

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL
REVENUE,
Petitioner,

CTA EB No. 2564
(CTA Case No. 9701)

Present:

-versus-

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

ECOTECHNOVATIONS, INC.,
Respondent.

Promulgated:
JUL 03 2023

X -----X

DECISION

DEL ROSARIO, PJ.:

Before this Court is a Petition for Review filed on March 7, 2022 by petitioner Commissioner of Internal Revenue, praying that the Court *En Banc* reverse and set aside the Decision dated March 3, 2021 and the Resolution dated December 17, 2021 promulgated by the Court of Tax Appeals (CTA) Third Division¹ in CTA Case No. 9701, entitled *Ecotechnovations, Inc. vs. Commissioner of Internal Revenue*.

The dispositive portions of the assailed Decision and assailed Resolution of the Court in Division read:

¹ Composed of Associate Justice Erlinda P. Uy, Associate Justice Ma. Belen M. Ringpis-Liban, and Associate Justice Maria Rowena Modesto-San Pedro.



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March 3, 2021 Decision:

“**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the Formal Letter of Demand and Assessment Notices bearing Demand No. 39-2017-B055-12, both dated June 16, 2017 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.”

December 17, 2021 Resolution:

“**WHEREFORE**, in light of the foregoing considerations, the instant *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.”

THE PARTIES

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, and penalties imposed in relation thereto or other matters arising under National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR.²

Respondent Ecotechnovations, Inc. is a domestic corporation duly registered with the Securities and Exchange Commission on September 16, 2011 with Registration No. CS201116475, and principal office at No. 6-C Santol St., Brgy. Doña Imelda, Quezon City.³

THE FACTS

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

“On August 10, 2012, petitioner bought parcels of land from SP Properties, Inc. (or SPPI), with a total area of five thousand three hundred four (5,304) square meters more or less, which is identified as Lot 1, Block 7 and Lot 2, Block 7 of the consolidation subdivision plan,

² Par. 1, Joint Stipulation of Facts, *CTA Division Docket*, Vol. I, p. 810.

³ The Parties, *Petition for Review*, *CTA Division Docket*, Vol. I, p. 11.

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Pcs-04-015427 situated at Barangay Bancal, Municipality of Carmona, Province of Cavite.

The Revenue District Office (RDO) No. 39 then issued *Letter Notice* (LN) No. 039-RLFTRS-12-00-00348 dated June 25, 2014 and Electronic Letter of Authority (eLA) No. 201100094952/*Letter of Authority* (LOA) No. 039-2014-00001186 dated November 19, 2014, authorizing the examination of petitioner's books of accounts and other accounting records for income tax and value-added tax covering the period from January 1, 2012 to December 31, 2012.

On May 19, 2017, petitioner received a *Preliminary Assessment Notice* (PAN), signed by OIC-Regional Director (RD) Marina C. De Guzman, stating that after conducting a computerized matching on information or data provided by the third party sources, petitioner is found to be liable for deficiency income tax and VAT amounting to ₱7,417,171.73 and ₱3,022,669.68, respectively.

Thereafter, petitioner, through its counsel filed a *Reply Letter* to the PAN on June 6, 2017, praying for reconsideration of the assessment and the removal of petitioner's name from the list of taxpayers with deficiencies.

On June 16, 2020, respondent through OIC-RD De Guzman, issued the FLD with FAN and *Details of Discrepancies*, assessing petitioner for deficiency income tax and VAT including surcharge and interest for TY 2012 in the aggregate amount of ₱10,515,521.49, broken down as follows:

Tax Type	Total
Income Tax	₱7,471,228.93
Value-Added Tax	3,044,292.56
	₱10,515,521.49

On July 21, 2017, petitioner received a *Letter* dated July 14, 2017 issued by OIC-RD De Guzman acknowledging petitioner's protest *Reply Letter* to the PAN and informing petitioner that the FLD had been issued.

Thereafter, on August 22, 2017, petitioner, through its counsel, filed a *Protest: Request for Reinvestigation*, stating that it did not receive the FLD or any FAN; that it is filing its protest to the alleged FLD, banking that the same findings were made as those mentioned in the PAN dated May 16, 2017; and requesting for the reinvestigation of its alleged deficiency taxes and for the cancellation of the FLD.

On September 21, 2014, petitioner received a *Letter* dated September 8, 2017, issued by OIC-RD De Guzman declaring that the assessment became final, executory and demandable for the alleged failure of the petitioner to file a valid protest.

Aggrieved by respondent's decision, petitioner filed the instant *Petition for Review with Prayer for the Issuance of Temporary*

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Restraining Order and Writ of Preliminary Injunction before this Court on October 18, 2017.

On October 24, 2017, this Court issued *Summons* requiring respondent to file his Answer. On the same day, petitioner's *Motion for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction* was set for hearing on October 26, 2017.

During the hearing on October 26, 2017, the Court considered petitioner's motion for issuance of temporary restraining order and writ of preliminary injunction as a motion for suspension of collection of taxes under Section 1 of Rule 10 of the Revised Rules of the Court of Tax Appeals. However, petitioner's counsel manifested that he has no witnesses to present and thus, the hearing was reset to January 16, 2018.

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Respondent filed his *Answer* on January 9, 2018, interposing special and affirmative defenses, which include, among others, the following, to wit: that despite petitioner's purchase of property in August 2012, no property, plant and equipment is shown in its Annual income Tax Return for TY 2012; that petitioner sold the said purchased property during TY 2012 and is therefore subject to income tax and VAT; that the lack of revalidation of LOA does not preclude the audit of the taxpayer nor invalidate the LOA; that deficiency tax assessment could be made since petitioner failed to file the VAT returns and/or failed to report income in its ITR; and that the requisites for the issuance of a writ of preliminary injunction are not present.

During the hearing of petitioner's *Motion* on January 16, 2018, petitioner presented the following witnesses: (1) James Jeffrey T. Chua who testified that he is the incumbent Vice-president of petitioner, and he stated the reasons why petitioner failed to maintain significant business and that there are intentions and pending negotiations happening for the corporation; and (2) Benigno S. Floralde, Jr., who testified that he is the Accounting/Finance Manager of petitioner, and he said that petitioner has no significant business transactions since its conception on 2012 and that an unwarranted collection by the BIR would result to petitioner's cessation of business. Upon termination of the testimonies of petitioner's witnesses, the Court set the Pre-Trial Conference on February 8, 2018.

However, the Pre-Trial Conference was reset several times, upon motions of respondent on January 31, 2018; March 20, 2018; and May 16, 2018. Meanwhile, petitioner filed its *Pre-Trial Brief* on February 2, 2018.

On March 22, 2018, petitioner filed its *Formal Offer of Evidence* in relation to its *Motion for Suspension of Collection of Taxes*. Respondent, however, failed to file its comment thereto, as per *Records Verification Report* dated April 18, 2018 issued by the Judicial Records Division of this Court.



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In the Resolution dated May 22, 2018, the Court granted petitioner's *Motion for Suspension of Collection of Tax* and ordered petitioner to deposit a cash bond in the amount of ₱10,515,521.49 or post a GSIS bond or a bond from other reputable surety company duly accredited by the Supreme Court, in the amount equivalent to one and a half (1 1/2) of the amount being collected or ₱15,773,282.24.

On June 7, 2018, petitioner filed a *Motion (For Reduction of Bond and for Extension of Time to Furnish Bond)* praying for the reduction of the amount of bond and for petitioner to be given an additional time of thirty (30) days from June 8, 2018 or until July 8, 2018 to furnish the bond.

On June 18, 2018, respondent filed his *Pre-Trial Brief*.

In the Resolution dated June 20, 2018, the Court (1) partially granted petitioner's *Motion (For Reduction of Bond and for Extension of Time to Furnish Bond)*; (2) set the case (petitioner's *Motion for Reduction of Bond*) for Preliminary Hearing; (3) and gave petitioner an additional period of thirty (30) days from June 8, 2018 or until July 8, 2018 within which to furnish bond.

During the hearing held on June 28, 2018, the parties agreed that in lieu of hearing of petitioner's *Motion for Reduction of Bond*, they shall be filing their respective Memorandum within fifteen (15) days. The Court likewise set the Pre-Trial Conference to August 2, 2018 and gave respondent's counsel not later than July 27, 2018 to forward the BIR Records of this case.

On July 9, 2018, petitioner filed a *Motion [For the Second Extension of Time to Furnish Bond]* praying that the Court grant petitioner's (1) Motion to reduce the amount of bond required to be furnished; and (2) Second Motion to extend time to furnish the required bond.

On July 13, 2018, petitioner filed its *Memorandum*.

In the Resolution dated July 24, 2018, the Court noted respondent's Pre-Trial Brief filed on June 18, 2018; granted petitioner's *Motion [For the Second Extension of Time to Furnish Bond]*; and gave petitioner a fresh period of twenty (20) days from receipt of the Court's resolution on petitioner's *Motion (For the Reduction of Bond)* filed on June 7, 2018, within which to furnish bond.

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After the *Pre-Trial Conference* held on August 2, 2018, the parties filed their *Joint Stipulation of Facts and Issues* on August 23, 2018. The same was approved by the Court in the Resolution dated September 3, 2018 and Pre-Trial was terminated. Thereafter, the Court issued a *Pre-Trial Order* on October 8, 2018.

In the Resolution dated October 8, 2018, the Court granted petitioner's *Motion (For the Reduction of Bond)*, treated as a Motion to

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Dispense with or Reduce the Bond; and dispensed with the posting of a cash or surety bond required under Section 11 of RA No. 1125, as amended.

Thereafter, trial on the merits ensued.

Petitioner presented an additional witness: James Michael T. Chua and waived the presentation of Wendell D. Zaragosa, the supposed last witness for the petitioner.

On December 3, 2018, petitioner filed *via* registered mail its *Formal Offer of Evidence*, and received by the Court on December 6, 2018. On January 8, 2019, a *Records Verification Report* was issued by the Judicial Records Division stating that respondent failed to file his comment on petitioner's *Formal Offer of Evidence*.

In the *Resolution*, dated February 27, 2019 the Court admitted some of petitioner's evidence but denied several exhibits for the following reasons: (1) failure to submit the duly marked exhibits; (2) failure to present the originals for comparison; (3) for not being found in the records of the case; and (4) for failure to identify the exhibit.

On March 26, 2019, petitioner filed a *Motion for Reconsideration (To the CTA Resolution dated 28 February 2019)*, praying that the denied exhibits be allowed admission by the Court. On May 10, 2019, a *Records Verification Report* was issued by the Judicial Records Division, stating that respondent failed to file his comment on petitioner's *Motion for Reconsideration (To the CTA Resolution dated 28 February 2019)*.

In the *Resolution* dated June 17, 2019, the Court partially granted petitioner's *Motion for Reconsideration (To the CTA Resolution dated 28 February 2019)* admitting some of petitioner's exhibits but denied the others: for failure to submit the duly marked exhibits; for not being found in the records of the case; and for failure to identify the exhibit.

During the presentation of respondent's evidence, respondent presented two (2) witnesses, namely: (1) Revenue Officer (RO) Margie R. De Castro; and (2) RO Rex D. Escala.

Thereafter, respondent filed his *Formal Offer Documentary of Evidence* on November 11, 2019. On January 9, 2020, the Court issued a *Resolution* admitting some of respondent's evidence but denying the other exhibits for failure to present the originals for comparison.

In the *Resolution* dated March 12, 2020, this case was submitted for Decision, taking into consideration petitioner's *Memorandum* filed on February 21, 2020, without respondent's *Memorandum* as per *Records Verification Report* dated March 5, 2020.”⁴

⁴ Decision dated March 3, 2021, CTA *En Banc* Docket, pp. 23 to 30.

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On March 3, 2021, the Court in Division rendered the assailed Decision⁵ granting respondent's "Petition for Review".

On May 24, 2021, petitioner filed a "Motion for Reconsideration (Decision dated 03 March 2021)".⁶

On December 17, 2021, the Court in Division issued the assailed Resolution⁷ denying petitioner's "Motion for Reconsideration" for lack of merit. Petitioner received the assailed Resolution on February 3, 2022.⁸

On February 17, 2022, petitioner filed a "Motion for Extension of Time to File Petition for Review" before the Court *En Banc*.⁹ The same was granted in the Minute Resolution¹⁰ dated February 21, 2022, and petitioner was given until March 5, 2022 within which to file his Petition for Review.

Petitioner filed the present "Petition for Review"¹¹ on March 7, 2022.¹²

With the filing of respondent's "Comment (on Petitioner's Petition for Review)"¹³ on June 2, 2022, the present case was referred to Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for mediation on June 22, 2022.¹⁴

Considering that the parties filed a "No Agreement to Mediate"¹⁵ on September 20, 2022, the Petition for Review was submitted for decision on November 2, 2022.¹⁶

THE ISSUE

As culled from the present Petition for Review, the issue for the Court *En Banc*'s resolution is whether or not the Court in Division

⁵ Annex "A", CTA *En Banc* Docket, pp. 22 to 41.

⁶ CTA *Division* Docket, Vol. II, pp. 1313 to 1318.

⁷ Annex "B", CTA *En Banc* Docket, pp. 42 to 45.

⁸ CTA *Division* Docket, Vol. II, p. 1350.

⁹ CTA *En Banc* Docket, pp. 1 to 4.

¹⁰ CTA *En Banc* Docket, p. 5.

¹¹ CTA *En Banc* Docket, pp. 6 to 21.

¹² March 5, 2022 is a Saturday, and the next working day is on March 7, 2022.

¹³ CTA *En Banc* Docket, pp. 63 to 68.

¹⁴ CTA *En Banc* Docket, pp. 112 to 113.

¹⁵ CTA *En Banc* Docket, p. 114.

¹⁶ CTA *En Banc* Docket, p. 116.

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erred in ruling that the assessment against respondent is void for having been issued in violation of respondent's right to due process.

THE PARTIES' ARGUMENTS

Petitioner's arguments

Petitioner contends that:

1. There was no error or illegality in the assessment issued against respondent as due process was duly observed. Petitioner claims that the Preliminary Assessment Notice (PAN), Formal Letter of Demand (FLD) and Final Assessment Notices (FANs) were duly served to respondent;
2. He properly apprised respondent of its income tax and value-added tax (VAT) liabilities for taxable year (TY) 2012;
3. His authority to assess respondent of deficiency taxes for TY 2012 has not yet prescribed; and,
4. The law favors the propriety and exactness of tax assessments.

Respondent's arguments

Respondent points out that:

1. Petitioner did not raise any new factual or legal arguments but merely reiterated his previous arguments in the present Petition for Review which have been thoroughly discussed in the assailed Decision and Resolution of the Court in Division;
2. Petitioner failed to support his claim that the substituted service of the FLD/FANs were validly effected; and,
3. It did not receive the FLD/FANs because they were improperly served.

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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

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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. (Rules of Court, Rule 42, sec. 1a)" (*Boldfacing supplied*)

Records show that petitioner received the assailed Resolution of the Court in Division on February 3, 2022. Petitioner had fifteen (15) days from February 3, 2022 or until February 18, 2022 within which to file his Petition for Review before the Court *En Banc*.

With the filing of a "Motion for Extension of Time to File Petition for Review"¹⁷ on February 17, 2022, petitioner was given until March 5, 2022 (a Saturday)¹⁸ within which to file his Petition for Review. The Petition for Review was timely filed on **March 7, 2022**.¹⁹ Hence, the Court *En Banc* has acquired jurisdiction over the present Petition for Review.

¹⁷ *Supra*, Note 9.

¹⁸ *Supra*, Note 10.

¹⁹ See Note 12.



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There was no proper service of the FLD/FANs to respondent

Petitioner claims that the PAN, and FLD/FANs were duly served to respondent via substituted service *i.e.* leaving a copy of the same to Mr. William S. Aplacador, who is the security guard of the place.

Respondent counters that Mr. Aplacador is not authorized to receive notices; hence, there was no valid service.

In *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*,²⁰ the Supreme Court held that when a taxpayer denies receiving an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the taxpayer, *viz.*:

“Jurisprudence is replete with cases holding that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter **to prove by competent evidence that such notice was indeed received by the addressee.** xxx”
(*Boldfacing and underscoring supplied*)

Once the taxpayer denied receipt of the notice, it is incumbent upon the BIR to prove **by competent evidence** that the taxpayer received the same. The burden of proof in establishing the fact of receipt of the assessment notice is shifted from the taxpayer to the BIR.

In the assailed Decision, the Court in Division noted that respondent denied having received the FLD/FANs. The Court in Division held that the burden of proving that the substituted service of the FLD/FANs was done in accordance with Section 3.1.6 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013 shifted to petitioner. To prove that respondent received the said notices *via* substituted service, petitioner presented the following documents:

1. Affidavit of Service dated June 20, 2017, executed by RO Rex D. Escala and GS Alfonso C. Aguja, stating that the FLD/FANs were served by substituted service to William S. Aplacador;²¹

²⁰ G.R. No. 150764, August 7, 2006.

²¹ Exhibit R-13, *CTA Division Docket*, Vol. II, p. 1146.



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2. Photocopy of the identification card of William S. Aplacador;²²
3. Photocopy of the identification card of Salvador M. Calupad Junior;²³ and,
4. Photocopy of the identification card of Ian Adriatico.²⁴

The Court in Division, however, did not give credence to said pieces of evidence except for Exhibit "R-13" as they were denied admission in the Resolution dated January 9, 2020,²⁵ for petitioner's failure to present the originals for comparison. In addition thereto, the Court in Division made the following observations:

"First, it must be noted that substituted service may be availed of only when it is shown that personal service is not practicable. However, no proof was presented by respondent to establish that personal service of the subject FLD/FAN was not practicable in this case.

Second, there is no showing that the subject FLD/FAN was served to petitioner's clerk or a 'person having charge' of petitioner's office as required under Section 3.1.6 of RR No. 12-99, as amended. A perusal of the *Affidavit of Service*, merely states that the FLD/FAN was served by substituted service to a certain William S. Aplacador. There is however no showing that Aplacador is petitioner's 'clerk' or a 'person having charged.' In fact, during the cross-examination of respondent's witness, it was revealed that William S. Aplacador is petitioner's security guard. Pertinent portions of said testimony are quoted as follows:

'Atty. Perez:

So is **Mr. William S. Aplacador** the president of the company?

Witness Escala:

No sir.

Atty. Perez:

Would you know what is his position in the company?

Witness Escala:

²² Exhibit "R-13-A", *CTA Division Docket*, Vol. II, p. 1147.

²³ Exhibit "R-13-B", *CTA Division Docket*, Vol. II, p. 1148.

²⁴ Exhibit "R-13-C", *CTA Division Docket*, Vol. II, p. 1149.

²⁵ *CTA Division Docket*, Vol. II, pp. 1250 to 1252.

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He is the one who is available on that premise when the time I have served the notice and witness.

Atty. Perez:

What is his position Mr. Witness, would you know?

Witness Escala:

Security Guard (*Emphasis and underscoring supplied.*)

Evidently, respondent failed to comply with the condition that the assessment notice should be left with petitioner's 'clerk' or 'person having charge' of the office.

Third, a closer examination of the FLD/FAN shows that it merely contains the notation: 'Constructively served on 06-16-07,' without indicating the required details including the relevant facts surrounding the substituted service. Thus, the Court cannot ascertain whether respondent's resort to substituted service was proper and in accordance with the conditions set forth in the rules.

Finally, the Court notes that only the names and signature of the alleged barangay officers are shown in the FLD/FAN. Their official positions are **not indicated** as required under the rules."

To be clear, Section 3.1.6 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013 provides:

"3.1.6 Modes of Service. — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:

- (i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

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

- (ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:

The notice may be left at the party's registered address, with **his clerk or with a person having charge thereof.**



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If the known address is a place where business activities of the party are conducted, the notice may be left with his **clerk or with a person having charge thereof.**

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. **Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.**

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. **Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.**

'Disinterested witnesses' refers to persons of legal age other than employees of the Bureau of Internal Revenue.

- (iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations

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on accreditation of tax agents, shall be deemed service to the taxpayer.”

The Court concurs with the findings of the Court in Division that there was no valid substituted service of the FLD/FANs to respondent. While Exhibits “R-13-A”, “R-13-B”, and “R-13-C” were denied admission; nonetheless, even if admitted, petitioner failed to prove through competent evidence that: (i) the one who received the FLD/FANs was authorized to do so; and, (ii) the procedure under Section 3.1.6 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013 was complied with, *i.e.* the FLD/FANs were received by petitioner’s ‘clerk’ or ‘person having charge’ of the office. Clearly, petitioner failed to prove that respondent received the FLD/FANs. Thus, there was a violation of respondent’s right to due process of law.

The FANs are void for lack of due date

There is more. Aside from petitioner’s invalid substituted service, the FLD/FANs, are void for their **failure to demand payment of the taxes due within a specific period.**

A perusal of the FLD²⁶/FANs²⁷ issued against respondent reveals that they failed to demand payment of the taxes due **within a specific period.** While the BIR demanded payment for the alleged deficiency taxes in the FLD, the period upon which respondent should pay **was not indicated therein.** The wordings of the FLD are as follows:

“In view thereof, you are requested to pay your aforesaid deficiency tax liabilities in a duly authorized agent bank in which you are enrolled using the electronic BIR Payment Form (eBIR Form 0611-A), submit proof of payment thereof to the Office of the Regional Director, this Region, located at 6th Floor, BIR Bldg., Quezon Ave. Cor. Sct. Santiago, Quezon City for updating of your records and cancellation of the herein FLD, if warranted”

Interestingly, a judicious scrutiny of the FANs reveals that **the spaces for the due dates, which indicates when respondent is required to pay the said deficiency taxes, were conspicuously left blank.**

²⁶ Exhibit “P-8”, *CTA Division Docket*, Vol. II, pp. 1023 to 1026.

²⁷ *CTA Division Docket*, Vol. II, pp. 1021 to 1022.



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Since the FANs did not properly indicate the due dates when the deficiency taxes must be paid, no proper demand thereof within a specific period was made.

In *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation*²⁸ and *Commissioner of Internal Revenue vs. Fitness By Design*,²⁹ the Supreme Court emphasized that a FAN without a definite due date for payment is not valid because it negates the demand for payment. Pertinent parts of the Supreme Court's ruling in *Fitness By Design* are quoted hereunder:

"The disputed Final Assessment Notice is not a valid assessment.

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Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:

In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice.

However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.

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."

In other words, a FAN must not only indicate the legal and factual bases of the assessment **but must also state a clear and categorical demand for payment of the computed tax liabilities within a specific period**. Absent such demand, as in this case, the FANs are fatally infirm. Being a void assessment, the FANs bear no fruit³⁰ and must be slain at sight.

²⁸ G.R. No. 128315, June 29, 1999.

²⁹ G.R. No. 215957, November 9, 2016.

³⁰ *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.



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In fine, the FLD/FANs are void due to petitioner's failure to comply with the procedure for substituted service thereof to respondent pursuant to Section 3.1.6 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, and for failure to demand payment of the taxes due within a specific period.

Due to the intrinsic invalidity of the FLD/FANs, there is no need for the Court to belabor the other issues.

WHEREFORE, in light of the foregoing, the Commissioner of Internal Revenue's Petition for Review filed on March 7, 2022 is hereby **DENIED** for lack of merit. The assailed Decision dated March 3, 2021 and the assailed Resolution dated December 17, 2021 of the Court in Division in CTA Case No. 9701 are **AFFIRMED**.

The Commissioner of Internal Revenue, his authorized representatives, or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the deficiency Value-Added Tax and Final Withholding Tax for taxable year 2012 contained in the Formal Letter of Demand with Demand No. 39-2017-B055-12 and two (2) Assessment Notices, all dated June 16, 2017. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

SO ORDERED.



ROMAN G. DEL ROSARIO

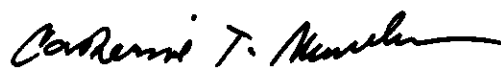
Presiding Justice

WE CONCUR:



MA. BELEN M. RINGPIS-LIBAN

Associate Justice



CATHERINE T. MANAHAN

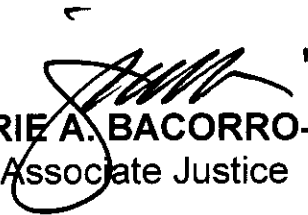
Associate Justice

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JEAN MARIE A. BACORRO-VILLENA

Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO

Associate Justice



MARIAN IVY P. REYES-FAJARDO

Associate Justice



LANEE S. CUI-DAVID

Associate Justice



CORAZON G. FERRER-FLORES

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