REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2792** (CTA Case No. 10063)
	Present:
- versus -	**DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLEÑA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
JOSELITO B. YAP, *Respondent.*	Promulgated: FEB 11 2025 3:30 pm

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review* ("*Petition*") filed by petitioner, Commissioner of Internal Revenue ("*CIR*"), on September 4, 2023,[1] challenging the Decision dated November 29, 2022 (the "*assailed Decision*")[2] and the Resolution dated August 1, 2023 (the "*assailed Resolution*"),[3] both issued by this Court's First Division (the "Court in Division") in CTA Case No. 10063, entitled "*Joselito B. Yap v. Bureau of Internal Revenue.*"

Petitioner requests that the aforesaid Decision and Resolution be reversed and set aside, and that a new ruling be issued ordering respondent Joselito B. Yap to pay the assessed deficiency taxes for the taxable years (TYs) 2011, 2012, and 2013, inclusive of surcharges and interest as mandated by

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[1] *En Banc (EB)* Docket, pp. 7–38.
[2] *Id.* at 46–78.
[3] *Id.* at 80–83.

Sections 248 and 249 of the National Internal Revenue Code (NIRC) of 1997, as amended.

THE PARTIES

Petitioner Commissioner of the Bureau of Internal Revenue (BIR) is duly appointed to exercise the powers and perform the duties of the office, including, inter alia, the power to decide on disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City. He may be served with court processes and pleadings through counsel at the Litigation Division, Room 703, BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

Respondent Joselito B. Yap is an individual taxpayer who may be served with summons, pleadings, and other court processes through his counsel, Galias & Rivera Law Offices, with office address at 3rd Floor Prestige Tower, F. Ortigas Jr. Road, Ortigas Center, Pasig City.[5]

THE FACTS AND THE PROCEEDINGS

The relevant facts, as narrated by the Court in Division in the assailed Decision, are as follows:

> On June 10, 2014, [petitioner] issued electronic Letters of Authority (LOA) No. 015-2014-00000015 for TY 2011, LOA No. 015-2014-00000014 for TY 2012, and LOA No. 015-2014-00000013 for TY 2013, covering the examination of [respondent's] books of accounts and other accounting records for all internal revenue taxes including documentary stamp tax and other taxes.
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> On January 15, 2015, [petitioner] issued Preliminary Assessment Notices (PANs) for the following TYs with the corresponding deficiency taxes, inclusive of interest and surcharge:

[TY]	Income Tax	VAT	Reg. Fee	Sub-Total
2011	P55,637,931.60	P21,512,240.11	0.00	P77,150,171.71
2012	8,721,834.25	3,030,712.16	0.00	11,752,546.41
2013	59,944,686.44	22,930,594.93	756.11	82,876,037.48
TOTAL				P171,778,755.60

[4] *Id.* at 9, Petition for Review, Parties.
[5] *Id.*

On January 23, 2015, [respondent] filed its reply to the PAN (Legal Petition Notice [LPN] dated January 21, 2015) for TYs 2011, 2012, and 2013.

On June 22, 2015, [petitioner] issued Formal Assessment Notices and Formal Letters of Demand (FAN/FLD) for the following TYs with the corresponding deficiency taxes, inclusive of interest and surcharge:

[TY]	Income Tax	VAT	Reg. Fee	Sub-Total
2011	P57,990,104.32	P22,392,903.29	0.00	P80,383,007.61
2012	9,130,424.68	3,174,014.56	0.00	12,304,439.24
2013	63,128,303.40	24,116,530.78	800.00	87,245,634.18
TOTAL				P179,933,081.03

On July 24, 2015, [respondent] filed protests/requests for reinvestigation (LPN dated July 11, 2015) for TYs 2011, 2012, and 2013.

On September 22, 2015, [respondent] filed supplemental protests for TYs 2011 and 2012 (LPN dated September 18, 2015), and 2013 (LPN dated September 19, 2015) (collectively, LPN dated September 18/19, 2015).

On May 24, 2018, [petitioner] issued a letter granting [respondent's] requests for reinvestigation for TYs 2011, 2012, and 2013.

On September 4, 2018, [respondent] received [petitioner's] letter dated July 30, 2018, informing him of his alleged failure to submit relevant supporting documents within sixty (60) days from the filing of his protests; and his cases have become final, executory, and demandable, therefore due for collection enforcement.

On October 9, 2018, [respondent] received [petitioner's] letter dated September 27, 2018, informing him that his motion for reinvestigation was not pursued.

On April 4, 2019, [respondent] received copies of [petitioner's] Preliminary Collection Letter (PCL) Notices dated April 4, 2019 for TYs 2011, 2012, and 2013.

PROCEEDINGS BEFORE THE COURT IN DIVISION

On April 11, 2019, respondent filed a *Petition for Review*[6] before the Court in Division, praying, among others, that petitioner's assessments and Preliminary Collection Letters (PCLs) be declared void.

[6] Division Docket – Vol. I, pp. 10–18.

After a couple of extensions, petitioner filed an *Answer* on July 23, 2019,[7] asking the Court in Division to dismiss the *Petition* for lack of jurisdiction or deny it for lack of merit.

On July 29, 2019, the Court in Division referred the case to the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) for mediation.[8] However, on September 9, 2019, the PMC-CTA reported that the parties had opted not to have their case mediated by the PMC-CTA.[9] Consequently, on October 1, 2019, the Court in Division issued a Resolution[10] setting a Pre-Trial Conference for November 21, 2019.

After the Pre-Trial Conference, the parties submitted a *Joint Stipulation of Facts and Issues*[11] via registered mail on December 11, 2019. Based on this, a Pre-Trial Order was issued on March 11, 2020.[12]

The trial ensued, during which both parties presented documentary and testimonial evidence to support their claims.

On November 29, 2022, the Court in Division issued the assailed Decision, with the dispositive portion reading:

> **WHEREFORE**, in view of the foregoing, the instant Petition for Review is **GRANTED**.
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> Accordingly, the PANs dated January 15, 2015, FAN/FLD dated June 22, 2015 and PCL notices dated April 4, 2019 for taxable years 2011, 2012 and 2013 are hereby **CANCELLED** and **SET ASIDE**.
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> [Petitioner], [petitioner's] representatives, agents, or other persons acting in [petitioner's] behalf are **ENJOINED** from enforcing the collection of the deficiency taxes inclusive of surcharge, interest, and penalty under the respective FAN/FLD issued on June 22, 2015 for TYs 2011 (Assessment Nos. R3-IT-015-0190 and R3-VT-015-019), 2012 (Assessment Nos. R3-IT-015-022 and R3-VT-015-022), and 2013 (Assessment Nos. R3-IT-015-016, R3-VT-015-016, and R3-RF-015-002) and the PCL Notices dated April 4, 2019 issued against [respondent].
>
> **SO ORDERED**.

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7 *Id.* at 190–208.
8 *Id.* at 211–212, Resolution dated July 29, 2019.
9 *Id.* at 214, No Agreement to Mediate (PMC-CTA Form 6).
10 *Id.* at 218.
11 *Id.* at 347–357.
12 *Id.* at 398–411.

Dissatisfied with the ruling, petitioner filed a *Motion for Reconsideration*,[13] which was denied in the Resolution[14] dated August 1, 2023, the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing considerations, [respondent's] Motion to Admit Comment dated April 11, 2023 is **GRANTED**. [Petitioner's] Motion for Reconsideration of the Decision promulgated on November 29, 2022 is **DENIED** for lack of merit.
>
> **SO ORDERED**.

PROCEEDINGS BEFORE THE COURT *EN BANC*

On August 17, 2023, petitioner filed a *Motion for Extension of Time to File Petition for Review*,[15] seeking an extension of fifteen (15) days from August 18, 2023, or until September 2, 2023, to file the *Petition*.

In a *Minute Resolution*[16] dated August 18, 2023, the Court *En Banc* granted petitioner's *Motion*.

On September 4, 2023,[17] petitioner filed the instant *Petition for Review*, and on September 26, 2023, the Court *En Banc* directed respondent to submit a comment.[18]

On October 10, 2023, respondent filed a *Comment (To Petitioner's Petition for Review)*,[19] which the Court *En Banc* noted in a Minute Resolution dated November 3, 2023.[20] In the same *Minute Resolution*, the Court *En Banc* referred the case to PMC-CTA for mediation, pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals*.

On February 15, 2024, the case was submitted for decision following a report from the PMC-CTA dated January 23, 2024, stating that the parties had decided not to have their case mediated.[21]

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13 Division Docket – Vol. II, pp. 834–861
14 *Id.* at 905–908.
15 *EB* Docket, pp. 1–4.
16 *Id.* at 4.
17 September 2, 2023 falls on a Saturday.
18 *EB* Docket, p. 84.
19 *Id.* at 90.
20 *Id.* at 61–63.
21 *Id.* at 92, Minute Resolution.

Hence, this Decision.

ASSIGNMENT OF ERRORS

In the present *Petition for Review*, petitioner assigns the following alleged errors committed by the Court in Division:

I. WITH ALL DUE RESPECT, THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT IT HAS JURISDICTION OVER THE ORIGINAL PETITION FOR REVIEW.

II. WITH ALL DUE RESPECT, THE HONORABLE COURT IN DIVISION ERRED IN RULING ON MATTERS THAT WERE NEVER SUBSTANTIATED IN THE ADMINISTRATIVE LEVEL DESPITE LACK OF JURISDICTION.

III. WITH ALL DUE RESPECT, THE HONORABLE COURT IN DIVISION ERRED IN RULING ON THE INVALIDITY OF ASSESSMENTS ON THE GROUND OF VIOLATION OF RESPONDENT'S RIGHT TO DUE PROCESS DESPITE LACK OF JURISDICTION.

Petitioner's Arguments:

In support of the *Petition*, petitioner submits that contrary to the Court in Division's ruling, the original Petition for Review filed on April 11, 2019, was filed beyond the jurisdictional thirty (30)-day period from receipt of the decision denying the protest against the assessment. Citing Section 228 of the NIRC of 1997, as amended, in relation to Revenue Regulations (RR) No. 18-2013, petitioner contends that, in cases where the protest is a request for reinvestigation, the required supporting documents must be submitted within sixty (60) days from the date of filing; otherwise, the assessment becomes final.

Allegedly, in the instant case, respondent admitted to filing a request for reinvestigation but failed to submit the relevant supporting documents within the sixty (60)-day period. Hence, the assessment, according to petitioner, has become final.

Petitioner adds that even if respondent had submitted the necessary supporting documents, the assessment remains final, executory, and demandable, outside the Court's jurisdiction.

Petitioner avers that respondent received the Formal Assessment Notices/Formal Letters of Demand (FANs/FLDs) for TYs 2011, 2012, and 2013 on June 25, 2015, and filed a protest on July 24, 2015, via Legal Petition Notices (LPNs) dated July 15, 2015. On July 30, 2018, the Regional Director of Revenue Region No. 3 – Tuguegarao City issued a denial letter stating:

> After further evaluation made by the investigating office and considering that you failed to submit relevant documents within sixty (60) days from filing of protest, your case [has] become final, executory and demandable pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as implemented by Revenue Regulations (RR) No. 12-99 and 18-2013.
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> Hence, due for collection enforcement.

Petitioner claims that the denial letter may constitute a denial of respondent's protest, which was appealable to the Court of Tax Appeals (CTA). Admittedly, respondent received the letter on September 4, 2018;[22] thus, he had thirty (30) days, or until October 4, 2018, to appeal to the CTA or elevate the protest to the CIR. However, instead of doing so, respondent filed LPN dated September 6, 2018, before the same Regional Director's Office that issued the denial letter—a remedy petitioner claims has no legal basis. As a result, petitioner argues that the filing of the LPN did not toll the running of the prescriptive period for filing an appeal before the CIR or the CTA.

Petitioner also faults the Court in Division for ruling on matters that respondent raised for the first time on appeal. According to petitioner, the issue of improper service of Letters of Authority (LOAs) and assessment notices was never raised at the administrative level despite the ample remedies provided by the NIRC of 1997, as amended, and its related rules and regulations. Citing relevant jurisprudence, [23] petitioner contends that the issue of improper service cannot be raised for the first time on appeal.

Petitioner also claims that the Court in Division erred in ruling that petitioner violated respondent's right to due process due to improper service of the LOAs and FLDs. According to petitioner, respondent explicitly acknowledged receipt of the Preliminary Assessment Notices (PANs) and FLDs in his LPNs

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[22] Division Docket – Vol. I, p. 109, Legal Petition Notice dated September 6, 2018.

[23] *Aguinaldo Industries Corporation (Fishing Nets Division) v. Commissioner of Internal Revenue, et al.*, G.R. No. L-29790, February 25, 1982 [Per J. Plana, First Division].

filed before the BIR and did not challenge the authority of the persons who received the BIR notices on his behalf. Hence, petitioner argues that respondent cannot now assail the position he previously accepted at the administrative level.

Besides, respondent cannot be said to have been denied his right to due process, as he was given full opportunity to be heard. According to petitioner, respondent was appraised of and able to avail the remedies provided by law to dispute the tax assessment when he filed the LPNs in response to the PANs and protests to the FLDs. In petitioner's view, these remedies clearly show that he was not denied his right to due process. Therefore, the assessments are valid and in accordance with the law.

Finally, petitioner maintains that respondent is liable for deficiency taxes in the amount of ₱80,383,007.61 for TY 2011, ₱12,304,439.24 for TY 2012, and ₱87,245,634.18 for TY 2013, for failure to present sufficient evidence to overthrow the findings of the BIR.

Respondent's Arguments:

By way of *Comment*, respondent submits that the Court has jurisdiction over the case. Respondent asserts that he submitted the relevant supporting documents within sixty (60) days from the filing of his protest. Further, his LPN dated September 6, 2018 (Exhibit "U"), clarified and informed petitioner of his submission of the relevant documents within the sixty (60)-day period in support of his protest/motion for reinvestigation. Respondent claims that petitioner's reliance on *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*[24] is misplaced, as that case involved a demand letter from the BIR, which is absent in this case. Hence, for respondent, the Court has jurisdiction over the instant case.

Respondent further counters that it is petitioner who is guilty of laches. In his Petition for Review, petitioner contends that respondent failed to raise the issue of improper service at the administrative level. However, respondent points out that in petitioner's *Comment/Opposition to Respondent's Formal Offer of Evidence*, petitioner did not specifically object to the admissibility of the LOAs for their stated purposes. Thus, respondent asserts that it is petitioner who is guilty of laches.

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[24] G.R. No. 225809, March 17, 2021 [Per J. Leonen, Third Division].

Respondent also asserts that petitioner violated his right to due process by failing to properly serve the notices. Respondent claims that petitioner disregarded his own rules on service of notices when: (a) he did not even attempt to serve the notices at his registered address; (b) the recipient is not his employee; and, (c) he failed to serve the notice to the barangay official when he was unable to personally serve the same to respondent himself.

Lastly, respondent maintains that he is not liable for the alleged deficiency taxes, as undeclared expenses cannot prove undeclared income.

THE COURT EN BANC'S RULING

Before addressing the merits of the case, the Court *En Banc* must first determine whether the present *Petition for Review* was timely filed.

The present Petition for Review was timely filed; hence, 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.* — ...
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> ... ...
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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 August 1, 2023,[25] denying his *Motion for Reconsideration (of the Decision promulgated on November 29, 2022)* on August 3, 2023. Thus, petitioner had fifteen (15) days from August 3, 2023, or until August 18, 2023, to file his *Petition for Review* with the Court *En Banc*.

On August 17, 2023, petitioner filed a *Motion for Extension to File Petition for Review*,[26] seeking an additional fifteen (15) days from August 18, 2023, or until September 2, 2023, to file the *Petition for Review*. The *Motion* was granted by the Court *En Banc* in a *Minute Resolution* dated August 18, 2023.[27]

Considering that September 2, 2023 fell on a Saturday, the filing of the *Petition for Review* on September 4, 2024 - the next working day - was timely. Hence, the Court *En Banc* has validly acquired jurisdiction over the *Petition for Review*.

Now, on the merits of the case.

The Court in Division did not err in holding that it has jurisdiction over the original petition.

On the *first* assigned error, petitioner disputes the Court in Division's ruling that the thirty (30)-day period to file an appeal before the CTA should be reckoned from the receipt of the PCLs, rather than from the receipt of the denial letter from the Regional Director of Revenue Region No. 3 – Tuguegarao City. Petitioner argues that the Regional Director's letter dated July 30, 2018, constitutes a denial of respondent's protest, thereby rendering it appealable to the CTA.

The Court *En Banc* is not convinced.

As clearly explained by the Court in Division, which *We* quote:

> A letter may be considered the Commissioner's final decision on a disputed assessment, if it communicates to the taxpayer in clear and unequivocal language what constitutes the Commissioner's final determination of the disputed

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25 *EB* Docket, p. 39, Notice of Resolution.
26 *Id.* at 1–3.
27 *Id.* at 4.

assessment. [T]he Supreme Court explained the requirement in *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue (Oceanic)*, to wit:

> We laid down the rule that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment, thus:
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> . . . we deem it appropriate to state that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by Sections 7 and 11 of Republic Act No. 1125, as amended. On the basis of his statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues.
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> The rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment — and, consequently, the collection of the amount demanded as taxes — by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the Commissioner from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action.

It is clear that the letter received on September 4, 2018 did not communicate [petitioner's] final determination on the disputed assessment in clear and unequivocal language. Instead, the letter from Regional Director Thelma S. Milabao of Revenue Region No. 03, Tuguegarao City dated July 30, 2018 informed [respondent] that he failed to submit relevant supporting documents within sixty (60) days from filing of the protest. The letter provides:

Please be informed that pertinent portion of Section 228 of the Tax Code and Section 3.1.5 of RR No. 12-99 specifically provides that —

> "*If the protest is denied in whole and in part or is not acted upon within one hundred eighty (180) days from submission of document, 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 one hundred (sic) (180)-day period; otherwise, the decision shall become final, executory and demandable.*"

Moreover, RR No. 18-2013 further clarified by Revenue Memorandum Circular No. 11-2014 provides that —

> ". . . *the taxpayer shall submit all the relevant supporting documents in support of his protest within sixty (60) days from date of filing [his/her] protest, otherwise, the assessment shall become final.*"

After further evaluation made by the investigating office and considering that you failed to submit relevant documents within sixty (60) days from filing of protest, your cases have become final, executory and demandable pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997 as implemented by Revenue Regulations (RR) Nos. 12-99 and 18-2013.

Hence, due for collection enforcement.

(Sgd.)
THELMA S. MILABAO
Regional Director

It is true that the September 4, 2018 letter as aforequoted, states that the assessments against [respondent] have become final, executory, and demandable due to [respondent's] failure to submit relevant documents. However, in *Commissioner of Internal Revenue v. First Express Pawnshop Co., Inc.*, the Supreme Court ruled that an assessment cannot be rendered final, executory, and demandable by [petitioner's] mere declaration that a taxpayer has failed to submit relevant supporting documents, to wit:

> The term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment **as determined by the taxpayer**. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents

> should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.
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> ... ...
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> Respondent has complied with the requisites in disputing an assessment pursuant to Section 228 of the Tax Code. Hence, the tax assessment cannot be considered as final, executory and demandable.

RR No. 18-2013, which was issued by [petitioner] and was cited in the letter received by [respondent] on September 4, 2018, likewise define "relevant supporting documents" in similar terms, as follows:

> For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of [the taxpayer's] protest within sixty (60) days from date of filing of [the taxpayer's] letter of protest, otherwise, the assessment shall become final. The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. . . Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied.

Even granting that [respondent] failed to submit relevant supporting documents, his failure to submit additional documents in support of his protests would only render the assessments final as defined by RR No. 18-2013, which means that the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence. **This would result in the denial of the request for reinvestigation and consequently, the issuance of the FDDA against the taxpayer.**

The PCL Notices, on the other hand, reiterated the tax deficiency assessments of [respondent] and requested the payment thereof. It indicated that if payment of the deficiency taxes be not made, [petitioner] will be "*constrained to enforce the collection thereof [through] the Administrative Summary remedies provided for by law, without further notice,*" similarly as in Oceanic, to wit:

> In this case, the letter of demand dated January 24, 1991, unquestionably constitutes the final action taken by the Bureau of Internal Revenue on petitioner's request for reconsideration when it reiterated the tax deficiency assessments due from petitioner, and requested its payment. Failure to do so would result in the "issuance of a warrant of distraint and levy to enforce its collection without further notice." In addition, the letter contained a notation indicating that petitioner's request for reconsideration had been denied for lack of supporting documents.

For this reason, the PCL Notices are [petitioner's] decision to the disputed assessments. In *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (Avon)*, the Supreme Court ruled that the Collection Letter may be considered [petitioner's] decision and therefore the reckoning point of the thirty (30)-day period to appeal with this Court, to wit:

> This Court holds that the Collection Letter dated July 9, 2004 constitutes the final decision of the Commissioner that is appealable to the Court of Tax Appeals. The Collection Letter dated July 9, 2004 demanded from Avon the payment of the deficiency tax assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice. The Collection Letter was purportedly based on the May 27, 2004 Memorandum of the Revenue Officers stating that Avon "failed to submit supporting documents within [the] 60-day period." This Collection Letter demonstrated a character of finality such that there can be no doubt that the Commissioner had already made a conclusion to deny Avon's request and she had the clear resolve to collect the subject taxes.

Similarly, **the tenor of the PCL Notices in this case, was of finality and was an unequivocal demand of payment since [petitioner] would be constrained to enforce administrative summary remedies in case of [respondent's] failure to do so**. This is also inferred in the warning of [petitioner] in the PCL Notices that failure to pay the deficiency taxes due would result in the accumulation of delinquency interest. (*Citations omitted*)

Undoubtedly, the PCL Notices for TYs 2011, 2012, and 2013, received on April 4, 2019, are considered the Final Decision on Disputed Assessment (FDDA) or the decision appealable to the Court in Division. As such, the thirty (30)-day period for appeal to this Court should be counted from the receipt of the PCL Notices, *i.e.*, April 4, 2019, and not from the date respondent received the letter dated July 30, 2018, *i.e.*, September 4, 2018. Accordingly, the original *Petition for Review,* filed on April 11, 2019, was timely, and the Court in Division correctly exercised jurisdiction over it.

Furthermore, the Court in Division properly noted that even if the PCL Notices were not considered the final decision of respondent, they would still qualify as "other matters" arising under the NIRC of 1997, as amended, making them subject to appeal before the CTA.[28]

The Court in Division did not err in ruling on an issue raised for the first time on appeal.

Anent the *second* assigned error, petitioner contends that the Court in Division erred when it ruled on matters raised by respondent for the first time on appeal, particularly the validity of the service of LOAs and assessment notices. Petitioner argues that respondent's failure to raise the issue of *improper service* at the administrative level precludes respondent from raising it before the Court.

Petitioner's contention is without merit.

Respondent's failure to raise the issue of improper service of LOAs and assessment notices at the earliest opportunity does not preclude the CTA from considering it, as this issue delves into the intrinsic validity of the assessment itself. Besides, in deciding a case, the CTA may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.[29]

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[28] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc./Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 201398-99/G.R. Nos. 201418-19, October 3, 2018 [Per J. Leonen, Third Division].

[29] *Commissioner of Internal Revenue v. Geniographics, Incorporated*, G.R. No. 264572 (Notice), July 26, 2023 [Per Resolution, Third Division]; A.M. No. 05-11-07-CTA (Revised Rules of the Court of Tax Appeals), as amended, Rule 14, sec. 1, par. 2.

Moreover, under Section 8 of the Republic Act (RA) No. 1125,[30] as amended, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases. [31] Consequently, the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.[32]

Respondent is estopped from asserting that the LOAs and assessment notices were improperly served.

In the present *Petition for Review,* petitioner alleges that the LOAs and assessment notices were properly served on respondent, as evidenced by respondent's admissions in his LPNs:

> Based on records, the LOAs for taxable years 2011, 2012 and 2013 were received by Ms. Dolly Cruz on 13 June 2014. It is worthy to note that the PANs for taxable years 2011, 2012 and 2013, all dated 15 January 2015, were likewise received by Ms. Cruz and in his LPNs dated 21 January 2015, respondent admitted that he received the said PANs on 19 January 2015. Interestingly, respondent did not question the service of the PANs.
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> On the other hand, the separate FLDs and FANs for taxable years 2011, 2012 and 2013 were received by Ms. Marivic Rumbaoa on 25 June 2015. In his LPNs dated 11 July 2015, respondent likewise admitted that on 25 June 2014, he received the said FLDs and FANs.
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> ... ...
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> Proceeding from the foregoing, it is safe to say that Ms. Cruz and Ms. Rumbaoa are authorized by respondent to receive the letters and notices from petitioner. Thus, respondent is now estopped from denying their authority.

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30 SECTION 8. Court of record; seal; proceedings. — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

31 *Philippine National Bank v. Commissioner of Internal Revenue*, G.R. Nos. 242647, 243814 & 242842-43 (Notice), March 15, 2022 [Per Resolution, First Division].

32 *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*, G.R. No. 231581, April 10, 2019 [Per J. J. Reyes, Jr., Second Division].

> As discussed above, the authority of the persons who received the BIR notices were never assailed by respondent in his protests. Respondent cannot now assail the position he had accepted in the administrative level.[33]

Respondent, however, disputes the propriety of service. Specifically, he argues in his *Comment* that:

> 7. While Petitioner further argued in its petition that Respondent received the notices through Ms. Dolly Yap, the former violated its own rules regarding the services of notices:
>
> 7.1. Petitioner did not even attempt to serve the notices at the registered address of Respondent.
>
> 7.2. The recipient is not an employee of Respondent.
>
> 7.3. Petitioner should have served the notices to the barangay since that the former was unable to personally serve the notices to Respondent himself, especially considering that he is a sole proprietorship and not a corporation.

In the assailed Decision, the Court in Division ruled that the assessments for TYs 2011, 2012, and 2013 are void for violating respondent's right to due process, as the LOAs and assessment notices were improperly served.

The Court in Division further held that petitioner failed to prove that the LOA, PAN, and FAN/FLD were properly served and received by respondent or an authorized representative, thus voiding the assessments, *viz.*:

> Since [petitioner] was unable to present sufficient evidence to prove that the LOA, PAN, and FAN/FLD for TYs 2011, 2012, and 2013, were properly served and received by petitioner or by its authorized representative/s, there are no valid assessments, consequently, the PCL Notices are void. A void assessment bears no valid fruit.

The Court *En Banc,* however, holds otherwise.

Upon a judicious review of the records and the parties' arguments, the Court *En Banc* finds that respondent explicitly and repeatedly admitted in his LPNs filed with the BIR to having received the assessment notices. These admissions confirm that respondent received the assessment notices as required, relieving petitioner of any obligation to prove the fact of receipt.

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[33] *EB* Docket, pp. 25–27, *Petition for Review* dated August 31, 2023.

As correctly noted by the Honorable Presiding Justice Roman G. Del Rosario (PJ Del Rosario),[34] the records clearly show that respondent expressly admitted receiving the PANs and FANs/FLDs for TYs 2011, 2012, and 2013, as follows:

Legal Petition Notice dated January 21, 2015 to the **PAN** for **TY 2011**:

> Last January 19, 2015, **I received** a Preliminary Assessment Notice with the same dated January 15, 2015 signed by the Regional Director Marina De Guzman on January 16, 2015; anent the issued Letter of Authority for Taxable Year 2011.[35] (*Emphasis supplied*)

Legal Petition Notice dated January 21, 2015 to the **PAN** for **TY 2012**:

> Last January 19, 2015, **I received** a Preliminary Assessment Notice with the same dated January 15, 2015 signed by the Regional Director Marina De Guzman on January 16, 2015; anent the issued Letter of Authority for Taxable Year 2012.[36] (*Emphasis supplied*)

Legal Petition Notice dated January 21, 2015 to the **PAN** for **TY 2013**:

> Last January 19, 2015, **I received** a Preliminary Assessment Notice with the same dated January 15, 2015 signed by the Regional Director Marina De Guzman on January 16, 2015; anent the issued Letter of Authority for Taxable Year 2013.[37] (*Emphasis supplied*)

Legal Petition Notice dated July 11, 2015 to the **FAN/FLD** for **TY 2011**:

> On June 25, 2015, **I received** a Formal Letter of Demand and Assessment Notice dated June 22, 2015 signed by the Regional Director Marina De Guzman; anent the issued Letter of Authority for Taxable Year 2011.[38] (*Emphasis supplied*)

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34 P.J. Del Rosario, Dissenting Opinion in *Yap v. Bureau of Internal Revenue*, CTA Case No. 10063, November 29, 2022 [Per J. Reyes-Fajardo, First Division].
35 BIR Records – Folder 1, p. 146.
36 BIR Records – Folder 2, p. 197.
37 BIR Records – Folder 3, p. 162.
38 Exhibit R-17-A, BIR Records (Exhibit R-69-A), p. 213.

Legal Petition Notice dated July 11, 2015 to the **FAN/FLD** for **TY 2012**:

On June 25, 2015, **I received** a Formal Letter of Demand and Assessment Notice dated June 22, 2015 signed by the Regional Director Marina De Guzman; anent the issued Letter of Authority for Taxable Year 2012.[39] (*Emphasis supplied*)

Legal Petition Notice dated July 11, 2015 to the **FAN/FLD** for **TY 2013**:

On June 25, 2015, **I received** a Formal Letter of Demand and Assessment Notice dated June 22, 2015 signed by the Regional Director Marina C. De Guzman; anent the issued Letter of Authority for Taxable Year 2013.[40] (*Emphasis supplied*)

Likewise, in his supplemental protest to the FANs/FLDs, respondent reiterated that he received the FANs/FLDs for TYs 2011, 2012, and 2013, to wit:

Legal Petition Notice dated September 18, 2015 to the **FAN/FLD** for **TY 2011**:

On June 25, 2015, **I received** a Formal Letter of Demand and Assessment Notice dated June 22, 2015 signed by the Regional Director Marina C. De Guzman; anent the issued Letter of Authority for Taxable Year 2011.[41] (*Emphasis supplied*)

Legal Petition Notice dated September 18, 2015 to the **FAN/FLD** for **TY 2012**:

On June 25, 2015, **I received** a Formal Letter of Demand and Assessment Notice dated June 22, 2015 signed by the Regional Director Marina C. De Guzman; anent the issued Letter of Authority for Taxable Year 2012.[42] (*Emphasis supplied*)

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39 Division Docket - Vol. I, p. 69, Annex "N".
40 *Id.* at 81, Annex "O".
41 *Id.* at 91, Annex "P".
42 BIR Records – Folder No. 2-A, p. 239.

Legal Petition Notice dated September 19, 2015 to the **FAN/FLD** for **TY 2013**:

> On June 25, 2015, **I received** a Formal Letter of Demand and Assessment Notice dated June 22, 2015 signed by the Regional Director Marina De Guzman; anent the issued Letter of Authority for Taxable Year 2013. [43] (*Emphasis supplied*)

Furthermore, respondent is *estopped* from questioning the propriety of the service of the LOAs and assessment notices.

In *Factory Automation and Instrumentation Corp. v. Commissioner of Internal Revenue,* [44] the Supreme Court held that petitioner is *estopped* from claiming that it did not receive the FAN and FLD, stating:

> The issue on the receipt or non-receipt of the Final Demand Letter and Assessment Notice is a factual question that is not generally proper in a Rule 45 petition before this Court.
>
> **Petitioner does not deny that Irene Masula received the FAN and FLD sent *via* registered mail**. Petitioner nonetheless argues that Irene Masula is not its authorized representative when it comes to receiving notices on its behalf, and that the principle of estoppel should not be applied herein.
>
> Petitioner is mistaken. The principle of estoppel may be applied in this case.
>
> The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith, and justice, and its purpose is to forbid one to speak against his or her own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied upon. It has been applied wherever and whenever special circumstances of a case so demand. This Court has applied the principle of estoppel on the part of the taxpayer in several tax cases.
>
> Here, petitioner is estopped from claiming that it did not receive the FAN and FLD sent through registered mail because of Irene Masula's alleged lack of authority to receive the same. As the CTA *En Banc* observed, Irene Masula previously received the PAN addressed and sent to petitioner through registered mail. Petitioner was thereafter able to file a protest to the PAN on June 8, 2011.

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[43] Exhibit R-57-A, BIR Records – Folder No. 3-A, p. 195.
[44] G.R. No. 236789 (Notice), March 27, 2023 [Per Resolution, First Division].

> **Petitioner did not contest the authority of Irene Masula to receive the PAN. It cannot now claim that the same person is unauthorized to receive the FAN, when it acted on the PAN that Irene Masula previously received.**
>
> ... ...
>
> With the foregoing evidence presented by respondent, it became incumbent upon petitioner to show by indubitable evidence that it did not receive the FAN and FLD. Bare denial of receipt of the FAN will not suffice. (*Emphasis supplied; citations omitted)*

Applying by analogy the pronouncement in the foregoing case, the *principle of estoppel* similarly applies here, as respondent failed to object to the propriety of the service of the LOAs and assessment notices at the earliest opportunity. As aptly noted by PJ Del Rosario, respondent's failure to timely raise the issue of improper service at the administrative level is **fatal** to his claim.[45]

Respondent is *estopped* from questioning the propriety of the service of the **LOAs**. By submitting the necessary documents in compliance with the LOAs, along with the *First Notice/Checklist of Requirements* issued for TYs 2011, 2012, and 2013, respondent effectively confirmed the propriety of the service of LOAs. Had respondent truly believed there was improper service thereof, he should have raised his objection, or questioned the service of the LOAs when he submitted the required documents for examination at the administrative level. However, the records are bereft of any evidence that he did so.

The Supreme Court aptly discussed a similar principle in *AFP General Insurance Corporation v. Commissioner of Internal Revenue*,[46] stating:

> *Third*, even if the Court brushes aside these recognized principles and follows AGIC's reasoning, **it is clear that they would have had the legal right to refuse service of an LOA it believed was defective due to lack of revalidation. However, it is undisputed that AGIC did not contest the LOA upon receipt and allowed the tax authorities to proceed with and complete the audit.**
>
> **Moreover, AGIC did not question the timeliness of the LOA's service in any of the following: reply to the PAN, two-page formal administrative protest to the FLD,**

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45 *Supra* note 344.
46 G.R. No. 222133, November 4, 2020 [Per J. Inting, Third Division].

> Petition for Review, and Motion for Reconsideration before the CTA Division. AGIC raised this argument only on appeal (to the CTA En Banc).
>
> To the Court's mind, **AGIC's failure to exercise its right to refuse the service of an allegedly defective LOA shows that they had acquiesced to the tax authorities' investigation**. That it waited until after the issuance of the PAN, FLD, as well as the CTA Division's adverse decision before objecting to this irregularity could only be interpreted as a mere afterthought to resist possible tax liability. (*Citations omitted; emphasis supplied*)

In the same vein, respondent is *estopped* from assailing the validity of the service of **assessment notices** for TYs 2011, 2012, and 2013. As with the LOAs, respondent failed to contest the alleged improper service of these assessment notices at the administrative level. Instead, as previously discussed, respondent categorically admitted receiving the PANs and FANs/FLDs in his LPNs.

Thus, by failing to raise any objection to the service of the LOAs and assessment notices at the earliest possible opportunity (or at least at the administrative level), respondent is deemed *estopped* from assailing the same before the Court.

Let it be emphasized that to allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level would be to sanction a procedure whereby the court — which is supposed to review administrative determinations — would not review, but determine and decide for the first time, a question not raised at the administrative forum.[47] Well-settled is the principle that a party is bound by the theory he adopts and by the cause of action he stands on and cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to re-litigate the matter anew either in the same forum or on appeal.[48]

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47 *Supra* note 23.

48 *Arroyo v. House of Representatives Electoral Tribunal*, G.R. No. 118597, July 14, 1995, 246 SCRA 284 [Per J. Francisco, *En Banc*], citing *Bashier v. COMELEC*, 43 SCRA 238 [Per J. Teehankee, First Division].

Respondent was duly informed of the legal and factual bases of the assessments.

Indeed, a fair and reasonable opportunity to explain one's side is one aspect of due process.[49] Another aspect is the due consideration given by the decision-maker to the arguments and evidence submitted by the affected party.[50]

In the instant case, indeed, the deficiency taxes reflected in the FLDs/FANs for TYs 2011, 2012, and 2013 are mere reiterations of those found in the PANs for the same period. However, the reiteration stems from respondent's failure to file a protest against the PANs. Although respondent was able to file LPNs[51] to the PANs for the given period, these LPNs merely requested an extension of time to file a protest to the PANs and did not include any substantive objections to the assessments. Hence, with no formal protest filed against the PANs, there was nothing to reconsider that merits a modification of the deficiency amounts initially stated in the PANs.

In fine, there is no basis to hold that the assessments issued against respondent for TYs 2011, 2012, and 2013 are void due to a violation of his right to due process.

WHEREFORE, premises considered, the *Petition for Review* filed by the Commissioner of Internal Revenue is **GRANTED**. Accordingly, the assailed Decision dated November 29, 2022, and Resolution dated August 1, 2023, issued by the First Division in CTA Case No. 10063, are **REVERSED and SET ASIDE**.

Let the case be **REMANDED** to the Court in Division for the determination of respondent's deficiency tax liabilities, if any, for taxable years 2011, 2012 and 2013.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

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[49] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc./Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 201398-99/G.R. Nos. 201418-19, October 3, 2018 [Per J. Leonen, Third Division] citing *Vivo v. Philippine Amusement and Game Corporation (PAGCOR)*, G.R. No. 187854, November 12, 2013 [Per J. Bersamin, *En Banc*].

[50] *Id.*

[51] BIR Records – Folder No. 1, p. 146; BIR Records – Folder No. 2, p. 196.; and BIR Records – Folder No. 3, p. 161.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(With Concurring and Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(I reiterate my position in the assailed Decision and Resolution in CTA Case No. 10063)

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2792** (CTA Case No. 10063)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
JOSELITO B. YAP, Respondent.	Promulgated: FEB 11 2025 3:30

x - x

CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

With due respect, while I concur with the *ponencia* of my esteemed colleague, Associate Justice Lanee S. Cui-David, in granting petitioner Commissioner of Internal Revenue's (**petitioner**'s/**CIR**'s) Petition for Review filed on 04 September 2022[1] and reversing the assailed Decision dated 29 November 2022[2] and Resolution dated 01 August 2023[3] both issued by this Court's First Division, a remand of the case to the said Division for the determination of respondent's deficiency tax liabilities, if any (for the taxable years 2011, 2012 and 2013) may not be proper.

In numerous decided cases by no less than the Supreme Court, remand is avoided in the following instances: *(a)* where the ends of justice would not be subserved by a remand; or *(b)* where public interest demands an early disposition of the case; or *(c)* <u>where the trial court had already received all the evidence presented by both parties,</u>

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1 *Rollo*, pp. 7-39.
2 Id., pp. 46-78.
3 Id., pp. 80-83.

and the court is in a position, based upon said evidence, to decide the case on its merits.[4] Under these circumstances, the remand of the case to the lower court (which here may be the Court's First Division) is no longer necessary.

As a rule, remand is necessary *only* when there has been no trial on the merits.[5] Trial on the merits is a trial where the parties had the opportunity to present their evidence, which was duly examined and considered by the court in resolving the issues presented before it.[6]

As the records bear, the parties here have already fully presented their evidence and these have already been attached to records of the case (transmitted to the Court *En Banc*).[7] Thus, the Court *En Banc* has all the evidence necessary to place it in a position to determine respondent's deficiency tax liabilities, if any, for the taxable years 2011, 2012 and 2013.

Furthermore, it also bears noting that since the instant *Petition for Review* was filed under Rule 43 of the Rules of Court, in relation to Section 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), *We* have the authority to resolve questions of fact or mixed questions of fact and of law and make the necessary factual findings.

More importantly, a remand to the Court's First Division, notwithstanding that no new evidence is anticipated, will only delay the disposition of the case. Certainly, Section 16, Article III of the 1987 Constitution guarantees the right of the people to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies.[8] Thus, a remand to the Court's First Division will run counter to this Constitutional guarantee.

With the foregoing, I vote **AGAINST** remanding the case to the Court in Division and recommend that the Court *En Banc* proceed with determining respondent's deficiency tax liabilities, if any, for taxable years 2011, 2012 and 2013.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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4 *Sioland Development Corporation, v. Fair Distribution Center Corporation*, G.R. No. 199539, 09 August 2023; *Annabelle Dela Peña, et al. v. The Court of Appeals, et al.*, G.R. No. 177828, 13 February 2009; *Rizza Lao @ Nerissa Laping v. People of the Philippines*, G.R. No. 159404, 27 June 2008.

5 *Sioland Development Corporation, v. Fair Distribution Center Corporation*, supra, citing *Spouses Gregorio C. Morales, et al. v. Court of Appeals, et al.*, G.R. No. 126186, 28 January 1998.

6 Id.

7 *Rollo*, pp. 47-51.

8 *Power Sector Assets and Liabilities Management (PSALM) Corporation v. Commission on Audit*, G.R. No. 247924, 16 November 2021.