REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

NEUFTECH PHILIPPINES, INC.,
Respondent.

CTA EB NO. 3012
(CTA CASE NO. 10442)

Present:

RINGPIS-LIBAN, *P.J.*,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, *JJ.*

Promulgated:
MAY 07 2026 1:15 pm

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DECISION

ANGELES, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed by the Commissioner of Internal Revenue (petitioner) against Neuftech Philippines, Inc. (respondent), seeking the reversal of the May 29, 2024 *Decision*[2] (Assailed Decision) and the September 20, 2024 *Resolution*[3] (Assailed Resolution) of the Special Second Division (Court in Division) in CTA Case No. 10442, entitled *Neuftech Philippines, Inc. v. Commissioner of Internal Revenue,* the dispositive portions of which respectively read:

Decision dated May 29, 2024:

> WHEREFORE, premises considered, the instant *Petition for Review* is **GRANTED**.
>
> Accordingly, the FLD/FAN dated June 06, 2019, the FDDA dated March 09, 2020, and the WDL dated November 11, 2020,

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[1] EB Docket, pp. 10 to 38.
[2] EB Docket, pp. 47 to 67, Penned by Associate Justice Lanee S. Cui-David, concurred by Associate Justice Jean Marie A. Bacorro-Villena.
[3] EB Docket, pp. 69 to71.

> issued by [petitioner] CIR against [respondent] Neuftech Philippines, Inc. for deficiency income taxes and improperly accumulated earnings taxes, including the compromise penalty, surcharges, and interests, covering the fiscal year ending March 31, 2016 are **CANCELLED** and **SET ASIDE**.
>
> Further, [petitioner] is **ENJOINED and PROHIBITED** from enforcing the collection of the subject deficiency taxes against [respondent].
>
> **SO ORDERED.**

Resolution dated September 20, 2024:

> **WHEREFORE**, premises considered, [petitioner's] *Motion for Reconsideration (Re: Decision promulgated on 29 May 2024)* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

THE PARTIES

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of his office, including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code of 1997 (Tax Code), as amended.[4]

Respondent is an existing and duly organized corporation under Philippine laws.[5]

ANTECEDENTS

In the assailed *Decision*, the Court in Division states the factual background of this case, to wit:

> On March 8, 2018, [petitioner] issued a *Letter of Authority* (LOA) No. 056-2018-00000097 (SN: eLA201200047177), authorizing Revenue Officer (RO) Benjamin Karlo Reyes and Group Supervisor Michele Delos Santos of Revenue District Office No. 056 to examine [respondent's] books of accounts and other accounting records for all internal revenue taxes for the period April 1, 2015 to March 31, 2016.

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[4] EB Docket, Petition for Review, p. 11.
[5] EB Docket, p. 12.

Thereafter, on April 2, 2019, [petitioner] issued a *Preliminary Assessment Notice* (PAN) with *Details of Discrepancies,* informing petitioner that after investigation, deficiency income tax, improperly accumulated earnings tax (IAET), and compromise penalty are due, in the total amount of ₱16,499,053.61, for the subject period, broken down as follows:

Tax Type	Basic Tax	Increments		Total
		Interest	Surcharge	
Income tax	₱6,721,232.97	₱2,961,761.95	₱3,360,616.49	₱13,043,611.41
IAET	2,226,015.40	647,922.95	556,503.85	3,430,442.20
Compromise penalty				25,000.00
			TOTAL	**₱16,499,053.61**

On April 22, 2019, [respondent] filed a *reply* to the PAN *via* the letter of even date.

On June 13, 2019, [petitioner] issued a *Formal Letter of Demand* (FLD) dated June 6, 2019, with *Details of Discrepancies* and *Assessment Notices* (FAN), assessing [respondent] of deficiency income tax, IAET, and compromise penalty, in the total amount of ₱16,684,371.96, computed as follows:

Tax Type	Basic Tax	Increments		Total
		Interest	Surcharge	
Income tax	₱6,721,232.97	₱3,100,974.34	₱3,360,616.49	₱13,182,823.80
IAET	2,226,015.40	694,028.91	556,503.85	3,476,548.16
Compromise penalty				25,000.00
			TOTAL	**₱16,684,371.96**

On July 8, 2019, [respondent] filed a *protest* letter in the nature of a request for reinvestigation. Within sixty (60) days, or on September 5, 2019, petitioner submitted another expansion plan and historical analysis of its income declared per 1702 with copies of its BIR Forms Nos. 1702 and 1601-F.

On June 22, 2020, [respondent] received a *Final Decision on Disputed Assessment* (FDDA) dated March 9, 2020, finding it liable for deficiency income tax, IAET, interests to the said taxes, and compromise penalty in the total amount of ₱17,549,190.92, as follows:

Tax Type	Basic Tax	Increments		Total
		Interest	Surcharge	
Income tax	₱6,721,232.97	₱3,750,632.14	₱3,360,616.49	₱13,832,481.60
IAET	2,226,015.40	909,190.07	556,503.85	3,691,709.32
Compromise penalty				25,000.00
			TOTAL	**₱17,549,190.92**

The FDDA was issued by Regional Director Ricardo B. Espiritu (RD Espiritu).

On July 1, 2020, [respondent] filed an *Appeal for Reconsideration* of the FDDA before respondent's office.

On December 4, 2020, [respondent] received a copy of the WDL dated November 11, 2020, enforcing collection of the deficiency taxes and compromise penalty for the fiscal year ending March 31, 2016.

PROCEEDINGS BEFORE THE COURT [IN DIVISION]

On January 4, 2021, [respondent] filed the present *Petition for Review*, incorporating a *Motion to Suspend Collection of Taxes*. The case was initially raffled to this Court's Third Division.

[Petitioner] filed his *Comment and Opposition (Re: Petitioner's Motion to Suspend Collection of Taxes)* and *Supplement to the Comment and Opposition dated 27 January 2021 (Re: Petitioner's Motion to Suspend Collection of Taxes)*, on January 27, 2021, and February 5, 2021, respectively.

At the hearing held for the *Motion to Suspend Collection of Taxes* on February 3, 2021, [respondent] presented various documentary evidence, which its witness, Ms. Maria Rebecca C. Del Corro, identified.

On February 8, 2021, [respondent] submitted its *Formal Offer of Evidence (Re: Motion to Suspend of Collection of Taxes)*, to which [petitioner] filed a *Comment (Re: Petitioner's Formal Offer of Evidence in relation to Motion to Suspend Collection of Taxes)* on February 15, 2021. In the Resolution dated March 12, 2021, the Court admitted [respondent's] exhibits, but denied its *Motion to Suspend Collection of Taxes* for lack of merit.

Within the extended period, [petitioner] filed his *Answer (Re: Petition for Review dated 30 December 2020)* on March 23, 2021.

In the Resolution dated June 9, 2021, the Court referred the case to the Philippine Mediation Center Unit - Court of Tax Appeals

(PMC-CTA) for possible mediation on July 13, 2021. However, the parties decided not to have their case mediated by the PMC-CTA.

The Court set the Pre-Trial Conference on December 1, 2021, which was reset to March 29, 2022. Prior thereto, [respondent's] *Pre-Trial Brief* was filed on November 26, 2021, while [petitioner's] *Pre-Trial brief* was filed on December 14, 2021.

In the meantime, [petitioner] transmitted the *BIR Records* of the case on December 13, 2021.

On April 18, 2022, the parties posted their *Joint Stipulation of Facts and Issues,* which the Court admitted and approved in the Resolution dated April 21, 2022. Thereafter, the Court issued the Pre-Trial Order dated May 5, 2022.

The trial proceeded, with the parties presenting and offering their respective testimonial and documentary evidence.

[Respondent] presented and offered the testimonies of the following: (1) Ms. Ma. Teresita Buccat, Accounting Consultant, and (2) Ms. Maria Rebecca Del Corro, Treasurer.

In the Order dated June 30, 2022, the case was transferred to the Second Division of this Court.

On September 6, 2022, [respondent] filed its *Formal Offer of Exhibits,* to which [petitioner] filed his *Comment (Re: Formal Offer of Exhibits dated 06 September 2022)* on September 20, 2022. In the Resolution dated October 12, 2022, the Court admitted [respondent's] offered exhibits, except for (1) Exhibit "P-9" for failure to present the original for comparison and (2) Exhibits "P-12" and "P-16" for failure to have the exhibits identified.

For his part, [petitioner] presented and offered the testimony of RO Benjamin Karlo L. Reyes.

On December 12, 2022, [petitioner] filed his *Formal Offer of Evidence,* to which [respondent] filed its *Comments/Objections (Re: Respondent's Formal Offer of Evidence dated 12 December 2022)* on December 28, 2022.

In the Resolution dated January 31, 2023, the Court admitted all [petitioner's] offered exhibits. In the same Resolution, the parties were given thirty (30) days to submit their memoranda.

On March 3, 2023, [petitioner] filed his *Memorandum.* Considering the same and the Report of the Judicial Records Division dated March 7, 2023, the Court submitted this case for decision on March 17, 2023.

On April 5, 2023, [respondent] filed a Motion to Admit Memorandum, with an attached *Memorandum* dated March 3, 2023.

> On May 2, 2023, the *Motion to Admit* was granted. Accordingly, [respondent's] Memorandum was admitted, and the present case was submitted anew for decision.
>
> Hence, this *Decision*.[6] *(Citations omitted)*

PROCEEDINGS BEFORE THIS COURT *EN BANC*

On October 21, 2024, petitioner filed a *Motion for Extension of Time to File Petition for Review*,[7] which the Court granted in a *Minute Resolution*[8] dated October 28, 2024. Petitioner thereafter filed his *Petition for Review* on November 07, 2024.[9]

Respondent electronically filed its *Comment/Opposition (To Petition for Review dated November 07, 2024)* on December 20, 2024.[10]

On January 09, 2025, the Judicial Records Division issued a Records Verification Report stating that the respondent failed to file the hard copy of its *Comment/Opposition (To Petition for Review dated November 07, 2024)*.[11]

On February 19, 2025, the Court issued a *Resolution* ordering respondent, in the interest of justice, to submit the hard copies of its Comment within a non-extendible period of three (3) days from receipt, and concurrently submitted the case for decision.[12]

ASSIGNMENT OF ERRORS

In the present *Petition for Review*, petitioner assigns the following errors allegedly committed by the Court in Division for this Court's *En Banc* resolution, *viz.*:

> I. PETITIONER'S BASIC RIGHT TO FAIR PLAY AND DUE PROCESS WAS VIOLATED WHEN THIS HONORABLE COURT IN DIVISION CONSIDERED AN ALLEGATION THAT WAS NEVER RAISED IN RESPONDENT'S PROTEST AND PETITION.

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[6] *Id.* at 48 to 52.
[7] *Id.* at 1 to 4.
[8] *Id.* at 9.
[9] *Id.* at 10 to 38.
[10] *Id.* at 77.
[11] *Id.* at 78.
[12] *Id.* at 80 to 81.

II. WITH ALL DUE RESPECT, THIS HONORABLE COURT IN DIVISION ERRED IN ENJOINING PETITIONER FROM COLLECTING THE ASSESSED DEFICIENCY TAXES.[13]

ARGUMENTS OF THE PARTIES

Petitioner's arguments

Petitioner argues that his basic right to fair play and due process was violated when the Court in Division considered an allegation that was never raised in respondent's protest or in its *Petition for Review*. He maintains that the issue on due process was not invoked by respondent either in its protest to the PAN and FLD or in its *Petition for Review* before the Court. As such, petitioner contends that he was denied both procedural and substantive due process because he was neither heard nor given the opportunity to be heard on that particular issue. Petitioner further asserts that, in any event, there was no violation of respondent's right to due process.

Petitioner likewise contends that the Court in Division erred in enjoining him from collecting the assessed deficiency taxes. He argues that there is no urgent and paramount necessity for the issuance of a suspension order to prevent any grave and irreparable damage. According to petitioner, there is no real jeopardy to respondent's interests that is so great as to warrant the suspension of tax collection.

Respondent's counter-arguments

Respondent argues that the Court in Division correctly ruled on the issue of due process. It maintains that the matter of due process was raised during the trial of the case, and was therefore properly considered by the Court. Respondent asserts that the Court in Division correctly found that its right to due process was violated by petitioner.

Respondent likewise contends that the Court in Division correctly enjoined petitioner from collecting the assessed deficiency taxes. According to respondent, the issuance of the suspension order was proper under the circumstances.

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[13] *Id.* at 16.

RULING OF THE COURT *EN BANC*

Respondent's Comment/Opposition is deemed as not filed

At the outset, the Court resolves the matter of respondent's belated filing of its *Comment/Opposition (To Petition for Review dated November 07, 2024)* (Comment). To recall, respondent electronically filed its Comment on December 20, 2024.[14] However, it failed to file the required hard copies of such Comment, as confirmed in the Records Verification Report issued by the Judicial Records Division on January 09, 2025.[15]

Despite this lapse, the Court gave respondent the opportunity to correct its deficiency through the *Resolution* dated February 19, 2025, wherein respondent was granted a non-extendible period of three (3) days from receipt within which to submit the required hard copies.[16] Notwithstanding this opportunity, respondent still failed to file the required hard copies of its Comment.[17]

Accordingly, respondent's *Comment/Opposition (To Petition for Review dated November 07, 2024)*, electronically filed on December 20, 2024, is deemed as not filed, pursuant to CTA *En Banc* Resolution No. 8-2024.[18]

The Court now proceeds to resolve the CIR's *Petition for Review* without respondent's Comment.

Absent any deputation from the OSG, the BIR Litigation Division had no legal authority to file the instant Petition

Records of the case show that petitioner, through the BIR Litigation Division, received a copy of the assailed *Resolution* on October 09, 2024.[19] Petitioner thus alleges that he had fifteen (15) days

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[14] *Id.* at 77.
[15] *Id.* at 78.
[16] *Id.* at 80 to 81.
[17] *Records Verification Report* issued by the Judicial Records Division dated February 11, 2025.
[18] Guidelines on Submission of Electronic Copies of Pleadings and Other Court Submissions Before the Court of Tax Appeals Pursuant to A.M. No. 10-3-7-SC and A.M. No. 11-9-4-SC, CTA En Banc Resolution No. 8-2024, September 1, 2024.
[19] EB Docket, p. 68.

from such receipt, or until October 24, 2024, to file a *Petition for Review* with the Court *En Banc*, pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA).[20]

On October 21, 2024, petitioner, through BIR Special Counsels, filed a *Motion for Extension of Time to File Petition for Review*.[21] The Court granted the said Motion in a *Minute Resolution* dated October 28, 2024,[22] **subject to the condition that the said Motion was timely filed**, and gave petitioner a non-extendible period of fifteen (15) days from October 24, 2024, or until November 08, 2024, within which to file a *Petition for Review*.

On November 07, 2024, petitioner, again through BIR Special Counsels, filed the instant *Petition for Review*.

Although the said Petition appears to have been timely filed with this Court, records show that the BIR Special Counsels who signed the same had no authority to institute the present appeal. Records of the case are bereft of any evidence that would prove that the BIR Special Counsels were duly authorized by the OSG to file the said Petition.

Section 10, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA)[23] provides that the OSG shall represent the People of the Philippines and government officials sued in their official capacity in all cases brought before the Court in the exercise of its appellate jurisdiction. The same rule allows the Solicitor General to deputize the legal officers of the BIR in tax cases, to wit:

> Section 10. Solicitor General as Counsel for the People and government officials sued in their official capacity. — **The Solicitor General shall represent the People of the Philippines and government official sued in their official capacity in all cases brought to the Court in the exercise of its appellate jurisdiction. The former may deputize the legal officer of the Bureau of Internal Revenue in cases brought under the National Internal Revenue Code or other laws enforced by the Bureau of Internal Revenue**, or the legal officers of the Bureau of Customs in case brought under the Tariff and Customs Code of the Philippines or other laws enforced by the Bureau of

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[20] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA); and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[21] EB Docket, pp. 1 to 4.
[22] *Id.* at 9.
[23] *Supra* note 20.

> Customs, to appear in behalf of the officials of said agencies sued in their official capacity; **Provided however, such duly deputized legal officers shall remain at all times under the direct control and supervision of the Solicitor General.** *(Emphasis supplied)*

As early as in the case of *Commissioner of Internal Revenue v. La Suerte Cigar & Cigarette Factory,*[24] the Supreme Court recognized the long established procedure of requiring the OSG to represent the interest of the government in appellate proceedings, the OSG having the primary responsibility to appear for the government in appellate proceedings.

The above case was upheld in *LG Electronics Philippines, Inc v. Commissioner of Internal Revenue,*[25] where the Supreme Court proclaimed that the BIR Legal Division is not the proper representative of petitioner in appellate proceedings, as it is the OSG who is the proper party to represent the interest of the government. The High Court went so far as to say that the BIR Legal Division should be mindful of this procedural lapse in the future.[26]

Such interpretation is in line with Section 35 of the Administrative Code of 1987,[27] which vests in the OSG the power and duty to represent the government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals, including the CTA, in all civil actions and special proceedings in which the government or any officer thereof in his official capacity is a party. While the said provision likewise authorizes the OSG to deputize legal officers of government departments, bureaus, and agencies to represent the government in cases involving their respective offices brought before the courts, such deputized legal officers remain under the supervision and control of the OSG.[28]

In view thereof, the Supreme Court in *Republic v. Viaje*[29] declared that the OSG's deputized counsel is "no more than the 'surrogate' of the Solicitor General in any particular proceeding" and that the OSG remains as the principal counsel entitled to be furnished copies of all court orders, notices, and decisions.

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[24] G.R. No. 144942, July 4, 2002.
[25] G.R. No. 165451, December 3, 2014.
[26] *Id.*
[27] Executive Order No. 292 , July 25, 1987.
[28] *Id.*
[29] G.R. No. 180993, January 27, 2016.

In the present case, the instant *Petition for Review* was filed by Special Counsels from the BIR Litigation Division, and not by the OSG, as required under prevailing law and jurisprudence as discussed above. Neither is there any written or other proof of deputation from the OSG showing that the BIR Special Counsels were duly authorized to appear on behalf of petitioner before the Court *En Banc*. In the absence of due authorization from the OSG, the BIR Special Counsels by themselves had no authority to file the instant *Petition*.

With the instant *Petition* suffering from the basic infirmity of lack of the requisite imprimatur from the OSG, the same is dismissible on such ground.[30]

Moreover, it is well-established that the right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in accordance with the provisions of law. Thus, one who seeks to avail the right to appeal must comply with the requirements of the rules; otherwise, such right is lost.[31]

Considering petitioner's failure to file the instant *Petition* in accordance with prevailing law and jurisprudence, the assailed Resolution has become final and executory, and this Court has no other recourse but to dismiss the present appeal.

But even if We were to disregard the foregoing fatal defect, the instant *Petition* must still be denied, as will be discussed below.

The Court in Division did not err when it ruled on the issue of respondent's due process rights

Petitioner contends that the issue on respondent's due process rights was never raised in the *Petition for Review* filed by respondent before the Court in Division, nor in its protests to the PAN and FLD/FAN filed at the administrative level. Petitioner was therefore denied procedural and substitutive due process as he was neither heard nor given the opportunity to be heard on the said issue.

Petitioner's argument is untenable.

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[30] *Republic v. "G" Holdings Inc.*, G.R. No. 141241, November 22, 2005.
[31] *Neypes v. Court of Appeals*, G.R. No. 141524, September 14, 2005.

As explained by the Court in Division in the assailed Resolution, it bears reiterating that this Court is not strictly confined to the issues stipulated by the parties, and may resolve related matters necessary to achieve a just and orderly disposition of the case.

Section 1, Rule 14 of the RRCTA[32] expressly provides:

> SECTION 1. *Rendition of Judgment.* — xxx xxx xxx
>
> **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 supplied)*

This authority, however, is not without limitation, and must be exercised within the bounds of due process and fairness to the parties. Thus, the Court may consider matters not specifically raised in the pleadings when these are necessarily connected with the issues submitted for resolution and when the parties were afforded an opportunity to be heard thereon.

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[33] the Supreme Court affirmed the authority of this Court to resolve issues not raised by the parties when such matters are necessary for the just and orderly disposition of the case. The Court held that the CTA is not strictly bound by the issues specifically raised by the parties and may rule upon related matters essential to the proper resolution of the controversy.[34]

In relation to the present controversy, the determination of whether the subject assessments were issued in accordance with the due process requirements prescribed by law and applicable rules and regulations, directly affects the validity of the assessments and is therefore indispensable to the proper resolution of the case. Thus, the Court in Division acted well within its authority when it considered the issue of due process, although not expressly raised by respondent in its *Petition for Review*.

Furthermore, Section 5, Rule 10 of the Revised Rules of Court[35] provides that issues not raised in the pleadings, but tried with the

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[32] *Supra* note 20.
[33] G.R. No. 183408, July 12, 2017.
[34] *Ibid.*
[35] 2019 Amendments to the 1997 Rules of Civil Procedure, A.M. No. 19-10-20-SC, October 15, 2019.

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express or implied consent of the parties, shall be treated as if they had been properly raised. The said Rule states:

> SECTION 5. No Amendment [Necessary] to Conform to or Authorize Presentation of Evidence. — **When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.** No amendment of such pleadings deemed amended is necessary to cause them to conform to the evidence. *(Emphasis supplied)*

Here, it is evident from the records that the issue on due process was tried during the course of the proceedings. At the trial for petitioner's witness, Revenue Officer (RO) Benjamin Karlo L. Reyes testified that the amounts of deficiency taxes indicated in the PAN and the FLD/FAN were substantially the same, except for the adjustments in interest.[36] He also admitted that the BIR did not address or consider respondent's explanations and supporting documents submitted in its Reply to the PAN and Protest to the FLD, including the Certificate of Donation, historical analysis, and business expansion.[37]

As earlier noted by the Court in Division in the assailed Decision, the pertinent portions of RO Reyes' testimony[38] are as follows:

> Q: The basic deficiency income tax in the Preliminary Assessment Notice, it is in the same of the FLD, correct?
>
> A: **Yes, except for the interest. It's just a reiteration.**
>
> Q: Going back to your Answer earlier, Mr. Witness, you mentioned that a tax payer or the petitioner, if they filed a response to the Preliminary Assessment Notice, **it will no longer be considered**, is that correct?
>
> A: **Yes Mam.**
>
> Q: They just wait for the FLD?
>
> A: To be served.
>
> Q: So if there is a response to the Preliminary Assessment Notice, it will not be considered by the Bureau of Internal Revenue, is that correct?
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> A: It will be considered after you protested for the Formal Letter of Demand. Of course, it will be consolidated in the docket.

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[36] Transcript of Stenographic Notes (TSN), December 01, 2022 Hearing, p. 6.
[37] *Id.* at 8 to 9.
[38] *Id.* at 6 to 11.

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Q: How about for the basic of the IAET, it is also the same?

A: Yes.

Q: In the Preliminary Assessment Notice and the FLD, same amount?

A: Yes.

Q: And the compromise penalty imposed, the same?

A: Yes.

Q: In this FLD, Mr. Witness, does it mention any Certificate of Donation submitted by petitioner?

ATTY. DIEGO: Objection, your Honors, the documents already speaks for itself.

JUSTICE UY: Let the witness answer unless you can stipulate on the document.

ATTY. DAYRIT: If the good counsel would be willing to stipulate that **the FLD does not mention any Certificate of Donation, the historical analysis and business expansion.**

A: For the donation, it's already filed in the Income Tax Return.

JUSTICE UY: The question is does it mention, yes or no?

A: No, your Honors.

ATTY. DAYRIT: As stipulated?

ATTY. DIEGO: **Yes, your Honors, stipulated.**

...

Q: And in this FDDA, the amount of basic deficiency income tax is also the same as in the FLD, correct?

A: Yes, same amount.

Q: Also the same amount for the basic IAET?

A: Yes.

Q: And same amount of compromise penalty imposed?

A: Yes.

Q: So you would agree with me, Mr. Witness, that the basic amount of assessed deficiency income tax, IAET and compromise penalty

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> input did not change from the Preliminary Assessment Notice to the FLD and to the FDDA even after the protest was evaluated, correct?
>
> A: Yes.
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> ATTY. DAYRIT: If willing to stipulate with counsel also that **the FDDA likewise does not mentioned any Certificate of Donation, historical analysis and business expansion**?
>
> ATTY. DIEGO: **Stipulated, your Honors.**
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> ATTY. DAYRIT: Mr. Witness, you may refer to the FDDA and FLD, will you agree with me that the explanations in the Details of Discrepancies in the FLD and the explanation in the FDDA are the same?
>
> A: Yes, Attorney. *(Emphases supplied)*

The foregoing testimony clearly shows that the findings in the PAN were merely reiterated in the FLD/FAN and later carried over to the FDDA, with no meaningful modification except for the computation of interest. More importantly, it confirms that respondent's explanations and supporting documents were neither addressed nor reflected in the assessment notices. This demonstrates that the issue of due process, particularly the alleged failure of petitioner to consider respondent's submissions, was squarely ventilated during the trial with the participation of both parties. Accordingly, pursuant to Section 5, Rule 10 of the Revised Rules of Court, such issue may be treated as properly raised in the pleadings and, thus, validly considered by the Court in Division.

Having settled this matter, the Court now proceeds to determine whether the Court in Division correctly ruled that respondent's right to due process was violated. In this regard, the Court first examines the statutory due process requirements governing tax assessments.

Section 228 of the Tax Code explicitly requires that the taxpayer be informed in writing of the law and the facts on which an assessment is made; otherwise, the assessment shall be void. The provision states, *viz.*:

> 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:
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> xxx

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> **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.**
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> xxx
>
> *(Emphasis supplied)*

Corollary thereto, Revenue Regulations (RR) No. 12-99,[39] as amended by RR No. 18-13,[40] prescribes the due process requirements for the issuance of a deficiency tax assessment, particularly with respect to the issuance of a PAN and a FLD/FAN, to wit:

> 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:
>
> 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 xxx.
>
> 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.
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> xxx
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> 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**

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[39] 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, Revenue Regulations No. 12-99, September 6, 1999.
[40] Amending Certain Sections of Revenue Regulations No. 12-99, Revenue Regulations No. 18-13, November 28, 2013.

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> **the assessment is based;** ***otherwise, the assessment shall be void*** xxx. *(Emphases supplied)*

Under these rules, the taxpayer is given fifteen (15) days from receipt of the PAN within which to respond and present explanations or supporting documents. When the taxpayer files a reply to the PAN disputing the proposed assessment, the BIR is expected to evaluate and consider the taxpayer's explanations before issuing the FLD/FAN. The FLD/FAN must likewise state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based. Failure to comply with these requirements renders the assessment void.

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[41] as aptly cited by the Court in Division, the Supreme Court emphasized that the BIR must not only receive the taxpayer's explanations and supporting documents, but must also genuinely consider them. The High Court explained that the issuance of assessment notices that merely reiterate the findings in the PAN, without addressing the taxpayer's defenses or submissions, constitutes a violation of the taxpayer's right to due process. Further, the right to be heard becomes meaningless if the tax authorities may simply disregard the evidence and arguments submitted by the taxpayer, thus:

> **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.**
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> xxx
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> 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**. xxx
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> "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,**

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[41] G.R. Nos. 201398-99, 201418-19, October 3, 2018.

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> **Final Letter of Demand with the Final Assessment Notices, and the Final Decision on Disputed Assessment.**
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> **The facts demonstrate that Avon was deprived of due process.** It was not fully apprised of the legal and factual bases of the assessments issued against it. **The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon.** xxx
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> Upon receipt of the Preliminary Assessment Notice, Avon submitted its protest letter and supporting documents, and even met with revenue examiners to explain. Nonetheless, the **Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice.** There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.
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> Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. **Despite Avon's timely submission of a** Reply to the Notice of Informal Conference and **protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply** and protest.
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> xxx
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> It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.**
>
> Indeed, the **Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process.** The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.
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> xxx
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> **The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice,**

> **Final Assessment Notices, and Collection Letter null and void, and of no force and effect.** *(Emphases supplied)*[42]

This principle echoes the long-standing doctrine on administrative due process enunciated in *Ang Tibay v. Court of Industrial Relations*,[43] where the Supreme Court held that administrative bodies must not only give the parties an opportunity to present their case and evidence, but must also actually consider the evidence presented. Due process in administrative proceedings requires not merely the opportunity to be heard, but also the conscientious consideration of the submissions made.

Applying these principles to the case at bar, this Court agrees with the Court in Division that petitioner failed to give due consideration to respondent's reply to the PAN before issuing the FLD/FAN. A careful reading of the subject PAN and the subsequent FLD/FAN shows that the basic tax deficiency amounts stated in the PAN were merely repeated in the FLD/FAN and were again carried over to the FDDA, with only the amounts of interest being adjusted. This circumstance strongly indicates that, despite the timely submission of respondent's Reply to the PAN and its subsequent Protest to the FLD, together with supporting documents, petitioner failed to provide any response or explanation as to why respondent's arguments and defenses were not adopted or considered. Notably, such failure to address respondent's explanations was likewise repeated in the FDDA. Hence, the assessment notices merely reiterated the earlier findings without demonstrating that respondent's submissions were actually evaluated or taken into account.

Such failure to meaningfully address respondent's explanations and supporting documents undermines the very purpose of the PAN stage in the assessment process. The PAN stage is not intended to be a mere procedural formality. Rather, it is designed to afford the taxpayer a genuine opportunity to refute the proposed findings and, at the same time, to allow the BIR to re-examine its conclusions before issuing a formal demand for payment. This principle was emphasized by the Supreme Court in *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*,[44] where the High Court stated, to wit:

> A PAN merely informs the taxpayer of the initial findings of the Bureau of Internal Revenue. It contains the proposed assessment, and the facts, law, rules, and regulations or jurisprudence on which the proposed assessment is based. It does not contain a demand for

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[42] Supra, note 41.
[43] G.R. No. 46496, February 27, 1940.
[44] G.R. No. 227544, November 22, 2017.

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> payment but usually requires the taxpayer to reply within 15 days from receipt. Otherwise, the Commissioner of Internal Revenue will finalize an assessment and issue a FAN.
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> **The PAN is a part of due process. It gives both the taxpayer and the Commissioner of Internal Revenue the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN.** *(Emphasis supplied)*

To sustain the validity of an assessment issued under circumstances where the taxpayer's explanations were not even acknowledged or addressed would effectively render the PAN stage inutile and reduce the taxpayer's right to respond into a hollow exercise. This would defeat the purpose of the safeguards established under Section 228 of the Tax Code and RR No. 12-99.

Accordingly, We find no reversible error on the part of the Court in Division when it ruled that petitioner's failure to meaningfully consider respondent's reply to the PAN constitutes a violation of respondent's right to due process. For these reasons, the FLD/FAN and the subsequent assessments issued pursuant thereto are void and of no force and effect.

The Court in Division did not err in enjoining petitioner from enforcing the collection of the subject deficiency taxes

Petitioner argues that respondent failed to discharge its burden of proving the existence of all the requisites for a suspension order or injunctive relief to issue. He points out that there is no showing of an extreme urgency, nor real jeopardy upon respondent's interest, necessitating the issuance of the suspension order to prevent serious damage to respondent.

Even on this point, petitioner's argument fails.

As previously discussed, the subject assessments were issued in violation of respondent's right to due process. Consequently, the FLD/FAN and the subsequent FDDA are void for failure to comply with the mandatory due process requirements under Section 228 of the Tax Code and its implementing rules.

It is well-settled that an assessment that fails to strictly comply with the due process requirements prescribed by law and prevailing rules and regulations is void and produces no legal effect.[45] A void assessment bears no valid fruit and cannot serve as a basis for the enforcement of tax collection measures.[46]

Here, the Warrant of Distraint and Levy (WDL) dated November 11, 2020 was issued by petitioner to enforce the collection of the deficiency taxes arising from the subject assessments. However, since the underlying assessments have been declared void, the WDL issued pursuant thereto necessarily suffers from the same defect.

Accordingly, the WDL, being a mere consequence of void assessments, is likewise void and cannot be enforced against respondent.

Given the invalidity of the assessments and the WDL issued pursuant thereto, the Court in Division correctly enjoined petitioner from enforcing the collection of the subject deficiency taxes.

WHEREFORE, premises considered, the present *Petition for Review* is **DISMISSED** for lack of authority to file the same.

Accordingly, the *Decision* dated May 29, 2024 and the *Resolution* dated September 20, 2024, promulgated by the Special Second Division in CTA Case No. 10442, are hereby **AFFIRMED**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

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[45] *Mannasoft Technology Corp. v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023.
[46] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023.

I concur and maintain my Separate Concurring Opinion in the assailed Resolution.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice