REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2387** (CTA Case No. 8974)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** *JJ.*
SOLUTIONS USING RENEWABLE ENERGY, INC., Respondent.	***Promulgated:*** JUN 23 2022 11:50am

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DECISION

UY, *J*.:

This is a *Petition for Review*[1] filed on December 7, 2020 by the Commissioner of Internal Revenue, petitioner, against Solutions Using Renewable Energy, Inc., respondent praying that the Decision dated July 9, 2020[2] and Resolution dated October 23, 2020,[3] rendered by the First Division of this Court (Court in Division), in CTA Case No. 8974, be reversed and set aside. The dispositive portions thereof respectively read as follows:

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[1] EB Docket, pp. 1 to 10.

[2] Penned by Presiding Justice Roman G. Del Rosario and concurred by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Catherine T. Manahan, EB Docket, pp. 16 to 35; Division Docket (CTA Case No. 8974) – Vol. 2, pp. 785 to 804.

[3] Penned by Presiding Justice Roman G. Del Rosario and concurred by Associate Justice Catherine T. Manahan; EB Docket, pp. 47 to 50; Division Docket (CTA Case No. 8974) – Vol. 2, pp. 827 to 830.

<u>Decision dated July 9, 2020</u>:

> "**WHEREFORE,** premises considered, the Petition for Review filed by petitioner Solutions Using Renewable Energy Inc. is hereby **GRANTED**. Accordingly, the Formal Letters of Demands and Assessment Notices, all dated January 13, 2014, assessing petitioner(sic) for the following deficiency taxes for taxable year 2010, *viz.:* [1] deficiency income tax of ₱2,012,799.82; [2] deficiency value-added tax of ₱22,421,948.59; [3] deficiency expanded withholding tax on compensation of ₱377,826.27; [4] deficiency withholding tax of ₱490,209.36; [5] deficiency documentary stamp tax of ₱491,290.73; and [6] compromise penalty of ₱17,000.00, are **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED."**

<u>Resolution dated October 23, 2020</u>:

> "**WHEREFORE,** premises considered, respondent's **Motion for Reconsideration (Decision dated 09 July 2020)** is hereby **DENIED** for lack of merit.
>
> **SO ORDERED."**

THE FACTS

Petitioner Commissioner of Internal Revenue (CIR) is vested by law with the power to implement and enforce the provisions of the National Internal Revenue Code and other tax laws. He may be served with notices and other legal processes at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On the other hand, respondent Solutions Using Renewable Energy, Inc. (SURE) is a domestic corporation organized and existing under Philippine laws, with principal office at Unit 602 OMM Citra Building, San Miguel Avenue, Ortigas Center, Pasig City, 1608.

On January 18, 2012, SURE received a *Letter of Authority* (LOA) No. LOA-43A-2012-00000111 dated January 16, 2012, authorizing Revenue Officer Dolores Gillego and Group Supervisor Ramon Navarro of Revenue District Office No. 43A-East Pasig to conduct an examination of its books of accounts and other accounting records for all internal revenue taxes for the taxable period January 1, 2010 to December 31, 2010.

On January 7, 2014, SURE allegedly received a *Preliminary Assessment Notice* (PAN) dated December 27, 2013.

On January 13, 2014, the CIR issued two (2) *Formal Letters of Demands* (FLDs), and six (6) *Assessment Notices*, assessing SURE for the following deficiency taxes for taxable year (TY) 2010:

Kind of Tax	Amount
Income Tax	₱ 2,012,799.82
Value-Added Tax (VAT)	22,421,948.59
Withholding Tax on Compensation (WTC)	377,826.27
Expanded Withholding Tax (EWT)	490,209.36
Documentary Stamp Tax (DST)	491,290.73
Compromise Penalty	17,000.00

SURE received the aforesaid *FLDs and Assessment Notices* also on January 13, 2014.

On February 11, 2014, SURE filed its *Protest/Letter* dated February 10, 2014, addressed to then CIR Kim S. Jacinto-Henares, through Revenue Regional Director Jonas DP Amora.

On March 5, 2014, Revenue Regional Director Amora wrote a letter to SURE informing the latter that its case will be forwarded to Revenue District Office No. 43A for reconsideration.

On March 13, 2014, Revenue District Officer (RDO) Josephine S. Virtucio issued a *Memorandum of Assignment*, referring SURE's case to Revenue Officer Rogelio Delos Reyes and Group Supervisor Ramon Navarro for reinvestigation, per protest letter/request for reinvestigation/reconsideration filed by SURE.

On April 11, 2014, SURE submitted relevant documents in support of its protest, through a *Letter* dated April 10, 2014 addressed to RDO Virtucio.

On June 11, 2014, SURE received a *Letter* dated June 6, 2014 from RDO Virtucio, alleging that its sixty (60)-day period within which to submit relevant supporting documents had lapsed and giving SURE, in the spirit of due process, a period of fifteen (15) days from receipt of the June 6, 2014 Letter within which to file relevant documents in support of its protest.

On June 25, 2014, SURE re-submitted to the CIR the relevant documents in support of its protest.

In view of the CIR's inaction on its protest to the *FLDs and Assessment Notices*, SURE filed a *Petition for Review* before the Court of Tax Appeals on January 21, 2015, or within thirty (30) days from the lapse of the 180-day period on December 22, 2014. The case was docketed as CTA Case No. 8974, entitled "*Solutions Using Renewable Energy Inc., petitioner versus Commissioner of Internal Revenue, respondent*", and was initially raffled to the Third Division of this Court.

Within the extension period granted by the Court in Division, the CIR filed his *Answer (Petition for Review, January 21, 2015)* in CTA Case No. 8974 on March 18, 2015, invoking the following special and affirmative defenses: (1) the assessment is already final, executory and demandable due to the failure of SURE to substantiate its request for reinvestigation with relevant documents; (2) tax assessments are presumed correct and made in good faith, and that the taxpayer has the duty to prove otherwise; and (iii) taxpayer's failure to overcome the presumption of the correctness of the tax assessment and the regularity in the performance of official duty will justify the judicial upholding thereof.

After the Pre-Trial Conference held on August 25, 2015, the parties filed their *Joint Stipulation of Facts and Issues* on September 4, 2015. The Third Division issued a Pre-Trial Order on September 24, 2015 thereby terminating the pre-trial.

During trial, SURE presented as witnesses, Ramie Kristina F. Buyser, SURE's Chief Accountant; and Maria Gracia L. Morfe, the Court-commissioned Independent Certified Public Accountant (ICPA); Upon resolution of SURE's Formal Offer of Evidence, SURE rested its case in CTA Case No. 8974.

On March 12, 2018, the CIR filed a *Motion to Dismiss* on the ground that the Petition for Review in CTA Case No. 8974 was filed out of time. SURE filed its *Opposition [Respondent's Motion to Dismiss]* on April 12, 2018.

The Third Division denied the CIR's Motion to Dismiss for lack of merit in the Resolution dated May 25, 2018. Aggrieved, the CIR filed his Motion for Reconsideration on June 18, 2018, which was also denied in the Resolution dated September 6, 2018.

Thereafter, pursuant to *CTA Administrative Circular No. 02-2018* dated September 18, 2018, reorganizing the three (3) Divisions of the Court, CTA Case No. 8974 was transferred to the First Division in the Order dated September 20, 2018.

For his part, the CIR presented as his sole witness, Revenue Officer Dolores Gillego. Upon resolution of the CIR's *Formal Officer of Evidence,* the CIR rested his case.

Considering the failure of both parties to file their respective memoranda within the given period, CTA Case No. 8974 was submitted for decision on December 5, 2019.

Subsequently, on July 9, 2020, the Court in Division rendered the assailed Decision[4], granting the Petition for Review in CTA Case No. 8974.

Aggrieved, the CIR filed a *Motion for Reconsideration (Decision dated 09 July 2020)* on July 30, 2020 with SURE's *Opposition to the Motion for Reconsideration* filed on October 14, 2020. In the assailed Resolution[5] dated October 23, 2020, the Court in Division denied the CIR's Motion for Reconsideration for lack of merit.

On November 20, 2020, the CIR filed via registered mail a *Motion for Extension of Time To File Petition for Review*[6] praying for an additional period of fifteen (15) days from November 20, 2020 to file his Petition for Review. In the Minute Resolution dated December 18, 2020,[7] the CIR's motion for extension of time to file Petition for Review was deemed granted by the Court *En Banc* in view of the filing of petitioner's Petition for Review[8] on December 7, 2020.

Subsequently, on January 12, 2021, the Court *En Banc* ordered SURE to file its Comment on the Petition for Review within ten (10) days from notice.[9] On January 25, 2021, SURE filed an *Urgent Motion for Additional Time* praying for an additional period of fifteen

[4] EB Docket, pp. 16 to 35; Division Docket (CTA Case No. 8974) – Vol. 2, pp. 785 to 804.
[5] EB Docket, pp. 47 to 50; Division Docket (CTA Case No. 8974) – Vol. 2, pp. 827 to 830.
[6] EB Docket, pp. 55 to 57.
[7] EB Docket, p. 59.
[8] EB Docket, pp. 1 to 10.
[9] EB Docket, pp. 61 to 62.

(15) days from January 23, 2021, to file its Comment to the Petition for Review.[10]

In the Resolution dated February 5, 2021, the Court *En Banc* granted SURE's urgent motion and gave an additional period of fifteen (15) days from January 23, 2021 or until February 7, 2021, within which to file its Comment.[11] On February 9, 2021, SURE filed its *Comment [To the Petition for Review].*[12]

Thereafter, on February 23, 2021, the Court *En Banc* referred the present case for mediation at the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA), pursuant to Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.[13] On June 30, 2021, PMC-CTA filed *PMC-CTA Form 6 – No Agreement to Mediate*[14] indicating that the parties decided not to have their case mediated by the PMC-CTA.

In the Resolution dated July 14, 2021, the instant case was submitted for decision.[15] Hence, this Decision.

ISSUES

Petitioner raises the following issues for Court *En Banc's* resolution, to wit:

> "I. Whether or not the First Division of the Court of Tax Appeals erred in ruling that SURE timely filed its Petition for Review.
>
> II. Whether or not the First Division of the Court of Tax Appeals erred in ruling that the FLDs and(sic) Assessment Notices were issued in violation of SURE's right to due process."[16]

The CIR's arguments:

The CIR maintains his position that the Petition for Review filed by SURE before the Court in Division was not timely filed.

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[10] EB Docket, pp. 63 to 65.
[11] EB Docket, pp. 68 to 69.
[12] EB Docket, pp. 70 to 86.
[13] EB Docket, pp. 88 to 89.
[14] EB Docket, p. 90.
[15] EB Docket, pp. 93 to 94.
[16] Petition for Review, EB Docket, p. 3.

According to the CIR, Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 3.1.4 of Revenue Regulations (RR) No. 18-2013 do not provide nor allow any extension of time to submit documents in cases of protest for reinvestigation.

Allegedly, the law and regulation clearly limit a 60-day period within which to submit additional documents; that this period is not subject to any agreement and/or compromise by the parties; and it could not also be subjected to any amendment or revision, except by Congress.

Moreover, the CIR contends that the acts of the agents of the government cannot bind the government itself when such acts are ultra vires; that there is no authority provided in law to extend the 60-day period within which to submit documents in a request for reinvestigation; thus, any act contrary thereto cannot bind nor prejudice the rights of the government.

The reckoning period of the start of the 180-day period for the CIR to decide is allegedly provided by law; that it cannot be made to depend on the date required by an agent of the CIR when the same is outside the 60-day period provided in law and in applicable regulations; and Section 228 of the NIRC, as amended, is clear and does not provide any exceptions.

Also, the CIR argues that the reckoning period of the start of the 180-day period for the CIR to decide cannot be made to depend on SURE's date of submission of documents when the same is outside the 60-day period provided in law and in applicable regulations.

The CIR claims that the period within which to file a Petition for Review is jurisdictional in nature. Absence such compliance, the assessment becomes final, executory, demandable, and non-appealable to the Court of Tax Appeals.

Allegedly, the issuance of the FLDs and Assessment Notices did not violate the right of SURE to due process, as the PAN, FLDs and Assessment Notices were duly served and received; that SURE was notified of the assessment and was given ample time and opportunity to protest the findings of the assessment against it.

The CIR adds that despite the slight infirmity in the issuance date of the FLDs and Assessment Notices, this does not necessarily result to violation of due process considering that SURE was able to intelligently contest the assessment, was informed of the factual and legal bases of the assessment and was afforded opportunity to defend itself.

Lastly, the CIR argues that the government is not barred in collecting the tax deficiencies of SURE. The government cannot and must not be estopped particularly in matters involving taxes as taxes are the lifeblood of the government and so should be collected without unnecessary hindrance.

SURE's counter-arguments:

SURE submits that the Petition for Review before the Court in Division was timely filed; that the 180-day period was correctly reckoned from June 25, 2014, the extended period given by the CIR, through RDO Virtucio's Letter dated June 6, 2014, within which to submit the relevant documents in support of its protest.

Allegedly, the CIR had, on his own, unilaterally, extended the period to submit relevant supporting documents in support of the protest beyond the sixty (60) day period, despite the fact that SURE had earlier discharged its responsibility to do so within the required period. Having done so, the CIR cannot be allowed to successfully argue that SURE's Petition for Review was filed out of time.

Relative thereto, SURE invokes the application of the Court in Division of the doctrine in the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc.*[17]; that parties must come to court with clean hands and the doctrine of estoppel may be applied to prevent injustice.

Furthermore, SURE also invokes the findings of the Court in Division that the CIR interposed a general denial regarding the receipt of the PAN on January 7, 2014, without setting forth the substance of the matter relied upon to support its general denial, when such matter was plainly within his knowledge because of the records in his possession. As such, the CIR cannot feign ignorance as to the receipt of the PAN. The CIR allegedly failed to properly

[17] G.R. No. 212825, December 7, 2015.

tender an issue regarding such date of receipt. Consequently, the date of receipt of the PAN by SURE on January 7, 2014 was deemed admitted by the CIR.

SURE also contends that the FLDs and Assessment Notices were issued in violation of its right to due process; hence, the same are void *ab initio*. Allegedly, the fatal infirmity that attended the issuance of the FLDs and Assessment Notices prior to the lapse of the fifteen (15) day period to respond to the PAN was not cured by SURE's filing of a protest to the FLDs and Assessment Notices.

THE COURT *EN BANC*'S RULING

In the instant *Petition*, the CIR insists that the Petition for Review in CTA Case No. 8974 was filed out of time.

According to the CIR, since SURE's protest to the FLDs and Assessment Notices was filed on February 11, 2014, followed by its submission of supporting documents on April 11, 2014 and no decision on the protest from the CIR was issued within the 180-day period from the submission of documents, the last day of the 180-day period being until October 8, 2014, SURE had 30 days to file its Petition for Review or until November 7, 2014. However, the Petition for Review in CTA Case No. 8974 was only filed on January 21, 2015. Thus, it was belatedly filed.

The CIR also claims that the reckoning of the 180-day period cannot be counted from June 25, 2014 or from the date SURE re-submitted its supporting documents. Allegedly, the ruling of the Court in Division that the letter from the BIR granting SURE an extension of fifteen (15) days to submit relevant documents is in contravention to the 60-day period limit under the law and the pertinent regulations.

We do not agree.

The Court in Division did not err in ruling that the Petition for Review in CTA Case No. 8974 was timely filed.

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

"SEC. 228. *Protesting of Assessment.* – x x x

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 xxx xxx

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." (*Emphasis supplied*)

Relative thereto, Section 3.1.4 of Revenue Regulations (RR) No. 12-99,[18] as amended by RR No. 18-2013[19], reads as follows:

"3.1.4 *Disputed Assessment.* – The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation as defined as follows:

[18] 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 Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.
[19] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

(i) **Request for reconsideration** – refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both question of fact or law or both.

(ii) **Request for reinvestigation** – refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or law or both.

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.*

xxx xxx xxx

For requests for reinvestigations, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term 'relevant supporting documents' refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term 'the assessment shall become final' shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

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If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeal (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eight (180) days counted from the filing of the protest in case of a request for reconsideration; or **from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eight (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.**

If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the decision. Otherwise, the assessment shall become final, executory, and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.

If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.

It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the

CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other." (*Emphases supplied*)

Based on the foregoing, in cases of a request for reinvestigation, the taxpayer is given sixty (60) days from the filing of a request for reinvestigation to submit the relevant supporting documents in support of the protest. Upon submission of the relevant supporting documents, the period of action on the part of the CIR or his duly authorized representative is one hundred eighty (180) days. In case of inaction, the taxpayer may either: 1) appeal to the Court in Division within thirty (30) days after the expiration of the 180-day period; or await the final decision of the CIR's duly authorized representative on the disputed assessment.

In the instant case, the relevant dates are summarized as follows:

Date	Action taken
January 13, 2014	SURE received the FLDs and Assessment Notices.[20]
February 11, 2014	SURE filed a Protest / Letter against the FLDs and Assessment Notices. [21]
April 11, 2014	SURE filed relevant documents in support of its protest. [22]
June 11, 2014	SURE received a Letter dated June 6, 2014 from RDO Virtucio. [23]
June 25, 2014	SURE re-submitted to the BIR the relevant documents in support of its protest. [24]

As can be seen from the table above, SURE was able to timely file the relevant supporting documents on April 11, 2014, well within the 60-day period (or until April 12, 2014), counted from the time it filed its administrative protest on February 11, 2014.

However, on June 11, 2014, petitioner received the *Letter* dated June 6, 2014 from RDO Virtucio stating that the 60-day period within which to submit relevant supporting documents had lapsed. However, in the spirit of due process, RDO Virtucio gave SURE an

[20] Exhibit "R-9-a", BIR Records, p.425.
[21] Exhibit P-10, Division Docket (CTA Case No. 8974) – Vol. 1, p. 106.
[22] Exhibit P-11, Division Docket (CTA Case No. 8974) – Vol. 1, pp. 351-363.
[23] Exhibit "P-12", Division Docket (CTA Case No. 8974) – Vol. 1, p. 109.
[24] Exhibit "P-13, Division Docket (CTA Case No. 8974) – Vol. 1, pp. 364 to 366.

additional period of fifteen (15) days from receipt of the June 6, 2014 Letter within which to file relevant supporting documents to support its protest. In the event, however, that SURE would fail to comply within the extension period to submit the additional documentary evidence, they will be constrained to report its case, on the basis of the findings per reinvestigation, to higher authorities for review and proper disposition. Hence, pursuant to the directive of RDO Virtucio, SURE re-submitted its relevant supporting documents in support of its protest on June 25, 2014.

On this score, the Court *En Banc* agrees with the Court in Division that the reckoning of the 180-day period for the CIR to act on the protest should be on June 25, 2014, the extended period given by RDO Virtucio, through the Letter dated June 6, 2014 and not on April 11, 2014. It cannot be ignored that it was because of the Letter dated June 6, 2014 issued by RDO Virtucio which prompted SURE to re-submit its relevant supporting documents despite the fact that it had already submitted the same earlier. As properly pointed out by the Court in Division, the Court cannot turn blind to the glaring injustice, should it allow the CIR to benefit from the mischievous scheme.

As a defense, the CIR argues that the government cannot be estopped by the mistakes or errors of its agents, implying that the letter dated June 6, 2014 issued by RDO Virtucio granting extension to SURE is an ultra vires act, thus, not binding.

We are not persuaded.

We are very much aware of the time-honored rule that "the government cannot be estopped by the mistakes or errors of its agents". Suffice it to state, however, that this precept is not absolute. As jurisprudence teaches, this rule on estoppel cannot be used to perpetrate injustice.[25]

In the instant case, it is evident that to follow the CIR's reasoning would cause grave prejudice to SURE, who was led to believe that the 180-day period should be reckoned from the re-submission of the supporting documents on June 25, 2014. Thus, the Letter dated June 6, 2014 issued by RDO Virtucio cannot be treated as a mere mistake or error. Neither can the CIR claim that he is not susceptible to estoppel.

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[25] SM Land, Inc. vs. Bases Conversion and Development Authority and Arnel Paciano D. Casanova, G.R. No. 203655, August 13, 2014.

Considering the foregoing, the Court *En Banc* adopts the findings of the Court in Division, in relation to the pertinent dates as to the timeliness of the filing of the Petition for Review in CTA Case No. 8974, to wit:

Date when SURE re-submitted its relevant supporting documents	**End of the 180-day period for the CIR to act on the protest**	**End of the 30-day period to file with the CTA Division**	**Date of filing of the Petition for Review before the CTA Division**
June 25, 2014	December 22, 2014	January 21, 2015	January 21, 2015[26]

As the Court in Division correctly found, the Petition for Review was timely filed, and therefore, it had jurisdiction over CTA Case No. 8974.

The CIR failed to observe due process requirements in the issuance of the FLDs and Assessment Notices against SURE.

The CIR reiterates that the PAN was duly served thru registered mail on December 27, 2013 and that the FLDs and Assessment Notices were also served to SURE on January 13, 2014. Moreover, SURE was able to file its protest on February 11, 2014 and submit its relevant documents on April 11, 2014, showing that SURE was given ample time and opportunity to protest the findings of the assessment against it. Hence, the issuance of the FLDs and Assessment Notices did not violate the right to due process of SURE.

The CIR's arguments deserves scant consideration.

Section 3 of Revenue Regulations No. 12-99 lays down the due process requirement in the issuance of a deficiency tax assessment, which provides, to wit:

> "SECTION 3. *Due process requirement in the issuance of deficiency tax assessment.* –

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[26] Division Docket (CTA Case No. 8974) – Vol. 1, pp. 6 to 20.

> 3.1 Mode of procedures 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 Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, 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. **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be cause to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.** (*Emphasis supplied*)

Based on the foregoing, 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 fails to file a protest to the PAN, it is only then that the CIR, or his duly authorized representative, can consider the taxpayer in default, and correspondingly cause the issuance of a FLD and assessment notice, which shall be sufficiently served to the said taxpayer. In other words, the CIR 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. Such procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment.

At this juncture, it is vital to determine the date of actual receipt of the PAN by SURE.

Records show that the PAN was issued on December 27, 2013, and sent thru registered mail on the same date.[27] However, SURE alleges in its Petition for Review in CTA Case No. 8974 that it received the PAN only on January 7, 2014.[28] This is corroborated by

[27] Exhibit "R-8", BIR Records, pp. 388 to 409.

[28] Par. 3.1, Timeliness of the Petition for Review, Division Docket (CTA Case No. 8794) – Vol. 1, p. 8.

SURE's witness, Ramie Kristina F. Buyser, who testified that SURE received the said PAN on January 7, 2014.[29] Furthermore, on January 13, 2014, the FLDs[30] and Assessment Notices[31] were received by SURE.

It bears stressing that the burden is shifted to the CIR to prove receipt of the PAN by SURE at a date earlier than January 7, 2014 to show the CIR's observance of the fifteen (15)-day given to SURE to respond to the PAN before the issuance of the FLDs and Assessment Notices. Notably, the CIR failed to present any counter-evidence to show the date of actual receipt of the PAN by SURE.

Hence, the Court *En Banc* affirms the Court in Division that it was only on January 7, 2014 that SURE received the PAN.

Anent the issue as to whether or not SURE was denied due process, We agree with the findings of the Court in Division that there was palpable violation of the right of SURE to procedural due process.

As mentioned earlier, SURE received a copy of the PAN on January 7, 2014. Therefore, the CIR should have granted SURE a period of fifteen (15) days from said date, or until January 22, 2014, to protest or respond to the PAN. As a corollary, it is only after the lapse of the said period that the CIR may issue the FLDs and Assessment Notices. To be clear, the said 15-day period is reckoned from the date of actual receipt of the PAN by SURE, and not the date of issuance of the PAN.

From the foregoing, the Court in Division correctly found that the FLDs and Assessment Notices were prematurely issued and received by SURE on January 13, 2014, or 8 days after SURE received the PAN. The CIR, in failing to await the lapse of the fifteen (15)-day period, disregarded the mandatory due process requirement laid down under RR No. 12-99, thereby denying SURE of its right to due process.

It is well-settled that failure to strictly comply with the notice requirements under Section 228 of the NIRC of 1997, as amended,

[29] Judicial Affidavit of Ramie Kristina F. Buyser, Answers to Q12, Exhibit "P-56-2", Division Docket (CTA Case No. 8794) – Vol. 1, pp. 317 to 331.
[30] Exhibits "P-8" and "P-9", Division Docket (CTA Case No. 8794) – Vol. 1, pp. 97 to 105.
[31] Exhibits "P-2", "P-3", "P-4", "P-5", "P-6", and "P-7", Division Docket (CTA Case No. 8794) – Vol. 1, pp. 91 to 96.

and RR No. 12-99 is tantamount to denial of due process.[32] As a result, the assessments issued in this case are void and perforce cancelled.

In sum, We uphold the factual findings and ruling of the Court in Division in the assailed Decision and Resolution.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision dated July 9, 2020 and the Resolution dated October 23, 2020 rendered by the First Division of this Court in CTA Case No. 8974 are **AFFIRMED**.

Consequently, the CIR or any person acting on his behalf is hereby **ENJOINED** from proceeding with the collection of the said deficiency taxes against respondent SURE during the pendency of the instant case.

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

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
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