REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE Petitioner,	**CTA EB No. 1413** (CTA Case No. 8456)
	Present:
- versus -	**DEL ROSARIO**, *P.J.*, **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN**, and **MANAHAN**, *JJ.*
DEREK ARTHUR P. RAMSAY, Respondent.	***Promulgated:*** JUN 22 2017 3:30 p.m.

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DECISION

UY, *J.*:

Before the Court *En Banc* is a *Petition for Review*[1] filed by the Commissioner of Internal Revenue (CIR) on February 3, 2016 against Mr. Derek Arthur P. Ramsay, praying for the reversal and setting aside of the Decision dated September 17, 2015[2] and the Resolution dated December 16, 2015[3], both rendered by the Third Division of this Court (Court in Division) in CTA Case No. 8456, entitled *"Derek Arthur P. Ramsay, Petitioner, versus Commissioner of Internal*

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[1] EB Docket, pp. 8 to 28.

[2] EB Docket, pp. 30 to 53; Ponencia of Associate Justice Lovell R. Bautista, and concurred by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban.

[3] EB Docket, pp. 54 to 56.

read:

Decision dated September 17, 2015:

"**WHEREFORE,** the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand dated January 4, 2012, demanding the payment of deficiency income and VAT assessment in the total amount of P18,230,498.46 for the period covering taxable years 2006 to 2009, which is void, is hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED."

Resolution dated December 16, 2015:

"**WHEREFORE,** respondent's 'Motion for Reconsideration (re: Decision promulgated on 17 September 2015)' is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner CIR is the chief of the Bureau of Internal Revenue (BIR), the government agency officially responsible for the assessment and collection of all internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties and fines connected with such taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent Derek Arthur P. Ramsay is a Filipino, of legal age, and with address located at Unit 424 Blanco Center, 119 Leviste St. Salcedo Village, Makati City.

On August 10, 2011, the Assistant Commissioner of Enforcement Service of the BIR, Mr. James H. Roldan (ASCOM) issued a *Preliminary Assessment Notice* (PAN), informing respondent of his deficiency income tax in the total amount of ₱11,849,428.66, and deficiency value-added tax (VAT) in the total amount of ₱6,381,069.80, for taxable years 2006 to 2009, and compromise penalty in the total amount of ₱125,000.00.

Respondent filed his Protest on November 10, 2011, and alleged that he did not receive any Letter of Authority (LOA); that he filed his return, but late; and that he paid his income tax due for taxable years 2006 to 2009 with surcharge and penalties on October 19, 2010.

On January 4, 2012, a *Formal Letter of Demand* (FLD) with the attached Details of Discrepancies was issued by ASCOM, informing respondent again of his deficiency income tax and VAT for taxable years 2006 to 2009, and compromise penalty.

A *Final Demand Letter* (FDL) was issued on February 20, 2012 by the Chief, National Investigation Division of the BIR, Mr. Sixto C. Dy, Jr., stating that respondent received a copy of the FLD with the attached Details of Discrepancies on January 17, 2012, and that he was demanding payment for the aforesaid deficiency internal revenue taxes.

On February 21, 2012, respondent filed a Protest Letter to the FLD, stating that no notice of assessment was issued, and therefore, the issuance of the FLD was illegal.

On February 27, 2012, ASCOM wrote a letter addressed to the counsels of respondent, alleging that the assessment had become final and executory as he failed to file his protest within thirty (30) days from receipt of the FLD on January 27, 2012.

Unheeding to the demands of petitioner, respondent filed a *Petition for Review* on April 11, 2012 with the Court in Division. The case was docketed as CTA Case No. 8456.

On June 18, 2012, petitioner filed his *Answer*, interposing special and affirmative defenses, which include, among others, that the Court in Division has no jurisdiction over respondent's *Petition for Review* since the assessment has become final, executory and demandable; the assessment on deficiency income tax and VAT was issued in accordance with law, rules and jurisprudence; respondent has the obligation to pay the corresponding taxes for all the income he received during taxable years 2006 to 2009; respondent has not pointed out any provision or item in the assessment notice which bears a trace of falsity; the power to tax, an inherent prerogative, has to be availed of to assure the performance of vital state functions; and well-settled is the principle that taxes are imposed for the support of the government in return for the general advantage and protection which the government affords to taxpayers and their property.

On July 12, 2012, the pre-trial conference was set. Petitioner filed his *Respondent's Pre-trial Brief* on July 5, 2012, while respondent filed his *Pre-trial Brief* on July 6, 2012.

After the termination of the pre-trial, the parties were granted a period of fifteen days to file their *Joint Stipulation of Facts and Issues*. On August 17, 2012, the parties filed the same.

On May 21, 2013, respondent presented Exhibits "A" to "X-1" in his *Formal Offer of Evidence*, while petitioner presented Exhibits "R-1" to "R-30-A" in his *Respondent's Formal Offer of Documentary Evidence*.

In the Resolution dated August 5, 2013 and January 17, 2014, the Court in Division admitted respondent's Exhibits "B-2", "D", "D-1", "E", "E-1", "H", "H-1", "H-2", "H-3", "H-4", "H-5", "H-6", "H-7", "H-8", "H-9", "I", "I-1", "I-2", "I-3", "I-4", "I-5", "I-6", "J", "J-1", "J-2", "J-3", "J-4", "J-6", "J-7", "J-8", "J-9", "K", "K-1", "K-2", "K-3", "K-4", "K-5", "K-6", "K-7", "K-8", "K-9", "K-10", "K-11", "L", "M", "N", "O", "P", "Q", "R", "S", "T", "V", "V-1", "W", and "W-1".

And in the Resolution dated July 1, 2014, the Court in Division admitted all of petitioner's exhibits. In the same Resolution, both parties were ordered to file their respective memorandum.

Respondent filed his *Memorandum for the Petitioner* on August 26, 2014, while petitioner filed his *Memorandum* on September 10, 2014.

In the assailed Decision,[4] the Court in Division granted respondent's *Petition for Review* and ruled that the FLD dated January 4, 2012 is void, for being non-compliant with the mandatory requirements of Section 228 of the National Internal Revenue Code (NIRC) and Section 3 of Revenue Regulations (RR) No. 12-99. The dispositive portion of the said Decision states:

"**WHEREFORE,** the instant Petition for Review is

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[4] EB Docket, pp. 30 to 53; Division Docket (CTA Case No. 8456) – Vol. 2, pp. 954 to 977.

> hereby **GRANTED**. Accordingly, the Formal Letter of Demand dated January 4, 2012, demanding the payment of deficiency income and VAT assessment in the total amount of P18,230,498.46 for the period covering taxable years 2006 to 2009, which is void, is hereby **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED**."

Petitioner filed his *Motion for Reconsideration (re: Decision promulgated on 17 September 2015)* on October 9, 2015,[5] to which respondent filed his *Comment To Respondent's Motion for Reconsideration To the 17 September 2015 Decision of this Honorable Court* on November 23, 2015.[6] In the assailed Resolution, the Court in Division denied the said *Motion for Reconsideration* for lack of merit.[7]

Thereafter, on January 18, 2016, petitioner filed before the Court *En Banc* a *Motion For Extension of Time To File Petition For Review*,[8] praying for an additional fifteen (15) days from January 19, 2016 or until February 3, 2016, within which to file his *Petition for Review*.

The Court *En Banc* then granted petitioner a final and non-extendible period of fifteen (15) days from January 19, 2016 or until February 3, 2016, within which to file the said *Petition for Review*.[9]

On February 3, 2016, petitioner filed the instant *Petition for Review* before the Court *En Banc*.[10]

Subsequently, on February 23, 2016, respondent filed a *Motion for Extension of Time To File Comment to Petitioner's Petition for Review*,[11] praying for an additional time of fifteen (15) days February 24, 2016 or until March 10, 2016, within which to file his *Comment* to the instant *Petition for Review*.

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[5] Division Docket (CTA Case No. 8456) – Vol. 2, pp. 978 to 992.
[6] Division Docket (CTA Case No. 8456) – Vol. 2, pp. 1004 to 1017.
[7] EB Docket, pp. 54 to 56; Division Docket (CTA Case No. 8456) – Vol. 2, pp. 1020 to 1022.
[8] EB Docket, pp. 1 to 3.
[9] Minute Resolution dated January 20, 2016, EB Docket, p. 5.
[10] EB Docket, pp. 8 to 28.
[11] EB Docket, pp. 62 to 65.

Respondent filed his *Comment To Petition for Review* on March 9, 2016.[12]

In the Resolution dated April 6, 2016,[13] the Court *En Banc*, after giving due course to the instant *Petition for Review*, required both parties to file their respective memorandum.

On May 13, 2016, petitioner filed a *Manifestation (Re: Resolution Promulgated 6 April 2016)*, stating that he is adopting the arguments raised in his *Petition for Review* dated February 1, 2016 filed before the Court *En Banc* on February 3, 2016, as his *Memorandum*.[14] The Court *En Banc* took note of the said *Manifestation*.[15]

Thereafter, on May 30, 2016, respondent filed a *Manifestation With* Ex-parte *Motion*, stating that he has not received a copy of the Resolution dated April 6, 2016, and prays that the 30-day period to file his *Memorandum* should expire on June 26, 2016.[16] The Court *En Banc* took note of the said *Manifestation* and granted respondent until June 26, 2016 to file his *Memorandum*.[17]

On June 27, 2016, respondent filed his *Memorandum*.[18]

In the Resolution dated July 7, 2016,[19] the Court *En Banc* deemed the instant case submitted for decision.

Hence, this Decision.

ASSIGNMENT OF ERRORS

In the instant *Petition for Review*, petitioner assigns the following errors supposedly committed by the Court in Division, to wit:

"The Honorable Third Division erred in not ruling whether it

[12] EB Docket, pp. 72 to 117.
[13] EB Docket, pp. 120 to 121.
[14] EB Docket, pp. 122 to 124.
[15] Minute Resolution dated May 17, 2016, EB Docket, p. 126.
[16] EB Docket, pp. 127 to 130.
[17] Minute Resolution dated May 31, 2016, EB Docket, p. 132.
[18] EB Docket, pp. 135 to 189.
[19] EB Docket, pp. 192 to 193.

has jurisdiction over the present case.

The Honorable Third Division erred in ruling that respondent was not accorded due process of law.

The Honorable Third Division erred in ruling that there was no demand to pay stated in the assessment notices."[20]

Petitioner's arguments:

Petitioner argues that the Court in Division erred in not ruling whether it has jurisdiction over the respondent's petition. He claims that the Court in Division did not acquire jurisdiction over the case since the FLD with assessment notices became final, executory and demandable when respondent failed to file a timely protest. He maintains that since there is no disputed assessment, the Court in Division has no jurisdiction over the original petition.

Moreover, petitioner likewise contends that the Court in Division erred in not ruling that respondent was accorded due process of law. According to petitioner, based on the records of the case, the procedure prescribed under Revenue Regulations (RR) No. 12-99 have been complied with by petitioner.

Furthermore, petitioner emphasizes that all the relevant documents starting from the LOA up to the assessment notices and final decision and *Warrant of Distraint and/or Levy* were all sent to respondent's registered address. Petitioner further stresses that the notices were served to respondent via personal service, which is one of the mandated modes of service stated in RR No. 12-99. According to petitioner, the fact that respondent was able to file reply/protest the assessments intelligently, imply that he had actual knowledge of the factual and legal bases of the assessments.

In addition, petitioner argues that the Court in Division erred in ruling that there was no demand to pay stated in the assessment notices. According to petitioner, a close scrutiny of the records shows that together with the FLD, the BIR Form No. 0401 (Audit Result / Assessment Notice) for income and VAT deficiencies for taxable years 2006, 2007, 2008 and 2009 were served to respondent on January 17, 2012. Petitioner claims that the said assessment

[20] EB Docket, p. 12.

notice states the return period, the tax type, the due date and the amount due and collectible. He stresses that under the assessment notice, the due date is "thirty (30) days from receipt of notice." As such, since the notice was received on January 17, 2012, respondent has until February 16, 2012 to pay.

Finally, petitioner stresses that the power to tax, an inherent prerogative, has to be availed of to assure the performance of vital state functions. The state will be deprived of the taxes validly due it and the public will suffer if taxpayers will not be held liable for the proper taxes assessed against them.

Respondent's counter-arguments:

Respondent counters that since there is a disputed assessment, the Court in Division has jurisdiction over the present case.

He maintains that there was no valid assessment in the first place because no proper service of the tax notices has ever been made to respondent or his duly authorized representatives.

Respondent likewise contends that respondent was not accorded with due process, thus, the tax assessment is void. Respondent claims that he was denied of his right to be served with tax notices resulting in the complete denial of his guaranteed right as taxpayer to be informed of the bases of the assessment against him.

Respondent claims that petitioner failed to overcome respondent's assertion of improper and/or absence of service tax notices and present competent evidence to show otherwise.

Furthermore, respondent stresses that the assessment is void since there was no demand to pay within a specified period of time.

Respondent also insists that the assessment has not become final, executory and demandable and that the right of petitioner to assess respondent has already prescribed.

Lastly, respondent submits that the records of the case show that respondent is not liable for deficiency tax

THE COURT *EN BANC*'S RULING

The *Petition for Review* must fail.

Petitioner failed to show that the subject assessment notices were delivered to respondent.

Upon careful examination of the evidence submitted by both parties, We note that no assessment notice was in fact received by respondent.

Petitioner's failure to attach the assessment notice to the FLD not only contradicts the statement in the FLD but more importantly violates the due process requirement under Section 228 of the NIRC in relation to Revenue Regulation (RR) No. 12-99, 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: Provided, however, that a pre-assessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> **The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)"*

To implement the foregoing provision, RR No. 12-99 was issued which specify the due process requirement to be observed in issuing deficiency tax assessments. Section 3.1.4 of RR No. 12-99 reads:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> xxx xxx xxx
>
> 3.1.4 *Formal Letter of Demand and Assessment Notice.* — **The formal letter of demand <u>and</u> <u>assessment notice</u> <u>shall</u> be issued by the Commissioner or his duly authorized representative.** The letter of demand 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 formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof." *(Emphasis and underscoring supplied)*

From the foregoing, it is clear that a formal letter of demand **and** an assessment notice shall be issued by petitioner or his duly authorized representative. The use of the word "shall" in these legal provisions indicate the mandatory nature of the requirements laid

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down therein.[21] Verily, it is mandatory for petitioner to demonstrate that both the formal letter of demand and the assessment notice were issued to, and was received by, the taxpayer.

While petitioner asserts that the assessment notice was issued to respondent, the latter insists that he did not receive any assessment notice. In fact, respondent has consistently denied the receipt of any assessment notice in his Protest to the FLD[22] and in the pleadings filed with the Court in Division (*Petition for Review filed on April 11, 2012*[23]) and with the Court *En Banc* (*Comment to Petition for Review* filed on March 9, 2016[24] and *Memorandum for the Respondent* filed on June 27, 2016[25].

Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.[26]

In this case, petitioner failed to convince Us that respondent indeed received the subject assessment notices.

Based on the BIR Records of this case which contain copies of the assessment notices[27], this Court notes the following irregularities:

1. The subject assessment notices were not attached to the FLD ("Exhibit R-21")[28];

2. On the subject assessment notices, there is no indication that respondent or his duly authorized representative acknowledge the receipt of the same;[29] and

3. The date of issuance of the assessment notices and the assessment number are not indicated.

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[21] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.
[22] Exhibit "D", Division Docket (CTA Case No. 8456) – Vol. 1, pp. 423 to 425;
[23] Division Docket (CTA Case No. 8456) – Vol. 1, pp. 6 to 29.
[24] EB Docket, pp. 72 to 117.
[25] EB Docket, pp. 135 to 189.
[26] *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006.
[27] BIR Records, p. 231 to 246.
[28] BIR Records, pp. 309 to 313.
[29] BIR Records, pp. 231 to 245.

Moreover, the Final Demand Letter (FDL) dated February 20, 2012, filed by petitioner as *Exhibit "R-22"*,[30] bolsters the fact that no assessment notice was attached to the FLD. For easy reference, the contents of the said FDL are reproduced as follows:

"February 20, 2012

FINAL DEMAND LETTER

Mr. Derek P. Ramsay
Unit 408 Catleya Condominium
Salcedo St. Legaspi Village, Makati City

Sir:

Records of this Office show that you received on January 17, 2012, **the Formal Letter of Demand (FLD), including the Details of Discrepancies**, for the payment of your internal revenue tax liabilities as described and enumerated hereunder:

Letter of Authority No.: 211-2010-00000237
Years Covered: 2006-2009
Date Issued: October 8, 2010
Date Received: October 9, 2010

Kind of Tax	Tax Due	Surcharge	Interest	Total
Income Tax -2006	P 1,338,199.15	P 669,099.58	P 1,348,275.79	P 3,355,574.52
VAT	P 510,164.12	P 255,082.06	P 537,044.67	P 1,302,290.85
Income Tax -2007	P 1,496,583.15	P 748,291.58	P 1,208,535.79	P 3,453,410.52
VAT	P 576,743.68	P 288,371.84	P 491,783.57	P 1,356,899.09
Income Tax -2008	P 2,460,391.60	P 1,230,195.80	P 1,494,761.71	P 5,185,349.11
VAT	P 939,971.85	P 469,985.93	P 613,510.23	P 2,023,468.01
Income Tax -2009	P 5,446,511.36	P 2,723,255.68	P 2,219,616.77	P 10,389,383.81
VAT	P 2,061,566.76	P 1,030,783.33	P 933,250.66	P 4,025,600.80
TOTAL				**P 20,250,298.40**

The Letter of Authority and Notices for the request for presentation of your records were duly received at Unit 408 Catleya Condominium Salcedo St. Legaspi Village Makati City. The Preliminary Assessment Notice and Formal Letter of Demand were likewise received at the same address.

However, despite receipt of the said demand letter and the considerable length of time given, you still failed to pay the above tax liabilities.

You are therefore directed to settle the above-mentioned tax liabilities within five (5) days from receipt hereof. Otherwise, this Office will be constrained to file the necessary legal actions against you.

Very truly yours,

(signed)

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[30] Exhibit "R-22", BIR Records, p. 314.

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SIXTO C. DY JR
Chief, National Investigation Division" (*Emphasis supplied.)*

A careful reading of the foregoing FDL reveals that based on petitioner's records, what was received by respondent are merely *"the Formal Letter of Demand (FLD) and the Details of Discrepancies".* Nothing has been said about the subject assessment notices. Clearly, this confirms that no assessment notice was received by respondent.

In *Commissioner of Internal Revenue vs. Azucena T. Reyes,*[31] the Supreme Court declared that if there is no valid notice sent, the assessment is void, and the reason is that the "law imposes a substantive, not merely a formal, requirement."

After taking the foregoing factual circumstances into consideration vis-à-vis the pertinent jurisprudence, We are of the view that indeed no assessment notice was received by respondent. Accordingly, the assessment in this case is a nullity.

Furthermore, the assessment is void for failure of the FLD to state a definite time for the payment of the supposed tax liabilities.

In the context in which it is used in the NIRC, an assessment is a written notice and demand by the BIR on the taxpayer for the settlement of a due tax liability **that is there definitely set and fixed**.[32] Thus, for a tax assessment to stand the test of validity, it must contain not only a computation of tax liabilities but also a demand for payment **within a prescribed period**.

In *Commissioner of Internal Revenue vs. Menguito,*[33] the Supreme Court ruled that "the issuance of a valid formal assessment

[31] G.R. No. 159694 and 163581, January 27, 2006.
[32] *Adamson, et al. vs. Court of Appeals, et al.*, G.R. Nos. 120935 and 124557, May 21, 2009.
[33] G.R. No. 167560, September 17, 2008, citing *Commissioner of Internal Revenue vs. Reyes,* G.R. No. 159694, January 27, 2006, *Roxas Securities, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006, and *Commissioner of Internal Revenue vs. Pascor Realty & Devt. Corp.,* 368 Phil. 714 (1999).

is a substantive prerequisite to tax collection, for it contains not only a computation of tax liabilities **but also a demand for payment within a prescribed period**, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor. Due process requires that it must be served on and received by the taxpayer."

Further, in *Petronila C. Tupaz vs. Honorable Benedicto B. Ulep and People of the Philippines*[34], the Supreme Court held that "an assessment contains not only a computation of tax liabilities, **but also a demand for payment within a prescribed period**. The ultimate purpose of assessment is to ascertain the amount that each taxpayer is to pay. An assessment is a notice to the effect that the amount therein stated is due as tax and a demand for payment thereof."

Contrary to the principle enunciated in the foregoing jurisprudence, there is no showing that the FLD dated January 4, 2012,[35] issued against respondent contains a prescribed period for the payment of the supposed deficiency tax. For easy reference, the contents of the said FLD are reproduced as follows:

"January 4, 2012

FORMAL LETTER OF DEMAND

Mr. Derek P. Ramsay
Unit 408 Cattleya Condominium
Salcedo St. Legaspi Village, Makati City

Sir:

Please be informed that after investigation, there has been found due from you deficiency internal revenue taxes for taxable years 2006 to 2009 as shown hereunder:

INCOME TAX

	2006	2007	2008	2009
Gross Taxable Income	4,311,247.34	4,806,197.33	7,833,098.74	17,179,723.00
Less: Personal Exemption	20,000.00	20,000.00	35,000.00	50,000.00
Total Taxable Inc.	**4,291,247.34**	**4,786,197.33**	**7,798,098.74**	**17,129,723.00**

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34 G.R. No. 127777, October 1, 1999, citing *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation*, G. R. No. 128315, June 29, 1999 and *Commissioner vs. Ayala Securities Corporation*, 70 SCRA 204 (1976).

35 Exhibit "C", Division Docket (CTA Case No. 8456) – Vol. 1, pp. 418 to 422; Exhibit "R-21", BIR Records, pp. 309 to 313.

Basic Income Tax Due	**1,338,199.15**	**1,496,583.15**	**2,460,391.600**	**5,446,511.36**
Surcharge	669,099.58	748,291.58	1,230,195.80	2,723,255.68
Interest up to 02/08/12	1,282,088.45	1,134,514.78	1,373,070.74	1,950,232.32
Total Deficiency Income Tax Due	3,289,387.18	3,379,389.51	5,043,802.78	10,076,046.01
Less:Tax Paid/Withheld	1,508,605.73	1,867,150.65	2,154,164.79	3,527,064.16
Total Deficiency Income Tax still due	**1,780,781.45**	**1,512,238.86**	**2,909,493.35**	**6,592,935.20**

TOTAL INCOME TAX DUE P12,795,448.86

VALUE ADDED TAX

	2006	**2007**	**2008**	**2009**
Taxable Income	*4,311,247.34	4,806,197.33	7,833,098.74	17,179,723.00
VAT DUE	**510,164.12**	**576,743.68**	**939,971.85**	**2,061,566. 76**
Surcharge	255,082.06	288,371.84	469,985.93	1,030,783.38
Interest 02/08/12	514,005.65	461,829.23	564,690.90	826,179.06
Total VAT Due	**1,279,251.83**	**1,326,944.75**	**1,974,648.68**	**3,918,529.20**
Less: Tax Paid			514,600.12	1,270,092.86
Deficiency VAT	**1,272,987.02**	**1,326,944.75**	**1,460,048.56**	**2,648,436.34**
	***11.833333 vat rate**			

TOTAL VALUE ADDED TAX DUE P 6,714,681.48

SUMMARY:

TOTAL INCOME TAX DUE P 12,795,448.86
TOTAL VALUE ADDED TAX DUE 6,714,681.48

TOTAL DEFICIENCY TAXES DUE **P 19,510,130.34**

COMPROMISE PENALTY

NO BOOKS OF ACCOUNTS P 25,000.00
NON FILING OF RETURNS 100,000.00

TOTAL COMPROMISE PENALTIES **P 125,000.00**

Please note that the interest and the total amount due will have to be adjusted if paid beyond February 8, 2012.

The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in accompanying Annex A of this Preliminary Assessment Notice.

The 50% surcharge has been imposed pursuant to the provisions of Section 248(B) of the National Internal Revenue Code of 1997, as amended by R.A. No. 8424, for willful failure to file the 2006, 2007, 2008 and 2009 tax returns within the period prescribed by the law.

The 20% interest per annum has been imposed pursuant to the provision of Section 249(B) of the National Internal Revenue Code.

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

Very truly yours,

KIM S. HENARES-JACINTO
Commissioner of Internal Revenue

By:

(signed)
JAMES H. ROLDAN
Assistant Commissioner
Enforcement Service"

Contrary to the settled principle that an assessment should indicate the specific time for payment, a perusal of the foregoing FLD shows that while it contains the computation of the supposed tax liabilities of respondent, there is no fixed date when payment should be made. Instead, the FLD in this case, merely states that the payment be made *"within the time shown in the enclosed assessment notice."* Such statement does not amount to a valid assessment as it failed to state a definite time when the supposed tax liabilities were due and demandable. This is especially true in this case since, as already determined, the subject assessment notices were not served to respondent.

The Court in Division has jurisdiction over the case; A void assessment does not ripen to finality nor create a demandable obligation.

Anent petitioner contention that the Court in Division did not acquire jurisdiction over the case since the FLD with assessment notices became final, executory and demandable when respondent failed to file a timely protest, the same deserves scant consideration.

In the first instance, there is no basis for petitioner's argument that the Court in Division has no jurisdiction. Section 7 of Republic Act (RA) No. 1125, as amended,[36] grants the CTA the exclusive appellate jurisdiction to review the decisions of petitioner in cases involving disputed assessments, fees or other charges, and penalties in relation thereto, or other matters arising under the 1997 NIRC. Further, Section 11 of RA No. 1125 provides that any taxpayer adversely affected by a decision of petitioner may file an appeal with this Court within thirty (30) days after the receipt of such decision.

In this case, respondent received the FDL dated February 27, 2012 on March 14, 2012, which respondent considered as the final denial of its Protest to the FLD. Therefore, respondent has until April 13, 2012 to file its appeal with the Court in Division. Thus, on April 11, 2012, petitioner timely filed its Petition for Review.

We reject petitioner's view that the assessment has become final and demandable. As discussed earlier, considering that the assessment in this case is void for failure to state a fixed date for the payment of the supposed tax liabilities and that the subject assessment notices were not received by respondent, the same cannot ripen into finality nor create demandable obligation on the part of the latter. It is well-settled that a void assessment does not bear fruit.[37]

The Court in Division did <u>not</u> err in ruling that respondent was not accorded due process of law.

We agree with the Court in Division that petitioner failed to comply with the mandatory requirements of Section 228 of the NIRC and Section 3 of the RR No. 12-99.

It is well settled that strict compliance with due process requirement is necessary for a valid tax assessment. In *Pilipinas*

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[36] "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;

xxx xxx xxx."

[37] *Commissioner of Internal Revenue vs. Reyes*, 516 Phil. 176, 189-190 (2006).

Shell Petroleum Corporation vs. Commissioner of Internal Revenue,[38] the Supreme Court ruled that the non-compliance with statutory and procedural due process renders the final assessment notice as null and void, *viz.*:

> "While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued. Respondent must be more circumspect in the exercise of his functions, as this Court aptly held in *Roxas v. Court of Tax Appeals*:
>
> > The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the "hen that lays the golden egg." And, in the order to maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously."

In this case, it is evident that petitioner, having failed to demand payment within a specified period of time and to serve upon respondent the subject assessment notices, unjustifiably denied respondent of its right to due process under earlier quoted Section 228 of the NIRC, as implemented by RR No. 12-99.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Decision dated September 17, 2015 and the Resolution dated December 16, 2015, both rendered by the Court in Division in CTA Case No. 8456, are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[38] G.R. No. 172598, December 21, 2007.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice