REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 3017** (CTA Case No. 10319)
	Present:
-versus-	**RINGPIS-LIBAN**, *Acting P.J.*, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, *and* **ANGELES**, *JJ.*
BERONG NICKEL CORPORATION, *Respondent.*	Promulgated: DEC 17 2025 4:10p.m.

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*[1] seeking the reversal and setting aside of the *Decision* dated June 11, 2024 (assailed *Decision*)[2] and the *Resolution* dated October 3, 2024 (assailed *Resolution*)[3] of the Court's Second Division (Court in Division), which cancelled and set aside the assessment for deficiency final withholding tax (FWT) in the aggregate amount of ₱117,062,117.83, inclusive of interest, for taxable year 2015.

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[1] *En Banc* (*EB*) Docket – Vol. I, pp. 5–11.
[2] *Id.* at 18–34.
[3] *Id.* at 36–39.

THE PARTIES

Petitioner, the Commissioner of Internal Revenue (CIR), is the government official vested with the authority to administer and enforce national internal revenue taxes, including, among others, the assessment and collection of all internal revenue taxes, fees, and charges. The CIR holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[4]

Respondent, Berong Nickel Corporation, is a domestic corporation duly organized and existing under Philippine laws. It is registered with the BIR with Tax Identification Number 233-903-690-0000, with office address at 3rd Floor, DMCI Homes Corporate Center, 1321 Apolinario Street, Barangay Bangkal, Makati City.[5]

THE FACTS AND THE PROCEEDINGS

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

> On April 19, 2017, [petitioner] issued the *Letter of Authority* (LOA) No. AUDM35/011282/2017 SN: eLA201500034706, authorizing revenue officers to examine [respondent]'s books of accounts and other accounting records covering taxable year 2015.
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> On August 8, 2018, [respondent] received a copy of *Preliminary Assessment Notice* (PAN) dated July 31, 2018, assessing [respondent] for alleged deficiency taxes, penalties, and interests, for the taxable year 2015, in the total amount of ₱131,271,889.53, broken down as follows:
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> a. Income tax in the amount of ₱17,853,760.70;
> b. Value-Added Tax in the amount of ₱2,711,828.10;
> c. Expanded withholding tax in the amount of ₱1,889,394.86;
> d. Final withholding tax in the amount of ₱104,309,319.86;
> e. Documentary stamp tax in the amount of ₱102,287.55;
> f. Interest for Late Remittance — Excise tax in the amount of ₱2,100,420.34;
> g. Interest for Late Remittance — Final tax (Royalty) in the amount of ₱2,119,878.74; and
> h. Administrative penalties in the amount of ₱185,000.

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[4] *Id.* at 18-19. Decision dated June 11, 2024.
[5] *Id* at 18.

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On August 23, 2018, [respondent] filed its Reply to the PAN on even date.

On January 17, 2019, [respondent] received an undated *Formal Letter of Demand* (FLD), with attached *Details of Discrepancies* and *Assessment Notice*, assessing [respondent] for alleged deficiency final withholding taxes on dividends payments, including interests, for the taxable year 2015 in the total amount of ₱108,655,717.83, computed as follows:

I. FINAL WITHHOLDING TAX

Dividends paid to Non-Resident Foreign Corporations (NRFCs)		236,800,000.00
x Tax Rate		30%
Basic Tax Due		71,040,000.00
ADD: Interest from January 16, 2016 to December 31, 2017	28,262,117.83	
Interest from January 1, 2018 to December 31, 2019	9,353,600.00	37,615,717.83
DEFICIENCY FINAL TAX		**108,655,717.83**

On February 15, 2019, [respondent] filed its Protest of even date, in the form of a *Request for Reconsideration.*

On July 23, 2020, [respondent] received the FDDA dated July 1, 2020, which still found due from [respondent] deficiency final withholding tax and interests, in the total amount of ₱117,062,117.83, for taxable year 2015, computed as follows:

FINAL WITHHOLDING TAX

Dividends paid to NRFCs		236,800,000.00
x Tax Rate		30%
Basic Tax Due		71,040,000.00
ADD: Interest from January 16, 2016 to December 31, 2017	28,262,117.83	
Interest from January 1, 2018 to February 29, 2020	17,760,000.00	46,022,117.83
DEFICIENCY FINAL TAX		**117,062,117.83**

[Respondent] filed the present *Petition for Review* on August 20, 2020. The case was initially raffled to this Court's Third Division.

On November 6, 2020, [petitioner] transmitted the *BIR Records* of this case, consisting of 832 pages in one (1) folder.

Thereafter, on November 10, 2020, [petitioner] filed his *Answer*, interposing the following special and affirmative defenses, to wit: (1) the assessment clearly states the facts and the law on which it was based; (2) the assessment has not yet

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prescribed; and (3) [respondent] is liable for deficiency final tax on dividend payments.

In the Resolution dated November 24, 2020, the parties were ordered to immediately proceed and to personally appear, or through their authorized representative, before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) on December 21, 2020. However, the PMC-CTA issued the *No Agreement to Mediate* dated January 12, 2021, stating that the parties decided not to have their case mediated.

Thus, the Pre-Trial Conference was set and held on May 25, 2021. Prior thereto, *[Petitioner]'s Pre-Trial Brief* was filed on February 3, 2021, while [respondent]'s *Pre-Trial Brief* was submitted on May 20, 2021.

On June 24, 2021, the parties submitted their *Joint Stipulation of Facts and Issues*, which was admitted and approved by the Court in the Resolution dated June 30, 2021, thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated July 8, 2021 was then issued.

Trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

[Respondent] offered the testimony of its lone witness, Ms. Marissa Nicdao, its Accounting Officer.

Subsequently, [respondent] filed its *Formal Offer of Evidence* on July 22, 2021, to which [petitioner] filed a *Comment (Re: Formal Offer of Evidence)* on July 28, 2021. In the Resolution dated December 4, 2021, the Court admitted [respondent]'s offered exhibits, *except* for Exhibits "P-10", "P-10-1", "P-22", "P-22-1", and "P-22-2", for failure to submit the originals for comparison.

[Respondent] then filed its *Motion for Reconsideration (with Motion to Set Additional Commissioner's Hearing)* on March 29, 2022, while [petitioner] failed to file a comment thereon. The Court, in the Resolution dated September 28, 2022, granted [respondent]'s *Motion for Reconsideration.*

[Petitioner] presented the testimony of Revenue Officer (RO) Reynoso Bravo.

On March 10, 2023, [petitioner] filed a *Formal Offer of Evidence*, to which [respondent] filed its *Comment (To [Petitioner]'s Formal Offer of Evidence dated March 2, 2023)* on March 22, 2023.

In the meantime, [respondent] filed a *Supplemental Formal Offer of Evidence* on March 13, 2023.

> In the Resolution dated May 26, 2023, the Court admitted all of [petitioner]'s exhibits, and all of [respondent]'s offered exhibits in its *Supplemental Formal Offer of Evidence*, and scheduled the presentation of [respondent]'s rebuttal evidence on July 13, 2023.
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> Thereafter, in the Notice of Resolution dated June 5, 2023, the present case was transferred to the Second Division of this Court.
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> [Respondent] then presented its recalled witness, Ms. Marissa S. Nicdao on July 13, 2023.
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> On July 25, 2023, [petitioner] filed a *Memorandum,* while [respondent]'s *Memorandum* was submitted on August 14, 2023.
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> The case was considered submitted for decision on August 15, 2023.

On June 11, 2024, the Court in Division rendered the assailed *Decision,* disposing of the case as follows:

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the undated FLD and the FDDA dated July 1, 2020 assessing petitioner for deficiency Final Withholding Tax in the aggregate amount of **₱117,062,117.83**, inclusive of interest, for taxable year 2015, are **CANCELLED** and **SET ASIDE**.
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> **SO ORDERED.**

On July 5, 2024, petitioner filed a *Motion for Reconsideration (Re: Decision dated 11 June 2024)*,[6] to which respondent filed a *Comment (on Respondent's Motion for Reconsideration dated July 5, 2024)*[7] on July 22, 2024.

On October 3, 2024, the Court in Division issued the assailed *Resolution* denying petitioner's *Motion for Reconsideration*, the *fallo* of which reads:

> **WHEREFORE**, premises considered, [petitioner's] Motion for Reconsideration (Re: Decision dated 11 June 2024) is **DENIED** for lack of merit.
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> **SO ORDERED.**

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[6] Division Docket – Vol. III, pp. 854–863.
[7] *Id.* at 865–877.

On October 28, 2024, petitioner filed the present *Petition for Review* before the Court *En Banc.*

Pursuant to the Court *En Banc*'s directive,[8] respondent filed a *Comment (On Petition for Review dated October 28, 2024)*[9] on January 30, 2025.

On March 4, 2025, the Court *En Banc* referred the case to the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) for mediation.[10]

On March 25, 2025, the Court *En Banc* received PMC-CTA Form No. 6—No Agreement to Mediate, dated March 19, 2025, stating that the parties decided not to submit the case for mediation.[11]

On April 23, 2025, the Court *En Banc* noted the PMC-CTA report and submitted the case for decision.[12]

THE ISSUES

Petitioner assigns the following errors:[13]

I.

WHETHER THE SECOND DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT THE SUBJECT TAX ASSESSMENT IS VOID FOR VIOLATION OF RESPONDENT'S RIGHT TO ADMINISTRATIVE DUE PROCESS.

II.

WHETHER THE SECOND DIVISION OF THE HONORABLE COURT ERRED IN RULING THAT PETITIONER FAILED TO GIVE REASONS FOR REJECTING RESPONDENT'S EXPLANATION.

Petitioner's arguments

Petitioner argues that the Court in Division erred in declaring the assessment void due to an alleged violation of respondent's right to administrative due process. Petitioner maintains that the issuance of a Notice of Informal Conference

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8 *Id.* at 51, Notice of Resolution dated January 17, 2025.
9 *Id.* at 52–67.
10 *Id.* at 71, Notice of Resolution.
11 *Id.* at 72.
12 *Id.* at 73, Notice of Resolution.
13 *Id.* at 3, *Petition for Review*, Assignment of Errors.

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(NIC) was no longer required under Revenue Regulations (RR) No. 18-2013, which was in effect at the time the Letter of Authority (LOA) was issued. Moreover, petitioner avers that respondent was adequately informed of the proposed assessment through e-mail correspondence and meetings, thereby satisfying the requirements of due process.

Petitioner also argues that the Final Decision on Disputed Assessment (FDDA) sufficiently stated the factual and legal bases of the assessment, and that respondent failed to overcome the presumption of correctness of the tax assessment.

Respondent's arguments

Respondent counters that the *Petition for Review* raised no new arguments and merely reiterated those already passed upon and rejected by the Court in Division. It emphasizes that RR No. 7-2018, which reinstated the requirement to issue an NIC, was already in effect when the Preliminary Assessment Notice (PAN) was issued. Thus, the failure to issue an NIC constituted a substantial violation of its right to due process, rendering the assessment void.

Respondent further asserts that the FDDA failed to provide any explanation for the rejection of its defenses, in violation of Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and established jurisprudence. It maintains that the verbatim repetition of the PAN in both the Formal Letter of Demand (FLD) and the FDDA demonstrates a lack of consideration of its multiple defenses. It concludes that petitioner's procedural lapses invalidated the assessment, and that the lifeblood doctrine cannot justify violations of due process.

THE COURT *EN BANC*'S RULING

The instant Petition for Review was filed out of time.

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

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

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> (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 <u>within fifteen days from receipt</u> 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)

Jurisprudence has consistently held that, in cases involving the government, the counting of the reglementary period to appeal, and the determination of when a decision becomes final, is based on the date the Office of the Solicitor General (OSG),[14] as the government's principal counsel, receives the decision or resolution. Receipt by a lawyer merely deputized by the OSG does not bind the government for purposes of reckoning the appeal period, since the OSG retains full supervision and control over such deputized counsel.[15] As such, parties must always refer to the OSG's date of receipt for computing deadlines.

This principle was articulated in *Baldovino-Torres v. Torres*,[16] where the Supreme Court affirmed its earlier rulings on the matter:

> In the case of *National Power Corporation v. National Labor Relations Commission* (*NAPOCOR*), the Court held that **the proper basis for computing the reglementary period to file an appeal and in determining whether a decision had attained finality is service on the OSG**. In holding so, the Court emphasized that the lawyer deputized by the OSG is considered as a mere representative of the latter who retains supervision and control over the deputized lawyer. As a consequence, copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter.

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[14] *Republic v. Viaje, et al.*, G.R. No. 180993, January 27, 2016 [Per J. Reyes, Third Division], citing *National Power Corporation v. National Labor Relations Commission, et al.*, G.R. Nos. 90933-61, May 29, 1997 [Per J. Romero, Second Division].

[15] *Baldovino-Torres v. Torres, et al.*, G.R. No. 248675, July 20, 2022 [Per J. Inting, Third Division]; *Commissioner of Customs v. Court of Tax Appeals, et al.*, G.R. No. 132929, March 27, 2000 [Per J. Mendoza, Second Division]; *National Power Corporation v. National Labor Relations Commission, et al.*, G.R. Nos. 90933-61, May 29, 1997 [Per J. Romero, Second Division].

[16] G.R. No. 248675, July 20, 2022 [Per J. Inting, Third Division].

> The *NAPOCOR* case was cited in the subsequent case of *Commissioner of Customs v. Court of Tax Appeals*, where it was reiterated that **although the OSG may have deputized the lawyers in a government agency represented by it, the OSG continues to be the principal counsel and, therefore, service on it of legal processes, and not that on the deputized lawyers, is decisive.**
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> In the same vein, the period to file a motion for reconsideration in the present case should be counted from the receipt by the OSG of a copy of the RTC Decision on April 4, 2017. Consequently, the filing by the OSG of its Motion for Reconsideration questioning the RTC Decision on April 18, 2017 was well within the reglementary period for filing such motion. **The counting of the period for its filing should be reckoned from the date of receipt of the assailed decision by the OSG** and not by the public prosecutor. This is because the public prosecutor acted as a mere representative of the OSG which, in turn, retained supervision and control over the former. *(Emphasis supplied; Citations omitted)*

A government lawyer deputized by the OSG is merely a representative, while the OSG retains supervision and control over the deputized counsel.[17] Thus, copies of court decisions served on a deputized counsel are not binding until they are received by the OSG, as the principal counsel.

In this case, petitioner erroneously relied on the date of receipt by the BIR's deputized counsel of the assailed *Resolution* on October 11, 2024.[18] However, records show that the OSG received the same *Resolution* earlier, on **October 9, 2024**.[19]

Thus, the 15-day reglementary period to file a petition for review or move for an extension, reckoned from October 9, 2024 under Section 3(b), Rule 8[20] of the RRCTA, expired on **October 24, 2024**.

However, petitioner filed the instant *Petition for Review* only on **October 28, 2024**. Consequently, the assailed *Resolution* of the Court in Division became *ipso facto* final and

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[17] *Baldovino-Torres v. Torres, et al.*, G.R. No. 248675, July 20, 2022 [Per J. Inting, Third Division]; *Commissioner of Customs v. Court of Tax Appeals, et al.*, G.R. No. 132929, March 27, 2000 [Per J. Mendoza, Second Division]; *National Power Corporation v. National Labor Relations Commission, et al.*, G.R. Nos. 90933–61, May 29, 1997 [Per J. Romero, Second Division].

[18] *EB* Docket, p. 1, Petition for Review.

[19] Division Docket – Vol. III, p. 879.

[20] SEC. 3. *Who may appeal; period to file petition.* – .... (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

executory by operation of law due to petitioner's failure to perfect an appeal within the prescribed period.[21]

It is well-settled that the failure to perfect an appeal within the prescribed period is not a mere technicality but jurisdictional.[22] Once the period lapses, the Court loses jurisdiction to review the assailed *Resolution,* thereby precluding petitioner from challenging it.

The Court in Division did not err in cancelling the assessment for violating respondent's right to due process.

Even assuming that the present appeal was timely filed, the assessment is void for failure to comply with the due process requirements mandated by law.

The Supreme Court has constantly enjoined the BIR to strictly observe the safeguards prescribed by law[23] and has nullified tax assessments that infringe on a taxpayer's right to due process,[24] as the law imposes a substantive, not merely a formal, requirement.[25]

Petitioner insists that when the LOA was issued on April 19, 2018, the requirement to issue an NIC had already been removed in RR No. 18-2013.

Petitioner's argument fails to persuade.

While RR No. 18-2013 dispensed with the mandatory issuance of an NIC, this requirement was unequivocally reinstated by RR No. 7-2018, issued on **January 31, 2018**, which expressly mandates the issuance of an NIC to ensure that the taxpayer is informed, in writing, of the discrepancies found during the investigation and is afforded an opportunity to explain or present its side during an informal conference. The relevant provision states:

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21 *Brual v. Contreras, et al.*, G.R. No. 205451, March 7, 2022 [Per J. Hernando, Second Division].
22 *Id.*
23 *Commissioner of Internal Revenue v. Stradcom Corporation*, G.R. No. 255520, April 21, 2025 [Per J. Caguioa, Third Division].
24 *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021 [Per J. Hernando, Second Division]; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010 [Per J. Mendoza, Second Division]; *Commissioner of Internal Revenue v. Enron Subic Power Corporation*, G.R. No. 166387, January 19, 2009 [Per J. Corona, First Division].
25 *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021 [Per J. Hernando, Second Division].

> SEC. 2. *Amendment.* — Section 3 of RR 12-99, as amended by RR No. 13-18, is hereby amended by adding Section 3.1.1 providing for the preparation of a Notice of Informal Conference, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities. The pertinent provisions of Section 3 of RR 12-99 shall now read as follows:
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> SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
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> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
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> 3.1.1 *Notice for Informal Conference.* - The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case.
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> ...

Here, although the LOA was issued before RR No. 7-2018, the controlling factor is that the PAN was issued on **August 8, 2018**, more than six (6) months after RR No. 7-2018 had taken effect. By that time, the issuance of an NIC had once again become a mandatory due process requirement.

It is well-settled that the failure to issue an NIC, as required under RR No. 12-99, as amended, in relation to Section 228 of the NIRC of 1997, as amended, constitutes a denial of due process and renders the assessment void.[26] In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*[27] (*Avon*), the Supreme Court emphasized that the NIC is not a mere formality but a substantive requirement designed to protect the taxpayer and promote early resolution of disputes:

[26] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398–99 & 201418–19, October 3, 2018 [Per J. Leonen, Third Division], citing *Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, G.R. No. 172598, December 21, 2007 [Per J. Velasco, Jr., Second Division].

[27] G.R. Nos. 201398–99 & 201418–19, October 3, 2018 [Per J. Leonen, Third Division].

> **Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference** and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.
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> **The Notice of Informal Conference** and the Preliminary Assessment Notice are **a part of due process. They give** both **the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice.** (Emphasis supplied)

As in *Avon*, respondent was deprived of due process because no NIC was issued prior to the PAN.

Petitioner insists that despite the absence of an NIC, respondent was sufficiently apprised of the proposed deficiency assessments through the exchanges of correspondence between the revenue officers and respondent's authorized representative. This contention is untenable.

As correctly observed by the Court in Division:

> With regard to [petitioner]'s argument that [respondent] was apprised of the proposed deficiency assessments as evidenced by the correspondence made between the handling revenue officers and [respondent]'s authorized representative, the Court is not swayed. Again, it should be noted that the alleged correspondences between [petitioner]'s ROs and [respondent] were not presented in evidence during trial. It is well-settled that the Court cannot consider evidence which has not been formally offered. And, granting that these correspondences were presented in evidence, it cannot discount the fact that [petitioner] failed to comply with its own rule in issuing a deficiency assessment.[28]

Even if such communications had indeed occurred, they cannot substitute for the mandatory issuance of an NIC. What the law and regulations demand is compliance with the prescribed due process requirement, not informal exchanges that are neither documented nor formally offered in evidence.

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[28] Resolution dated October 3, 2024.

Accordingly, the absence of an NIC prior to the issuance of the PAN invalidates the entire assessment.

Furthermore, petitioner's argument that the FDDA sufficiently stated the factual and legal bases for the assessment is unavailing.

The Court *En Banc* affirms the findings of the Court in Division that the FDDA failed to comply with the due process requirements under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended by RR No. 18-2013. As established in *Commissioner of Internal Revenue v. Liquigaz v. Philippines Corporation*,[29] "an FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. Therefore, it is as if there was no decision rendered by the CIR."

Section 228 of the NIRC of 1997, as amended, expressly requires that the taxpayer be informed in writing of the law and the facts on which the assessment is made.[30] This requirement also applies to the FDDA[31] to ensure the taxpayer is afforded a meaningful opportunity to respond to the assessment.[32] In this case, while petitioner argues that the FDDA sufficiently stated the factual and legal bases of the assessment, the records show otherwise.

Petitioner's failure to articulate the reasons for rejecting respondent's explanations, particularly its assertion that the dividends were paid to a domestic corporation and not to non-resident foreign corporations, deprived respondent of the ability to understand how its arguments and defenses were evaluated.

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[29] G.R. No. 215534, April 18, 2016 [Per J. Mendoza, Second Division].

[30] SEC. 228. *Protesting of Assessment.* - **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings**: Provided, however, That a *pre-assessment notice* shall not be required in the following cases:

....

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings. (Emphasis supplied)

[31] *Commissioner of Internal Revenue v. Liquigaz v. Philippines Corporation*, G.R. No. 215534, April 18, 2016 [Per J. Mendoza, Second Division].

[32] See *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018 [Per J. Leonen, Third Division]; *Commissioner of Internal Revenue v. Liquigaz v. Philippines Corporation*, G.R. No. 215534, April 18, 2016 [Per J. Mendoza, Second Division].

Moreover, the testimony of Revenue Officer Reynoso Bravo, respondent's own witness, confirmed that no explanation was provided in the FDDA regarding the rejection of respondent's defenses. The mere statement that "no compelling reason" was found to reverse the findings does not satisfy the requirement to state the particular facts and legal basis for rejecting the taxpayer's position.

As held in *Avon*, due process is violated when the taxpayer is left unaware of how its defenses were appreciated, and when the assessment is issued without a clear explanation of the factual and legal basis for rejecting those defenses.

Accordingly, the Court *En Banc* finds no reversible error in the Court in Division's conclusion that the BIR failed to comply with the due process requirements in issuing the subject assessment. Again, the Supreme Court has consistently enjoined the BIR to strictly observe the prescribed procedures in the issuance of assessment notices, precisely to uphold the taxpayers' constitutional rights to due process.[33] Any deviation from these mandatory requirements renders the assessment void.

WHEREFORE, premises considered, the instant *Petition for Review* is **DISMISSED** for having been filed out of time and for lack of merit.

Accordingly, the *Decision* dated June 11, 2024, and the *Resolution* dated October 3, 2024, of the Court's Second Division are **AFFIRMED**.

SO ORDERED.

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LANEE S. CUI-DAVID
Associate Justice

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[33] *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue*, G.R. No. 249153, September 12, 2022 [Per J. Dimaampao, Third Division], citing *Commissioner of Internal Revenue v. Yumex Philippines Corp.*, G.R. No. 222476, May 5, 2021 [Per C.J. Gesmundo, First Division]; *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016 [Per J. Leonen, Second Division] and *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014 [Per J. Peralta, Third Division]; *Commissioner of Internal Revenue v. Algue, Inc.*, G.R. No. L-28896, February 17, 1988 [Per J. Cruz, First Division].

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

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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
Acting Presiding Justice