REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

NEXT MOBILE, INC.,
Respondent.

CTA EB No. 1419
(CTA Case No. 8516)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA, and
RINGPIS-LIBAN, JJ.

Promulgated:

NOV 21 2016 3:35 p.m.

x - x

DECISION

UY, J.:

Before the Court *En Banc* is a Petition for Review filed by the Commissioner of Internal Revenue on February 11, 2016 against Next Mobile, Inc.,[1] seeking the reversal and setting aside of the Decision dated October 14, 2015[2] and Amended Decision dated December 22, 2015,[3] both rendered by the Third Division of this Court (Court in Division) in CTA Case No. 8516, entitled *"Next Mobile, Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent"*,

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[1] EB Docket, pp. 4 to 15.

[2] EB Docket, pp. 18 to 66; Ponencia of Associate Justice Lovell R. Bautista, and concurred by Associate Justice Esperanza R. Fabon-Victorino. Associate Justice Ma. Belen M. Ringpis-Liban dissented.

[3] EB Docket, pp. 72 to 78; Ponencia of Associate Justice Lovell R. Bautista, and concurred by Associate Justice Esperanza R. Fabon-Victorino, and Associate Justice Ma. Belen M. Ringpis-Liban.

the dispositive portions of which respectively read:

Decision dated October 14, 2015:

"**WHEREFORE,** in view of the foregoing, the present Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, petitioner is hereby **ORDERED TO PAY** deficiency Income Tax for the taxable year ended December 31, 2006, in the modified amount of Php41,656,670.93, inclusive of the 25% surcharge imposed under *Section 248(A)(3) of the 1997 NIRC*, computed as follows:

Type of Tax	Basic Deficiency	25% Surcharge	Total
Income Tax	33,325,161.74	8,331,334.19	41,656,670.93

In addition, petitioner is liable to pay:

1. Deficiency interest at the rate of twenty percent (20%) *per annum* pursuant to *Section 249(B) of the 1997 NIRC* on the basic deficiency Income Tax of Php33,325,161.74 computed from April 15, 2007 until full payment thereof; and

2. Delinquency interest at the rate of twenty percent (20%) *per annum* on the total amount due of Php41,656,670.93 (inclusive of 25% surcharge), and on the 20% deficiency interest which have accrued as aforestated in (1), computed from May 17, 2010 until full payment thereof, pursuant to *Section 249(C) of the 1997 NIRC*, as amended.

SO ORDERED."

Amended Decision dated December 22, 2015:

"In view of the foregoing, respondent's 'Motion for Partial Reconsideration (Re: Decision dated 14 October 2015)' is hereby **DENIED** for lack of merit and petitioner's 'Motion for Partial Reconsideration (Of the Decision dated 14 October 2015)' is hereby **GRANTED**. Accordingly, the dispositive portion of the Decision promulgated on October 14, 2015 is hereby modified to read as follows:

WHEREFORE, premises considered, the Petition for Review filed on July 13, 2012 by petitioner Next Mobile, Inc. is hereby **GRANTED**. Accordingly, Formal Letter of Demand and Final

> Assessment Notice No. 32-06-IT-0071 dated April 14, 2010 assessing and demanding from petitioner Next Mobile, Inc. the payment of deficiency income tax, interest and compromise penalty for taxable year 2006 in the aggregate amount of Php79,320,554.30, are hereby **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED.**
>
> **SO ORDERED.**"

THE FACTS

Petitioner Commissioner of Internal Revenue is the government authority designated to collect all taxes, grant refunds, issue and abate assessments, and examine the books of accounts and returns filed therewith to determine the correctness of taxes paid under the 1997 National Internal Revenue Code (NIRC).

Respondent Next Mobile, Inc. is duly organized and existing under Philippine laws, with principal address at Next Mobile Building, 2244 España Avenue, Sampaloc, Manila. It is authorized to construct, establish, operate and maintain radio paging systems and mobile communications services, and to install and operate corresponding radio transmitting and receiving stations and communication facilities in or outside the Philippines.

On April 27, 2007, respondent filed its Annual Income Tax Return or accomplished BIR Form 1702 for taxable year 2006 with the Bureau of Internal Revenue (BIR).

On September 21, 2007, respondent received the Letter of Authority No. 00000367 dated September 18, 2007, together with a *First Request for Presentation of Records* for the examination of respondent's books of accounts and other accounting records for all internal revenue taxes for taxable year 2006.

Respondent received the *Second Request for Presentation of Records* dated September 27, 2007 (*"Second Request"*), on October 9, 2007.

On October 15, 2007, respondent, through the letter dated October 14, 2007, requested for an extension of time or until November 15, 2007, within which to submit the required books of accounts in the *Second Request*, in view of the examination being conducted by respondent's external auditors of the said books of accounts.

Respondent received the *Final Request for Presentation of Records* dated October 10, 2007 (*"Final Request"*), on October 16, 2007.

On February 19, 2008, respondent received the Summons and/or *Subpoena Duces Tecum* dated February 11, 2008.

Subsequently, on February 29, 2008, respondent, in the letter dated February 29, 2008, submitted to the Regional Director, all the documents listed in the said *Subpoena*.

On May 4, 2009, respondent received the *Notice of Informal Conference* dated April 30, 2009 from petitioner through Revenue District Office (RDO) No. 32. Respondent likewise received from petitioner, through RDO No. 32, the *Revised Post Reporting Notice* dated July 29, 2009, on July 30, 2009.

Thereafter, on April 6, 2010, respondent received from petitioner, through the Regional Director of Revenue Region No. 6, the *Preliminary Assessment Notice* (PAN) dated March 25, 2010, for deficiency income tax and compromise penalty allegedly due for calendar year 2006.

On April 15, 2010, respondent received from petitioner, through the Regional Director, the *Formal Letter of Demand* (FLD) with *Final Assessment Notice* (FAN) dated April 14, 2010, for deficiency income tax, inclusive of interest, and compromise penalty in the aggregate amount of ₱79,298,554.30.

Respondent then filed a written protest dated May 13, 2010 to the FAN on May 14, 2010.

On June 8, 2010, petitioner, through the Regional Director, issued a letter: (1) informing respondent that the entire docket of the case, including the protest, was forwarded to RDO No. 32, and (2) instructing respondent to address all communications to said RDO.

The same RDO issued the *Tax Verification Notice* dated June 11, 2010, authorizing Revenue Officers Dionisio Cruz, Jr. under

Group Supervisor Alemar Sani to handle the internal revenue taxes of respondent for taxable year 2006 which was the subject of the protest.

On June 13, 2012, respondent received the letter dated June 8, 2012 from the Regional Director, reiterating the deficiency tax assessment and requesting for the payment of the same, otherwise, the case will be forwarded to the Collection Division of Revenue Region No. 6.

Respondent sent the letter dated July 5, 2012 to the Regional Director on July 6, 2012, stating that it would treat the June 8, 2012 letter as the petitioner's final decision on the protest, unless respondent receives a written communication, on or before July 13, 2012, clarifying that the re-investigation would continue.

On July 13, 2012, respondent filed a Petition for Review before the Court in Division, assailing the deficiency tax assessment. The case was docketed as CTA Case No. 8516.

On July 31, 2012, respondent received the letter dated July 27, 2012 from the Regional Director, informing respondent that the docket of the case was forwarded to the Collection Division of Revenue Region No. 6.

On August 31, 2012, petitioner filed his *Answer*, interposing the following Special and Affirmative Defenses, to wit: (1) the subject assessment has become final and executory; hence, not appealable to the Court in Division; (2) procedural due process has been complied with in the issuance of the assessment; and (3) respondent has the burden of showing the incorrectness of the subject assessment.

The case was set for pre-trial conference on September 27, 2012. As agreed upon by both counsels, the parties filed their *Joint Stipulation of Facts and Issues* on October 19, 2012, and a *Pre-Trial Order* was subsequently issued on November 16, 2012.

Trial proceeded wherein both parties presented their respective evidence. Upon termination thereof, the Court in Division required the parties to file their respective memorandum within thirty (30) days from notice in the Resolution dated August 26, 2014.

Respondent filed its *Memorandum* on September 29, 2014, while petitioner's *Memorandum* was filed on October 28, 2014. Thus, on November 3, 2014, the Court in Division promulgated a resolution submitting the case for decision.

In the assailed Decision,[4] respondent's *Petition for Review* was partially granted, thereby ordering the payment of deficiency income tax for taxable year ended Decision 31, 2006 in the reduced amount of ₱41,656,670.93, inclusive of the 25% surcharge, plus deficiency and delinquency interests.

Petitioner and respondent filed their respective motions for partial reconsideration of the said Decision on November 5, 2015[5] and November 4, 2015[6], respectively.

On December 22, 2015, the Court in Division rendered the assailed Amended Decision,[7] denying petitioner's motion for partial reconsideration, while granting that of respondent; thereby modifying the assailed Decision to the effect of granting respondent's *Petition for Review*, and cancelling and withdrawing the FLD and FAN No. 32-06-IT-0071 dated April 14, 2010 issued against respondent.

Thereafter, on January 27, 2016, petitioner filed a *Motion For Extension of Time to File Petition for Review*,[8] praying that he be granted an extension of fifteen (15) days from January 27, 2016 or until February 11, 2016, within which to file his Petition for Review. The Court *En Banc* granted petitioner **a final and non-extendible** period of fifteen (15) days from January 27, 2016 or until February 11, 2016, within which to file the said Petition for Review.[9]

On February 11, 2016, petitioner filed the instant *Petition for Review*. Subsequently, in the Resolution dated February 24, 2016,[10] the Court *En Banc* ordered respondent to file its *Comment* to the instant *Petition for Review* ten (10) days from receipt thereof.

On March 10, 2016, respondent filed its *Comment*.[11]

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[4] EB Docket, pp. 18 to 66; Division Docket (CTA Case No. 8516) – Vol. 3, pp. 1212 to 1260.
[5] Division Docket (CTA Case No. 8516) – Vol. 3, pp. 1286 to 1291.
[6] Division Docket (CTA Case No. 8516) – Vol. 3, pp. 1268 to 1284.
[7] EB Docket, pp. 72 to 78; Division Docket (CTA Case No. 8516) – Vol. 3, pp. 1311 to 1317.
[8] EB Docket, pp. 1 to 2.
[9] EB Docket, p. 3.
[10] EB Docket, pp. 80 to 81.
[11] EB Docket, pp. 82 to 94.

In the Resolution dated April 1, 2016,[12] the Court *En Banc* gave due course to the instant Petition for Review, and required the parties to submit their respective memorandum.

Respondent filed its Memorandum on May 20, 2016;[13] while petitioner filed his Memorandum on May 26, 2016.[14]

On June 15, 2016, this case was deemed submitted for decision.[15]

Hence, this Decision.

THE ISSUE

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

> "WHETHER OR NOT NEXT MOBILE, INC. WAS DENIED DUE PROCESS IN THE ISSUANCE OF THE DEFICIENCY TAX ASSESSMENT FOR TAXABLE YEAR 2006."[16]

Petitioner's arguments:

Petitioner argues that a perusal of the records show that there was compliance with the mandate of the law.

He submits that respondent's failure to file a reply to the PAN shall not be deemed as deprivation of its right to procedural due process. Petitioner points out that on March 25, 2010, the PAN was mailed at the respondent's registered business address and after the lapse of sufficient period of time therefrom, the FAN was issued on April 14, 2010; and thus, petitioner did not totally disregard respondent's right to respond to the PAN as it waited for the lapse of twenty (20) days before it issued the FAN. In fact, according to petitioner, respondent was not denied due process and no prejudice was inflicted against it because of the protest against the FAN which

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[12] EB Docket, pp. 97 to 98.
[13] EB Docket, pp. 101 to 118.
[14] EB Docket, pp. 120 to 130.
[15] EB Docket, pp. 133 to 134.
[16] EB Docket, p. 124.

was timely filed on May 14, 2010. In this connection, petitioner invokes the ruling in the case of *International Exchange Bank vs. Commissioner of Internal Revenue*, 520 SCRA 688.

Furthermore, petitioner points out that respondent's representative met with the revenue officers of the BIR after the issuance of the *Notice of Informal Conference*; and that respondent was afforded at this point the opportunity to present its side regarding the assessment. According to petitioner, anent the assessment for Income Tax, records show that respondent was duly issued with a copy of the *Revised Post Reporting Notice* dated July 29, 2009; and thereafter, on August 18, 2009, respondent's representative went to the BIR to discuss and refute the proposed deficiency tax assessment as contained in the said *Revised Post Reporting Notice.*

Finally, petitioner claims that the cases of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[17] and *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*[18] find no application in the instant case.

Respondent's counter-arguments:

On the other hand, respondent counter-argues that the Court in Division correctly cancelled the deficiency income tax assessment for calendar year 2006, for being void due to petitioner's failure to accord respondent due process. According to respondent, the reply to the PAN is an indispensable due process requirement provided in Section 228 of the Tax Code and Revenue Regulations (RR) No. 12-99.

Furthermore, respondent is of the view that contrary to petitioner's claim, the informal conference and its protest of the FAN on May 14, 2010 did not cure respondent's violation of due process; and that even assuming that a reply to the PAN may be dispensed with, petitioner repeatedly disregarded its right to due process throughout the assessment process.

Lastly, respondent points out that even assuming that the violation of its right to due process may be disregarded, petitioner's issuance of the deficiency income tax assessment for calendar year

[17] G.R. No. 185371, December 8, 2010.
[18] G.R. No. 172598, December 21, 2007.

2006 was still erroneous because respondent incurred a net operating loss of ₱504,271,519.00 in the same year.

THE COURT *EN BANC*'S RULING

The instant Petition for Review must fail.

Section 228 of the NIRC of 1997 provides as follows:

> "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: xxx
>
> xxx xxx xxx
>
> The taxpayer 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. xxx.
>
> xxx xxx xxx." *(Emphasis supplied)*

The *"implementing rules and regulations"* referred to in the foregoing provision is embodied in RR No. 12-99,[19] which lays down, under Section 3 thereof, the due process requirement in the issuance of a deficiency tax assessment, to wit:

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[19] SUBJECT: Implementing the Provision of the National Internal Revenue Code of 1997 Governing the Rules of 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.

> "SECTION 3. ***Due Process Requirement in the Issuance of Deficiency Tax Assessment.—***
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> 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 (see illustration in ANNEX A hereof.) **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 caused to be issued by the said Office**, calling payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> xxx xxx xxx." *(Emphases supplied)*

Based on the foregoing, after the issuance of the PAN, the Commissioner of Internal Revenue or his duly authorized representative is duty bound to wait for the expiration of fifteen (15) days from the date of receipt thereof. If during the said period, the taxpayer failed to respond to the PAN, it is only then that the Commissioner of Internal Revenue or his duly authorized representative can consider the taxpayer in default, and correspondingly cause the issuance of a formal letter of demand and assessment notice, which shall be subsequently served to the said taxpayer. Such a process or procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment.

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 citizens 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 in accordance with the prescribed procedure.**[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</u> with the requirements laid down by law and its own rules is a denial of the taxpayer's right to due process.**[22]

In this case, We agree with the Court in Division's finding that there was a violation of respondent's right to due process, to wit:

> "In the present case, the PAN was issued on March 25, 2010 and received by *[respondent]* on April 6, 2010. However, even before filing the protest to the PAN, *[respondent]* received the FAN dated April 14, 2015 on April 15, 2010. Therefore, *[petitioner]* issued and mailed the FAN before considering the protest to the previously-issued PAN, depriving *[respondent]* of its right to due process."[23]

Furthermore, petitioner even impliedly admitted, in his Memorandum, that he did, in fact, fail to strictly comply with the due process requirements under RR No. 12-99, to wit:

> "It is respectfully submitted, however, that the respondent's failure to file a reply to the PAN shall not be deemed as deprivation of its right to procedural due process. **On March 25, 2010, the PAN was mailed at the respondent's registered business address and after the lapse of sufficient period of time therefrom, the FAN was issued on 14 April 2010. Clearly, petitioner did not totally disregard respondent's right to respond to the PAN as it waited for the lapse of**

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[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.

[23] Amended Decision dated December 22, 2015, EB Docket. p. 77.

> **twenty (20) days before it issued the FAN.** In fact, herein respondent was not denied due process and no prejudice was inflicted against it because of the protest against the FAN which was timely filed on 14 May 2010."[24] *(Emphasis supplied)*

Based on the foregoing, it is apparent that petitioner did not observe the procedure laid down in the aforequoted Section 3.1.2 of RR No. 12-99. This is so because petitioner reckoned the time of the issuance of the FAN on the date of issuance of PAN. As a corollary, petitioner should have instead waited for respondent's failure to respond to the PAN within fifteen (15) days after the *"date of receipt"* thereof before it caused the issuance of the FAN, as required by the said provision (not on the date of issuance thereof), since it is only after that time wherein respondent shall be considered in default. Obviously, in this case, petitioner rushed into the issuance of the said FAN, without waiting for the expiration of the said period, and without giving an opportunity to respondent to respond to the PAN. It is clear therefore that petitioner indeed violated respondent's right to due process. Consequently, the subject FAN is a nullity.

Lastly, the Court *En Banc* disagrees with petitioner's contention that the cases of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*[25] (*Metro Star* case) and *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*[26] (*Pilipinas Shell* case) find no application in the instant case. Both cases stress the importance of strictly observing the due process requirement under RR No. 12-99.

In the *Pilipinas Shell* case, the Supreme Court held:

> "**Fourth Issue: Non-compliance with statutory and procedural due process**
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> Finally, PSPC avers that its statutory and procedural right to due process was violated by respondent in the issuance of the assessment. PSPC claims respondent violated RR 12-99 since no pre-assessment notice was issued to PSPC before the November 15, 1999 assessment. Moreover, PSPC argues that the November 15, 1999 assessment effectively deprived it of its statutory right to protest the

[24] EB Docket. p. 127.
[25] G.R. No. 185371, December 8, 2010.
[26] G.R. No. 172598, December 21, 2007.

pre-assessment within 30 days from receipt of the disputed assessment letter.

While this has likewise been mooted by our discussion above, it would not be amiss to state that PSPC's rights to substantive and procedural due process have indeed been violated. **The facts show that PSPC was not accorded due process before the assessment is levied on it.** The Center required PSPC to submit certain sales documents relative to supposed delivery of IFOs by PSPC to the TCC transferors. PSPC contends that it could not submit these documents as the transfer of the subject TCCs did not require that it be a supplier of materials and/or component supplies to the transferors in a letter dated October 29, 1999 which was received by the Center on November 3, 1999. On the same day, the Center informed PSPC of the cancellation of the subject TCCs and the TDM covering the application of the TCCs to PSPC's excise tax liabilities. The objections of PSPC were brushed aside by the Center and the assessment was issued by respondent on November 15, 1999, **without following the statutory and procedural requirements clearly provided under the NIRC and applicable regulations.**

What is applicable is RR 12-99, which superseded RR 12-85, pursuant to Sec. 244 in relation to Sec. 245 of the NIRC implementing Secs. 6, 7, 204, 228, 247, 248, and 249 on the assessment of national internal revenue taxes, fees, and charges. **The procedures delineated in** the said statutory provisos and **RR 12-99 were not followed by respondent, depriving PSPC of due process in contesting the formal assessment levied against it. Respondent ignored RR 12-99** and did not issue PSPC a notice of informal conference and a preliminary assessment notice, as required. PSPC's November 4, 1999 motion for reconsideration of the purported Center findings and cancellation of the subject TCCs and the TDM was not even acted upon.

PSPC was merely informed that it is liable for the amount of excise taxes it declared in its excise tax returns for 1992 and 1994 to 1997 covered by the subject TCCs via the formal letter of demand and assessment notice. xxx.

In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. **While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment __before it was issued__.** Respondent must be more circumspect in the exercise of his functions, as this Court aptly held in *Roxas v. Court of Tax Appeals*:

> The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the 'hen that lays the golden egg.' And, in order to maintain the general public's trust and confidence in the Government this power must be justly and not treacherously." *(Emphases and underscoring supplied)*

Similarly, in the *Metro Star* case, the High Court ruled as follows:

> "From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities. The use of the word 'shall' in subsection 3.1.2 describes the mandatory nature of the service of a PAN. **The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process.** Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.
>
> xxx xxx xxx
>
> **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.** Hence in *Commissioner of Internal Revenue v. Algue, Inc.*, it was said –
>
> > Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
> >
> > xxx xxx xxx
> >
> > It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that is an arbitrary method of exaction by those in the seat of power.
> >
> > **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.** If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate x x x that the law has not been observed. (Emphasis supplied)
> >
> > *(Emphases supplied)*

Thus, considering that the instant case involves the failure of the BIR to strictly observe the due process requirement of RR No. 12-99, particularly under Section 3.1.2 thereof, the pronouncements in *Pilipinas Shell* and *Metro Star* cases must perforce be applied thereto.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. Accordingly, the Amended Decision dated December 22, 2015 of the Court in Division in CTA Case No. 8516, granting respondent's Petition for Review and cancelling the FLD and FAN No. 32-06-IT-0071 dated April 14, 2010, is **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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
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