REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SUMITOMO CORPORATION - MANILA BRANCH
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10412

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:

MAY 14 2024

2:53 p.m.

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DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review* [1] filed on November 25, 2020 by petitioner Sumitomo Corporation - Manila Branch (“**Petitioner**”), against respondent Commissioner of Internal Revenue (“**CIR**” or “**Respondent**”), seeking the cancellation of deficiency income tax and value-added tax (VAT) assessments against petitioner in the aggregate amount of ₱63,488,986.11.

THE PARTIES

Petitioner Sumitomo Corporation – Manila Branch is a corporation duly organized and existing under and by virtue of the laws of Japan and licensed to operate a branch office in the Philippines. [2] Its principal office address is located at 35/F Philamlife Tower, 8767 Paseo de Roxas, Makati City. [3] It is also

[1] Docket – Vol. I, pp. 7 to 30.
[2] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. III, p. 1045; Exhibit “P-1”, Docket – Vol. IV, pp. 1868 to 1874.
[3] Par. 1, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1045.

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registered with the Bureau of Internal Revenue (**BIR**) with Taxpayer Identification Number 000-145-521-00000.[4]

Respondent is the duly appointed Commissioner of Internal Revenue who holds office at the Bureau of Internal Revenue, National Office, Diliman, Quezon City, where he may be served with summons and other legal processes.[5]

THE FACTS

On February 9, 2015, respondent issued *Letter of Authority* (**LOA**) No. eLA201100087022 dated February 5, 2015 (**Original LOA**) designating Revenue Officers (**RO**) Josa Gomez, Felina Guimbao, and Group Supervisor (**GS**) Olivia Aviles of the Large Taxpayers (**LT**) Regular Audit Division 1 to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, including documentary stamp tax, and other miscellaneous taxes, for the fiscal year ended March 31, 2013.[6]

On September 8, 2017, petitioner received a copy of the *Preliminary Assessment Notice* (**PAN**), with *Details of Discrepancies*, dated September 8, 2017, finding petitioner liable for deficiency taxes in the total amount of ₱130,049,871.44, including interest, broken down as follows:[7]

KIND OF TAX	BASIC TAX	INTEREST	AMOUNT
Income Tax (**IT**)	35,024,878.41	29,516,856.43[8]	64,541,734.84
Value-added Tax (**VAT**)	29,624,568.19	26,280,644.33	55,905,212.52
Withholding Tax on Compensation (**WTC**)	1,496,802.62	1,336,050.12	2,832,852.74
Expanded Withholding Tax (**EWT**)	3,497,866.30	3,122,205.04[9]	6,620,071.34
Miscellaneous Tax (**MT**)-Others	-	-	150,000.00
		TOTAL	**₱130,049,871.44**

[4] Exhibit "P-2", Docket – Vol. IV, pp. 1879 to 1880.
[5] Par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1045.
[6] Par. 3, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1045; Exhibit "P-3", Docket – Vol. I, pp. 70 to 72; Exhibit "R-1", BIR Records – Folder 1 of 18 (Exhibit "R-9"), p. 1.
[7] Par. 4, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1046; Exhibit "P-4", Docket – Vol. I, pp. 73 to 81; Exhibit "R-4", BIR Records – Folder 1 of 18 (Exhibit "R-9"), pp. 835 to 843.
[8] The amount stated in par. 4, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1046, is ₱29,516,856, but the amount shown on Exhibit "P-4", Docket – Vol. I, p. 73, is actually ₱29,516,856.**43**.
[9] The amount stated in par. 4, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1046, is ₱122,205.04, but the amount shown on Exhibit "P-4", Docket – Vol. I, p. 74, is actually ₱**3,**122,205.04.

On September 22, 2017, petitioner filed a protest letter against the PAN (*Reply* to PAN or PAN Protest) dated September 22, 2017.[10]

On September 27, 2017, petitioner received a copy of the *Formal Letter of Demand* (**FLD**) with *Details of Discrepancies*, dated September 27, 2017, and the following *Assessment Notices* (**FANs**), also finding petitioner liable for deficiency taxes in the total amount of ₱130,049,871.44 as follows:[11]

KIND OF TAX	ASSESSMENT NO.	BASIC TAX	INTEREST	AMOUNT
IT	IT-116-LOA-00000011-13-17-578	35,024,878.41	29,516,856.43[12]	64,541,734.84
VAT	VT-116-LOA-00000011-13-17-579	29,624,568.19	26,280,644.33	55,905,212.52
WTC	WC-116-LOA-00000011-13-17-580	1,496,802.62	1,336,050.12	2,832,852.74
EWT	WE-116-LOA-00000011-13-17-581	3,497,866.30	3,122,205.04[13]	6,620,071.34
MT-Others	MC-116-LOA-00000011-13-17-582	-	-	150,000.00
			TOTAL	**130,049,871.44**

On October 27, 2017, or within thirty (30) days from receipt of the FLD/FANs, petitioner filed a protest letter (*Protest* or *Protest* to FLD/FANs) and requested for a reinvestigation of the BIR's findings.[14] On December 22, 2017, petitioner filed a letter of even date, submitting additional documents in support of its *Protest*.[15]

On December 17, 2019, respondent issued LOA No. eLA201700047469 dated November 28, 2019, designating RO Neriza Manuel and GS Junely Ivanhoe Fernandez to examine petitioner's books of accounts and other accounting records for the fiscal period ended March 31, 2013.[16]

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[10] Par. 5, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. I, pp. 8 and 475, respectively; Exhibit "P-5", Docket – Vol. I, pp. 82 to 119.

[11] Par. 5, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1046; Exhibits "P-6" to "P-6-E", Docket – Vol. I, pp. 120 to 133; Exhibit "R-5", BIR Records – Folder 1 of 18 (Exhibit "R-9"), pp. 969 to 982.

[12] The amount stated in par. 5, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1046, is ₱29,516,856, but the amount shown on Exhibits "P-6" and "P-6-A", Docket – Vol. I, pp. 120 and 129, respectively, is actually ₱29,516,856.**43**.

[13] The amount stated in par. 5, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1046, is ₱122,205.04, but the amount shown on Exhibits "P-6" and "P-6-D", Docket – Vol. I, pp. 121 and 132, respectively, is actually **₱3,**122,205.04.

[14] Par. 7, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. I, pp. 9 and 475, respectively; Exhibit "P-7", Docket – Vol. I, pp. 134 to 163.

[15] Exhibit "P-8", Docket – Vol. I, pp. 178 to 185.

[16] Par. 9, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. I, pp. 9 and 475, respectively; Exhibit "P-9", Docket – Vol. I, p. 186; Exhibit "R-6", BIR Records – Folder 1 of 18 (Exhibit "R-9"), p. 988.

On October 27, 2020,[17] petitioner received the *Final Decision on Disputed Assessment* (**FDDA**) with *Details of Discrepancies*, and the following *Assessment Notices*: (i) IT-116-LOA-00000355-FY3-13-19-0330, and (ii) VT-116-LOA-00000355-FY3-13-19-0331, all dated October 23, 2020, partially granting petitioner's *Protest to FLD/FANs* and reducing the deficiency tax assessments from ₱130,049,871.44 to ₱63,488,986.11, and only for IT and VAT as follows:[18]

KIND OF TAX	ASSESSMENT NO.	BASIC TAX	INTEREST	AMOUNT
IT	Assessment No. IT-116-LOA-00000355-FY3-13-19-0330	6,492,941.10	7,936,686.57	14,429,627.67
VAT	Assessment No. VT-116-LOA-00000355-FY3-13-19-0331	21,643,137.00	27,416,221.44	49,059,358.44[19]
			TOTAL	**63,488,986.11**

PROCEEDINGS BEFORE THE COURT

On November 25, 2020, petitioner filed the present *Petition for Review*.[20] The case was initially raffled to this Court's Third Division.

On February 15, 2021, respondent posted his *Answer*.[21]

On February 24, 2021, the Court issued a *Resolution*,[22] referring this case for mediation to the Philippine Mediation Center-Court of Tax Appeals (**PMC-CTA**) on April 5, 2021. On May 27, 2021, the PMC-CTA issued the *No Agreement to Mediate*,[23] stating that the parties decided not to have this case mediated.

On March 5, 2021, petitioner filed an *Urgent Motion to Lift Warrant of Distraint and/or Levy and to Suspend Collection of Taxes*[24] to which respondent filed his *Opposition (Urgent Motion to Suspend Collection of Taxes)* on June 16, 2021.[25]

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[17] Exhibit "P-10", Docket – Vol. I, p. 188; Exhibit "R-8", BIR Records – Folder 1 of 18 (Exhibit "R-9"), pp. 1060 to 1079; Exhibit "P-38" (Q&A No. 31), Docket – Vol. III, p. 1095; Transcript of Stenographic Notes at the hearing held on February 16, 2023, p. 9.
[18] Par. 6, Summary of Admitted Facts, JSFI, Docket – Vol. III, pp. 1046 to 1047; Exhibits "P-10" to "P-10-B", Docket – Vol. I, pp. 187 to 197; Exhibit "R-8", BIR Records – Folder 1 of 18 (Exhibit "R-9"), pp. 1060 to 1079.
[19] There is a rounding off difference as the amount stated in par. 6, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 1047 is ₱49,059,358.**44**, but the amount shown on Exhibits "P-10" and "P-10-B", Docket – Vol. I, pp. 188 and 197, respectively, is actually ₱49,059,358.**43**.
[20] Docket – Vol. I, pp. 7 to 30.
[21] Docket – Vol. I, pp. 475 to 482.
[22] Docket – Vol. II, pp. 486 to 487.
[23] Docket – Vol. II, p. 748.
[24] Docket – Vol. II, pp. 488 to 526.
[25] Docket – Vol. II, pp. 761 to 772.

On October 18, 2021, the Court granted petitioner's *Urgent Motion to Suspend Collection Taxes* and dispensed with the required cash deposit or bond.[26]

On November 26, 2021, respondent posted a *Motion for Reconsideration (Re: Resolution dated 18 October 2021)*,[27] to which petitioner filed its *Comment/Opposition* on March 7, 2022.[28] In the Resolution dated March 29, 2022, the Court denied respondent's *Motion for Reconsideration* for lack of merit.[29]

Petitioner's *Pre-Trial Brief* was filed on July 30, 2021,[30] while respondent's *Pre-Trial Brief* was submitted on June 6, 2022.[31] The Pre-Trial Conference initially set for September 2, 2021,[32] was reset to and held on June 9, 2022.[33]

On July 7, 2022, the parties submitted their *Joint Stipulation of Facts and Issues*,[34] which the Court admitted and approved on July 19, 2022.[35] The Pre-Trial Order dated July 19, 2022 was then issued.[36]

In the Order dated July 11, 2022,[37] the present case was transferred to the Second Division of this Court.

On July 29, 2022, respondent transmitted the *BIR Records* of this case, consisting of eighteen (18) folders.[38]

The trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimony of its lone witness, Mr. Tomoki Takahashi,[39] its General Manager effective September 1, 2022.

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[26] Docket – Vol. II, pp. 985 to 997.
[27] Docket – Vol. II, pp. 998 to 1006.
[28] Docket – Vol. II, pp. 1011 to 1017.
[29] Docket – Vol. II, pp. 1025 to 1029.
[30] Docket – Vol. II, pp. 962 to 976.
[31] Docket – Vol. II, pp. 1030 to 1034.
[32] Resolution dated June 9, 2021, Docket – Vol. II, pp. 754 to 755.
[33] Resolution dated March 15, 2022, Docket – Vol. II, pp. 1022 to 1023; Minutes of hearing held on, and Order dated, June 9, 2022, Docket – Vol. II, pp. 1037 to 1039.
[34] Docket – Vol. III, pp. 1045 to 1051.
[35] Docket – Vol. III, p. 1054.
[36] Docket – Vol. III, pp. 1056 to 1063.
[37] Docket – Vol. III, p. 1052.
[38] *Compliance* dated July 28, 2022, Docket – Vol. III, pp. 1078 to 1080.
[39] Exhibit "P-38", Docket – Vol. III, pp. 1088 to 1112; Minutes of the hearing held on, and Order dated, October 13, 2022, Docket – Vol. IV, pp. 1834 to 1835.

On November 3, 2022, petitioner filed its Formal Offer of Evidence, to which respondent filed his *Comment* on November 10, 2022. On December 15, 2022, the Court admitted petitioner's offered exhibits, except for Exhibit "P-13," for failing to present the original for comparison.

Respondent presented the testimony of RO Neriza M. Manuel.[40]

On March 2, 2023, respondent filed his *Formal Offer of Evidence*,[41] to which petitioner filed its *Comment* on March 8, 2023.[42] On March 24, 2023,[43] the Court admitted all of respondent's offered exhibits.

The *Memorandum for Petitioner* was filed on April 27, 2023,[44] while respondent submitted a *Manifestation* on May 4, 2023,[45] adopting his *Answer* filed on February 15, 2021, as his *Memorandum*.

This case was considered submitted for decision on May 18, 2023.[46]

Hence, this *Decision*.

THE ISSUE

The parties stipulated the following issue for this Court's resolution, *viz.*:[47]

> "Whether or not Petitioner is liable to pay the deficiency income tax and value-added tax for the fiscal year ended 31 March 2013 in the aggregate amount of ₱63,488,986.11, inclusive of increments."[48]

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[40] Exhibit "R-10", Docket – Vol. III, pp. 1070 to 1075; Minutes of the hearing held on, and Order dated, February 16, 2023, Docket – Vol. IV, pp. 2302 to 2303.
[41] Docket – Vol. IV, pp. 2304 to 2310.
[42] Docket – Vol. IV, pp. 2312 to 2313.
[43] Docket – Vol. IV, pp. 2318 to 2319.
[44] Docket – Vol. IV, pp. 2320 to 2356.
[45] Docket – Vol. IV, pp. 2360 to 2362.
[46] Resolution dated May 18, 2023, Docket – Vol. IV, p. 2364.
[47] *JSFI*, Issue/s Stipulated by the Parties, *supra* at note 34.
[48] Stipulation of Issues, JSFI, Docket – Vol. III, p. 1047.

Petitioner's Arguments

Petitioner claims that the deficiency assessments should be declared void for having been issued by respondent in violation of its constitutional and administrative right to due process due to the following: (1) the FAN/FLD and *Assessment Notices* failed to indicate a definite amount of tax liabilities and clear and categorical demand for payment as required under Section 228 of the Tax Code, as amended, and Revenue Regulations (**RR**) No. 12-1999, as amended; (2) the FDDA does not indicate a valid due date for payment; (3) the FAN/FLD does not explain the particular facts used as the basis for rejecting the PAN Protest; and (4) ROs Aurora S. Pelayo and Neriza M. Manuel were not authorized to investigate petitioner's books of accounts and accounting records for the fiscal year ended March 31, 2013, under the Original LOA. Petitioner further claims that the assessments are invalid for lack of factual and/or legal bases.

Respondent's Arguments

Respondent contends that petitioner was accorded due process and a real opportunity to refute the audit assessment, that the assessment has bases both in fact and law, that petitioner is liable for deficiency IT and VAT, and that petitioner cannot raise issues for the first time on appeal.

THE COURT'S RULING

The instant *Petition for Review* is meritorious.

The Court has jurisdiction over the instant case.

Section 7(a)(1) of Republic Act ("**RA**") No. 1125,[49] as amended by RA No. 9282,[50] confers jurisdiction to this Court relative to decisions of respondent, to wit:

SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:

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[49] An Act Creating the Court of Tax Appeals, June 16, 1954.
[50] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the [CIR] in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; ... *[Emphasis supplied]*

Moreover, Section 11 of RA No. 1125, as amended by RA No. 9282, provides the period for filing an appeal before the CTA, *viz.*:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any** **<u>party adversely affected</u> by a decision, ruling, or inaction of the [CIR]...**may file an **appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. ...** [*Emphasis supplied*]

The above provisions are likewise provided under Section 3(a)(1), Rule 4,[51] and Section 3(a), Rule 8[52] of the RRCTA.

Based on the foregoing, this Court has exclusive jurisdiction to review by appeal a decision, ruling, or inaction of respondent. The appeal must be filed by the party adversely affected within thirty (30) days from receipt of such decision or ruling or after the expiration of the period fixed by law for action.

In the present case, petitioner received the FDDA on October 27, 2020. Thus, it had 30 days from that date, or until November 26, 2020, to file a Petition for Review. Petitioner *timely* did so on **November 25, 2020**.

Accordingly, this Court has validly obtained jurisdiction over the instant case.

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[51] *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or <u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; ...

[52] Sec. 3. Who may appeal; period to file petition. — (a) A party adversely affected by a decision, ruling, or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, ...may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. ...

The FLD/FANs are void due to respondent's violation of petitioner's right to administrative due process.

Petitioner claims that respondent violated its constitutional and administrative right to due process based on the following grounds:

> (1) the FAN/FLD and *Assessment Notices* failed to indicate a definite amount of tax liabilities and clear and categorical demand for payment as required under Section 228 of the Tax Code, as amended, and Revenue Regulations (**RR**) No. 12-1999, as amended;
>
> (2) the FDDA does not indicate a valid due date for payment;
>
> (3) the FAN/FLD does not explain the particular facts used as the basis for rejecting the PAN Protest; and
>
> (4) ROs Aurora S. Pelayo and Neriza M. Manuel were not authorized to investigate petitioner's books of accounts and accounting records for the fiscal year ended March 31, 2013 under the Original LOA.

The Court shall determine first the *third* ground: that *the FAN/FLD does not explain the particular facts used as basis for rejecting the PAN Protest.*

Petitioner contends that it filed its PAN Protest on 22 September 2017, raising legal and factual arguments. The BIR ignored the explanations and documents contained in its PAN Protest and proceeded to issue the FAN/FLD and the Assessment Notices, containing the same findings and figures as in the PAN, without addressing any of the legal and factual issues raised by Petitioner in its PAN Protest.[53] It further contends that based on the Supreme Court's decision in the *Avon* case, the BIR's issuance of the FAN/FLD and the assessment notices, which merely reiterates the findings as contained in the PAN without addressing the issues and explanations raised in Petitioner's PAN protest, makes the FAN/FLD and the assessment notices null and void.

On the other hand, respondent counters that petitioner was always accorded due process from the time the required documents for audit were communicated to it until the FLD was issued. Petitioner was constantly apprised of the audit findings, which led to the deficiency assessment. Moreover, respondent

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[53] Memorandum for Petitioner, pars. 71-79, Docket – Vol. IV, pp. 2338-2342.

claims that the deficiency tax assessment against petitioner has bases both in fact and law.

We find merit in petitioner's contention.

Section 228 of the NIRC of 1997 reads, in part, 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: ...
>
> ... ...
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be <u>void.</u>** [*Emphasis supplied*]

To implement Section 228, Section 3 of RR No. 12-1999,[54] as amended by RR No. 18-2013,[55] specifies the *due process requirement* in the issuance of a deficiency tax assessment as follows:

> SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. –***
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> 3.1.1 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).
>
> ... ...
>
> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes <u>shall state the facts, the law</u>, rules and**

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

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

> **regulations, or jurisprudence <u>on which the assessment is based, *otherwise, the assessment shall be void*</u>** (see illustration in ANNEX 'B' hereof).
>
> ... ...
>
> 3.1.5 *Final Decision on a Disputed Assessment (FDDA).* – The decision of the Commissioner or his duly authorized representative <u>shall state the (i) facts, the applicable law</u>, rules and regulations, or jurisprudence on which such decision is based, <u>*otherwise, the decision shall be void*</u> (see illustration in ANNEX 'C' hereof), and (ii) that the same is his final decision. [*Emphasis supplied*]

Based on the foregoing, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made. RR No. 12-99, as amended by RR No. 18-2013, prescribes that the FLD/FAN and FDDA must state, among other things, the facts and the law on which the assessment is based as part of due process in the issuance of tax assessments; otherwise, the FLD/FAN and/or FDDA shall be void.

The requirement that the taxpayer be informed of the factual and legal bases of the assessment is **mandatory**. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest.[56] The law imposes a substantive, not merely a formal requirement.[57]

In the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*[58] ("***Avon case***") cited by petitioner, the Supreme Court emphasized that the taxpayer must not only be given an opportunity to present its defenses and evidence but also that the Commissioner and his subordinates must give *due consideration* to these, *viz.*:

> **<u>Tax assessments issued in violation of the due process rights of a taxpayer are null and void.</u> While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, <u>but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process</u>.**

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[56] *Commissioner of Internal Revenue v. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R. No. 232663, May 3, 2021.
[57] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021.
[58] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. **Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.**

... ...

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

... ...

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

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

> ... ...
>
> The second to the sixth requirements refer to the party's "inviolable rights applicable at the deliberative stage." **The decision-maker must consider the totality of the evidence presented as he or she decides the case.**
>
> ... ...
>
> **Administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it demands** that the party's defenses be considered by the administrative body in making its conclusions, and **that the party be sufficiently informed of the reasons for its conclusions.**
>
> ... ...
>
> The facts demonstrate that Avon was deprived of due process. **It was not fully apprised of the** legal and **factual bases of the assessments issued against it. The Details of Discrepancy attached to** the Preliminary Assessment Notice, as well as **the Formal Letter of Demand with Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.
>
> ... ...
>
> It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, **when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusion are based, and those facts must appear in the record.**
>
> ... ...
>
> **The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notices,** and Collection Letter **null and void, and of no force and effect.** [*Emphasis supplied; citations omitted*]

In the instant case, respondent issued the PAN dated September 8, 2017, which petitioner received on the same day,[59] finding petitioner liable for deficiency IT, VAT, WTC, and

[59] Exhibit "P-4", Docket – Vol. I, pp. 73 to 81; Exhibit "R-4", BIR Records – Folder 1 of 18 (Exhibit "R-9"), pp. 835 to 843.

EWT assessments in the total amount of ₱130,049,871.44, including interest. In its *Reply* to PAN or PAN Protest dated September 22, 2017,[60] petitioner raised legal and factual arguments, citing pertinent provisions of the law, jurisprudence, and revenue regulations, and even submitted supporting documents.[61] Barely five (5) days later, or on September 27, 2017,[62] it received a copy of the FLD/FANs with *Details of Discrepancies* which merely reiterated the findings and deficiency tax assessments of ₱130,049,871.44 in the PAN with *Details of Discrepancies.*

Put simply, a side-by-side comparison of the figures and findings in both the PAN and FLD/FANs, alongside their respective Details of Discrepancies, shows that they are *identical.*

While the BIR stated in the *Details of Discrepancies* attached to the FLD/FANs that petitioner's "arguments and documents submitted to refute the assessments per PAN are not sufficient to warrant a reversal and/or modification thereof,[63] such a general statement did not sufficiently inform petitioner of the *specific* reasons for the BIR conclusions; thus, petitioner was not given a fair and reasonable opportunity to explain or defend itself and prepare an intelligent protest against the FLD/FANs.

As established in the *Avon case,* the CIR is not obliged to accept the taxpayer's explanation, like that of the petitioner. Nonetheless, it is imperative that he give the *particular facts* upon which his conclusion is based, and these facts must appear in the record.[64]

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[60] Exhibit "P-5", Docket – Vol. I, pp. 82 to 119.
[61] BIR Records – Folder 2 of 18 (Exhibit "R-9-a").
[62] Exhibits "P-6" to "P-6-E", Docket – Vol. I, pp. 120 to 133; Exhibit "R-5", BIR Records – Folder 1 of 18 (Exhibit "R-9"), pp. 969 to 982.
[63] Exhibit "P-6", Docket – Vol. I, p. 123; Exhibit "R-5", BIR Records – Folder 1 of 18 (Exhibit "R-9"), p. 965.

> "Perusal of your reply to the Preliminary Assessment Notice (PAN), which was received by the Office of the Assistant Commissioner, Large Taxpayers Service on September 22, 2017, disclosed that the arguments and documents submitted to refute the assessments per PAN are not sufficient to warrant a reversal and/or modification thereof. Moreover, Sec. 3 of Revenue Regulations (RR) No. 18-2013 provides that –
> xxx xxx xxx
> Based on the foregoing, the total assessment per PAN is hereby reiterated in the attached Formal Letter of Demand (FLD), details of which are as follows:
> xxx xxx xxx"

[64] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021, citing *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.[65] Respondent's failure to give due consideration to petitioner's defenses, explanations, and supporting documents when he concluded in the FLD/FANs that petitioner had deficiency tax liabilities could hardly be considered substantial compliance with the due process requirement.

In the more recent case of *Commissioner of Internal Revenue v. Next Mobile, Inc. (Next Mobile* case*)*,[66] the Supreme Court *reiterated* its ruling in the *Avon* and *Ang Tibay* cases that "not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts, ***but the tribunal must consider the evidence presented.***"

Indeed, the right of a taxpayer to protest the PAN carries with it the correlative duty on the part of the BIR to consider the response thereto, and the issuance of the FAN without even hearing the side of the taxpayer is anathema to the cardinal principles of due process. Right to due process is the opportunity to be heard. However, such an opportunity would be wasted if the reply or protest to assessments submitted to the BIR is not considered. It is an empty and meaningless exercise if the BIR does not even consider the same.

Respondent's subsequent issuance of the FDDA, which partially granted petitioner's *Protest to FLD/FANs* by reducing the deficiency tax assessments from ₱130,049,871.44 to ₱63,488,986.11 for IT and VAT, ***does not denigrate the fact that it was deprived of statutory and procedural due process.***[67] As ruled by the Supreme Court in the *Next Mobile* case:

> ..., <u>that Next Mobile was able to timely file a protest to the FAN is of no moment</u>. '**Such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued**.' It is a settled rule that tax assessment issued in violation of the right of the taxpayer to due process are null and void and bears no fruit. [*Emphasis supplied*]

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[65] *Id.*
[66] G. R. No. 232055 (Notice), April 27, 2022.
[67] *Id.*

Respondent's failure to uphold petitioner's fundamental right to due process under Section 228 of the NIRC of 1997, as amended and implemented by RR No. 12-1999 and RR No. 18-2013, renders the subject FLD/FANs null and void.

The period to assess petitioner of deficiency taxes has already prescribed.

Furthermore, it is worth noting that the period for assessing petitioner's deficiency taxes for the fiscal year ended March 31, 2013, has prescribed.

The BIR's power to assess and collect taxes is limited by Section 203 of the NIRC of 1997, as amended, *viz.*:

> **SEC. 203.** ***Period of Limitation Upon Assessment and Collection.*** - **Except** as provided in **Section 222,** internal revenue taxes shall be assessed **within three (3) years** after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That **in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed**. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. [*Emphasis supplied*]

Accordingly, internal revenue taxes shall be assessed within *three (3) years*, counting from the last day prescribed by law for filing the return or from the day the return was filed, whichever is later.

By exception, under Section 222 of the NIRC of 1997, as amended, the assessment period may exceed the original 3-year prescriptive period. Specifically, Section 222(a) establishes the ten (10)-year prescriptive period for cases involving a *false or fraudulent return with intent to evade tax* or *failure to file a return*, while Section 222(b) authorizes the extension of the three years upon the execution of a *valid waiver, viz.:*

> **SEC. 222.** ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes.-***
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such

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tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, ...

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have **agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon**. ... [*Emphasis supplied*]

Pursuant to Section 203, the last days to assess petitioner's deficiency income tax and value-added tax for the fiscal year ended March 31, 2013, were as follows:

Return	**Actual date of filing**	**Due Date/Actual Date of Filing**	**Last day to assess/End of the 3-year prescriptive period**
Income Tax	March 28, 2014 (Amended ITR) [68]	July 15, 2013	March 28, 2017
Value-added Tax	April 19, 2013[69]	April 25, 2013 (for the 4th quarter of the FY ending March 31, 2013)	April 25, 2016

In fine, the last day for the CIR to issue an assessment on petitioner's income tax was *March 28, 2017,* and the latest date to assess petitioner of VAT for the four quarters of the fiscal year ending March 31, 2003, was *April 25, 2016*. Clearly, the FLD/FANs dated **September 27, 2017**, were issued beyond the 3-year prescriptive period.

The records do not indicate that the 10-year prescriptive period under Section 222(a) applies. However, a perusal of respondent's evidence reveals that five (5) waivers of the defense of prescription had been formally offered and admitted by the Court.[70] The details of these waivers follow:

[68] Exhibit "P-25", Docket – Vol. IV, p. 2092; BIR Records, pp. 737-739.
[69] Exhibit "P-15-c", Docket – Vol. IV, p. 2028.
[70] *Supra* at note 43.

	Date of Execution	Date of Expiry	Representative of petitioner
First Waiver[71]	March 16, 2015	December 31, 2015	Hiroshi Shiraishi
Second Waiver[72]	October 22, 2015	June 30, 2016	Hiroshi Shiraishi
Third Waiver[73]	May 17, 2016	December 31, 2016	Hiroshi Shiraishi
Fourth Waiver[74]	October 19, 2016	June 30, 2017	Sosuke Ishida
Fifth Waiver[75]	May 24, 2017	September 30, 2017	Sosuke Ishida

Accordingly, the effectivity of the FLD/FANs issued in the present case depends on whether the waivers validly extended the 3-year period to assess. If the waivers are invalid, the subject FLD/FANs would be void due to prescription.

To implement Section 222(b), the BIR issued RMO No. 20-90 on April 4, 1990, which provides the guidelines for the proper execution of the *Waiver of Statute of Limitations* under the NIRC. It holds that a valid waiver of the statute of limitations must be: (a) in writing; (b) agreed to by both the Commissioner and the taxpayer; (c) issued before the expiration of the ordinary prescriptive periods for assessment and collection; and (d) for a definite period beyond the ordinary prescriptive period for assessment and collection.[76]

Parenthetically, Revenue Delegation Authority Order (RDAO) No. 05-01, dated August 2, 2001, authorized subordinate Bureau officials to sign the waivers and introduced a new waiver form. It also provided the following procedures for the proper execution of a valid waiver, to wit:

1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after _____ 19 ____," which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled-up.

2. **The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.**

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[71] Exhibit "R-3", BIR Records, p. 10.
[72] Exhibit "R-3-a", BIR Records, p. 427.
[73] Exhibit "R-3-b", BIR Records, p. 432.
[74] Exhibit "R-3-c", BIR Records, p. 436.
[75] Exhibit "R-3-d", BIR Records, p. 486.
[76] *La Flor Dela Isabela, Inc. v. CIR*, G.R. 202105, April 28, 2021, citing *BPI v. CIR*, G.R. No. 139736, October 17, 2005.

> 3. The waiver should be duly notarized.
>
> 4. The CIR, or the revenue official authorized by him, must sign the waiver, thereby indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, has been duly notarized, and was executed by the taxpayer or his duly authorized representative.
>
> 5. Both the date of execution by the taxpayer and the date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.
>
> 6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy, to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.[77] [*Emphasis supplied*]

These requirements are mandatory and must be strictly followed.[78] The Supreme Court did not hesitate to strike down and invalidate waivers that failed to strictly comply with RMO No. 20-90 and RDAO No. 05-01.

In the case of *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.* (*STI* case),[79] the Supreme Court held that the periods for the CIR to assess or collect the deficiency income tax, EWT and VAT were not extended due to the defects in the waivers. One of the defects was that the signatory to the waivers had no notarized written authority from the corporation's board of directors, viz.:

> Tested against the requirements of RMO 20-90 and relevant jurisprudence, the Court cannot but agree with the CTA's finding that the waivers subject of this case suffer from the following defects:

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[77] *La Flor Dela Isabela, Inc. v. CIR*, G.R. No. 202105, April 28, 2021 citing *CIR v. Systems Technology Institute, Inc.*, G.R. No. 220835, July 26, 2017.
[78] *Id.*
[79] G.R. No. 220835, July 26, 2017.

> 1. At the time when the first waiver took effect, on June 2, 2006, the period for the CIR to assess STI for deficiency EWT and deficiency VAT for fiscal year ending March 31, 2003, had already prescribed. ...
>
> 2. **STI's signatory to the three waivers had no notarized written authority from the corporation's board of directors**. It bears to emphasize that RDAO No. 05-01 mandates the authorized revenue official to ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same; **and in case the authority is delegated by the taxpayer to a representative, as in this case, the concerned revenue official shall see to it that such delegation is in writing and duly notarized**. <u>The waiver should not be accepted by the concerned BIR office and official unless notarized.</u>
>
> 3. Similar to Standard Chartered Bank, the waivers in this case did not specify the kind of tax and the amount of tax due. ...
>
> Verily, considering the foregoing defects in the waivers executed by STI, the periods for the CIR to assess or collect the alleged deficiency income tax, deficiency EWT and deficiency VAT were not extended. The assessments subject of this case, which were issued by the BIR beyond the three-year prescriptive, are therefore **considered void and of no legal effect**. Hence, the CTA committed no reversible error in cancelling and setting aside the subject assessments on the ground of prescription. [*Emphasis supplied*]

In the more recent case of *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue (La Flor)*,[80] the assessments issued were considered void because of defects in the waiver. Thus:

> Applying Section 222 (b) in relation with Section 203 of the NIRC, as well as the applicable BIR issuances, namely, RMO 20-90 and RDAO 05-01, and the relevant jurisprudence, We find that the waivers subject of this case failed to strictly comply with the requirements under the law.
>
> First, the first and fourth waivers . . . failed to specify the date of acceptance by the CIR or his duly authorized representative ... .
>
> Second, all five waivers were signed by Cesar C. Maranan (Maranan), the Accounting Manager of petitioner La Flor. ... **No notarized written authority was attached to the waivers authorizing Maranan to sign the waivers for and**

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[80] G.R. No. 202105, April 28, 2021.

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> **on behalf of La Flor**. Neither was there any evidence showing that Maranan was among the responsible officials of petitioner La Flor authorized by its by-laws to execute a waiver.
>
> Third, even assuming that the first three waivers were validly executed and that Maranan had authority to sign the waivers on behalf of petitioner, the fourth Waiver was executed and notarized only on January 6, 2004, clearly beyond the expiry of the third waiver on December 31, 2003. The fourth waiver did not also indicate the date of acceptance by the CIR or his duly authorized representative. ... .
>
> Consequently, with the nullity of the fourth waiver, the execution and acceptance of the fifth waiver on November 4, 2004 were not valid since there was no more period to extend for which the CIR could assess La Flor's internal revenue taxes for taxable year 1999. Section 222(b) of the NIRC is explicit that the period agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. [*Emphasis supplied*]

As ruled in the *STI* and *La Flor* cases, Revenue Delegation Authority Order (RDAO) No. 05-01 requires that in case the taxpayer delegates the authority to a representative, such delegation should be in writing and duly notarized. Moreover, the concerned revenue official is mandated to ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative, and in case the authority is delegated by the taxpayer to a representative, to see to it that such delegation is in writing and duly notarized.

In the instant case, petitioner's General Managers, Hiroshi Shiraishi and Sosuke Ishida, signed the waivers. Hiroshi Shiraishi signed the first three, while Sosuke Ishida signed the fourth and fifth. A further review of respondent's evidence and the *BIR Records* reveals that no notarized written authority from petitioner's board of directors was attached to all five waivers.

Applying Section 222(b), RMO No. 20-90, RDAO No. 05-01, and the cited jurisprudence, the Court finds the subject waivers void and the CIR's period to assess and collect the alleged deficiency IT and VAT not validly extended until *September 30, 2017*.

Accordingly, the subject FLD/FANs dated *September 27, 2017*, are void as they were issued beyond the 3-year prescriptive period.

All told, even if respondent did not violate petitioner's right to due process, the FLD/FANs are still void due to prescription.

Given the foregoing, addressing the other issues raised in the present case becomes unnecessary, for it is well-settled that a void assessment bears no valid fruit.[81]

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the Formal Letter of Demand and the attached *Assessment Notices*, all dated September 27, 2017, assessing petitioner for deficiency taxes for fiscal year ended March 31, 2013 are **CANCELLED** and **WITHDRAWN**. Furthermore, the Final Decision on Disputed Assessment and the attached *Assessment Notices*, all dated October 23, 2020, assessing petitioner for deficiency income tax and VAT for fiscal year ended March 31, 2013 in the aggregate amount of **₱63,488,986.11**, inclusive of interests, are **REVERSED** and **SET ASIDE**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

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[81] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice