REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

CONCEPCION INDUSTRIES, INC.,
Respondent.

CTA *EB* No. 2863
(CTA Case No. 10305)

Members:

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

Promulgated:
JAN 22 2025 4:12pm

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review (Petition)* dated February 23, 2024,[1] filed by petitioner Commissioner of Internal Revenue (**CIR**). The *Petition* seeks to reverse the *Decision* dated November 24, 2022[2] and the *Resolution* dated January 2, 2024,[3] both rendered by the Court's Special Third Division (**Court in Division**), granting respondent's *Petition* and cancelled the assessment issued by petitioner against respondent.

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[1] *En Banc (EB)* Docket, pp.7–60, including annexes.
[2] *Id.* at 69–86.
[3] *Id.* at 88–91.

THE PARTIES

Petitioner Commissioner of Internal Revenue (**CIR**) is the head of the Bureau of Internal Revenue (**BIR**), with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City, Metro Manila.[4]

Respondent is a corporation registered with the BIR under Tax Identification Number (**TIN**) 000-158-908.[5]

THE FACTS

The undisputed facts as narrated by the Court in Division in *Concepcion Industries, Inc. v. Commissioner of Internal Revenue,*[6] are as follows:

> On 26 September 2014, Letter of Authority ("LOA") No. 116-2014-00000173 was issued by the OIC-Assistant Commissioner of the Large Taxpayers ("LT") Service, Nestor S. Valeroso, in favor of Revenue Officers ("RO") Maria Gracielle Cecilia San Pedro-Anaban and Riza Budano and Group Supervisor ("GS") Allan Maniego of LT Regular Audit Division 1, authorizing them to audit and examine [respondent]'s books of accounts and other accounting records for the purpose of determining any deficiency tax liability for the period from 1 January 2013 to 31 December 2013.
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> Thereafter, the Chief of the LT Regular Audit Division 1, Cesar D. Escalada, sent a Letter to [respondent] informing it that RO Arnaldo T. Ancheta and Tito R. Monforte are authorized to assist, under GS Maniego, in the examination of [respondent]'s books.
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> On 30 May 2016, Letter Notice No. 116-C-RLFTRS-13-00-0012 was issued by [petitioner] requesting [respondent] to reconcile the discrepancies found by the BIR's computerized matching system.
>
> On 27 February 2017, [petitioner] issued a Preliminary Assessment Notice ("PAN") finding [respondent] liable for deficiency IT, VAT, EWT, DST, and IAET.
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> [Respondent] filed a Reply to the PAN on 10 March 2017.

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4 Division Docket, p. 7, Petition, par. 2.
5 *Id.* at 26, Petition, Annex "A".
6 CTA Case No. 10305, November 24, 2022.

On 29 March 2017, [petitioner] issued the Formal Letter of Demand ("FLD") and Formal Assessment Notices ("FAN"). The FAN sought to collect the following deficiency taxes from [respondent]:

Tax type	Amount Due (inclusive of surcharge and interest, exclusive of compromise penalty)
IT	Php 379,115,270.32
VAT	117,106,506.20
EWT	9,413,857.84
DST	5,695,336.43
IAET	416,189,691.35

Notably, the FAN did not indicate any due date: the space provided for it was left blank by [petitioner].

[Respondent] filed its Protests to the FLD and to the FAN on 27 April 2017 and 27 June 2017, respectively.

On 18 June 2020, [petitioner] issued the Final Decision on Disputed Assessment ("FDDA") denying [respondent]'s Protests to the FLD/FAN. In total, the FDDA assessed [respondent] the following:

Tax type	Amount Due (inclusive of surcharge and interest, exclusive of compromise penalty)
IT	Php 490,555,272.50
VAT	142,075,190.16
EWT	11,624,996.43
DST	7,038,073.47
IAET	499,785,582.82
Total	Php 1,151,079,115.37

Thus, [respondent] was constrained to file the instant Petition on 17 July 2020.

On 16 October 2020, this Court issued Summons to [petitioner] to file an Answer to the Petition. [Petitioner] filed his Answer on 22 December 2020.

In a Resolution, dated 6 January 2021, this Court referred the instant case to mediation. However, the parties failed to agree on a settlement.

On 26 January 2021, [petitioner] elevated all of the BIR Records appurtenant to the case.

On 17 June 2021, [respondent] filed a Motion for Summary Judgment, alleging that a Summary Judgment is proper in light of [petitioner]'s failure to raise a genuine issue as to any material fact. To this, [petitioner] filed a Comment/Opposition

(On [Respondent's] Motion for Summary Judgment) on 5 July 2021. Similarly, [respondent] filed a Reply (to [Petitioner's] Comment/Opposition to [Respondent's] Motion for Summary Judgment).

This Court then granted [respondent]'s Motion for Summary Judgment on 17 December 2021.

On 2 February 2022, [petitioner] filed a Motion for Reconsideration of the Court's Resolution granting Summary Judgment, alleging that: a) the Court erred in granting [respondent]'s Motion for Summary Judgment without conducting summary hearing; and b) the Court erred in ruling that [respondent] satisfied the twin elements to render a Summary Judgment, namely: that 1) there is no genuine issue on material facts pertaining to the validity of the assessment in the instant case; and 2) [respondent] is entitled to a judgment as a matter of law.

On 7 March 2022, [respondent] filed its Comment/Opposition (to [Petitioner's] Motion for Reconsideration [of the Resolution dated 17 December 2021]), [23] counter-arguing as follows: a) a summary hearing is not an indispensable requirement in resolving [Respondent's] Motion for Summary Judgment; b) the Court correctly ruled that [respondent] satisfied the twin requirements for rendering a summary judgment; and c) no genuine issue on material facts has been presented by [petitioner], hence, the issues left for this Court to resolve are purely legal questions. [*Citations omitted.*]

On November 24, 2022, the Court in Division promulgated a *Decision*[7] with the following dispositive portion:

WHEREFORE, [petitioner]'s Motion for Reconsideration [of the Resolution dated 17 December 2021]) is hereby **DENIED**. The Resolution, dated 17 December 2021 is **AFFIRMED**. Meanwhile, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. The PAN, FLD/FAN, and FDDA issued against [respondent] are declared **NULL AND VOID**. The deficiency IT, VAT, EWT, DST, and IAET assessments issued against [respondent] for TY 2013, in the aggregate amount of Php1,151,079,115.37, are hereby **CANCELLED** and **SET ASIDE**. Respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against [respondent].

SO ORDERED.

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7 *EB* Docket, pp. 69–86.

On December 19, 2022, petitioner filed a *Motion for Reconsideration [of the Decision dated November 24, 2022]* [8] while respondent filed its *Comment/Opposition [To: Respondent's Motion for Reconsideration (Re: Decision Promulgated on 24 November 2022)*[9] on January 20, 2023.

In a *Resolution* dated January 2, 2024,[10] the Court in Division denied petitioner's *Motion for Reconsideration, viz.*:

> **WHEREFORE**, the instant *Motion for Reconsideration [of the Decision dated November 24, 2022]* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.

PROCEEDINGS BEFORE THE COURT

On February 8, 2024, petitioner filed a *Motion for Extension of Time to File Petition for Review*,[11] which was granted, giving petitioner a non-extendible period of fifteen (15) days from February 10, 2024, or until February 25, 2024 to file his *Petition.*[12] Subsequently, on February 26, 2024, petitioner filed his *Petition for Review.* [13]

On April 12, 2024, respondent filed its *Comment (to the Petition for Review dated February 23, 2024).*[14]

On May 3, 2024, the Court directed the parties to proceed to mediation. [15] However, on July 8, 2024, the Philippine Mediation Center Office issued a *No Agreement to Mediate.*[16]

The case was submitted for decision on July 16, 2024.[17]

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8 Division Docket, pp. 621–651.
9 *Id.* at 730–741
10 *EB* Docket, pp. 88–91.
11 *Id.* at 1–4.
12 *Id.* at 6, *Minute Resolution* dated February 13, 2024.
13 *Supra* note 1.
14 *EB* Docket, pp. 132–155.
15 *Id.* at 159, *Minute Resolution* dated May 3, 2024.
16 *Id.* at 160.
17 *Id.* at 161, *Minute Resolution* dated July 16, 2024.

THE ISSUE

Petitioner assigns the following errors[18] for the Court *En Banc*'s review:

> I.
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> WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT;
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> II.
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> WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN RULING ON MATTERS THAT WERE NEVER SUBSTANTIATED IN THE ADMINISTRATIVE LEVEL;
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> III.
>
> WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN RULING THAT THE ASSESSMENT IS VOID AS THE AUDIT/EXAMINATION HAS NOT BEEN AUTHORIZED.
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> IV.
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> WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN RULING THAT THE FORMAL LETTER OF DEMAND/FINAL ASSESSMENT NOTICE IS VOID FOR FAILURE TO PROVIDE DEFINITE DUE DATE AND DEMAND FOR PAYMENT OF DEFICIENCY TAX LIABILITY.
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> V.
>
> WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN ENJOINING THE COLLECTION OF TAXES.

Petitioner's Arguments

Petitioner contends that the Court in Division erred in granting respondent's *Motion for Summary Judgment.* He asserts that whether the Revenue Officers (**ROs**) named in the Letter of Authority (**LOA**) were indeed the ones who conducted the audit constitutes a genuine issue of fact that must be established through a full-blown trial.

Petitioner also argues that the Court in Division erred in ruling on matters that were never substantiated at the administrative level as the Court in Division's jurisdiction is "strictly appellate in nature."

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[18] *Id.* at 6–7, Petition, Assignment of Errors.

On the validity of the assessment, petitioner argues that (1) an LOA is not required when the audit investigation is conducted by the Office of the CIR; (2) even if an LOA is required, the examination of respondent's books of accounts and other accounting records was nevertheless conducted pursuant to a valid LOA; (3) the conduct of the audit investigation is in accordance with law and rules; (4) recent Court decisions regarding the technicalities on petitioner's LOA should not be applied retroactively; (5) there was no violation of respondent's right to due process when other ROs assisted in the conduct of the audit; (6) the Formal Letter of Demand (**FLD**) has fixed and definitely set the deficiency tax liabilities of respondent; and (7) the Court in Division erred in enjoining the collection of taxes as there was no Motion to Suspend Collection of Taxes filed by respondent and there were no documents submitted by respondent to prove the collection effort of petitioner will cause prejudice on its part.

Respondent's Counter-arguments

In its *Comment*, respondent argues that the granting of its *Motion for Summary Judgment* was justified, as petitioner failed to submit opposing affidavits to support its *Comment/Opposition (On Petitioner's Motion for Summary Judgment filed on 5 July 2021).*

Respondent further contends that the Court in Division has jurisdiction to rule on related issues necessary to achieve an orderly disposition of the case, even if not raised at the administrative level.

On the validity of the assessment, respondent argues that (1) the absence of a valid LOA specifically listing the other ROs who actually conducted the audit investigation renders the assessment void for violating respondent's right to due process; (2) the Letter issued by LT Regular Audit Division 1 Cesar D. Escalada authorizing RO Arnaldo T. Ancheta (RO Ancheta) and RO Tito R. Monforte (RO Monforte) to conduct the audit and investigation does not qualify as a valid LOA; (3) the doctrine established in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[19] *(Fitness by Design)* is applicable; (4) the FAN did not contain a definite due date; and (5) the Court in Division correctly enjoined the collection of taxes as a void assessment cannot attain finality.

[19] G.R. No. 215957, November 9, 2016 [Per J. Leonen, Second Division].

THE COURT *EN BANC'S RULING*

The Court En Banc has jurisdiction over the instant Petition.

Before addressing the merits of the case, the Court must first determine whether it has jurisdiction over the present *Petition*.

On January 2, 2024, petitioner's *Motion for Reconsideration* was denied by the Court in Division through the assailed *Resolution*, which petitioner received on **January 26, 2024**.

Under Section 3(b), Rule 8[20] of the Revised Rules of the Court of Tax Appeals (RRCTA), petitioner had 15 days from receipt of the assailed Resolution, or until **February 10, 2024**, to file a *Petition for Review*.

On **February 8, 2024**, petitioner filed a *Motion for Extension of Time to File Petition for Review*,[21] which was granted by the Court. Accordingly, petitioner had until February 25, 2024, to file his *Petition for Review*. Since the date fell on a Sunday, petitioner timely filed the *Petition for Review* on the next working day, **February 26, 2024**.[22]

Having established that the Court has jurisdiction over the *Petition*, We shall now proceed to resolve its merits.

The Court in Division did not err in granting respondent's Motion for Summary Judgment.

At the outset, the Court *En Banc* notes that petitioner's arguments in the *Petition for Review* merely reiterate those previously raised in his *Comment/Opposition (On Petitioner's*

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[20] Section 3. Who May Appeal; Period to File Petition. — ...
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of 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.

[21] *EB* Docket, pp. 1–4.

[22] *Supra* note 1.

Motion for Summary Judgment) filed on July 5, 2021,[23] and in his *Motion for Reconsideration (of the Resolution dated 17 December 2021)* filed on February 2, 2022.[24]

The Court *En Banc* upholds the ruling of the Court in Division that no genuine issue of fact exists in the present case, as established by the affidavits, depositions, and admissions submitted by the parties. Accordingly, the Court *En Banc* adopts and quotes with approval the Court in Division's discussion denying petitioner's *Motion for Reconsideration (of the Resolution dated 17 December 2021)* as incorporated in the assailed Decision, *viz.:*

> At the onset, it must be stressed that a summary hearing is not an indispensable requirement before this Court may grant a Motion for Summary Judgment. This was stressed in the case of *Carcon Development Corporation v. Court of Appeals*, viz.:
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> > "The theory of summary judgment is that although an answer may on its face appear to tender issues-requiring trial-yet if it is demonstrated by affidavits, depositions, or admissions that those issues are not genuine, but sham or fictitious, the Court is justified in dispensing with the trial and rendering summary judgment for plaintiff. The court is expected to act chiefly on the basis of the affidavits, depositions, admissions submitted by the movant, and those of the other party in opposition thereto. The hearing contemplated (with 10-day notice) is for the purpose of determining whether the issues are genuine or not, not to receive evidence on the issues set up in the pleadings. A hearing is not thus *de riguer*. The matter may be resolved, and usually is, on the basis of affidavits, depositions, admissions. This is not to say that a hearing may be regarded as a superfluity. It is not, and the Court has plenary discretion to determine the necessity therefor. Under the circumstances of this case, however, a hearing would have served no purpose, and was clearly unnecessary. The summary judgment here was justified, considering the absence of opposing affidavits to contradict the sworn declarations of Univet's officials, which demonstrate that the issues raised in the answer are sham, not genuine."

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[23] Division Docket, pp. 517–540.
[24] *Id.* at 570-582.

Consequently, [petitioner]'s contention that this Court erroneously granted [respondent]'s Motion for Summary Judgment without a summary hearing is unmeritorious. This Court has discretion whether or not to hold summary hearings in order to determine whether a genuine issue of fact exists that necessitates the need for a full-blown trial. If it can already be determined that no genuine issue of fact exists on a particular case on the basis solely of the affidavits, depositions, and admissions submitted by the parties, then there is no longer any need to conduct a summary hearing as the same would merely be superfluous.

Further, [petitioner], in his Motion for Reconsideration, failed to dispute this Court's findings that no genuine issue of fact exists in the case at bar. There is no genuine issue of fact on the authority of the ROs who conducted the audit and investigation of [respondent]. In the Motion for Reconsideration, [petitioner] insists that a full-blown trial is still necessary in order for him to present evidence that RO San Pedro-Anaban has the requisite authority to conduct an audit and examination of [respondent]'s books of accounts and to give him the opportunity to present documentary evidence on the authority of the other ROs to conduct the audit and examination of [respondent]'s books of accounts and other accounting records.

This is terribly misplaced. No genuine issue of fact exists with respect to the alleged authority of the ROs who conducted the audit and examination of [respondent]'s books of accounts and other accounting records.

First, there is no question that RO San Pedro-Anaban was one of the ROs named in the LOA who were authorized to audit and examine [respondent]'s books of accounts and other accounting records. [respondent] does not even deny this. Hence, there is no factual issue on this matter that requires the presentation of evidence.

Second, there are no factual issues raised by either parties with respect to the due execution of the subject LOA as well as the names of the parties indicated in the LOA.

Third, with respect to the other ROs (not named in the LOA) who likewise audited and examined [respondent]'s books of accounts and other accounting records, [petitioner] did not deny that they were not particularly named in the LOA. Instead, he posited that these ROs are likewise authorized to audit [respondent] through other documents other than a LOA, which he intends to present before this Court.

> Simply put, [petitioner] wants to convince this Court that ROs may be authorized to audit the books of a taxpayer through means other than a LOA. This is not a factual issue; it is a legal question. This does not necessitate the presentation of documentary evidence. Hence, no material factual issue is involved.
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> Likewise, there is no genuine factual issue involved as to the issues of (1) whether the FLD/FAN issued by [petitioner] had a definite computation of tax liability; and (2) whether the FLD/FAN had a demand to pay the tax liabilities contained therein within a prescribed period or due date. [petitioner] neither questioned the due execution of the FLD/FAN being presented by [respondent]. In fact, the FLD/FAN presented by [respondent] is the same as those in the BIR Records. Both [respondent]'s and [petitioner]'s copies of the FLD/FAN contain the phrase "[p]lease note that the interest and total amount due will have to be adjusted if paid beyond April 28, 2017," and lack a definite due date. Accordingly, the only questions that remain are whether the FLD/FAN contained no definite computation of tax liability and whether the lack of due date in the FLD/FAN constitute a lack of demand to pay the tax liabilities contained therein. These questions are not factual but legal ones. Hence, there is no need for evidence to be presented on these matters.
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> Given the foregoing, this Court's Resolution, dated 17 December 2021, granting [respondent]'s Motion for Summary Judgment stands. [respondent] has adequately proven its entitlement to a Summary Judgment as no genuine issue of fact exists that necessitates a full-blown trial. [*Citations omitted.*]

The Court in Division did not err in ruling on matters that were not substantiated at the administrative level.

Petitioner contends that the Court in Division erred in ruling on matters that were not substantiated at the administrative level. He points out that the CIR rendered a Final Decision on Disputed Assessment (**FDDA**), and as such, the Court's jurisdiction becomes strictly appellate.

Citing *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[25] petitioner asserts that the issuance of a FDDA limits the Court's role to judicial review. Consequently, the Court should confine its examination to the issues and documents

[25] G.R. No. 207112, December 8, 2016 [Per J. Mendoza, *En Banc*].

presented in respondent's protests against petitioner's assessment.

The Court disagrees.

As a court of record, cases before the Court of Tax Appeals are litigated *de novo,* and party litigants must prove every minute aspect of their case if they want the Court to take such evidence into consideration.[26]

The case of *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*,[27] is instructive:

> The power of the Court of Tax Appeals to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim in the Bureau of Internal Revenue. Republic Act No. 1125 states that the Court of Tax Appeals is a court of record:
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> > 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 forms 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.
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> As such, parties are expected to litigate and prove every aspect of their case anew and formally offer all their evidence. No value is given to documentary evidence submitted in the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals. Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud, or error of law, as contended by the Commissioner. As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings.

Accordingly, this Court is not confined to merely assessing whether the CIR's findings align with the law based on the supporting documents submitted by the taxpayer at the administrative level. Jurisprudence has consistently held that this Court has the authority to independently evaluate the

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26 *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005 [Per J. Carpio-Morales, Third Division].

27 G.R. Nos. 206079-80 & 206309, January 17, 2018 [Per J. Leonen, Third Division].

evidence presented before it and render its own factual determinations.

The Court *En Banc* now proceeds to address whether the Court in Division erred in declaring the deficiency tax assessment against respondent null and void.

The Court in Division did not err in holding that the assessment is void due to the audit being conducted by unauthorized revenue officers.

Petitioner argues that an LOA is not a requirement when the audit investigation is conducted by the Office of the CIR, and even if an LOA is required, the examination of respondent's books of accounts and other records was performed pursuant to a valid LOA. Conversely, respondent contends that the absence of a valid LOA specifically identifying the ROs who conducted the audit investigation renders the assessment void for violating its right to due process. Respondent further contends that the Letter issued by LT Regular Audit Division 1 Cesar D. Escalada, which purportedly authorized ROs Ancheta and Monforte to conduct the audit, does not qualify as a valid LOA.

The Court *En Banc* rules in favor of respondent.

The power to assess necessarily includes the authority to examine any taxpayer to determine the correct amount of tax due.[28] Verily, the law vests the BIR with general powers in relation to the assessment and collection of all internal revenue taxes.[29] However, only the CIR or his duly authorized representatives may authorize the examination of any taxpayer and issue an assessment against the latter. This power or authority is derived from Section 6(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides:

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28 *AFP General Insurance Corporation v. Commissioner of Internal Revenue*, G.R. No. 222133, November 4, 2020 [Per J. Inting, Third Division].

29 *Id.*

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

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[30] The issuance of an LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs *only* to the CIR himself or his *duly authorized* representatives.[31]

Section 13 of the NIRC of 1997, as amended, further emphasizes:

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

Section 13 of the NIRC of 1997, as amended, underscores that no examination can be undertaken without an LOA issued by the CIR or a duly authorized representative. The circumstances contemplated under Section 6 of the NIRC of 1997, as amended, where the taxpayer may be assessed through the best evidence obtainable, inventory-taking, or surveillance, among others, do not negate the LOA requirement. These are simply methods of examining the taxpayer in order to

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30 *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].

31 *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021 [Per J. Lopez, J., Third Division].

arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.[32]

The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. [33] The Supreme Court, in *Commissioner of Internal Revenue v. McDonalds Philippines Realty Corp.* (*McDonalds'* case),[34] clarified the importance of an LOA, stating:

> **To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA**. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, **identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment**. [*Emphasis and underscoring supplied.*]

Accordingly, the issuance of an LOA serves as a critical safeguard to uphold due process, ensuring that the taxpayer is duly informed that the revenue officer knocking at the taxpayer's door and conducting the examination has the proper authority to examine their books of accounts.

In the instant case, petitioner issued LOA No. 116-2014-00000173, authorizing RO Cecilia San Pedro-Anaban (RO San Pedro-Anaban), RO Riza Budano (RO Budano), and GS Allan Maniego (GS Maniego) to examine petitioner's books of accounts

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[32] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, 5 April 2017, 808 SCRA 528-556 [Per J. Reyes, Third Division].
[33] *Supra* note 31.
[34] *Id.*

for TY 2013.[35] However, BIR Records reveal that on February 13, 2017, ROs Ancheta and Monforte issued a *Memorandum* recommending the issuance of the PAN against petitioner.[36] Similarly, on March 17, 2017, the same ROs issued another *Memorandum* recommending the issuance of the Formal Letter of Demand/Final Assessment Notice (FLD/FAN).[37] These documents clearly indicate the involvement of ROs Ancheta and Monforte in the audit of petitioner.

However, ROs Ancheta and Monforte are not named in any LOA duly issued by the Regional Director. Instead, they are mentioned in a Letter informing petitioner that the said ROs were authorized to assist in the examination of petitioner's books.[38]

The Court *En Banc* echoes the finding of the Court in Division that the records are bereft of any LOA specifically authorizing ROs Ancheta and Monforte to proceed with the audit of petitioner's accounting records. Nevertheless, the Letter issued by the BIR does not satisfy the requirements of a valid LOA.

In the *McDonalds'* case,[39] the Supreme Court clarified:

> ***B. The Use of Memorandum of Assignment, Referral Memorandum, or Such Equivalent Document Directing the Continuation of Audit or Investigation by an Unauthorized Revenue Officer Usurps the Functions of the LOA***
>
> It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers. However, **notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of**

[35] Division Docket, p. 27, Petition, Annex "B"; Exhibit "R-1", BIR Records, p. 4.
[36] Exhibit "R-5", BIR Records, pp. 168–171.
[37] Exhibit "R-7", BIR Records, pp. 223–225.
[38] Division Docket, p. 30, Petition, Annex "D"; BIR Records, p. 1.
[39] *Supra* note 31.

assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.

The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. But **an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.**

The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative. The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10 (c) and 13 of the NIRC. Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.

C. Revenue Memorandum Order No. 43-90 dated September 20, 1990 Expressly and Specifically Requires the Issuance of a New LOA if Revenue Officers are Reassigned or Transferred

Section D (5) of RMO No. 43-90 dated September 20, 1990 provides:

> Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation

> thereto, including the previous L/A number and date of issue of said L/As.

The above provision expressly and specifically requires the issuance of a new LOA if revenue officers are reassigned or transferred to other cases. The provision involves the following two separate phrases: "re-assignment/transfer of cases to another RO(s)," on the one hand, and "revalidation of L/As which have already expired," on the other hand. The occurrence of one, independently of the other, requires the issuance of a new LOA. The new LOA must then have a corresponding relevant notation, including the previous LOA number and date of issue of the said LOAs.

The petitioner claims that RMO No. 43-90 dated September 20, 1990 is not the implementing rule for Section 13 of the NIRC. RMO No. 43-90 was promulgated on September 20, 1990, which is seven years prior to the law it supposedly implemented. Because of this, the petitioner implies that RMO No. 43-90 dated September 20, 1990 is not a valid legal basis in the position that a reassignment and transfer of cases requires the issuance of a new and separate LOA for the substitute revenue officer.

The petitioner is mistaken. Section 291 of the NIRC states:

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

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

Even the Operations Group of the BIR now recognizes that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation without a separate LOA, is no longer tenable. Thus, in Operations Memorandum No. 2018-02-03 dated February 9, 2018, the Operations Group has decided that "the issuance of a MOA for reassignment of cases in the aforementioned instances [i.e., the original revenue officer's transfer to another office, resignation, retirement, etc.] shall be discontinued."

D. Revenue Officer Marcellano Was Not Authorized to Continue the Audit of the Respondent's Books of Accounts for C.Y. 2006, Rendering the Assessment Void

...

In summary, We rule that **the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990**. [*Emphasis and underscoring supplied.*]

Jurisprudence clearly establishes that a mere letter naming ROs Ancheta and Monforte is insufficient to confer upon them the requisite authority to conduct an audit of petitioner.

Furthermore, the letter in question was signed solely by the Chief of the LT Regular Audit Division 1, Cesar D. Escalada. However, Section D(4) of Revenue Memorandum Order (RMO) No. 43-1990[40] provides:

> For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the **Regional Directors, the Deputy Commissioners and the Commissioner**. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself. [*Emphasis and underscoring supplied.*]

Accordingly, a Chief of the LT Regular Audit Division is not among the officers authorized to issue LOAs.

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40 Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit. September 20, 1990.

Jurisprudence further underscores that an LOA is not a general authority to any revenue officer. Rather, it is a special authority granted to a particular revenue officer.[41] Therefore, the participation of unauthorized ROs, even alongside duly authorized ones, constitutes a violation of the petitioner's due process rights. There must be a grant of authority in the form of an LOA before ***any*** **revenue officer** can conduct an examination or assessment.[42] The mere continuation of an audit by authorized ROs cannot cure the participation of unauthorized officers. To emphasize, **all ROs conducting an audit or investigation of a taxpayer must be duly authorized with an LOA.**[43]

Petitioner's assertion that an LOA is unnecessary when the audit is conducted by ROs under the Office of the CIR is without merit.

This Court has consistently held that, unless authorized by the CIR or his duly authorized representative through an LOA, an examination of the taxpayer's books of accounts and other accounting records cannot ordinarily be undertaken. Consequently, unless undertaken by the CIR or his duly authorized representatives, other tax agents may not validly conduct this kind of examination without prior authority.[44] The grant of authority by a valid LOA may be dispensed with when the CIR personally undertakes the investigation. However, that is not the case here. It is also equally recognized that any other person who intends so must be duly clothed with authority.[45]

As such, the Court *En Banc* rules that the audit conducted by ROs Ancheta and Monforte without a valid LOA violated petitioner's right to due process and renders the assessment null and void.

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41 *Supra* note 31.

42 *Commissioner of Internal Revenue v. Geniographics, Incorporated*, G.R. No. 264572 (Notice), July 26, 2023 [Per Resolution, Third Division].

43 *Commissioner of Internal Revenue v. ABS-CBN Film Productions, Inc.*, CTA *EB* Case No. 2619 (CTA Case No. 9982), September 28, 2023; *Commissioner of Internal Revenue v. Jopauen Realty Corp.*, CTA *EB* Case No. 2206 (CTA Case No. 8943), February 21, 2022.

44 *Commissioner of Internal Revenue v. Diageo Philippines, Inc.*, CTA *EB* Case No. 2702 (CTA Case No. 9522), April 25, 2024.

45 *Commissioner of Internal Revenue v. Formula Sports, Inc.*, CTA *EB* Case No. 2674 (C.T.A. Case No. 9625), March 6, 2024.

The Court in Division did not err in declaring the FLD/FAN null and void for lack of a due date, and enjoining petitioner from collecting the assessed amounts.

Petitioner avers that the Court in Division erred in ruling that the assessments are void due to the absence of a definite tax liability and due date in the FLD/FAN. Petitioner posits that a due date is not required, even claiming that the Supreme Court engaged in **judicial legislation** in *Fitness by Design*[46] and misapplied its ruling in *Commissioner of Internal Revenue v. Menguito (Menguito).*[47]

The Court *En Banc* finds petitioner's arguments unpersuasive.

The issuance of a valid formal assessment is a substantive prerequisite for the collection of taxes.[48] An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed.[49]

In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation,*[50] the Supreme Court emphasized:

> **An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period**. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. ... [*Emphasis and underscoring supplied.*]

Further, the Supreme Court, in *Fitness by Design,*[51] unambiguously held:

> **A final assessment notice provides for the amount of tax due with a demand for payment**. ...
>
> ...

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46 *Supra* note 19.
47 G.R. No. 167560, September 17, 2008 [Per J. Austria-Martinez, Third Division].
48 *Id.*
49 *Tupaz v. Ulep*, G.R. No. 127777, October 1, 1999 [Per J. Pardo, First Division].
50 G.R. No. 128315, June 25, 1999 [Per J. Panganiban, Third Division].
51 *Supra* note 19.

The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a "specific definition or form of an assessment." However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay**.

...

A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."

The disputed Final Assessment Notice is not a valid assessment.

...

First, **it lacks the definite amount of tax liability** for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a "written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed." **Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment.** Thus:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. Please note, *however, that* ***the interest and the total amount due will have to be adjusted if prior or beyond*** *April 15, 2004.*

Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not **the due date for payment of tax liabilities**. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand

> to pay. [*Emphasis and underscoring supplied; citations omitted*]

Consistent with the ruling in *Fitness by Design*, the Supreme Court has nullified assessments that do not contain a definite due date in subsequent cases, such as *Republic v. First Gas Power Corporation*[52] and *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*[53]

The requirement to indicate a due date in an assessment is explicitly provided under Section 249(C) of the NIRC of 1997, as amended, which states:

> *Section 249 – Interest.*
>
> (C) Delinquency Interest. - In case of failure to pay:
>
> (3) A deficiency tax, or any surcharge or interest thereon **on the due date appearing in the notice and demand of the Commissioner**, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax. [*Emphasis and underscoring supplied.*]

The inclusion of a due date in an assessment directly relates to the requirement of stating a definite amount due. Without a due date, the delinquency interest may not be *properly* computed, among other consequences. It bears stressing that under the NIRC, an assessment is "a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed."[54]

In this case, the *Assessment Notices* accompanying the FLD[55] do not specify due dates. To illustrate, one of the Assessment Notices is reproduced below:

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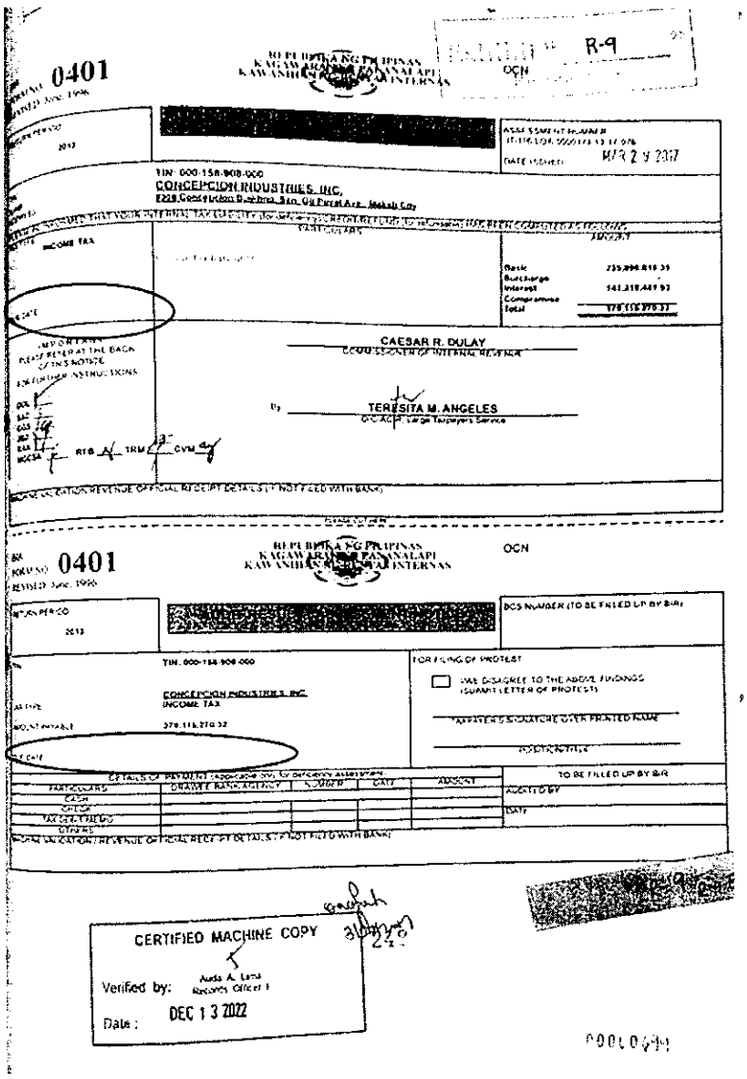
52 G.R. No. 214933, February 15, 2022 [Per J. Lopez, J., First Division].
53 G.R. No. 240729 (Resolution), August 24, 2020 [Per J. Inting, Second Division].
54 *Adamson v. Court of Appeals*, G.R. Nos. 120935 & 124557, May 21, 2009 [Per C.J. Puno. First Division].
55 Exhibit "R-9", "R-9-a", "R-9-b", "R-9-c", "R-9-d", and "R-9-e", Division Docket, pp. 699–704.



The omission of the due date undermines petitioner's demand for payment and renders the assessment defective.

The Court *En Banc* sees no reason to depart from the ruling in *Fitness by Design.* Judicial decisions applying or interpreting the law or the Constitution form part of the legal system of the Philippines,[56] and the principle of *stare decisis* enjoins lower courts to adhere to doctrinal rules established by the Supreme Court in its final decisions.[57]

Thus, the Court *En Banc* affirms the invalidity of the assessments for failure to indicate a due date.

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56 Civil Code, art. 8.
57 *Ting v. Velez-Ting*, G.R. No. 166562, March 31, 2009, 601 SCRA 676-694 [Per J. Nachura, Third Division].

It is axiomatic that tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.[58]

Due process is the very essence of justice itself.[59] While "taxes are the lifeblood of the government," the power to tax has its limits in spite of all its plenitude.[60] Even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[61]

Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements is *void and produces no effect.*[62] A void assessment bears no valid fruit.[63]

Accordingly, the Court *En Banc* upholds the order of the Court in Division enjoining and prohibiting petitioner from collecting the assessed amounts against respondent.

WHEREFORE, in light of the foregoing, the instant *Petition for Review* is **DENIED** for lack of merit.

Accordingly, the *Decision* dated November 24, 2022, and the *Resolution* dated January 2, 2024, rendered by the Court's Special Third Division in CTA Case No. 10305 are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

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58 *Commissioner of Internal Revenue v. BASF Coating + Inks Phils.*, Inc., G.R. No. 198677, November 26, 2014, 748 SCRA 760-773 [Per J. Peralta, Third Division].

59 *Macias vs. Macias*, G.R. No. 149617, September 3, 2003, 457 SCRA 463-471.

60 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 652 SCRA 172-188 [Per J. Mendoza, Second Division].

61 *Commissioner of Internal Revenue v. Algue, Inc.*, G.R. No. L-28896, February 17, 1988, 241 SCRA 829-836 [Per J. Cruz, First Division].

62 *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue*, G.R. No. 249153, September 12, 2022 [Per J. Dimaampao, Third Division].

63 *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023 [Per C.J. Gesmundo, First Division]; *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014 [Per J. Villarama, Jr., Third Division].

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
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