REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2963** (CTA Case No. 9999)
	Present:
- versus -	**RINGPIS-LIBAN,** *P.J.*, **BACORRO-VILLEÑA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
FORT PALM SPRING CONDOMINIUM CORPORATION, Respondent.	Promulgated: FEB 03 2026 3:52 p.m.

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DECISION

BACORRO-VILLENA, J.:

In its bid to reverse the Special Third Division's Decision[1] promulgated on 05 September 2023 (**assailed Decision**) and its Resolution[2] (**assailed Resolution**) issued on 15 July 2024, petitioner Commissioner of Internal Revenue (**petitioner/CIR**) filed the present Petition for Review[3] pursuant to Section 2(a)(1),[4] Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

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[1] Division Docket, Volume III, pp. 1345-1366. Penned by Associate Justice Ma. Belen M. Ringpis-Liban with the concurrence of Associate Justice Maria Rowena Modesto-San-Pedro.

[2] Id., pp. 1393-1397.

[3] Filed on 16 August 2024, id., pp. 7-15. The Petition for Review was filed subsequent to the grant of a fifteen (15)-day extension by the Court *En Banc* pursuant to a "Motion for Extension of Time to File Petition for Review" *per En Banc* Minute Resolution dated 06 August 2024, id., p. 6.

[4] **SEC. 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:

In the assailed Decision and Resolution, the Special Third Division granted respondent Fort Palm Spring Condominium Corporation's (**respondent**'s) prior Petition for Review and, thereby, declared void petitioner's deficiency income tax (**IT**) and expanded withholding tax (**EWT**) assessments in the total amount of ₱164,382,440.05, including interest, penalties and surcharges for taxable year (**TY**) 2009. It also cancelled and set aside petitioner's Preliminary Assessment Notice[5] (**PAN**) dated 14 July 2017, [Final] Assessment Notice[6] (**FAN**) dated 17 August 2017 and Warrant of Distraint and/or Levy[7] (**WDL**) dated 21 November 2018.

PARTIES OF THE CASE

Petitioner is the duly appointed CIR tasked to decide disputed assessment, refunds of internal revenue taxes, fees or charges, 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 Legal Division, Revenue Region No. 8-B, South NCR, Second (2nd) Floor, Bureau of Internal Revenue (**BIR**) Building, 313 Senator Gil Puyat Avenue, Makati City.[8]

Respondent, on the other hand, is a domestic corporation duly organized and existing under Philippine laws, with office address at Unit 2C-A, FPS Bldg., First (1st) Avenue, corner 30th Street, Global City, Taguig. It is engaged in the business of owning, using, developing, subdividing, selling all kinds of real estate.[9]

FACTS OF THE CASE

On 26 June 2009, in a letter sent to the BIR, respondent requested for a ruling on the transfer of condominium and/or parking units from respondent/trustee to the individual investors-trustors or unit owners

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(a) Decisions or resolutions on motion for reconsideration or new trial of the Court in Division 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 and Department of Agriculture[.]

5 Exhibit "R-2", BIR Records, pp. 731-735.
6 Exhibit "R-4", id., pp. 744-750.
7 Exhibit "P-1", Division Docket, Volume I, p. 253.
8 *Rollo*, p. 7.
9 See primary purpose in Exhibit "P-2", Division Docket, Volume I, p. 254.

being subjected to tax.[10] In reply, the BIR issued Ruling No. DA(128) 374-2009 (**BIR Ruling**) on 15 July 2009.[11] In the said ruling, petitioner confirmed that the described transaction is not subject to tax (*i.e.*, capital gains tax [**CGT**], IT, withholding tax, value-added tax [**VAT**], and documentary stamp tax [**DST**] on the deeds).[12]

Subsequently, respondent filed a Petition for Declaratory Relief before the Regional Trial Court (**RTC**), Branch 266 of Taguig City, docketed as SCA No. 4014-TG and entitled "*Fort Palm Spring Condominium Corp. v. Hon. Kim Henares, in her capacity as the Commissioner of the Bureau of Internal Revenue*".[13] There, it prayed for the RTC to declare that (1) the BIR Ruling remains effective in the absence of any investigation finding that the factual representations by respondent are false; (2) an investigation and finding of false representation is required before the BIR Ruling may be revoked; and (3) in case the BIR Ruling is revoked, that such revocation cannot be implemented retroactively.[14]

In an Order dated 12 July 2016, the RTC sustained the validity of the BIR Ruling.[15] Later, following a supposed lapse of period to question the RTC's action, issued a Certificate of Finality for the said Order.[16]

Meanwhile, on 28 September 2010, petitioner issued a Letter of Authority (**LOA**) No. 044-2010-00000045 (SN: eLA201000035874),[17] authorizing Revenue Officer (**RO**) Ramon Rojas (**Rojas**) and Group Supervisor (**GS**) Reynaldo Laureta (**Laureta**) of Revenue District Office No. 44, Taguig-Pateros, to examine respondent's books of accounts for all internal revenue taxes for the period of 01 January 2009 to 31 December 2009, or TY 2009. Petitioner's authorized representative, Anthony M. Poblete (**Poblete**), received the LOA.

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10 See Paragraph 2, Joint Stipulation of Facts and Issues (JSFI), As to Facts, id., p. 431.
11 Par. 3, id.
12 Id., pp. 29-30.
13 Par. 4, id., p. 431.
14 Id., pp. 54-59.
15 Par. 5, id., p. 432.
16 Par. 6, id. See also Q&A Nos. 36-42, Judicial Affidavit of Philip Cea dated 18 June 2020, Exhibit "P-11" id., pp. 445-446.
17 Par. 10, id.; BIR Records, p. 5. The said LOA failed to indicate the date when Poblete received it.

Subsequently, on 17 May 2011, respondent received the "Final Notice"[18] (**Final Notice**). In the Final Notice, the BIR directed respondent to present its books of accounts and other related accounting records within ten (10) days from receipt thereof. On 28 July 2011, petitioner issued a Subpoena *Duces Tecum*[19] (**SDT**), through Regional Director (**RD**) Jaime Santiago (**Santiago**), commanding respondent to appear and bring its books of accounts for TY 2009.

Later, on 17 May 2013, petitioner, through Revenue District Officer (**RDO**) Maridur V. Rosario (**Rosario**) issued a Notice for Informal Conference[20] (**NIC**) against respondent, requesting the latter to appear before the BIR Revenue District Office No. 44, for an informal conference on its deficiency taxes for TY 2009.

On 14 July 2017, petitioner issued a PAN with Details of Discrepancies[21] against respondent, assessing the latter deficiency IT and EWT, including interest in the aggregate amount of ₱163,538,129.75. Respondent's deficiency IT and EWT assessment arose out of the following: (1) disallowed expenses based on the best evidence obtainable rule; (2) disallowed expenses due to non-withholding; (3) unsubstantiated cost and expenses; and (4) failure to remit the correct withholding tax.

Subsequently, on 17 August 2017, petitioner issued a FAN[22] with Details of Discrepancies against respondent. The Office of the Regional Director, Revenue Region No. 8, sent the FAN, signed by then RD Glen A. Geraldino (**Geraldino**). The FAN retained and reiterated the findings in the PAN.

Still later, or on 02 March 2018, petitioner issued a Preliminary Collection Letter[23] (**PCL**) requesting payment of its deficiency IT and EWT liabilities in the total amount of ₱164,382,440.05. On 12 March 2018, petitioner also issued the Final Notice Before Seizure[24] (**FNBS**), where respondent was requested to settle its tax liabilities within 10 days /

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18 Par. 14, id.; id., p. 7.
19 Par. 15, id.; id., p. 66.
20 Id., p. 175.
21 Supra at note 5.
22 Supra at note 6.
23 BIR Records, p. 759.
24 Exhibit "R-6", id., p. 761.

from receipt of the FNBS. On 21 November 2018, petitioner issued WDL No. ARTF-WDL-2018034.[25] In the said WDL, the BIR stated that due to respondent's refusal to pay its deficiency taxes, respondent will sell its personal properties to the extent necessary to satisfy its obligation.

Thereafter, or on 06 December 2018, respondent submitted a Request for Reconsideration and/or Reinvestigation (**Protest**) to the BIR's office copy furnished the Department of Finance.[26]

Subsequently, petitioner issued Warrants of Garnishment[27] (**WOGs**) to the following banks: (1) Bank of Commerce; (2) China Banking Corporation; (3) Philippine National Bank; (4) BPI Family Bank; (5) Bank of the Philippine Islands; (6) Security Bank; (7) Banco De Oro Universal Bank; (8) United Coconut Planters Bank; (9) Philippine Savings Bank; (10) Union Bank of the Philippines; (11) HSBC; (12) East West Banking Corporation; and (13) Metropolitan Bank and Trust Company.

PROCEEDINGS BEFORE THE COURT IN DIVISION

Disagreeing with the WDL, respondent filed a "Petition for Review (with Application for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction)"[28] (**Petition with Application for Issuance of TRO**) with this Court on 27 December 2018. The case was docketed as CTA Case No. 9999 and was initially raffled to the Third Division.

In its petition, respondent argued that: (1) it was deprived of due process because it did not receive the LOA and Assessment Notices (**ANs**);[29] (2) petitioner's right to assess deficiency taxes for TY 2009 had already prescribed; and (3) petitioner's assessment for TY 2009 has no factual and legal basis.

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25 Supra at note 7.
26 See JSFI, As to Facts, Par. 17, Division Docket, Volume I, p. 433.
27 Exhibits "R-9" to "R-21", BIR Records, pp. 825, 822, 819, 816, 800, 813, 810, 807, 796, 792, 788, 783, and 804, respectively.
28 Division Docket, Volume I, pp. 12-27.
29 Refers to the PAN dated 14 July 2017 and FAN dated 17 August 2017; supra at note 21 and 22.

In the Resolution dated 20 February 2019,[30] the Third Division ordered petitioner to comment on respondent's "Application for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction" (**Application for Issuance of TRO**), embodied in the original Petition for Review. In the same Resolution, the hearing on the Application for Issuance of TRO was set on 05 March 2019.

During the 05 March 2019 hearing on the Motion for Suspension, the Third Division treated respondent's Application for Issuance of TRO as an application for suspension of collection of taxes (**Motion for Suspension**).[31] In the said hearing, respondent presented as its witness Florencio Y. Rojas Jr. (**Rojas, Jr.**),[32] respondent's Tax Consultant who testified on direct examination by way of his Judicial Affidavit.[33]

On the witness stand, Rojas, Jr. declared that: (**1**) he reviews respondent's Income Tax Return (**ITR**) and Audited Financial Statements (**AFS**); (**2**) on 29 November 2018, respondent received a WDL dated 21 November 2018; (**3**) upon checking with the BIR's records, the LOA and ANs were sent to <u>30th Street, Fort Bonifacio, Global City, Taguig</u>; (**4**) respondent did not receive the LOA and ANs because the mailing address was incorrect; (**5**) based on respondent's General Information Sheet (**GIS**), its correct address is at <u>Unit 2C-A, FPS Building, 1st Avenue corner 30th Street, Global City, Taguig City</u>; (**6**) the BIR has a copy of petitioner's GIS; (**7**) respondent's constitutional right against deprivation of property without due process of law was violated; (**8**) despite the LOA's issuance on 28 September 2010, the PAN was only issued in 2016[34] and the FAN was only issued in 2017; (**9**) the BIR's right to assess and collect taxes against respondent had already prescribed; (**10**) petitioner's allegation of fraud has no basis; (**11**) since petitioner's assessment is invalid, the WDL is likewise invalid; (**12**) based on respondent's AFS for 2012, 2013, 2014 and 2017, it had no transactions; hence, it also has no income sufficient to answer for the alleged tax liabilities; and (**13**) the filing of respondent's Petition for Review will not stop the WDL's implementation, unless the court issues a TRO.[35]

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[30] Division Docket, Volume I, pp. 159-160.
[31] Minutes of the Hearing and Order, both dated 05 March 2019, id., pp. 162 and 163-a-163-b, respectively.
[32] Id.
[33] Judicial Affidavit of Florencio Y. Rojas Jr., Exhibit "P-7", id., pp. 60-66.
[34] As *per* the parties' JSFI, the PAN was issued on 23 February 2016; Division Docket, Volume I, p. 432. In contrast, with the actual date on Exhibit "R-2" which indicated 14 July 2017; supra at note 5.
[35] Supra at note 33.

During cross-examination, Rojas, Jr. responded positively when asked whether respondent was willing to post the required bond for the suspension of collection of taxes. He clarified that although respondent claimed financial incapacity, it was still willing to post a bond because its 2017 AFS, showed ₱1 million in cash - an amount far lower than the BIR's deficiency assessment of ₱164 million.[36]

On redirect examination, Rojas, Jr. testified that because respondent's 2017 AFS showed only ₱1 million in cash, that amount was (most likely) the maximum bond that respondent could post.[37]

Petitioner did not conduct any re-cross examination.[38]

In response to the Court's inquiry, Rojas Jr. confirmed that he was respondent's Consultant. He also stated that the BIR used the wrong address when it mailed petitioner's ANs.[39] Finally, he opined that enforcing the WDL would lead to the closure of respondent's business.[40]

In compliance with the Court's directive, on 11 March 2019, respondent filed its "Formal Offer of Exhibits (In support for the Motion to Suspend Collection of Taxes)"[41] (**FOE on the Motion for Suspension**).

Later, after being granted an extension of time to file an Answer[42] to respondent's Petition for Review, petitioner (as then respondent) filed his or her Answer[43] on 04 April 2019. Therein, petitioner made the following arguments in the bid to have respondent's case dismissed, to wit: (1) assessments are presumed correct and made in good faith, and it is the taxpayer's duty to prove otherwise; (2) petitioner's assessment has factual and legal basis; and (3) taxes are the lifeblood of the government and should be collected without unnecessary hindrance.

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36 TSN dated 05 March 2019, pp. 11-12.
37 Id., pp. 12-13.
38 Id., pp. 13.
39 Refers to the PAN dated 14 July 2017 and FAN dated 17 August 2017; supra at note 21 and 22.
40 TSN dated 05 March 2019, pp. 14-17.
41 Division Docket, Volume I, pp. 248-252.
42 See Resolution dated 28 March 2019, id., p. 340.
43 Id., pp. 344-346.

In the Resolution dated 14 August 2019,[44] the Third Division: (1) admitted all of respondent's exhibits relative to its Motion for Suspension; (2) granted respondent's Motion for Suspension; and (3) ordered respondent to post a cash or surety bond amounting to ₱55,030,939.12.

On 13 September 2019, respondent filed its "Motion for Waiver or Reduction of Bond"[45] (**Motion to Reduce Bond**). Following the Court's directive to comment thereto[46], petitioner filed a Manifestation[47] on 24 October 2019, stating that it has been the BIR's policy to defer action on matters already under the Court's jurisdiction, including enforcement of summary remedies. Petitioner added that he or she would leave the resolution of the Motion to Reduce Bond to the Court's discretion.

Subsequently, or on 26 November 2019, the Third Division denied respondent's Motion to Reduce Bond for lack of merit, reasoning that the Court may only allow the suspension of collection of taxes (provided that respondent post a cash or surety bond). Further, respondent was not able to prove its allegations that petitioner violated its right to due process. Hence, the Court cannot exempt respondent from posting the said bond.[48]

Later, respondent posted Surety Bond No. BD-G16-HO-0005009 on 16 December 2019.[49] As a result, the Court enjoined petitioner from collecting or attempting to collect the subject ANs in the present case, until further court orders.[50]

Respondent and petitioner thereafter filed their Pre-Trial Briefs on 20 May 2020[51] and 24 June 2020,[52] respectively. Prior to the Pre-Trial Conference (**PTC**) held on 24 September 2020,[53] the parties filed their

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[44] Id., pp. 357-362.
[45] Id., pp. 366-376.
[46] See Resolution dated 19 September 2019, id., p. 378.
[47] Id., pp. 379-380.
[48] See Resolution dated 26 November 2019, id., pp. 385-388.
[49] See Respondent's Manifestation/Compliance dated 17 December 2019, id., pp. 391-405, with annexes.
[50] See Resolution dated 28 January 2020, id., pp. 407-408.
[51] Id., pp. 419-426.
[52] Id., Volume II, pp. 633-635.
[53] Minutes of the Hearing and Order, both dated 24 September 2020, id., pp. 639 and 645-647, respectively.

Joint Stipulation of Facts and Issues[54] (**JSFI**) on 26 June 2020, which the Third Division admitted and approved in its Order dated 24 September 2020.[55] Later, the pre-trial was terminated. On 23 October 2020, the Third Division issued the corresponding Pre-Trial Order (**PTO**).[56]

At the trial proper that ensued subsequently, respondent presented its testimonial and documentary evidence. It offered the testimonies of the following witnesses: (1) Rojas, Jr.,[57] respondent's tax consultant; and (2) Philip Cea[58] (**Cea**), businessman and respondent's independent consultant.

During the hearing on 28 October 2020, respondent presented Rojas, Jr., as its first witness.[59] On the witness stand, he declared essentially that: (1) he reviews respondent's ITR and AFS; (2) the BIR issued a ruling which confirmed that the transfer of property to the individual unit owners is considered a non-taxable transaction; (3) on 29 November 2018, the BIR served a WDL to FPS Condominium Association Inc. (**FPSCAI**); (4) FPSCAI is a corporation separate and distinct from respondent; (5) he reviewed the BIR Records and he discovered that the LOA and ANs were all sent to 30th Street, Fort Bonifacio, Global City, Taguig; (6) respondent did not receive the LOA and ANs because the mailing address was incorrect; (7) based on respondent's GIS, its correct address is at 2C-A, FPS Building, 1st Avenue corner 30th Street, Global City, Taguig City; (8) the BIR has a copy of petitioner's GIS; (9) respondent's constitutional right against deprivation of property without due process of law was violated; (10) petitioner's assessment is invalid because petitioner failed to inform respondent of the facts and the law on which the assessment was based; (11) on 06 December 2018, respondent filed its Protest with the BIR; (12) the WDL should not be implemented as it was issued in violation of respondent's constitutional right to due process; (13) the BIR's right to assess and collect taxes against respondent had already prescribed; and (14) petitioner's allegation of fraud has no basis.[60]

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54 Id., Volume I, pp. 431-436.
55 Supra at note 53.
56 Division Docket, Volume II, pp. 656-663.
57 Exhibit "P-16", id., pp. 502-521; Minutes of the hearing and Order both dated, 28 October 2020, id., pp. 664 and 665-666, respectively.
58 Exhibit "P-11", id., Volume I, pp. 438-455; Minutes of the hearing and Order both dated, 18 November 2020, id., pp. 667 and 668-669, respectively.
59 Supra at note 57.
60 See Judicial Affidavit dated 18 June 2020, Exhibit "P-16", supra at note 57.

During his cross-examination, Rojas, Jr., confirmed that respondent was not able to file a Protest to both ANs because it did not receive the said ANs.[61] He also testified that in the Letterhead of Exhibit "P-8" (Letter dated 26 June 2009)[62] respondent's address was Fort Bonifacio Stop Over corner 22nd St. N. Rizal Drive, Global City, hence, this was not the same address as indicated in respondent's GIS which was 2C-A, FPS Building, 1st Avenue corner 30th Street, Global City, Taguig City.[63]

On redirect examination, Rojas, Jr. declared that Exhibit "P-8" is dated 26 June 2009, and he could no longer recall the date when respondent's condominium was constructed.[64]

Petitioner did not conduct any re-cross examination.[65]

On 18 November 2020, respondent also presented Cea, a businessman and petitioner's independent consultant.[66] In his Judicial Affidavit dated 18 June 2020,[67] he declared that: (1) he has been respondent's independent consultant since 2009; (2) "Build Your Own" (**BYO**) concept is an arrangement where the investors act as the developers in order to remove a third party developer; (3) Since BYO has no third party developers, the subsequent registration of the investors' individual units to their respective names would not be subject to certain taxes; (4) subsequently, the BIR issued a ruling which confirmed that the transfer of property to the individual unit owners are considered non-taxable transactions; (5) after, Rodolfo Mendoza (OIC-Revenue District Offices) verbally informed respondent that the said BIR Ruling had been revoked; (6) eventually, respondent filed a Petition for Declaratory Relief with the RTC; (7) the RTC affirmed the BIR Ruling's validity and existence; (8) the BIR did not file an appeal against the RTC's order, hence it has attained finality; (9) on 29 November 2018, the BIR served a WDL to FPSCAI; (10) FPSCAI is a corporation separate and distinct from respondent; (11) respondent did not authorize FPSCAI or any of its external counsel to receive documents on its behalf; (12) the

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61 TSN dated 28 October 2020, p. 6.

62 The Third Division denied the admission of Exhibit "P-8" on the ground that respondent failed to present the originals for comparison. See Resolution dated 11 February 2021, Division Docket, Volume III, pp. 1032-1033.

63 TSN dated 28 October 2020, pp. 9-10.

64 Id., p. 10.

65 Id., p. 11.

66 Supra at note 58.

67 Exhibit "P-11", supra at note 58.

BIR's ANs for TY 2009 and the LOA were all sent to respondent *via* registered mail, but respondent did not receive the same; and (13) the BIR's right to assess and collect taxes against respondent had already prescribed.

Petitioner did not conduct any cross examination.[68]

On 26 November 2020, respondent filed its FOE,[69] to which petitioner failed to file his or her comment thereon.[70]

Later, petitioner transmitted to the Third Division the BIR Records of this case, consisting of one (1) folder with 897 pages.[71] The Third Division noted the same in a Minute Resolution dated 27 November 2020.[72]

In the Resolution dated 11 February 2021,[73] the Third Division admitted respondent's offered exhibits, except for the following: (1) Exhibits "P-8", "P-9", "P-17", and "P-17-1",[74] for failure to present the originals for comparison; (2) Exhibits "P-10",[75] for failure to submit the duly marked exhibits; and (3) Exhibits "P-12", "P-13", "P-14", and "P-15",[76] for not being found in the records.

68 TSN dated 18 November 2020, p. 8.
69 Division Docket, Volume II, pp. 670-681.
70 See Records Verification Report dated 04 January 2021, id, Volume III, p. 1029.
71 See Compliance dated 26 November 2020, id., pp. 1024-1027.
72 Id., p. 1028.
73 Id., pp. 1032-1033.
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Exhibit No.	Description
"P-8"	FPSCC's letter dated 26 June 2009.
"P-9"	BIR Ruling No. DA (128) 374-2009.
"P-17"	Formal Assessment Notice dated 17 August 2017.
"P-17-1"	Details of Discrepancies.

75 Order dated 12 July 2016 issued by Regional Trial Court Taguig Branch 266 in SCA No. 4014-TG.
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Exhibit No.	Description
"P-12"	Montilla Law Office Letter to BIR dated 17 October 2014.
"P-13"	Petition for Declaratory Relief docketed as SCA No. 4014-TG.
"P-14"	Certificate of Finality dated 28 December 2018.
"P-15"	Letter Request for Reconsideration and/or Reinvestigation dated 06 December 2018.

For his or her part, petitioner presented RO Talib Muti (**Muti**) as his or her sole witness.[77] In his Judicial Affidavit dated 12 October 2021, RO Muti declared that: (1) he prepared a Memorandum Report dated 29 May 2015 regarding respondent's audit for TY 2009; (2) respondent's sole and primary purpose for incorporation is to act as custodian of the title over the land where Fort Palm Spring Condominium is erected; (3) on 15 July 2009, the BIR issued a ruling (BIR Ruling No. DA-374-2009) which granted respondent exemption from IT and withholding tax; (4) on 07 June 2005, the BIR issued Ruling No. DA-245-2005 which granted Meridian East Realty and Development Corporation (**Meridian**) and Century Properties Inc. (**CPI**) exemption from IT and withholding tax; (5) on 08 March 2010, the BIR issued Revenue Memorandum Circular (**RMC**) No. 20-2010[78] circulating the revocation of BIR Ruling No. DA-245-2005; (6) the tax exemption granted to Meridian and CPI is similar to respondent, hence the revocation is likewise applicable to BIR Ruling No. DA-374-2009; (7) his assessment against respondent was based on the Best Evidence Obtainable Rule; (8) the 10-year prescriptive period applies because respondent filed a false or fraudulent return for TY 2009; (9) petitioner served on respondent the PAN dated 14 July 2017 and FAN dated 17 August 2017, through registered mail; (10) due to respondent's failure to file a protest to the FAN, petitioner eventually issued an FNBS, WDL and WOG; and (11) as *per* the BIR-Taxpayer Accounting System respondent's address is at 30th Street, Fort Bonifacio Global City, Taguig City.

During his cross-examination, RO Muti confirmed that no LOA was issued under his name. He admitted that an RDO authorized him to conduct respondent's audit through a Memorandum of Assignment (**MOA**). He also confirmed that the RD did not sign the said MOA. Finally, he has no knowledge if the ANs were actually sent to respondent.[79]

On redirect examination, RO Muti declared that: (1) he did not personally send the ANs; and (2) he did not audit respondent's BYO scheme since its investigation was transferred to another RO.[80]

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77 Exhibit "R-34", Division Docket, Volume III, pp. 1074-H-1074-T; Minutes of the hearing and Order, both dated 19 October 2021, id., pp. 1057 and 1058A-1058B, respectively.

78 Circularizing the Revocation of BIR Ruling No. DA-245-2005.

79 TSN dated 19 October 2021, pp. 14-15, and 21.

80 Id., pp. 29-31.

During re-cross examination, RO Muti confirmed that respondent's BYO scheme is similar to Meridian's BYO scheme. He likewise answered affirmatively when asked if both BYO schemes are covered by RMC No. 20-2010.[81] Finally, he admitted he did not look into the similarities and differences between the BYO concept of Meridian and respondent.[82]

In response to the Court's clarificatory question, RO Muti explained that respondent committed fraud because of its previous reliance that it was exempt from taxes prior to the circularization of RMC No. 20-2010.[83]

Subsequently, on 09 November 2021, petitioner's FOE was filed.[84] Respondent filed its comment thereto on 22 November 2021.[85] On 17 March 2022, the Third Division issued a Resolution[86] that admitted petitioner's exhibits, except for "R-23", "R-24", "R-25", "R-26", "R-27", "R-28", "R-29", "R-30", "R-31", "R-32", and "R-33",[87] for failure to present the originals for comparison.

81 Supra at note 78.
82 TSN dated 19 October 2021, pp. 32-34.
83 Supra at note 78.
84 See FOE, Division Docket, Volume III, pp. 1153-1163.
85 Id., pp. 1136-1152.
86 See Resolution dated 17 March 2022, id., pp. 1166-1168.
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Exhibit No.	Description
"R-23"	Monthly Remittance Return of Income Taxes Withheld on Compensation/BIR Form No. 1601-C.
"R-24"	Monthly Remittance Return of Income Taxes Withheld on Compensation/BIR Form No. 1601-C.
"R-25"	Monthly Remittance Return of Income Taxes Withheld on Compensation/BIR Form No. 1601-C.
"R-26"	Monthly Remittance Return of Income Taxes Withheld on Compensation/BIR Form No. 1601-C.
"R-27"	Monthly Remittance Return of Income Taxes Withheld on Compensation/BIR Form No. 1601-C.
"R-28"	Monthly Remittance Return of Income Taxes Withheld on Compensation/BIR Form No. 1601-C.
"R-29"	Monthly Remittance Return of Income Taxes Withheld on Compensation/BIR Form No. 1601-C.
"R-30"	Monthly Remittance Return of Income Taxes Withheld on Compensation/BIR Form No. 1601-C.
"R-31"	Monthly Remittance Return of Income Taxes Withheld on Compensation/BIR Form No. 1601-C.
"R-32"	Monthly Remittance Return of Income Taxes Withheld on Compensation/BIR Form No. 1601-C.
"R-33"	Monthly Remittance Return of Income Taxes Withheld on Compensation/BIR Form No. 1601-C.

On 26 April 2022, only respondent filed its Memorandum.[88] The case was then deemed submitted for decision on 19 September 2022.[89]

In the now assailed Decision of 05 September 2023,[90] the Special Third Division granted respondent's Petition for Review. The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.
>
> Accordingly, the subject PAN (whether dated February 23, 2016 or July 14, 2017), the FAN dated August 17, 2017, and the WDL dated November 21, 2018, all issued against [respondent], in the aggregate amount of Php164,382,440.05, for deficiency income tax and EWT, for the taxable year 2009, are **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED.**
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> ...

In granting respondent's Petition for Review, the Special Third Division mainly held that: (1) the subject tax assessments against respondent are void since the RO who conducted respondent's investigation was not duly authorized to do so; and (2) petitioner's failure to prove that respondent received the subject ANs rendered the tax assessment void, for violation of respondent's right to due process.[91]

Meanwhile, on 27 September 2023, petitioner filed a "Motion for Reconsideration (Decision of 05 September 2023)"[92] (**petitioner's MR**). On 12 March 2024, respondent filed its Comment/Opposition thereto.[93] On 15 July 2024, the Special Third Division issued the assailed Resolution denying petitioner's MR.[94]

In the assailed Resolution, the Special Third Division held that petitioner failed to establish the service of the ANs on respondent. It also held that since RO Muti was not issued with an LOA, he did not

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88 Id., pp. 1300-1335.
89 See Resolution dated 19 September 2022, id., p. 1341.
90 Supra at note 1.
91 Supra at note 1.
92 Division Docket, Volume III, pp. 1371-1378.
93 Id., pp. 1382-1389.
94 Supra at note 2.

possess the required authority to examine or reinvestigate respondent's books of accounts. Finally, since petitioner's assessment against respondent is void, there is no basis to collect from respondent.[95]

PROCEEDINGS BEFORE THE COURT *EN BANC*

Unsatisfied with the Special Third Division's actions, petitioner filed the present Petition for Review before the Court *En Banc* on 16 August 2024.[96]

On 27 September 2024, the Court *En Banc* directed respondent to file his or her comment within 10 days from notice.[97] In the Resolution dated 06 January 2025,[98] the Court *En Banc* noted respondent's failure to file its comment on the present petition. Accordingly, in the same Resolution, this case was submitted for decision.

On 20 March 2025, respondent filed a "Motion to Admit (Comment to Petition for Review)"[99] (**Motion to Admit**). In a Resolution dated 19 May 2025,[100] the Court *En Banc* deemed respondent's Motion to Admit as not filed for failure to provide the email/soft copy of the said Motion, pursuant to *En Banc* (**EB**) Resolution No. 8-2024.[101] Later, or on 04 June 2025, respondent emailed the soft copy of its Motion to Admit.[102]

On 09 June 2025, respondent filed an "[MR] (To Resolution dated May 19, 2025)" (**respondent's MR**).[103]

Before We proceed with the disposition of the case, We shall first resolve respondent's MR *sans* petitioner's Comment.[104]

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95 Supra at note 2.
96 Supra at note 3.
97 Id., p. 50.
98 Id., p. 52
99 Id., pp. 53-56.
100 Id., p. 68.
101 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.
102 *Rollo*, p. 69.
103 Id., pp. 70-77.
104 See Records Verification dated 04 December 2025, id., p. 85.

RESPONDENT'S MOTION FOR RECONSIDERATION (MR) SHOULD NOT BE GRANTED.

In respondent's MR, it is argued that rules of procedure are intended to promote substantial justice. It further contended that there was a subsequent and substantial compliance, hence, its Motion to Admit should be granted.[105]

We disagree.

The rules of procedure are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial and extrajudicial proceedings.[106] Any party seeking a liberal application of the rules must present strong and compelling reasons to warrant the suspension of the rules.[107] To merit liberality, respondent must show that there is reasonable cause justifying its noncompliance with the rules.[108]

In *National Grid Corporation of the Philippines v. Clara C. Bautista, married to Rey R. Bautista*, the Supreme Court ruled:[109]

> ...
> *. . . Liberality in the application of the rules is not an end in itself. It must be pleaded with factual basis and must be allowed for equitable ends. There must be no indication that the violation of the rule is due to negligence or design. Liberality is an extreme exception, justifiable only when equity exists.*
> ...

Here, respondent, in its MR, failed to show any reasonable cause justifying its noncompliance with *EB* Resolution No. 08-2024. Respondent's explanation, proffered in its Motion to Admit, that its

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105 Supra at note 99.
106 *Auria Limpot v. Court of Appeals, et al.*, G.R. No. L-44642, 20 February 1989.
107 *Subic Bay Metropolitan Authority v. Subic Bay Marine Exploratorium, Inc.*, G.R. No. 237591, 10 November 2021.
108 *Philippine Charity Sweepstakes Office, et al. v. The Commission on Audit*, G.R. No. 246313, 15 February 2022.
109 G.R. No. 232120, 30 September 2020; Citation omitted and italics in the original text.

lapse was due to mere inadvertence cannot, in any degree, be considered as reasonable cause that would justify the suspension of the rules.[110]

As the records bear, it took respondent <u>159 days to file its comment</u> on the present Petition for Review. When it finally did, it failed to comply with *EB* Resolution No. 8-2024.[111] Specifically, the Court issued its Resolution dated 27 September 2024[112] and directed respondent to file its Comment within 10 days from notice. Respondent received the said Resolution on 02 October 2024, counting 10 days therefrom, respondent should have filed its Comment on 12 **October 2024**. Hence, respondent's Comment attached to its Motion to Admit filed on **20 March 2025** was filed **159 days late.**

Additionally, the records of the case also show that when respondent filed its Motion to Admit, it also failed to provide the email/soft copy of the said Motion, pursuant to *EB* Resolution No. 8-2024.[113] Respondent's delay in filing its Comment and its non-compliance with *EB* Resolution No. 8-2024 only evince respondent's blatant disregard of procedural rules, further precluding any justification for Us to liberally apply them.

In *Joenar Vargas Agravante v. Commission on Elections, Municipal Trial Court of Goa, Camarines Sur,*[114] the Supreme Court held —

> ...
>
> While petitioner does not deny his procedural lapses, **he argues that** the COMELEC *En Banc* **should have afforded him liberality considering his substantial compliance** with the rules and the *prima facie* merit of his brief. **However, it must be recalled that the relaxation of procedural rules cannot be made without any valid reasons to support it.** Any party seeking a liberal application of the rules is required to present strong and compelling reasons to warrant the suspension of the rules. **To merit liberality, petitioner must show that there is reasonable cause justifying his noncompliance with the rules and that the outright dismissal of the petition would defeat the administration of substantive justice.**
>
> ...

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110 See respondent's Motion to Admit (Comment to Petition for Review), supra at note 99.
111 Supra at note 101.
112 Supra at note 97.
113 See Resolution dated 19 May 2025, supra at note 100.
114 G.R. No. 264029, 08 August 2023; Citation omitted and emphasis supplied.

All told, this Court sees no cogent reason to warrant a reconsideration or modification of the Resolution dated 19 May 2025.

We now proceed to the resolution of the main case.

ISSUE

Before Us, the parties put forward the following issue for the Court *En Banc*'s resolution:

> WHETHER THE SPECIAL THIRD DIVISION ERRED IN CANCELLING THE PRELIMINARY ASSESSMENT NOTICE (PAN) (WHETHER DATED 23 FEBRUARY 2016 OR 14 JULY 2017) AND WARRANT OF DISTRAINT AND/OR LEVY (WDL) DATED 21 NOVEMBER 2018 ALL ISSUED AGAINST RESPONDENT FORT PALM SPRING CONDOMINIUM CORPORATION IN THE AGGREGATE AMOUNT OF ₱164,382,440.05 FOR DEFICIENCY INCOME TAX (IT) AND EXPANDED WITHHOLDING TAX (EWT) FOR TAXABLE YEAR (TY) 2009.

ARGUMENTS

In calling for the reversal of the Special Third Division's actions, petitioner insists that with regard to mails sent *via* registered mail, it is enough that the post office's registry receipt provides sufficiently identifiable details.[115] Petitioner argues that respondent's mere denial that it did not receive the ANs is self-serving and will not controvert the fact of mailing to respondent's registered address.[116]

On the other hand, respondent, in its original Petition for Review with the Court in Division, argued that it was deprived of due process because it did not receive the LOA and ANs. It further argued that petitioner's right to assess deficiency taxes for TY 2009 had already prescribed. Finally, it insisted that petitioner's assessment for TY 2009 has no factual and legal basis.[117]

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115 See Petition for Review, supra at note 3.

116 Id., p. 14.

117 See respondent's Petition with Application for Issuance of TRO, supra at note 28.

RULING OF THE COURT *EN BANC*

THE PRESENT PETITION FOR REVIEW WAS TIMELY FILED.

At the outset, it is noted that the present petition before the Court *En Banc* was timely filed.

Petitioner received a copy of the assailed Resolution on 17 July 2024.[118] Petitioner had 15 days from receipt of the assailed Resolution, pursuant to Section 3(b),[119] Rule 8 of the RRCTA, or until 01 August 2024, to file a Petition for Review before the Court *En Banc*. On 01 August 2024, petitioner filed a "Motion for Extension of Time to File Petition for Review".[120] The Court *En Banc* granted the said motion and allowed petitioner until 16 August 2024.[121] Petitioner timely filed the present Petition for Review on 16 August 2024.[122]

PETITIONER FAILED TO PROVE THAT RESPONDENT RECEIVED THE PRELIMINARY ASSESSMENT NOTICE (PAN) AND FINAL ASSESSMENT NOTICE (FAN).

Here, petitioner insists that the ANs were validly served at respondent's registered address through registered mail. He or she further argues that the registry receipt containing the transaction's sufficiently identifiable details constitute sufficient proof of mailing. According to petitioner, respondent's mere denial that it did not receive the ANs is self-serving and does not controvert the fact of mailing.[123]

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118 See Notice of Resolution dated 16 July 2024, Division Docket, Volume III, p. 1392.

119 **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.

120 *Rollo*, pp. 1-3.

121 Id., p. 6.

122 Supra at note 3.

123 See pars. 2, 3, 4 and 5, Petition for Review, p. 14, supra at note 3.

We do not share petitioner's argument.

Once a taxpayer denies receipt of the BIR's issuances, the burden of proof rests upon the latter to prove that these issuances have been actually received. In the case of *Barcelon, Roxas Securities Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*[124] (**Barcelon**), citing the case of *Gonzalo P. Nava v. Commissioner of Internal Revenue,*[125] the Supreme Court emphasized that it is imperative for the BIR to satisfactorily prove the release, mailing or sending of the assessment, *viz*:

> ...
>
> Jurisprudence is replete with cases holding that if the **taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.** The **onus probandi was shifted to respondent to prove by contrary evidence** that the Petitioner received the assessment in the due course of mail. The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.
>
> ...
>
> > "While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration, this ruling makes it the more imperative **that the release, mailing or sending of the notice be clearly and satisfactorily proved.** Mere notations made without the taxpayer's intervention, notice or control, **without adequate supporting evidence cannot suffice**; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense."
>
> ...

In the case of *Republic of the Philippines v. The Court of Appeals and Nielson & Company, Inc.*[126] and in *Barcelon,*[127] the Supreme Court also held that a party favored by the presumption has the burden of

[124] G.R No. 157064, 07 August 2006; Citations omitted and emphasis supplied.
[125] G.R No. L-19470, 30 January 1965.
[126] G.R No. L-38540, 30 April 1987.
[127] Supra at note 124.

proving that the addressee received the mailed letter in cases when there is a direct denial of the receipt of the mail. Consistently, the Supreme Court has held that it is a due process requirement that the taxpayer actually receives the assessment, to wit:

> ...
> It must be noted, however, that the foregoing rule requires that the notice be sent to the taxpayer, and not merely to a disinterested party. Although there is no specific requirement that the taxpayer should receive the notice within the said period, due process requires at the very least that such notice actually be received. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*, we had occasion to say:
>
> > 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.[128]
>
> ...

Petitioner failed to discharge his or her burden of proof.

Firstly, in trying to prove valid service of the ANs, petitioner offered the following pieces of evidence: (1) PAN dated 14 July 2017;[129] (2) Philpost Proof of Delivery with Tracking No. AC424784428ZZ (**Philpost Proof of Delivery**);[130] (3) FAN dated 17 August 2017;[131] and (4) Registry Receipt with RR No. 54452 (**Registry Receipt**).[132]

The Court *En Banc* notes that respondent's address as indicated in the ANs is **30th Street, Bonifacio Global City, Taguig City**. However, respondent's address as indicated in its GIS for 2018[133] is **Unit 2C-A, FPS Bldg, 1st Ave., corner 30th Street, Global City, Taguig.** Moreover, the BIR did not accomplish the stamped received found at the upper and bottom portion of both the ANs.

128 *Estate of the Late Juliana Diez Vda. De Gabriel v. Commissioner of Internal Revenue*, G. R No. 155541, 27 January 2004; Citations omitted, italics and underscoring in the original text.
129 Supra at note 5.
130 Exhibit "R-3", BIR Records, p.751
131 Supra at note 6.
132 Exhibit "R-5", BIR Records, p.752.
133 Exhibit "P-2", Division Docket, Volume I, pp. 254-263.

In the Philpost Proof of Delivery,[134] no name appears as the PAN's recipient. We quote below the relevant details of the Philpost Proof of Delivery, to wit:

> ...
> RTS Date: 8/10/17 Time:
> Reason:
> _ Item refused by addressee _Incorrect address
> _Addressee cannot be located _Missent
> _Others: **NO ONE TO RECEIVE**
>
> Received By: ______________________
> Printed Name and Signature
>
> ...

As for the Registry Receipt,[135] it merely indicates that a letter/package was mailed to respondent. In other words, it only proves the fact of mailing and nothing more.

Although BIR issuances may be sent *via* registered mail, such service does not conclusively prove receipt. As the records bear: (1) petitioner failed to mail the ANs to respondent's correct address; (2) the Philpost Proof of Delivery indicated that respondent did not receive the PAN; and (3) the Registry Receipt only proves the FAN's mailing.

The BIR's own regulations, particularly Section 3.1.6 of Revenue Regulations (**RR**) No. 12-99,[136] as amended, by RR No. 18-2013,[137] provide the following:

> ...
> SEC. 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:
> ...

---

134 Supra at note 130; Emphasis supplied.

135 Supra at note 132.

136 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.

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

> 3.1.6 *Modes of Service.* — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:
>
> ...
>
> (iii) **Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered.** A copy of the notice, may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.
>
> **The server shall accomplish the bottom portion of the notice.** He shall also make a **written report under oath** before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting **forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information.** The **registry receipt issued by the post office** or the official receipt issued by the professional courier company **containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.**[138]
>
> ...

We also do not agree with petitioner's contention that the registry receipt containing the transaction's identifiable details constitute sufficient proof of mailing. Both the Philpost Proof of Delivery[139] and the Registry Receipt[140] highlighted petitioner's failure to comply with the above-mentioned requirements, namely: (1) the server did not accomplish the receiving stamp/bottom portion of both notices, leaving the printed name, signature and designation of the person who received the subject PAN, FAN and the date of receipt blank; and (2) the Registry Receipt contains no identifiable details of the transaction, merely indicating that a letter/package was sent to respondent without further specifics.

Moreover, petitioner's pieces of evidence also did not include any written report, certification, or any other document from Philpost

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138 Emphasis supplied and italics in the original text.
139 Supra at note 130.
140 Supra at note 132.

regarding the service of the subject ANs. Therefore, this only leaves the conclusion that there was no valid service of the ANs on respondent.

Succinctly, the requirement of informing the taxpayer of the assessment is **mandatory** in nature as provided in Section 228 of the NIRC of 1997, as amended, and Section 3 of RR No. 12-99,[141] as amended, by RR No. 18-2013,[142] the relevant portions of which are quoted hereunder for ready reference:

> ...
>
> **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: ...
>
> ...
>
> **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.**[143]
>
> ...
>
> SEC. 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** (see illustration in ANNEX "A" hereof).
>
> **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, 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.
>
> ...

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141 Supra at note 136.
142 Supra at note 137.
143 Emphasis supplied and italics in the original text.

> 3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. **The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void*** (see illustration in ANNEX "B" hereof).
>
> 3.1.4 *Disputed Assessment.* — **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.** The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows[.][144]
>
> ...

Moreover, while petitioner insists that respondent's mere denial (that it did not receive the ANs) does not controvert the fact of mailing to respondent's registered address; it, nevertheless, remains true that receipt was denied in the first place. In light of respondent's denial of receipt, the burden of proof that the ANs were received has then necessarily shifted to petitioner. Unfortunately, the latter failed to discharge this burden.

As a consequence, for petitioner's failure to inform respondent of the facts and the law on which the assessment was based (through the valid service of the ANs), respondent's right to due process was violated. This violation renders the subject assessment against respondent void and of no legal effect.

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

The Court *En Banc* has consistently held that the RO tasked to examine the books of accounts of taxpayers must be authorized by an LOA. Otherwise, any assessment for deficiency taxes resulting therefrom is void. Section 6(A) of the NIRC of 1997, as amended, reads:

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144 Emphasis supplied and italics in the original text.

...

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.[145]

...

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:

...

> (c) **Issue Letters of Authority** for the examination of taxpayers within the region[.][146]

...

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

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145 Emphasis supplied and italics in the original text.

146 Emphasis supplied and italics in the original text.

> any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.[147]
>
> ...

Under the said provision, 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 cannot conduct the audit of taxpayer's books of accounts and other accounting records because such right is statutorily conferred only upon the CIR.

Corollarily, Section D(4) of RMO No. 43-90[148] 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 service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.[149]
>
> ...

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 addition, the **CIR's own rules, specifically Section C(5) of RMO No. 43-90,[150] mandate the issuance of a new LOA in cases of reassignment or transfer of examination to another RO.** It reads —

> ...
>
> C. Other policies for issuance of L/As.
>
> ...

[147] Emphasis supplied and italics in the original text.
[148] 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.
[149] Emphasis supplied.
[150] Supra at note 148.

> 5. **Any reassignment/transfer of cases to another RO(s),** and revalidation of [LOAs] which have already expired, **shall require the issuance of a new [LOA]**, with the corresponding notation thereto, including the previous [LOA] number and date of issue of said [LOAs].[151]
>
> ...

In the case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[152] **(McDonald's)**, the Supreme Court has already highlighted the importance of the issuance 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 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**

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151 Emphasis and underscoring supplied.
152 G.R. No. 242670, 10 May 2021; Emphasis supplied.

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,*[153] 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. ...

...

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.

...

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

Citing the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[154] the Supreme Cour 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. **In the absence of such an authority, the assessment or examination is a nullity.**
>
> ...

Further, the Supreme Court in *McDonald's*[155] concluded that:

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

In the case at bar, the case records indisputably show that the LOA[156] only named RO Rojas and GS Laureta as the duly authorized BIR examiners that could conduct an examination of respondent's books. Without issuing a new LOA, RO Muti could not be deemed to have been validly clothed with the proper authority to continue the audit and recommend the issuance of the assessments against respondent. Thus, considering the absence of a new and valid LOA authorizing him to examine respondent's books of accounts and other accounting records (as a result of the reassignment/transfer of the case to him), the deficiency tax assessment issued against respondent is inescapably void.

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154 G.R. No. 178697, 17 November 2010; Emphasis and underscoring supplied.
155 Supra at note 152; Emphasis and underscoring supplied.
156 Supra at note 17.

During his cross-examination, RO Muti admitted that no new LOA was issued under his name. We quote below the relevant portion of RO Muti's testimony:

> ...
> **Atty. Martinez: You, yourself Mr. Witness, would you confirm that you are not a named person in the Letter of Authority?**
>
> **Witness Muti III: Yes, Your Honor.**
>
> **Atty. Martinez:** Was there any Letter of Authority issued under your name?
>
> **Witness Muti III: None, none Your Honor.**
>
> **Atty. Martinez:** Then what is your authority to make the assessment?
>
> **Witness Muti III: A Memorandum of Assignment signed by the OIC Revenue District Officer.**
>
> **Atty. Martinez:** So the Memorandum of Assignment was signed by the Revenue District Officer?
>
> **Witness Muti III:** Yes Your Honor.
>
> **Atty. Martinez: It was never signed by the Regional Director?**
>
> **Witness Muti III:** Never.[157]
> ...

In *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*,[158] the Supreme Court further reiterated that only the ROs actually named in the LOA are authorized to examine the taxpayer, to wit:

> ...
> Likewise, the CTA *EB* correctly held that the deficiency tax assessments were invalid due to the revenue officers' lack of authority to do so. Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers. **It is axiomatic that only the revenue officers actually named under the LOA are authorized to examine the taxpayer. ... In the absence of a new LOA issued in favor of the revenue officers who recommended**

157 TSN dated 19 October 2021, pp. 14-15; Emphasis supplied.
158 G.R. Nos. 249883-84 (Notice), 27 January 2020; Citations omitted and emphasis supplied.

the issuance of the deficiency tax assessments against respondent, the resulting assessments are void.

...

In *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*,[159] where the tax audit investigation of a taxpayer was reassigned to another RO without the issuance of a new LOA, the Supreme Court nullified the FAN/Formal Letter of Demand (**FLD**) issued against the said taxpayer. It held, thusly:

> ...
>
> A perusal of the records of the case discloses that electronic LOA SN: eLA201000017400 LOA-039-2010-00000072 issued against petitioner specifically authorized revenue officer Cacdac and group supervisor Andaya, to examine the books of accounts of petitioner for taxable year 2009[.] ...
>
> ...
>
> However, it appeared that Cacdac was not the revenue officer who actually conducted the audit of petitioner's books of accounts. It was revenue officer Bagauisan who audited petitioner by virtue of a memorandum of assignment signed by revenue district officer Nacar[.] ...
>
> ...
>
> The reassignment of the examination of petitioner's books of accounts pursuant to electronic LOA SN: eLA201000017400 LOA-039-2010-00000072 from revenue officer Cacdac to revenue officer Bagauisan necessitates the issuance of a new LOA. This is clear under Revenue Memorandum Order (RMO) No. 43-90 or "An Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit"[.] ...
>
> ...
>
> Here, there was no new LOA issued naming Bagauisan as the new revenue officer who would conduct the examination of petitioner's books of accounts. The authority of Bagauisan is anchored only upon the memorandum of assignment signed by revenue district officer Nacar.
>
> Section 13 of the NIRC requires that a revenue officer must be validly authorized before conducting an audit of a taxpayer[.]
>
> ...

[159] G.R. No. 241848, 14 May 2021.

Well-entrenched is the principle that in cases where the BIR conducts an audit without a valid LOA or in excess of the authority duly provided therefor, the resulting assessments shall be void and ineffectual.[160]

To reiterate, tax assessments issued in violation of the due process rights of a taxpayer are null and void.[161] Relative thereto, a void assessment bears no valid fruit.[162] Such being the case, the subject assessment cannot be enforced against respondent, and the BIR has no right to collect the same.

With the foregoing disquisitions, the Court *En Banc* sees no cogent or compelling reason to deviate from the Special Third Division's findings and conclusions.

WHEREFORE, with the foregoing considered, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 16 August 2024 is **DENIED** for lack of merit. Accordingly, the assailed Decision dated 05 September 2023 and assailed Resolution dated 15 July 2024, of the Special Third Division in CTA Case No. 9999, entitled *Fort Palm Spring Condominium Corporation v. Hon. Caesar R. Dulay, in his capacity as Commissioner of the Bureau of Internal Revenue*, are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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160 See *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, supra at note 153.

161 *Commissioner of Internal Revenue v. Avon Products Manufacturing Inc.*, G.R No. 201398-99, 03 October 2018.

162 *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, 10 December 2014.

WE CONCUR:

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

ON LEAVE
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. RINGPIS-LIBAN
Presiding Justice