REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2363** *(CTA Case No. 9415)*
-versus-	Present: **DEL ROSARIO, P.J., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
SCRIPT2010, INC., *Respondent.*	Promulgated: AUG 25 2022 1:50 pm

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **PETITION FOR REVIEW ("Petition")**, filed through registered mail on 16 November 2020,[1] with respondent's **COMMENT/OPPOSITION (Re: Petition for Review dated November 16, 2020) ("Comment")**, filed on 1 February 2021.[2]

The Parties

Petitioner **COMMISSIONER OF INTERNAL REVENUE** ("CIR") is the head of the Bureau of Internal Revenue ("BIR") and is empowered to perform the duties of said office, including, among others, the power to decide

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[1] Records, pp. 6-125.
[2] *Id.*, pp. 221-232.

disputed assessments, refunds of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto, or other matters arising under the ***National Internal Revenue Code, as amended ("NIRC")***, or other laws or portions thereof administered by the BIR.

Respondent **SCRIPT2010, INC.** is a corporation engaged in the business of providing services including but not limited to the management and production of events and shows, design and development of merchandising and promotional materials, conceptualization and implementation of trade and consumer promotions and exhibits, outsourced operations such as fabrication and installation of stages, sets, and advertising materials, and other related activities.

The Facts

In the Petition, petitioner admitted the following facts:[3]

"13. On 16 April 2012, respondent filed its Annual Income Tax Return (BIR Form No. 1702) for its calendar year (CY) 2011.

14. Likewise, on the dates below, respondent filed via eFPS its Quarterly VAT Returns (BIR Form No. 2550-Q) for the first (1st) to fourth (4th) quarters of CY 2011, as follows:

Taxable Quarter	Date of Filing
1st Quarter	April 19, 2011
2nd Quarter	July 22, 2011
3rd Quarter	October 25, 2011
4th Quarter	January 25, 2012

15. Respondent also filed via eFPS its Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601E) for CY 2011 on the following dates, *viz.:*

Monthly	Date of Filing
January	February 9, 2011
February	March 9, 2011
March	April 11, 2011
April	May 9, 2011
May	June 10, 2011
June	July 11, 2011
July	August 11, 2011
August	September 12, 2011
September	October 11, 2011
October	November 10, 2011
November	December 9, 2011
December	January 11, 2012

[3] *Id.*, pp. 8-4.

16. On 22 August 2012, respondent received a Letter of Authority (LOA) No. LOA-039-2012-00000662 dated August 16, 2012 authorizing Revenue Officer (RO) Flordeliza Reyes and Group Supervisor (GS) Crustt Rejuso of RDO No. 39-South Quezon City to examine respondent's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2011, to December 31, 2011.

17. Subsequently, petitioner issued a Preliminary Assessment Notice (PAN) stating that after investigation respondent has been found due of deficiency income tax, VAT and EWT for CY 2011 in the aggregate amount of Php37,232,424.05.

18. As such, respondent filed on 13 January 2015, a letter re: request for reinvestigation on PAN dated 22 December 2014 contesting the proposed deficiency income tax, VAT and EWT assessments for CY 2011.

19. On 08 January 2015, petitioner issued a Formal Letter of Demand with attached Details of Discrepancies and Assessment Notices (FLD-FAN) ordering respondent to pay its outstanding deficiency tax for CY 2011 in the aggregate amount of Php37,961,114.00.

20. On 06 February 2015 respondent filed a letter re: request for reinvestigation on FAN dated 08 January 2015 of the deficiency income tax, VAT and EWT assessments for CY 2011 in the FLD-FAN.

21. On 08 May 2015, Revenue District Officer Florante R. Aninag of Revenue District Office No. 39, issued a letter informing respondent that its request for reinvestigation has been assigned to RO Nimfa N. Mina and GS Cristy E. Rejuso, thereby requiring respondents to submit its books of accounts and all relevant records to these BIR examiners.

22. On 05 July 2015, respondent received a copy of petitioner's Final Decision on Disputed Assessment (FDDA) of even date with attached Details of Discrepancies, ordering it to pay the alleged deficiency income tax, VAT and EWT for CY 2011 in the total amount of Php45,447,506.55.

23. Consequentily, respondent filed a Petition for Review before the Court of Tax Appeals (CTA).

24. On 4 October 2019, the Second Division of the Honorable Court rendered a Decision partly granting [respondent's] Petition for Review. It declared:

> **WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** The assessments issued by respondent against petitioner for the taxable year ended December 31, 2011 covering deficiency income tax, VAT and EWT are **AFFIRMED WITH MODIFICATIONS.** Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **SIXTY-TWO MILLION EIGHT HUNDRED SEVENTY-NINE THOUSAND PESOS AND EIGHTY-SIX CENTAVOS (PHP62,879,000.86),** inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as follows:

	Income Tax	VAT	EWT	Total
Basic Tax	Php19,395,976.54	Php278,437.00	Php1,347,993.76	Php21,022,407.30
25% Surcharge	4,848,994.13	69,609.25	336,998.44	5,255,601.82
20% Deficiency Interest				
From 4/16/2012 to 8/5/2016 (Php19,395,976.54 x 20% x 1,572/365 days)	16,707,109.66			16,707,109.66
From 1/26/2012 to 8/5/2016 (Php278,437.00 x 20% x 1654/365 days)		252,347.84		252,347.84
From 1/11/2012 to 8/5/2016 (Php1,347,993.76 x 20% x 1,668/365 days)			1,232,029.37	1,232,029.37
Total Amount due as of August 5, 2016	Php40,952,080.33	Php600,394.09	Php2,917,021.57	Php44,469,495.99
20% Deficiency interest from 8/6/2016 to 12/31/2017				
(Php19,395,976.54 x 20% x 513/365 days)	5,452,129.30			5,452,129.30
(Php278,437.00 x 20% x 513/365 days)		78,267.50		78,267.50
(Php1,347,993.76 x 20% x 513/365 days)			378,915.51	378,915.51
20% delinquency interest from 8/6/2016 to 12/31/2017				
(Php40,952,080.33 x 20% x 513/365)	11,511,461.48			11,511,461.48
(Php600,394.09 x 20% x 513/365 days)		168,768.31		168,768.31
(Php2,917,021.56 x 20% x 513/365 days)			819,962.77	819,962.77
Total amount due as of December 31, 2017	Php57,915,671.11	Php847,429.90	Php4,115,899.85	Php62,879,000.86

In addition petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) on the total unpaid amount of **Php44,469,495.99** as of July 31, 2015, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249 (C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018.

SO ORDERED.

25. On 25 October 2019, petitioner thereafter filed a Motion for Partial Reconsideration. [Similarly, respondent filed a Motion for Partial Reconsideration.]

26. On 17 February 2020, the Second Division of the Honorable Court promulgated an Amended Decision. It declared that:

> **WHEREFORE,** premises considered, respondent's Motion for Partial Reconsideration (Decision dated 04 October 2019) is **DENIED** for lack of merit. While on the other hand, petitioner's Motion for Partial Reconsideration (Re: Decision dated October 4, 2019), is hereby **GRANTED.** Accordingly, the dispositive portion of this Court's Decision promulgated on October 4, 2019, is amended to read as follows:
>
> > **WHEREFORE,** premises considered, the instant Petition for review is **GRANTED.** Accordingly, the assessments issued by respondent against petitioner for deficiency income tax, VAT and EWT in the aggregate amount of Php45,447,506.55, inclusive of interest for the

taxable year ended December 31, 2011, are **CANCELLED** and **SET ASIDE.**

SO ORDERED."

On 16 November 2020, petitioner filed the instant Petition before the Court *En Banc.*

The Court *En Banc* then issued a Resolution, dated 31 January 2021, requiring respondent to file its Comment to the Petition within ten (10) days from notice.[4] On 1 February 2021, respondent filed its Comment.

Afterwards, the Court *En Banc* issued a Resolution, dated 15 February 2021, noting the filing of the Comment and referring the instant case to mediation.[5] On 6 July 2021, the Court *En Banc* received a No Agreement to Mediate from the Philippine Mediation Center Unit.[6]

On 28 July 2021, this Court *En Banc* issued a Resolution submitting the instant case for Decision.[7]

Hence, this Decision.

<u>The Assigned Errors</u>[8]

The Petition raised the following issues for resolution by the Court *En Banc:*

1. The Court in Division erred in cancelling the assessment issued against respondent due to petitioner's failure to strictly comply with the notice requirements laid down in ***Section 228 of the NIRC*** and ***Revenue Regulations No. 12-99 ("RR 12-99")*** amounting to denial of petitioner's right to due process; and

2. The Court in Division erred in denying the Motion for Reconsideration.

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[4] *Id.*, pp. 218-220.
[5] *Id.*, pp. 233-235.
[6] *Id.*, pp. 236-237.
[7] *Id.*, pp. 238-240.
[8] *Id.*, p. 12.

Arguments of the Parties

Petitioner presents the following arguments:[9]

1. Petitioner posits that he observed both substantial and procedural due process in issuing the assessment subject of this case;

2. ***RR 12-99*** provides for the due process requirement in the issuance of a deficiency tax assessment pursuant to ***Section 228 of the NIRC***. Under ***Section 3.1.1 of RR 12-99***, if the taxpayer is not amenable to the submitted report of investigation of the revenue officer, the taxpayer shall be informed in writing by the BIR of the discrepancy/discrepancies for purposes of the informal conference in order to afford the taxpayer with an opportunity to present his side of the case. His failure to respond within fifteen (15) days from the date of the receipt of the Notice of Informal Conference ("NIC") would result in the issuance of a Preliminary Assessment Notice ("PAN"). Therefore, prior to the issuance of the PAN, the taxpayer is already given the opportunity to present his side;

3. With respect to the purported violation of ***RR 12-99***, it does not in any manner affect the validity of the assessment. Petitioner was informed of the actual and legal basis of the assessment. The Audit Reports, Memorandum Report, PAN, Formal Letter of Demand and Assessment Notices ("FLD/FAN"), and the Final Decision on the Disputed Assessment ("FDDA") indicated not only the deficiency tax involved and interest due thereon, but also sufficiently stated the facts, law, rules, and regulations on which the assessment was based;

4. Likewise, the Letter of Authority, Second and Final Notice for Presentation of Books of Accounts, Audit Reports on Income, VAT and Expanded Withholding Tax, Memorandum Report, PAN, FLD/FAN, and FDDA were chronologically issued in accordance with law, rules and jurisprudence;

5. In addition, if the basis would be the receipt, the PAN was received on 29 December 2014 while the FAN was received on 23 January 2015, equivalent to a twenty-three (23) day interval. More than fifteen (15) days had already lapsed, as mandated under ***RR 12-99***;

6. The Court in Division erred in denying the Motion for Reconsideration. The undersigned counsel, due to some oversight, filed a Motion for Extension of Time to File a Petition for Review instead of a Motion for Reconsideration of the Amended Decision. This mistake is excusable,

[9] *Id*., pp. 13-19.

Accordingly, the procedural rules should have been relaxed in order that no injustice will prevail among the litigants; and

7. The Court in Division could have treated the Motion for Reconsideration as a Petition for Relief from Judgment under ***Rule 38 of the Rules of Court.***

In its Comment, respondent counter-alleges as follows:[10]

1. The Petition should be dismissed outright for being filed out of time. The Amended Decision has already attained finality, considering that petitioner filed a Motion for Extension of Time to File a Petition for Review instead of a Motion for Reconsideration. As petitioner failed to timely file a Motion for Reconsideration against the Amended Decision, the Amended Decision has become final and executory. Consequently, petitioner's right to appeal has already expired;

2. There is no showing that the negligence of petitioner's counsel is excusable, which would have required the relaxation of the procedural rules. Accordingly, the Motion for Reconsideration cannot be treated as a Petition for Relief from Judgment under ***Rule 38 of the Rules of Court.***

3. The Court in Division did not err in cancelling and setting aside petitioner's assessment for violation of due process; and

4. The right to respond to a PAN is part of due process in deficiency tax assessment proceedings. The failure of the BIR to accord a taxpayer with such right is tantamount to a denial of due process and would result in the nullification of the assessment issued against the taxpayer.

The Ruling of the Court En Banc

This Court resolves to **DENY** the **Petition** for lack of merit.

The Amended Decision has become final and executory due to petitioner's failure to timely file a Motion for Reconsideration thereto.

Under ***Section 1, Rule 8 of A.M. No. 05-11-07-CTA***, otherwise known as the ***Revised Rules of the Court of Tax Appeals ("RRCTA")***, a timely filed Motion for Reconsideration or Motion for New Trial is a requisite for the

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[10] *Id.*, pp. 64-73.

perfection of a Petition for Review with the Court *En Banc*. The said provision provides:

"RULE 8 PROCEDURE IN CIVIL CASES

> 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."**
> (Emphasis and underscoring, Ours.)

As such, without a timely filed Motion for Reconsideration or Motion for New Trial assailing a Decision by the Court in Division, an appeal can no longer be made before the Court *En Banc.*

This is a matter that has been lengthily discussed in ***City of Manila, et al. v. Cosmos Bottling Corporation***,[11] to wit:

> "The filing of a motion for reconsideration or new trial before the CTA Division is an indispensable requirement for filing an appeal before the CTA En Banc.
>
> The CTA En Banc was correct in interpreting ***Section 18 of R.A. No. 1125, as amended by R.A. 9282 and R.A. No. 9503***, which states –
>
>> Section 18. Appeal to the Court of Tax Appeals En Banc. – No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of this Act.
>>
>> A party adversely affected by a resolution of a Division of the CTA on motion for reconsideration or new trial, may file a petition for review with the CTA en banc. (underlining supplied)
>
> as requiring a prior motion for reconsideration or new trial before the same division of the CTA that rendered the assailed decision before filing a petition for review with the CTA En Banc. **Failure to file such motion for reconsideration or new trial is cause for dismissal of the appeal before the CTA En Banc.**
>
> Corollarily, Section 1, Rule 8 of the CTA Rules provides:
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>> 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

[11] G.R. No. 196681, 27 June 2018.

> filing of a timely motion for reconsideration or new trial with the Division. (emphasis supplied)
>
> Clear it is from the cited rule that the filing of a motion for reconsideration or new trial is mandatory – not merely directory – as indicated by the word 'must.'
>
> Thus, in Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue (Asiatrust), we declared that **<u>a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution in order for the CTA En Banc to take cognizance of an appeal via a petition for review.</u>** Failure to do so is a ground for the dismissal of the appeal as the word 'must' indicates that the filing of a prior motion is mandatory, and not merely directory. In Commissioner of Customs v. Marina Sales, Inc. (Marina Sales), which was cited in Asiatrust, we held:
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>> The rules are clear. Before the CTA 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 CTA division. Procedural rules are not to be trifled with or be excused simply because their noncompliance may have resulted in prejudicing a party's substantive rights. Rules are meant to be followed. They may be relaxed only for very exigent and persuasive reasons to relieve a litigant of an injustice not commensurate to his careless non-observance of the prescribed rules. (citations omitted)"
>
> (Emphasis and underscoring, Ours.)

It should be noted that an Amended Decision is an entirely new Decision which replaces the old Decision, to which a Motion for New Trial or Motion for Reconsideration may be filed again.[12]

Under ***Section 1, Rule 15 of the RRCTA,*** the period to file a Motion for Reconsideration or a Motion for New Trial is fifteen (15) days from the date of receipt of the notice of the decision:

> "SECTION 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 by filing a motion for reconsideration or new trial within **<u>fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question."</u>**
>
> (Emphasis and underscoring, Ours.)

Following this, therefore, the party who wants to appeal an Amended Decision by the Court in Division must first timely file (*i.e.*, within fifteen (15) days from receipt of the adverse Decision) a prior Motion for Reconsideration or Motion for New Trial with the Court in Division before he or she is allowed to file an appeal (*i.e.*, Petition for Review) before the Court

[12] Angelito L. Cristobal v. Philippine Airlines, Inc., et al., G.R. No. 201622, 4 October 2017.

En Banc. Failing to comply with this requirement would result in such Decision becoming final and executory on the part of the party who failed to file a Motion for Reconsideration or Motion for New Trial.

Elementary is the rule that perfection of an appeal within the reglementary period is not only mandatory but also jurisdictional. In this jurisdiction, an appeal is not a matter of right, but is one of sound judicial discretion. It may only be availed of in the manner provided by the law and the rules. A party who fails to question an adverse decision by not filing the proper remedy within the period prescribed by law loses the right to do so as the decision becomes final and binding.[13]

In the case at bar, petitioner received a copy of the Amended Decision on 20 February 2020. Following the above stated periods, he had until 6 March 2020 within which to file a Motion for Reconsideration or Motion for New Trial thereto. Instead, he opted to file a Motion for Extension of Time to File a Petition for Review on 4 March 2020. In turn, the Court in Division denied such Motion for Extension of Time to File a Petition for Review in a Resolution, dated 10 March 2020. Petitioner received the said Resolution on 8 June 2020. Petitioner then posits that he used the said date as the commencement of the fifteen (15) day period within which he could file his Motion for Reconsideration.

Clearly, from the above facts, the Amended Decision had already become final and executory with respect to petitioner. This is because he failed to timely file a Motion for Reconsideration or Motion for New Trial from receipt of the Amended Decision. Failing on this step rendered his appeal (*i.e.*, Petition for Review) before the Court *En Banc* invalid.

Moreover, the subsequent filing of a Motion for Reconsideration cannot disturb the finality of a judgment or order. Once a Decision has become final and executory, even the Courts can no longer reverse the same absent any valid excuse.[14] Consequently, petitioner's belated act of filing a Motion for Reconsideration can no longer save his cause.

With respect to petitioner's pleas that his Motion for Reconsideration be treated as a Petition for Relief from Judgment under ***Rule 38 of the Rules of Court***, the same is equally undeserving of any consideration.

A Petition for Relief from Judgment under ***Rule 38 of the Rules of Court*** is an equitable remedy that is allowed only in exceptional cases when there is no other available or adequate remedy. It may be availed of only after

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[13] Heirs of Gamaliel Albano, et al. v. Sps. Mena C. Ravanes and Roberto Ravanes, G.R. No. 183645, 20 July 2016.
[14] Barrio Fiesta Restaurant, et al. v. Helen C. Beronia, G.R. No. 206690, 11 July 2016.

a judgment, final order, or other proceeding was taken against petitioner in any court through fraud, accident, mistake, or excusable negligence.[15]

The relief afforded by ***Rule 38 of the Rules of Court*** will not be granted to a party who seeks to be relieved from the effects of the judgment when the loss of the remedy of law was due to its own negligence or to a mistaken mode of procedure; otherwise, the petition for relief will be tantamount to reviving the right of appeal which has already been lost, either because of inexcusable negligence or due to a mistake of procedure by counsel. The Rules allow a petition for relief only when there is no other available remedy and *not* when litigants, like the petitioner, lose a remedy by negligence.[16]

In the case at bar, petitioner cannot avail of the Petition for Relief from Judgment under ***Rule 38 of the Rules of Court*** because he was not deprived of his right to appeal through fraud, accident, mistake, or excusable negligence. Though late, Petitioner was able to file a Motion for Reconsideration. The excusable negligence covered by ***Rule 38 of the Rules of Court*** must be one which ordinary diligence could not have guarded against.

On these discussions alone, the instant Petition already fails. Nonetheless, even if petitioner's appeal is entertained by the Court *En Banc*, the instant Petition has no substantial merit sufficient to overturn the Amended Decision, dated 17 February 2020.

Petitioner denied respondent due process by issuing the FAN/FLD prior to the expiration of the fifteen (15) day period to Reply to the PAN.

Petitioner claims that it followed due process when it issued the subject assessments against respondent because: a) the PAN, FLD/FAN, and FDDA all contained the factual and legal bases of the assessment; b) the PAN, FLD/FAN, and FDDA were chronologically issued; and c) respondent was given sufficient opportunity to present its side during the NIC. This argument is fundamentally flawed.

Due process in tax assessment proceedings comprise of various factors. Having the factual and legal bases stated in the assessment notices is one, but giving the taxpayer the right to respond to an assessment and actually considering such response along with the pieces of evidence adduced in

[15] Julio B. Purcon, Jr. v. MRM Philippines, Inc., et al., G.R. No. 182718, 26 September 2008.
[16] Trancedo Redeña v. Hon. Court of Appeals, et al., G.R. No. 146611, 6 February 2007.

deciding a reply to an assessment equally indispensable requisites to comply with due process in tax assessment proceedings.

Indeed, the right to Reply to a PAN has been recently reiterated in ***Commissioner of Internal Revenue v. Nippon Metal Tech Phils. Inc.***:[17]

> "Clearly, due process demands that the taxpayer receives the PAN and that he is given the opportunity to respond thereto. Moreover, in CIR v. Avon Products Manufacturing, Inc., the Court even went beyond 'opportunity to be heard' as an aspect of due process. In said case, the Court, reiterating Ang Tibay v. The Court of Industrial Relations, held 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 [CIR] must consider the evidence presented.'
>
> In this case, the records show that respondent received the PAN on February 5, 2009. However, without waiting for the lapse of the 15-day period, the CIR already issued the FLD/FAN. **By disregarding the 15-day period provided by law, the CIR utterly deprived respondent of the opportunity to contest the PAN and present evidence in support thereto before an FLD/FAN was issued."**
> (Emphasis and underscoring, Ours.)

Indisputably, the BIR should allow a taxpayer the opportunity to contest a PAN within fifteen (15) days from receipt thereto. The BIR should wait until such period expires before it issues a FLD/FAN. Failing this would mean that it has prematurely decided on or, worse, did not consider the taxpayer's response to the PAN at all, which are clear violations of due process in tax assessment proceedings.

Further, it is important to note that the fifteen (15) day period starts to run from the taxpayer's receipt of the PAN and not from its date of issuance.[18]

As duly found by the Court in Division and as painstakingly verified by the Court *En Banc*, respondent received the PAN, dated 22 December 2014 on 29 December 2014.[19] Accordingly, respondent had until 13 January 2015 within which to file a Reply to the PAN.

Until such date, therefore, petitioner was not allowed to issue a FLD/FAN. Acting otherwise would clearly be a violation of respondent's right to due process in tax assessment proceedings, as he would be prematurely deciding on or not considering respondent's Reply to the PAN and its pieces of evidence.

[17] G.R. No. 227616, 19 June 2019.

[18] Commissioner of Internal Revenue v. Linde Philippines, Inc. (formerly, Consolidated Industrial Gases, Inc.), CTA EB No. 1515 (CTA Case No. 8724), 7 March 2018.

[19] Exhibit "P-6", Docket (Vol. II), pp. 813-818; Exhibit "R-7", BIR Records, pp. 413-416.

However, petitioner issued the subject FLD/FAN on 8 January 2015,[20] which was five (5) days earlier than respondent's last day to file a Reply to the PAN. Clearly, therefore, petitioner violated respondent's right to due process. The instant assessment is thus null and void.

WHEREFORE, the instant Petition is hereby **DENIED** for lack of merit. Accordingly, the Amended Decision, dated 17 February 2020, and Resolution, dated 28 September 2020, promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[20] Exhibit "P-8", Docket (Vol. II), pp. 819-8251 Exhibits "R-9" to "R-12", BIR Records, pp. 426-432.

ON LEAVE
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