REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2582** (CTA Case No. 9589)
	Present:
-versus-	**DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, *and* **ANGELES**, *JJ.*
FABTECH KITCHENS UNLIMITED, INC., *Respondent.*	Promulgated: DEC 2 9 2023 11:50 am

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review* filed by the Commissioner of Internal Revenue[1] ("**Petitioner**" or "**CIR**"), under Section 3(b), Rule 8,[2] in relation to Section 2(a)(1), Rule

[1] Dated April 4, 2022, received by the Court on April 4, 2022; *En Banc* (*EB*) Docket, pp. 4-11.
[2] *Section 3. Who May Appeal; Period to File Petition.* — (a) x x
(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.

4[3] of the Revised Rules of the Court of Tax Appeals (**"RRCTA"**),[4] assailing the *Decision* dated June 23, 2021 [5] (**"assailed Decision"**) and *Resolution* dated February 22, 2022[6] (**"assailed Resolution"**) of the Court's First Division (**"Court in Division"**) in CTA Case No. 9589 entitled *Fabtech Kitchens Unlimited, Inc. v. Commissioner of Internal Revenue.*

THE PARTIES

Petitioner is the Commissioner of the Bureau of Internal Revenue (**"BIR"**), the government agency in charge of, among others, the assessment and collection of all national internal revenue taxes, fees, and charges.

Respondent Fabtech Kitchens Unlimited, Inc., is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines. Its principal office is at Phase 1, Block 3, Lots 2 and 3, Santiago Street, Paseo de Magallanes Commercial Center, Magallanes Village, Makati City.[7]

THE FACTS

The following are the undisputed facts as narrated in the assailed *Decision* in CTA Case No. 9589:

> On June 30, 2014, [petitioner] issued Letter Notice (LN) No. 038-RLFTRS-12-00-00454 against [respondent] stating that a computerized matching conducted by the BIR disclosed discrepancies for taxable year 2012 and invited [respondent] to BIR Revenue District Office [**"RDO"**] No. 38-Assessment to present any documentary evidence in connection thereto on July 24, 2014.
>
> On June 1, 2015, [respondent], through Ma. Teresa K. Go received Letter of Authority [**"LOA"**] No. LOA-038-2015-0000056 (SN:eLA201200007614),dated May 27, 2015, issued by Regional Director Alfredo V. Misajon, authorizing Revenue Officer (RO) Paula Marie Bea [**"RO Bea"**] and Group Supervisor

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[3] *Section 2. Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.
[4] A.M. No. 05-11-07-CTA.
[5] *EB* Docket, pp. 14-41; penned by Presiding Justice Roman G. Del Rosario, with Associate Justice Catherine T. Manahan concurring.
[6] *Id.*, pp. 43-47.
[7] Paragraph 2, Petition for Review, Division Docket – Vol. 1, p. 12.

(GS) Samira Pagdilao to examine its books of accounts and other accounting records for all internal revenue taxes, including Documentary Stamp Tax (DST) and other taxes (miscellaneous), for the period from April 1, 2012 to March 31, 2013.

On June 28, 2016, [petitioner] issued a Preliminary Assessment Notice with Details of Discrepancies ["**PAN**"].

On July 21, 2016, [petitioner] issued a Formal Letter of Demand with Details of Discrepancies ["**FLD**"] and three (3) Assessment Notices ["**FAN**"] with Demand No. 038-B061-3.31.13 (50%) for Income Tax, Value-Added Tax (VAT) and Improperly Accumulated Earnings Tax (IAET), assessing [respondent] deficiency taxes in the total amount of P78,237,950.10, broken down as follows:

Type of Tax	Amount
Income Tax	P59,264,169.95
VAT	18,692,311.11
IAET	281,469.04
Total	P78,237,950.10

On November 24, 2016, [petitioner] issued a Preliminary Collection Letter (PCL). The issuance of a Final Notice Before Seizure (FNBS) followed on December 5, 2016.

On February 27, 2017, a Warrant of Distraint and/or Levy (WDL) of even date was received by [respondent].

On March 3, 2017, [respondent] filed an administrative protest which was denied in a Letter dated March 28, 2017.

On May 10, 2017, [respondent] filed the present Petition for Review, which was initially raffled to the Court of Tax Appeals (CTA)-Third Division and subsequently transferred to the CTA-First Division pursuant to CTA Administrative Circular No. 02-2018, reorganizing the three (3) Divisions of the Court.

Summonses were served on [petitioner] on May 23, 2017 and to the Office of the Solicitor General on May 25, 2017.

On June 14, 2017, Warrants of Garnishment were issued to [respondent]'s bank accounts.

On July 7, 2017, within the extended period, [petitioner] filed his Answer raising as special and affirmative defense that the Court has no jurisdiction over the case as the subject assessment has long become final, executory and demandable for [respondent]'s failure to timely file a valid protest despite service of two (2) copies of the FLD on July 21, 2016 to its registered address at No. 1229 Quezon Avenue, Sta. Cruz, 1104, Quezon City and its other address at WS 1 (Basement 1) SM City Taytay, Dolores, 1920, Taytay, Rizal.

On September 13, 2017 and September 14, 2017, the parties filed their respective Pre-Trial Briefs.

The Pre-Trial Conference proceeded as scheduled on September 19, 2017, where the parties were given until October 4, 2017 to file their Joint Stipulation of Facts and Issues (JSFI).

On March 13, 2018, within the extended period, the parties filed their JSFI.

On March 20, 2018, the Pre-Trial Order was issued, terminating the Pre-Trial.

During trial, [respondent] presented four (4) witnesses, namely: 1) Norberto J. Corneja, its duly authorized tax agent; 2) Jacqueline Sy Go, its President; 3) Ma. Teresa K. Go, its Head of Accounting Department; and 4) Arbil S.R. Bucatcat, its Admin Officer.

On March 5, 2019, [respondent] filed its Formal Offer of Exhibits which was acted in the Resolution dated July 2, 2019, admitting in evidence its exhibits except Exhibits "P-10","P-27-B","P-36","P-43" (inclusive of sub-markings), and "P-43-A" (inclusive of sub-markings) for failure to present their originals for comparison; and "P-10-A" for failure to identify the same.

[Respondent] moved for the reconsideration of the Resolution dated July 2, 2019, which was denied for lack of merit in the Resolution dated November 22, 2019.

[Petitioner] presented three (3) witnesses, namely: 1) Revenue Officer Paula Marie C. Bea, 2) Revenue Officer Ingrid Princess V. Martinez, and 3) Revenue Officer Solita C. Mauricio.

In the September 12, 2019 Hearing, [respondent] moved to offer its rebuttal evidence and was granted until September 17, 2019 to formally offer the same.

On September 16, 2019, [respondent] filed its Formal Offer of Additional Documentary Exhibits.

On February 7, 2020, within the extended period, [petitioner] filed his Formal Offer of Evidence.

In the Resolution dated June 30, 2020, [petitioner's] exhibits were admitted in evidence except Exhibits "R-9","R-11" and "R-17" for failure to present the originals for comparison while [respondent]'s additional documentary exhibits were all admitted in evidence. The parties were also given thirty (30) days from notice of the Resolution to file their respective memoranda.

On August 24, 2020, the Memorandum (for [respondent]) was filed. On August 27, 2020, [respondent], however, filed a Motion for Leave to Admit Amended Memorandum with enclosed Amended Memorandum (for [respondent]), which was granted by the Court in the Order dated September 10, 2020. [Petitioner], on the other hand, failed to file his memorandum despite notice.

On September 17, 2020, the case was submitted for decision.

On June 23, 2021, the Court in Division ruled in favor of respondent.[8] The dispositive portion reads:

WHEREFORE, premises considered, the Petition for Review filed by Fabtech Kitchens Unlimited, Inc. on May 10, 2017 is hereby **GRANTED**. Accordingly, the Letter dated March 28, 2017, is hereby **SET ASIDE**. The Warrant of Distraint and/or Levy and the Formal Letter of Demand dated July 21, 2016, with Details of Discrepancies and the following Assessment Notices, covering taxable year 2012, assessing petitioner for deficiency Income Tax, Value-Added Tax and Improperly Accumulated Earnings Tax, in the total amount of **₱78,237,950.10**, *viz.*:

Tax	Assessment Notice Nos.	Amount
Income Tax	038-B061-3.31.13(50%)	₱59,264,169.95
Value-Added Tax	038-B061-3.31.13(50%)	₱18,692,311.11
Improperly Accumulated Earnings Tax	038-B061-3.31.13(50%)	₱281,469.04
	Total:	**₱78,237,950.10**

are hereby **CANCELLED** and **WITHDRAWN** for being void *ab initio.*

Respondent Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from taking any further action against petitioner Fabtech Kitchens Unlimited, Inc., arising from the

[8] *Supra* at note 5.

MV

> Formal Letter of Demand dated July 21, 2016 and Assessment Notices with Demand No. 038-B061-3.31.13 (50%), all dated July 21, 2016.
>
> Petitioner Fabtech Kitchens Unlimited, Inc. is **DIRECTED** to pay the deficiency legal fees amounting to **₱1,989.13** within **ten (10) days** from receipt hereof.
>
> **SO ORDERED.**

On July 28, 2021, petitioner filed his *Motion for Reconsideration (Decision dated June 23, 2021).*[9] After being ordered to comment,[10] respondent filed its *Comment (To Respondent's Motion for Reconsideration)* on October 28, 2021.[11]

On February 22, 2022, the Court in Division promulgated its *Resolution* denying petitioner's *Motion for Reconsideration.*[12] The dispositive portion reads:

> **WHEREFORE**, premises considered, petitioner's Motion for Reconsideration (Decision dated June 23, 2021) is **DENIED** for lack of merit. [sic]
>
> **SO ORDERED.**

PROCEEDINGS BEFORE THE COURT *EN BANC*

On March 18, 2022, petitioner filed a *Motion for Extension of Time to File Petition for Review,*[13] which was granted in a *Minute Resolution* dated March 22, 2022.[14]

On April 4, 2022, petitioner filed a *Petition for Review* before the Court *En Banc.*[15]

On April 29, 2022, respondent filed an *Urgent Motion to Release Garnished Bank Deposits,*[16] which was noted in a *Resolution* dated June 6, 2022.[17] In the same *Resolution,* petitioner was ordered to comment, but he failed to do so per

[9] Division Docket – Vol. IV, pp. 1742-1749.
[10] Resolution dated November 11, 2021, Division Docket – Vol. IV, p. 1757.
[11] Division Docket – Vol. IV, pp. 1758-1762.
[12] *Supra* at note 6.
[13] *EB* Docket, pp. 1-2.
[14] *Id.*, p. 3.
[15] *Supra* at note 1.
[16] *EB* Docket, pp. 51-52.
[17] *Id.*, pp. 54-57.

Records Verification dated June 28, 2022.[18] Thus, on August 30, 2022, the Court granted the respondent's Urgent Motion.[19]

On September 22, 2022, respondent filed its *Comment (to the Petition for Review).*[20]

In a *Resolution* dated October 10, 2022,[21] the case was referred for mediation to the Philippine Mediation Center – Court of Tax Appeals ("**PMC-CTA**").

On October 18, 2022, the Court received a *Letter* from China Banking Corporation's ("**CBC**") Legal Counsel,[22] to which the Court replied in a *Letter* dated October 25, 2022, signed by Clerk of Court Atty. Danilo B. Fernando.[23] This was then followed by respondent's filing of a *Motion to Show Cause China Banking Corporation for Willful Refusal to Comply With the Resolution dated August 30, 2022,* on November 15, 2022.[24] CBC filed its *Comment/Opposition (Re: Motion to Show Cause China Banking Corporation for Willful Refusal to Comply with the Resolution dated 30 August 2022)* on November 18, 2022,[25] to which respondent filed its *Comment (to China Bank's Comment/Opposition)* on December 6, 2022.[26]

Meanwhile, the PMC-CTA issued a "*No Agreement to Mediate*" dated November 18, 2022, stating that the parties "decide not to have their case mediated."[27]

On February 1, 2023, the Court promulgated a *Resolution* ordering CBC and its bank officers to return to respondent the garnished funds in relation to the Warrant of Garnishment dated June 14, 2017. In the same *Resolution,* the case was submitted for decision.[28]

On February 16, 2023, CBC filed its *Manifestation,*[29] which the Court noted in a *Resolution* dated March 24, 2023.[30]

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[18] *Id.*, p. 65.
[19] *Id.*, pp. 67-71.
[20] *Id.*, pp. 76-78.
[21] *Id.*, pp. 81-82.
[22] *Id.*, p. 84.
[23] *Id.*, p. 85.
[24] *Id.*, pp. 86-90.
[25] *Id.*, pp. 91-94.
[26] *Id.*, pp. 105-108.
[27] *Id.*, p. 104.
[28] *Id.*, pp. 110-114.
[29] *Id.*, unpaged.
[30] *Id.*, unpaged.

THE ISSUES

Petitioner raised the following grounds in the instant *Petition for Review*:

I.
THE HONORABLE COURT ERRED IN RULING THAT THE HONORABLE COURT HAS JURISDICTION OVER THE INSTANT CASE.

II.
THE HONORABLE COURT ERRED IN RULING THAT PETITIONER FAILED TO COMPLY WITH DUE PROCESS REQUIREMENTS.

III.
THE HONORABLE COURT ERRED IN RULING THAT PETITIONER FAILED TO DEMAND PAYMENT OF TAX DUE WITHIN A SPECIFIC PERIOD.

Petitioner's Arguments

Petitioner argues that the Court in Division erred in ruling that it has jurisdiction over the case. According to petitioner, respondent failed to timely file a valid protest despite the issuance and proper service of the FAN/FLD.

Petitioner also argues that he complied with due process requirements. According to him, he had no prior knowledge of respondent's current address. The Assessment Division of Revenue Region No. 7 was not informed of any change in respondent's address. Petitioner alleges that the correspondences sent by respondent, which indicated its current address, were not sent to the said Assessment Division but were submitted to different offices of the BIR. Petitioner added that most documents were filed for a different purpose that is not in any way related to the assessment. According to petitioner, the Court in Division erred in relying on the fact that RO Bea was aware of respondent's current address as the said Revenue Officer is not at the Assessment Division of Revenue Region No. 7.

According to petitioner, he did not err in sending the assessment notices to the registered address of respondent. Petitioner also pointed to the fact that respondent was filing its returns at the old RDO and was using its registered address in other documents filed with Revenue Region No. 7.

Respondent's Counter-arguments

Respondent contends that the PAN and FAN/FLD were improperly served. *First*, RO Bea personally served the LOA to respondent's address at Magallanes Village, Makati City. *Second*, RO Bea was able to examine respondent's records at its address at Magallanes Village, Makati City. Thus, respondent alleges that the FAN/FLD should have been sent by respondent to the said address, considering that RO Bea had personal knowledge of respondent's new address. According to respondent, its new address is sufficiently shown in its registration before the Securities and Exchange Commission ("**SEC**") and is likewise indicated in respondent's BIR registration and official correspondences.

THE COURT *EN BANC'S* RULING

The *Petition* is not impressed with merit.

The Court En Banc has jurisdiction over the instant Petition.

Before We proceed to the merits of the case, We shall first determine whether the Court *En Banc* has jurisdiction over the instant *Petition*.

On February 22, 2022, petitioner's *Motion for Reconsideration* was denied by the Court in Division through a *Resolution*, a copy of which was received by petitioner on March 4, 2022.[31]

Under Section 3(b), Rule 8 of the RRCTA,[32] petitioner had fifteen (15) days from receipt of the assailed *Resolution*, or until March 19, 2022, to file a *Petition for Review* before the Court *En Banc*.

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[31] *Supra* at note 6.
[32] *Supra* at note 2.

On March 18, 2022, within the 15-day period prescribed above, petitioner filed a *Motion for Extension of Time to File Petition for Review*,[33] which the Court *En Banc* granted in a *Minute Resolution* dated March 22, 2022.[34] Accordingly, petitioner was given until April 3, 2022, to file a *Petition for Review*.

On April 4, 2022,[35] petitioner filed the instant *Petition* within the reglementary period.[36]

Having settled that the *Petition* was timely filed, We likewise rule that the CTA *En Banc* has jurisdiction to take cognizance of the present case under Section 2(a)(1), Rule 4[37] of RRCTA.

We now discuss petitioner's grounds *in seriatim.*

At the outset, We note that petitioner's arguments in this *Petition for Review* are mere reiterations of his arguments in the *Answer* and *Motion for Reconsideration* he filed before the Court in Division, which have been duly considered and passed upon in the assailed *Decision* and *Resolution.* Nonetheless, We shall discuss petitioner's contentions if only to emphasize the disquisition of the Court in Division.

The Court in Division did not err in ruling that it has jurisdiction over the original Petition for Review.

The Court in Division did not err in ruling that Petitioner failed to comply with due process requirements.

The *first* and *second* grounds of this *Petition for Review*, being interrelated, shall be discussed jointly.

[33] *Supra* at note 13.
[34] *Supra* at note 14.
[35] April 3, 2022, fell on a Sunday. The next working day is April 4, 2022.
[36] *Supra* at note 1.
[37] *Section 2. Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.

Petitioner contends that the Court in Division has no jurisdiction over the instant case. Citing Section 228 of the NIRC of 1997, as amended, petitioner claims that respondent failed to file a valid protest timely and that its protest was filed more than nine (9) months after the subject FAN/FLD were issued and served through registered mail, and after the WDL was issued. Thus, petitioner insists that the Court has no jurisdiction over the case since the assessments have long become final, executory, and demandable.[38]

Petitioner insists that the assessments against respondent are valid; that the due process requirements under the law and Revenue Regulation ("**RR**") No. 12-1999 have been strictly observed and followed by petitioner; that the Assessment Division of Revenue Region No. 7, Quezon City reviewed and prepared the subject FLD and FANs, thus, it is the office that should have been notified by respondent; that the Court in Division's reliance on exhibits consisting of letters and communications in considering that petitioner has prior knowledge of respondent's current address is misplaced; that the said exhibits were not filed or submitted to the said Assessment Division but to different offices of the BIR, and for a different purpose, except for Exhibits "P-61" to "P-63"; that the Court in Division's reliance on the fact that RO Bea was aware of respondent's current address is misplaced since the said RO was, at the time of audit, assigned at the RDO and not at the Assessment Division of Revenue Region No. 7. Thus, petitioner maintains that the FLD and FANs were properly served by *registered mail* to respondent's registered address.

On the other hand, respondent counter-argues that the FLD and FANs were not duly served to it, violating the due process requirement under Section 228. Respondent contends that RO Paula Marie Bea personally served the LOA upon which the assailed Assessment Notices arose to its office address in Magallanes Village, Makati City; that RO Bea personally examined its records at the address in Magallanes Village, Makati City; that with the knowledge of its address in Magallanes Village, Makati City, it is incumbent upon the BIR to serve the consequent Assessment Notices therein and not elsewhere; and that the insistence of the BIR to serve the assailed Assessment Notices to respondent's long vacated office address in Quezon City and the alleged office address in SM City, Dolores, Taytay, Rizal, is contrary to law and settled

[38] *EB* Docket, pp. 4-7.

jurisprudence; that RR No. 18-2013 commands the BIR to send the assessment notice to respondent's *known* address which is Magallanes Village, Makati City.

We find for respondent.

In *Estate of the Late Juliana Diez Vda. De Gabriel v. Commissioner of Internal Revenue,*[39] it was ruled that *due process* requires that the notice of assessment must be *served* on and *received* by the taxpayer and that the notice be sent to the taxpayer and not merely to a disinterested party.

Thus, it is not enough that the tax assessment notice was sent to petitioner by respondent. It is imperative that the taxpayer **actually received** the said notice.

The importance of providing the taxpayer with adequate written notice of its tax liability is indisputable. Under Section 228 of the National Internal Revenue Code of 1997, as amended,[40] 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.[41]

Section 3.1.6 of RR No. 12-1999,[42] as amended by RR No. 18-2013, provides for the proper procedure to be observed when *serving* the assessment notices by personal service, substituted service, or mail, *viz.*:

> **SEC. 3. Due Process Requirement in the Issuance of a Delinquency Tax Assessment. —**
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> ... ...

[39] G.R. No. 155541, January 27, 2004.
[40] **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: ...
<u>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</u>.
Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.
[41] *Id.*
[42] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, 6 September 1999.

3.1.6 ***Modes of Service***. - The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:

(i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his **registered or known address** or wherever he may be found. **A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence**.

In case personal service is not practicable, the notice shall be served by substituted service or by mail.

(ii) **Substituted service** can be resorted to when the party is not present at the registered or **known address** under the following circumstances:

The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

If the **known address** is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the **known address** is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

If no person is found in the party's registered or **known address**, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. ...

Should the party be found at his registered or **known address** or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. ...

(iii) **Service by mail** is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered... [*Emphases and underscoring supplied.*]

In addition, Revenue Memorandum Circular ("**RMC**") No. 11-2014[43] clarified that:

> (6) The notice (PAN/FLD/FAN/FDDA) **shall *first* be served to the taxpayer's registered address before the same may be served to the taxpayer's known address**, or in the alternative, may be served to the taxpayer's registered address *and* known address **simultaneously**. [*Emphasis and underscoring supplied.*]

RR No. 12-1999[44] speaks of a "known address," defined as "a place other than the registered address where business activities of the party are conducted or his place of residence." RR No. 12-1999 and RMC No. 11-2014[45] mandate that the PAN/FLD/FAN/FDDA be delivered to the *registered* address or the taxpayer's *known* address if the taxpayer's known address is different from the registered address.

The evident intention is for the taxpayer to be able to actually receive the assessment notices, which is an integral and indispensable part of procedural due process. True enough, it will be absurd to insist on sending the assessment notice to an empty and abandoned registered address when an actual address different from what is registered, where the taxpayer is present, is already known.

In the instant case, it is undisputed that respondent's registered address with the BIR, which has already been vacated or abandoned, is No. 1229 Quezon Avenue, Sta. Cruz, Quezon City, and its new business address, where it holds office, is in Magallanes Village, Makati City.

While the LOA issued in this case was *personally served* by RO Bea to respondent at its new address in Makati City, and RO Bea personally conducted the examination of respondent's records at the same address in Makati City, the PAN, FLD, and Assessment Notices subsequently issued were still served by *registered mail* at its old address in Quezon City. As expected, the notices were not received by respondent.

As found by the Court in Division in the assailed *Decision*, at the start of petitioner's audit investigation on respondent, the assigned ROs were already aware that petitioner could not

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[43] Clarifying Certain Issues Relative to Due Process Requirement in the Issuance of a Deficiency Tax Assessment Pursuant to RR 12-99, as amended by RR 18-2013.
[44] *Supra* at note 42.
[45] *Supra* at note 43.

be located at its registered address in Quezon City. Still, the assessment notices were sent to said registered address, as testified by RO Bea, *viz.*:

> (7) Q. Having mentioned that you were the Revenue Officer who conducted the audit examination, could you state how you conducted said examination?
>
> A. Initially, we furnished petitioner with Letter Notice (LN) No. 038-RLFTRS-12-00-00454 dated June 30, 2014 along with the Details of Withholding Agents/Payors and Payees/Income Recipients Records consisting of three pages. The LN was sent through registered mail on July 25, 2014 as the taxpayer **could not be located at the registered address.** **Thereafter, due to diligent efforts exerted, we were able to locate the whereabouts of Petitioner where we furnished Petitioner with the Letter of Authority bearing SN: eLA201200007614/LOA-038-2015-00000569 dated May 27, 2015 with an attached Checklist**. Upon presentation of documents, we conducted an audit of the books of accounts and other records based on the documents thus presented by Fabtech Kitchen's Unlimited, Inc.
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> ... ...
>
> (28) Q. You mentioned the PAN was served by RO Trias through registered mail, why was it served through mail?
>
> A. Based on record, a 'Certification' was secured by RO Trias from Barangay Sta. Cruz stating that **Petitioner is no longer operating/nor located at 1229 Quezon Ave.,Barangay Sta. Cruz, Quezon City**.
>
> ... ...
>
> (36) Q. Were the Final Assessment Notices, Formal Letter of Demand and Details of Discrepancy served to Petitioner?
>
> A. Based on record, copies of the Final Assessment Notices, Formal Letter of Demand and Details of Discrepancy were served through registered mail by the Billing Section of the Assessment Division on July 21, 2016 while another copy was served through registered mail by the Revenue Officer Ariel D. Trias who was then assigned at Revenue District Office No. 38, North Quezon City." [*Emphasis supplied*]

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Moreover, the unrefuted documentary evidence that respondent presented and offered in evidence before the Court in Division, bearing its business address in Makati City, undeniably shows petitioner's prior knowledge of respondent's new address in Makati City.

Given the foregoing, respondent's Makati City address, where the LOA was served and the audit examination of respondent conducted, is, indeed, its "known address."

Under Section 3.1.6 of RR No. 12-1999,[46] as amended by RR No. 18-2013 above, [47] the assessment notices must be served to the party by *personal service* at the registered or known address or ***wherever he may be found***. In case personal service is not practicable, the notice shall be served by *substituted service* or by *mail.*

Considering that respondent could not be found at its registered address in Quezon City since it had already transferred to its "known address" in Makati City, petitioner should have served the assessment notices to respondent's "known address" in Makati City, not elsewhere.

Thus, petitioner's failure to serve the PAN, FLD, and FANs to respondent's "known" address in Makati City first by *personal service*, and if not practicable, by *substituted service* or *by mail*, constitutes a violation of respondent's right to due process, which ultimately renders the assessment void. Clearly, respondent was not properly informed in writing of the law and the facts on which the assessments issued against it were based.

In fine, the Court in Division correctly ruled that petitioner failed to comply with the due process requirements. Further, petitioner's contention that the Court in Division had no jurisdiction over the original Petition since the assessments have long become final, executory, and demandable is devoid of any factual or legal basis.

Section 228 of the NIRC of 1997, as amended, provides:

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[46] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, 6 September 1999.
[47] *Supra* at note 42.

> 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:
>
> ... ...
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment** in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; **otherwise, the assessment shall become final**.
>
> ... ...

Similarly, Section 3.1.4 of RR No. 12-1999,[48] as amended by RR No. 18-2013,[49] provides:

> If the taxpayer fails to file a valid protest against the FLD/FAN **within thirty (30) days from date of receipt thereof**, **the assessment shall become final, executory and demandable**. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable. [*Emphasis and underscoring supplied.*]

Consistent and basic is the rule that failure to file a protest within thirty (30) days **from receipt** of the FLD/FAN would render the assessment final and executory.

To repeat, petitioner improperly served the subject PAN, FLD, and FANs to respondent's old address by *registered mail*. Consequently, respondent has not received the PAN, FLD, and FANs, and the 30-day period to file a protest has not commenced. Hence, it bears no other conclusion but to rule that the FLD and FANs never became final and executory.

It is axiomatic in this jurisdiction that a void assessment bears no valid fruit.[50] There can be no final and executory assessment if, in the first place, the assessment is a nullity.

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[48] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.
[49] Amending Certain Sections of Revenue Regulations No. 12-99
[50] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. No. 159694 & 163581, January 27, 2006, 382 SCRA 480; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 647; *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014, 743 SCRA 126; *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014, 744 SCRA 474.

The Court in Division did not err in ruling that the FLD and Assessment Notices are void for failure to indicate a due date.

Petitioner alleged in his Petition for Review that the Court in Division erred in ruling that petitioner failed to demand payment of tax due within a specific period.

While petitioner raised the above issue as his *third* ground for this *Petition for Review*, he did not endeavor to discuss his position or present his argument.

Nonetheless, our perusal of the records confirms the Court in Division's findings that the FLD and FANs subject of the instant case failed to indicate a due date.

The issuance of a valid formal assessment is a substantive prerequisite for the collection of taxes.[51] An assessment not only includes a computation of tax liabilities; it also includes a demand for payment within a prescribed period.[52]

In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation et al.*,[53] the Supreme Court held:

> **<u>An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period</u>**. 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 and underscoring supplied.*]

Further, the Supreme Court, in *Commissioner of Internal Revenue v. Fitness by Design, Inc.* (*Fitness by Design* case),[54] is unambiguous:

> **A final assessment notice provides for the <u>amount</u> of tax due with a <u>demand</u> for payment. ...**

...

[51] *Commissioner of Internal Revenue v. Menguito*, G.R. No. 167560, September 17, 2008, 587 SCRA 234-257.
[52] *Tupaz v. Ulep*, G.R. No. 127777, October 1, 1999, 374 SCRA 474-488.
[53] G.R. No. 128315, June 29, 1999.
[54] G.R. No. 215957, November 9, 2016, 799 SCRA 391-420.

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."

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.*

> 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 and underscoring supplied; citations omitted*]

Following the *Fitness by Design* case, which the Court in Division cited in the assailed *Decision*, the Supreme Court has consistently nullified an assessment that does not contain a definite due date, such as in *Republic v. First Gas Power Corp.*[55] and *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*[56]

Reference to the due date in an assessment is found in Section 249(C) of the NIRC of 1997, as amended. We quote:

> *Section 249 – Interest.*
>
> (C) Delinquency Interest. - In case of failure to pay:
>
> (3) A deficiency tax, or any surcharge or interest thereon **<u>on the due date appearing in the notice and demand of the Commissioner</u>**, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax. [*Emphasis and underscoring supplied.*]

Accordingly, indicating the due date in an assessment is directly related to the requirement of showing the definite amount that is assessed. The delinquency interest may not be properly computed if a due date does not appear in the FLD/FAN, as in this case. It bears stressing that an assessment, in the context of the NIRC, is a "written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed."[57]

Failing to indicate the due date negates petitioner's demand for payment.[58] In the instant case, the spaces for the due date in the FAN were left blank. Thus, We rule that the assessments subject of this case are void for failure to indicate the due date for payment.

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[55] G.R. No. 214933, February 15, 2022.
[56] G.R. No. 240729 (Resolution), August 24, 2020.
[57] *Adamson v. Court of Appeals*, G.R. Nos. 120935 & 124557, May 21, 2009, 606 SCRA 10-35.
[58] *Id.*

Due process is the very essence of justice itself.[59] While "taxes are the lifeblood of the government," the power to tax has its limits in spite of all its plenitude.[60] Even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[61]

All told, We see no compelling reason to depart from the ruling of the Court in Division.

WHEREFORE, in light of the foregoing, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed *Decision* dated June 23, 2021, and *Resolution* dated February 22, 2022, in CTA Case No. 9589 are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ON LEAVE
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[59] *Macias v. Macias*, G.R. No. 149617, September 3, 2003, 457 SCRA 463-471.
[60] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 652 SCRA 172-188.
[61] *Commissioner of Internal Revenue v. Algue, Inc.*, G.R. No. L-28896, February 17, 1988, 241 SCRA 829-836.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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.

CATHERINE T. MANAHAN
Acting Presiding Justice