

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**COMMISSIONER OF INTERNAL
REVENUE,**

Petitioner,

- versus -

**FILAIRCO, INC., doing business
under the name and style
TRANE PHILIPPINES,**

Respondent.

CTA EB NO. 2793
(CTA Case No. 10862)

Present:

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

Promulgated:

DEC 13 2024

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*¹ filed by petitioner Commissioner of Internal Revenue (CIR) via accredited courier on September 1, 2023, praying for the Court to reverse and set aside the Resolutions dated March 10, 2023² and July 18, 2023³ (the “Assailed Resolutions”), rendered by this Court’s First Division (the “Court in Division”) in CTA Case No. 10862 entitled “*Filairco, Inc., doing business under the name and style Trane Philippines v. Commissioner of Internal Revenue.*”

The dispositive portions of the Assailed Resolutions read:

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¹ *En Banc (EB)* Docket, pp. 6-22.

² *EB* Docket, pp. 30-38.

³ *EB* Docket, pp. 40-43.

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Assailed Resolution dated **March 10, 2023**:

WHEREFORE, petitioner's Motion for Judgment on the Pleadings, filed on November 10, 2022, is **GRANTED**. Accordingly, Assessment Nos. IT-ELA78370-13-17-371, VAT-ELA78370-13-17-371, WE-ELA78370-13-17-371, WF-ELA78370-13-17-371, DS-ELA78370-13-17-371, IE-ELA78370-13-17-371 and MC-ELA78370-13-17-371, Formal Assessment Notice dated January 13, 2017, Final Decisions on Disputed Assessment dated April 7, 2017 and January 26, 2018, Final Demand Before Suit dated March 8, 2021, and Decision dated March 31, 2022, are **CANCELLED** and **SET ASIDE**.

Respondent, his agents, or any persons acting in his behalf are **ENJOINED** from enforcing the collection of taxes under the above tax assessments against petitioner.

SO ORDERED.

Assailed Resolution dated **July 18, 2023**:

WHEREFORE, respondent's Motion for Reconsideration (of the Resolution dated 10 March 2023), posted on April 5, 2023, is **DENIED**, for lack of merit. The assailed Resolution dated March 10, 2023, is **AFFIRMED**.

SO ORDERED.

The Resolution of March 10, 2023, which was affirmed in the subsequent Resolution of July 18, 2023, granted respondent's *Motion for Judgment on the Pleadings* and, accordingly, found that the deficiency tax assessment under the Formal Assessment Notice (FAN) dated January 13, 2017, is void since petitioner violated respondent's right to due process in the assessment.

THE PARTIES⁴

Petitioner is the duly appointed CIR, vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, grant tax refunds, and issue tax credit certificates, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules, and regulations. He holds office at the

⁴ The Parties, Petition for Review, *EB* Docket, p.7



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Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City, and may be served with summons, notices, and other processes of this Court through the Legal Division of BIR – Revenue Region No. 8B – South NCR at 2nd Floor, BIR Regional Office Building, 333 Sen. Gil Puyat Avenue, Makati City.

Respondent Filairco, Inc., on the other hand, is a company primarily engaged in the business of distribution of air-conditioning equipment and parts, with business address at Lot 1 D-3 Ninoy Aquino Avenue, Brgy. San Dionisio, Parañaque City.

THE FACTS AND THE PROCEEDINGS

On May 19, 2022, respondent filed a *Petition for Review*⁵ with the Court in Division, seeking to annul and set aside petitioner’s Decision dated March 31, 2022, which denied respondent’s appeal and affirmed the assessment of Php224,093,889.88 representing alleged deficiency Income Tax (IT), Value-Added Tax (VAT), Documentary Stamp Tax (DST), Expanded Withholding Tax (EWT), Final Withholding Tax (FWT) and Improperly Accumulated Earnings Tax (IAET), inclusive of Compromise Penalty (CP), for the taxable year 2013.

In the said *Petition for Review*, respondent avers, among others, that:

“6. On 10 January 2017, [respondent] received a Preliminary Assessment Notice (PAN) dated 28 December 2016 finding it allegedly liable for the following taxes, inclusive of interest:

IT	₱22,296,593.02
VAT	66,175,725.01
EWT	5,051,432.79
FWT	41,265,863.01
DST	973,831.38
IAET	60,729,994.04
CP	80,000.00

A copy of the PAN (Part I) is attached as Annex “P-2” and its Details of Discrepancies as Annex P-2-a”, and a copy of the PAN (Part II) on CP is attached as Annex “P-2-b”. A screenshot of the date of receipt of the PAN is attached as Annex “P-2-c”.

⁵ Division Docket, pp. 6-65.

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7. On 13 January 2017, or just three (3) days after [respondent's] receipt of the PAN, the BIR issued the following: (i) Formal Assessment Notice (FAN) (Part I) – copy attached as Annex “P-3” and its Details of Discrepancies as Annex “P-3-a”; (ii) FAN (Part II) for CP – a copy attached as Annex “P-3-b”; (iii) Assessment Notice No. IT-ELA78370-13-17-371 for P22,572,443.41 – a copy attached as Annex “P-3-c”; (iv) Assessment Notice No. VAT-ELA78370-13-17-371 for P66,971,926.59 – a copy attached as Annex “P-3-d”; (v) Assessment Notice No. WE-ELA78370-13-17-371 for P5,112,001.53 – a copy attached as Annex “P-3-e”; (vi) Assessment Notice No. WF-ELA78370-13-17-371 for P41,760,657.53 – a copy attached as Annex “P-3-f”; (vii) Assessment Notice No. DS-ELA78370-13-17-371 for P983,902.77 – a copy attached as Annex “P-3-g”; (viii) Assessment Notice No. IE-ELA78370-13-17-371 for P61,436,098.11 – a copy attached as Annex “P-3-h”; and (ix) Assessment Notice No. MC-ELA78370-13-17-371 for P80,000.00 – a copy attached as Annex “P-3-I”. The FAN and Assessment Notices shall be collectively called as the “FAN”. The FAN was received by [respondent] on 27 January 2017.

8. Under the rules, [respondent] has a 15-day period to reply to the PAN, i.e., 25 January 2017, considering that it received the PAN on 10 January 2017. [Respondent] filed its Reply to PAN on 25 January 2017, well-within said 15-day period. A copy of the Reply to PAN with BIR receiving stamp dated 25 January 2017 is attached Annex “P-4”.

9. On 27 February 2017, [respondent] filed its Protest to the FAN via registered mail. A copy of the Protest is attached as Annex “P-5”. The BIR received the Protest on 02 March 2017. Copies of Registry Receipt No. RD 707 936 342 ZZ, the corresponding Registry Return Card and Post Office Certification dated 02 May 2017 are attached as Annexes “P-5-a”, “P-5-b” and “P-5-c”, respectively.

10. On 21 April 2017, [respondent] received a letter dated 07 April 2017 from the Regional Director informing the latter that the subject assessment has become final and executory allegedly due to its failure to file a valid protest against the FAN within 30 days from receipt thereof. Because of the categorical statement of the BIR that “the assessment is now final, executory and demandable,” [respondent] considered the 07 April 2017 BIR letter as the Final Decision on Disputed Assessment (the “07 April 2017 FDDA”). Thus, [respondent] had until 22 April 2017 to appeal the FDDA to [petitioner]. A copy of the 07 April 2017 FDDA is attached as Annex “P-6”.

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On September 12, 2022, and within the extension period given, petitioner filed his *Answer*,⁶ interposing, among others, the following:

“ADMISSION/DENIAL

XXX XXX XXX

3. [Petitioner] admits the allegations narrated in paragraphs 4, 5 and 6 of the Petition for Review.

4. [Petitioner] admits the allegations narrated in paragraph 7 of the Petition for Review with respect to the existence of the Formal Assessment Notice (FAN) Part I and II with attached Details of Discrepancies and Assessment Notices for IT, VAT, DST, EWT, FWT, IAET, and CP all dated 13 January 2017 but denies the rest thereof for lack of knowledge sufficient to form a belief as to the truth thereof.

XXX XXX XXX

6. [Petitioner] admits the allegations narrated in paragraph 10 of the Petition for Review with respect to the existence of BIR Letter dated 07 April 2017 issued by the Regional Director of then BIR Revenue Region No. 8 – Makati City but denies the rest thereof for lack of knowledge sufficient to form a belief as to the truth thereof.

XXX XXX XXX

SPECIAL AND AFFIRMATIVE DEFENSES

XXX XXX XXX

43. Moreover, there was substantial compliance of due process when the FAN dated 13 January 2017 was only received by [respondent] on 27 January 2017 or seventeen (17) days from its receipt of the PAN dated 28 December 2016 on 10 January 2017 and was able to file its Reply to PAN on 26 January 2017. Hence, [respondent] actually had the opportunity to be heard when it filed the Reply to PAN.”

XXX XXX XXX

After an unsuccessful mediation,⁷ respondent filed a *Motion for Judgment on the Pleadings*⁸ on November 10, 2022, praying for the Court to grant its *motion* considering petitioner’s judicial admissions in his *Answer*.

⁶ Division Docket, pp. 520-534.

⁷ Division Docket, p. 602.

⁸ Division Docket, pp. 603-614.

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In compliance with the Court in Division's directive, petitioner filed his *Comment/Opposition (To Petitioner's Motion for Judgment on the Pleadings dated 09 November 2022)*⁹ on January 16, 2023, to which respondent filed its *Reply (Re: Comment/Opposition dated 16 January 2023)*¹⁰ on February 6, 2023.

On March 10, 2023, the Court in Division rendered the first assailed Resolution granting respondent's *motion*. In ruling for respondent, the Court in Division, citing *Basbas v. Sayson*,¹¹ held that when an *Answer* fails to tender any issue - that is, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by admitting the truthfulness thereof and/or omitting to deal with them at all - a judgment on the pleadings is appropriate. Based on petitioner's admission, specifically in paragraph 43 of his *Answer*, respondent received the PAN dated December 28, 2016, on January 10, 2017. Counting fifteen (15) days from January 10, 2017, respondent had until January 25, 2017, to file a reply or response. According to the Court in Division, the BIR's issuance of the FAN on January 13, 2017, just three (3) days after respondent's receipt of the PAN, violated its right to due process. Hence, the Court in Division declared the deficiency tax assessment under the FAN dated January 13, 2017, void for violation of respondent's right to due process.

Not satisfied, petitioner moved for reconsideration,¹² but the same was denied in the equally assailed Resolution dated July 18, 2023.

Undeterred, petitioner filed a *Motion for Extension of Time to File Petition for Review*¹³ on August 18, 2023, praying before this Court *En Banc* for a 15-day extension from August 18, 2023, or until September 4, 2023, to file his *Petition for Review*, which the Court *En Banc* granted in the *Minute Resolution*¹⁴ dated August 23, 2023.

On September 4, 2023, the Court *En Banc* received petitioner's *Petition for Review*, filed through an accredited private courier on September 1, 2023. Consequently, in the

⁹ Division Docket, pp. 641-643.

¹⁰ Division Docket, pp. 645-650.

¹¹ G.R. No. 172660, August 24, 2011.

¹² Division Docket, pp. 662-674.

¹³ EB Docket, pp. 1-3.

¹⁴ EB Docket, p. 5.

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*Minute Resolution*¹⁵ dated September 29, 2023, the Court *En Banc* required respondent to file its comment within ten (10) days from notice.

In compliance, respondent filed its *Comment/Opposition (Re: Petition for Review dated 01 September 2023)*¹⁶ on October 20, 2023, which the Court *En Banc* noted in the Resolution¹⁷ dated November 3, 2023. In the same Resolution, the Court *En Banc* referred the instant case to mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals*.

On January 31, 2024, the instant case was submitted for decision, considering the report of the PMC-CTA dated January 22, 2024, stating that the parties had opted not to mediate their case.¹⁸

Hence, this Decision.

ASSIGNMENT OF ERROR

In the present *Petition for Review*, petitioner assigns the following error allegedly committed by the Court in Division, to wit:

The Honorable First Division of the CTA gravely erred in granting respondent's Motion for Judgment on the Pleadings and in ordering petitioner to cancel and set aside deficiency tax assessments against respondent for IT, VAT, DST, EWT, FWT, IAET and CP for taxable year 2013.

Petitioner's Arguments:

Petitioner asserts that there is no ground to render judgment on the pleadings in this case. According to petitioner, in *Asian Construction and Development Corporation v.*

¹⁵ *EB* Docket, p. 45.

¹⁶ *EB* Docket, pp. 46-61.

¹⁷ *EB* Docket, pp. 63.

¹⁸ Minute Resolution, *EB* Docket, p. 65.

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Sannaedle Co., Inc.,¹⁹ the Supreme Court, citing *First Leverage and Services Group, Inc. v. Solid Builders, Inc.*, held that when a motion for judgment on the pleadings is filed, the essential question is whether there are issues generated by the pleadings. For petitioner, his *Answer* tendered issues which cannot be brushed aside without the presentation of evidence. Hence, judgment on the pleadings is not proper in the instant case.

Petitioner further contends that, at the time of the issuance of the BIR Letter dated April 7, 2017, there was no protest yet that had been wholly or partially denied by the CIR's authorized representative, which could be appealed to the CIR or the CTA. Thus, when respondent filed a Letter dated May 9, 2017, explaining that the protest to the FAN dated February 27, 2017 was timely filed, the Regional Director of BIR Revenue Region No. 8 – Makati City had the opportunity to correct the earlier BIR Letter dated April 7, 2017, and found that the FAN dated January 13, 2017, had not become final, executory, and demandable, leading to the issuance of the BIR Letter dated May 22, 2017.

Finally, petitioner asserts that the FDDA dated January 26, 2018, concerning the deficiency tax assessments for the taxable year 2013 (*sic*), had long become final, executory, and demandable due to respondent's failure to file a valid appeal with the CIR or this Court within 30 days from receipt thereof; and since the FDDA had already attained finality, its validity, and correctness could no longer be assailed.

Respondent's Arguments:

In its *Comment/Opposition (Re: Petition for Review dated 01 September 2023)*, respondent underscores that petitioner did not dispute or even address respondent's receipt of the FAN just three (3) days after receiving the PAN. This, according to respondent, further confirms petitioner's previous admission that the BIR issued the FAN in violation of respondent's right to respond to the PAN within 15 days from receipt.



¹⁹ G.R. No. 181676, June 11, 2014.

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Respondent also argues that petitioner’s contentions in the present *Petition for Review* are merely a rehash of arguments from his previous submissions, which the Court in Division had already deemed without merit. Nonetheless, respondent refutes petitioner’s assertions as follows:

1. The present appeal *via Petition for Review* is not allowed by the *2019 Proposed Amendments to the 1997 Rules of Civil Procedure* (“2019 Rules of Court”);
2. A judgment on the pleadings is proper because the CIR’s *Answer* failed to tender an issue or otherwise admitted the material allegations of respondent’s *Petition for Review* dated 18 May 2022;
3. The 07 April 2017 BIR Letter is the Regional Director’s (RD’s) final decision on its administrative protest, which is appealable to the CTA of CIR;
4. The Honorable Court has jurisdiction over this case; and
5. The FDDA dated 26 January 2018 can never attain finality for a void assessment bears no valid fruit.

THE COURT *EN BANC*’S RULING

Before delving into the merits, the Court *En Banc* shall first determine whether the present *Petition for Review* was timely filed.

The present Petition for Review was seasonably filed; therefore, the Court En Banc has jurisdiction over it.

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

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

xxx

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

Records show that petitioner received the Resolution dated July 18, 2023,²⁰ which denied his *Motion for Reconsideration (of the Resolution dated 10 March 2023)* on August 3, 2023. Thus, petitioner had 15 days from August 3, 2023, or until August 18, 2023, to file his *Petition for Review* before the Court *En Banc*.

On August 18, 2023, petitioner filed a *Motion for Extension of Time to File Petition for Review* requesting an additional 15 days from August 18, 2023, or until September 4, 2023, to file his *Petition for Review*. The Court *En Banc* granted the *Motion* in a *Minute Resolution*²¹ dated August 23, 2023.

Considering that the present *Petition* was filed through an accredited private courier on September 1, 2023, and received by the Court *En Banc* on September 4, 2023, which is within the extended period granted by the Court, it was timely filed. Thus, the Court *En Banc* has validly acquired jurisdiction over the case.

Now, on the merits of the instant *Petition for Review*.

The filing of the instant Petition for Review as an appeal from a judgment on the pleadings is allowed by the rules.

Respondent asserts that the instant *Petition for Review*, an appeal from an action of the court on a motion for judgment on the pleadings, should be denied outright for not being sanctioned by the 2019 Rules of Court.

The Court *En Banc* disagrees.

²⁰ Notice of Resolution, *EB Docket*, p. 39.

²¹ *EB Docket*, p. 5.



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Indeed, as provided in the 2019 Amendments to the 1997 Rules of Civil Procedure,²² any action of the court on a motion for judgment on the pleadings shall not be subject to an appeal or petition for *certiorari*, prohibition, or *mandamus*. However, it must be emphasized that the party aggrieved by the **eventual judgment** is not prohibited from availing themselves of the remedies allowed by the rules. What is not subject to appeal by *certiorari*, prohibition, or *mandamus* is the grant or denial of a **motion** for judgment on the pleadings, **NOT** the eventual judgment on the case.

Here, petitioner is appealing the eventual judgment of the Court in Division, which ordered the cancellation and setting aside of the assessment issued against respondent for the taxable year 2013. Hence, contrary to respondent's assertion, the instant appeal is sanctioned by the rules.

The Court in Division did not err in granting respondent's Motion for Judgment on the Pleadings.

Section 1, Rule 43 of the Rules of Court, as amended, states:

SECTION 1. *Judgment on the pleadings.* — Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. However, in actions for declaration of nullity or annulment of marriage or for legal separation, the material facts alleged in the complaint shall always be proved.

In the case of *Tan et al. v. De la Vega et al.*,²³ the Supreme Court aptly stated:

"Where a motion for judgment on the pleadings is filed, the essential question is whether there are issues generated by the pleadings. **In a proper case for judgment on the pleadings, there is no ostensible issue at all because of the failure of the defending party's answer to raise an issue. The answer would fail to tender an issue, of course, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by confessing the truthfulness thereof and/or omitting to deal with them at all.** Now, if an answer does in

²² A.M. No. 19-10-20-SC.

²³ G.R. No. 168809, March 10, 2006.

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fact specifically deny the material averments of the complaint and/or asserts affirmative defenses (allegations of new matter which, while admitting the material allegations of the complaint expressly or impliedly, would nevertheless prevent or bar recovery by the plaintiff), a judgment on the pleadings would naturally be improper." (*Boldfacing and underscoring supplied*)

In this case, as correctly pointed out by the Court in Division, paragraph 43 of petitioner's *Answer* specifically states:

"43. Moreover, there was substantial compliance of due process when **the FAN dated 13 January 2017** was only received by [respondent] on 27 January 2017 or seventeen (17) days from its **receipt of the PAN** dated 28 December 2016 **on 10 January 2017** and was able to file its Reply to PAN on 26 January 2017. Hence, [respondent] actually had the opportunity to be heard when it filed the Reply to PAN."

Clearly, petitioner admitted respondent's material allegation in its *Petition for Review* that the FAN had already been issued before the lapse of the 15-day period within which respondent could file its response to the PAN.

Hence, the Court *En Banc* concurs with the Court in Division in holding that:

Basbas v. Sayson decreed that "[w]hen the Answer fails to tender any issue, that is, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by admitting the truthfulness thereof and/or omitting to deal with them at all, a judgment on the pleadings is appropriate."

Here, petitioner invokes, among others, paragraph 43 of [petitioner's] *Answer*, which is hereby reproduced in *verbatim*:

43. Moreover, there was substantial compliance of due process when the **FAN dated 13 January 2017** was only received by [respondent] on 27 January 2017 or seventeen (17) days from its **receipt of the PAN** dated 28 December 2016 **on 10 January 2017** and was able to file its Reply to PAN on 26 January 2017. Hence, [respondent] actually had the opportunity to be heard when it filed the Reply to PAN.



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What we can reframe therefrom are [petitioner's] admissions on: first, the FAN's issuance on January 13, 2017; and second, [respondent's] receipt of the PAN dated December 28, 2016, on January 10, 2017. These admitted facts exhibit [petitioner's] violation of petitioner's right to due process on assessment. (*Citation omitted*)

The deficiency tax assessment under the FAN dated January 13, 2017, is null and void due to petitioner's violation of respondent's right to due process.

Section 228 of the NIRC of 1997, as amended, provides:

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

XXX

XXX

XXX.

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.

XXX

XXX

XXX."

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Corollarily, Section 3.1.2 of Revenue Regulations No. 12-99 provides:²⁴

"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 law, rules and regulations, or jurisprudence on which the proposed assessment is based . . . 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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xxx"

Pursuant to the aforementioned provisions, it is clearly mandated that a taxpayer be given the opportunity to respond to the PAN within 15 days from receipt. Upon the lapse of the 15-day period without any response from the taxpayer, the latter shall be considered in default, and the BIR shall issue a formal letter of demand along with assessment notices.

In this case, the Court *En Banc* supports the Court in Division's finding that there was a violation of respondent's right to due process.

The records reveal that respondent received the PAN dated December 28, 2016, on January 10, 2017. Thus, respondent had 15 days, or until January 25, 2017, to file a reply to the PAN. However, before the lapse of the 15 days during which respondent could respond to the PAN, the BIR issued the FAN on January 13, 2017, or barely three (3) days after respondent's receipt of the PAN. Notably, the BIR did not wait for respondent to reply to the PAN before issuing the FAN on January 13, 2017. Simply put, the BIR issued the FAN even before the expiration of the 15-day period for respondent to file a reply to the PAN.

²⁴ SUBJECT: Implementing the Provision of the National Internal Revenue Code of 1997 Governing the Rules of Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

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As previously quoted, Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, specifically Section 3.1.2, prescribe a 15-day period from receipt of a PAN within which a taxpayer may respond. Indubitably, the taxpayer's right to respond to the PAN is an important aspect of the due process requirement in issuing a deficiency tax assessment. By wantonly disregarding respondent's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated respondent's right to due process as enshrined in Section 228 of the NIRC of 1997, as amended and RR No. 12-99. Procedural due process is not satisfied by merely issuing a PAN, *sans* providing the taxpayer an opportunity to respond.

In the fairly recent case of *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue*,²⁵ the Supreme Court, citing *Commissioner of Internal Revenue v. Yumex Philippines Corp.*,²⁶ highlighted that "[t]here can be no substantial compliance with the due process requirement when the BIR completely ignored the 15-day period by issuing the FAN and FLD even before petitioner was able to submit its Reply to the PAN." As the Supreme Court aptly discussed:

"The importance of the PAN 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.

In the very recent case of *Commissioner of Internal Revenue v. Yumex Philippines Corp.*, the Court had occasion to state that **the 15-day period provided under Revenue Regulations No. 12-99 for a taxpayer to reply to a PAN should also be strictly observed by the BIR. The Court highlighted that '[o]nly after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN.'**

While Yumex rests on slightly different factual circumstances, it may nevertheless apply analogously to the case at bench. **There can be no substantial compliance with the due process requirement when the BIR completely ignored the 15-day period by issuing the FAN and FLD even before petitioner was able to submit its Reply to the PAN.**



²⁵ G.R. No. 249153, September 12, 2022.

²⁶ G.R. No. 222476, 5 May 2021.

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As the Court also held in *Yumex*, '[t]hat [the taxpayer] was able to file a protest to the FLD/FAN is of no moment.' 'Sec. 3.1.2 of RR No. 12-99 explicitly grants the taxpayer fifteen (15) days from receipt of the PAN to file a response.'

In the same vein, it is beside the point that petitioner was able to submit a 'well-prepared protest letter.' The fact remains that **respondent violated petitioner's right to due process by issuing a FAN without even awaiting its reply to the PAN.** (*Citations omitted; Boldfacing supplied*)

Following the foregoing, while respondent was given ample opportunity to contest the FAN, the fatal infirmity that attended its issuance before the lapse of the period to respond to the PAN is not cured. In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*,²⁷ the Supreme Court ruled that non-compliance with statutory and procedural due process renders the final assessment notice null and void, *viz.*:

"In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. While PSPC 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. Respondent must be more circumspect in the exercise of his functions, as this Court aptly held in *Roxas v. Court of Tax Appeals*:

The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the "hen that lays the golden egg." And, in the order to maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously."

It is noteworthy that in several cases,²⁸ the Court has declared void any assessment that fails to comply with the due process requirement.



²⁷ G.R. No. 172598, December 21, 2007.

²⁸ *A Brown Co., Inc. v. Commissioner of Internal Revenue*, CTA Case No. 6357, June 7, 2004; *Puratos Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 6980, October 4, 2010; *Yumex Philippines Corporation v. Commissioner of Internal Revenue*, CTA Case No. 8331, 28 November 2013.

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In conclusion, considering the palpable violation of respondent's right to procedural due process pursuant to Section 228 of the NIRC of 1997, as amended, and the provisions of RR No. 12-99, the subject FAN — being fatally infirm — should be considered void. Therefore, its cancellation and setting aside are warranted.


WHEREFORE, premises considered, the *Petition for Review* filed by the Commissioner of Internal Revenue is **DENIED** for lack of merit. The assailed Resolutions dated March 10, 2023, and July 18, 2023, are **AFFIRMED**.

SO ORDERED.



LANEE S. CUI-DAVID
Associate Justice

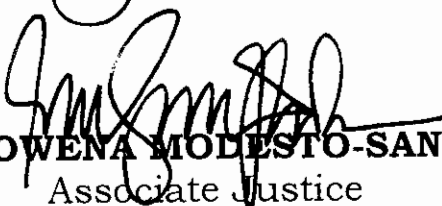
WE CONCUR:


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 MOLESTO-SAN PEDRO
Associate Justice

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ON LEAVE

MARIAN IVY F. REYES-FAJARDO

Associate Justice

Corazon G. Ferrer-Flores
CORAZON G. FERRER-FLORES
Associate Justice

HF
HENRY S. ANGELES
Associate Justice

HF

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CERTIFICATION

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


ROMAN G. DEL ROSARIO
Presiding Justice

