REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2264** ✓ *(CTA Case No. 9507)*
	Present:
-versus-	**DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
NATIONWIDE HEALTH SYSTEMS BAGUIO, INC., *Respondent.*	Promulgated: DEC 0 9 2021 4:28 pm

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review[1] under ***Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***,[2] asking the Court *En Banc* to reverse and set aside the Decision, promulgated on 15 October 2019, and the Resolution, dated 11 March 2020, of the Court of Tax Appeals ("CTA") Second Division ("Court in Division").

The assailed pronouncements declared the assessments issued against respondent void, which consequently led to the cancellation and setting aside of the Warrant of Distraint and/or Levy ("WDL"), dated 26 October 2016.

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[1] Petition for Review, Records, pp. 7-64, with annexes.
[2] A.M. No. 05-11-07-CTA, 22 November 2005.

The Parties

Petitioner Commissioner of Internal Revenue ("CIR") is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who has the power to decide on disputed assessments; act on and approve claims for refund of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto; or other matters arising under the National Internal Revenue Code of 1997, as amended, ("Tax Code") or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Meanwhile, respondent Nationwide Health Systems Baguio, Inc. is a corporation duly formed and organized under the laws of the Republic of the Philippines, with principal address located at Rm. 01 G/F, EDY Building, 144 Kisad Road, Baguio City.

The Facts

On 27 August 2015, petitioner issued a Formal Letter of Demand ("FLD") to respondent demanding the payment of ₱5,846,348.16 representing the latter's alleged deficiency taxes for taxable year 2012,[3] broken down as follows:

Tax Type	Amount
Income Tax	₱ 491,842.08
Value-Added Tax ("VAT")	5,115,878.42
Expanded Withholding Tax ("EWT")	28,434.04
Improperly Accumulated Earnings Tax ("IAET")	210,193.62
TOTAL	**₱ 5,846,348.16**

In response, respondent filed a Protest to the FLD, dated 30 September 2015.[4] The same was denied by the BIR Revenue Region No. 2 through a letter, dated 4 January 2016, which respondent received on 18 January 2016.[5]

Arguing that the letter, dated 4 January 2016, does not conform with ***Revenue Regulations ("RR") No. 18-2013***[6] and, thus, cannot be considered **a Final Decision on Disputed Assessment ("FDDA"), respondent filed a Request for Reconsideration with petitioner on 3 February 2016.**[7]

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[3] Decision, Annex "A" of the Petition for Review; Records, pp. 32-57.

[4] Exhibit "P-11"; Division Records Vol. 2, pp. 1224-1227.

[5] Exhibit "P-19"; *id.*, pp. 1238-1246.

[6] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, 28 November 2013.

[7] Exhibit "P-19"; Division Records Vol. 2, pp. 1238-1246.

Although there was no action yet on respondent's Request for Reconsideration, Revenue District Officer Rosalina F. Legaspi issued a Preliminary Collection Letter ("PCL") on 19 September 2016,[8] which was received by respondent on 3 October 2016.[9] This was followed by a Final Notice Before Seizure ("FNBS"), dated 28 September 2016,[10] which was received by respondent on 11 October 2016.[11]

Aggrieved, respondent sent out letters to Revenue District Officer Rosalina F. Legaspi informing her that its Request for Reconsideration was still pending action with petitioner and, thus, asked the BIR to suspend its collection efforts against it.[12] Likewise, respondent wrote a letter to petitioner following up on his decision to its Request for Reconsideration and demanding the cancellation of the PCL and FNBS.[13]

On 18 November 2016, respondent received a copy of the Warrant of Distraint and/or Levy ("WDL"), dated 26 October 2016, collecting the amount of ₱5,846,348.16 from it.[14]

Treating the WDL as petitioner's final act of denial on its Request for Reconsideration, respondent filed the original Petition for Review with the Court in Division on 16 December 2016.[15]

Following trial, the Court in Division issued the assailed Decision[16] on 15 October 2019, declaring null and void the assessment and, consequently, cancelling and setting aside the WDL issued against respondent. The dispositive portion of the said Decision is hereby quoted, to wit:

> "**WHEREFORE**, with the foregoing, the instant Petition for Review filed by petitioner Nationwide Health Services Baguio, Inc. is **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue's notices and assessments are declared **VOID** and henceforth **CANCELLED**. Consequently, the Warrant of Distraint and/or Levy dated 26 October 2016, covering the assessed deficiency tax liabilities against petitioner for taxable year 2012, in the aggregate amount of ₱5,846,348.16, is also **CANCELLED** and **SET ASIDE**.
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> **SO ORDERED.**"[17]

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[8] Exhibit "P-21"; *id.*, p. 1263.
[9] Exhibit "P-23" and "P-24"; *id.*, pp. 1265-1269.
[10] Exhibit "P-22"; *id*, p. 1264.
[11] Exhibit "P-25" and "P-26"; *id*, pp. 1270-1275.
[12] Exhibit "P-23" to "P-26" and "P-28"; *id*, pp. 1265-1275, 1280-1282
[13] Exhibit "P-27"; *id*, pp.1276-1279.
[14] Decision, Annex "A" of the Petition for Review; Records, pp. 32-57.
[15] *Id.*; Petition for Review; Division Records Vol. 1, pp. 12-201.
[16] Decision, Annex "A" of the Petition for Review; Records, pp. 32-57.
[17] *Id.*, p. 25; *id.*, p. 56.

In the assailed Decision, the Court in Division found the original Petition for Review to be timely filed on 16 December 2016 or within thirty ("30") days from respondent's receipt of the WDL on 18 November 2016. Hence, it declared that it had jurisdiction over the case.[18]

Likewise, it ruled that petitioner failed to overturn respondent's direct denial of receiving the Final Assessment Notice ("FAN"). The Court in Division stated that petitioner failed to present any competent proof that the same was indeed sent out to and received by respondent.[19]

Lastly, the Court in Division pointed out that even if it treats the FLD as equivalent to the FAN, that the same is still fatally defective because it did not contain a due date, citing the case of ***Commissioner of Internal Revenue v. Fitness By Design, Inc. ("Fitness Case")***.[20]

This prompted petitioner to file his Motion for Reconsideration (Re: Decision dated 15 October 2019) on 31 October 2019.[21] The same was denied by the Court in Division through the assailed Resolution for lack of merit. The said Resolution, dated 11 March 2020, was received by petitioner on 8 June 2020.[22]

Undeterred, petitioner, on 22 June 2020, filed a Motion for Extension of Time to File Petition for Review requesting the Court *En Banc* for an additional time of fifteen (15) days from 23 June 2020 or until 8 July 2020 to file his Petition for Review.[23] The same was granted by the Court *En Banc* on 23 June 2020.[24]

Thereafter, petitioner posted the instant Petition for Review on 8 July 2020.[25]

Finding that petitioner's "Verification and Certification of Non-Forum Shopping" non-compliant with ***Sections 4 and 5, Rule 7 of the Rules of Court*** as amended by ***A.M. No. 19-10-20-SC***, the Court *En Banc* ordered him to submit an Amended Verification and Certification of Non-Forum Shopping on 26 August 2020.[26] Petitioner complied with the said Order on 15 September 2020.[27]

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[18] Decision, Annex "A" of the Petition for Review; Records, pp. 32-57.
[19] *Ibid.*
[20] G.R. No. 215957, 09 November 2016.
[21] Motion for Reconsideration (Re: Decision dated 15 October 2019); Division Records Vol. 3, pp. 1470-1483.
[22] Resolution Annex "B" of the Petition for Review; Records, pp. 58-63.
[23] Motion for Extension of Time to File Petition for Review; *id.*, pp. 1-5.
[24] Minute Resolution; *id.*, p. 6.
[25] Petition for Review; *id.*, pp. 7-64.
[26] Resolution; *id.*, pp. 66-67.
[27] Compliance; *id.*, pp. 68-73.

Afterwards, respondent filed its Comment (Re: Petition for Review dated 07 July 2020) on 22 October 2020.[28]

On 3 November 2020, the Court *En Banc* referred the case for mediation pursuant to ***Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals***.[29]

Considering the parties' decision not to undergo mediation, the Philippine Mediation Center-CTA terminated the said proceedings and referred the case back to the Court *En Banc* on 25 November 2020.[30]

Taking cue from the foregoing, the Court *En Banc* issued a Resolution on 11 December 2020 submitting the case for decision.[31] Hence, this Decision.

The Issues[32]

WHETHER THE COURT IN DIVISION ERRED IN STATING THAT THE ASSESSMENT HAS NOT BECOME FINAL AND EXECUTORY;

WHETHER THE COURT IN DIVISION ERRED IN RULING THAT RESPONDENT'S FLD IS NOT VALID BECAUSE THERE IS NO NOTICE OF INFORMAL CONFERENCE SENT TO PETITIONER; AND

WHETHER THE COURT IN DIVISION ERRED IN RULING THAT THE ABSENCE OF A DUE DATE ON THE FAN/FLD INVALIDATED THE ASSESSMENT.

Arguments of the Parties

Petitioner's Arguments[33]

Petitioner argues that the Court in Division has no jurisdiction over the original Petition for Review for being filed out of time. He explains that in cases when the CIR fails to render a decision on the taxpayer's protest within 180 days, the latter is given 30 days therefrom to file an appeal to the CTA pursuant to ***RR No. 18-13*** and ***The CTA Law***.[34]

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[28] Comment (Re: Petition for Review dated 07 July 2020); *id.*, pp. 77-88.
[29] Resolution; *id.*, pp. 90-91; A.M. No. 11-1-5-SC-PHILJA; 18 January 2011.
[30] Back to Court; *id.*, p. 92.
[31] Resolution; *id.*, pp. 94-95.
[32] See Grounds for the Petition, Petition for Review, p. 4; *id.*, p. 10.
[33] Petition for Review; *id.*, pp. 7-64, with annexes.
[34] Republic Act No. 1125, as amended, 12 June 2008.

Thus, he points out that since respondent filed its Protest to the FLD on 30 September 2015, it only had until 27 April 2016 to appeal the assessment before the Court in Division. Considering that respondent only filed the original Petition for Review on 16 December 2016, he alleges that the said appeal was clearly filed beyond the 180+30 day periods.

Petitioner insists that there is no legal pronouncement which supports respondent's assertion that the WDL is tantamount to a denial of the taxpayer's protest appealable to the CTA.

However, even assuming a collection notice can be construed as his final decision on respondent's protest, he explains that it should have filed its appeal to the CTA within 30 days after its receipt of the PCL, or until 2 November 2016, instead of waiting for the WDL.

He stresses that the issuance of the PCL clearly shows his intention to enforce the assessment and proceed with the collection of the deficiency taxes rendering, from that point on, respondent's protest deemed denied. Hence, he contends that respondent's act of elevating the case only on 16 December 2016, or more than 30 days after its receipt of the PCL, divested the Court in Division of jurisdiction to take on the case.

Assuming further that the Court in Division has jurisdiction over the case, petitioner argues that respondent is already estopped from raising issues questioning the validity of the FLD. He posits that the said issues were never raised in the administrative forum and, thus, cannot be raised for the first time on judicial appeal without violating the rule on exhaustion of administrative remedies.

He points out that the assailed Decision is erroneous for finding the assessment void based on: (a) his non-issuance of the Notice of Informal Conference ("NIC"); (b) failure to overturn respondent's denial of receipt of the FAN; and (c) that the FLD does not indicate a specific due date.

On the issue of non-issuance of the NIC, petitioner claims that during the time of respondent's audit investigation, ***RR No. 18-13*** removed the requirement of issuing NICs to taxpayers in order to expedite the assessment process. Hence, he argues that the BIR's non-issuance of a NIC to respondent did not affect the validity of the assessment.

As for his alleged failure to overturn respondent's denial of receipt of the FAN, petitioner emphasizes that respondent's assertion is a mere alibi. Hence, without evidence, the same should be considered as hearsay. Furthermore, he stresses that he was able to offer the registry return receipt as evidence which serves as competent proof that the FAN was mailed to respondent.

As for the FLD's lack of due date, petitioner posits that the Tax Code does not require that a due date be stated in the said assessment. In any case, he explains that the FAN clearly indicates a due date as testified by his witness.

Finally, he stresses that the assessment enjoys the presumption of regularity and, thus, should be upheld considering it was issued in accordance with law, rules, and jurisprudence.

Respondent's Counter-Arguments[35]

Respondent contends that the instant Petition bears no new substantial arguments and is merely a repeat of his assertions before the Court in Division. Considering that the said contentions have been exhaustively resolved in the assailed Decision, it posits that the instant Petition should be denied outright for lack of merit.

It opposes petitioner's argument that the Court in Division has no jurisdiction over the original Petition. It discusses that an appeal to the CTA is not limited to decisions of the CIR but also includes "other matters" arising under the Tax Code or other related laws administered by the BIR, such as, the determination of the validity of a WDL. On this note, respondent argues that since it was able to file the original Petition within 30 days from its receipt of the WDL, the Court in Division correctly conferred jurisdiction over the said Petition.

Respondent belies petitioner's contention that there is no legal pronouncement which supports its argument that the WDL is tantamount to the CIR's final denial of a taxpayer's protest. It cites the Supreme Court case of ***CIR v. Algue, Inc. (hereinafter referred to as the "Algue Case")***[36] as its legal basis.

Likewise, respondent counters petitioner's claim that its denial of receipt of the FAN is a mere alibi and, thus, hearsay. It explains that the Court in Division had already carefully reviewed the pieces of evidence submitted by petitioner but found the same insufficient to prove its receipt of the FAN, except for a registry return receipt, which in turn was not considered by the Court in Division for being inadmissible.

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[35] **Comment (Re: Petition for Review dated 07 July 2020);** ***id.*****, pp. 77-88.**
[36] G.R. No. L-28896, 17 February 1988.

Finally, respondent belies petitioner's allegation that the absence of due date in the FLD did not affect its validity. It posits that petitioner's argument is contrary to the ***Fitness Case*** which rendered a FAN void for lack of a definite due date.

The Ruling of the Court

After a careful review of the foregoing arguments, the Court *En Banc* finds petitioner's contentions bereft of merit.

The Court in Division has jurisdiction over the original Petition for Review.

Being a court of special jurisdiction, the CTA can only take cognizance of matters that are within its jurisdiction.[37] ***Section 7(a) of the CTA Law*** enumerates the cases appealable to the Court in Division, as follows:

> "SEC. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (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 other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;
>
> (2) **Inaction by the Commissioner of Internal Revenue 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, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**; xxx"
> (Emphasis and underscoring supplied.)

Taking cue from the foregoing, the Court in Division's appellate jurisdiction is not limited to cases involving decisions of the CIR in relation to disputed assessments or refunds. The second portion of ***Section 7(a)(1) and (2) of the CTA Law*** clearly covers "other matters" arising under the Tax Code or other laws administered by the BIR.

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[37] Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc., G.R. No. 221780, 25 March 2019.

Applying the same herein, records show that respondent received the WDL on 18 November 2016. Hence, it had 30 days from the said date or until 18 December 2016 to file its appeal with the Court in Division. Considering that the original Petition for Review was filed on 16 December 2016, the Court in Division correctly assumed jurisdiction over respondent's case.

The Court in Division may take cognizance of issues not raised in the administrative forum.

Aside from the expanded jurisdiction conferred to the CTA, it is also sanctioned to take on matters and resolve issues even if the same has not been threshed out in the administrative forum. This is so, considering that cases brought before this Court are *litigated de novo* which means that the party filing the case is expected to prove every minute aspect of its claim required for its successful prosecution.

This was further explained by the Supreme Court in the case of ***Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.***,[40] to wit:

> "The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. **The paramount consideration remains the ascertainment of truth. Thus, the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA** to support its case for tax refund.
>
> **Cases filed in the CTA are litigated de novo as such, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim." Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance**."
>
> (Emphasis and underscoring supplied.)

The CTA is also empowered to resolve related issues necessary to achieve an orderly disposition of a case, notwithstanding whether it was raised by the parties or not, as pronounced by the High Court in ***Commissioner of Internal Revenue v. Lancaster Philippines, Inc.***,[41] to wit:

[40] G.R. No. 231581, 10 April 2019.
[41] G.R. No. 183408, 12 July 2017.

The CTA's "other matters" jurisdiction includes the determination of the validity of the WDL, as ruled by the Supreme Court in the case of ***La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue***,[38] citing ***Philippine Journalists, Inc. v. Commissioner of Internal Revenue***,[39] to wit:

> "In Philippine Journalists, **we ruled that the CTA's appellate jurisdiction is not limited to cases involving decisions of the CIR on matters relating to assessments or refunds. Section 7 (a) (2) of RA 9282 also covers "other matter arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue." <u>Clearly, the CTA has jurisdiction to determine whether the WDL issued by the BIR is valid</u>** and rule on the validity of the five waivers of the statute of limitations and La Flor's application for tax amnesty under RA 9480."
> (Emphasis and underscoring supplied.)

Corollary, ***Section 11 of the CTA Law*** provides for the time period on when the taxpayer may invoke the jurisdiction of the CTA in order to question the validity of the WDL, to wit:

> "**SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **<u>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</u>**.
>
> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA **<u>within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal</u>:** Provided, however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case en banc. xxx"
> (Emphasis and underscoring supplied.)

On this note, an appeal before the Court in Division should be made within thirty (30) days from the receipt of the assailed decision, ruling, or after the expiration of the period fixed by law for the CIR to act on a taxpayer's protest.

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[38] G.R. No. 202105, 28 April 2021.
[39] G.R. No. 162852, 16 December 2004.

"**<u>On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative</u>**.

Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, **<u>the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.</u>** The text of the provision reads:

> SECTION 1. Rendition of judgment. - x xx
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

<u>The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda.</u> The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." (Emphasis and underscoring supplied.)

Evidently, the foregoing cases pronounce that the CTA, as a court of record, has the authority to determine issues, regardless of whether the same were raised or not by the parties administratively or judicially. Hence, in this case, the Court *En Banc* finds no merit in petitioner's argument that the Court in Division is precluded from resolving the issue pertaining to the validity of the assessment even assuming that the same was not raised in the administrative forum.

Moreover, a perusal of the records contradicts petitioner's argument that the issues as to respondent's non-receipt of the FAN and the lack of due date of the FLD were not raised during the administrative forum. Respondent's pieces of evidence proves that these issues were communicated to petitioner in respondent's Request for Reconsideration dated 2 February 2016.[42]

Then, too, respondent's assailment of the WDL necessitates the CTA to look into the validity of the assessment. This is so since the validity of petitioner's collection efforts through the WDL is chiefly dependent on the propriety of the assessment he issued against the respondent. This is consistent with the long-standing principle that a void assessment bears no valid fruit.[43] In short, the determination of the assessments validity is directly necessary and related to the determination of the correctness of the issuance of the WDL.

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[42] Exhibit "P-19"; Division Records Vol. 2, pp. 1238-1246.

[43] Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp., G.R. Nos. 197945 & 204119-20, 9 July 2018.

Petitioner was not required to issue the NIC during respondent's audit investigation.

An assessment's validity is dependent on whether it was issued in accordance with the Tax Code, the pertinent rules of the BIR, and jurisprudence.

Corollary, ***Section 228 of the Tax Code*** provides for the procedure on the issuance of an assessment and the manner on how it can be protested by the taxpayer. The relevant provision is hereby quoted, to wit:

> "SEC. 228. Protesting of Assessment. - **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings**: xxx
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void**.
>
> Within a period to be prescribed by implementing rules and regulations, **the taxpayer shall be required to respond to said notice.**
>
> If the **taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings**.
>
> Such assessment may be **protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations**.
>
> Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.**" (Emphasis and underscoring supplied.)

The said provision is interpreted by ***Section 2 of RR No. 18-13***, to wit:

"SECTION 2. Amendment. — **Section 3 of RR 12-99 is hereby amended by deleting Section 3.1.1 thereof which provides for the preparation of a Notice of Informal Conference, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities.** Section 3 of RR 12-99 shall now read as follows:

"SEC. 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:

xxx xxx xxx

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 shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void** (see illustration in ANNEX "B" hereof).

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 defined as follows:

(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 a question of fact or of law or both.

xxx xxx xxx

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 Appeals (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.

xxx xxx xxx

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

On this basis, petitioner contends that the assessment issued against respondent is valid. He stresses that the same was issued in accordance with the above-quoted legal pronouncements. He raises that during the audit investigation of respondent, ***RR No. 18-13*** removed the requirement of issuing NICs to the taxpayer. Hence, he avers that the absence of the NIC did not render the assessment void.

The Court *En Banc* agrees with petitioner's argument insofar as it states that the NIC, during the time of respondent's audit investigation, was not a requirement under ***RR No. 18-13***.

To elaborate, respondent's audit investigation started on 25 March 2014 or upon its receipt of the Letter of Authority.[44] During this period, the rule in place was ***RR No. 18-13***, which became effective on 18 December 2013. The said issuance removed the section requiring the NIC, as can be gleaned on the above-quoted ***Section 2 of RR No. 18-13***. This was only reinstated on 16 February 2018 or upon the effectivity of ***RR No. 07-18***.[45]

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[44] Exhibit "R-1"; BIR Records Folder 1, p. 20.

[45] Amending Certain Sections of Revenue Regulations No. 12-99, as Amended by Revenue Regulations No. 18-13, Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, 22 January 2018.

However, even with the above findings of this Court, the said ruling will not affect the outcome of this case, more so since as pointed out by respondent, the Court in Division even settled this particular issue in favor of petitioner. The Court in Division ruled that petitioner, through its authorized representatives, was still able to send out letters and memoranda to respondent during the NIC stage narrating the deficiencies the BIR had noted during the investigation. This is despite the fact that the NIC was not required during respondent's audit. Hence, to the Court *En Banc*'s mind, the issue pertaining to the NIC is actually non-existent and, more importantly, will not affect the ultimate resolution of this case.

The assessment and, consequently, the WDL issued against respondent are both void and, therefore, must be cancelled and set aside.

Corollary to ***Section 228 of the Tax Code*** and ***Section 2 of RR No. 18-13***, when petitioner finds a taxpayer liable for deficiency taxes, the former is mandated to issue and serve an FLD and a FAN to the latter. These issuances should state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based. Furthermore, these must also categorically state petitioner's demand for payment of the said deficiency taxes within a particular time prescribed. Failure to comply with the foregoing requirements will render the same void and inexistent.[46]

In this case, respondent directly denies receiving the FAN. It only confirms receiving the FLD but contends that the same has no indicated due date. Hence, on these grounds, it argues that the assessment is void and non-existent.

In support of its assertion, it presented its Treasurer and authorized representative to the BIR, Ms. Teresita B. Benitez, who testified, by way of judicial affidavit,[47] on the following matters:

> "9. Q: When you received the FLD, what other notice did you receive, if there is any?
>
> A: We **received no other notice aside from the FLD**.
>
> 10. Q: What happened when you received the FLD?

[46] Commissioner of Internal Revenue v. Fitness By Design, Inc., G.R. No. 215957, 09 November 2016.
[47] Exhibit "P-45", p. 3; Division Records Vol. 2, p. 845.

A: We **noticed that the FLD was not accompanied by a Formal Assessment Notice (FAN) and that the FLD made no mention of a demand for payment of the alleged deficiencies within a prescribed or definite period**."
(Emphasis and underscoring supplied.)

Petitioner insists that the BIR sent the FAN together with the FLD by way of registered mail. He presented a registry return receipt[48] bearing the signature of a certain "Chevy Marrero" and the testimony of Revenue Officer Rhodaline Fortea Ramelo ("RO Ramelo") to prove the said assertion. The relevant portions of her testimony by way of judicial affidavit,[49] are hereby quoted, to wit:

"13. Q: After service of the PAN and Details of Discrepancies, what happened next?

A: Because we did not receive a reply to the PAN, **I recommended for the issuance of a Formal Letter of Demand which was likewise favorably acted upon. Thus, a Formal Letter of Demand with the Details of Discrepancies and Audit Result/Assessment Notice was served upon petitioner**.

xxx xxx xxx

17. Q: How was the FLD together with the Details of Discrepancies and Audit Result/Assessment Notice served upon petitioner?

A: **It was served by registered mail as evidenced by registry return receipt**.

18. Q: I am now showing you this registry receipt card found on page 1308 of the BIR Records and marked as Exhibit "R-13" for the respondent. What relation does this document have with the document that you mentioned?

A: This is the registry receipt I was talking about."
(Emphasis and underscoring supplied.)

Relevant to the above disquisitions is ***Section 3(v), Rule 131 of the Rules of Court***, which provides a disputable presumption that "a letter duly directed and mailed was received in the regular course of the mail."

However, the said presumption is subject to controversion and direct denial of the person who is expected to receive such mail matter. Hence, in case of direct denial, the burden is shifted to "the party favored by the

48 Exhibit "R-13", BIR Folder No. 3, p. 1308.
49 Exhibit "R-16"; Division Records Vol. 1, p. 267-268.

presumption to establish that the subject mailed letter was actually received by the addressee."[50]

Unfortunately for petitioner, the registry return receipt and the testimony of RO Ramelo are insufficient to prove that the FAN was indeed received by respondent.

In ***Commissioner of Internal Revenue v. T Shuttle Services, Inc.***,[51] the Supreme Court found that the presentation of a registry receipt, without properly identifying and authenticating the signatures appearing thereon, is insufficient in proving the taxpayer's receipt of an assessment. The relevant portion of the Decision is quoted, to wit:

> As can be gleaned from the above provisions, **service of the PAN or the FAN to the taxpayer may be made by registered mail. Under Section 3 (v), Rule 131 of the Rules of Court, there is a disputable presumption that "a letter duly directed and mailed was received in the regular course of the mail." <u>However, the presumption is subject to controversion and direct denial, in which case the burden is shifted to the party favored by tbe presumption to establish that the subject mailed letter was actually received by the addressee</u>**.
>
> **<u>In view of respondent's categorical denial of due receipt of the PAN and the FAN, the burden was shifted to the CIR to prove that the mailed assessment notices were indeed received by respondent or by its authorized representative.</u>**
>
> As ruled by the CTA En Banc, **<u>the CIR's mere presentation of Registry Receipt Nos. 5187 and 2581 was insufficient to prove respondent's receipt of the PAN and the FAN. It held that the witnesses for the CIR failed to identify and authenticate the signatures appearing on the registry receipts; thus, it cannot be ascertained whether the signatures appearing in the documents were those of respondent's authorized representatives.</u>** It further noted that Revenue Officer Joseph V. Galicia (Galicia), the CIR's witness, had in fact admitted during cross-examination that he was uncertain whether the PAN and FAN were actually received by respondent."
> (Emphasis and underscoring supplied.)

Here, although the subject registry return receipt indicates a name and a signature, petitioner was unable to prove that the name appearing on the said document is an authorized representative of respondent. Furthermore, the testimony of RO Ramelo failed to establish that she has personal knowledge as to the fact of the actual mailing of the FAN. Hence, on these grounds, petitioner failed to prove that the FAN was indeed served to respondent.

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[50] **Commissioner of Internal Revenue v. T Shuttle Services, Inc., G.R. No. 240729, 24 August 2020.**
[51] G.R. No. 240729, 24 August 2020.

Regrettably, the FLD, in this case, failed to compensate for the lack of FAN and does not satisfy the due process requirements laid down under ***Section 228 of the Tax Code*** and ***Section 2 of RR No. 18-13***. A close scrutiny of the said document proves that the same does not constitute a definite demand for payment. The relevant portion of the FLD[52] is hereby quoted, to wit:

> "In view hereof, **you are requested to pay your aforesaid deficiency tax liabilities through the duly authorized agent bank in which you are enrolled within the time shown**."
> (Emphasis supplied.)

As can be gleaned above, the FLD does not have a due date. It merely states petitioner's request for respondent to pay the deficiency tax liabilities through the authorized agent bank. It failed to even specify the exact document where the due date is supposedly shown.

In view of the foregoing, the Court *En Banc* has no option but to declare the assessment void, in light of the Supreme Court ruling in the ***Fitness Case***, to wit:

> "**<u>The disputed Final Assessment Notice is not a valid assessment</u>**.
>
> First, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a "written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed." Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. Thus:
>
>> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. Please note, however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.
>
> Second, **<u>there are no due dates in the Final Assessment Notice</u>**. **<u>This negates petitioner's demand for payment</u>**. Petitioner's contention **that April 15, 2004 should be regarded as the actual due date cannot be** accepted. The last paragraph of the Final Assessment Notice states that the **due dates for payment were supposedly reflected in the attached assessment:**

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[52] Exhibit "P-10", Division Records Vol. 2, p. 1221.

> In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice.
>
> However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished." (Emphasis and underscoring supplied.)

On this breath, petitioner's collection efforts cannot proceed against respondent absent a valid assessment. This is consistent with the time-honored principle that a void assessment bears no valid fruit. As such, any effort to proceed with tax collection on the basis of a void assessment is violative of the taxpayer's right to due process which is a substantive rather than a formal requirement.[53] On this ground, the Court *En Banc* deems it proper to cancel and set aside the WDL issued against respondent

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Decision promulgated on 15 October 2019, and the Resolution, dated 11 March 2020, are both **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

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[53] Commissioner of Internal Revenue v. Reyes, G.R. Nos. 159694 & 163581, 27 January 2006.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(On Leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

C E R T I F I C A T I O N

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