REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

KUEHNE + NAGEL, INC.,
Respondent.

CTA EB NO. 3024
(CTA Case No. 10216)

Present:

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

Promulgated:
APR 15 2026 4:21

x- x

DECISION

FERRER-FLORES, J.:

This **Petition for Review**[1] filed via registered mail on November 14, 2024 seeks the reversal and setting aside of the Decision dated March 7, 2024 (assailed Decision),[2] and the Resolution dated October 7, 2024 (assailed Resolution),[3] both promulgated by the Special Second Division of this Court (Court in Division)[4] in CTA Case No. 10216, entitled *Kuehne + Nagel, Inc. vs. Commissioner of Internal Revenue,* the dispositive portions of which respectively read:

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1 *Rollo,* pp. 10 to 31.
2 *Id.* at 37 to 75.
3 *Id.* at 86 to 95.
4 Penned by Associate Justice Jean Marie A. Bacorro-Villena, concurred in by Associate Justice Maria Rowena Modesto-San Pedro, with Concurring and Dissenting Opinion by Associate Justice Lanee S. Cui-David.

Assailed Decision

WHEREFORE, the foregoing premises considered, the instant Petition for Review filed by petitioner Kuehne + Nagel, Inc. on 22 November 2019 is hereby **GRANTED**. Accordingly, the Formal Assessment Notice dated 14 January 2013, Final Decision on Disputed Assessment dated 17 March 2017, and the Decision of the Commissioner of Internal Revenue dated 10 October 2019 — all issued against petitioner Kuehne + Nagel, Inc. for assessed deficiency internal revenue taxes in the taxable year 2009, are declared **VOID**.

Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO RETURN** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **TWO MILLION TWENTY THOUSAND NINE HUNDRED SIXTY PESOS AND EIGHTY CENTAVOS (₱2,020,960.80)**, representing petitioner's erroneously paid income tax, expanded withholding tax, and fringe benefits tax.

The Second Division Clerk of Court is **DIRECTED** to assess and determine the additional docket fees to be paid by petitioner based on the deficiency value-added tax assessment amounting to ONE MILLION SEVENTY-FOUR THOUSAND NINETY-THREE PESOS AND NINETY CENTAVOS (P1,074,093.90), inclusive of penalties.

Petitioner is likewise **ORDERED TO PAY THE ADDITIONAL DOCKET FEES** mentioned above. Upon receipt of notice of petitioner's compliance therewith, respondent is further **ORDERED TO RETURN** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **EIGHT HUNDRED EIGHTEEN THOUSAND FOUR HUNDRED EIGHTY-EIGHT PESOS AND THIRTY-FIVE CENTAVOS (₱818,488.35)** representing petitioner's erroneously paid value-added tax.

SO ORDERED.

Assailed Resolution

WHEREFORE, the foregoing premises considered, respondent's "Motion for Reconsideration (of the Decision dated 07 March 2024)" filed on 26 March 2024 is hereby **PARTIALLY GRANTED**.

Accordingly, in order to rectify the inadvertent errors in the dispositive portion of the Decision dated 07 March 2024, the same is **MODIFIED** to read as follows:

> **WHEREFORE**, the foregoing premises considered, the instant Petition for Review filed by petitioner Kuehne + Nagel, Inc. on 22 November 2019 is hereby **GRANTED**. Accordingly, the Formal Assessment Notice dated 14 January 2013, Final Decision on Disputed Assessment dated 17 March 2017, and the Decision of the Commissioner of Internal Revenue dated 10 October 2019 — all issued against petitioner Kuehne + Nagel, Inc. for assessed deficiency internal revenue taxes in the taxable year 2009, are declared **VOID**.

> Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO RETURN** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **ONE MILLION TWO HUNDRED TWO THOUSAND FOUR HUNDRED SEVENTY TWO PESOS AND FORTY FIVE CENTAVOS (P1,202,472.45),** representing petitioner's erroneously paid income tax, expanded withholding tax, and fringe benefits tax.
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> The Second Division Clerk of Court is **DIRECTED** to assess and determine the additional docket fees to be paid by petitioner based on the deficiency value-added tax assessment amounting to ONE MILLION SEVENTY-FOUR THOUSAND NINETY-THREE PESOS AND NINETY CENTAVOS (P1,074,093.90), inclusive of penalties.
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> Petitioner is likewise **ORDERED TO PAY THE ADDITIONAL DOCKET FEES** mentioned above. Upon receipt of notice of petitioner's compliance therewith, respondent is further **ORDERED TO RETURN** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **EIGHT HUNDRED EIGHTEEN THOUSAND FOUR HUNDRED EIGHTY-EIGHT PESOS AND THIRTY-FIVE CENTAVOS (P818,488.35)** representing petitioner's erroneously paid value-added tax.
>
> **SO ORDERED.**
>
> **SO ORDERED.**

THE PARTIES

Petitioner is the duly appointed **Commissioner of the Bureau of Internal Revenue (BIR)** vested with authority to carry out all the functions, duties and responsibilities of said office, such as 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 National Internal Revenue Code (NIRC) of 1997, as amended, or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City. For purposes of this case, petitioner may be served with pleadings, notices and all court processes at the Legal Division of Revenue Region 8B-South NCR, 2/F BIR Building, No. 313 Sen. Gil Puyat Ave., Makati City.[5]

Respondent **Kuehne + Nagel, Inc.** is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at 5/F Unit 501-H, 507-H and 508-H 5 E-com Center Bldg. Harbor Drive corner Pacific Drive, Mall of Asia Complex, Brgy. 76, NCR,

[5] The Parties, *Petition for Review* dated November 14, 2024, *Rollo*, p. 10.

Fourth district, Pasay City, 1300. It is registered with the BIR under Tax Identification Number 000-514-133-000.[6]

THE ANTECEDENT FACTS

The factual antecedents, as found by the Court in Division in the assailed Decision, are as follows:[7]

> Petitioner [herein respondent] is engaged in the business of freight and cargo consolidation and forwarding. To facilitate the conduct of an investigation of petitioner's [herein respondent's] books accounts, the BIR, through Revenue District Office No. 052-Parañaque City (RDO No. 052), issued Letter of Authority (LOA) No. 2009-00018655 dated 24 May 2010 authorizing Group Supervisor Bernard U. Urbano (GS Urbano) and Revenue Officer Mariano M. Flores (RO Flores) to examine petitioner's [herein respondent's] books of accounts and other accounting records. The LOA covered all types of internal revenue taxes for TY 2009.
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> Pursuant to the above LOA, respondent [herein petitioner] issued a Preliminary Assessment Notice (PAN) dated 28 December 2012 against petitioner [herein respondent], informing the latter of its alleged liabilities for deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), final withholding tax (FWT), fringe benefits tax (FBT), improperly accumulated earnings tax (IAET), and documentary stamp tax (DST).
>
> GS Urbano allegedly served the said PAN personally on petitioner [herein respondent] on 28 December 2012, or on the day of its issuance. Petitioner [herein respondent], however, claimed to have received the PAN only on 04 January 2013. According to petitioner [herein respondent], it failed to file a Reply to the PAN.
>
> On 16 January 2013, petitioner [herein respondent] received a Formal Assessment Notice (FAN), with attached Details of Discrepancies and Assessment Notices, all dated 14 January 2013, reiterating the assessments in the PAN with the same basic tax due and surcharge, but with updated amounts for the corresponding interest.
>
> On 13 February 2013, or within 30 days from its receipt of the FAN, petitioner [herein respondent] filed a Letter-Protest with Regional Director Nestor S. Valeroso (RD Valeroso) of Revenue Region No. 8, Makati City. In its Letter-Protest, petitioner [herein respondent], through its counsel, argued against each item of the deficiency tax assessments. As to supporting documentation, it undertook to deliver specific pieces of documentation for the purpose of refuting several of the items addressed in the protest.
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> While awaiting the result of the BIR's investigation in connection with the above Letter-Protest, petitioner [herein respondent] continued to negotiate with the BIR. Discussions and preparations of reconciliation

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6 *Rollo,* p. 11.
7 *Id.* at 38 to 41.

schedules allegedly resulted in the issuance by RO Emerito G. Rivera (Rivera) of a revised computation of its deficiency assessments for IT, VAT, EWT, and FBT. RO Rivera was assigned to handle petitioner's [herein respondent's] case in connection with the investigation of its Letter-Protest.

According to petitioner [herein respondent], with the revision, it made payments on 06 June 2014, facilitated by draft BIR Form No. 0605 Payment Forms, which were also signed by RO Rivera, as well Officer-in-Charge Revenue District Officer (OIC-RDO) Rosita U. Meniano (Meniano). The payments were evidenced by online payment summary screenshots and online payment acknowledgments from the BIR's e-Filing and Payment System (eFPS):

Tax	Basic Tax Due	Interest	Surcharge	Total Amount Due
IT	₱ 202,167.84	₱168,466.46	-	₱ 370,634.30
VAT	435,992.30	382,496.05	-	818,488.35
EWT	357,597.97	314,982.99	-	671,580.96
FBT	84,994.53	75,262.66	-	160,257.19
Total	**₱1,080,752.64**	**₱941,208.16**	-	**₱2,020,960.80**

Meanwhile, respondent [herein petitioner] refused to acknowledge the revised computations contending that it was not attended by a valid amended assessment nor a properly issued amended FAN.

On 24 March 2017, petitioner [herein respondent] received a Final Decision on Disputed Assessment (FDDA) dated 17 March 2017, signed by then RD Glen A. Geraldino (RD Geraldino). It informed petitioner [herein respondent] of its liability to pay deficiency taxes for TY 2009 aggregating ₱232,919,241.84, inclusive of interest and surcharges, summarized as follows:

Tax	Basic Tax Due	Interest	Surcharge	Total Amount Due
IT	₱27,571,790.54	₱ 39,144,388.66	-	₱ 66,716,179.20
VAT	435,992.30	638,101.60	-	1,074,093.90
EWT	14,799,548.23	21,741,144.55	-	36,540,692.78
FWT	15,270,184.00	22,424,160.61	-	37,694,344.61
FBT	910,217.97	1,337,147.60	-	2,247,365.57
IAET	11,760,324.80	14,924,335.47	₱ 5,880,162.40	32,564,822.67
DST	18,854,044.61	27,800,676.19	9,427,022.31	56,081,743.11
Total	**₱89,602,102.45**	**₱128,009,954.68**	**₱15,307,184.71**	**₱232,919,241.84**

On 21 April 2017, petitioner [herein respondent] filed with respondent [herein petitioner] a Request for reconsideration/ Administrative Appeal of the FDDA.

On 24 October 2019, petitioner [herein respondent] received a Decision from respondent [herein petitioner] dated 10 October 2019 (Final Decision) which the parties mutually recognized as the latter's final decision. This Final Decision modified the FDDA, informing petitioner [herein respondent] that it is still liable for the total amount of ₱231,845,147.94. The Final Decision contained a reiteration of a majority of the assessed deficiency taxes in the FDDA but without the assessment for

> VAT. Respondent [herein petitioner] affirmed the assessments for deficiency IT, EWT, FWT, FBT, IAET, and DST.
>
> As to the VAT, respondent [herein petitioner] considered petitioner's [herein respondent's] payment on 06 June 2014 (on the revised computation with draft BIR payment forms it had allegedly received) and cancelled the corresponding deficiency finding amounting to ₱1,074,093.90. According to respondent [herein petitioner], the basic tax due of the VAT component of petitioner's [herein respondent's] aforementioned payment matched that which appeared in the previously-issued FAN. Furthermore, the interest paid per the payment form accurately corresponded to the period covered, i.e., from the date of the assessment until the date of payment. As such, respondent [herein petitioner] acknowledged the same as valid and full payment of petitioner's [herein respondent's] deficiency VAT.

THE PROCEEDINGS BEFORE THE COURT IN DIVISION

On November 22, 2019, within 30 days from respondent's receipt of petitioner's Final Decision on October 24, 2019, respondent filed its *Petition for Review* with the Court in Division. After the Court in Division twice granted petitioner with extensions of time to file the Answer, petitioner filed his *Answer* on March 2, 2020.

On March 7, 2024, the Court in Division rendered the assailed Decision granting the *Petition for Review*. The Court declared void the FAN, FDDA, and Decision of the Commissioner of Internal Revenue (CIR) against respondent for assessed deficiency internal revenue taxes in TY 2009. The CIR was likewise ordered to return or issue a tax credit certificate (TCC) in the amount of ₱2,020,960.80, representing respondent's erroneously paid income tax, expanded withholding tax (EWT) and fringe benefits tax (FBT).

The Court in Division Clerk of Court was directed to assess and determine the additional docket fees to be paid by respondent based on the deficiency value-added tax (VAT) assessment of ₱1,074,093.90, inclusive of penalties. Respondent was ordered to pay said additional docket fees, and upon notice of petitioner's compliance, to return or issue a TCC in the amount of ₱818,488.35 representing respondent's erroneously paid VAT.

Undaunted, petitioner filed his *Motion for Reconsideration (of the Decision dated 07 March 2024)* on March 26, 2024,[8] to which herein respondent filed its *Comment (Re: Motion for Reconsideration dated March 26, 2024)* on April 30, 2024.[9]

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[8] Division Docket – Vol. III, pp. 1213 to 1229.

[9] *Id.* at 1234 to 1256.

On October 7, 2024, the Court in Division promulgated the assailed Resolution partially granting petitioner's *Motion for Reconsideration.*[10] Accordingly, the dispositive portion of the assailed Decision was modified to rectify the error in the amount representing respondent's erroneously paid income tax, expanded withholding tax and fringe benefits tax from ₱2,020,960.80 to ₱1,202,472.45.

Hence, the present *Petition for Review.*

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On October 29, 2024, petitioner filed via registered mail a *Motion for Extension of Time (To File Petition for Review)* requesting an additional period of 15 days from October 30, 2024 or until November 14, 2024, to file his *Petition for Review.*[11] The said motion was granted by the Court on November 13, 2024, subject to the condition that the motion for extension as filed on time.[12]

On November 14, 2024, petitioner filed via registered mail the instant *Petition for Review*, which was received by the Court on November 20, 2024.[13]

In the Minute Resolution dated January 6, 2025, respondent was directed to file its comment on the present *Petition for Review* within a period of 10 days from notice. [14]

Thereafter, respondent filed its *Comment (Re: Petition for Review dated November 14, 2024)* on January 24, 2025.[15]

On February 10, 2025, the Court noted respondent's *Comment (Re: Petition for Review dated November 14, 2024)* and ordered the parties to personally appear before the Mediation Staff Assistant of the Philippine Medication Center – Court of Tax Appeals (PMC-CTA) on March 10, 2025 at 1:30 pm, with or without the presence of their counsels for purposes of deciding whether or not they will enter into mediation.[16]

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10 *Rollo,* pp. 86 to 95.
11 *Id.* at 2 to 4.
12 *Id.* at 7.
13 *Id.* at 10 to 32.
14 *Id.* at 100.
15 *Id.* at 109 to 119.
16 *Id.* at 121.

On March 12, 2025, the Court *En Banc* received *PMC-CTA Form 6 - No Agreement to Mediate* stating that the parties decided not to have their case mediated by the PMC-CTA.[17]

On April 2, 2025, the Court *En Banc* issued a Resolution noting *PMC-CTA Form 6 – No Agreement to Mediate* dated March 10, 2025. Accordingly, the instant case was submitted for decision.[18]

THE ISSUES

In the instant *Petition for Review*, petitioner assigns the following errors for resolution:

I. Whether or not the Court in Division erred in ordering the return or issuance of TCC in favor of respondent in the amount of ₱1,202,472.45, representing respondent's alleged erroneously paid income tax, EWT, and FBT;

II. Whether or not the Court in Division erred in ordering the return or issuance of TCC in favor of respondent in the amount of ₱818,488.35 representing respondent's alleged erroneously paid VAT;

III. Whether or not the Court in Division erred in granting respondent's *Petition for Review* by ordering declaring void the FAN, FDDA, and Decision of the CIR, issued against respondent for TY 2009; and,

IV. Whether the Court in Division erred in denying herein petitioner's *Motion for Reconsideration.*

Petitioner's arguments

Petitioner asserts that this Court has no jurisdiction to order the refund of ₱1,202,472.45 and ₱818,488.35, representing alleged erroneously paid income tax, EWT, FBT and VAT. He argues that filing a written claim for refund is both mandatory and jurisdictional. According to petitioner, respondent failed to file such a claim with the CIR within two years from the date of the alleged payment, nor did respondent allege in its *Petition* that the said amounts were erroneously paid or illegally collected.

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17 *Rollo*, p. 122.
18 *Id.* at 123.

Petitioner argues that, even assuming the FAN was issued less than 15 days after receipt of the PAN, due process was satisfied because respondent was given the opportunity to explain its side and seek reconsideration of the action or ruling complained of. Petitioner points out that respondent was able to file a protest to the FAN, a request for reconsideration to the FDDA, before it elevated the matter to this Court.

Petitioner argues that issues not raised in the protest can no longer be validly raised for the first time on appeal under Section 3.1.4 of the Revenue Regulations (RR) No. 18-2013. Since respondent did not raise the alleged due process violation in its protest or administrative appeal, it should be deemed waived. He adds that respondent's voluntary participation in the audit, protest and appeal cured the alleged violation.

Petitioner maintains that, absent an amended assessment and properly issued amended FAN, respondent cannot claim that the deficiency taxes were indeed recomputed. A mere list or revised computation, unsigned and undated, cannot serve as a revised assessment. He further argues that estoppel has already set in as respondent voluntarily paid on June 6, 2014 without any reservation as to the validity of the assessment, thereby admitting the validity of the assessments and its obligation to pay deficiency taxes.

Finally, petitioner contends that the assessment has already become final because respondent failed to submit supporting documents within the required 60-day period. Respondent was allegedly given until April 15, 2013 but submitted supporting documents only on May 14, 2013, September 2, 2013, September 27, 2013 and October 21, 2013, which were all beyond the required period.

Respondent's counter-arguments

Respondent maintains that the Court has jurisdiction over the *Petition for Review* and that the deficiency tax assessment for TY 2009 is invalid for violating its right to procedural due process. Respondent highlights that the issuance of the FAN before the lapse of the 15-day period to reply to the PAN constitutes a violation of due process, rendering the assessment void. The defect cannot be cured by the subsequent filing of a protest or response to the assessment notices.

Respondent argues that the invalidity of the assessment for TY 2009 makes its partial payments illegally or erroneously collected. Thus, the Court correctly ordered the refund. It adds that the Court may resolve matters not specifically raised by the parties if the matter is necessary to achieve a just and complete resolution, avoid piecemeal justice, or serve judicial economy.

Respondent asserts that the petitioner, through his Revenue District Officer (RDO) and Revenue Officer (RO), already considered its payments in full satisfaction of the assessed deficiency taxes which served as the basis for closing and terminating the audit of its books for TY 2009. Respondent asserts that the payments were not voluntary but made in the context of formally concluding and terminating the audit.

Finally, respondent argues that the assessments did not become final and executory despite the late submission of supporting documents beyond the 60-day period. It opines that the only consequence of such delay would be the denial of the protest and the subsequent issuance of an FDDA. Respondent insists it was still entitled to appeal the FDDA to this Court within 30 days from receipt of the decision in order to question the very factual and legal basis of the assessments.

THE RULING OF THE COURT *EN BANC*

The instant *Petition for Review* is partially granted.

The present Petition for Review was timely filed; hence, the Court En Banc has jurisdiction over the same

Before proceeding to the merits of the arguments of the parties, the Court *En Banc* deems it necessary to delve on the timeliness of the instant *Petition for Review*.

Section 3 (b) of Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> Sec. 3. Who may appeal; period to file petition. — x 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. (*Emphasis supplied*)

Based on the foregoing, petitioner had 15 days from receipt of the assailed Resolution within which to file his *Petition*.

Records show that the assailed Resolution of the Court in Division was served on petitioner on October 15, 2024.[19] Petitioner, thus, had 15 days from such receipt, or until October 30, 2024, to file his *Petition* before this Court.

On October 29, 2024, petitioner filed a *Motion for Extension of Time (To File Petition for Review)*,[20] which the Court granted in a Minute Resolution dated November 13, 2024, giving petitioner a non-extendible period of 15 days from October 30, 2024, or until November 14, 2024, within which to file his petition for review.[21]

The instant *Petition* was, thus, timely filed on November 14, 2024.

The Court in Division did not err in declaring the assessments void as they were issued in violation of respondent's right to due process

Petitioner contends that the Court in Division erred in ruling that respondent's right to the due process was violated. He maintains that, even assuming the FAN was issued less than 15 days from respondent's receipt of the PAN, no denial of due process attended the assessment as due process is satisfied when a party is given the opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.

Petitioner further argues that, even assuming arguendo that respondent's right to due process had been violated, respondent can no longer validly raise this argument for the first time on appeal as this was never raised in its protest to the FAN and administrative appeal. He asserts that respondent's voluntary participation in the audit and its protest and appeal without raising this issue should be considered to have cured the alleged violation.

The Court is not persuaded.

Section 3.1.2 of Revenue Regulations (RR) No. 12-99[22] explicitly grants the taxpayer a period of 15 days from receipt of the PAN within which to file a response. Failure to respond within the prescribed period places the taxpayer in default, and only then may the CIR or his duly authorized

19 *Rollo*, p. 85.
20 *Id.* at 2 to 4.
21 *Id.* at 7.
22 SUBJECT: 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, September 06, 1999.

representative issue to the taxpayer an FLD/FAN demanding payment of the assessed deficiency tax, surcharges, and penalties.[23]

In *Commissioner of Internal Revenue vs. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)*,[24] the Court categorically ruled that due process requires not only the receipt of the PAN but also the opportunity to respond thereto, *viz.*:

> 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 supplied*)

This doctrine was further expanded in *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.* (*Avon* case),[25] where the Court, citing *Ang Tibay vs. The Court of Industrial Relations*,[26] held that due process requires not only the mere opportunity to be heard. It imposes upon the CIR the correlative duty to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.

It is thus well-settled that the BIR must grant the taxpayer a period of 15 days from receipt of the PAN within which to submit a reply. Consequently, the BIR must await either the taxpayer's reply or the lapse of the 15-day period, whichever comes first, before issuing a FLD/FAN. Issuing it earlier would mean that the BIR has either prematurely decided or failed to consider the taxpayer's response, reducing the reply to the PAN into a meaningless exercise.

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23 *Commissioner of Internal Revenue vs. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021.

24 *Commissioner of Internal Revenue vs. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)* (Notice), G.R. No. 227616, June 19, 2019.

25 G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

26 G.R. No. 46496, February 27, 1940.

As duly found by the Court in Division, petitioner claims that the PAN issued on December 28, 2012 was served on respondent on the same day. Petitioner, however, failed to present any proof beyond his bare assertion that his representative had served the PAN on said date. Neither did petitioner's copies of the PAN bear any indication of service or receipt. On the other hand, respondent maintains that it only received a copy of the PAN on January 4, 2013. A scrutiny of the PAN itself reveals an informal notation of receipt, wherein one Perla Basaen wrote "Received Jan 04, 2013" near the bottom of the first page.

Counting from respondent's receipt of the PAN on **January 4, 2013**, it had 15 days or until **January 21, 2013**[27] to file a reply. Records, however, show that petitioner issued a FAN on **January 14, 2013**, seven days before respondent's last day to reply. Clearly, respondent's right to due process was violated.

Settled is the rule that an assessment issued in violation of the right of the taxpayer to due process are null and void and bears no valid fruit.[28] To emphasize, where the petitioner or his duly authorized representative fails or effectively fails to observe the due process requirements prescribed by law and jurisprudence, such omission shall have the effect of rendering the assessment of the alleged deficiency tax void.

Finally, the fact that respondent was able to file a protest to the FAN and submit an administrative appeal before the CIR does not cure the defect nor validate an assessment that was void from the outset.

In *Commissioner of Internal Revenue vs. Yumex Philippines Corporation*,[29] the BIR issued a PAN and a FAN which were both received by the taxpayer on the same day, thereby effectively depriving it of the 15-day period to respond to the PAN prior to the issuance of the FAN. The Supreme Court categorically held that the issuance of the PAN is a substantive and not merely a formal requirement, and that failure to observe it renders the assessment void, this notwithstanding that the taxpayer was able to file a protest against the FAN.

In the same case, the Court, citing *Pilipinas Shell Petroleum Corporation (PSPC) vs. Commissioner of Internal Revenue*,[30] emphasized that although *PSPC* was able to protest the formal assessment, such protest did not cure the fundamental defect. The taxpayer was still deprived of its

27 The 15th day falls on a Saturday. Respondent, thus, had until January 21, 2013 or the next working day to file a reply to the PAN.
28 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,G.R.No. 185371, December 8, 2010.
29 G.R. No. 222476, May 5, 2021.
30 G.R. No. 172598, December 21, 2007.

statutory and procedural right to contest the assessment at the preliminary stage, before the FAN was issued. On this score, the Supreme Court once more reminded the BIR to be more circumspect in the exercise of its functions as the power of taxation is also sometimes called the power to destroy and, therefore, should be exercised with caution to minimize injury to the proprietary rights of the taxpayer.

The Court lacks jurisdiction to order the refund or the issuance of tax credit certificates in favor of respondent

In the assailed Decision, the Court in Division ruled that respondent's payments of ₱1,202,472.45, representing deficiency income tax, EWT, and FBT and ₱818,488.35, representing deficiency VAT, were erroneously made pursuant to a void assessment. Since a void assessment bears no fruit, the amounts previously paid must be refunded to respondent.

Petitioner, however, argues that this Court lacks jurisdiction to order the refund of the said amounts as the requirement to file a written claim for refund is not only mandatory but also jurisdictional. Petitioner points out that respondent did not file any claim for refund or tax credit with the CIR within two years from the date of the alleged payment, nor did respondent allege in its *Petition* that the said amounts were erroneously paid or illegally collected. Petitioner further stresses that the nature of respondent's *Petition for Review* before the Court in Division was solely for the cancellation of deficiency tax assessments for TY 2009 and not for refund.

The Court *En Banc* finds petitioner's contention impressed with merit.

To recall, respondent received a FAN dated January 14, 2013 assessing deficiency taxes for TY 2009 in the total amount of ₱156,584,201.82, inclusive of surcharges and interests. Within 30 days from receipt thereof, respondent filed its protest against the FAN.

During the reinvestigation of this protest, respondent claims that petitioner arrived at a revised computation of its deficiency income tax, VAT, EWT and FBT liabilities for TY 2009. Petitioner, however, disputes the validity of this alleged recomputation, stressing that no valid, signed amended assessment notice or its equivalent was ever issued by petitioner.

On June 6, 2014, respondent allegedly accepted the revised computation and paid the revised amounts of deficiency taxes for TY 2009, the breakdown of which is as follows:

Tax	Basic Tax Due	Interest	Surcharge	Total Amount Due
IT	₱ 202,167.84	₱168,466.46	-	₱ 370,634.30
VAT	435,992.30	382,496.05	-	818,488.35
EWT	357,597.97	314,982.99	-	671,580.96
FBT	84,994.53	75,262.66	-	160,257.19
Total	**₱1,080,752.64**	**₱941,208.16**	-	**₱2,020,960.80**

As found by the Court in Division, the abovementioned payments were transacted in accord with the draft manual BIR Form No. 0605 Payment Forms signed by OIC-RDO Meniano and RO Rivera, with the latter handling the investigation of respondent's assessment case since February 28, 2013, and bearing matching amounts and reflecting the same details needed by respondent to accomplish the online equivalent of the form in the eFPS platform.

The Court in Division further noted that the payments were intended for TY 2009 as "initial payments on undisputed deficiency tax assessments" and the forms filed accordingly specified the type of tax being paid therein.

Almost three years later, or on March 24, 2017, respondent received the Final Decision on Disputed Assessment (FDDA), informing respondent that it is liable to pay deficiency taxes for TY 2009 in the total amount of ₱232,919,241.84, inclusive of surcharges and interest, broken down as follows:

Tax	Basic Tax Due	Interest	Surcharge	Total Amount Due
IT	₱27,571,790.54	₱ 39,144,388.66	-	₱ 66,716,179.19
VAT	435,992.30	638,101.60	-	1,074,093.90
EWT	14,799,548.23	21,741,144.55	-	36,540,692.78
FWT	15,270,184.00	22,424,160.61	-	37,694,344.61
FBT	910,217.97	1,337,147.60	-	2,247,365.57
IAET	11,760,324.80	14,924,335.47	₱ 5,880,162.40	32,564,822.67
DST	18,854,044.61	27,800,676.19	9,427,022.31	56,081,743.11
Total	**₱89,602,102.45**	**₱128,009,954.68**	**₱15,307,184.71**	**₱232,919,241.84**

On April 21, 2017, respondent filed a request for reconsideration of the FDDA before petitioner.

On October 24, 2019, respondent received from petitioner a Decision dated October 10, 2019, cancelling the VAT deficiency amounting to ₱1,074,093.90, and informing respondent that it is still liable to pay ₱231,845,147.94, broken down as follows:

Tax	Basic Tax Due	Interest	Surcharge	Total Amount Due
IT	₱27,571,790.54	₱ 39,144,388.66	-	₱ 66,716,179.19
EWT	14,799,548.23	21,741,144.55	-	36,540,692.78
FWT	15,270,184.00	22,424,160.61	-	37,694,344.61
FBT	910,217.97	1,337,147.60	-	2,247,365.57
IAET	11,760,324.80	14,924,335.47	₱ 5,880,162.40	32,564,822.67
DST	18,854,044.61	27,800,676.19	9,427,022.31	56,081,743.11
Total	**₱89,166,110.15**	**₱127,371,853.08**	**₱15,307,184.71**	**₱231,845,147.94**

Counting 30 days from receipt of the Decision dated October 10, 2019, respondent timely filed his judicial appeal before this Court on November 22, 2019 to assail the respondent's assessment.

On the refund or issuance of a tax credit certificate in the amount of ₱818,488.35, representing respondent's alleged erroneously paid VAT, granted by the Court in Division

With respect to respondent's alleged erroneously paid VAT, the Court *En Banc* finds that the Court in Division lacks jurisdiction to order the refund or issuance of a tax credit certificate in the amount of ₱818,488.35.

Section 7(a)(1) of RA No. 1125[31], as amended by RA No. 9282[32], provides that this Court has exclusive appellate jurisdiction, *inter alia*, over decisions of the CIR in cases involving disputed assessments.[33] In other words, this Court exercises exclusive appellate jurisdiction not over the assessments per se, but over decisions involving disputed assessments arising under the NIRC of 1997, as amended.[34]

31 An Act Creating the Court of Tax Appeals.

32 An Act Expanding the Jurisdiction of the Court of Tax Appeals, Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

33 Sec. 7. Jurisdiction. – The CTA Shall Exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx

34 Refer to *People of the Philippines vs. Sandiganbayan (Fourth Division), et al.*, G.R. No. 152532, August 16, 2005.

Here, the Court *En Banc* finds that the assessment on deficiency VAT is no longer a disputed assessment subject to review, considering that petitioner had already removed the portion on the deficiency VAT in its Decision dated October 10, 2019. The relevant portion of said Decision reads:

> Considering the unresolved inconsistencies between the assessed taxes, the payment, and the details in the payment forms, this Office is constrained not to acknowledge the payment for IT, FBT, and EWT, for the assessments in question.
>
> However, with regard to the payment for VAT, there were no such inconsistencies. The payment form for deficiency VAT shows that the basic tax paid was P435,992.30, which is the same basic tax in the FAN. Further, the interest paid in the payment form corresponds to the interest computed from January 26, 2010 up to the date of payment on June 6, 2014. **Thus, in view of the consistency in the FAN and the payment details for deficiency VAT, this Office acknowledges such payment as valid and full payment of the Kuehne's deficiency VAT. Consequently, the deficiency VAT assessment in the FDDA amounting to P1,074,093.90, consisting of the basic deficiency tax amounting to P435,992.30 and interest amounting to P638,101.60 should be cancelled.** (*Emphasis supplied*)

Considering that the deficiency VAT assessment has already been cancelled at the administrative level, there is no longer any disputed VAT deficiency assessment to speak of. Only the deficiency income tax, EWT, FWT, FBT, IAET and DST for TY 2009 in the total amount of ₱231,845,147.94, were judicially assailed by respondent in its *Petition for Review* before the Court in Division. These were the assessments specifically prayed to be cancelled and withdrawn in respondent's *Memorandum* and identified as an issue to be resolved in the parties' *Joint Stipulation of Facts and Issues*.

Accordingly, the basis for the computation of the docket fee is the amount of the disputed tax assessment, inclusive of interest, penalties and surcharges, amounting to ₱231,845,147.94, which excludes VAT. The Court *En Banc* finds that respondent is now estopped from seeking a refund of the settlement amount pertaining to VAT considering that it has already been removed from the assessment in the administrative level. By paying the VAT deficiency in the amount of ₱818,488.35, respondent impliedly admitted the validity of the findings in the FAN with respect to the deficiency VAT.

Finally, settled is the rule that what determines the nature of the action and which court has jurisdiction over it are the allegations of the complaint and the character of the relief sought.[35] Although a court may grant any relief allowed by law, said prerogative is delimited by the cardinal principle that it

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[35] G.R. No. 163021, April 27, 2007.

cannot grant anything more than what is prayed for by the movant. Certainly, the relief to be dispensed cannot rise above its source.[36]

On the Court in Division's grant of refund or issuance of a tax credit certificate in the amount of ₱1,202,472.45, representing respondent's alleged erroneously paid income tax, expanded withholding tax, and fringe benefits tax

With respect to respondent's alleged erroneously paid income tax, EWT and FBT, the Court *En Banc* finds that the Court in Division lacks jurisdiction to order the refund or issuance of a tax credit certificate in the amount of ₱1,202,472.45.

Section 204 (C) of the NIRC of 1997, as amended, clearly prescribes the procedure and prescriptive period for any claim for refund of erroneously or illegally collected internal revenue taxes, to wit:

> SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. —
>
> The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax** or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund. (*Emphasis supplied*)

Similarly, Section 229 of the NIRC of 1997, as amended, governs judicial claim for refund, *viz.*:

> SEC. 229. Recovery of Tax Erroneously or Illegally Collected. — **No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected,** or of any penalty claimed to have been collected without authority, of any sum alleged to have been

[36] *Conrado Potenciano vs. Court of Appeals*, G.R. No. L-11769, July 25, 1958.

> excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty <u>regardless of any supervening cause that may arise after payment</u>:** Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (*Emphasis supplied*)

As held in *Commissioner of Internal Revenue vs. San Miguel Corporation, et seq.*,[37] both administrative and judicial claims for refund must be filed within two years from the date of payment of tax. There can be no exception to the application of this prescriptive period based on equity considerations because equity cannot be invoked when there is clear statutory law governing the matter, *viz.*:

> The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with the CIR before filing its judicial claim with the courts of law. **Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.** It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax 'regardless of any supervening cause that may arise after payment. (*Emphasis supplied and citations omitted*)
>
> xxx xxx xxx
>
> **SMC's argument that its claims should be excepted from the two (2)-year prescriptive period based on equity considerations is untenable; the Court cannot resort to equity when there is clear statutory law governing the matter.** Relevant herein are the following pronouncements of the Court in *Republic v. Provincial Government of Palawan*:
>
>> The Court finds the submission untenable. Our courts are basically courts of law, not courts of equity. Furthermore, for all its conceded merits, equity is available only in the absence of law and not as its replacement. As explained in the old case of *Tupas v. Court of Appeals*:
>>
>>> Equity is described as justice outside legality, which simply means that it cannot supplant although it may, as often happens, supplement the law. We said in an earlier case, and

[37] *Commissioner of Internal Revenue vs. San Miguel Corporation, et seq.*, G.R. Nos. 180740 and 180910, November 11, 2019.

> we repeat it now, that all abstract arguments based only on equity should yield to positive rules, which [preempt] and prevail over such persuasions. Emotional appeals for justice, while the may wring the heart of the Court, cannot justify disregard of the mandate of the law as long as it remains in force. he applicable maxim, which goes back to the ancient days of the Roman jurists - and is now still reverently observe - is "aequetas nunquam contravenit legis." (Citations omitted)

Clearly, both law and jurisprudence are unequivocal that no suit or proceeding may be maintained in any court for the recovery of any national internal revenue tax after the expiration of two years from the date of payment of the tax or penalty, ***regardless of any supervening cause that may arise after payment***. To stress, the date of payment of the tax is the reckoning point of the two-year period within which a valid claim for refund may be filed in both the administrative and judicial levels. The two-year prescriptive period under Section 229 of the NIRC of 1997, as amended, is mandatory and jurisdictional.

It bears emphasis that the phrase "regardless of any supervening cause" was first introduced by Presidential Decree (PD) No. 69 on November 24, 1972, and was subsequently retained in both the 1977 and the NIRC of 1997. Before PD No. 69, however, Section 306 of the 1939 Tax Code[38] (now Section 229) did not expressly address situations where a tax was legally paid but later became erroneous due to the occurrence of a supervening cause.

The legislative intent behind the insertion of the phrase is unmistakable: it establishes, as a *condition sine qua non*, that all claims and actions for the refund of any tax or penalty must be filed within two years from the date of payment of such tax or penalty. This holds true even if the taxpayer had no cause for refund as the tax or penalty was legally collected and even if after the lapse of the two-year period, a supervening cause should arise which would entitle the taxpayer to refund.[39]

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[38] Section 306. Recovery of Tax Erroneously or Illegally Collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal-revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty.

[39] *Atlanta Land Corporation vs. Commissioner of Internal Revenue*, CTA EB Case No. 79 (CTA Case No. 6987), May 23, 2006, *citing* Arañas, Annotations and Jurisprudence on the National Internal Revenue Code of 1977, As Amended, Sixth Edition, p. 571. Affirmed in G.R. No. 172773 dated June 18, 2007.

This strict limitation rests on the basic principle that taxes are the lifeblood of the Government and their prompt and certain availability is an imperious need.[40] The availability of funds from the collection of taxes cannot forever be left subject to the contingency of refund brought about by certain acts which are solely within the exclusive control of the private contracting parties, otherwise, fiscal adequacy cannot be achieved.[41]

Applying the foregoing principles to the instant case, respondent made payments in the total amount of ₱2,020,960.80 on June 6, 2014, allegedly as full settlement of deficiency assessments for income tax, VAT, EWT and FBT. Of this amount, ₱818,488.35 pertained to the deficiency VAT, which as earlier discussed, was already cancelled at the administrative level. The remaining ₱1,202,472.45 covered the deficiency assessments for income tax, EWT and FBT, which were retained in the disputed assessment.

Counting two years from the date of payment on June 6, 2014, respondent had until **June 6, 2016** to file both administrative and judicial claims for refund. The records, however, reveal that no such claims were filed within the prescribed period. Consequently, respondent's right to a refund of the amounts previously paid has already prescribed.

It must be stressed that strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential for such a claim to prosper. Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer.[42]

Finally, as a court of special jurisdiction, the CTA can take cognizance only of matters clearly within its jurisdiction. Failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and also precluding the appellate court from acquiring jurisdiction over the case.[43]

Even if this Court were to set aside the mandatory two-year prescriptive period from the date of payment and treat it as suspended due to the special circumstances of this case, the Court nonetheless finds that it lacks jurisdiction to order the refund or issuance of tax credit certificate in favor of respondent.

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[40] *Commissioner of Internal Revenue vs. Manuel B. Pineda, as one of the heirs of deceased Atanasio Pineda,* G.R. No. L-22734, September 15, 1967.

[41] *Atlanta Land Corporation vs. Commissioner of Internal Revenue,* CTA EB No. 79, May 23, 2006.

[42] *Commissioner of Internal Revenue vs. San Roque Power Corp.*, G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

[43] *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation*, G.R. No. 167606, August 11, 2010.

Assuming, for the sake of argument, that respondent genuinely believed its payment of ₱2,020,960.80 constituted full settlement of the assessed deficiency taxes for TY 2009 following negotiations with the revenue officer assigned to the audit, respondent should have filed its administrative and judicial claims for refund upon receipt of the FDDA on March 24, 2017. At this point, it was already clear that the supposed settlement had not materialized. At the very latest, respondent should have filed its claims for refund within two years from receipt of the final decision of the CIR on October 24, 2019 when the CIR expressly and categorically did not consider its payments made on June 6, 2014, as settlement for the assessed deficiency taxes.

In this case, respondent filed its *Petition for Review* before this Court on November 22, 2019. The records, however, show that respondent neither filed a written claim for refund or tax credit with the CIR nor alleged in its *Petition for Review*, or in subsequent pleadings before the Court in Division, any claim or prayer for refund of the amounts initially paid. As aptly observed by the Court in Division, the parties did not specifically raise the issue of whether the payments should be returned to respondent.

In sum, the Court finds that the present *Petition for Review* must be partially granted, insofar as the cancellation of the order requiring petitioner to return or issue a TCC in the amount of ₱1,202,472.45, representing respondent's alleged erroneously paid income tax, EWT, and FBT, as well as ₱818,488.35 representing respondent's alleged erroneously paid VAT. The Court, however, affirms the ruling of the Court in Division that the assessments for TY 2009 must be cancelled and declared void, as they were issued in violation of respondent's right to due process.

ACCORDINGLY, the instant **Petition for Review** is **PARTIALLY GRANTED.**

The assailed Decision dated March 7, 2024 of the Court in Division in CTA Case No. 10216 is **MODIFIED** as follows:

> **WHEREFORE**, the foregoing premises considered, the instant Petition for Review filed by petitioner Kuehne + Nagel, Inc. on 22 November 2019 is hereby **GRANTED**. Accordingly, the Formal Assessment Notice dated 14 January 2013, Final Decision on Disputed Assessment dated 17 March 2017, and the Decision of the Commissioner of Internal Revenue dated 10 October 2019 — all issued against petitioner Kuehne + Nagel, Inc. for assessed deficiency internal revenue taxes in the taxable year 2009, are declared **VOID**.
>
> **SO ORDERED.**

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

With Concurring and Dissenting Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I join the CDO of J Villena
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 3024** (CTA Case No. 10216)
- versus -	Present: **RINGPIS-LIBAN,** ***P.J.*****,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES,** *and* **ANGELES,** ***JJ.***
KUEHNE + NAGEL, INC., Respondent.	Promulgated: APR 15 2026 4:20

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CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of our esteemed colleague, Associate Justice Corazon G. Ferrer-Flores, in declaring the Formal Assessment Notice (**FAN**) dated 14 January 2023, Final Decision in Disputed Assessment (**FDDA**) dated 17 March 2017, and the Decision of the Commissioner of Internal Revenue (**CIR**) dated 10 October 2019 void as they were issued in violation of respondent's right to due process. However, with all due respect, I maintain my stance that the Court has jurisdiction to order the refund or the issuance of tax credit certificates (**TCCs**) in favor of respondent.

I forward the legal grounds below to support the position I have taken.

At the outset, I reiterate that the amount of ₱2,020,960.80[1] paid by respondent representing the deficiency income tax (**IT**), value-added tax (**VAT**), expanded withholding tax (**EWT**), and fringe benefits tax (**FBT**) were

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[1] See computation in the Decision dated 07 March 2024, *rollo*, p. 40.

illegally collected since the said payment sprung from an assessment declared void by this Court. It is well-settled that a void assessment bears no valid fruit,[2] thus, all events that resulted from the said void assessment, including respondent's payment, shall be without any legal effect.

In the *ponencia*, it was ruled that the Court in Division lacks jurisdiction to order the refund or issuance of a TCC in the amount of ₱818,488.35 representing the VAT illegally collected from respondent since the assessment on deficiency VAT was no longer a disputed assessment subject to review.

Section 7(a) of Republic Act (**RA**) No. 1125[3], as amended, provides:

> ...
> SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**[.][4]
>
> ...

As observed by the Supreme Court in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[5] the jurisdiction of the CTA is not limited only to cases which involve decisions or inactions of the CIR on matters relating to assessments or refunds but also includes other cases arising from the National Internal Revenue Code (**NIRC**) or related laws administered by the Bureau of Internal Revenue (**BIR**).

In the case at bar, petitioner's collection of deficiency VAT from respondent arose from the former's duty of collecting national internal revenue taxes, fees, and charges, as provided in Section 2 of the NIRC of 1997, as amended:

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[2] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, 24 April 2023; *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 197945 & 204119-20, 09 July 2018; *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*, G.R. No. 215534 & 215557, 18 April 2016; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, 08 December 2010.

[3] AN ACT CREATING THE COURT OF TAX APPEALS.

[4] Italics in the original text, emphasis and underscoring supplied.

[5] G.R. No. 183408, 12 July 2017.

> ...
> SEC. 2. *Powers and Duties of the Bureau of Internal Revenue.* — The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and **collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith**, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws.[6]
> ...

Thus, the issue on the return of the deficiency VAT amounting to ₱818,488.35 collected by petitioner from respondent based on FAN later declared void by this Court falls within "other matters arising under the [NIRC] or other laws administered by the [BIR]" to which this Court has jurisdiction over.

Moreover, Section 1, Rule 14 of A.M. No. 05-11-07-CTA or the Revised Rules of the Court of Tax Appeals (RRCTA) provides that in deciding cases, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

Again, it is well-settled that a void assessment bears no valid fruit.[7] With the entirety of the assessment declared void, all proceedings in pursuit thereof should necessarily be struck down as plain nullity. **The declaration of the subject assessments' nullity gave rise to the unresolved subsidiary matter of determining what must be done with payments advanced by respondent. While the proceedings have thus been voided, petitioner has retained the said payments (from respondent). As such, for the complete and orderly disposition of the case at bar, it is logical that the deficiency VAT and other taxes paid by respondent as a result of such void assessment be reverted to it accordingly.**

It was also observed that the basis of the computation of the docket fee was the amount of the disputed tax assessment which excludes VAT, supporting the finding that the Court did not acquire jurisdiction over the amount paid by respondent for deficiency VAT. Section 2 of the Rule 141[8] of the Rules of Court, which applies suppletorily to the RRCTA,[9] comes to the fore and is particularly instructive:

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[6] Italics in the original text, emphasis and underscoring supplied.
[7] *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, 24 April 2023, supra at note 2.
[8] Rule 141 — Legal Fees.
[9] Sec. 3, Rule 1 of A.M. No. 05-11-07-CTA or the Revised Rules of the Court of Tax Appeals.

> ...
>
> SEC. 2. *Fees in lien.* — **Where the court in its final judgment awards a claim not alleged, or a relief different from, or more than that claimed in the pleading, the party concerned shall pay the additional fees which shall constitute a lien on the judgment in satisfaction of said lien.** The clerk of court shall assess and collect the corresponding fees.[10]
>
> ...

Thus, I reiterate the finding in the Decision of the Court in Division that the Second Division Clerk of Court shall assess and collect the incremental docket fees corresponding to the deficiency VAT amounting to ₱1,074,093.90.[11] Such resolves the shortage of this Court's jurisdiction in its final judgment. This likewise entitles respondent to the return of its payment for recomputed deficiency VAT amounting to ₱818,488.35, provided that it has paid the said additional fees, which upon order of this Court, shall constitute a lien on the judgment in satisfaction of said lien.

With respect to the amount illegally collected from respondent representing deficiency IT, EWT, and FBT, the *ponencia* held that the Court in Division lacks jurisdiction to order its refund or issuance of TCCs on the ground of prescription as the two (2)-year period available for respondent to file both administrative and judicial claims refund under Section 229[12] of the NIRC of 1997, as amended, has already lapsed.

Vehemently, I maintain my position that the nuances of respondent's peculiar situation warrant the relaxation of the said two (2)-year prescriptive period.

To recall, respondent made the subject payments on 06 June 2014[13] during the reinvestigation following its Letter-Protest to the FLD/FAN. As a result of such reinvestigation, the BIR issued the FDDA on 17 March 2017.[14]

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10 Emphasis supplied and italics in the original text.

11 See computation in the Decision dated 07 March 2024, *rollo*, p. 67.

12 SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment. *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis supplied)

13 See Facts of the Case in the Decision dated 07 March 2024, *rollo*, p. 40.

14 Id.

After respondent's administrative appeal, petitioner's Final Decision was only issued on 10 October 2019.[15]

Nearly three (3) years had lapsed from the time respondent made the subject payments until the FDDA was issued. As for petitioner's Final Decision, this was issued more than five (5) years from when respondent paid. If the date of payment (or 06 June 2014) marks the start of the two (2)-year period to file a claim under Section 229 of the NIRC of 1997, as amended, petitioner would have had to file its claim, both administratively and judicially, by 06 June 2016, at the latest. At this time, petitioner was still awaiting the results of its request for reinvestigation.

Indeed, Section 229 of the NIRC of 1997, as amended, before its most recent amendment (as introduced by the Ease of Paying Taxes Law or RA 11976) precludes any supervening causes from interfering with the period set therein.[16] By its letter, respondent should have filed a refund claim by 06 June 2016. Such is without prejudice to how such a claim will impact its assessment which is being evaluated by the same agency, and eventually to be decided upon by the same party, the CIR. Moreso, this contemplates a refund case before the CTA while the BIR's investigation of respondent's assessment is still ongoing.

Nonetheless, **the Supreme Court has elucidated, in *Commissioner of Internal Revenue v. Philippine National Bank*[17] citing *Commissioner of Internal Revenue v. The Philippine American Life Insurance Co., et al.*[18] (Philamlife), that even if the two (2)-year period had already lapsed, the same is not jurisdictional and may be suspended for reasons of equity and other special circumstances.**

Further, in *Philamlife* and *Accra Investments Corporation v. The Honorable Court of Appeals, Commissioner of Internal Revenue and The Court of Tax Appeals,*[19] the Supreme Court held that the prescriptive period of two (2) years should commence to run only from the time that the refund is ascertained. Respondent could have only ascertained the refundability of its previous payments after this Court's declaration of the assessment's nullity.

15 Id., p. 41.
16 Supra at note 12.
17 G.R. No. 161997, 25 October 2005.
18 G.R. No. 105208, 29 May 1995.
19 G.R. No. 96322, 20 December 1991.

Delving a step further, even if the two (2)-year period were to be set aside, the alternative concocts an equally absurd position to burden and corner the taxpayer. With petitioner disputing the payments' validity, and in line with the strict application of Section 229 of the NIRC of 1997, as amended, a denial upon an administrative claim for refund may eventually find its way back to this Court. In such an instance, petitioner's fresh judicial claim suffers exposures to procedural defects from forum shopping.[20]

The Supreme Court's views in *State Land Investment Corporation v. Commissioner of Internal Revenue*,[21] finding that the same resonates harmoniously with the present case:

> ...
>
> **Substantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, thereby enriching itself at the expense of its law-abiding citizens. Under the principle of *solutio indebiti*, provided in Art. 2154, Civil Code, the BIR received something "when there [was] no right to demand it," and thus, it has the obligation to return it. Heavily militating against respondent Commissioner is the ancient principle that no one, not even the state, shall enrich oneself at the expense of another. Indeed, simple justice requires the speedy refund of the wrongly held taxes.**
>
> ...

It is only proper to relax procedural rules when a rigid application of these rules only hinders substantial justice.[22]

Accordingly, for the complete and orderly disposition of the present case, and in the higher interest of substantial justice, basic fairness, and judicial economy, I vote to:

(i) **DENY** petitioner Commissioner of Internal Revenue's Petition for Review;

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[20] Jurisprudence has recognized that forum shopping can be committed in several ways:
(1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) **filing multiple cases based on the same cause of action but with different prayers** (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*). (*Bernardo S. Zamora v. Emmanuel Z. Quinan, Jr., et al.*, G.R. No. 216139, 29 November 2017; Citation omitted, emphasis supplied and italics in the original text)

[21] G.R. No. 171956, 18 January 2008; Citations omitted, emphasis, italics and underscoring supplied.

[22] *City of Dagupan v. Ester F. Maramba*, G.R. No. 174411, 02 July 2014; Emphasis supplied.

(ii) **ORDER** petitioner to **RETURN** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of respondent Kuehne+Nagel, Inc. in the amount of ONE MILLION TWO HUNDRED TWO THOUSAND FOUR HUNDRED SEVENTY-TWO PESOS AND FORTY-FIVE CENTAVOS (₱1,202,472.45), representing the illegally collected income tax, expanded withholding tax, and fringe benefits tax from the former;

(iii) **DIRECT** the Second Division Clerk of Court to **ASSESS AND DETERMINE THE ADDITIONAL DOCKET FEES** to be paid by respondent based on the deficiency value-added tax assessment amounting to ONE MILLION SEVENTY-FOUR THOUSAND NINETY-THREE PESOS AND NINETY CENTAVOS (₱1,074,093.90), inclusive of penalties; and

(iv) **ORDER RESPONDENT TO PAY THE ADDITIONAL DOCKET FEES** mentioned above. Upon receipt of notice of respondent's compliance therewith, petitioner shall be further **ORDERED TO RETURN** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of respondent in the amount of EIGHT HUNDRED EIGHTEEN THOUSAND FOUR HUNDRED EIGHTY-EIGHT PESOS AND THIRTY-FIVE CENTAVOS (₱818,488.35) representing the value-added tax illegally collected from respondent.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice