CTA Form No. 8

22-000379-0079

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10946

ORICA NITRATES PHILIPPINES, INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago
Diliman, Quezon City

CABRERA & COMPANY
28th Floor, AIA Tower (formerly Philamlife Tower)
8767 Paseo de Roxas
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **April 15, 2026,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 17, 2026.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

ORICA NITRATES PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 10946**
	Members:
-versus-	**BACORRO-VILLENA**, *Acting Chairperson, and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 1 5 2026 ; 4:00PM

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DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review,*[1] filed by petitioner Orica Nitrates Philippines, Inc. (**petitioner**) on August 2, 2022, seeking the cancellation and reversal of the Final Assessment Notice and Formal Letter of Demand (**FAN/FLD**) issued by respondent Commissioner of Internal Revenue (**CIR** or **respondent**), which found petitioner liable for deficiency taxes in the amount of ₱41,332,677.49, inclusive of interest, surcharges, and administrative penalties.

THE PARTIES

Petitioner Orica Nitrates Philippines Inc. is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office address at #2 Monte De Ramos Apt., Infante Subdivision, Bagacay, Dumaguete City, Negros Oriental.[2] Petitioner is a registered taxpayer of Revenue Region

[1] Docket – Vol. I, pp. 6-22.
[2] Docket – Vol. II, p. 990, Petitioner's Memorandum, I. The Parties, par. 1.1; 753, Exhibit "P-1".

No. 12 — Bacolod City, with Taxpayer's Identification Number (**TIN**) 000-134-384-000.[3]

Respondent CIR is the government official authorized and charged with the assessment and collection of all national internal revenue taxes, fees and charges, and enforcement of all forfeitures, penalties and fines connected therewith.

THE FACTS

On June 21, 2017, respondent issued Letter of Authority (**LOA**) No. eLA201200046008 (**First LOA**), authorizing Revenue Officer (**RO**) Priscilla Ho (**Ho**) and Group Supervisor (**GS**) Grace Rikelle Lapu-Os (**Lapu-Os**) to examine petitioner's books of accounts and other accounting records for the period **October 1, 2015 to March 31, 2017.** The First LOA was received by petitioner on the same date.[4]

On **September 19, 2017**, petitioner received an undated Schedule of Tax Deficiencies signed by RO Ho, finding petitioner liable for total tax deficiencies of ₱189,096,587.35.[5] Petitioner responded through a Letter dated October 23, 2017, signed by its Finance Officer, Rowena R. Viliran, and received by RO Ho on October 24, 2017.[6]

On April 26, 2018, respondent then issued a Preliminary Assessment Notice (**PAN**), finding petitioner liable for deficiency taxes in the amount of ₱42,549,775.67, inclusive of interest, for the short period **October 1, 2016 to March 31, 2017**,[7] broken down as follows:

Total Income Tax Deficiency - 1st Quarter	42,284,227.25
Total Income Tax Deficiency - 2nd Quarter	13,428.20
Total Value-Added Tax Deficiency	252,120.21
Total Amount Due and Collectible	**42,549,775.67**

On April 30, 2018, petitioner received the PAN.[8]

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[3] *Id.* at 992, Petitioner's Memorandum, IV. Statement of the Facts, par. 7; 769-770, Exhibit "P-3".
[4] Docket – Vol. I, p. 264, Joint Stipulation of Facts and Issues, par. I.1.a.1; Docket – Vol. II, p. 790, Exhibit "P-6".
[5] Docket – Vol. II, pp. 791-795, Exhibit "P-7".
[6] *Id.* at 796-806, Exhibit "P-8".
[7] Docket – Vol. II, pp. 807-810, Exhibit "P-9".
[8] Docket – Vol. I, p. 264, Joint Stipulation of Facts and Issues, par. I.1.a.2.

On May 9, 2018, petitioner filed a *Protest Letter to PAN*, which was received by respondent on May 10, 2018.[9]

On June 19, 2018, respondent issued a Formal Letter of Demand (**FLD**) with Details of Discrepancies, finding petitioner liable for deficiency value-added tax (**VAT**) in the amount of P303,922.90, inclusive of interest, and compromise penalties of P350,000.00 for the fiscal year (**FY**) ending September 30, 2016 ("**FY 2016**").[10]

The FLD was received by petitioner on June 28, 2018.[11] However, the attached *Details of Discrepancies* reveals that a deficiency income tax of ₱43,427,958.28 was likewise being imposed and covers the short period **October 1, 2016 to March 31, 2017**, with no assessment shown for FY 2016. The FLD and Details of Discrepancies were signed by Aynie E. Mandajoyan-Dizon, OIC-Regional Director of Revenue Region No. 12 – Bacolod City.

On July 25, 2018, petitioner filed its *Protest to Final Letter of Demand (FLD) / Final Assessment Notice (FAN)* [sic] dated July 23, 2018.[12]

On April 15, 2019, respondent issued LOA No. eLA201500076065 (**Second LOA**), authorizing RO Jolen Keith Ilustre and GS Priscilla Ho to examine petitioner's books of accounts and other accounting records for the period **October 1, 2015 to March 31, 2017**. The Second LOA was received by petitioner on April 22, 2019.[13]

On June 27, 2019, respondent issued two documents captioned as Final Decision on Disputed Assessment (**FDDA**), finding petitioner liable for the following:

First FDDA[14]		
Deficiency VAT	FY September 30, 2016	316,378.94
Compromise penalties		350,000.00
Total Amount Due and Collectible		**666,378.94**

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9 Docket – Vol. II, pp. 811-819, Exhibit "P-10".
10 Docket -Vol. I, p. 265, Joint Stipulation of Facts and Issues, par. I.1.a.3; Docket – Vol. II, pp. 820-823, Exhibit "P-11".
11 *Id.*
12 Docket – Vol. II, pp. 824-834, Exhibit "P-12".
13 Docket – Vol. II, p. 265, Joint Stipulation of Facts and Issues, par. I.1.a.4; Docket – Vol. II, p. 835, Exhibit "P-13".
14 Docket – Vol. II, pp. 836-837, Exhibit "P-14".

Second FDDA[15]		
Total Income Tax Deficiency - 1st Quarter	Short Period - October 1, 2016 to March 31, 2017	34,226.64
Total Income Tax Deficiency - 2nd Quarter		14,426.23
Total Value-Added Tax Deficiency		290,014.57
Total Suggested Compromise Penalties		205,000.00
Total Amount Due and Collectible		**543,667.44**

The FDDAs were signed by Assistant Regional Director Zennen A. Tabanao.

On June 28, 2019, petitioner voluntarily paid the amount indicated in the FDDAs. The payments made have the following details:

BIR Form	Amount	Filing Reference No.	Check No.
0605[16]	666,378.94	291900031058712	268708[17]
0605[18]	153,652.87	291900031058909	286708[19]
0605[20]	390,014.57	291900031058859	286708[21]

Notably, the sum of the above payments is equal to the sum of the total amount due and collectible as indicated in the FDDA dated June 27, 2019.

On September 27, 2019, respondent issued a *Letter* cancelling the First LOA (***Cancellation Letter***). [22] The dispositive portion of the *Cancellation Letter* provides:

> **PREDICATED** on all the foregoing, please be informed that eLA No. eLA201200046008 LOA -079-2017-00000078 dated June 21, 2017 is hereby **CANCELLED** without prejudice to the issuance of a valid Letter of Authority covering the investigation of fiscal years October 1, 2015 to September 30, 2016 and October 1, 2016 to September 30, 2017.

The *Letter* was signed by Antonio Jonathan G. Jaminola, Regional Director of Revenue Region No. 12 – Bacolod City (**RD Jaminola**).

[15] Docket – Vol. II, pp. 840-848, Exhibit "P-15".
[16] *Id.* at 849-851, Exhibit "P-16".
[17] *Id.* at 852, Exhibit "P-17".
[18] *Id.* at 856-858, Exhibit "P-18".
[19] *Id.* at 862, Exhibit "P-20".
[20] *Id.* at 859-861, Exhibit "P-19".
[21] *Id.* at 865, Exhibit "P-20-1".
[22] *Id.* at 916-917, Exhibit "P-21".

On October 17, 2019, respondent issued LOA No. eLA201600038852 (**Third LOA**), authorizing RO Michael Luberas (**Luberas**) and GS Gretchen Abay (**Abay**) to examine petitioner's books of accounts and other accounting records for the period **October 1, 2016 to September 30, 2017**. The Third LOA was received by petitioner on November 12, 2019.[23]

On December 11, 2019, respondent issued the First Notice, requesting the presentation of petitioner's records for examination.[24] A *Second and Final Notice* was also issued on February 13, 2020,[25] followed by a Notice of Discrepancy (**NOD**) issued on October 23, 2020. The NOD was signed by Assistant Revenue District Officer Brigette B. Sepe.

RO Luberas and GS Abay recommended the issuance of a PAN through an undated *Memorandum*.[26] Another *Memorandum* dated March 16, 2021 was prepared by RO Elaine Marie A. Elumir (**Elumir**) and GS Edmon A. Yanson (**Yanson**), recommending the issuance of the PAN.[27]

On March 26, 2021, petitioner received an undated PAN assessing deficiency income tax of ₱41,332,677.49, inclusive of surcharge and interest. The PAN alleged an undeclared gain on the sale of land and improvements amounting to ₱294,835,733.00.[28]

Petitioner filed its *Reply* to the PAN dated April 10, 2021,[29] which was received by respondent on April 12, 2021.[30]

On October 4, 2021, respondent issued a response letter to petitioner's *Reply*, invoking the ten (10)-year prescriptive period.[31]

Thereafter, on October 7, 2021, respondent issued the FAN[32]/FLD,[33] again assessing deficiency income tax in the amount of ₱41,332,677.49, inclusive of surcharge and interest. Petitioner received the FAN/FLD on the same date.

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[23] Docket-Vol. I, p. 265, Joint Stipulation of Facts and Issues, par. I.1.a.7; BIR Records, pp. 169, Exhibit "R-2"; 170, Exhibit "P-22".
[24] BIR Records, p. 171, Exhibit "R-4".
[25] *Id.* at 172, Exhibit "R-5".
[26] *Id.* at 287-300, Exhibit "R-7".
[27] *Id.* at 330-334, Exhibit "R-9".
[28] *Id.* at 349-350, Exhibit "R-10".
[29] Docket – Vol. II, pp. 866-872, Exhibit "P-24".
[30] BIR Records, p. 370.
[31] *Id.* at 457-469, Exhibit "R-11".
[32] *Id.* at 482, Exhibit "R-12-2"; 496, Exhibit "P-25-2".
[33] *Id.* at 480-481, Exhibit "R-12"; 488-489, Exhibit "P-25".

On November 5, 2021, petitioner filed its *Protest* to the FAN/FLD in the form of a request for reinvestigation, sent via registered mail.[34] However, respondent allegedly received the *Protest* only on February 17, 2022.[35] To establish the timeliness of its filing, petitioner sent a *Letter* dated March 22, 2022, attaching a Certification from the Bacolod City Post Office confirming that the *Protest* was mailed on November 5, 2021. The said *Letter* was received by respondent on March 28, 2022.[36]

Meanwhile, in a *Letter* dated January 4, 2022, or within sixty (60) days from the filing of its *Protest*, petitioner submitted additional supporting document, a Certificate Authorizing Registration (**CAR**).[37]

On March 29, 2022, a *Memorandum* issued by Regional Director Josephine S. Virtucio directed the return of the docket from the Collection Division to the Assessment Division, upon finding that petitioner's *Protest* was timely filed.[38]

Notwithstanding the presence of a draft FDDA in the BIR Records, it appears that no FDDA resolving petitioner's November 5, 2021 *Protest* was ever issued or served upon petitioner.

PROCEEDINGS BEFORE THE COURT

On August 2, 2022, petitioner filed the present *Petition for Review*.[39]

On August 11, 2022,[40] the Court issued *Summons* requiring respondent to file an Answer. On September 15, 2022, respondent filed a *Motion for Extension of Time to File Answer*,[41] which the Court granted in an *Order* dated September 19, 2022, giving respondent until October 15, 2022 to file his Answer.[42] Thus, on October 17, 2022, respondent filed his *Answer*.[43]

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[34] Docket – Vol. II, pp. 873-882, Exhibit "P-26".
[35] BIR Records, p. 629, Exhibit "R-13", in relation to respondent's copy of the Protest in BIR Records, p. 609.
[36] Docket – Vol. II, p. 892, Exhibit "P-28".
[37] *Id.*
[38] BIR Records, pp. 637-641, Exhibit "R-14".
[39] Docket – Vol. I, pp. 6-22.
[40] *Id.* at 179.
[41] *Id.* at 181-184.
[42] *Id.* at 186.
[43] *Id.* at 187-204.

On October 20, 2022,[44] the Court issued a *Notice of Pre-Trial Conference,* setting the pre-trial on February 9, 2023.

On October 27, 2022, respondent filed a *Motion to Defer Transmittal of BIR Records,*[45] which the Court granted in an *Order* dated November 7, 2022.[46] Thus, on December 19, 2022, respondent elevated the BIR Records, consisting of one folder with 756 pages.[47]

On February 2, 2023, the *Pre-Trial Brief (of Petitioner Orica Nitrates Philippines, Inc.)*[48] was filed while *Respondent's Pre-Trial Brief* was filed on February 3, 2023.[49]

As directed during the Pre-Trial Conference on February 9, 2023,[50] the parties filed their *Joint Stipulation of Facts and Issues* on March 13, 2023,[51] which the Court approved in its *Resolution* dated May 18, 2023.[52]

On March 14, 2023, both parties filed their *Joint Motion to Refer the Case for Mediation,*[53] which the Court granted in a *Resolution* dated March 29, 2023.[54]

The *Pre-Trial Order* was promulgated on May 18, 2023.[55]

On June 1, 2023, the Court received the *Mediation Schedule* from the Philippine Mediation Center Office – Court of Tax Appeals **(PMC-CTA)**.[56] On July 4, 2023, PMC-CTA requested an extension,[57] which the Court granted in a *Resolution* dated July 17, 2023.[58] Notwithstanding the extension, *Records Verification* dated August 24, 2023 reveals that no report on the status of the compromise settlement was made by the parties.[59] Thus, on September 27, 2023, the Court promulgated a *Resolution* ordering the parties to provide an

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[44] *Id.* at 206-207.
[45] *Id.* at 208-211.
[46] *Id.* at 213.
[47] *Id.* at 214-216, Compliance dated December 19, 2022.
[48] *Id.* at 219-231.
[49] *Id.* at 237-242.
[50] *Id.* at 256-257.
[51] *Id.* at 264-271.
[52] *Id.* at 646.
[53] *Id.* at 621-625.
[54] *Id.* at 643-644.
[55] *Id.* at 648-653.
[56] *Id.* at 655.
[57] *Id.* at 659.
[58] *Id.* at 662.
[59] *Id.* at 684.

update to the Court on the status of their compromise settlement.[60]

Another *Records Verification* dated January 2, 2024 reveals that the parties failed to update the Court on the status of petitioner's Offer of Compromise.[61] Thus, on January 11, 2024, both parties filed a *Joint Manifestation on the Status of Offer of Compromise*, stating that the National Evaluation Board (**NEB**) has not yet convened to evaluate petitioner's offer of compromise.[62]

Trial then ensued.

On April 2, 2024,[63] petitioner presented its witnesses Rowena R. Viliran and Roselle Y. Caraig, who both testified by way of their judicial affidavits. Thereafter, petitioner filed its *Formal Offer of Evidence Ad Cautelam (with Manifestation)* on April 17, 2024[64] and its *Supplemental Formal Offer of Evidence (of Petitioner Orica Nitrates Philippines, Inc.)* on May 10, 2024.[65] On May 16, 2024, respondent filed his *Comment (to Petitioner's Formal Offer of Evidence and Supplemental Offer of Evidence)*.[66]

On June 27, 2024, the Court admitted all of petitioner's exhibits except Exhibit "P-21-1", which was denied admission for failure to present the original for comparison.[67]

On November 12, 2024, respondent presented his witnesses: RO Luberas and RO Elumir, who both testified by way of their judicial affidavits.[68] *Respondent's Formal Offer of Evidence* was filed on November 22, 2024,[69] to which petitioner filed its *Comment (to Respondent's Formal Offer of Evidence)* on December 2, 2024.[70]

On February 17, 2025, the Court promulgated a *Resolution* admitting respondent's exhibits.[71]

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60 *Id.* at 696-697.
61 *Id.* at 708.
62 *Id.* at 709-711.
63 *Id.* at 729-730.
64 *Id.* at 740-752.
65 *Id.* at 911-915.
66 *Id.* at. 922-924.
67 *Id.* at 939-940.
68 *Id.* at 956-958.
69 *Id.* at 960-970.
70 *Id.* at 978-981.
71 *Id.* at 988-989.

Petitioner [72] and respondent [73] separately filed their *Memorandum* on March 24, 2025, and April 2, 2025, respectively.

The case was submitted for decision on April 24, 2025.[74]

THE ISSUES

The parties have stipulated the following issues for the Court's resolution:[75]

1. WHETHER THE RESPONDENT'S RIGHT TO ASSESS HAS PRESCRIBED.

2. WHETHER THERE ARE FACTUAL AND LEGAL BASES TO HOLD PETITIONER LIABLE FOR AD VALOREM PENALTIES ON THE QUARTERLY INCOME TAX FILED FOR THE FIRST QUARTER OF FY 2017 AMOUNTING TO P41,332,677.49.

PETITIONER'S ARGUMENTS

In its *Petition for Review* and *Memorandum*, petitioner argues that respondent may no longer conduct a reassessment since "FY 2017 has already been previously audited including the questioned transaction." Petitioner argues that the issuance of the Cancellation Letter and the Third LOA merely "corrects the period as explicitly stated in the Cancellation Letter." Thus, according to petitioner, the issues assessed, and the related payment under the First and the Second LOAs remain valid.

Petitioner also states that the First FDDA already dropped the assessment on the alleged undeclared income from the sale of real properties. Thus, respondent should be estopped and be "precluded from disregarding its previous assessment and reissuing a new one to the prejudice of petitioner."

Petitioner argues that respondent's right to assess petitioner of deficiency taxes has already prescribed, considering that the FAN/FLD was issued beyond the three (3)-year prescriptive period. It also argues that the instant case does not fall under Section 222(a) of the National Internal Revenue Code (**NIRC**) of 1997, as amended, which provides

[72] *Id.* at 990-1013.
[73] *Id.* at 1022-1046.
[74] *Id.* at 1050.
[75] Docket – Vol. I, p.265, II. Joint Stipulation of Facts and Issues, II. Stipulation of Issue.

respondent the benefit of a 10-year prescriptive period. Petitioner states that the 10-year prescriptive period shall not apply in the absence of intent to evade tax.

Petitioner also raises alleged violations of its right to due process, arguing that: (1) RO Elumir's participation is unauthorized; and (2) there is no factual and/or legal basis for the imposition of the *ad valorem penalties.*

RESPONDENT'S ARGUMENTS

In his *Answer* and *Memorandum,* respondent argues that the BIR is not barred from assessing deficiency taxes or penalties against petitioner. According to respondent, as the First and the Second LOAs were declared void, "there was no impediment in the issuance of the Third LOA."

Respondent maintains that his right to assess has not yet prescribed. Respondent posits that "there is falsity in the returns filed by [petitioner]," considering that there is an underdeclaration of income, emanating from underdeclared gain on sale of land and improvement, exceeding 30%.

Respondent also claims that the deficiency assessments have factual and legal basis, quoting heavily from the various memoranda prepared by the ROs involved in the audit.

THE COURT'S RULING

The instant *Petition for Review* is meritorious.

The Court has jurisdiction over the instant petition.

Before addressing the substantive issues, the Court must first determine whether it validly acquired jurisdiction over the present *Petition.*

Section 7(a)(1) and (2) of Republic Act (**RA**) No. 1125,[76] as amended by RA No. 9282,[77] vests the Court of Tax Appeals (**CTA**) with exclusive appellate jurisdiction to review decisions or inactions of the CIR, to wit:

> SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the [CIR] 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 [CIR] 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, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; (Emphasis supplied)

Correlatively, Section 11 of the same law governs the period to appeal, to wit:

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

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76 An Act Creating the Court of Tax Appeals, June 16, 1954.

77 An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

The above provisions are echoed in Section 3(a)(1) and (2), Rule 4,[78] and Section 3(a), Rule 8[79] of the Revised Rules of the CTA.

Thus, the CTA has exclusive appellate jurisdiction to review a decision, ruling, or inaction of the CIR, provided the appeal is filed **within** thirty (30) days from receipt of such decision or ruling, or after the expiration of the period fixed by law for action.

Relatedly, Section 3.1.4 of RR No. 12-1999,[80] as amended by RR No. 18-2013,[81] provides the procedure and timelines governing protests against a FAN/FLD. It states that:

> 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:
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> (i) Request for reconsideration — ...
>
> (ii) Request for reinvestigation — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. ...
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> ...
>
> 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

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78 *Section 3. Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(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 relation 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 or other applicable law provides a specific period for action: ... (Emphasis supplied)

79 Sec. 3. Who may appeal; period to file petition. — (a) A party adversely affected by a decision, ruling, or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

80 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 6, 1999.

81 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

> 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 additional evidence, and the FDDA shall consequently be denied.
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> ...
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> If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.
>
> ...
>
> It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other.

Based on the foregoing, a taxpayer who files a **request for reinvestigation** must submit all relevant supporting documents within sixty (60) days from the filing of the protest. If the CIR fails to act on the protest within **one hundred eighty (180) days** from submission of said documents, the taxpayer may either:

1. Appeal to the CTA within thirty (30) days from the lapse of the 180-day period; or
2. Await the final decision of the CIR and appeal therefrom within thirty (30) days from receipt.

These options are **mutually exclusive**, and resorting to one bars the other.

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In this case, petitioner filed its *Protest* to the FAN/FLD, in the form of a request for reinvestigation, on November 5, 2021 via registered mail.[82] On January 4, 2022, or within 60 days from the filing of *Protest*, petitioner submitted its additional supporting document, a Certificate Authorizing Registration (**CAR**).[83]

Thus, the 180-day period for respondent to act commenced on January 4, 2022 and expired on July 3, 2022.[84] Respondent **did not act** within the 180-day period.

Under the law, petitioner could either await the CIR's decision **or** appeal to the CTA within 30 days from the lapse of the 180-day period. The 30-day period to appeal to the CTA ended on **August 2, 2022**. Petitioner chose the latter and timely filed a *Petition for Review* on **August 2, 2022**.

The Court therefore validly acquired jurisdiction over this case.

The Third LOA is void.

Section 235 of the NIRC of 1997, as amended, explicitly provides that, for income tax purposes, the examination and inspection of a taxpayer's books shall be made only once in a taxable year, subject to limited exceptions:

> SEC. 235. Preservation of Books of Accounts and Other Accounting Records. — All the books of accounts ..., shall be preserved by them for a period beginning from the last entry in each book until the last day prescribed by Section 203 within which the Commissioner is authorized to make an assessment. The said books and records shall be subject to examination and inspection by internal revenue officers: Provided, That **for income tax purposes, such examination and inspection shall be made only once in a taxable year**, except in the following cases:
>
> (a) Fraud, irregularity or mistake, as determined by the Commissioner;
>
> (b) The taxpayer requests reinvestigation;
>
> (c) Verification of compliance with withholding tax laws and regulations;

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[82] Docket – Vol. II, pp. 873-882, Exhibit "P-26".
[83] Docket – Vol. II, p. 892, Exhibit "P-28".
[84] The 180th day fell on July 3, 2022, Sunday. The next working day is July 4, 2022.

> (d) Verification of capital gains tax liabilities; and
>
> (e) In the exercise of the Commissioner's power under Section 5(B) to obtain information from other persons in which case, another or separate examination and inspection may be made. Examination and inspection of books of accounts and other accounting records shall be done in the taxpayer's office or place of business or in the office of the Bureau of Internal Revenue. . . . . (Emphasis supplied)

This statutory limitation is echoed and operationalized in RMO No. 8-2006, which enshrines the "One LOA per Taxable Year" rule and clarifies that only one Letter of Authority (LOA) may be issued for the same taxpayer, tax type, and period, unless validly superseded under conditions determined by the CIR. Items 1 and 2 of Part IV.D. of RMO No. 8-2006 provide:

> 1. **<u>Only one (1) [LOA] shall be issued to the same taxpayer, for the same tax type and period</u>**, except where an [LOA] was issued for a specific tax type only and subsequently, another [LOA] was issued to the same taxpayer by the same or another office covering the investigation of all internal revenue taxes (AIRT) for the same taxable period. **The [LOA] issued for AIRT purposes shall be allowed provided the coverage shall be limited to AIRT except for the specific tax type and said coverage shall be clearly stated on the face of the [LOA].**
>
> 2. In case two or more [LOA]s are issued to the same taxpayer for the same tax type and for the same period, the power to decide which [LOA] shall prevail shall be under the exclusive jurisdiction of the Commissioner (CIR). The LA [LOA] prevailed upon shall be considered cancelled. ... . (Emphasis supplied)

In the instant case, three LOAs were issued, all covering **All Internal Revenue Taxes (AIRT)**. The First LOA authorized RO Ho and GS Lapu-Os to examine petitioner's books of accounts and other accounting records for the period **October 1, 2015 to March 31, 2017.** The Second LOA, in turn, authorized RO Ilustre and GS Ho to conduct the same examination of petitioner for the same period, **October 1, 2015 to March 31, 2017**. Finally, the Third LOA authorized RO Luberas and GS Abay to examine petitioner's books for the period **October 1, 2016 to September 30, 2017**.

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The issuance of the Second LOA, which effectively superseded the First LOA, is permissible, as it was necessitated by the reassignment of the ROs. In *Republic v. Robiegie Corporation*,[85] the Supreme Court recognized an exception to the "One LOA per Taxable Year" rule in cases of reassignment, retirement, or other inability of the originally assigned revenue officers to continue the investigation, *viz.*:

> Clearly, the "one LOA per taxable year" rule is not as ironclad as the Republic portrays it to be. Part IV.D., Item 2 of RMO No. 8-2006 authorizes the issuance of duplicate LOAs, subject to the CIR's discretion to determine which of the two LOAs shall prevail. Obviously, **when a tax investigation is reassigned to a different RO pursuant to the mandatory "rotation" of assessment officers under Section 17 of the NIRC, or for any other legally justified reason, the CIR or his/her duly authorized representatives <u>may issue a new LOA to the newly assigned RO, and such LOA can be made to prevail over the LOA issued to the previous investigating officer</u>**. Since the CIR's power to issue a LOA is delegable, the concomitant power to uphold the validity of a subsequently issued duplicate LOA is likewise delegable to the CIR's duly authorized representatives, as enumerated in RMO No. 43-90. Stated differently, RMO No. 8-2006 does not prohibit the issuance of a new LOA within the same taxable period if such new LOA is necessitated by the reassignment, retirement, or other inability of the incumbent RO to continue an investigation. The BIR official who will issue the new LOA also has the power to make it prevail over the old, previously issued LOA, subject of course to the control and regulation of the CIR as the statutorily designated tax investigator.

When an audit is reassigned to a different RO, a replacement LOA may be issued and made to prevail over the earlier LOA. Thus, the Second LOA validly replaced and prevailed over the First LOA.

However, the Third LOA is infirm.

First, it violates the "One LOA per Taxable Year" rule. It overlaps with the coverage of the First and Second LOAs for the period **October 1, 2016 to March 31, 2017**, despite covering the same AIRT for substantially the same taxable period.

Second, the Third LOA does not fall within the recognized exceptions to the "One LOA per Taxable Year" rule. Even assuming the existence of fraud, irregularity, or mistake, these

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[85] G.R. No. 260261, October 3, 2022 [Per J. Gaerlan, Third Division].

matters had already been the subject of audit and assessment under the Second LOA. Notably, the purported undeclared gain on sale of land and improvements for the first quarter covering October 1 to December 31, 2016, the very basis of the ad valorem penalties assessment under the Third LOA, was previously investigated but ultimately not sustained and was dropped in the FDDA issued pursuant to the Second LOA. Thus, the Third LOA merely seeks to revive an issue already considered and discarded in the prior assessment.

Third, the assessments under the Second LOA had already attained finality and were fully settled. On June 27, 2019, respondent issued two FDDAs[86] assessing deficiency taxes in the amounts of **₱666,378.94** (deficiency VAT and Compromise Penalties for the fiscal year ending September 30, 2016) and **₱543,667.44** (deficiency Income Tax, VAT, and Suggested Compromise Penalties for the short period from October 1, 2016 to March 31, 2017). On June 28, 2019, petitioner voluntarily paid these amounts. Such payment effectively closed the audit and assessment process under the Second LOA.

In light of the foregoing, respondent's attempt to reopen the audit through the issuance of the Third LOA cannot be sustained. The Third LOA not only violates the "One LOA per Taxable Year" rule, but also improperly seeks to reassess matters already covered, resolved, abandoned, and fully satisfied by petitioner. This runs afoul of the principles of finality of assessments and orderly tax administration.

Accordingly, the Third LOA is void. Consequently, the assessments issued pursuant to such void LOA are likewise void and without legal effect.

The assessment is void for having been conducted by unauthorized revenue officers.

Even assuming *arguendo* that the Third LOA was valid, the assessment must still be declared void, as it was based on an audit conducted by revenue officers without proper authority.

[86] First FDDA: Docket – Vol. II, pp. 836-837, Exhibit "P-14"; Second FDDA: Docket – Vol. II, pp. 840-848, Exhibit "P-15".

Under Sections 6(A), 10(c), and 13 of the NIRC of 1997, as amended, only the CIR or duly authorized representatives may examine a taxpayer's books and recommend an assessment, and such authority must be expressly conferred through a valid LOA, *viz.*:

> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. ... (Emphasis supplied)
>
> SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the **Revenue Regional Director shall**, within the region and district offices under his jurisdiction, among others:
>
> . . . .
>
> (c) **Issue Letters of Authority** for the examination of taxpayers within the region[.] (Emphasis supplied)
>
> SEC. 13. *Authority of a Revenue Officer.* - ..., 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. (Emphasis supplied)

An LOA is therefore an indispensable requirement. It is the legal authority granted to the revenue officers named therein to conduct the tax audit and "examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax."[87] The issuance of an LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily

[87] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010 [Per J. Mendoza, Second Division].

belongs only to the CIR himself or his duly authorized representatives.[88]

In *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*,[89] the Supreme Court underscored that the identification of authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit and, consequently, of a valid assessment:

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

This doctrinal rule is vital: if the audit is conducted by revenue officer other than those expressly named in the LOA, the resulting assessment is void.

In the present case, the Third LOA authorized **RO Luberas and GS Abay** to examine petitioner's books of accounts for FY 2017.[90] However, the BIR Records reveal that, while RO Luberas and GS Abay initially recommended the issuance of the PAN through an undated *Memorandum*,[91] another *Memorandum* dated March 16, 2021, likewise recommending

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[88] *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021 [Per J. Lopez, J., Third Division].
[89] *Id.*
[90] Docket-Vol. I, p. 265, Joint Stipulation of Facts and Issues, par. I.1.a.7; BIR Records, pp. 169, Exhibit "R-2"; 170, Exhibit "P-22".
[91] BIR Records, pp. 287-300, Exhibit "R-7".

the issuance of the PAN, was prepared by RO Elumir and GS Yanson,[92] who were not authorized under the LOA.

The participation of RO Elumir and GS Yanson in the audit and assessment process, absent a corresponding LOA, constitutes a fatal jurisdictional defect. Without proper authority, the audit itself is invalid, and the assessment issued pursuant thereto is necessarily void.

The requirement of an LOA is not a mere procedural formality but a substantive safeguard of the taxpayer's right to due process. Thus, the failure to issue a new or amended LOA to cover the participation or substitution of revenue officers vitiates the audit and invalidates the resulting assessment.

Accordingly, the assessment is void and unenforceable.

Respondent's right to assess has prescribed.

The power of the BIR to assess and collect taxes under Section 2 of the NIRC of 1997, as amended,[93] is limited by Section 203,[94] which provides that internal revenue taxes must be assessed within **three (3) years**, counted from the last day prescribed by law for filing the return or from the date the return was actually filed, whichever is later. An assessment issued beyond this period is ***void***.

As an exception, Section 222 allows the assessment period to be extended beyond the original three-year prescriptive period.[95] Section 222(a) provides for a 10-year prescriptive

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[92] BIR Records, pp. 330-334, Exhibit "R-9".

[93] SEC. 2. Powers and Duties of the Bureau of Internal Revenue. - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance, and its **powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges**, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. ... (Emphasis supplied)

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

[95] **SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.-**
(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. ...

period in cases where the taxpayer filed a *false* or *fraudulent return with intent to evade tax*, or *failed to file a return*, while Section 222(b) authorizes an extension by agreement through a *valid waiver*.

Hence, the crux of the controversy here is whether the assessment against petitioner falls under the ordinary three-year prescriptive period or the extraordinary 10-year prescriptive period.

To resolve this issue, the Court finds *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue* (**McDonald's**)[96] highly instructive, *viz.*:

> *F. Summary:* ***Conditions*** *for a Valid Extension of Assessment Period in Case of a False Return*
>
> *i.* ***Requisites*** *under Section 222 (a) of the 1997 Tax Code*
>
> - *General Rule — Proof of False or Fraudulent Return*
>
> Pursuant to Section 222 (a) of the 1997 Tax Code, the extraordinary 10-year assessment period may apply in case the taxpayer: (1) filed a false return, (2) filed a fraudulent return, or (3) failed to file a return.
>
> A fraudulent return "implies intentional or deceitful entry with intent to evade the taxes due," while a false return simply "implies deviation from the truth, whether intentional or not."
>
> It must be stressed, however, that a false return within the meaning of Section 222 (a) does not refer to false returns in general. To be sure, the extraordinary 10-year assessment period applies to a *false return* when:
>
> (1) the return contains an error or misstatement, and
> (2) **such error or misstatement was *deliberate or willful.***
>
> ... ...
>
> It shall be the CIR's burden to establish the existence of the above-enumerated statutory requisites with ***clear and convincing evidence.***

[96] G.R. No. 247737, August 8, 2023 [Per J. Inting, *En Banc*].

- *Exception — Prima Facie Evidence of a False or Fraudulent Return (30% Threshold)*

The **CIR may be relieved from the above-mentioned burden of proof when there is *prima facie evidence of falsity or fraud,*** as defined under Section 248 (B) of the 1997 Tax Code.

(1) The CIR ascertains that there is a *misstatement/misdeclaration* in the return, in particular,

(a) an *understatement/under declaration* of sales, receipts, or income or

(b) an *overstatement/over declaration* of expenses or other deductions, and

(2) the misstatement is *substantial,* such that exceeds the corresponding amount declared in the return by 30%.

30% threshold satisfied. There is *prima facie* evidence of falsity or fraud, and the burden of proof shifts to the taxpayer. If the taxpayer fails to overcome the presumption, the *prima facie* evidence shall be sufficient to justify the application of the 10-year period.

Taxpayer refutes presumption. If the taxpayer is successful in overturning the presumption (*e.g.*, demonstrating that the misstatement as ascertained by the CIR had been inadvertent or attributable to a mistake or was not deliberate or willful on the part of the taxpayer), the CIR cannot rely on the presumption in proving the taxpayer's *intent to evade.*

ii. ***Due Process Requirements***

(1) First Due Process Requirement. The *assessment notice* issued to the taxpayer must clearly state the following:

(a) that extraordinary prescriptive period (not the basic three-year period) is being applied, and

(b) the bases of allegations of falsity or fraud, *e.g.*, if the CIR seeks to rely on the *presumption of falsity or fraud* particularly, the formal notice to the taxpayer *must set out the computation by which it ascertained that the misdeclaration in the return surpassed the 30% threshold.*

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> (2) Second Due Process Requirement. The tax authorities have not acted in a manner that is inconsistent with the invocation of the extraordinary prescriptive period or have otherwise misled the taxpayer that the basic period will be applied. (Emphasis supplied; citation omitted)

Applying the standards laid down in *McDonald's*, the Court finds that respondent failed to comply with the ***first*** *due process requirement*, that the assessment notice must expressly state the application of the extraordinary 10-year prescriptive period and the factual basis for such application. While both the PAN[97] and the FAN[98]/FLD[99] imposed a 50% surcharge, neither indicated that respondent was invoking the 10-year prescriptive period under Section 222(a), nor did they set forth the factual basis for alleging falsity or fraud.

Respondent's invocation of the 10-year prescriptive period appears only in the October 4, 2021 *Letter* signed by RD Jaminola, issued in response to petitioner's *Reply* to the PAN.[100] In that letter, respondent claimed that petitioner's alleged underdeclaration was "more than 30% or 7,138.35%," thereby constituting *prima facie* evidence of a false return under Section 248, and, on that basis, concluded that the 10-year prescriptive period applies. This belated invocation, however, does not satisfy the ***first*** *due process requirement. McDonald's* clearly mandates that the invocation of the 10-year prescriptive period and the basis thereof be indicated in the assessment notice itself, not in some other communication to petitioner. The PAN and the FAN/FLD constitute respondent's official act of apprising the taxpayer of the factual and legal bases of the assessment. Thus, the October 4, 2021 *Letter* cannot be deemed substantial compliance with the due process requirement.

For this reason alone, the 10-year prescriptive period cannot apply.

Even assuming *arguendo* that due process had been satisfied, the Court finds that petitioner successfully rebutted any presumption of falsity or fraud.

Respondent's finding of falsity rests solely on a comparison between petitioner's **First Quarter VAT Return** and **First**

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97 BIR Records, pp. 349-350, Exhibit "R-10".
98 *Id.* at 482, Exhibit "R-12-2", 496, Exhibit "P-25-2"
99 *Id.* at 480-481, Exhibit "R-12"; 488-489, Exhibit "P-25".
100 *Id.* at 457-469, Exhibit "R-11".

Quarter Income Tax Return, from which respondent derived an alleged underdeclaration of 7,138.37%.

A review of the FAN[101]/FLD[102] reveals that respondent concluded that petitioner had undeclared gain on the sale of land by comparing petitioner's First Quarter VAT Return filed on January 17, 2017 against its First Quarter Income Tax Return filed on February 23, 2017. Based on this comparison, respondent computed the supposed under-declaration of 7,138.37% and, on this basis alone, invoked the *prima facie* presumption of fraud.

The Court finds no fraud.

It is important to discuss the nature of a quarterly income tax return *vis-à-vis* the annual income tax return or final adjustment return. Sections 75 and 76 of the NIRC of 1997, as amended, provide:

> SEC. 75. - *Declaration of Quarterly Corporate Income Tax.* - Every corporation shall file in duplicate a quarterly summary declaration of its gross income and deductions on a cumulative basis for the preceding quarter or quarters upon which the income tax, as provided in Title II of this Code, shall be levied, collected and paid. The tax so computed shall be decreased by the amount of tax previously paid or assessed during the preceding quarters and shall be paid not later than sixty (60) days from the close of each of the first three (3) quarters of the taxable year, whether calendar or fiscal year.
>
> SEC. 76. - *Final Adjustment Return.* - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid during the year, the excess amount shown on its final adjustment return may be carried over and credited against the estimated

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[101] *Id.* at 482, Exhibit "R-12-2"; 496, Exhibit "P-25-2".
[102] *Id.* at 480-481, Exhibit "R-12"; 488-489, Exhibit "P-25".

quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. ... ."

In *Commissioner of Internal Revenue v. Philippine American Life Insurance Company*,[103] the Supreme Court explained that quarterly payments are merely partial tax payments, with the final tax liability determined only upon the filing of the annual return:

> It may be observed that although quarterly taxes due are required to be paid within sixty days from the close of each quarter, the fact that the amount shall be deducted from the tax due for the succeeding quarter shows that until a final adjustment return shall have been filed, **the taxes paid in the preceding quarters are merely partial taxes due from a corporation**. **Neither amount can serve as the final figure to quantify what is due the government nor what should be refunded to the corporation**.
>
> This interpretation may be gleaned from the last paragraph of Section 69 of the Tax Code which provides that the refundable amount, in case a refund is due a corporation, is that amount which is shown on its **final adjustment return** and not on its quarterly returns. [Emphasis and underscoring supplied.]

Accordingly, any omission or misstatement in a quarterly income tax return is not conclusive and may be corrected in the annual income tax return, which constitutes the taxpayer's final adjustment. Here, the alleged failure of petitioner to declare the gain on the sale of land in its first quarter income tax return was rectified when petitioner declared the gain on the sale of land in its annual income tax return, which constitutes the final adjustment return.

Respondent's reliance on quarterly returns alone, without reference to the annual return or final adjustment return, was therefore insufficient to establish fraud. This is especially so considering that petitioner disclosed the transaction in its VAT return, a circumstance inconsistent with any intent to evade tax.

With no fraud to justify the application of the extraordinary prescriptive period, the Court proceeds to determine whether the assessment was issued within the ordinary three-year period under Section 203 of the NIRC.

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[103] G.R. No. 105208, May 29, 1995 [Per J. Romero, Third Division].

Petitioner filed its Annual Income Tax Return (**AITR**) for FY 2017 on January 15, 2018,[104] which was also the statutory deadline.[105] Under Section 203, the three-year period to assess petitioner for deficiency income tax expired on **January 15, 2021**.

An assessment is deemed made only on the date the assessment notice was released, mailed, or sent to the taxpayer.[106] Furthermore, it is clear that the assessment contemplated in Sections 203 and 222 of the NIRC of 1997, as amended, refers to the service of the FAN upon the taxpayer.[107] Here, the FLD and FAN were issued only on **October 7, 2021**, well beyond the three-year prescriptive period.

The Court recognizes that the running of the statute of limitations was suspended during the COVID-19 pandemic pursuant to Section 4(z) of RA No. 11469, which authorized the extension of statutory deadlines and timelines.[108]

In implementation thereof, RR Nos. 7-2020,[109] 10-2020,[110] and 11-2020[111] expressly suspended the running of the prescriptive period under Sections 203 and 222, pursuant to Section 223, beginning March 16, 2020.

The computation of the period of suspension was clarified in RMC No. 136-2020,[112] issued on December 7, 2020, which specified that the suspension runs from March 16, 2020 until **sixty (60) days after the lifting of quarantine**, and that the

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[104] Docket – Vol. II, pp. 775-789, Exhibit "P-5".

[105] NIRC of 1997, as amended, sec. 77(B).

[106] *Commissioner of Internal Revenue v. Pascor Realty and Development Corp.*, G.R. No. 128315, June 29, 1999 [Per J. Panganiban, Third Division].

[107] *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017 [Per J. Leonen, Third Division].

[108] SEC. 4. Authorized Powers. – Pursuant to Article VI, Section 23 (2) of the Constitution, the President is hereby authorized to exercise powers that are necessary and proper to carry out the declared national policy. The President shall have the power to adopt the following temporary emergency measures to respond to crisis brought by the pandemic:

....

(z) **Move statutory deadlines and timelines for the filing and submission of any document**, the payment of taxes, fees, and other charges required by law, and the grant of any benefit, in order to ease the burden on individuals under Community Quarantine; (Emphasis supplied)

[109] Implementing Section 4(z) of Republic Act No. 11469, otherwise know as "Bayanihan to Heal As One Act", particularly on the extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes, March 27, 2020.

[110] Amends Section 2 of Revenue Regulations No. 7-2020 Relative to the Extension of Statutory Deadlines and Timelines for the Filing and Submission of Any Document and the Payment of Taxes Pursuant to Section 4(z) of Republic Act No. 11469, Otherwise Known as "Bayanihan to Heal as One Act", April 9, 2020.

[111] Amends Section 2 of Revenue Regulations No. 10-2020 relative to the extension of statutory deadlines and timelines for the filing and submission of any document and the payment of taxes pursuant to Section 4(z) of Republic Act No. 11469, otherwise known as "Bayanihan to Heal As One Act", April 29, 2020.

[112] Clarification on the Suspension of the Statute of Limitations Provided Under Revenue Regulations (RR) No. 11-2020, December 7, 2020.

number of days covered by such suspension must be excluded in counting the three-year prescriptive period to assess.[113]

Moreover, RMC No. 93-2021 [114] reiterated that the suspension applies in areas placed under Enhanced Community Quarantine (ECQ) and/or Modified ECQ (MECQ), including any extension/s thereof, and for 60 days thereafter.

Applying the foregoing issuances, the Court considers the quarantine classifications in **Bacolod City** up to the issuance of the FAN/FLD on October 7, 2021:

Quarantine / Alert Level Status	**Pertinent IATF Resolution / Order**	**Date Covered**	**Number of Days**
General Community Quarantine (**GCQ**)[115]	Bacolod City EO No. 21	March 16 – March 29, 2020	61
Enhanced Community Quarantine (**ECQ**)	Bacolod City EO No. 26 / EO 112	March 30 – May 15, 2020	
			+60 days[116]
Modified ECQ (**MECQ**)	IATF Resolution No. 69-A	Sept 8 – Sept 30, 2020	23
			+60 days[117]
Total number of days of suspension of the statute of limitations			**204 days**

Hence, as illustrated above, **a total of 204 days** is added to the original prescriptive period, giving respondent **<u>three years and 204 days</u>**, or until **August 9, 2021,**[118] to assess petitioner.

[113] Item 32 in the matrix provided under RR No. 11-2020 pertains to the suspension of the statute of limitation provided under Sections 203 and 222 of the Tax Code. The said matrix provided that the suspension shall start from March 16, 2020, when the state of emergency was declared due to COVID-19 virus until sixty days after the lifting of the quarantine. With such suspension, the counting of the three (3)-year prescriptive period for the period to assess and the five (5)-year period to collect, shall exclude the number of days covered by the period of suspension, which is a total of one hundred thirty-seven (137) days.

[114] SUBJECT: SUSPENSION OF THE RUNNING OF THE STATUTE OF LIMITATIONS ON ASSESSMENT AND COLLECTION OF TAXES PURSUANT TO SECTION 223 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, DUE TO THE DECLARATION OF ENHANCED COMMUNITY QUARANTINE (ECQ) AND MODIFIED ECQ (MECQ) IN THE NATIONAL CAPITAL REGION (NCR) AND OTHER AREAS OF THE COUNTRY.

[115] Despite being only in GCQ, RR No. 7-2020 provides a nationwide suspension on the running of statute of limitations.

[116] See requirement under RMC No. 93-2021.

[117] See requirement under RMC No. 93-2021.

[118] The 3-year-and-204-day period lapses on August 7, 2021, Saturday. The next working day is August 9, 2021.

Even with this extension, respondent's right to assess had already prescribed when the FAN[119]/FLD[120] was issued on **October 7, 2021**.

The FAN and the FLD are void for failure to state a definite due date.

Section 228 of the NIRC of 1997, as amended,[121] mandates that the taxpayer be informed in writing of the facts and the law upon which the assessment is based; otherwise, the assessment is void.[122] This requirement is mandatory, not merely directory, and cannot be presumed.

Jurisprudence further underscores that "the issuance of a **valid** formal assessment is a substantive prerequisite to the collection of taxes."[123]

In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*,[124] the Supreme Court held that an assessment must not only contain a computation of tax liabilities but must also embody a **demand for payment within a prescribed period,** as this demand marks the point when penalties and interest begin to accrue and enables the taxpayer to determine the proper remedies. Thus:

> **An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period**. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. ... (Emphasis supplied)

More emphatically, in *Commissioner of Internal Revenue v. Fitness by Design, Inc.* (***Fitness by Design***),[125] cited in *Republic*

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[119] BIR Records, p. 482, Exhibit "R-12-2"; 496, Exhibit "P-25-2".

[120] *Id.* at 480-481, Exhibit "R-12":488-489, Exhibit "P-25".

[121] SEC. 228. Protesting of Assessment. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:

....

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

[122] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398–99 *et al.*, October 3, 2018 [Per J. Leonen, Third Division].

[123] *Commissioner of Internal Revenue v. Menguito*, G.R. No. 167560, September 17, 2008 [Per J. Austria-Martinez, Third Division].

[124] G.R. No. 128315, June 29, 1999 [Per J. Panganiban, Third Division]. See also *Tupaz v. Ulep*, G.R. No. 127777, October 1, 1999 [Per J. Pardo, First Division].

[125] G.R. No. 215957, November 9, 2016 [Per J. Leonen, Second Division].

v. First Gas Power Corp. ***(First Gas Power Corp)***,[126] the Supreme Court held that a Final Assessment Notice is not valid if it does not state a **definite due date for payment** by the taxpayer, thus:

> **A final assessment notice provides for the amount of tax due with a demand for payment.** ...
>
> . . . .
>
> The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. ... **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.**
>
> . . . .
>
> **A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof."** This demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]" Thus, it must be "sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period."
>
> **The disputed Final Assessment Notice is not a valid assessment.**
>
> First, **it lacks the definite amount of tax liability** for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be.
>
> . . . .
>
> Second, **there are no due dates in the Final Assessment Notice.** This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:.... (Emphasis supplied; citations omitted)

Following *Fitness by Design*, the Supreme Court consistently nullified assessments that fail to indicate a

[126] G.R. No. 214933, February 15, 2022 [Per J. Lopez, J., First Division].

definite due date for payment,[127] holding that such omission renders the supposed demand for payment legally ineffective. Without a specific period within which payment must be made, there is no valid assessment to speak of.

The importance of a due date is further underscored in Section 249(C) of the NIRC of 1997, as amended, which provides that **delinquency interest** accrues only from the "due date appearing in the notice and demand." Without a due date, there is neither a lawful demand nor a basis to compute delinquency interest.

Section 249(C) provides, in part:

> SEC. 249. *Interest.* –
>
> (C) Delinquency Interest. - In case of failure to pay:
>
> . . . .
>
> (3) A deficiency tax, or any surcharge or interest thereon **<u>on the due date appearing in the notice and demand of the Commissioner</u>**, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax. (Emphasis supplied)

Accordingly, **without a definite due date**, delinquency interest cannot lawfully accrue, and the BIR cannot enforce collection. This alone underscores why specifying a due date is an indispensable element of a valid assessment.

An assessment is a "written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed." The Supreme Court in *Fitness by Design* reiterated that a final assessment must be "sent to and received by the taxpayer, and **must demand payment of the taxes described therein within a specific period**." The phrase "specific period" must refer to a prospective or future due date that affords the taxpayer a real and fair opportunity to comply. A due date that has already lapsed at the time of receipt deprives the taxpayer of this opportunity and thus violates the taxpayer's due process rights.

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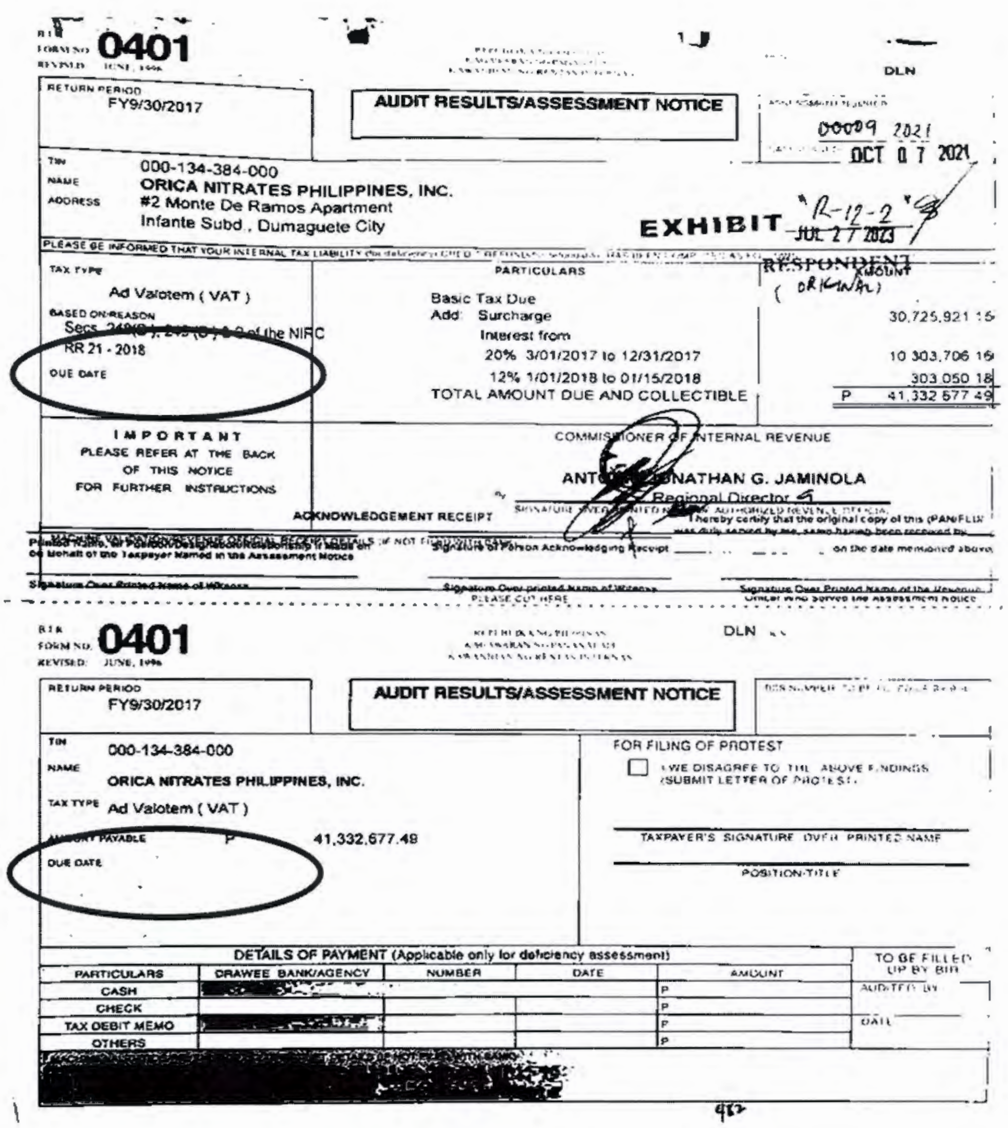
[127] *Republic v. First Gas Power Corporation*, G.R. No. 214933, February 15, 2022 [Per J. Lopez, J., First Division]; *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020 [Per J. Inting, Second Division].

In this case, the FLD[128] dated October 7, 2021 contains the following instruction:

> In view thereof, you are requested to pay your aforesaid Ad Valorem Penalties on Income Tax through the duly Authorized Agent Bank in which you are enrolled within the time shown in the assessment notice.

However, a perusal of the FAN[129] shows that no due date was indicated. The due-date field was left blank, *viz*.:



BIR FORM NO. 0401

AUDIT RESULTS/ASSESSMENT NOTICE

DLN

RETURN PERIOD: FY9/30/2017

00009 2021

OCT 0 7 2021

TIN: 000-134-384-000
NAME: ORICA NITRATES PHILIPPINES, INC.
ADDRESS: #2 Monte De Ramos Apartment Infante Subd., Dumaguete City

EXHIBIT "R-12-2" JUL 27 2023 RESPONDENT (ORIGINAL)

TAX TYPE	PARTICULARS	AMOUNT
Ad Valorem (VAT)	Basic Tax Due	30,725,921.15
BASED ON/REASON Secs. 248(B), 249(B) & (C) of the NIRC RR 21 - 2018	Add: Surcharge	10,303,706.16
	Interest from 20% 3/01/2017 to 12/31/2017	
DUE DATE	12% 1/01/2018 to 01/15/2018	303,050.18
	TOTAL AMOUNT DUE AND COLLECTIBLE	P 41,332,677.49

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

COMMISSIONER OF INTERNAL REVENUE
ANTONIO JONATHAN G. JAMINOLA
Regional Director

ACKNOWLEDGEMENT RECEIPT

BIR FORM NO. 0401

AUDIT RESULTS/ASSESSMENT NOTICE

DLN

RETURN PERIOD: FY9/30/2017

TIN: 000-134-384-000
NAME: ORICA NITRATES PHILIPPINES, INC.
TAX TYPE: Ad Valorem (VAT)
AMOUNT PAYABLE: P 41,332,677.48
DUE DATE:

FOR FILING OF PROTEST
☐ I/WE DISAGREE TO THE ABOVE FINDINGS (SUBMIT LETTER OF PROTEST)
TAXPAYER'S SIGNATURE OVER PRINTED NAME
POSITION/TITLE

DETAILS OF PAYMENT (Applicable only for deficiency assessment)

PARTICULARS	DRAWEE BANK/AGENCY	NUMBER	DATE	AMOUNT
CASH	[redacted]			P
CHECK				P
TAX DEBIT MEMO	[redacted]			P
OTHERS				P

[redacted]

TO BE FILLED UP BY BIR
AUDITED BY
DATE

Clearly, there was **no date certain** by which petitioner was required to pay, no defined period for compliance, and thus **no valid demand for payment**. This defect is not a mere irregularity; it is a substantive violation of due process that, under *Fitness by Design* and subsequent jurisprudence, renders the subject FAN and FLD void.

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[128] BIR Records, pp. 480-481, Exhibit "R-12"; 488-789, Exhibit "P-25".
[129] *Id.* at 482, Exhibit "R-12-2";496, Exhibit "P-25-2".

The principle of due process furnishes a standard to which governmental action should conform in order to impress it with the stamp of validity. Fidelity to such standards must be the overriding concern of government agencies.[130] While indeed the government has an interest in the swift collection of taxes, its assessment and collection should be exercised justly and fairly and always in strict adherence to the requirements of the law and of the BIR's own rules.[131]

Given the foregoing, the Court finds that the FAN and FLD are void for four independent reasons:

(1) the Third LOA is void for violating the "One LOA per Taxable Year" rule;

(2) the audit was conducted by revenue officers who were not duly authorized under a valid LOA;

(3) the assessment was issued beyond the prescriptive period; and

(4) the FAN and FLD failed to state a definite due date for payment.

In view of the nullity of the assessment, further discussion of the remaining issues is unnecessary.

WHEREFORE, premises considered, petitioner Orica Nitrates Philippines, Inc.'s *Petition for Review* is hereby **GRANTED**.

Accordingly, the Final Assessment Notice and Formal Letter of Demand, both dated October 7, 2021, are hereby **CANCELLED** and **SET ASIDE**.

Furthermore, respondent Commissioner of Internal Revenue is **ENJOINED** and **PROHIBITED** from enforcing the collection of the subject ad valorem penalties assessment against petitioner.

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[130] *Mabuhay Textile Mills Corporation v. Ongpin*, G.R. No. 67784, February 28, 1986 [Per J. Gutierrez, Jr., First Division], citing *Bacus v. Ople*, G.R. No. 56856, October 23, 1984 [Per J. Cuevas, Second Division].

[131] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398–99 *et al.*, October 3, 2018 [Per J. Leonen, Third Division].

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Special First Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice