

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY

EN BANC

COMMISSIONER OF  
INTERNAL REVENUE,  
Petitioner,

CTA EB NO. 2794  
(CTA Case No. 9696)

*Present:*

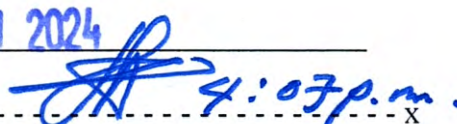
- versus -

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

BRIGHT ALLIANCE  
ENTERPRISES  
CORPORATION,  
Respondent.

Promulgated:

DEC 11 2024

 4:07 p.m.

x-----x

DECISION

**FERRER-FLORES, J.:**

Before this Court is a *Petition for Review* filed on September 4, 2023 by the **Commissioner of Internal Revenue (CIR/petitioner)** against the **Bright Alliance Enterprises Corporation (BAEC/respondent)** appealing the *Decision* dated December 13, 2022 (**assailed Decision**)<sup>1</sup> and *Resolution* dated July 25, 2023 (**assailed Resolution**)<sup>2</sup> rendered by the then First Division and Special First Division of this Court (**Court in Division**), respectively.

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

<sup>1</sup> Penned by Associate Justice Catherine T. Manahan with the concurrence of Presiding Justice Roman G. Del Rosario and Associate Justice Marian Ivy F. Reyes-Fajardo; *Rollo*, pp. 16 to 32.

<sup>2</sup> *Rollo*, pp. 33 to 39.

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*Assailed Decision*

**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the FLD/FANs dated January 12, 2016 for TY 2012, and the WDL dated September 5, 2016, both issued against petitioner, are **CANCELLED** and **SET ASIDE**. Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount embodied in the FLD/FANs dated January 12, 2016.

**SO ORDERED.**

*Assailed Resolution*

**WHEREFORE**, premises considered, the *Motion for Reconsideration* filed by respondent is hereby **DENIED** for lack of merit.

**SO ORDERED.**

**THE PARTIES**

Petitioner is the duly appointed head of the Bureau of Internal Revenue (BIR), the government agency tasked to, among others, collect all national internal revenue taxes. As the CIR, petitioner has the power to decide disputed assessments or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended, or other laws administered by the BIR.<sup>3</sup>

Respondent is a corporation previously engaged in the retail food business, owning a Mister Donut franchise. It is registered with the BIR under Tax Identification Number (TIN) 237-735-767-000, with address at No. 7 Driod Street, Cubao, Quezon City.<sup>4</sup>

**THE ANTECEDENT FACTS**

As found by the Court in Division, the facts are as follows:<sup>5</sup>

A Letter of Authority No. 040-2013-00001190 dated December 2, 2013 was issued by respondent [herein petitioner] for the tax examination of petitioner's [herein respondent's] books of accounts and other accounting records for taxable year (TY) 2012.

On January 6, 2016, petitioner [herein respondent] received a Preliminary Assessment Notice (PAN) dated December 21, 2015, wherein

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<sup>3</sup> *Parties*, assailed Decision, *Rollo*, pp. 16 to 17

<sup>4</sup> *Id.*

<sup>5</sup> *Facts*, assailed Decision, *Rollo*, pp. 17 to 19; citations omitted.

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respondent [herein petitioner] assessed petitioner [herein respondent] for deficiency income tax and value-added tax (VAT), in the total amount of P11,491,610.91, inclusive of interest.

Subsequently, on January 15, 2016, petitioner [herein respondent] received a FLD dated January 12, 2016 (with corresponding Assessment Notices) (FLD/FANs), wherein respondent [herein petitioner] assessed petitioner [herein respondent] for deficiency income tax and VAT in the total amount of P11,614,880.83, inclusive of interest. Respondent [herein petitioner] served the said FLD/FANs at the 3/F Farmer's Plaza, Cubao, Quezon City.

On February 15, 2016, petitioner [herein respondent] filed a protest to the FLD/FANs. Thereafter, on April 15, 2016, petitioner [herein respondent] submitted documents to support the arguments contained in the protest.


On March 16, 2016, petitioner [herein respondent] received from respondent [herein petitioner] the letter dated March 7, 2016, stating that the protest of petitioner [herein respondent] to the FLD/FANs was filed out of time and further alleged that petitioner [herein respondent] received the FLD on January 12, 2016, through Mr. Mark Anthony Mainit, hence, the thirty (30)-day period to file a protest expired on February 11, 2016. As a consequence, respondent [herein petitioner] claimed that the assessments for TY 2012 had become final and executory.

Petitioner [herein respondent] then filed the letter dated March 7, 2016 with the BIR on March 22, 2016, requesting for the reconsideration of the allegation in respondent's [herein petitioner's] letter dated March 7, 2016 that the FLD/FANs have become final and executory.

Thereafter, petitioner [herein respondent] received the Preliminary Collection Letter (PCL) dated July 4, 2016 on July 25, 2016. Subsequently, on August 2, 2016, petitioner [herein respondent] received the Final Notice Before Seizure (FNBS) dated July 8, 2016.

Consequently, on August 31, 2016, petitioner filed a letter dated August 22, 2016 with the BIR, informing the latter that the demand to settle petitioner's [herein respondent's] tax liabilities is premature, and without legal basis, because a valid assessment has not attached against petitioner [herein respondent], due to the alleged ineffectual and invalid service of the FLD/FANs dated January 12, 2016.

On September 6, 2017, petitioner [herein respondent] received the WDL dated September 5, 2017 signed by Ms. Alice S.A. Gonzales, Chief of the Collection Division, on behalf of respondent [herein petitioner], directing the concerned revenue officers of the BIR to distraint personal properties and levy upon real properties of petitioner, in view of the alleged deficiency taxes of petitioner [herein respondent] in the amount of P11,614,880.83, inclusive of interest.



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**THE PROCEEDINGS BEFORE THE COURT IN DIVISION**

As detailed in the assailed Decision, the proceedings before the Court in Division are as follows:<sup>6</sup>

Petitioner [herein respondent] filed the instant Petition for Review on October 6, 2017.

On January 8, 2018, respondent [herein petitioner] posted his Answer, raising therein his affirmative defenses against the Petition for Review.

Respondent [herein petitioner] submitted the BIR Records of the case on April 6, 2018, consisting of three hundred ninety-four (394) pages contained in one (1) folder.

The Pre-Trial Conference was initially set on April 24, 2018. However, upon respondent's Motion to Reset Pre-Trial Conference filed on April 16, 2018, the Court, in the Resolution dated April 24, 2018, reset the Pre-Trial Conference on July 3, 2018.

In the meantime, petitioner's [herein respondent's] Pre-Trial Brief was posted on April 20, 2018, while respondent's [herein petitioner's] Pre-Trial Brief was filed on July 2, 2018.

On July 19, 2018, the parties filed their Joint Stipulation of Facts and Issues. Subsequently, the Pre-Trial Order dated August 10, 2018 was issued, thereby deeming the termination of the Pre-Trial Conference.

Trial then ensued.

Petitioner [herein respondent] presented its documentary and testimonial evidence. It offered the testimonies of its witnesses namely: (1) Mr. Rolando Javen, Operations Manager of petitioner [herein respondent]; and (2) Ms. Recel B. Manalang, Area Manager of Manuel Carlo's Snack House.

Petitioner [herein respondent] posted its Formal Offer of Documentary Evidence on August 7, 2019, to which respondent [herein petitioner] filed his Comment/Opposition to Petitioner's Formal Offer of Evidence on September 11, 2019. In the Resolution dated November 8, 2019, the Court admitted the offered exhibits of petitioner, except for Exhibits "P-12" and "P-13", for the latter's failure to present the originals thereof for comparison.

Respondent [herein petitioner] likewise presented his documentary and testimonial evidence. He offered the testimonies of Revenue Officers (ROs) Emelina R. Mateo and Zaldy D. Dy.

On December 9, 2020, the Formal Offer of Evidence of respondent [herein petitioner] was posted, to which petitioner [herein respondent] filed its Comment on January 12, 2021. In the Resolution dated May 19, 2021,

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<sup>6</sup> *Facts*, assailed Decision, *Rollo*, pp. 19 to 21; citations omitted.

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the Court admitted respondent's [herein petitioner's] offered exhibits, except for the following:

1. Exhibit "R-4-E", for failure to present the original thereof for comparison; and
2. Exhibit "R-17", for failure to submit the duly marked exhibit.

Petitioner's [herein respondent's] Memorandum was posted on July 14, 2021. Respondent [herein petitioner], however, failed to file his memorandum.

The present case was submitted for decision on December 16, 2021.  
(Citations omitted)

On December 13, 2022, the Court in Division rendered the assailed Decision granting BAEC's *Petition for Review* thereby cancelling and setting aside the *Formal Letter of Demand* (FLD) dated January 12, 2016 (with corresponding Final Assessment Notices) (FLD/FAN) and *Warrant of Distraint and/or Levy* (WDL) dated September 5, 2016. In the assailed Decision, the Court found that CIR wantonly disregarded the mandatory due process requirement [i.e., 15-day period for taxpayer to respond to the Preliminary Assessment Notice (PAN)] laid down under Section 228 of the 1997 NIRC, as amended, in relation to Section 3.1.1 of Revenue Regulations (RR) No. 12-1999, as amended by RR No. 18-2013, when it prematurely issued FLD/FAN on January 12, 2016, without awaiting the lapse of the 15-day period.

Aggrieved, herein petitioner posted his *Motion for Reconsideration* posted on January 18, 2023, which was received by the Court on January 26, 2023, with BAEC's *Comment/Opposition to Motion for Reconsideration* filed on April 28, 2023.<sup>7</sup>

On July 25, 2023, the Court in Division promulgated the assailed Resolution, denying herein petitioner's *Motion for Reconsideration* for lack of merit.<sup>8</sup>

Hence, the instant *Petition for Review*.

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<sup>7</sup> Division Docket, pp. 565 to 569.

<sup>8</sup> *Rollo*, pp. 33 to 39.

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**THE PROCEEDINGS BEFORE THE COURT *EN BANC***

On August 16, 2023, petitioner filed via registered mail his *Motion for Extension of Time To File Petition for Review*, which was received by the Court on September 4, 2023, seeking an additional 15 days from August 17, 2022, or until September 1, 2023, to file a Petition for Review.<sup>9</sup> In the meantime, the same Motion filed via registered courier was received by the Court on August 23, 2023. The Court *En Banc* granted the same on August 24, 2023.<sup>10</sup>

On September 13, 2023, the Court received petitioner's *Petition for Review* filed via registered mail on September 4, 2023.<sup>11</sup>

In the Minute Resolution dated September 29, 2023, the Court ordered respondent to file his comment on the present *Petition for Review*.<sup>12</sup>

Respondent filed its *Comment/Opposition to Petition for Review* on October 23, 2023.<sup>13</sup>

On November 13, 2023, the case was submitted for decision.<sup>14</sup>

**THE ISSUES**

In the instant *Petition for Review*, petitioner assailed the decision of the Court in Division on the following grounds:

- I. The Court in Division erred in ruling that the subject deficiency tax assessments failed to attain finality and that the protest of herein respondent against the final assessment notice was filed on time; and,
- II. The Court in Division erred in ruling that the subject deficiency tax assessments and the subsequently issued warrant of distraint and/or levy are void for violation of respondent's right to due process.

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<sup>9</sup> *Rollo*, pp. 1 to 3.

<sup>10</sup> Minute Resolution dated August 24, 2023; *Rollo*, p. 4.

<sup>11</sup> *Rollo*, pp. 10 to 14.

<sup>12</sup> *Rollo*, p. 45.

<sup>13</sup> *Rollo*, pp. 46 to 51.

<sup>14</sup> Minute Resolution dated November 13, 2023, *Rollo*, p. 54.

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**THE ARGUMENTS**

Petitioner argues that the assessment has attained finality as the respondent failed to timely file its protest. Petitioner insists that the FAN/FLD was allegedly received by respondent on January 12, 2016; thus, the 30-day period to file the protest should be reckoned therefrom. Since respondent filed its protest only on February 15, 2016, it was clearly filed out of time. Consequently, the subject deficiency tax assessments have become final and executory.

Petitioner also assails the cancellation of the subject deficiency tax assessments and the WDL on the ground of the premature issuance of the FLD/FAN which the Court found to be violative of respondent's right to due process. According to the petitioner, the Court failed to consider the alleged earlier service of the PAN through registered mail to respondent's other known business address/branch and the alleged receipt of its authorized representative on December 28, 2015. Petitioner posits, therefore, that the FLD/FAN issued on January 12, 2016 was issued beyond the 15-day period.

On the other hand, as to the first ground, respondent counters that its protest was timely filed. The records of the case clearly show that the CIR did not properly serve the FLD/FAN dated January 12, 2016 upon respondent on even date. First, the CIR served the same upon a Mister Donut stall which is owned and operated by a totally different franchisee. Second, the FLD/FANs were allegedly received by Mr. Mark Anthony J. Mainit, who is neither an authorized representative nor an employee of BAEC. In addition, respondent maintains that the issue on the date of receipt of the FLD/FAN has already been settled by the Court in Division.

As to the second ground, respondent alleges that the records of the case are bereft of any evidence that BAEC received the PAN on December 28, 2015 and that the same was received by an employee or authorized representative of BAEC. Respondent contends that the Court in Division has ruled that the PAN was received by respondent on January 6, 2016; thus, the premature issuance of the FLD/FAN on January 12, 2016, without waiting for the lapse of the 15-day period to file a reply to the PAN, rendered the subject tax assessments null and void.

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**THE RULING OF THE COURT *EN BANC***

The *Petition for Review* lacks merit.

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

Section 3(b) of Rule 8 of the Revised Rules of the CTA (RRCTA) provides:

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

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

Based on the foregoing, petitioner had 15 days from receipt of the assailed Resolution within which to file his *Petition for Review*.

Records show that the assailed Resolution of the Court in Division was received by petitioner on August 2, 2023;<sup>15</sup> thus, petitioner had 15 days therefrom, or until **August 17, 2023**, to file his *Petition for Review*.

On August 16, 2023, petitioner posted his *Motion for Extension of Time To File Petition for Review*<sup>16</sup> seeking an additional period of 15 days from August 17, 2023, or until **September 1, 2023**, which was granted by this Court.<sup>17</sup> Since Court operations were suspended on September 1, 2023 (Friday) due to inclement weather,<sup>18</sup> petitioner had until **September 4, 2023**, the next working day, to file a motion for reconsideration.

Clearly, the instant *Petition for Review*<sup>19</sup> filed via registered mail on **September 4, 2023** was timely filed.

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<sup>15</sup> Notice of Resolution dated July 27, 2023; Division Docket, p. 572.

<sup>16</sup> *Rollo*, pp. 1 to 4.

<sup>17</sup> Minute Resolution dated August 24, 2023; *Rollo*, p. 4.

<sup>18</sup> CTA Memorandum dated August 31, 2023.

<sup>19</sup> *Rollo*, pp. 10 to 15.



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

***The assessment did not attain finality in view of the timely filed Protest of respondent.***

Petitioner argues that respondent's *Protest* was filed out of time, while respondent insists that the same was timely filed within the 30-day period from its receipt of the FLD/FAN.

Central to the issue on the timeliness of the filing of the *Protest* are two varying dates of receipt of the FLD/FAN. Below is a summary of the conflicting dates of receipt invoked by the parties:

Party alleging	Alleged date of receipt of the FLD/FAN	Last day to file a Protest	Date of filing of Protest
Petitioner	January 12, 2016	February 11, 2016	February 15, 2016
Respondent	January 15, 2016	February 14, 2016 (Sunday)	

The Court in Division held that the date of receipt of the FLD/FAN on January 15, 2016 has already been admitted by the parties pursuant to the *Joint Stipulation of Facts and Issues*. Thus, as illustrated above, if the 30-day period is reckoned from January 15, 2016, the last day to file the Protest falls on February 14, 2016, which is a Sunday. In view thereof, respondent had until February 15, 2016 to file the Protest; thus, the Court declared that the same was timely filed.

We agree with the Court in Division.

As correctly held by the Court in Division, the date of receipt of the FLD/FAN (i.e., January 15, 2016) served upon respondent via registered mail was admitted and undisputed by both parties. The stipulated facts and issues including the date of receipt of the FLD/FAN on January 15, 2016 were formalized in the Pre-Trial Order of the Court dated August 10, 2018. We quote with approval the Court in Division's discussion on this matter:

Section 7, Rule 18 of the 1997 Revised Rules of Civil Procedure as amended by A.M. No. 19-10-20-SC provides that the contents of the pre-trial order shall control the subsequent proceedings, unless modified before trial.

A pre-trial order, explicitly defines and limits the issues to be tried and is binding upon the parties. Pre-trial is an essential device for the speedy

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disposition of cases. Hence, parties cannot brush it aside as a mere technicality.

The Supreme Court, in the case of *Licomcen vs. Abainza*, emphasizes that one of the purpose of a pre-trial order is to limit the issues for the resolution of the Court, thus:

**"The non-inclusion of this belated defense in the pre-trial order barred its consideration during the trial.** To rule otherwise would put the adverse party at a disadvantage since he could no longer offer evidence to rebut the new theory. Indeed, parties are bound by the delimitation of issues during pre-trial." (*emphasis supplied*)

The assailed Decision even treated the stipulated facts as judicial admissions binding on the parties, and we quote:

"The admission having been made in a stipulation of facts at pre-trial by the parties, it must be treated as a judicial admission. A judicial admission binds the person who makes the same, and absent any showing that this was made thru palpable mistake, no amount of rationalization can offset it."

Accordingly, the Court in the assailed Decision ruled that the FLD/FANs did not become final and executory as the protest was filed within the thirty (30)-day period provided by Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended.

Notwithstanding the foregoing, petitioner still insists that, prior to January 15, 2016, the FLD/FAN was already served upon respondent on January 12, 2016. According to petitioner, the same was received by a "Mr. Mark Anthony J. Mainit", allegedly respondent's employee present at its other branch office address.

In order to determine whether the service made on January 12, 2016 was valid, we refer to the rules on service of notices provided under Section 3.1.6 of RR No. 12-1999, as amended by RR No. 18-2013, to wit:

SEC. 3. Due Process Requirement in the Issuance of a Delinquency Tax Assessment. —

xxx

xxx

xxx

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.

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**In case personal service is not practicable, the notice shall be served by substituted service or by mail.**

(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.

Based on the foregoing, if personal service is not practicable, notice shall be served by substituted service or by mail. Substituted service can be made at the taxpayer's known address or a place where business activities of the party are conducted and done by leaving the notice with the taxpayer's *clerk or with a person having charge thereof*.

In this case, petitioner averred that the assigned ROs initially attempted to cause personal service of the FLD/FAN at the respondent's registered address at "No. 7 Driod St., Cubao, Quezon City" but were not allowed to enter the premises; thus, on January 12, 2016, petitioner resorted to substituted service at the other business address known to the petitioner.

A perusal of the records reveals that the earlier service on January 12, 2016 was made upon Mr. Mainit, who was not an employee of the respondent but rather an employee of Manuel-Carlo's Snack House (MCSH), a different franchisee of Mister Donut. Ms. Recel Belocora Manalang, employee of MCSH and witness for the respondent,<sup>20</sup> testified that MCSH and respondent BAEC are different entities and presented the *DTI Certificate of Business Name Registration*<sup>21</sup> and *BIR Form No. 2303 – Certificate of Registration*<sup>22</sup> of Mr. Manuel Tan (proprietor)/MCSH to support her claim. She also testified

<sup>20</sup> Judicial Affidavit of Ms. Recel B. Manalang, Exhibit "P-29", Division Docket, pp. 192 to 198; Supplemental Judicial Affidavit of Ms. Recel B. Manalang, Exhibit "P-30", Division Docket, pp. 253 to 256;

<sup>21</sup> Exhibit "P-25", Division Docket, p. 215.

<sup>22</sup> Exhibit "P-22", Division Docket, p. 213.

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how MCSH received the FLD/FAN which was served upon its employee, Mr. Mainit,<sup>23</sup> viz.:

A: I double checked our records and found out that the FLD was served twice to our stall in MD Farmer's Plaza. The first one was **personally served by the officers of the Bureau of Internal Revenue (BIR) in MD Farmer's Plaza and was received by our staff Mr. Mark Anthony J. Mainit on 12 January 2016.** The second FLD was sent by the BIR through registered mail, which was received on 15 January 2016. *(Emphasis and underscoring supplied)*

Furthermore, the testimony of petitioner's witness,<sup>24</sup> Mr. Zaldy D. Dy, the RO who served the FLD/FAN, shows that there was no certainty whether the person receiving the FLD/FAN was an employee of the respondent authorized to receive said notice on behalf of the company, to wit:

21. Q: What is your proof that the Assessment Notice and Notice of Formal Demand with Details of Discrepancies was received by Petitioner?

A: The Assessment Notice and Notice of Formal Demand with Details of Discrepancies was **received by Petitioner's representative in the person of Mr. Mark Anthony Mainit at its branch office located at Space 14 Blk B 3/F Farmer's Plaza, Cubao, Quezon City on January 12, 2016.**

xxx xxx xxx

24. Q: What is our proof that Mr. Mark Anthony Mainit was Petitioner's representative?

A: **I asked for his company identification card. But instead he handed me a copy of his HDMF Transaction Card because according to him, they do not have a company ID.**

xxx xxx xxx

26. Q: How else did you serve a copy of the Assessment Notice and Notice of Formal Demand with the Details of Discrepancies?

A: Apart from the personal service at Petitioner's branch office, I also sent a copy of the Assessment Notice and Notice of Formal Demand with Details of Discrepancies at Petitioner's registered business address on January 12, 2016 as evidenced by Registry Receipt No. 580. *(Emphasis supplied)*

Evidently, the FLD/FAN was neither left at a place where business activities of the respondent are conducted nor left with a clerk or a person a person having charge thereof, rather, it was received by Mr. Mainit, a person

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<sup>23</sup> MCSH ID of Mr. Mainit, Exhibit "P-23", Division Docket, p. 214.

<sup>24</sup> Exhibit "R-10", Division Docket, pp. 357 to 362.

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who is not at all affiliated with the respondent. Thus, there can be no other logical conclusion than to disregard such invalid service of the FLD/FAN on January 12, 2016.

All told, the mutually admitted date of receipt of FLD/FAN on January 15, 2016 should prevail. As such, the *Protest* timely filed on February 15, 2016 effectively prevented the assessment from attaining finality.

The Court also observes that, at the earliest opportunity, respondent already raised the invalid service of the FLD/FAN, among others, at the alleged other business address at “Space 14 Blk. B 3/F Farmer’s Plaza, Cubao, Quezon City”. It bears noting that, despite the irregularities in the service of the same, respondent still filed a *Protest* within 15 days from its actual receipt of the FLD/FAN or when the same was transmitted to it by MCSH.

With the above disquisitions, this Court finds no error in the ruling of the Court in Division holding that the *Protest* was timely filed; thus, the assessment did not attain finality.

*The subject deficiency tax assessments are void; hence, the assessment notices and the subsequently issued WDL are also void.*

Petitioner assails the Court in Division’s finding that the FLD/FAN was prematurely issued arguing that respondent was served a copy of the PAN as early as December 28, 2015; thus, when the FLD/FAN was issued on January 12, 2016, the 15-day period for respondent to file its Reply had already lapsed. Respondent posits that there is no evidence that respondent received the PAN on December 28, 2015.

We agree with the respondent.

Similar to the date of receipt of the FLD/FAN, the parties have likewise admitted the date of receipt of the PAN on January 6, 2016 pursuant to the *Joint Stipulation of Facts and Issues*. The said date remained undisputed until the assessment was declared void by the Court in Division in the assailed Decision. It was only when the petitioner moved for reconsideration that the alleged earlier date of receipt by respondent on December 28, 2015 was alleged by petitioner.

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A closer examination of the pertinent *Registry Return Receipt* (RRR),<sup>25</sup> shows that, on **December 28, 2015**, a certain “Rosan M. Mollenido” received the PAN at the address “Space 14 Blk. B 3/F, Farmers Plaza, Cubao, Quezon City”. There was no indication thereon nor was there any evidence presented showing that such person was authorized to receive the PAN on behalf of respondent BAEC. More importantly, this Court observes that the address indicated on the RRR was the same address where the FLD/FAN was allegedly served via substituted service. As already established earlier, the said address belongs to the Mister Donut branch/franchise owned by MCSH. Thus, said service by mail cannot be considered by this Court as valid service of the PAN upon respondent.

As it is, the PAN was received by respondent only on **January 6, 2016**, as admitted by the parties. Respondent, thus, had 15 days from January 6, 2016, or until **January 21, 2016**, to file a Reply to the PAN as provided under Section 3.1.6 of RR No. 12-99, as amended by RR No. 18-2013.<sup>26</sup> However, even before the lapse of such mandatory period, petitioner already issued the FLD/FAN on **January 12, 2016**, or just six days after respondent received the PAN. Glaringly, the mandatory 15-day period was not observed by the petitioner. Such violation of respondent’s right to due process thus rendered the subject deficiency tax assessments null and void. Necessarily, the assessment notices and the subsequently issued WDL are likewise void.

Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the NIRC of 1997, as amended, and RR No. 12-1999 is void and produces no effect.<sup>27</sup> 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. The Court has 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.<sup>28</sup>

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<sup>25</sup> Exhibit “R-3-E”, BIR Records.

<sup>26</sup> SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

3.1.1 Preliminary Assessment Notice (PAN). — xxx

**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 Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**

<sup>27</sup> *Mannasoft Technology Corp. vs. Commissioner of Internal Revenue*, G.R. No. 244202, July 10, 2023, citing *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

<sup>28</sup> *Commissioner of Internal Revenue vs. Manila Medical Services, Inc. (Manila Doctors Hospital)*, G.R. No. 255473, February 13, 2023, citing *Commissioner of Internal Revenue vs. Yumex Philippines Corporation*, G.R. No. 222476, May 5, 2021.

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In light of the foregoing disquisitions, the Court *En Banc* finds no compelling reason to reverse the Court in Division's assailed Decision and Resolution.


**WHEREFORE**, premises considered, the *Petition for Review* is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated December 13, 2022, and assailed Resolution dated July 25, 2023 in CTA Case No. 9696 are **AFFIRMED**.

**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 MOBESTO-SAN PEDRO**  
Associate Justice


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**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