REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2854** (CTA Case No. 9407)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES,** *and* **ANGELES** *JJ.*
ABUNDANCE PROVIDERS AND ENTREPRENEURS CORPORATION, Respondent.	Promulgated: JUN 30 2025 4:30

x- x

DECISION

FERRER-FLORES, J.:

Before the Court *En Banc* is a **Petition for Review**[1] filed on February 2, 2024 by the **Commissioner of Internal Revenue (CIR/petitioner)** against **Abundance Providers and Entrepreneurs Corporation (APEC/respondent)**, praying that the Decision dated July 14, 2023 (**assailed Decision**)[2] and the Resolution dated December 7, 2023 (**assailed Resolution**),[3] both rendered by the Special Third Division[4] of this Court (**Court in Division**) in CTA Case No. 9407 entitled "*Abundance Providers*

---

[1] *Rollo*, pp. 7-29.
[2] *Id. at* 36-50.
[3] *Id. at* 52-59.
[4] Penned by Associate Justice Marian Ivy F. Reyes-Fajardo and concurred in by Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Lanee S. Cui-David.

and Entrepreneurs Corporation vs. Commissioner of Internal Revenue and the Bureau of Internal Revenue" be set aside and cancelled.

The dispositive portions of the assailed Decision and assailed Resolution respectively read as follows:

Assailed Decision:

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the Formal Letter of Demand dated June 26, 2013 and the Final Decision on Disputed Assessment dated February 24, 2016 assessing petitioner for deficiency income tax, value-added tax, expanded withholding tax, and documentary stamp tax assessments for calendar year 2008 are hereby **CANCELLED** and **SET ASIDE** for being void.
>
> Respondents, its representatives, agents, or other persons acting in its behalf are **ENJOINED** from enforcing against the petitioner the collection of deficiency income tax, value-added tax, expanded withholding tax, and documentary stamp tax assessments for calendar year 2008.
>
> **SO ORDERED.**

Assailed Resolution:

> **WHEREFORE**, in light of the foregoing considerations, respondent Commissioner of Internal Revenue's Motion for Reconsideration of the Decision promulgated on July 14, 2023 is **DENIED** for lack of merit.
>
> **SO ORDERED.**

THE PARTIES

Petitioner is the head of the Bureau of Internal Revenue (BIR), the government agency tasked to assess and collect all national internal revenue taxes. Petitioner CIR has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended, or other laws or portions thereof administered by the BIR.

Respondent is a corporation duly organized and existing under the laws of the Republic of the Philippines. It is registered with the BIR under Tax Identification Number 000-799-948-00000, with address at 2nd Floor, Eurovilla 1 Condominium, 142 Legaspi corner V.A. Rufino Streets, San Lorenzo, Makati City.

FACTUAL ANTECEDENTS

The factual antecedents as narrated in the assailed Decision of the Court in Division are as follows:[5]

> Empowered by Letter of Authority (LOA) No. 2008 00033698 dated July 1, 2009, the BIR examined APEC's books of accounts and other accounting records for all internal revenue taxes covering the calendar year 2008. The initial audit team consisted of Group Supervisor (GS) Erlinda V. Ulgado and Revenue Officers (ROs) Gerald Alan Quebral and Belinda Balagtas. Subsequently, in a Memorandum dated April 5, 2010 and letter dated April 7, 2010, the BIR referred APEC's entire docket "for continuance of investigation" and informed the taxpayer that the conduct of the audit and examination of its books of accounts and accounting records have been "re-assigned to Revenue Officer/s Maribel D. Serafica, Reynoso Bravo, Walter Batoon, Daniela S. Gabaon, Olivia Sison, under Group Supervisor Erlinda V. Ulgado."
>
> In the interim, APEC executed four Waivers of the Defense of Prescription (Waivers) which suspended the prescriptive period under Section 203 of the National Internal Revenue Code (Tax Code) and allowed the BIR to extend audit and investigation as follows:

	Date of Execution	**Extended until**
First Waiver	February 2, 2011	December 31, 2011
Second Waiver	November 4, 2011	June 30, 2012
Third Waiver	May 25, 2012	September 30, 2012
Fourth Waiver	August 22, 2012	June 30, 2013

> Thereafter, the BIR issued Notice of Informal Conference dated *November 12, 2012*.
>
> On account of the re-assignment/retirement/transfer of revenue officers that handled previously the audit of APEC's books, the BIR issued a Memorandum of Assignment (MOA) dated *February 25, 2013* to refer anew APEC's case for continuance to RO Arnaldo T. Ancheta and GS Juvy S. De La Peña.
>
> In a Memorandum dated May 8, 2013, RO Ancheta, with other ROs and GS De La Peña, recommended the approval of a Preliminary Assessment Notice (PAN), informing APEC of the audit results, corresponding deficiency tax assessments, and details thereon. Based on this recommendation, on *May 28, 2013*, the CIR issued the **PAN with attached Details of Discrepancies** finding APEC liable for deficiency income tax, VAT, EWT and DST for taxable year 2008, in the aggregate amount of ₱113,428,791.61, computed as follows:

	Basic	**Interest**	**Compromise Penalty**	**Total**
Income tax	₱2,137,343.09	₱1,800,048.97	₱25,000.00	₱3,962,392.06
VAT	53,488,545.85	47,392,546.28	50,000.00	100,931,092.13
EWT	47,984.07	42,909.75	16,000.00	106,893.82
DST	4,429,484.17	3,948,929.43	50,000.00	8,428,413.60
Total	₱60,103,357.18	₱53,184,434.43	₱141,000.00	**₱113,428,791.61**

---

[5] *Rollo*, pp. 37-41.

After its receipt thereof on May 28, 2013, APEC responded to the PAN through a letter dated June 10, 2013. It refuted the assessments for each tax type and submitted the corresponding factual and legal arguments in support thereof.

On June 26, 2013, upon the recommendation of RO Ancheta, the other ROs, and GS De La Peña, the CIR issued the Formal Letter of Demand (FLD) with attached Details of Discrepancies and Audit Results/Assessments, which reiterated APEC's deficiency income tax, VAT, EWT and DST liabilities in the aggregate amount of ₱114,449,277.99, computed as follows:

	Basic	Interest	Compromise Penalty	Total
Income tax	₱2,137,343.09	₱1,836,362.43	₱25,000.00	₱3,998,705.52
VAT	53,488,545.85	48,300,691.769	50,000.00	101,839,237.64
EWT	47,984.07	43,724.52	16,000.00	107,708.59
DST	4,429,484.17	4,024,142.07	50,000.00	8,503,626.24
Total	₱60,103,357.18*	₱54,204,920.79	₱141,000.00*	**₱114,449,277.97**

* Same amount as reflected in the PAN.

The CIR provided the following explanation to justify the issuance of the FLD:

> We received protest letter, (*sic*) without sufficient and valid documentation and legal basis on June 13, 2013 but failed to execute Waiver of the Defense of Prescription as contemplated under Sections 203 and 22 (*sic*) of National Internal Revenue Code which we have already requested in our Preliminary Assessment Notice, (sic) this Formal Assessment has been issued to protect the interest of the government. However, please be informed that you may still file/reiterate your protest against this FAN within thirty (30) days from receipt hereof in accordance with the provisions of Revenue Regulations 12-99.

This prompted APEC to file its administrative protest on *July 26, 2013*. However, the CIR denied the same through the FDDA with attached Details of Discrepancies dated *February 24, 2016* and sought the payment of the aggregate amount of ₱144,809,602.46, computed as follows:

	Basic	Interest	Compromise Penalty	Total
Income tax	₱2,095,039.35	₱2,881,396.58	₱25,000.00	₱5,001,435.93
VAT	53,488,545.85	75,909,771.92	50,000.00	129,448,317.77
EWT	41,954.08	59,770.20	16,000.00	117,724.28
DST	4,194,053.48	5,998,071.00	50,000.00	10,242,124.48
Total	₱59,819,592.76	₱84,849,009.70	₱141,000.00	**₱144,809,602.46**

While APEC moved for reconsideration of the said assessment through a letter dated March 23, 2016, the CIR denied the same in a Final Decision dated *June 30, 2016*.

Hence, on *August 1, 2016*, APEC filed the [present] Petition for Review (judicial protest).

The CIR filed its Answer on December 5, 2016.

After the conduct of a Pre-Trial Conference, the parties submitted their respective Briefs and Joint Stipulation of Facts and Issues. Consequently, the Court issued the Pre-Trial Order dated January 12, 2018.

Trial ensued thereafter.

For its part, APEC presented the testimonies of the following individuals, namely: (1) Mr. Renato V. Bernardo, petitioner's General Accounting Department Manager; (2) Mr. Rolando I. Gonzalez, petitioner's Executive Vice-President and Chief Operating Officer; (3) Mr. Mamerto A. Marcelo, Jr., Rehabilitation Receiver of petitioner; (4) Ms. Agnes C. Colobong, former Accounting Officer for petitioner's Tax Accounting Division; (4) Ms. Maria Gracia L. Morfe, the Court-commissioned Independent Certified Public Accountant (ICPA); and (5) Mr. Raoul V. Santos, Senior Vice President of the Trust and Investment Division of Rizal Commercial Banking Corporation.

On the other hand, the CIR presented the testimony of Assistant Revenue District Officer (Chief Revenue Officer II) Juvy S. Dela Peña.

The present case was submitted for decision on July 25, 2022.

On July 14, 2023, the Court in Division rendered the assailed Decision granting APEC's *Petition for Review* thereby cancelling and setting aside the *Formal Letter of Demand* (FLD) dated June 26, 2013 and the *Final Decision on Disputed Assessment* (FDDA) dated February 24, 2016. The CIR and its agents/representatives were likewise enjoined from collecting deficiency income tax, value-added tax, expanded withholding tax, and documentary stamp tax assessments for calendar year (CY) 2008.

Aggrieved, petitioner filed his *Motion for Reconsideration*[6] on September 4, 2023. Respondent, on the other hand, filed its *Comment/Opposition [To: Motion for Reconsideration (re: Decision dated 14 July 2023) dated 31 August 2023]*[7] on September 27, 2023.

In the assailed Resolution dated December 7, 2023, the Court in Division denied petitioner's *Motion for Reconsideration* for lack of merit.

PROCEEDINGS BEFORE THE COURT *EN BANC*

On January 19, 2024, petitioner filed a *Motion for Extension to File Petition for Review*,[8] seeking an additional 15 days from January 20, 2024, or until February 4, 2024, to file a *Petition for Review*. The Court *En Banc* granted the same on January 22, 2024.[9]

6 Division Docket, pp. 6470 - 6488.
7 *Id.* at 6496 - 6528.
8 *Rollo*, pp. 1-5.
9 *Id.* at 6.

On February 2, 2024, petitioner filed his *Petition for Review.*[10]

The Court directed the respondent to file its Comment/Opposition on the petitioner's *Petition for Review* within 10 days from notice.[11] Respondent filed a *Motion for Extension of Time to File Comment/Opposition* on April 25, 2024. Thereafter, respondent filed through registered mail its *Comment/Opposition [To: Petition for Review dated 2 February 2024]* on April 30, 2024.[12]

In a Resolution dated May 22, 2024,[13] the Court deemed as granted the *Motion for Extension of Time to File Comment/Opposition* filed by the respondent and noted respondent's *Comment/Opposition [To: Petition for Review dated 2 February 2024].* On even date, the case was submitted for decision.

ISSUES

In assailing the Decision and Resolution of the Court in Division, petitioner assigns the following errors:

I. The Honorable Court in Division erred in ruling that the assessments issued by petitioner are void;

II. The Honorable Court in Division deprived petitioner of due process when it ruled on an issue never raised by respondent, never joined by the pleadings, never raised during the pre-trial and never defined by the Court in the pre-trial order; and,

III. The Honorable Court in Division erred in enjoining and prohibiting petitioner to collect the assessed deficiency taxes.

Petitioner's arguments

In support of the above assigned errors, petitioner forwards the following arguments:

---

10 *Rollo*, pp. 7-27.
11 Minute Resolution dated April 4, 2024, *Rollo*, p. 64.
12 *Rollo*, pp. 70-112.
13 *Id.* at 115.

First, petitioner argues that mere reiteration of the contents of the Preliminary Assessment Notice (PAN) to the FLD and to the FDDA, as in the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.* (*Avon case)*,[14] is not proof that respondent's reply was ignored, especially when the arguments are unmeritorious, and no new pieces of evidence are presented to refute the assessments. Petitioner emphasizes that both the FLD and FDDA he issued were accompanied by Details of Discrepancies, which contained details of respondent's deficiency tax assessments addressing the matters raised in respondent's Protest. Respondent was given every opportunity to refute the assessment; hence, it cannot be said that it was not fully apprised of the factual and legal bases of the assessments when it was able to exhaustively refute the assessments and explain its claims refuting the assessments.

Second, petitioner's basic right to fair play and due process was violated when the Court in Division ruled that respondent was deprived of due process because the assessment was a result of an investigation conducted by revenue officers (ROs) not vested with necessary authority. Petitioner stresses that the said issue was never raised by the respondent in its *Petition for Review* or *Pre-Trial Brief*, not joined by the parties, nor defined by the Court in the Pre-Trial Order.

Third, petitioner argues that assuming the Court may suddenly decide the case based on an issue that was never raised by respondent, was never joined by the pleadings, never raised at the pre-trial conference, never defined by the Court in the Pre-Trial Order and never tried by the parties – the assessments are valid. Petitioner submits that the issuance of a Letter of Authority (LOA) applies only to ROs in Revenue District Offices (RDO). The audit in the instant case was done by the Large Taxpayer Service (LTS) which is an office under the Office of the Commissioner of Internal Revenue (OCIR). Hence, the issuance of a LOA is not a statutory requirement.

Lastly, petitioner argues that the Court cannot enjoin the respondent from collecting the deficiency taxes because the said order is tantamount to a restraining order which is not allowed by law. Petitioner cites Section 218 of the NIRC of 1997, as amended, which explicitly prohibits any court from granting an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by the said law.

Respondents' arguments

Respondent, on the other hand, avers that the assessment notices were issued in blatant violation of respondent's right to due process. It is

---

[14] G.R. No. 201398-99 & 201418-19, October 3, 2018.

insufficient that the respondent was given an opportunity to explain the discrepancies in its assessment. Part and parcel of due process is that respondent's explanations and evidence are duly considered by the petitioner, and the reasons for petitioner's refusal to accept the explanations and evidence of respondent be properly explained to respondent in writing and supported by facts and law.

Further, respondent submits that there was no violation of petitioner's right to fair play and due process when the Court ruled on the issue as to the lack of authority of the ROs to conduct an audit investigation of the respondent. Respondent argues that, prior to the filing of its *Petition* before the court *a quo*, it had no access to inter-office and internal Memoranda of the BIR which directed various ROs and Group Supervisors (GS) to assist and/or continue the investigation of the respondent. It would, therefore, be baseless for petitioner to insist that respondent should have raised any defect on the authority of the ROs upon filing of its *Petition* when clearly such defect was not within respondent's knowledge at the time of such filing.

Respondent claims that the assessment notices issued by ROs and GS not duly authorized under any LOA are null and void, pursuant to the NIRC of 1997, as amended, Revenue Memorandum Order (RMO) No. 48-90 and relevant jurisprudence.

Finally, respondent contends that no error was committed by the Court *a quo* when it permanently enjoined and prohibited the petitioner from collecting the alleged assessed deficiency taxes which is a necessary consequence of its judgment declaring the assessment notices null and void.

RULING OF THE COURT *EN BANC*

The *Petition for Review* is bereft of merit.

The instant Petition for Review was timely filed; thus, the Court En Banc has jurisdiction over the case.

Before delving into the merits of the case, the Court must first determine whether it has jurisdiction over this *Petition for Review*.

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

> Sec. 3. *Who may appeal; period to file petition.* –

> (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 he 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)*

Petitioner received the Resolution denying its *Motion for Reconsideration* on January 5, 2024. Counting 15 days therefrom, petitioner had until **January 20, 2024** within which to elevate the appeal before this Court.

On January 19, 2024, petitioner filed a *Motion for Extension of Time to File Petition for Review.* In a Resolution dated January 22, 2024, petitioner was granted 15 days or until February 4, 2024 within which to file its *Petition for Review.*

Petitioner, thus, timely filed the instant *Petition for Review* on February 2, 2024.

The Court shall now proceed to the issues in the present petition.

The assessment is void for being issued in violation of the respondent's right to due process.

Petitioner argues that it is not under any obligation to give credence to the arguments raised by the respondent in its reply to the PAN and mere reiteration of the contents of the PAN to the FLD and to the FDDA is not proof in any way that respondent's reply was ignored. Furthermore, petitioner contends that respondent was given every opportunity to refute the tax assessment and was able to file its reply to the PAN and protest to the FLD. Hence, it cannot be said that the taxpayer was not fully apprised of the factual and legal bases of the assessments when it was able to exhaustively refute the assessments and explain its claims refuting the assessments.

We are not convinced.

While the Court agrees with petitioner that he is not bound to accept respondent's arguments, and that mere reiteration of the contents of the PAN, FAN and FDDA, does not, in itself, constitute a violation of due process, it bears emphasis that due process demands more than the mere formality of notice and opportunity to be heard. It imposes upon the BIR the correlative duty to judiciously evaluate the defenses and evidence submitted by the taxpayer, and to render a decision that reflects such consideration. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.[15]

In the landmark case of *Ang Tibay vs. The Court of Industrial Relations (Ang Tibay),*[16] the Supreme Court judiciously illuminated the fundamental tenets of due process in administrative proceedings. It was held that not only must a party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal **must consider** the evidence presented.

In *Ang Tibay*, the Supreme Court, citing *Edwards vs. McCoy*,[17] further emphasized that "[t]he right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration."

Indeed, such right becomes illusory and devoid of substance if the tribunal or administrative agency to whom the evidence is presented may simply disregard it without proper evaluation or explanation.

In the context of tax assessments, the Supreme Court has consistently affirmed the indispensable requirements of due process in administrative proceedings. In the *Avon Case,* the Court empathetically ruled:

> It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. **However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.**
>
> Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. **The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.** *(Emphasis supplied)*

In the said case, the Commissioner's failure to address, or even consider, the defenses and supporting documents submitted by Avon

[15] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.
[16] G.R. No. 46496, February 27, 1940.
[17] G.R. No. 7474, March 25, 1912.

constituted a clear violation of the taxpayer's right to due process. As the Court aptly stated, the right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason.

This ruling in the *Avon case* echoes the principles established in *Ang Tibay*, which remains the cornerstone of due process in administrative proceedings. At its core, administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and that the party be sufficiently informed of the reasons for its conclusions.[18]

In *Commissioner of Internal Revenue vs. Maxicare Healthcare Corporation*[19] citing the *Avon* ruling, the Supreme Court reiterated that the CIR's issuance of essentially identical assessment notices which made no reference to or rebuttal of the taxpayer's submissions indicates that the CIR failed to consider or appreciate the evidence submitted by the taxpayer and this omission deprived that taxpayer of due process and necessarily rendered the assessments against it null and void.

More recently, in *Commissioner of Internal Revenue vs. Arturo E. Villanueva, Jr.*,[20] the Supreme Court, in reaffirming the doctrine in the *Avon case*, reiterated the indispensable duty of the Commissioner to give due consideration to the taxpayer's evidence and explanation; otherwise, the right to be heard is rendered meaningless.

In this case, the Court *En Banc* agrees with the ruling of the Court in Division that the filing of a response to the PAN prior to the issuance of the FAN/FLD cannot be a useless exercise. While the CIR remains to have the sole discretion whether or not to act favorably on the response/protest, it is nonetheless duty-bound to, at least, consider the taxpayer's defenses in resolving the case and provide clear reasons for its decision, citing the applicable factual and legal bases for its conclusion.[21] We quote with approval the following discussion in the assailed Decision, to wit:

> *First*, the FLD contained amounts of basic tax (in the aggregate amount of ₱60,103,357.18) and compromise penalty (in the aggregate amount of ₱141,000.00) identical to those in the PAN, adjusted only to update the computation of interest.

[18] *Ibid.*
[19] G.R. No. 261065, July 10, 2023.
[20] G.R. No. 249540, February 28, 2024.
[21] Assailed Decision dated July 14, 2023, p. 10; *Rollo*, p. 45.

> *Second*, verily, the CIR attached Details of Discrepancies to the PAN and FLD, respectively, to explain the findings and resulting deficiency tax amounts. However, the Details of Discrepancies accompanying the FLD bore the exact same explanations/contents[22] as those already provided in the Details of Discrepancies accompanying the PAN.
>
> *Third*, aside from its repetitive discussions, the CIR did not mention any of APEC's arguments, much less give an intelligent discourse in resolving each matter raised. It merely referred to APEC's protest letter as "without sufficient and valid documentation and legal basis."
>
> The identity in substance between the subject PAN and the subsequent FLD, as well as the Details of Discrepancies accompanying them, as in *Avon*, shows that the CIR completely ignored APEC's response to the PAN.
>
> x x x
>
> It is also worth noting that the CIR issued the FLD on *June 26, 2013* "to protect the interest of the government" on account of APEC's failure to execute another Waiver extending the assessment period. These statements convince Us that the CIR issued the FLD in haste and as a mere afterthought to foreclose the impending prescription of its right to assess, which was set to expire on *June 30, 2013*.

The Court *En Banc* agrees with the above observations of the Court in Division. Moreover, even assuming *arguendo* that the reply is unmeritorious, petitioner must nevertheless explain why the same was rejected, as held in the *Avon case*.

Petitioner points out that the ROs who conducted the audit evaluated the respondent's reply to the PAN, as shown by the Memoranda[23] prepared by the ROs conducting the audit.

A careful examination of the Memorandum dated June 24, 2013, however, reveals that petitioner failed to address the particular arguments raised by respondent/taxpayer in its protest. Instead of engaging with the taxpayer's contentions, the memorandum merely provided a sweeping and generalized assertion that the protest was "without sufficient and valid documentation and legal basis", stating:

> Preliminary Assessment notice was served to the taxpayer on May 23, 2013. Taxpayer filed a protest on June 13, 2013 **without sufficient and valid documentation and legal basis to cancel our assessment**. Taxpayer failed to extend their June 30, 2013 – waiver, thus in order to protect the interest of the government to collect taxes the herein assessment is reiterated for the enforcement and collection of the following taxes: *(Emphasis supplied)*

---

22 The Court *En Banc* notes that save for two instances (*i.e.* discrepancies in value-added tax and in documentary stamp tax), the FAN merely reproduced the Details of Discrepancies in the PAN.

23 Exhibits "R-18" and "R-22", BIR Records, pp. 1110 - 1111 and 2125 - 2128, respectively.

Clearly, the Memoranda does not show any substantive evaluation of the respondent's specific defenses, nor does it identify which documents or arguments were found wanting, or why. As such, it falls short of the due process standards articulated in the cases of *Avon* and *Ang Tibay*, which held that the Commissioner's total disregard of due process rendered the identical PAN, FAN and Collection Letter null and void, and of no force and effect.

The Court is not precluded from passing upon the issue of the revenue officers' lack of authority.

Petitioner reiterates his argument that his basic right to fair play and due process was violated when the Court in Division ruled that respondent was deprived of due process because the assessment was the result of an investigation conducted by the ROs not vested with necessary authority.

Petitioner stresses that the issue on the authority of the ROs who conducted the audit was never raised by the respondent in its *Petition for Review*, never joined by the pleadings nor raised by the parties during the pre-trial conference. Likewise, the same issue was never defined by the Court in the Pre-Trial Order.

We are not persuaded.

Under Section 1, Rule 14 of the RRCTA, the Court 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 x x
>
> 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 Court in Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the ROs who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda.[24]

Conspicuously, it is this same spirit of liberality which impelled the Supreme Court to recognize that the Court may even consider issues not

[24] *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

specifically raised by the parties at all in the disposition of tax cases so long as the same is related to the principal issue for its resolution and is necessary to achieve an orderly disposition of the matter at hand.[25]

Thus, the Court *En Banc*, or even a Division thereof, may consider arguments raised for the first time on appeal or on motion for reconsideration upon the concurrence of two conditions: *First*, these arguments are related to the principal issue to be resolved by the court and is necessary to achieve an orderly disposition of the case; and, *Second*, the resolution of these new arguments would not require the presentation of additional evidence, and must rely solely on factual bases that are already matters of record in the case.[26]

It bears emphasis that these parameters were duly observed by the Court in Division when it deemed it proper to address the issue of the lack of authority of petitioner's ROs to conduct the audit investigation in this case. We quote with approval the pertinent disquisition of the Court in Division as contained in the assailed Resolution:

> Accordingly, We observe the following in the present case: *First*, whether the revenue officers were authorized to audit APEC is a matter that directly affects the core issue on the validity of the assessment issued against the taxpayer. *Second*, the Court reached the conclusion that the concerned revenue officers did not possess the required formal authority to audit APEC based on an examination of documents already part of the record, viz.: Letter of Authority (LOA) No. 00033698 dated July 1, 2009, Letter dated April 7, 2010, and Memorandum of Assignment (MOA) dated February 25, 2013. These exhibits were formally offered by both parties during trial.
>
> APEC submitted these documents to prove that only one LOA was issued relative to the audit of APEC's books, despite the further reassignment of the same investigation to revenue officers other than those named in the original LOA. The CIR did not object to the admission of these documents nor did it proffer any argument to counter APEC's assertion (i.e., lack of authority) when it filed its Memorandum after both parties have rested their case.
>
> For its part, the CIR offered the same documents in evidence to prove that it notified APEC that a different set of revenue officers were going to conduct/continue the audit.
>
> To be sure, that revenue officers did not possess the required formal authority to conduct an investigation is a matter that affects the resulting assessment's intrinsic validity. The Court may take cognizance of this issue despite the taxpayer's failure to raise it at earliest opportunity, more so when it appears that, in fact, the taxpayer disputed the revenue officers' authority in the course of the trial.

---

[25] *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*, G.R. No. 249153, September 12, 2022.

[26] *Id.*

In fine, no violation of petitioner's right to fair play and due process can be ascribed to the Court in Division when it deemed it necessary to look into the authority of the concerned ROs who conducted the audit of respondent's books of accounts and other accounting records for CY 2008, to achieve an orderly disposition of the present case. More significantly, it is determinative of the validity of the assessment issued by petitioner against respondent for CY 2008.

The Court *En Banc* now proceeds to the issue on whether the ROs who conducted the audit were duly clothed with the requisite authority.

The revenue officers were not duly authorized to conduct the audit investigation; hence, the resulting tax assessments are void.

Section 6(A) of the NIRC of 1997, as amended, vests in the CIR, or his duly authorized representative, the exclusive authority to authorize the examination of any taxpayer and the assessment of the correct amount of tax, to wit:

> **Section 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –**
>
> **(A) Examination of Return and Determination of Tax Due.** – After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. *(Emphasis supplied)*

In relation thereto, Section 13 of the NIRC of 1997, as amended, expressly provides that the authority of an RO to examine or recommend the assessment of any deficiency tax due must be exercised pursuant to a LOA, to wit:

> **Section 13. Authority of a Revenue Officer.** – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a **Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director,** examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself. *(Emphasis supplied)*

The above provisions leave no room for doubt. A LOA issued by the CIR or his duly authorized representative is required before an RO may examine taxpayers and collect the correct amount of tax, or recommend the assessment of any deficiency tax due.

Jurisprudence is equally clear on this matter. In *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*,[27] the Supreme Court held that the lack of authority of the ROs is tantamount to the absence of a LOA itself which results in a void assessment. Being a void assessment, the same bears no fruit.

Thus, we concur with the observations made by the Court in Division that the Supreme Court has been consistent in upholding and reiterating these requirements and in invalidating assessments in case of the tax authorities' non-compliance thereto.[28]

In the present case, petitioner does not deny that there was no new LOA issued in favor of the ROs who conducted the examination of respondent's books and accounting records. Petitioner, however, argues that a new LOA is not required and a Memorandum of Assignment (MOA) issued by the Head of the investigating office is sufficient to vest authority on the ROs named in the MOA. Petitioner further avers that a LOA is not required for audits done by the LTS which is an office under the OCIR, and that the requirement of an LOA applies only to ROs in RDOs.

We cannot sustain petitioner's view.

At the outset, it bears emphasis that neither the NIRC of 1997, as amended, nor its implementing rules and regulations, draws any distinction between audits conducted by ROs from RDOs and those conducted by the LTS, insofar as the requirement for a valid LOA is concerned. The law is clear in requiring that an examination of a taxpayer's books of accounts and other accounting records must be conducted only by ROs duly authorized by the CIR or his duly authorized representative. In this regard, the doctrine *Ubi lex non distinguit, nec nos distinguere debemus* finds apt application. That is to say, where the law does not distinguish, we ought not to distinguish. To hold otherwise would give rise to an untenable situation where taxpayers classified under the LTS may be subjected to audits without the safeguards provided by law.

---

27 G.R. No. 241848, May 14, 2021.

28 *Republic vs. Robiegie Corp.*, G.R. No. 260261, October 3, 2022; *Himalayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021; *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

An LOA is not a mere administrative requirement, nor may it be reduced as merely an administrative tool devised to account for audit activities under audit programs, as petitioner suggests. Rather, it is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.[29] The LTS, like all other BIR offices conducting tax audits, is bound by the requirements of the law.

Moreover, the Court sees no cogent reason not to apply the ruling in *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corporation*[30] *(McDonald's)* to the instant case. The *McDonald's case* is not a novel principle but a reiteration of long-standing jurisprudence. As early as *Commissioner of Internal Revenue v. Sony Philippines,*[31] the Supreme Court has consistently held that there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.

Thus, the *McDonald's case* merely affirms established doctrine. It cannot be said to introduce a new rule warranting prospective application. In *McDonald's*, the Supreme Court merely applied statutory requirements consistently upheld in previous decisions.

As to petitioner's argument that RMO No. 43-90 is not an implementing rule of any statute, the Supreme Court has already ruled with finality in the *McDonald's case* that RMO 43-90 remains effective and applicable, despite being issued prior to the promulgation of the NIRC of 1997 pursuant to Section 291 of the same code, which provides:

> Section 291. In General. – All laws, decrees, executive orders, rules and regulations or parts thereof which are contrary to or inconsistent with this Code are hereby repealed, amended or modified accordingly.

In applying the above provision, the Supreme Court held that Section D (5) of RMO No. 43-90 dated September 20, 1990 is not contrary to, or inconsistent with, the NIRC of 1997. In fact, the NIRC of 1997 codifies the LOA requirement in RMO No. 43-90. While RMO No. 43-90 was issued under the old Tax Code, nothing in Section D (5) of RMO No. 43-90 is repugnant to Sections 6(A), 10 and 13 of the NIRC of 1997. Hence, pursuant to Section 291 of the NIRC of 1997, RMO No. 43-90 remains effective and applicable.

---

[29] *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021.
[30] G.R. No. 242670, May 10, 2021.
[31] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

In sum, petitioner's failure to secure a new or amended LOA authorizing the ROs and GS to conduct the audit of the respondent's books of accounts and other accounting records renders the resulting tax assessments void. To stress, a void assessment bears no valid fruit.[32]

A void assessment bears no fruit and cannot attain finality. Hence, it cannot be the basis of collection of a deficiency tax assessment.

Petitioner argues that the Order of the Court in Division enjoining the CIR to desist from undertaking any collection proceedings of the subject tax deficiencies is tantamount to a restraining order, an act allegedly proscribed under Section 218 of the NIRC of 1997, as amended:

> Section 218. Injunction not Available to Restrain Collection of Tax. – No court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee, or charge imposed by this Code.

In addition, petitioner asserts that, assuming *arguendo* the Court in Division had the authority to enjoin the collection of the assessed deficiency taxes, it should have required the respondent to post a bond pursuant to Section 6, Rule 10 of the RRCTA.

Petitioner's contentions are untenable.

To resolve the matter, it is necessary to revisit the rationale underlying Section 218 of the NIRC of 1997, as amended.

Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance.[33] Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it.[34]

It is in this context that courts are generally precluded from enjoining the collection of any national internal revenue tax, fee, or charge imposed by the Tax Code. If the payment of taxes could be postponed by simply questioning their validity, the machinery of the state would grind to a halt and all government functions would be paralyzed.[35] Thus, the law presumes the regularity and correctness of tax assessments and shields their collection from

[32] *Commissioner of Internal Revenue vs. Unioil Corporation*, G.R. No. 204405, August 4, 2021.
[33] *Commissioner of Internal Revenue vs. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021.
[34] *Commissioner of Internal Revenue vs. Algue, Inc.*, G.R. No. L-28896, February 17, 1988.
[35] *Commissioner of Internal Revenue vs. Cebu Portland Cement Company and Court of Tax Appeals*, G.R. No. L-29059, December 15, 1987.

judicial interference. These are precisely the policy considerations that animates Section 218 of the NIRC of 1997, as amended.

However, such prohibition is not without exception. An exception is found in Section 11 of RA No. 1125[36] as amended by RA No. 9282[37] which vests the CTA with the authority to suspend the collection of a tax when, in its sound discretion, such collection may jeopardize the interests of either the government and/or the taxpayer. In such instance, the law provides that the CTA "**at any stage of the proceeding** may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount."[38]

Section 218 of the NIRC of 1997, as amended, and Section 11 of RA No. 1125, as amended, however, by necessary implication, pertains only to interim reliefs or preliminary injunctions or motions to suspend collection, sought during the pendency of the case and prior to the rendition of a judgment or final order by the Court. In the contrary, the Order assailed herein, which enjoined the petitioner from collecting deficiency taxes, is not provisional in character, but rather a necessary consequence of a final adjudication declaring the assessments void.

In *The City of Iloilo vs. Hon. Judge Rene B. Honrado, et. al.*,[39] the Supreme Court drew a clear line between preliminary injunctions and final judgments. The Court held that a preliminary injunction is an order granted at any stage of an action or proceeding **prior to the judgment or final order** requiring a party or a court, an agency, or a person to refrain from a particular act or acts. Its essential role is preservative of the rights of the parties in order to protect the ability of the court to render a meaningful decision, or in order to guard against a change of circumstances that will hamper or prevent the granting of the proper relief after the trial on the merits.

In the case at bar, the Court in Division enjoined the CIR from collecting the assessed deficiency taxes, not as a provisional measure, but as a necessary consequence of its judgment declaring the assessments null and void. A void assessment produces no legal effect. It is as if it were never issued. Hence, it

[36] R.A. No. 1125, AN ACT CREATING THE COURT OF TAX APPEALS, June 16, 1954.
[37] R.A. No. 9282, AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES, March 30, 2004.
[38] *Commissioner of Internal Revenue vs. Standard Insurance Co., Inc.*, G.R. No. 219340, November 7, 2018.
[39] *The City of Iloilo, Represented by Hon. Mayor Jerry P. Treñas vs. Hon. Judge Rene B. Honrado, Presiding Judge, Regional Trial Court, Branch 29, Iloilo City, and JPV Motor Vehicle Emission Testing & Car Care Center, Co., Represented by Jim P. Velez*, G.R. No. 160399, December 9, 2015.

cannot attain finality nor serve as a lawful basis for the petitioner to collect taxes.

The petitioner's insistence on the applicability of Section 218 of the NIRC of 1997, as amended, and the need for a bond under Rule 10 of the RRCTA, fails to appreciate this fundamental distinction. The rule requiring the posting of a bond applies only when the Court issues a provisional suspension of collection prior to resolving the case on the merits. Where, as here, the assessment has already been adjudged void, the matter is no longer governed by the rules on injunctive relief, but by the inherent powers of the Court to enforce its final judgment.

Indeed, Section 5 (c), Rule 135 of the Rules of Court provides:

> Section 5. Inherent powers of court. — Every court shall have power:
>
> x x x
>
> (c) To compel obedience to its judgments, orders and processes, and to the lawful orders of a judge out of court, in a case pending therein;
>
> x x x

Similarly, Section 6, Rule 135 of the Rules of Court provides:

> Sec. 6. Means to carry jurisdiction into effect. - When by law jurisdiction is conferred on a court or judicial officer, **all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer**; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears comfortable to the spirit of the said law or rules. *(Emphasis supplied)*

It follows, therefore, that the Court may rightfully enjoin any act, including the collection of deficiency taxes, that would render its final judgment inutile. To allow the petitioner to proceed with collection despite the nullity of the assessments would not only amount to blatant disregard for judicial authority but would also erode the rule of law and undermine the integrity of the Court's decisions.

At this juncture, it is almost trite to restate, yet necessary to emphasize, that a void assessment bears no fruit and can never attain finality. Accordingly, it cannot serve as the basis for the collection of deficiency tax.

In sum, the Court *En Banc* finds no reversible error committed by the Court in Division that would warrant the modification, much more, the reversal of the assailed Decision and Resolution.

WHEREFORE, in light of the foregoing considerations, the instant **Petition for Review** is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated July 14, 2023 and Resolution dated December 7, 2023, both rendered by the Court in Division in CTA Case No. 9407 are hereby **AFFIRMED**.

Consequently, petitioner Commissioner of Internal Revenue or any person acting on his behalf is **ENJOINED** from enforcing the collection of deficiency taxes assessed against respondent for calendar year 2008.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice