22-000133-0043

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10814

WIPRO PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. LARA NICOLE T. GONZALES
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

CABRERA & COMPANY
28th Floor, Philamlife Tower,
8767 Paseo de Roxas, 1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **June 24, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 25, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

WIPRO PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10814

Members:

DEL ROSARIO, *P.J., Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

JUN 24 2024 3:15PM

x- -x

DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review*[1] filed by Wipro Philippines, Inc. on March 23, 2022, seeking the cancellation and withdrawal of the deficiency Income Tax (IT) assessment amounting to ₱6,315,375.47, inclusive of surcharge and interest, for the fiscal year (FY) ended March 31, 2016.

THE PARTIES

Petitioner Wipro Philippines, Inc. is a corporation existing under the laws of the Philippines.[2] It is registered with the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 123, under Tax Identification Number (TIN) 006-897-563-000, with address at Cebu IT Tower 1, Lt. 7 Blk. 2 corner Arch. Reyes St. and Mindanao St., Cebu Business Park, Cebu City.[3] It is also registered with the Philippine Economic Zone Authority (PEZA), as evidenced by Amended Certificates

[1] Docket – Vol. I, pp. 6 to 20.
[2] Par. 1(a), Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 598.
[3] Par. 1(b), Stipulation of Facts, JSFI, Docket – Vol. II, p. 598; and Exhibit "P-4-1", Docket – Vol. II, p. 817.

of Registration (COR) 07-73-IT dated October 8, 2013 and August 29, 2018[4], respectively.

Respondent Commissioner of Internal Revenue (CIR) is charged with the assessment and collection of all national internal revenue taxes, fees, and charges and enforcement of all forfeitures, penalties, and fines connected therewith.[5] He may be served with summons and other court processes at the BIR, Room 703 Litigation Division, BIR Bldg., Diliman, Quezon City.[6]

THE FACTS AND THE PROCEEDINGS

On April 21, 2017, the Assistant Commissioner for the Large Taxpayers Service, Ms. Teresita M. Angeles, issued a Letter of Authority (LOA) No. eLA201500034443, authorizing Revenue Officers (ROs) Bianca Bess Lindugan, Roben Saguin, Jissa Mandin, and Group Supervisor (GS) Jane Tumagan to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from April 1, 2015 to March 31, 2016.[7]

On November 27, 2019, petitioner received a *Preliminary Assessment Notice*[8] (PAN) of even date, assessing it of deficiency IT, expanded withholding tax (EWT), withholding tax on compensation (WTC), documentary stamp tax (DST), and miscellaneous taxes (compromise penalties) for FY ended March 31, 2016, in the aggregate amount of ₱94,551,239.34, inclusive of surcharges and interests, broken down as follows:

Tax Type	Total
Income tax	₱ 49,552,317.72
EWT	14,496,911.82
WTC	29,870,024.54
DST	441,985.26
Compromise penalties	190,000.00
Total	**₱ 94,551,239.34**

On December 12, 2019, petitioner filed a *Protest Letter*[9] refuting the deficiency tax assessments and requesting that

[4] Exhibits "P-5" and "P-5-1", Docket – Vol. II, pp. 818 to 819.
[5] Par. 2, *Petition for Review* vis-à-vis par.1, *Answer*, Docket – Vol. I, p. 6 and 363, respectively.
[6] Par. 1, *Answer*, Docket – Vol. I, p. 363.
[7] Par. 10, Petition for Review, Docket – Vol. I, p. 9.
[8] Exhibits "P-14", "R-10" and "R-10-1", BIR Records (Exhibit "R-17") – Folder 2, pp. 648 to 653.
[9] Exhibit "P-15", Docket – Vol. II, pp. 846 to 858.

the same be revisited, reinvestigated, and consequently, cancelled.

On June 22, 2020, petitioner received the *Formal Letter of Demand/Assessment Notices*[10] (FLD/FAN) dated June 15, 2020, allegedly reflecting the very same findings per PAN, with adjusted interest only as difference, to wit:

Tax Type	Total
Income tax	₱ 53,346,848.34
EWT	15,607,030.95
WTC	32,157,358.97
DST	476,040.11
Compromise penalties	190,000.00
Total	**₱ 101,777,278.37**

On July 22, 2020, petitioner filed with the BIR a *Motion for Reinvestigation/Protest* to the FLD/FAN,[11] contesting the deficiency tax assessments and requesting that the same be revisited, reinvestigated, and consequently, cancelled. In support of its position/explanation, petitioner allegedly submitted additional documents on September 21, 2020.[12]

On February 22, 2022, petitioner received the letter dated February 4, 2022 (Final Decision on Disputed Assessment and/or FDDA) signed by then Commissioner Caesar R. Dulay,[13] informing petitioner that after considering the latter's protest, it has been found still liable for deficiency IT, EWT, WTC, DST, and miscellaneous taxes (compromise penalties), inclusive of surcharges and interests, in the aggregate amount of ₱14,485,240.26, broken down as follows:

Tax Type	Total
Income tax	₱ 6,315,375.47
EWT	6,532,503.42
WTC	1,184,452.91
DST	322,908.46
Compromise penalties	130,000.00
Total	**₱ 14,485,240.26**

[10] Exhibit "P-16", Docket – Vol. II, pp. 859 to 871; and Exhibits "R-12", "R-12-1", "R-13", "R-13-1", "P-13-2", "R-13-3" and "R-13-4", BIR Records (Exhibit "R-17") – Folder 2, pp. 806 to 811G.
[11] Exhibit "P-17", Docket – Vol. II, pp. 872 to 893.
[12] Exhibit "P-18", Docket – Vol. II, pp. 894 to 896.
[13] Exhibit "P-19", Docket – Vol. II, pp. 897 to 908; and Exhibits "R-16", "R-16-1", "P-17", "R-17-1", "R-17-2", "R-17-3" and "R-17-4", BIR Records (Exhibit "R-17") – Folder 7, pp. 146 to 155.

On March 18, 2022, petitioner partially paid [14] the assessments for deficiency EWT, WTC, DST, and miscellaneous taxes, in the aggregate amount of ₱8,167,873.74, broken down as follows:

Tax Type	**Total**
EWT	₱ 6,581,834.46
WTC	1,216,144.79
DST	369,894.49
TOTAL PAID DEFICIENCY TAXES (including interests and miscellaneous taxes)	**₱ 8,167,873.74**

Anent the deficiency IT assessment, petitioner questioned it *via* the present *Petition of Review* filed on March 23, 2022, and initially raffled to this Court's Second Division.

On May 30, 2022, within the extension period given by the Court,[15] respondent filed his *Answer*[16] contending that the instant *Petition of Review* should be denied for lack of merit. Respondent alleged that petitioner is liable to pay the assessed deficiency IT for the FY ended March 31, 2016, as its Income Tax Holiday (ITH) entitlement for the activities at its 1 Cyber Pod Centris, Eton Centris, already expired on February 28, 2014. Respondent added that petitioner failed to present any proof that its ITH incentive was extended and admits that the extension of its ITH incentive was only confirmed by PEZA on September 23, 2019. Hence, for respondent, there was no existing ITH incentive for petitioner to apply such an exemption for FY 2016.

The *Pre-Trial Conference*[17] was set and held on August 15, 2022. During the said *Conference,* the Court, among other things, directed the parties to appear before the Philippine Mediation Center—Court of Tax Appeals (PMC-CTA) for mediation proceedings. However, the parties decided not to have their case mediated.[18]

[14] Par. 1(c), Stipulation of Facts, JSFI, Docket – Vol. II, pp. 598 to 599; and Exhibits "P-21", "P-21-1", "P-22", "P-22-1", "P-23" and "P23-1", Docket – Vol. II, pp. 910 to 918.
[15] Respondent's *Motion for Extension of Time to File Answer*, Docket – Vol. I, pp. 357 to 360; and Order dated May 2, 2022, Docket – Vol. I, p. 362.
[16] Docket – Vol. I, pp. 363 to 370.
[17] Notice of Pre-Trial Conference dated June 1, 2022, Docket – Vol. I, pp. 372 to 373; and Minutes of the hearing held on, and Order dated, August 15, 2022, Docket – Vol. I, pp. 576, and Docket – Vol. II, pp. 577 to 579, respectively.
[18] Docket – Vol. II, p. 622.

On September 13, 2022, the parties filed their *Joint Stipulation of Facts and Issues*,[19] based on which a *Pre-Trial Order*[20] was issued on September 29, 2022.

The trial ensued, during which petitioner presented its witnesses: (1) Atty. Harold S. Ocampo, petitioner's Corporate Secretary;[21] (2) Mr. John Paul Vargas[22] and Atty. Lawrence C. Biscocho,[23] petitioner's External Tax Consultants; and (3) Ms. Susan G. Batistis,[24] petitioner's Deputy Manager for Finance.

On February 15, 2023, petitioner filed its *Formal Offer of Evidence with Motion to Adopt the Correct Exhibit Reference Markings*,[25] to which respondent failed to file his comment despite the opportunity given.[26]

On April 12, 2023, the Court resolved[27] to admit petitioner's offered exhibits, *except* Exhibits "P-4," "P-8," and "P-20," for failure to present the originals for comparison.

For his part, respondent offered the testimony of RO Lyn Dy Octot Gamalo.[28]

On April 25, 2023, respondent filed his *Formal Offer of Evidence*,[29] to which petitioner filed its *Comment on the Respondent's Formal Offer of Exhibits* on April 27, 2023.[30] In the Resolution dated May 26, 2023,[31] the Court admitted all respondent's offered exhibits, *except* Exhibit "R-1", for failure to present the original for comparison.

On May 29, 2023, this case was transferred to this Court's First Division pursuant to Administrative Circular No.

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[19] Docket – Vol. II, pp. 598 to 606.
[20] *Id.*, pp. 611 to 618.
[21] Exhibit "P-26", Docket – Vol. I, pp. 163 to 168; and Minutes of hearing held on, and Order dated, November 10, 2022, Docket – Vol. II, pp. 625 to 626.
[22] Exhibit "P-27", Docket – Vol. I, pp. 386 to 393; and Minutes of hearing held on, and Order dated, October 6, 2022, Docket – Vol. II, pp. 619 to 621.
[23] Deemed marked as Exhibit "P-28", pursuant to Resolution dated April 12, 2023, Docket – Vol. II, pp. 629 to 637, and 921 to 924, respectively; and Minutes of hearing held on, and Order dated, January 26, 2023, Docket – Vol. II, pp. 711 to 713.
[24] Exhibit "P-25", Docket – Vol. I, pp. 411 to 422; and Minutes of hearing held on, and Order dated, October 6, 2022, Docket – Vol. II, pp. 619 to 621.
[25] Docket – Vol. II, pp. 714 to 722.
[26] Records Verification issued by this Court's Judicial Records Division dated March 22, 2023, Docket – Vol. II, p. 919.
[27] Resolution, Docket – Vol. II, pp. 921 to 924.
[28] Exhibit "R-19", Docket – Vol. I, pp. 559 to 567; and Minutes of the hearing held on, and Order dated, April 13, 2023, Docket – Vol. II, pp. 925 to 927.
[29] Docket – Vol. II, pp. 928 to 936.
[30] *Id.*, pp. 938 to 940.
[31] *Id.*, pp. 942 to 943.

01-2023 (Reorganizing the Divisions of the Court) dated May 23, 2023. [32]

On July 26, 2023, this case was submitted[33] for decision considering the *Memorandum (of Petitioner Wipro Philippines, Inc.)* [34] filed on July 10, 2023, and respondent's *Memorandum*[35] filed *via* electronic mail on July 10, 2023.

Hence, this Decision.

THE ISSUE

The parties stipulated to submit for this Court's resolution the lone issue as follows:[36]

> "WHETHER OR NOT PETITIONER IS LIABLE FOR THE ASSESSED DEFICIENCY INCOME TAX FOR THE FISCAL YEAR ENDING 31 MARCH 2016 IN THE AMOUNT OF **SIX MILLION THREE HUNDRED FIFTEEN THOUSAND THREE HUNDRED SEVENTY-FIVE PESOS AND FORTY-SEVEN CENTAVOS (₱6,315,375.47),** PLUS ADDITIONAL INTEREST".

Petitioner's Arguments:

Petitioner argues that its revenue from 1 Cyber Pod Centris Site is covered by the ITH, hence, not subject to the 5% gross income tax (GIT); that it has paid the 5% GIT for the income of its 1 Cyber Pod Centris Site from March 1, 2016 to March 31, 2016; and that the PEZA has confirmed that its entitlement to ITH applies from March 1, 2010 up to the end of its second ITH extension on February 28, 2016.

Respondent's Arguments:

Respondent contends that petitioner is liable to pay the assessed deficiency income taxes for the FY ending March 31, 2016. According to respondent, petitioner does not have an ITH incentive at the time of the filing of its income tax returns. Even though petitioner claims that it was issued an ITH

[32] Notice dated May 29, 2023, Docket – Vol. II, p. 944.
[33] Notice dated July 26, 2023, Docket – Vol. II, p. 997.
[34] Docket – Vol. II, pp. 945 to 967.
[35] *Id.*, pp. 968 to 980.
[36] Stipulation of Issue, JSFI, Docket – Vol. II, p. 599.

exemption, petitioner was not able to present said document during the tax audit investigation.

THE COURT'S RULING

The Court has jurisdiction over the present case.

Section 7(a)(1) and (2) of Republic Act (RA) No. 1125,[37] as amended, confers jurisdiction to the Court of Tax Appeals (CTA) relative to decisions and inactions of respondent, to wit:

> "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;
>
> (2) Inaction by the [CIR] 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*]

In exercising its appellate jurisdiction over tax assessment cases, the CTA is guided by Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, which governs the procedure for protesting assessment and taking an appeal to the CTA, *viz.*:

> "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:
>
> xxx xxx xxx

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[37] AN ACT CREATING THE COURT OF TAX APPEALS.

> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> **If the protest is denied in whole or in part**, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision** or inaction **may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of the one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable**." (*Boldfacing supplied*)

Under Section 228, petitioner has thirty (30) days from receipt of the FAN to file an administrative protest and another 30 days from receipt of respondent's decision or the lapse of the one hundred eighty (180)-day period to file a Petition for Review with this Court.

In the instant case, petitioner received respondent's FDDA on February 22, 2022. Counting 30 days from said date, petitioner had until March 24, 2022, to challenge said Final Decision before the Court *via* a *Petition for Review*.

Clearly, the filing of the instant *Petition for Review* on March 23, 2022 was well within the 30-day period to appeal. Hence, the Court has jurisdiction to take cognizance of this case.

The subject Income Tax assessment is void due to respondent's violation of petitioner's right to due process.

Before addressing the issue of whether petitioner is liable for the assessed deficiency IT of ₱6,315,375.47 for the FY ended March 31, 2016, the Court shall first determine the validity of the assessment, as a void assessment bears no fruit.[38]

Section 228 of the NIRC of 1997, as amended, provides, in part, as follows:

> "SEC. 228. *Protesting of Assessment.* — xxx
>
> 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.**" *xxx (Emphasis added)*

Based on the foregoing, the BIR is mandated to inform taxpayers, in writing, of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.[39] The requirement that the taxpayer be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[40]

The law requires that the factual and legal bases for the assessment be stated in writing. This is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.[41] Furthermore, it must be emphasized that failure to comply with Section 228 not only renders the

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[38] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006, 516 Phil. 176, 189-190; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633; *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014, 743 SCRA 113; *Samar-I Electric Cooperative v. Commissioner of Internal Revenue,* G.R. No. 193100, December 10, 2014, 744 SCRA 459; *Commissioner of Internal Revenue v. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016, 808 SCRA 422.

[39] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

[40] *Commissioner of Internal Revenue v. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.

[41] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

assessment void but also finds no validation in any provision in the Tax Code.[42]

To implement Section 228, Section 3 of Revenue Regulations (RR) No. 12-99[43], as amended by RR No. 18-2013[44] and renumbered by RR No. 7-2018[45], provides, in part, as follows:

> "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:
>
> xxx xxx xxx
>
> 3.1.2 *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 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).
>
> xxx xxx xxx
>
> 3.1.4 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and 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 <u>shall state the facts, the law,</u> rules and regulations, or jurisprudence <u>on which the assessment is based, *otherwise, the assessment shall be void*</u>** (see illustration in ANNEX 'B' hereof).
>
> xxx xxx xxx

[42] *Id.*, citing *Commissioner of Internal Revenue v. Reyes*, 516 Phil. 176, 189 (2006).

[43] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayers Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

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

[45] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> 3.1.6 *Final Decision on a Disputed Assessment (FDDA).* – The decision of the Commissioner or his duly authorized representative shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void* (see illustration in ANNEX 'C' hereof), and (ii) that the same is his final decision." *(Emphases and underscoring added)*

The foregoing provision prescribes that, as part of due process in the issuance of tax assessments, the PAN, FLD/FAN, and FDDA must, respectively, state, among other things, the facts and the law on which the assessment is based; otherwise, the FLD/FAN and/or FDDA shall be void.

The requirement that the taxpayer be informed of the factual and legal bases of the assessment is **mandatory**. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[46] The law imposes a substantive, not merely a formal requirement.[47]

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.* (*Avon* case),[48] the Supreme Court ruled:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**
>
> xxx xxx xxx

[46] *Supra* at note 40.
[47] *Supra* at note 41.
[48] *Supra* at note 39.

The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. xxx. **The Commissioner and revenue officers must strictly comply with the requirements of the law, with the Bureau of Internal Revenue's own rules, and with due regard to taxpayer's constitutional rights.**

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In *Ang Tibay v. The Court of Industrial Relations*,[49] this Court observed that **although quasi-judicial agencies 'may be said to be free from the rigidity of certain procedural requirements [it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.'** It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:

(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.
(2) The administrative tribunal or body must consider the evidence presented.
(3) There must be evidence supporting the tribunal's decision.
(4) The evidence must be substantial or 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'
(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.
(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.

The administrative tribunal's decision is rendered in a manner that <u>the parties may know the various issues involved and the reasons for the decision</u>.

xxx xxx xxx

The last requirement relating to the form and substance of the decision is <u>the decision-maker's *'duty to give reason'*</u> to enable the affected person to understand how the rule of fairness has been administered in his [or her] case, to expose the reason to

[49] 62 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].

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public scrutiny and criticism, and to ensure that the decision will be thought through by the decision-maker.

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Administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and **that the party be sufficiently informed of the reasons for its conclusions.**

xxx xxx xxx

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

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

xxx xxx xxx

The facts demonstrate that Avon was deprived of due process. **It was not fully apprised of the legal and factual bases of the assessments issued against it.** The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with Final

Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. **Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.

xxx xxx xxx

It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusion are based, and those facts must appear in the record.**

xxx xxx xxx

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

This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.

xxx xxx xxx

xxx. ***[The Commissioner of Internal Revenue's]*** **disregard of the standards and rules renders the deficiency tax assessments null and void.** xxx." *(Emphases and underscoring added)*

Based on the foregoing jurisprudential pronouncement, respondent or his duly authorized representative is mandated to perform assessment functions in accordance with, and strictly adherence to, the law, with their own rules of procedure, and always with regard to the basic tenets of due process. The due process requires respondent and/or the BIR to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.

A significant part of the due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed in writing of the law and the facts on which the assessment is made. Such requirement must be embodied in the PAN, FLD/FAN, and FDDA. The concerned taxpayer must *not* be left unaware on how the respondent or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment.

It bears stressing that if respondent or his duly authorized representative fails to observe the foregoing due process requirements, it shall render the assessment and collection of the pertinent deficiency tax void.

In this case, as stated in the PAN dated November 27, 2019,[50] the BIR ascertained that petitioner has deficiency IT, EWT, WTC, DST, and compromise penalties in the aggregate amount of ₱94,551,239.34, inclusive of surcharge and interests), for the FY ended March 31, 2016, summarized as follows:

Tax Type	Basic	Surcharge	Interests	Compromise Penalty	Total
Income tax	₱ 32,882,328.50		₱ 16,669,989.22	₱ 50,000.00	₱ 49,602,317.72
EWT	9,619,978.21		4,876,933.61	50,000.00	14,546,911.82
WTC	19,821,392.91		10,048,631.63	50,000.00	29,920,024.54
DST	196,483.00	₱ 49,120.75	196,381.51		441,985.26
Late payment of correct tax – Fringe Benefits Tax				40,000.00	40,000.00
Total	**₱ 62,520,182.62**	**₱ 49,120.75**	**₱ 31,791,935.97**	**₱ 190,000.00**	**₱ 94,551,239.34**

To recall, on December 12, 2019, petitioner filed a *Protest Letter* of even date,[51] contesting the proposed deficiency taxes found in the PAN for the reasons explained therein. Specifically, the following is the summary of arguments raised by petitioner in the said *Protest Letter*, to wit:

1. Petitioner's receipts from communication links, travel and incentives & rewards are receipts connected to the performance of its registered activities.

2. Even assuming that the receipts are not related to petitioner's registered activities and subject to 30% regular corporate income tax, no deficiency income tax shall arise as the receipts represent reimbursement from its customers and technically not petitioner's income.

[50] Exhibits "P-14", "R-10" and "R-10-1", BIR Records (Exhibit "R-17") – Folder 2, pp. 648 to 653.
[51] Exhibit "P-15", Docket – Vol. II, pp. 846 to 858.

3. Eton Manila is entitled to the four-year ITH counted from the date of its start of commercial operation (SCO), i.e., March 1, 2010 and can be extended for two (2) more years upon satisfaction of certain PEZA conditions (*i.e.*, until February 28, 2016) and it was able to file for the two-year extension.

4. Even assuming that Eton Manila's gross income shall be subject to 5% GIT, the amount of the alleged adjusted gross income should be limited to ₱76,131,458.94.

5. Petitioner disagrees with the disallowance of its direct costs as it employed the appropriate cost allocation method that it deems suitable to its operations.

6. All petitioner's purchases have been subjected to 1% EWT and assuming there is discrepancy, the same shall not result in income tax.

7. There is no supporting evidence presented to prove the existence of income due to the alleged undeclared expense and that the same is received by petitioner.

8. Petitioner subjected all its taxable compensation to WTC and the items, *i.e., staff welfare, non-taxable allowance and benefits* and *cost provision impact,* that were disallowed for non-withholding, are not compensation subject to WTC.

However, on June 22, 2020, petitioner received a copy of the FLD/FAN dated June 15, 2020 [52] with *Details of Discrepancies,* which merely reiterated the findings and deficiency tax assessments in the PAN dated November 27, 2019 *with Details of Discrepancies*, except for the adjustment in the amounts of interests, *viz.*:

Tax Type	**Basic**	**Surcharge**	**Interests**	**Compromise Penalty**	**Total**
Income tax	₱ 32,882,328.50		₱ 20,464,519.84	₱ 50,000.00	₱ 53,396,848.34
EWT	9,619,978.21		5,987,052.74	50,000.00	15,657,030.95
WTC	19,821,392.91		12,335,966.06	50,000.00	32,207,358.97
DST	196,483.00	₱ 49,120.75	230,436.36		476,040.11
Late payment of correct tax – Fringe Benefits Tax				40,000.00	40,000.00
Total	**₱ 62,520,182.62**	**₱ 49,120.75**	**₱ 39,017,975.00**	**₱ 190,000.00**	**₱101,777,278.37**

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[52] Exhibit "P-16", Docket – Vol. II, pp. 859 to 871; and Exhibits "R-12", "R-12-1", "R-13", "R-13-1", "P-13-2", "R-13-3" and "R-13-4", BIR Records (Exhibit "R-17") – Folder 2, pp. 806 to 811G.

A side-by-side comparison of the figures and findings in both the PAN and the FLD/FAN, along with the *Details of Discrepancies*, shows that they are *identical.*

Notably, the BIR did not address any of the explanations made by petitioner in its protest to the PAN—an indication that the BIR did not consider them when it issued the subject FLD/FAN without giving any reason for rejecting petitioner's refutations and explanations in its thirteen-paged *Protest Letter* dated December 12, 2019.

As established in the *Avon case,* the CIR is not obliged to accept the taxpayer's explanation, like that of petitioner. Nonetheless, it is imperative that he give the *particular facts* upon which his conclusion is based, and these facts must appear in the record.[53]

The right to be heard, including the right to present evidence, is meaningless if the Commissioner can ignore the evidence without reason.[54] Respondent's failure to gives due consideration to petitioner's defenses, explanations, and supporting documents when he concluded in the FLD/FAN that petitioner had deficiency tax liabilities could hardly be considered substantial compliance with the due process requirement.

In the more recent case of *Commissioner of Internal Revenue v. Next Mobile, Inc. (Next Mobile* case*),*[55] the Supreme Court *reiterated* its ruling in the *Avon* and *Ang Tibay* cases that "not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts, ***but the tribunal must consider the evidence presented."***

Respondent's failure to uphold petitioner's fundamental right to due process under Section 228 of the NIRC of 1997, as amended and implemented by RR No. 12-1999 and RR No. 18-2013, renders the FLD/FAN, more particularly the deficiency IT assessment of ₱6,315,375.47, which is subject of the instant case, null and void.

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[53] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021, citing *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.
[54] *Id.*
[55] G. R. No. 232055 (Notice), April 27, 2022.

Petitioner is a PEZA-registered entity whose revenue from 1 Cyber Pod Centris Site is entitled to ITH until February 28, 2016.

Even if respondent did not violate due process in issuing the subject FLD/FAN, petitioner is still not liable for the alleged deficiency IT.

Records reveal that in the FDDA dated February 4, 2022, petitioner was still found liable for deficiency IT, EWT, WTC, DST, and miscellaneous taxes (compromise penalties), inclusive of surcharge and interests, in the aggregate amount of ₱14,485,240.26, broken down as follows:

Tax Type	**Total**
Income tax	₱ 6,315,375.47
EWT	6,532,503.42
WTC	1,184,452.91
DST	322,908.46
Compromise penalties	130,000.00
Total	**₱ 14,485,240.26**

Records likewise reveal that on March 18, 2022, petitioner partially paid[56] the assessments for deficiency EWT, WTC, DST, and miscellaneous taxes, in the aggregate amount of ₱8,167,873.74, broken down as follows:

Tax Type	**Total**
EWT	₱ 6,581,834.46
WTC	1,216,144.79
DST	369,894.49
TOTAL PAID DEFICIENCY TAXES (including interests and miscellaneous taxes)	**₱ 8,167,873.74**

Hence, the only remaining disputed assessment, which is the subject of the instant *Petition for Review*, is the deficiency IT assessment of ₱6,315,375.47.

[56] Par. 1(c), Stipulation of Facts, JSFI, Docket – Vol. II, pp. 598 to 599; and Exhibits "P-21", "P-21-1", "P-22", "P-22-1", "P-23" and "P23-1", Docket – Vol. II, pp. 910 to 918.

As stated in the *Details of Discrepancies* attached to the FDDA, the deficiency IT assessment of ₱6,315,375.47 arose from petitioner's revenues derived from its 1 Cyber Pod Centris Site, a PEZA accredited IT Park, to wit:

> **I - INCOME TAX**
>
> **Income from Manila (Eton) should be subjected to 5% preferential tax, ₱70,505,659.90** - Re-evaluation of records and documents showed that the ITH entitlement for the activities at 1 Cyber Pod Centris, Eton Centris Manila has expired on February 28, 2014. For the year under audit, income from this branch should already be subjected to the 5% preferential tax rate pursuant to Section 24 of R.A. 7916 and no longer under the ITH tax regime.

	Eton, Manila – per ITR Declaration		
	Subject to 5% GIT	ITH	TOTAL
Total Revenue	66,655,312.85	392,642,522.38	459,297,835.23
Cost Claimed	37,662,122.88	322,136,862.48	359,798,985.36
Gross Income	28,993,189.97	70,505,659.90	99,498,849.87

Sections 23 and 24 of RA No. 7916,[57] as amended by RA No. 8748,[58] specifically provide, thus:

> "SEC. 23. *Fiscal Incentives.* – **Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as** provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, **or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987**.
>
> xxx xxx xxx
>
> SEC. 24. *Exemption from National and Local Taxes.* – **Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE** shall be paid and remitted as follows:
>
> (a) Three percent (3%) to the National Government;

[57] AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES.

[58] AN ACT AMENDING REPUBLIC ACT NO. 7916, OTHERWISE KNOWN AS THE "SPECIAL ECONOMIC ZONE ACT OF 1995".

> (b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located." *(Emphases added)*

Clear from the foregoing that Section 23 of RA No. 7916, as amended, gives the PEZA-registered enterprises the option to choose between two (2) sets of fiscal incentives: (a) the five percent (5%) preferential tax rate on its gross income under RA No. 7916, as amended; and (b) the ITH provided under Executive Order (EO) No. 226, otherwise known as the Omnibus Investment Code of 1987, as amended.[59]

The 5% preferential tax rate on gross income under RA No. 7916, as amended, is *in lieu of all taxes*. Except for real property taxes, no other national or local tax, not even an indirect tax like VAT, may be imposed on a PEZA-registered enterprise availing of this particular fiscal incentive.[60]

Alternatively, Book VI of EO No. 226, as amended, grants ITH to registered pioneer and non-pioneer enterprises for six-year and four-year periods, respectively. Those availing of this incentive are exempt only from income tax but shall be subject to all other taxes.[61]

Specifically, the grant of ITH is governed by Article 39(a)(1), Title III, Book VI, of EO No. 226, as amended by RA No. 7918. Said provision enumerates the fiscal incentives granted to a registered enterprise, which include ITH from four (4) to six (6) years, depending on whether the enterprise is registered as a pioneer or non-pioneer firm,[62] as a rule. It provides as follows:

> "ARTICLE 39. *Incentives to Registered Enterprises.* – All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment;
>
> (a) *Income Tax Holiday.* –
>
> (1) For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, new

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[59] *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*, G.R. No. 150154, August 9, 2005.
[60] *Id.*
[61] *Id.*
[62] *Commissioner of Internal Revenue v. J.P. Morgan Chase Bank, N.A. – Philippine Customer Care Center*, G.R. No. 210528, November 28, 2018.

> registered firms shall be fully exempt from income taxes levied by the National Government. xxx.
>
> The preceding paragraph notwithstanding, no registered pioneer firm may avail of the incentive for a period exceeding eight (8) years."

However, Rule XIII, Section 5 of the *Implementing Rules and Regulations* of RA No. 7916[63] specifies that PEZA-granted incentives shall apply only to registered operations of the Ecozone Enterprise and only during its registration with PEZA. In other words, tax incentives to which an Ecozone Enterprise is entitled do not necessarily include all kinds of income received during the period of entitlement. Only income actually earned or received by the Ecozone Enterprise related to the conduct of its registered business activity are covered by fiscal incentives.[64]

As borne by the records, petitioner registered with the PEZA as an Ecozone IT Enterprise on November 29, 2007, covering its Cebu IT Tower, **Eton Centris**, and GAGFA IT Center, which later on included the CBP-IT Park, as evidenced by the Amended COR No. 07-73-IT issued on October 8, 2013[65] and August 29, 2018,[66] respectively.

Further, and after careful examination of the evidence presented and the laws applicable thereto, it is without question that petitioner complied with the requirements for an entitlement to ITH under Article 39(a)(1) of EO No. 226, as amended, as a PEZA-registered company. This is manifested in the letter dated December 18, 2013,[67] signed by PEZA Director General Lilia B. De Lima, and addressed to petitioner's president and country manager Jibin Arjunan Thandayamparambil, the pertinent portion of which reads:

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[63] Said provision reads:

> "RULE XIII
> *Application and Entitlement*
>
> xxx xxx xxx
>
> SECTION 5. *Limitation of Entitlement to Incentives.* – Incentives granted by the PEZA shall apply **only to registered operations of ECOZONE Enterprises** and only during period of its registration with PEZA." *(Emphasis added)*

[64] *Supra* at note 62.
[65] Exhibit P-5, Docket – Vol. II, p.818.
[66] Exhibit P-5-1, Docket, - Vol. II, p. 819.
[67] Exhibit "P-6", Docket – Vol. II, p. 820.

"On the basis of the documents submitted..., please be advised that your application is hereby **APPROVED**, as follows:

ACTIVITY COVERED (New Project)	:	**To provide customer contact center operations, specifically in reference to the processing of hotel and travel-related transactions (e.g. online ticketing, reservation and booking services, marketing, promotions, membership service and administration, customer service, etc.) technical support, billing and customer service queries, collection and other similar activities, at 1 Cyber Pod Centris, Eton Centris.**
REFERENCE DOCUMENT	:	Supplemental Agreement dated 17 September 2009
SCO DATE IN SUPPLEMENTAL AGREEMENT	:	March 2010
WBPLIPROVED DATE OF SCO	:	March 2010
ITH Entitlement Period	:	**1 March 2010 – 28 February 2014**". *(Emphases and underscoring added)*

Clearly, as PEZA-registered enterprise, petitioner has availed of the 4-year ITH incentive for its 1 Cyber Pod Centris Site, and its availment of the said incentive commenced from March 1, 2010 until February 28, 2014. Note, however, that petitioner's entitlement to ITH was extended when it applied for,[68] and was granted additional two (2) years of ITH for having met the criteria under the *Capital Equipment to Labor Ratio* (CELR) and the *Net Foreign Exchange Earnings* (NFEE), to wit:

1. *PEZA Notice of ITH No. 19-ERD/ITH/CELR/ITE 056* dated September 23, 2019,[69] signed by Director General Charito B. Plaza, which indicates the period within which petitioner is entitled to ITH, to wit:

Inclusive ITH Period	**ITH Extension Period**
March 1, 2010 to February 28, 2014	**March 1, 2014 to February 28, 2015**

2. *PEZA Notice of ITH No. 22-ERD/ITH/NFEE/ITE-027* dated June 3, 2022,[70] signed by Director General Charito B. Plaza, indicating the period within which petitioner is entitled to ITH, to wit:

Inclusive ITH Period	**ITH Extension Period**
March 1, 2010 to February 28, 2014 (Notice of Confirmation No. 17-ERD/ITH/CONF/ITE-184 dd. December 27, 2017)	**March 1, 2015 to February 28, 2016**

[68] Exhibits "P-9" and "P-10", Docket – Vol. II, pp. 823 to 824, and 825 to 826, respectively.
[69] Exhibit "P-11", Docket – Vol. II, pp. 827 to 828.
[70] Exhibit "P-12-2", Docket – Vol. II, pp. 831 to 832.

Mr

Extension: CELR March 1, 2014 to February 28, 2015 (CELR/Approval No. ITE-056 dated September 23, 2019)	

With the granting of ITH in favor of petitioner from March 1, 2010 to February 28, 2016, it is evident that petitioner is entitled to the availment of the same until February 28, 2016. Hence, in the instant case, petitioner should not be assessed of deficiency IT for revenues earned at its 1 Cyber Pod Centris Site for the subject audit period, particularly from April 1, 2015 to February 28, 2016.

As for the remaining month of March 2016, which is no longer covered by the ITH extension, petitioner claims that it has paid the corresponding 5% Gross Income Tax (GIT) on the income of its 1 Cyber Pod Centris Site. Allegedly, the amount of gross income reflected in its Annual Income Tax Return for 2016, which was subjected to 5% GIT, includes the amount of ₱29,196,678.84 gross income derived from its 1 Cyber Pod Centris Site for the month of March 2016. However, none of petitioner's witnesses was able to prove or substantiate said allegation.

Nonetheless, considering the Court's finding that respondent violated petitioner's right to due process in issuance of the subject assessment, the deficiency IT assessment for March 2016, if any, is void.

A void assessment bears no valid fruit.[71] Such being the case, the deficiency IT assessment of ₱6,315,375.47 could not be enforced against petitioner, and respondent BIR has no right to collect the same.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the subject deficiency Income Tax assessment in the total amount of ₱6,315,375.47, inclusive of interests, for the fiscal year ending March 31, 2016, is **CANCELLED and WITHDRAWN** and the FDDA dated February 4, 2022, issued by respondent against petitioner is **REVERSED** and **SET ASIDE**.

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[71] *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

Respondent is **ENJOINED** from proceeding with the collection of the said deficiency Income Tax assessment.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice