REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

ALE MART CORPORATION,
Respondent.

CTA *EB* NO. 1983
(CTA Case No. 8998)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JUL 29 2020
10:08 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **PETITION FOR REVIEW ("Petition")** filed last 14 January 2019[1] with respondent's **COMMENT *(On CIR's Petition for Review)* ("Comment")** filed on 28 February 2019.[2]

The Parties

Petitioner **COMMISSIONER OF INTERNAL REVENUE** is the head of the Bureau of Internal Revenue ("BIR") and empowered to perform the duties of said office, including, among others, the assessment and collection of all national internal revenue taxes, fees, and charges as provided

[1] See Petition, Records, Vol. 1, pp. 7-27.
[2] See Comment, Records, Vol. 1, pp. 45-53.

by law. He may be served summons, pleadings and other processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

Respondent **ALE MART CORPORATION** is a corporation duly organized and existing under and by virtue of the laws of the Philippines.[4]

The Facts

On 23 September 2011, respondent received Letter of Authority No. LOA-116-2011-00000093 with SN eLA201100003034, authorizing revenue officers to conduct an examination of respondent's books of accounts and other accounting records for all internal revenue taxes for the period covering 1 January 2010 to 31 December 2010 ("CY 2010").[5]

On 13 June 2014, respondent received a Preliminary Assessment Notice ("PAN") with Details of Discrepancies.[6]

On 30 June 2014, respondent received a Formal Letter of Demand ("FLD"), Details of Discrepancy and Assessment Notice Nos. IT-116-LOA-00000093-10-14-1054, VT-116LOA-00000093-10-14-1055, WE-116-LOA-00000093-10-14-1056 and WC116-LOA-00000093-10-14-1057 for alleged deficiency income tax, value added tax ("VAT"), expanded withholding tax ("EWT"), and withholding tax on compensation ("WTC") in the total amount of Php481,137,433.13, inclusive of interest and surcharge, for CY 2010.[7]

On 30 July 2014, respondent filed its Protest, together with supporting documents, against the FLD.[8]

There being no action taken by petitioner on the Protest, respondent filed a Petition for Review before the Court in Division on 25 February 2015.[9]

On 14 February 2018, the Court in Division issued the Original Decision finding respondent liable for One Hundred Forty-Six Million Eight Hundred Thirty-Eight Thousand Two Hundred Forty-Seven and 74/100 (Php146,838,247.74) representing deficiency income tax, VAT, EWT, and WTC for CY 2010, inclusive of twenty-five percent (25%) surcharge imposed

[3] See Petition, Records, Vol. 1, p. 8.
[4] *Ibid.*
[5] *Ibid.*
[6] See Petition, Records, Vol. 1, p. 9.
[7] *Ibid.*
[8] *Ibid.*
[9] *Ibid.*

under ***Section 248 (A) (3) of the National Internal Revenue Code ("NIRC"), as amended.***[10]

Petitioner and respondent filed their respective Motions for Partial Reconsideration from the Original Decision. On 17 August 2018, the Court in Division issued an Amended Decision cancelling the entire deficiency tax assessment against respondent on the basis that the FLD and the accompanying Assessment Notices issued by petitioner did not provide for a specific period within which the alleged deficiency taxes should be paid, *viz:*

> "**WHEREFORE,** premises considered, Petitioner's **Motion for Partial Reconsideration *(of the Decision Promulgated on February 14, 2018),*** is **GRANTED;** while Respondent's **Motion for Partial Reconsideration Re: Decision dated 19 February 2018,** is **DENIED.**
>
> Accordingly, the Court's Decision dated February 14, 2018, is amended to read as follows:
>
> > '**WHEREFORE,** premises considered, the Petition for Review is **GRANTED.** Accordingly, the Formal Letter of Demand, Details of Discrepancy and Assessment Notices Nos. IT-116-LOA-00000093-10-14-1054, VT-116-LOA-00000093-10-141055, WE-116-LOA-00000093-10-14-1056 and WC-116-LOA-00000093-10-14-1057 for deficiency income tax, VAT, EWT and WTC in the total amount of Php481,137,433.13 are **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED."**[11]

On 6 September 2018, petitioner filed a Motion for Reconsideration on the Amended Decision, which was denied by the Court in Division in a Resolution dated 10 December 2018, *to wit:*

> "**WHEREFORE,** premises considered, respondent's **Motion for Partial Reconsideration (Re: Amended Decision dated 17 August 2018)** is **DENIED.**
>
> **SO ORDERED."**[12]

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[10] See Petition, Records, Vol. 1, p. 9.
[11] See Amended Decision of the Court in Division, Records, Vol. 1, pp. 30-36.
[12] See Resolution dated 10 December 2018, Records, Vol. 1, pp. 38-41.

On 27 December 2018, petitioner filed a Motion for Extension of Time to File Petition for Review,[13] which was granted by this Court *En Banc* in a Resolution dated 3 January 2019.[14]

On 14 January 2019, petitioner filed the instant Petition.[15]

In a Resolution dated 7 February 2019, respondent was ordered to file a Comment on the Petition,[16] which it complied with by filing the instant Comment on 28 February 2019.[17]

Thereafter, this Court *En Banc* issued a Resolution dated 14 March 2019 setting the case for mediation.[18] On 15 April 2019, the parties agreed not to have their case mediated by the Philippine Mediation Center Unit – Court of Tax Appeals.[19]

On 10 May 2019, respondent filed a Manifestation showing that it paid Php3,200.00 in compliance with this Court *En Banc* Resolution No. 2-2017,[20] which was duly noted by this Court *En Banc* in a Resolution dated 20 May 2019.[21]

This Court *En Banc* then issued a Resolution dated 28 May 2019 noting the parties non-agreement to pursue mediation, resolving to give due course to the Petition, and requiring the parties to file their respective Memoranda within thirty (30) days from notice.[22]

On 1 July 2019, respondent filed its Memorandum.[23]

On 2 July 2019, petitioner filed a Motion for Extension of Time to File Memorandum,[24] which was granted by this Court *En Banc* in a Resolution dated 4 July 2019.[25]

On 29 July 2019, petitioner filed his Memorandum.[26]

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13 See Motion for Extension of Time to File Petition for Review, Records, Vol. 1, pp. 1-5.
14 See Resolution dated 3 January 2019, Records, Vol. 1, p. 6.
15 See Petition, Records, Vol. 1, pp. 7-27.
16 See Resolution dated 7 February 2019, Records, Vol. 1, pp. 42-44.
17 See Comment, Records, Vol. 1, pp. 45-53.
18 See Resolution dated 14 March 2019, Records, Vol. 1, pp. 54-56.
19 See No Agreement to Mediate, Records, Vol. 1, pp. 57-58.
20 See Manifestation, Records, Vol. 1, pp. 59-61.
21 See Resolution dated 20 May 2019, Records, Vol. 1, p. 62.
22 See Resolution dated 28 May 2019, Records, Vol. 1, pp. 63-65.
23 See Memorandum for the Respondent, Records, Vol. 1, pp. 66-78.
24 See Motion for Extension of Time to File Memorandum, Records, Vol. 1, pp. 79-82.
25 See Resolution dated 4 July 2019, Records, Vol. 1, p. 83.
26 See Memorandum, Records, Vol. 1, pp. 84-99.

Eventually, the present case was submitted for decision in a Resolution dated 22 August 2019 by this Court *En Banc*.[27]

On 18 September 2019, petitioner's counsels of record, Atty. Rowell B. Vicente and Atty. Rachelle L. Ngo, filed a Withdrawal of Appearance,[28] which this Court *En Banc* noted in a Resolution dated 23 September 2019.[29]

The Assigned Errors

Petitioner raised the following issues in the Petition:[30]

> **"THE HONORABLE COURT THIRD DIVISION ERRED IN RULING THAT THE FINAL ASSESSMENT NOTICE AGAINST RESPONDENT IS VOID FOR ALLEGEDLY NOT CONTAINING A DEFINITE DUE DATE FOR PAYMENT OF THE TAX LIABILITIES.**
>
> **"THE HONORABLE COURT THIRD DIVISION ERRED IN GRANTING A RELIEF THAT WAS NOT PRAYED FOR BY RESPONDENT. PETITIONER'S BASIC RIGHT TO FAIR PLAY AND DUE PROCESS WAS VIOLATED."**

Arguments of the Parties

Petitioners argued the following:

1. The Court in Division erred in ruling that the Assessment Notices against respondent are void for allegedly not containing a definite due date for payment of tax liabilities.[31]

    a. The case of ***Commissioner of Internal Revenue v. Fitness By Design, Inc.***[32] ***("Fitness By Design")*** should be revisited. The said case was rendered through a misapplication of

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[27] See Resolution dated 22 August 2019, Records, Vol. 1, pp. 100-102.
[28] See Withdrawal of Appearance, Records, Vol. 1.
[29] See Resolution dated 23 September 2019, Records, Vol. 1.
[30] See Petition, Records, Vol. 1, p. 10.
[31] See Petition, Records, Vol. 1, pp. 11-16.
[32] G.R. No. 215957, 9 November 2016.

Commissioner of Internal Revenue v. Menguito[33] ***("Menguito"). Fitness By Design*** used ***Menguito*** as legal basis to postulate that for a Final Assessment Notice ("FAN") to be valid, it must contain a singular definite amount and period. However, ***Menguito*** dealt with post reporting notice and preliminary assessment notice, which is different from a FAN.[34]

b. For an Assessment Notice to be valid, ***Section 228 of the NIRC, as amended*** merely requires that it should contain in writing the law and facts on which it is based. The Assessment Notices in question complied with this requirement.[35]

c. All presumptions should be in favor of the correctness of tax assessments.[36]

2. The Court in Division erred in granting a relief not prayed for by respondent. Petitioner's right to fair play and due process was violated.[37]

   a. Respondent never raised the issue on whether the FAN contains a definite due date for payment of tax liabilities in the Petition, Pre-Trial Brief, nor in any of the proceedings during trial. It only raised said issue in its Motion for Partial Reconsideration of the Original Decision promulgated on 14 February 2018. Petitioner was denied of its procedural and substantive due process as he was neither heard nor given an opportunity to be heard on the particular issue.[38]

   b. ***Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*** was intended to allow this Court to resolve the main issue under the proper perspective, not to resolve as a main issue a matter not derived from the pleadings.[39]

   c. Achieving an orderly disposition of cases in accordance with the ***RRCTA*** is not synonymous with violating litigants' basic right to fair play and due process. It also does not mean disregarding rules of procedure and rules on pre-trial.[40]

In the Comment respondent alleged the following:[41]

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33 G.R. No. 167560, 17 September 2008.
34 See Petition, Records, Vol. 1, pp. 12-13.
35 See Petition, Records, Vol. 1, pp. 14-16.
36 See Petition, Records, Vol. 1, p. 16.
37 See Petition, Records, Vol. 1, pp. 16-19.
38 See Petition, Records, Vol. 1, pp. 16-17.
39 See Petition, Records, Vol. 1, p. 18.
40 See Petition, Records, Vol. 1, pp. 18-19.
41 See Comment, Records, Vol. 1, pp. 46-52.

1. The Court in Division did not err in ruling that the Assessment Notices are void for failure to contain a definite due date for the payment of the tax liabilities.[42]

    a. An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period.[43]

    b. ***Fitness By Design*** has perfect application in the present case. ***Menguito*** tackles the requisites of a valid FAN wherein it zeroed in on the importance of "a demand for payment within a prescribed period," which is essentially pertaining to the "due date."[44]

    c. In ***Lucas G. Adamson, et al. v. Court of Appeals,***[45] the Supreme Court had a chance to declare that a recommendation letter cannot be considered a formal assessment as "there was no demand made on the taxpayers to pay the tax liability, nor a period for payment set therein."[46]

    d. Under the principle of *stare decisis,* a principle of law applicable to a certain state of facts will apply to future cases where the facts are substantially the same. Petitioner was not able to provide a valid ground or cite a contrary decision that would strengthen his challenge against ***Fitness By Design.*** To ask this Court not to apply said case is tantamount to asking it to contravene a law.[47]

2. The Court in Division did not err in granting a relief that was not prayed for by respondent, which according to petitioner violates its right to fair play and due process.[48]

    a. Respondent has been consistently praying for the declaration of the Assessment Notices as null and void as early as the filing of the Petition for Review before the Court in Division. In the Joint Stipulation of Facts and Issue filed by both parties, the lone issue for resolution was whether or not respondent is liable for the subject deficiency tax assessments, which is so general in scope as it would necessarily include the issue on the validity of the subject Assessment Notices.[49]

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42 See Comment, Records, Vol. 1, pp. 46-49.
43 See Comment, Records, Vol. 1, p. 46.
44 See Comment, Records, Vol. 1, pp. 46-47.
45 G.R. Nos. 120935 and 124557, 21 May 2009.
46 See Comment, Records, Vol. 1, p. 48.
47 See Comment, Records, Vol. 1, pp. 48-49.
48 See Comment, Records, Vol. 1, pp. 49-51.
49 See Comment, Records, Vol. 1, p. 49.

b. Following ***Northern Tobacco Redrying Co., Inc. v. Commissioner of Internal Revenue,***[50] the failure to raise the issue pertaining to the defects in the FLD, does not prevent this Court from examining the same since the FLD and the Assessment Notices were offered as evidence by both parties. To sustain such an argument will bear greater injustice to the taxpayer as a void assessment bears no fruit.[51]

c. ***Section 1, Rule 14 of the RRCTA*** provides that this 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.[52]

The Ruling of the Court En Banc

This Court resolves to ***DENY*** *the* ***Petition*** *for lack of merit.*

<u>This Court may rule on matters not raised by the parties in their pleadings.</u>

Section 1, Rule 14 of the RRCTA provides:

"RULE 14
JUDGMENT, ITS ENTRY AND EXECUTION

SECTION. 1. Rendition of judgment.-The Court shall decide the cases brought before it in accordance with Section 15, paragraph (1), Article VIII of the 1987 Constitution. The conclusions of the Court shall be reached in consultation by the Members on the merits of the case before its assignment to a Member for the writing of the decision. The presiding justice or chairman of the Division shall include the case in an agenda for a meeting of the Court *en banc* or in Division, as the case may be, for its deliberation. If a majority of the justices of the Court *en banc* or in Division agree on the draft decision, the *ponente* shall finalize the decision for the signature of the concurring justices and its immediate promulgation. Any justice of the Court *en banc* or in Division may submit a separate written concurring or dissenting opinion within twenty days from the date of the voting on the case. The concurring and dissenting opinions, together with the majority opinion, shall be jointly promulgated and attached to the rollo.

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50 CTA Case No. 8857, 14 December 2017.
51 See Comment, Records, Vol. 1, p. 50.
52 See Comment, Records, Vol. 1, pp. 50-51.

> **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.** *(2002 Internal Rules of the Court of Appeals, Rule VI, secs. 9 and 10a; and Rules of Court, Rule 51, sec. 2a)"*
>
> (Emphasis, Ours)

That this Court, in deciding a case, is not limited by the issues raised or agreed upon by the parties in their respective pleadings is not just clear from the above Rule, but has also been stressed in ***Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.,***[53] where the Supreme Court ruled, *to wit:*

> "The general rule is that appeals can only raised questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.
>
> xxx xxx xxx
>
> The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:
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>> **The appellate court may, in the interest of justice, properly take into consideration in deciding the case matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignore, although they have not been specifically raised as issues by the pleadings. This is in consonance with the liberal spirits**

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[53] G.R. No. 163835, 7 July 2010.

> **that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them.**
>
> xxx xxx xxx
>
> **Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance."**
>
> (Emphasis, Ours)

Furthermore, in the recent case of ***Commissioner of Internal Revenue v. Lancaster Philippines, Inc.,***[54] the Supreme Court categorically declared that this Court can resolve an issue not raised by the parties, *viz:*

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
> > SECTION 1. Rendition of judgment. - xxx
> >
> > 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 CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter."

From these pronouncements, it cannot be denied that this Court may rule on matters of record in the present case which neither respondent nor petitioner raised in their respective pleadings.

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

<u>The FLD and its corresponding Assessment Notices issued against respondent lack a definite date for payment.</u>

A perusal of the FLD, Details of Discrepancy and Assessment Notice Nos. IT-116-LOA-00000093-10-14-1054, VT-116-LOA-00000093-10-14-1055, WE-116-LOA-00000093-10-14-1056 and WC-116-LOA-00000093-10-14-1057 issued against respondent shows that petitioner failed to demand payment of the tax due within a specific period.

As aptly found by the Court in Division, while the last paragraph of the FLD states that respondent must pay its deficiency tax liabilities, it does not, however, indicate the specific period when the payment should be made. Worse, the accompanying Assessment Notices did not also show specific dates for payment.[55] The FLD simply provided:

> "[i]n view thereof, you are requested to pay your aforesaid deficiency tax liabilities through the Electronic Filing and Payment System (EFPS). Afterwards, submit a copy thereof to Regular Large Taxpayers Audit Division I located at Rm 216 National Office Building, BIR Road, Diliman, Quezon City for updating of your records."[56]

This fact has not been contested by petitioner in his pleadings.[57] Instead, he simply assailed the essence and validity of the Supreme Court's pronouncements in ***Fitness By Design*** and ***Menguito,***[58] and argued that he complied with the requisites of a valid assessment under ***Section 228 of the NIRC, as amended.***[59] Consequently, this factual matter (*i.e.,* the failure of the FLD and its corresponding Assessment Notices to state a definite date by which the tax liability therein should be settled) is already conclusive.

The importance of a date certain of when tax liabilities in an assessment should be settled cannot be underscored. This period is indispensable as it dictates the time when the penalties, surcharges and interest imposed under the ***NIRC*** should begin to accrue. More importantly, it is an essential element of petitioner's demand for payment of tax liabilities. Without such, petitioner cannot be said to have demanded the amount due in an FLD/Final Assessment Notice contrary to the very nature of a tax assessment, which is a demand to pay taxes.

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55 See Amended Decision, Records, Vol. 1, p. 35.
56 Joint Stipulation of Facts and Issues, par. 5, Court in Division's Docket, Vol. 4, p. 2158.
57 See Petition, Records, Vol. 1, pp. 10-16. See Memorandum, Records, Vol. 1, pp. 87-93.
58 See Petition, Records, Vol. 1, pp. 12-14. See Memorandum, Records, Vol. 1, pp. 89-91.
59 See Petition, Records, Vol. 1, pp. 14-16. See Memorandum, Records, Vol. 1, pp. 91-93.

Contrary to petitioner's arguments, ***Fitness By Design*** finds clear application to this case, it provides:

> **"The disputed Final Assessment Notice is not a valid assessment.**
>
> xxx xxx xxx
>
> **Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment.** Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:
>
> > In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice.
>
> However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.
>
> Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.
>
> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.
>
> The Court of Tax Appeals did not err in cancelling the Final Assessment Notice as well as the Audit Result/Assessment Notice issued by petitioner to respondent for the year 1995 covering the 'alleged deficiency income tax, value-added tax and documentary stamp tax amounting to P10,647,529.69, inclusive of surcharges and interest' for lack of due process. Thus, the Warrant of Distraint and/or Levy is void since an invalid assessment bears no valid effect."
>
> (Emphasis, Ours)

Therefore, on this note alone, the deficiency tax assessment against respondent is void for failure to state a definite period for the payment of the alleged tax liabilities.

The lack of a definite date for payment of the FLD and the corresponding assessment notice is an issue necessary to the orderly disposition of the present case, a matter of record, and a matter of public importance. Hence, this Court may pass upon the same.

Although the FLD and the corresponding Assessment Notices issued against respondent are void for failure to provide a definite due date for its payment, it still remains that respondent did not raise the same as an issue in its pleadings prior to its Motion for Partial Reconsideration of the Original Decision rendered by the Court in Division. The question now is whether this Court should take notice of this matter crucial to the resolution of this case despite being belatedly raised.

We rule in the affirmative

As discussed above, this Court is not bound by technical rules and may rule upon related issues necessary to achieve an orderly disposition of the case.[60] In the Joint Stipulation of Facts and Issue filed by both parties, the lone issue for resolution was whether or not respondent is liable for the subject deficiency tax assessments.[61] This issue is very general in scope that it would necessarily include the issue on the validity of the subject FLD and the corresponding Assessment Notices. To determine the validity of the assessment issued against respondent, an examination of its contents is necessary. Hence, this Court may, on its own prerogative, examine the FLD and Assessment Notices, and determine whether the same provides a definite due date for payment of tax liabilities despite respondent's failure to put the same in issue.

Furthermore, it is noteworthy that the FLD, Details of Discrepancy and Assessment Notice Nos. IT-116-LOA-00000093-10-14-1054, VT-116-LOA-00000093-10-14-1055, WE-116-LOA-00000093-10-14-1056 and WC-116-LOA-00000093-10-14-1057 were part of the BIR Records and the Court in Division's Docket. In fact, these were offered as evidence by petitioner. Also, these documents have a bearing on the issue of whether respondent is liable

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60 *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, 12 July 2017.
61 See Comment, Records, Vol. 1, p. 49. See Memorandum for Respondent, Records, Vol. 1, p. 73.

for the deficiency tax assessment. Thus, these are *matters of record* that may be passed upon by this Court in resolving the case following the case of ***Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.***[62]

To sustain petitioner's contention that he was denied substantive and procedural due process, since the issue on whether the FLD and Assessment Notices contain a definite due date for payment of tax liabilities was never raised by respondent in the Petition, its Pre-Trial Brief, nor in any of the proceedings during trial, deserves scant consideration. To consider such argument despite the glaring nullity of the assessment against respondent would result in greater injustice as a void assessment can never bear fruit.[63]

Likewise, the issue on the validity of an FLD and its corresponding Assessment Notices is *a matter of public importance*. Taxpayers must always be afforded their right to due process such that before tax collection can be effected, they must first receive a valid tax assessment.

Thus, the issue of whether the FLD and the corresponding Assessment Notices contains a definite date for payment is a matter which may be decided by this Court even if the parties neither raised the same in their pleadings nor stipulated on its resolution.

Based on the foregoing, this Court *En Banc* finds that the deficiency tax assessment against respondent was invalidly issued for failure to provide a definite date for its payment. Consequently, collection cannot be pursued from said tax assessment.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Amended Decision dated 17 August 2018 and Resolution dated 6 September 2018 promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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62 G.R. No. 163835, 7 July 2010.

63 *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, 26 November 2014.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice