



DECISION

*Commissioner of Internal Revenue vs. Tektite*

*Insurance Brokers, Inc.*

CTA EB No. 2443 (CTA Case No. 9184)

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The dispositive portions of the assailed Decision and assailed Resolution of the Court in Division are as follows:

June 25, 2020 Decision:

“**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, Formal Letter of Demand No. 043A-B179-11 dated January 9, 2015 with attached Assessment Notices and Details of Discrepancies issued against petitioner for alleged deficiency Income Tax, Value-Added Tax, and Expanded Withholding Tax in the aggregate amount of ₱9,616,239.28, inclusive of surcharges and interest, for taxable year ended December 31, 2011 is hereby **CANCELLED** and **SET ASIDE**.

**SO ORDERED.”**

January 27, 2021 Resolution:

“**WHEREFORE**, premises considered, Respondent's Motion for Reconsideration (Decision dated 25 June 2020), is **DENIED** for lack of merit.

**SO ORDERED.”**

**THE PARTIES**

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR), vested by law to implement and enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws.<sup>2</sup>

Respondent Tektite Insurance Brokers, Inc. (Tektite) is a corporation duly organized and existing under the laws of the Philippines.<sup>3</sup> It is primarily engaged to carry on the business of insurance brokers in all their branches; to act as brokers or managers for any insurance company, club or association, or for any individual underwriter, in connection with its or his or her insurance or underwriting business (wherever the same may be carried on) or any branch of the same, and to enter into any agreement for such purpose with any such insurance company, club, association or underwriter.<sup>4</sup> It was authorized by the Insurance Commission as a

<sup>2</sup> Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), *CTA Division Docket*, Vol. I, p. 374.

<sup>3</sup> Exhibit “P-1”, *CTA Division Docket*, Vol. III, p. 1669.

<sup>4</sup> Exhibit “P-2”, *CTA Division Docket*, Vol. III, p. 1672.



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non-life insurance broker from July 1, 2010 to June 30, 2011 and January 1, 2016 to December 31, 2018.<sup>5</sup>

**THE FACTS<sup>6</sup>**

The facts of the case as found by the Court in Division are as follows:

“For TY 2011, Petitioner filed its Monthly VAT Declaration (BIR Form No. 2550M) and Quarterly VAT Returns (BIR Form No. 2550Q) as follows:

Period	VAT Return	Date of Filing
January 2011	Monthly VAT Declaration	February 18, 2011
February 2011	Monthly VAT Declaration	March 18, 2011
1 <sup>st</sup> Quarter – CY 2011 (January 1, 2011 to March 31, 2011)	Quarterly VAT Declaration	April 25, 2011
April 2011	Monthly VAT Declaration	May 20, 2011
May 2011	Monthly VAT Declaration	June 21, 2011
2 <sup>nd</sup> Quarter – CY 2011 (April 1, 2011 to June 30, 2011)	Quarterly VAT Declaration	July 25, 2011
July 2011	Monthly VAT Declaration	August 22, 2011
August 2011	Monthly VAT Declaration	September 20, 2011
3 <sup>rd</sup> Quarter – CY 2011 (July 1, 2011 to September 30, 2011)	Quarterly VAT Declaration	October 25, 2011
October 2011	Monthly VAT Declaration	November 21, 2011
November 2011	Monthly VAT Declaration	December 20, 2011
4 <sup>th</sup> Quarter – CY 2011 (October 1, 2011 to December 31, 2011)	Quarterly VAT Declaration	January 25, 2012

Likewise, Petitioner submitted its Quarterly Income Tax Returns and Annual Income Tax Return for TY 2011, to wit:

Period and Return	Date of Filing
1 <sup>st</sup> Quarterly Income Tax Return (January 1, 2011 to March 31, 2011)	May 30, 2011
2 <sup>nd</sup> Quarterly Income Tax Return (April 1, 2011 to June 30, 2011)	August 31, 2011
3 <sup>rd</sup> Quarterly Income Tax Return (July 1, 2011 to September 30, 2011)	November 28, 2011
Annual Income Tax Return (TY 2011)	April 14, 2012

As regards the Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601-E), petitioner filed them on the following dates:

<sup>5</sup> Exhibits “P-3” and “P-4”, CTA Division Docket, Vol. VI, pp. 3841 to 3842.

<sup>6</sup> The Commissioner of Internal Revenue was the respondent; and Tektite Insurance Brokers, Inc. was the petitioner in CTA Case No. 9184.

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Period	Date of Filing (BIR Form No. 1601-E)
January 2011	February 10, 2011
February 2011	March 10, 2011
March 2011	April 8, 2011
April 2011	May 10, 2011
May 2011	June 9, 2011
June 2011	July 11, 2011
July 2011	August 9, 2011
August 2011	September 12, 2011
September 2011	October 7, 2011
October 2011	November 4, 2011
November 2011	December 9, 2011
December 2011	January 16, 2012

Petitioner filed its Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (BIR Form No. 1604-E) on March 1, 2012.

On November 14, 2012, Respondent issued a Letter Notice (LN) No. 43A-RLF-11-0000343 with Details of Taxpayer's Suppliers' Records and Details of Taxpayers Customers' Records, which Petitioner received on November 15, 2012. Due to alleged inaction of Petitioner on the said LN, Respondent issued a Follow-up Letter on February 10, 2014 and [which] Petitioner received on February 11, 2014.

On January 15, 2013, Respondent issued a Letter of Authority (LOA) No. LOA-43A-2013-0000005 with SN:eLA201100027767, authorizing revenue officers to examine Petitioner's books of accounts and other accounting records for all internal revenue taxes covering the period of January 1, 2011 to December 31, 2011, which Petitioner received on January 16, 2013. Respondent also released a First Request for Presentation of Records on even date.

On February 8, 2013, a Second and Final Notice was issued. Consequently, Petitioner transmitted its books of accounts for TY 2011 on several dates.

**On December 18, 2014, Respondent issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies, assessing Petitioner for deficiency income tax, VAT, and EWT, inclusive of increments, in the respective amounts of ₱6,799,457.38, ₱2,669,177.15, and ₱30,404.38; and Petitioner received them on January 13, 2015.**

**On January 9, 2015, Petitioner received a Formal Letter of Demand (FLD) No. 043A-B179-11 with attached Details of Discrepancies and Assessment Notices (FAN), assessing it for alleged deficiency income tax, VAT, and EWT in the amount of ₱6,878,094.24, ₱2,707,172.55, and ₱30,972.49, respectively, or in the aggregate amount of ₱9,616,239.28.**



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As a result, Petitioner protested the FLD/FAN on February 9, 2015 by requesting for a reinvestigation.

On March 18, 2015, Petitioner was informed that its protest/request for reinvestigation was granted, thus, its tax case was forwarded to Revenue District Office (RDO) No. 43-A-Pasig City. Subsequently, Petitioner submitted its supporting documents for the protest/request for reinvestigation on April 10, 2015.

On May 6, 2015, Respondent requested Petitioner to submit relevant supporting documents. Petitioner then complied with Respondent's request by submitting supporting documents on May 11, 2015.

As Respondent did not act allegedly on the protest, Petitioner filed a Petition for Review with the Court on November 6, 2015, seeking the cancellation of the deficiency income, VAT, and EWT assessments. The instant case was initially raffled to this Court's First Division.

After several Motions for Extension of Time to File Answer were granted by the Court, Respondent filed his Answer on March 21, 2016, interposing the following special and affirmative defenses: xxx

The pre-trial conference was set and held on May 26, 2016.

xxx                      xxx                      xxx

Respondent's Pre-Trial Brief was submitted on May 20, 2016. Petitioner filed its Pre-Trial Brief on May 23, 2016.

xxx                      xxx                      xxx

The parties subsequently filed their Joint Stipulation of Facts and Issues on June 10, 2016.

xxx                      xxx                      xxx

In the Resolution dated June 21, 2016, the Court approved the Joint Stipulation of Facts and Issues and granted Respondent's motion for extension to submit BIR Records. Consequently, the Pre-Trial was terminated.

xxx                      xxx                      xxx

On July 28, 2016, the Court issued the Pre-Trial Order.

Thereafter, trial proceeded.

xxx                      xxx                      xxx

To prove its case, Petitioner offered its documentary and testimonial evidence. As to the testimonial evidence, Petitioner set



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forth the testimony of Mr. Antonio Reyes-Cuerva, Petitioner's President; Mr. Michael L. Aguirre, the Court-commissioned Independent Certified Public Accountant (ICPA); and Ms. Josefa Maria Bernadette Dizon, Petitioner's former Accountant and Bookkeeper.

xxx xxx xxx

Petitioner then filed its Formal Offer of Evidence on November 27, 2017. Respondent failed to comment thereon. Thus, the Court admitted Petitioner's exhibits; however, some of the following exhibits were denied, to wit: xxx

Consequently, Petitioner filed a Motion for Partial Reconsideration on May 29, 2018. In the said motion, Petitioner included a prayer to set this case for a Commissioner's Hearing and the Court allowed the same. Xxx

On June 14, 2018, a Commissioner's Hearing was held.

xxx xxx xxx

Respondent presented his documentary and testimonial evidence. As part of the testimonial evidence, Respondent proffered the testimonies of Elma V. Delluta, Revenue Officer; and Ms. Ma. Lourdes Morales, Revenue Officer.

xxx xxx xxx

Respondent filed his Formal Offer of Evidence on August 14, 2018. Xxx

On September 24, 2018, this case was transferred to this Court's Third Division.

xxx xxx xxx

In the Resolution dated February 21, 2019, the Court noted Petitioner's Manifestation with Submission and granted its Motion for Partial Reconsideration. Thus, Petitioner's Exhibits "P-3", "P-4", "P-46", "P-47", "P-48", "P-9-O.2-ICPA", "P-11-HY-ICPA", "P-11-HZ-ICPA", "P-11-US-ICPA", "P-11-ANV-ICPA", "P-11-ANW-ICPA", "P-12-R.1.1-ICPA", "P-12-AF.2.13-ICPA", "P-12-AF.2.14-ICPA", "P-12-AG.2.6-ICPA", "P-16-B.3.2-ICPA", and "P-16-B.3.3-ICPA", were admitted. The Court likewise resolved Respondent's Formal Offer of Evidence in the aforesaid Resolution, admitting all of Respondent's exhibits.

On April 1, 2019, Petitioner filed through registered mail its Memorandum which the Court received on April 10, 2019. On the other hand, Respondent failed to file his memorandum.



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As such, the Court deemed this case submitted for decision on April 15, 2019.”<sup>7</sup> (*Boldfacing supplied*)

On June 25, 2020, the Court in Division rendered the assailed Decision<sup>8</sup> granting Tektite’s Petition for Review.

On August 20, 2020, the CIR filed a “Motion for Reconsideration (Decision dated 25 June 2020)”.<sup>9</sup>

On January 27, 2021, the Court in Division issued the assailed Resolution<sup>10</sup> denying the CIR’s “Motion for Reconsideration (Decision dated 25 June 2020)” for lack of merit.

On February 23, 2021, the CIR filed a “Motion for Extension of Time to File Petition for Review with Notice of Change of Address” before the Court *En Banc*.<sup>11</sup> The same was granted in the Minute Resolution<sup>12</sup> dated February 23, 2021, and the CIR was given until March 10, 2021 within which to file his Petition for Review.

The CIR filed the present “Petition for Review”<sup>13</sup> before the Court *En Banc* on March 9, 2021.

With the filing of Tektite’s “Comment/Opposition (To Petition for Review dated March 8, 2021)”<sup>14</sup> on June 21, 2021, the case was referred to mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) on July 1, 2021.<sup>15</sup>

In view of the submission of the parties’ “No Agreement to Mediate”<sup>16</sup> to the Court *En Banc* on October 26, 2021, the Petition for Review was eventually submitted for decision on December 9, 2021.<sup>17</sup>

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<sup>7</sup> Annex “A”, *CTA En Banc Docket*, pp. 16 to 25.

<sup>8</sup> *Id.*, pp. 14 to 33.

<sup>9</sup> Annex “B”, *CTA En Banc Docket*, pp. 34 to 38.

<sup>10</sup> Annex “C”, *CTA En Banc Docket*, pp. 39 to 44.

<sup>11</sup> *CTA En Banc Docket*, pp. 1 to 3.

<sup>12</sup> *CTA En Banc Docket*, p. 4.

<sup>13</sup> *CTA En Banc Docket*, pp. 5 to 9.

<sup>14</sup> *CTA En Banc Docket*, pp. 369 to 411.

<sup>15</sup> Resolution, *CTA En Banc Docket*, pp. 414 to 415.

<sup>16</sup> *CTA En Banc Docket*, p. 416.

<sup>17</sup> *CTA En Banc Docket*, pp. 418 to 419.



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**THE ISSUE**

The sole issue raised by the CIR<sup>18</sup> for the Court *En Banc*'s resolution is as follows:

“Whether the Letter of Authority (LOA) needs revalidation if the Revenue Officer (RO) fails to submit its Memorandum Report within the 120-day period.”

**THE PARTIES' ARGUMENTS**

*The CIR's arguments*

The CIR raises the following arguments:

1. The Court erred in declaring the LOA void for failure to comply with Department Order (DO) No. 006-99 issued by the Department of Finance (DOF) and Revenue Memorandum Order (RMO) No. 43-90 issued by the Bureau of Internal Revenue (BIR);
2. DOF DO No. 006-99 was already expressly revoked by DOF DO No. 011-09, and RMO No. 43-90 has already been superseded by RMO No. 044-10; and,
3. DOF DO No. 011-09 and RMO No. 044-10 state that the LOA need not be revalidated even if the prescribed audit period has been exceeded.

*Tektite's arguments*

Tektite made the following counter-arguments:

1. The Preliminary Assessment Notice (PAN) and Formal Assessment Notice (FAN)/Formal Letter of Demand (FLD) are void for having been issued pursuant to a prescribed LOA;
2. The FAN/FLD is void for failure of the CIR to issue a PAN before the issuance of a FAN;

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<sup>18</sup> Petition for Review, *CTA En Banc Docket*, p. 7.



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3. The CIR's right to assess Tektite for deficiency value-added tax (VAT) and expanded withholding tax (EWT) for taxable year ending December 31, 2011 has already prescribed; and,
4. Tektite is not liable for the deficiency taxes for taxable year ending December 31, 2011 assessed in the FAN/FLD.

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

***The Petition for Review was timely filed before the Court En Banc***

At the outset, the Court shall determine whether the present Petition for Review was timely filed. Section 3 (b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

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

xxx

xxx

xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)" (*Boldfacing supplied*)

Records show that the CIR received the assailed Resolution on February 8, 2021. The CIR had fifteen (15) days from February 8, 2021 or until February 23, 2021 within which to file his Petition for Review before the Court *En Banc*. With the filing of a "Motion for Extension to File Petition for Review"<sup>19</sup> on February 23, 2021, the CIR was given until March 10, 2021<sup>20</sup> within which to file his Petition for Review. The Petition for Review was timely filed on **March 9, 2021**.

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<sup>19</sup> *Supra*, Note 11.

<sup>20</sup> *Supra*, Note 12.



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**DOF DO No. 006-99 and RMO  
No. 43-90 were expressly  
revoked by DOF DO No. 011-09,  
and RMO No. 044-10,  
respectively**

In the assailed Resolution, the Court in Division ruled that DOF DO No. 006-99 has not yet been repealed. In other words, the Court in Division upheld DO No. 006-99 which required the LOA to be revalidated when an RO fails to complete the final report within the one hundred twenty (120)-day period, to wit:

“Evidently, there is no showing that DOF Department Order No. 006-99 has been subsequently repealed. Even assuming that RMO No. 43-1990 was already repealed by RMO No. 44-2010, DOF Department Order No. 006-99 requiring a RO who fails to complete the final report within the 120-day period to return the LOA for revalidation, *i.e.*, issuance of a new LOA, is still in effect and with force. xxx”

The CIR contends that the LOA is valid as DOF DO No. 006-99 and RMO No. 43-90 were expressly repealed by DOF DO No. 011-09 and RMO No. 044-10, respectively.

Tektite, on the other hand, maintains that the PAN and FAN/FLD are void for having been issued pursuant to a prescribed LOA.

After careful evaluation of the parties' respective arguments, the Court *En Banc* finds the CIR's argument meritorious.

The relevant portions of DOF DO No. 011-09 and RMO No. 044-10 are as follows:

DOF DO No. 011-09

“February 24, 2009

DOF DEPARTMENT ORDER NO. 011-09

In the exigency of the service, for consistency and efficiency, and considering that there were already existing issuances by the Commissioner of Internal Revenue dealing comprehensively on Letter of Authority and taxpayer's investigation pursuant to Section 6 (A) of the Tax Code of 1997, as amended, **Department Order**

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**No. 6-99** (dated 26 January 1999), entitled 'Defining the Authority of the Commissioner of Internal Revenue and Regional Directors, Re: Issuance of Letter of Authority and Taxpayer's Investigation' **is hereby revoked** accordingly." (Boldfacing and underscoring supplied)

RMO No. 044-10

"May 12, 2010

REVENUE MEMORANDUM ORDER NO. 044-10

SUBJECT: Electronic Issuance of Letters of Authority

xxx

xxx

xxx

"8. Beginning June 1, 2010, the rule on the need for revalidation of LAs for failure of the revenue officials to complete the audit within the prescribed period shall be **withdrawn**. Accordingly, there is **no need for revalidation of the LA even if the prescribed audit period has been exceeded**. However, the failure of the RO to complete the audit within the prescribed period shall be subject to the applicable administrative sanctions." (Boldfacing and underscoring supplied)

It is clear that the need for revalidating an LOA after one hundred twenty (120) days from the issuance thereof has been expressly revoked by both DOF DO No. 11-2009 and RMO No. 44-2010.

Considering the 120-day period has been revoked by the aforesaid implementing rules, the LOA is valid. In view of the foregoing, the Court finds that the failure of RO Elma Delluta to have the LOA revalidated did not render the LOA invalid. In other words, RO Delluta was still authorized to examine Tektite's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2011 to December 31, 2011 despite the lapse of the 120-day audit period.

***The CIR did not wait for the lapse of the fifteen (15)-day period from Tektite's receipt of the PAN before issuing the FLD; hence, Tektite's right to due process was violated***



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In its Comment, Tektite contends that the FAN/FLD is void for failure of the CIR to issue a PAN before the issuance of a FAN.

Tektite's argument is impressed with merit.

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

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

xxx                      xxx                      xxx.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

**Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.**

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

xxx                      xxx                      xxx."  
(*Boldfacing Supplied*)

Corollary thereto, Section 3.1.2 of Revenue Regulations No. 12-99<sup>21</sup> provides:

**"3.1.2 Preliminary Assessment Notice (PAN).** - If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, **it is determined that there exists sufficient basis to assess the taxpayer** for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based..... **If the taxpayer**

<sup>21</sup> Dated September 6, 1999.



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**fails to respond within fifteen (15) days from date of receipt of the PAN**, he shall be considered in default, in which case, **a formal letter of demand and assessment notice shall be caused to be issued** by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx                      xxx                      xxx"  
(*Boldfacing and underscoring supplied*)

Based on the aforementioned law and revenue regulation, a taxpayer is given a period of fifteen (15) days from receipt of the PAN to file a reply thereto.

Records show that Tektite received the PAN dated December 18, 2014 on **January 13, 2015**. Counting fifteen (15) days therefrom, Tektite had until **January 28, 2015** within which to file its reply to the PAN.

The CIR, however, issued the FAN/FLD on **January 9, 2015** and Tektite received the same on even date, or five (5) days before the latter received the PAN on **January 13, 2015**. The FAN/FLD was clearly issued prematurely, thereby depriving Tektite of the opportunity to be heard on the PAN, in complete violation of the due process requirement in issuing tax assessments.

Needless to say, the PAN is an important part of due process. It gives both the taxpayer and respondent the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN.<sup>22</sup> To be sure, procedural due process is not satisfied with the mere issuance of a PAN, *sans* any intention on the part of the BIR to actually consider the taxpayer's position on the proposed assessment.

In *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc. (formerly Global Metal Tech Corporation)*,<sup>23</sup> the Supreme Court held that:

"xxx                      xxx                      xxx

In this case, the records show that respondent received the PAN on February 5, 2009. However, **without waiting for the lapse of the 15-day period, the CIR already issued the FLD/FAN. By**

<sup>22</sup> *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017, citing *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

<sup>23</sup> G.R. No. 227616, June 19, 2019.



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**disregarding the 15-day period provided by law, the CIR utterly deprived respondent of the opportunity to contest the PAN and present evidence in support thereto before an FLD/FAN was issued.**

In *CIR v. Metro Star Superama, Inc.*, the Court emphasized that the PAN is part of due process. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to **strictly comply** with the requirements laid down by law and its own rules, as in this case, **is a denial of the taxpayer's right to due process.** (*Boldfacing and underscoring supplied*)

Truth to tell, the Supreme Court has consistently nullified tax assessments that were issued in violation of the taxpayer's right to due process. On this point, the eloquent disquisition of the Honorable Marvic M.V.F. Leonen in *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*<sup>24</sup> and *Avon Products Manufacturing, Inc. v. The Commissioner of Internal Revenue*<sup>25</sup> relative to the utmost importance of observing due process in issuing deficiency tax assessments is edifying, viz.:

**"Tax assessments issued in violation of the due process rights of a taxpayer are null and void.** While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and **always with regard to the basic tenets of due process.**

**The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions.** Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.

xxx

xxx

xxx

**This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.** (*Citations omitted; additional boldfacing supplied*)

<sup>24</sup> G.R. Nos. 201398-99, October 3, 2018.

<sup>25</sup> G.R. Nos. 201418-19, October 3, 2018.



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In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*,<sup>26</sup> the Supreme Court categorically ruled that the non-compliance with statutory and procedural due process renders the final assessment notice as null and void, *viz.*:

“In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. **While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued.** Xxx.” (*Boldfacing and underscoring supplied*)

The fatal infirmity that attended the issuance and receipt of the FAN/FLD prior to Tektite’s receipt of the PAN was not cured by Tektite’s filing of a protest to the FAN/FLD.

In view of the palpable violation of Tektite’s right to procedural due process, the FAN/FLD, - - being fatally infirm - - should be considered void; and must perforce be cancelled and set aside.

**WHEREFORE**, in light of the foregoing, the Petition for Review filed on March 9, 2021 by the Commissioner of Internal Revenue is **DENIED** for lack of merit.

The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the deficiency income tax, value-added tax, and expanded withholding tax assessments issued against Tektite Insurance Brokers, Inc. arising from the Formal Letter of Demand and Assessment Notices all dated January 9, 2015, for the disputed deficiency income tax, value-added tax, and expanded withholding tax, inclusive of surcharges and interest in the aggregate amount of ₱9,616,239.28, for taxable year ended December 31, 2011. The order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

**SO ORDERED.**

  
**ROMAN G. DEL ROSARIO**  
Presiding Justice

<sup>26</sup> G.R. No. 172598, December 21, 2007.


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**WE CONCUR:**

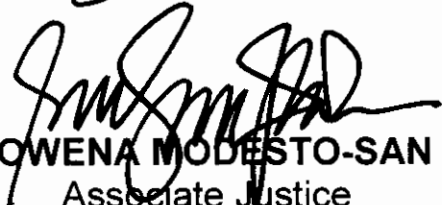
  
**JUANITO C. CASTAÑEDA, JR.**  
Associate Justice

  
**ERLINDA P. UY**  
Associate 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

  
**LANEE S. CUI-DAVID**  
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