REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1714** (CTA Case No. 8838)
	Present:
- versus -	**DEL ROSARIO,** <u>*P.J.*</u>, **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** <u>*JJ.*</u>
FREELIFE PHILIPPINES DISTRIBUTION, INC. – Philippine Branch, Respondent.	***Promulgated:*** JAN 04 2019 3:49p.m.

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DECISION

UY, <u>*J.*</u>:

Before the Court *En Banc* is a *Petition for Review*[1] filed on October 11, 2017 by the Commissioner of Internal Revenue against Freelife Philippines Distribution, Inc. – Philippine Branch, praying for the setting aside of the Decision dated April 27, 2017[2] and Resolution dated August 29, 2017[3], both rendered by the Second Division of this Court (Court in Division) in CTA Case No. 8838, entitled "*Freelife Philippines Distribution, Inc. – Philippine Branch, Petitioner, versus Hon. Kim S. Jacinto-Henares- in her capacity as the Commissioner of*

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[1] EB Docket, pp. 5 to 13.

[2] Penned by Associate Justice Juanito C. Castañeda, Jr., and concurred by Associate Justice Caesar A. Casanova, and Associate Justice Catherine T. Manahan, EB Docket, pp. 14 to 31.

[3] *Supra*, EB Docket, pp. 32 to 37.

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Internal Revenue, Respondent", the dispositive portions of which respectively read as follows:

Decision dated April 27, 2017:

> "**WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. Thus, the assailed Decision of respondent dated May 22, 2014 upholding the FLD-FAN dated January 25, 2013 is **REVERSED** and **SET ASIDE**. Accordingly, the assessment against petitioner for deficiency income tax and deficiency VAT for taxable year 2009 is hereby **CANCELLED**.
>
> **SO ORDERED**."

Resolution dated August 29, 2017:

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

THE FACTS

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Quezon City.

On the other hand, respondent Freelife Philippines Distribution, Inc. – Philippine Branch is a foreign corporation duly licensed to do business in the Philippines, with principal office at the UGF-3, One San Miguel Avenue Bldg., San Antonio, Pasig City. It is engaged primarily in the importation, sale, marketing, and distribution of fruit juices and other nutritional products on wholesale basis to independent distributors. It is registered with the BIR with Certificate of Registration No. OCN3RC0000442640 issued on December 5, 2008.

On June 29, 2010, respondent received the *Letter of Authority* (LOA) No. 200900033180 dated June 24, 2010 issued by the BIR, authorizing Revenue Officer Janice Solomon and Group Supervisor Antonino Ilagan to examine the books of accounts and other accounting records of respondent for all its internal revenue taxes for the period covering January 1, 2009 to December 31, 2009.

Petitioner served the *Preliminary Assessment Notice* (PAN) with *Details of Discrepancies* dated January 4, 2013, through registered mail, which was received by respondent on January 10, 2013.

On January 25, 2013, respondent received through electronic mail the *Formal Letter of Demand* (FLD) with *Assessment Notices* (FAN) and *Details of Discrepancies*, signed by OIC - Chief of Assessment Division Norma P. Ceroma and OIC-Regional Director Jonas DP. Amora, covering alleged deficiency income tax and value-added tax (VAT) for taxable year 2009 in the amounts of ₱934,507.23 and ₱4,095,349.21, respectively.

On February 22, 2013, respondent filed its *Protest* dated February 20, 2013 to petitioner's FLD-FAN addressed to Regional Director Jonas DP. Amora of Revenue Region No. 7, Quezon City.

On May 22, 2014, the BIR issued the *Final Decision on Disputed Assessment* (FDDA) signed by Regional Director Jonas DP. Amora.

Consequently, respondent filed a *Petition for Review* before the Court in Division on June 20, 2014. The case was docketed as CTA Case No. 8838.

On August 26, 2014, petitioner filed his *Answer*, interposing special and affirmative defenses, which include, among others, the following: that all presumptions are in favor of the correctness of the assessment; that the PAN and the assessment notice/demand for the year 2009 issued against the respondent were issued in compliance with the provisions of Section 228 of the NIRC and in accordance with existing revenue rules and regulations relative to the right of the taxpayer to be informed of the factual and legal bases upon which the assessment was made; that respondent was fully appraised of the facts and law on which the assessment was issued;

that the assessment has already become final, executory and demandable by reason of the failure of respondent to timely file a *Petition for Review;* that respondent failed to subject portion of salaries and wages to withholding tax, hence, disallowed as deduction from gross income pursuant to Section 34 (K) of the NIRC of 1997, in relation to Revenue Regulation (RR) No. 2-98; that respondent's income payments and certain expenses were not subjected to expanded withholding tax (EWT) as required under RR No. 2-98, thus, disallowed as deduction from gross income pursuant to the same Section 34(K); that the purchases claimed per VAT returns exceed the amount presented in the Financial Statement, therefore, the input tax attributed to the unsupported purchases is disallowed pursuant to Section 110 of the NIRC of 1887, as amended; and that the twenty percent (20%) interest *per annum* has been imposed pursuant to the provisions of Section 249(B) of the NIRC.

The Pre-Trial Conference for CTA Case No. 8838 was set on October 9, 2014. Respondent's *Pre-Trial Brief* was filed on October 2, 2014, while petitioner's *Pre-Trial Brief* was filed on December 3, 2014.

The parties filed their *Joint Stipulation of Facts and Issues* on December 23, 2014, which was approved by the Court in Division in the Pre-Trial Order dated January 28, 2015.

Respondent filed its *Formal Offer of Evidence* on March 23, 2015. In the Resolution dated May 8, 2015, the Court in Division admitted Exhibits "P-5", "P-6", "P-6A", "P-7", "P-7A", "P-8", "P-9", "P-10", "P-10A", "P-11", "P-11A", "P-12"/"P-25", "P-12A"/"P-25A", "P-13"/"P-26", "P-13A"/"P-26A", "P-14"/"P-27", "P-14A"/"P-27A", "P-15"/"P-28", "P-15A"/"P-28A", "P-16", "P-17", "P-18", "P-19", "P-22", "P-23", "P-23A", "P-24", and the "Testimony of Atty. Jackielyn N. Arceño – ICPA as embodied in her Judicial Affidavit filed on March 13, 2015"; but denied the admissions of "P-1", "P-1A", "P-2", "P-2A", "P-3", "P-3A", "P-4", "P-4A", "P-4B", "P-4C", "P-4D", "P-4E", "P-12B", "P-12C", "P-12D", "P-13B", "P-13C", "P-13D", "P-14B", "P-14C", "P-14D", "P-14E", "P-15B", "P-15C", "P-15D", P-29", "P-30-A", "P-30-B", "P-30-C", "P-30-D" , "P-30-E", "P-30-F", "P-30-G", "P-30-H", "P-30-I", "P-30-J", "P-30-K", "P-30-L", "P-31-A", "P-31-B", "P-31-C", "P-31-D", "P-31-E", "P-31-F", "P-31-G", "P-31-H", "P-31-I", "P-31-J", "P-31-K", "P-31-L", "P-32-E", "P-32-F", "P-33", "P-32-A", "P-32-B", and "P-32-C".

Respondent filed a *Motion for Reconsideration with Prayer for Mandatory Judicial Notice* on May 27, 2015. The Court in Division admitted Exhibits "P-1" to "P-4", inclusive of submarkings, in the Resolution dated June 17, 2015.

On the other hand, petitioner filed his *Formal Offer of Evidence* on February 9, 2016. Respondent filed its *Comment/Opposition [To Respondent's Formal Offer of Evidence]* on March 2, 2016.

In the Resolution dated April 13, 2016, the Court in Division partially granted respondent's *Motion for Reconsideration with Prayer for Mandatory Judicial Notice*. The Court in Division however, still denied Exhibits "P-12B", "P-12C", "P-12D", "P-13B", "P-13C", "P-13D", "P-14B", "P-14C", "P-14D", "P-14E", "P-15B", "P-15C", "P-15D", P-29", "P-30-A", "P-30-B", "P-30-C", "P-30-D" , "P-30-E", "P-30-F", "P-30-G", "P-30-H", "P-30-I", "P-30-J", "P-30-K", "P-30-L", "P-31-A", "P-31-B", "P-31-C", "P-31-D", "P-31-E", "P-31-F", "P-31-G", "P-31-H", "P-31-I", "P-31-J", "P-31-K", "P-31-L", "P-32-E", "P-32-F", "P-33", "P-32-A", "P-32-B", and "P-32-C". In the same Resolution, the Court in Division admitted Exhibits "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-7-A", "R-8", "R-9", "R-11", "R-12", "R-17", and "R-18"; but denied Exhibits "R-1", "R-10", "R-10-A", "R-13", "R-13-A", "R-14", "R-15", "R-16", and "R-19".

Thereafter, the parties were given a period of thirty (30) days within which to file their memoranda.

On June 6, 2016, CTA Case No. 8838 was submitted for decision by the Court in Division.

In the assailed Decision dated April 27, 2017,[4] respondent's *Petition for Review* was granted by the Court in Division. The latter reversed and set aside the FDDA dated May 22, 2014, and likewise set aside the FLD-FAN dated January 25, 2013.

Petitioner then filed its *Motion for Reconsideration* on May 17, 2017.[5]

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[4] EB Docket, pp. 5 to 13; Division Docket – Vol. II (CTA Case No. 8838), pp. 494 to 511.
[5] Division Docket – Vol. II (CTA Case No. 8838), pp. 512 to 517.

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On May 31, 2017, respondent filed its *Comment/Opposition*,[6] after being ordered by the Court in Division to do so.[7]

In the assailed Resolution dated August 29, 2017,[8] the Court in Division denied petitioner's *Motion for Reconsideration* for lack of merit.

On September 28, 2017, petitioner filed a *Motion for Extension of Time to File Petition for Review* before the Court *En Banc*,[9] praying for an extension of fifteen (15) days from September 30, 2017, to file his *Petition for Review*.

In the Minute Resolution dated October 2, 2017,[10] the Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from September 30, 2017, or until October 15, 2017, within which to file his *Petition for Review*.

On October 11, 2017, petitioner filed the instant *Petition for Review* with the Court *En Banc*.[11]

In the Resolution dated November 20, 2017,[12] respondent was directed by the Court *En Banc* to file its comment on the instant *Petition for Review* within ten (10) days from receipt thereof.

On December 22, 2017, respondent's counsel filed an *Entry of Appearance with Motion for Extension of Time to File Comment*,[13] praying for an extension of ten (10) days from December 22, 2017 or until January 1, 2018, to finalize and file its comment.

On January 2, 2018, petitioner filed a *Motion for Extension of Time to File Comment*,[14] praying for an additional ten (10) days from January 1, 2018 or until January 11, 2018, to finalize and file its comment.

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[6] Division Docket – Vol. II (CTA Case No. 8838), pp. 520 to 523.
[7] Resolution dated May 23, 2017, Division Docket – Vol. II (CTA Case No. 8838), p. 519.
[8] EB Docket, pp. 32 to 37; Division Docket – Vol. II (CTA Case No. 8838), pp. 530 to 535.
[9] EB Docket, pp. 1 to 3.
[10] EB Docket, p. 4.
[11] EB Docket, pp. 5 to 13.
[12] EB Docket, pp. 42 to 43.
[13] EB Docket, pp. 44 to 47.
[14] EB Docket, pp. 50 to 52.

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On January 11, 2018, petitioner again file *a Motion for Extension of Time to File Comment*,[15] praying for an additional five (5) days from January 11, 2018 or until January 16, 2018, to finalize and file its comment.

On January 16, 2018, respondent filed its *Comment.*[16]

In the Resolution dated February 13, 2018,[17] the Court granted and noted respondent's *Entry of Appearance with Motion for Extension of Time to File Comment*. The Court likewise granted the two (2) *Motions for Extension of Time to File Comment* filed by respondent. In the same Resolution, the instant case was deemed submitted for decision.

Hence, this Decision.

ASSIGNMENTS OF ERROR

Petitioner raises the following errors supposedly committed by the Court in Division, to wit:

> "The 2nd Division of the Honorable Court of Tax Appeals committed reversible error in declaring that:
>
> A. 'The herein assessment has not become final, executory and demandable by reason of the failure of Respondent to comply with the provisions of Section 228 of the Tax Code, as amended.'
>
> B. 'The Petitioner failed to observe due process in the issuance of the Assessment Notices.'
>
> C. 'The Respondent is not liable for the deficiency assessments.'"[18]

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[15] EB Docket, pp. 55 to 57.
[16] EB Docket, pp. 60 to 70.
[17] EB Docket, pp. 74 to 76.
[18] *Petition for Review*, EB Docket, p. 7.

NO

Petitioner's arguments:

Petitioner argues that the subject assessment has become final, executory and demandable by reason of the failure of the respondent to comply with the provisions of Section 228 of the Tax Code, as amended. According to petitioner, respondent failed to submit relevant documents in support of its protest within the sixty (60)-day period provided under Section 228, and thus, the one-hundred eighty (180)-day period to file the appeal to this Court should be reckoned from the date of filing of the protest.

Moreover, petitioner contends that the due process requirement in the issuance of the deficiency tax assessment was complied with.

Finally, petitioner claims that the Court in Division erred in not considering the merits of the case and declaring respondent not liable for the deficiency tax assessments.

Respondent's counter-arguments:

Respondent counter-argues that petitioner failed to ascribe any reversible error on the part of the Court of Division. It argues that petitioner's arguments are mere reiterations or rehash of the arguments already submitted and found to be without merit by the Court in Division.

It is likewise being averred by respondent that the submission of relevant documents within the sixty-day period under Section 228 of the NIRC is discretionary and that the filing of a protest without supporting documents does not invalidate the protest.

Moreover, respondent proffers that petitioner failed to observe due process in the issuance of the assessment notices when it sent the FAN/FLD through email before the expiration of the mandatory fifteen (15)-day period. Respondent emphasized that the service of the FAN/FLD via email is not valid.

THE COURT *EN BANC*'S RULING

We find the instant *Petition for Review* unmeritorious.

For an orderly disposition of this case, We shall primarily address the second assigned error of petitioner, *i.e.*, that the Court in Division erred in declaring that he failed to observe due process in the issuance of the Assessment Notices.

Petitioner indeed failed to observe the due process requirement of the law. Thus, the subject tax assessments are void.

In support of his argument that there is compliance with the due process requirement of the law, petitioner avers the following:

> "The respondent was fully informed of the facts and the law on which the Final Assessment was issued. The Final Assessment Notice, Demand Letter and Details of Discrepancies which were all together sent at the same time to the Respondent, contained, in details, the manner of computation, the facts on which the assessment was based and the provisions of the law used in arriving at such deficiency assessment.
>
> The due process requirement in the issuance of the deficiency tax assessment was complied with. The Respondent was not deprived of their right to present and submit their defense, as ample opportunity was given. The fifteen (15) day period provided for under the rules was complied with.
>
> The herein Preliminary Assessment Notice (PAN) was issued on January 4, 2013 and according to the Respondent the same was received on January 10, 2013. The Final Assessment Notice/Formal Letter of Demand (FAN/FLD) was issued on January 25, 2013 or after a period of twenty-one (21) days from the issuance of the PAN.
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> Even assuming, for the sake of argument, that the FAN/FLD was prematurely issued, under the herein circumstances, the same did not deprived the Respondent of their remedies provided under the Tax Code. Neither was the Respondent deprived of due process. The Respondent, throughout the duration of

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audit was given every and all opportunities to present their case and adduce supporting evidence."[19]

Petitioner is, in effect, arguing that since: (1) the FAN, Demand Letter and Details of Discrepancy were all together sent, at the same time to respondent, containing the legally required information; (2) respondent was given ample opportunity to submit its defense for a period of fifteen (15) days; (3) the FAN-FLD was not prematurely issued; and (4) respondent, throughout the duration of the audit, was given all opportunities to present its case and adduce supporting evidence; then petitioner has already complied with the due process requirement of the law.

The argument of petitioner is untenable.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while taxes are the lifeblood of the government, the power to tax has its limits, in spite of all its plenitude.[20] Even as We concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that **it be exercised reasonably and <u>in accordance with the prescribed procedure</u>.**[21]

In other words, the persuasiveness of the right to due process reaches both substantial and procedural rights and **the failure of the Commissioner of Internal Revenue to <u>strictly comply with the requirements laid down by law and its own rules</u> is a denial of the taxpayer's right to due process.**[22]

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[19] EB Docket, pp. 9 to 10.

[20] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010

[21] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014, citing *Commissioner of Internal Revenue vs. Algue, Inc.*, 241 Phil. 829, 836 (1988).

[22] Refer to *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, supra, citing *Tupas v. Court of Appeals*, G.R. No. 89571, February 6, 1991.

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On the basis thereof, petitioner is mandated to strictly comply with the requirements of the law and its own rules, and the prescribed procedure in the issuance of tax assessments. Thus, compliance with one specific procedure or requirement does not mean compliance with all the others. Correspondingly, the sending of the FLD, FAN, with details of Discrepancies and other required information by petitioner, and the giving of ample opportunity for respondent to present and submit its defense, during audit or even after the receipt of the PAN, do not necessarily mean that there is already compliance with the due process of law, when there are still other procedures or requirements that have not been complied with.

It is noteworthy that except for the question of premature issuance of the FAN-FLD, the Court in Division **did <u>not</u> rule**, in the assailed Decision, that the BIR failed to observe due process because it did send the FLD, FAN, with details of Discrepancies and other required information to petitioner, and because respondent was not given ample opportunity to present and submit its defense, during audit and/or after its receipt of the PAN. Rather, the Court in Division ruled that there was violation of due process because petitioner did not send the FAN via registered mail or personal delivery as required by Section 3.1.4 of Revenue Regulations (RR) No. 12-99, in addition to the premature issuance of the subject FAN-FLD.

We find no basis to deviate from the conclusion of the Court in Division, since petitioner was not able to refute the same in the instant *Petition for Review*.

Section 3 of RR No. 12-99 lays down the due process requirement in the issuance of deficiency tax assessment, the pertinent provisions thereof read as follows:

> "SECTION 3. *Due Process Requirement in the Issuance of Deficiency Tax Assessment.* —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
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> xxx xxx xxx
>
> 3.1.2 *Preliminary Assessment Notice (PAN).* - If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized

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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, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). **If the taxpayer fails to respond <u>within fifteen (15) days from date of receipt of the PAN</u>, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office**, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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3.1.4 *Formal Letter of Demand and Assessment Notice.* — **The formal letter of demand and assessment notice <u>shall</u> be issued by the Commissioner or his duly authorized representative.** The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX B hereof). **<u>The same shall be sent to the taxpayer only by registered mail or by personal delivery.</u>** If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof." *(Emphasis and underscoring supplied).*

<u>*The FLD-FAN was prematurely issued.*</u>

Under the aforequoted Section 3.1.2 of RR No. 12-99, a taxpayer has fifteen (15) days from receipt of the PAN to file a protest with the BIR. If during the said period, the taxpayer failed to file a protest to the PAN, it is only then that petitioner or his duly authorized

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representative can consider the taxpayer in default, and correspondingly cause the issuance of a FLD and assessment notice, which shall be subsequently served to the said taxpayer. In other words, petitioner or his duly authorized representative is duty bound to wait for the expiration of fifteen (15) days **from the date of receipt** of the PAN before issuing the FLD and assessment notice. Needless to state, such a process or procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment.

In the instant case, as admitted by petitioner, respondent received a copy of the PAN on January 10, 2013. Petitioner therefore had to wait for fifteen (15) days from said date or until January 25, 2013 for respondent to protest or respond to the PAN. As a corollary, it is only **after** the lapse of the said period that petitioner may issue the FLD or FAN. Contrary to petitioner's stance, the said 15-day period is reckoned from the date of receipt by respondent of the PAN; not when the same is issued.

By prematurely issuing the FLD or FAN on January 25, 2013, without awaiting the lapse of the fifteen (15)-day period, petitioner wantonly disregarded the mandatory due process requirement laid down under the above-stated rules. As a consequence, respondent was denied of its right to due process.

The issuance of FAN via electronic mail is not sanctioned by any law, rules or regulations.

As quoted above, Section 3.1.4 of RR No. 12-99 provides that the FLD and assessment notice shall be sent to the taxpayer **only** by registered mail or by personal delivery. The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein.[23] Thus, it is essential for petitioner to establish and prove that the said FLD and assessment notices were duly served to the taxpayer either by registered mail or by personal delivery.

As found by the Court in Division and as admitted by the parties,[24] the FLD and assessment notices were issued to respondent

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[23] *Commissioner of Internal Revenue vs. Enron Subic Power Corporation*, G.R. No. 166387, January 19, 2009.

[24] Par. 5, *Joint Stipulation of Facts and Issues*, Division Docket – Vol. I (CTA Case No. 8838), p. 172.

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through electronic mail, contrary to the required mode of service provided under RR No. 12-99. Further, no evidence was presented by petitioner to prove that the FLD and assessment notices were served by registered mail or by personal delivery.

Clearly, petitioner failed to comply with the due process requirement in the issuance of the subject FLD and assessment notices.

In sum, We find no cogent reason to deviate from the conclusion of the Court in Division that petitioner failed to comply with the mandatory due process requirements under Sections 3.1.2 and 3.1.4 of RR No. 12-99. Accordingly, We affirm the Court in Division's finding that the deficiency tax assessments against respondent are null and void for having been issued in violation of the due process requirements under the law.

In view of the nullity of the subject tax assessments, and considering that a void assessment bears no valid fruit,[25] it is no longer necessary to address the remaining assignments of error posited by petitioner.

Nevertheless, anent the first assigned error of petitioner, even granting that there was no violation of due process in this case, the subject tax assessments did not become final, executory and demandable.

The failure of respondent to submit supporting documents within the sixty (60)-day period does not render the assessment final, executory and demandable.

Petitioner argues that the assessment became final, executory and demandable when respondent failed to submit relevant documents in support of its protest within the sixty (60)-day period provided under Section 228 of the Tax Code. Consequently, he

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[25] *Commissioner of Internal Revenue vs. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006; *Commissioner of Internal Revenue vs. BASF Coating+Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014; and *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

claims that the Court in Division has no jurisdiction to act on the instant petition.

We are not convinced.

Section 228 of the NIRC of 1997 lays down the guidelines in protesting an assessment, to wit:

> "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 pre-assessment notice shall not be required in the following cases:
>
> 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.
>
> 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;**

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otherwise, the decision shall become final, executory and demandable." *(Emphases supplied)*

Based on the foregoing provision, the concerned taxpayer has thirty (30) days from receipt of the assessment within which to file an administrative protest, and must submit, within a period of sixty (60) days from the filing of the protest all relevant supporting documents.

In this case, it is undisputed that respondent received the subject tax assessments on January 25, 2013.[26] Respondent then filed its administrative protest dated February 20, 2013 on February 22, 2013.[27] It is noteworthy that the said protest referred to certain annexes as supporting documents to respondent's arguments therein.

In *Commissioner of Internal Revenue v. First Express Pawnshop Co., Inc.*,[28] the Supreme Court rejected petitioner's view that the assessment has become final and unappealable for failure of the taxpayer to submit relevant supporting documents, *viz.:*

> "Since respondent has not allegedly submitted any relevant supporting documents, petitioner now claims that the assessment has become final, executory and demandable, hence, unappealable.
>
> **We reject petitioner's view that the assessment has become final and unappealable. It cannot be said that respondent failed to submit relevant supporting documents that would render the assessment final <u>because when respondent submitted its protest, respondent attached the GIS and Balance Sheet</u>**. xxx.
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> **The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted.**

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[26] Exhibit "P-10", Division Docket – Vol. I (CTA Case No. 8838), pp. 245 to 247.
[27] Exhibits "P-11" and "P-11A", Division Docket – Vol. I (CTA Case No. 8838), pp. 248 to 256.
[28] G.R. No. 172045-46, June 16, 2009.

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Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit." *(Emphases and underscoring supplied)*

It is clear from the foregoing that if there is a showing that "relevant supporting documents" were attached to the administrative protest, it cannot render the tax assessment as final; that such term means those documents necessary to support the said protest, as determined by the taxpayer; and that while the BIR can inform the taxpayer to submit additional documents, it cannot demand what type of documents should be submitted.

Correspondingly, in view of the attachments on petitioner's administrative protest which are simultaneously submitted therewith on February 22, 2013, it cannot be said that respondent failed to submit relevant supporting documents.

Furthermore, while petitioner avers that Revenue Officer Rosalina T. Reyes testified, in fact, that no supporting documents was submitted by respondent and that she exerted efforts to communicate with the latter, and in support thereof, petitioner points to Exhibits "R-19" and "R-16", the same is of no moment. This is so not only because the said Exhibits were denied admission by the Court in Division for failure to identify the same in the Resolution dated April 13, 2016,[29] but also more importantly, the BIR cannot demand what type of supporting documents should be submitted by respondent.

Accordingly, the 180-day under the aforequoted Section 228 of the NIRC of 1997 should be reckoned from the said date of filing of the administrative protest on February 22, 2013. Nevertheless, even when the said 180-day period and the 30-day period that followed lapsed without appealing petitioner's inaction to the Court in Division, respondent's *Petition for Review* in CTA Case No. 8838 is still considered as timely filed.

In *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*,[30] the Supreme Court said:

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[29] Division Docket – Vol. I (CTA Case No. 8838), pp. 461 to 464.
[30] G.R. No. 168498, April 24, 2007.

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> "xxx it is clear that the jurisdiction of the Court of Tax Appeals has been expanded to include not only decisions or rulings but inaction as well of the Commissioner of Internal Revenue. The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal, provided it is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on disputed assessments. This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeal of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.
>
> In case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can **<u>either</u>: 1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; <u>or 2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision</u>. However, <u>these options are mutually exclusive, and resort to one bars the application of the other</u>.**" *(Emphases and underscoring supplied)*

On the basis of the foregoing jurisprudential pronouncements, the Court in Division still has jurisdiction to entertain a petition for review appealing a final decision on a disputed assessment issued by petitioner, even after the expiration of the above-stated 180+30-day periods, so long as the concerned taxpayer awaits the final decision of petitioner, and files the petition for review within thirty (30) days after the receipt of the said final decision.

Considering that respondent opted to wait for the issuance of the subject FDDA and filed the *Petition for Review* in CTA Case No. 8838, within thirty (30) days thereafter, the Court in Division validly acquired jurisdiction over the said case.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Decision dated April 27, 2017 and the Resolution dated August 29, 2017, both rendered by the Court in Division in CTA Case No. 8838, are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice