REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

ARNEL CORTEZ MANALOTO, *Petitioner,*	**CTA CASE NO. 10551**
-*versus*-	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
BUREAU OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 25 2024 4:10 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This Petition for Review ("Petition") seeks to cancel the Final Decision on Disputed Assessment ("FDDA") NID-2021-0001, dated May 4, 2021, issued by respondent, which found petitioner liable for deficiency income tax in the amount of Php37,827,190.05 and deficiency value added tax ("VAT") in the amount of Php14,428,393.34, or in the total amount of Php52,255,583.39, inclusive of interest and surcharge, for taxable year ("TY") 2011.[1]

The Parties

Petitioner is of legal age, Filipino and with address at 20 Don Luis Panlilio St., Villa Dolores, Angeles City.[2]

Meanwhile, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who is tasked to assess and collect all national internal revenue taxes, fees, and charges, and enforce all forfeitures, penalties, and fines connected therewith. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

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1 See Statement of the Case, Pre-Trial Order, Records, p. 226.
2 See Parties, Petition, Records, p. 7.
3 See Stipulation of Facts, Pre-Trial Order, Records, p. 227.

The Facts

In Court of Tax Appeals ("CTA") Criminal Case Nos. O-454, O-455, O-456, and O-457, petitioner was accused of violating *Sections 254 and 255 of the National Internal Revenue Code, as amended, ("NIRC")* for allegedly: a) attempting to evade or defeat the payment of VAT, b) substantially under-declaring his income tax, c) failing to file VAT returns, and d) failing to supply correct and accurate information in his income tax returns, with all of these being supposedly committed in TY 2011. In a Decision, dated December 5, 2018, promulgated by the CTA Second Division, petitioner was found not guilty of the offenses charged against him. The dispositive portion of the same reads as follows:[4]

> **WHEREFORE,** premises considered, CTA Crim. Case Nos. O-454, O-455, O-456, and O-457 are **DISMISSED** for failure of the prosecution to establish the guilt of the accused beyond reasonable doubt. Accused Arnel Cortez Manaloto is **ACQUITTED** of the crimes charged and without civil liability.
>
> **SO ORDERED.**

This Decision became final and executory after the Supreme Court dismissed, through a Resolution, dated September 4, 2019, respondents' Petition for Certiorari for failure to sufficiently show that any grave abuse of discretion was committed by the CTA in rendering the challenged Decision, which, on the contrary, was found by the Supreme Court to be in accord with the facts and the applicable law and jurisprudence.[5]

Under the notion that petitioner's liability to pay deficiency income tax and VAT was not extinguished as a result of petitioner's acquittal from the offenses charged against him under CTA Criminal Case Nos. O-454, O-455, O-456, and O-457, respondent issued a Final Letter of Demand ("FLD"), dated September 17, 2020 against petitioner finding him liable for deficiency income tax and VAT in the amounts of Php37,827,190.05 and Php14,428,393.34, inclusive of surcharge and interest, respectively.[6] Petitioner received the FLD on the same date that it was issued.[7] The contents of the FLD are, as follows:[8]

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[4] Exhibit "P-3", Records, p. 28-63.
[5] G.R. No. 247592-95, Exhibit "P-5", Records, p. 68.
[6] Records, pp. 21-24.
[7] See Stipulation of Facts, Pre-Trial Order, Records, p. 227.
[8] Records, pp. 21-24.

ANNEX "P-1"

Republic of the Philippines
Department of Finance
Bureau of Internal Revenue
National Office
Quezon City

September 17, 2020

FINAL LETTER OF DEMAND

ARNEL CORTEZ MANALOTO
64B Sto. Entierro St., Sto. Cristo, Angeles City
Pampanga

Sir:

Please be informed that after investigation pursuant to Letter of Authority No. 211-2012-00000319 dated November 26, 2012, there has been found due from you the deficiency taxes for taxable year 2011 as shown hereunder:

	Basic	Surcharge	Interest	Total
INCOME TAX	12,114,525.20	6,057,262.60	19,655,402.25	37,827,190.05
VAT	4,556,071.95	2,278,035.98	7,594,285.41	14,428,393.34
				52,255,583.39

*Please take note that interest and the total amount due will have to be adjusted if paid beyond December 31, 2021

The complete details covering the aforementioned discrepancies established during the investigation of the case are shown in Annex A of this letter.

The 20% interest per annum has been imposed pursuant to the provision of Section 249 (B) of the National Internal Revenue Code. Beginning January 1, 2018, the interest imposed has been reduced to 12% per annum pursuant to Republic Act No. 10963.

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The 50% surcharge has been imposed pursuant to the provisions of Section 248(B) of the NIRC as amended by R.A. 8424, which took effect on January 1, 1998 for willfully filing false or fraudulent returns for taxable year 2011

In view thereof, you are requested to pay your aforesaid deficiency income tax liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice.

Very truly yours,

JAMES H. ROLDAN
Assistant Commissioner
Enforcement & Advocacy Service

ANNEX A
Details of Discrepancies
For Taxable Year 2011

Deficiency Income Tax

The total income subject to tax of Atty. Arnel Manaloto is determined by using the expenditure method

COMPUTATION OF UNREPORTED INCOME USING EXPENDITURES METHOD

A) EXPENDITURES FOR A GIVEN TAXABLE YEAR	2011	
1. EXPENSES CLAIMED PER INCOME TAX RETURN/FINANCIAL STATEMENTS		
RENTAL EXPENSES	66,000.00	
GAS & OIL	27,192.83	
TRANSPORTATION EXPENSE	3,130.00	
UTILITIES AND COMMUNICATION EXPENSES	56,063.93	
REPRESENTATION AND ENTERTAINMENT	75,784.83	
LICENCES AND TAXES (NET OF PERCENTAGE TAX)	700.00	
REPAIRS AND MAINTENANCE-OFFICE	70,426.25	
ACCOUNTING AND LEGAL FEES	4,900.00	
OFFICE SUPPLIES	13,692.44	
TOLL AND PARKING FEES	1,107.73	
DUES AND MEMBERSHIP-PROFESSIONAL	13,600.00	
PRINTING AND REPRODUCTION OF COPIES	2,547.25	
MISCELLANEOUS EXPENSES	920.00	336,065.26
2 PERSONAL EXPENSES		
DEDUCTIBLE OR NONDEDUCTIBLE		-
3. PAYMENT OF DEBTS, PAYABLES;		
ACCRUALS; AND OTHER LIABILITIES/DRAWINGS		-
4 PAYMENT OF TAXES		
INCOME TAX	43,520.00	
PERCENTAGE TAX	44,856.00	
EXPANDED WHT	3,025.00	
REGISTRATION FEE	500.00	
DOCUMENTARY STAMPS TAX	300,000.00	391,901.00
5 ACQUISITION OF ASSETS		
OTHER UNDECLARED ACQUISITION OF REAL PROPERTIES	20,000,000.00	
OTHER ASSETS PER FINANCIAL STATEMENTS	18,734,500.00	
VEHICLES	-	
INVESTMENTS	-	38,734,500.00
TOTAL EXPENDITURES		39,462,466.26
B) SOURCES OF CASH		
1 DECLARED INCOME PER INCOME TAX RETURN	1,495,200.00	
2 NON TAXABLE RECEIPTS(PRIZES, ROYALTIES)	-	
3 NON TAXABLE RECEIPTS(DIVIDENDS, DONATIONS FROM ABROAD)	-	
4 RECEIPTS SUBJECTED TO TRANSFER SUCH AS DONATIONS, INHERITANCE	-	
5 CASH LOANS IF ANY	-	
6 CASH AT THE BEGINNING OF THE PERIOD	-	
7 DEFERRED INCOME PER FINANCIAL STATEMENTS	17,501,500.00	18,996,700.00
EXCESS CASH AS DETERMINED PER INVESTIGATION		20,465,766.26
DEFERRED INCOME PER FINANCIAL STATEMENTS		17,501,500.00
TOTAL INCOME SUBJECT TO TAX		37,967,266.26

atty

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INCOME TAX

Basic Tax			P	12,114,525.20
Add: Surcharge				6,057,262.60
Interest (20%)	4/16/2012 to	12/31/2017		13,840,430.16
Interest (12%)	1/1/2018 to	12/31/2021		5,814,972.10
AMOUNT STILL DUE			P	37,827,190.06

*Please take note that interest and the total amount due will have to be adjusted if paid beyond December 31, 2021

Deficiency Value-Added Tax

The Value-Added Tax is determined based on the unreported income per investigation for the said taxable year.

VALUE-ADDED TAX

Unreported income per investigation			37,967,266.26
Output tax			4,556,071.95
Less: Allowable Input Tax			0.00
Tax Due			4,556,071.95
ADD Surcharge			2,278,035.98
Interest (20%)	1/26/2012 to	12/31/2017	5,407,370.87
Interest (12%)	1/1/2018 to	12/31/2021	2,186,914.54
TOTAL VAT DUE			14,428,393.35
TOTAL TAX DEFICIENCIES			52,255,583.39

*Please take note that interest and the total amount due will have to be adjusted if paid beyond December 31, 2021

While the FLD mentioned of the existence of assessment notices, said assessment notices cannot be found in either the FLD presented by petitioner in support of the instant Petition nor in the BIR Records submitted by respondent.[9]

On October 1, 2020, petitioner filed his Protest against the FLD. He argued that the civil liability has already been decided by the CTA when it acquitted petitioner of the offenses charged without any civil liability. Hence, per petitioner, respondent can no longer separately pursue the alleged deficiency income tax and VAT liabilities. According to petitioner, the supposed deficiency tax liabilities were already instituted in the criminal cases filed against him, and since the CTA already made a finding on such civil liabilities, respondent can no longer make a separate administrative finding.[10]

In support of this Protest, petitioner submitted before respondent copies of: a) the Decision, dated December 5, 2018, by the CTA Second Division; b) the Resolution, dated April 16, 2019, by the CTA Second Division affirming the Decision, dated December 5, 2018; and c) the Notice of Dismissal issued by the Supreme Court, dated September 4, 2019, in G.R. No. 247592-95, which dismissed the Petition for Certiorari filed by respondents

9 See BIR Records.
10 Exhibit "P-1", Records, pp. 25-26.

in relation to the Decision, dated December 5, 2018, and the Resolution, dated April 16, 2019, by the CTA Second Division.[11]

On May 4, 2021, respondent issued the FDDA against petitioner. In the FDDA, respondent denied petitioner's Protest and counter-argued that even if the guilt of an accused has not been satisfactorily established, he is not exempt from civil liability which may be proved by preponderance of evidence only. According to respondent, the obligation to pay tax is required by law and not a consequence of the offense charged in the criminal proceeding nor is a mere civil liability arising from a crime that could be wiped out by a judicial declaration that the criminal acts charged did not exist. Respondent further alleged that civil liability to pay tax survives the acquittal. Moreover, respondent noted that no formal assessment has yet been issued against petitioner during the pendency of the criminal case. Thus, per respondent, he can still issue such formal assessment to demand payment of deficiency taxes which is entirely different from instituting a criminal complaint, the main purpose of which is simply to penalize a taxpayer for violating the *NIRC*.[12] The FDDA was received by petitioner on May 11, 2021 after a copy of the same was served by respondents' revenue officers to Erwin Carreon, petitioner's bookkeeper.[13]

On June 8, 2021, petitioner filed the instant Petition before this Court.[14]

Summons were issued to respondent to file an Answer to the Petition,[15] which he filed on December 15, 2021.[16]

On December 29, 2021, a Notice of Pre-Trial Conference was issued, setting the Pre-Trial Conference on May 3, 2022.[17] However, on April 8, 2022, petitioner requested respondent to answer Written Interrogatories,[18] and the Pre-Trial Conference was reset to August 9, 2022 through a Resolution, dated May 4, 2022.[19]

On August 5, 2022, respondent filed his Pre-Trial Brief.[20] On the other hand, petitioner filed his Pre-Trial Brief on August 9, 2022.[21] The Pre-Trial Conference ensued on August 9, 2022.[22]

11 Exhibit "P-2", Records, p. 27.
12 Exhibit "P-6", Records, pp. 132-135.
13 Records, p. 136; See Stipulation of Facts, Pre-Trial Order, Records, p. 227.
14 Records, pp. 6-122.
15 Records, p. 139.
16 Records, pp. 147-167.
17 Records, pp. 168-169.
18 Records, pp. 183-188.
19 Records, p. 191.
20 Records, pp. 192-197.
21 Records, pp. 198-209.
22 Records, pp. 210-212.

The parties then filed a Joint Stipulation of Facts and Issues on September 8, 2022. Both parties manifested in this submission that they would no longer present any witness as testimonial evidence. In fact, respondent noted that he would no longer present any form of evidence.[23]

A Pre-Trial Order was then issued by this Court on October 3, 2022.[24]

Petitioner filed its Formal Offer of Evidence on November 3, 2022,[25] to which respondent interposed no objections.[26] This Court admitted all of petitioner's Exhibits.[27]

Through a Manifestation and Motion for Time to File a Memorandum, respondent reiterated his intention not to present any evidence for his case as there are no factual disputes in the present controversy but only legal questions are existing, and as such, respondent requested that he be given a period of 30 days to file a Memorandum.[28]

On April 11, 2023, respondent filed his Memorandum.[29] Meanwhile, petitioner filed his Memorandum on June 13, 2023.[30] Thus, in a Resolution, dated June 27, 2023, the instant case was submitted for Decision.[31]

Hence, this Decision.

The Issue[32]

> Whether or not petitioner is liable to pay deficiency income tax and VAT in the total amount of Php52,255,583.39, inclusive of surcharge and interest, for taxable year 2011.

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23 Records, pp. 217-222.
24 Records, pp. 225-232.
25 Records, pp. 235-238.
26 Records, pp. 240-243.
27 See Resolution, dated January 18, 2023, Records, pp. 246-248.
28 Records, pp. 249-256.
29 Records, pp. 258-290.
30 Records, pp. 293-323.
31 Records, pp. 324-325.
32 See Issue, Pre-Trial Order, Records, p. 229.

Arguments of the Parties

Petitioner's Arguments[33]

Petitioner avers that it is not liable for deficiency income tax and VAT. Petitioner posits the following arguments:

CTA Criminal Cases Nos. O-454, O-455, O-456, and O-457 include civil liability to pay taxes, not civil liability as a result of a criminal act. Petitioner's civil liability to pay taxes has already been adjudged by the CTA Second Division, when it ruled in the Decision, dated December 5, 2018, as follows:

> "**WHEREFORE,** premises considered, CTA Crim. Case Nos. O-454, O-455, O-456, and O-457 are **DISMISSED** for failure of the prosecution to establish the guilt of the accused beyond reasonable doubt. Accused Arnel Cortez Manaloto is **ACQUITTED** of the crimes charged and without civil liability.
>
> **SO ORDERED.**"
> (Underscoring, Ours)

The phrase "civil liability" pertains to the civil liability for taxes and penalties. *Republic Act No. 9282* clearly provides that "[a]ny provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of **civil liability for taxes and penalties** shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized." Moreover, *Section 11 of A.M. No. 05-11-07-CTA,* otherwise known as *the Revised Rules of the CTA,* states that: "civil liability for taxes and penalties shall be deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized."

The law is clear: "any provision of law or the Rules of Court to the contrary notwithstanding", the criminal action carries with it the civil action which pertains to taxes and penalties. Hence, *Section 254 of the NIRC* is deemed superseded by *Republic Act No. 9282.*

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33 See Memorandum (For Petitioner), Records, pp. 298-322.

The definition of the term "civil liability" under income tax law pertains to the liability to pay taxes. The concept of civil liability under criminal law is entirely different from the concept of civil liability under taxation law. The civil liability under taxation law is not because of any criminal act committed by a taxpayer but because of the tax that was not paid.

Since under *Republic Act No. 9282,* the criminal action and the corresponding civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, there is no other logical interpretation but to construe the aforementioned criminal cases have already adjudged the civil liability to pay taxes in so far as petitioner is concerned.

The case of *Gaw v. Commissioner of Internal Revenue*[34] has no application in the case at bar because in said case both the criminal cases for tax evasion and the appeal with the CTA are pending unlike in the present case wherein the tax evasion cases against petitioner have long been decided.

In CTA Criminal Cases Nos. O-454, O-455, O-456, and O-457, the CTA Second Division already made definitive findings on the tax liabilities of petitioner for TY 2011, which cannot be ignored in the instant case in view of the doctrine of *res judicata* in the concept of conclusiveness of judgment.

Considering that petitioner's tax evasion case has long been decided, the Court may take note that the legal and factual bases of the supposed tax deficiencies of petitioner for TY 2011 as stated in the FLD are the same as those stated in the BIR computations provided for in the criminal cases. The criminal cases filed against petitioner and the instant case involve identical parties and originate from the same factual antecedents. Thus, the findings in the aforementioned criminal cases cannot be simply set aside, in view of the doctrine of *res judicata* in the concept of conclusiveness of judgment.

In the Decision, dated December 5, 2018, the CTA Second Division made the following definitive findings that can no longer be re-litigated upon under the concept of *res judicata* in the concept of conclusiveness of judgment: a) the revenue officer admitted that based on the accused's (now, petitioner) income tax return and audited financial statements, the petitioner is not liable to pay VAT; b) the BIR failed to show definite proof that the petitioner received cash for legal services rendered; c) with respect to the deferred revenue, the BIR failed to show definite proof of income, e.g., receipt, on this matter; and d) the BIR has not aptly applied the Net Worth (Inventory) Method nor the Expenditures Method in computing the tax liability of the petitioner.

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34 G.R. No. 222837, July 23, 2018.

Indeed, the CTA Second Division, in CTA Criminal Cases Nos. O-454, O-455, O-456, and O-457, already made its ruling that petitioner is not liable to pay income tax and VAT based on the same audit findings contained in the FLD and FDDA subject of the present case. Thus, the CTA Second Division's findings in CTA Criminal Cases Nos. O-454, O-455, O-456, and O-457 can no longer be re-litigated upon in the instant case. Otherwise, it would be an injustice to leave any taxpayer in perpetual uncertainty and answer for the same tax findings over and over again.

Presumption of correctness of the tax assessment is not applicable in the case at bar as claimed by respondent. The CTA Second Division already made its own findings adverse to the BIR. Despite this, respondent simply adopted, even recycled, in its formal assessment, its previous findings without any further change and without further investigation or evidentiary support. Further, respondent alleged the existence of fraud in the present case in order that the present assessment will not be considered prescribed and for the 50% surcharge to apply. Respondent did this without even showing any evidence to prove the factual basis of the alleged fraud in the assessments, or that petitioner filed returns with intent to evade payment of taxes. Considering these circumstances, respondent cannot merely rely on a presumption of correction of the tax assessment. He must prove that the tax assessment he issued is based on valid grounds.

Respondent's Arguments[35]

In refutation, respondent alleges that this Court has no jurisdiction to entertain the present Petition. This is because petitioner failed to file a valid Protest against the FLD. Petitioner did not refute the assessments stated therein. As there was no valid Protest, there is no Protest to the assessment to speak of. Accordingly, there is no disputed assessment that may be appealed before this Court. In fact, the said assessments, as the same were not validly subjected to a Protest, have become final, executory, and not subject to judicial scrutiny.

Further, respondent alleged that civil action is not deemed instituted with the criminal case for tax evasion. What is simply deemed instituted with a criminal case is the action to recover civil liability arising from the crime. The source of the obligation to pay taxes does not come from the criminal case of tax evasion. It is independent of a criminal action. It is an obligation which is sourced from law. Given this, the obligation to pay taxes is not the civil action which is deemed instituted in the criminal action. As there was no formal assessment issued against petitioner during the pendency of the criminal cases actually setting forth the precise tax liability of petitioner, it

[35] See Memorandum, Records, pp. 262-286.

was necessary for respondent to issue the FLD to collect any deficiency tax due and demandable from taxpayer.

The assessment of taxes is different from the institution of criminal cases against an erring taxpayer. A criminal case for tax evasion is filed by the government against taxpayers to punish them for knowingly or willfully filing a fraudulent return with intent to evade and defeat a part or all of the tax. On the other hand, the assessment of taxes is part of the procedure for collection of deficiency taxes. The two must not be confused with each other. While petitioner has proven that he is not guilty of the crime of tax evasion, it remains that there is still no definite ruling with respect to his liability or obligation to pay the correct amount of taxes. The CTA Second Division could not have ruled on that matter since, as mentioned above, there was no formal assessment yet issued during the pendency of such criminal cases.

Petitioner is liable for the deficiency taxes assessed. The use of the expenditures method in assessing deficiency taxes is allowed by jurisprudence. Moreover, tax assessment enjoy the presumption of correctness. Competent proof must be adduced by the taxpayer to nullify this presumption. Unfortunately, petitioner failed to discharge this burden of proof. As such, the instant assessment stands.

The Ruling of the Court

The instant Petition is **GRANTED.**

The Court has jurisdiction over the present Petition.

Jurisdiction by this Court over the instant case is conferred by *Section 7 (1) of Republic Act No. 1125*, to wit:

> ***SEC. 7. Jurisdiction.*** - The Court of Tax Appeals shall exercise 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 imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue; . . .
> (Emphasis, Ours)

In the instant case, petitioner is appealing the assessment contained in the FDDA. In totality, the FDDA is a decision of the Commissioner of Internal Revenue pertaining to deficiency tax assessments referred to in the above cited provision that may be appealed before this Court. Accordingly, the said subject matter is within the jurisdiction of this Court and it may validly try the same as long as the appeal has been timely made.

In the present case, it is unquestioned that petitioner received the FDDA on May 11, 2021. Under *Section 3, Rule 8 of the Revised Rules of the CTA*, "[a] party adversely affected by a decision... of the Commissioner of Internal Revenue... may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision." Following this, petitioner had 30 days from receipt of the FDDA (*i.e.*, May 11, 2021), or until June 10, 2021, within which to file a judicial appeal before this Court. As petitioner filed the instant Petition on June 8, 2021, this Court properly assumed jurisdiction over the present case.

The Court has the authority to rule on issues not specifically raised by the parties.

The Court notes that in the Petition, petitioner focused on his argument that respondent is prohibited from issuing a separate assessment considering that these were allegedly deemed instituted with the criminal tax cases previously filed against petitioner and duly disposed of by the Courts. No contentions were raised relating to the validity of the assessment or on matters of due process –how it was observed by respondent or any violations thereto.

Before this Court determines whether or not respondent observed due process in issuing the present tax assessment against petitioner, it must first be noted that the Court has authority to rule on issues not specifically raised by the parties. As such, while neither petitioner nor respondent delved on the matters of due process relating to the issuance of the present deficiency tax assessment, this Court may inquire as to whether these have been complied with in the present case.

Section 1, Rule 14 of the Revised Rules of the CTA provides that the CTA is not limited by issues raised by the parties but may also rule upon related issues necessary to achieve the orderly disposition of the case, to wit:

> RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. Rendition of judgment. — The Court shall decide the cases brought before it in accordance with Section 15, paragraph (1), Article VIII of the 1987 Constitution. The conclusions of the Court shall be reached in consultation by the Members on the merits of the case before its assignment to a Member for the writing of the decision. The presiding justice or chairman of the Division shall include the case in an agenda for a meeting

> of the Court En Banc or in Division, as the case may be, for its deliberation. If a majority of the justices of the Court En Banc or in Division agree on the draft decision, the ponente shall finalize the decision for the signature of the concurring justices and its immediate promulgation. Any justice of the Court En Banc or in Division may submit a separate written concurring or dissenting opinion within twenty days from the date of the voting on the case. The concurring and dissenting opinions, together with the majority opinion, shall be jointly promulgated and attached to the rollo.
>
> **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.**
> (Emphasis, Ours.)

The Supreme Court, in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[36] affirmed the authority of this Court to rule on issues not raised by the parties in this wise:

> **On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.**
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, 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. The text of the provision reads:
>
> SECTION 1. Rendition of judgment. — . . . .
>
> 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.
>
> 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.** The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter.
> (Emphasis, Ours)

In the same vein, the High Court recognized this Court's authority to rule on issues not raised in the petition for review, in the case of *Commissioner of Internal Revenue vs. Yumex Philippines Corporation ("Yumex case")*[37] as follows:

> As the CTA *En Banc* held, the **CTA Division was justified in ruling on the issue that respondent was denied due process even though it was not expressly raised by respondent in its petition for review**. Sec.

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36 G.R. No. 183408, July 12, 2017.
37 G.R. No. 222476, May 5, 2021.

> 1, Rule 14 of the RRCTA provides that '[i]n 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.**' Herein, **the issue of the validity of the assessment against respondent also necessarily requires the determination of the matter of the proper issuance of said assessment in accordance with the requirements of due process**. In addition, there were sufficient allegations in respondent's petition for review on the dates of issuance by the BIR and receipt by respondent of the PAN and FLD/FAN, as well as documentary and testimonial evidence to establish the essential facts for resolution of the issue which were presented during the trial without any objection from petitioner. This could be deemed as petitioner's implied consent to try the issue, recognized under Sec. 5, Rule 10 of the Revised Rules of Court, which applies suppletorily to the RRCTA.
> (Emphasis, Ours.)

To emphasize, the Supreme Court ruled in the *Yumex case* that the validity of the assessment requires the determination of the propriety of the issuance of the notices in accordance with the taxpayer's right to due process. This remains true even if the violation of such right was not raised in the taxpayer's pleadings since due process is a related issue necessary to achieve the orderly disposition of an assessment case.

Further guidance may also be gleaned from the High Court's pronouncement in the case of *Prime Steel Mill, Incorporated vs. Commissioner of Internal Revenue ("Prime Steel case")*.[38] While this involves an issue raised for the first time on appeal or on motion for reconsideration, the conditions laid therein may be used as parameters on determining whether an issue may be touched upon by the Court despite the parties' failure to raise it.

In the *Prime Steel case*, the Supreme Court ruled that the CTA may consider arguments raised for the first time on appeal or on motion for reconsideration, provided that (1) these arguments are related to the principal issue to be resolved by the court and is necessary to achieve an orderly disposition of the case; and (2) the resolution of these new arguments would not require the presentation of additional evidence and must rely solely on factual bases that are already matters of record in the case:

> At the outset, the Court shall delve into the propriety of the CTA *En Banc*'s action of entertaining petitioner's additional arguments, including the alleged violation of its right to due process when the BIR prematurely issued the FAN and FLD in this case, which were raised for the very first time on appeal, and only in its Supplemental Memorandum.
>
> As correctly held by the CTA *En Banc*, **in deciding a case, the tax 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**

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38 G.R. No. 249153, September 12, 2022.

> **of the case.'** However, this authority of passing upon additional arguments not expressly contained in the parties' joint stipulation of facts and issues submitted during the pre-trial stage is not unbridled. As the CTA *En Banc* itself recognized, such issues 'should be dealt with, based not only on substantive law but in light of the relevant rules of evidence.'
>
> . . . .
>
> Conspicuously, it is this same spirit of liberality which impelled the Court to recognize that **the CTA may even consider issues not specifically raised by the parties at all in the disposition of tax cases so long as the same is related to the principal issue for its resolution and is necessary to achieve an orderly disposition of the matter at hand.**
>
> From the foregoing, the Court so holds that the CTA *En Banc*, or even a Division thereof, may consider arguments raised for the first time on appeal or on motion for reconsideration, respectively, only if two conditions concur: **one, these arguments are related to the principal issue to be resolved by the court and is necessary to achieve an orderly disposition of the case; and two, the resolution of these new arguments would not require the presentation of additional evidence, and must rely solely on factual bases that are already matters of record in the case.**
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> . . . .
>
> Conversely, the same procedural hindrance does not exist in resolving the issue on the violation of petitioner's right to due process.
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> First. **The issue on the violation of petitioner's right to due process is inextricably linked to the validity of the assessment.** It is primal that the BIR's right to collect deficiency taxes must flow from a valid assessment. This, in turn, proceeds from the basic truism that a void assessment bears no valid fruit. Moreover, a resolution on the apparent violation of petitioner's right to due process is indispensable for an orderly and comprehensive disposition of this case.
>
> Second. Unlike the issue on the invalidity or non-existence of the LOA, the non-observance of the 15-day period to reply to PAN **may be resolved by an examination of the evidence on record without requiring the presentation of additional proof.** Thus, the CTA En Banc correctly took cognizance of this new issue.
> (Emphasis, Ours)

Here, and as will be discussed below, the Court shall determine whether there was proper issuance of the instant assessment subject of the present case. This issue is intricately related to the principal issue to be resolved by the Court, i.e., whether petitioner is liable for deficiency taxes for TY 2011, and is necessary to achieve an orderly and comprehensive disposition of the case. Also, the said issue may be resolved by an examination of the evidence on record and would not require the presentation of additional evidence.

<u>Failure to serve a Preliminary Assessment Notice ("PAN") prior to the issuance of a final assessment is a violation of the taxpayer's right to due process</u>

Section 228 of the NIRC mandates that taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment is void.

To implement such provision, *Section 3 of Revenue Regulations ("RR") No. 12-99,*[39] *as amended by RR No. 18-2013,*[40] states:

> Sec. 3. Due Process Requirement in the Issuance of a Deficiency Assessment. —
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> . . . .
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> 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).
>
> If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> . . . .
>
> Sec. 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,

[39] Subject: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, dated September 6, 1999.

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

> or jurisprudence on which the assessment is based; otherwise, the assessment shall be void (see illustration in ANNEX "B" hereof). (Emphasis, Ours.)

It is clear from the foregoing provisions that a taxpayer shall be issued with a PAN upon determination of deficiency taxes. Thereafter, it has 15 days from the receipt of the PAN within which to submit its response. Only after receiving the taxpayer's reply or the lapse of the 15-day period to file the same shall the BIR issue a final assessment (*i.e.,* FLD/Final Assessment Notice ("FAN")).

In the oft-cited case of *Commissioner of Internal Revenue vs. Metro Star Superama Inc.*,[41] the Supreme Court highlighted the importance of PAN and categorically stated that the issuance of the same is a substantive, not merely a formal, requirement, to wit:

> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer **must first be informed that he is liable for deficiency taxes through the sending of a PAN**. He must be informed of the facts and the law upon which the assessment is made. **The law imposes a substantive, not merely a formal, requirement**. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence.
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> . . . .
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> From the provision quoted above, it is clear that the **sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities**. The use of the word "shall" in subsection 3.1.2 describes the mandatory nature of the service of a PAN. **The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process.** Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void. (Emphasis, Ours.)

In the case at bar, no PAN was issued by respondent to petitioner informing him of the preliminary assessment to be imposed against him.[42] Further, as there was no PAN issued to petitioner, he did not have a chance to refute such preliminary assessment through a Reply to PAN. The subject FLD was immediately issued by respondent without a PAN being served upon

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[41] G.R. No. 185371, December 8, 2010.

[42] See BIR Records.

petitioner and enough time given to the latter (*i.e.,* 15 days upon receipt of the PAN) to refute said preliminary assessment.

Citing *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc. ("Avon case")*,[43] the Supreme Court, in the *Yumex case,* commanded for the strict observance of by the BIR of the procedures for the issuance of the assessment notices in accordance with the taxpayer's constitutional rights to due process. It was further emphasized that BIR must not only inform the taxpayer through the PAN, FLD and FAN of the facts and law on which the assessment is based, but must also accord taxpayer the opportunity to be heard through the entire process, *i.e.* from tax investigation until assessment. Relevant portions of the *Avon case,* as reproduced in the *Yumex case*, states:

> The Bureau of Internal Revenue is the primary agency tasked to assess and collect proper taxes, and to administer and enforce the Tax Code. To perform its functions of tax assessment and collection properly, it is given ample powers under the Tax Code, such as the power to examine tax returns and books of accounts, to issue a subpoena, and to assess based on best evidence obtainable, among others. However, these powers must "be exercised reasonably and [under] the prescribed procedure." 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 taxpayers' constitutional rights.
>
> xxx xxx xxx
>
> The importance of providing the taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulations No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4 requires that the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void. Finally, Section 3.1.6 specifically requires that the decision of the Commissioner or of his or her duly authorized representative on a disputed assessment shall state the facts and law, rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the Final Decision on Disputed Assessment.
>
> **"The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory." This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.**

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43 G.R. Nos. 201398-99, 201418-19, October 3, 2018.

> On the other hand, the **taxpayer is explicitly given the opportunity to explain or present his or her side throughout the process, from tax investigation through tax assessment**. Under Section 3.1.1 of Revenue Regulations No. 12-99, the taxpayer is given 15 days from receipt of the Notice for Informal Conference to respond; otherwise, he or she will be considered in default and the case will be referred to the Assessment Division for appropriate review and issuance of deficiency tax assessment, if warranted. Again, under Section 228 of the Tax Code and Section 3.1.2 of Revenue Regulations No. 12-99, the taxpayer is required to respond within 15 days from receipt of the Preliminary Assessment Notice; otherwise, he or she will be considered in default and the Final Letter of Demand and Final Assessment Notices will be issued. After receipt of the Final Letter of Demand and Final Assessment Notices, the taxpayer is given 30 days to file a protest, and subsequently, to appeal his or her protest to the Court of Tax Appeals.
> (Emphasis, Ours.)

Based on the foregoing, the Court holds that the non-issuance of a PAN prior to the issuance of the subject FLD constitutes a violation of petitioner's right to due process, thus, invalidating the assessment against the petitioner.

The FLD failed to indicate the due date for payment; thus, it is invalid.

As discussed above, *Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013*, implementing *Section 228 of the NIRC*, prescribes that a taxpayer shall be issued with a FLD/FAN duly calling for payment of the alleged deficiency taxes, and stating the factual and legal bases of such assessments.

With the foregoing due process requirements, the Supreme Court, in the case of *Commissioner of Internal Revenue v. Pascor Realty and Development Corp.*, pronounced that *"(a)n assessment contains not only a computation of tax liabilities, but also a **demand for payment within a prescribed period**."*[44]

Anchoring on such pronouncement, the Supreme Court opined in the case of *Commissioner of Internal Revenue vs. Fitness by Design Inc. ("Fitness by Design Case)*[45] that the BIR's demand for payment was rendered void when the FAN did not indicate a due date. The High Court discussed that the FAN issued to Fitness by Design, Inc. states that the taxpayer is requested to pay the deficiency internal revenue tax liabilities *within the time shown in the enclosed assessment notice*. However, the attached assessment therein remained unaccomplished.

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44 G.R. No. 128315 June 29, 1999
45 G.R. No. 215957, November 9, 2016.

In the case at bar, the FLD did not whatsoever provide for a definite final date for payment of the taxes assessed therein. More importantly, the said FLD did not have assessment notices attached thereto which could have likewise indicated a definite due date for the payment of the assessed deficiency income tax and VAT.[46]

Considering the foregoing, the Court herby finds the FLD lacking the due date within which the payment of assessed taxes should be made; thus, it is void.

ACCORDINGLY, the Petition for Review filed by petitioner **ARNEL CORTEZ MANALOTO** is hereby **GRANTED**. Accordingly, the deficiency income tax assessment in the amount of Php37,827,190.05 and deficiency VAT assessment in the amount of Php14,428,393.34, or in the total amount of Php52,255,583.39, inclusive of interest and surcharge, for TY 2011 contained in the FLD and FDDA are **CANCELLED** and **SET ASIDE**. The FLD and FDDA are **DECLARED NULL AND VOID.** Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

(on Official Business)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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46 See BIR Records.

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.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Acting Division 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.

ROMAN G. DEL ROSARIO
Presiding Justice