REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

- versus -

**JOWELLE'S AUTO PARTS INC.,**
Respondent.

**CTA EB No. 2905**
(CTA Case No. 10018)

Present:

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

Promulgated:
DEC 12 2025 3:50 pm

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# DECISION

***BACORRO-VILLENA, J.:***

In its bid to reverse the Special First Division's Decision[1] promulgated on 05 October 2023 (**assailed Decision**) and the Resolution[2] (**assailed Resolution**) issued on 02 April 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

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[1] *Rollo*, pp. 41-88. Penned by Associate Justice Catherine T. Manahan and concurred in by Presiding Justice Roman G. Del Rosario (Ret.) and Associate Justice Marian Ivy F. Reyes-Fajardo.

[2] Id., pp. 90-97.

[3] Filed on 03 May 2024, id., pp. 7-36. 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* Resolution dated 19 April 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:

Rules of the Court of Tax Appeals (**RRCTA**). In the assailed Decision and Resolution, the Special First Division partially granted the prior Petition for Review (CTA Case No. 10018) filed by respondent Jowelle's Auto Parts Inc. (**respondent**), as then petitioner, cancelling some items of petitioner's assessment while also upholding the rest of the said assessment.

## 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 7th Floor Bureau of Internal Revenue (**BIR**) Bldg., Senator Miriam Defensor-Santiago Avenue, Quezon City.[5]

Respondent, on the other hand, is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Cabatuan Road, San Fermin, Cauayan City, Isabela.[6]

## FACTS OF THE CASE

On 13 June 2014, respondent received three (3) electronic Letters of Authority (**eLAs**) Nos. SN: eLA201100032039[7], SN: eLA201100032040[8] and SN: eLA201100032044[9], respectively, all issued on 10 June 2014, informing respondent that petitioner will examine its books of accounts and other accounting records for all internal revenue taxes for the taxable year (**TY**) 2011, 2012 and 2013, respectively.

(a) Decisions or resolutions on motions 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 *Rollo*, p. 11.
6 Id.
7 Exhibit "P-1" / "R-1", BIR Records, Folder 1 of 4, p. 2.
8 Exhibits "P-2" / "R-19", id., Folder 3 of 4, p. 345.
9 Exhibits "P-3" / "R-10", id., Folder 2 of 4, p. 118.

On even date, respondent also received three (3) checklists of requirements[10] (**Checklists**), all dated 10 June 2014. In the Checklists, the BIR directed respondent to present its books of accounts and other related accounting records for TY 2011, 2012 and 2013, respectively.

Subsequently, on 27 June 2014, respondent received three (3) "Second and Final Notices for the Presentation of Books of Accounts and Other Accounting Records"[11] (**Final Notices**).

On 14 April 2015, respondent received petitioner's Preliminary Assessment Notice[12] (**PAN**) dated 06 April 2015, for TY 2013 finding respondent liable for the following deficiency taxes:

| | |
|---|---|
| Income tax (**IT**) | ₱31,314,902.15 |
| Value-Added Tax (**VAT**) | ₱11,706,293.65 |
| TOTAL | ₱43,021,195.80 |

On 22 April 2015, respondent received petitioner's PAN dated 16 February 2015[13] for TY 2011 and PAN dated 10 April 2015[14] for TY 2012, finding respondent liable for IT, VAT, improperly accumulated earnings tax (**IAET**), and registration fee (**RF**), detailed as follows:

| TY | IT | VAT | IAET | RF | Total |
|---|---|---|---|---|---|
| 2011 | ₱42,981,980.92 | ₱16,986,092.87 | ₱16,138,086.48 | ₱4,676.39 | ₱76,110,836.66 |
| 2012 | ₱40,879,465.30 | ₱13,770,119.53 | ₱14,110,316.72 | ₱0 | ₱68,759,901.55 |

Thereafter, on 25 June 2015, respondent received three (3) Formal Letters of Demand/Final Assessment Notices[15] (**FLDs/FANs**), all dated 22 June 2015, for TYs 2011, 2012, and 2013, finding respondent liable for the following deficiency taxes:

10 Exhibit "R-2", id., Folder 1 of 4, p. 1; Exhibit "R-11", id., Folder 2 of 4, p. 117; Exhibit "R-20", id., Folder 3 of 4, p. 346.
11 Exhibit "R-3", id., Folder 1 of 4, p. 3; Exhibit "R-12", id., Folder 2 of 4, p. 121; Exhibit "R-21", id., Folder 3 of 4, p. 347.
12 Exhibits "R-15" to "R-15-A" / "P-4", id., Folder 2 of 4, pp. 580-583.
13 Exhibits "R-6" to "R-6-A", id., Folder 1 of 4, pp. 265-269.
14 Exhibits "R-24" to "R-24-A", id., Folder 3 of 4, pp. 475-478.
15 Exhibits "R-7" to "R-7-B", id., Folder 1 of 4, pp. 272-279; Exhibits "R-25" to "R-25-B", id., Folder 3 of 4, pp. 484-494; Exhibits "R-16" to "R-16-B", id., Folder 2 of 4, pp. 594-599.

| TY | IT | VAT | IAET | RF | Total |
|---|---|---|---|---|---|
| 2011 | ₱44,338,164.91 | ₱17,546,660.63 | ₱16,669,277.42 | ₱4,851.39 | ₱78,558,954.35 |
| 2012 | ₱41,750,764.86 | ₱14,056,915.17 | ₱14,404,197.78 | ₱0 | ₱70,211,877.81 |
| 2013 | ₱32,095,207.91 | ₱11,469,857.44 | ₱0 | ₱0 | ₱43,565,065.35 |

In the FLDs/FANs[16], petitioner's deficiency assessments against respondent were mainly based on the following grounds: (1) unsubstantiated and unsupported expenses found in the Income Tax Return filed in violation of Section 34[17] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, Revenue Audit Memorandum Order (**RAMO**) No. 1-2000[18] and Revenue Memorandum Circular (**RMC**) No. 23-2000[19]; (2) undeclared expenses tantamount to undeclared income pursuant to RAMO No. 1-2000 and Section 32(A)[20] of the NIRC of 1997, as amended; and (3) unsupported purchases for failure to submit documentary evidence in support of the claimed expense.

Dissatisfied with petitioner's findings, respondent filed three (3) Protest Letters[21] (in the nature of a request for reinvestigation) to the FLDs/FANs (**Protests to FANs**) before the Regional Director, Revenue Region No. 3 on 24 July 2015. There, respondent forwarded factual and legal bases (of its opposition to the assessment) for each item of the deficiency assessment set forth in the FLDs/FANs. There, it also argued

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16 Id.

17 **Sec. 34.** *Deductions from Gross Income.* - Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under subsection (M) hereof, in computing taxable income subject to income tax under Sections 24 (A); 25 (A); 26; 27 (A), (B) and (C); and 28 (A) (1), there shall be allowed the following deductions from gross income[.]

18 Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000), 17 March 2000.

19 Existing Revenue Procedures on the Assessment of Deficiency Internal Revenue Taxes Based on the "Best Evidence Obtainable", 27 November 2000.

20 **Sec. 32.** *Gross Income.* -
(A) *General Definition.* - Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:
(1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;
(2) Gross income derived from the conduct of trade or business or the exercise of a profession;
(3) Gains derived from dealings in property;
(4) Interests;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Annuities;
(9) Prizes and winnings;
(10) Pensions; and
(11) Partner's distributive share from the net income of the general professional partnership.

21 Exhibits "P-10", "P-10-A", and "P-10-B", Division Docket, Volume II, pp. 697-705, 706-713 and 714-719, respectively.

that its right to due process was violated due to petitioner's failure to conduct a closing conference. In its Protests to FANs, respondent prayed for the FLDs/FANs' cancellation.

On 22 September 2015, respondent transmitted the necessary supporting documents in support of its requests for reinvestigation.[22] Later, or on 11 July 2018, respondent received a Preliminary Collection Letter[23] (**PCL**) requesting payment of its deficiency IT, VAT, IAET and RF liabilities in the total amount of ₱192,335,897.51.

Thereafter, or on 16 July 2018, respondent submitted a Legal Petition Notice (**LPN**) dated 13 July 2018.[24] In the said LPN, respondent argued that petitioner failed to issue any Final Decision on Disputed Assessments (**FDDAs**) after his or her issuance of the FLDs/FANs. Hence, it insisted that petitioner's PCL could not be deemed valid on the ground that there are no final and executory assessments warranting collection.

On 17 January 2019, respondent received the Final Notice Before Seizure[25] (**FNBS**), where it was requested to settle its tax liabilities within five (5) days from receipt. Subsequently, or on 31 January 2019, respondent received a Warrant of Distraint and/or Levy[26] (**WDL**) No. 2019-00005 dated 30 January 2019.

Still later, petitioner issued Warrants of Garnishment[27] (**WOGs**) to the following banks: (1) Philippine National Bank; (2) Landbank of the Philippines; (3) Rizal Commercial Banking Corporation; (4) Metropolitan Bank & Trust Company; (5) BDO Unibank, Inc.; (6) Development Bank of the Philippines; (7) UnionBank of the Philippines; (8) China Banking Corporation; and (9) Bank of the Philippine Islands.

22 Exhibits "P-11" to "P-13", id., pp. 720-829.
23 Exhibits "R-29" / "P-14", BIR Records, Folder 4 of 4, pp. 1-2.
24 Exhibit "P-15", Division Docket, Volume II, pp. 830-842.
25 Exhibit "R-30", BIR Records, Folder 4 of 4, p. 33.
26 Exhibits "P-16" / "R-31", id., Folder 4 of 4, p. 35
27 Exhibits "R-32" to "R-40", id., Folder 4 of 4, pp. 40, 42, 45, 46, 49, 50, 52, 54 and 56, respectively.

## PROCEEDINGS BEFORE THE COURT IN DIVISION

On 01 February 2019, respondent filed a "Petition for Review with Motion to Suspend Collection of Taxes"[28] (**Petition with Motion for Suspension**) with this Court. The case was docketed as CTA Case No. 10018 and was initially raffled to the First Division.[29] There, respondent contended that: (1) the undeclared purchases and expenses cannot prove undeclared income; and (2) respondent already submitted the substantiation for the alleged unsupported expenses and purchases. It then prayed that judgment be rendered lifting petitioner's WDL, declaring void petitioner's PANs, FLDs/FANs and PCL, and suspending the collection of taxes.

As for respondent's Motion for Suspension, it was initially scheduled for hearing on 07 March 2019.[30] However, on 04 March 2019, respondent filed a "Very Urgent Motion to Reset (Scheduled Hearing on 7 March 2019)"[31], requesting that the hearing be moved to either 02 April 2019 or 19 April 2019. Respondent explained that it needed more time to gather evidence because its witness still had to travel from Isabela. There being no objection from petitioner and in the interest of justice, the Court granted the request and reset the hearing to 02 April 2019.[32]

On 01 April 2019, respondent filed another "Very Urgent Motion to Reset"[33], requesting that the 02 April 2019 hearing be moved again. However, during the 02 April 2019 hearing, petitioner's counsel: (1) objected to this request on the ground that it was already the second (2$^{nd}$) motion for resetting; and (2) prayed for the dismissal of respondent's Motion for Suspension on the ground that there is no evidence presented to substantiate its allegation.[34]

Finding that respondent does not have evidence to support its Motion for Suspension and considering that it was already a second

28 Division Docket, Volume I, pp. 12-19.

29 Then composed of Presiding Justice Roman G. Del Rosario (Ret.) as Chairperson, Associate Justice Esperanza R. Fabon-Victorino (Ret.) and Associate Justice Catherine T. Manahan, as Members.

30 See Notice of Hearing (Motion to Suspend Collection of Taxes) dated 26 February 2019, Division Docket, Volume I, p. 218.

31 Id., pp. 220-222.

32 See Minutes of the Hearing and Order both dated 07 March 2019, id., pp. 224-225 and 226-227, respectively.

33 Id., pp. 237-238.

34 TSN dated 02 April 2019, pp. 3-4.

(2nd) motion for resetting, the Court denied both respondent's "Very Urgent Motion to Reset" and "Motion for Suspension. It declared in open court –

> ...
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> The Court noted counsel for [petitioner's] prayer to deny both [respondent's] Very Urgent Motion to Reset Hearing and Motion to Suspend Collection of Taxes. Finding merit in the arguments of [petitioner's] counsel, the Court resolved to **GRANT** the same. Accordingly, [respondent's] Very Urgent Motion to Reset Hearing was **DENIED**. Likewise, [respondent's] Motion to Suspend Collection of Taxes [was] **DENIED**.[35]
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> ...

Later, after being granted an extension of time to file an Answer[36] to respondent's Petition for Review, petitioner (as then respondent) filed his or her Answer[37] on 15 April 2019. Therein, petitioner argued that respondent's case should be dismissed outright for the following reasons, to wit: (1) the First Division has no jurisdiction over the case; (2) the deficiency tax assessments for TY 2011, 2012 and 2013 are correct; (3) respondent's undeclared purchases constitute as undeclared revenue; and (4) petitioner's failure to send an FDDA does not amount to a violation of respondent's right to due process since the PCL serves the same purpose as that of the FDDA.

On 25 April 2019, petitioner transmitted to the First Division the BIR Docket of this case, consisting of four (4) folders, with 1,665 pages.[38]

Still later, the First Division ordered the parties to undergo mediation proceedings before the Philippine Mediation Center-Court of Tax Appeals (**PMC-CTA**).[39] However, the parties decided not to have their case mediated.[40] The case was then referred back to the court for the resumption of the proceedings.[41]

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35 See Minutes of the Hearing and Order both dated 02 April 2019, Division Docket, Volume I, pp. 240-241 and 242-243, respectively.

36 See Order dated 22 March 2019, id., p. 234.

37 Id., pp. 245-258.

38 Compliance dated 25 April 2019, id., pp. 260-262.

39 See Resolution dated 03 May 2019, id., pp. 270-271.

40 See No Agreement to Mediate dated 17 June 2019, id., p. 272.

41 See Resolution dated 08 July 2019, id., p. 279. Respondent's Pre-Trial Brief was submitted on 13 August 2019 while petitioner's Pre-Trial Brief was filed on 06 August 2019, id., pp. 351-355 and 287-292, respectively. Pre-Trial Conference was held on 15 August 2019.

After the conclusion of the Pre-Trial Conference on 16 September 2019, the parties filed their "Joint Stipulation of Facts and Simplification of Issues"[42] **(JSFI)** which the First Division approved.[43] Meanwhile, on even date, respondent filed a "Motion for Appointment and/or Commissioning of Independent Certified Public Accountant (**Motion to Commission an ICPA**)".[44]

Subsequently, on 21 October 2019, the First Division issued the Pre-Trial Order.[45] The trial proper ensued thereafter.

During the hearing on 12 November 2019, respondent presented its first witness, Divine Grace Fresco (**Fresco**).[46] In her Judicial Affidavit, which was adopted as her direct testimony, she declared essentially that: (**1**) she is respondent's tax consultant; (**2**) based on respondent's records, it received three (3) Letters of Authority (**LOAs**) informing it that petitioner will examine its books of accounts for TYs 2011, 2012, and 2013; (**3**) on 14 April 2015, respondent received a PAN dated 06 April 2015 for TY 2013; (**4**) on 22 April 2015, respondent received two (2) PANs for TY 2011 and 2012, respectively; (**5**) on 25 June 2015, respondent received three (3) FLDs/FANs for TY 2011, 2012 and 2013, respectively; (**6**) on 24 July 2015, respondent filed its Protests to FANs; (**7**) within sixty (60) days from filing of respondent's Protests to FANs, it submitted the necessary supporting documents in support of its requests for reinvestigation on 22 September 2015; (**8**) on 11 July 2018, respondent received a PCL, instead of an FDDA; (**9**) on 16 July 2018, respondent filed an LPN to inform petitioner that there was a pending motion for reinvestigation; (**10**) on 31 January 2019, respondent received a WDL; and (**11**) the undeclared purchases and expenses cannot prove undeclared income.

No cross-examination followed.[47]

Responding to the Court's clarificatory questions, Fresco confirmed that instead of receiving an FDDA, respondent received a

42 Id., pp. 382-387.
43 See Resolution dated 07 October 2019, id., p. 390.
44 Id., pp. 378-380.
45 Id., pp. 393-401.
46 Exhibit "P-17", id., pp. 341-350; Minutes of the hearings and Order both dated 12 November 2019, id., pp. 426-427 and 428-429, respectively.
47 See Minutes of the Hearings and Order both dated 12 November 2019, id., pp. 426-427 and 428-429, respectively.

PCL that did not contain the grounds or reasons for the denial of its Protests to FANs.[48]

On the hearing on the Motion to Commission an ICPA, respondent's counsel manifested that she would not be able to present her ICPA as scheduled. Thus, the First Division granted respondent's request for a period of thirty (30) days to look for another ICPA.[49] Eventually, or on 11 February 2021, Franklin R. Casedo (**Casedo**) took his oath as the court-commissioned ICPA.[50] On 24 May 2021, Casedo filed his ICPA Report *via* email.[51]

On 12 November 2019, petitioner filed a "Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court"[52] (**Motion for Early Resolution**), praying that the same be given due course and that respondent's petition be dismissed for lack of jurisdiction. Respondent filed its Comment[53] thereto on 16 December 2019.

In the Resolution dated 30 January 2020,[54] the First Division denied respondent's Motion for Early Resolution on the following grounds: (1) the issue of jurisdiction is closely linked to the determination of what constitutes as petitioner's final decision; and (2) to resolve the said issue without a full-blown trial would result in the deprivation of the party litigants' opportunity to present the merits of their case.

On 06 July 2021, respondent presented its second witness, Casedo.[55] In his Judicial Affidavit[56], which was adopted as his direct testimony, he declared that: (1) after his examination, he prepared a formal report dated 29 March 2021; and (2) the electronic copy was filed on 24 May 2021 and the hard copy was filed on 25 May 2021.

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48 TSN dated 12 November 2019, p. 16.
49 Supra at note 47.
50 Oath of Commission dated 11 February 2021, Minutes of the Hearing and Order dated 11 February 2021, Division Docket, Volume II, pp. 575-C, 575-575-B, and 576 to 576-A, respectively.
51 Exhibit "P-22", id., pp. 599-646, received on 25 May 2021.
52 Id., Volume I, pp. 434-443.
53 Id., pp. 452-454.
54 Id., pp. 469-471.
55 See Minutes of the Hearing and Order both dated 06 July 2021, id., Volume II, pp. 658-660 and 661-662, respectively.
56 Exhibit "P-21", id., pp. 652-657.

During his cross-examination, Casedo testified that: (1) he was only able to examine the scanned copies of the enumerated exhibits on page 7 of the ICPA Report; (2) he was not able to examine the excess of the ₱19 million out of the ₱97 million on page 11 of the ICPA Report; (3) respondent was only able to present supporting documents for ₱1,070,883.18, out of the ₱99 million that needed documentation as indicated on page 26 of the ICPA Report.[57]

No redirect examination was conducted.[58]

On 21 October 2021, respondent filed its Formal Offer of Evidence[59] (**FOE**) to which petitioner filed a Comment[60] thereto on 18 November 2021. In the Resolution dated 17 March 2022[61], the First Division admitted respondent's offered exhibits, except for Exhibits "P-10-A" and "P-10-B", for failure of petitioner's witness to duly identify them.

As for petitioner, he or she presented Revenue Officer (**RO**) Pamela Español (**Español**) as his or her first witness.[62] In her Judicial Affidavit dated 06 August 2019, RO Español declared that: (1) she is the RO assigned to audit respondent's books of accounts and other accounting records for TY 2013; (2) the LOA together with the Checklist was served upon respondent; (3) respondent failed to submit its books of accounts despite several notices; (4) the BIR was constrained to issue a *Subpoena Duces Tecum* (**SDT**) against respondent; (5) respondent eventually complied and submitted its accounting records; (6) after audit, she found that respondent was liable for deficiency IT, VAT, IAET and RF; (7) she recommended the PAN's issuance; (8) the PAN dated 06 April 2015 was served on respondent; (9) since respondent failed to file a Reply to the PAN, an FLD/FAN was eventually served upon respondent; (10) respondent filed a Protest to FAN; (11) after consideration of the arguments in respondent's Protest to FAN, she found the same to be without merit; and (12) eventually, she recommended the issuance of the PCL.

57 TSN dated 07 October 2021, pp. 4-6.
58 Id., p. 6.
59 Division Docket, Volume II, pp. 691-695.
60 Id., pp. 843-845.
61 Id., pp. 854-855.
62 Exhibit "R-42", id, Volume I, pp. 298-305; Order dated 12 May 2022, id., pp. 857-857-A.

During her cross-examination, RO Español testified further that: (1) she personally served the LOA on respondent; (2) the LOA was served at respondent's registered address; (3) Dolly Yap Cruz (**Cruz**) received the LOA; (4) Cruz is the daughter of respondent's company president; (5) although she did not specify Cruz's exact position, she stated that Cruz also serves as respondent's officer, and that respondent previously informed the BIR that Cruz is an authorized signatory; (6) she does not have a copy of this prior communication; (7) she personally served the PAN on respondent; (8) Marie C. Duque received the PAN; (9) she is not certain who served the FLD/FAN on petitioner; (10) she did not inform respondent that the arguments raised in its Protest to FAN lacked merit; and (11) the BIR did not issue an FDDA.[63]

No redirect examination followed.[64]

During the Court's clarificatory questions, RO Español confirmed that: (1) respondent submitted Sales Invoices, Delivery Receipts, Packing Lists and other documentary attachments in its Protest to FAN; (2) she prepared a Memorandum indicating her reasons for her denial of respondent's arguments in its Protest to FAN; (3) the said Memorandum merely contained a general statement as to why she is reiterating the FLD/FAN's findings.

Subsequently, petitioner proceeded to present his or her second witness, RO Zarah Rosanna Dumaga (**Dumaga**).[65] In her Judicial Affidavit dated 06 August 2019[66], Dumaga declared that: (1) she is the RO assigned to audit respondent's books of accounts and other accounting records for TY 2012; (2) the LOA, together with the Checklist, was served upon respondent; (3) despite several notices, respondent failed to submit its books of accounts; (4) the BIR was constrained to issue an SDT against respondent; (5) respondent eventually complied and submitted its accounting records; (6) after audit, she found that respondent was liable for deficiency IT, VAT, IAET and RF; (7) she recommended the PAN's issuance; (8) the PAN dated 10 April 2015 was served on respondent; (9) since respondent failed to file a Reply to the PAN, an FLD/FAN was eventually served upon respondent; (10) respondent filed a Protest to FAN; (11) after

63 TSN dated 12 May 2022, pp. 8-15.
64 Id., p. 15.
65 See Order dated 12 May 2022, Division Docket, Volume II, pp. 857-857-A.
66 Exhibit "R-43", id., Volume I, pp. 321-328.

consideration of the arguments in respondent's Protest to FAN, she found the same to be without merit; and (12) eventually, she recommended the issuance of the PCL.

In her cross-examination, RO Dumaga stated that: (1) she, along with RO Español and RO Lavella Tolentino (**Tolentino**), served the FLD/FAN on respondent; (2) they were the duly authorized ROs for respondent's audit; (3) Marivic Rumbaoa (**Rumbaoa**) received the FLD/FAN; and (4) she did not ask any proof of authority (to receive) from Rumbaoa.[67]

No redirect examination was conducted.[68]

On the hearing held on 26 May 2022, petitioner presented Chief RO Elizabeth C. Soriano (**Chief RO Soriano**) as his or her third witness.[69] Chief RO Soriano's direct testimony was by way of her Judicial Affidavit dated 08 August 2019[70] where she stated that: (1) she was assigned as the group supervisor (while Tolentino was the RO) to audit respondent's books of accounts and other accounting records for TY 2011; (2) RO Tolentino served the LOA and Checklist on respondent; (3) respondent failed to submit its books of accounts despite several notices; (4) due to respondent's noncompliance, RO Tolentino recommended the issuance of an SDT against respondent; (5) respondent eventually complied and submitted its accounting records; (6) RO Tolentino recommended the PAN's issuance; (7) the PAN dated 16 February 2015 was served on respondent; (8) since respondent failed to file a Reply to the PAN, an FLD/FAN was eventually served upon respondent; and (9) in a Memorandum dated 07 September 2015, RO Tolentino recommended the issuance of a PCL.

On cross-examination, Chief RO Soriano testified further that: (1) her knowledge regarding the LOA's service was based on RO Tolentino's statement which was relayed to her; (2) she was not present at the time the FLD/FAN was served on respondent; and (3) petitioner did not issue an FDDA.[71]

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67 TSN dated 12 May 2022, pp. 25-28.
68 Id., p. 28.
69 See Order dated 26 May 2022, Division Docket, Volume II, pp. 859-859-A.
70 Exhibit "R-44", id., Volume I, pp. 333-340.
71 TSN dated 26 May 2022, pp. 8-12.

During redirect examination, Chief RO Soriano stated that the PCL was issued based upon RO Tolentino's recommendation that respondent's arguments in its Protest to FAN was not sufficient to change respondent's deficiency taxes in the FLD/FAN.[72]

No re-cross examination followed.[73]

Petitioner next presented RO Jedaya C. Duran (**Duran**) as his or her fourth witness.[74] In his Judicial Affidavit dated 06 August 2019[75], he declared that: (1) his duties included the service of WDLs and collection notices to taxpayers; (2) he served the PCL, FNBS, WDL and WOGs on respondent; (3) respondent's records were forwarded to him for collection; and (4) the FNBS was issued to reiterate the demand for payment in the PCL and to inform the taxpayer that collection remedies under the law will be availed of.

On cross-examination, RO Duran testified that he cannot remember who actually received the PCL. He also confirmed that he did not serve the WOG on respondent but rather on respondent's banks.[76]

No redirect examination was conducted.[77]

Later, on 03 June 2022, petitioner filed his or her FOE.[78] On 16 June 2022, respondent filed its Comment thereto.[79] On 10 August 2022, the First Division issued a Resolution that admitted petitioner's exhibits.[80]

On 15 September 2022, petitioner's Memorandum[81] was filed, while respondent filed its Memorandum[82] on 16 September 2022. The case was then deemed submitted for decision on 06 October 2022.[83]

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72 Id., pp. 13-14.
73 Id., p. 14.
74 Supra at note 69.
75 Exhibit "R-45", Division Docket, Volume I, pp. 310-316.
76 TSN dated 26 May 2022, pp. 28-29.
77 Id., p. 30.
78 Division Docket, Volume II, pp. 860 to 871.
79 See Comment (To Formal Offer of Evidence), id., pp. 875-878.
80 See Resolution dated 10 August 2022, id., pp. 881-882.
81 Id., pp. 884-912.
82 Id., pp. 914-921.
83 See Minute Resolution dated 06 October 2022, id., p. 922.

In the now assailed Decision of 05 October 2023[84], the Special First Division partially granted respondent's Petition for Review. The dispositive portion thereof reads:

> ...
>
> **WHEREFORE,** in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED.**
>
> Accordingly, **for TY 2011,** the assessment issued by [petitioner] against [respondent] covering the deficiency VAT is **CANCELLED,** while the deficiency income tax, IAET and the annual registration fee is **PARTIALLY UPHELD.**
>
> **For TY 2012,** the assessment issued by [petitioner] against [respondent] covering the deficiency income tax, VAT and IAET is **PARTIALLY UPHELD.**
>
> **For TY 2013,** the assessment issued by [petitioner] against [respondent] covering the deficiency income tax and VAT is **PARTIALLY UPHELD.**
>
> [Respondent] is thus **ORDERED TO PAY** [petitioner] the aggregate amount of **₱165,427,503.60,** representing deficiency taxes for TYs 2011 to 2013, inclusive of twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the 1997 NIRC, as amended, and deficiency interest imposed under Section 249(B) of the same Code, respectively computed until January 22, 2019, computed as follows:
>
> ...
>
> In addition, [respondent] is also **ORDERED TO PAY** the annual registration fees for TY 2011 for all of its four (4) branches in the amount of **₱2,000.00** plus the applicable surcharge and interests.
>
> Finally, [respondent] is **ORDERED TO PAY** [petitioner] delinquency interest at the rate of twelve percent (12%) on the total unpaid deficiency taxes of **₱165,427,503.60** as of January 22, 2019 for TYs 2011 to 2013, as determined above, or equivalent to the amount of **₱54,387.12** per day, computed from January 23, 2019 until full payment thereof, pursuant to Section 249(C) of the 1997 NIRC, as amended by RA No. 10963 or the Tax Reform for Acceleration and Inclusion Law and implemented by RR No. 21-2018.
>
> **SO ORDERED.**
>
> ...

---

[84] Supra at note 1; Citations omitted.

In granting respondent's prior Petition for Review, the Special First Division mainly held that: (*i*) it has jurisdiction over the case; (***ii***) the LOAs, PANs, FLDs/FANs were duly served on respondent; (***iii***) petitioner's right to assess respondent of deficiency VAT for the four (4) quarters of TY 2011, and first (1st) quarter of TY 2012 is barred by prescription; (***iv***) petitioner's right to assess respondent of the unpaid annual registration fee for TY 2011 has not yet prescribed; (***v***) petitioner timely assessed respondent of deficiency IAET; (***vi***) for TY 2011 and 2013, respondent is liable for deficiency IT and IAET; and (***vii***) while, for TY 2012, respondent is liable for deficiency IT, VAT and IAET.[85]

On 27 October 2023, respondent filed a "Motion for Partial Reconsideration"[86] (**respondent's MPR**). On the other hand, on 03 November 2023, petitioner filed an "[MPR] (Re: Decision promulgated on 5 October 2023"[87] (**petitioner's MPR**) on the same Decision.

On 02 April 2024, after the parties were given time to comment, the Special First Division issued the assailed Resolution denying both of the parties' MPR for lack of merit.[88] The dispositive portion of the assailed Resolution reads:

> ...
>
> **WHEREFORE,** premises considered, [respondent's] *Motion for Partial Reconsideration* and [petitioner's] *Motion for Partial Reconsideration (Re: Decision Promulgated on 5 October 2023)* are **DENIED** for lack of merit.
>
> Accordingly, the Decision of the Court in the above-captioned case dated October 5, 2023, is hereby **AFFIRMED.**
>
> **SO ORDERED.**
>
> ...

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85 Supra at note 1.
86 Division Docket, Volume II, pp. 973-976.
87 Id., pp. 978-989.
88 Supra at note 2.

## PROCEEDINGS BEFORE THE COURT *EN BANC*

Unsatisfied with the Special First Division's actions, petitioner filed the present petition on 03 May 2024 (following the extension of time granted to petitioner).[89] On 30 September 2024, respondent filed a "Manifestation" that it is adopting its MPR dated 27 October 2023 as its Comment to petitioner's Petition for Review.[90] On 12 December 2024, the Court *En Banc* resolved to give due course to the instant case and submitted it for decision.[91]

## ISSUES

Before Us, petitioner puts forward the following issues for the Court *En Banc*'s resolution:

I.

WHETHER THE SPECIAL FIRST DIVISION VALIDLY ACQUIRED JURISDICTION OVER RESPONDENT JOWELLE'S AUTO PARTS, INC.'S PETITION FOR REVIEW.

II.

WHETHER THE SPECIAL FIRST DIVISION ERRED IN CANCELING RESPONDENT JOWELLE'S AUTO PARTS, INC.'S ASSESSMENT COVERING THE DEFICIENCY VALUE-ADDED TAX (VAT) FOR THE FIRST (1st) TO FOURTH (4th) QUARTERS OF 2011 AND FIRST QUARTER OF 2012.

## ARGUMENTS

In asking the Court *En Banc* to reverse the Special First Division's actions, petitioner insists that respondent failed to file its Petition for Review within the period provided in Section 3, Rule 8 of the RRCTA.[92]

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89 *Rollo*, p. 6.

90 Id., pp. 123-127.

91 Id., p. 134.

92 **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of

Petitioner argues that the period within which to file respondent's prior Petition for Review must be counted from the date of receipt of the PCL.[93] He or she further argues that since respondent failed to file its Petition for Review within 30 days from the PCL's receipt, the same was filed out of time and the Special First Division had no jurisdiction over the same.[94]

Petitioner also asserts that the discrepancies on respondent's VAT returns constitute a false return, thus the latter may be assessed within ten (10) years after the discovery of such falsity.[95] Finally, petitioner maintains that respondent is liable for the 50% surcharge for its deficiency taxes for filing false returns.

Adopting its MPR as its Comment on the petition, respondent prays for the entire cancellation of petitioner's assessments and the modification of the assailed Decision. In asking for the cancellation of all the items of assessment respondent argues that: (1) despite respondent's submission of documents in its Protests to FANs, petitioner failed to give any explanation on how it considered its arguments and explanations; and (2) since respondent's arguments and evidence in its Protests to FANs were not considered, petitioner violated respondent's right to due process, hence the subject assessments should be declared void.[96]

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

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

Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

(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.

93 See par. 1, pp. 13-14; supra at note 3.

94 Par. 2, id., p. 17.

95 Par. 3, id., p. 22.

96 Supra at note 86.

Petitioner received a copy of the assailed Resolution on 08 April 2024.[97] Petitioner had fifteen (15) days from receipt of the assailed Resolution, pursuant to Section 3(b)[98], Rule 8 of the RRCTA, or until 23 April 2024, to file a Petition for Review before the Court *En Banc*. On 17 April 2024, petitioner filed a "Motion for Extension of Time to file Petition for Review".[99] The Court *En Banc* granted the said motion and allowed petitioner until 03 May 2024.[100] Thus, petitioner timely filed the present Petition for Review on 03 May 2024.[101]

We proceed to the merits of the case.

After a careful review of the records of the case and the contrasting arguments of the parties, the Court *En Banc* finds the petition bereft of merit.

It is worthwhile to note that the allegations and arguments in the instant petition are but reiterations of petitioner's pleadings before the Special First Division, which the latter has already exhaustively discussed and passed upon. For emphasis and for petitioner's further enlightenment, We will oblige to discuss anew the more salient points in *seriatim*.

THE SPECIAL FIRST DIVISION DID NOT ERR IN HOLDING THAT IT HAS JURISDICTION OVER THE ORIGINAL PETITION.

Here, petitioner insists that the period within which respondent should have filed its Petition for Review must be counted from the <u>PCL's date of receipt.</u>[102] Citing the case of *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*[103] (**SEGI**), he or she argues that while the CTA has jurisdiction over the validity of a WDL, any issue thereon should still be brought within the period provided by law. In *SEGI*, the Supreme Court ruled that since SEGI filed its Petition for Review beyond

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97 Division Docket, Volume II, p. 1010.
98 Supra at note 92.
99 *Rollo*, pp. 1-4.
100 Id., p. 6.
101 Supra at note 3.
102 Supra at note 93.
103 G.R No. 225809, 17 March 2021.

the 30-day period from the WDL's receipt, it lost its statutory right to appeal and the CTA should have dismissed the case on the ground of lack of jurisdiction.

Petitioner contends that, in this case, since the PCL had a tenor of finality, the 30-day period to file a Petition for Review should be reckoned therefrom. Similar to *SEGI*, since respondent failed to file its Petition for Review within 30 days from the PCL's receipt, its Petition for Review should be deemed as filed out of time. As a result, the Special First Division has no jurisdiction over the same.

Petitioner's arguments fail to convince Us.

The factual circumstance of *SEGI* is not similar to the case at bar. In *SEGI*[104], the taxpayer failed to file a timely protest, hence the FLDs/FANs attained finality. We quote the relevant discussion of the Supreme Court:

> ...
>
> **In the <u>absence of a timely protest from respondent</u>, it was then <u>reasonable for petitioner to presume that the Formal Letter of Demand and Final Assessment Notice had become final, executory, and demandable.</u>** Respondent's protest in its June 19, 2008 letter was belatedly raised. On June 22, 2010, a Warrant of Distraint and. Levy was issued and served against respondent.
>
> The **Warrant of Distraint and Levy on June 22, 2010 constitutes a constructive denial or rejection of respondent's claim** in its June 19, 2008 letter. It is petitioner's final decision on respondent's belated protest that is appealable to the Court of Tax Appeals. Respondent should have filed its appeal to the Court of Tax Appeals within 30 days from June 22, 2010, or on July 22, 2010, but it failed to do so. Instead, respondent filed a request82 for withdrawal and cancellation of the Warrant of Distraint and Levy **on September 29,2010**, or **99 days** from receipt of the Warrant.
>
> ...

Here, respondent was able to file its Protests to FANs on time.[105] Therein, respondent explained its positions to the BIR's assessment, with the corresponding factual and legal bases for each item of the

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104 Supra; Citations omitted, underscoring supplied, emphasis in the original text and supplied.
105 Supra at note 21.

deficiency assessment as set forth in the FLDs/FANs. Further, respondent had even transmitted the necessary supporting documentation in support of its requests for reinvestigation.[106] With this, We cannot thus reasonably conclude that the PCL constituted as the constructive denial or rejection of respondent's arguments in its Protests to FANs.

Interestingly, upon respondent's receipt of the PCL, it is clear that it was still awaiting petitioner's final decision. In its LPN dated 13 July 2018[107], respondent questioned the PCL's issuance despite the pendency of its request for reinvestigation with the BIR. We also quote below the pertinent portion of the said LPN, to wit:

> ...
>
> 23. More than three (3) years had passed before the BIR [broke its] silence on anything related [to] this case. **I am comforted by the fact that my docket [had stayed with] the Chief Assessment Division or with the Regional Director pending ... decision on my protest. Yet without any justifiable reason, my docket [was] forwarded to the Collection Division, whose task is to collect taxes.**[108]
>
> ...

To the mind of the Court *En Banc*, petitioner's reliance on *SEGI* is misplaced. As stated earlier, the Supreme Court unequivocally declared that the 30-day period to appeal to the CTA's should be <u>reckoned from the WDL's receipt</u> (which constituted as the constructive and final denial of the belated protest).

Further, in *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, et al.*[109], the Supreme Court ruled that a demand letter for payment of delinquency taxes may be considered as respondent's FDDA if it contains final and unequivocal language that it is his or her final determination of the disputed assessment, to wit:

> ...
>
> A demand letter for payment of delinquent taxes may be considered a decision on a disputed or protested assessment. **The determination on whether or not a demand letter is final is**

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106 Supra at note 22.
107 Exhibit "P-15", Division Docket, Volume II, pp. 830 to 842; Emphasis supplied.
108 Emphasis supplied.
109 G.R. No. 148380, 09 December 2005; Citation omitted and emphasis supplied.

**conditioned upon the language used or the tenor of the letter being sent to the taxpayer.**

We laid down the rule that the Commissioner of Internal Revenue should **always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment,** thus:

> . . . we deem it appropriate to state that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by Sections 7 and 11 of Republic Act No. 1125, as amended. **On the basis of his statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues.**
>
> The rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment — and, consequently, the collection of the amount demanded as taxes — by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. **This would also deter the Commissioner from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action.**

...

Further, the Court *En Banc* also notes that petitioner's witnesses RO Español and Chief Soriano both confirmed that **petitioner did not issue any FDDA.**

Section 228 of the NIRC of 1997, as amended, in part, reads as follows:

> ...
>
> **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[.] ...
>
> ...
>
> 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.
>
> **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, **<u>the taxpayer adversely affected by the decision</u>** <u>or inaction</u> **<u>may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision</u>**, or from the lapse of the one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable.**[110]
>
> ...

The afore-quoted Section 228 is implemented by Revenue Regulations (**RR**) No. 12-99[111], as amended by RR No. 18-2013.[112] Relevant portions of Section 3.1.5 of the said implementing regulation outline the requirement of what constitutes a valid FDDA, to wit:

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110 Italics in the original text, emphasis and underscoring supplied.

111 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.

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

> ...
>
> 3.1.5. *Final Decision on a Disputed Assessment (FDDA).* — The decision of the Commissioner or his duly authorized representative shall state the **(i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void (see illustration in ANNEX "C" hereof), and (ii) that the same is his final decision.**[113]
>
> ...

Based on the foregoing, it is clear that the period to appeal with this Court, if a decision on the protest is denied in whole or in part by the CIR, commences to run from *the taxpayer's receipt of the FDDA.*

While it may be gainsaid that the PCL[114] carries a tone of finality, a further examination thereof reveals the following: (1) petitioner failed to indicate in a clear and unequivocal language that it was his or her decision on the disputed assessments; (2) it did not mention respondent's pending request for reinvestigation with the BIR's office; (3) it did not provide the facts, law, rules and regulation on which petitioner's decision was based; and (4) the PCL did not state that it was petitioner's final decision. Thus, respondent could not be faulted if it did not deem that the PCL indeed constituted petitioner's FDDA or whether its right to appeal with the CTA has already accrued.

Additionally, We find that to reckon respondent's appeal period from the receipt of the PCL would undermine fair play, regularity and orderliness of an administrative action for the following reasons: (1) the PCL failed to expressly indicate that it is petitioner's final decision on its Protests to FANs; (2) the PCL failed to meet the requirements of a valid FDDA as defined in RR No. 12-99[115], as amended by RR No. 18-2013[116]; and (3) the FLDs/FANs did not immediately become final, executory and demandable due to respondent's timely filing of its Protests to FANs and submission of its documentation supporting its requests for reinvestigation. These defects undermine fair play because they deprive respondent of clear notice, disregard the procedural safeguards mandated by regulation, and disturb the orderly progression of administrative review. They collectively show that petitioner cannot shortcut the process by treating the PCL as a constructive denial or as

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113 Emphasis supplied and italics in the original text.
114 Supra at note 23.
115 Supra at note 111.
116 Supra at note 112

the final decision triggering the appeal period. Hence, the issuance of the PCL cannot be treated as a constructive denial or rejection of respondent's request for reinvestigation.

We also find no merit in petitioner's insistence that the Special First Division has no jurisdiction in light of Section 7(a)(1) of Republic Act (**RA**) No. 1125[117], as amended by RA 9282[118], which confers upon this Court the jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, but also on "other matters" arising under the NIRC of 1997, as amended. Said provision reads:

> ...
>
> SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]**[119]
>
> ...

Based on the foregoing provision, the appellate jurisdiction of this Court is not limited to cases which involve decisions of the CIR, on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by petitioner.[120]

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[121], the Supreme Court held as follows, to wit:

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117 AN ACT CREATING THE COURT OF TAX APPEALS.

118 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 OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

119 Emphasis supplied and italics in the original text.

120 *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, 17 November 2010.

121 G.R. No. 162852, 16 December 2004; Emphasis supplied.

> ...
>
> The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected.
>
> ...

Also, in *Commissioner of Internal Revenue v. Avon Products* Manufacturing, Inc.[122], the Supreme Court also recognized that the CIR's Collection Letter, instead of an FDDA is appealable to the CTA, to wit:

> ...
>
> In any case, even if this Court were to disregard the Collection Letter as a final decision of the Commissioner on Avon's protest, **the Collection Letter constitutes an act of the Commissioner on "other matters" arising under the National Internal Revenue Code, which, pursuant to *Philippine Journalists, Inc. v. CIR*, may be the subject of an appropriate appeal before the Court of Tax Appeals.**
>
> ...

The validity of a WDL is an issue that falls under "other matters arising from the NIRC" that is within the jurisdiction of the Special First Division to decide upon. Similar to respondent's prior Petition for Review, what is being primarily assailed is petitioner's WDL[123] issued against respondent.

In instances when petitioner proceeds with the issuance of a distraint and levy or institutes an action for collection in the ordinary courts (without categorically deciding the taxpayer's protest or request for reinvestigation), the Supreme Court has ruled that such action is deemed a denial of the protest or request for reinvestigation. As such, the WDL becomes the subject of an appeal with this Court and the

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122 G.R. Nos. 201398-99 & 201418-19, 03 October 2018; Citation omitted, italics in the original text and emphasis supplied.

123 Supra at note 26.

appeal maybe filed within 30-days from the taxpayer's receipt of the WDL.[124]

Relative thereto, Section 11 of RA 1125[125], as amended by RA 9282[126], states, in part, as follows:

> ...
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue ...may file an appeal with the CTA **within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.[127]
> ...

Thus, respondent had 30-days from receipt of the said WDL on 31 January 2019[128] or until 04 March 2019[129], within which to file its appeal with this Court. Correspondingly, the filing of respondent's Petition for Review on 01 February 2019[130] was timely made.

THE SPECIAL FIRST DIVISION CORRECTLY RULED THAT THE EXTRAORDINARY PRESCRIPTIVE PERIOD OF TEN (10)-YEARS DOES **NOT** APPLY.

Petitioner asserts that the discrepancies on respondent's VAT returns constitute filing of a false return which may be assessed within 10 years after the discovery of such falsity.[131] Petitioner relies on the case of *Commissioner of Internal Revenue v. Asalus Corporation*[132], where the Supreme Court ruled that a mere showing that returns filed by the taxpayer were false, notwithstanding the absence of intent to defraud, is sufficient to warrant the application of 10-year prescriptive period

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124 See *Commissioner of Internal Revenue v. Algue, Inc., et al.*, G.R. No. L-28896, 17 February 1988. Also see *Commissioner of Internal Revenue v. SEGI*, supra at note 103.
125 Supra at note 117; Emphasis supplied.
126 Supra at note 118.
127 Emphasis supplied and italics in the original text.
128 Supra at note 26.
129 The 30th day fell on 02 March 2019, a Saturday. The next working day would be 04 March 2019, a Monday.
130 Supra at note 28.
131 Supra at note 95.
132 G.R. No. 221590, 22 February 2017.

under Section 222 of the NIRC of 1997, as amended. Finally, petitioner argues that proof of fraud need not be alleged for respondent to be held accountable for filing a false return.

Given the circumstances at bar, We find no cogent reason to deviate from the Special First Division's findings. As already stated in the assailed Resolution, unintentional or inadvertent errors do not necessarily constitute outright fraud to call for the application of the 10-year period to assess.[133]

The recent Supreme Court case of *McDonald's Philippines Realty Corporation v. Commissioner of Internal Revenue*[134] **(McDonald's)** presents an exemplification of what supports a valid invocation of the extraordinary prescriptive period:

> ...
> D. *Proof of Falsity or Fraud*
>
> i. *General Rule*
>
> Tax assessments are presumed correct under the law and ssued in the regular performance the tax authorities' duty. As a consequence, it is incumbent upon the taxpayer to dispute such correctness and regularity.
>
> Similarly, *tax returns* are presumed to have been prepared and filed by the *taxpayer* in good faith, in observance of the ordinary course of business, and in compliance with the applicable rules and regulations.
>
> Thus, it must be understood that *falsity* and/or, *fraud with respect to any tax return* cannot be presumed to the extent that these are relied upon as grounds for the extension of the assessment period to 10 years. In keeping with their duty to preserve due process in tax assessments, as enunciated in *BF Goodrich, Fitness by Design, Samar Electric, Asalus, and Spouses Magaan,* <u>**the tax authorities bear the burden of establishing, with *clear and convincing proof*, the existence of grounds warranting the application of the 10-year period.**</u>
> ...

133 Supra at note 2, p. 95.
134 G.R. No. 247737, 08 August 2023; Citation omitted, emphasis and italics in the original text, and underscoring supplied.

E. *Due Process Requirements When Invoking the 10-Year Period*

i. *In General*

It must be stressed that while the law accords the tax authorities an extended period within which they may investigate the taxpayer and issue a corresponding tax assessment, the law does so **by exception.** Furthermore, it is recognized that <u>the *law on prescription should be liberally construed in favor of the taxpayer,*</u> to afford them protection against unreasonable examination, investigation, or assessment.

Thus, when invoking the benefit of the extraordinary 10-year assessment period, as well as the presumption of falsity or fraud, the tax authorities are duty-bound to respect a taxpayer's *fundamental right to due process of the law.* There is due process when the taxpayer is provided with information necessary to mount an <u>*intelligent and timely protest/defense to the assessment.*</u>

Consequently, <u>*first,* the tax authorities are required to *communicate* to the taxpayer, in a clear and adequate manner, the basis for extending the assessment period.</u> Guided by the pronouncements in *Asalus, Fitness by Design, and Spouses Magaan,* the tax authorities are obligated to indicate in the *assessment notice* <u>that the extraordinary prescriptive period is being applied and the bases of allegations of falsity or fraud</u> (First Due Process Requirement).

*Second,* they are likewise <u>*proscribed from adopting a position inconsistent with the invocation of the extended period* or that which will mislead the taxpayer and prejudice its defense</u> (Second Due Process Requirement).

In the past, the Court regarded the following acts performed by the tax authorities as contradictory to the application of the 10-year prescriptive period: <u>(a) prior execution of waivers meant to extend the basic three-year period (*Inquirer*)</u>; <u>(b) hasty issuance of an assessment notice in order to meet the basic three-year deadline (*i.e.*, one day before the last day of the three-day prescriptive period, as in *Unioil*).</u>

*ii. Due Process in Invoking the Presumption of Falsity or Fraud*

The First and Second Due Process Requirements above must also be complied with particularly when invoking the *presumption of falsity* or *fraud.* Thus, <u>it shall not be sufficient that the CIR merely ascertains a misstatement or misdeclaration.</u> To avail oneself of the benefit, *first,* the tax authorities must set out in the assessment notice the facts comprising the misstatement or misdeclaration and the manner by which the conditions under Section 248(B) are met and, *second*, there are no circumstances that negate the tax authorities' claim of relying on the 10-year period or those which have misled the taxpayer that it would only be assessed within the basic three-year period.

The Court must reiterate that the conditions under Section 248(B) may be summarized as the 30% threshold, which, by its nature, is derived mathematically. Accordingly, in relation to the Second Due Process Requirement, it is essential for the CIR to *at least disclose the computation by which it ascertained that the misdeclaration in the return surpassed the threshold*, if only to afford the taxpayer an opportunity to refute the correctness or reasonableness of such computation.

iii. *False Return*

...

The Court agrees with MPRC that only *intentional errors* in the return may justify the application of the extraordinary 10-year period.

...

Since *Aznar*, the Court has been consistent in the interpretation of what constitutes a *false return* with respect to the application of the 10-year period — ***not all types of error or falsehood in a return will make available the 10-year exception under Section 222 (a) of the 1997 Tax Code***. The settled rule is that *"the entry of wrong information due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return."* That there is an under/overstatement, by itself, does not amount to a falsehood for purposes of extending the assessment period.

Declarations in the return pertaining to, for instance, (a) a selling price that is below the fair market value *(BF Goodrich)*, (b) purchases the aggregate amount of which, upon audit, exceeds those reported in the suppliers' independent records *(Inquirer)*, or (c) the face amount of checks received but excluded from the computation of taxable income *(Spouses Magaan)* do not *ipso facto* render the return false within the meaning of Section 222(a) of the 1997 Code.

*Third*, the CIR's interpretation of the law disregards the presumptions that taxpayers have prepared and filed their returns in good faith and have complied with the applicable laws and regulations in doing so. It also gives the CIR and revenue agents unbridled authority to extend and prolong any assessment.

> The power to assess authorizes the CIR and its revenue agents to examine a taxpayer's books for the purpose of determining the correct amount of tax. Given the nature of this authority, as pointed out by MPRC, each tax audit will necessarily expose varying errors and/or irregularities in how the taxpayer computed its tax liability. Following the CIR's logic, all such inaccuracies committed by the taxpayer — including mere clerical or typographical errors or arithmetic miscalculations, no matter how trivial — shall render the return false and may be used as a ground to invoke the exceptional 10-year period. To the Court's mind, this creates an opportunity for the CIR to find errors at whim, renders the basic three-year assessment period under Section 203 of the 1997 Tax Code superfluous and inoperative, and extends the assessment period virtually in all tax audits. The Court does not believe that the law intended to grant the tax authorities such an expansive and unlimited power — one that clearly defies due process rights.
>
> ...

Petitioner asserts that the discrepancies on respondent's VAT returns constitute filing of a false return which may be assessed within 10 years after the discovery of such falsity. Petitioner also argues proof of fraud need not be alleged for respondent to be held accountable for filing a false return.

We disagree.

Mere misstatement or misdeclaration does not automatically create a presumption of falsity or fraud.[135] Moreover, to allow petitioner to apply the 10-year prescriptive period would violate respondent's due process rights since petitioner failed to properly notify respondent of the basis thereof. Below is the relevant portion of the FLDs/FANs dated 22 June 2015:[136]

> ...
>
> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying ANNEX A of this letter of demand. **The 25% and 50% surcharge and 20% interest per annum have been imposed pursuant to Section 248(A) & (B) and 249(A) respectively of the National Internal Revenue Code (NIRC), as amended.**
>
> ...

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135 See *McDonald's Philippines Realty Corporation v. Commissioner of Internal Revenue*, supra at note 134.

136 Supra at note 15.

The foregoing yields clearly that petitioner involved the presumption of falsity or fraud under Section 248(B)[137] of the NIRC of 1997, as amended. However, the FLDs/FANs, as above quoted, contained mere reference to the provision. Petitioner did not even elaborate on the statutory conditions that would have given rise to the presumption. He or she also did not disclose the computation it used to determine whether the 30% threshold was indeed exceeded.

Succinctly, petitioner's bare reference to Section 248(B) in the FLDs/FANs does not satisfy the required threshold under the provision. To the Court *En Banc*, this deprived respondent an opportunity to refute the basis of the computation and, ultimately, to set up an intelligent protest.

It is also noted that petitioner relied heavily on the presumption of falsity or fraud in justifying its application of the extraordinary 10-year period. Aside from its repeated assertion that respondent failed to declare its correct purchases and to provide sufficient documentation for its claimed expenses, petitioner did not provide support or proof to establish that respondent's failure to properly report the alleged discrepancy in its VAT returns was willful or intentional. Bare presumptions, on its own, cannot be regarded as sufficient proof of an intention to evade tax.[138]

We wish to emphasize that only intentional and deliberate errors may render the return false for purposes of invoking the extraordinary

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137 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 under-declaration 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 under-declaration of sales, receipts or income or for overstatement of deductions, as mentioned herein

138 See *Commissioner of Internal Revenue v. Spouses Remigio P. Magaan and Leticia L. Magaan*, G.R No. 232663, 03 May 2021.

period under Section 222(a)[139] of the NIRC of 1997, as amended.[140] Certainly, a return may contain mistakes. However, if petitioner fails to establish that the misstatement is willful on the part of the taxpayer, plain errors cannot justify the application of the 10-year period.

As discussed in *McDonald's*, due process in invoking the exceptional period 10-year not only *requires* the tax authorities to issue an *assessment notice* to provide clear and adequate information necessary in setting up the taxpayer's protest but also *disallows* the tax authorities from acting in a manner that is inconsistent with the invocation of the extraordinary prescriptive period or would otherwise mislead the taxpayer that the basic period will be applied.

In the present case, the following circumstances negate petitioner's good faith in extending the assessment period:

*First*, a review of the records reveals that petitioner had no intention to extend the three (3) year prescriptive period. Though the parties did not execute any waivers extending the assessment period, it appears that the ROs requested its execution, thereby negating any imputation of falsity or fraud on respondent. If petitioner really intended to apply the extraordinary 10-year period, the ROs would not have requested for the waiver's execution. RO Tolentino, in her Memorandum dated 07 September 2015[141] recommending the issuance of the PCL stated to wit:

> ...
> 3. The LPN/Protest **lacks the requisites of a valid administrative protest, for having not accompanied by a waiver of the Statute of Limitations** in favor of the Government[.][142]
> ...

[139] 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.

[140] See *McDonald's Philippines Realty Corporation v. Commissioner of Internal Revenue*, supra at note 134. Also see *Commissioner of Internal Revenue v. Villanueva, Jr.*, G.R. No. 249540, 28 February 2024.

[141] Exhibit "R-8", BIR Records, Folder 1 of 4, pp. 319-320.

[142] Emphasis supplied.

RO Dumaga and RO Español also made a similar observation in their Memorandum dated 08 September 2015[143] and 07 September 2015[144], respectively, to wit:

> ...
>
> 3. The LPN/Protest **lacks the requisites of a valid administrative protest, for having not accompanied by a waiver of the Statute of Limitations** in favor of the Government and no additional documents/evidence submitted[.][145]
>
> ...

*Second,* RO Español and Chief Soriano both confirmed that petitioner did not issue any FDDA and there was no reason proffered why the PCL was issued. These lapses highlight petitioner's failure to substantiate his or her claim that respondent filed a false return. Had the case been so, there would not have been a reason for the speed with which the BIR pursued the PCL. Plainly, the PCL was hastily issued and it was devoid of any indication that respondent's arguments in its Protests to FANs were taken into consideration. The PCL issued to respondent was also wanting of proof that it was already petitioner's final decision on respondent's request for reinvestigation.

Similar to the Supreme Court's observations in *Commissioner of Internal Revenue v. Unioil Corporation*[146] (**Unioil**), the BIR's hasty issuance of a PC in this case appears to have contradicted the BIR's intention to apply the 10-year prescriptive period. On the contrary, it was more consistent with the BIR's original intention to abide by the basic assessment period of three (3) years.

*Third,* petitioner did not make any allegation of falsity or fraud in any of the Assessment Notices[147] (**ANs**), nor in his or her Answer.[148] The first instance that petitioner alleged falsity or fraud was in his or her MPR[149], *i.e.,* after the Special First Division had already issued the assailed Decision ruling that respondent was not to be held liable for deficiency VAT for the four (4) quarters of TY 2011 and the first (1st)

143 Exhibit "R-26", id., Folder 3 of 4, pp. 552-553.
144 Exhibit "R-17", id., Folder 2 of 4, pp. 645-646.
145 Emphasis supplied.
146 G.R No. 204405, 04 August 2021.
147 See PANs dated 16 February 2015, 10 April 2015, and 06 April 2015 for TY 2011, 2012 and 2013, respectively, supra at notes 12 to 14. Also see FANs/FLDs dated 22 June 2015; supra at note 15.
148 Supra at note 37.
149 Supra at note 87.

quarter of TY 2012 on the ground that petitioner's assessment was barred by prescription.

As held in *Unioil*[150], petitioner's intention to request for an execution of a waiver and the lack of any allegation of falsity or fraud in any of the ANs reveal that petitioner really had no intention to extend the prescriptive period. These considerations lead the Court *En Banc* to the conclusion that petitioner invoked the 10-year period as a *mere afterthought*. In the Court *En Banc's* view, to go through the motions of limiting the audit and assessment within the basic three (3)-year period, only to later on accuse respondent of filing a false return (without so much as a justification therefor), is an arbitrary exercise of the power to assess. Respondent has the right to be informed of any fraud allegations against it. Otherwise, the State, on account of the tax authorities' actions, would be depriving the taxpayer of property without due process of the law.[151]

Having determined that the extraordinary 10-year period does not apply in the present case, the Court *En Banc* sees no cogent or compelling reason to deviate from the Special First Division's findings and conclusions.

**WHEREFORE**, with the foregoing considered, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 03 May 2024 is **DENIED** for lack of merit. Accordingly, the assailed Decision dated 05 October 2023 and assailed Resolution dated 02 April 2024, of the Special First Division in CTA Case No. 10018, entitled *Jowelle's Auto Parts, Inc. v. Bureau of Internal Revenue*, are hereby **AFFIRMED**.

**SO ORDERED.**

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

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150 See supra at note 146.

151 *McDonald's Philippines Realty Corporation v. Commissioner of Internal Revenue* supra at note 134.

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

**WE CONCUR:**

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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
Acting Presiding Justice