REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ADELANTADO CORPORATION,
Petitioner,

CTA *EB* NO. 3092
(CTA Case No. 10406)

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x- -x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA *EB* NO. 3096
(CTA Case No. 10406)

Present:

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

- versus -

ADELANTADO CORPORATION,
Respondent.

Promulgated:
JUL 15 2026 4:?

x - x

DECISION

CUI-DAVID, J.:

Before the Court *En Banc* are the consolidated *Petitions for Review* filed by Adelantado Corporation[1] (Adelantado) and the Commissioner of Internal Revenue[2] (CIR), assailing the

[1] *En Banc* (*EB*) Docket (*EB* No. 3092), pp. 1–57.
[2] *EB* Docket (*EB* No. 3096), pp. 10–23.

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Decision[3] dated August 15, 2024, and the *Resolution*[4] dated January 24, 2025, of the Court's Second Division (Court in Division), which partially upheld the assessment against Adelantado.

THE PARTIES

Adelantado is a domestic corporation duly organized and existing under Philippine laws, with principal office address at 6th Floor Sol Building, 112 Amorsolo Street, Legaspi Village, San Lorenzo, City of Makati, National Capital Region, Fourth District, Philippines 1223.[5]

The CIR is vested with the authority and 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 by the Bureau of Internal Revenue (BIR).[6]

THE FACTS AND PROCEEDINGS

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

> On October 19, 2016, [the CIR] issued the *Letter of Authority* (LOA) No. eLA201200033073, authorizing Revenue Officer (RO) Melissa Baes and Group Supervisor (GS) Rebecca Pandapatan of Revenue District Office (RDO) No. 47-East Makati, to examine [Adelantado]'s books of accounts and other accounting records for all internal revenue taxes, for the period from January 1, 2015 to December 31, 2015.
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> On February 22, 2018, [the CIR], through Regional Director Glen A. Geraldino, issued the *Preliminary Assessment Notice* (PAN) with *Details of Discrepancies*, informing [Adelantado] that the BIR found due from [Adelantado] deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and documentary stamp tax (DST), plus interests, surcharge, and compromise penalty, in the total amount of ₱15,066,881.46, for the taxable year 2015.

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[3] *EB* Docket (*EB* No. 3092), pp. 65–100; *EB* Docket (*EB* Case No. 3096), pp. 31–66.
[4] *EB* Docket (*EB* No. 3092), pp. 102–108; *EB* Docket (*EB* Case No. 3096), pp. 68–74.
[5] *EB* Docket (*EB* No. 3092), pp. 3–4, *Petition for Review*, III. The Parties, par. 8.
[6] *EB* Docket (*EB* No. 3096), p. 12, *Petition for Review*, The Parties, par. 9.

On March 14, 2018, [Adelantado] filed its letter-response dated March 12, 2018, refuting the findings of the BIR, and requesting reconsideration and reinvestigation of the deficiency tax assessments, as well as the cancellation of the said PAN, for lack of factual basis.

On April 2, 2018, [Adelantado] received the *Formal Assessment Notice*, with attached *Assessment Notices* and *Details of Discrepancies* (FAN), dated March 14, 2018, signed by Regional Director Geraldino, assessing [Adelantado] of deficiency income tax, VAT, EWT, and DST, plus interests, surcharge, and compromise penalty, in the aggregate amount of ₱13,276,132.77, for the taxable year 2015.

On April 30, 2018, [Adelantado] filed its letter-protest dated March 14, 2018 to the FAN, reiterating its arguments in its letter-response dated March 12, 2018, and requesting reconsideration and reinvestigation of the deficiency tax assessments, as well as the cancellation of the said FAN with reference to LOA No. eLA201200033073, for lack of factual basis.

On September 9, 2019, [Adelantado] received the *Final Decision on Disputed Assessment* (FDDA) dated September 5, 2019 signed by Regional Director Maridur V. Rosario, for deficiency internal revenue taxes, including interests, surcharge, and compromise penalty, for taxable year 2015, in the total amount of ₱14,527,753.44.

[Adelantado] then filed its *Request for Reconsideration on the Final Decision on Disputed Assessment for Taxable Year 2015* before the [CIR] on October 7, 2019.

On October 21, 2020, [Adelantado] received the WDL No. RR8A-WDL-2020-10-235 dated October 9, 2020, signed by Assistant Regional Director Greg M. Buhain, for the deficiency internal revenue taxes, for taxable year 2015, in the total amount of ₱14,527,753.44.

The [original] *Petition for Review* was filed on November 19, 2020 [with the Court in Division].

[Adelantado] filed an *Urgent Motion to Lift Warrant of Garnishment and Suspend the Collection of Tax, and Dispense with Payment of Bond* on December 17, 2020. It also respectively filed its *Compliance (with attached Original Warrant of Distraint and Levy dated October 9, 2020)* and *Manifestation* on December 28, 2020 and January 14, 2021. [The CIR] posted his *Opposition (To [Adelantado]'s Urgent Motion to Lift Warrant of Garnishment and Suspend the Collection of Tax, and Dispense with the Payment of Bond)* on March 1, 2021. On March 15, 2021, [Adelantado] filed its

Motion to Admit Reply (To [the CIR]*'s Comment/Opposition dated March 1, 2021).*

In the meantime, in relation to *Urgent Motion to Lift Warrant of Garnishment and Suspend the Collection of Tax, and Dispense with Payment of Bond,* [Adelantado] filed its *Formal Offer of Evidence* on March 11, 2021, to which [the CIR] posted his *Comment/Opposition (To [Adelantado]'s Formal Offer of Evidence)* on March 22, 2021.

On May 24, 2021, [the CIR] posted his *Answer*, raising certain special and affirmative defenses, to wit: (1) the FDDA dated September 5, 2019 is final, executory and demandable, hence, the execution of summary collection remedies is valid; (2) the assessments against [Adelantado] are valid; (3) the LOA was properly served to [Adelantado], and hence, its right to due process was not violated; (4) the FAN dated March 14, 2018 was validly issued; (5) the WDL and *Warrant of Garnishment* are validly issued; (6) the ten (10)-year period to assess applies to this case; and (7) the assessments contain the factual and legal bases of the assessment.

After trial on the merits, during which both parties presented evidence in support of their respective claims, the Court in Division rendered the assailed *Decision*, the dispositive portion of which reads:

WHEREFORE, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, the assessment issued by respondent against petitioner covering the deficiency DST for TY 2015 in the amount of ₱31,299.00 should be **CANCELLED** and **SET ASIDE**. However, the assessments for deficiency income tax, VAT and EWT for TY 2015 are to be **UPHELD IN PART**. Consequently, petitioner should be **ORDERED TO PAY** respondent the aggregate amount of **THREE MILLION FIVE HUNDRED THIRTY-NINE THOUSAND THIRTY-EIGHT PESOS AND FORTY-FOUR CENTAVOS (₱3,539,038.44)**, inclusive of surcharge and deficiency interest imposed under Sections 248(A)(3) and 249(B) of the NIRC of 1997, as amended, computed as follows:

	IT	**VAT**	**EWT**	**Total**
Basic Tax	₱1,902,082.11	₱242,322.08	₱23,036.80	2,167,440.99
Add: 25% Surcharge	475,520.53	60,580.52	5,759.20	541,860.25
20% Deficiency Interest				
IT: From Apr. 16, 2016 to Dec. 31, 2017 *[₱1,902,082.11 x 20% x 625/365 days]*	651,397.98			651,397.98
VAT: From Jan 26, 2016 to Dec. 31, 2017		93,742.13		93,742.13

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[₱242,322.08 x 20% x 706/365 days]				
EWT: From Jan. 14, 2016 to Dec. 31, 2017 *[₱23,036.80 x 20% x 718/365 days]*			9,063.25	9,063.25
12% Deficiency Interest from Jan. 1, 2018 to Apr. 16, 2018				
IT: *[₱1,902,082.11 x 12% x 106/365 days]*	66,286.26			66,286.26
VAT: *[₱242,322.08 x 12% x 106/365 days]*		8,444.76		8,444.76
EWT: *[₱23,036.80 x 12% x 106/365 days]*			802.82	802.82
Total Amount Due, April 16, 2018	**₱3,095,286.88**	**₱405,089.49**	**₱38,662.07**	**₱3,539,038.44**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the total unpaid deficiency taxes due as of April 16, 2018, in the amount of ₱3,539,038.44 or equivalent to ₱1,163.52 per day, computed from April 17, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018.

SO ORDERED.

The CIR and Adelantado filed their respective motions for reconsideration on September 5, 2024[7] and September 12, 2024.[8] In the assailed *Resolution,* the Court denied both motions for being mere reiterations of issues already exhaustively passed upon, considered, and resolved in the assailed *Decision.* The *fallo* of the assailed *Resolution* reads:

> **WHEREFORE**, premises considered, [the CIR]'s "Motion for Partial Reconsideration" and [Adelantado]'s "Motion for Reconsideration (Re: Decision dated August 15, 2024)" are **DENIED** for lack of merit.
>
> **SO ORDERED**.

On February 19, 2025, Adelantado filed its *Petition for Review*[9] with the Court *En Banc,* docketed as CTA *EB* No. 3092, without comment from the CIR.[10]

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[7] Division Docket – Vol. V, pp. 2310–2316, *Motion for Partial Reconsideration.*
[8] Division Docket – Vol. V, pp. 2321–2367, *Motion for Reconsideration (Re: Decision dated August 15, 2024).*
[9] Supra note 1.
[10] *EB* Docket (*EB* No. 3092), p. 126, Records Verification dated June 2, 2025.

On the same date, the CIR filed a *Motion for Extension of Time to File Petition for Review,*[11] seeking an additional fifteen (15) days within which to file its petition for review. The Court *En Banc* granted the motion for extension on February 27, 2025, giving the CIR until March 6, 2025 to file an appeal subject to the conditions that said motion is filed on time and compliant with CTA *En Banc* Resolution Nos. 8-2024 and 1-2025.[12] On March 6, 2025, the CIR filed a *Petition for Review,*[13] to which Adelantado filed a *Comment/Opposition (To Petitioner's Petition for Review dated March 5, 2025)*[14] on May 8, 2025.

On March 17, 2025, the Court *En Banc* ordered the consolidation of the above-captioned cases pursuant to Section 1, Rule 31 of the Rules of Court, as amended.[15]

On July 8, 2025, the Court *En Banc* referred the consolidated cases to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for mediation, pursuant to Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.[16]

On October 13, 2025, the Court *En Banc* submitted for decision the consolidated cases[17] following the receipt of the PMC-CTA Form 6 – No Agreement to Mediate[18] dated August 27, 2025, stating that the parties decided not to have their cases mediated.

THE ISSUES

The parties assign the following errors to the Court in Division:

CTA *EB* No. 3092:[19]

A. The Honorable CTA in Division erred in ruling that there was no violation of due process; and

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[11] *EB* Docket (*EB* No. 3096), pp. 1–4.
[12] *Id.* at 7, Notice of Resolution.
[13] Supra note 2.
[14] *EB* Docket (*EB* Case No. 3092), pp. 113–122.
[15] *Id.* at 111.
[16] *Id.* at 127, Notice of Resolution.
[17] *Id.* at 129, Notice of Resolution.
[18] *Id.* at 128.
[19] *Id.* at 10, *Petition for Review*, V Assignments of Error.

B. The Honorable CTA in Division erred in ruling that [Adelantado] is liable for the alleged deficiency income tax, VAT, and EWT, plus penalty and interest, for taxable year 2015 in the amount of ₱3,539,038.44.

CTA *EB* No. 3096:[20]

I. The Honorable Court lacks jurisdiction over [Adelantado]'s petition for review.

II. The Honorable Court erred in partially granting [Adelantado]'s petition for review.

THE ARGUMENTS

Adelantado's Petition for Review (CTA EB No. 3092)

Adelantado assails the rulings of the Court in Division insofar as the sustained portions of the deficiency income tax, VAT, and EWT assessments for TY 2015. It argues that the assessments are void for violation of due process, asserting that the BIR failed to issue a Notice for Informal Conference (NIC) as allegedly required under Revenue Regulations (RR) No. 7-2018; improperly served the Letter of Authority (LOA), Preliminary Assessment Notice (PAN) and Formal Assessment Notice (FAN) upon persons who were neither its employees nor duly authorized representatives; failed to meaningfully address its defenses in the PAN, FAN, and FDDA; and prematurely issued the Warrant of Distraint and/or Levy (WDL) while its motion for reconsideration before the CIR was still pending.

Adelantado further disputes the disallowance of its claimed deductions and the imposition of deficiency income tax, VAT, EWT, surcharges, and interest, asserting that these lack both factual and legal bases, and that certain assessments have already prescribed.

[20] *EB* Docket (*EB* Case No. 3096), p. 15, *Petition for Review*, Assignment of Errors.

The CIR's Petition for Review (CTA EB No. 3096)

The CIR, on the other hand, argues that the Court in Division lacked jurisdiction to take cognizance of Adelantado's original Petition for Review, claiming that it was prematurely filed while its administrative appeal, *i.e.*, Request for Reconsideration of the FDDA, remained pending before the CIR. The CIR maintains that the receipt of a WDL does not trigger the right to appeal under Section 228 of the NIRC.

Even assuming that the Court in Division has jurisdiction over Adelantado's original Petition for Review, the CIR maintains that the Court in Division gravely erred in cancelling or reducing certain assessed items. It contends that Adelantado failed to discharge its burden of proof with respect to: (a) the deductibility of interest expense; (b) the existence and proper application of the net operating loss carry over (NOLCO) allegedly incurred in 2013 and applied in TY 2015; and (c) the claim that certain income payments for building improvements were consummated in 2014 and thus not subject to EWT in 2015. The CIR emphasizes that tax assessments enjoy the presumption of correctness and that Adelantado's reliance on financial statements and tax returns, without corroborating evidence, is insufficient to overturn the assessments.

By way of comment/opposition, Adelantado counters that the Court in Division validly exercised jurisdiction over the case, arguing that the issuance of the WDL constituted an implied denial of its administrative protest, making the appeal seasonable under Section 7(a)(1)[21] of RA No. 1125, as amended. It further maintains that jurisprudence recognizes the Court's authority to rule not only on assessments but also the validity of WDL as "other matters arising under the NIRC."

Adelantado further argues that the CIR merely rehashed issues already resolved by the Court in Division, stressing that it sufficiently proved the deductibility of its interest expense, the availability and proper application of its NOLCO, and the correct timing of income payments for withholding tax purposes.

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[21] 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 or other laws administered by the Bureau of Internal Revenue[.]

THE COURT *EN BANC'S* RULING

The Court En Banc has jurisdiction over Adelantado's Petition for Review.

The CIR's Petition for Review, however, is dismissible for lack of deputation from the Office of the Solicitor General.

Before addressing the merits, the Court *En Banc* first determines whether the present *Petitions for Review* were timely filed.

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 **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)

Records show that Adelantado and the CIR received the assailed *Resolution* denying their respective motions for reconsideration on February 4, 2025.[22] Thus, both parties had fifteen (15) days therefrom, or until February 19, 2025, to file their respective petitions for review before the Court *En Banc*. As Adelantado filed its *Petition for Review* on February 19, 2025, the same was timely.

[22] Division Docket – Vol. V, p. 2385, *Notice of Resolution*.

Having established the timeliness of the filing, the Court *En Banc* also finds that it has jurisdiction to take cognizance of Adelantado's *Petition for Review* under Section 2(a)(1), Rule 4[23] of the RRCTA.

Meanwhile, the CIR filed a *Motion for Extension of Time to File Petition for Review* on February 19, 2025, which the Court granted, giving the CIR until March 6, 2025 to file a petition. Notably, the motion for extension was timely filed, whether reckoned from the receipt of the BIR's counsel or from the Office of the Solicitor General (OSG). Consequently, the CIR's *Petition for Review,* filed on March 6, 2025, was likewise timely.

However, a review of the records reveals that no written deputation or authority from the OSG authorizing the filing of the *Motion for Extension of Time to File Petition for Review* and the *Petition for Review* was attached thereto by the CIR. In the absence of such deputation, the CIR's *Petition for Review* is procedurally dismissible for lack of authority of its counsels to file the same, consistent with settled jurisprudence recognizing the OSG as the statutory counsel of the CIR in proceedings before the CTA.[24]

In any case, even assuming that the CIR's counsels was duly authorized to file the present appeal, the assessment is void for failure to comply with the due process requirements mandated by law.

The tax assessments were issued in violation of Adelantado's right to due process.

Adelantado claims that it was deprived of due process because the CIR failed to issue a Notice of Informal Conference (NIC). Notably, the CIR did not refute this allegation,[25] thereby leaving the absence of an NIC uncontroverted on record.

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[23] SEC. 2. *Cases within the jurisdiction of the Court en banc.* — The Court *En Banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.]

[24] *Commissioner of Internal Revenue v. Second Division of the Hon. Court of Tax Appeals,* G.R. No. 280165, August 4, 2025 [Per J. Inting, Third Division], citing ADM. CODE (1987), Book IV, Title III, Chapter 12, sec. 35(1).

[25] Division Docket – Vol. II, pp. 929–945, *Answer*; Division Docket – Vol. V, pp. 2248–2267, *Memorandum for Respondent.*

Adelantado's contention is well-taken.

Section 3.1.1[26] of RR No. 12-1999[27] originally required the BIR to issue an NIC and conduct an informal conference as part of the due process requirements in deficiency tax assessments. While RR No. 18-2013 [28] temporarily removed this requirement,[29] it was unequivocally reinstated by RR No. 7-2018, which took effect on **February 16, 2018**.[30] Section 2 of RR No. 7-2018 provides:

> 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:
>
> "SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> 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

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[26] SEC.3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
3.1 Mode of procedures in the issuance of a deficiency tax assessment:
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 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. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

[27] 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 6, 1999.

[28] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

[29] SEC. 2. *Amendment.* — Section 3 of RR 12-99 is hereby amended by deleting Section 3.1.1 thereof which provides for the preparation of a Notice of Informal Conference, thereby renumbering other provisions thereof, and prescribing other provisions for the assessment of tax liabilities.

[30] Fifteen (15) days after its publication in Manila Bulletin on February 1, 2018.

> 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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> The Informal Conference shall in no case extend beyond thirty (30) days from receipt of the notice for informal conference. If it is found that the taxpayer is still liable for deficiency tax or taxes after presenting his side, and the taxpayer is not amenable, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case within seven (7) days from the conclusion of the Informal Conference to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative for issuance of a deficiency tax assessment.
>
> Failure on the part of Revenue Officers to comply with the periods indicated herein shall be meted with penalty as provided by existing laws, rules and regulations." (Emphasis supplied)

The amendment expressly mandates the issuance of an NIC to ensure that taxpayers are informed, in writing, of any discrepancies discovered during the investigation and are afforded an opportunity to present their side prior to the issuance of a PAN. The use of the word ***"shall"*** in subsection 3.1.1 underscores the mandatory character of this requirement. Being an integral component of the due process safeguards governing tax assessments, the absence of an NIC renders the resulting assessment void.

Given that RR No. 7-2018 had already taken effect at the time material to the issuance of the PAN, compliance with the NIC requirement was mandatory. In this case, although the LOA was issued on October 19, 2016, the PAN was issued only on **February 22, 2018**, <u>after the effectivity of RR No. 7-2018</u>. **Thus, the governing regulation at the time of assessment unequivocally required the prior issuance of an NIC.**

A review of the records confirms that no NIC was issued to Adelantado prior to the PAN, as established during the cross-examination of Revenue Officer Melissa R. Baes, who conducted the audit of Adelantado's tax liabilities for TY 2015:

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Atty. Vergara:	Ms. Witness, for the record, for this case, do [sic] you serve an NIC to the petitioner?
JUSTICE LIBAN:	Did she...
Q:	Did she serve a Notice of Informal Conference for this assessment?
A:	May I refer to the docket, Your Honor?
Q:	Your Honor, for the record LOA is on page 3 and the PAN was found on page 440.
JUSTICE LIBAN:	What is the question?
Atty. Vergara:	If there is a notice of informal conference served to petitioner?
JUSTICE LIBAN:	You can refer to Question No. 19. On November 15, 2016, a first notice of presentation of records was issued to petitioner.
A:	With regard to the notice of informal conference, you were asking?
JUSTICE LIBAN:	Siguro between those things.
A:	I believe during this time the notice of informal conference was not required.
JUSTICE LIBAN:	There is none on the record?
A:	Based on what...
JUSTICE LIBAN:	Yes, there is nothing on record?
A:	Yes.[31]

[31] TSN, Revenue Officer Melissa Carla Baes, March 9, 2023, pp. 9–10.

The undisputed absence of an NIC prior to the PAN is fatal to the validity of the assessment. It is well-settled that failure to comply with mandatory due process requirements under RR No. 12-1999, as amended, in relation to Section 228 of the NIRC of 1997, as amended, renders the assessment void.[32]

In Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue (*Pilipinas Shell*),[33] the Supreme Court held that the CIR's failure to issue an NIC constituted a denial of due process, thereby invalidating the assessment.

The same principle applies here. As in *Pilipinas Shell*, Adelantado was deprived of due process when no NIC was issued prior to the PAN, notwithstanding the intervening effectivity of RR No. 7-2018.

Moreover, in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.* [34] (*Avon*), the Supreme Court emphasized that the NIC is not a mere procedural formality but a substantive requirement designed to protect taxpayers and facilitate the early resolution of disputes:

> **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.
>
> **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, citation omitted)

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[32] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398 *et al.*, October 3, 2018 [Per J. Leonen, Third Division], citing *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, G.R. No. 172598, December 21, 2007 [Per J. Velasco, Jr., Second Division].

[33] G.R. No. 172598, December 21, 2007 [Per J. Velasco, Jr., Second Division], cited in *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. Nos. 197945 *et al.*, July 9, 2018 [Per J. Leonardo-De Castro, First Division].

[34] G.R. Nos. 201398 *et al.*, October 3, 2018 [Per J. Leonen, Third Division].

Avon underscores that both the NIC and PAN are integral components of due process, affording the parties a meaningful opportunity to address and resolve issues prior to the issuance of a final assessment.

Consistent with these rulings, the Supreme Court has repeatedly enjoined the BIR to strictly observe the due process safeguards prescribed by law and regulations[35] and has not hesitated to nullify tax assessments that violate them[36] as the law imposes a substantive, not merely a formal, requirement[37] that cannot be disregarded.

Here, although the LOA was issued prior to RR No. 7-2018, the critical stages of the assessment process, particularly the issuance of the PAN, occurred after its effectivity. The BIR's failure to issue an NIC cannot be excused by the earlier issuance of the LOA. Compliance with due process requirements must be observed at every stage of the assessment process,[38] especially at those stages governed by the prevailing regulations at the time of their execution.

Neither can the subsequent issuance of notices, nor Adelantado's responses to the PAN and FAN, cure this defect. The law requires strict compliance with prescribed procedures, and the absence of an NIC prior to the PAN renders the entire assessment void. When the assessment is void *ab initio* for want of due process, it produces no legal effect and may be assailed at any time, even if no protest was filed.[39]

While taxation is the lifeblood of the government, the State's power to tax is not absolute and must be exercised in accordance with due process.

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35 *Commissioner of Internal Revenue v. Stradcom Corporation*, G.R. No. 255520, April 21, 2025 [Per J. Caguioa, Third Division]; *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, G.R. No. 172598, December 21, 2007 [Per J. Velasco, Jr., Second Division], citing *Roxas v. Court of Tax Appeals*, G.R. No. L-25043, April 26, 1968 [Per J. Bengzon, J.P., *En Banc*].

36 *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].

37 *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021 [Per J. Hernando, Second Division].

38 *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398 *et al.*, October 3, 2018 [Per J. Leonen, Third Division].

39 *Ortiz Memorial Chapel Inc. v. Commissioner of Internal Revenue*, G.R. No. 278483, December 3, 2025 [Per J. Singh, Third Division].

The power of the State to collect taxes must be balanced with the taxpayer's right to substantial and procedural due process.[40] Indeed, the Supreme Court has recognized that, when the State's interest to tax and the taxpayer's right to due process are in conflict, the scales tilt in favor of protecting the taxpayer's right to due process.[41]

In light of the foregoing, the CIR's *Petition for Review* fails to provide sufficient basis to sustain the assessments. Conversely, Adelantado's *Petition for Review* must be granted, and the assessments set aside **for having been issued in clear violation of due process.**

WHEREFORE, premises considered, the *Petition for Review* filed by Adelantado Corporation in CTA *EB* No. 3092 is **GRANTED**, while the *Petition for Review* filed by the Commissioner of Internal Revenue in CTA *EB* No. 3096 is **DISMISSED**.

Accordingly, the Formal Assessment Notices (Parts I and II) dated March 14, 2018 are **DECLARED VOID and CANCELLED** for having been issued in violation of due process. Consequently, the Final Decision on Disputed Assessment dated September 5, 2019, which directed Adelantado Corporation to pay ₱11,376,420.44, ₱1,141,822.25, ₱689,000.06, ₱53,890.02, and ₱15,000.00, representing deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, Documentary Stamp Tax, and compromise penalty, respectively, for taxable year 2015, inclusive of interests, is likewise **REVERSED** and **SET ASIDE**.

As a necessary consequence of the nullity of the assessments, the *Decision* dated August 15, 2024, and the *Resolution* dated January 24, 2025, of the Court's Second Division in CTA Case No. 10406 are **REVERSED** and **SET ASIDE.**

The Commissioner of Internal Revenue, his authorized representatives, agents, and all persons acting on his behalf are **ENJOINED** from enforcing, implementing, or otherwise giving

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[40] *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital)*, G.R. No. 255473, February 13, 2023 [Per J. Singh, Third Division].

[41] See *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital)*, G.R. No. 255473, February 13, 2023 [Per J. Singh, Third Division], citing *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021 [Per C.J. Gesmundo, First Division].

effect to any Warrant of Distraint and/or Levy, Warrant of Garnishment, or any other administrative collection action pertaining to Adelantado Corporations alleged deficiency taxes subject of this case.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With due respect, please see my Concurring and Dissenting Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

(With due respect, I concur with the Concurring and Dissenting Opinion of Justice San Pedro)
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 consolidated cases were 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

ADELANTADO CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 3092
(CTA Case No. 10406)

x - x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

ADELANTADO CORPORATION,
Respondent.

CTA *EB* NO. 3096
(CTA Case No. 10406)

Promulgated:

JUL 15 2026 4:24pm

x - x

CONCURRING AND DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

I concur with the dismissal of the Petition for Review filed by the Commissioner of Internal Revenue ("CIR") in CTA *EB* Case No. 3096. However, I respectfully register my dissent on the Court's ruling in CTA *EB* Case No. 3092 filed by Adelantado Corporation ("Adelantado"), but only with respect to the consequent rulings of the ultimate ruling to reverse and set aside the assailed Decision and Resolution of the Court's Second Division in CTA Case No. 10406.

In granting petitioner Adelantado's appeal before this Court, the majority subscribed to the *ponente*'s ratiocination that the CIR failed to comply with *Revenue Regulations ("RR") No. 7-2018*, thereby warranting the reversal of the assailed Decision and Resolution of the Court's Second Division in CTA Case No. 10406 and declaring the disputed assessments for taxable year ("TY") 2015 as null and void.

However, I find this ruling erroneous for reasons I shall discuss hereunder.

Based on the settled facts of the case, Adelantado received the Final Decision on Disputed Assessment ("FDDA") on September 9, 2019. Thereafter, Adelantado filed its Request for Reconsideration on the FDDA before the CIR on October 7, 2019. However, while the Request for Reconsideration was still pending resolution by the CIR, Adelantado received the WDL No. RR8A-WDL-2020-10-235 dated October 9, 2020 on October 21, 2020. This prompted Adelantado to file its Petition for Review before the Court of Tax Appeals ("CTA") on November 19, 2020.

Adelantado's prayers in its Petition for Review filed on November 19, 2020 are the following, in gist:

1.) To declare as null and void the (a) WDL dated October 9, 2020; and (b) assessments upon which the said WDL is based, involving collection of the alleged deficiency tax assessments for TY 2015 in the total amount of ₱14,527,753.44; and

2.) To order CIR to withdraw and cancel the WDL and the assessments upon which the said warrant is based.

Based on Adelantado's prayers, it invokes the CTA's appellate jurisdiction on two matters: (1) on the decisions of the CIR with respect to the disputed assessments; and (2) on other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue ("BIR"). Both matters are indeed found in *Section 7(a)(1) of Republic Act ("RA") No. 1125, as amended*, ("the *CTA Law*"):

> 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 or other laws administered by the Bureau of Internal Revenue*;

However, it is the opinion of the undersigned that while the Court in Division acquired jurisdiction on the assailed WDL under "other matters", it failed to do so with respect to the disputed assessment upon which the WDL is based because the CIR had not yet rendered a decision appealable before the CTA.

The Court has jurisdiction over the validity of the WDL. The WDL was prematurely issued.

It has been consistently held that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid.[1]

Indeed, the *National Internal Revenue Code, as amended*, ("the *Tax Code*") and its rules and regulations have been consistent in defining when the civil remedies for collection may be pursued – it is only when the taxes have become "delinquent".

The definition of a delinquent account in general is provided in *RMO No. 011-14*,[2] as amended by *RMO No. 045-19*, where *Item II.1* thereof provides:

> II. Definition of Terms. — In applying the provisions of this Order, the terms herein provided are defined as follows:
>
> 1. Accounts Receivable/Delinquent Account (AR/DA) — refers to the amount of tax due from a taxpayer which was not paid within the time prescribed for its payment. It includes:
>
> A. **Unpaid Revenues** which is composed of the following:
>
> 1. Dishonored check;
>
> 2. Validated unpaid tax due per tax returns filed by the taxpayer;

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[1] *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004; *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division, et. al.*, G.R. No. 258947, March 29, 2022; *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital)*, G.R. No. 255473, February 13, 2023.

[2] Policies, Guidelines and Procedures in the Periodic Clean-Up of Accounts Receivable/Delinquent Accounts.

> 3. Validated unpaid second installment of income tax by individual taxpayers; and
>
> 4. Tax liabilities of taxpayers per final and executory decision of the Court.
>
> B. **Unpaid Assessments** which become final and executory due to taxpayer's failure to do the following:
>
> 1. File valid protest within the prescribed period of thirty (30) days from its receipt. For this purpose, a valid protest is one which is filed within the time prescribed and it contains the factual and/or legal basis of the protest;
>
> 2. Submit the necessary documents to support request for re-investigation within sixty (60) days from the date of filing a valid protest;
>
> 3. Appeal the decision of the BIR either to the Commissioner's Office or Court of Tax Appeals within thirty (30) days from receipt of the decision denying the protest;
>
> 4. File a motion for reconsideration the decision of the Court favorable to the BIR or appeal the same to higher court within the prescribed time for its filing;
>
> 5. Update the BIR on the change of address or cancellation of business registration resulting to the non-receipt of the assessment notice that was delivered or served to the address as indicated in the Registration database in the Integrated Tax System.

As can be gleaned from the foregoing, there are only two instances when a tax due becomes an accounts receivable/delinquent account ("AR/DA"): 1.) unpaid revenues; or 2.) unpaid assessments *which became final and executory* due to any of the above applicable instances.

Relatedly, *Item II.10* of the same *RMO* defines the execution of a WDL as follows:

> 10. Execution of Warrant of Distraint and Levy — this refers to the implementation of the administrative and judicial remedies in the enforcement of collection of *delinquent tax liabilities* by a duly authorized Revenue Officer/Official of the Bureau.
>
> For this purpose, a WDL is considered executed when the Seizure Agent (SA) has served any or all of the following notices to the concerned person or entity that has possession of the garnishable/leviable/distrainable properties of the delinquent taxpayer, depending on the circumstances surrounding the case:
>
> a. Warrant of Garnishment (for cash in bank, shares of stocks, bonds and bills, trades and non-trade receivables and other garnishable properties as defined under Section 207 (A) of the Tax Code);

> b. Notice of Levy (for real properties); and
>
> c. Notice of Actual/Constructive Seizure (for personal properties, such as furnitures and equipment, stocks in trade, and other distrainable properties as defined under Section 207 (A) of the Tax Code).
>
> In case the concerned entities to whom the notices were served upon have confirmed existence of distrainable and/or leviable properties, and the value/s of which is/are enough to satisfy the taxpayer's delinquent accounts, including the delinquency penalties and expenses related to seizure, maintenance and disposition of the levied/distrained properties, the service of the Notice of Tax Lien or Notice of Encumbrance shall be deemed complete execution of the WDL.
>
> In the event that there is no property to be distrained and/or levied, and/or the total value of the levied and/or distrained properties is not enough to fully satisfy the taxpayer's delinquent accounts, including the delinquency penalties and expenses related to seizure, maintenance and disposition of levied/distrained properties, the WDL can already be considered as executed and the AR/DA case, after the disposition of the levied/distrained properties, can be placed under the suspense file.
> (Italics supplied.)

Accordingly, the implementation of the administrative and judicial remedies in the enforcement of collection, *i.e.*, the execution of WDL, is geared only against delinquent tax liabilities.

Under the later *RMO No. 035-19*, dated July 8, 2019, the BIR is now authorized to immediately pursue the civil remedies for the enforcement of collection provided under *Section 205 of Tax Code*. However, said immediacy shall be made only in two instances, thus:

> In order to protect the interest of the government, civil remedies provided under Section 205 of the National Internal Revenue Code (NIRC), as amended, shall immediately be pursued as soon as the "Form 40-Collectible" reports relative to the following have been received by the offices responsible in the enforcement of collection remedies:
>
> 1. List of Unpaid Revenues (Annex "A") — these are self-assessed taxes arising from dishonored check, unpaid second installment of income tax due of individual taxpayers and duly validated unpaid tax due per tax returns; and
>
> 2. List of Unpaid Tax Assessments (Annex "B") — these are *tax assessments* arising from investigation *which have become "final and executory"* in accordance with existing policies.
> (Emphases, Ours)

Further, *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*[3] *("Mannasoft")* emphasized that availing of the summary collection remedies under the *Tax Code*, such as the issuance of a WDL, are premised first and foremost on the existence of "delinquent taxes". This premise is lacking when the matter of the taxpayer's civil liability is the subject of a valid request for reinvestigation which is still pending resolution by the respondent and its authorized agents.

The same principle was reiterated in *Commissioner of Internal Revenue v. Stradcom Corporation*,[4] where it was held that before the CIR can avail of the summary administrative collection remedies, it must first be established that the taxes sought to be collected have become delinquent. As to the concept of delinquent account, the High Court, citing Revenue Regulations No. 17-86, has held that this refers to the amount of tax due from a taxpayer who failed to pay the same within the time prescribed for its payment, that arises from (1) a self-assessed tax, whether or not a tax return was filed, or (2) *a deficiency assessment issued by the BIR which has become final and executory.*

The concept of a delinquent account under *RR No. 17-86* was maintained in *RMO No. 011-14*, as amended by *RMO No. 045-19*.

Indeed, it has been the consistent procedural rule of the BIR, based on the foregoing issuances and as confirmed by jurisprudence, that the implementation of civil remedies for the enforcement of collection of taxes due from deficiency assessments may be pursued only when the same has become final and executory.

Testing the settled facts against the instances under *Item II.1.b of RMO No. 011-14*, as amended by *RMO No. 045-19*, the deficiency tax assessments issued by the CIR in this case is far from becoming final and executory, since:

1.) Adelantado did not fail to timely file a request for reconsideration and reinvestigation against the Formal Assessment Notice on April 30, 2018, well-within the 30-day period to protest from its date of receipt on April 2, 2018; and

2.) Adelantado did not fail to timely appeal the decision denying its request for reconsideration and reinvestigation (*i.e.* FDDA) to the CIR, when it filed the Request for Reconsideration on the FDDA on October 7, 2019, well-

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3 G.R. No. 244202, July 10, 2023.
4 G.R. No. 255520, April 21, 2025.

within the 30-day period to appeal from its date of receipt on September 9, 2019.

The CIR is consequently not yet authorized to implement any of the administrative and judicial remedies in the enforcement of collection, *i.e.* the execution of the WDL. Thus, the issuance of the WDL in this case is premature and the BIR cannot be permitted to pursue a method of collection, *i.e.*, through distraint or levy, which cannot yet be validly resorted to at this stage.

Accordingly, the WDL cannot be given force and effect until such time that the deficiency tax assessments for TY 2015 upon which it is based have become final and executory in accordance with *RMO No. 011-14*, as amended by *RMO No. 045-19.*

The Court has no jurisdiction on the deficiency tax assessments.

RR No. 18-13, amending certain sections of *RR No. 12-99*, has enumerated the following remedies of the aggrieved taxpayer on the denial of its protest against the Formal Letter of Demand/Final Assessment Notice ("FLD/FAN"):

> ***If the protest is denied**, in whole or in part, **by the Commissioner's duly authorized representative**, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or **(ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision**.* No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.
>
> . . . .
>
> If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.
>
> ***If the** protest or **administrative appeal is not acted upon by the Commissioner** within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either*: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or ***(ii) await the final decision of the Commissioner on the***

> ***disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.***
>
> It must be emphasized, however, that *in case of inaction on protested assessment within the 180-day period,* ***the option of the taxpayer*** *to either*: (1) *file a petition for review with the CTA* within 30 days after the expiration of the 180-day period; *or (2) await the final decision of the Commissioner or his duly authorized representative* on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, ***are mutually exclusive and the resort to one bars the application of the other.***
> (Italics and boldfacing supplied.)

The foregoing was explained in *Mannasoft*, citing *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*[5] and *Light Rail Transit Authority v. Bureau of Internal Revenue*[6] *("LRTA")*, where the following alternative recourse are available to the taxpayer in case of the CIR's inaction to a protest:

> (1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessment; or
>
> (2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision. This is true even if the 180-day period for the Commissioner to act on the disputed assessment had already expired.

> Accordingly, ***the two options are mutually exclusive and resort to one bars the other***. This is also consistent with *Section 3(a)(2), Rule 4 of A.M. No. 05-11-07-CTA*, or the *Revised Rules of the Court of Tax Appeals*, which states that "*should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court* under *Section 3 (a), Rule 8* of these *Rules*." (Italics and boldfacing supplied.)

In this case, Adelantado opted to appeal the FDDA before the CIR himself when it filed its Request for Reconsideration on October 7, 2019. Thus, even assuming that the CIR had the whole 180-day period to act on the Request for Reconsideration, it nevertheless ended on April 7, 2020. However, despite the lapse of period to act on the Request for Reconsideration, Adelantado made no action thereon. This confirms that Adelantado opted to await the CIR's decision on its Request for Reconsideration on the FDDA.

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[5] G.R. No. 168498, April 24, 2007.
[6] G.R. No. 231238, June 20, 2022.

Since Adelantado opted for the second recourse as provided by *RR No. 18-13* and explained in *Mannasoft*, it is now to bound to await the final decision of the CIR on the disputed assessments and appeal such final decision to the CTA within 30 days after receipt of a copy of such decision.

As the two options are mutually exclusive, Adelantado's resort to awaiting the CIR's final decision on its Request for Reconsideration on the FDDA effectively barred it from appealing the FDDA with the CTA. This is so even when there was already a WDL issued on October 9, 2020.

Mannasoft went on to explain that it is true that a WDL, in certain cases, triggers the running of the 30-day period to elevate the case to the CTA as it constitutes as a constructive and final denial of the taxpayer's protest. However, this was only applicable at a time when the taxpayer still had no choice of awaiting the decision of the CIR on its protest – *i.e.* before the *CTA Law* added inactions of the CIR to the CTA. Citing *LRTA* therein:

> *Commissioner of Internal Revenue v. Isabela Cultural Corporation* cannot be made basis to claim that the Final Notice Before Seizure is the Final decision on the protest appealable to the Court of Tax Appeals. **When Isabela was promulgated in 2001, Section 7 of Republic Act No. 1125 had yet to be amended by Republic Act No. 9282 to add inactions of the Commissioner as appealable to the Court of Tax Appeals. Moreover, this Court had yet to promulgate *Rizal Commercial Banking Corporation* and *Lascona*, where it was clarified that taxpayers have the option to await the decision of the Commissioner in protests of disputed assessments before they file an appeal with the Court of Tax Appeals.** In other words, in Isabela, the taxpayer still had no choice of awaiting the decision of the Commissioner on its protest. This is why in *Isabela*, this Court considered the Final Notice Before Seizure as the Commissioner's decision on the protest. More so because it was the only response Isabela Cultural Corporation received from the Commissioner after it had filed its protest.
> (Boldfacing and italics in the original. Citations omitted.)

Given that the *CTA Law*, the *Tax Code*, and its rules and regulations have now introduced the option to await the CIR's decision on a taxpayer's protest on the assessment and specifically states that recourse to such bars the remedy of appeal to the CTA until the Commissioner's decision has been received, the taxpayer is bound by such choice.

The provision on mutual exclusivity of remedies is not an empty passage. Its purpose is two-fold: (1) so as not to pre-empt the CIR's authority to review the actions and decisions of his subordinates, which is rightfully under his powers and the Court so respects; and (2) taxpayers cannot be allowed to circumvent such provision by attacking the merits of the deficiency tax assessments in the course of appealing the validity of a subsequently issued WDL before the CTA. To allow such would set a dangerous precedent where a conflict may arise after the Court may possibly render a decision favoring the taxpayer, and then later receive an unfavorable decision by the CIR, which will then again be possibly subjected to another appeal before the CTA.

Further, while it is true that the lone issue stipulated before the Court in Division is to determine whether Adelantado is liable for deficiency tax assessments for TY 2015, it would be improper for the Court to rule on its merits considering that petitioner is essentially still waiting for the CIR's decision on its Request for Reconsideration on the FDDA. On this respect, there is not yet any decision on a disputed assessment which is appealable before the Court under *Section 7(a)(1) of the CTA Law*. Thus, as far as the deficiency tax assessment is concerned, the CTA still has no jurisdiction over the same and it would be an error for the Court to rule upon its merits even if the issue was stipulated by the parties.

Finally, the Court cannot simply disregard the policy on mutual exclusivity of the remedies and proceed to rule upon the merits of the deficiency tax assessments on the mere basis of the parties' stipulation on the issue of its validity or that it was voluntarily litigated during trial. For in doing so, the Court would erroneously assume jurisdiction over an assessment which is not yet ripe for determination and, as earlier discussed, would tantamount to a circumvention on the mutual exclusivity of the remedies available to a taxpayer.

For the foregoing reasons, I **VOTE** to **PARTIALLY GRANT** the Petition for Review filed by Adelantado Corporation in CTA *EB* Case No. 3092 in the following manner:

1) **REVERSE** and **SET ASIDE** the assailed Decision and Resolution of the Court's Second Division, dated August 15, 2024 and January 24, 2025, respectively, in CTA Case No. 10406;

2) **CANCEL** and **SET ASIDE** WDL No. RR8A-WDL-2020-10-235, dated October 9, 2020;

3) **ORDER** the CIR and any of his officers and/or employees to **CEASE** and **DESIST** from committing any or all acts to collect the alleged deficiency tax assessments for TY 2015 as indicated in the WDL until the same have become final and executory, in accordance with *RMO No. 011-14*, as amended by *RMO No. 045-19*; and

4) **DISMISS** Adelantado's petition, insofar as it prays for the cancellation and setting aside of the deficiency tax assessments for TY 2015.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice