REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2394** (CTA Case No. 8851)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** JJ.
OIC CONSTRUCTION & DEVELOPMENT CORPORATION, Respondent.	***Promulgated:*** MAY 3 1 2022 9:21 a.m.

x - x

DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed on December 17, 2020 by petitioner, Commissioner of Internal Revenue (CIR), against respondent, OIC Construction & Development Corporation, praying that the *Decision* dated May 29, 2020, and the *Resolution* dated November 4, 2020, in CTA Case No. 8851, entitled *"OIC Construction & Development Corporation, petitioner, v. Commissioner of Internal Revenue, respondent"*, be reversed and set aside, and that petitioner be allowed to enforce the collection of the deficiency tax assessments, and that the Warrant of Distraint and/or Levy be reinstated. The dispositive portions thereof respectively read:

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[1] EB Docket, pp. 1 to 13.

***Decision* dated May 29, 2020:**

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the FLD, *Assessment Notice* Nos. 33-08-IT-3334 and 33-08-IAET-3335, all dated April 13, 2012, assessing petitioner for deficiency income tax and deficiency improperly accumulated earnings tax, including increments, for taxable year 2008 in the total amount of ₱18,371,868.30 are **CANCELLED and SET ASIDE**.
>
> Respondent is likewise permanently enjoined from enforcing the collection of the deficiency tax assessments from petitioner for taxable year 2008 amounting to ₱18,371,868.30 by virtue of the above-mentioned assessment notices. In view of the nullity thereof, the WDL dated July 14, 2014 issued against petitioner is also **CANCELLED and WITHDRAWN**.
>
> **SO ORDERED.**"

***Resolution* dated November 4, 2020:**

> "**WHEREFORE**, premises considered, respondent's *Motion to Admit Attached Motion for Reconsideration* and the *Motion for Reconsideration of Decision Dated 29 May 2020* are **DENIED**.
>
> **SO ORDERED.**"

THE FACTS

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), who is duly appointed and empowered to perform the duties of his office, including, among others, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the Tax Code or others laws or portions thereof administered by the BIR, subject to the exclusive appellate jurisdiction of this Court, pursuant to Section 4 of the 1997 National Internal Revenue Code (NIRC), as amended.

On the other hand, respondent is registered with the BIR under Tax Identification Number 000-348-758-000, with address at Unit 2002, Summit One Tower, 530 Shaw Blvd., Highway Hills, Mandaluyong City.

On February 2, 2010, Letter of Authority (LOA) No. LOA 200800000607 was issued by Regional Director Alfredo V. Misajon, Revenue Region (RR) No. 6 – Manila, authorizing Revenue Officer (RO) Teresita P. Reyes and Group Supervisor (GS) Carolyn B. Labao of Revenue District Office (RDO) No. 033 – Malate-Intramuros-Ermita-Port Area Manila, to examine the books of accounts and other accounting records of respondent for all internal revenue taxes for the period January 1, 2008 to December 31, 2008. Respondent's address indicated in the LOA is Carmen Apt., Roxas Boulevard Malate, Manila. RDO No. 033 is under RR No. 6 – Manila.

Respondent filed an Application for Registration (BIR Form No. 1903) with RDO No. 041 – Mandaluyong City on March 14, 2011, indicating its business address at "Unit 2002 Summit One Tower, 530 Shaw Blvd., Mandaluyong City".

Accordingly, on April 5, 2011, respondent was issued a BIR Certificate of Registration (COR) by RDO No. 041, under RR No. 7, indicating respondent's address at Unit 2002 Summit One Tower, 530 Shaw Blvd., Highway Hills, Mandaluyong City 1550. The said COR has, *inter alia*, the following notation: "TRANSFERRED FROM RDO 033".

Thereafter, a Preliminary Assessment Notice (PAN) was issued by RR No. 6 on March 29, 2012 against respondent, as well as a Formal Letter of Demand (FLD) with Assessment Notice Nos. 33-08-IT-3334 and 33-08-IAET-3335, all dated April 13, 2012, assessing respondent of deficiency income tax and deficiency improperly accumulated earnings tax. All these notices indicate respondent's address at Carmen Apt., Roxas Boulevard, Malate, Manila.

By virtue of a Memorandum of Assignment (MOA) dated September 6, 2012, the case was assigned to RO Elizabeth F. Ginete (Ginete) of RDO No. 033 with the instruction, among others, that she "...[c]onduct a verification whether the said account/s has/have already been paid or settled. If paid, secure a copy of the official receipt of any evidence of the settlement thereof. If it is not yet paid or settled, demand from the taxpayer the payment thereof. xxx"

On October 12, 2012, respondent received the Preliminary Collection Letter (PCL) dated September 14, 2012, holding respondent liable for alleged deficiency taxes in the total amount of ₱18,371,868.30 for taxable year 2008, pursuant to Demand/Assessment Notice Nos. 33-08-IT-3334 and 33-08-IAET-3335 issued on April 13, 2012, *to wit*:

	TAX DUE	SURCHARGE	INTEREST	COMPROMISE	TOTAL AMOUNT DUE
Deficiency income Tax	₱11,307,391.25	-	₱6,784,434.75	-	₱18,091,826.00
Deficiency Improperly Accumulated Earnings Tax	₱ 151,374.22	₱37,843.55	₱ 90,824.53	-	₱ 280,042.30
TOTAL					**₱18,371,868.30**

Attached to the PCL are the following:

a. Assessment Notice No. 33-08-IAET-3335 dated April 13, 2012;
b. Assessment Notice No. 33-08-IT-3334 dated April 13, 2012;
c. FLD dated April 13, 2012; and
d. Final Opportunity Notice dated September 17, 2012.

On October 17, 2012, respondent, through counsel, filed a letter dated October 16, 2012 with RR No. 6 of RDO No. 033 (Admin Section), contesting the issuance of the PCL.

In response to said letter, RO Ginete wrote a letter dated January 4, 2013, stating, *inter alia*, that the "subject taxpayer *[sic]* delinquent accounts case is final and executory, however, so as not to jeopardize the interest of the government to collect taxes, this case will be forwarded to Revenue District Office No. 41 – Mandaluyong City wherein you are presently registered xxx".

By virtue of a MOA dated May 23, 2014, the case was assigned to RO Loida E. Taguiam (Taguiam) of the Collection Division of RR No. 7 with the instruction, among others, that she "prepare, issue and serve approved Warrant of Distraint and/or Levy (WDL) personally to the delinquent taxpayer or persons having in actual possession or control over the delinquent taxpayer's properties (including receivables); or constructive service, if the need arises" and "prepare and serve the duly approved Warrant of Garnishment (WOG) to the banks".

On July 15, 2014, the Collection Division of BIR RR No. 7 served the WDL No. RR7-2014-427 dated July 14, 2014 against respondent.

In response to the WDL issued by petitioner, respondent filed a *Petition for Review (With Motion for the Suspension of Collection of Tax)* with the Court in Division, on July 30, 2014, docketed as CTA Case No. 8851 entitled *"OIC Construction & Development Corporation v. Commissioner of Internal Revenue"*. The case was initially raffled to the Third Division of this Court but was later on transferred to the First Division.

In the meantime, the Collection Division of RR No. 7 issued a letter dated August 14, 2014, addressed to the Chief of the Assessor's Office of Mandaluyong City, requesting for a certificate of property holdings of respondent. The Collection Division likewise issued various WOGs dated August 29, 2014, which were served to several banks where respondent maintains accounts in order to collect the amount allegedly due from respondent.

The hearings for respondent's *Motion for the Suspension of Collection of Tax* were held on September 8, 2014 and October 13, 2014. Respondent presented therein the following witnesses: (1) Engr. Jovencio Maligro, Jr. respondent's Assistant Manager; (2) Mr. Alfred Cebedo, respondent's Project Engineer; and (3) Atty. Ceferino S. Paredes, Jr., respondent's lawyer.

Petitioner (then respondent) filed his *Opposition (On Petitioner's Motion for the Suspension of Collection of Tax and Motion to Lift the Order of Distraint and Levy)* on October 3, 2014, while respondent (then petitioner) filed its *Reply [To Respondent's Opposition on Petitioner's Motion for the Suspension of Collection of Tax, and Motion to Lift the Order of Distraint and Levy]* on October 13, 2014.

Respondent filed its *Formal Offer of Evidence*, in support of its *Motion for the Suspension of Collection on Tax*, on October 27, 2014.

On October 15, 2014, petitioner filed his *Answer* to the *Petition for Review* in CTA Case No. 8851, interposing, among others, the following special and affirmative defenses, *to wit*:

(a) That all presumptions are in favor of the correctness of the assessment;

(b) That the PAN and the Final Assessment Notice (FAN) for the year 2008 were issued in compliance with the provisions of Section 228 of the 1997 NIRC, as amended, and in accordance with existing Revenue Rules and Regulations relative to the right of the taxpayer to be informed of the factual and legal bases upon which the assessment was made;

(c) That respondent was fully apprised of the facts and the law on which the Final Assessment was issued, and that the FAN, Demand Letter and Details of Discrepancies, which were all sent to respondent, contained, in detail, the manner of computation, the facts on which the assessment was based, and the provisions of the law used in arriving at such deficiency assessment;

(d) That the assessment has already become final, executory and demandable due to respondent's failure to timely file a protest against the assessment, and for respondent's failure to timely file the *Petition for Review* in accordance with the provisions of Section 228 of the 1997 NIRC, as amended; and

(e) That summary remedies for the collection of the delinquent tax have already been commenced by petitioner.

Respondent's *Pre-Trial Brief* and *Amended Pre-Trial Brief* were filed on December 1, 2014 and December 4, 2014, respectively; while petitioner's *Pre-Trial Brief* was filed on May 18, 2015.

Meanwhile, respondent's *Motion for the Suspension of Collection of Tax* was denied for lack of merit by the Court in Division in the *Resolution* dated January 14, 2015.

The Pre-Trial Conference was initially set on December 11, 2014. However, upon the Court in Division's *Resolutions* dated December 5, 2014 and January 23, 2015, due to petitioner's filing of an *Urgent Motion to Cancel and Reset Pre-Trial* on March 3, 2015, and respondent's filing of an *Urgent Motion for Postponement* on March 26, 2015, the Pre-Trial Conference was further reset to, and was eventually held on, May 19, 2015.

The parties filed their *Joint Stipulation of Facts and Issues* on July 3, 2015. Thereafter, the *Pre-Trial Order* dated July 20, 2015 was issued.

During trial, respondent presented documentary and testimonial evidence. Respondent presented Engr. Jovencio Maligro, Jr. and its counsel manifested that it shall adopt the testimonies of its witnesses who were presented in support of its the *Motion for the Suspension of Collection of Tax*.

On October 9, 2015, respondent filed its *Formal Offer of Evidence*. Petitioner failed to file his *Comment* thereto. In the *Resolution* dated October 28, 2015, respondent's exhibits were admitted by the Court in Division, except for Exhibits "P-4", "P-5", and "P-6", for failure to present the originals for comparison.

Petitioner, for his part, likewise presented documentary and testimonial evidence. Petitioner presented the following witnesses: (1) RO Taguiam, BIR employee assigned at Arrears Management Team (AMT), RR-7 Collection Division of the BIR; and (2) RO Ginete, then petitioner's Seizure Agent.

Thereafter, petitioner filed its *Formal Offer of Evidence* on August 23, 2018. Respondent failed to file its *Comment* thereon. In the *Resolution* dated December 6, 2018, the Court in Division: (1) admitted petitioner's exhibits, except for Exhibit "R-16", as it is not in the record of the case; and (2) gave the parties a period of thirty (30) days from notice to file their respective memoranda. In the same *Resolution*, the Court in Division noted petitioner's *Memorandum* which was filed on September 12, 2018.

Respondent failed to file its *Memorandum*. In the *Resolution* dated March 21, 2019, CTA Case No. 8851 was submitted for decision.

On May 29, 2020, the Court in Division rendered the assailed *Decision*[2] granting respondent's *Petition for Review*, and permanently enjoining petitioner from enforcing the collection of the deficiency tax assessments against respondent.

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[2] EB Docket, pp. 15 to 37; Division Docket (CTA Case No. 8851), pp. 520 to 541.

Dissatisfied with the Court in Division's *Decision*, petitioner filed a *Motion to Admit Attached Motion for Reconsideration*[3] and *Motion for Reconsideration of Decision Dated 29 May 2020*[4] on October 21, 2020, praying that the Court in Division grant the *Motion to Admit Attached Motion for Reconsideration*, and admit and give due course to the *Motion for Reconsideration*; and reverse and set aside the *Decision* dated May 29, 2020, and allow petitioner to enforce the collection of the deficiency tax assessments from respondent, respectively.

In the assailed *Resolution*[5] dated November 4, 2020, the Court in Division denied both petitioner's *Motion to Admit Attached Motion for Reconsideration* and *Motion for Reconsideration of Decision of Decision Dated 29 May 2020*.

Thus, on December 17, 2020, petitioner filed the instant *Petition for Review*[6] docketed as CTA EB No. 2394.

In the *Resolution*[7] dated March 3, 2021, the Court *En Banc* ordered respondent to file its *Comment* to the *Petition for Review*. However, respondent failed to file the required *Comment*.[8]

On June 24, 2021, the Court *En Banc* issued the *Resolution*[9] submitting the instant case for decision.

Hence, this *Decision*.

ISSUES

Petitioner raises the following issues for resolution of the Court *En Banc*, *to wit*:

a) Whether the Court in Division should have relaxed the application of procedural rules.

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[3] EB Docket, pp. 38 to 41; Division Docket (CTA Case No. 8851), pp. 542 to 545.
[4] EB Docket, pp. 42 to 49; Division Docket (CTA Case No. 8851), pp. 546 to 553.
[5] EB Docket, pp. 50 to 52; Division Docket (CTA Case No. 8851), pp. 556 to 558.
[6] EB Docket, pp. 1 to 13.
[7] EB Docket, pp. 57 to 58.
[8] Records Verification Report dated June 14, 2021 issued by Angel Magpantay, Clerk IV, Receiving Unit – Judicial Records Division, EB Docket, p. 59.
[9] EB Docket, pp. 61 to 62.

b) Whether the Court in Division erred in ruling that the assessment is void for violating respondent's right to due process.

c) Whether the presumption that tax assessments are correct and that there is regularity in the performance of duties of revenue officers, should be upheld.

d) Whether the principle that the government is not bound by the errors committed by its agents should be upheld.

Petitioner's arguments:

Petitioner argues that while the provisions of the law and the rules concerning the manner and period of appeal are mandatory and jurisdictional requirements, the Court may set aside technicalities when stringent application of the rules will result in manifest injustice. Allegedly, the delay in the filing of its *Motion for Reconsideration* was not meant to be frivolous and dilatory; that the cause of the delay was not entirely attributable to its fault or negligence; and that the admission of said *Motion* would not prejudice the rights of respondent.

Petitioner also asserts that respondent is estopped from denying the receipt of the PAN, FLD and FAN. Said documents, which allegedly were not received by respondent, are in between the LOA and PCL which respondent does not deny receiving. Petitioner claims that all of the aforementioned documents were sent to the same address of respondent. As such, logic dictates that respondent was already notified of the assessment; thus, respondent's right to due process was not violated.

Likewise, petitioner insists that a presumption of proper service exists, and said presumption was not overthrown by respondent. Allegedly, the finding and conduct of the revenue officers, which include the service of the tax assessment notices, must stand in the absence of proof of irregularity in the performance of their duties. Moreover, petitioner argues that assuming that respondent did not receive the assessment notices, respondent still received the LOA and Preliminary Collection Notice, which informed it of the conduct of the tax/audit investigation, and its internal revenue tax liabilities and its obligation to settle these, respectively.

Finally, petitioner invokes the principle that the government is not bound by the errors committed by its agents. According to petitioner, the government must not be estopped particularly in matters involving taxes.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

The application of procedural rules may not be relaxed in this case.

Petitioner argues that the Court *En Banc* may set aside technicalities when stringent application of the rules will result in manifest injustice.

While there are indeed instances when the courts may relax rules of procedure, the relaxation of the rules is not warranted in this case.

In *Aichi Forging Company of Asia, Inc. v. Court of Tax Appeals – En Banc and Commissioner of Internal Revenue*,[10] the Supreme Court held that it is only for the most persuasive of reasons that the Rules of Court may be liberally applied, and that the party invoking the same must show justifiable reason to relax the rules. Moreover, the well-settled rule is that negligence and mistakes of counsel bind the client. The exception is when the negligence of counsel is so gross as to constitute a violation of the due process rights of the client. Even so, it must be convincingly shown that the client was so maliciously deprived of information that he or she could not have acted to protect his or her interests.

In the present case, the Court in Division correctly found that the assailed *Decision* dated May 29, 2020 was received by petitioner on June 1, 2020, giving petitioner until **June 16, 2020** within which to file a *Motion for Reconsideration*. However, petitioner only filed the *Motion to Admit Attached Motion for Reconsideration* and *Motion for Reconsideration of Decision Dated 29 May 2020* on **October 21, 2020**, or more than four (4) months from receipt of a copy of the *Decision*.

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[10] G.R. No. 193625, August 30, 2017.

While petitioner argues that the delayed filing was due to the fact that the instant case was assigned to petitioner's counsel only on October 13, 2020; that the delay was not entirely attributable to the fault or negligence of petitioner; that the delayed filing was not meant to be frivolous or dilatory; and that admission of the *Motion for Reconsideration* would not prejudice the rights of respondent, the Court *En Banc* is constrained not to relax the rules of procedure.

As held in the *Aichi* case, it is only for the most persuasive of reasons can the rules of procedure be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.

Here, petitioner received the assailed *Decision* on June 1, 2020, while the case was allegedly assigned to petitioner's counsel only on October 13, 2020, or almost four (4) months after the deadline for filing a *Motion for Reconsideration*. To reiterate the Supreme Court's ruling in *Aichi*, "negligence and mistakes of counsel bind the client. The exception is when the negligence of counsel is so gross as to constitute a violation of the due process rights of the client. Even so, it must be convincingly shown that the **client was so maliciously deprived of information that he or she could not have acted to protect his or her interests**". Petitioner received the assailed *Decision* on June 1, 2020; thus, petitioner cannot now say that it was maliciously deprived of information and that he could not have acted to protect his interest. The foregoing reasons proffered by petitioner are not strong and justifiable to warrant the relaxation of rules of procedure.

Moreover, if no appeal or motion for reconsideration is filed on time, the judgment or final order of the court becomes final and executory. The case of *Far East Bank & Trust Company v. Commissioner of Internal Revenue*[11] is instructive, *to wit*:

> "Second, **if no appeal or motion for reconsideration is filed on time, the judgment or final order of the court becomes final and executory**. Here, the records of the case confirm that **petitioner's motion for reconsideration in the CTA was filed out of time. Petitioner received its notice and a copy of the CTA decision on August 4, 1998. Under the rules, it had fifteen days (or until August 19, 1998) to move for**

[11] G.R. No. 149589, September 15, 2006.

> **reconsideration. By the time it filed its motion for reconsideration on August 26, 1998, the decision of the CTA had already attained finality. As a final judgment, it had by then already laid the issues to rest and the appellate courts could no longer review it.**
>
> Courts are charged with putting an end to controversies. In keeping with this function, judgments must become final at some definite time fixed by law." *(Emphasis supplied)*

Here, by the time petitioner filed his *Motion to Admit Attached Motion for Reconsideration* and *Motion for Reconsideration of Decision Dated 29 May 2020* on October 21, 2020, which was more than four (4) months from receipt of a copy of the *Decision*, the decision of the Court in Division had already attained finality; hence, can no longer be reviewed by this Court.

The Court *En Banc* shall discuss the second and third issues jointly.

The presumption that tax assessments are correct cannot be upheld; respondent's right to due process was violated.

Petitioner insists that a presumption of proper service exists, and said presumption was not overthrown by respondent. Petitioner also asserts that respondent is estopped from denying the receipt of the PAN, FLD and FAN since these documents, which allegedly were not received by respondent, are in between the LOA and PCL, which respondent does not deny receiving. According to petitioner, respondent was already notified of the assessment; thus, respondent's right to due process was not violated.

Petitioner is mistaken.

Section 1 (m) of Rule 131 of the Revised Rules of Court provides that the presumption that official duty has been regularly performed is a disputable presumption that may be contradicted by other evidence, *to wit*:

> "Sec. 3. *Disputable presumptions.* — The following presumptions are **satisfactory if uncontradicted, but may be contradicted and overcome by other evidence**:
>
> xxx xxx xxx
>
> (m) That **official duty has been regularly performed**;" *(Emphasis supplied)*

While there exists a presumption of regularity in the performance of official duty, said presumption cannot stand in the face of positive evidence of irregularity or failure to perform a duty.[12]

In *Bank of the Philippine Islands v. Spouses Willie and Julie L. Evangelista and LTS Philippines Corporation*,[13] the Supreme Court held that the presumption of regularity in the performance of official duties does not apply in cases where there is no substantial compliance with the requirements of the rules of procedure, thus:

> "We cannot sustain petitioner's argument, which is anchored on the presumption of regularity in the process server's performance of duty. The Court already had occasion to rule that "[c]ertainly, **it was never intended that the presumption of regularity in the performance of official duty will be applied even in cases where there is no showing of substantial compliance with the requirements of the rules of procedure**." Such presumption does not apply where it is patent that the sheriffs or servers return is defective. Under this circumstance, respondents are not duty-bound to adduce further evidence to overcome the presumption, which no longer holds." *(Emphasis supplied)*

As will be discussed momentarily, considering that there was no substantial compliance with the due process requirements under Section 228 of the 1997 NIRC, as amended, and Revenue Regulations (RR) No. 12-99, as amended, the presumption of regularity in the performance of official duties will not apply.

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[12] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. No. 201398-99 & 201418-19, October 3, 2018.
[13] G.R. No. 146553, November 27, 2002.

Section 228 of the 1997 NIRC, as amended, provides the procedure in the issuance of tax deficiency assessment, *to wit*:

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first **notify the taxpayer of his findings**: x x x
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings." *(Emphasis supplied)*

Relative thereto, Section 3 of RR No. 12-99, specifies the due process requirement in the issuance of a deficiency tax assessment, to wit:

> "SECTION 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:
>
> xxx xxx xxx
>
> 3.1.2 *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 <u>shall</u> issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment**, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof). If the

> taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> xxx xxx xxx
>
> 3.1.4 *Formal Letter of Demand and Final Assessment Notice.* — **The formal letter of demand and assessment notice <u>shall</u> be issued by the Commissioner or his duly authorized representative.** The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX 'B' hereof). **The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.**" *(Emphasis and underscoring supplied)*

In *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*,[14] the Supreme Court reiterated the mandatory nature of issuing an FLD/FAN, *to wit*:

> "Indeed, Section 228 of the Tax Code provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. **Otherwise, the assessment is void.** To implement the aforesaid provision, Revenue Regulations No. 12-99 was enacted by the BIR, of which Section 3.1.4 thereof reads:
>
> xxx xxx xxx

[14] G.R. No. 197515, July 2, 2014.

> It is clear from the foregoing that a taxpayer must be informed in writing of the legal and factual bases of the tax assessment made against him. **The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein**." *(Emphasis supplied)*

Based on the foregoing, it is clear that a PAN, an FLD and an assessment notice shall be issued by the CIR or his duly authorized representative. The use of the word "shall" in these legal provisions indicate the mandatory nature of the requirements laid down therein.[15] Verily, it is mandatory for the CIR or his duly authorized representative to demonstrate that the PAN/FLD/FAN was issued to, and was received by, the taxpayer.

In the instant case, respondent alleges that it did not receive any prior assessment notices, *i.e.*, the PAN, FLD and FAN. Meanwhile, petitioner claims that the PAN, FLD and FAN were sandwiched between the LOA and PCL which respondent does not deny receiving. Petitioner insists that respondent could not have not received the PAN, FLD and FAN considering that the latter received the LOA and PCL.

Petitioner's reasoning is flawed. Receipt of the LOA and PCL is not a guarantee that respondent also received the PAN, FLD and FAN, which were issued after the LOA and before the PCL. Petitioner must prove that respondent **actually received** the PAN/FLD/FAN.

We quote with approval the Court in Division's ruling in the *Decision* dated May 29, 2020, that there is no proof that the assessment notices were either sent to respondent by registered mail or by personal delivery, *to wit*:

> "In this case, while a PAN was issued by RR No. 6 on March 29, 2012, and an FLD with Assessment Notice Nos. 33-08-IAET-3335 and 33-08-IT-3334, all dated April 13, 2012, the records do not show any proof that these notices were either sent to petitioner [now respondent] by registered mail or by personal delivery. An examination of these notices in the BIR Records shows that there are [sic] no acknowledgment receipt appearing on these

[15] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.

> notices. Moreover, respondent's [now petitioner] witnesses did not testify on how the PAN and FLD/Assessment Notices were served to petitioner. Respondent's witness, RO Elizabeth F. Ginente [sic], merely testified that as per records, a PAN dated March 29, 2012 and FLD/Assessment Notices dated April 13, 2012 were issued against the taxpayer. Likewise, RO Loida E. Taguiam merely testified on the issuance of the PAN and FAN/FLD as per records.
>
> xxx xxx xxx
>
> The Court, instead turned to the records of this case and found that there are no registry receipts or registry return cards attached to the said assessment notices as borne by the BIR Records. Neither did respondent present any Certification from the Bureau of Posts and any other pertinent document executed with its intervention, to prove the fact of mailing. Correspondingly, the inevitable conclusion is that the PAN dated March 29, 2012, and the subject FLD and Assessment Notices were never sent to petitioner, prior to the issuance of the subject PCL and WDL."[16]

Considering petitioner's total disregard of the due process requirements under Section 228 of the 1997 NIRC, as amended, and RR No. 12-99, as amended, the inescapable conclusion is that the assessment is void.

In fact, in the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[17] the Supreme Court emphasized that it had, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the 1997 NIRC, as amended, and RR No. 12-99, as amended.

Hence, We cannot stress enough the importance of issuing a PAN/FLD/FAN as part of a taxpayer's right to due process in tax assessments. The rationale behind the requirement that taxpayers should be informed of the facts and the law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due

[16] EB Docket, pp. 34 to 36.
[17] G.R. No. 201398-99 & 201418-19, October 3, 2018.

process of law. Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.[18] Thus, any assessment issued in violation of Section 228 of the 1997 NIRC, as amended, and RR No. 12-99, as amended, is void.

As discussed above, petitioner failed to prove that respondent received the PAN, FLD and FAN, in violation of the latter's right to due process; thus, rendering the assessment void. Corollary thereto, the presumption of regularity in the performance of official duties will not apply as there was no substantial compliance with the due process requirements under Section 228 of the 1997 NIRC, as amended, and RR No. 12-99, as amended.

The principle that the government is not bound by the errors committed by its agents is not applicable in the instant case.

Petitioner claims that the government is not bound by the errors committed by its agents, and the government must not be estopped particularly in matters involving taxes.

Petitioner is mistaken. Petitioner cannot invoke the aforementioned principle in this case.

While petitioner cited the case of *Commissioner of Internal Revenue v. Court of Tax Appeals*[19] (*CIR* case) where the Supreme Court held that "the State cannot be estopped by the neglect of its agents and officers"; and "[i]t is axiomatic that the Government cannot and must not be estopped particularly in matters involving taxes", said case is not applicable in the present case.

A careful reading of the *CIR* case reveals that the errors contemplated therein, which warranted the application of the principle that the government is not bound by the errors committed by its agents, and that the government must not be estopped particularly in matters involving taxes, is one which involved the BIR's deprivation of

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[18] *Commissioner of Internal Revenue v. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016.
[19] G.R. No. 106611, July 21, 1994.

its day in court by reason of the mistakes and/or negligence of the BIR's officials and employees.

The aforementioned principle is also applicable when there is an erroneous application and enforcement of the law by the CIR,[20] or when the state acts to rectify mistakes, errors, irregularities or illegal acts of its officials and agents.[21]

In the instant case, the Court *En Banc* cannot subscribe to petitioner's contention that the government is not bound by the errors committed by its agents, and that the government must not be estopped particularly in matters involving taxes.

Law and jurisprudence are clear that any assessment issued in violation of Section 228 of the 1997 NIRC, as amended, and RR No. 12-99, as amended, is void. Petitioner cannot now invoke the principle that the government is not bound by the errors committed by its agents, and that the government must not be estopped particularly in matters involving taxes, to excuse himself or his agents for their failure to afford respondent due process. Failure to afford a taxpayer due process during an assessment is not the error contemplated in the Supreme Court decisions where the application of the principle that the government is not bound by the errors committed by its agents, and that the government must not be estopped particularly in matters involving taxes, is warranted.

In view of the foregoing, We find no cogent reason to vacate the assailed *Decision* and *Resolution*.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit.

The *Decision* dated May 29, 2020 and the *Resolution* dated November 4, 2020 by the First Division of this Court in CTA Case No. 8851 are hereby **AFFIRMED**.

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[20] *Philippine Basketball Association v. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 119122, August 8, 2000.

[21] *Secretary of Finance v. Oro Maura Shipping Lines*, G.R. No. 156946, July 15, 2009; *Intra-Strata Assurance Corporation and Philippine Home Assurance Corporation v. Republic of the Philippines, represented by the Bureau of Customs*, G.R. No. 156571, July 9, 2008.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
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

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice