REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2229** (CTA Case No. 8740)
- versus -	Present: **DEL ROSARIO,** *P.J.*, **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
IBM PLAZA CONDOMINIUM ASSOCIATION, INC., Respondent.	Promulgated: OCT 14 2022 10:31am

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] dated September 02, 2019 ("Assailed Decision") and Resolution[2] dated January 24, 2020 ("Assailed Resolution") of the Court of Tax Appeals Second Division ("Second Division"), setting aside the assessments for deficiency income tax in the amount of Php40,541,907.93, for deficiency value-added tax ("VAT") in the amount of Php9,854,917.85 and expanded withholding tax ("EWT") in the amount of Php1,349,515.59, all inclusive of interest, surcharges, and penalties for taxable year ("TY") 2008, and the Warrant of Distraint and/or Levy ("WDL").

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1 Penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justices Juanito C. Castañeda, Jr. and Jean Marie A. Bacorro-Villena concurring; Docket, pp. 1727-1753.

2 Penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justices Juanito C. Castañeda, Jr. and Jean Marie A. Bacorro-Villena concurring; Docket, pp. 1831-1834.

The Parties

Petitioner is the duly appointed Commissioner of Internal Revenue ("CIR") vested with the authority to carry out the functions, duties and responsibilities of said office including, among others, the power to cancel disputed assessments.

Respondent is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines

The Facts

A Letter of Authority ("LOA") was issued by Petitioner (then Respondent) authorizing the examination of Respondent's books of accounts and other accounting records for TY 2008.

On December 16, 2009, a Post Reporting Notice was issued by Petitioner requesting Respondent to submit documentary evidence to refute the findings against the proposed summary assessment in the total amount of Php27,207,859.46.

On May 12, 2011, Respondent received a Preliminary Assessment Notice ("PAN") issued by Petitioner.

On June 07, 2011, Petitioner issued a Formal Letter of Demand and Assessment Notice ("FLD/FAN") demanding the payment of Php51,746,341.37 representing alleged deficiency income tax, VAT and EWT for TY 2008.

On July 08, 2011, Respondent filed a protest against the FLD/FAN and on September 05, 2011 and September 09, 2011, submitted documents to support its arguments against the findings embodied in the FLD/FAN.

Petitioner issued a Final Decision denying the protest filed by Respondent.

On November 04, 2013, Respondent received a WDL signed by Ms. Ruth Vivian G. Gadia, the Chief of the Collection Division of the Bureau of Internal Revenue ("BIR").

On December 04, 2013, Respondent filed a Petition for Review with the Court in Division.

Petitioner filed its Answer to the Petition for Review on March 03, 2014.

The case was deemed submitted for decision on November 16, 2018.

On September 02, 2019, the Court in Division rendered the Assailed Decision declaring the deficiency assessments for income tax, VAT and EWT for TY 2008 void for being issued in violation of Respondent's right to due process and consequently cancelled said assessments, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the assessments for deficiency income tax in the amount of Php40,541,907.93, for deficiency value-added tax in the amount of Php9,854,917.85 and [deficiency expanded withholding tax in the amount of] Php1,349,515.59, all inclusive of interest, surcharges, and penalties for taxable year 2008, and the Warrant of Distraint and/or Levy are hereby are **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**[3]

On September 18, 2019, Petitioner posted a Motion for Reconsideration which was received by the Court on September 25, 2019.

On January 24, 2020, the Court in Division issued a Resolution denying Petitioner's Motion for Reconsideration, to wit:

> **WHEREFORE**, Respondent's Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED.**[4]

Petitioner then posted a Petition for Review with the Court *En Banc* on February 28, 2020 which was received by the Court on March 05, 2020.

On June 16, 2020, the Court ordered Petitioner to submit certified true copies of the Court in Division's Decision and Resolution within five (5) days from notice.

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[3] Docket, Decision dated September 02, 2019, p. 1752.
[4] *Id.*, Resolution dated January 24, 2020, p. 1833.

For Petitioner's failure to submit the certified true copies of the Assailed Decision and Assailed Resolution within the time prescribed in the Resolution dated June 16, 2020, the Court dismissed the Petition for Review in a Resolution dated October 20, 2020.

Petitioner then posted a Motion for Reconsideration with Prayer to Admit Belated Compliance on November 18, 2020, seeking the reversal of the dismissal of the Petition for Review and attributed late compliance to heavy workload and other pressing deadlines brought about by the Enhanced Community Quarantine (ECQ) and the maternity leave of counsel.

In a Resolution dated January 12, 2021, the Court granted Petitioner's Motion for Reconsideration with Prayer to Admit Belated Compliance and reinstated the Petition for Review. Consequently, the Court ordered Respondent to file its comment to the Petition for Review within ten (10) days from notice.

On February 19, 2021, Respondent filed its Comment/Opposition To Petition for Review dated 27 February 2020.

On March 8, 2021, the Court referred the case to mediation in the Philippine Mediation Center-Court of Tax Appeals ("PMC-CTA") for initial appearance.

On July 9, 2021, the parties executed a No Agreement to Mediate having decided not to have the case mediated by the PMC-CTA.

On September 15, 2021, the above-captioned case was submitted for decision.

Assignment of Errors

The grounds cited by Petitioner for the nullification of the Assailed Decision and Assailed Resolution are quoted as follows:

> "I.
>
> The Second Division erred in ruling that the subject tax deficiency assessments and the subsequently issued Warrant of Distraint and/or Levy are void for violating respondent's right to due process inasmuch as the latter itself admitted receipt of the BIR Notices/Assessment.
>
> II.

> The Second Division erred in ruling that the issued tax deficiency assessments are void as herein respondent failed to disprove the validity, finality and enforceability [*sic*] subject assessments."

The Arguments of Parties

Petitioner's Arguments:

Petitioner argues that there was no violation of Respondent's right to due process in the face of its admission that it received the BIR notices such as the PAN and the FLD/FAN and an alleged confirmation by its witness that the recipient of these notices was respondent's administrative assistant. The receipt therefore, of these BIR notices by an authorized representative belies the claim of Respondent that it was denied due process. As regards the Final Decision on Disputed Assessment ("FDDA"), Petitioner avers that it was received by Mr. Ace Guerrero who worked in the administrative room, basement area of the IBM Building. Since Mr. Guerrero presented himself at Respondent's business address and actively received the FDDA on behalf of Respondent, Petitioner contends that regularity in the performance of official duty is presumed.

Petitioner also declares that the deficiency tax assessments issued are already final and executory for failure of Respondent to submit the necessary supporting documents within the time prescribed by Section 228 of the National Internal Revenue Code ("NIRC"), as amended. She narrates that Respondent received the FLD/FAN on June 09, 2011 and filed a protest on July 08, 2011, hence it had until September 06, 2011 (*i.e.*, the 60th day from July 08, 2011) to submit the supporting documents but Respondent allegedly failed to do so.

Even assuming that Respondent was able to submit the supporting documents on September 06, 2011, Petitioner submits that the last day to resolve the protest would have been on March 04, 2012 and counting thirty (30) days from date, it had until April 03, 2012 to file an appeal with the Court but records would show that the Petition for Review was filed only on December 04, 2013 rendering the assessments final and executory.

Respondent's Counter-Arguments:

Respondent maintains that the BIR notices such as the PAN, FLD/FAN and even the FDDA were not received by its authorized representatives and assumes that in a corporate set-up, the authorized representatives consist of Respondent's duly elected officers, the law firm of Bello, Valdez, Caluya & Fernandez as its legal counsel and/or its property manager. It then declares that the filing of a timely protest against

the PAN and the FLD/FAN did not negate or cure the violation of its right to due process.

Contrary to the contention of Petitioner, Respondent declares that the presumption of regularity in the performance of official duty cannot stand in the face of irregularities or failure to perform one's duty, particularly referring to the improper service of the said BIR notices to unauthorized persons.

Going beyond the technicalities of the receipt of the assessments, Respondent also assails the substantive merits thereof and claims that the income tax and VAT assessments are bereft of any legal basis. In particular, Respondent argues that a condominium corporation's association dues, membership fees and other assessments/charges are neither considered as profit or gain, hence not liable to income tax. Neither are they liable to VAT, citing a Supreme Court decision where it was supposedly held that such membership fees and association dues do not arise from transactions involving the sale, barter or exchange of goods or property, hence not subject to VAT.

The Ruling of the Court

We first determine the timeliness of the appeal made by the CIR with the Court *En Banc.*

Records show that Petitioner received the Assailed Resolution dated January 24, 2020 on January 29, 2020.

Petitioner had fifteen (15) days from the date of receipt of the assailed Resolution within which to file her Petition for Review with the Court *En Banc* pursuant to Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals ("RRCTA").[5]

Counting fifteen (15) days from January 29, 2020, Petitioner had until February 13, 2020 within which to file her Petition for Review with the Court *En Banc.*

On February 12, 2020, Petitioner filed a Motion for Extension of Time to File Petition for Review which was granted by the Court in a Minute

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[5] Section 3. *Who may appeal; period to file petition.-*

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. xxx xxx xxx

Resolution dated February 14, 2020 giving her until February 28, 2020 to file the same.

On February 28, 2020, Petitioner posted her Petition for Review *via* registered mail. Hence, the subject Petition for Review was filed on time.

We now proceed to the merits of the case.

Petitioner assails the decision of the Court in Division for cancelling the deficiency tax assessments for TY 2008 on the ground that Respondent's right to due process was violated for failure to properly serve the BIR notices to Respondent particularly the PAN, the FAN and the FDDA.

Petitioner disagrees with the finding of the Court in Division that there was improper service of the BIR notices as it maintains that records show that these were served to the Respondent's registered address and to authorized persons, contrary to the claim of the latter. Petitioner alleges that Respondent itself admitted receiving these official notices.

Petitioner's contention is impressed with merit.

The facts and records of this case show that as to the receipt of the PAN and the FAN, there should have been no more dispute as to its receipt as the fact thereof was already well established by the evidence on record.

Exhibit "P-10"[6] offered by Respondent during trial and admitted by the Court[7] is identified and described as follows:

> "**Exhibit "P-10"** – Preliminary Assessment Notice dated 06 May 2011 with **stamp 'received' on 12 May 2011**"

Also, in the narration of facts in the assailed Decision of the Court in Division, it was clearly stated that "[Respondent] received the Preliminary Assessment Notice (PAN) from [Petitioner] dated May 6, 2011."[8]

As to the receipt of the FAN/FLD, this is also well-established by the evidence on record when the protest to the FAN sent by counsel on behalf of Respondent stated quite explicitly that the latter received the same, and we quote a portion as follows:

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6 Docket, pp. 1433 -1434.
7 *Id.*, Court Resolution dated May 24, 2017, pp. 1594-1596.
8 *Id.*, Decision dated September 2, 2019, Page 2, p. 1727.

> "On June 7, 2011, the BIR issued an FLD and Assessment Notice under Demand No. 040-B058-08 for the fiscal year ending 31 December 2008, **received by our client on 09 June 2011**..."[9]

Further, the receipt of the FLD/FAN was itself acknowledged by Respondent when it offered in evidence Exhibit "P-11"[10] described as follows:

> "Exhibit 'P-11' – Formal Letter of Demand dated 07 June 2011 with **stamp 'received' on 09 June 2011**."[11]

From the foregoing, Respondent's receipt of the PAN and the FLD/FAN were established.

However, contrary to Petitioner's argument, the FLD/FAN did not become final and executory. Section 228 of the NIRC of 1997, as amended, states that the "assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment" and "[w]ithin sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final". In the case at bar, Respondent filed its protest (to the FLD/FAN) on July 08, 2011[12], and within sixty (60) days thereafter was able to submit the supporting documents in support of its protest on September 06, 2011.[13]

At any rate, while the records of the case disclose the fact of receipt of Respondent of the PAN and FLD/FAN, the instant Petition for Review will still be denied due to the violation of due process in the issuance of the assessment.

A perusal of the records of the case show that there is no indication that the BIR issued a Notice of Informal Conference ("NIC") to Respondent which is required under Section 3 of Revenue Regulations ("RR") No. 12-99, as follows:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:

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9 *Id.*, Exhibit "P-12", p. 1443; *Emphasis and underscoring supplied.*
10 *Id.*, pp. 1438-1439.
11 *Id.*, Formal Offer of Evidence, page 980-998; *Emphasis and underscoring supplied.*
12 *Id.*, Exhibit "P-12", page 1443-1475.
13 *Id.*, Exhibit "P-14", page 1496-1499.

> 3.1.1 ***Notice for informal conference.*** — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of 'Informal Conference,' in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.
>
> 3.1.2 Preliminary Assessment Notice (PAN). — xxx
>
> 3.1.3 Exceptions to Prior Notice of the Assessment. — xxx
>
> 3.1.4 Formal Letter of Demand and Assessment Notice. — xxx
>
> 3.1.5 Disputed Assessment. — xxx"[14]

In the case of *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*[15], the Supreme Court ruled, among others, that the taxpayer was deprived of due process when the BIR failed to issue a notice of informal conference as required by RR No. 12-99, in relation to Section 228[16] of the NIRC of 1997, as amended, as follows:

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[14] *Emphasis and underscoring supplied.*

[15] G.R. No. 172598, December 21, 2007.

[16] 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. xxx

> "**The facts show that PSPC was not accorded due process before the assessment was levied on it.** The Center required PSPC to submit certain sales documents relative to supposed delivery of IFOs by PSPC to the TCC transferors. PSPC contends that it could not submit these documents as the transfer of the subject TCCs did not require that it be a supplier of materials and/or component supplies to the transferors in a letter dated October 29, 1999 which was received by the Center on November 3, 1999. On the same day, the Center informed PSPC of the cancellation of the subject TCCs and the TDM covering the application of the TCCs to PSPC's excise tax liabilities. The objections of PSPC were brushed aside by the Center and the assessment was issued by respondent on November 15, 1999, without following the statutory and procedural requirements clearly provided under the NIRC and applicable regulations.
>
> What is applicable is RR 12-99, which superseded RR 12-85, pursuant to Sec. 244 in relation to Sec. 245 of the NIRC implementing Secs. 6, 7, 204, 228, 247, 248, and 249 on the assessment of national internal revenue taxes, fees, and charges. **The procedures delineated in the said statutory provisos and RR 12-99 were not followed by respondent, depriving PSPC of due process in contesting the formal assessment levied against it.** Respondent ignored RR 12-99 and **did not issue PSPC a notice for informal conference** and a preliminary assessment notice, **as required**.[17]

The NIC is a part of due process. Its issuance gives both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice.[18] However, this purpose is not served in the instant case because records do not show that a NIC was issued. Thus, for failure to observe the due process requirement, the assessment is void.

Although the issuance of the NIC was not one of the issues stipulated by the parties, it is a related issue that this Court deemed imperative to decide for the achievement of an orderly disposition of the case. This is allowed under Section 1, Rule 14 of the RRCTA, to wit:

> "SECTION 1. *Rendition of judgement.* – xxx.

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[17] *Emphasis and underscoring supplied.*

[18] Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., G.R. Nos. 201398-99 and 201418-19, October 03, 2018.

> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."

Moreover, in the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[19], the Supreme Court recognized that this Court is not bound by the issues specifically raised by the parties but may rule upon related issues necessary to achieve an orderly disposition of the case, *viz.*:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
> SECTION 1. *Rendition of judgment.* - x xx
>
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter."

WHEREFORE, premises considered, the Petition for Review filed with the Court *En Banc* through registered mail on February 28, 2020 is **DENIED** for lack of merit. Accordingly, the September 02, 2019 Decision and January 24, 2020 Resolution in CTA Case No. 8740 are **AFFIRMED**.

Consequently, Petitioner is **ENJOINED** and **PROHIBITED** from collecting against Respondent the amount representing the assessed deficiency taxes which was set aside and cancelled by this Court.

[19] G.R. No. 183408, July 12, 2017.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

(With due respect, please see my Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(On Leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

(With due respect, please see my Concurring and Dissenting Opinion)
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>EN BANC</u>

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 2229** (CTA Case No. 8740)
	Present:
-*versus*-	**DEL ROSARIO,** *P.J.,* **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** *<u>JJ.</u>*
IBM PLAZA CONDOMINIUM ASSOCIATION, INC., *Respondent.*	Promulgated: OCT 14 2022 10:31 am

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DISSENTING OPINION

MANAHAN, *<u>J.</u>*:

I wish to dissent from the majority opinion cancelling the deficiency tax assessments issued against respondent for taxable year 2008 for being violative of the latter's right to due process and vote to remand the case for further re-evaluation of its alleged tax liabilities based on the substantive merits of the Formal Letter of Demand and Final Assessment Notice (FLD/FAN).

The following Assignment of Errors raised by petitioner in her Petition for Review deserves a careful consideration in the light of the admissions made by respondent during trial, and we quote:

"I.

The Second Division erred in ruling that the subject tax deficiency assessments and the subsequently issued Warrant of Distraint and/or Levy are void for violating

> respondent's right to due process in as much **as the latter itself admitted receipt of the BIR Notices/Assessment.**
>
> II.
>
> The Second Division erred in ruling that the issued tax deficiency assessments are void as herein respondent failed to disprove the validity, finality and enforceability (*sic*) subject assessments."

I humbly believe that in the light of the admissions and evidence offered by respondent during trial, there should have been no more dispute as to its receipt of the Preliminary Assessment Notice (PAN) and the FLD/FAN.

To specify, respondent offered Exhibit "P-10,"[1] identified and described as follows:

> '**Exhibit "P-10"** – Preliminary Assessment Notice dated 06 May 2011 with **stamp "received" on 12 May 2011**'

Exhibit "P-10" was admitted by the Court in the Resolution dated August 31, 2018.[2]

In the narration of facts in the assailed Decision of the Court in Division, it was clearly stated that the "*petitioner received the Preliminary Assessment Notice (PAN) from respondent dated May 6, 2011.*"[3]

As to the receipt of the FAN, this is also well-established by the evidence on record when the protest to the FAN sent by counsel on behalf of respondent stated quite explicitly that the latter received the same, and I quote a portion as follows:

> "On June 7, 2011, the BIR issued an FLD and Assessment Notice under Demand No. 040-B058-08 for the fiscal year ending 31 December 2008, **received by our client on 09 June 2011** xxx xxx."[4] (Emphasis supplied)

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[1] Division Docket, Volume IV, pp. 1433 -1434.
[2] Division Docket, Volume IV, pp. 1686-1687.
[3] Page 2, third paragraph of the assailed Decision dated September 2, 2019.
[4] Exhibit "P-12", Division Docket, Volume IV, page 1443.

Further, the receipt of the FLD/FAN was itself acknowledged by respondent when it offered in evidence Exhibit "P-11"[5] described as follows:

> '"P-11" – Formal Letter of Demand dated 07 June 2011 with **stamp "received" on 09 June 2011**.'

In its *Comment/Opposition* to the Petition for Review, respondent lists down the persons authorized to receive official notices in a corporate set up, i.e., respondent's duly elected officers; the law firm of Bello, Valdez, Caluya & Fernandez as its legal counsel and/or its property manager, suggesting that outside of these persons, the service of said notices would be invalid.

I find the allegations of respondent bereft of merit.

It would be impractical and would create a difficult situation on the part of the government to wait for an opportune time to serve these notices to these listed persons to receive them because they may not be around at all times in the registered business address of the taxpayer, particularly the corporate officers and its legal counsel. This was even acknowledged by respondent's witness, Ms. Marie Edelgrace B. Ilagan, during the hearing held on February 18, 2015, and I quote as follows:

> Q. You also mentioned in your answer number 55 that the duly elected officers and JGLaw, which is IBM's Plaza counsel are the only authorized agent or representative of the corporation?
>
> A. Yes, ma'am.
>
> Q. Authorized Agent or Representative in what sense?
>
> A. Because the corporation or the Board of Directors of JGLaw are assigned as corporate entity of IBM Plaza.
>
> Q. So you mean to say that this agent or authorized representative, they are the only ones who should be receiving mail matters in behalf of the corporation IBM?
>
> A. Yes ma'am.

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[5] Division Docket, Volume IV, pp. 1438-1439.

> Q. With that, they are the only ones allowed to receive mail matters in behalf of the corporation?
>
> A. Yes ma'am.
>
> Q. Are they always present in the office to receive mail matters in behalf of the corporation?
>
> A. No Ma'am.

Truth to tell, it is common knowledge that the day-to-day receipt and/or delivery of official communication to any company is not the responsibility of the corporate officers much less its legal counsel.

The demands and consequences of prescription of actions or statute of limitations and the requirements of due process provided under various provisions of law be they administrative, civil or criminal, make it imperative for these same laws to prescribe certain modes of service as acceptable.

Records reveal that the Letter of Authority (LOA), the PAN and the FLD/FAN were served to respondent by personally delivering the same to its business address.

Section 3, sub-paragraph 3.1.6 of Revenue Regulations (RR)18-2013[6] which amended RR 12-99, recognizes personal or substituted service as two of the modes of service of official notices that may be availed of by the government, and I quote in part as follows:

> **"Revenue Regulations No. 18-2013**
>
> Section 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –
>
> 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 address or known address or wherever he may be found. A known address shall mean a place other than the registered address where

[6] "Amending Certain Sections of revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment."

> 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 required 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.
>
> **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.**" (emphases supplied)

In case the taxpayer is a juridical entity, substituted service may be availed of by serving the same where the business activities of the taxpayer are conducted, in which case, the notice may be left with the clerk or person having charge thereof, as stated in the afore-quoted section.

Contrary to the claim of respondent, the law and the implementing regulations do not require that only the corporate officers, legal counsel or property manager are the only ones authorized to receive official notices on behalf of a taxpayer.

Also, the fact of receipt of the Final Decision on Disputed Assessment (FDDA) which was allegedly served by registered mail, becomes insignificant in the face of the Warrant of Distraint and/or Levy (WDL) which served as the basis of the appeal of respondent to the Court. It may be recalled that respondent used the issuance of the WDL as its fulcrum for its Petition for Review with the Court in Division and sought for its nullification. I quote a portion of the Decision which ruled on the timeliness of respondent's Petition for Review with the Court in Division, thus:

> "Considering that petitioner received the **Warrant of Distraint and/or Levy** on November 4, 2013, the Court found that it had thirty (30) days from November 4, 2013, or until December 4, 2013, within which to file an appeal before the Court. Petitioner filed its Petition for Review on December 4, 2013, hence, within the 30-day period allowed by law to appeal." (Emphasis supplied)

It is well settled that the issuance of a WDL may be construed as a "final decision" on the protest which may be

appealable to the Court. In *Commissioner vs. Algue and the Court of Tax Appeals,*[7] citing the case of *Philippine Planters Investment Co. vs. Acting Commissioner* of Internal Revenue and *Vicente Hidalgo vs. Commissioner of Internal Revenue,* the Supreme Court held that the issuance of the WDL is the proof of finality of the assessment and such is tantamount to an outright denial of a taxpayer's protest, and we quote:

> 'xxx It is true that as a rule the warrant of distraint and levy is "proof of the finality of an assessment" and "renders hopeless a request for reconsideration," being "tantamount to an outright denial thereof and makes the said request deemed rejected."...'

Overall, I find the evidence presented by respondent itself during trial compelling enough to establish completed service which effectively contravenes its own assertion that it did not receive the documents sent by petitioner, more particularly the PAN and the FAN.

It is worthy to note that respondent did not dispute the correctness of the address indicated in the PAN, the FAN and the FDDA but focused its allegation of non-receipt on the lack of authority of the person/s to whom the PAN, FAN and the FDDA were served.

From the foregoing, I firmly believe that the assessments having been properly served to respondent, the latter's right to due process was not violated.

In view of the foregoing, I vote to remand the case to the Court in Division to determine the substantive merits of respondent's tax liabilities for taxable year 2008.

CATHERINE T. MANAHAN
Associate Justice

[7] G.R. No. L-28896 February 17, 1988.

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QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*,	**CTA *EB* NO. 2229** (CTA Case No. 8740)
	Present:
-versus-	**DEL ROSARIO,** *PJ*, **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
IBM PLAZA CONDOMINIUM ASSOCIATION, INC., *Respondent.*	Promulgated: OCT 14 2022 10:31am

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CONCURRING AND DISSENTING OPINION

CUI-DAVID, J.:

I concur with the *ponencia* that there is a valid receipt of the Preliminary Assessment Notice (PAN) and Formal Letter of Demand (FLD)/Final Assessment Notice (FAN) by respondent. However, I respectfully dissent from the majority opinion cancelling the assessment for petitioner's failure to observe the due process requirement given the non-issuance of a Notice for Informal Conference (NIC).

The NIC is part of the due process requirement in the issuance of a deficiency tax assessment stating the discrepancies in taxpayer's payment of its internal revenue taxes to afford the taxpayer an opportunity to present its side of the case.[1]

[1] Revenue Regulations No. 12-99. Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.

The requirement for the Bureau of Internal Revenue (BIR) to send taxpayers a NIC has existed since RR No. 12-1985,[2] which governed the procedure on administrative protests on assessments, to wit:

> **POST REPORTING NOTICE**
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> SEC. 1. *Post-reporting notice.* — Upon receipt of the report of findings, the Division Chief, Revenue District Officer or Chief, Office Audit Section, as the case may be, **shall send to the taxpayer a notice for an informal conference** before forwarding the report to higher authorities for approval. The notice which is Annex "A" hereof shall be accompanied by a summary of findings as basis for the informal conference.
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> In cases where the taxpayer has agreed in writing to the proposed assessment, or where such proposed assessment has been paid, the required notice may be dispensed with. (*Emphasis added*)

Since 1985, the NIC has been known as the Post-Reporting Notice (PRN).[3] PRN and NIC have been used interchangeably[4] by the BIR to refer to the notice given to taxpayers for them to be able to provide supporting evidence to refute the BIR's initial findings before the issuance of a PAN. This requirement of sending a PRN or NIC to taxpayers was retained in RR No. 12-1999,[5] implementing the 1997 Tax Code provisions on the assessment of taxes, civil penalties, and interest.

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[2] Procedure covering administrative protests on assessments of the Bureau of Internal Revenue, November 27, 1985.
[3] Annex "A" of RR 12-85.
[4] Revenue Memorandum Order (RMO) No. 013-09, Prescribing an Office Audit Program in the Assessment Division of Revenue Regional Offices, April 28, 2009; Revenue Delegation Authority Order No. 09-07, Temporary Delegation of Authority to Approve and Sign Various Accountable Forms, Notices, Permits, Reports, and Other Documents Processed by the LTS-Excise Large Taxpayers, August 31, 2007; RMO No. 56-99, Exemption from Revenue Memorandum Order (RMO) No. 53-98 on Mandatory Reporting Requirements and on RMO No. 38-88 on Revalidation of Letters of Authority for Cases under Investigation by Special Teams under the Enforcement Service, July 12, 1999.
[5] *Supra*, note 1. SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* — ||| 3.1 Mode of procedures in the issuance of a deficiency tax assessment:

> 3.1.1 *Notice for informal conference.* — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the c
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> ase may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

Hence, from1985 until the amendment of RR No. 12-1999 by RR No. 18-2013,[6] the BIR is required to issue a NIC (or PRN) to inform the taxpayer of its tax deficiencies. If the taxpayer disagrees with the BIR's findings, the taxpayer may, within a specific period, submit any documentary evidence to refute said findings.

Here, a PRN was issued on December 16, 2009[7] under Letter of Authority (LOA) No. 00038546 dated June 18, 2009, covering all internal revenue taxes of respondent for the taxable year (TY) 2008. Similar to the tenor of a NIC, the said PRN was issued requesting respondent to submit any documentary evidence to support any objection it may find in the proposed assessment amounting to ₱27,207,859.46 within fifteen (15) days from receipt thereof; otherwise, the BIR will presume that respondent is agreeable to said proposed assessment. This identity in the phraseology of the NIC and PRN convinces that the PRN served the purpose of the NIC. It may even be concluded that the PRN is the NIC in the instant case. As with pleadings and contracts, it is almost the universal rule that the caption is not controlling but what is embodied therein.[8] Courts are instead to be guided by the substance[9] of the document.[10]

Respondent replied to the PRN by letter dated January 22, 2010,[11] and was able to present its arguments and documentary evidence to refute the proposed assessment of petitioner. Hence, it cannot be said that respondent is deprived of its right to due process. It must be emphasized that a fundamental requirement of due process is that the party interested or affected must be able to present his or her case and submit evidence in support of it,[12] which was observed with the issuance of the PRN.

Thus, I humbly submit that the PRN issued in this case to respondent is, in essence, a NIC. A PRN is no different from a NIC for all intents and purposes. Hence, the Court should treat the PRN as such.

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[6] Issued on November 28, 2013, deleted the requirement of NIC.
[7] Exhibit "P-4", Division Docket – Vol. IV, pp. 1384-1386.
[8] *People v. Navarro*, G.R. No. L-38453-54, March 25, 1975, 159 SCRA 863-874.
[9] The Supreme Court in *Spouses Munsalud v. National Housing Authority*, G.R. No. 167181, December 23, 2008 defined substance as "that which is essential and is used in opposition to form. It is the most important element in any existence, the characteristic and essential components of anything, the main part, the essential import, and the purport."
[10] See *Heirs of Amarante v. Court of Appeals*, G.R. No. 76386, May 21, 1990, 264 SCRA 174-198.
[11] Exhibit "P-5", Division Docket – Vol. IV, pp. 1387-1404.
[12] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

The essence of a PRN is explained by the Supreme Court in the case of *Commissioner of Internal Revenue v. Menguito*,[13] as follows:

> The post-reporting notice and pre-assessment notice merely hint at the initial findings of the BIR against a taxpayer and invites the latter to an "informal" conference or clarificatory meeting. Neither notice contains a declaration of the tax liability of the taxpayer or a demand for payment thereof. Hence, the lack of such notices inflicts no prejudice on the taxpayer for as long as the latter is properly served a formal assessment notice.

Applying the foregoing, even considering that a NIC is not issued in this case, no prejudice was inflicted on respondent in view of the Court's finding that the PAN and FAN/FLD were actually received by it.

Accordingly, I vote to uphold the validity of the assessment notices.

LANEE S. CUI-DAVID
Associate Justice

[13] G.R. No. 167560, September 17, 2008.