.REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

INTELLIGENT TOUCH CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2966
(CTA Case No. 10215)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

INTELLIGENT TOUCH CORPORATION,
Respondent.

CTA EB NO. 2969
(CTA Case No. 10215)

Present:

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

Promulgated:
APR 10 2026 3:45pm

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* are two (2) consolidated Petitions for Review[1] filed by Intelligent Touch Corporation (**ITC**) and the Commissioner of Internal Revenue (**CIR**), assailing the Decision dated 19 October 2023[2] (**assailed Decision**) and the subsequent Resolution dated 23 July 2024[3] (**assailed Resolution**) of the Special Third Division in CTA Case No. 10215, entitled *Intelligent Touch Corporation v. Commissioner of Internal Revenue.*

The assailed Decision cancelled the deficiency income tax assessment against ITC for the taxable year (**TY**) 2011, but upheld, with modification, the deficiency value-added tax (**VAT**) assessment, thereby ordering ITC to pay ₱3,772,955.77, representing deficiency VAT for the third and fourth quarters of the TY 2011, inclusive of interest and surcharge. Meanwhile, the assailed Resolution denied, for lack of merit, both ITC's Motion for Partial Reconsideration (of the Decision dated 19 October 2023)[4] and the CIR's Motion for Partial Reconsideration[5] (collectively, "**MPRs**").

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1 Filed by Intelligent Touch Corporation on 29 August 2024, *rollo* (CTA EB No. 2966), pp. 19-100, with annexes, and by the Commissioner of Internal Revenue on 02 September 2024, *rollo* (CTA EB No. 2969), pp. 6-69, with annexes.

Rule 8 - Procedure in Civil Cases, Section 3(b), Revised Rules of the Court of Tax Appeals.

Section 3. *Who may appeal; period to file petition.* —

...

(b) Any 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.

2 Division Docket, Volume II, pp. 1005-1034. Penned by Presiding Justice (then Associate Justice) Ma. Belen M. Ringpis-Liban with Associate Justice Maria Rowena Modesto-San Pedro and Associate Justice Corazon G. Ferrer-Flores, concurring.

3 Id., Volume III, pp. 1089-1099.

4 Id., pp. 1035-1062.

5 Id., pp. 1064-1071.

PARTIES TO THE CASE

ITC is a domestic corporation duly organized and registered under the laws of the Republic of the Philippines, with Company Registration No. 200259725, with principal address at Unit 109, Central Business Park, Pasig City.[6]

The CIR, on the other hand, is vested with the power to decide disputed assessments pursuant to Section 4[7] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, with office address at the 5th Floor, Bureau of Internal Revenue (**BIR**) National Office Building, Agham Road (now, Senator Miriam P. Defensor-Santiago Avenue), Diliman, Quezon City and may be served with summons and other legal processes through the its counsels with office address at the Legal Division, Revenue Region 8A – Makati City.[8]

FACTS OF THE CASE

On 16 August 2012, the CIR issued Letter of Authority (**LOA**) No. LOA-047-2012-00000383 (SN: eLA201100015037), authorizing Revenue Officer (**RO**) Remedios Arcega (**Arcega**), under the supervision of Group Supervisor (**GS**) Elizabeth Arias (**Arias**), to examine ITC's books and records for all internal revenue taxes for the calendar year (**CY**) 2011.[9] A Checklist of Requirements accompanied the LOA, listing the documents that ITC ought to provide for examination and audit.[10]

Thereafter, on 22 October 2014, the CIR issued a Preliminary Assessment Notice[11] (**PAN**) accompanied by Details of Discrepancies, finding ITC liable for deficiency income tax, VAT, expanded

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6 Paragraph 1, I. Summary of Admitted Facts, Joint Stipulation of Facts and Issues (**JSFI**), id., Volume II, p. 612.

7 SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

8 *Rollo* (CTA EB No. 2969), p. 7.

9 BIR Records, Exhibit "R-1", p. 248.

10 Exhibit "R-2", id., p. 247.

11 Exhibits "R-10" and "R-11", id., unpaginated.

withholding tax (**EWT**), and withholding tax on compensation (**WTC**), totalling ₱50,481,040.77, inclusive of interest, for TY 2011.

The PAN was followed by the issuance, on 11 November 2014, of a Formal Assessment Notice[12] (**FAN**) accompanied by Details of Discrepancies and Assessment Notices, upholding the same amount of basic deficiency tax assessments and differing only as to interest, for an aggregate amount of ₱51,036,095.48, inclusive of interest. On 10 December 2014, ITC filed a letter addressed to the CIR entitled "Request for Reinvestigation/Valid Protest of FAN dated 11 November 2014"[13] (**Request for Reinvestigation**).

The CIR then issued the Final Decision on Disputed Assessment[14] (**FDDA**) dated 17 September 2015, accompanied by Details of Discrepancies, reiterating the same amount of basic deficiency taxes and differing only as to interest, for an aggregate amount of ₱56,837,312.49, inclusive of interest, broken down as follows:

Tax Type	Basic	Interest	Total
Income Tax	₱14,471,961.71	₱10,340,514.01	₱24,812,475.72
VAT	17,363,430.81	13,177,179.00	30,540,609.81
EWT	650,812.83	497,470.63	1,148,283.46
WTC	190,402.76	145,540.74	335,943.50
Total	**₱32,676,608.11**	**₱24,160,704.38**	**₱56,837,312.49**

On 19 October 2015, ITC paid in full the deficiency EWT and WTC.[15] It also paid, albeit under protest, the deficiency income tax and VAT assessments, but only for ₱161,613.06 and ₱2,149,029.29, respectively.[16] On the same day, ITC filed an Administrative Appeal to the CIR contesting the deficiency income tax and VAT assessments.[17]

Following the payments made, on 24 October 2019, ITC received the Decision of the CIR reducing the total deficiency tax assessment to

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12 Exhibits "R-12", "R-13", "R-14", "R-15", "R-16", and "R-17", id., unpaginated.
13 Exhibit "P-5", Division Docket, Volume II, pp. 804-814.
14 Exhibit "P-6", id., pp. 815-822.
15 Exhibits "P-11" and "P-12", id., pp. 844-849.
16 Exhibits "P-9" and "P-10", id., pp. 837-843.
17 Exhibit "P-7", id., pp. 823-831.

₱28,547,592.19, inclusive of interest, representing only the remaining deficiency income tax and VAT assessments,[18] broken down as follows:

	Deficiency Income Tax	**Deficiency VAT**	**Total**
Basic deficiency tax due	₱200,189.02	₱17,363,430.81	₱17,563,619.83
Add: Interest (04.16.12 to 10.19.15)	140,516.24	12,958,352.20	13,098,868.44
Less: Payments made on 10.19.15	161,613.06	2,149,029.29	2,310,642.35
Add: Interest (10.19.15 to 11.11.15)	1,268.52	194,477.75	195,746.27
Total amount due	**₱180,360.72**	**₱28,367,231.47**	**₱28,547,592.19**

PROCEEDINGS BEFORE THE THIRD DIVISION

On 21 November 2019 and within thirty (30) days from receipt of the CIR's Decision, ITC filed its prior Petition for Review[19] before the Court in Division to appeal the denial of its administrative claim. The same was raffled to the Third Division and docketed as CTA Case No. 10215.

On 26 December 2019, the Third Division issued Summons[20] ordering the CIR to file an Answer within fifteen (15) days from service. The CIR received the said Summons on 07 January 2020.[21] After the Third Division granted extension of time (to file) twice,[22] the CIR filed an Answer (with Special and Affirmative Defenses)[23] on 01 July 2020. The CIR transmitted the BIR records on 30 July 2020.[24]

Later, the case was referred to mediation in the Philippine Mediation Center-Court of Tax Appeals (**PMC-CTA**).[25] However, the parties agreed not to have their case mediated before the same.[26] On 17 September 2020, the Third Division set the case for Pre-Trial Conference on 09 February 2021.[27] In compliance with the Court's

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18 See Paragraph 3, I. Summary of Admitted Facts, JSFI, id., p. 613.
19 Id., Volume I, pp. 7-157, with annexes.
20 Id., p. 186.
21 Id.
22 See Resolution dated 27 January 2020, id., p. 192 and Resolution dated 03 March 2020, id., p. 198.
23 Id., pp. 199-215.
24 See Compliance dated 28 July 2020, id., p. 317.
25 See Resolution dated 22 July 2020, id., pp. 315-316.
26 See No Agreement to Mediate dated 10 September 2020 issued by the PMC-CTA, id., p. 319.
27 See Resolution dated 17 September 2020, id., pp. 321-322.

directive, ITC filed its Pre-Trial Brief on 04 February 2021,[28] while the CIR filed its Pre-Trial Brief on 05 February 2021.[29]

At the scheduled Pre-Trial Conference, the Third Division granted the parties a twenty (20)-day period to submit their Joint Stipulation of Facts and Issues (**JSFI**).[30] On 01 March 2021, the parties filed their JSFI.[31] The Third Division approved and adopted the same in its Resolution dated 04 March 2021[32] and, subsequently, in its Pre-Trial Order[33] dated 08 June 2021. The pre-trial was then declared terminated.

Earlier, on 11 March 2021, ITC filed a "Motion to Commission Independent Certified Public Accountant"[34] (**Motion to Commission ICPA**), requesting the appointment of Atty. Edward M. Menor (**Menor**) as the ICPA for this case. In its Order dated 04 May 2021,[35] the Third Division commissioned Menor and directed him to submit his report by 18 June 2021.

During the trial, ITC presented its testimonial and documentary evidence. It offered the testimonies of the following witnesses, namely: (1) Efren Q. Samson, Jr. (**Samson**), ITC's Accounting Assistant; and (2) ICPA Menor.

During the hearing on 17 June 2021,[36] Samson identified his Judicial Affidavit dated 02 February 2021,[37] where he testified on the: (1) administrative proceedings with the BIR, starting from the receipt by ITC of the FAN up to the CIR's Decision on the remaining deficiency income tax and VAT assessments; (2) ITC's admission of liability and subsequent payment of the deficiency income tax arising from disallowed creditable withholding tax; (3) dates of filing by ITC of the quarterly VAT returns for TY 2011; (4) ITC's admission of liability and subsequent payment of the deficiency VAT arising from: (**a**) sales not

28 Id., pp. 348-360.
29 Id., Volume II, pp. 521-603.
30 See Order dated 09 February 2021, id., pp. 609-611.
31 Id., pp. 612-622.
32 Id., pp. 624-625.
33 Id., pp. 679-688.
34 Id., pp. 626-636, with annexes.
35 See Order dated 04 May 2021, id., pp. 664-665.
36 See Minutes of the Hearing and Order, both dated 17 June 2021, id., pp. 691 and 692-693, respectively.
37 See Judicial Affidavit of Efren Q. Samson, Jr., Exhibit "P-20", id., Volume I, pp. 367-500, with annexes.

subjected to VAT; and (**b**) other income not subjected to VAT, except those pertaining to the first and second quarters of TY 2011; (**5**) ITC's claim for input VAT being duly substantiated with the appropriate supporting invoices and official receipts; and (**6**) ITC's excess tax credits appearing as excess input VAT over output VAT in its VAT return for the fourth quarter of 2011. The CIR conducted cross-examination. ITC did not conduct a redirect examination.[38]

On 18 June 2021, ICPA Menor filed his ICPA Report,[39] which the Third Division noted on 06 July 2021.[40]

On 13 July 2021,[41] ITC presented ICPA Menor who identified his Judicial Affidavit dated 29 June 2021.[42] He testified essentially that: (1) ITC did not fully utilize its expenses as deduction, but there was no indication that these unclaimed expenses corresponded to unreported income; (2) ITC agreed not to contest and, in fact, paid for the deficiency income tax assessment on disallowed creditable withholding tax; (3) ICPA Menor did not examine the issue on deficiency VAT arising from sales and other income not subject to VAT since ITC already paid the income tax due on these items; and (4) the deficiency VAT assessment arising from disallowed input tax credits have: (**a**) prescribed, as a portion of the assessment pertains to the first and second quarters of 2011; (**b**) been duly supported by VAT sales invoices; or (**c**) already been paid by ITC. The CIR conducted cross-examination. ITC did not conduct a redirect examination.[43]

After completing the presentation of evidence, on 15 October 2021, ITC filed its Formal Offer of Evidence[44] (**FOE**), consisting of Exhibits "P-1" to "P-173-A", inclusive of sub-markings. On 25 October 2021, the CIR filed a Comment[45] thereto. In its Resolution dated 01 March 2022,[46]

[38] TSN dated 17 June 2021, pp. 6-9.
[39] Exhibit "P-172", Division Docket, Volume II, pp. 694-737.
[40] See Minute Resolution dated 06 July 2021, id., p. 763.
[41] See Minutes of the Hearing and Order, both dated 13 July 2021, id., pp. 766 and 767-768, respectively.
[42] See Judicial Affidavit of Atty. Edward M. Menor (On the Report Submitted on 18 June 2021), Exhibit "P-173", id., pp. 743-761.
[43] TSN dated 13 July 2021, pp. 8-11.
[44] Division Docket, Volume II, pp. 769-780.
[45] Id., pp. 914-920.
[46] Id., pp. 924-925.

the Third Division acted upon ITC's FOE, admitting all the exhibits submitted by the latter.

During the 24 May 2022 hearing,[47] CIR presented GS Arias, who identified her Judicial Affidavit dated 01 July 2020.[48] In her affidavit, GS Arias testified that: (1) at the time she executed her Judicial Affidavit, she held the position of Group Supervisor assigned to Revenue District Office (**RDO**) No. 47-East Makati City; (2) her duties included tax verification and post audit examination of the books of accounts and other accounting records of taxpayers; (3) she was authorized to conduct the examination through the LOA,[49] which the BIR served on ITC and which Sylvia D. Gapuz (**Gapuz**) received on 23 August 2012;[50] (4) the BIR served two notices on ITC requesting for presentation of accounting records for examination;[51] and (5) the BIR served the PAN to ITC, and Bernadette Estrada (**Estrada**) received the same on 22 October 2014,[52] among other administrative proceedings at the BIR level. ITC conducted cross-examination. The CIR did not conduct a redirect examination.[53]

On 16 June 2022, the CIR filed a "Motion to Admit ([FOE])",[54] attaching thereto the FOE, consisting of Exhibits "R-1" to "R-28-1". The Third Division granted CIR's Motion and admitted the FOE as part of the records of the case.[55] On 28 June 2022, ITC filed a "Comment/ Opposition [On Respondent's Motion to Admit ([FOE]) dated 14 June 2022]".[56] In the Resolution dated 02 August 2022,[57] the Third Division acted upon the CIR's FOE, admitting all the exhibits submitted by the latter.

In compliance with the Court's directive, on 03 October 2022, ITC filed its Memorandum.[58] The CIR, however, did not file his or her

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47 See Minutes of the Hearing and Order, both dated 24 May 2022, id., pp. 926 and 927-928, respectively.
48 See Judicial Affidavit of Elizabeth C. Arias, Exhibit "R-28", id., Volume I, pp. 219-309, with attached exhibits.
49 Supra at note 9.
50 Id.
51 BIR Records, Exhibits "R-3" and "R-4", pp. 245-246.
52 Supra at note 11.
53 TSN dated 24 May 2022, pp. 6-10.
54 Division Docket, Volume II, pp. 929-942.
55 See Resolution dated 21 June 2022, id., p. 945.
56 Id., pp. 946-959.
57 Id., pp. 966-967.
58 Id., pp. 968-998.

Memorandum.[59] Thereafter, the Third Division submitted the case for decision through its Resolution dated 26 October 2022.[60]

In the *interim*, following the reorganization of the Court's Divisions, the Special Third Division[61] promulgated the now assailed Decision of 19 October 2023,[62] partially granting ITC's Petition for Review. The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**.
>
> The assessment issued by [CIR] against [ITC] for taxable year 2011 covering the deficiency income tax is **CANCELLED and SET ASIDE**, while the assessment for deficiency VAT is **UPHELD**, but with modification.
>
> Accordingly, [ITC] should be **ORDERED TO PAY** [CIR] the aggregate amount of **Php3,772,955.57**, representing deficiency value-added tax for the 3rd and 4th quarters of the taxable year 2011, the remaining unpaid interest computed until October 19, 2015, twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, twenty percent (20%) deficiency interest imposed under Section 249(B) of the same Code, and twenty percent (20%) delinquency interest imposed under Section 249(C) of the same Code, respectively, computed until December 31, 2017, as shown below:

Basic tax	Php	1,137,131.40
Unpaid interest on 10.19.2015		849,940.12
Surcharge (25% x Php1,137,131.40)		284,282.85
Total amount due – October 19, 2015	**Php**	**2,271,354.37**
20% Deficiency interest (10.20.2015 to 12.31.2017) [20% x Php1,137,131.40 x 804 days / 365 days]		500,960.90
20% Delinquency interest (10.20.2015 to 12.31.2017) [20% x Php2,271,354.37 x 804/365]		1,000,640.50
Total amount due – December 31, 2017	**Php**	**3,772,955.77**

59 See Records Verification dated 19 October 2022, id., p. 1001.
60 Id., p. 1002.
61 Pursuant to Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court) dated 23 May 2023, which was issued following the retirement of Associate Justice Erlinda P. Uy, the Court underwent a reorganization. The members of the then Third Division were reorganized into the Second Division, but the instant case stayed with and was ruled by the same members, albeit as the *Special* Third Division.
62 Supra at note 2, pp. 1032-1033.

> In addition, [ITC] should be **ORDERED TO PAY** [CIR] delinquency interest at the rate of twelve percent (12%) on the total unpaid deficiency taxes of **Php2,271,354.37** as of October 19, 2015, as determined above, or equivalent to the amount of **Php746.75** per day, computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion Law and as implemented by Revenue Regulations No. 21-2018.
>
> On the other hand, since all of [ITC's] payments made on October 19, 2015 in the amounts of Php161,613.06 and Php2,149,029.29 for deficiency income tax and deficiency VAT, respectively, have been deducted from the tax due in computing the deficiency tax liability, there is no excess left to be refunded.
>
> **SO ORDERED.**[63]
>
> ...

In granting ITC's Petition for Review, the Special Third Division primarily held that: (1) the totality of the evidence that both parties presented cast doubt on ITC's allegations that it did not receive any LOA and PAN for TY 2011; (2) the CIR's right to assess deficiency taxes for the first and second quarters of TY 2011 is time-barred; (3) the deficiency income tax assessment is cancelled because the imputation of undeclared income cannot be based on a mere presumption that since there are undeclared expenses, there are corresponding undeclared sources of income; (4) the portion of the deficiency VAT assessment arising from disallowed input taxes that was properly substantiated is also cancelled; and (5) the excess input tax carried over to the succeeding period should not be applied against any VAT liability for TY 2011. In sum, ITC is now only liable for the remaining unsubstantiated input tax claims and the input tax carried over to the succeeding period that were not covered by the payments made by ITC on 19 October 2015.

On 15 December 2023, ITC filed an "[MPR] (of the Decision dated 19 October 2023)",[64] while the CIR filed an MPR[65] on 19 December 2023, with ITC's "Comment (on the [CIR's MPR] dated 19 December 2023) filed on 29 January 2024.[66]

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63 Citations omitted, emphasis and italics in the original text.
64 Supra at note 4.
65 Supra at note 5.
66 Division Docket, Volume III, pp. 1076-1082.

In the now, similarly assailed Resolution of 23 July 2024,[67] the Special Third Division denied the parties' MPRs. The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, premises considered, [ITC's] Motion for Partial Reconsideration (of the Decision dated 19 October 2023) and [CIR's] Motion for Partial Reconsideration are both **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

In denying the MPRs, the Special Third Division noted that the arguments raised by ITC were mere reiteration of matters which have already been considered, weighed, and resolved in the assailed Decision. As for the CIR's arguments, it was ruled that: (1) ITC's failure to submit additional documents in support of its request for reinvestigation did not automatically result in the assessment becoming final, executory, demandable, and unappealable because the immediate consequence of such failure is only the issuance of the FDDA, which may still be appealed either to the CIR by way of request for reconsideration or to this Court by way of petition for review; and (2) the CIR has no right to demand that ITC specifically identify which transactions fall under the months or quarters for which the right to assess has already prescribed because a time-barred assessment is a void act from which no right can arise.

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

Mutually dissatisfied, ITC and the CIR filed their respective Petitions for Review[68] before the Court *En Banc*. In a Minute Resolution dated 06 September 2024,[69] the Court *En Banc* consolidated CTA EB No. 2966, filed by ITC on 29 August 2024, with CTA EB No. 2969, filed by the CIR on 02 September 2024, pursuant to Section 1,[70] Rule 31 of the Rules of Court (**ROC**), as amended.

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67 Supra at note 3.
68 Supra at note 1.
69 *Rollo* (CTA EB No. 2966), p. 102.
70 Sec. 1. *Consolidation.* – When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

On 07 November 2024, ITC filed a "Comment (To the CIR's Petition for Review dated 30 August 2024)".[71] The CIR, on the other hand, did not file a Comment to ITC's Petition for Review.[72]

In a Minute Resolution dated 19 February 2025,[73] the Court *En Banc* referred the case to the PMC-CTA. However, the parties decided not to have their case mediated.[74]

On 10 April 2025, the Court *En Banc* submitted the consolidated Petitions for Review for decision.[75]

ISSUES

Based on the parties' arguments in the consolidated Petitions for Review, the issues for the Court *En Banc*'s resolution are —

I.
WHETHER THE ASSESSMENT IS VOID SINCE THE REVENUE OFFICER (RO) WHO CONDUCTED THE REINVESTIGATION WAS AUTHORIZED ONLY THROUGH A MEMORANDUM OF ASSIGNMENT (MOA) INSTEAD OF A LETTER OF AUTHORITY (LOA);

II.
WHETHER THE LETTER OF AUTHORITY (LOA) AND PRELIMINARY ASSESSMENT NOTICE (PAN) WERE PROPERLY SERVED UPON AND DULY RECEIVED BY INTELLIGENT TOUCH CORPORATION (ITC);

III.
WHETHER INTELLIGENT TOUCH CORPORATION'S (ITC's) FAILURE TO SUBMIT ADDITIONAL DOCUMENTS TO SUPPORT ITS REQUEST FOR REINVESTIGATION RENDERED THE ASSESSMENT FINAL AND UNASSAILABLE;

IV.
WHETHER THE SPECIAL THIRD DIVISION ERRED IN RULING THAT THE INPUT TAX CARRIED OVER TO THE SUCCEEDING

71 Id., pp. 104-111.
72 See Records Verification dated 20 November 2024, id., p. 115.
73 Id., p. 117.
74 See No Agreement to Mediate issued by the PMC-CTA, id., p. 119.
75 See Resolution dated 10 April 2025, id., p. 120.

PERIOD SHOULD BE DEDUCTED FROM ALLOWABLE INPUT TAX FOR TAXABLE YEAR (TY) 2011; AND

V.

WHETHER THE SPECIAL THIRD DIVISION ERRED IN RULING THAT IT WAS NOT INCUMBENT UPON INTELLIGENT TOUCH CORPORATION (ITC) TO SPECIFICALLY IDENTIFY WHICH TRANSACTIONS FALL WITHIN THE PERIODS FOR WHICH THE COMMISSIONER OF INTERNAL REVENUE'S (CIR's) RIGHT TO ASSESS HAS PRESCRIBED.

ARGUMENTS

In ITC's Petition for Review in CTA EB No. 2966 and in the CIR's Petition for Review in CTA EB No. 2969, both ask the Court *En Banc* to reverse and set aside specific portions of the assailed Decision[76] and assailed Resolution[77] based on the following grounds —

ITC emphasizes that a mere Memorandum of Assignment (**MOA**) that the RDO No. 47 issued (on 06 March 2015) assigned the reinvestigation of ITC's assessment to GS Arias and RO Armina Anwar (**Anwar**). According to it, since there was no LOA authorizing RO Anwar to conduct the reinvestigation, which was a continuation of the original audit and examination of ITC's accounting and financial records, the FDDA, having been issued based on the audit conducted and report submitted by RO Anwar, is null and void. Furthermore, ITC reiterates that: (1) it did not receive the LOA and PAN; (2) Gapuz's authority to receive the PAN was not established during trial; and (3) the LOA and PAN were improperly served.

On the merits, ITC restates its argument that the input tax allegedly carried over to the succeeding period in the amount of ₱911,842.60 should not have been disallowed in computing the amount of VAT deficiency for TY 2011.

On the other hand, the CIR re-asserts that ITC's failure to submit additional documents to support its Request for Reinvestigation

[76] Supra at note 2.
[77] Supra at note 3.

rendered the assessment final and thus, barred ITC from assailing the same.

In its Comment, ITC stressed that since the FDDA itself remains subject to appeal either through a request for reconsideration with the CIR or by the filing of a petition for review with the Court in Division, it is erroneous to assume that the assessment has become final and executory solely due to failure to submit supporting documents during reinvestigation.

On the issue of prescription of the assessment insofar as the first and second quarters of TY 2011 are concerned, the CIR further re-emphasizes that it is incumbent upon ITC to specifically identify which transactions fall under the months or quarters for which the CIR's right to assess has prescribed.

In its Comment, ITC asserts that the ICPA specifically identified the VAT transactions within the periods for which the CIR's right to assess has prescribed.

RULING OF THE COURT *EN BANC*

Before going into the merits of the case, We shall first resolve whether the Court *En Banc* has jurisdiction over the present consolidated Petitions for Review insofar as the timeliness of the same is concerned.

THE CONSOLIDATED PETITIONS FOR REVIEW WERE TIMELY FILED AND THE COURT *EN BANC* ACQUIRED JURISDICTION OVER THE CONSOLIDATED CASES.

The Special Third Division issued the assailed Resolution[78] denying both parties' respective MPRs[79] on 23 July 2024. ITC received the same on 31 July 2024,[80] while the CIR received it on 01 August 2024.[81]

[78] Supra at note 3.
[79] Supra at notes 4 and 5.
[80] See Notice of Resolution dated 29 July 2024, *rollo* (CTA EB No. 2966), p. 89.
[81] Id., *rollo* (CTA EB No. 2969), p. 58.

Under Section 2(a)(1),[82] Rule 4 in relation to Section 3(b),[83] Rule 8 of the RRCTA, both parties had 15 days within which to file their respective appeals before this Court. Accordingly, ITC had until 15 August 2024, while the CIR had until 16 August 2024, to file the said appeals.

On 14 August 2024, ITC filed a "Motion for Extension of Time to File Petition for Review (Re: *Decision* dated 19 October 2023 and *Resolution* dated 23 July 2024)",[84] requesting for an additional period of 15 days from 15 August 2024, or until 30 August 2024, within which to file its Petition for Review. The Court *En Banc* granted the same in its Minute Resolution dated 15 August 2024.[85]

On 15 August 2024, the CIR likewise filed a Motion for Extension of Time to File Petition for Review,[86] similarly requesting for an additional period of 15 days from 16 August 2024, or until 31 August 2024, within which to file its petition for review. The Court *En Banc* granted the same in its Minute Resolution dated 20 August 2024.[87]

Thereafter, ITC filed its Petition for Review on 29 August 2024.[88] Meanwhile, the CIR filed its Petition for Review on 02 September 2024,[89] being the next working day after the extended deadline of 31 August 2024, which falls on a Saturday.

Since both parties filed their respective Petitions for Review on time, the Court *En Banc* has jurisdiction over these consolidated cases. We now proceed to address their merits.

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82 **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:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.] (Emphasis supplied)

83 Supra at note 1.

84 *Rollo* (CTA EB No. 2966), pp. 1-4.

85 Id., p. 18.

86 *Rollo* (CTA EB No. 2969), pp. 1-4.

87 Id., p. 5.

88 Supra at note 1.

89 Id.

After thoroughly reviewing the records and evaluating the parties' arguments *vis-à-vis* the pertinent laws, rules, and jurisprudence, the Court *En Banc* finds the consolidated Petitions for Review **lacking in merit.**

THE ASSESSMENT AGAINST INTELLIGENT TOUCH CORPORATION (ITC) IS VALID.

ITC, in its Petition for Review, asserts that since RO Anwar conducted the reinvestigation pursuant to a mere MOA, instead of an LOA, the assessment is void.

We clarify.

It is true that under the NIRC of 1997, as amended, the authority to examine the taxpayer and assess the correct amount of tax must come from the CIR or his duly authorized representative. Pertinently, Section 6 thereof provides that:

> ...
>
> 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[.][90]
>
> ...

Section 13 of the NIRC of 1997, as amended, then clarifies that it is the Revenue Regional Director, not any other officer such as a Revenue District Officer (**RDOr**), who is considered the authorized representative of the CIR and is empowered to vest ROs with the authority to conduct an examination of taxpayers:

[90] Emphasis supplied and italics in the original text.

> ...
>
> Sec. 13. *Authority of a Revenue Officer.* — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a **Revenue Officer** assigned to perform assessment functions in any district **may, pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.[91]
>
> ...

In *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[92] (**McDonald's**), the Supreme Court shed light on the rationale behind the requirement of an LOA in the examination and assessment of a taxpayer:

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

Based on the foregoing, there is a requirement that the authority of the RO proceed from an LOA *only in relation to the:* (1) examination of a taxpayer; and (2) assessment of any deficiency tax due. The examination and assessment cover the period after the filing of the taxpayer's returns, followed by the inception of the audit of the books and accounting records of the taxpayer, up to the issuance of the FAN.

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[91] Emphasis supplied and italics in the original text.

[92] G.R. No. 242670, 10 May 2021; Emphasis supplied.

However, the NIRC of 1997, as amended, did not similarly require that an LOA be issued to support the authority of the RO conducting a reinvestigation, which occurs after a protest to the FAN is filed by the taxpayer, up to the recommendation of a final decision on the disputed assessment.

Therefore, the logical interpretation of the NIRC provisions and prevailing jurisprudence is that the **LOA is necessary only until the issuance of the FAN** because it is upon the latter's issuance that an *assessment* of any deficiency tax due has already been made and determined. Any reinvestigation that follows *after* the issuance of the FAN already concerns the *decision* on the disputed assessment, which is a different matter from an assessment.

Given that the NIRC provision did not include reinvestigation and the issuance of a decision on disputed assessment as part of the stages which necessitate an LOA, it follows that the same is not required and **the authority of ROs arising from other documents short of an LOA, such as an MOA, will suffice, provided that such ROs participate only from the reinvestigation stage onwards**.

In the instant case, the records show that the FAN (which came about pursuant to the authority granted to GS Arias and RO Arcega as indicated in the LOA[93]) was already issued on 11 November 2014[94] when the case was re-assigned for reinvestigation to GS Arias and RO Anwar through the MOA issued on 06 March 2015.[95] The re-assignment was brought about by ITC's filing of a Request for Reinvestigation on 10 December 2014.[96] In other words, when RO Anwar took part in the case pursuant to a mere MOA, the examination and assessment stages have been completed, and what is left is the reinvestigation and the ensuing final decision on disputed assessment.

ITC, in an attempt to support its argument that the assessment is void due to RO Anwar being armed only with an MOA instead of an LOA, cited the aforementioned case of *McDonald's,* as well as the case of *Commissioner of Internal Revenue v. Wellington Investment*

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93 Supra at note 9.
94 Supra at note 12.
95 BIR Records, Exhibit "R-20", p. 309.
96 Supra at note 13.

Manufacturing Corporation[97] (**Wellington**), to prove that issuance of a mere MOA instead of an LOA will render the assessment void. What ITC fails to realize, however, is that in both cases, the new ROs participated not only in the reinvestigation stage, but also in the examination and assessment stages. This is starkly different from the instant case wherein RO Anwar took part only when the case was re-assigned to her and GS Arias for reinvestigation. In other words, the cases of *McDonald's* and *Wellington* cited by ITC are not on all fours with the instant case.

Specifically, in the *McDonald's* case, the BIR issued an LOA on 31 August 2007 authorizing RO Demadura, among others, to examine the books of accounts and accounting records of McDonald's. On 02 December 2008, the BIR transferred the assignment of Demadura and pursuant to a Referral Memorandum, designated RO Marcellano to *continue the audit*. It was not until more than two (2) years later that the BIR issued the Formal Letter of Demand (**FLD**). Clearly, the new RO, authorized pursuant only to an MOA instead of an LOA, participated in the examination and assessment stages (*i.e.*, prior to the issuance of the FLD), and not just during reinvestigation.

Meanwhile, in the *Wellington* case, the BIR issued an LOA on 01 July 2009 authorizing ROs Maniego, Aguila, Hernandez, Ramirez, and Parungao to examine Wellington's books of accounts and other accounting records. However, ROs Bravo and Mendoza, who were clearly not named in the LOA, were the ones presented by the BIR as witnesses. In their testimonies, ROs Bravo and Mendoza admitted to taking part in the conduct of examination and investigation of Wellington's books of accounts and other accounting records, not just at the reinvestigation stage.

In contrast, in the instant case, it was not until the re-assignment of the case for reinvestigation that RO Anwar participated in the same. Stated differently, RO Anwar did not participate in the examination and assessment stages armed only with an MOA. She only did so beginning from the reinvestigation stage. This is evident from the Judicial Affidavit executed by GS Arias,[98] with the pertinent portion as follows:

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[97] G.R. No. 249795 (Notice), 29 November 2022.
[98] Exhibit "R-28", supra at note 48, p. 229.

...

65. Q Thereafter, what happened?

A By virtue of the Letter of Authority dated August 16, 2012, a Memorandum of Assignment (RDO8-047-PRO-0315-073), marked as Exhibit R-19 was issued by RDO No. 47 on March 6, 2015, assigning the reinvestigation of the Petitioner's assessment to RO Armina Anwar and me.

...

In *Commissioner of Internal Revenue v. Rieckermann Philippines, Inc.*[99] (**Rieckermann**), this Court had the occasion to rule on a case, the facts of which fall squarely with the case at bar.

In *Rieckermann,* a FAN has already been issued when the case was re-assigned for reinvestigation (*per* protest letter/request for reinvestigation of the taxpayer) to new ROs through a Tax Verification Notice (**TVN**) and MOA, instead of an LOA. Similar with the instant case, the new ROs recommended that the findings *per* FAN be reiterated. Here, this Court ruled that:

> ...
>
> [T]he requirement for the issuance of an LOA by the Commissioner or his duly authorized representative, as mandated under Sections 6 and 13 of the NIRC of 1997, as amended, pertains to such stage where the RO and GS would conduct an audit of the books of accounts and other accounting records of the taxpayer after the filing of the latter's tax returns, and recommend the issuance of a PAN and FAN. **It does not envision a situation where a reinvestigation will have to be conducted to come up with a *decision* on the *Protest* to the FAN or Assessment Notice by way of an FDDA.**
>
> ...

Applying this to the instant case, since RO Anwar, who was authorized pursuant to a mere MOA, participated in the case only after the same was re-assigned to her for reinvestigation, and at which point, the law and jurisprudence no longer requires that the RO's authority proceed from an LOA, then the FDDA issued upon the recommendation of RO Anwar, notwithstanding the fact that her authority only proceeded from an MOA, is valid.

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99 CTA EB No. 2704 (CTA Case No. 9613), 13 May 2024; Emphasis supplied and italics in the original text.

This Court notes that on 27 March 2015, after ITC filed its Request for Reinvestigation and in clear recognition of the authority of RO Anwar pursuant to the MOA, ITC submitted a letter to the BIR addressed to the Regional Director (**RD**) Jonas DP Amora (**Amora**), RDOr Isabel A. Paulino (**Paulino**), GS Arias, **and RO Anwar**.[100] This indicates that any possible abuse sought to be prevented by the requirement for an LOA has already dissipated because ITC was already well aware of the identity of RO Anwar as part of the team involved in the reinvestigation of ITC's case.

Even assuming *arguendo* that an LOA is still required even at the reinvestigation stage (it is not), its absence would, at most, invalidate the decision arrived at after the said reinvestigation, *i.e.*, the FDDA. It will not nullify the assessment *per se*, the reason being that a decision is different from an assessment.

Citing the Supreme Court case of *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*,[101] We explained in *Rieckermann* that:

> ...
>
> **Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other—unless the law or regulations otherwise provide.**
>
> ...
>
> The Court, however, finds that the CTA erred in concluding that the assessment on EWT and FBT deficiency was void because the FDDA covering the same was void. **The assessment remains valid notwithstanding the nullity of the FDDA because as discussed above, the assessment itself differs from a decision on the disputed assessment.**
>
> ...

Considering that the examination and the subsequent assessment in the instant case (culminating in the FAN's issuance) were performed by GS Arias and RO Arcega, who are the very same officers authorized under the LOA, the assessment is already clothed with validity. Any

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100 BIR Records, Exhibit "R-21", pp. 335-336.
101 G.R. Nos. 215534 & 215557, 18 April 2016; Emphasis supplied.

consequent invalidity of the FDDA, pursuant to the conduct of reinvestigation, will not reach back to the assessment.

Before going any further, the Court *En Banc* notes that the other arguments raised in the consolidated Petitions for Review are a mere rehash or restatement of the parties' arguments in ITC's prior Petition for Review, the CIR's Answer, ITC's Memorandum, and the MPRs filed in CTA Case No. 10215, which the Special Third Division had thoroughly and exhaustively addressed and resolved. This notwithstanding, both parties' arguments shall still be discussed briefly to reinforce the ruling of the Special Third Division.

THE LETTER OF AUTHORITY (LOA) AND PRELIMINARY ASSESSMENT NOTICE (PAN) WERE PROPERLY SERVED UPON AND DULY RECEIVED BY INTELLIGENT TOUCH CORPORATION (ITC).

ITC, in its Petition for Review, reiterates that it never received the LOA and PAN, and disavowed any authority of the persons who received the LOA and PAN on its behalf.

This Court is not convinced.

In *Commissioner of Internal Revenue v. T Shuttle Services, Inc.,*[102] the Supreme Court recognized that in view of a taxpayer's categorical denial of due receipt of the PAN, the burden shifted to the CIR to prove that the same was indeed received by the taxpayer or by its authorized representative.

Based on the records of this case, the CIR adequately discharged this burden of proof. As aptly discussed in the assailed Decision, the CIR presented sufficient evidence to prove that the LOA and PAN were duly received by ITC. Included in the BIR Records were the following —

[102] G.R. No. 240729, 24 August 2020.

1. LOA No. LOA-047-2012-00000383 (SN: eLA201100015037) issued on 16 August 2012 and received by Gapuz, as Authorized Representative, on 23 August 2012;[103] and

2. PAN issued on 22 October 2014 and received by Estrada, HR Assistant, on the same date.[104]

Had it really been the case that Gapuz and Estrada were unauthorized to receive the LOA and PAN, respectively, ITC should have already raised the said issue when it filed its Request for Reinvestigation[105] on 10 December 2014. However, as the records yield clearly, it did not. Interestingly, even when ITC filed its Administrative Appeal[106] to the CIR on 19 October 2015, it only stated that the BIR failed to duly serve an LOA or PAN and made no mention of the alleged lack of authority on the part of Gapuz and Estrada. The very first instance when ITC raised this issue was in its prior Petition for Review before the Third Division.[107]

Further, it is noted that even ITC's own witness, Samson, was unable to shed light on the identity of Gapuz and Estrada as he appeared to have no personal knowledge of the employees hired before the start of his employment in 2016.[108] Thus, and as already clarified in the assailed Decision, ITC cannot rely on its witness to support the contention that Gapuz and Estrada were unauthorized to receive the LOA and PAN, respectively.

ITC's plain denial, coupled with the delay in the timing when it raised the issue, as well as the fact that ITC cannot rely on its witness to support its claims, taken together, led the Special Third Division, and this Court as well, to the conclusion that ITC's allegation of lack of authority on the part of the persons who received the LOA and PAN was a mere afterthought. Weighed against the CIR's submission of the actual LOA and PAN that the ITC's representatives received, this Court agrees with the findings of the Special Third Division that the LOA and PAN were duly served upon and received by ITC.

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103 Supra at note 9.
104 Supra at note 11.
105 Supra at note 13.
106 Supra at note 17.
107 Supra at note 19.
108 See Question No. 15, Judicial Affidavit of Mr. Efren Q. Samson, Jr., Exhibit "P-20", supra at note 37, p. 371.

As to ITC's argument on constructive service, considering that the LOA and PAN were both personally served upon and duly received by ITC, constructive service is irrelevant given that, pursuant to Revenue Regulations (**RR**) No. 12-99,[109] which was likewise cited by ITC in its Petition for Review, constructive service applies only when the taxpayer or his duly authorized representative refused to acknowledge receipt of the notice. In the instant case, the authorized representatives of ITC did not refuse to acknowledge receipt, as they, in fact, signed the LOA and PAN, as evidenced by the receiving copies of the said documents submitted to this Court as part of the BIR Records.

INTELLIGENT TOUCH CORPORATION's (ITC's) FAILURE TO SUBMIT ADDITIONAL DOCUMENTS RENDERED THE ASSESSMENT FINAL.

According to the CIR, ITC failed to submit additional documents in support of its Request for Reinvestigation and only submitted invoices and receipts during the course of trial in the Court in Division.

This Court holds that there is nothing wrong about ITC's decision to elevate the case to the Court in Division and submit the additional documents in the course of trial for the evaluation of the latter. To be sure, RR No. 18-2013[110] provides that:

> ...
> For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, **otherwise, the assessment shall become final**. The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, **the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or**

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109 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. Issued on 06 September 1999.

110 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment. Issued on 28 November 2013. Emphasis supplied.

> **additional evidence, and the FDDA shall consequently be denied.**[111]
>
> ...

Clearly, therefore, the finality of the assessment, as a result of the failure of the taxpayer to submit additional documents during reinvestigation, is finality **only at the administrative level in the BIR.** At worst, such failure would only result in the denial of the Request for Reinvestigation and the issuance of the FDDA. This notwithstanding, such FDDA may still be elevated to the Court in Division through a petition for review.

On the Court in Division's appreciation of the documents submitted by ITC, which the latter failed to present to the CIR, in *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (Formerly Nissan Motor Philippines, Inc.),*[112] the Supreme Court discussed that:

> ...
>
> The law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth. Thus, **the CTA is not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue. The claimant may present new and additional evidence to the CTA to support its case for tax refund.**
>
> Cases filed in the CTA are litigated *de novo* as such, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting . . . to the Court of Tax Appeals all evidence . . . required for the successful prosecution of its administrative claim." Consequently, **the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.**
>
> ...

Once the case is elevated to the Court in Division, the taxpayer may then present new and additional evidence in support of its case, regardless of whether the taxpayer submitted the same to the CIR or

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111 Emphasis supplied.
112 G.R. No. 231581, 10 April 2019; Citations omitted, emphasis supplied and italics in the original text.

not. Nothing prevents the Court in Division to lend weight, evaluate, and rule based on the submission of such new and additional evidence, the proceedings in the Court of Tax Appeals (**CTA**) being conducted *de novo*.

INPUT TAX CARRIED OVER TO THE SUCCEEDING PERIOD WAS PROPERLY DEDUCTED FROM ALLOWABLE INPUT TAX FOR TAXABLE YEAR (TY) 2011.

ITC again avers that the excess credits carried over to the succeeding period should not be disallowed as a deduction in the computation of deficiency VAT for TY 2011.

This Court disagrees.

We reproduce below the computation of deficiency VAT for TY 2011 provided in the assailed Decision:[113]

VATable sales per VAT Returns						Php 115,833,279.35
Add:	Sales not subjected to VAT				PhP 957,499.98	
	Other income not subjected to VAT				4,495,160.00	Php 5,452,659.98
Adjusted VATable sales						Php 121,285,939.33
Output tax (12%)						Php 14,554,312.72
Less:	Input tax carried over from previous period				Php -	
	Input tax claimed per returns				14,926,736.10	
	Subtotal				Php 14,926,736.10	
	Less:	Disallowed input taxes	Php 1,828,329.83			
		Input tax carried over to succeeding period	**911,842.60**		2,740,172.43	12,186,563.67
Value-Added Tax Payable						Php 2,367,749.05
Less:	VAT payments per returns					-
Value-Added Tax Due						Php 2,367,749.05
Add:	Interest (1.26.12 to 10.19.15) [Php2,367,749.05 x 20% x (1,363/365 days)]					1,768,351.76
Total amount due on 10.19.15						Php 4,136,100.81
Less:	Payment on 10.19.15					2,149,029.29
Balance still due						**Php 1,987,071.52**

113 Supra at note 2, p. 1031; Emphasis supplied.

This Court clarifies that the deduction of the ₱911,842.60 from the total amount of input taxes is **not *per se* a disallowance** pursuant to a tax assessment similar to the "Disallowed input taxes" line item. It is deducted from the amount of input taxes not because it constitutes disallowed input tax but simply because to do otherwise would **reduce** the deficiency VAT assessment for TY 2011, which is not the purpose of excess input tax carried over to the succeeding period. Input tax carried over to the succeeding period is intended to be a deduction from output tax in the *next* succeeding period (*i.e.*, TY 2012, in this case). It should not be used to reduce the amount of deficiency VAT for the current period (*i.e.*, TY 2011, in this case).

If this Court were to remove the line item on "Input tax carried over to the succeeding period" amounting to ₱911,842.60, the ending balance of the VAT deficiency for 2011 will be lower, thereby benefitting ITC for the first time. And then, by 2012, ITC will be entitled to reduce its 2012 output tax by the same amount of ₱911,842.60 representing excess input tax carried over from 2011. ITC will then be benefitted for the second time. This is improper for being contrary to the nature of excess input tax. By its very name, it is the excess of input tax over output tax in one period, that is carried over to the next period in order to utilize the excess as deduction from output tax next period. It is not intended to reduce the taxpayer's VAT deficiency.

We note that the Special Third Division, in the assailed Decision, already provided a detailed explanation on why the excess input tax carried over to the succeeding period (*i.e.*, TY 2012) amounting to ₱911,842.60 should not be applied against the VAT liability for TY 2011. Then again, in the assailed Resolution, the Special Third Division addressed the cases cited by ITC in its MPR, saying that decisions of the CTA divisions do not constitute binding precedents and that ITC's reliance on this alone will not suffice. Taken together with this Court's explanation above, We finally lay this issue to rest by holding that excess input tax should be deducted from allowable input tax, not pursuant to a disallowance, but to stay true to the purpose of carrying over of excess input tax and its intended consequence of benefitting the taxpayer not in the current, but in the future taxable periods.

IT WAS NOT INCUMBENT UPON INTELLIGENT TOUCH CORPORATION (ITC) TO SPECIFICALLY IDENTIFY WHICH TRANSACTIONS FALL WITHIN THE PERIODS FOR WHICH THE RIGHT TO ASSESS HAS PRESCRIBED

Lastly, the CIR re-asserts that ITC should have specifically identified which transactions fall under the first and second quarters of the TY 2011.

The CIR's argument is untenable.

In *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*,[114] the Supreme Court explained that:

> ...
>
> It bears stressing that, in a number of cases, this Court has explained that the statute of limitations on the collection of taxes **primarily benefits the taxpayer**. ...
>
> ...
>
> Likewise, in *Republic of the Philippines v. Ablaza*, this Court elucidated that the prescriptive period for the filing of actions for collection of taxes is justified by the need to protect law-abiding citizens from possible harassment. Also, in *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, it was held that the statute of limitations on the assessment and collection of taxes is **principally intended to afford protection to the taxpayer against unreasonable investigations as the indefinite extension of the period for assessment deprives the taxpayer of the assurance that he will no longer be subjected to further investigation** for taxes after the expiration of a reasonable period of time. Thus, in *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc.*, this Court ruled that the **legal provisions on prescription should be liberally construed to protect taxpayers** and that, as a corollary, the exceptions to the rule on prescription should be strictly construed.
>
> ...

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[114] G.R. No. 198677, 26 November 2014; Citations omitted, emphasis supplied and italics in the original text.

The liberal construction of the tax provisions on prescription bolsters the conclusion that it is not incumbent upon the taxpayer to prove to the CIR which transactions should not be covered by an assessment on the ground of prescription. As aptly discussed in the assailed Resolution, a right cannot spring in favor of a person from his own void or illegal act.[115] The CIR, in issuing an assessment that is time-barred, violated the explicit provisions of the NIRC on the prescriptive period for assessments. Having done an act contrary to the plain provisions of law, it cannot, from a position of illegality, make demands on the part of the taxpayer, the very person that the law desires to protect against such abuses in time-barred tax assessments.

In view of all the foregoing, and after a careful review of ITC and the CIR's arguments in their consolidated Petitions for Review, the Court *En Banc* finds no reason to reverse or modify the assailed Decision and Resolution of the Special Third Division in CTA Case No. 10215.

WHEREFORE, premises considered, the Petition for Review (Re: *Decision* dated 19 October 2023 and *Resolution* dated 23 July 2024) filed by Intelligent Touch Corporation on 29 August 2024, docketed as CTA EB No. 2966, and the Petition for Review filed by the Commissioner of Internal Revenue on 02 September 2024, docketed as CTA EB No. 2969, are hereby **DENIED** for lack of merit. The Special Third Division's Decision dated 19 October 2023 and Resolution dated 23 July 2024 in CTA Case No. 10215 entitled *Intelligent Touch Corporation v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[115] *Commissioner of Internal Revenue v. Team Sual Corporation (Formerly Mirant Sual Corporation)*, G.R. No. 194105, 05 February 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

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

Kindly see my Separate Concurring and Dissenting Opinion
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 cases were assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

INTELLIGENT TOUCH CORPORATION, Petitioner,	**CTA EB NO. 2966** (CTA Case No. 10215)
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	

x - x

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2969** (CTA Case No. 10215)
	Present: **RINGPIS-LIBAN,** *P.J.,* **BACORRO-VILLENA, MODESTO-SAN PEDRO,**
- versus -	**REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
INTELLIGENT TOUCH CORPORATION, Respondent.	Promulgated: APR 10 2026 3:50

x - x

SEPARATE CONCURRING AND DISSENTING OPINION

ANGELES, *J.*:

While I concur with the majority's pronouncement denying the *Petition for Review* filed by the Intelligent Touch Corporation, Inc. (ITC) in Court of Tax Appeals (CTA) *En Banc* (*EB*) No. 2966 for lack of merit, I am, with due respect, unable to join the *ponencia* in likewise denying the Commissioner of Internal Revenue's (CIR) *Petition* in CTA *EB* No. 2969.

I thus respectfully register my dissent and set forth hereunder the reasons therefor.

The Court in Division was bereft of jurisdiction over the subject matter of the case

At the core of my disagreement lies a fundamental jurisdictional infirmity: the Court in Division did not acquire jurisdiction over the subject matter of the case. Jurisdiction over the subject matter, or nature of the action, refers to the power of a court to hear and determine cases of a general class to which the proceedings in question belong.[1] It is conferred only by law.[2] It cannot be fixed by the will of the parties, nor can it be acquired, enlarged or diminished by any act of the parties.[3] It is axiomatic that what determines the nature of an action, as well as which court has jurisdiction over it, are the **allegations in the complaint and the character of the relief sought.**[4]

In the present case, ITC, in its *Petition for Review*[5] before the Court in Division, assails the validity of the subject assessments, and assuming their validity, denies liability for the alleged deficiency income tax and value-added tax (VAT). Verily, the jurisdiction invoked by ITC[6] is premised on Section 7 (a)(1) of Republic Act (R.A.) No. 1125,[7] as amended by R.A. No. 9282,[8] which confers in the CTA exclusive appellate jurisdiction to review, by appeal, decisions of the CIR in cases involving disputed assessments, among others, *viz.*:

> SEC. 7. Jurisdiction. – The CTA shall exercise:
>
> a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:

[1] *Heirs of Concha, Sr. v. Spouses Lumocso*, G.R. No. 158121, December 12, 2007 [Per C.J. Puno, First Division].
[2] *City of Lapu-Lapu v. Phil. Economic Zone Authority*, G.R. Nos. 184203 & 187583, November 26, 2014 [Per J. Leonen, Second Division].
[3] *Municipality of Sogod v. Rosal*, G.R. No. 38204, September 24, 1991 [Per J. Medialdea, First Division].
[4] *Cubero v. Laguna West Multi-Purpose Cooperative, Inc.*, G.R. No. 166833, November 30, 2006 [Per J. Carpio Morales, Third Division]; *Heirs of Bautista v. Lindo*, G.R. No. 208232, March 19, 2014 [Per J. Velasco, Jr., Third Division].
[5] Division Docket – Vol. I, pp. 7 to 26.
[6] *Id.* at 8, par. 3.
[7] An Act Creating the Court of Tax Appeals.
[8] An Act Expanding the Jurisdiction of the Court of Tax Appeals, 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.

> 1. **Decisions of the Commissioner of Internal Revenue in cases involving <u>disputed assessments</u>**, 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; (Emphases and underscoring supplied)

This jurisdictional mandate is mirrored in Section 3(a)(1), Rule 4 of the RRCTA.[9]

From the foregoing provisions, it is unequivocal that a taxpayer may elevate its case before the Court in Division only when it stems from a decision of the CIR on a **disputed assessment**, among others. As the Supreme Court has elucidated in *St. Stephen's Association v. Collector of Internal Revenue*,[10] an assessment attains such character only when the taxpayer seasonably contests its validity and formally seeks its reconsideration or cancellation. Upon the filing of such a protest, it becomes the clear duty of the CIR to act thereon, and only upon receipt of the CIR's decision may the taxpayer properly elevate the matter to the CTA for judicial review, to wit:

> Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a "disputed assessment" that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, in accordance with paragraph (1) of section 7, Republic Act No. 1125, conferring appellate jurisdiction upon the Court of Tax Appeals to review "*decisions* of the Collector of Internal Revenue in cases involving *disputed assessment* . . ." (Emphasis supplied).

Moreover, Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, plainly requires that a taxpayer's protest be filed within thirty (30) days from receipt of the assessment, in the form and manner prescribed by the implementing rules and

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[9] Revised Rules of the Court of Tax Appeals, Rule 4, Section 3(a)(1) provides:

SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:

(a) Exclusive original over or appellation jurisdiction to review by appeal the following:

(1) Decision of the Commissioner of Internal Revenue in cases involving disputed assessments, refund 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; x x x

[10] G.R. No. L-11238, August 21, 1958 [Per J. J.B.L. Reyes, *En Banc*].

regulations. In instances where the protest takes the form of a request for reinvestigation, the law further mandates that all relevant supporting documents be submitted within sixty (60) days from the date of filing the protest. Failure to comply with this requirement renders the assessment final and executory. It pertinently provides:

> "SECTION 228. *Protesting of Assessment.* — x x x
>
> "**Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation** within thirty (30) days from receipt of the assessment **in such form and manner as may be prescribed by implementing rules and regulations**. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final**.
>
> "If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (Emphases and underscoring supplied)

To implement the foregoing statutory directive, Revenue Regulations (RR) No. 12-99,[11] as amended by RR No. 18-13,[12] prescribes that a taxpayer may dispute an assessment by filing an administrative protest—either a request for *(1)* reconsideration or *(2)* reinvestigation—within thirty (30) days from receipt of the Formal Letter of Demand/Final Assessment Notice (FLD/FAN). Failure to do so renders the assessment final, executory, and demandable. The protest must explicitly state: *(1)* its nature, whether reconsideration or reinvestigation; *(2)* the date of the assessment notice; and *(3)* the factual and legal bases relied upon; otherwise, it shall be considered void and without effect. In case of reinvestigation, the taxpayer must further submit all relevant supporting documents within sixty (60) days from the filing of the protest, failing which, the assessment likewise attains finality. Once final and executory, the assessment may no longer be reopened, reconsidered, or become the subject of any further protest or reinvestigation. Thus:

> 3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the

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[11] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 06, 1999.

[12] Amending Certain Sections of Revenue Regulations No. 12-99, November 28, 2013.

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:

> (i) *Request for reconsideration* — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) ***Request for reinvestigation*** — refers to a plea of re-evaluation of an assessment **on the basis of <u>newly discovered or additional evidence</u> that a taxpayer intends to present in the reinvestigation**. It may also involve a question of fact or of law or both.

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or **reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation**, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.*

If there are several issues involved in the FLD/FAN but the taxpayer only disputes or protests against the validity of some of the issues raised, the assessment attributable to the undisputed issue or issues shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax or taxes, inclusive of the applicable surcharge and/or interest.

If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the assessment attributable thereto shall become final, executory and demandable; and the taxpayer shall be required to pay the deficiency tax or taxes attributable thereto and a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest.

For requests for <u>reinvestigation</u>, the taxpayer shall submit all relevant supporting documents in support of his protest <u>within sixty (60) days</u> from date of filing of his letter of protest, <u>otherwise, the assessment shall become final</u>. The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for

> reconsideration. Furthermore, **the term "the assessment shall become final" shall mean <u>the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence</u>**, and the FDDA shall consequently be denied.
>
> If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable. (Emphases and underscoring supplied)

Here, the records are replete with overwhelming evidence establishing that ITC failed to submit the relevant supporting documents—whether newly discovered or additional—within the sixty (60)-day period prescribed by law and implementing regulations.

To recapitulate, on December 10, 2014, petitioner filed a protest by way of a request for reinvestigation. In said protest, ITC expressly reserved the right to submit additional documents and arguments, asserting that its undersigned President was still in the process of retrieving old files for the year 2011, which it intended to submit within sixty (60) days from the filing of the protest.[13] Counting sixty (60) days from December 10, 2014, the deadline for submission fell on February 08, 2015. Notably, however, as admitted by ITC in its *Petition*[14] before the CTA Division and corroborated by the testimony of the CIR's witness, Ms. Elizabeth C. Arias, Officer-in-Charge (OIC) Assistant Chief of Assessment,[15] ITC further sought an extension for the submission of additional documents through its letter to the Bureau of Internal Revenue (BIR) dated March 27, 2015.

Accordingly, in the Final Decision on Disputed Assessment (FDDA) dated September 17, 2015, the CIR, through her duly authorized representative, declared that ITC had failed to submit the pertinent records to support its protest, thereby contravening the requirements of Section 228 of the NIRC of 1997, as amended.[16] In the subsequent CIR Decision on appeal dated October 10, 2019, it was further clarified that the copies of the invoices attached to ITC's request for reconsideration, having been submitted beyond the sixty (60)-day period prescribed under Section 228 of the NIRC of 1997, as amended, could no longer be accorded any consideration.[17]

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[13] Division Docket – Vol. II, Exhibit "P-5," p. 813; Exhibit "R-18."
[14] Division Docket – Vol. I, p. 10, par. 16; Exhibit "R-21."
[15] *Id.*, Judicial Affidavit of OIC Assistant Chief – Assessment, Elizabeth C. Arias dated July 01, 2020, pp. 219 to 235.
[16] Division Docket – Vol. II, Exhibit "P-6," p. 815; Exhibit "R-25."
[17] Division Docket – Vol. I, Exhibit "P-1," p. 35.

As there is, therefore, no valid protest on record, it necessarily follows that ITC did not dispute the subject assessments, which have consequently become final and executory. Under the law and applicable regulations, ITC is thereby precluded from disputing the correctness of the assessments, whether at the administrative stage or before the judicial forum.

While the *ponencia* correctly recognizes that ITC's failure to submit the requisite relevant documents rendered the assessment final, it, nevertheless concludes that such finality pertains solely to the administrative level before the BIR, resulting only in the denial of the request for reinvestigation and the issuance of the FDDA, which, according to the *ponencia*, may still be brought before the CTA Division.

With all due respect, I am compelled to disagree. As previously discussed, the NIRC of 1997, as amended, and its implementing rules are explicit and unqualified: the failure to submit relevant supporting documents within sixty (60) days from the filing of a protest, by way of a request for reinvestigation, renders the assessment final. **Such finality is not, and cannot be, limited solely to the administrative level.** While it is true that an aggrieved taxpayer may elevate an FDDA to the Court in Division—for instance, to challenge the denial of a reinvestigation request due to the untimely submission of documents—such procedural recourse does not alter the inherent finality of the assessment.

The CTA Division cannot, with due deference, simply arrogate or exercise jurisdiction where the record incontrovertibly demonstrates that the taxpayer failed to comply with the statutory and regulatory requirements, thereby rendering the assessment final and executory. This is a threshold matter that directly divests the Court of the jurisdiction granted to it by law. Put differently, the procedural remedy of elevating the FDDA to the Court in Division is distinct and separate from the substantive finality of the assessment. Once the Court determines that the assessment had already attained finality and became executory, there exists neither a disputed assessment nor a decision on a disputed assessment to challenge before the Court. Consequently, the only proper course of action left to the Court is to dismiss the *Petition* outright.[18]

The Supreme Court further shed light on the matter in *Commissioner of Internal Revenue v. Court of Tax Appeals-Third*

[18] *AT&T Communications Services Phils., Inc. v. Commissioner of Internal Revenue*, G.R. No. 185969, November 19, 2014 [Per J. Perez, First Division].

Division,[19] holding that Section 228 of the NIRC of 1997, as amended, is categorical: a taxpayer's right to protest an assessment is conditioned not only on timely filing, but also on strict compliance with the form and manner prescribed under the implementing rules and regulations, including, in the case of a request for reinvestigation, the submission of all relevant supporting documents within sixty (60) days. Absent such compliance, the assessment becomes final, executory, and demandable by operation of law—leaving neither a disputed assessment nor a decision that may properly be brought within the CTA's appellate jurisdiction. Thus:

> Petitioner argues that the Court of Tax Appeals had no jurisdiction over respondent's Petition for Review because the assessment had attained finality before then.
>
> Section 228 of the National Internal Revenue Code states the procedure in protesting an assessment:
>
> > SECTION 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:
> >
> > (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
> >
> > (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
> >
> > (c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or
> >
> > (d) When the excise tax due on excisable articles has not been paid; or
> >
> > (e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare

[19] G.R. No. 239464, May 10, 2021 [Per J. Leonen, Third Division].

> parts, has been sold, traded or transferred to non-exempt persons.
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> *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; <u>otherwise, the assessment shall become final</u>.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (Emphasis supplied)

Upon receipt of the audit results/assessment notices for Letter of Authority No. 116-2013-00000017, respondent, through Lee, replied with an April 29, 2015 letter which reads:

> This is to submit copies of our protest to the Audit Result/Assessment Notices for Audit Result/Assessment Notices for Letter of Authority LOA-116-2013-00000017 for Citysuper, Incorporated TIN No.: 205-412-358 for the taxable year 2011.
>
> Please be informed that we are in the process of compiling the necessary documentation to support our protest to said assessments, and will be requiring additional time to accomplish this.

Petitioner did not consider the April 29, 2015 letter as a valid protest, as it said in its July 13, 2015 response to respondent:

> The requisite information and conditions prescribed under the provisions of Section 6 in relation to Section 228 of the Tax Code, as amended, as implemented by

> Revenue Regulations No. 18-2013, for filing a valid protest were not met, as enumerated hereunder, to wit:
>
> Your letter dated, April 29, 2015, failed to indicate/state the following:
>
> a. Name and address of the taxpayer;
>
> b. The nature of the protest, since the letter merely contained a statement that the subject taxpayer was in the process of compiling documents for eventual presentation to the bureau;
>
> c. The assessment number, date of receipt of assessment notice and formal letter of demand;
>
> d. The itemized statement of findings to which the taxpayer agrees and schedule of adjustments to which the taxpayer does not agree;
>
> e. A statement of the facts, applicable law, rules and regulations or jurisprudence in support of the protest.
>
> Premised on the foregoing, a collection letter shall be issued against Citysuper, Inc., calling for payment of the aforesaid deficiency assessments on Income Tax, VAT, Withholding Tax on Compensation, EWT and DST for taxable year 2011.

In particular, Arriola, the revenue officer, said that the April 29, 2015 letter failed to state the protest's nature, the date of the assessment notice, and the applicable law, rules and regulations, or jurisprudence on which the protest was based. Thus, to petitioner, respondent's failure to properly protest the assessment meant that it had attained finality.

Section 3.1.14 of Revenue Regulations No. 18-2013, amending Revenue Regulations No. 12-99, states what constitutes a valid protest:

> 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:
>
> (i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing

> records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) **Request for reinvestigation** — refers to a plea of re-evaluation of an assessment **on the basis of <u>newly discovered or additional evidence</u> that a taxpayer intends to present in the reinvestigation**. It may also involve a question of fact or of law or both.
>
> *The taxpayer shall state in his protest (i) the nature of the protest whether reconsideration or* ***reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation,*** *(ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.*
>
> xxx xxx xxx
>
> **For requests for <u>reinvestigation</u>, the taxpayer shall submit all relevant supporting documents in support of his protest <u>within sixty (60) days</u> from date of filing of his letter of protest, <u>otherwise, the assessment shall become final</u>.** The term "relevant supporting documents" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, **the term "the assessment shall become final" shall mean <u>the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence</u>**, and the FDDA shall consequently be denied.
>
> If the taxpayer failed to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable. (Emphasis supplied)

Nowhere in respondent's April 29, 2015 letter did it state the assessment notice's date and the applicable law, rules and regulations, or jurisprudence on which its protest was based. Attaching copies of the audit results/assessment notices is not stating the date of the assessment notice, any more than attaching copies of assailed judgments to a petition without stating them in the petition itself complies with the rule on statements of material dates.

While respondent's declaration that it was "in the process of compiling the necessary documentation to support [its] protest to said assessments" **could imply that it was requesting a reinvestigation, its failure to explicitly state this means that petitioner had no way of knowing whether it should monitor the 60-day period stated in Revenue Regulations No. 18-2013.**

Section 228 of the National Internal Revenue Code is clear. The administrative protest must be filed not only within the stated period, but also "in such form and manner as may be prescribed by implementing rules and regulations." Respondent's April 29, 2015 letter did not comply with the three requirements of Revenue Regulations No. 18-2013.

The Court of Tax Appeals is a court of special jurisdiction. Section 7 of Republic Act No. 9282 states what matters involving the Commissioner of Internal Revenue are within its exclusive appellate jurisdiction:

> SECTION 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;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial[.]
>
> x x x

In *Commissioner of Internal Revenue v. Villa*, this Court held that the Court of Tax Appeals' jurisdiction was over the Commissioner of Internal Revenue's decision on the protest against an assessment,

> and not the assessment itself. Thus, the period to invoke judicial review must be counted from receipt of the Commissioner's decision on the disputed assessment.
>
> Here, however, **respondent's protest was void for failing to comply with the requirements of Revenue Regulations No. 18-2013, as mandated by Section 228 of the National Internal Revenue Code.** Respondent erred in claiming that the July 13, 2015 letter was petitioner's "final decision" on its protest, there being no valid protest to speak of. Notably, the July 13, 2015 letter did not discuss the merits of any communication sent by respondent after its April 29, 2015 letter, but merely stated that no valid protest was filed.
>
> x x x
>
> **When a taxpayer files a petition for review before the Court of Tax Appeals without validly contesting the assessment with the Commissioner of Internal Revenue, <u>the appeal is premature and the Court of Tax Appeals has no jurisdiction</u>**:
>
>> Since in the instant case the taxpayer appealed the assessment of the Commissioner of Internal Revenue without previously contesting the same, the appeal was premature and the Court of Tax Appeals had no jurisdiction to entertain said appeal. For, as stated, the jurisdiction of the Tax Court is to review by appeal decisions of Internal Revenue on disputed assessments. The Tax Court is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction. (Citation omitted)
>
> **Section 228 of the National Internal Revenue Code requires that administrative protests against assessments conform to the rules and regulations issued by the Bureau of Internal Revenue.** Respondent's April 29, 2015 letter did not comply with the requirements set down in Revenue Regulations No. 18-2013. **<u>There was no administrative protest to speak of, and no decision on a disputed assessment to assail</u>. Thus, <u>the Court of Tax Appeals had no jurisdiction over the Petition for Review</u> assailing the July 13, 2015 letter.** (Emphases and underscoring supplied; citations omitted)

Although the Supreme Court in the above-cited case invalidated the protest under circumstances not identical to the present case—where the taxpayer plainly failed to submit the requisite documents within the prescribed period—it nevertheless made abundantly clear that strict adherence to Section 228 of the NIRC of 1997, as amended, and RR No. 18-2013[20] is indispensable to effectuate a valid protest. Failure to comply renders the assessment final and undisputed, leaving

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[20] *Supra* note 12.

no decision on a disputed assessment to elevate before the CTA Division. The High Court further emphasized the critical necessity for taxpayers to diligently monitor the sixty (60)-day period for the submission of supporting documents in cases where a request for reinvestigation is filed.

Indeed, the CTA is a tribunal of special and limited jurisdiction, empowered only to act within the bounds expressly conferred by law. Where, as here, no valid protest exists and the assessment has long attained finality, there is nothing for the Court to review. To assume jurisdiction under these circumstances would be an unwarranted expansion of authority and a clear departure from the statutory mandate. Jurisdiction cannot be presumed where it is plainly withheld.

Litigation de novo in tax cases does not confer upon the taxpayer an unfettered right to introduce evidence not previously presented at the administrative level.

Fundamental principles of justice and fair play dictate that the Court cannot admit and/or accord weight to evidence not considered in the assailed CIR Decision.

Even assuming, *arguendo*, that the Court in Division acquired jurisdiction over the instant case, it should not have admitted, and/or afforded probative value to, evidence not submitted during the administrative proceedings. It is my considered view that litigation *de novo* does not empower the Court to try the case anew in disregard of prior proceedings. Rather, it mandates that the taxpayer must formally present, offer, and submit the evidence presented at the administrative level to the CTA for the latter to consider, verify, and accord probative weight thereto. This procedural requirement aligns not only with the CTA's nature as a court of record, but also with its strictly appellate jurisdiction over CIR decisions in cases involving disputed assessments.

To hold otherwise would not only run afoul of the settled principles governing the appellate jurisdiction of the CTA, but would also effectively render nugatory any decision rendered by the CIR. Such a stance would reduce the administrative adjudication process to a mere formality, stripping it of its legal consequence. More gravely, it risks establishing a dangerous precedent: taxpayers might be encouraged to file protests with incomplete documentation merely to meet the prescribed period, anticipating that they may later supplement such documents at the judicial level—pieces of evidence that were either in their possession or could have been reasonably submitted during the administrative proceedings. Such a practice would effectively circumvent the reglementary periods and undermine the finality and integrity of administrative review.

The *ponencia* relied on *Commisisoner of Internal Revenue v. Univation Motor Philippines, Inc. (Formerly Nissan Motor Philippines, Inc.*[21] (*Univation*) to advance the proposition that, "[o]nce the case is elevated to the Court in Division, the taxpayer may then present new and additional evidence in support of its case, regardless of whether the taxpayer submitted the same to the CIR or not. Nothing prevents the Court in Division to lend weight, evaluate, and rule based on the submission of such new and additional evidence, the proceedings in the [CTA] being conducted *de novo*."[22]

While this principle is correctly stated within the context of *Univation*, it is imperative to note that the case involved a **refund** claim for overpayment of income tax under Sections 204 and 229 of the NIRC of 1997, as amended, where **the CIR had not acted** upon the taxpayer-claimant's administrative claim. Beyond being a refund case, the distinction between instances in which the CIR has acted and those in which it has remained silent is crucial. Where the CIR has failed to act, there exists no administrative determination for review. In such circumstances, consonant with the doctrine in *Pilipinas Total Gas v. Commissioner of Internal Revenue*[23] (*Pilipinas Total Gas*), the taxpayer, as an exception to the general rule, may present evidence for the first time before the CTA, the case being effectively decided in the first instance.

Although I am aware that *Pilipinas Total Gas* involved a VAT refund claim under Section 112 of the NIRC of 1997, as amended, the underlying rationale for permitting a taxpayer-claimant to submit additional evidence before the CTA where the CIR has not acted—and, conversely, barring such evidence where the CIR has rendered a substantive decision—is firmly rooted in the fundamental principles of justice and fair play. With due respect, it is precisely these principles that I regard as controlling and to which I accord paramount importance in resolving the present case, fully consistent with the CTA's appellate function over CIR decisions and its nature as a Court of record.

[21] G.R. No. 231581, April 10, 2019 [Per J. J.C. Reyes, Jr., Second Division].
[22] Decision, pp. 25 to 26.
[23] G.R. No. 207112, December 08, 2015 [Per J. Mendoza, *En Banc*].

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In other words, this exception cannot be extended to instances such as the present case, where the CIR has rendered an actual and substantive decision. Once a determination has been made at the administrative level, the taxpayer cannot circumvent the reglementary process by introducing new evidence at the judicial stage.

Having established the governing principles as to why the CTA Division, as a court of law, should neither have admitted nor given probative value to evidence not previously submitted to the BIR, I now turn to the specific circumstances in the proceedings that reinforce this conclusion.

First, the CIR timely objected, in its comment on the petitioner's Formal Offer of Evidence,[24] to the admission of certain exhibits on the ground that they were not submitted during the course of the BIR's audit, as detailed hereunder:

Exhibit	Description	Comment
P-22 to P-33	Petitioner's [BIR] Form 1601 for January to December 2011	Respondent objects to the admissibility of Exhibits "P-22" to "P-33," "P-34," "P-35," and "P-36" to "P-170[,]" for being not competent. **All supporting documents a taxpayer must be submitted to the [BIR] during the course of investigation/audit. In fact, the taxpayer was given numerous opportunity to submit these documents to support their claim. However, the taxpayer failed to submit these documents in reply to the PAN, protest to the FAN, and even during investigation. Submitting these documents only upon the filing of a Petition for Review is not congruent with the Doctrine of Primary Jurisdiction.** The purpose for which these exhibits are being offered are
P-34	Petitioner's 2011 Alphalist of Payees subjected to Expanded Withholding Tax	
P-35	Petitioner's 2011 Summary List of Purchases	
P-36 to P-170	NCR Corporation Philippines 2011 Invoices	

[24] Division Docket – Vol. II, pp. 917 to 918.

		also objected for being self-serving and for lack of knowledge sufficient to form a belief as to the truth thereof. The same exhibits do not satisfy the purposes for which they are offered. (Emphases supplied)

Second, these same documents were among those examined by the Independent Certified Public Accountant (ICPA) in the preparation of his ICPA Report, as testified in his Judicial Affidavit dated June 29, 2021.[25] In the course of his testimony, the ICPA candidly acknowledged his inability to determine whether the documents he examined had, in fact, been submitted to the BIR, stating as follows:

> JUSTICE SAN PEDRO:
> Would you know how many pieces of documents were presented to the BIR? If 150 were submitted to you, would you know how many were submitted to the BIR during the assessment?
>
> Witness:
> Well, in that case, Your Honor, **I did not have any indication that all of these are submitted to the BIR.**[26] (Emphasis supplied)

It bears reiterating that to give credence to documents made available only after the filing of petitioner's administrative protest, assuming there is a valid one to speak of, would not only contravene the CTA's appellate jurisdiction, but would also render the CIR's decision meaningless. Such a result is manifestly contrary to the dictates of our laws, procedural rules, and the fundamental principles of justice and fair play, which plainly do not countenance such an outcome.

Indeed, it is high time for this Court, as a court of law, to clearly delineate the bounds of its appellate jurisdiction in cases involving tax assessments—distinguishing those instances where the CIR has issued a decision from those in which no administrative action has been taken. To blur this line would risk emboldening taxpayers to treat the administrative process as a mere perfunctory step—filing protests with incomplete or absent supporting documents, only to litigate them in full for the first time before this Court. Such a result would come at the expense of the BIR, whose efforts to perform its duty to resolve cases

[25] Division Docket – Vol. II, pp. 743 to 761.
[26] Transcript of Stenographic Notes during the hearing held on July 13, 2021, pp. 13 to 14.

on the basis of the taxpayer's submissions would be rendered futile. Once the CIR has acted, the decision must stand or fall on the strength of the evidence timely and properly submitted at both the administrative and judicial stages, for judicial review is not a convenient vehicle to circumvent administrative compliance.

Service of the Letter of Authority (LOA) and Preliminary Assessment Notice (PAN) on an unauthorized recipient strikes at the core of due process and constitutes a matter necessary for an orderly disposition of the case

While I am in accord with the majority that the LOA and PAN were duly served on ITC, in that the CIR was able to substantiate proof of service, I respectfully differ from the view that ITC may not belatedly raise, in its *Petition for Review* before the Court in Division, the contention that the individuals who received the LOA and PAN lacked authority.[27]

For *one*, it is my considered judgment that the Court is empowered to rule on the question of the lack of authority of the persons who received the LOA and PAN, even if this issue was not raised at the administrative level, by virtue of its authority to decide on matters necessary for an orderly disposition of the case.[28] The question of whether the LOA or PAN by an unauthorized representative of the taxpayer goes directly to the intrinsic validity of the assessment. Stated differently, service upon an unauthorized recipient implicates a fundamental due process concern, which, if established, may render the assessment void. For this reason, the issue is essential to the properly resolution of the case.

For *another*, to adopt such a position is inconsistent *ponencia*'s own prior acknowledgment that the CTA Division may consider evidence in support of the taxpayer's case, irrespective of whether such documents were presented at the BIR level. ITC, in fact, sought to substantiate its argument through the testimony of its witness, Mr. Efren Q. Samson, Jr.,[29] who, however, was accorded no probative

[27] Decision, pp. 22 to 24.
[28] Revised Rules of the Court of Tax Appeals, A.M. No. 05-11-07-CTA, Rule 14, Section 1.
[29] Division Docket – Vol. I, Judicial Affidavit of Mr. Efren Q. Samson, Jr. dated February 02, 2021, pp. 367 to 381; Transcript of the Stenographic Notes during the hearing held on June 17, 2021.

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weight by the Court, reasoning that the witness had no personal knowledge of the employees in question prior to the commencement of his employment in 2016.

All told, I vote to *(1)* **DENY** the *Petition* filed by ITC for lack of merit; and *(2)* **PARTIALLY GRANT** the CIR's *Petition for Review*. Accordingly, the case should be **DISMISSED** on the ground that the Court in Division lacks jurisdiction over the subject matter.

HENRY S. ANGELES
Associate Justice