REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 3011** (CTA Case No. 10098)
	Present:
- versus -	**RINGPIS-LIBAN,** ***P.J.,*** **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** ***JJ.***
TRAVEL WAREHOUSE, INC., Respondent.	Promulgated: APR 06 2026 4:30

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**) pursuant to Section 3(b),[2] Rule 8 of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks to

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[1] Filed on 07 November 2024, *rollo*, pp. 6-17.

[2] **SEC. 3**. Who may appeal; period to file petition. —

...

(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.

reverse and set aside the Decision dated 12 July 2024[3] (**assailed Decision**) and the Resolution dated 02 October 2024[4] (**assailed Resolution**) of this Court's Second Division in CTA Case No. 10098, entitled "*Travel Warehouse, Inc. v. Commissioner of Internal Revenue.*" Both assailed Decision and Resolution granted respondent Travel Warehouse, Inc.'s (**respondent**'s) prior "Petition for Review"[5] (**prior petition**) before the Second Division and cancelled the deficiency income tax (**IT**) and value-added tax (**VAT**) assessment for taxable year (**TY**) 2012.[6]

PARTIES OF THE CASE

Petitioner is the duly appointed CIR tasked to decide disputed assessment, refunds of internal revenue taxes, fees or charges, and penalties imposed in relation thereto, as provided by law. He or she may be served with all notices, pleadings, resolutions, orders, decisions, and other legal processes of this Court at the 5th floor, Bureau of Internal Revenue (**BIR**) National Office Building, Agham Road, Diliman, Quezon City.[7]

Respondent, on the other hand, is a domestic corporation duly organized and existing under Philippine laws, with office address at Unit 1007 OMM-Citra Building, San Miguel Avenue, Ortigas Center, San Antonio, Pasig City.[8] It is engaged in the business of tours and travel agency.[9]

FACTS OF THE CASE

On 24 July 2014, respondent received Letter Notice (**LN**) No. 43A-RLFTRS-12-00-00838.[10] The LN states that after conducting a computerized matching of respondent's sales as reported in its tax

3 Division Docket, Volume II, pp. 815-830. Penned by Associate Justice Maria Rowena Modesto-San Pedro with the concurrence of Associate Justice (now Presiding Justice) Ma. Belen M. Ringpis-Liban and Associate Justice Corazon G. Ferrer-Flores.
4 Id., pp. 903-904.
5 Id., Volume I, pp. 12-31.
6 See Formal Letter of Demand (**FLD**) dated 24 October 2018, id., pp. 510-514.
7 Par. 3, Stipulation of Facts, Joint Stipulation of Facts and Issues (**JSFI**), id., p. 527.
8 Par. 1, id.
9 See primary purpose in Exhibit "P-2", id., p. 234.
10 Exhibit "R-2", id., Volume II, p. 497.

returns and its customers' payments based on their Summary Lists of Purchases (**SLPs**), petitioner identified that respondent underdeclared its sales in its tax returns for TY 2012 by 86.65%.[11] On the day petitioner specified, respondent failed to explain the discrepancy, thus, the former sent a Follow-Up Letter dated 11 August 2014[12] which respondent received on 14 August 2014. Petitioner warned that should respondent fail to respond within thirty (30) days from its receipt of the LN, a Letter of Authority (**LOA**) will be issued.[13]

On 03 September 2014,[14] respondent, through a letter by its Finance Manager, Violeta Santos (**Santos**), explained to petitioner that the reason behind the discrepancies previously noted was the erroneous declaration of purchase amounts by respondent's clients.[15] Respondent emphasized that its income should be based on its service fees only.[16]

On 26 May 2015, Regional Director (**RD**) Alfredo V. Misajon (**Misajon**) of Revenue Region No. 7 issued an LOA No. LOA-43A-2015-00000136/eLA201200005400 dated 25 May 2015,[17] authorizing Revenue Officer (**RO**) Rosalina Reyes (**Reyes**) and Group Supervisor (**GS**) Antonino Ilagan (**Ilagan**) of Revenue District Office No. 43A-East Pasig (**RDO No. 43A**) to examine respondent's books of accounts for IT and VAT for the period of 01 January 2012 to 31 December 2012.

On 11 August 2015, respondent, through Santos, requested petitioner to give it until 31 October 2015 to submit the documents required in connection with petitioner's investigation of its books of accounts for TY 2012.[18] On the same date, respondent submitted its Sales Summary for TY 2012.[19] Petitioner duly received both correspondence on 11 August 2015.[20]

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11 Id.
12 Exhibit "R-3", id., p. 498.
13 Id.
14 Exhibit "P-10-b", id., Volume I, p. 289.
15 Exhibit "P-10", id.
16 Id.
17 Exhibit "R-4", id., p. 499.
18 Exhibit "P-8", id., Volume I, p. 287.
19 Exhibit "P-9", id., p. 288.
20 Exhibits "P-8-b" and "P-9-a" id., pp. 287-288.

On 19 April 2016, Revenue District Officer (**RDOr**) Emilia C. Combes (**Combes**) of RDO No. 43A issued a Memorandum of Assignment (**MOA**) No. RR7-30509,[21] designating RO Josephine C. Cortuna (**RO Cortuna**) and GS Patricia C. Ranchez (**GS Ranchez**) for the purpose of "*Compliance with the review/reporting requirements of (indicate the reviewing office, e.g., Regional Assessment Division, Office of the Regional Director, Assessment Service, etc.).*" By virtue of this MOA, Cortuna conducted an audit investigation of respondent's books, submitted audit reports, and recommended the issuance of a Preliminary Assessment Notice (**PAN**).[22]

Petitioner served the PAN with Details of Discrepancy on respondent *via* registered mail on 04 October 2018.[23] Respondent alleged that it received the same on 09 October 2018.[24] Petitioner then issued the Formal Letter of Demand with Details of Discrepancy and Final Assessment Notice (**FLD/FAN**) dated 24 October 2018[25] and served the same on respondent *via* registered mail on 26 October 2018.[26] Respondent received the same on 04 November 2018.[27] Save for the recalculated interest, petitioner's findings in the PAN were reiterated in the FLD/FAN.[28]

On 04 December 2018, unable to agree with petitioner's findings, respondent, by way of a Request for Reconsideration, filed its Protest against the FLD/FAN.[29] Acting on the Protest, RDOr Rufo Ranario (**RDOr Ranario**) of RDO 43A issued a MOA dated 09 January 2019 referring back respondent's case to RO Cortuna and GS Ranchez.[30] On 21 February 2019, RO Cortuna submitted a Memorandum[31] stating that respondent failed to refute the assessment and recommending the issuance of the Final Decision on Disputed Assessment (**FDDA**).

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21 Exhibit "R-5", id., p. 500; GS Ranchez and RO Cortuna's positions were mistakenly switched in this issuance.

22 Exhibits "R-6", "R-7" and "R-8", id., pp. 501-503.

23 Exhibit "R-10", id., p. 509.

24 See Paragraph 12, Respondent's Comment [Re: Petition for Review dated 5 November 2024] filed on 27 January 2025, *rollo*, pp. 56-57.

25 Exhibit "R-11", Division Docket, Volume II, pp. 510-516.

26 Exhibit "R-12", id., p. 517.

27 Annex "A" attached to Exhibit "P-14", id., p. 225.

28 See Exhibit "R-9" and Exhibit "R-11", id., pp. 504-508 and 510-514, respectively.

29 BIR Records, Exhibit "R-1", pp. 234-242.

30 Exhibit "R-13", Division Docket, Volume II, p. 518.

31 Exhibit "R-14", id., pp. 519-521.

Based on the records, no FDDA was issued to respondent.

PROCEEDINGS BEFORE THE COURT IN DIVISION

Since petitioner did not act on respondent's request for reconsideration within 180 days,[32] respondent filed a "Petition for Review"[33] with this Court on 28 June 2019. The case was docketed as CTA Case No. 10098 and was initially raffled to the Third Division.

In its petition, respondent argued that: (1) it was deprived of due process because the FLD/FAN was issued on the last day of the fifteen (15)-day period granted to it by law to reply to the PAN; (2) petitioner's right to assess deficiency taxes for TY 2012 had already prescribed; (3) the authority of the ROs under the LOA has already lapsed; and (4) petitioner's assessment for TY 2012 has no factual and legal basis.

The Third Division issued "Summons"[34] dated 29 July 2019 ordering petitioner to file an Answer to the Petition for Review. Following petitioner's receipt of the Summons on 31 July 2019, he or she filed a "Motion for Extension of Time to File Answer"[35] (**Motion for Extension**) on 15 August 2019. In a Resolution dated 28 August 2019,[36] the Third Division granted petitioner's Motion for Extension and gave petitioner 30 days, or until 14 September 2019, to file his or her Answer.

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32 See Sec. 228 of the National Internal Revenue Code of 1997, as amended, which provides:
Sec. 228. Protesting an Assessment. – ...

...

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

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

33 Division Docket, Volume I, pp. 12-31.

34 Id., p. 146.

35 Id., pp. 147-148.

36 Id., p. 150.

On 13 September 2019, petitioner again filed a Motion for Extension[37] which the Third Division granted on 19 September 2019.[38] Petitioner was given a final and non-extendible period of 30 days, or until 14 October 2019, to file his or her Answer.[39]

On 14 October 2019, petitioner filed his or her Answer[40] essentially interposing the following defenses: (1) petitioner issued the FLD/FAN after the respondent failed to reply to the PAN within the 15-day period granted to it by law; (2) petitioner's right to assess deficiency taxes for TY 2012 had not prescribed because respondent is subject to the extraordinary prescriptive period of ten (10) years due to its underdeclaration of its sales by more than 30%; (3) the authority of the ROs under the LOA had not lapsed as revalidation is no longer needed based on recent BIR issuances; and (4) the assessment was conducted in accordance with existing rules and regulations.

In its Resolution dated 22 October 2019,[41] the Third Division noted the filing of petitioner's Answer and ordered the parties to proceed to mediation. However, the parties failed to reach an agreement before the Philippine Mediation Center-Court of Tax Appeals (**PMC-CTA**).[42] The Pre-Trial Conference was then held on 06 October 2020 following the parties' submission of their respective Pre-Trial Briefs on 01 October 2020[43] and 02 October 2020,[44] respectively.

On 05 November 2020, both parties forwarded a Joint Stipulation of Facts and Issues (**JSFI**)[45] which the Third Division admitted and approved through a Resolution dated 11 November 2020,[46] effectively terminating the Pre-Trial Conference. A Pre-Trial Order[47] was subsequently issued on 13 January 2021.

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37 Id., p. 152.
38 See Resolution dated 19 September 2019, id., p. 155.
39 Id.
40 Id., pp. 156-167.
41 Id., pp. 169-170.
42 See Resolution dated 12 February 2020, id., pp. 184-185.
43 Petitioner's Pre-Trial Brief, id., pp. 188-191.
44 Respondent's Pre-Trial Brief, id., pp. 342-352.
45 Id., Volume II, pp. 527-535.
46 Id., pp. 538-539.
47 Id., pp. 541-549.

During the trial conducted through videoconferencing on 20 October 2021, respondent presented its Assistant Finance and Admin Manager, Carolina J. Calderon (**Calderon**), who testified *via* her judicial affidavit.[48] In her testimony, Calderon narrated the events that transpired during petitioner's audit of respondent's books, from the latter's receipt of the LN up to its submission of its Protest to FAN.[49] In addition, Calderon stated that petitioner's determined undeclared income refers to the costs of airline tickets, hotel accommodations, and foreign travel agencies that respondent immediately remitted to the respective payees.[50]

During cross-examination, when asked whether Calderon has personal knowledge of the matters that she testified on (considering that she was only hired by respondent on 01 June 2021), she clarified that her testimony about the case covering respondent's tax returns for TY 2012 was based on its records.[51] She emphasized that as Assistant Finance Manager, it is part of her duties and responsibilities to be aware of cases with financial implications to respondent.[52]

Respondent did not conduct any redirect examination.[53] Afterwards, in response to the Court's clarificatory questions, Calderon recounted that RO Reyes and GS Ilagan were the ones named in the LOA but neither of them prepared or signed the PAN, FLD/FAN, or issued any memorandum to respondent.[54] Calderon also confirmed that respondent's former Finance Manager did not sign any waiver in relation to the case.[55] Moreover, Calderon clarified that other than respondent's Reply to the PAN, there are no other proof that respondent received the same on 09 October 2018.[56] Finally, Calderon disclosed that the proof of remittance of the costs of airline tickets, hotel accommodations, and foreign travel agencies to the respective payees were not presented to the BIR during the audit investigation.[57]

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48 See Judicial Affidavit of Carolina J. Calderon dated 01 October 2021, Exhibit "P-21", id., pp. 573-592.
49 Id.
50 Id., p. 588.
51 TSN dated 20 October 2021, pp. 8-9.
52 Id.
53 Id., p. 10.
54 Id.
55 Id., p. 11.
56 Id., pp. 11-14.
57 Id., p. 14.

On 04 November 2021, respondent filed its "Formal Offer of Evidence"[58] (**FOE**). Since petitioner failed to comment on respondent's FOE,[59] the same was deemed submitted for resolution on 15 February 2022.[60]

In the Resolution dated 24 March 2022,[61] the Third Division admitted respondent's offered exhibits, except for the following: (1) Exhibits "P-13", "P-13-a", "P-13-b", "P-15", "P-15-a", "P-15-b", and "P-15-c"[62] for failure to present the originals for comparison; and (2) Exhibits "P-20" and "P-20-a"[63] for failure to identify.

On 25 January 2023, petitioner presented its lone witness, RO Cortuna, who testified *via* her judicial affidavit.[64] RO Cortuna stated that she was tasked to conduct the audit examination of respondent's IT and VAT for TY 2012 by virtue of a MOA dated 19 April 2016.[65] She also narrated the events that transpired during the assessment of respondent's books of accounts, from the issuance of the LN up to her submission of her report recommending the issuance of the FDDA.[66] She also explained that she tried to serve the PAN dated 17 September 2018 personally, but respondent refused to receive the same believing that the period to issue an assessment for TY 2012 has already prescribed.[67]

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58 Division Docket, Volume II, pp. 718-729.

59 See Records Verification dated 07 February 2022, id., p. 734.

60 See Resolution dated 15 February 2022, id., p. 736.

61 Id., pp. 738-739.

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Exhibit No.	Description
"P-13"	Travel Warehouse, Inc.'s (TWI) Reply to Preliminary Assessment Notice (PAN) dated 24 October 2018.
"P-13-a"	Signature of TWI's counsel, Virginia B. Viray.
"P-13-b"	Signature of TWI's counsel, Glorie Anne Pineda.
"P-15"	TWI's Protest to the Final Assessment Notice (FAN) dated 03 December 2018.
"P-15-a"	Signature of TWI's counsel, Glorie Anne Pineda.
"P-15-b"	Signature of TWI's counsel, Virginia B. Viray.
"P-15-c"	Signature of TWI's counsel, Jewelynn Gay B. Zareno.

63 See Judicial Affidavit of Violeta D. Santos and the signature thereon.

64 See Judicial Affidavit of Josephine C. Cortuna dated 08 October 2020, Exhibit "R-15", Division Docket, Volume II, pp. 489-496. See also Order dated 25 January 2023.

65 Id., p. 490.

66 Id., p. 494.

67 Id., p. 492.

During cross-examination, RO Cortuna explained further that her name did not appear in the LOA issued for the investigation of respondent's books for TY 2012.[68] She also clarified that instead of a LOA, a MOA was issued to her, and there was no revalidation of the LOA issued on 25 May 2015.[69] In addition, RO Cortuna confirmed that the purpose ticked on the MOA was "*compliance with the review/reporting requirements*" and not "*continuation of audit investigation to replace the previously assigned Revenue Officer(s) who retired/transferred to another group supervisor.*"[70]

On further questioning, when asked whether she has proof to support her assertion that respondent's former Finance Manager refused to accept the PAN in person prompting her to serve the PAN through registered mail, RO Cortuna failed to categorically answer and reasoned that it happened long ago in 2018.[71] Moreover, she confirmed that aside from the Affidavits of Service prepared by her, no registry return cards were available to prove the service of the PAN and the FLD/FAN through registered mail.[72] Lastly, when asked whether she is aware of the respondent's nature of business as the RO assigned to review respondent's books, RO Cortuna replied that she had already forgotten.[73]

Petitioner did not conduct any redirect examination.[74] Afterwards, when the Court asked clarificatory questions, RO Cortuna reiterated that her name did not appear in the LOA, but only in the MOA signed by their RDOr.[75] She also stated that her conclusion that the three (3)-year prescriptive period was not applicable to respondent due to its underdeclaration of its gross sales by more than 30% was based only on a partial tally.[76]

On 07 February 2023, petitioner filed his or her FOE[77] to which respondent filed its "Comment/Opposition [Re: (Petitioner's FOE)

68 TSN dated 25 January 2023, pp. 5-6.
69 Id., pp. 6-7.
70 Id., pp. 12-14.
71 Id., p. 8.
72 Id., pp. 8-9.
73 Id., pp. 11-12.
74 Id., p. 14.
75 Id., pp. 16-17.
76 Id., pp. 15-16.
77 Division Docket, Volume II, pp. 752-756.

dated 7 February 2023]"[78] on 23 February 2023. In the Resolution dated 31 March 2023,[79] the Third Division admitted petitioner's offered exhibits and directed the parties to file their respective memoranda within 30 days from receipt thereof.

Respondent then filed its Memorandum[80] on 12 May 2023. Meanwhile, the Third Division issued a Resolution dated 01 June 2023 transferring the case to the Second Division.[81] The case was deemed submitted for decision on 30 August 2023 following the Records Verification Report dated 16 August 2023[82] that petitioner failed to file a memorandum within the period provided.[83]

In the now assailed Decision of 12 July 2024,[84] the Second Division granted respondent's Petition for Review. The dispositive portion thereof reads:

> ...
>
> **FOR THESE REASONS,** the Petition for Review, filed on June 28, 2019, is hereby **GRANTED.** The assessment against [respondent] for deficiency income tax and value-added tax for taxable year 2012 is hereby **CANCELLED** and declared **NULL AND VOID.**
>
> Accordingly, [petitioner] is hereby **ENJOINED AND PROHIBITED** from collecting the amount sought by the void assessment.
>
> **SO ORDERED.**[85]
>
> ...

The Second Division ratiocinated that (1) the 10-year period for assessment cannot be invoked due to petitioner's failure to establish respondent's willful intent to evade tax; (2) RO Cortuna examined respondent's books without authority to do so; and (3) the FLD/FAN was issued prematurely in violation of respondent's rights.

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78 Id., pp. 758-763.
79 Id., pp. 767-768.
80 Id., pp. 770-807.
81 Id., p. 811.
82 Id., p. 812.
83 See Minute Resolution dated 30 August 2023, id., p. 813.
84 Supra at note 3.
85 Citation omitted and emphasis in the original text.

On 01 August 2024, petitioner filed its "Motion for Reconsideration (Decision dated 12 July 2024)"[86] (**MR**) interposing fundamentally the same arguments laid down in his or her Answer[87] to respondent's Petition.

On 19 August 2024, respondent filed its Comment[88] *via* registered mail, essentially reiterating the assailed Decision. In addition, respondent asserts that it has adequately addressed the alleged substantial underdeclaration imputed by petitioner.[89] Thereafter, on 02 October 2024,[90] the Second Division denied petitioner's MR, to wit:

> ...
>
> In short, [petitioner] fails to address any of the actual reasons given by the Court for Our ruling. We consequently need neither dwell in [petitioner's] generic arguments nor give serious consideration to his prayer. The reasons delineated in the assailed Decision still stand, valid and unrefuted.
>
> **ACCORDINGLY**, [petitioner's] *Motion for Reconsideration (Decision dated 12 July 2024)*, filed on August 1, 2024, is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

<u>PROCEEDINGS BEFORE THE COURT *EN BANC*</u>

Undeterred, petitioner filed the present Petition for Review before the Court *En Banc* on 07 November 2024,[91] following a 15-day extension granted to it through a Resolution dated 28 October 2024.[92]

On 06 January 2025, the Court *En Banc* directed respondent to file its comment within 10 days from notice.[93] Accordingly, respondent

86 Division Docket, Volume II, pp. 831-840.
87 Supra at note 40.
88 Division Docket, Volume II, pp. 874-897.
89 See Par. 55.2, Respondent's Comment [Re: Motion for Reconsideration dated 30 July 2024] dated 19 August 2019, id, p. 883.
90 Supra at note 4.
91 Supra at note 1.
92 *Rollo*, p. 4.
93 See *En Banc* Resolution dated 06 January 2025, id., p. 47.

filed its Comment on 27 January 2025.[94] In a Resolution dated 06 February 2025,[95] the Court *En Banc* referred the instant case to the PMC-CTA for mediation pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.* However, the parties decided not to have their case mediated before the PMC-CTA.[96] Hence, the present petition was submitted for decision on 02 April 2025.[97]

ISSUES

Petitioner raised the following issues for the Court *En Banc*'s resolution:[98]

I.

WHETHER THE PERIOD OF LIMITATION FOR THE BUREAU OF INTERNAL REVENUE (BIR) TO ASSESS RESPONDENT TRAVEL WAREHOUSE, INC. FOR DEFICIENCY INCOME TAX (IT) AND VALUE-ADDED TAX (VAT) FOR TAXABLE YEAR (TY) 2012 HAD ALREADY PRESCRIBED;

II.

WHETHER THE REVENUE OFFICER (RO) WHO CONDUCTED THE AUDIT EXAMINATION OF RESPONDENT TRAVEL WAREHOUSE, INC.'S ACCOUNTING RECORDS HAD AUTHORITY TO DO SO; AND

III.

WHETHER THE FINAL ASSESSMENT NOTICE (FAN) WAS ISSUED PREMATURELY, RENDERING THE ASSESSMENT VOID.

ARGUMENTS

Before the Court *En Banc*, petitioner contends that RO Cortuna's finding that respondent underdeclared its sales by more than 30% constitutes *prima facie* evidence of false or fraudulent return willfully made, thus, petitioner may assess respondent within an extended period of 10 years from the discovery of the falsity or fraud.

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94 Id., pp. 54-83.

95 Id., p. 85.

96 PMC-CTA Form 6 - No Agreement to Mediate dated 11 March 2025, id., p. 86.

97 See *En Banc* Resolution dated 06 January 2025, id., 87.

98 See Issues, Petition for Review, supra at note 1, pp. 7-8.

Moreover, petitioner argues that RO Cortuna, who examined respondent's records and recommended the deficiency assessment, was authorized to conduct the audit in accordance with Revenue Memorandum Order (**RMO**) No. 69-2010.[99] According to petitioner, under the said RMO, the standard operating procedure is when an RO initially assigned to audit a taxpayer's books resigns or transfers to another RDO, the Head of the Investigating Office assigns another RO through an MOA. Further, petitioner stresses that the MOA is merely for the continuation of the audit already authorized by the LOA which, according to petitioner, is not a letter addressed to ROs authorizing them to audit a taxpayer's books, but a letter informing the taxpayer that an audit of his or her person has been authorized by the Commissioner.

Finally, petitioner asserts that the FLD/FAN dated 24 October 2018 was timely issued because respondent only had 15 days from the service of the PAN on 04 October 2018, or until 19 October 2018, to file its Protest to PAN. Considering that the said period lapsed without the respondent filing its Protest to PAN, the FAN was issued without violating respondent's right to due process. In addition, petitioner argues that respondent was duly informed of its findings and was given an opportunity to refute the same, thus, respondent's right to due process was not violated.

On the other hand, respondent counters that petitioner's right to assess its books of accounts for TY 2012 had already prescribed. According to respondent, the 10-year prescriptive period cannot apply because willful intent to evade taxes on its part was not established. Respondent further alleged that it had adequately addressed the alleged substantial underdeclaration and that petitioner disregarded the doctrine that gross receipts of travel agencies shall be limited to their commissions and service fees.

Respondent also asserts that the RO who examined its records was not authorized to do so, rendering the assessment void. Respondent contends that petitioner's insistence that the MOA is

[99] Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment.

sufficient to clothe the RO with authority is clearly contrary to prevailing law and jurisprudence.

Lastly, respondent argues that petitioner issued the FLD/FAN prematurely, in violation of its right to due process. According to respondent, petitioner's position that the 15-day period given to it by law to reply to the PAN must be reckoned from the mailing of the PAN and not its actual receipt is bereft of legal basis. Thus, respondent submits that petitioner violated its right to due process when it ignored its Reply to PAN before issuing the FLD/FAN.

<u>RULING OF THE COURT *EN BANC*</u>

Before going into the merits of the case, the Court *En Banc* shall first determine whether the instant Petition for Review was timely filed.

THE INSTANT PETITION FOR REVIEW WAS FILED OUT OF TIME.

Section 18 of Republic Act (**RA**) No. 1125,[100] as amended by RA 9282,[101] provides that a party adversely affected by a resolution of a Division of the CTA on motion for reconsideration or new trial, may file a Petition for Review with the CTA *En Banc*.

Section 3(b),[102] Rule 8 of the RRCTA states that the party affected should file the Petition for Review within 15 days from receipt of a copy of the questioned decision or resolution. This is without prejudice to the authority of the Court to grant an additional 15-day period[65] from the expiration of the original period, within which to file the Petition for Review.

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100 AN ACT CREATING THE COURT OF TAX APPEALS.

101 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

102 Supra at note 2.

In the present case, petitioner received the assailed Resolution on 07 October 2024.[103] Counting 15 days therefrom, petitioner had until 22 October 2024 to file the present Petition for Review before the Court *En Banc*. On 21 October 2024, petitioner filed a "Motion for Extension of Time to File Petition for Review"[104] which the Court *En Banc* granted on 28 October 2024.[105] Petitioner was given a non-extendible period of 15 days from 22 October 2024, or until 06 November 2024, to file his or her Petition for Review.[106]

CTA *En Banc* Resolution No. 08-2024[107] provides that the filing of initiatory pleadings shall be by personal filing, by registered mail, or by accredited courier. Given that a Petition for Review before the Court *En Banc* is an initiatory pleading, it must thus be filed either personally, by registered mail, or by accredited courier.

In this case, while petitioner electronically transmitted his or her Petition for Review on 05 November 2024,[108] he or she personally filed the same only on 07 November 2024.[109] Thus, petitioner shall be considered to have filed the instant Petition for Review only on 07 November 2024, beyond the extended 15-day reglementary period. *Even* if We are to consider this instant petition to have been filed on time, the same would still have to be denied or dismissed on grounds discussed below.

THE EXTRAORDINARY PRESCRIPTIVE PERIOD OF TEN (10)-YEARS DOES NOT APPLY.

Section 203 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, provides that taxes may be assessed and collected within three (3) years after the last day prescribed by law for the filing of the return or the day the return was filed, whichever is later:

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103 See Notice of Resolution dated 02 October 2024, *rollo*, p. 39.
104 Id., pp. 1-2.
105 Id., p. 4.
106 Id.
107 Guidelines on Submission of Electronic Copies of Pleadings and Other Court Submissions Before the Court of Tax Appeals Pursuant to A.M. No. 10-3-7-SC and A.M. No. 11-9-4-SC, effective 01 September 2024.
108 *Rollo*, p. 5.
109 Supra at note 1.

> ...
>
> SEC. 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.[110]
>
> ...

By exception, the 10-year prescriptive period under Section 222 of the same Code may apply in certain cases, as in the case of a false or fraudulent return, to wit:

> ...
>
> SEC. 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 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.[111]
>
> ...

Petitioner posits that the finding of discrepancy between respondent's reported amount of sales in its VAT returns and the purchases in the SLPs submitted by its customers through the Reconciliation of Listing for Enforcement (**RELIEF**) System, in an amount exceeding 30%, constitutes substantial underdeclaration of taxable sales, a *prima facie* evidence of a false or fraudulent return, in accordance with Section 248(B) of the NIRC of 1997, as amended:

110 Emphasis supplied and italics in the original text.
111 Emphasis supplied and italics in the original text.

...

SEC. 248. *Civil Penalties.* —

...

(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case, any payment has been made on the basis of such return before the discovery of the falsity or fraud: ***Provided*, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return: *Provided, further*, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.**[112]

...

The Second Division rejected petitioner's position citing *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc. (now Sime Darby International Tire Co., Inc.), et al.*[113] (**Goodrich**), *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[114] (**Fitness by Design**), and *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc*[115] (**Inquirer**) which all held that the 10-year period can be invoked only when willful intent is established.

A careful review of *Goodrich*, *Fitness by Design*, and *Inquirer* yields that they are not really on all fours with the case at bar. In *Goodrich*, *Fitness by Design*, and *Inquirer*, the CIR alleged that the tax returns assessed were false and fraudulent to justify his or her application of the extraordinary 10-year period, which the High Court found to be unsupported by clear and convincing evidence. In contrast to the present case, there were no findings of underdeclaration of sales or receipts in an amount exceeding 30% of that declared or over-declaration of deductions in an amount exceeding 30% of the actual

112 Emphasis supplied and italics in the original text.
113 G.R. No. 104171, 24 February 1999.
114 G.R. No. 215957, 09 November 2016.
115 G.R. No. 213943, 22 March 2017.

deductions as to constitute a *prima facie* evidence of a false return, pursuant to Section 248(B) of the NIRC of 1997, as amended.

As correctly pointed out by the Second Division, petitioner's position finds basis in *Commissioner of Internal Revenue v. Asalus Corporation*[116] (**Asalus**). In *Asalus*, petitioner's audit investigation revealed that there were undeclared VATable sales amounting to more than 30% of that declared in Asalus' VAT returns, which the High Court considered as a *prima facie* evidence of false return.[117] Asalus failed to overcome the said *prima facie* evidence of false return, thus, the extraordinary 10-year prescriptive period was applied.[118]

In the present case, however, the Court *En Banc* holds that **petitioner's finding of respondent's substantial underdeclaration of its sales by more than 30% cannot be deemed as *prima facie* evidence of false or fraudulent returns as its bases were not properly validated.**

RMO No. 13-2012[119] or the *Revised Guidelines and Procedures in Handling LNs Generated Through Third-Party Information Data Matching with Tax Returns* requires Investigating Offices to send Confirmation Requests to Third-Party Information (**TPI**) sources to attest to the veracity of the data included in the LN:

> ...
> **IV. GUIDELINES AND PROCEDURES**
>
> ...
>
> **D. Investigating Offices**
>
> ...
>
> 9. Send a Confirmation Request from TPI sources attesting to the veracity of the data included in the LN package (Annexes "I" and "I-1").
>
> If no response from the TPI source **after the lapse of five (5) days** from service of Confirmation Request, the RO may consider the data in the LN package to be true and correct. However, if

---

116 G.R. No. 221590, 22 February 2017.

117 Id.

118 Id.

119 Issued on 29 March 2012.

> there is/are TPI source/s located outside of the jurisdiction of the investigating office, the RO shall send the Confirmation Request to the taxpayer through registered mail with Registered Return Card and wait for the lapse of ten (10) days after mailing thereof before proceeding to the next step.[120]

...

Petitioner's finding of respondent's substantial underdeclaration of sales was based on LN dated 23 July 2014,[121] generated through TPI data matching programs, thus necessitating the sending of Confirmation Requests to TPI sources. The records show, however, that when the case was forwarded by RO Reyes and GS Ilagan to the Assessment Division on 10 July 2015 for review and issuance of the PAN,[122] no Confirmation Requests from TPI sources were attached.[123]

Upon the instruction of Officer-in-Charge Assistant Chief Analyn S. Chu (**OIC Asst. Chief Chu**) of Revenue Region No. 7's Assessment Division to provide copies of the confirmation request/s sent,[124] RDO Combes, through OIC-Assistant RDOr Ramon Navarro (**OIC Asst. RDOr Navarro**), sent Confirmation Requests to the TPI sources on 30 May 2016 *via* registered mail.[125] On the same day, RO Cortuna issued a Memorandum[126] for the Revenue Region No. 7's Regional Director reporting her compliance with OIC Asst. Chief Chu's instruction. Prior to this, RO Cortuna issued a Memorandum dated 18 May 2016 recommending that the case "*be forwarded to the Assessment Division, this region, for review and issuance of Preliminary Assessment Notice in order to enforce collection of the above-mentioned deficiency taxes.*"[127]

Notably, the said Memorandum was issued beyond the regular period provided by law to examine respondent's VAT returns for TY 2012:

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120 Emphasis in the original text and supplied.
121 Supra at note 10.
122 BIR Records, Exhibit "R-1", p. 91.
123 See Memorandum to the Revenue District Officer of Revenue District Office No. 43A issued by Analyn S. Chu, OIC-Asst. Chief, Assessment Division, referred to the handling Revenue Officer on 19 April 2016, id., p. 108.
124 Id.
125 Id., pp. 112-117.
126 Id., p. 136.
127 Id., p. 135.

Quarter	Date of Filing/Due Date	Regular Prescription Date
Quarter 1	25 April 2012/25 April 2012[128]	25 April 2015
Quarter 2	25 July 2012/25 July 2012[129]	25 July 2015
Quarter 3	22 October 2012/25 October 2012[130]	25 October 2015
Quarter 4	25 January 2013/25 January 2013[131]	25 January 2016

From these, it can only be concluded that RO Cortuna did not wait for the responses of TPI sources to the Confirmation Requests before recommending the issuance of the PAN beyond the regular three (3)-year prescriptive period. Nor did RO Cortuna wait for the lapse of the five (5)-day period provided under RMO No. 13-2012[132] after which she may consider the data in the LN package to be true and correct if no response from the TPI source is received.

RO Cortuna also explained in her testimony the basis of the conclusion that the extraordinary 10-year prescriptive period applies, *viz*:

...

Q: Ms. Witness, how did you come up with the Deficiency Income Tax?

A: The partial tally of the computerized matching conducted by this Bureau on the gross revenues per Summary List of Purchases (SLP) submitted by the customers of [respondent] and gross revenues/income payments per alphalist of the withholding agents/payors against the amount declared in the tax returns shows an understatement of income in the amount of P8,183,129.55.

Line by line reconciliation per LN: Revenues per SLP against Gross Sales/Income Payments per alphalist of payors to one and the same payee Tax Reconciliation System (TRS).

Q: Ms. Witness, how did you come up with the Deficiency VAT?

A: The partial tally of the computerized matching conducted by this Bureau on the gross receipts per SLP submitted by the customers of [respondent] and gross receipts/income payments per alphalist of [the] withholding agents/payors against the amount declared in the VAT returns shows an

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128 Exhibit "P-16", Division Docket, Volume I, p. 441.
129 Exhibit "P-17", id., p. 443.
130 Exhibit "P-18", id., p. 445.
131 Exhibit "P-19", id., p. 447.
132 Supra at note 119.

understatement of receipt in the amount of P8,108,649.01 which is subject to VAT pursuant to Title IV, Section 105 and 108 of the NIRC of 1997, as amended.

Q: Ms. Witness, what else did you find out, if any?

A: The running of the three-year statute of limitation as provided under Section 203 of the NIRC of 1997, as amended, is not applicable with respect to the Income Tax and Value-Added Tax liabilities of [respondent], but rather to the ten (10) year prescriptive period pursuant to Section 222(a) of the NIRC of 1997, as amended due to the discrepancy of more than 30% on the gross sales of [respondent].[133]

...

Court: And with regards to your statement that the running of the three (3)-year statute of limitations is not applicable due to the discrepancy of more than 30% of the gross sales of [respondent]. Why do you say that it is a 30% discrepancy, where did you compare it with?

Witness: [Underdeclaration] over the total sales declared by the taxpayer.

Court: Where did you get the figures?

Witness: In the financial statement.

Court: What[?] I'm sorry, I cannot hear you.

Witness: Audited Financial Statement[,] Your Honor.

Court: You compare the Audited Financial Statement with what?

Witness: Against the data of the top withholding agent submitted to us.

Court: With the BIR computerized matching?

Witness: Yes[,] Your Honor.

Court: So[,] you stated here that partial tally, it is based on a partial tally?

Witness: Yes[,] Your Honor.

---

133 Supra at note 64, p. 493.

Court: And not a total tally?

Witness: Yes[,] Your Honor.[134]

...

To sum up, petitioner's presumption that respondent's tax returns were false or fraudulent, triggering the application of the extraordinary 10-year prescriptive period, was merely based on another presumption – the presumption of correctness of the data provided by the TPI sources.

We cannot uphold petitioner's finding that there is *prima facie* evidence that respondent's tax returns for TY 2012 are false and fraudulent as to warrant the application of the extraordinary 10-year prescriptive period.

In *Commissioner of Internal Revenue v. Arturo E. Villanueva, Jr.*,[135] the High Court, citing previous jurisprudence, reiterated that the statute of limitations on assessment and collection of taxes was incorporated in our Tax Code for the benefit and protection of taxpayers against unreasonable and protracted investigations. In *Goodrich*,[136] the High Court declared that the legal provisions on prescription should be liberally construed to protect taxpayers and that, as a corollary, the exceptions to the rule on prescription should be strictly construed.

Thus, we cannot allow petitioner to invoke the extraordinary 10-year prescriptive period based solely on unverified TPI. It would be the height of injustice to deprive respondent of the benefit and protection of the statute of limitations on assessment and collection of taxes solely because of unverified information that may possibly be erroneously reported by other taxpayers.

As such, the extraordinary prescriptive 10-year period will not apply, and consequently, the subject assessment for TY 2012 is void for being issued beyond the regular three (3)-year prescriptive period.

---

134 TSN dated 25 January 2023, pp. 15-16.

135 G.R. No. 249540, 28 February 2024.

136 Supra at note 113.

THE SUBJECT TAX ASSESSMENT IS VOID SINCE THE REVENUE OFFICER (RO) WHO CONDUCTED RESPONDENT'S AUDIT WAS NOT DULY AUTHORIZED TO DO SO.

We agree with the Second Division that the subject assessment for deficiency taxes is void because RO Cortuna, who conducted the audit of respondent's books of accounts, was not authorized through an LOA.

The issuance of a 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,[137] as provided in Section 6(A) of the NIRC of 1997, as amended:

> ...
>
> **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> > (A) *Examination of Returns 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: *Provided*, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.[138]
>
> ...

Section 10(c) of the NIRC of 1997, as amended, provides:

> ...
>
> **SEC. 10.** *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the **Revenue Regional Director** shall, within the region and district offices under his jurisdiction, among others:
>
> ...

137 *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, 05 April 2017.
138 Emphasis supplied and italics in the original text.

(c) **Issue Letters of Authority** for the examination of taxpayers within the region[.][139]

...

Section 13 of the NIRC of 1997, as amended, likewise requires that the RO assigned to examine the taxpayer's books of accounts must be armed with an LOA, *viz*:

...

SEC. 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 deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.[140]

...

Based on the above provisions, the right to examine a taxpayer's books of accounts and other accounting records is statutorily conferred only upon the CIR. An RO must be clothed with authority, through an LOA, to conduct the audit or investigation of the taxpayer. Absent such grant of authority through an LOA, the RO's audit and examination of taxpayer's books of accounts is a nullity.[141]

Corollarily, Section D(4) of RMO No. 43-90[142] dated 20 September 1990, provides:

...

D. Preparation and issuance of L/As.

...

4. 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

139 Emphasis supplied and italics in the original text.

140 Emphasis supplied and italics in the original text.

141 See *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.

142 Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit dated 20 September 1990.

> service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.[143]
>
> ...

From the foregoing, only the CIR and his or her duly authorized representatives (*i.e.*, Deputy Commissioners, the Revenue [RDs], and such other officials as may be authorized by the CIR) may issue the LOA.

In this case, the records show that the audit of respondent was initially assigned to RO Reyes and GS Ilagan through an LOA issued by RD Misajon of Revenue Region No. 7,[144] but was later reassigned to RO Cortuna and GS Ranchez through a MOA signed by RDOr Combes of RDO No. 43A.[145]

Indeed, the LOA does not reflect or carry the names of RO Cortuna and GS Ranchez as those authorized to examine respondent's books of accounts and other accounting records. RO Cortuna even testified that her authority is only by virtue of a MOA signed by an RDOr and that she was the one who audited or examined respondent's documents and prepared the report detailing the results of the said audit or examination, *viz*:

> ...
>
> **Atty. Pajarito:** Ms. Witness, may I refer you to your Judicial Affidavit[,] in Question No. 10 of your Judicial Affidavit, you made mention of a Memorandum of Assignment, is that correct?
>
> **Witness:** Yes[,] attorney.
>
> **Atty. Pajarito:** Can you tell the court, just for the record, what is Memorandum of Assignment issued for?
>
> **Witness:** This was the Memorandum of Assignment authorizing me to conduct the examination.
>
> **Atty. Pajarito:** Ms. Witness, you also mentioned in your Answer to Question No. 16 of your Judicial Affidavit a Letter of Authority, is that correct?

143 Emphasis supplied.
144 Supra at note 17.
145 Supra at note 21.

Witness:	Yes[,] attorney.
Atty. Pajarito:	Ms. Witness, can you tell us if your name appears on the said Letter of Authority?
Witness:	It was the name of the original examiner.
Atty. Pajarito:	Ms. Witness, just to confirm, you are not among those names that appear on the Letter of Authority?
Witness:	No.
Atty. Pajarito:	Ms. Witness, can you confirm if a separate Letter of Authority, if any (sic) there is a separate Letter of Authority that contains your name?
Witness:	A Memorandum of Assignment was issued to me.
Atty. Pajarito:	Can you tell us the date of this Memorandum of Assignment?
Witness:	This was ano, I forgot already.
Atty. Pajarito:	Is it the May 18, 2016?
Witness:	The first Memorandum of Assignment was dated April 19, 2016.
Atty. Pajarito:	Ms. Witness, prior to that, can you let us know[,] for the record, what the date on the Letter of Assignment you mentioned in your Answer to Question 16 was?
Witness:	Authorizing me to conduct an examination.
Atty. Pajarito:	No[,] Ms. Witness, the Letter of Authority you mentioned in your Answer to Question 16 of your Judicial Affidavit.
Witness:	The Letter of Authority[?] No Letter of Authority was issued to me.
Atty. Pajarito:	Yes[,] Ms. Witness, but for the record[,] can you read the date that appears in your Answer to Question 16, the date of the Letter of Authority[?]
Witness:	The date of Letter of Authority is May 25, 2015.

Atty. Pajarito:	Ms. Witness, can you confirm if a revalidated Letter of Authority was issued in relation to this case?
Witness:	It was only the Memorandum of Assignment [that] was issued.
Atty. Pajarito:	And the same is dated?
Court:	April 19, 2016, Exhibit "R-5".
Witness:	Yes[,] Your Honor.
Atty. Pajarito:	And Ms. Witness, just for the record, can you confirm when you made your report to the BIR?
Witness:	It was May 18, 2016.
...	
Court:	Question from the Court. With regards to the Memorandum of Assignment, who signed the same?
Witness:	The MOA[,] Your Honor[,] dated April 19, 2016 was signed by our Revenue District Officer.
...	
Court:	Alright. So[,] it is clear that your name does not appear, your authority is based on Memorandum of Assignment issued by the, who issued that?
Witness:	By our Revenue District Officer.
Court:	On April, when was it issued?
Witness:	April 19, 2016[,] Your Honor.
Court:	And the period you are supposed to review is?
Witness:	2012.[146]
...	

From the foregoing, it is evident that RO Cortuna conducted the audit without being so authorized by petitioner or his duly authorized representative through an LOA. As such, the subject assessment for deficiency taxes arose from the examination made by an RO who,

[146] TSN dated 25 January 2023, supra at notes 68 to 70, pp. 5-17.

as stated earlier, was not properly authorized by the CIR or his duly authorized representative.

Petitioner argues that the ROs indicated in the LOA would not always be able to complete their audit investigations due to unforeseen circumstances, such as reassignment, retirement, illness, or death, thus, the need for the issuance of an MOA to other revenue officers who will continue the audit, as standardized by RMO No. 69-2010:[147]

> ...
> III. Policies and Guidelines
> ...
>
> 8. Manual serially-numbered MOA shall be issued for the following cases:
>
> 8.1 Reassignment for the continuation of the audit/investigation of a case to another RO due to resignation/retirement/transfer of the original RO[.]
>
> ...

The Supreme Court addressed a similar argument in the case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[148] **(McDonald's)**. In the said case, the Supreme Court highlighted the importance of the issuance of a new LOA in case of transfer or re-assignment in this wise:

> ...
> 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

[147] Supra at note 99.
[148] G.R. No. 242670, 10 May 2021; Emphasis supplied.

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.

...

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue,*[149] the Supreme Court underscored the importance of an LOA, *viz*:

...

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. 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. ...

...

[149] G.R. No. 222743, 05 April 2017; Citation omitted and emphasis supplied.

> Based on the afore-quoted provision, 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 best-evidence obtainable, inventory-taking, or surveillance among others has 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.**
>
> ...
>
> ... To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made.
>
> ...

Citing the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[150] the Supreme Court went on to state:

> ...
>
> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **<u>In the absence of such an authority, the assessment or examination is a nullity.</u>**
>
> ...

Further, the Supreme Court in *McDonald's*[151] concluded that:

> ...
>
> In summary, **We rule that the <u>practice of reassigning or transferring revenue officers originally named in the LOA</u> and substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA <u>(i) violates the taxpayer's right to due process in tax audit or investigation</u>; <u>(ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer</u>; and <u>(iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990</u>.**
>
> ...

---

150 G.R. No. 178697, 17 November 2010; Emphasis and underscoring supplied.

151 Supra at note 148; Emphasis and underscoring supplied.

Based on the foregoing pronouncements, We find no merit in petitioner's contention that a new LOA is unnecessary in cases of reassignment (of audit) to new ROs and that a MOA would suffice pursuant to RMO No. 69-2010.[152]

Considering the absence of a new LOA authorizing RO Cortuna to examine respondent's books of accounts and other accounting records as a result of the reassignment/transfer of the case to her, the assessment for deficiency taxes issued against respondent is inescapably void.

THE FORMAL LETTER OF DEAMAND/FINAL ASSESSMENT NOTICE (FLD/FAN) WAS PREMATURELY ISSUED, IN VIOLATION OF RESPONDENT'S RIGHT TO DUE PROCESS.

Section 228 of the NIRC of 1997, as amended, provides the procedure for protesting of assessments, to wit:

> ...
> **SEC. 228.** *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a **preassessment notice** shall not be required in the following cases:
>
> > (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
> >
> > (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
> >
> > (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

[152] Supra at note 99.

(d) When the excise tax due on exciseable articles has not been paid; or

(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.[153]

...

The above provision is implemented by Section 3 of Revenue Regulations (**RR**) No. 12-99,[154] as amended by RR No. 18-2013,[155] which provides:

...

SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

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

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153 Emphasis supplied and italics in the original text.

154 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.

155 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> **If the taxpayer fails to respond <u>within fifteen (15) days from date of receipt of the PAN</u>, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**
>
> **If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**[156]
>
> ...

It is clear from the foregoing provisions that the issuance of the PAN, as well as giving the taxpayer 15 days from receipt thereof to respond to such notice, is part of due process in the issuance of tax assessments. If the taxpayer fails to respond to the PAN within the said 15-day period, the taxpayer shall be considered in default. Only then can the CIR or his duly authorized representative validly issue the FAN. Otherwise stated, the CIR or his duly authorized representative is duty-bound to wait for the expiration of the 15-day period from receipt of the PAN before issuing the FAN.

To recall, petitioner served the PAN *via* registered mail on 04 October 2018.[157] Respondent claims that it received the PAN on 09 October 2018,[158] thus, it had until <u>24 October 2018</u> within which to file its reply thereto. On 04 November 2018[159] respondent received the FLD/FAN dated 24 October 2018.[160]

The Second Division held that the FLD/FAN was issued prematurely since petitioner issued it without waiting for the expiration of the 15-day period available for the respondent to reply to the PAN.[161] Petitioner contradicted the Second Division's finding by reiterating its argument that the date when the demand letter or notice of assessment is mailed, released, or sent to the taxpayer is considered the date of the

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156 Italics in the original text, emphasis and underscoring supplied.
157 Supra at note 23.
158 Supra at note 24.
159 Supra at note 27.
160 Supra at note 25.
161 Supra at note 3, p. 829.

actual assessment,[162] citing the case of *Basilan Estates, Inc. v. The Commissioner of Internal Revenue, et al.*[163] (**Basilan**). Thus, according to petitioner, the 15-day period available to respondent already lapsed after 19 October 2018.

We agree with the Second Division that *Basilan*'s discussion on the date of assessment relates to the determination of prescription and has nothing to do with ascertaining the lapse of the 15-day period available to taxpayers to respond to the PAN, *viz*:

> ...
>
> **PRESCRIPTION**
>
> There is no dispute that the assessment of the deficiency tax was made on February 26, 1959; but the petitioner claims that it never received notice of such assessment or if it did, it received the notice beyond the five-year prescriptive period. ...
>
> ... Besides, even granting that notice had been received by the petitioner late, as alleged, **under Section 331 of the Tax Code requiring five years within which to assess deficiency taxes, the assessment is deemed made when notice to this effect is released, mailed or sent by the Collector to the taxpayer and it is not required that the notice be received by the taxpayer within the aforementioned five-year period.**[164]
>
> ...

Petitioner further contends that due process is satisfied since respondent was given an opportunity to refute his or her findings, and was in fact able to do so by filing its Protests to the PAN and the FAN.[165] *Commissioner of Internal Revenue v. Nippo Metal Tech Phils., Inc.*,[166] citing *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[167] is instructive:

162 Supra at note 1, p. 12.
163 G.R. No. L-22492, 05 September 1967.
164 Id.; Citation omitted, emphasis in the original text and supplied.
165 Supra at note 1, p. 14.
166 G.R. No. 227616 (Notice), 19 June 2019; Citations omitted, emphasis, italics and underscoring in the original text.
167 G.R. Nos. 201398-99 & 201418-19, 03 October 2018.

> ...
>
> Clearly, due process demands that the taxpayer receives the PAN **and** that he is given the opportunity to respond thereto. Moreover, in *CIR v. Avon Products Manufacturing, Inc.*, the Court even went beyond "opportunity to be heard" as an aspect of due process. In said case, the Court, reiterating *Ang Tibay v. The Court of Industrial Relations*, held that "[n]ot only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts ***but the [CIR] must consider the evidence presented***."
>
> ...

Notably, even as respondent was able to file a protest against the PAN and the FLD/FAN, the mere fact that the FLD/FAN was issued prior to the lapse of the 15-day period for respondent to file its protest against the PAN unmistakably shows petitioner's non-observance of the mandatory 15-day period given to respondent to file a protest and be heard on its defenses before the final assessment was issued against it.

With the above disquisition, the Court *En Banc* thus upholds the Second Division's finding that the FLD/FAN was issued prematurely and respondent was deprived of the opportunity to be heard on the PAN, in clear violation of the due process requirement in the issuance of tax assessments. Consequently, the FLD/FAN is void and the assessments for deficiency taxes contained therein bear no valid fruit and must not be given any effect.[168]

WHEREFORE, with the foregoing considered, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 07 November 2024 is **DENIED** for being filed out of time and, even if deemed filed on time, for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[168] Refer to *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. Nos. 197945 & 204119-20, 09 July 2018; *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*, G.R. Nos. 215534 & 215557, 18 April 2016; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, 08 December 2010.

WE CONCUR:

Ma. Belen S.-L.
MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes - Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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.

Ma. Belen M. R-L

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice