REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PRISCILA J. CRUZ and JOCELYN CRUZ-DELOS REYES (in substitution of the deceased JULIO S. CRUZ),
Respondents.

CTA EB No. 1646
(CTA Case No. 8103)

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PRISCILA CRUZ and JOCELYN CRUZ-DELOS REYES (IN SUBSTITUTION OF DECEASED JULIO S. CRUZ),
Petitioners,

- versus -

THE COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1650
(CTA Case No. 8103)

Present:
DEL ROSARIO, *P.J.;*
CASTAÑEDA, JR.
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN, *JJ.*

Promulgated:

NOV 13 2018 3:39 p.m.

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DECISION

Fabon-Victorino, J.:

Before the Court are the Petitions for Review filed by the Commissioner of Internal Revenue (CIR), in CTA EB No. 1646, and by Priscila Cruz and Jocelyn Cruz De Los Reyes (Cruzes), in CTA EB No. 1650, assailing the Decision dated September 2, 2016 rendered by the Court in Division in CTA

Case No. 8103. Both also assail the Resolution dated April 19, 2017, which denied their respective motions for reconsideration.

The following facts established during trial are undisputed.

The CIR is the Commissioner of the Bureau of Internal Revenue (BIR), charged with the responsibility to collect all national internal revenue taxes, with office at the BIR National Office Building, Diliman, Quezon City.

Priscila Cruz is the spouse of deceased Julio S. Cruz, who died after the termination of the Pre-trial Conference conducted by the Court in Division, hence, he was substituted by his eldest daughter, Jocelyn Cruz-Delos Reyes. The Cruzes may be notified at their office at Doña Priscila Building, Manila East Road, Taytay, Rizal.

On May 6, 2008, the representative of the Cruzes received from the BIR a Letter of Authority (LOA) 2007-00021886 dated April 30, 2008 authorizing Revenue Officers Valentin C. Paz, Themos L. Maroket, and Edgardo S. Sabaresa, all under the supervision of Raul Q. Magtagnob, of the BIR National Investigation Division (NID), to examine "the books of accounts and other accounting records for all Internal Revenue Taxes for the period from Taxable Years 2004 and UPY[1]."

The said LOA was followed by a Preliminary Assessment Notice (PAN) dated February 27, 2009 for deficiency income tax assessment in the amount of P789,342,934.33, fifty percent (50%) surcharge, and interest for taxable years (TY) 1992 to 2004. The same was received on April 24, 2009 also by the representative of the Cruzes who filed a protest on May 11, 2009.

On September 17, 2009, the Cruzes, through their representative, received a Formal Letter of Demand (FLD) dated July 15, 2009 and thirteen (13) Assessment Notices

[1] Unverified prior years.

issued on September 1, 2009 for deficiency income taxes for TYs 1992 to 2004 in the amount of P804,941,747.88.

Again, the Cruzes challenged the said FLD on October 16, 2009, through a Letter of Protest.

On April 12, 2010, the Cruzes, through their representative, received the Final Decision on Disputed Assessment (FDDA) dated February 15, 2010, denying their protest against the FLD.

Aggrieved, the Cruzes filed a Petition for Review before the Court in Division on May 7, 2010.

After trial, the assailed Decision dated September 2, 2016 was promulgated, disposing the case as follows:

> WHEREFORE, premises considered, the deficiency income tax assessment issued by respondent (CIR) against petitioner (Cruzes) for taxable year 2004 is AFFIRMED, while the deficiency income tax assessments for taxable years 1992 to 2003 are CANCELLED and SET ASIDE for lack of valid LOA. Accordingly, petitioners are ORDERED TO PAY FOURTEEN MILLION NINE HUNDRED FIFTY THREE THOUSAND EIGHTY-SEVEN PESOS AND FIFTY-THREE CENTAVOS (P14,953,087.53) representing basic deficiency income tax, inclusive of the 50% surcharge imposed under Section 248(B) of the NIRC of 1997, as amended, computed as follows:

Basic deficiency income tax for taxable year 2004	P 9,968,725.02
Add: 50% surcharge	4,984,362.51
Total	P 14,953,087.53

> In addition, petitioners are hereby ORDERED TO PAY:
>
> (a) Deficiency interest at the rate of twenty (20%) per annum on the basic deficiency income tax computed from April 15, 2005 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and
>
> (b) Delinquency interest at the rate of 20% per annum on the total amount of P14,953,087.53 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from April 12, 2010 until full

payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

The Cruzes and the CIR moved for the reconsideration of the Decision of September 2, 2016 which were both denied for lack of merit.

Hence, the instant Petitions Review filed on May 24, 2017 by the CIR docketed as CTA EB No. 1646, and by the Cruzes, on May 31, 2017 docketed as CTA EB No. 1650.

In a Minute Resolution dated June 1, 2017, the two cases were consolidated.

In his appeal, the CIR questions the ruling of the Court in Division invalidating the assessment for TYs 1992 to 2003 for lack of proper LOA to conduct of tax investigation and to issue assessment for the said years.

He claims that contrary to the ruling of the Court in Division, the LOA need not specify the years covered for investigation to be valid. Allegedly, unspecified years prior or subsequent to the year specified in the LOA may also be validly investigated pursuant to Revenue Memorandum Order (RMO) 24-2008 as long as the investigation of such unspecified years is "to determine or trace continuing transactions entered into in the covered year and concluding thereafter" as obtaining in the present case.

While only the year 2004 was specified in the LOA, the investigation for TYs 1992 to 2003 was essential being the starting point of the transaction subject of investigation for deficiency income taxes. Hence, the LOA authorizing the investigation and assessment for TY 2004 and unverified prior years or UPY is valid and justified.

In fact, under the obtaining circumstances, an authority to examine the books of account by the named Revenue Officers was not necessary since they themselves collated the data they used as basis of the assailed assessment.

Further, since the taxpayers themselves participated in the entire investigation, and were allowed ample opportunity to dispute the assessment, the alleged infirmity due to his inability to specify all the taxable years covered by the investigation should not work against the otherwise valid LOA.

Finally, the Cruzes are estopped from assailing the validity of the LOA as they were able to avail remedial measures in their favor including the filing of protests against the assessment and actions for the cancellation or modification of the same.

The Cruzes, on the other hand, counter that the CIR cannot rely on RMO 24-2008 issued on June 11, 2008 as basis to justify the validity of the subject LOA which was issued ahead on April 30, 2008. They believe that RMO 24-2008 cannot be applied retroactively or be used as basis to uphold the validity of the LOA.

The Cruzes also dispute the contention that a LOA is not required in this case since their books of accounts were not examined and that the BIR Revenue Officers themselves collated the documents they needed and used as basis for the issuance of the assailed assessment, citing *Medicard vs. Commissioner of Internal Revenue (Medicard)*.[2]

The Cruzes point out that a valid LOA is required before the BIR can legally assess any taxpayer for deficiency taxes. The cited Medicard case is an exception not applicable to this case as they differ in factual milieu. In the Medicard case, a LOA was dispensed with since the documents used by the BIR in its investigation resulting in the issuance of the assessment were submitted by the taxpayer itself in support of its protest. Thus, the taxpayer therein was deemed to have authorized the BIR to conduct an investigation through the documents it submitted, thereby dispensing with the need for a LOA. In stark contrast, there was no such submission of documents by the Cruzes, therefore, no implied authorization was given by the taxpayer.

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[2] CTA EB No. 1224.

Lastly, the CIR cannot validly invoke estoppel against them to justify an *ultra vires* action on the alleged ground that they were able to avail of various remedies to dispute the subject assessment. Per jurisprudence, the doctrine of estoppel cannot operate to give effect to a patently illegal act, such as the lack of a valid LOA in this case.

In their own Petition for Review, the Cruzes argue that the PAN and FLD issued against them are void since the LOA which authorized the Revenue Officers to conduct investigation and issue the impugned assessment is void since it was issued by the Deputy Commissioner of the Legal and Inspection Group in violation of Section 10 of the NIRC, as amended, which provides that only Revenue Regional Directors have authority to issue LOAs. In fine, at the time he issued the questioned LOA, the Deputy Commissioner of the Legal and Inspection Group still lacked the required authority to issue a LOA which was accorded to him only later on May 9, 2008 when RMO No. 24-2008 was issued.

Even assuming that the LOA was issued by an authorized BIR officer, the subject LOA, which expired after 120 days from issue, had already lapsed since it was not revalidated as required under RMO 38-88 and RMO 40-2006. Since the efficacy of the LOA had already lapsed, it could not give birth to a valid assessment.

The absence of a Notice of Informal Conference in violation of their right to due process also rendered the assessment void for such indicates that the parties failed to meet and that the Cruzes were not accorded the opportunity to adduce evidence in their favor.

The Cruzes also find erroneous that the PAN, FLD, and FDDA were all issued by one and the same person, Deputy Commissioner Cabantac. Under RMO No. 11-2006, "cases for reinvestigation/protested cases shall not be assigned to the same RO who handled the initial investigation."

They were likewise deprived of due process as the PAN, FLD, and FDDA failed to fully inform them of the law and the facts upon which the assessment was based, as required in Section 228 of the NIRC, as amended.

The Cruzes also do not agree with the finding that they are liable for deficiency income tax and that they filed a false or fraudulent return warranting the application of the ten-year prescriptive period to assess. They claim that no proof of actual or intentional fraud was presented against them, hence, such finding is a mere conjecture. The finding of fraud is premised on alleged unreported sources of cash investment. For the CIR, the investment came from unreported income subject to tax. However, there is no proof that they indeed earned taxable income which they did not report in their tax returns for the subject TYs. Without fraud, the ten-year prescriptive period to assess should not apply.

Finally, they availed of tax amnesty covering TY year 2005 and prior years.

In his Comment, the CIR, invoking Section 7, Rule 43 of the Rules of Court, moves to dismiss the case outright for failure to contain an Affidavit of Service required under Section 13, Rule 13 of the same Rules of Court, as amended.

THE RULING OF THE COURT

On the timeliness of seeking judicial review by the parties, Section 228 of the NIRC, as amended, pertinently provides, thus:

> 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: x x x
>
> 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; otherwise, the assessment shall become final.
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> 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. (emphasis ours)

Per the foregoing provision, a request for reconsideration must be made by the taxpayer within thirty (30) days from receipt of the tax deficiency assessment, otherwise, the decision becomes final, unappealable and therefore, demandable. x x x. Where an adverse ruling has been rendered by the Commissioner of Internal Revenue with reference to a disputed assessment or a claim for refund or credit, the taxpayer may appeal the same within thirty (30) days after receipt thereof.[3] Thus, the Cruzes had 30 days to appeal the CIR's denial of its protest to the CTA.[4]

Evidence show that the Cruzes received the FLD on September 17, 2009 giving them thirty (30) days or until October 17, 2009 to protest the same. In fine, their protest was timely filed on October 16, 2009.

On April 12, 2010, the Cruzes received the FDDA denying their protest, thus, they had thirty (30) days or until May 12, 2010 to appeal the matter to the CTA. Undoubtedly, their Petition for Review was seasonably instituted with the Court in Division on May 7,2010.

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[3] Oceanic Wireless Network vs. CIR, G. R. No. 148380, December 9, 2005.
[4] Fishwealth Canning Corporation vs. CIR, G.R. No. 179343, January 21, 2010.

The same is true with the instant Petitions for Review before the Court *En Banc.* From receipt of the Resolution dated April 19, 2017 denying their respective bids for reconsideration of the Decision dated September 2, 2016, both the CIR and the Cruzes had fifteen (15) days to elevate the matter to the Court *En Banc.*[5]

The CIR received the Resolution dated April 19, 2017 on April 24, 2017 giving him until May 9, 2017 to appeal to the Court *En Banc*. Within the allowable period, the CIR moved and was granted an extension of 15 days, hence, his Petition for Review was lodged on time on May 24, 2017.

On the other hand, the Cruzes received the Resolution dated April 19, 2017 on May 2, 2017 and also moved for an extension of until June 1, 2017 to appeal. Thus, their Petition for Review filed on May 31, 2017 was likewise timely filed vesting the Court *En Banc* the jurisdiction to determine the merit of the present cases.

On the merits of the cases. One of the most important provisions enshrined in our 1987 Constitution under which most party-litigants take refuge is found in Article III, Section 1 of the title Bill of Rights. It provides that no person shall be deprived of life, liberty or property without due process of law. In relation to the present case, it has been held while taxes are the lifeblood of the government, the power to tax has its limits, in spite of all its plenitude.[6]

Precisely, before any revenue officer may conduct an examination or assessment of a taxpayer, such revenue officer must first be authorized to do so. To further flex the taxing muscle of the government, the examining revenue officer is not allowed to go beyond the authority given him or her. In the absence of such valid authority, the assessment or examination conducted is a nullity.[7]

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[5] Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals.
[6] Commissioner of Internal Revenue vs. Metro Star Superama, G.R. No. 185371, December 8, 2010.
[7] Commissioner of Internal Revenue vs. Sony Philippines, Inc., G.R. No. 178697, November 17, 2010.

Such authority is embodied in a LOA defined as the authority given to the appropriate revenue officer assigned to perform assessment or audit functions. It empowers or enables the said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax due. A LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. x x x Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.[8]

In the instant case, the investigation and audit of the Cruzes commenced with LOA 2007-00021886,[9] authorizing Revenue Officers Valentin C. Paz, Themis L. Maroket, and Edgardo S. Sabareza, under the supervision of Raul Q. Magtagnob, to examine the books of accounts and other accounting records for the period 2004 to UPY. The audit and investigation culminated in the issuance of the FLD finding the Cruzes liable for deficiency income taxes for TYs 1992 to 2004.

Significantly, under the rules, a LOA can only authorize the examination of one (1) taxable period and any other unspecified periods mentioned in the LOA is not validly covered. Thus, any assessment for the unspecified periods not validly covered by the LOA is deemed the result of an unauthorized examination, and therefore void.

In this regard, the Supreme Court categorically proscribed the BIR's practice of issuing LOAs covering unverified prior years (UPYs). It ruled:

> Upon review, the CTA-EB even added that the coverage of LOA 19734, particularly the phrase "and unverified prior years," violated Section C of Revenue Memorandum Order No. 43-90 dated September 20, 1990, the pertinent

[8] Medicard Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 222743, April 5, 2017.
[9] Exhibit R-1, BIR Record p. 59.

portion of which reads:

> 3. A Letter of Authority should cover **a taxable period not exceeding one taxable year**. The practice of issuing L/As covering audit of "unverified prior years is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the L/A.
>
> On this point alone, the deficiency VAT assessment should have been disallowed.[10]

Very clearly, that portion of LOA 2007-00021886 dated April 30, 2008 authorizing the assigned Revenue Officers to audit the books of account and other accounting records of the Cruzes for all Internal Revenue taxes for unspecified prior years cannot be allowed. In other words, the absence of a valid LOA authorizing the tax audit and examination of the Cruzes for taxable years 1992 to 2003, rendered the assessment resulting therefrom void.

The foregoing therefore negates the CIR's argument that LOA 2007-00021886 dated April 30, 2008 can validly cover the tax investigation of unspecified years prior or subsequent to the year specified in the LOA. To repeat, a LOA can only cover one (1) taxable year, and any unspecified prior or subsequent years cannot be validly covered by the same LOA.

This precept was clarified in a subsequent case where the Supreme Court held, thus:

> What this provision clearly prohibits is the practice of issuing LOAs covering audit of *unverified prior years*. RMO 43-90 does not say that a LOA which contains unverified prior years is void.

[10] Commissioner of Internal Revenue vs. Sony Philippines, Inc., G.R. No. 178697, November 17, 2010.

> It merely prescribes that if the audit includes more than one taxable period, the other periods or years must be specified. The provision read as a whole requires that if a taxpayer is audited for more than one taxable year, the BIR must specify each taxable year or taxable period on separate LOAs. x x x As the CTA correctly held, the assessment for taxable year 2003 is valid because this taxable period is specified in the LOA. DLSU was fully apprised that it was being audited for taxable year 2003. Corollarily, the assessments for taxable years 2001 and 2002 are void for having been *unspecified* on separate LOAs as required under RMO No. 43-90.[11]

Beyond the foregoing, the CIR believes that the assessment for 2004, as well as for 1992 to 2003, are valid because it was not even necessary for him to issue a LOA as the assigned Revenue Officers themselves collated the bases of their assessment without examining the books of account and other accounting records of the Cruzes. But the prevailing jurisprudence contradicts this stance emphasizing the essence of the statutory requirement of issuing a LOA before a tax examination may be conducted, thus:

> x x x **an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination**.
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> The BIR's RELIEF System has admittedly made the BIR's assessment and collection efforts

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[11] Commissioner of Internal Revenue vs. De La Salle University, Inc., G.R. No. 196596; De La Salle University Inc. vs. Commissioner of Internal Revenue, G.R. No. 198841; Commissioner of Internal Revenue vs. De La Salle University, Inc., G.R. No. 198941, November 9, 2016.

> much easier and faster. The ease by which the BIR's revenue generating objectives is achieved is no excuse however for its non-compliance with the statutory requirement under Section 6 and with its own administrative issuance. In fact, apart from being a statutory requirement, **an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records:** to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.
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> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void. [12] (emphasis ours)

Plainly, a valid LOA is required to conduct investigation on any taxpayer, regardless of whether the latter voluntarily submitted or opened their books of account and other accounting records for the BIR to feast on.

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[12] Medicard Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 222743, April 5, 2017.

On the CIR's allegation that the Cruzes as taxpayers are estopped from impugning the validity of the LOA given that they were able to take remedial actions to protect their interest, including filing protest against the assessment, such is patently devoid of merit. Note that the Cruzes filed their protest as a matter of right precisely to question the assessment which necessarily included compliance with the mandatory due process requirements under the law. Due process contemplated in taxation includes the issuance of a LOA which ignites the investigation and assessment of the taxpayer.

To deprive the Cruzes of their right to question the LOA is tantamount to taking away from them what the law has provided for their availment. A valid LOA is a precursor and part of the due process requirement for purposes of assessment and collection of taxes.

When the law or rule mandates that a party or authority must comply with a specific obligation to perform an act for the benefit of another, the non-compliance thereof by the former should not operate to prejudice the latter, lest it render nugatory the objective of the rule. Such is the situation in case at bar.[13] The equitable doctrine of estoppel (is) for the *prevention of injustice* and is for the protection of those who have been misled by that which on its face was fair x x x. It cannot therefore be utilized to insulate from liability the very perpetrators of the injustice complained of.[14] Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.[15]

With obvious intention to totally avoid payment of the assessed tax liability, the Cruzes, on the other hand, contend that the LOA issued against them is void in its entirety having been issued by a Deputy Commissioner of the Legal and Inspection Group of the BIR, who is without authority to do so.

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[13] Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, G.R. No. 207112, December 8, 2015.
[14] Republic of the Philippines vs. Mega Pacific Esolutions, Inc., Willy U. Yu, Bonnie S. Yu, Enrique T. Tansipek, Rosita Y. Tansipek, Pedro O. Tan, Johnson W. Fong, Bernard I. Fong, and Lauriano A. Barrios, G.R. No. 184666, June 27, 2016.
[15] Commissioner of Internal Revenue vs. Fitness By Design, Inc., G.R. No. 215957, November 9, 2016.

The contention collides with the categorical provision of the Tax Code.

As amended by R.A. No. 8424, the NIRC, specifically Sec. 7 thereof, authorizes the BIR Commissioner to delegate the powers vested in him under the pertinent provisions of the Code to any subordinate official with the rank equivalent to a division chief or higher, except the following:

> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
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> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
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> (c) The power to compromise or abate under Sec. 204(A) and (B) of this Code, any tax deficiency: *Provided, however*, that assessments issued by the Regional Offices involving basic deficiency taxes of five hundred thousand pesos (P500,000.00) or less, and minor criminal violations as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon the recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
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> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept.[16]

In fine, the CIR may delegate the powers vested in him under the pertinent provisions of the NIRC to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as

[16] Republic of the Philippines, Represented by the Commissioner of the Bureau of Internal Revenue (BIR) vs. Salud v. Hizon, G.R. No. 130430, December 13, 1999.

may be imposed under the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the CIR.[17] Corollarily, the [Supreme] Court held - "the general rule is that the Commissioner of Internal Revenue may delegate any power vested upon him by law to Division Chiefs or to officials of higher rank. He cannot, however, delegate the four powers granted to him under the [NIRC] enumerated in Section 7."[18]

It is therefore plain that the issuance of the LOA by the Deputy Commissioner of the Legal and Inspection Group of the BIR does not fall under any of the exceptions mentioned as non-delegable. In other words, the Deputy Commissioner of the Legal and Inspection Group of the BIR is deemed clothed with proper authority to issue the LOA in this case.

Moreover, as a general rule, official acts enjoy the presumption of regularity, and the presumption may be overthrown only by evidence to the contrary. When an act is official, a presumption of regularity exists because of the assumption that the law tells the official what his duties are and that he discharged these duties accordingly.[19]

The Court *En Banc* cannot also side with the Cruzes on their contention that the LOA issued against them was effective only for 120 days, and should have been subsequently revalidated. But nothing in the law, or the jurisprudence cited supports this preposition.

With the invalidity of the assessment for the years 1992 to 2003 due to the lack of valid LOAs covering the said years, the validity of the remaining assessment for the specified year, i.e. 2004, must now be determined.

Under Section 228 of the Tax Code, a taxpayer must be informed in writing of the legal and factual bases of the tax

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[17] Commissioner of Internal Revenue vs. Hedcor Sibulan, Inc., G.R. No. 209306, September 27, 2017.
[18] People of the Philippines vs. Tess S. Valeriano, G.R. No. 199480, October 12, 2016.
[19] Reyes, Jr. vs. Belisario, G.R. No. 154652, August 14, 2009

assessment made against him. The use of the word "shall" indicates the mandatory nature of the requirements.[20]

A perusal of the FLD and the Assessment Notice No. ES-IT-2004-0806, reveals that the Cruzes failed to report in their return the source of their cash investment with Manila East Holding Corporation (MEHCOR) and J.S. Cruz Construction and Development Inc. (CruzCon) for which reason they were assessed deficiency income tax, citing Sections 29(a) and 32(A)(2) as legal basis. The fact that the Cruzes were informed of the factual and legal bases of the assessment is shown in Annex A-1 of the FLD, to wit:

> Verification conducted on the Audited Financial Statements and Corporate Records of Manila East Holdings Corporation and J.S. Cruz Construction Corporation disclosed that Spouses Julio and Priscila Cruz made substantial Cash Investments from 1992 to 2004 which totaled to Php743,366,011.58.
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> x x x x x x
>
> Verification conducted on the Bureau of Internal Revenue's Integrated Tax Systems disclosed that Spouses Julio and Priscila Cruz filed their combined income tax returns from 1999 to 2004 using BIR form 1700. (Compensation income subject to fix (sic) and determinable income tax rate).
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> Their reported compensation income from 1999 to 2004 totaled to Php9,686,480.00 x x x.
>
> x x x x x x
>
> Spouses Julio and Priscila Cruz were assessed of Php688,775,028.11 computed on a yearly basis inclusive of increments for unsubstantiated/unexplained sources of cash investments of Php743,366,011.58 in Manila East

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[20] Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc., G.R. No. 197515, July 02, 2014.

Holdings Corporation and J.S. Cruz Construction and Development Corporation from 1992 to 2004.

As succinctly held by the Court in Division, assessment notices need not be a full narration of the facts and laws on which the assessment is based. For after all, substantial compliance with the requirement under Section 228 of the NIRC suffices, for what is important is that the taxpayer has been sufficiently informed of the factual and legal bases of the assessment so that it may file an effective protest against the assessment. [21] Due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest. To immediately ensue with tax collection without initially substantiating a valid assessment contravenes the principle in administrative investigations "that taxpayers should be able to present their case and adduce supporting evidence".[22]

The fact that the Cruzes were able to intelligently protest the PAN on May 11, 2009 through a protest letter dated May 6, 2009, and the FLD on October 16, 2009 is a plain indication that they were informed of the facts and law upon which the assessment was based.

Anent the Cruzes' complaint that no Notice of Informal Conference was issued by the BIR, suffice it to say that even if such were true, the same would not make a dent to the otherwise valid assessment.

It has been ruled that the stringent requirement that an assessment notice be satisfactorily proven to have been issued and released or, if receipt thereof is denied, that said assessment notice have been served on the taxpayer, applies only to formal assessments prescribed under Section 228 of the National Internal Revenue Code, but not to post-reporting notices or pre-assessment notices. The issuance of a valid formal assessment is a substantive prerequisite to tax collection, for it contains not only a computation of tax

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[21] Commissioner of Internal Revenue vs. Asalus Corporation, G.R. No. 221590, February 22, 2017.

[22] Commissioner of Internal Revenue vs. Fitness By Design, Inc., G.R. No. 215957, November 9, 2016.

liabilities but also a demand for payment within a prescribed period, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor. Due process requires that it must be served on and received by the taxpayer. A post-reporting notice and pre-assessment notice do not bear the gravity of a formal assessment notice. The post-reporting notice and pre-assessment notice merely hint at the initial findings of the BIR against a taxpayer and invites the latter to an informal conference or clarificatory meeting. Neither notice contains a declaration of the tax liability of the taxpayer or a demand for payment thereof. Hence, the lack of such notices inflicts no prejudice on the taxpayer for as long as the latter is properly served a formal assessment notice.[23]

It is undisputed that the Cruzes received the FLD on September 17, 2009, and on the basis of which, they filed a Letter of Protest with the BIR on October 16, 2009. The said protest was denied in the assailed FDDA dated February 15, 2010, leading to the filing of their Petition for Review with the Court in Division on May 7, 2010.

Evidently, the alleged lack of a Notice of Informal Conference, which is nothing but an invitation to an informal conference or a clarificatory meeting, is of no moment. With sufficient opportunity to file protest, the Cruzes right to due process is deemed complied with.

As regards, the application of the ten (10)-year prescriptive period to assess under Section 222 of the NIRC, as amended, the rules and jurisprudence are clear. When there is underdeclaration of income in an amount exceeding 30%, there exists a presumption that the returns filed by a taxpayer is false, as provided under Section 248(B) of the NIRC, as amended, meriting the application of the 10-year prescriptive period under Section 222 of the Tax Code, as elucidated below:

> Thus, a mere showing that the returns filed by the taxpayer were false, notwithstanding the absence of intent to defraud, is sufficient to

[23] Commissioner of Internal Revenue vs. Dominador Menguito, G.R. No. 167560, September 17, 2008.

> warrant the application of the ten (10) year prescriptive period under Section 222 of the NIRC.
>
> x x x x x x x x x
>
> Under Section 248(B) of the NIRC, there is a *prima facie* evidence of a false return in there is a substantial underdeclaration of taxable sales, receipt or income. The failure to report sales, receipts or income in an amount exceeding 30% what is declared in the returns constitute substantial underdeclaration. A *prima facie* evidence is one which that (sic) will establish a fact or sustain a judgment unless contradictory evidence is produced.
>
> In other words, when there is a showing that a taxpayer has substantially underdeclared its sales, receipt or income, there is a presumption that it has filed a false return. As such, the CIR need not immediately present evidence to support the falsity of the return, unless the taxpayer fails to overcome the presumption against it.
>
> x x x x x x x x x
>
> Hence, the CIR need not present further evidence as the presumption of falsity of the returns was not overcome. Asalus was bound to refute the presumption of the falsity of the return and to prove that it had filed accurate returns. Its failure to overcome the same warranted the application of the ten (10)-year prescriptive period for assessment under Section 222 of the NIRC. To require the CIR to present additional evidence in spite of the presumption provided in Section 248(B) of the NIRC would render the said provision inutile.[24]

Evidence show that the Cruzes declared in their Annual Income Tax Return for the year 2004 a gross taxable income of merely P2,880,000.00. After audit, the BIR found that the Cruzes failed to report an income amounting to P31,261,640.68.

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[24] Commissioner of Internal Revenue vs. Asalus Corporation, G.R. No. 221590, February 22, 2017.

The Cruzes' undeclared income of P28,381,640.68 (P31,261,640.68 minus P2,880,000.00) already comprises more than the thirty (30%) percent threshold prescribed under the law. From such substantial underdeclaration of more than 30% arose a presumption of a false or fraudulent return meriting the application of the 10-year prescriptive period. And the Cruzes failed to overthrow or rebut this presumption by competent proof to the contrary. Besides, tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise.[25]

Note that the instant cases involve a deficiency income tax assessment for TY 2004. The FLD dated July 15, 2009 was received by the Cruzes on September 17, 2009, hence, the assailed assessment was timely issued within the 10-year period under Section 222 of the NIRC, as amended.

Finally, the alleged availment of tax amnesty program under Republic Act (R.A.) No. 9480 in 2005 by J.S. Cruz Construction and Development Inc., through Julio Cruz, will not also save the day for the Cruzes. Assuming that it was granted, the immunity accorded to J.S. Cruz Construction and Development Inc. from the payment of taxes, will not inure to their benefit. The corporation had a personality separate and distinct from its individual directors, officers, or owners.[26] Additionally, such grant is construed strictly against the taxpayer, hence, Priscila J. Cruz and Jocelyn Cruz Delos Reyes, cannot take refuge under the said grant of tax amnesty in favor of the Corporation.

Further, the documents[27] evidencing the application and grant of tax amnesty were denied admission as they were not authenticated in court by a competent witness.[28] There being no proof of application and grant of tax amnesty, the same cannot be used as defense to set the Cruzes free from their assessed tax liability for TY 2004. Basic is the rule that judgments must be based on the evidence

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[25] Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007.
[26] People's Security, Inc. and Nestor Racho vs. Julius S. Flores and Esteban S. Tapiru, G.R. No. 211312, December 05, 2016.
[27] Exhibits X to X-17.
[28] Resolution dated February 4, 2015, Division docket vol. 4, pp. 1793-1794.

presented before the court.[29] Thus, insofar as availment of tax amnesty is concerned, the Cruzes simply had none.

As ruled in a myriad of cases, a tax amnesty, like a tax exemption, is never favored nor presumed in law. The grant of a tax amnesty must be construed strictly against the taxpayer and liberally in favor of the taxing authority.[30]

Lastly, since the computation of the amount of tax liability of the Cruzes for the year 2004 is uncontested, the same will no longer be discussed.

Thus, as held by the Court in Division, the Cruzes are liable for basic deficiency income tax for TY 2004 amounting to P9,968,725.02, the details of which are shown below:

Particulars	Amount	
Cash Advances to J.S. Cruz Construction and Development Inc. / Julio Cruz	P	31,261,640.68
Total unreported income	P	31,261,640.68
Income tax due:		
First 500,000.00		125,000.00
Next 30,761,640.68 x 32%		9,843,725.02
Basic deficiency income tax	**P**	**9,968,725.02**

WHEREFORE, the Petition for Review dated May 23, 2017 filed by the Commissioner of Internal Revenue (CIR), and the Petition for Review dated May 27, 2017 filed by Priscila Cruz and Jocelyn Cruz De Los Reyes (Cruzes), are both **DENIED**, for lack of merit.

Consequently, the Decision dated September 2, 2016 and Resolution dated April 19, 2017, both rendered by the Court in Division are AFFIRMED with MODIFICATION in the computation of deficiency and delinquency interests in view of the effectivity of Republic Act No. 10963 (TRAIN Law) on January 1, 2018.

[29] Robert F. Mallilin vs. Luz G. Jamesolamin and the Republic of the Philippines, G.R. No. 192718, February 18, 2015.
[30] Commissioner of Internal Revenue vs. Philippine Aluminum Wheels, Inc., G.R. No. 216161, August 9, 2017.

Accordingly, Priscila Cruz and Jocelyn Cruz De Los Reyes (in substitution of the deceased Julio S. Cruz) are **ORDERED TO PAY** the Bureau of Internal Revenue in the amount of **SEVENTY-EIGHT MILLION EIGHT HUNDRED SEVEN THOUSAND FIFTY-SIX PESOS AND NINETY-FIVE CENTAVOS (₱78,807,056.96),** representing basic deficiency income tax, 50% surcharge imposed under Section 248(B) of the NIRC of 1997, as amended, as well as deficiency and delinquency interests imposed under Sections 249(B) and (C) of the same Code, respectively, computed until December 31, 2017 as follows:

Basic deficiency income tax for taxable year 2004	₱ 9,968,725.02
Add: 50% surcharge	4,984,362.51
Deficiency Interest from April 16, 2005 to April 12, 2010 *(₱9,968,725.02 x 20% x 1,823/365 days)*	9,957,800.39
Total Amount Due as of April 12, 2010	**₱24,910,887.92**
Add: Deficiency Interest from April 13, 2010 to December 31, 2017 *(₱9,968,725.02 x 20% x 2,820/365 days)*	15,403,728.52
Delinquency Interest from April 13, 2010 to December 31, 2017 *(₱24,910,887.92 x 20% x 2,820/365 days)*	38,492,440.51
Total Amount Due as of December 31, 2017	**₱78,807,056.95**

In addition, petitioners are **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%), which is double the legal interest rate for loans or forbearance of any money, on the total amount due of **₱24,910,887.92** as of April 12, 2010, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by Revenue Regulations No. 21-2018.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

See Concurring & Dissenting Opinion

ON LEAVE
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1646 (CTA CASE NO. 8103)**
- versus –	
PRISCILA J. CRUZ and JOCELYN CRUZ-DELOS REYES (in substitution of the deceased JULIO S. CRUZ), Respondents.	

x---x

PRISCILA CRUZ and JOCELYN CRUZ DELOS REYES (in substitution of deceased JULIO S. CRUZ), Petitioners,	**CTA EB NO. 1650 (CTA Case No. 8103)**
	Present:
- versus -	**DEL ROSARIO**, PJ, **CASTAÑEDA, JR.**, **UY**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, and **MANAHAN**, JJ.
THE COMMISSIONER OF THE BUREAU INTERNAL REVENUE, Respondent.	Promulgated: NOV 13 2018 3:39 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the respective Petitions for Review filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 1646 and by Priscila Cruz and Jocelyn Cruz Delos Reyes (in substitution of deceased Julio S. Cruz) in CTA EB No. 1650, thereby affirming the assailed Decision and Resolution of the

Court in Division, albeit with *modification* in the computation of deficiency and delinquency interests in view of the effectivity of Republic Act No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN LAW), and as implemented by Revenue Regulations (RR) No. 21-2018

With due respect, however, I differ in the computation of the deficiency and delinquency interests. Applying the amendments under the TRAIN LAW, as implemented by RR No. 21-2018, I submit that the 20% deficiency interest, which shall in turn be subjected to 20% delinquency interest, shall be computed from the date prescribed for payment until the due date for payment as indicated in Assessment Notice No. ES-IT-1992-0794.[1]

Assessment Notice No. ES-IT-1992-0794 states that the due date for payment shall be thirty (30) days from receipt thereof. Since the parties stipulated that Priscila Cruz and Julio S. Cruz received the Assessment Notice on September 17, 2009, the due date for the payment of the deficiency income tax assessment for taxable year 2004 was on October 17, 2009.

All told, I VOTE to: (i) DENY the respective Petitions for Review filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 1646 and by Priscila Cruz and Jocelyn Cruz Delos Reyes (in substitution of deceased Julio S. Cruz) in CTA EB No. 1650, for lack of merit; (ii) AFFIRM with MODIFICATION the assailed Decision and Resolution of the Court in Division; and, (iii) ORDER Priscila Cruz and Jocelyn Cruz De Los Reyes (in substitution of the deceased Julio S. Cruz) to PAY the Bureau of Internal Revenue the amount of ₱79,635,351.94, representing the basic deficiency income tax, 50% surcharge imposed under Section 248 (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, as well as deficiency and delinquency interests, imposed under Sections 249 (B) and (C) of the NIRC of 1997, as amended by the TRAIN LAW, and as implemented by RR No. 21-2018, computed as follows:

[1] Exhibit R-11, BIR Records, p. 1050.

Basic Deficiency Tax for taxable year 2004	₱	9,968,725.02
Add: 50% Surcharge		4,984,362.51
Deficiency Interest from April 16, 2005 to October 17, 2009 (₱9,968,725.02 x 20% x 1,646/365 days)		8,990,970.62
Total Amount Due, October 17, 2009	₱	23,944,058.15
Add: Deficiency Interest From October 18, 2009 to December 31, 2017		
(₱9,968,725.02 x 20% for 2,997/365 days)	₱	16,370,558.29
Delinquency Interest From October 18, 2009 to December 31, 2017		
(₱23,944,058.15 x 20% x 2,997/365 days)	₱	39,320,735.49
Total Amount Due as of December 31, 2017	₱	79,635,351.94

In addition, Priscila Cruz and Jocelyn Cruz De Los Reyes (in substitution of the deceased Julio S. Cruz) are ORDERED to PAY the Bureau of Internal Revenue delinquency interest at the rate of 12%, which is double the legal interest for loans or forbearance of money, on the total amount due of ₱23,944,058.15 as of October 17, 2009, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249 (C) of the NIRC of 1997, as amended by the TRAIN Law and as implemented by RR No. 21-2018.

ROMAN G. DEL ROSARIO
Presiding Justice