SECOND DIVISION

[G.R. No. 263811. November 26, 2024]

COMMISSIONER OF INTERNAL REVENUE, *Petitioner, v.* **FORT 1 GLOBAL CITY CENTER, INC.,** *Respondent.*

D E C I S I O N

M. LOPEZ, *J.*:

In this petition,[1] the Commissioner of Internal Revenue (CIR) seeks to reverse and set aside the Decision[2] dated November 10, 2021, and Resolution[3] dated October 7, 2022, of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 2233 that affirmed the CTA 2nd Division Decision[4] dated September 24, 2019 and Resolution[5] dated January 23, 2020 in CTA Case Nos. 9490 and 9503. The CTA cancelled the deficiency tax assessments issued by the Bureau of Internal Revenue (BIR) against Fort 1 Global City Center, Inc. (FGCCI) for taxable years 2009 and 2012 on

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1 *Rollo*, pp. 108–154.

2 *Id.* at 9–60. The Decision was penned by Associate Justice Catherine T. Manahan and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Ma. Belen M. Ringpis-Liban, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro, and Marian Ivy F. Reyes-Fajardo. Associate Justice Ma. Belen M. Ringpis-Liban issued a Separate Opinion.

3 *Id.* at 63–69. The Resolution was penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Erlinda P. Uy, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro. Marian Ivy F. Reyes-Fajardo, and Lanee S. Cui-David. Associate Justice Catherine T. Manahan dissented, *see id.*, at 71–75.

4 *Id.* at 236–267. The Decision was penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Jean Marie A. Bacorro-Villena.

5 *Id.* at 269–274. The Resolution penned by Associate Justice Cielito N. Mindaro-Grulla and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Jean Marie A. Bacorro-Villena.

Supreme Court E-Library

the ground of void assessment as FGCCI did not receive the assessment notices.

Antecedents

For the taxable year 2009, the BIR issued a Preliminary Assessment Notice[6] (PAN) dated January 24, 2012, finding FGCCI liable for deficiency income tax, value-added tax (VAT), withholding tax (WT), and documentary stamp tax (DST). FGCCI contested these findings, but the BIR issued a Final Assessment Notice[7] (FAN) as a response. After FGCCI filed its protest to the FAN,[8] the BIR issued a Final Decision on Disputed Assessment[9] (FDDA) dated October 13, 2016, informing FGCCI that it is liable to pay deficiency taxes amounting to PHP 1,598,860,663.45 for the taxable year 2009.

On the other hand, for the taxable year 2012, the BIR issued a PAN[10] dated February 3, 2016, and a FAN[11] dated March 15, 2016, for deficiency income tax and VAT totaling PHP 134,099,378.74. FGCCI filed its protest to the FAN on April 1, 2016, but the BIR did not act on the protest.

Hence, FGCCI filed two separate Petitions for Review on *Certiorari* before the CTA to question: (a) the CIR's inaction to its protest for the taxable year 2012 and (b) the FDDA for the taxable year 2009. The two cases were eventually consolidated.[12]

FGCCI argued that the assessments were invalid because the notices were served to the wrong address. Specifically, the Letter of Authority (LOA), PAN, FAN, and FDDA for the taxable year 2009 were delivered to 30th Street, Bonifacio Blvd., Global City,

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6 *Id.* at 294–298.

7 *Id.* at 308–312.

8 *Id.* at 313–320.

9 *Id.* at 321–325.

10 *Id.* at 326–329.

11 *Id.* at 330–332.

12 *Id.* at 245.

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Taguig,[13] while the LOA, PAN, and FAN for the taxable year 2012 were served at 32nd Street, corner Boni Avenue.[14] However, the principal address of FGCCI in its 2016 General Information Sheet (GIS) is Unit 2C-B, FPS Building, 1st Avenue, corner 30th Street, Global City, Taguig.[15] According to FGCCI, it got copies of the BIR notices because an uninterested third person received them and informed FGCCI. FGCCI added that the BIR notices were not served on persons authorized by FGCCI. In their testimony before the CTA, the Revenue Officers failed to identify the position or affiliation of the persons to whom the letters and assessments were served.

For his part, the CIR alleged that the LOA, PAN, and FAN for taxable years 2009 and 2012 were properly served to FGCCI, as evidenced by the "stamped received" annotation on BIR's copies.[16] Besides, even assuming that these documents were served to the wrong address and persons, FGCCI is deemed to have received them because it responded and duly protested the assessments.[17]

Ruling of the Court of Tax Appeals

The CTA Division resolved the case in favor of FGCCI.[18] It held that under Revenue Regulation (RR) No. 12-99, the BIR must send the relevant notices to the taxpayer by registered mail or personal service. In personal service, the notices must be received by the taxpayer or its duly authorized representatives showing the latter's name, signature, designation and authority, and date of receipt. The CTA ruled that although the 2016 GIS may not be considered as FGCCI's address registered in the BIR, the BIR failed to prove that the addresses to which the notices were sent were the registered or known address of FGCCI. Further, the

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[13] *Id.* at 250–252.

[14] *Id.* at 252.

[15] *Id.* at 250.

[16] *Id.* at 251–252.

[17] *Id.* at 252.

[18] *Id.* at 236–267.

Supreme Court E-Library

notices did not indicate the designation or authority of the persons who received them. The CTA emphasized that FGCCI's filing of protest to the FAN is inconsequential as it does not cure the violation of FGCCI's right to due process. The dispositive portion of the Decision states:

> **WHEREFORE**, premises considered, the instant Petitions for Review are **GRANTED**. The PAN and FAN for taxable years 2009 and 2012 are **CANCELLED**. Accordingly, the deficiency tax assessments against petitioner amounting to ₱134,099,378.74 and ₱1,598,860,663.45 for taxable years 2012 and 2009 mentioned in the said assessment notices, as well as the FDDA dated October 13, 2016, are likewise cancelled and set aside.
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> **SO ORDERED.**[19] (Emphasis in the original)

The CTA Division denied the BIR's Motion for Reconsideration.[20] It ruled that the CTA may take cognizance of issues regarding the proper service of BIR notices, even if the same has not been raised at the administrative level. The CTA reiterated that based on the evidence presented by the parties, the BIR failed to comply with the provisions of RR No. 12-99 for taxable years 2009 and 2012. Thus:

> **WHEREFORE**, finding no cogent reason to reverse the Court's ruling, respondent's Motion for Reconsideration (On the Decision promulgated on August 6, 2019) is **DENIED** for lack of merit.
>
> **SO ORDERED.**[21] (Emphasis in the original)

On appeal, the CTA *En Banc* discussed that there was merit in the BIR's contention that the GIS is not the proper evidence to prove the business address for purposes of official service of BIR notices. FGCCI should have submitted the BIR Certificate of Registration since this would be the address reflected in the BIR-Integrated Tax System (BIR-ITS). Further, the CTA *En Banc* held that FGCCI's right to due process was not violated. FGCCI duly filed its protests to the 2009 and 2012 FANs. Besides, FGCCI did

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[19] *Id.* at 266.

[20] *Id.* at 269–274.

[21] *Id.* at 274.

Supreme Court E-Library

not present the "uninterested third person" who allegedly received the BIR notices for them. The CTA *En Banc* also discussed the substantive aspects of the case, but ultimately sustained the CTA Division's conclusion because the required affirmative votes under the law were not garnered.[22] Thus:

> In the deliberation of the instant case, only Presiding Justice Roman G. del Rosario, Justice Erlinda P. Uy and Justice Maria Rowena Modesto-San Pedro concurred with the opinion of the ponente that the Petition for Review filed by the CIR docketed as CTA EB No. 2233 should be granted and that the case be decided on its merits.
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> **WHEREFORE**, considering that the required affirmative votes of five (5) members of the Court *En Banc* was not obtained in the instant case, pursuant to section 2 of Republic Act No. 1125, as amended by Republic Act No. 9503 in relation to Section 3 of Rule 2 of the RRCTA, the Petition for Review filed by the CIR is instead **DENIED** and the Decision of the Court in Division promulgated on September 24, 2019 and the Resolution dated January 23, 2020 are deemed **AFFIRMED**.
>
> **SO ORDERED.**[23] (Emphasis in the original)

Both parties requested reconsideration, but the CTA *En Banc* denied them in the assailed Resolution.[24] It was ruled that the tenets of due process mandate that the BIR should properly serve an assessment on the taxpayer; otherwise, the same is void. Thus, it was of no consequence that FGCCI protested the FAN and PAN for taxable years 2009 and 2012, as that fact does not detract from the reality that there was a violation of the taxpayer's right to due process. Hence:

> **WHEREFORE**, premises considered, Petitioner's "Motion for Reconsideration (On the Decision promulgated on November 10, 2021)" and Respondent's "Motion for Reconsideration" are both **DENIED** for lack of merit.
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> **SO ORDERED**.[25] (Emphasis in the original)

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[22] *Id.* at 9–60.

[23] *Id.* at 60.

[24] *Id.* at 63–69.

[25] *Id.* at 69.

Supreme Court E-Library

The BIR received the CTA *En Banc's* Resolution on October 13, 2022. Thus, it had 15 days, or until October 28, 2022, to file its Petition for Review on *Certiorari* before this Court.[26]

On October 28, 2022, the CIR filed a Motion for Extension of Time to File a Petition for *Certiorari*,[27] requesting an additional 30 days, or until November 28, 2022, to file its petition. This was granted in this Court's Resolution dated January 11, 2023.[28]

However, the CIR filed a Motion to Admit[29] with its Petition[30] on November 29, 2022. The Office of the Solicitor General (OSG), acting as counsel for the CIR, explained that it failed to file during the reglementary period because of heavy work and close proximity of due dates.

FGCCI opposed[31] the Motion to Admit. It argued that a heavy workload is not a sufficient justification for the leniency of the rules.

Arguments of the Parties

In its Petition,[32] the CIR argues that the notices and assessments were personally served at FGCCl's registered address as found in the BIR-ITS. He narrates that the LOA, PAN, and FAN for the taxable year 2009 were all sent to 30th Street, Bonifacio Blvd., Global City, Taguig—which was the address in the BIR-ITS at the time these notices were served. Subsequently, FGCCI updated its registered address with the BIR to 32nd Street, corner Bonifacio Blvd., Global City, Taguig City. Thus, the PAN and FAN for the taxable year 2012 were sent to the new address. According to the CIR, as of February 2020, the address of FGCCI registered with the BIR-ITS was still 32nd Street, cor. Bonifacio Blvd. Global

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[26] RULES OF COURT, Rule 45, sec. 2.

[27] *Rollo*, pp. 3–5.

[28] *Id.* at 98.

[29] *Id.* at 100–105.

[30] *Id.* at 106–154.

[31] *Id.* at 85–95.

[32] *Id.* at 106–154.

Supreme Court E-Library

City, Taguig City.[33] To be sure, even the documentary exhibits that FGCCI submitted before the CTA Division and *En Banc* stated that FGCCI's address was 32nd Street corner Bonifacio Blvd., Global City, Taguig City. The CIR emphasized that it is the taxpayer's responsibility to provide and update the address for his place of business, head office, and/or branches with the BIR.[34]

In any case, the CIR stresses that FGCCI admitted receiving the BIR notices in various communications with the BIR. FGCCI failed to substantiate its claim that an "uninterested third person" received the notices instead of FGCCI. If the GIS can be deemed as the basis for FGCCI's principal address, the CIR stressed that the 2016 GIS is also not the appropriate basis since it was filed *after* most of the BIR notices were sent to FGCCI and *after* FGCCI acknowledged receiving the PAN and FAN for the taxable year 2009 in 2012. Thus, FGCCI is estopped from claiming it did not receive the BIR notices, especially when it actively participated in the proceedings before the BIR. FGCCI cannot claim that it was denied due process when it was given the opportunity to be heard during the BIR proceedings. Finally, the CIR argued on the substance and merits of the case.[35]

In its Comment,[36] FGCCI denies valid receipt of the LOA, PAN, and FAN and argues that it is incumbent upon the BIR to prove that these were properly and lawfully served. FGCCI points out that Revenue Officers failed to comply with the requirements of RR No. 12-99, as they failed to ascertain the authority of the persons who received the notices. Moreover, the presumption of regularity cannot be applied when irregularities in the procedures undertaken by the CIR are found. The BIR notices were delivered to an incorrect address, to a different building, and to persons not duly found or established to be related to FGCCI. Thus, FGCCI is neither estopped from questioning the validity of the service of the

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[33] *Id.* at 129.

[34] *Id.*

[35] *Id.* at 130–132.

[36] *Id.* at 454–512.

Supreme Court E-Library

BIR notices, nor does FGCCI's filing of protest letters cure the defects in the improper service of the BIR notices.[37]

ISSUE

The core issue is whether or not FGCCI's right to due process was violated because (a) the LOA, PAN, and FAN were served at the wrong address and (b) the Revenue Officers failed to comply with the procedural requirements under RR No. 12-99 in ascertaining the authority of the persons who received the said notices on behalf of FGCCI.

RULING

Preliminarily, We discuss the procedural lapse that occurred in this case.

The CIR admits that it has filed the present petition out of time — one day after the deadline.[38] The late filing was due to heavy work and close proximity of due dates. Yet, a heavy workload is relative and often self-serving.[39] A heavy workload, standing alone, is hardly a compelling or meritorious reason to allow extensions of time to file pleadings.[40] Besides, We have consistently held that the need to comply with reglementary periods to file appeals is an adjunct of the basic principle that the right to appeal is merely vested by statute. Thus, anyone who appeals must diligently comply with the governing rules.[41] This Court has not shied away from dismissing appeals and petitions non-observant of the Rules of Court.[42]

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[37] *Id.* at 476–491.

[38] *Id.* at 100–105.

[39] *Heirs of Gayares v. Pacific Asia Overseas Shipping Corp.,* 691 Phil. 46, 54 (2012) [Per J. Del Castillo, First Division].

[40] *Adtel, Inc. v. Valdez*, 816 Phil. 110, 119 (2017) [Per J. Carpio, Second Division].

[41] *Magat, Sr. v. Tantrade Corp.,* 817 Phil. 53, 62 (2017) [Per J. Leonen, Third Division].

[42] *See Philippine Independent Catholic Church of Kibatang 63rd and Mothers (Alfahanon), Inc. v. Iglesia Filipina Independiente,* G.R. No. 244656, June 3, 2019 [Unsigned Resolution, First Division].

Supreme Court E-Library

The rule, however, is not without exception. Procedural rules are merely designed to facilitate the proper adjudication of cases. If the rigid application of the rules of procedure tends to obstruct the dispensation of justice, they can be relaxed.[43]

After carefully reviewing the facts and law of the case and considering the amount of deficiency taxes involved, which, when collected, will devolve into the government's coffers, We deem it proper to take cognizance of the present case. We held in *Thenamaris Philippines, Inc. v. Court of Appeals*:[44]

> [W]e recognized that although procedural rules ought to be strictly enforced by courts in order to impart stability in the legal system, we have, nonetheless, relaxed the rigid application of the rules of procedure in several cases to afford the parties the opportunity to fully ventilate their cases on the merits. This is because the ends of justice would be better served if the parties were given the chance to argue their causes and defenses. We are likewise constantly reminded that the general objective of procedure is to facilitate the application of justice to the opposing claims of the competing parties and always be guided by the principle that procedure must not hinder but, rather, promote the administration of justice.[45]

However, the Petition must still be denied.

The address in the records of the BIR is presumed to be the taxpayer's correct address to determine the proper service of BIR notices.

RR No. 12-85[46] prescribes that notices for proposed assessments shall be sent to the taxpayer at the address indicated in its return

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[43] *Espiritu v. Field Investigation Office II,* G.R. No. 249863, February 3, 2020 [Unsigned Resolution, Third Division].

[44] 725 Phil. 590 (2014) [Per J. Del Castillo, Second Division].

[45] *Id.* at 602–603.

[46] Subject: PROCEDURE COVERING ADMINISTRATIVE PROTESTS ON ASSESSMENTS OF THE BUREAU OF INTERNAL REVENUE, dated November 27, 1985.

Supreme Court E-Library

or at its last known address as stated in his notice of change of address:

> SECTION 2. *Notice of proposed assessment*. — When the Commissioner or his duly authorized representative finds that taxes should be assessed, he shall first notify the taxpayer of his findings in the attached prescribed form as Annex "B" hereof. **The notice shall be made in writing and sent to the taxpayer at the address indicated in his return or at his last known address as stated in his notice of change of address.**
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> . . . .
>
> SECTION 11. *Change of address*. — In case of change of address, the taxpayer must give written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business, the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, and in case of **failure to do so, any communication referred to in these regulations previously sent to his former legal residence or business address as appearing in his tax return for the period involved shall be considered valid and binding for purposes of the period within which to reply**. (Emphasis supplied)

The requirement to update the BIR for any change in address and other relevant information has been reiterated and streamlined in RR No. 07-12.[47] Section 10 reads:

> SECTION 10. *Transfer of Registration*. — In case a registered person transfers his registered address to a new location, it shall be his duty to inform the BIR district office where he is registered of such fact by filing the prescribed BIR Form specifying therein the complete address where he intends to transfer.

It was incumbent upon FGCCI to inform the BIR of any change in its address. The BIR is not expected to refer to the taxpayer's GIS to determine the correct address for sending tax assessments

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[47] Subject: AMENDED CONSOLIDATED REVENUE REGULATIONS ON PRIMARY REGISTRATION, UPDATES, AND CANCELLATION, dated April 2, 2012.

Supreme Court E-Library

and BIR notices. As far as the BIR is concerned, the address in its BIR-ITS remains true and correct until FGCCI informs it of the new address by complying with the requirements of RR No. 07-12. Failing to do so, FGCCI's address in the BIR-ITS shall be deemed the correct address. Consequently, notices served in this address shall be valid.

Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.[48] exemplifies the importance of informing the BIR of the correct address. In that case, the taxpayer did not formally notify the BIR of its change of address; hence, the BIR alleged that the statute of limitation was suspended. While the Court acknowledged the requirement of notifying the BIR, We ruled that the BIR has been sufficiently informed of the taxpayer's change in address as seen from various documents found in the BIR records:

> It is true that, under Section 223 of the Tax Reform Act of 1997, the running of the Statute of Limitations provided under the provisions of Sections 203 and 222 of the same Act shall be suspended when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected. **In addition, Section 11 of Revenue Regulation No. 12-85 states that, in case of change of address, the taxpayer is required to give a written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business. However, this Court agrees with both the CTA Special First Division and the CTA En Banc in their ruling that the abovementioned provisions on the suspension of the three-year period to assess apply only if the BIR Commissioner is not aware of the whereabouts of the taxpayer.**
>
> In the present case, petitioner, **by all indications, is well aware that respondent had moved to its new address in Calamba, Laguna, as shown by the following documents which form part of respondent's records with the BIR:**
>
> 1) Checklist on Income Tax/Withholding Tax/Documentary Stamp Tax/Value-Added Tax and Other Percentage Taxes;
>
> 2) General Information (BIR Form No. 23-02);
>
> 3) Report on Taxpayer's Delinquent Account, dated June 27, 2002;
>
> 4) Activity Report, dated October 17, 2002;

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[48] 748 Phil. 760–773 (2014) [Per J. Peralta, Third Division].

Supreme Court E-Library

5) Memorandum Report of Examiner, dated June 27, 2002;

6) Revenue Officer's Audit Report on Income Tax;

7) Revenue Officer's Audit Report on Value-Added Tax;

8) Revenue Officer's Audit Report on Compensation Withholding Taxes;

9) Revenue Officer's Audit Report on Expanded Withholding Taxes;

10) Revenue Officer's Audit Report on Documentary Stamp Taxes.

The above documents, all of which were accomplished and signed by officers of the BIR, clearly show that respondent's address is at Carmelray Industrial Park, Canlubang, Calamba, Laguna.[49] (Emphasis supplied)

As a rule, the taxpayer is bound by its registered address with the BIR. The exception is when the BIR has been deemed notified by the taxpayer through various communications. Here, the records do not show that FGCCI notified the BIR of any change in the address previously registered with the BIR to the address indicated in the 2016 GIS. FGCCI, thus, cannot rely on the address in its 2016 GIS and insist that the BIR should have sent the notices to that address.

Despite this, the tax assessments for taxable years 2009 and 2012 must be cancelled for the BIR's failure to comply with the relevant rules on proper service.

The BIR notices were not properly served to the taxpayer.

Section 228 of the 1997 National Internal Revenue Code[50] (Tax Code) mandates the CIR to inform the taxpayer in writing of the law and the facts on which the assessment is made; otherwise, the assessment is void. To implement the procedural and substantive rules on the assessment of national internal revenue taxes, the BIR issued RR No. 12-99.[51] Section 3 requires that notices served

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[49] *Id.* at 767–768.

[50] Republic Act No. 8424, December 11, 1997.

[51] IMPLEMENTING THE PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 GOVERNING THE RULES ON ASSESSMENT

Supreme Court E-Library

through personal delivery must be acknowledged by the taxpayer or his duly authorized representative:

> SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment*. — . . . .
>
> 3.1.4 *Formal Letter of Demand and Assessment Notice*. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. **If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.** (Emphasis supplied)

In the recent case of *Mannasoft Technology Corp. v. Commissioner of Internal Revenue*[52] (*Mannasoft*), this Court clarified that while it was only in the personal service of FAN that RR No. 12-99 requires that it must be acknowledged by the taxpayer or his duly authorized representative, the same rule should also apply to the delivery of the Notice of Informal Conference and the PAN. Thus, We declared the tax assessment void for failure to comply with the personal delivery requirements. In that case, the PAN was served to the taxpayer's receptionist, who was not authorized to receive the same, while the FAN was served to the reliever security guard with no indication of his authority to act on behalf of the taxpayer:

OF NATIONAL INTERNAL REVENUE TAXES, CIVIL PENALTIES AND INTEREST AND THE EXTRA-JUDICIAL SETTLEMENT OF A TAXPAYER'S CRIMINAL VIOLATION OF THE CODE THROUGH PAYMENT OF A SUGGESTED COMPROMISE PENALTY, dated September 6, 1999.

[52] G.R. No. 244202, July 10, 2023 [Per J. Dimaampao, Third Division].

Supreme Court E-Library

Section 228 of the Tax Code explicitly provides that when the respondent finds that proper taxes should be assessed, the taxpayer must be properly notified of its findings. Moreover, under Section 3.1.4 of Revenue Regulations No. 12-99, personal delivery must be acknowledged by the taxpayer or his duly authorized representative, viz.:

. . . .

The very same provision even requires that the signee-recipient must indicate their "designation and authority to act for and in behalf of the taxpayer," which further emphasizes that personal delivery must be discriminate.

The wisdom for such a requirement is readily apparent — unless the recipient possesses a certain degree of authority or discretion, they would be unable to grasp the gravity of the service of an assessment notice and the potential financial impact it would have to the taxpayer they purport to serve and represent. This is especially true for juridical entity taxpayers who can only act through its officers and employees, and who would otherwise be prejudiced by such recipient's simple ignorance.

While Sections 3.1.1. and 3.1.2. of Revenue Regulations No. 12-99, which govern the NIC and the PAN, respectively, bear no similar qualifications for personal delivery as those found under Section 3.1.4, the Court deems it more in keeping with the spirit of the law that these should likewise be served only upon the taxpayer or, especially for juridical entities, their duly authorized representatives.

This is consistent with the oft-repeated principle that the sending and actual receipt of the PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment that the BIR must strictly comply with. Certainly, the importance of this preliminary stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of a FAN. (Emphasis supplied)

Here, it is undisputed that the PAN, FAN, and FDDA for the taxable year 2009 were personally delivered. However, the revenue officer who served the notices did not ascertain the authority of the persons who received the notices on behalf of FGCCI. A summary of the relevant tax documents is provided below:

Supreme Court E-Library

Document	Received by	Position
PAN[53]	Grizel Patanao	Not indicated
FAN[54]	Lauron Airen	Lobby Receptionist
FDDA[55]	Arnel Santos	Not indicated

During her cross-examination, Revenue Officer Gigette Ventura (Revenue Officer Ventura) cannot even recall the details of the service:

[Atty. Martinez]

Q: Do you know what is the position of the person who received the Preliminary Assessment Notice?

A: No, your Honors.

Q: For the Formal Notice of Assessment, Ms. Witness, for the year 2009, who received the specific document?

. . . .

A: It was received by a certain [Lauron Airen] at the lobby reception on July 31, 2012.

. . . .

Q: And, did you get the position of this person who received the document?

A: It was specified here he was a receptionist.

Q: He was a receptionist at the hotel or is he a receptionist of [FGCCI]?

A: I cannot recall, your Honors, if I was the one who served this document that's why I cannot recall if he is at the reception of the hotel or the petition.[56]

Undeniably, Revenue Officer Ventura miserably failed to comply with the requirements under RR No. 12-99.

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[53] *Rollo*, p. 256.

[54] *Id.*

[55] *Id.*

[56] *Id.* at 258–260.

Supreme Court E-Library

As for the taxable year 2012, the Revenue Officer Abdulhalim Usman (Revenue Officer Usman) did not comply with the rules of proper service under RR No. 18-13,[57] which amended RR No. 12-99, to wit:

> 3.1.6 Modes of Service. — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
>
> i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
>
> In case personal service is not practicable, the notice shall be served by substituted service or by mail.
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> (ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:
>
> The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.
>
> If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.
>
> If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.
>
> If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.
>
> Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned

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[57] AMENDING CERTAIN SECTIONS OF REVENUE REGULATIONS NO. 12-99 RELATIVE TO THE DUE PROCESS REQUIREMENT IN THE ISSUANCE OF A DEFICIENCY TAX ASSESSMENT, dated November 28, 2013.

shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses. "Disinterested witnesses" refers to persons of legal age other than employees of the Bureau of Internal Revenue.

Records show that the LOA[58] was received by a certain "Ramirez James," while the PAN[59] and FAN[60] were received by "Arnel Santos." Their positions, however, were not indicated in the documents. Even in his testimony before the CTA, Revenue Officer Usman is unsure whether these persons are FGCCI's authorized representatives. He attempted to explain his failure to properly serve the notices because the security guard of the premises was uncooperative:

[Atty. Martinez]

Q: Could you identify from the received Notice of Assessments that you have the name and position of the person who received them?

A: I cannot recall anymore because it is five (5) years ago. But in this Letter of Authority, it was received by Ramirez James.

Q: Was the position of the said Ramirez James mentioned in that (*paused*)

A: It was not mentioned Sir but I always told (sic) to the guard that could you please see to it that you will give it to the authorized person because we are not allowed to go upstairs to talk to that.

Q: So basically, the guard told you that the authorized person is James Ramirez?

A: Exactly. In fact, the first Letter of Authority when I go there (sic), I waited for more or less one (1) hour, more than one (1) hour.

Q: And who received the Preliminary Assessment Notice?

. . . .

A: It was Arnel Santos, Sir.

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[58] Exhibit R-16, CTA Case Nos. 9490 and 9503 Records, Volume 4.

[59] Exhibit R-25, CTA Case Nos. 9490 and 9503 Records, Volume 4.

[60] Exhibit R-27, CTA Case Nos. 9490 and 9503 Records, Volume 4.

Supreme Court E-Library

Q: And Mr. Arnel Santos, did Mr. Arnel Santos identify his signature, his position in the Fort 1 Global City Center, Inc.?

A: No, Sir.

Q: How about the Final Assessment Notice, who received that?

A: Arnel Santos also, Sir.

Q: Mr. Witness, in all these notices and assessment you served to Fort 1 Global City Center, Inc., did you ask for an identification of these people who received them to be sure that they are indeed affiliated with the said corporation?

A: I always told the guard, Sir, in fact, his angry to (sic) me because I always keep on repeating my instructions. But I was assure (sic) him that I hope you give it to the authorized person.

Q: So, you relied on the information given by the guard?

A: Exactly, Sir[.][61]

We are unconvinced. Revenue Officer Usman cannot blame the security guard who allegedly refused to tell him who the authorized representatives of FGCCI are. RR No. 18-13 provides for the process to be done if no person can be found at the taxpayer's known address, *i.e.*, bring a barangay official and two disinterested witnesses so that they may personally observe and attest to such act of refusal. Despite this, he proceeded to merely rely on the representations of the security guard.

That FGCCI was able to file its protests and responses to the BIR does not bar it from raising the issue of due process. In *Mannasoft*,[62] We held that the BIR's defect in complying with the requirements of due process was not cured by the fact that the taxpayer could file a protest to the FAN. Moreover, the BIR was negligent in complying with its own rules; hence, it should not be allowed to benefit from the doctrine of estoppel.[63]

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[61] *Rollo*, pp. 261–263.

[62] G.R. No. 244202, July 10, 2023 [Per J. Dimaampao, Third Division].

[63] *Universal Weavers Corp. v. Commissioner of Internal Revenue*, 903 Phil. 160, 172–173 (2021) [Per J. Delos Santos, Third Division].

Supreme Court E-Library

Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements outlined in Section 228 of the Tax Code and its implementing rules is void and produces no effect.[64] This is because while it is true that taxation is the lifeblood of the government, the power of the State to collect tax must be balanced with the taxpayer's right to substantial and procedural due process. This Court has consistently recognized that, between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.[65] We have repeatedly urged strict observance by the BIR of the prescribed procedure for issuance of the assessment notices to uphold the taxpayers' constitutional rights.[66]

The assailed decision and resolution are affirmed.

Section 2 of Republic Act No. 1125,[67] as amended by Republic Act No. 9503,[68] in relation to Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals,[69] provides for the required number of votes to render a decision of the court *en banc*:

> SECTION 3. *Court En Banc; Quorum and Voting*. — The presiding justice or, in his absence, the most senior justice in attendance shall preside over the sessions of the Court *en banc*. The attendance of four justices of the Court shall constitute a quorum for its session *en banc*. The presence at the deliberation and the affirmative vote of four justices

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[64] *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue*, 929 Phil. 644, 654 (2022) [Per J. Dimaampao, Third Division].

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

[66] *Id.*

[67] Entitled, "AN ACT CREATING THE COURT OF TAX APPEALS," dated June 16, 1954.

[68] Entitled, "AN ACT ENLARGING THE ORGANIZATIONAL STRUCTURE Of THE COURT OF TAX APPEALS, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES," dated June 12, 2008.

[69] Entitled, A.M. No. 05-11-07-CTA, dated November 22, 2005, "REVISED RULES OF THE COURT OF TAX APPEALS."

Supreme Court E-Library

of the Court *en banc* shall be necessary for the rendition of a decision or resolution on any case or matter submitted for its consideration. Where the necessary majority vote cannot be had, the petition shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied.

No decision of a Division of the Court may be reversed or modified except by the affirmative vote of four justices of the Court *en banc* acting on the case.

Interlocutory orders or resolutions shall be acted upon by majority vote of the justices present constituting a quorum.

In the assailed Decision, only three justices concurred with the opinion of the *ponente*[70] that the petition filed by the CIR should be granted and that the case should be decided on the merits. Following the foregoing rule, the petition was dismissed. On reconsideration, however, six justices concurred with the new *ponente*[71] that the BIR notices were not served to FGCCI's duly authorized representative. Consequently, FGCCI's right to due process was violated. Since the assailed CTA *En Banc*'s decision was deemed affirmed, the assessments were effectively invalidated. Thus, the CTA *En Banc* found no need to grant FGCCI's motion for reconsideration.

Here, we agreed with the *ponente* in the assailed CTA *En Banc* Decision that the GIS is not the proper evidence to prove FGCCI's address for purposes of service of BIR notices. Nonetheless, we held that the BIR violated FGCCI's right to due process for improper service of notices. Thus, the assailed Decision and Resolution should be affirmed.

ACCORDINGLY, the petition is **DISMISSED**. The Court of Tax Appeals *En Banc* Decision dated November 10, 2021 and Resolution dated October 7, 2022 in Court of Tax Appeals *En Banc* No. 2233 are **AFFIRMED**. The deficiency tax assessments

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[70] The Decision was penned by Associate Justice Catherine T. Manahan.

[71] The Resolution was penned by Associate Justice Ma. Belen M. Ringpis-Liban.

issued against Fort 1 Global City Center, Inc., for taxable years 2009 and 2012 are declared **VOID** and **CANCELLED**.

SO ORDERED.

Lazaro-Javier, J. Lopez, and *Kho, Jr., JJ.*, concur.

Leonen, S.A.J. (Chairperson), see dissenting opinion.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Martinez Law Office for respondent.

DISSENTING OPINION

LEONEN, *J.*:

I dissent.

The majority declared as void the deficiency tax assessments for taxable years 2009 and 2012, ruling that the notices were improperly served on the taxpayer, i.e., the notices did not indicate the authority or designation of the persons who received the assessments on behalf of respondent Fort 1 Global City Center, Inc.

I agree that the 2012 deficiency tax assessment is void for lack of due process; however, the 2009 deficiency tax assessment is valid.

Section 228 of the Tax Code requires that taxpayers be *informed* in writing of the law and the facts on which the assessment is made. It likewise requires, subject to a few exceptions, that a *preassessment notice be issued first*, to which the taxpayer shall be required to respond. Section 228 provides:

> SECTION 228. *Protesting of Assessment*. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> . . . .

Supreme Court E-Library

(e) . . .

> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

The written notice requirement with the prescribed content for both the preassessment and final assessment conforms to the demands of due process.

The Constitution mandates that no person shall be deprived of property without due process of law.[1] Due process has both substantive and procedural aspects. "Substantive due process requires the intrinsic validity of the law in interfering with the rights of the person to [their] property."[2] On the other hand, the essence

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[1] CONST., art. III. sec. 1.

[2] J. Sandoval-Gutierrez, Concurring and Dissenting Opinion in *Abakada Guro Party List v. Ermita*, 506 Phil. 1, 224 (2005) [Per J. Austria-Martinez, *En Banc*].

Supreme Court E-Library

of procedural due process is opportunity to be heard[3] before a person is deprived of his property.

In tax assessments, procedural due process requires that taxpayers be fully informed of the factual and legal bases for the assessment so that they may be able to file an effective protest, if necessary.[4]

To ensure that taxpayers indeed receive the assessment notices, Revenue Regulation No. 12-99 prescribes the rules for the proper service of these notices:

> 3.1.2 *Preliminary Assessment Notice (PAN)*. — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
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> . . . .
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> 3.1.4 *Formal Letter of Demand and Assessment Notice*. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes

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[3] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, 524 Phil. 524, 529 (2006) [Per J. Ynares-Santiago, First Division]; *Commissioner of Internal Revenue v. Reyes*, 516 Phil. 176, 190 (2006) [Per C.J. Panganiban, First Division].

[4] *Commissioner of Internal Revenue v. Fitness by Design, Inc.,* 799 Phil. 391, 409 (2016) [Per J. Leonen, Second Division]. *See also Commissioner of Internal Revenue v. Reyes*, 516 Phil. 176, 190 (2006) [Per C.J. Panganiban, First Division].

Supreme Court E-Library

shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX B hereof). *The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.* (Emphasis supplied)

For personal service, Revenue Regulations No. 12-99 requires the taxpayer or their duly authorized representative to acknowledge receipt of the assessment notice in the duplicate copy, and indicate, among others, their "designation and authority to act for and in behalf of the taxpayer[.]"

Mannasoft Technology Corporation v. Commissioner of Internal Revenue[5] explains the rationale for this requirement:

> The very same provision even requires that the signee-recipient must indicate their "designation and authority to act for and in behalf of the taxpayer," which further emphasizes that personal delivery must be discriminate.
>
> The wisdom for such a requirement is readily apparent — unless the recipient possesses a certain degree of authority or discretion, they would be unable to grasp the gravity of the service of an assessment notice and the potential financial impact it would have to the taxpayer they purport to serve and represent. This is especially true for juridical entity taxpayers who can only act through its officers and employees, and who would otherwise be prejudiced by such recipient's simple ignorance.[6]

Again, the underlying purpose for this is to ensure that taxpayers receive the assessment notices and be informed of the basis of the assessment, so they can file an intelligent protest.

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[5] G.R. No. 244202, July 10, 2023 [Per J. Dimaampao, Third Division].

[6] *Id.* at 9–10. This pinpoint citation refers to the Decision uploaded to the Supreme Court website.

Supreme Court E-Library

In this case, respondent assails the validity of the deficiency tax assessments for 2009 and 2012 on the ground of improper service, specifically for not indicating the designation and authority of the persons who received them.

Notwithstanding, it is undisputed that respondent was able to file its protests to the Preliminary Assessment Notice (PAN) and Formal Assessment Notice (FAN) for 2009. It had the opportunity to be heard, and has indeed been heard, through the filing of its protests. Therefore, the purpose behind the rule was deemed duly served. The requirements of due process are substantially complied with.

In *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*,[7] this Court held that the written notice requirement under Section 228 should not be mechanically applied. There is substantial compliance so long as the taxpayer was apprised of the factual and legal bases for the assessment as to enable it to make an intelligent protest:

> Nevertheless, the requirement of providing the taxpayer with written notice of the facts and law used as basis for the assessment is not to be mechanically applied. Emphasis on the purpose of the written notice is important. The requirement should be in place so that the taxpayer could be adequately informed of the basis of the assessment enabling him to prepare an intelligent protest or appeal of the assessment or decision. In *Samar-I Electric Cooperative v. CIR*,[8] the Court elaborated:
>
> > The above information provided to petitioner enabled it to protest the PAN by questioning respondent's interpretation of the laws cited as legal basis for the computation of the deficiency withholding taxes and assessment of minimum corporate income tax despite petitioner's position that it remains exempt therefrom. In its letter-reply dated May 27, 2002, respondent answered the arguments raised by petitioner in its protest, and requested it to pay the assessed deficiency on the date of payment stated in the PAN. A second protest letter dated June 23, 2002 was sent by petitioner, to which respondent replied (letter dated July 8,

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7 784 Phil. 874 (2016) [Per J. Mendoza, Second Division].

8 749 Phil. 772 (2014) [Per J. Villarama, Third Division].

Supreme Court E-Library

> 2002) answering each of the two issues reiterated by petitioner: (1) validity of EO 93 withdrawing the tax exemption privileges under PD 269; and (2) retroactive application of RR No. 8-2000. The FAN was finally received by petitioner on September 24, 2002, and protested by it in a letter dated October 14, 2002 which reiterated in lengthy arguments its earlier interpretation of the laws and regulations upon which the assessments were based.
>
> Although the FAN and demand letter issued to petitioner were not accompanied by a written explanation of the legal and factual bases of the deficiency taxes assessed against the petitioner, the records showed that respondent in its letter dated April 10, 2003 responded to petitioner's October 14, 2002 letter-protest, explaining at length the factual and legal bases of the deficiency tax assessments and denying the protest.
>
> Considering the foregoing exchange of correspondence and documents between the parties, we find that the requirement of Section 228 was substantially complied with. Respondent had fully informed petitioner *in writing* of the factual and legal bases of the deficiency taxes assessment, which enabled the latter to file an "effective" protest, much unlike the taxpayer's situation in *Enron*. Petitioner's right to due process was thus not violated.

Thus, substantial compliance with the requirement under Section 228 of the NIRC is permissible, provided that the taxpayer would be eventually apprised in writing of the factual and legal bases of the assessment to allow him to file an effective protest against.[9] (Citation omitted)

However, for the deficiency tax assessment for 2012, respondent was able to file a protest only on the FAN. The facts are not clear whether respondent received a copy of the PAN within a reasonable time as to enable it to file a protest/reply before the FAN was issued. As such, the 2012 FAN should be voided for violating respondent's due process rights.

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[9] *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.,* 784 Phil. 874, 894–896 (2016) [Per J. Mendoza, Second Division].

Supreme Court E-Library

In *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*,[10] we held that "[t]he PAN is a part of due process. It gives both the taxpayer and the Commissioner of Internal Revenue the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN."[11]

In *Mannasoft*, the Notice of Informal Conference (NIC), PAN, and FAN were personally served on individuals who were not authorized representatives of the taxpayer. While the taxpayer argued that it did not receive the NIC and PAN, it was still able to file its protest to the FAN. This Court held that the "sending and actual receipt of the PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment that the BIR must strictly comply with."[12] This is because the PAN "presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of a FAN."[13] Hence, with the improper service of the NIC and PAN, the succeeding FAN was necessarily void and without effect.

Indeed, in *Mannasoft*, the taxpayer was denied due process because it did not receive the NIC and PAN, and thus, was deprived of the opportunity to contest the findings of the revenue officers, adduce its evidence, and possibly settle the case at the preliminary stage of the assessment process.

Previous cases are consistent with this ruling.

In *Commissioner of Internal Revenue v. Yumex Philippines Corporation*,[14] the taxpayer received the PAN and FAN on the same day although posted by the Bureau of Internal Revenue on different dates. This Court held that there was a violation of due

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[10] 821 Phil. 664 (2017) [Per J. Leonen, Third Division].

[11] *Id.* at 679.

[12] *Mannasoft Technology Corporation v. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023 [Per J. Dimaampao, Third Division], at 10.

[13] *Id.* (Citation omitted)

[14] 902 Phil. 87 (2021) [Per C.J. Gesmundo, First Division].

Supreme Court E-Library

process[15] as the taxpayer was not given any notice of the PAN and was deprived of the opportunity to respond to it before being given the final assessment.[16]

In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*,[17] this Court stressed that while the petitioner "indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued."[18]

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[19] this Court stated that the PAN is a substantive requirement of due process, and failure to serve the PAN on the taxpayer renders the assessment void:

> From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities. The use of the word *"shall"* in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.[20] (Citation omitted)

ACCORDINGLY, I vote to **PARTLY GRANT** the Petition. The November 10, 2021 Decision and October 7, 2022 Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 2233 should be **REVERSED** and **SET ASIDE** insofar as it upheld the cancellation of the deficiency tax assessments for taxable year 2009.

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[15] *Id.* at 102.

[16] *Id.* at 98.

[17] 565 Phil. 613 (2007) [Per J. Velasco, Jr., Second Division].

[18] *Id.* at 656.

[19] 652 Phil. 172 (2010) [Per J. Mendoza, Second Division].

[20] *Id.* at 186–187.