REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

ROBINSONS LAND CORPORATION,
Respondent.

CTA *EB* NO. 2430
(CTA Case No. 9163)

Present:

DEL ROSARIO, *PJ,*
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:
JAN 1 7 2023 4:00pm

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* are the Petition for Review[1] and Supplemental Petition for Review[2] filed on February 22, 2021 and March 5, 2021, respectively, by the Commissioner of Internal Revenue (CIR), which assail the July 9, 2020 Decision (assailed Decision),[3] January 20, 2021 Resolution (assailed Resolution),[4] and February 3, 2021 Amended Resolution (assailed Amended Resolution)[5] of the Court's First Division (Court in Division) in CTA Case No. 9163. The assailed Decision cancelled and set aside the assessments issued by petitioner against respondent Robinsons Land Corporation for its alleged deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC),

[1] *En Banc* (*EB*) Docket, pp. 7-51, with annexes.
[2] *Id.*, pp. 52-70, with annexes.
[3] *EB* Docket, pp. 28-45; Division Docket – Vol. III, pp. 1724-1742.
[4] *EB* Docket, pp. 46-51; Division Docket – Vol. IV, pp. 2221-2226.
[5] *EB* Docket, pp. 65-70; Division Docket – Vol. IV, pp. 2229-2234.

final withholding tax (FWT), and documentary stamp tax (DST), in the aggregate amount of Three Billion Seven Hundred Sixty-Two Million Seven Hundred Ninety-Nine Thousand Five Hundred Sixty-Four Pesos (₱3,762,799,564.00), inclusive of penalties and increments for fiscal year (FY) ended September 30, 2009.

THE PARTIES

Petitioner is the CIR 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 Tax Code. His office is on the 5th floor, BIR National Office Building, Quezon City.

Respondent Robinsons Land Corporation is a domestic corporation, with its principal office located at Level 2, Galleria Corporate Center, EDSA corner Ortigas Avenue, Quezon City. It is registered with the BIR with Taxpayer Identification Number (TIN) 000-361-376-0000.

THE FACTS

The facts, as found by the Court in Division, are as follows:

> On May 14, 2010, [petitioner] issued *Letter of Authority* (LOA) No. LOA-127-2010-0000002 authorizing the examination of [respondent's] books of accounts for FY covering October 1, 2008 to September 30, 2009.
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> On May 26, 2014, [respondent] received a copy of the *Preliminary Assessment Notice* (PAN) indicating that upon investigation, it was found to have deficiency IT, VAT, WC, EWT, FWT and DST in the aggregate amount of ₱3,483,203,002.82, inclusive of increments, for the FY ended September 30, 2009.
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> On June 10, 2014, [respondent] protested the PAN.
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> On June 30, 2014, [respondent] received a *Formal Letter of Demand* (FLD) dated June 27, 2014, reiterating the findings in the PAN, with assessment for deficiency IT, VAT, WTC, EWT, FWT, DST and compromise penalties in the sum of ₱3,539,349,169.19, inclusive of increments, for FY ended September 30, 2009.

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On July 30, 2014, [respondent] protested the FLD, and even filed a Supplement thereto on September 26, 2014.

On September 3, 2015, [respondent] received the *Final Decision on Disputed Assessment* (FDDA) which increased the amount of deficiency tax assessment from ₱3,539,349,169.19 to ₱3,762,799,564.00, inclusive of penalties and increments, as shown below:

Type of Tax	Basic Tax	Surcharge	Interest	Compromise	Total
IT	₱758,009,940.11	₱379,004,970.05	₱839,833,478.00		₱1,976,848,388.16
VAT	664,731,346.20	332,365,673.10	766,353,288.00		1,763,450,307.30
WC	1,857,921.19		2,157,225.00	P25,000.00	4,040,146.19
EWT	2,141,108.07		2,486,032.00	25,000.00	4,627,140.07
FWT	5,242,848.61		6,087,449.00	50,000.00	11,380,297.61
DST	997,700.54	249,425.13	1,161,159.00	20,000.00	2,428,284.67
Total	**₱1,432,980,864.72**	**₱711,620,068.28**	**₱1,618,078,631.00**	**₱120,000.00**	**₱3,762,799,564.00**

On October 2, 2015, [respondent] filed the instant Petition for Review which was initially raffled to the Second Division of the Court.

On January 4, 2016, [petitioner] filed [his] *Answer*, capitalizing on petitioner's admission of receipt of a valid LOA on May 14, 2010 consistent with Section 6 of the National Internal Revenue Code (NIRC), as amended, only that no electronic Letter of Authority (eLOA) was issued as required under Revenue Memorandum Order (RMO) No. 69-10 pertaining to the transition from manually issued LOAs to eLOAs. Such absence of eLOA however did not invalidate the assessment contrary to [respondent's] contention as there was nothing in the said RMO, or in any other RMO for that matter that states that non-issuance of an eLOA shall render invalid an otherwise valid assessment.

Besides, RMOs are mere internal issuances to serve as guidelines for BIR's operations and which do not vest any rights in favor of a taxpayer.

Further, an assessment enjoys the presumption of correctness, thus, shifting the burden of proving the contrary on the taxpayer, such as [respondent]. *Sans* any proof, [respondent's] allegations disputing the assessment remain to be as such.

The assessment likewise informed [respondent] of the law and the facts upon which it was based. The FDDA indicated the factual and legal bases for each item of the assessment in compliance with the due process requirement on assessment.

The items in the assessment were not also mere presumptions for they were based on actual audit and verification of documents conducted by the examining Revenue Officers (ROs). In addition, [respondent] did not submit in the administrative proceeding the required documents fortifying [her] conclusion that subject taxes were not paid.

The parties filed their *Joint Stipulation of Facts and Issues*, on March 9, 2016 on the basis of which a Pre-Trial Order was issued on March 31, 2016, thereby terminating the pre-trial proceeding.

Trial ensued during which [respondent] presented as witnesses its Business Unit Controller, Anne Mae E. Mangaser, and the Court-commissioned Independent Certified Public Accountant (ICPA), Katherine O. Constantino.

Witness **Anne Mae E. Mangaser** testified that as [respondent's] Business Unit Controller she oversees its accounting department, files tax returns for and in its behalf, pays the corresponding taxes, and coordinates with the BIR regarding tax audits.

Per its Amended Articles of Incorporation and SEC Registration, [respondent] is a real estate developer engaged in the business of selling, acquiring, building, constructing, developing, leasing, disposing real properties. It is also an operator of various shopping malls, hotels, and mixed-use properties. It is registered with the BIR with Certificate of Registration No. 8RC0000447303.

[Respondent] was audited by the BIR for the period of October 1, 2008 to September 30, 2009 pursuant to a LOA it received. However, no eLOA was served upon it.

After the tax audit, [respondent] received the PAN issued against it to which it filed a written protest on June 10, 2014.

On June 30, 2014, [respondent] received the FLD dated June 27, 2014 against which it filed a formal protest on July 30, 2014, with a supplement filed on September 26, 2014.

On September 3, 2015, [respondent] received the assailed FDDA, hence, this appeal *via* a Petition for Review.

The witness further declared that [respondent] in this appeal questions the assessment for IT arising from alleged undeclared revenue as determined by the BIR after comparing its revenue subjected to VAT with its revenue as reported in its Income Tax Returns (ITRs), and deemed the difference in the equation as taxable income. The discrepancy however, witness opined, was only due to erroneous encoding, wherein the gross VATable sales/revenues inputted in its electronically filed VAT Return for the 1st Quarter of 2009 did not match with the gross VATable sales/revenues entered in the manual VAT Return for the same period. The correct figure for the relevant period is however easily verifiable from [respondent's] monthly and quarterly VAT Returns, ITRs, audited financial statements, worksheet for VAT returns, summary list of sales, and supporting official receipts.

Admittedly, [respondent] did not exert any effort to rectify the erroneous entry in the electronically filed VAT Return since the manual VAT Returns reflected the correct amount. Besides, the error was detected only in 2011 during the tax audit conducted against [respondent]. The discrepancies discovered were due to timing difference in the recording of the transactions as [respondent] used the fiscal year while the BIR third-party sources used the calendar year.

[Respondent] refutes the rest of the findings as the items in question were either not subject to tax, or had already been paid. Also some deficiency taxes were based on discrepancies which could be verified through the documents in its possession.

Finally, the imposition of the 50% surcharge in addition to the assessed deficiency IT and VAT was erroneous. The FDDA merely states that 25% and 50% surcharges were imposed pursuant to Section 248 of the NIRC of 1997, as amended, *sans* any explanation thereto.

Katherine O. Constantino, the Court-commissioned ICPA, testified that she examined the pertinent documents in connection with the deficiency tax assessments issued against [respondent]. She reduced her findings in the *Final and Consolidated ICPA Report* and *Supplemental ICPA Report* she submitted to the Court on July 22, 2016 and August 26, 2016, respectively.

Per her examination, the PAN, FLD, FDDA with attached Details of Discrepancies did not provide sufficient transaction details such as dates, the name of suppliers, amounts involved, invoice amounts, input VAT or EWT amounts, etc., rendering verification of each item in the assessment impossible.

She concurred with witness Anne Mae E. Mangaser that most of the discrepancies noted and served as bases of the assessment were attributable to timing difference in the recording of the transactions.

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The ICPA also found that the items claim not subjected to tax, which resulted in deficiency tax assessment were either been paid, or not subject to tax.

After its last witness, [respondent] filed its *Formal Offer of Evidence*, which the Court resolved in the Resolutions dated September 28 [,] 2017, and October 4, 2018.

For [her] defense, [petitioner] presented [her] lone witness, Revenue Officer III **Joel M. Aguila**. He testified that he was among the ROs authorized to conduct audit against [respondent] for the FY ended September 30, 2009 by virtue of LOA No. LOA-127-2010-00000022. The LOA, together with a Letter Request for Submission of accounting records and Checklist of Requirements were served upon [respondent] on May 18, 2010.

Despite request, [respondent] failed to submit any document resulting in the issuance of a First Notice for the Presentation of Books of Accounts and Other Accounting Records which was served to [respondent] on June 10, 2010. Only after receipt of the Second and Final Notice on August 9, 2010 that [respondent] requested for more time to submit the required documents for which purpose [respondent] executed two Waivers of the Defense of Prescription on April 2, 2012 and on December 7, 2012.

With the finding of deficiency taxes, [petitioner] issued a Notice of Informal Conference (NIC). However, instead of refuting the result of the audit, [respondent] requested for additional time to submit supporting documents, hence, a third Waiver of the Defense of Prescription was executed on October 9, 2013.

By virtue of the Memorandum dated April 3, 2014, the PAN was issued and served upon [respondent] on May 26, 2014. Since [respondent] failed to refute the finding in the PAN, they recommended the issuance of the FLD/FAN via Memorandum dated June 13, 2014. The FLD/FAN was issued on June 30, 2014.

Upon their recommendation in the Memorandum dated June 22, 2015, the assailed FDDA was issued and served upon [respondent] on September 3, 2015.

[Petitioner] filed [her] *Formal Offer of Evidence* on November 26, 2018, which the Court resolved in its Resolution dated January 18, 2019.

The case was submitted for decision on April 22, 2019.

On July 9, 2020, the Court in Division promulgated the assailed Decision with the following dispositive portion:

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> **WHEREFORE**, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the assessments against [respondent] for deficiency income tax, VAT, EWT, WTC, FWT, and DST, in the aggregate amount of ₱3,762,799,564.00, inclusive of penalties and increments, for fiscal year ended September 30, 2009, are **CANCELLED and SET ASIDE**.
>
> **SO ORDERED.**

Aggrieved, petitioner filed a Motion for Reconsideration on July 30, 2020,[6] which was denied by the Court in Division in the assailed Resolution dated January 20, 2021. The *fallo* reads:

> **WHEREFORE**, premises considered, the instant *Motion for Reconsideration (re: Decision dated 9 July 2020)* is **DENIED** for lack of merit.
>
> **SO ORDERED.**

On February 5, 2021, petitioner filed a Motion for Extension to File Petition for Review,[7] which was granted in a Minute Resolution dated February 8, 2021.[8]

On February 22, 2021, petitioner filed a Petition for Review assailing the July 9, 2020 Decision and the January 20, 2021 Resolution of the Court in Division, unaware that on February 3, 2021, the Court in Division promulgated the assailed Amended Resolution with the following decretal portion:

> **WHEREFORE**, premises considered, the instant *Motion for Reconsideration (re: Decision dated 9 July 2020)* is **DENIED** for lack of merit and for having been filed beyond the reglementary period. The *Decision dated July 9, 2020* is accordingly declared final and executory.
>
> **SO ORDERED.**

On March 5, 2021, petitioner filed a Supplemental Petition for Review (Supplemental Petition) seeking the reversal of the July 9, 2020 Decision and the February 3, 2021 Amended Resolution.

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[6] Division Docket – Vol. III, pp. 1724-1742.
[7] *EB* Docket, pp. 1-5.
[8] *Id.*, p. 6.

On May 25, 2021, respondent filed a Comment (To: Petition for Review),[9] which it adopts as a comment to the Supplemental Petition, as per the Compliance and Manifestation filed on July 19, 2021.[10]

Thus, on June 7, 2022, the Court issued a Resolution[11] submitting this Petition for Review for decision.

On November 28, 2022, petitioner filed a Manifestation stating that he accepted respondent's compromise offer in its letter December 7, 2020. Hence, on January 28, 2021, respondent paid the compromise amount of ₱115,000,000.00. The belated filing of this Manifestation is noted without action.

THE ISSUES

Petitioner raises the following grounds for the resolution of the Court *En Banc*:

I.

THE HONORABLE COURT IN DIVISION ERRED IN RULING ON AN ISSUE NEVER RAISED BY RESPONDENT, NEVER JOINED BY THE PLEADINGS, NEVER RAISED DURING THE PRE-TRIAL AND NEVER DEFINED BY THE COURT IN THE PRE-TRIAL ORDER. THUS, PETITIONER'S BASIC RIGHT TO FAIR PLAY AND DUE PROCESS WAS VIOLATED WHEN THE COURT RULED TO GRANT THE ORIGINAL PETITION ON THE GROUND THAT THE ASSESSMENTS ARE VOID FOR FAILURE TO INDICATE DUE DATES AND DEFINITE TAX LIABILITY OF RESPONDENT.

II.

ASSUMING THE COURT MAY SUDDENLY DECIDE THE CASE BASED ON AN ISSUE THAT WAS NEVER RAISED BY RESPONDENT, NEVER JOINED BY THE PLEADINGS, NEVER RAISED AT THE PRE-TRIAL ORDER, NEVER DEFINED BY THE COURT IN THE PRE-TRIAL ORDER AND NEVER TRIED BY THE PARTIES – THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT THE ASSESSMENTS ARE VOID AS IT LACKS DUE DATE AND THE DEFINITE AMOUNT OF TAX LIABILITY.

III.

THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT PETITIONER'S MOTION FOR RECONSIDERATION WAS FILED OUT OF TIME.

[9] *Id.*, pp. 73-98.
[10] *Id.*, p. 104-105.
[11] *Id.*, pp. 117-118.

Petitioner's arguments

Petitioner argues that his basic right to fair play and due process was violated when the Court in Division ruled on a matter not raised as an issue by respondent in its Petition for Review and Pre-Trial Brief, not joined by the parties, and not defined by the Court in Division in the Pre-Trial Order. Therefore, according to petitioner, he was denied procedural and substantive due process when he was neither heard nor given the opportunity to be heard on the issue of lack of due date and definiteness of the tax liabilities on the FAN issued against respondent.

Petitioner likewise claims that Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) is not a license to resolve as a main issue a matter not derived from the pleadings and not tried by the parties as it blindsides a litigant and is not considered an orderly disposition of the case.

Assuming that the Court in Division may suddenly decide the case based on an issue that was never raised by respondent, never joined by the pleadings, never raised at the pre-trial conference, never defined by the Court in the Pre-Trial Order and never tried by the parties, petitioner insists that the assessments are still valid. According to petitioner, there are only three (3) mandatory requirements under Section 228 of the Tax Code for an assessment to be valid: (1) the taxpayer must be informed of the findings of the BIR; (2) the notice must be in writing; and, (3) such notice must contain the facts and the law on which the assessment is made. Petitioner adds that what is essential is that the taxpayer was informed in writing of the BIR's findings and stating therein the facts and laws on which the assessment is based, as sufficiently complied by the subject FLD and FDDA.

Granting for the sake of argument that a FAN should indicate a definite amount of tax liability and due date for payment, petitioner submits that the FLD indicated respondent's tax liabilities and due date for payment on July 9, 2014. Notwithstanding the foregoing, petitioner submits that the doctrine laid down in *Commissioner of Internal Revenue v. Fitness by Design, Inc.* (*Fitness by Design*)[12] should be revisited since its ratio is based on the case of *Commissioner of Internal Revenue v. Menguito* (*Menguito*),[13] which was misapplied on

[12] G.R. No. 215957, November 9, 2016.
[13] G.R. No. 167560, September 17, 2008.

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Fitness by Design since the main issue for resolution in *Menguito* was whether or not there were post-reporting and pre-assessment notices issued by the CIR that were actually received by therein respondent. *Menguito*, petitioner argues, does not involve the lack of demand for payment of assessed taxes within a specific period.

Respondent's comment

Respondent counters that the assailed Decision is already final and executory for petitioner's one (1) day late filing of his Motion for Reconsideration on July 30, 2020. Respondent opines that it is petitioner's responsibility to ensure that judgments, processes and pleadings of the Court are received promptly and efficiently.

Respondent posits that petitioner's arguments in the present Petition were thoroughly addressed by the Court in Division and found to be unmeritorious.

Respondent asserts that petitioner's right to due process was not violated since the assessment notices are matters of record and the issue of their validity is a matter of public importance, which the Court has the authority to resolve considering that the definite amount of tax deficiencies and due date for payment is interwoven with the validity of the assessment, which respondent assails in its Petition for Review.

Respondent further alleges that the *Fitness By Design* case is not entirely based on *Menguito,* but on the cases of *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*[14] and *Tupaz v. Ulep,*[15] both of which emphasize that an assessment must not only contain a computation of tax liabilities, but also a demand for payment within a prescribed period.

THE COURT *EN BANC'S* RULING

The instant Petition for Review was filed on time.

Before proceeding further, the Court *En Banc* shall determine first the timeliness of filing this Petition for Review.

[14] G.R. No. 128315, June 29, 1999.
[15] G.R. No. 127777, October 1, 1999.

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Section 3(b), Rule 8 of the RRCTA states:

SEC. 3. *Who may appeal; period to file petition.* — ...

... ...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

On July 9, 2020, the Court in Division promulgated a Decision granting respondent's Petition for Review.

On July 30, 2020, petitioner filed a Motion for Reconsideration against the Decision.

On January 20, 2021, the said Motion for Reconsideration was denied by the Court in Division through a Resolution, a copy of which was received by petitioner on January 22, 2021.

Petitioner had fifteen (15) days from January 22, 2021, or until February 6, 2021, to file his Petition for Review before the CTA *En Banc*.[16]

On February 5, 2021, within the reglementary period, petitioner filed a Motion for Extension to File Petition for Review, which the Court *En Banc* granted in a Minute Resolution dated February 8, 2021. Accordingly, petitioner was given a final and non-extendible period of fifteen (15) days from February 6, 2021, or until February 21, 2021, to file his Petition for Review.

Considering that February 21, 2021 fell on a Sunday, petitioner had until the next working day, or on February 22, 2021 to file his Petition for Review. On February 22, 2021, and within the extension period, petitioner *timely* filed the present Petition for Review.

[16] Section 3(b), Rule 8 of RRCTA.

Petitioner filed the Petition on February 22, 2021, unaware that on February 16, 2021, the Legal Service of the BIR received the assailed Amended Resolution dated February 3, 2021.

On March 5, 2021, petitioner filed a Supplemental Petition seeking the reversal of the July 9, 2020 Decision and the February 3, 2021 Amended Resolution.

We shall now ascertain the merits of the Petition.

Petitioner's Motion for Reconsideration was filed out of time. Hence, the assailed Decision of the Court in Division has already become final and executory.

The Court in Division noted that petitioner received the assailed Decision on *July 14, 2020*, yet a Motion for Reconsideration was only filed on *July 30, 2020*, or one (1) day late. Hence, the assailed Amended Resolution dated February 3, 2021 was issued with the following *fallo*:

> **WHEREFORE**, premises considered, the instant *Motion for Reconsideration (re: Decision dated 9 July 2020)* is **DENIED** for lack of merit and for having been filed beyond the reglementary period. **The *Decision dated July 9, 2020* is accordingly declared final and executory**.
>
> **SO ORDERED.**

Petitioner alleged in the Motion for Reconsideration (to the assailed Decision) and in the "Timeliness of the Petition" portion of his Petition for Review that he received the assailed Decision on July 15, 2020, and not on July 14, 2020.

In the Supplemental Petition, petitioner insists that the Motion for Reconsideration was filed on time.[17] He claims that the Decision dated July 9, 2020 was received by the Litigation Division, the office representing petitioner, on July 15, 2020, and not on July 14, 2020.[18] Petitioner states that a copy of the Notice of Decision bearing the stamp of the Litigation Division and the date of receipt by the said office was attached therein.[19]

[17] *EB* Docket, p. 53.
[18] See *Cervantes v. City Service Corporation, et al.*, G.R. No. 191616, April 18, 2016.
[19] *EB* Docket, p. 53.

However, upon perusal of the records, the Court *En Banc* failed to find a copy of the supposed Notice of Decision in the Supplemental Petition.[20]

Without conceding that the Motion for Reconsideration is filed out of time, petitioner submits that the Court *En Banc* set aside this technical infirmity in filing the Motion for Reconsideration and justifies[21] that:

> It must be emphasized that the motion was filed only a day late. In several instances, the Honorable Supreme Court has condoned the delay in filing of appeals due to consideration of fairness and justice. Also, in several instances, the Honorable Supreme Court set aside technical infirmities and gave due course to tardy appeals. This is to afford litigants fair opportunity to appeal their cases and so that the case may be decided based on the merits of the case rather than based on mere technicalities.
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> ... As the country is currently in a pandemic and in order to prevent further spread of the virus in the Bureau of Internal Revenue (BIR), the BIR put up a centralized receiving section for all the five groups in the Bureau, one of them is the Legal Group of which the Litigation Division is under. **On June 14, 2020, the assigned office to receive all documents for all the divisions under Legal Group is Internal Investigation Division (IID).** However, IID failed to affix their stamp on the Notice issued by the Court in Division. Thus, when the undersigned counsel received the Notice, the Notice only bore the stamp of receipt of Litigation Division on January 15, 2020. Hence, undersigned counsel, unaware that the Decision was received a day prior, computed the reckoning of filing of the motion on July 15, 2020. Undersigned counsel came to know of the prior receipt only when she received the assailed resolution. **Thus, upon investigation, it was discovered that it was received by IID on *July 14, 2020*.**
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> Petitioner respectfully submits that the **one-day delay in filing may be excused**. Thus, petitioner respectfully requests that the motion be admitted and be given due course. The dismissal of [his] motion for being belatedly filed would lead to height of injustice considering that petitioner has meritorious arguments in [his] Motion. (*Emphasis supplied*)

Respondent counters, in its Comment[22] (To Petition for Review), that:

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[20] Resolution dated June 23, 2021, *EB* Docket, p. 103.
[21] Supplemental Petition for Review, Supplemental Arguments/Discussions, *EB* Docket, pp. 53-55.
[22] *EB* Docket, pp. 76-77.

11. Rule 8, Section 1 of the RRCTA explicitly requires the timely filing of a motion for reconsideration as a prerequisite for filing a Petition for Review before the Honorable Court *en Banc.* The said rule states that:

> **SECTION 1**. *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court en banc, the petition for review of a decision or resolution of the Court in Division ***must*** be preceded by the filing of a ***timely*** motion for reconsideration or new trial with the Division.

12. The failure of petitioner to timely file a motion for reconsideration before the Honorable First Division, by itself, therefore, should already be sufficient basis to dismiss the present petition outright.

13. Petitioner claims that the Bureau of Internal Revenue ("BIR") Litigation Division only received a copy of the 9 July 2020 Decision on 15 July 2020 and not 14 July 2020.

14. The Respondent begs to differ.

15. This Honorable Court, as well as any other party, are not bound by the internal processes and mechanisms of the BIR.

16. By directing and authorizing the BIR Internal Investigation Division to receive judgments and processes of this Honorable Court on behalf of the BIR Litigation Division, receipt of court processes by the BIR Internal Investigation Division is considered receipt by the BIR Litigation Division.

17. After all, the BIR Internal Investigation Division and the BIR Litigation Division are all under the direct supervision and control of the Commissioner of Internal Revenue and are part of a singular government agency holding office in one and the same BIR National Office Building where notices in connection with this case are to be sent.

... ...

17.3 In the final analysis, nothing prevented the BIR Litigation Division from exercising due diligence in ascertaining the BIR's actual date of receipt of the Decision instead of recklessly acting on the basis of unfounded assumptions and, in doing so, actively misleading the Honorable Court and the respondent as to the material dates relative to the instant appeal. (*Emphasis supplied*)

We agree with respondent.

As stated in Section 1, Rule 8 of the RRCTA above, filing a Petition for Review before the Court *En Banc* must be preceded by a timely filing of a motion for reconsideration or new trial with the Division.

Relatedly, Section 1, Rule 15 of the RRCTA states:

> SEC. 1. *Who may and when to file motion.* - Any aggrieved party may seek a reconsideration or new trial of any decision, resolution, or order of the Court. He shall file a motion for reconsideration or new trial within fifteen days from the date he received notice of the decision, resolution or order of the Court in question.

The foregoing rules are clear. Before the Court *En Banc* could take cognizance of the petition for review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned Court in Division[23] within *fifteen (15)* days from receipt of the assailed decision.

In the present case, petitioner received a copy of the July 9, 2020 Decision of the Court in Division on *July 14, 2020*. His special counsel, the Litigation Division, also received its copy on *July 14, 2020* through the Internal Investigation Division, which was the office assigned to receive documents for the Litigation Division on that day.[24]

Counting fifteen (15) days from *July 14, 2020,* petitioner had until July 29, 2020 to file a motion for reconsideration or new trial with the Court in Division. However, he filed his Motion for Reconsideration only on July 30, 2020, or *one (1) day late.*

It has been said time and again that the perfection of an appeal within the period fixed by the rules is *mandatory* and *jurisdictional*, and that failure to perfect an appeal within the period fixed by law renders the judgment appealed from *final and executory.*[25]

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[23] *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*, G.R. No. 201530, April 19, 2017, citing *Commissioner of Customs v. Marina Sales, Inc.*, G.R. No. 183868, November 22, 2010.
[24] Supplemental Petition for Review, *EB* docket, p. 54.
[25] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015.

In *People of the Philippines v. Benedicta Mallari and Chi Wei-Neng* (*Mallari*),[26] the Supreme Court held that petitioner's failure to file a Motion for Reconsideration on time resulted in losing its right to assail the CTA First Division's judgment before this Court. Thus:

> A perusal of the records shows that the BIR Main Office and the Office of the City Prosecutor received the Notice of the December 14, 2009 Resolution of the CTA First Division on December 17, 2009 and December 21, 2009, respectively. From the date of receipt, petitioner only had until January 4, 2010 and January 5, 2010, respectively, to file its Motion for Reconsideration. Petitioner, however, filed its motion only on January 18, 2010 or 14 days beyond the prescribed period. Thus, we find no cogent reason to depart from the findings of the CTA Special First Division, which was affirmed by the CTA *En Banc*, that petitioner filed its Motion for Reconsideration beyond the 15-day reglementary period.
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> Consequently, **petitioner's failure to duly file on time a Motion for Reconsideration of the CTA First Division's December 14, 2009 Resolution resulted in losing its right to assail the CTA First Division's judgment before this Court**. This is in accordance with the basic rule that a party who fails to question an adverse decision by not filing the proper remedy within the period prescribed by law for the purpose loses the right to do so. ...

In the *Mallari* case, it was reiterated that the failure to file a Motion for Reconsideration seasonably renders the judgment *final and executory* by operation of law, *viz.*:

> Consequently, the CTA First Division December 14, 2009 Resolution had already attained finality because of petitioner's failure to file a Motion for Reconsideration within the 15-day reglementary period allowed under the CTA's revised internal rules.
>
> We reiterate the settled pronouncement that "judgments or orders become **final and executory** by operation of law and not by judicial declaration. **The finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or no motion for reconsideration or new trial is filed.** The court need not even pronounce the finality of the order as the same becomes final by operation of law. (*Emphasis supplied*)

[26] G.R. No. 197164, December 4, 2019.

Correspondingly, in the recent case of *Bureau of Internal Revenue v. TICO Insurance Company, Inc., et al.* (*TICO*),[27] the Supreme Court ruled that once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not. No court — not even the Supreme Court — has the power to revise, review, change or alter the same, *viz.*:

> It is settled that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional. This means that the failure to interpose a timely appeal deprives the appellate body of any jurisdiction to alter the final judgment, more so to entertain the appeal. **Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not, and no court — not even the Supreme Court — has the power to revise, review, change or alter the same**. The right to appeal is not a part of due process of law but is a mere statutory privilege to be exercised only in the manner, and in accordance with, the provisions of the law. After a decision is declared final and executory, vested rights are acquired by the winning party.
>
> In the same vein, "a motion for reconsideration must necessarily be filed within the period to appeal. When filed beyond such period, the motion for reconsideration ipso facto forecloses the right to appeal." (*Emphasis supplied*)

In the *TICO* case, the Supreme Court underscored that the 15-day period to file a motion for reconsideration is non-extendible. Thus:

> ... "Under Section 1, Rule 52 of the Rules of Court, a motion for reconsideration of a judgment or final resolution should be filed *within 15 days* from notice. If no appeal or motion for reconsideration is filed within this period, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgment, as provided under Section 10 of Rule 51. **The 15-day reglementary period for filing a motion for reconsideration is non-extendible**."
>
> ... ...
>
> **That the motion for reconsideration was filed only one day late is immaterial**; the Court has similarly refused to admit motions for reconsideration which were filed late without sufficient justification. Indeed, "[j]ust as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the case." *(Emphasis supplied)*

[27] G.R. No. 204226, April 18, 2022.

Provisions of the Rules of Court prescribing the time within which certain acts must be done, or certain proceedings taken, are absolutely indispensable to the prevention of needless delays and the orderly and speedy discharge of judicial business.[28]

It is always in the power of this Court to suspend its own rules or to except a particular case from its operation whenever the purposes of justice require it.[29] Strong compelling reasons, such as serving the ends of justice and preventing a grave miscarriage, warrant the suspension of the rules.[30]

Significantly, in this case, the BIR failed to adduce strong compelling reason that would warrant the liberal application of the rules.

To justify petitioner's one-day delay, his special counsel cited that the "IID failed to affix their stamp on the Notice issued by the Court in Division. Thus, when the undersigned counsel received the Notice, the Notice only bore the stamp of receipt of Litigation Division on January 15, 2020." Hence, his special counsel computed the reckoning of the filing of the motion on July 15, 2020, even if IID received the Notice on July 14, 2020. The alleged mistake of IID is not a valid plea for relaxation of the rules of procedure.

The Supreme Court emphasized in the *TICO case*, that:

> ... a counsel's tardiness in complying with reglementary periods for filing pleadings that are attributed to the negligence of said counsel's secretary or clerk is **not a valid reason.** "It is the counsel's duty to adopt and strictly maintain a system that ensures that all pleadings should be filed and duly served within the period; and if he fails to do so, the negligence of his secretary or clerk to file such pleading is imputable to the said counsel.[31] *(Emphasis supplied)*

Besides, as observed by respondent, the BIR Internal Investigation Division and the BIR Litigation Division are all under the direct supervision and control of the Commissioner of Internal Revenue. The two divisions and petitioner are holding offices in the same BIR National Office Building, where

[28] *Id.*
[29] *Sumbilla v. Matrix Finance Corporation*, G.R. No. 197582, June 29, 2015, citing *Lu v. Lu Ym, Sr., et al.*, G.R. No. 153690, February 15, 2011, citing *Destileria Limtuaco & Co. Inc. v. Intermediate Appellate Court*, L-74369, January 29, 1988.
[30] *Trans International v. Court of Appeals, et al.*, G.R. No. 128421, January 26, 1998, citing *Ronquillo v. Marasigan*, L-11621, May 31, 1962; *Workmen's Insurance Co., Inc. v. Augusto, et al.*, L-31060, July 29, 1971.
[31] *Bureau of Internal Revenue v. TICO Insurance Company, Inc.*, G.R. No. 204226, April 18, 2022.

notices concerning this case have been sent. The BIR Litigation Division should have exercised due diligence in ascertaining the actual date of receipt of the assailed Decision.

Thus, We sustain the Court in Division's ruling that petitioner's failure to file his Motion for Reconsideration seasonably rendered its July 9, 2020 Decision final and executory. A decision that has acquired finality becomes *immutable* and *unalterable* and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it was made by the court that rendered it or by the highest court of the land.[32]

Notably, this case involves deficiency tax assessments amounting to ₱3,762,799,564.00, which is too substantial to be brushed aside by the Court solely due to technicalities. To abruptly put an end to litigation solely based on technicalities amounts to serious injustice to the parties.[33] However, having attained finality, the instant case is already beyond the Court *En Banc's* power to amend or revoke.

Nonetheless, even if the Court were to disregard petitioner's *one-day delay* and the *finality* of the July 9, 2020 Decision, the case would still fail for the reasons discussed below.

The FLD and FANs are void because they failed to indicate a definite due date for payment.

The Court *En Banc* agrees with the Court in Division that the assessments for deficiency taxes for the period ended September 30, 2009, are void due to failure to state a demand or a period for payment.[34] The Audit Results/Assessment Notices (FANs) attached to the FLD and the FDDA contain the phrase "DUE DATE" but fail to indicate a specific date in the space provided after the word, negating respondent's compliance with the requisite demand for payment within the prescribed period.

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[32] *Roberto A. Torres, et al., v. Antonia F. Aruego*, G.R. No. 201271, September 20, 2017.
[33] *Kabalikat Para Sa Maunlad Na Buhay, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 217530-31, 217536-37, & G.R. No. 217802, February 10, 2020.
[34] See *Adamson v. Court of Appeals*, G.R. Nos. 120935 & 124557, May 21, 2009.

However, We depart from the court a *quo*'s ruling that the FLD failed to provide a definite amount of tax liability and that "the amount remains indefinite, since the said tax assessment is still subject to modification or adjustment, depending on the date of payment by petitioner" (now respondent). Upon scrutiny of the same, We find that the FLD and FANs indicate a definite amount of tax liability.

In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, et al.*,[35] 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**. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. ... (*Emphasis supplied*)

Similarly, in *Fitness By Design*,[36] the Supreme Court ruled that the disputed final assessment notice is not a valid assessment considering that it lacks a *definite amount* of tax liability and there is no *due date*, to wit:

> **A final assessment notice provides for the <u>amount</u> of tax due with a <u>demand</u> for payment.** ...
>
> ...
>
> The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment." However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a <u>computation of tax liabilities</u>; it also includes a <u>demand for payment within a period prescribed</u>. Its main purpose is to determine the amount that a taxpayer is liable to pay**.
>
> ...
>
> **A final assessment is a notice "to the effect that the <u>amount</u> therein stated is due as tax <u>and</u> a <u>demand</u> for payment thereof."** This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."

[35] *Supra*, note 14.
[36] *Supra*, note 12.

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

In *Fitness By Design*, the Supreme Court ruled that the FAN lacks a definite amount of tax liability since the same is subject to modification and is *entirely dependent* on the taxpayer's payment date, *viz.*:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. ... **Please note, however, that the interest and the total**

hr

> **amount due will have to be adjusted <u>if paid prior or beyond</u> <u>April 15, 2004</u>.** (*Emphasis on the original*)

This irregularity in the FAN does not exist in the instant case. Records reveal that the FANs attached to the FLD specify a fixed and definite amount of respondent's deficiency tax liabilities.[37]

---

[37] Below is the summary of the amounts stated on the Formal Letter of Demand (FLD) (Exhibit "R-13", BIR Records, pp. 1665-1667):

DEFICIENCY INCOME TAX		
Total Amount Due / (Overpayment)		₱ 758,009,940.11
Add: Surcharge – 50%	₱ 379,004,970.05	
20% Interest from 01/16/2010 to 07/09/2014	679,093,836.76	
Compromise Penalty		1,058,098,806.81
Total Amount Due		**₱ 1,816,108,746.92**

DEFICIENCY VALUE-ADDED TAX		
Deficiency VAT		₱ 664,731,346.20
Add: Surcharge – 50%	₱ 332,365,673.10	
Add: 20% Interest p.a. from 10/26/2009 to 07/09/2014	652,393,819.96	
Compromise Penalty on Deficiency Tax	-	
Compromise Penalty for non-submission of the following:		
SLS	25,000.00	
SLP	25,000.00	
SLI	25,000.00	957,834,493.06
Total Amount Due		**₱ 1,622,565,839.26**

DEFICIENCY COMPENSATION WITHHOLDING TAX		
Total Basic Deficiency Tax		₱ 1,857,921.19
Add: 20% Interest p.a. from 10/11/2009 to 07/09/2014		1,763,243.56
Compromise Penalty		25,000.00
Total Amount Due		**₱ 3,646,164.75**

DEFICIENCY EXPANDED WITHHOLDING TAX		
Deficiency Tax		₱ 2,141,108.07
Add: 20% Interest p.a. from 10/11/2009 to 07/09/2014	₱ 1,995,630.04	
Compromise Penalty	25,000.00	2,020,630.04
Total Amount Due		**₱ 4,161,738.11**

DEFICIENCY FINAL TAX		
Total Deficiency Final Tax – Basic		₱ 37,021,391.61
Add: Surcharge – 50%	₱ 18,510,695.81	
Add: 20% interest from 10/11/2009 to 07/09/2014	35,134,822.06	53,645,517.87
Total Amount Due		**₱ 90,666,909.48**

DEFICIENCY DOCUMENTARY STAMP TAX		
Deficiency Tax / (Overpayment)		₱ 997,700.54
Add: Surcharge		249,425.13
20% Interest up to 11/06/2009 to 07/09/2014		932,645.00
Compromise Penalty		20,000.00
Total Amount Due		**₱ 2,199,770.67**

mv

The statement in the FLD that "the interest and the total amount due will have to be adjusted **if paid beyond *July 9, 2014*,"**[38] does not make respondent's deficiency tax liabilities indefinite to render the subject FLD/FANs void. The statement merely reminded respondent that the interest would have to be adjusted if the assessed tax liabilities are paid after *July 9, 2014*.

It bears to emphasize that only the 20% deficiency/delinquency interest per annum[39] will be adjusted if paid ***beyond July 9, 2014***. The basic deficiency taxes and the surcharge remain the same regardless of the date of payment. The interest would be subject to changes, considering that the BIR could not foresee when respondent would pay the deficiency taxes. Consequently, the total amount due will have to be adjusted.

Hence, the subject FLD and FANs clearly indicated a fixed and definite amount of respondent's deficiency tax liabilities. Nonetheless, they are void for failure to state a demand or a period for payment.

In *Fitness by Design*, the Supreme Court concluded that the disputed FAN was not a valid assessment because it <u>did not set a specific due date</u>, negating the demand for payment. Thus, the Supreme Court held:

> ... [T]here are **no due dates in the Final Assessment Notice. This negates petitioner's demand for payment.** Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:
>
>> In view thereof, **you are *requested to pay*** your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled ***within the time shown in the enclosed assessment notice***.

[38] Exhibit "P-8", Division Docket – Vol. III, p. 1241.
[39] SEC. 249. *Interest*. –
(A) In General. - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
(B) Deficiency Interest. - ...
(C) Delinquency Interest. - ...

> However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained unaccomplished.**
>
> Contrary to petitioner's view, **April 15, 2004 was the <u>reckoning date of accrual of penalties and surcharges</u> and <u>not</u> the <u>due date</u> for payment of tax liabilities**. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay. (*Emphasis supplied*)

Similarly, the last paragraph of the FLD in this case states that respondent is requested to pay its deficiency tax liabilities **<u>within the time</u>** shown in the **<u>enclosed assessment notice</u>**,[40] to wit:

> In view thereof, you are requested to pay your aforesaid deficiency tax liabilities through eFPS using BIR Payment Form (BIR Form 0605) within the time shown in the enclosed assessment notice. Afterwards, submit copy thereof to **Large Taxpayers Regular Audit Division 1 located at Rm 216 National Office Building, BIR Road, Diliman, Quezon City** for updating of your records and cancellation of the herein FLD if warranted.
>
> Very truly yours,
>
> **KIM S. JACINTO-HENARES**
> Commissioner of Internal Revenue
>
> 025139

However, a perusal of the enclosed assessment notices[41] reveals that the due date for payment was left blank, *viz.*:

[40] Exhibit "R-13", BIR Records, p. 1664.
[41] Exhibit "R-14", BIR Records, pp. 1644-1650.

x---x

BIR FORM NO. **0401**
REVISED June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

AUDIT RESULT/ASSESSMENT NOTICE

RETURN PERIOD: FY Ended Sep. 30, 2009

ASSESSMENT NUMBER: IT-116-LOA-0000022-09-14-996
DATE ISSUED:

TIN: **000-361-376**
NAME: **Robinsons Land Corporation**
ADDRESS: Lower Level, West Lane, Robinsons GalleriaEDSA cor. Ortigas Ave., Quezon City

EXHIBIT R-14
RESPONDENT
ORIGINAL
FEB 13 2017

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS:

	PARTICULARS	AMOUNT
TAX TYPE: Income Tax	Basic	P 758,009,940.11
BASED ON/REASON: - Sections 32, 34(A)and (K) of NIRC of 1997 and RR 2-98, as amended	Surcharge	379,004,970.05
- Surcharge - Sec. 248 of 1997 Tax Code	Interest	679,093,836.76
- Interest - Sec. 249 of the 1997 Tax Code	Compromise penalty	
DUE DATE	Total Amount Due	P 1,816,108,746.92

IMPORTANT
PLEASE REFER AT THE BACK OF THIS NOTICE FOR FURTHER INSTRUCTIONS

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE
NSV ODL CDE GGS JSD WSR AMM JMA

BIR FORM NO. **0401**
REVISED June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

AUDIT RESULT/ASSESSMENT NOTICE

RETURN PERIOD: FY Ended Sep. 30, 2009

ASSESSMENT NUMBER: VT-116-LOA-0000022-09-14-997
DATE ISSUED:

TIN: **000-361-376**
NAME: **Robinsons Land Corporation**
ADDRESS: **Lower Level, West Lane. Robinsons GalleriaEDSA cor. Ortigas Ave., Quezon City**

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS:

	PARTICULARS	AMOUNT
TAX TYPE: Value-Added Tax		
BASED ON/REASON: Sections 106 and 108 of 1997 NIRC, as amended	Basic	P 664,731,346.20
- RR No. 16-2005, as amended	Surcharge	332,365,673.10
- Interest - Sec. 249 of the 1997 Tax Code	Interest	625,393,819.96
- Surcharge - Sec. 248 of 1997 Tax Code	Compromise penalty	
DUE DATE	Total Amount Due	P 1,622,490,839.26

IMPORTANT
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KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE
NSV ODL CDE GGS JSD WSR AMM JMA

BIR FORM NO. **0401**
REVISED June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

AUDIT RESULT/ASSESSMENT NOTICE

RETURN PERIOD: FY Ended Sep. 30, 2009

ASSESSMENT NUMBER: WC-116-LOA-0000022-09-14-998
DATE ISSUED:

TIN: **000-361-376**
NAME: **Robinsons Land Corporation**
ADDRESS: **Lower Level, West Lane, Robinsons GalleriaEDSA cor. Ortigas Ave., Quezon City**

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS

	PARTICULARS	AMOUNT
TAX TYPE: Compensation Withholding Tax		
BASED ON/REASON: - Compromise Pen. - Sections 250 & 255, RR 1-90 as amended by RMO No. 19-2007	Basic	P 1,857,921.19
- Interest-Sec. 249 of the 1997 Tax Code	Surcharge	
	Interest	1,763,243.56
	Compromise penalty	25,000.00
DUE DATE	Total Amount Due	P 3,646,164.75

IMPORTANT
PLEASE REFER AT THE BACK OF THIS NOTICE FOR FURTHER INSTRUCTIONS

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE
NSV ODL CDE GGS JSD WSR AMM JMA

BIR FORM NO. **0401**
REVISED: June, 1996

OCN

AUDIT RESULT/ASSESSMENT NOTICE

RETURN PERIOD: FY Ended Sep. 30, 2009

ASSESSMENT NUMBER: WF-116-LOA-0000022-09-14-1000
DATE ISSUED:

TIN: 000-361-376
NAME: Robinsons Land Corporation
ADDRESS: Lower Level, West Lane, Robinsons GalleriaEDSA cor. Ortigas Ave., Quezon City

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS

TAX TYPE	PARTICULARS	AMOUNT
Final Tax BASED ON/REASON - Sections 28 of the NIRC of 1997 - Surcharge - Sec. 248 of 1997 NIRC - Interest - Sec. 249 of 1997 NIRC	Basic	P 37,021,391.61
	Surcharge	18,510,695.81
	Interest	35,134,822.06
	Compromise penalty	-
DUE DATE	Total Amount Due	P 90,666,909.48

IMPORTANT
PLEASE REFER AT THE BACK OF THIS NOTICE FOR FURTHER INSTRUCTIONS

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE
NSV DOL CDE GGS JSD WSR AMM SMA

BIR FORM NO. **0401**
REVISED: June, 1996

OCN

AUDIT RESULT/ASSESSMENT NOTICE

RETURN PERIOD: FY Ended Sep. 30, 2009

ASSESSMENT NUMBER: WE-116-LOA-0000022-09-14-999
DATE ISSUED:

TIN: 000-361-376
NAME: Robinsons Land Corporation
ADDRESS: Lower Level, West Lane, Robinsons GalleriaEDSA cor. Ortigas Ave., Quezon City

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS

TAX TYPE	PARTICULARS	AMOUNT
Expanded Withholding Tax BASED ON/REASON: - RR No. 2-98, as amended - Interest - Sec. 249, NIRC - Compromise Pen. - Sections 250 & 255, RR 1-90 as amended by RMO No. 19-2007	Basic	P 2,141,108.07
	Surcharge	
	Interest	1,995,630.04
	Compromise penalty	25,000.00
DUE DATE:	Total Amount Due	P 4,161,738.11

IMPORTANT
PLEASE REFER AT THE BACK OF THIS NOTICE FOR FURTHER INSTRUCTIONS

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE
NSV DOL CDE GGS JSD WSR AMM SMA

BIR FORM NO. **0401**
REVISED: June, 1996

OCN

AUDIT RESULT/ASSESSMENT NOTICE

RETURN PERIOD: FY Ended Sep. 30, 2009

ASSESSMENT NUMBER: DS-116-LOA-0000022-09-14-1001
DATE ISSUED:

TIN: 000-361-376
NAME: Robinsons Land Corporation
ADDRESS: Lower Level, West Lane, Robinsons GalleriaEDSA cor. Ortigas Ave., Quezon City

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS

TAX TYPE	PARTICULARS	AMOUNT
Documentary Stamp Tax BASED ON/REASON - Sections 179 of 1997 NIRC, as amended by RR No. 13-2004 - Surcharge - Sec. 248 of 1997 NIRC - Interest - Sec. 249 of 1997 NIRC - Compromise Pen. - Sections 250 & 255, RR 1-90 as amended by	Basic	P 997,700.54
	Surcharge	249,425.13
	Interest	932,645.00
	Compromise penalty	20,000.00
DUE DATE:	Total Amount Due	P 2,199,770.67

IMPORTANT
PLEASE REFER AT THE BACK OF THIS NOTICE FOR FURTHER INSTRUCTIONS

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE
NSV DOL CDE GGS JSD WSR AMM SMA

While the date July 9, 2014 as indicated on the FLD was the reckoning date for adjustment of interest, it cannot be recognized as the due date for payment, absent any showing that the same is expressly indicated as the due date on the assessment notices.

Correspondingly, in *Fitness by Design,* the date April 15, 2004 was regarded as the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities.

As the Supreme Court highlighted in *Commissioner of Internal Revenue v. T Shuttle Services, Inc. (T Shuttle),*[42] the FAN must not only be duly served on the taxpayer but must also contain a demand to pay within a specific period, to wit:

> ... **even granting that the PAN and the FAN were properly and duly served upon and received by respondent,** the Court affirms the CTA *En Banc*'s ruling that the FAN and **the assessment notices attached to it are still void for failure to demand payment of the taxes due within a specific period.**
>
> ... ...
>
> ... However, the CTA *En Banc* found nothing in the record that reveals that the CIR had issued a final demand containing a specific or definite period of payment following the expiration of the 15-day period given to respondent to the FAN. Further, the CTA *En Banc* observed that **the assessment notices attached to the FAN also did not prescribe a definite period for respondent to pay the alleged deficiency taxes.**
>
> ... the Court accords respect to the [CTA *En Banc*]'s finding that the FAN dated July 20, 2010 and the assessment notices attached to it did not contain a definite period within which to pay the assessed taxes. As such, **even assuming that the assessments were duly served on and received by respondent, they are still void and without any legal consequence.** *(Emphasis supplied)*

Clearly, the FLD, FAN, and the FDDA did not contain a definite and actual demand for respondent to pay the alleged deficiency taxes.

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[42] G.R. No. 240729, August 24, 2020.

Given the foregoing, the Court in Division did not err in ruling that the subject assessments for FY ended September 30, 2009 are void,[43] for petitioner's failure to state the due date.

The FLD and FANs are void for failure to comply with the due process requirement.

Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended, mandates petitioner to inform the taxpayer in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. It states, in part:

> 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:
>
> ... ...
>
> **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**. *(Emphasis supplied)*

Relative thereto, Section 3 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, implements, and specifies the *due process requirement* in the issuance of a deficiency tax assessment, to wit:

> SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> 3.1 Mode of procedures 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** ...
>
> ... ...

[43] See *Republic v. First Gas Power Corp.*, G.R. No. 214933, February 15, 2022.

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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 the assessment is based; otherwise, the assessment shall be <u>void</u>** ... *(Emphasis supplied)*

Based on the foregoing, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void.[44] RR No. 12-99, as amended by RR No. 18-2013, prescribes that the FLD/FAN must state, among others, the facts and the law on which the assessment is based as part of due process in the issuance of tax assessments; otherwise, the FLD/FAN shall be void.

The use of the word 'shall' in Section 228 of the 1997 NIRC, as amended, and RR 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 PAN, FLD with FAN, and the FDDA.[45]

A party's fundamental right to due process includes the right to be informed of the various issues involved in a proceeding, and the reasons for the decision rendered by the quasi-judicial agency.[46]

In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* (*Avon*),[47] the Supreme Court stressed that the taxpayer must not only be given an opportunity to present its defenses, explanations, and supporting documents, but the Commissioner and their subordinates must give *due consideration* to these, in making their conclusions on the taxpayers' liabilities, and sufficiently inform the taxpayer of the reasons for their conclusions. Failure to do so constitutes a violation of the taxpayer's right to due process.[48]

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[44] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. No. 201398-99 and 201418-19, October 3, 2018, citing *Ang Tibay v. The Court of Industrial Relations*, G.R. No. L-46496, February 27, 1940.
[45] *Id.*
[46] *Lourdes College v. Commissioner of Internal Revenue*, G.R. No. 226210, January 18, 2021.
[47] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.
[48] *Supra, Note 46.*

In *Avon*, the Supreme Court declared as null and void the FLD/FAN by reason of the BIR's total disregard of due process when it failed to fully apprise the taxpayer of the legal and factual bases of the assessment issued against it despite the latter's defenses and submission of supporting documents, *viz.*:

> 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**. Thus, **Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments.** There was clear inaction of the Commissioner at every stage of the proceedings.
>
> ... ...
>
> 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.
>
> ... ...
>
> **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.**

In *Edwards v. McCoy*:

> The object of a hearing is as much to have evidence considered as it is to present it. The right to adduce evidence, **without the corresponding duty on the part of the board to consider it, is vain**. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.

> In *Ang Tibay*, this Court similarly ruled that "[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts *but* ***the tribunal must consider the evidence presented.***"
>
> ... ...
>
> Similarly, in this case, despite Avon's submission of its explanations and pieces of evidence to the assessments, **the Commissioner failed to acknowledge these submissions and instead issued *identical* Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices**, and Collection Letter, the latter being premised on Avon's alleged failure to submit supporting documents to its protest. Had the Commissioner performed her functions properly and considered the explanations and pieces of evidence submitted by Avon, this case could have been settled at the earliest possible time. ..." (*Emphasis supplied, citation omitted*)

Here, respondent received a copy of the PAN with Details of Discrepancies[49] on May 26, 2014, indicating that upon investigation, it was found to have deficiency IT, VAT, EWT, WTC, FWT, and DST, in the aggregate amount of ₱3,483,203,002.82, inclusive of penalties and increments for FY ended September 30, 2009.

On June 10, 2014, respondent protested[50] the PAN and requested that the deficiency tax assessments against it be cancelled and withdrawn based on the reasons discussed in appropriate headings. It also claimed that the imposition of a 50% surcharge by petitioner and the extension of the prescriptive period is wrong, being based merely on a presumption.

[49] Exhibit P-6 with Annexes, *EB* Docket, pp. 1210-1228.
[50] Exhibit P-7, *EB* Docket, pp. 1229-1238.

Subsequently, on June 30, 2014, respondent received a copy of the FLD with Details of Discrepancies dated June 27, 2014.[51] Notably, the findings of basic deficiency IT, VAT, EWT, WTC, FWT, and DST, surcharge, and compromise penalty in the FLD were copied *verbatim* from the PAN, except for the amounts of interest, without considering, or referring, at the very least, any of respondent's arguments in its Reply (or protest) to the PAN.

On July 30, 2014, respondent protested the FLD, stating that the assessments in the FLD were *exactly the same* as that of the assessments in the PAN and that its arguments in the protest letter to the PAN were not given proper credit.

On September 26, 2014, respondent submitted reconciliations and other relevant documents in support of its protest against the FLD.

On September 3, 2015, respondent received the FDDA with the same deficiency tax assessments and Details of Discrepancies as those stated in the FLD and PAN, except for the amount of interest. In sum, petitioner merely reiterated in the FDDA his previous findings and assessments against respondent in the FLD and PAN even the discussion in the Details of Discrepancies,[52] without giving credit to its

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[51] Exhibit P-8 with Annexes, *EB* Docket, pp. 1239-1255.
[52] Exhibit "R-16", BIR Records. Below is a partial comparison of the Details of Discrepancies as stated on the PAN, FLD and FDDA:

PAN	FAN/FLD	FDDA
I. DEFICIENCY INCOME TAX **a. Revenue/Income Not Subjected to Income Tax (VAT Returns vs. ITR Recon) – P2,999,999.76** Reconciliation of revenues subjected to VAT as compared with the revenues reported in your income tax return disclosed that the former is higher by P2, 999, 999.76 which you failed to justify and substantiate with any documentary evidences. The said amount was considered as undeclared revenue and should form part of your gross income pursuant to Sec. 32 of the 1997 NIRC which states that ".... Gross income means all income derived from whatever source..." Reconciliation of Revenue per VAT Returns versus ITR Recon is hereto attached as **Schedule 1** and made an integral part hereof. ...	**I. DEFICIENCY INCOME TAX** **a. Revenue/Income Not Subjected to Income Tax (VAT Returns vs. ITR Recon) – P2,999,999.76** Reconciliation of revenues subjected to VAT as compared with the revenues reported in your income tax return disclosed that the former is higher by P2, 999, 999.76 which you failed to justify and substantiate with any documentary evidences. The said amount was considered as undeclared revenue and should form part of your gross income pursuant to Sec. 32 of the 1997 NIRC which states that ".... Gross income means all income derived from whatever source..." Reconciliation of Revenue per VAT Returns versus ITR Recon is hereto attached as **Schedule 1** and made an integral part hereof. ...	**I. DEFICIENCY INCOME TAX** **a. Revenue/Income Not Subjected to Income Tax (VAT Returns vs. ITR Recon) – P2,999,999.76** Reconciliation of revenues subjected to VAT as compared with the revenues reported in your income tax return disclosed that the former is higher by P2, 999, 999.76 which you failed to justify and substantiate with any documentary evidences. The said amount was considered as undeclared revenue and should form part of your gross income pursuant to Sec. 32 of the 1997 NIRC which states that ".... Gross income means all income derived from whatever source..." Reconciliation of Revenue per VAT Returns versus ITR Recon is hereto attached as **Schedule 1** and made an integral part hereof. ...
PAN	FAN/FLD	FDDA
II. DEFICIENCY VALUE-ADDED TAX a. As discussed I(b), I(c) and I(g) above, the following were added to taxable sales subject to VAT pursuant to Section 106 and/or 108 both of the 1997 NIRC of the Philippines:	**II. DEFICIENCY VALUE-ADDED TAX** a. As discussed I(b), I(c) and I(g) above, the following were added to taxable sales subject to VAT pursuant to Section 106 and/or 108 both of the 1997 NIRC of the Philippines:	**II. DEFICIENCY VALUE-ADDED TAX** a. As discussed I(b), I(c) and I(g) above, the following were added to taxable sales subject to VAT pursuant to Section 106 and/or 108 both of the 1997 NIRC of the Philippines:

arguments in the Reply letter to PAN and Protest letter to the FLD.

Similar to the *Avon* case, petitioner did not comment or address the matters raised by respondent. There was no discussion of petitioner's findings in a manner that respondent may know the various issues involved and the reasons for rejecting its refutations and explanations in its Reply to the PAN, and in its Protest to the FLD. Thus, respondent was left unaware of how petitioner, or his authorized representatives, appreciated the explanations or defenses raised against the assessments.

It is true that the Commissioner is not obliged to accept the taxpayer's explanations; 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

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Undeclared Revenue – discrepancy noted per masterfile extract CAATTS: P5,660,285.24 Additional Gross Income due to under – declaration of Purchases: 2,322,054.04 Gross Receipts not subjected to VAT: 4,084,594,494.40	Undeclared Revenue – discrepancy noted per masterfile extract CAATTS: P5,660,285.24 Additional Gross Income due to under – declaration of Purchases: 2,322,054.04 Gross Receipts not subjected to VAT: 4,084,594,494.40	Undeclared Revenue – discrepancy noted per masterfile extract CAATTS: P5,660,285.24 Additional Gross Income due to under – declaration of Purchases: 2,322,054.04 Gross Receipts not subjected to VAT: 4,084,594,494.40
III. DEFICIENCY COMPENSATION – P1,857,921.19 (basic Def. WC) and EXPANDED WITHHOLDING TAXES – P2,141,108.07 (basic Def. WE) Since you did not withhold and remit the corresponding withholding tax due on the above disallowed compensation, wages and benefit and income payments to your suppliers/services providers, you are still liable for the deficiency compensation and expanded withholdings taxes, respectively, pursuant to the provisions imposed under Revenue Regulations No. 2-98, as amended.	**III. DEFICIENCY COMPENSATION – P1,857,921.19 (basic Def. WC) and EXPANDED WITHHOLDING TAXES – P2,141,108.07 (basic Def. WE)** Since you did not withhold and remit the corresponding withholding tax due on the above disallowed compensation, wages and benefit and income payments to your suppliers/services providers, you are still liable for the deficiency compensation and expanded withholdings taxes, respectively, pursuant to the provisions imposed under Revenue Regulations No. 2-98, as amended.	**III. DEFICIENCY COMPENSATION – P1,857,921.19 (basic Def. WC) and EXPANDED WITHHOLDING TAXES – P2,141,108.07 (basic Def. WE)** Since you did not withhold and remit the corresponding withholding tax due on the above disallowed compensation, wages and benefit and income payments to your suppliers/services providers, you are still liable for the deficiency compensation and expanded withholdings taxes, respectively, pursuant to the provisions imposed under Revenue Regulations No. 2-98, as amended.
IV. DEFICIENCY FINAL WITHHOLDING TAX – P37,021,391.61 (basic Def. FT) Verification of your 1601F and Cash Dividend Withholding Tax Summary Report from Philippines Central Depository Inc. disclosed that you failed to fully withhold and remit final income tax on your dividend payments as prescribed under Revenue Regulation No. 2 – 98, as amended. …	**IV. DEFICIENCY FINAL WITHHOLDING TAX – P37,021,391.61 (basic Def. FT)** Verification of your 1601F and Cash Dividend Withholding Tax Summary Report from Philippines Central Depository Inc. disclosed that you failed to fully withhold and remit final income tax on your dividend payments as prescribed under Revenue Regulation No. 2 – 98, as amended. …	**IV. DEFICIENCY FINAL WITHHOLDING TAX – P37,021,391.61 (basic Def. FT)** Verification of your 1601F and Cash Dividend Withholding Tax Summary Report from Philippines Central Depository Inc. disclosed that you failed to fully withhold and remit final income tax on your dividend payments as prescribed under Revenue Regulation No. 2 – 98, as amended. …
V. DEFICIENCY DOCUMENTARY STAMP TAX – P997,700.54 (basic Def. DST) Verification disclosed that you failed to file and pay the corresponding documentary stamp tax due on your Receivables from Affiliates (P199, 540,107.00) in violation of Section 179 of the National Internal Revenue Code of 1997, as amended by RA 9243 and implemented by RR No. 13 – 04 in relation to RMC No. 48 – 2011.	**V. DEFICIENCY DOCUMENTARY STAMP TAX – P997,700.54 (basic Def. DST)** Verification disclosed that you failed to file and pay the corresponding documentary stamp tax due on your Receivables from Affiliates (P199, 540,107.00) in violation of Section 179 of the National Internal Revenue Code of 1997, as amended by RA 9243 and implemented by RR No. 13 – 04 in relation to RMC No. 48 – 2011.	**V. DEFICIENCY DOCUMENTARY STAMP TAX – P997,700.54 (basic Def. DST)** Verification disclosed that you failed to file and pay the corresponding documentary stamp tax due on your Receivables from Affiliates (P199, 540,107.00) in violation of Section 179 of the National Internal Revenue Code of 1997, as amended by RA 9243 and implemented by RR No. 13 – 04 in relation to RMC No. 48 – 2011.

her conclusions are based, and those facts must appear in the record.[53]

The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.[54] His failure to give due consideration to respondent's defenses, explanations, and supporting documents when he made his conclusion as to respondent's tax liability, could hardly be considered substantial compliance with the due process requirement.

In *Ang Tibay*, cited in *Avon*, the Supreme Court similarly ruled that "not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts *but the tribunal must consider the evidence presented.*"

Petitioner's disregard of the due process standards and rules under RR No. 12-99, as amended by RR No. 18-2013, and his failure to sufficiently inform respondent of the reasons for his conclusions under Section 228 of the 1997 NIRC, as amended, render the subject deficiency tax assessments null and void.

The Court can resolve issues even if not specifically raised by the parties.

Petitioner argues that his basic right to fair play and due process was violated when the Court in Division ruled on an issue *never* raised by respondent, *never* joined by the pleadings, *never* raised during the pre-trial, *never* defined by the Court in the pre-trial order, and *never* tried by the parties.

Petitioner is gravely mistaken.

The Court's prerogative to rule upon related issues notwithstanding that they were not taken up during trial is not novel. By now, petitioner must have already attained sufficient mastery of the provisions of the RRCTA, particularly Section 1, Rule 14, which empowers the Court to rule on matters even if not raised by the parties. Instead, petitioner opted to demonstrate an ingenuousness of the CTA rules.

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[53] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021.
[54] *Id.*

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[55] the Supreme Court emphatically ruled that the Court of Tax Appeals can resolve an issue which was not specifically raised by the parties, *viz.*:

> **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.* - 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.
>
> 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 supplied)*

Likewise, in *Commissioner of Internal Revenue v. Yumex Philippines Corporation*,[56] the Supreme Court sustained the authority of this Court to raise and resolve an issue that was not raised in a petition for review, *viz.*:

> 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. 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.** (*Emphasis supplied*)

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[55] G.R. No. 183408, July 12, 2017; See also *Republic v. First Gas Power Corp.*, G.R. No. 214933, February 15, 2022.
[56] G.R. No. 222476, May 5, 2021.

Here, the issue stipulated by the parties for the Court in Division's determination is whether respondent is liable to pay the deficiency income tax, VAT, EWT, WTC, FWT, and DST in the aggregate amount of ₱3,762,799,564.00, inclusive of increments, for FY ended September 30, 2009. To be able to fully resolve the said issue, the validity of the assessment must be ascertained first as it is a *related issue,* the resolution of which necessarily determines whether respondent has a tax liability.

Conclusion

All told, the Decision dated July 9, 2020 of the Court's First Division had already attained finality because of petitioner's belated filing of his Motion for Reconsideration. Under the doctrine of immutability of judgment, the said Decision may no longer be modified even if it is meant to correct an erroneous conclusion of law and facts[57] of the Court in Division.

Besides, even if the Court *En Banc* assumes jurisdiction over the present case, it would still fail, given the above disquisition.

WHEREFORE, premises considered, the instant Petition for Review and Supplemental Petition for Review, are **DISMISSED** for lack of jurisdiction. Accordingly, the July 9, 2020 Decision of the Court's First Division in CTA Case No. 9163 had lapsed to finality and is already beyond our power to review.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

[57] *People v. Mallari, et al.*, G.R. No. 197164, December 4, 2019.

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WE CONCUR:

(I concur on grounds elucidated on pp. 12 to 19 and pp. 23 to 38 of the ponencia)
ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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