent to comment on the Petition for Review within ten (10) days from notice.

Respondent failed to file a comment thereto.[11] Thus, on March 19, 2018, a Resolution[12] was issued giving due course to the Petition for Review, and ordering the parties a period of thirty (30) days within which to file their respective memoranda.

Consequently, Respondent filed a "Motion to Admit Hereto Appended Memorandum (For the Petitioner)[sic]"[13] with attached "Petitioner's [sic] Memorandum"[14] on May 09, 2018 *via* registered mail, which the Court noted in a Minute Resolution[15] dated July 03, 2018. On the other hand, Petitioner filed on June 22, 2018 a "Manifestation"[16] stating that he is adopting his Petition for Review as his Memorandum, which the Court noted in a Minute Resolution[17] dated June 29, 2018.

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[7] Rollo, pp. 1-3. Record shows that Petitioner received the assailed Resolution on September 20, 2017, Docket, p. 1831.
[8] *Id.*, p. 5.
[9] *Id.*, pp. 6-45.
[10] *Id.*, pp. 74-75.
[11] *Id.*, p. 76.
[12] *Id.*, pp. 78-79.
[13] *Id.*, pp. 81-83.
[14] *Id.*, pp. 84-108.
[15] *Id.*, p. 117.
[16] *Id.*, pp. 110-112.
[17] *Id.*, p. 116.

On August 09, 2018, the Court issued a Resolution[18] submitting the instant case for decision.

On September 05, 2018, Petitioner filed a "Motion to Inhibit" praying that the Justices of the Second Division inhibit themselves from reviewing their own decision and resolution in the present case.

On October 09, 2018, a Resolution was issued ordering Respondent to comment on Petitioner's "Motion to Inhibit" within ten (10) days from notice.

On November 09, 2018, Respondent filed a "Motion to Admit Hereto Appended Comment (to the Petitioner's Motion to Inhibit)" *via* registered mail, praying that the attached "Comment (to the Petitioner's Motion to Inhibit)" be admitted to form part of the records of the case, and be duly considered relative to the instant case.

On March 07, 2019, a Resolution was issued:

1) Referring Petitioner's "Motion to Inhibit" to the Justices of the CTA Second Division [now Special Second Division] for appropriate action;

2) Granting Respondent's "Motion to Admit Hereto Appended Comment (to the Petitioner's Motion to Inhibit)"; and

3) Admitting Respondent's "Comment (to the Petitioner's Motion to Inhibit)" to form part of the records of the case, and will be duly considered relative to the instant case.

On June 18, 2019, the Court issued a Resolution noting the memoranda submitted by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Catherine T. Manahan stating that no just or valid ground exists for the justices of the Second Division to inhibit themselves from participating in the hearing *En Banc*, and that the grounds articulated in Petitioner's motion to inhibit are undoubtedly groundless and frivolous.

The Issues

Petitioner raises the following grounds in support of its petition:

1) The assailed Decision appeared to have tried a case different from that derived from the original petition and the answer. It

[18] *Id.*, pp. 119-120.

is even totally alien to the stipulation of issues that was adopted by the Court and meant to govern the trial proceedings. This is both unjust and unfair;

2) The Second Division of the Honorable Court did not have jurisdiction over the original petition as a refusal to enter into a compromise agreement is not covered by "other matters";

3) The Second Division of the Honorable Court could not exercise jurisdiction over the original petition as there was no cause of action;

4) Assuming that suing to obtain consent to a contract may be brought as a cause of action and further assuming that securing a contract is indeed a quasi-judicial proceeding covered by "other matters" – the Second Division of the Honorable Court had no jurisdiction as the Warrant of Garnishment here is not a decision that is appealable to the CTA;

5) On all the previous assumptions as well as further assuming that the Warrant of Garnishment here is an appealable decision – the collateral attack and nullification herein of a final, executory and demandable assessment is highly irregular bordering on illegal;

6) Assuming the jurisdictional flaws are overlooked and further assuming that collateral attacks on final, executory assessments are now allowed – the legal justification of the Second Division of the Honorable Court in examining the assessment based on a supposed analogous case is quite off; and

7) Assuming the jurisdictional flaws are overlooked and collateral attacks on final executory assessment are now allowed, further assuming that this case is analogous with the Azucena Reyes Case – the legal justification of the Second Division of the Honorable Court in nullifying the assessment based on a one (1) day lapse cannot ipso facto result in the invalidity of the assessment.[19]

<u>The Ruling of the Court</u>

We deny the petition.

[19] *Id.*, p. 14-15.

At the outset, we note that most of the arguments advanced by Petitioner in the instant Petition for Review are the same arguments in his "Motion for Reconsideration"[20] filed on March 14, 2017 *via* registered mail before the Court in Division. Said issues have been extensively addressed by the Second Division in the Assailed Decision and Assailed Resolution. Nevertheless, We shall answer all of Petitioner's arguments, including those merely reiterated, if only to reinforce the earlier disquisition of the Court in Division.

The Court in Division properly assumed and exercised jurisdiction over the case

Petitioner submits that the Second Division had no jurisdiction over the original Petition. To support his contention, he enumerates three (3) reasons. First, Petitioner's refusal to enter into a compromise agreement is not covered by the phrase "other matters arising under this Code" as stated in Section 7(a)(1) of Republic Act ("RA") No. 1125, as amended by RA No. 9282. Second, Respondent had no cause of action as there is no wrong or right in entering or refusing to enter into a compromise contract. Lastly, a Warrant of Garnishment is not a decision that is appealable to the CTA.

The Court *En Banc* is not persuaded.

Jurisdiction is conferred by law and is the capacity of a court to "entertain, hear, and determine controversies."[21] The CTA, as a court of special jurisdiction, only takes cognizance of matters clearly within its jurisdiction.[22]

The jurisdiction of the CTA, in particular those falling under the "other matters" clause has been ruled to include, but not limited to: prescription of the Commissioner of Internal Revenue ("CIR")'s right to collect taxes,[23] determination of the validity of a warrant of distraint and levy issued by the CIR and the validity of a waiver of the statute of limitations.[24]

In the landmark case of *Philippine National Oil Company v. Court of Appeals*[25], the Supreme Court expanded the previous enumeration and considered the validity of a compromise agreement as "other matters arising from the NIRC and other laws being administered by the Bureau of Internal Revenue" and thus,

[20] *Id.*, pp. 1753-1767.
[21] Guy v. Court of Appeals, G.R. Nos. 165849, 170185, 170186, 171066 and 176650, December 10, 2007.
[22] Commissioner of Internal Revenue v. Silicon Philippines, Inc., G.R. No. 169778, March 12, 2014.
[23] Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc., G.R. No. 169225, November 17, 2010.
[24] Philippine Journalists, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004.
[25] G.R. Nos. 109976 and 112800, April 26, 2005.

appealable to the CTA under Section 7(1)(a) of RA No. 1125, as amended by RA No. 9282.

Notably, the Supreme Court pointed out in the said decision that the CIR's discretionary authority to enter into a compromise agreement is not absolute and that this Court may inquire into allegations of abuse thereof. In fact, the CTA has the authority and power to set aside a compromise agreement entered into by the CIR and a taxpayer that is contrary to law and public policy, to wit:

> "It is generally true that purely administrative and discretionary functions may not be interfered with by the courts; but when the exercise of such functions by the administrative officer is tainted by a failure to abide by the command of the law, then it is incumbent on the courts to set matters right, with this Court having the last say on the matter.
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> The manner by which BIR Commissioner Tan exercised his discretionary power to enter into a compromise was brought under the scrutiny of the CTA amidst allegations of 'grave abuse of discretion and/or whimsical exercise of jurisdiction.' The discretionary power of the BIR Commissioner to enter into compromises cannot be superior over the power of judicial review by the courts.
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> The discretionary authority to compromise granted to the BIR Commissioner is never meant to be absolute, uncontrolled and unrestrained. No such unlimited power may be validly granted to any officer of the government, except perhaps in cases of national emergency. In this case, the BIR Commissioner's authority to compromise, whether under E.O. No. 44 or Section 246 of the NIRC of 1977, as amended, can only be exercised under certain circumstances specifically identified in said statutes. The BIR Commissioner would have to exercise his discretion within the parameters set by the law, and in case he abuses his discretion, the CTA may correct such abuse if the matter is appealed to them.
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> Petitioners PNOC and PNB both contend that BIR Commissioner Tan merely exercised his authority to enter into a compromise specially granted by E.O. No. 44. Since this Court has already made a determination that the compromise agreement did not qualify under E.O. No. 44, BIR Commissioner Tan's decision to agree to the compromise should have been reviewed in the light of the general authority granted to the BIR Commissioner to compromise taxes under Section 246 of the NIRC of 1977, as amended. Then again, petitioners PNOC and PNB failed to allege,

much less present evidence, that BIR Commissioner Tan acted in accordance with Section 246 of the NIRC of 1977, as amended, when he entered into the compromise agreement with PNOC.

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The Court of Appeals, in upholding the jurisdiction of the CTA to set aside the compromise agreement, ruled that:

> We are unable to accept petitioner's submissions. Its formulation of the issues on CIR and CTA's lack of jurisdiction to disturb a compromise agreement presupposes a compromise agreement validly entered into by the CIR and not, when as in this case, it was indubitably shown that the supposed compromise agreement is without legal support. In case of arbitrary or capricious exercise by the Commissioner or if the proceedings were fatally defective, the compromise can be attacked and reversed through the judicial process (Meralco Securities Corporation v. Savellano, 117 SCRA 805, 812 [1982]; Sarah E. Ramsay, et. al. v. U.S. 21 Ct. C1 443, aff'd 120 U.S. 214, 30 L. Ed. 582; Tyson v. U.S., 39 F. Supp. 135 cited in page 18 of decision) ....

Although the general rule is that compromises are to be favored, and that compromises entered into in good faith cannot be set aside, this rule is not without qualification. A court may still reject a compromise or settlement when it is repugnant to law, morals, good customs, public order, or public policy.

The compromise agreement between the BIR and PNOC was contrary to law having been entered into by BIR Commissioner Tan in excess or in abuse of the authority granted to him by legislation. E.O. No. 44 and the NIRC of 1977, as amended, had identified the situations wherein the BIR Commissioner may compromise tax liabilities, and none of these situations existed in this case.

The compromise, moreover, was contrary to public policy. The primary duty of the BIR is to collect taxes, since taxes are the lifeblood of the Government and their prompt and certain availability are imperious needs. In the present case, however, BIR Commissioner Tan, by entering into the compromise agreement that was bereft of any legal basis, would have caused the Government to lose almost [Php]300 million in tax revenues and would have deprived the Government of much needed monetary resources.

Allegations of good faith and previous execution of the terms of the compromise agreement on the part of PNOC would not be enough for this Court to disregard the demands of law and public policy. Compromise may be the favored method to settle disputes, but when it involves taxes, it may be subject to closer scrutiny by the courts. A compromise agreement involving taxes would affect not just the taxpayer and the BIR, but also the whole nation, the ultimate beneficiary of the tax revenues collected."

In the same way that this Court can review the discretionary power of the CIR to enter into compromise agreements, it can also review the CIR's refusal to do so.

Moreover, the CTA has jurisdiction to review not only disputed assessments but also the Bureau of Internal Revenue ("BIR")'s right to collect upon an assessment.[26]

Garnishment is one of the methods or remedies for the collection of taxes. Together with distraint and levy, these methods for collection are given to the BIR under Sections 205 to 208[27] of the National Internal Revenue Code ("NIRC") of 1997, as amended. In a number of cases[28], what was appealed to the CTA was the issuance of a Warrant of Distraint and/or Levy. It logically follows therefore that a Warrant of Garnishment may also be subject of an appeal to this Court.

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[26] Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc., G.R. No. 169225, November 17, 2010.

[27] SEC. 208. Procedure for Distraint and Garnishment. - The officer serving the warrant of distraint shall make or cause to be made an account of the goods, chattels, effects or other personal property distrained, a copy of which, signed by himself, shall be left either with the owner or person from whose possession such goods, chattels, or effects or other personal property were taken, or at the dwelling or place of business of such person and with someone of suitable age and discretion, to which list shall be added a statement of the sum demanded and note of the time and place of sale...

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Bank accounts shall be garnished by serving a warrant of garnishment upon the taxpayer and upon the president, manager, treasurer or other responsible officer of the bank.

Upon receipt of the warrant of garnishment, the bank shall tun over to the Commissioner so much of the bank accounts as may be sufficient to satisfy the claim of the Government.

[28] Commissioner of Internal Revenue v. Fitness by Design, Inc., G.R. No. 215957, November 09, 2016; Commissioner of Internal Revenue v. Petron Corporation, G.R. No. 185568, March 21, 2012; Philippine Journalists, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004; Jose Pantoja v. Saturnino David, G.R. No. L-10765, February 28, 1961.

In the instant case, the reliefs prayed for by Respondent in its Petition for Review[29] with the Court *a quo* were confined to the following: (1) nullification of the Notice of Denial and Warrant of Garnishment, (2) declaration of Respondent's payment on June 8, 2012 pursuant to the compromise agreement as valid and reasonable, and (3) prohibition for the collection of the deficient Documentary Stamp Tax ("DST") due that was the subject of the Warrant of Garnishment.

Evidently, Respondent's prayers were indicative that the issues raised with the Court a *quo* (*i.e.*, refusal to compromise and Warrant of Garnishment) fall within the Court's jurisdiction, under the "other matters" clause.

There being a question as to whether the CIR can collect on said assessment, the Court may also look into the validity of said assessment

Petitioner contends that the issues as agreed by the parties in the Pre-Trial Order dated May 12, 2015 all centered on the compromise proceedings. Respondent allegedly did not ask for the nullification of the assessment. Also, it was never even stipulated as an issue for trial. Petitioner maintains that the Second Division, when it granted the petition (filed by herein Respondent), went too far and examined the validity of an undisputable assessment.

Respondent on the other hand points out that the Court in Division correctly rendered the Assailed Decision as it is founded on logical conclusion of law. An invalid FLD will make the consequent Warrant of Garnishment null and void.

Respondent's argument is well-taken.

The first prayer of Respondent in its Petition for Review (filed with the Court in Division) seeks for the nullification of the Warrant of Garnishment. There being a question as to whether the CIR can collect on said assessment, the Court may also look into the validity of said assessment including Petitioner's compliance with due process in order to determine whether the assessment was validly issued, whether the Warrant of Garnishment was validly issued, and whether payment of the compromise amount of 40% of Respondent's alleged DST liability will render the amount being collected under the Warrant of Garnishment moot and academic.

[29] Docket, p. 17.

It is well-settled that a void assessment does not bear fruit[30] and it cannot give rise to an obligation to pay deficiency taxes. Absent a previously issued valid assessment, it is clear that an attempt to collect through a subsequent Warrant of Garnishment or Warrant of Distraint or Levy, as the case may be, is also void and ineffectual. Whether or not the issue of validity of an assessment is stipulated by the parties or prayed in a Petition for Review, the same is part and parcel of the matters that should be looked upon by this Court. For there can be no legal basis to collect tax without a proper and bona fide assessment.

Besides, 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. This is provided under Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals[31], *viz*:

> SECTION 1. *Rendition of judgment.* — x x x
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> 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.

The above section is clearly worded. On the basis thereof, the Second Division was, therefore, well within its authority to consider in its decision the question on validity of the assessment even though the parties had not stipulated the same as one of the issues in their Joint Stipulation of Facts and Issues[32] dated April 27, 2015.

Non-observance of the 15-day period to protest the PAN violates a taxpayer's right to due process

In this regard, the Court in Division found that fourteen (14) days after Respondent received the Preliminary Assessment Notice ("PAN") dated June 15, 2010, assessing it for deficiency DST for calendar year 2007, Petitioner sent the FLD on June 29, 2010.

Thus, the Court *a quo* concluded that there was a denial of Respondent's right to due process since the FLD was issued prior to the lapse of the 15-day period given to the taxpayer to respond/protest the PAN.

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[30] Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation, G.R. No. 197945, July 09, 2018 *citing* Commissioner of Internal Revenue v. Azucena T. Reyes, G.R. Nos. 159694 and 163581, January 27, 2006.
[31] A.M. No. 05-11-07-CTA, February 10, 2009.
[32] Docket, pp. 1608-1609.

According to Petitioner, this one-day lapse only involves a very slight administrative procedural lapse and is far removed from deprivation of procedural due process.

Petitioner is mistaken.

The requirement of informing the taxpayer of the assessment is mandatory in nature as provided in Section 228 of the NIRC of 1997, as amended, and Section 3 of RR No. 12-99, as amended by RR 18-2013, the pertinent portions of which are quoted hereunder for ready reference:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> 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.
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> **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.**
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> 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.
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> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one

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hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."[33]

"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 xxx.

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

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties."[34]

On the basis of the foregoing, after the issuance of the PAN, the CIR or his duly authorized representative is **duty bound to wait for the expiration of fifteen (15) days from the date of receipt** thereof. If the taxpayer fails to respond to the PAN within the said period, it is only then that the CIR or his duly authorized representative can consider the taxpayer in default, and correspondingly cause the issuance of a formal letter of demand and assessment notice, which shall be subsequently served to the said taxpayer.

Note that compliance with Section 228 of the NIRC of 1997, as amended is a substantive requirement. It is not a mere formality. The use of the word

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[33] *Emphasis supplied.*
[34] *Emphasis and underscoring supplied.*

"shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein.[35] Consequently, such procedure is mandatory under the due process requirement in the issuance of a deficiency tax assessment.

To be sure, the said 15-day period is given to a taxpayer, like Respondent, to give it time to prepare and amply ventilate its defense for the consideration of the taxing authority. For after all, 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.[36]

In this case, the FLD was issued only fourteen (14) days later after issuance and receipt of PAN, a clear violation of Respondent's right to due process. Clearly, the BIR rushed into the issuance of the FLD, without waiting for the lapse of the period, depriving Respondent an opportunity to respond to the PAN.

WHEREFORE, the Assailed Decision dated February 23, 2017 and Assailed Resolution dated September 14, 2017 are **AFFIRMED**. Accordingly, the Petition for Review filed with the Court *En Banc* on October 20, 2017 is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen S.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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[35] Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, July 02, 2014.

[36] Commissioner of Internal Revenue v. Fitness by Design, Inc., G.R. No. 215957, November 09, 2016.

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(took no part)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(took no part)
MARIA ROWENA MODESTO-SAN PEDRO
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