REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MEDICAL CENTER TRADING CORPORATION,
Respondent.

CTA *EB* NO. 2473
(CTA Case No. 9412)

Members:

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

Promulgated:
FEB 22 2023 2:35pm

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a Petition for Review filed by the Commissioner of Internal Revenue[1] ("**Petitioner**" or "**CIR**"), under Section 3(b), Rule 8,[2] in relation to Section 2(a)(1), Rule

[1] Dated 2 June 2021, received by the Court on 9 June 2021; *En Banc* (*EB*) Docket, pp. 1-28.
[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.

4[3] of the Revised Rules of the Court of Tax Appeals[4] ("**RRCTA**"), assailing the *Decision* dated 23 September 2020[5] ("**assailed Decision**") and *Resolution* dated 22 March 2021[6] ("**assailed Resolution**") of the Third Division ("**Court in Division**") in CTA Case No. 9412 entitled *Medical Center Trading Corporation 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 Medical Center Trading Corporation ("**MCTC**") is a domestic corporation duly organized under Philippine laws, with principal office at Pioneer Street corner Shaw Boulevard, Pasig City.[8] Respondent is engaged in the business of general wholesale and retail; manufacture, buy, sell, import, trade, and deal in all kinds of drugs, medicines, druggists sundries, chemicals, metals, extracts, tinctures, pomades, ointments, liniments, toilet articles, perfumeries, surgical apparatus, physician and hospital equipment, instruments and supplies, oils, DIY-stuffs, and such other articles as may be carried in a general wholesale and retail business; to establish and maintain research laboratories; and acting as manufacturer's agent or representative of the corporation.[9]

Respondent is registered with the BIR under Certificate of Registration No. OCN-8RC0000049332 dated 14 June 1994, with Tax Identification Number ("**TIN**") 000-280-681.[10]

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[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.
[5] *EB* Docket, pp. 37-49; penned by Associate Justice Juanito C. Castañeda, with Associate Justice Cielito N. Mindaro-Grulla and Associate Justice Jean Marie A. Bacorro -Villena, concurring.
[6] *Id.*, pp. 51-145.
[7] Petition for Review, *En Banc* Docket, p. 2.
[8] Comment, *EB* Docket, p. 68.
[9] *Id.*
[10] Comment, *EB* Docket, p. 68; Annex "D", Division Docket – Vol. I, p. 77.

THE FACTS

The following are the undisputed facts as narrated in the assailed *Decision* in CTA Case No. 9412, to wit:[11]

> On May 25, 2010, [respondent] received from [petitioner] the Letter of Authority (LOA) No. LOA-116-2010-00000069 dated May 14, 2010, authorizing the examination of [respondent]'s books of accounts and other accounting records for taxable year ended December 31, 2009.
>
> During the course of audit, four (4) Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code were executed by [respondent], through its President, Mr. Sulpicio A. Batilaran, and accepted by [petitioner], through Mr. Alfredo V. Misajon, OIC Assistant Commissioner for Large Taxpayer Service, to wit:

	Date of Execution	**Stated Period of Extension**
1st Waiver	July 17, 2012	Until June 30, 2013
2nd Waiver	April 2, 2013	Until December 31, 2013
3rd Waiver	September 3, 2013	Until June 30, 2014
4th Waiver	March 27, 2014	Until December 31, 2014

> Thereafter, [respondent] received from the BIR a Preliminary Assessment Notice (**PAN**), wherein [respondent] was assessed deficiency income tax (**IT**), value-added tax (**VAT**), withholding tax — expanded (**EWT**), withholding tax — compensation (**WTC**), documentary stamp tax (**DST**), plus interest and compromise penalties, for taxable year 2009 in the aggregate amount of P1,000,782,684.57.
>
> On August 4, 2014, [respondent] received a Formal Letter of Demand (**FLD**) with Details of Discrepancies, and attached undated Audit Result/Assessment Notices (**FANs**) from [petitioner], containing assessments for deficiency income tax, VAT, EWT, WTC, and DST for taxable year 2009, in the aggregate amount of P1,009,814,663.69, inclusive of surcharge, interests and compromise penalties, broken down as follows:

Tax Type	**Amount**
Income Tax	₱ 667,916,886.27
VAT	325,667,994.36
EWT	14,248,326.32
WTC	1,612,937.06
DST	368,519.68
Total	₱ 1,009,814,663.69

[11] Annex "A", Petition for Review, pp. 18 to 27.

On September 2, 2014, [respondent] filed with the BIR its protest letter dated August 26, 2014, requesting for a reinvestigation of the findings in the FLD.

Thereafter, on July 4, 2016, [respondent] received the assailed undated FDDA with Details of Discrepancies, and attached undated FANs from [petitioner], demanding payment in the total reduced amount of P347,498,651.38, broken down as follows:

Tax Type	**Amount**
Income Tax	₱ 277,588,175.00
VAT	55,266,522.71
EWT	12,641,062.97
WTC	1,951,116.61
DST	51,774.09
Total	₱ 347,498,651.38

PROCEEDINGS BEFORE THE COURT IN DIVISION

Respondent filed a *Petition for Review*[12] before the Court's First Division on 3 August 2016. Petitioner filed his *Answer*[13] on 14 November 2016, against which a *Reply*[14] was filed by respondent on 28 November 2016.

Petitioner transmitted to the Court the *BIR Records* for the case on 12 January 2017.[15]

Respondent filed its *Pre-Trial Brief* on 3 March 2017,[16] while petitioner's *Pre-Trial Brief* was submitted on 6 July 2017.[17] The Pre-Trial Conference was held on 13 July 2017.[18]

The parties filed their *Joint Stipulation of Facts & Issues* ("**JSFI**") on 28 July 2017.[19] The said *JSFI* was approved by the Court's First Division in its *Resolution* dated 10 August 2017.[20] The *Pre-Trial Order* dated 19 September 2017 was then issued.[21]

[12] Division Docket – Vol. I, pp. 10-50.
[13] Division Docket – Vol. I, pp. 294-311.
[14] Division Docket – Vol. I, pp. 319-335.
[15] Division Docket – Vol. I, pp. 337-339.
[16] Division Docket – Vol. I, pp. 348-358.
[17] Division Docket – Vol. II, pp. 717-721.
[18] Order dated 27 April 2017, Division Docket — Vol. I, p. 397; Minutes of the hearing held on, and Order dated, 13 July 2017, Division Docket — Vol. II, pp. 725 to 729, and 732 to 734, respectively.
[19] Division Docket – Vol. II, pp. 752-759.
[20] Division Docket – Vol. II, pp. 767-768.
[21] Division Docket – Vol. II, pp. 887-914.

Trial proceeded. The report of the Independent Certified Public Accountant ("**ICPA**") was submitted to the Court on 11 August 2017.[22]

Respondent filed its *Formal Offer of Evidence* ("**FOE**") on 5 March 2018,[23] to which petitioner failed to file his comment.[24] The Court admitted respondent's exhibits with a few exclusions in a *Resolution* dated 11 September 2018.[25]

The case was then transferred from the First Division to the Third Division in an *Order* dated 26 September 2018.[26]

After respondent filed a *Motion for Reconsideration*[27] and *Amended FOE*, [28] the Court admitted certain exhibits of respondent but still explicitly denied some.[29] Respondent filed its *Tender of Excluded Evidence* on 20 May 2019,[30] which the Court in Division noted.[31]

Petitioner filed his *FOE* on 4 June 2019, [32] to which respondent filed its comment. [33] Petitioner's evidence was admitted by the Court in Division on 30 July 2019.[34]

On 4 September 2019, petitioner submitted his *Memorandum*; [35] respondent filed its *Memorandum* on 13 September 2019[36] and its *Reply Memorandum* on 20 September 2019.[37]

The case before the Court in Division was deemed submitted for decision on 26 September 2019.[38]

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[22] Division Docket – Vol. II, p. 769.
[23] Division Docket – Vol. III, pp. 932-2116.
[24] Division Docket – Vol. IV, p. 2119.
[25] Division Docket – Vol. IV, pp. 2127-2189.
[26] Division Docket – Vol. IV, p. 2190.
[27] Division Docket – Vol. IV, p. 2192-2209, dated 10 October 2018.
[28] Division Docket – Vol. IV, p. 2343 to Vol. VI, p. 3508., dated 26 February 2019.
[29] Division Docket – Vol. VI, pp. 3512-3517; Resolution dated 15 April 2019.
[30] Division Docket – Vol. VI, pp. 3518-3521.
[31] Division Docket – Vol. VI, pp. 3523-3524; Order dated 21 May 2019.
[32] Division Docket – Vol. VI, pp. 3525-3533.
[33] Division Docket – Vol. VI, pp. 3536-3539.
[34] Division Docket – Vol. VI, pp. 3550-3551.
[35] Division Docket – Vol. VI, pp. 3558-3579.
[36] Division Docket – Vol. VI, pp. 3581-3636.
[37] Division Docket – Vol. VII, pp. 3643-3658.
[38] Division Docket – Vol. VII, pp. 3660-3661; Resolution dated 26 September 2019.

On 23 September 2020, the Court in Division ruled in favor of respondent.[39] The dispositive portion reads:

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the subject assessments issued against petitioner under the FDDA for taxable year ended December 31, 2009 for deficiency income tax, VAT, EWT, WTC, and DST, inclusive of increments and compromise penalties in the aggregate amount of P347,498,651.37 are **CANCELLED and SET ASIDE**.
>
> **SO ORDERED**.

On 16 October 2020, petitioner filed his *Motion for Reconsideration (Re: Decision promulgated 23 September 2020).* [40] Respondent filed its *Comment/Opposition (To [Petitioner's] Motion for Reconsideration dated October 13, 2020)* on 23 December 2020.[41]

On 22 March 2021, the Court in Division promulgated its *Resolution*[42] with the following dispositive portion:

> **WHEREFORE**, premises considered, respondent's Motion for Reconsideration (Re: Decision promulgated 23 September 2020) is **DENIED** for lack of merit.
>
> **SO ORDERED**.

PROCEEDINGS BEFORE THE COURT *EN BANC*

On 9 June 2021, petitioner filed a *Petition for Review*[43] before the Court *En Banc.* In a *Resolution* dated 16 July 2021,[44] the Court ordered respondent to file its comment. Respondent filed its *Comment* on 25 October 2021.[45]

In a *Resolution* dated 16 February 2022,[46] the case was referred for mediation to the Philippine Mediation Center – Court of Tax Appeals ("**PMC-CTA**"). The Philippine Mediation

[39] Division Docket – Vol. VII, pp. 3671-3691.
[40] Division Docket – Vol. VII, pp. 3692-3718.
[41] Division Docket – Vol. VII, pp. 3723-3758.
[42] Division Docket – Vol. VII, pp. 3761-3768.
[43] *EB Docket*, pp. 1-63.
[44] *EB Docket*, pp. 65-66.
[45] *EB Docket*, pp. 67-116.
[46] *EB Docket*, pp. 502-503.

Center Unit issued a "*No Agreement to Mediate,*" stating that the parties "decide not to have their case mediated."[47]

Thus, on 8 April 2022, this Court issued a *Resolution* submitting the *Petition* for decision.[48]

Hence, this Decision.

ISSUES

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

I.

WITH ALL DUE RESPECT, THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT THE ASSESSMENTS WERE ISSUED BEYOND THE PERIOD TO ASSESS.

II.

THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT THE ABSENCE OF AN ELOA IN THE PRESENT CASE INVALIDATES THE SUBJECT TAX ASSESSMENTS.

III.

THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT THE ASSESSMENTS ARE VOID DUE TO THE ALLEGED ABSENCE OF A DEFINITE TAX LIABILITY AND DUE DATE IN THE FLD AND FAN.

PETITIONER'S ARGUMENTS

Petitioner claims that the Court in Division erred in ruling that the period to assess respondent has already prescribed. According to petitioner, considering that respondent has filed no DST return, the 10-year prescriptive period should apply. [49] Further, considering that there is a substantial difference between the reported amounts and the findings after the audit, the returns filed are false or fraudulent. However, even if the returns are not false or fraudulent and that the 10-year prescriptive period does not apply, the waivers of the statute of limitation should have effectively extended the prescribed period.

[47] *EB Docket*, p. 504.
[48] *EB Docket*, pp. 510-511.
[49] Petition for Review, pp. 4-6.

Petitioner avers that the failure to indicate the nature and the amount of the tax due is not fatal to the waiver's validity.[50] Accordingly, respondent should not be the first person to impugn the waiver's validity as respondent benefited from such waiver. [51] For petitioner, respondent is estopped. It even participated in the investigation by submitting evidence to the BIR.[52] Even if the waiver is defective, both are *in pari delicto.*[53]

Regarding the alleged lack of authority, petitioner asserts that the Court in Division erred in ruling that the absence of an eLOA invalidates the tax assessment. Petitioner posits that a valid LOA was issued; thus, an eLOA does not invalidate the assessment.[54]

Petitioner likewise avers that the Court in Division erred in ruling that the assessments are void due to the alleged absence of a definite tax liability and due date in the FLD/FAN. According to petitioner, what is essential is that the taxpayer was informed in writing of petitioner's findings and stated the facts and laws on which the assessment is based.[55] Petitioner posits that a due date is not required, even alleging that the Supreme Court engaged in judicial legislation in *Fitness by Design* and misapplied *Menguito.*[56]

Finally, petitioner also adds that the FLD/FAN he has issued contains a definite amount, notwithstanding the statement, "please note that the interest will have to be adjusted if paid beyond the dated specified therein." Accordingly, the interest will depend on when the respondent will pay its alleged tax liabilities.[57]

[50] Petition for Review, pp. 6-8.
[51] Petition for Review, pp. 8-11.
[52] Petition for Review, p. 12.
[53] Petition for Review, pp. 12-13.
[54] Petition for Review, pp. 14-16.
[55] Petition for Review, pp. 17-19.
[56] Petition for Review, p. 17.
[57] Petition for Review, pp. 21-25.

RESPONDENT'S ARGUMENTS

Respondent argues that petitioner's right to assess has already prescribed. Respondent points out that the FLD and the FDDA did not allege fraud against it; thus, the 10-year prescriptive period should not apply.[58] According to respondent, fraud must be proved and not merely alleged.[59]

In relation to the waivers, respondent argues against their validity. According to respondent, the nature and kind of tax should be indicated in the waiver for its validity.[60] Further, respondent states that petitioner failed to furnish it with a copy of the waiver as accepted by the BIR.[61] The BIR allegedly accepted another waiver beyond the three-year prescriptive period.[62]

Respondent adds that the Court in Division is correct in nullifying the FLD and the FDDA, considering that the BIR admitted that no new eLOA was issued.[63] Respondent cites Revenue Memorandum Order ("**RMO**") No. 69-2010, which required the replacement of LOAs with eLOAs.[64] It is respondent's position that the BIR is estopped from assailing such.[65]

Respondent also avers that the due date is required for the validity of the FLD and FDDA, contrary to petitioner's supposition.[66] Respondent points out the failure of petitioner to conduct a NIC.[67] Enumerating other alleged defects, respondent states that the BIR failed to complete its audit within the allegedly required 60-day period,[68] and the BIR failed to issue a new LOA on the reassignment of the 2009 audit to a new audit team.[69] All told, respondent alleges that the FAN, FLD, and FDDA are void.

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[58] Comment, p. 11, par. 51.
[59] Comment, p. 11, par. 53.
[60] Comment, pp. 13-14, pars. 54-56.
[61] Comment, pp. 14-15, par. 58(i).
[62] Comment, pp. 15-16, par. 58(ii).
[63] Comment, pp. 18-19, par. 61.
[64] Comment, pp. 19-20, par. 64.
[65] Comment, pp. 21-22, par. 68.
[66] Comment, pp. 23-24, pars. 72-73.
[67] Comment, pp. 28-30, pars. 78-81.
[68] Comment, pp. 32-39, pars. 84-91.
[69] Comment, pp. 39-48, pars. 92-99.

RULING OF THE COURT *EN BANC*

The Petition is not impressed with merit.

The Court *En Banc* has jurisdiction over the instant Petition.

Before We proceed to the merits of the case, We shall first determine whether the Court *En Banc* has jurisdiction over the instant *Petition.*

On 23 September 2020, the Court in Division promulgated a *Decision* granting respondent's *Petition for Review.*[70]

On 16 October 2020, respondent filed a *Motion for Reconsideration*[71] against the *Decision* of the Court in Division within the period provided under Section 3(b), Rule 8[72] of RRCTA.

On 22 March 2021, the said *Motion for Reconsideration* was denied by the Court in Division through a *Resolution,*[73] a copy of which was received by petitioner on 26 May 2021.

As provided under Section 3(b), Rule 8[74] of RRCTA, petitioner had fifteen (15) days from his receipt of the assailed *Resolution,* or until 10 June 2021 to file his *Petition for Review* before the CTA *En Banc.*

Within the reglementary period, on 9 June 2021, petitioner filed the instant *Petition.*[75]

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[70] *Supra* at note 39.
[71] *Supra* at note 40.
[72] *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.
[73] *Supra* at note 42.
[74] *Supra* at note 72.
[75] *Supra* at note 43

Having settled that the *Petition* was timely filed, We likewise rule that the CTA *En Banc* has jurisdiction to take cognizance of this *Petition* pursuant to Section 2(a)(1), Rule 4[76] of RRCTA.

We now discuss the merits.

At the first instance, We note that petitioner's arguments in his *Petition for Review* before this Court are mere reiterations of his arguments in the *Motion for Reconsideration* before the Court in Division. We shall nevertheless discuss petitioner's contentions.

Petitioner's right to assess respondent of deficiency internal revenue taxes for the taxable year 2009 has *partially* prescribed.

Petitioner contends that the Court in Division erred in ruling that the assessments were issued beyond the period to assess. He claims that there are exceptions to the three-year prescriptive period within which the BIR may assess a taxpayer under Section 222 of the NIRC, as amended, namely: if there is filing of a false or fraudulent return or failure to file a return; or if the CIR and the taxpayer agreed in writing before the expiration that the assessment would be made after such time. He submits that both circumstances are present in this case, *i.e.,* respondent filed no DST return for 2009, and the returns filed are false or fraudulent. Since respondent has filed no DST return, the 10-year prescriptive period should apply.[77] He further contends that, even if the returns are not false or fraudulent, it is his position that the parties signed valid waivers. As such, the assessment was validly made even if beyond the three-year prescriptive period.[78]

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[76] *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.
[77] *Supra* at note 49.
[78] Petition for Review, p. 3.

Respondent counters that prescription had already set in. It claims that the 2009 PAN, FLD, and FDDA did not allege fraud against it during the administrative stage of the tax audit process. It was only after the issuance of the assailed *Decision* and *Resolution* that petitioner alleged the existence of fraud.[79] Further, the existence of fraud must be proved and not merely alleged.[80] Without fraud, the 10-year prescriptive period should not apply.[81]

Respondent likewise argues that the waiver must specify the kind and amount of tax to be valid. The BIR admits its failure to do so. Thus, the Court in Division was correct in ruling that the subject waivers are invalid.[82]

Section 203 of the NIRC of 1997, as amended, states:

> *Section 203. Period of Limitation Upon Assessment and Collection.* - **Except** as provided in **Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That **in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed**. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. [*Emphasis and underscoring supplied.*]

Based on the foregoing, internal revenue taxes shall be assessed within *three (3) years* counted from the last day prescribed by law for filing the return or from the day the return was filed, whichever is later. Thus, assessments issued after the expiration of such period are no longer valid and effective. However, Section 222 of the same law provides exceptions to the said three-year period of limitation. Accordingly:

> *Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.-*
>
> (a) **In the case of a false or fraudulent return with intent to evade tax or of failure to file a return**, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, **at any time within ten (10) years after the discovery of the falsity, fraud or**

[79] Comment, p. 11, par. 52.
[80] *Supra* at note 59.
[81] *Supra* at note 58.
[82] Comment, p. 13, par. 56.

> **omission**: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. [*Emphasis and underscoring supplied.*]

Section 222(a) provides that in case of a false or fraudulent return with the intent to evade tax, or in case of failure to file a return, the extraordinary prescriptive period of *ten (10) years* shall apply. On the other hand, Section 222(b) provides that if, before the expiration of the time prescribed in Section 203 for the assessment of the tax, the CIR and the taxpayer agreed in writing to the assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

The oft-cited case of *Aznar vs. Court of Tax Appeals*[83] discusses the nature of fraud that merits the application of the 10-year prescriptive period.

> The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law. It must amount to intentional wrong doing [sic] with the sole object of avoiding the tax. It necessarily follows that a mere mistake cannot be considered as fraudulent intent, and if both petitioner and respondent Commissioner of Internal Revenue committed mistakes in making entries in the returns and in the assessment, respectively, under the inventory method of determining tax liability, it would be unfair to treat the mistakes of the petitioner as tainted with fraud and those of the respondent as made in good faith.

[83] G.R. No. L-20569, 23 August 1974, 157 SCRA 510-536.

In determining whether the return filed is false or fraudulent, jurisprudence has consistently held that fraud is a question of fact that should be alleged and duly proven.[84] Fraud cannot be presumed.[85] Fraud is never imputed and the courts never sustain findings of fraud upon circumstances, which, at most, create only suspicion and the mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion.[86] The taxpayer's resort to minimize taxes must be in the context of fraud, which must be proven by clear and convincing evidence and cannot be based on mere speculation.[87]

A cursory reading of the PAN[88] and FLD with Details of Discrepancies[89] reveals that these did not contain any factual allegation of fraud. Petitioner neither states nor points to any other detail establishing actual fraud committed by respondent.

Indeed, petitioner failed to overcome the burden of evidence required to establish fraud. As such, We are one with the Court in Division in ruling that, except for the DST assessment, the 3-year prescriptive period should apply. For the DST assessment, since respondent failed to prove the filing of the DST return, the 10-year prescriptive period applies.

As regards the issue on the validity of the *Waiver of the Defense of Prescription under the Statute of Limitations*, petitioner argues that it is not always required to state the exact amount in the waiver considering that there is no assessment yet, and the final amount is not yet available at the time of its execution.[90]

Petitioner also posits that, by respondent's acts or representation, and after benefitting from the effects of the waivers, the latter should not be the first person to impugn their validity.[91] For petitioner, respondent is estopped considering that it did not only execute one, but *four* Waivers. After executing the waivers, it even participated in the investigation by submitting evidence to the BIR.[92] Even if the waivers are

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[84] *Commissioner of Internal Revenue vs. Ayala Securities Corp.*, G.R. No. L-29485, 31 March 1976, 162 SCRA 287-298.
[85] *Commissioner of Internal Revenue vs. Air India*, G.R. No. 72443, 29 January 1988, 241 SCRA 689-702.
[86] *Commissioner of Internal Revenue vs. Javier*, Jr., G.R. No. 78953, 31 July 1991, 276 SCRA 914-923.
[87] *Commissioner of Internal Revenue vs. The Hongkong Shanghai Banking Corp. Limited-Philippine Branch*, G.R. No. 227121, 9 December 2020.
[88] Division Docket – Vol. II, pp. 14 and 294.
[89] Exhibit "P-52", Division Docket – Vol. II, pp. 641-654; Exhibit "R-12", BIR Records, pp. 508-516.
[90] Petition for Review, pp. 6-8.
[91] Petition for Review, pp. 8-11.
[92] Petition for Review, p. 12.

defective, the subsequent acts of respondent puts it in estoppel to question the said waivers.[93]

On the other hand, respondent counter-argues against the validity of the subject waivers. It maintains that the waiver must specify the kind and amount of taxes subject thereof to be valid.[94] It claims that a waiver is a bilateral agreement between the taxpayer and the BIR to extend the period to assess or collect deficiency taxes on a certain date. Logically, there can be no agreement if the nature and amount of the taxes to be assessed or collected are not indicated. Indeed, specific information in the waiver is necessary for its validity.[95]

Further, respondent states that petitioner failed to furnish respondent with a copy of the waiver as accepted by the BIR.[96] Another waiver was allegedly accepted by the BIR beyond the three-year prescriptive period.[97]

We discuss.

In *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue* (*Philippine Journalists* case)[98] the Supreme Court explained the requirement to furnish the taxpayer with a copy of the waiver, *viz.:*

> Finally, the records show that petitioner was not furnished a copy of the waiver. Under RMO No. 20-90, the waiver must be executed in three copies with the second copy for the taxpayer. The Court of Appeals did not think this was important because the petitioner need not have a copy of the document it knowingly executed. It stated that the reason copies are furnished is for a party to be notified of the existence of a document, event or proceeding.
>
> **The flaw in the appellate court's reasoning stems from its assumption that the waiver is a unilateral act of the taxpayer when it is in fact and in law an agreement between the taxpayer and the BIR**. When the petitioner's comptroller signed the waiver on September 22, 1997, it was not yet complete and final because the BIR had not assented. There is compliance with the provision of RMO No. 20-90 only after the taxpayer received a copy of the waiver accepted by the BIR. **The requirement to furnish the taxpayer with a copy**

[93] Petition for Review, pp. 12-13.
[94] Comment, pp. 13-14, pars. 54-56.
[95] Respondent cited *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.
[96] Comment, pp. 14-15, par. 58(i).
[97] Comment, pp. 15-16, par. 58(ii).
[98] G.R. No. 162852, 16 December 2004, 488 SCRA 218-235.

> **of the waiver is not only to give notice of the existence of the document but of the acceptance by the BIR and the perfection of the agreement**. [*Emphasis and underscoring supplied.*]

However, petitioner posits that respondent is in estoppel, and thus, cannot assail the validity of the waivers.

It is at this point that We find for petitioner.

In *Commissioner of Internal Revenue vs. Kudos Metal Corporation (Kudos Metal case),*[99] the Supreme Court ruled on BIR's invocation of estoppel. We quote:

> Moreover, **the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued**. As stated earlier, the BIR failed to verify whether a notarized written authority was given by the respondent to its accountant, and to indicate the date of acceptance and the receipt by the respondent of the waivers. **Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer.** To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed. [*Emphasis and underscoring supplied.*]

In *Kudos Metal case,* the Supreme Court laid down the guidelines for the execution of a valid waiver in accordance with RMO No. 20-90[100] issued on 4 April 1990, and Revenue Delegation Authority Order ("**RDAO**") No. 05-01 issued on 2 August 2001, to wit:

> ... RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:
>
> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after ___ 19 ___," which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by

[99] G.R. No. 178087, 5 May 2010, 634 SCRA 314-330.
[100] Proper Execution of Waiver of Statute of Limitations Under the NIRC

the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form duly notarized, and executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.

... ...

However, in *Commissioner of Internal Revenue vs. Next Mobile, Inc.* (*Next Mobile* case),[101] the Supreme Court recognized that when both parties are at fault, the waivers shall be upheld. We quote:

> To be sure, both parties in this case are at fault.
>
> Here, respondent, through Sarmiento, executed five Waivers in favor of petitioner. However, her authority to sign these Waivers was not presented upon their submission to the BIR. In fact, later on, her authority to sign was questioned by respondent itself, the very same entity that caused her to sign such in the first place. Thus, it is clear that respondent violated RMO No. 20-90 which states that in case of a corporate taxpayer, the waiver must be signed by its responsible officials and RDAO 05-01 which requires the presentation of a written and notarized authority to the BIR.

[101] G.R. No. 212825, 7 December 2015.

> Similarly, the BIR violated its own rules and was careless in performing its functions with respect to these Waivers. It is very clear that under RDAO 05-01 it is the duty of the authorized revenue official to ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same. It also instructs that in case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. Furthermore, it mandates that the waiver should not be accepted by the concerned BIR office and official unless duly notarized.
>
> Vis-à-vis the five Waivers it received from respondent, the BIR has failed, for five times, to perform its duties in relation thereto: to verify Ms. Sarmiento's authority to execute there, demand the presentation of a notarized document evidencing the same, refuse acceptance of the Waivers when no such document was presented, affix the dates of its acceptance on each waiver, and indicate on the Second Waiver the date of respondent's receipt thereof.
>
> **Both parties knew the infirmities of the Waivers yet they continued dealing with each other on the strength of these documents without bothering to rectify these infirmities. In fact, in its Letter Protest to the BIR, respondent did not even question the validity of the Waivers or call attention to their alleged defects**. [*Emphasis and underscoring supplied.*]

In the *Next Mobile* case,[102] the Supreme Court etched an exception to the general rule that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90[103] and RDAO No. 05-01,[104] it is invalid and ineffective to extend the prescriptive period to assess taxes. According to the Supreme Court, if the parties are *in pari delicto* or "in equal fault," the validity of the waivers should be upheld.

In *Commissioner of Internal Revenue vs. Transitions Optical Philippines, Inc.* (*Transitions Optical* case),[105] the Supreme Court ruled that the taxpayer is in estoppel for only raising the issue of the waivers' validity in its Petition for Review filed with the CTA.

[102] *Supra* at note 101.
[103] *Supra* at note 100.
[104] Delegation of Authority to Sign and Accept Waiver of Defense of Prescription Under Statute of Limitations, 2 August 2001.
[105] G.R. No. 227544, 22 November 2017.

In *Asian Transmission Corp. vs. Commissioner of Internal Revenue* (*Asian Transmission* case),[106] the Supreme Court had the opportunity to tackle a case with a similar factual milieu to the instant *Petition*, to wit:

> Verily, both parties in those cases contributed flaws to the waivers. However, **the Court upheld the waivers as effective because, although both parties caused separate defects, the taxpayer contested the waivers' validity only on appeal.**
>
> A more circumspect appreciation of the relevant jurisprudence reveals that **the taxpayer's contributory fault or negligence coupled with estoppel will render effective an otherwise flawed waiver, regardless of the physical number of mistakes attributable to a party**.
>
> In other words, **while a waiver may have been deficient in formalities, the taxpayer's belated action on questioning its validity tilts the scales in favor of the tax authorities**.
>
> In the present case, the Court considers the following:
>
> First, it is no longer disputed that the subject defects were the result of both parties failure to observe diligence in performing what is incumbent upon them, respectively, relative to the execution of a valid waiver, particularly the requirements outlined in applicable BIR issuances. That the defects attributable to one party had been greater in number cannot diminish the seriousness of the counter-party's fault or negligence.
>
> Second, ATC issued eight successive Waivers over the course of four years (2004-2008). The Waivers had always been marred by defects and, yet, ATC continued to correspond with the tax authorities and allowed them to proceed with their investigation, as extended by the Waivers in question.
>
> Third, when the CIR issued the FLD, ATC did not question the Waivers' validity. It raised this argument for the first time in its appeal to the CTA, after obtaining an unfavorable CIR decision on their administrative protest.
>
> That ATC acquiesced to the BIR's extended investigation and failed to assail the Waivers' validity at the earliest opportunity gives rise to estoppel. Moreover, ATC's belated attempt to cast doubt over the Waivers' validity could only be interpreted as a mere afterthought to resist possible tax liability.

[106] G.R. No. 230861 (Resolution), 14 February 2022.

> Verily, it has been held that **the doctrine of estoppel, as a bar to the statute of limitations protecting a taxpayer from prolonged investigations, must be applied sparingly**. [*Emphasis and underscoring supplied.*]

We find the exception to the general rule applicable to the instant *Petition.*

Similar to the *Next Mobile*[107] and *Asian Transmission*[108] cases, a series of waivers was issued in favor of respondent, and similar to the *Transitions Optical*[109] and *Asian Transmission*[110] cases, despite petitioner noting the waivers in the FAN/FLD issued against respondent, respondent did not tackle its alleged invalidity in the protest. It is only in its *Petition for Review* before the Court in Division that it first raised the issue of invalidity of the waivers. Verily, by continuing on executing the waivers, respondent allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it.[111]

Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing.[112] As such, despite the defects in the executed waivers, We rule against the invalidity of such.

Moreover, the subject waivers are valid even if they failed to indicate the nature and the amount of tax due against respondent.

Here, the four waivers were executed as follows:

	Date of Execution
1st Waiver[113]	July 17, 2012
2nd Waiver[114]	April 2, 2013
3rd Waiver[115]	September 3, 2013
4th Waiver[116]	March 27, 2014

[107] *Supra* at note 101.
[108] *Supra* at note 106.
[109] *Supra* at note 105.
[110] *Supra* at note 106.
[111] *Commissioner of Internal Revenue vs. Next Mobile, Inc., supra* at note 101.
[112] *Department of Public Works and Highways vs. Quiwa*, G.R. No. 183444 (Resolution), 8 February 2012, 681 SCRA 485-492.
[113] Exhibit "R-5", BIR Records, p. 321.
[114] Exhibit "R-6", BIR Records, p. 324.
[115] Exhibit "R-7", BIR Records, p. 326.
[116] Exhibit "R-8", BIR Records, p. 329.

On 4 August 2014, or 130 days after the execution of the fourth waiver, respondent received the FLD with Details of Discrepancies and the undated Audit Results/Assessment Notices. Since the waivers were executed prior to the issuance of the FLD/FANs, respondent could not be expected to indicate the specific type and amount of tax at the time it executed the waiver since the said information were not yet available.

Nonetheless, the waiver form provided under RMO No. 20-90, which requires the type and amount of tax, has been revised and abandoned. As stated in Revenue Memorandum Circular ("**RMC**") No. 029-12 issued on June 29, 2012, the Waiver format in RMO No. 20-90 should not be used anymore as the same has been revised per RDAO No. 05-01, *viz.*:

> "The provisions of RMO No. 20-90 should be strictly complied with in order for a Waiver to be valid. However, **the Waiver form prescribed in RMO No. 20-90 should no longer be used as the same has been revised per RDAO No. 05-01**.
>
> A copy of the Waiver form prescribed under RDAO No. 05-01 is hereto attached as Annex "A" for reference. [*Emphasis supplied*]

The waiver format prescribed under RDAO No. 05-01, which is the format applicable to respondent, does not require the taxpayer to indicate the specific type and amount of tax.

Having established the validity of the waivers, We shall now determine whether the waivers have been *timely* executed so as to extend the prescriptive period, and if in the affirmative, whether the assessments have been issued within the extended prescriptive period.

First, We consider the deadline for the filing of the VAT returns on the 25th day following the close of each taxable quarter,[117] and the filing of expanded withholding tax ("**EWT**") and withholding tax on compensation ("**WTC**") remittance returns ten (10) days after the end of each month, except for the month of December, which shall be filed on or before January 15 of the following year.[118]

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[117] Section 114(A), NIRC of 1997, as amended.
[118] Section 2.58(A)(2)(a), RR No. 2-1998, as amended.

Second, as previously quoted, the reckoning of the 3-year period is the date of actual filing or the deadline, whichever is later.[119]

Return	Actual date of filing[120]	Reckoning of three-year period	Prescriptive period
Income Tax, 2009	April 12, 2010	April 15, 2010	April 15, 2013
VAT 1Q, 2009	April 17, 2009	April 25, 2009	April 25, 2012
VAT 2Q, 2009	July 17, 2009	July 25, 2009	July 25, 2012
VAT 3Q, 2009	October 19, 2009	October 25, 2009	October 25, 2012
VAT 4Q, 2009	January 19, 2010	January 25, 2010	January 25, 2013
EWT, January 2009	February 09, 2009	February 10, 2009	February 10, 2012
EWT, February 2009	March 09, 2009	March 10, 2009	March 10, 2012
EWT, March 2009	April 07, 2009	April 10, 2009	April 10, 2012
EWT, April 2009	May 07, 2009	May 10, 2009	May 10, 2012
EWT, May 2009	June 08, 2009	June 10, 2009	June 10, 2012
EWT, June 2009	July 06, 2009	July 10, 2009	July 10, 2012
EWT, July 2009	August 07, 2009	August 10, 2009	August 10, 2012
EWT, August 2009	September 08, 2009	September 10, 2009	September 10, 2012
EWT, September 2009	October 06, 2009	October 10, 2009	October 10, 2012
EWT, October 2009	November 05, 2009	November 10, 2009	November 10, 2012
EWT, November 2009	December 07, 2009	December 10, 2009	December 10, 2012
EWT, December 2009	January 09, 2010	January 15, 2010	January 15, 2013
WTC, January 2009	February 09, 2009	February 10, 2009	February 10, 2012
WTC, February 2009	March 09, 2009	March 10, 2009	March 10, 2012
WTC, March 2009	April 07, 2009	April 10, 2009	April 10, 2012
WTC, April 2009	May 07, 2009	May 10, 2009	May 10, 2012
WTC, May 2009	June 08, 2009	June 10, 2009	June 10, 2012
WTC, June 2009	July 06, 2009	July 10, 2009	July 10, 2012
WTC, July 2009	August 07, 2009	August 10, 2009	August 10, 2012
WTC, August 2009	September 08, 2009	September 10, 2009	September 10, 2012
WTC, September 2009	October 06, 2009	October 10, 2009	October 10, 2012
WTC, October 2009	November 05, 2009	November 10, 2009	November 10, 2012
WTC, November 2009	December 07, 2009	December 10, 2009	December 10, 2012
WTC, December 2009	January 09, 2010	January 15, 2010	January 15, 2013

Next, We note the following dates of execution and stated periods of extension of the waivers:

	Date of Execution	Stated Period of Extension
1st Waiver[121]	July 17, 2012	Until June 30, 2013
2nd Waiver[122]	April 2, 2013	Until December 31, 2013
3rd Waiver[123]	September 3, 2013	Until June 30, 2014
4th Waiver[124]	March 27, 2014	Until December 31, 2014

[119] Section 203, NIRC of 1997, as amended.
[120] Division Docket – Vol. II, pp. 466-583.
[121] Exhibit "R-5", BIR Records, p. 321.
[122] Exhibit "R-6", BIR Records, p. 324.
[123] Exhibit "R-7", BIR Records, p. 326.
[124] Exhibit "R-8", BIR Records, p. 329.

Considering that the first waiver was executed on **17 July 2012**, We note that the period to assess the following returns has prescribed:

Return	Prescriptive period
EWT, January 2009	February 10, 2012
WTC, January 2009	February 10, 2012
EWT, February 2009	March 10, 2012
WTC, February 2009	March 10, 2012
EWT, March 2009	April 10, 2012
WTC, March 2009	April 10, 2012
VAT 1Q, 2009	April 25, 2012
EWT, April 2009	May 10, 2012
WTC, April 2009	May 10, 2012
EWT, May 2009	June 10, 2012
WTC, May 2009	June 10, 2012
EWT, June 2009	July 10, 2012
WTC, June 2009	July 10, 2012

The following returns remained:

Return	Prescriptive period
Income Tax, 2009	April 15, 2013
VAT 2Q, 2009	July 25, 2012
VAT 3Q, 2009	October 25, 2012
VAT 4Q, 2009	January 25, 2013
EWT, July 2009	August 10, 2012
EWT, August 2009	September 10, 2012
EWT, September 2009	October 10, 2012
EWT, October 2009	November 10, 2012
EWT, November 2009	December 10, 2012
EWT, December 2009	January 15, 2013
WTC, July 2009	August 10, 2012
WTC, August 2009	September 10, 2012
WTC, September 2009	October 10, 2012
WTC, October 2009	November 10, 2012
WTC, November 2009	December 10, 2012
WTC, December 2009	January 15, 2013

The absence of an electronic Letter of Authority does not invalidate the assessment.

The assessment cannot be invalidated on the ground that the revenue officers conducting the audit lack authority.

Petitioner asserts that the Court in Division erred in ruling that the absence of an eLOA invalidates the tax assessment. Petitioner posits that a valid LOA was issued, and thus, an eLOA does not invalidate the assessment.[125]

On the other hand, respondent contends that the Court in Division is correct in nullifying the FLD and the FDDA, considering that it was admitted by the BIR that no new eLOA was issued.[126] Respondent cites RMO No. 69-2010, which required the replacement of LOAs with eLOAs.[127] It is respondent's position that the BIR is estopped from assailing such.[128]

We find for petitioner.

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[129] The issuance of an LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.[130]

Section 13 of NIRC of 1997, as amended, is instructive, to wit:

> *Section 13. Authority of a Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any

[125] Petition for Review, pp. 14-16.
[126] Comment, pp. 18-19, par. 61.
[127] Comment, pp. 19-20, par. 64.
[128] Comment, pp. 21-22, par. 68.
[129] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010, 649 SCRA 519-537).
[130] *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*, G.R. No. 242670, 10 May 2021.

> deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself. [*Emphasis and underscoring supplied.*]

Correlatively, Section 6(A) of NIRC of 1997, as amended provides:

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

Additionally, Section D(4) of RMO No. 43-1990[131] provides:

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

Based on the afore-quoted provisions, it is clear that unless authorized by the CIR himself or by his duly authorized representative through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through the best evidence obtainable, inventory-taking, or surveillance among others have nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.[132]

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[131] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, 20 September 1990.
[132] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, 5 April 2017, 808 SCRA 528-556

The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality.[133] The Supreme Court elucidates in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.* (*McDonalds* case),[134] the important relation of the receipt of LOA by the taxpayer to the due process requirement, *viz.*:

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

Accordingly, the purpose of an LOA is to comply with due process: that the taxpayer needs to be informed that the revenue officer knocking at the taxpayer's door has the proper authority to examine the latter's books of accounts.

Respondent cites RMO No. 69-2010,[135] wherein the BIR mandates the replacement of existing LOAs with eLAs. According to the said RMO, "all LAs, whether manual or electronic, issued from March 1, 2010 covering cases for 2009 and other taxable years, as well as LAs issued by the Commissioner pursuant to RMC No. 61-2010, shall be retrieved and replaced with the new eLA form (BIR Form No. 1966)."[136]

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[133] *Supra* at note 130.
[134] G.R. No. 242670, 10 May 2021.
[135] Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment, 11 August 2010.
[136] Part III, Item 6, RMO No. 69-2010.

Respondent does not deny receipt of the manual LOA. In fact, respondent received from petitioner LOA No. LOA-116-2010-00000069 dated 14 May 2010 on 25 May 2010.[137] What is being assailed herein is the fact that the manual LOA was not replaced by an eLA.

To this Court's mind, this is merely a matter of form of the LOA and shall not affect petitioner's right to due process. In line with the digitization of the government and for expediency of the audit process, an LOA shall be replaced by an eLA as provided under RMO No. 69-2010. However, RMO No. 69-2010 does not state that the conduct of the audit would be invalidated in the event that a new eLA is not issued. Neither does it provide a blanket revocation of the manual LOA if the said manual LOA is not replaced with an eLA.

The fact that an LOA was issued already satisfies the reasoning of the Supreme Court in the *McDonalds* case[138] -- that the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his or her books of accounts.

Thus, We rule that the non-issuance of the eLA, when an LOA has been issued, does not violate respondent's right to due process.

Respondent additionally contends that the BIR failed to issue a new LOA on the reassignment of the 2009 audit to a new audit team. [139]

We likewise rule in favor of petitioner.

The LOA received by respondent names Revenue Officers ("**RO**") Wilfredo Reyes, Miguel Sulit, William Sundiang, Alpha Betty Tanguilig, and Fenalon Chan and Group Supervisor ("**GS**") Joriz Saldajeno.[140] However, in the Memorandum Reports,[141] only ROs Miguel Sulit and William Sundiang were named as ROs, while the GS was changed to Wilfredo Reyes. Upon a perusal of the records and based on the confirmation of GS Reyes,[142] no new LOA was issued to reflect this change.

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[137] Exhibit "R-1", BIR Records, p. 251.
[138] *Supra* at note 134.
[139] Comment, pp. 39-48, pars. 92-99.
[140] *Supra* at note 137.
[141] Exhibits "R-9" and "R-11".
[142] Transcript of Stenographic Notes, 21 May 2019 hearing, pp. 12-14.

Part C, Item V of RMO No. 43-1990[143] provides:

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

It is clear under said RMO that a new LOA is required should there be a reassignment or transfer of cases. This, again, is aimed at satisfying the requirements of due process: that the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his or her books of accounts.

However, what was received by respondent is a *Notice of Change of Audit Jurisdiction* dated 14 May 2010.[144]

This *Notice of Change of Audit Jurisdiction* does not satisfy the exacting requisite of due process. The *McDonalds* case[145] is clear and categorical in this matter:

> It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers. **However, notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts**. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.
>
> The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a

[143] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, 20 September 1990.
[144] Exhibit "P-49", Division Docket Vol. II – p. 631.
[145] *Supra* at note 134.

validly issued LOA. But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.

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

A perusal of the LOA in the instant case reveals that the revenue officers named therein are the same persons who recommended the issuance of the PAN and FLD against respondent. We quote the pertinent portion of RO Wilfredo Reyes' direct testimony in his *Judicial Affidavit, viz.*:[146]

> 30. Q: After petitioner executed a fourth Waiver of the Defense of Prescription, what happened next if any?
>
> A: Result of the conduct of **our** audit investigation revealed that petitioner is liable for deficiency taxes, thus on 19 May 2014, **we** recommended through a Memorandum that the Preliminary Assessment Notice (PAN) be issued.
>
> 31. Q: You mentioned of a Memorandum recommending the issuance of the Preliminary Assessment Notice (PAN), if this Memorandum will be shown to you, will you be able to identify the same?
>
> A: Yes.
>
> ...

[146] Exhibit "R-18", Division Docket, Vol. 2, pp. 701-715.

36. Q: After the Preliminary Assessment Notice (PAN) was issued, what happened next if any?

A: Petitioner was not able to refute **our** audit findings contained in the Preliminary Assessment Notice (PAN). Thus, on 18 June 2014, **we** recommended through a Memorandum that the Formal Letter of Demand be issued. [*Emphasis and underscoring supplied.*]

This was even admitted by respondent in its *Memorandum* before the Court in Division. [147] The pertinent portion is reproduced below:

> 63. The Letter of Authority (Exhibit "P-48") for this case states that the Revenue Officers Wilfredo Reyes, Miguel Sulit, William Sundiam, Alpha Betty Tanguilig and Fenalon Chan, together with Group Supervisor Joriz Saldajeno are the BIR officers authorized to conduct the special audit of Petitioner for taxable year ended December 31, 2009. ...
>
> 64. However, under the BIR's Memorandum (Exhibit "R-9'), which recommended the issuance of Preliminary Assessment Notice and Memorandum (Exhibit "R-11") which recommended the issuance of the Formal Letter of Demand, **the signing Revenue Officers were RO Miguel Sulit and RO William Subdiam [sic], while the approving Group Supervisor was RO Wilfredo Reyes**.. ... [*Emphasis and underscoring supplied.*]

Thus, respondent's audit may be continued by ROs Reyes, Sulit, and Sundiang without the need of a new LOA, as they were already given the authority to do so under the original LOA. Clearly, no unauthorized person conducted the audit.

For purposes of conferring authority, the subject *Notice of Change of Audit Jurisdiction* is a mere superfluity at this point, since with or without it, ROs Reyes, Sulit, and Sundiang could continue with the investigation, as the source of their authority to investigate emanates from the original LOA and not from the *Notice of Change of Audit Jurisdiction.*

Hence, the assessment was conducted with the necessary authority.

Given the foregoing, We rule that the assessment cannot be invalidated on the ground of lack of authority of the revenue officers.

[147] Division Docket, Vol. 6, p. 3160.

The assessment is void for failure to indicate a due date.

Petitioner avers that the Court in Division erred in ruling that the assessments are void due to the alleged absence of a definite tax liability and due date in the FLD/FAN. According to petitioner, what is essential is that the taxpayer was informed in writing of the findings of the petitioner and stating therein the facts and laws on which the assessment is based.[148] Petitioner posits that a due date is not required, even alleging that the Supreme Court engaged in judicial legislation in *Fitness by Design* and misapplied *Menguito.*[149]

Respondent counter-avers that the due date is required for the validity of the FLD and FDDA.[150]

Petitioner's arguments do not convince.

The issuance of a valid formal assessment is a substantive prerequisite for the collection of taxes.[151] An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed.[152]

In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, et al.*,[153] 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 requires that it must be served on and received by the taxpayer. ... [*Emphasis and underscoring supplied.*]

Further, the Supreme Court, in *Commissioner of Internal Revenue vs. Fitness by Design, Inc.* (*Fitness by Design* case),[154] is unambiguous:

[148] Petition for Review, pp. 17-19.
[149] Petition for Review, p. 17.
[150] Comment, pp. 23-24, pars. 72-73.
[151] Commissioner of Internal Revenue vs. Menguito, G.R. No. 167560, 17 September 2008, 587 SCRA 234-257.
[152] Tupaz vs. Ulep, G.R. No. 127777, 1 October 1999, 374 SCRA 474-488.
[153] G.R. No. 128315, 29 June 1999.
[154] G.R. No. 215957, 9 November 2016, 799 SCRA 391-420.

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:

> 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, the Supreme Court has then consistently nullified assessment which does not contain a definite due date, such as in *Republic v. First Gas Power Corp.*[155] and *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*[156]

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

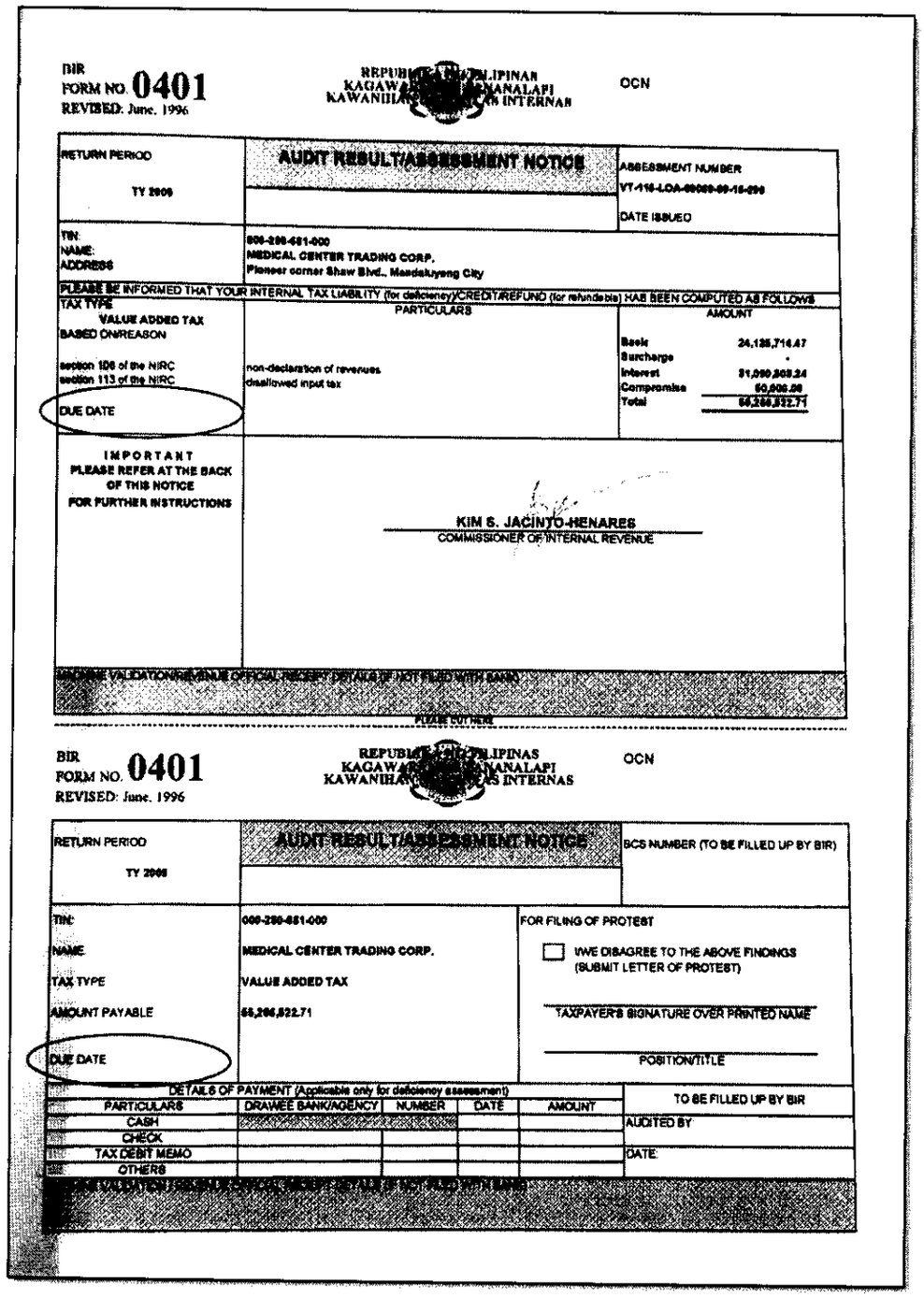
> *Section 249 – Interest.*
>
> (C) Delinquency Interest. - In case of failure to pay:
>
> (3) A deficiency tax, or any surcharge or interest thereon **on the due date appearing in the notice and demand of the Commissioner**, there shall be assessed and collected on the unpaid amount, interest at the 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 indicating the definite amount that is assessed. The delinquency interest may not be properly computed if a due date does not appear in the FAN/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."[157]

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[155] G.R. No. 214933, 15 February 2022.
[156] G.R. No. 240729 (Resolution), 24 August 2020.
[157] *Adamson vs. Court of Appeals*, G.R. Nos. 120935 & 124557, 21 May 2009, 606 SCRA 10-35.

In the instant case, the *Assessment Notices* attached to the FLD [158] and FDDA [159] do not have due dates. One of the Assessment Notices is reproduced below:[160]



BIR
FORM NO. **0401**
REVISED: June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG MGA INTERNAS

OCN

RETURN PERIOD	AUDIT RESULT/ASSESSMENT NOTICE	ASSESSMENT NUMBER
TY 2009		VT-116-LOA-09-16-299
		DATE ISSUED

TIN: 000-299-681-000
NAME: MEDICAL CENTER TRADING CORP.
ADDRESS: Pioneer corner Shaw Blvd., Mandaluyong City

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS

TAX TYPE	PARTICULARS	AMOUNT	
VALUE ADDED TAX		Basic	24,125,714.47
BASED ON/REASON		Surcharge	-
section 106 of the NIRC	non-declaration of revenues	Interest	31,080,808.24
section 113 of the NIRC	disallowed input tax	Compromise	50,000.00
DUE DATE		Total	55,206,522.71

IMPORTANT
PLEASE REFER AT THE BACK OF THIS NOTICE FOR FURTHER INSTRUCTIONS

KIM S. JACINTO-HENARES
COMMISSIONER OF INTERNAL REVENUE

MACHINE VALIDATION/REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

PLEASE CUT HERE

BIR
FORM NO. **0401**
REVISED: June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG MGA INTERNAS

OCN

RETURN PERIOD	AUDIT RESULT/ASSESSMENT NOTICE	BCS NUMBER (TO BE FILLED UP BY BIR)
TY 2009		

TIN:	000-299-681-000	FOR FILING OF PROTEST
NAME	MEDICAL CENTER TRADING CORP.	☐ I/WE DISAGREE TO THE ABOVE FINDINGS (SUBMIT LETTER OF PROTEST)
TAX TYPE	VALUE ADDED TAX	
AMOUNT PAYABLE	55,206,522.71	TAXPAYER'S SIGNATURE OVER PRINTED NAME
DUE DATE		POSITION/TITLE

DETAILS OF PAYMENT (Applicable only for deficiency assessment)

PARTICULARS	DRAWEE BANK/AGENCY	NUMBER	DATE	AMOUNT
CASH				
CHECK				
TAX DEBIT MEMO				
OTHERS				

TO BE FILLED UP BY BIR
AUDITED BY
DATE

MACHINE VALIDATION/REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

Further, the interest in the FDDA is computed until 30 June 2016, but the FDDA was served on or after 4 July 2016. Similarly, the interest in the FLD is computed until 30 June 2014, but the FLD was only served to respondent on or after 4 August 2014. As such, respondent and this Court cannot

[158] Division Docket, Vol. I., pp. 268-272.
[159] *Id.*, pp. 58-62.
[160] Encircling ours.

construe the abovementioned dates from which petitioner computed interest as the due dates, for such dates precede the receipt of the taxpayer of the FLD and FDDA, respectively.

As such, for failure to indicate the due date, it negates petitioner's demand for payment.[161] We see no reason to depart from *Fitness by Design* case for judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines[162] and the principle of *stare decisis* enjoins adherence by lower courts to doctrinal rules established by this Court in its final decisions.[163]

All told, we rule against petitioner on the grounds of prescription and invalidity of the assessment for failure to indicate a due date.

It is axiomatic that tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.[164]

Due process is the very essence of justice itself.[165] While "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude.[166] Even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[167]

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

Accordingly, the Assailed *Decision* dated 23 September 2020 and the Assailed *Resolution* dated 22 March 2021 in CTA Case No. 9412 are **AFFIRMED**.

SO ORDERED.

LANEE CUI-DAVID
Associate Justice

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[161] *Id.*
[162] Article 8, Civil Code of the Philippines.
[163] *Ting vs. Velez-Ting*, G.R. No. 166562, 31 March 2009, 601 SCRA 676-694.
[164] *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils.*, Inc., G.R. No. 198677, 26 November 2014, 748 SCRA 760-773.
[165] *Macias vs. Macias*, G.R. No. 149617, 3 September 2003, 457 SCRA 463-471.
[166] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, 8 December 2010, 652 SCRA 172-188.
[167] *Commissioner of Internal Revenue vs. Algue, Inc.*, G.R. No. L-28896, 17 February 1988, 241 SCRA 829-836.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With due respect, please see Concurring and Dissenting Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2473** (CTA Case No. 9412)
-versus-	Present: **DEL ROSARIO, P.J., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
MEDICAL CENTER TRADING CORPORATION, *Respondent.*	Promulgated: FEB 22 2023 2:35 PM

x ---------- x

CONCURRING AND DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

I concur with the *ponencia's* denial of the Petition for Review filed by Commissioner of Internal Revenue ("CIR").

I also concur with the greater part of the decision which found: (1) petitioner's right to assess deficiency internal revenue taxes for taxable year 2009 has partially prescribed; and (2) the assessment void for failure to indicate a due date.

With due respect, however, I dissent from the finding that 'the assessment cannot be invalidated on the ground that the revenue officers conducting the audit lack authority'. In reaching this conclusion, the *ponencia* explained that Revenue Officers ("ROs") Reyes, Sulit, and Sundiang could continue the audit as their authority to investigate emanates from the original LOA and the authority of the new Group Supervisor ("GS"), Wilfredo Reyes, emanating from the *Notice of Change of Audit Jurisdiction* is a mere superfluity. The decision explained the matter as follows:

> "The **LOA received by respondent names Revenue Officers ("RO") Wilfredo Reyes, Miguel Sulit, William Sundiang, Alpha Betty Tanguilig, and Fernalon Chan and Group Supervisor ("GS") Joriz Saldajeno.** However, in the **Memorandum Reports, only ROs Miguel Sulit and William Sundiang were named as ROs, while the GS was changed to Wilfredo Reyes.** Upon [perusal of the records and based on the confirmation of GS Reyes, **no new LOA was issued to reflect this change**.
>
> ...
>
> It is clear under said RMO that a new LOA is required should there be a reassignment or transfer of cases. This, again, is aimed at satisfying the requirements of due process: that the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his or her books.
>
> **However, what was received by respondent is a *Notice of Change of Audit*** dated 14 May 2010.
>
> This *Notice of Change of Audit Jurisdiction* does not satisfy the exacting requisite of due process. The *McDonalds* case is clear and categorical in this matter:
>
> ...
>
> A perusal of the LOA in the instant case reveals that the revenue officers named therein are the same persons who recommended the issuance of the PAN and FLD against respondent.
>
> ...
>
> Thus, respondent's audit may be continued by ROs Reyes, Sulit, and Sundiang without the need of a new LOA, as they were already given the authority to do so under the original LOA. **Clearly, no unauthorized person conducted the audit.**
>
> For purposes of conferring authority, the subject *Notice of Change of Audit Jurisdiction* is a mere superfluity at this point, since with or without it, ROs Reyes, Sulit, and Sundiang could continue with the investigation, as the source of their authority to investigate emanates from the original LOA and not from the *Notice of Change of Audit Jurisdiction.*
>
> Hence, the assessment was conducted with the necessary authority.
>
> Given the foregoing, We rule that the assessment cannot be invalidated on the ground of lack of authority of the revenue officers." (Emphasis supplied; citations omitted.)

Essentially, the *ponencia* concluded that the authority conducted on respondent headed by GS Reyes, whose authority emanated from a *Notice of Change of Audit* and not from a LOA, does not invalidate the audit because the ROs were properly authorized through the original LOA. I respectfully disagree.

Upon a second hard look at the facts of the present case, and with the recent pronouncements of the Supreme Court in ***Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*** ("***McDonald's Case***")[1] and ***Republic of the Philippines v. Robiegie Corporation*** ("***Robiegie Case***"),[2]

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[1] G.R. No. 242670, 10 May 2021.
[2] G.R. No. 260261, 14 November 2022.

I take the view that the deficiency tax assessments against respondent should be cancelled for lack of authority of GS Reyes.

Pertinently, the ***McDonald's Case*** admonished the practice of reassigning revenue officers through a memorandum of assignment, referral memorandum, or any other equivalent documents for the reason that these documents are typically issued by subordinate officials and not by the CIR or his duly authorized representatives:

> "It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers. However, notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. **The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.**
>
> The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. **But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer**.
>
> The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative. **The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10 (c) and 13 of the NIRC.** Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives."
> (Emphasis supplied.)

The ***McDonald's Case*** also instructs that due process requires that the taxpayers are made aware of the tax agents who will conduct the examination and assessment as follows:

"*I. The Reassignment or Transfer of a Revenue Officer Requires the Issuance of a New or Amended LOA for the Substitute or Replacement Revenue Officer to Continue the Audit or Investigation*

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

Section 6 of the NIRC provides:

...

Section 10 (c) of the NIRC provides:

...

Section 13 of the NIRC provides:

...

Section D (4) of RMO No. 43-90 dated September 20, 1990 provides:

...

Pursuant to the above provisions, only the CIR and his duly authorized representatives may issue the LOA. The authorized representatives include the Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR.

Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. Unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority. There must be a grant of authority, in the form of a LOA, before any revenue officer can conduct an examination or assessment. The revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity.**

A. Due Process Requires Identification of Revenue Officers Authorized to Continue the Tax Audit or Investigation

The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, We have ruled that the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued. In that case, We have stated that "[d]ue process demands x x x that after [a Letter Notice] has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case." The result of the absence of a LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process.

> **To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA.** If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. **Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers.** In other words, **identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.**
>
> We do not agree with the petitioner's statement that the LOA is not issued to the revenue officer and that the same is rather issued to the taxpayer. The petitioner uses this argument to claim that once the LOA is issued to the taxpayer, "any" revenue officer may then act under such validly issued LOA.
>
> The LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the revenue officers, pursuant to Sections 6, 10 (c) and 13 of the NIRC. Naturally, this grant of authority is issued or bestowed upon an agent of the BIR, i.e., a revenue officer. Hence, petitioner is mistaken to characterize the LOA as a document "issued" to the taxpayer, and that once so issued, "any" revenue officer may then act pursuant to such authority."
> (Citations omitted; Emphasis supplied.)

The same ruling was upheld in the more recent ***Robiegie Case***.

To my mind, the term "revenue officers" referred to in these cases pertains to the positions of ROs and GS collectively. Both ROs and GS are part of the audit team who are authorized to conduct the examination of a taxpayer's books of accounts through an LOA. The GS performs supervisory functions over the ROs, particularly on how the audit is conducted as well as the items of deficiency assessment based on the examination of the taxpayer's books of accounts.

Typically, an LOA would identify the ROs and GS as revenue officers authorized to conduct an examination of petitioner's books of accounts. The LOA in the present case similarly names and authorizes the following ROs and GS to conduct the audit examination:

"SIR/MADAM/GENTLEMEN:

> The bearer(s) hereof, RO- WILFREDO REYES, MIGUEL SULIT, WILLIAM SUNDIAM, ALPHA BETTY TANGUILIG, FENALON CHAN/ **GS-JORIZ SALDAJENO** of LT REGULAR AUDIT DIVISION 1 is/are authorized to examine your books of accounts and other accounting records for ALL INTERNAL REVENUE TAXES for the period from January 1, 2009 to December 31, 2009 pursuant to REVENUE MEMORANDUM ORDER NO. 36-2010 (CONGLOMERATE AUDIT PROGRAM). The Revenue Officer(s) identified herein are provided with the necessary identification card(s) which shall be presented to you upon request."

Considering the foregoing, if due process demands that a new LOA should be issued when an RO is replaced, then there is more reason to require a new LOA to be issued if the GS is replaced. Essentially, the requirement of naming the revenue officers in the LOA is a safeguard against abuses that may be perpetrated by revenue officers against taxpayers.[3] An LOA guarantees a taxpayer that only persons named therein are allowed to examine its books of accounts and other accounting records.[4] Hence, it has a right to deny other revenue officers not so named from auditing it for potential deficiency tax assessments.[5]

Thus, the replacement of GS from GS Saldajeno to GS Reyes without an LOA renders the assessment void.

All told, I VOTE to **DENY** the instant *Petition for Review* and **AFFIRM** the Assailed Decision dated 23 September 2020 and Assailed Resolution dated 22 March 2021 in CTA Case No. 9412.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[3] Huey Commercial, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 8985, 30 September 2021.
[4] *Ibid.*
[5] *Ibid.*