

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**COMMISSIONER OF
INTERNAL REVENUE,**
Petitioner,

CTA EB NO. 2729
(CTA Case No. 9708)

Present:

-versus-

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

**RITEGROUP
INCORPORATED,**
Respondent.

Promulgated:

MAR 12 2024

X- - - - -X

DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*¹ filed on February 15, 2023 by the Commissioner of Internal Revenue ("**Petitioner**" or "**CIR**"), under Section 3(b), Rule 8,² in relation to Section 2(a)(1), Rule 4³ of the Revised Rules of the Court of Tax Appeals ⁴ ("**RRCTA**"), assailing the *Decision* dated

¹ Received by the Court on February 21, 2023; *En Banc (EB)* Docket, pp. 5-11.

² Section 3. *Who May Appeal; Period to File Petition.* — (a) x x

(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.

³ Section 2. *Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.

⁴ A.M. No. 05-11-07-CTA.

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September 22, 2022⁵ (“**assailed Decision**”) and the *Resolution* dated January 9, 2023⁶ (“**assailed Resolution**”) of the First Division (“**Court in Division**”) in CTA Case No. 9708 entitled *Ritegroup Incorporated v. Commissioner of Internal Revenue*.

THE PARTIES

Petitioner is the Commissioner of the Bureau of Internal Revenue (“**BIR**”), the government agency in charge of, among others, the assessment and collection of all national internal revenue taxes, fees, and charges.⁷

Respondent Ritegroup Incorporated is a domestic corporation duly organized under Philippine laws, engaged in the business of supplying medical and laboratory products, with principal office at Unit 2202, Prestige Tower, F. Ortigas Road, Ortigas Center, Pasig City 1605.⁸

THE FACTS

The undisputed facts, as narrated in the assailed *Decision* in CTA Case No. 9708, are as follows:⁹

On September 15, 2014, a Letter of Authority (LOA) No. 43A-2014-00000750 was issued by Regional Director Alfredo V. Misajon of RR 7-Quezon City, authorizing Revenue Officer (RO) Verjun Solomon Catapia and Group Supervisor (GS) Roummel Bernos to examine [respondent]'s books of account and other accounting record for the periods January 1, 2013 to December 31, 2013.

Pursuant to LOA No. 43A-2014-00000750, a Preliminary Assessment Notice (PAN) was issued, finding [respondent] liable for deficiency IT, VAT, EWT, and WTC, inclusive of interest and surcharge in the total amount of Three Million Seven Hundred Seven Thousand Two Hundred and Twenty-Nine Pesos and Forty-Eight Centavos (P3,707,229.48), broken down as follows:

⁵ EB Docket, pp. 12-27; penned by Associate Justice Marian Ivy F. Reyes-Fajardo, with Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan, concurring.

⁶ *Id.*, pp. 28-31.

⁷ Par. 2, Joint Stipulation of Facts, Docket - Vol. II, pp. 595-596.

⁸ Par. 3, Roman Numeral I., *ibid.*

⁹ *Supra* at note 5.

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Tax Type	Amount Due
Deficiency IT	₱3,331,015.67
Deficiency VAT	83,469.19
Deficiency EWT	124,976.72
Deficiency WTC	167,767.90
Total	<u>₱3,707,229.48</u>

On January 11, 2017, [petitioner] released the FAN, and FLD with Details of Discrepancy, assessing [respondent] for deficiency IT, VAT, EWT, and WTC inclusive of surcharge, interest and penalty for TY 2013 in the total amount of Three Million Seven Hundred Forty-Nine Thousand One Hundred Eight Pesos and Thirteen Centavos (₱3,749,108.13), computed as follows:

Tax Type	Amount Due
Deficiency IT	₱3,368,760.89
Deficiency VAT	84,388.96
Deficiency EWT	126,348.68
Deficiency WTC	169,609.60
Total	<u>₱3,749,108.13</u>

On February 10, 2017, [respondent] protested the FAN, and FLD with Details of Discrepancy by way of a request for reinvestigation.

In [petitioner]'s Letter dated March 7, 2017, [respondent] was informed that its request for reinvestigation was given due course, and was directed to submit supporting documents within sixty (60) days from filing of its protest, which was complied with through [respondent]'s Letter dated April 7, 2017, and filed with the BIR on even date.

PROCEEDINGS BEFORE THE COURT IN DIVISION

We likewise quote the Court in Division in its narration of facts that had transpired before it.

On November 3, 2017, [respondent] filed its Original Petition for Review dated October 30, 2017, docketed as CTA Case No. 9708, initially raffled to the Third Division of the Court.

On January 12, 2018, [petitioner] filed an Answer to the Original Petition for Review.

On January 29, 2018, [respondent] filed a Motion for Leave to File Amended Petition for Review, together with the attached Amended Petition for Review of even date. In so moving, [respondent] explained that the Amended Petition for



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Review seeks to add matters which transpired after the filing of its Original Petition for Review.

On February 2, 2018, [respondent] filed a Motion to Set for Hearing (Motion for Leave to File Amended Petition for Review), which the Court denied in the Resolution dated February 19, 2018.

In a Resolution dated March 28, 2018, the Court granted [respondent]'s Motion for Leave to File Amended Petition for Review and accordingly admitted the Amended Petition for Review dated January 29, 2018 attached thereto as part of the case record.

On May 4, 2018, [petitioner] filed an Amended Answer to the Amended Petition for Review dated January 29, 2018.

In the Pre-Trial Conference held on July 24, 2018, the Court directed the parties to submit their Joint Stipulation of Facts and Issues (JSFI), set the schedule for the presentation of evidence for the parties and the commissioner's hearings for the marking of their respective evidence.

On August 8, 2018, the parties submitted their JSFI.

On August 29, 2018, the Court issued a Pre-Trial Order.

In an Order dated September 25, 2018, this case was transferred from the Third Division to the First Division of the Court pursuant to CTA Administrative Circular No. 02-2018 dated September 18, 2018.

During trial, [respondent] presented Mhay Madlangbayan Agana, Franklin R. Casedo, and Mary Grace L. Castro as its witnesses.

On June 17, 2019, [respondent] filed a Manifestation with Omnibus Motion for (1) Leave to File and Admit the Supplemental Judicial Affidavit of Mary Grace Castro; (2) Issuance of Subpoena Duces Tecum; and (3) Referral to Mediation.

In the Hearing held on July 19, 2019, [respondent]'s request for issuance of subpoena duces tecum and motion to refer the case for mediation were denied; while [respondent]'s witness Mary Grace Castro was allowed to testify on the additional matters stated in her Supplemental Judicial Affidavit.

On July 26, 2019, [respondent] filed its Manifestation with *Ad Cautelam* Formal Offer of Evidence.



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Under Resolution dated August 3, 2020, the pieces of evidence offered by [respondent] were admitted, save for Exhibits "P-9" and "P-9-a."

On September 11, 2020, [respondent] filed its Motion for Reconsideration (Re: Resolution dated 03 August 2020), followed by another Motion to Refer Case to Mediation filed on October 29, 2020.

In a Resolution dated December 2, 2020, the Court granted [respondent]'s Motion for Reconsideration (Re: Resolution 03 August 2020). Accordingly, Exhibits "P-9" and "P-9-a" were admitted as [respondent]'s evidence. Its Motion to Refer Case to Mediation was again denied.

In the Hearing held on May 27, 2021, upon motion of counsel for [petitioner], the initial presentation of evidence for [petitioner] was reset on September 7, 2021 at 9:00 a.m. Counsel for [petitioner] was also required to submit the Judicial Affidavits of the proposed witnesses until June 7, 2021, lest the presentation of his evidence be waived.

In a Resolution dated July 8, 2021, the presentation of [petitioner]'s witnesses was waived because of counsel for [petitioner]'s failure to file the Judicial Affidavits of his witnesses within the period granted.

In a Resolution dated December 16, 2021, the case was submitted for decision taking into account the filing of [respondent]'s Memorandum; and [petitioner]'s failure to [file] Memorandum within the period granted.

On September 22, 2022, the Court in Division ruled in favor of respondent.¹⁰ The dispositive portion reads:

WHEREFORE, the Amended Petition for Review dated January 29, 2018, filed by Ritegroup, Incorporated is **GRANTED**. Accordingly, the deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, and Withholding Tax on Compensation assessments, inclusive of surcharge, interest, and penalty for taxable year 2013 in the total amount P3,749,108.13 issued against Ritegroup, Incorporated under the Final Assessment Notices all with Demand No. 043A-B207-13 and Formal Letter of Demand No. 043A-B207-13 dated January 11, 2017 are **CANCELLED**.

The Commissioner of Internal Revenue, his [or her] representatives, agents, or other persons acting in his [or her] behalf are **ENJOINED** from enforcing the collection of deficiency Income Tax, Value-Added Tax, Expanded

¹⁰ *Supra* at note 5.



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Withholding Tax, and Withholding Tax on Compensation assessments, inclusive of surcharge, interest and penalty for taxable year 2013 in the total amount of P3,749,108.13, under the Final Assessment Notices all with Demand No. 043A-B207-13 and Formal Letter of Demand No. 043A-B207-13 dated January 11, 2017 issued against Ritegroup, Incorporated.

SO ORDERED.

On October 18, 2022, petitioner filed his *Motion for Reconsideration (Decision dated 22 September 2022)*,¹¹ to which respondent filed its *Comment (to [Petitioner]'s Motion for Reconsideration dated 17 October 2022)* on November 18, 2022.¹²

On January 9, 2023, the Court in Division promulgated a *Resolution*¹³ with the following dispositive portion:

WHEREFORE, [petitioner]'s Motion for Reconsideration (Decision dated 22 September 2022), belatedly filed on October 18, 2022, is **DENIED**.

PROCEEDINGS BEFORE THE COURT EN BANC

On January 31, 2023, petitioner filed his *Motion for Extension of Time to File Petition for Review*,¹⁴ which was granted in a *Minute Resolution* dated February 1, 2023.¹⁵

On February 15, 2023, petitioner posted his *Petition for Review*.¹⁶ After being ordered by the Court to attach proof of receipt of the assailed *Resolution*,¹⁷ petitioner filed his *Compliance* on March 13, 2023.¹⁸

Pursuant to the *Minute Resolution* dated March 15, 2023,¹⁹ respondent filed its *Comment (to Petition for Review dated February 15, 2023)* on March 31, 2023.²⁰

¹¹ Division Docket – Vol. III, pp. 1396-1398.

¹² Division Docket – Vol. III, pp. 1401-1406.

¹³ *Supra* at note 6.

¹⁴ *EB* Docket, pp. 1-3

¹⁵ *Id.*, p. 4

¹⁶ *Supra* at note 1.

¹⁷ *EB* Docket, p. 39

¹⁸ *Id.*, pp. 40-41

¹⁹ *Id.*, p. 43.

²⁰ *Id.*, pp. 44-74.

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Thus, on April 24, 2023, this Court issued a *Resolution* submitting the *Petition* for decision.²¹

Hence, this Decision.

ISSUES

Petitioner raises the following grounds for his *Petition* for Review with the Court *En Banc*:

I.

THE HONORABLE COURT ERRED IN RULING THAT THE AMOUNT STATED IN THE FORMAL LETTER OF DEMAND (FLD) REMAINS INDEFINITE AS IT DID NOT FIX THE TAX DUE FROM THE PETITIONER THUS RENDERING THE SUBJECT ASSESSMENT VOID AND OF NO EFFECT.

II.

ASSUMING FOR THE SAKE OF ARGUMENT THAT THE HONORABLE COURT HAS JURISDICTION TO DETERMINE THE VALIDITY OF THE ASSESSMENT WHICH HAS ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE, THE HONORABLE COURT ERRED IN RULING THAT THE SUBJECT FDDA IS VOID FOR NOT STATING THE FACTS, LAW OR JURISPRUDENCE ON WHICH THE DECISION IS BASED.

PETITIONER'S ARGUMENTS

Petitioner argues that the Court in Division erred in ruling that the amount stated in the FLD remains indefinite.²² According to petitioner, the case of *CIR v. Fitness by Design* (*Fitness by Design* case)²³ is inapplicable considering that the phraseology employed by the Final Assessment Notices ("**FANs**")/Formal Letter of Demand ("**FLD**") in the *Fitness by Design* case includes the word "if prior" which is absent in the FANs/FLD in this case. He posits that assuming no due date is stated in the FANs, such a date is easily determinable by counting 30 days from the date of receipt of the FANs/FLD. He further posits that the mere fact that the interest and the total amount due will have to be adjusted if paid after the due date does not amount to a lack of a fixed and determinate amount of tax liability.²⁴

²¹ *Id.*, p. 76.

²² *Petition for Review*, p. 7.

²³ G.R. No. 215957, November 9, 2016.

²⁴ *Petition for Review*, p. 8.



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Petitioner faults the Court in Division in denying the *Motion for Reconsideration* and submits that the Court should relax procedural rules when a rigid application of these rules only hinders substantial justice. According to petitioner, the handling counsel believed in good faith that LBC Express, Inc. was an accredited private courier.²⁵

RESPONDENT'S COUNTER-ARGUMENTS

In its *Comment*, respondent highlights that the *Petition for Review* is a mere rehash of petitioner's arguments before the Court in Division.²⁶ According to respondent, the statement in the FLD "palpably shows that there is no definite amount of tax liability for which petitioner is accountable." It contends that the FANs/FLD merely provided that the tax due, as well as its interest, are still subject to modification depending on the date of payment.²⁷

Respondent adds that the FANs/FLD failed to indicate a final and definite date within which payment must be made. It further adds that the requirement to indicate a fixed and definite period or a date certain within which a taxpayer must pay the assessed deficiency tax liabilities cannot be presumed and is indispensable to the validity of the assessment.²⁸

Respondent contends that the Court in Division correctly ruled that the *Motion for Reconsideration* filed by petitioner was belatedly filed. Respondent argues that the belated filing of the motion before the Court in Division is not justified.²⁹

RULING OF THE COURT EN BANC

The Court *En Banc* finds the instant *Petition for Review* outrightly dismissible.



²⁵ *Id.*, pp. 8-9.

²⁶ *Comment*, par. 1.

²⁷ *Id.*, par. 5.

²⁸ *Id.*, par. 8.

²⁹ *Id.*, pars. 12-17.

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Petitioner's Motion for Reconsideration before the Court in Division was filed out of time; hence, the assailed Decision has already become final and executory.

On September 22, 2022, the Court in Division promulgated a *Decision* granting respondent's *Petition for Review*.³⁰

Under Section 1, Rule 15 of the RRCTA, any aggrieved party may seek a reconsideration of the *Decision* of the Court by filing a motion for reconsideration within fifteen (15) days from receipt of the assailed decision, *viz.*:

SECTION 1. *Who may and when to file motion.* —
Any aggrieved party may seek a reconsideration or new trial **of any decision**, resolution, or order **of the Court** by **filing a motion for reconsideration** or new trial within **fifteen days from the date of receipt of notice of the decision**, resolution or order of the Court in question.
[Emphasis supplied]

Moreover, under Section 3, Rule 13 of the Revised Rules of Court, as amended,³¹ pleadings may be filed in court personally, by registered mail, by **accredited courier**, or by electronic mail or other electronic means as may be authorized by the court, *viz.*:

SECTION 3. *Manner of Filing.* — The filing of pleadings and other court submissions shall be made by:

- (a) Submitting personally the original thereof, plainly indicated as such, to the court;
- (b) Sending them by registered mail;
- (c) Sending them by accredited courier; or
- (d) Transmitting them by electronic mail or other electronic means as may be authorized by the [c]ourt in places where the court is electronically equipped.



³⁰ *Supra* at note 5.

³¹ 2019 Amendments to the 1997 Rules of Civil Procedure, A.M. No. 19-10-20-SC, October 15, 2019.

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In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second and third cases, the **date of the mailing of motions**, pleadings, [and other court submissions, and]..., **shall be considered as the date of their filing**, ... in court. [Emphasis supplied]

Notably, Administrative Order No. 242-A-2020, which provides guidelines on the accreditation of courier service providers given the 2019 Rules of Civil Procedure, took effect only on October 1, 2020. It must be emphasized that under the old Rules of Court, filing *via* private couriers, although not prohibited, is nevertheless not recognized.³² However, the established rule is that the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court and that in such cases, the date of actual receipt by the court and not the date of delivery to the private carrier is deemed the date of filing of that pleading.³³

Records reveal that petitioner received the assailed *Decision* on September 30, 2022. Accordingly, petitioner had 15 days, or until **October 17, 2022** – since the 15th day, October 15, 2022, fell on a Saturday – to file a *Motion for Reconsideration*.

Petitioner sent his *Motion for Reconsideration* to the Court in Division *via* LBC Express, Inc. (**LBC**), a private courier, on October 17, 2022, but it was only delivered and received by the Court in Division on **October 18, 2022**.

LBC was not yet an accredited courier service provider when petitioner sent his *Motion for Reconsideration*. Pursuant to the Office of the Court Administrator (**OCA**) Circular No. 54-2023 dated February 13, 2023, LBC was accredited as a Courier Service Provider nationwide for a period of one (1) year, from February 1, 2023 to January 31, 2024. Hence, the rule applicable in the instant case is as follows: the date of receipt by the court, and not the date of delivery to LBC, is deemed the date of filing of the pleading.



³² *Bureau of Internal Revenue v. Gan-Lim, Jr.*, G.R. No. 254939 (Notice), March 3, 2021.

³³ *IP E-Game Ventures, Inc. v. Beijing Perfect World Software Co., Ltd.*, G.R. No. 220250, September 7, 2020; *Uy v. Flores*, A.M. No. RTJ-12-2332, June 25, 2014; *Philippine National Bank v. Commissioner of Internal Revenue*, G.R. No. 172458, December 14, 2011; *Charter Chemical and Coating Corp. v. Tan, et al.*, 606 Phil. 75, 80-81 (2009), G.R. No. 163891, May 21, 2009.

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Given the foregoing, petitioner's *Motion for Reconsideration*, due for filing on **October 17, 2022**, was deemed filed only on **October 18, 2022**, or one (1) day late.

Petitioner attempts to justify his late filing by stating that the Supreme Court has relaxed procedural rules in a long line of cases when a rigid application of the rules only hinders substantial justice. He claims that filing *via* registered mail "usually takes more than a week to deliver mail," thus, the handling counsel opted to send the *Motion for Reconsideration via* LBC, believing in good faith that LBC was an accredited private courier.

The Court is not convinced.

It bears reiterating that when petitioner sent the *Motion for Reconsideration* through LBC, the latter was not yet an accredited courier service provider. Moreover, invoking "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. Like all rules, they must be followed except only for the most persuasive *reasons* when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of its thoughtlessness in not complying with the procedure prescribed.³⁴ Petitioner's reasons do not merit the relaxation of procedural rules prayed for. The manner of filing of pleadings and motions before the courts is a matter that lawyers ought to know, and this Court will not sanction such negligence.

As stated in Section 1, Rule 8 of the RRCTA, the filing of a *Petition for Review* before the Court *En Banc* must be preceded by a *timely filing* of a motion for reconsideration or new trial with the Division.

Indeed, before the Court *En Banc* could take cognizance of a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned CTA division ³⁵ within *fifteen (15) days* from receipt of the assailed decision.


³⁴ *Lim v. Delos Santos*, G.R. No. 172574, July 31, 2009, citing *Lazaro v. Court of Appeals*, G.R. No. 137761, April 6, 2000.

³⁵ *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 201530 and 201680-81, April 19, 2017, citing *Commissioner of Customs v. Marina Sales, Inc.*, G.R. No. 183868, November 22, 2010.

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The rule is and has been that the period for filing a motion for reconsideration is *non-extendible*.³⁶ If no motion for reconsideration is filed on time, the judgment or final order of the court becomes final and executory.³⁷

In the case of *Bureau of Internal Revenue v. TICO Insurance Company, Inc., et al. (TICO)*,³⁸ the Supreme Court ruled that the 15-day period to file a motion for reconsideration is non-extendible. Thus:

... "Under Section 1, Rule 52 of the Rules of Court, a motion for reconsideration of a judgment or final resolution should be filed **within 15 days from notice**. If no appeal or motion for reconsideration is filed within this period, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgment, as provided under Section 10 of Rule 51. **The 15-day reglementary period for filing a motion for reconsideration is non-extendible.**"

... ..

That the motion for reconsideration was filed only one day late is immaterial; the Court has similarly refused to admit motions for reconsideration which were filed late without sufficient justification. Indeed, "[j]ust as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the case." [*Emphasis supplied*]

The Supreme Court underscored in the *TICO* case that once a decision attains finality, it becomes the law of the case, irrespective of whether the decision is erroneous or not. No court — not even the Supreme Court — has the power to revise, review, change or alter the same, *viz.*:

It is settled that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional. This means that the failure to interpose a timely appeal deprives the appellate body of any jurisdiction to alter the final judgment, more so to entertain the appeal. **Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not, and no court — not even the Supreme Court — has the power to revise, review, change or alter the same.** The right to appeal is not a part of due process of law but is a mere statutory privilege to be exercised only in the manner, and in accordance with, the provisions of the law. After a decision is declared final and executory, vested rights are acquired by the winning party.

³⁶ *Apex Mining Co., Inc. v. Commissioner of Internal Revenue and Court of Appeals*, G.R. No. 122472, October 20, 2005.

³⁷ *Far East Bank & Trust Company v. Commissioner of Internal Revenue*, G.R. No. 149589 (Resolution), September 15, 2006.

³⁸ G.R. No. 204226, April 18, 2022.

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In the same vein, "a motion for reconsideration must necessarily be filed within the period to appeal. When filed beyond such period, the motion for reconsideration *ipso facto* forecloses the right to appeal." [*Emphasis supplied*]

A decision that has acquired finality becomes *immutable* and *unalterable* and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it was made by the court that rendered it or by the highest court of the land.³⁹

Thus, We sustain the Court in Division's ruling in the assailed Resolution that the *Motion for Reconsideration* was belatedly filed on October 18, 2022, leading to the finality of the assailed Decision.

Having attained finality, the instant case is already beyond the Court *En Banc*'s power to amend or revoke.

The Court in Division did not err in ruling that the FANs and FLD are void for failure to indicate a definite due date.

Even if the Court were to disregard petitioner's *one-day delay* and the *finality* of the September 22, 2022 Decision, the instant *Petition for Review* would still be denied due to the invalidity of the assessments.

The issuance of a valid formal assessment is a substantive prerequisite for the collection of taxes.⁴⁰ An assessment not only includes a computation of tax liabilities; it also includes a demand for payment within a prescribed period.⁴¹

In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation et al.*,⁴² the Supreme Court held:

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

³⁹ *Roberto A. Torres, et al., v. Antonia F. Aruego*, G.R. No. 201271, September 20, 2017.

⁴⁰ *Commissioner of Internal Revenue v. Menguito*, G.R. No. 167560, September 17, 2008.

⁴¹ *Tupaz v. Ulep*, G.R. No. 127777, October 1, 1999.

⁴² G.R. No. 128315, June 29, 1999.

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requires that it must be served on and received by the taxpayer. ... [*Emphasis and underscoring supplied.*]

Further, the Supreme Court, in the *Fitness by Design* case,⁴³ is unambiguous:

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

...

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:



⁴³ *Supra* at note 23.

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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*]

Following the *Fitness by Design* case, which the Court in Division cited in the assailed *Decision*, the Supreme Court has consistently nullified an assessment that does not contain a definite due date, such as in *Republic v. First Gas Power Corp.*⁴⁴ and *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*⁴⁵

Reference to the due date in an assessment is found in Section 249(C) of the NIRC of 1997, as amended. We quote:

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.*]

Accordingly, indicating the due date in an assessment is directly related to the requirement of showing the definite amount that is assessed. The delinquency interest may not be properly computed if a due date does not appear in the

⁴⁴ G.R. No. 214933, February 15, 2022.

⁴⁵ G.R. No. 240729 (Resolution), August 24, 2020.



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FANs/FLD, as in this case. It bears stressing that an assessment, in the context of the NIRC, 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.”⁴⁶

RE SUBMITTING RETURN KAGAWARAN NG PANANALAHIN KAWANIHAN NG RENTAS INTERNAS		DATE RECEIVED January 11, 2017 PERIOD COVERED 2013
1708 ASSESSMENT NOTICE		DATED AND NO. 043A-B207-13 ASSESSMENT NO.
TAXPAYER IDENTIFICATION NUMBER 253-064-094-000		DATE ISSUED January 11, 2017
NAME OF TAXPAYER RITEGROUP INC		
ADDRESS Unit 2212 Prestige Tower F Ortigas Jr. Rd. San Antonio Office Center 1605 Pasig City		
PLEASE BE INFORMED THAT YOUR INTERNAL REVENUE TAX LIABILITY HAS BEEN ASCERTAINED BASED ON: ☒ THE RETURN FILED ☐ AFTER PRE-AUDIT ☐ NO RETURN FILED ☐ AFTER PRE-AUDIT		
DETAILS OF ASSESSMENT		
CHECK KIND OF TAX	PARTICULARS	AMOUNT
☒ A INCOME	TAX DUE	2,752,657.09
☐ B CAPITAL GAINS		
☐ C WITHHOLDING TAX	ADD SURCHARGE (25%)	
☐ D VAT	INTEREST (4.16.14 to 2.12.17)	1,216,103.81
☐ E PERCENTAGE	UNEMPLOYED BENEFIT	
☐ F DONORS	TOTAL	3,968,760.89
PLEASE PRESENT THIS NOTICE TO THE NEAREST REVENUE DISTRICT OFFICE OR OTHER DULY AUTHORIZED ASSUING OFFICE FOR ANY COUPONCE OF PAYMENT FORM (BR FORM NO. 005) AND PAY THE TOTAL AMOUNT PAYABLE ON OR BEFORE _____ TO ANY AUTHORIZED BANK WHERE NOT ENROLLED OR TO THE OFFICE OF COLLECTION OF SUCH EMPLOYER HEREINAFTER MENTIONED.		
IMPORTANT		
IF YOU DISAGREE WITH THIS ASSESSMENT, FILE YOUR PROTEST IN WRITING (WITH FACTUAL AND LEGAL BASES) WITH THE COMMISSIONER OF INTERNAL REVENUE OR WITH THE AUTHORIZED BIR OFFICIAL WITHIN THIRTY (30) DAYS FROM RECEIPT HEREOF. OTHERWISE, THE SAME BECOMES FINAL AND UNAPPEALABLE PURSUANT TO THE PERTINENT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.		
FAILURE TO PAY THIS ASSESSMENT ON TIME WILL FURTHER SUBJECT THE TOTAL AMOUNT DUE TO ADDITIONAL PENALTIES FOR LATE PAYMENT.		
CAESAR R. DULAY COMMISSIONER OF INTERNAL REVENUE		
RECOMMENDING APPROVAL ANALYN S. CHUA DIRECTOR OF ASSESSMENT DIVISION		APPROVED ALFREDO V. VISAJON

*Please see attached Formal Letter of Demand for the factual and legal bases of assessment.

* You may file your protest in writing to the Regional Director's Office, 5th Floor, BIR Bldg., Quezon Ave., cor. Sct. Santiago, Quezon City

* Please attach photo copy of this notices to your protest letter.

Received by
Marketing
Invoice # 1000000000
0000000000

⁴⁶ *Adamson et al. v. Court of Appeals*, G.R. Nos. 120935 & 124557, May 21, 2009.

⁴⁷ *Supra* at note 23.

⁴⁸ Division Docket, Vol. I — pp. 67-70.

DECISION

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BIR
FORM NO.
REVISED FEBRUARY, 1994

REP. B. LANG. PLIPINAS
KASAWARAN NG PANANALAP
KAWANIHAN NG RENTAS INTERNAS

AMINER 31
107-100-00000

1708

ASSESSMENT NOTICE

General No. 043A-B207-13

Assessment No.

TAXPAYER IDENTIFICATION NUMBER 233 064 094 000 DATE ISSUED January 11, 2017 Period Covered 2013

OF TAXPAYER
RITEGROUP INC.

ADDRESS Unit 2002 Prestige Tower F. Corrales J. Rd. San Antonio, Quezon City 1505

PLEASE BE INFORMED THAT YOUR INTERNAL REVENUE TAX LIABILITY HAS BEEN ASSESSED BASED ON:
☐ 1 THE RETURN FILED
☐ 2 AFTER PRE-AUDIT
☐ 3 AFTER PRE-AUDIT
☐ 4 AFTER PRE-AUDIT
☐ 5 AFTER PRE-AUDIT

DETAILS OF ASSESSMENT

CHECK KIND OF TAX	PARTICULARS	AMOUNT
☐ 1 INCOME	TAX DUE	\$2,455.67
☐ 2 WITHHOLDING TAX	ADD PURCHASE (25%)	
☐ 3 PAY	INTEREST (1.26.14 to 1.10.17)	31,933.29
☐ 4 PERCENTAGE	Compliance Penalty	
☐ 5 LONGER	TOTAL	84,388.96

PLEASE PRESENT THIS NOTICE TO THE NEAREST REVENUE DISTRICT OFFICE OR OTHER DULY AUTHORIZED ISSUING OFFICE FOR THE ISSUANCE OF PAYMENT FORM (BIR FORM NO. 006) AND PAY THE TOTAL AMOUNT PAYABLE ON OR BEFORE TO ANY ACCREDITED BANK WHERE YOU ENROLLED OR TO THE CHIEF ASSESSMENT DIVISION 5th FLOOR Rm 7 QUEZON CITY

IMPORTANT

IF YOU DISAGREE WITH THIS ASSESSMENT, FILE YOUR PROTEST IN WRITING (WITH FACTUAL AND LEGAL BASES) WITH THE COMMISSIONER OF INTERNAL REVENUE OR WITH THE AUTHORIZED BIR OFFICIAL WITHIN THIRTY (30) DAYS FROM RECEIPT HEREOF. OTHERWISE, THE SAME BECOMES FINAL AND UNAPPEALABLE PURSUANT TO THE PERTINENT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

FAILURE TO PAY THIS ASSESSMENT ON TIME WILL FURTHER SUBJECT THE TOTAL AMOUNT DUE TO ADDITIONAL PENALTIES FOR LATE PAYMENT.

CAESAR R. DULAY
COMMISSIONER OF INTERNAL REVENUE

RECOMMENDING APPROVAL

APPROVED

ANALYN S. CHU
DIO Chief Assessment Division

ALFREDO V. MISJON
Regional Director

337 rev. FORM 600 sec
6011399
BIR NO. 37-341

Please see attached Formal Letter of Demand for the factual and legal bases of assessment

* You may file your protest in writing to the Regional Director's Office, 5th Floor, BIR Bldg., Quezon Ave., cor. Sol. Santiago, Quezon City

* Please attach photo copy of this notices to your protest letter.

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DECISION

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BR
FORM NO
REVISED FEBRUARY, 1994

REPUBLIKANG PILIPINAS
KAGAWARAN NG PANANALAP
KAWANHAN NG RENTAS INTERNAS

0-12
Office of the Regional Director

1708

ASSESSMENT NOTICE

Assessment No 043A-B207-13

ASSESSMENT NO.

TAXPAYER IDENTIFICATION NUMBER 233-054-054-000 DATE ISSUED January 11, 2017 Period Covered 2013

TAXPAYER RITEGROUP INC

ADDRESS Unit 2202 Prudential Tower, F. Ortigas Jr. Rd. San Antonio, Quezon Center 1605 Pasig City

PLEASE BE INFORMED THAT YOUR INTERNAL REVENUE TAX LIABILITY HAS BEEN ASSESSED BASED ON

1-6 THE RETURN FILED 1 AFTER PRE-AUDIT 2 AFTER A.D.T 3 AFTER PRE-AUDIT
7-9 NOT RETURN FILED

DETAILS OF ASSESSMENT

CHECK KIND OF TAX		PARTICULARS	AMOUNT
☐ 1 INCOME	☐ 7 CAPITAL GAINS	1 TAX DUE	78,244.43
☐ 2 WITHHOLDING	☐ 8 DOG STAMPS	2 ADD. SURCHARGE (25%)	
☐ 3 EWT	☐ 9 FRANCHISE	Interest (1.16.14 to 2.10.17)	43,104.25
☐ 4 VAT	☐ 10 MISCELLANEOUS	Corporate Penalty	
☐ 5 PERCENTAGE	☐ 11 OTHERS	TOTAL	126,348.68
☐ 6 DONORS	☐ 12 OTHERS		

PLEASE PRESENT THIS NOTICE TO THE NEAREST REVENUE DISTRICT OFFICE OR OTHER DULY AUTHORIZED ISSUING OFFICE FOR THE SECURANCE OF PAYMENT FORM BR FORM NO. 0665 AND PAY THE TOTAL AMOUNT PAYABLE ON OR BEFORE TO ANY ACCREDITED BANK WHERE YOU ENROLLED OR TO THE CHIEF ASSESSMENT DIVISION, 5th FLOOR BR 1, QUEZON CITY

IMPORTANT

IF YOU DISAGREE WITH THIS ASSESSMENT, FILE YOUR PROTEST IN WRITING (WITH FACTUAL AND LEGAL BASES) WITH THE COMMISSIONER OF INTERNAL REVENUE OR WITH THE AUTHORIZED BIR OFFICIAL WITHIN THIRTY (30) DAYS FROM RECEIPT HEREOF. OTHERWISE, THE SAME BECOMES FINAL AND UNAPPEALABLE PURSUANT TO THE PERTINENT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

FAILURE TO PAY THIS ASSESSMENT ON TIME WILL FURTHER SUBJECT THE TOTAL AMOUNT DUE TO ADDITIONAL PENALTIES FOR LATE PAYMENT.

CAESAR R. DULAY
COMMISSIONER OF INTERNAL REVENUE
APPROVED

RECOMMENDING APPROVAL

ANALYN S. CHU
O.C. Chief, Assessment Division

ALFREDO V. MISION
Regional Director

Required FORMS filing via:
16.17.11.202
16.17.11.202

*Please see attached Formal Letter of Demand for the factual and legal bases of assessment.

* You may file your protest in writing to the Regional Director's Office, 6th Floor, BIR Bldg., Quezon Ave., cor. Sgt. Santiago, Quezon City

* Please attach photo copy of this notices to your protest letter.

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BIR
FORM NO.
REVISED FEBRUARY 1994

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWAIBHAN NG RENTAS INTERNAS

RECEIVED
JAN 11 2017
BIR - QUEZON CITY
Office of the Regional Director

1708

ASSESSMENT NOTICE

Demand No. 043A-B207-13
Assessment No.

TAXPAYER IDENTIFICATION NUMBER 233 054 094 000 DATE ISSUED January 11, 2017 Period Covered 2013

TAXPAYER RITEGROUP INC.

ADDRESS Unit 2602 Prestige Tower F Ortigas Rd San Antonio Ortigas Center 1605 Pasig City

PLEASE BE INFORMED THAT YOUR INTERNAL REVENUE TAX LIABILITY HAS BEEN ASSESSED BASED ON:
☐ 1 THE RETURN FILED
☒ 2 AFTER PRE-AUDIT
☐ 3 AFTER AUDIT
☐ 4 NO RETURN FILED

DETAILS OF ASSESSMENT

CHECK KIND OF TAX	PARTICULARS	AMOUNT
☐ 1 INCOME	1. TAX DUE	165,034.79
☒ 2 WITHHOLDING	2. ADD. SURCHARGE (24%)	
☐ 3 VAT	INTEREST (1.16.18 to 2.19.17)	64,574.81
☐ 4 PERCENTAGE	Comprehensive Penalty	
☐ 5 DONORS	TOTAL	169,609.60

PLEASE PRESENT THIS NOTICE TO THE NEAREST REVENUE DISTRICT OFFICE OR OTHER BIR AUTHORIZED ISSUING OFFICE FOR THE SEQUENCE OF PAYMENT FORM (BR FORM NO. 2005) AND PAY THE TOTAL AMOUNT PAYABLE ON OR BEFORE TO THE APPROPRIATE BANK WHERE YOU ENROLLED OR TO THE CHIEF ASSESSMENT DIVISION, 5th FLOOR, RR#7, QUEZON CITY.

IMPORTANT

IF YOU DISAGREE WITH THIS ASSESSMENT, FILE YOUR PROTEST IN WRITING (WITH FACTUAL AND LEGAL BASES) WITH THE COMMISSIONER OF INTERNAL REVENUE OR WITH THE AUTHORIZED BIR OFFICIAL WITHIN THIRTY (30) DAYS FROM RECEIPT HEREOF. OTHERWISE, THE SAME BECOMES FINAL AND UNAPPEALABLE PURSUANT TO THE PERTINENT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

FAILURE TO PAY THIS ASSESSMENT ON TIME WILL FURTHER SUBJECT THE TOTAL AMOUNT DUE TO ADDITIONAL PENALTIES FOR LATE PAYMENT.

CAESAR R. DULAY
COMMISSIONER OF INTERNAL REVENUE

RECOMMENDING APPROVAL

APPROVED

ANALYN S. CHU
O.C. Chief, Assessment Division

ALFREDO V. VISAJON
Regional Director

2005-2006 FORMS (July 2005)
6/27/1355
2017 RVO 07-04)

Please see attached Formal Letter of Demand for the factual and legal bases of assessment.

You may file your protest in writing to the Regional Director's Office, 5th Floor, BIR Bldg., Quezon Ave., cor. Sgt. Santiago, Quezon City

Please attach photo copy of this notices to your protest letter.

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DECISION

CTA EB No. 2729 (CTA Case No. 9708)

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Petitioner's argument that the due date is easily determinable by counting 30 days from the date of receipt of the FANs/FLD finds no basis in law and regulations. The due date cannot be assumed or surmised and is expressly required to be indicated in the FANs/FLD.

Thus, We rule that the assessments subject of this case are void for failure to indicate the due date for payment.

The issue on the violation of respondent's right to due process is inextricably linked to the validity of the assessment. It is primal that the BIR's right to collect deficiency taxes must flow from a valid assessment.⁴⁹ The law imposes a substantive, not merely a formal, requirement.⁵⁰ It is axiomatic that void assessments bear no valid fruit.⁵¹

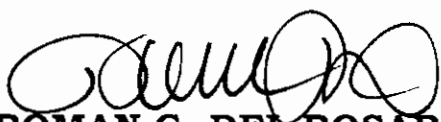
WHEREFORE, in light of the foregoing, the instant *Petition for Review* is **DISMISSED** for lack of jurisdiction.

Accordingly, the assailed *Decision* dated September 22, 2022, and the Resolution dated January 9, 2023, in CTA Case No. 9708 are **AFFIRMED**.

SO ORDERED.


LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

⁴⁹ *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue*, G.R. No. 249153, September 12, 2022.

⁵⁰ *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corp.*, G.R. Nos. 197945 and 204119, July 9, 2018 citing *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.

⁵¹ *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 and cccccc 163581, January 27, 2006; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010; *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014; *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

DECISION

CTA EB No. 2729 (CTA Case No. 9708)

Commissioner of Internal Revenue v. Ritegroup Incorporated

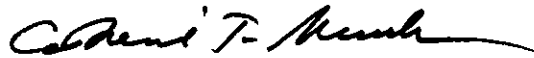
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MA. BELEN M. RINGPIS-LIBAN

Associate Justice



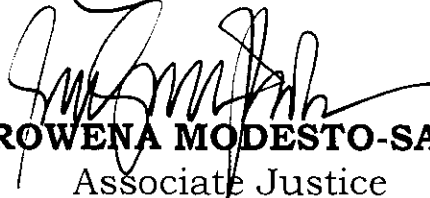
CATHERINE T. MANAHAN

Associate Justice



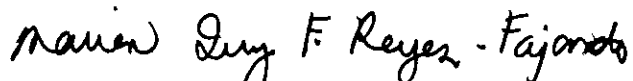
JEAN MARIE A. BACORRO-VILLENA

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



DECISION

CTA *EB* No. 2729 (CTA Case No. 9708)

Commissioner of Internal Revenue v. Ritegroup Incorporated

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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

