REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2292** *(CTA Case No. 9609)*
	Present:
-versus-	**DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
ALPHALAND MAKATI PLACE, INC., *Respondent.*	Promulgated: MAR 14 2022 4:31 pm

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review[1] under ***Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***,[2] asking the Court *En Banc* to reverse and set aside the Decision, promulgated on 15 January 2020,[3] and the Resolution, dated 15 June 2020,[4] of the Court of Tax Appeals ("CTA") Second Division ("Court in Division").

[1] Petition for Review, Records, pp. 7-58, with annexes.
[2] A.M. No. 05-11-07-CTA, 22 November 2005.
[3] Annex "A" of the Petition for Review-Decision, Records, pp. 28-53.
[4] Annex "B" of the Petition for Review-Resolution, *id.*, pp. 54-57.

The assailed pronouncements cancelled and set aside the Final Decision on Disputed Assessment ("FDDA") and all corresponding assessments holding respondent liable for deficiency value-added tax ("VAT") and compromise penalty amounting to ₱10,708,088.80 and ₱50,000.00, respectively, for the period from 1 January 2014 to 30 June 2014.

The Parties

Petitioner Commissioner of Internal Revenue ("CIR") is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who has the power to decide on disputed assessments; act on and approve claims for refund of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto; or other matters arising under the National Internal Revenue Code of 1997, as amended, ("Tax Code") or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Alphaland Makati Place, Inc. is a corporation duly formed and organized under the laws of the Republic of the Philippines, with principal address at Sime Darby Building, Ayala corner Malugay Street, Makati City, Metro Manila. It is duly registered with the BIR under Tax Identification No. 000-499-448.

The Facts

On 15 August 2014, respondent received Letter of Authority ("LOA") No. eLA201100086467, dated 12 August 2014, from the BIR Large Taxpayers Service. The LOA authorized Revenue Officer ("RO") Ivy Claudette Puno, Margie Padre, and Group Supervisor ("GS") Mariesol Girang to examine respondent's books of accounts and other accounting records for VAT covering the period 1 January 2014 to 30 June 2014.[5]

Thereafter, respondent received the Preliminary Assessment Notice ("PAN"), dated 9 October 2015, on even date, finding it liable for deficiency VAT and compromise penalty amounting to ₱33,948,551.10 and ₱50,000.00, respectively.[6]

On 29 October 2015, respondent was furnished the Formal Letter of Demand with Details of Discrepancies and the corresponding Audit Result/Assessment Notices ("FLD/FAN"), dated 27 October 2015, assessing it for deficiency VAT in the total amount of ₱34,245,433.92 and compromise penalty amounting to ₱50,000.00.[7]

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[5] Exhibit "R-1" Letter of Authority, Division Docket Vol. 2, p. 676.
[6] Annex "A" of the Petition for Review-Decision, Records, pp. 28-53.
[7] *Ibid.*

Afterwards, respondent filed its Protest, dated 3 November 2015, to the FLD/FAN.[8]

In response, the Assistant Commissioner of the Large Taxpayers Services, Mr. Nestor S. Valeroso, issued the FDDA on 20 June 2016, which was received by respondent on 29 June 2016. The said issuance found it liable for deficiency VAT in the amount of ₱10,441,816.14, inclusive of compromise penalty amounting to ₱50,000.00.[9]

On 28 July 2016, respondent filed a letter, dated 14 July 2016, requesting for the reconsideration of the FDDA.[10]

The CIR replied through an undated letter, which was received by respondent on 5 May 2017, denying its request for reconsideration.[11]

Aggrieved, respondent filed the original Petition for Review with the Court in Division on 5 June 2017.[12]

On 15 January 2020, the Court in Division issued the assailed Decision which ordered the cancellation and setting aside of the FDDA.[13] The dispositive portion of the said Decision is hereby quoted, to wit:

> "**WHEREFORE**, in light of the foregoing considerations, the assailed subject assessments and FDDA, and respondent's *Decision*, holding petitioner liable for deficiency VAT in the amount of ₱10,708,088.80, and compromise penalty in the amount of ₱50,000.00, for the period of January 1, 2014 and June 30, 2014, are **CANCELLED and SET ASIDE**.
>
> **SO ORDERED**."

The Court in Division ruled that the FLD, specifically the portion which states *"Please take note that the interest will have to be adjusted if paid beyond November 20, 2015"* rendered respondent's tax liability indefinite. It found that the total amount is subject to modification depending on when respondent will pay the assessed tax.[14] On this ground, the Court in Division nullified the assessment, citing the case of ***Commissioner of Internal Revenue v. Fitness By Design, Inc., (hereinafter referred to as "Fitness Case")***.[15]

[8] *Ibid.*
[9] Exhibit "R-9" Final Decision on Disputed Assessment; Division Docket Vol. 2, pp. 700-703.
[10] Annex "A" of the Petition for Review-Decision, Records, pp. 28-53.
[11] *Ibid.*
[12] *Ibid.*
[13] *Ibid.*
[14] *Ibid.*
[15] G.R. No. 215957, 9 November 2016.

Undeterred, petitioner filed his Motion for Reconsideration Re: Decision dated 15 January 2020 on 3 February 2020, with respondent's Opposition (To Respondent's Motion for Reconsideration) filed on 20 February 2020.[16]

The said Motion was denied by the Court in Division in its Resolution, dated 15 June 2020, for lack of merit. Petitioner received the same on 30 June 2020.[17]

On 15 July 2020, petitioner filed his Motion for Extension of Time to File Petition for Review, requesting the Court *En Banc* for an additional fifteen (15) days from 15 July 2020, or until 30 July 2020, within which to file his Petition for Review.[18] This was granted by the Court *En Banc* on 20 July 2020.[19]

Thereafter, petitioner posted the instant Petition for Review on 29 July 2020.[20]

After scrutinizing the instant Petition, the Court *En Banc* found petitioner's "Verification and Certification of Non-Forum Shopping" non-compliant with ***Sections 4 and 5, Rule 7 of the Rules of Court*** as amended by ***A.M. No. 19-10-20-SC***.[21] Hence, the Court *En Banc* ordered him to submit a corrected Verification and Certification of Non-Forum Shopping on 18 September 2020.[22] Petitioner posted his Manifestation in compliance with the Court *En Banc's* Resolution on 8 October 2020.[23]

Subsequently, respondent filed its Comment (to the Petition for Review) on 19 November 2020.[24]

On 26 November 2020, the Court *En Banc* referred the case for mediation pursuant to ***Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals***.[25]

Considering the parties' decision not to undergo mediation, the Philippine Mediation Center-CTA terminated the said proceedings and referred the case back to the Court *En Banc* on 27 January 2021.[26]

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[16] Annex "B" of the Petition for Review-Resolution, Records, pp. 54-57.
[17] *Ibid.*
[18] Motion for Extension of Time to File Petition for Review; *id.*, pp. 1-5.
[19] Minute Resolution dated 20 July 2020; *id.*, p. 6.
[20] Annex "A" of the Petition for Review-Decision, *id.*, pp. 28-53.
[21] 2019 Amendments to the 1997 Rules of Civil Procedure, 1 May 2020.
[22] Resolution dated 18 September 2020; Records, pp. 60-61.
[23] Manifestation; *id.*, pp. 62-68.
[24] Comment (to the Petition for Review); *id.*, pp. 72-84.
[25] Resolution dated 26 November 2020; *id.*, pp. 86-87; A.M. No. 11-1-5-SC-PHILJA, 18 January 2011.
[26] Back to Court; Records, p. 88.

This prompted the Court *En Banc* to issue a Resolution on 4 February 2021 submitting the case for decision.[27] Hence, this Decision.

The Issues[28]

WHETHER THE COURT IN DIVISION ERRED IN GRANTING A RELIEF THAT WAS NOT PRAYED FOR BY RESPONDENT;

WHETHER THE COURT IN DIVISION ERRED IN RULING THAT THE FLD/FAN ARE VOID BECAUSE THEY FAILED TO DEMAND PAYMENT THEREOF WITHIN A SPECIFIC PERIOD.

WHETHER THE COURT IN DIVISION ERRED IN RULING THAT RESPONDENT IS NOT LIABLE TO PAY THE COMPROMISE PENALTY.

Arguments of the Parties

Petitioner's Arguments[29]

Petitioner argues that the validity of the FLD/FAN was never questioned by respondent in the original Petition for Review nor during the course of trial. He contends that the Court in Division should have refrained from ruling on the issue. By so doing, he opines that the Court in Division violated his right to due process since he was not given the opportunity to be heard or argue on the said contentions. He emphasizes that the legal basis cited by the Court in Division in resolving the unraised issue, specifically, ***Section 1, Rule 14 of the RRCTA***, should be implemented without disregarding established rules of procedure and violating his basic rights to due process and fair play.

Petitioner explains that the FAN/FLD was issued in accordance with the ***Tax Code*** and is, thus, valid. He alleges that the said assessment indicates respondent's basic tax deficiency, surcharge, and interest which makes its tax obligation fixed and definite. He explains that the sentence on the FLD/FAN relied on by the Court in Division did not affect the finality of the assessment since it only mirrors the rule under the ***Tax Code*** that the interest will have to be adjusted until the assessed amount is paid.

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[27] Resolution dated 4 February 2021; *id.*, pp. 90-91.
[28] See Issue, Petition for Review, p. 3; *id.*, p. 9.
[29] Petition for Review, Records, pp. 7-58, with annexes.

Further, he posits that the rule in the ***Fitness Case*** should be revisited. He explains that a review of the said case proves that the Supreme Court heavily relied on ***Commissioner of Internal Revenue v. Menguito (hereinafter referred to as "Menguito Case")***.[30] However, he observes that nowhere in the ***Menguito Case*** was it discussed that the FLD/FAN must contain a singular definite amount and period in order to be valid. On this point, he stresses that the Court in Division incorrectly relied on the ***Fitness Case*** and insists that the assessment issued against respondent is valid.

Finally, petitioner points out that the BIR's imposition of the compromise penalty is sanctioned under ***Section 249 of the Tax Code*** and was even allowed by the Supreme Court in ***Commissioner of Internal Revenue v. Filinvest Development Corporation***.[31] He asks the Court *En Banc* to uphold the validity of the said penalty.

Respondent's Counter-Arguments[32]

Respondent counters that the Court in Division was well within its power when it resolved the issue as to the assessment's invalidity. It contends that the resolution of the said issue was necessary to the orderly disposition of the herein case citing ***Section 1, Rule 14 of the RRCTA***.

As to the issue of the propriety of the assessment, respondent avers that the Supreme Court had consistently ruled that the assessment may only be considered valid if it contains a definite amount and an unequivocal demand for payment on a certain date. It states that this was not only pronounced in the ***Fitness Case*** but also in earlier jurisprudence, including the case of ***Commissioner of Internal Revenue v. Pascor Realty and Development Corp., (hereinafter referred to as "Pascor Case")***.[33] Hence, it posits that in rendering the assailed Decision and Resolution, the Court in Division merely adhered to the mandate of ***Article 8 of the Civil Code of the Philippines*** which considers judicial decisions of the Supreme Court part of the legal system of the Philippines.

The Ruling of the Court

The Court *En Banc* finds the instant Petition partially meritorious.

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[30] G.R. No. 167560, 17 September 2008.
[31] G.R. Nos. 163653 & 167689, 19 July 2011.
[32] Comment (to the Petition for Review); Records., pp. 72-84.
[33] G.R. No. 128315, 29 June 1999.

The Court in Division can rule on issues although not raised by the respondent in its original Petition for Review or during trial.

Section 1, Rule 14 of the RRCTA empowers the Court of Tax Appeals ("CTA") to resolve related issues that are deemed necessary to achieve an orderly disposition of the case *albeit* not raised by any of the parties during trial or in their respective pleadings. The relevant portion of the provision reads as follows:

> "SECTION 1. Rendition of judgment. - xxx
>
> **In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**"
> (Emphasis and underscoring supplied.)

The said rule was further elaborated by the Supreme Court in the recent case of ***Commissioner of Internal Revenue v. Lancaster Philippines, Inc.* (hereinafter referred to as "Lancaster Case"),**[34] to wit:

> "**On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative**.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, **the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:
>
> SECTION 1. Rendition of judgment. - x xx
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> **The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda.** The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter."
> (Emphasis and underscoring supplied.)

Here, the resolution of the assessment's validity (*e.g.* whether the same was issued in accordance with the Tax Code) is necessary and closely intertwined with the issue as to its correctness (*e.g.* propriety of the findings in the assessment). This is so since the tax liability of respondent is sourced

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

from the assessment itself. Hence, without a valid assessment, respondent's alleged tax liability also ceases to exist.[35]

In fact, this particular issue is no longer novel and has already been resolved by this Court in ***Commissioner of Internal Revenue v. Ale Mart Corporation***,[36] to wit:

> **"Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals definitely provides that this "Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case." This was affirmed in Commissioner of Internal Revenue v. Lancaster Philippines, Inc., where the Supreme Court categorically declared that this Court could resolve an issue not raised by the parties. Consequently, it is well-settled that this Court, in deciding a case, is not limited by the issues raised or agreed upon by the parties in their respective pleadings. It may also consider other related matters to dispose of a case on the merits.**
>
> Moreover, we agree with respondent's argument that **since the crux of the controversy in the present case is the validity of the subject deficiency tax assessments, the issue on whether the FAN/FLD contains a definite date of payment of deficiency tax liabilities is a related issue that should be resolved by this Court regardless if the same was particularly raised by the parties in their pleadings or during trial. The rationale for this is that the existence of a definite date of payment in an FLD/FAN complies with the "demand for payment" requirement in deficiency tax assessments. As such, the existence of such definite date of payment in an FLD/FAN is necessary for the validity of a deficiency tax assessment. Hence, this Court is duty bound to find if a definite date of payment is present in an FLD/FAN, a sub-issue requisite to the resolution of the main issue, which is the validity of a deficiency tax assessment.**
>
> **In other words, the factual issue on the presence of a definite date of payment in an FLD/FAN is already subsumed under the general issue in the present case, i.e., the validity of the deficiency tax assessments issued against respondent, such that there is no more need to specifically identify the same in the pleadings filed by the parties or to manifest the same during trial.** On this note, petitioner cannot claim that he was denied due process since by agreeing in the Joint Stipulation of Facts and Issues that the main issue to be tried in the present case is whether respondent is liable for the subject deficiency tax assessments, he impliedly agreed that other matters that would go into the validity of the deficiency tax assessments, which include the issue on whether the subject FLD/FAN contains a definite date for payment, would be considered by this Court." (Emphasis and underscoring supplied.)

Furthermore, the Court *En Banc* does not agree with petitioner's contention that his right to due process was violated when the Court in Division resolved the issue as to the validity of the FLD/FAN.

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[35] *See* Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue, G.R. No. 241848, 14 May 2021.

[36] CTA E.B. Case No. 1983, 18 February 2021.

Petitioner is reminded that due process is satisfied once the party is accorded the opportunity to be heard and to present his evidence as ruled in the case of ***Milwaukee Industries Corporation v. CTA***,[37] to wit:

> "Accordingly, Milwaukee's right to due process was not transgressed. **The Court has consistently reminded litigants that due process is simply an opportunity to be heard. The requirement of due process is satisfactorily met as long as the parties are given the opportunity to present their side. In the case at bar, Milwaukee was precisely given the right and the opportunity to present its side. It was able to present its evidence-in-chief and had its opportunity to present rebuttal evidence.**"
> (Emphasis and underscoring supplied.)

Based on the records of the case, petitioner was given ample opportunity to present his evidence. Judgment in the case was also rendered only after a full-blown trial. Hence, the allegation of the petitioner has no leg to stand on.

On these grounds, the Court *En Banc* finds no error on the part of the Court in Division ruling on the validity of the FAN/FLD although not raised by any of the parties during trial or in its pleadings.

The FLD/FAN did not render respondent's tax liability indefinite.

In ***SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue***,[38] the Supreme Court defined the term "assessment" as "the determination of amounts due from a person obligated to make payments. In the context of national internal revenue collection, it refers [to] the determination of the taxes due from a taxpayer under the National Internal Revenue Code of 1997."

Under ***Section 6 of the Tax Code***, the power to make assessments is lodged with the CIR or his duly authorized representative. However, in order to safeguard the due process rights of the taxpayer, the same law, as well as established rules and jurisprudence, also impose stringent requirements that the CIR or his authorized representative must follow in the issuance of the assessment.

Succinctly, ***Section 228 of the Tax Code*** and ***Section 3.1.3 of Revenue Regulation ("RR") No. 12-99, as amended***,[39] require, among others, that the assessment must provide for the definite amount of tax due and a demand for

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[37] G.R. No. 173815, 24 November 2010.
[38] G.R. No. 175410, 12 November 2014.
[39] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, 28 November 2013.

payment. Failure to comply with the requirement will automatically render the issuance invalid.

In the ***Fitness Case***, the Supreme Court discussed what constitutes "a definite demand for payment", to wit:

> "The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment." However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.**
>
> xxx xxx xxx
>
> A final assessment is a notice "**to the effect that the amount therein stated is due as tax and a demand for payment thereof**." This **demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]"** Thus, it must be "sent to and received by the taxpayer, and **must demand payment of the taxes described therein within a specific period**."
>
> (Emphasis and underscoring supplied).

To summarize, an assessment is considered to have a definite demand for payment if it: (a) includes a computation of the alleged tax liability; (b) indicates the definite amount of taxes due, including penalties and interests; and (c) demands for the payment of the said tax within a specific given period.

Guided by the foregoing, the Supreme Court in the ***Fitness Case*** nullified the FAN issued to the taxpayer. It ruled that the assessment did not contain a due date and a definite amount of tax liability relying heavily on the following statement in the FAN: "Please note, however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004". The relevant portion of the case is quoted, to wit:

> "**The disputed Final Assessment Notice is not a valid assessment.**
>
> First, it **lacks the definite amount of tax liability for which respondent is accountable**. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a "written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed." **Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment.** Thus:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. **<u>Please note, however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004</u>**.

Second, there **<u>are no due dates in the Final Assessment Notice</u>**. **This negates petitioner's demand for payment.** Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. **The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment**:

> In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice.

However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.

Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay."
(Emphasis and underscoring supplied.)

Finding that the FLD herein has the same tenor as the one in the ***Fitness Case***, the Court in Division nullified the assessment issued against respondent.

The Court *En Banc* reproduces the two statements, to wit:

Fitness Case	Alphaland Case
The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. **<u>Please note, however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.</u>**	"xxx **<u>Please take note that the interest will have to be adjusted if paid beyond November 20, 2015</u>**. The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex A of this letter. The twenty (20%) interest per annum has been imposed pursuant to Section 249(B) of the same Tax Code due to your failure to pay the tax within the time prescribed by law for its payment. xxx"

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After careful consideration, the Court *En Banc* does not agree with the observations of the Court in Division.

In the ***Fitness Case***, the statement in the FLD clearly states that the total amount [of taxes] due is subject to modification and is dependent on when the taxpayer will pay the deficiency taxes. The intention of the BIR not to prescribe a "definite amount of tax liability" is even made clearer when it did not set a specific due date on the assessment which is essential for the BIR to compute the taxpayer's specific tax liability.

These irregularities do not exist herein.

Instead, the FLD/FAN clearly indicates a due date which is "30 days from date of receipt thereof". It also specifies a definite amount of basic tax due (₱27,090,557.82), interest which was computed until 20 November 2015 (₱7,154,876.10), and compromise penalty (₱50,000.00). All these are indicated on the FLD/FAN which were received by the taxpayer on 29 October 2015.

The statement in the FLD, *"Please take note that the interest will have to be adjusted if paid beyond November 20, 2015"*, did not make the foregoing amounts indefinite. The statement merely served as a reminder to the taxpayer that the interest will have to be adjusted if the assessed tax liability remains unpaid on the stated date in the assessment. This is nothing but a natural consequence of ***Section 249 of the Tax Code*** which requires the imposition of interest on unpaid taxes from the time the Tax Code requires it paid until its full payment.

Understandably, the interest in the assessment would be subject to changes, considering that the BIR would not have the foresight to determine when respondent would pay the deficiency taxes.

In addition, neither does the following portion of the FLD affect the validity of the assessment:

> "Pursuant to the provision of Section 228 of the aforesaid Code and its implementing revenue regulations, you are hereby given the opportunity to present in writing your side of the case **<u>within fifteen (15) days from receipt hereof.</u>** However, if you are amenable, **<u>you may pay the above assessment</u> using the BIR Payment Form (BIR Form 0605) through eFPS. Afterwards, submit proof of payment thereof to our Office located at Room 213, VAT Audit Group, BIR National Office Building, BIR Road, Diliman, Quezon City for updating of your records and cancellation of the herein FLD, if warranted.**"
> (Emphasis and underscoring supplied).

Although the fifteen (15) day period stated in the FLD to which the taxpayer may file its protest is less than the thirty (30)-day period expressly provided under ***Section 228 of the Tax Code*** and ***Section 3.1.3 of RR No. 12-99, as amended***, this error alone is not sufficient to outright invalidate the assessment.

To the mind of the Court *En Banc*, the provisions of the ***Tax Code*** are deemed written on every assessment. Hence, in cases of conflict, the incorrect period to file a protest stated on the FLD should be disregarded and the number of days prescribed under the Tax Code should prevail.

At any rate, case records show that respondent was accorded due process during the issuance of the FLD/FAN and the FDDA. Here, the taxpayer was able to file a timely Protest to the FLD/FAN on 3 November 2015. In turn, its protest was heavily considered by the BIR in lowering the deficiency VAT assessment from ₱34,245,433.92 to ₱10,391,816.14 in the FDDA.

Hence, without proof of violation of respondent's due process, the Court *En Banc* has no reason to invalidate the assessment.

Likewise, the Court *En Banc* rules that the phrase "*you may pay the above assessment xxx*" did not affect the validity of the FLD.

Although the phrase purports to be more of a request than a demand for payment of deficiency taxes, this Court is of view that the assessment should not be read in isolation but in its entirety.

As discussed above, the FLD/FAN in this case already satisfies the requirements laid down in the ***Fitness Case***. The FLD/FAN not only specifies the exact amount of respondent's tax liability but it also shows how this was computed. The said assessment also provides for a specific due date when the said deficiency tax should be paid. The existence of these provisions on the assessment clearly shows the BIR's demand for respondent to settle the subject assessed tax liability.

All told, the Court *En Banc* upholds the validity of the FLD/FAN issued against respondent.

<u>Respondent is not liable to pay compromise penalty.</u>

Despite the validity of the FLD/FAN, the Court *En Banc* upholds the assailed pronouncements declaring the imposition of the compromise penalty against respondent void.

The rule on compromise penalty was already settled in ***Wonder Mechanical Engineering Corporation vs. The Court of Tax Appeals, et. al***,[40] where the Supreme Court ruled that a "compromise penalty cannot be imposed without an agreement or conformity of a taxpayer." Hence, absent proof that respondent had agreed to pay the compromise penalty, the same cannot be imposed against it.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, the Decision promulgated on 15 January 2020, and the Resolution, dated 15 June 2020, of the CTA Second Division in CTA Case No. 9609 are **REVERSED AND SET ASIDE.**

Let the case be **REMANDED** to the Court in Division for the determination of respondent's deficiency VAT liability for the period 1 January 2014 to 30 June 2014.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

(See Separate Opinion.)
ROMAN G. DEL ROSARIO
Presiding Justice

(With due respect, please see C.D.O.)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[40] G.R. Nos. L-22805 & L-27858. 30 June 1975; cited in Commissioner of Internal Revenue v. Batangas Electric I Cooperative 1, C.T.A. EB Case No. 1939, 19 February 2021.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I join J. JBV's Separate Opinion.)
CATHERINE T. MANAHAN
Associate Justice

(With Separate Opinion.)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution*, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2292** *(CTA Case No. 9609)*
	PRESENT:
-versus-	DEL ROSARIO, *P.J.,* CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, and CUI-DAVID, *JJ.*
ALPHALAND MAKATI PLACE, INC., *Respondent.*	**PROMULGATED:** MAR 14 2022 4:22 pm

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SEPARATE OPINION

DEL ROSARIO, P.J.:

I concur in the position taken by Honorable Associate Justice Juanito C. Castañeda, Jr. that the assessment is void as there was no demand or requirement for respondent to pay the deficiency taxes, consistent with the doctrine laid down in Commissioner of Internal Revenue vs. Fitness By Design, Inc.[1]

I further submit that an intrinsically void assessment may neither attain finality nor be the subject of a lawful execution.

In *Commissioner of Internal Revenue vs. Pilipinas Shell*

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[1] G.R. No. 215957, November 9, 2016.

Petroleum Corporation,[2] the Supreme Court emphasized the importance of issuing a valid assessment before proceeding with the collection of deficiency taxes and reiterated that no fruit may arise in situations where the assessment is invalid or when no assessment at all was made, *viz.*:

> "In the normal course of tax administration and enforcement, the BIR must first make an **assessment** then enforce the collection of the amounts so assessed. 'An assessment is not an action or proceeding for the collection of taxes. x x x It is **a step preliminary, but essential to warrant distraint**, if still feasible, and, also, to establish a cause for judicial action.' **The BIR may summarily enforce collection only when it has accorded the taxpayer administrative due process, which vitally includes the issuance of a valid assessment**. Xxx.
>
> Xxx. **The Court, absent a valid assessment, refused to accord validity and effect to petitioner's collection efforts** - which involved, among other things, the successive issuances of a collection letter, a final notice before seizure, and a warrant of distraint and/or levy against the taxpayer estate - and declared that:
>
>> 'x x x [P]etitioner violated the cardinal rule in administrative law that the taxpayer be accorded due process. Not only was the law here disregarded, but no valid notice was sent, either. **A void assessment bears no valid fruit.**
>
> x x x x
>
> The Court similarly found that there was no valid assessment in *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc. (BASF Coating Case)* as the assessment notice therein was sent to the taxpayer company's former address. Without a valid assessment, the Court pronounced that petitioner's issuance of a First Notice Before Issuance of Warrant of Distraint and Levy to be in violation of the taxpayer company's right to due process and effectively **blocked any further efforts by petitioner to collect by virtue thereof**. The Court ratiocinated that:
>
>> 'It might not also be amiss to point out that petitioner's issuance of the First Notice Before Issuance of Warrant of Distraint and Levy violated respondent's right to due process because no valid notice of assessment was sent to it. **An invalid assessment bears no valid fruit.**
>
> x x x x
>
> Absent a previously issued assessment supporting the 1998 and 2002 Collection Letters, **it is clear that petitioner's attempts**

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[2] G.R. No. 197945, July 9, 2018.

> **to collect through said collection letters as well as the subsequent Warrants of Garnishment and Distraint and/or Levy are void and ineffectual. If <u>an invalid assessment bears no valid fruit</u>, with more reason will no such fruit arise if there was no assessment in the first place.**" *(Additional boldfacing and underscoring supplied)*

Sans a valid assessment, the Court cannot accord validity and effect to petitioner's collection efforts. In the present case, the assessment issued against respondent, being void *ab initio*, cannot be used as a basis for collection of the deficiency taxes against respondent. **The assessment is fatally infirm since it failed to make a categorical demand for payment of the taxes due. This infirmity in the assessment precludes its eventual execution as clearly laid down in *Pilipinas Shell*.**

With respect to the contention that respondent failed to timely invoke the jurisdiction of the Court of Tax Appeals (CTA) when it failed to file a Petition for Review within thirty (30) days from receipt of the Warrant of Distraint and/or Levy on January 5, 2016, I submit that irrespective of respondent's failure to do so, the assessment's inherent invalidity cannot justly be ignored by the Court. After all, respondent should not be held liable to pay any amount arising from a void *ab initio* assessment.

Stated differently, since the assessment in this case is void *ab initio*, it is within the power of the Court to slay it at sight and consequently, deny any move of petitioner to collect taxes pursuant to an invalid assessment.

Like a void judgment, a void assessment produces no legal effect; **it never attains finality and - akin to an outlaw - it may be slain whenever or wherever it exhibits its head**.[3]

The disquisition in *Rene H. Imperial, et al. vs. Hon. Edgar L. Armes, Presiding Judge of Branch 4, Regional Trial Court, 5th Judicial Region, Legazpi City, et al. ("Imperial"),*[4] on the effect of a void judgment is enlightening:

> "**A void judgment is no judgment at all in legal contemplation**. In *Cañero v. University of the Philippines,* we held that-

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[3] Imperial vs. Cruz, G.R. No. 178842, January 30, 2017.
[4] *Id.*

> x x x A void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. **It has no legal or binding effect or efficacy <u>for any purpose or at any place</u>.** Xxx.
>
> xxx
>
> xxx, our ruling in *Banco Español-Filipino* v. *Palanca* on the effects of a void judgment has reappeared consistently in jurisprudence touching upon the matter. In this case, we said that a **void judgment is 'a lawless thing, which can be treated as an outlaw and slain at sight, or ignored <u>wherever and whenever it exhibits its head</u>.'** In concrete terms, this means that a void judgment creates no rights and imposes no duties. Any act performed pursuant to it and any claim emanating from it have no legal effect.
>
> xxx
>
> ***Effects of a void judgment***
>
> Xxx.
>
> Thus, in *Guevarra,* **we allowed the filing of a motion for reconsideration even if it was made beyond the reglementary 15-day period We based our ruling on the ground that the order challenged by the motion for reconsideration was issued with grave abuse of discretion and is null and void.** We explained-
>
> > 'Such judgment or order may be resisted in any action or proceeding whenever it is involved. It is not even necessary to take any steps to vacate or avoid a void judgment or final order; it may simply be ignored.'
>
> Our ruling in *Gonzales* v. *Solid Cement Corporation* is more unequivocal. In this case, we found that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction, therefore acting outside the contemplation of law. **<u>Hence, even when the period to assail the CA decision had already lapsed, we ruled that it did not become final and immutable. A void judgment never becomes final</u>**. Xxx." *(Boldfacing and underscoring supplied; citations omitted)*

In *Heirs of Mayor Nemencio Galvez vs. Court of Appeals, et al.,*[5] the Supreme Court emphasized that a void judgment may be attacked anytime, as the action to declare its nullity does not prescribe, *viz.*:

> "Considering that the assailed decision rendered by the lower court on May 6, 1988 is a void judgment, **it is no longer necessary to determine whether or not proper service on the late mayor's lawyer-son of a copy of the said decision was valid to reckon**

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[5] G.R. No. 119193, March 29, 1996.

> **the date of its finality inasmuch as <u>a void judgment never acquires finality and any action to declare its nullity does not prescribe. It can be attacked at anytime</u>.**" *(Boldfacing and underscoring supplied)*

In sum, I submit that the collection of taxes arising from a void assessment may be questioned or attacked anytime.

All told, I VOTE to: (i) DENY the Petition for Review filed by the Commissioner of Internal Revenue; (ii) CANCEL and SET ASIDE the Formal Letter of Demand and Assessment Notices, all dated October 27, 2015, Final Notice of Seizure dated December 15, 2015, Warrant of Distraint and/or Levy dated January 5, 2016, Letter dated May 6, 2016 signed by Assistant Commissioner Nestor S. Valeroso, Final Decision on Disputed Assessment dated June 20, 2016 and its attached Assessment Notices and the Final Decision issued by the Commissioner of Internal; and, (iii) ENJOIN respondent Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf from enforcing collection and/or taking any further action against respondent Alphaland Makati Place, Inc. in connection with the subject assessments.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* –

ALPHALAND MAKATI PLACE, INC.,
Respondent.

CTA EB NO. 2292
(CTA Case No. 9609)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo, and
Cui-David, *JJ.*

Promulgated:
MAR 14 2022 4:22pm

x---x

CONCURRING AND DISSENTING OPINION

CASTAÑEDA, JR., *J.:*

I concur with the *ponencia* of my esteemed colleague, the Honorable Associate Justice Maria Rowena Modesto-San Pedro, insofar as it held that the Court in Division can rule on issues not raised by respondent in its original Petition for Review or during trial, on the strength of the Supreme Court's ruling in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[1]

On the other points raised in the *ponencia*, however, I disagree.

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

In partially granting the present Petition for Review, the *ponencia* essentially held that the FLD subject of the present case did not render respondent's tax liability indefinite. It ruled that the FLD clearly indicates a due date and specifies a definite amount of basic tax due. The *ponencia* is also of the view that although only a period of 15 days within which the taxpayer may file its protest was stated in the FLD instead of the 30-day period as expressly provided under Section 228 of the Tax Code and Section 3.1.3 of Revenue Regulations No. 12-99 as amended, this error alone is not sufficient to outrightly invalidate the assessment.

The *ponencia* also stated that the phrase *"you may pay the above assessment"* did not affect the validity of the FLD.

In the case of *Commissioner of Internal Revenue v. Fitness By Design, Inc.*,[2] the Supreme Court concluded that the disputed Final Assessment Notice was *not* a valid assessment because it also did "not purport to be a *demand for payment* of tax due, which a final assessment notice should supposedly be", had no due dates and was barred by prescription, thus:

> "A final assessment is a notice 'to the effect that the amount therein stated is due as tax and <u>a demand for payment thereof</u>.' <u>This demand for payment signals the time 'when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]</u>' Thus, it must be 'sent to and received by the taxpayer, and <u>must demand payment of the taxes described therein within a specific period</u>.'
>
> The disputed Final Assessment Notice is not a valid assessment.
>
> First, it lacks the definite amount of tax liability for which respondent is accountable. <u>It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be</u>. An assessment, in the context of the National Internal Revenue Code, is a '<u>written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed</u>.'" (*Underscoring supplied and citations omitted*)

To demand means to "require (a person) to do"[3] and is also defined as "the assertion of a legal right", "an imperative request preferred by one person to another under a claim of right, requiring the latter to do or yield something or to abstain from some act."[4]

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[2] G.R. No. 215957, November 9, 2016.
[3] Shorter Oxford English Dictionary (6th Edition), Vol. I, p. 639.
[4] Black's Law Dictionary (Abridged 5th Edition), pp. 223-224.

In this case, an examination of the tenor of the FLD[5] would reveal that there is *no* demand or requirement for the taxpayer to pay the taxes due. The phrase "you *may* pay the above assessment xxx" negates the imperative nature of the request to pay as it gives the taxpayer the option *not* to pay if it is not amenable to the assessment:

> "Sir/Madam:
>
> Please be informed that after investigation of your Value-Added tax liabilities for the 1st Semester January 01, 2014 to June 30, 2014 pursuant to Letter of Authority No. LOA-LV1-2014-00000065 dated August 12, 2014, there has been found deficiency Value-Added Tax for the 1st Semester of <u>**2014**</u>, as shown hereunder:
>
> xxx xxx xxx
>
> Please take note that the interest will have to be adjusted if paid beyond November 20, 2015.
>
> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying ANNEX-A of this letter.
>
> The twenty percent (20%) interest per annum has been imposed pursuant to Section 249(B) of the same Tax Code due to your failure to pay the tax within the time prescribed by law for its payment.
>
> The compromise penalty has been imposed in view of your failure to file and/or pay an internal revenue tax at the time or times required by law or regulation pursuant to Section 255 of the NIRC, as amended, as determined using the schedule of suggested compromise penalties prescribed under Revenue Memorandum Order (RMO) No 7-2015.
>
> <u>Pursuant to the provision of Section 228 of the aforesaid Code and its implementing revenue regulations, you are hereby given the opportunity to present in writing your side of the case within fifteen (15) days from receipt hereof.</u> However, <u>if you are amenable</u>, <u>**you may pay the above assessment using the BIR Payment Form (BIR Form 0605) through eFPS.**</u> Afterwards, **submit proof of payment thereof to our Office located at Room 213, VAT Audit Group, BIR National Office Building, BIR Road, Diliman, Quezon City** for updating of your records and cancellation of the herein FLD, if warranted.

[5] Exhibit R-8, BIR Records, pp. 133-134.

We hope that you will give this matter your preferential action.

Very truly yours,

(signed)
NESTOR S. VALEROSO
Assistant Commissioner
Large Taxpayers Service"
(*Underscoring supplied*)

The FLD is also void for being violative of Section 228 of the National Internal Revenue Code of 1997, as amended, as it only gives the taxpayer fifteen (15) days to protest the assessment which is less than the thirty (30) days expressly provided for by law. It is basic that acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.[6]

I simply cannot subscribe to the proposition maintained by the *ponencia* to the effect that the provisions of the Tax Code are *deemed written* on every assessment. Following that logic, then, there will never be any void assessment to speak of considering that whatever legal infirmity that might be raised by the taxpayer against a deficiency assessment would be deemed cured by the simple expedient of claiming that the defective provision of the assessment should just be disregarded and what is actually provided under the Tax Code should prevail. In such case, the issuance of deficiency assessments will be reduced to absurdity or a mere exercise in futility. They will never serve their purpose of aiding the taxpayers in making reasonable protests and will certainly not afford the taxpayers any due process.

At any rate, after a more circumspect review of the facts of the present case as borne out by the case records, it is my view that the original Petition for Review before the Court in Division should have been dismissed outright for lack of jurisdiction. The Petition for Review before the Court in Division was filed out of time.

In its Petition for Review before the Court in Division, petitioner made the following factual allegations, to wit:[7]

"3.4. On 27 October 2015, AMPI received a Formal Letter of Demand ("FLD) dated 29 October 2015 demanding the

[6] Article 5, Civil Code.
[7] Division Docket, Vol. I, pp. 11-14.

payment of the alleged deficiency VAT amounting to Php34,245,433.92 and compromise penalty of Php50,000.

Copy [of] FLD is attached hereto and made integral parts hereof as Annex "C".

3.5. Petitioner AMPI filed a Protest on 03 November 2015 where it claimed that all its collections were accounted for and substantiated by VAT official receipts. Thus, input taxes may be properly be (sic) claimed.

Copy of the Protest is attached hereto and made integral part hereof as Annex "D".

3.6. Despite the pendency of AMPI's Protest, the Bureau of Internal Revenue ("BIR") issued on 15 December 2015 a Final Notice of Seizure dated 15 December 2015 demanding payment of the total amount of Php34,245,433.92 within ten days from receipt thereof.

Copy of the Final Notice of Seizure is attached hereto and made integral part hereof as Annex "E".

3.7. A Warrant of Distraint and/or Levy was subsequently issued by the BIR on 05 January 2016.

Copy of the Warrant of Distraint and/or Levy is attached hereto and made integral part hereof as Annex "F".

3.8. On 07 January 2016, petitioner AMPI filed a Request for Re-investigation and Lifting of Warrant of Distraint.

Copy of the Request for Re-investigation and Lifting of Warrant of Distraint dated 06 January 2016 is attached hereto and made integral part hereof as Annex "G".

3.9. On 14 January 2016, petitioner AMPI filed a Request for Re-Investigation and Lifting of Warrant of Distraint and/or Levy to supplement the earlier Request dated 06 January 2016. In this Request, petitioner AMPI emphasized that it was waiting for the supporting schedules behind the assessment so it can properly and comprehensively respond thereto.

Copy of the Request for Re-investigation and Lifting of Warrant of Distraint dated 06 January 2016 is attached hereto and made integral part hereof as Annex "H".

3.10. Petitioner AMPI claimed that: (1) the FLD was not received by its authorized officer; (2) the Protest against the FLD was not considered and acted upon leaving petitioner AMPI with no decision on the disputed assessments which it could elevate to the

Court of Tax Appeals; and (3) the assessment lacks details preventing petitioner AMPI from fully and completely refuting the same.

3.11. AMPI received a letter dated 05 May 2016 from respondent BIR informing that its Protest letter was denied.

Copy of the Letter dated 05 May 2016 is attached hereto and made integral part hereof as Annex "I".

3.12. On 19 May 2016, petitioner AMPI sought reconsideration of the Letter dated 05 May 2016.

Copy of the Letter dated 17 May 2016 is attached hereto and made integral part hereof as Annex "J".

3.13. On 15 June 2015, petitioner AMPI submitted copies of relevant VAT invoices and official receipts in support of the claimed input taxes.

Copy of the cover letter for the submission is attached hereto and made integral part hereof as Annex "K".

3.14. On 29 June 2016, AMPI received a Final Decision on Disputed Assessment ("FDDA") where the amount of Deficiency VAT was reduced to Php10,391,816.14. The amount of compromise penalty was retained at Php50,000.00. The BIR also issued Audit Results/Assessment Notice (Form 0401) with numbers VAT-LV1-2014-00000065-10-15-20-A and VAT-LV1-2014-00000065-10-15-20-B for the alleged deficiency VAT and for the proposed compromise penalty, respectively (collectively hereinafter referred to as "Assessments").

Duplicate originals of the FDDA and the Assessments are attached hereto and made integral part hereof as Annexes "L", "M", and "N".

3.15. Petitioner AMPI elevated the matter to respondent CIR through a Motion for Reconsideration dated 14 July 2016.

Copy of the Motion for Reconsideration is attached hereto and made integral part hereof as Annex "O".

3.16. Petitioner AMPI's Motion for Reconsideration was denied by respondent CIR in the Assailed Decision finding its contentions or arguments unmeritorious.

Duplicate original of the denial is attached hereto and made integral part hereof as Annex "P".

3.17. Hence, this appeal." *(Emphasis supplied)* jr

Revenue Regulations (RR) No. 12-99, as amended,[8] specifies the due process requirement to be observed in issuing deficiency tax assessments. The relevant portion of the said issuance reads:

> "**SECTION 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:
>
> xxx xxx xxx
>
> 3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> xxx xxx xxx
>
> **<u>If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative,</u> 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) <u>elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision</u>.** 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. *(Emphasis and underscoring supplied)*

With the above-cited rule as basis, I submit that the Petition for Review before the Court in Division was filed out of time and, accordingly, this Court never acquired jurisdiction over the case.

Upon petitioner's receipt of the letter dated 05 May 2016 denying its protest to the FLD, petitioner had the option of either filing a Petition for Review before this Court within 30 days from receipt of such letter or to file a request for reconsideration of the denial of its protest before the Office of the Commissioner also within 30 days from receipt thereof. Petitioner failed to do any of these. Instead, petitioner sought reconsideration of the letter denying its protest before the same office. There being no appeal before the CTA nor a request for reconsideration before the Office of the Commissioner within the 30-day period from receipt of the denial of the protest, the assessment had accordingly become final. Thus, when the

[8] As amended by RR No. 18-2013 dated November 28, 2013.

Petition for Review was filed before the CTA, the court is already bereft of any jurisdiction to take cognizance of the same.

In view of the foregoing, I vote to **GRANT** the present Petition for Review. The Decision of the Second Division of this Court in CTA Case No. 9609, dated January 15, 2020 and the Resolution, dated September 18, 2020, should be **REVERSED** and **SET ASIDE**. CTA Case No. 9609 should be **DISMISSED** for lack of jurisdiction.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

ALPHALAND MAKATI PLACE, INC.,
Respondent.

CTA EB No. 2292
(CTA Case No. 9609)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
MAR 14 2022 4:30pm

x - x

SEPARATE OPINION

BACORRO-VILLENA, J.:

After a second hard look on the factual antecedents of this case, it is my opinion that the Court in Division no longer had jurisdiction over the prior Petition for Review, as respondent filed the same beyond the thirty-day period prescribed by law.

Respondent claims that it filed its protest on 03 November 2015.[1] Subsequently, respondent received a Final Notice Before Seizure[2] (**FNBS**) on 23 December 2015 and a Warrant of Distraint and/or Levy[3] (**WDL**) on 05 January 2016. After receiving the said WDL[4], respondent did not file an

[1] Question & Answer (Q&A) No. 15, Judicial Affidavit (of Jennette M. Manlosa), Division Docket, Volume I, p. 212.
[2] Exhibit "P-6", id., Volume II, p. 612.
[3] Exhibit "P-7", id., p. 615.
[4] Not reflected in the assailed Decision or in the *ponencia*.

appeal before this Court and instead, filed requests for reinvestigation[5] on 07 and 14 January 2016 with the same person who signed the previous FNBS and WDL, Assistant Commissioner Nestor S. Valeroso of the Large Taxpayers Service.

As early as in the case of *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[6], the thirty-day period to appeal before this Court was already reckoned from the taxpayer's receipt of the WDL.

This was reiterated in the more recent case of *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*[7] where the Supreme Court unequivocally declared that "[t]he warrant of distraint or levy issued by the Commissioner of Internal Revenue constitutes constructive and final denial of [the] belated protest, from which the 30-day period to appeal to the Court of Tax Appeals should be reckoned".

In sum, I vote to **GRANT** the instant Petition for Review and consequently, **REVERSE** and **SET ASIDE** the assailed Decision and Resolution in CTA Case No. 9609 entitled *Alphaland Makati Place, Inc. v. Commissioner of Internal Revenue* on the ground that the Court in Division no longer had jurisdiction over respondent's prior Petition for Review.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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5 Exhibit "P-8", BIR Records, p. 143; Exhibit "P-9", Division Docket, Volume II, pp. 616-618.

6 G.R. No. 162852, 16 December 2004.

7 G.R. No. 225809, 17 March 2021.