CTA Form No. 8

23-000316-0047

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 11211

REMIE R. TALAVER,
Petitioner,

- versus -

ROMEO D. LUMAGUI, in his capacity as the COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

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

ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. KARL KENNY M. RAMO
ATTY. DOROTHY JOY A. CAY-AN
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City, Philippines

ISNANI & CULAJARA
2F, MP Towers, Nuñez Street
Zamboanga City

GREETINGS:

You are hereby notified by these presents that on **August 22, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 28, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

REMIE R. TALAVER,
Petitioner,

- versus -

HON. ROMEO D. LUMAGUI, in his capacity as the **COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

CTA CASE NO. **11211**

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
AUG 2 2 2025
11:40 a.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a "Petition for Review (With Motion to Suspend Collection of Taxes [**Motion to Suspend**])"[1] filed by petitioner Remie R. Talaver (**petitioner/Talaver**) on 13 July 2023 pursuant to Section 3(a)[2], Rule 8 in relation to Section 3(a)(1)[3], Rule 4 of the Revised Rules of the

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1 Division Docket, pp. 8-34.

2 **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.

3 **SEC. 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

Court of Tax Appeals (**RRCTA**), seeking to appeal respondent Hon. Romeo D. Lumagui, in his capacity as the Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Notice of Denial (Application for Compromise Settlement)"[4] (**Notice of Denial**) which requested petitioner to pay the aggregated amount of ₱34,396,794.42, representing the alleged income tax (**IT**) and value-added tax (**VAT**) liabilities for the taxable years (**TYs**) 2006 and 2007.

PARTIES OF THE CASE

A duly Bureau of Internal Revenue (**BIR**)-registered taxpayer with Tax Identification No. (**TIN**) 102-299-268-000[5], petitioner is the sole proprietor of the business Jonrem Trade Distributor[6] (**Jonrem**) located at Doña Pura A Bucoy Drive Veterans Avenue - Camino Nuevo 7000 Zamboanga City, Zamboanga del Sur.[7]

Respondent, on the other hand, is the duly appointed CIR empowered to perform the duties of his or her office, including among others, the power to decide disputed assessments and approve compromise settlements, with office address at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City, where he or she may be served summons and other legal processes of the Court.

FACTS OF THE CASE

Petitioner was subjected to two (2) assessments for TYs 2006 and 2007. For TY 2006, petitioner initially received a Final Assessment Notice[8] (**FAN**) with Details of Discrepancies and Assessment Notices[9] (**ANs**), all dated 24 February 2010, which demanded payment for the alleged deficiency IT and VAT in the total amount of ₱103,537,816.12.

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(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[.]

4 Exhibit "P-1", Division Docket, p. 36.
5 See Certificate of Registration, id., pp. 446-447.
6 See Exhibit "P-2", id., p. 37.
7 Supra at note 5.
8 Exhibit "P-4", id., pp. 275-277.
9 Id., pp. 278-279.

Aggrieved, petitioner filed a Legal Formal Protest Notice dated 24 March 2010[10] to the FAN and asserted that he did not receive a Letter of Authority (**LOA**) or a Letter Notice (**LN**) in relation to the said assessments. Thereafter, he received an Amended Preliminary Assessment Notice (**PAN**)[11] with Details of Discrepancies (dated 14 October 2010) which reduced the alleged deficiency taxes to ₱16,026,008.74. However, he did not receive the related LOA.

On 24 December 2010, petitioner filed a Legal Preliminary Protest Notice[12] to the amended PAN and claimed that it was erroneous for the BIR to use a gross profit ratio instead of the actual values in its financial statements and income tax return (which he claimed he had already submitted). Four (4) days after, respondent issued another FAN[13] with Details of Discrepancies and the ANs[14] (that repeated his alleged deficiency liabilities of ₱16,026,008.74 for TY 2006). Opposing the assessments, petitioner filed another Legal Formal Protest Notice dated 20 January 2011[15] and reiterated that the use of presumptions (*i.e.*, the gross profit ratio) should be disallowed for lack of any factual basis.

Simultaneous with the 2006 assessment, on 29 January 2010, respondent issued LOA No. 200800467658[16] which authorized revenue officers (**ROs**) to examine petitioner's books and accounting records for TY 2007.

In the course of the assessment for TY 2007, petitioner received an undated Notice for Informal Conference[17] (**NIC**), a PAN with Details of Discrepancies dated 24 November 2010[18] and a FAN with Details of Discrepancies[19] and ANs[20] (all dated 10 March 2011), which assessed an alleged deficiency IT and VAT in the aggregate amount of ₱18,279,523.61 for TY 2007.

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10 Exhibit "P-5", id., pp. 282-284.
11 Exhibit "P-6", id., pp. 285-287.
12 Exhibit "P-7", id., pp. 290-292.
13 Exhibit "P-8", id., pp. 294-296.
14 Id., pp. 297-298.
15 Exhibit "P-9", id., pp. 301-304.
16 Exhibit "P-13", id., p. 313.
17 Exhibit "P-14", id., pp. 314-317.
18 Exhibit "P-15", id., pp. 318-320.
19 Exhibit "P-17", id., pp. 324-326.
20 Id., pp. 327-328.

Consolidating the two (2) assessments, petitioner wrote the BIR a letter[21] seeking for a compromise of 20% of the alleged basic deficiency taxes for TYs 2006 and 2007. In response thereto, on 14 March 2011, respondent sent a Letter-Reply[22] where he or she treated petitioner's offer for compromise as an abandonment of his protest to the 2006 assessment. In addition, respondent ordered petitioner to accomplish BIR Form No. 2107 and submit it together with the compromise offer for final consideration of the Revenue National Evaluation Board (**RNEB**).

Subsequently, in compliance with the above directive, on 30 March 2011, petitioner executed the Applications for Compromise Settlement[23] (BIR Form No. 2107) and partially made payment on 01 April 2011.[24] A summary of the offer of settlements and payments are as follows:

Taxable Year	Nature of Tax	Amount of Offer	Amount of Payment
2006	IT	₱1,039,324.22	₱173,220.70
2006	VAT	₱390,898.58	₱65,149.76
2007	IT	₱1,282,612.10	₱213,768.68
2007	VAT	₱482,179.54	₱80,363.26

After more than twelve (12) years, or on 17 January 2023, BIR issued the Notice of Denial[25] on petitioner's request for compromise settlement and demanded payment of the alleged deficiency taxes. Disagreeing with respondent's action, petitioner filed the instant Petition for Review (with Motion to Suspend Collection of Tax and Dispense with Bond [**Motion to Suspend**])[26] before this Court. The case was raffled to the Court's First Division.

PROCEEDINGS BEFORE THE COURT

After petitioner complied with the Court's prior directive[27] to submit a proper Certification against Forum Shopping, his counsels' Integrated Bar of the Philippines (**IBP**) official receipts and the

21 See number 5 of Factual Antecedents, Letter dated 14 March 2011, Exhibit "P-18", id., p. 331.
22 Id., pp. 331-338.
23 Exhibit "P-20", id., pp. 343-346.
24 See Exhibits "P-21", "P-22", "P-23" and "P-24", id., pp. 349, 355, 361 and 367, respectively.
25 Supra at note 4.
26 Supra at note 1.
27 See Minute Resolution dated 26 July 2023, Division Docket, p. 228.

Mandatory Continuing Legal Education (**MCLE**) certificates[28] (or exemptions if applicable), the Court set the hearing for petitioner's Motion to Suspend.[29] Thereafter, on 13 November 2023, the Court issued Summons to respondent.[30]

On 20 November 2023, respondent filed (*via* electronic filing/email) his or her "Comment (on Petitioner's Urgent [Motion] to Suspend Collection of Tax and Dispense with Bond)".[31] There, he or she highlighted petitioner's alleged failure to discharge the burden of proof of injury that it will incur if the alleged deficiency taxes will be collected from him.

During the hearing on the Motion to Suspend on 29 November 2023, petitioner presented himself and Diana Wester Escobal (**Escobal**), petitioner's Disbursement Officer, who all testified *via* their respective judicial affidavits.

Petitioner himself assumed the witness stand first. He testified *via* his Judicial Affidavit[32] that: (**1**) his business, Jonrem, was subjected to an assessment for TYs 2006 and 2007; (**2**) for the TY 2006 assessment, he initially received a FAN (dated 24 February 2010) demanding payment for deficiency taxes, however, he did not receive a LOA or a LN in relation to the said FAN; (**3**) he filed a Legal Formal Protest Notice, dated 24 March 2010, to the FAN; (**4**) he then received an Amended PAN, dated 14 October 2010, for TY 2006 but did not receive the related LOA; (**5**) he filed a Legal Preliminary Protest Notice, dated 24 December 2010, to the amended PAN; (**6**) he received another FAN, dated 28 December 2010, to which he filed another Legal Formal Protest Notice (dated 20 January 2011); (**7**) for TY 2007 assessment, he received the LOA authorizing ROs to examine his books and accounting records; (**8**) in the course of the 2007 assessment, he received an undated NIC, PAN dated 24 November 2010 and FAN dated 10 March 2011; (**9**) he filed a letter seeking a compromise of 20% of the alleged basic deficiency taxes for TYs 2006 and 2007 to be made payable in six (6) monthly installments; (**10**) the BIR treated his offer for compromise as an abandonment of his protest to the 2006 assessment; (**11**) he executed the applications for

28 See Compliance filed on 17 August 2023, id., pp. 233-243.
29 See Resolution dated 10 November 2023, id., pp. 246-248.
30 Id., pp. 249-250.
31 Id., pp. 254-263.
32 Exhibit "P-26", Judicial Affidavit of Remie R. Talaver, id., pp. 121-135.

compromise settlement and partially paid the offered compromise amounts on 01 April 2011; (12) respondent denied his request for compromise through the issuance of a Notice of Denial dated 17 January 2023; and (13) upon receipt of the Notice of Denial, he filed a Petition for Review with a Motion to Suspend.

During the hearing, petitioner's counsel propounded questions relating to the additional documents that he submitted to the BIR. With the Court's approval, petitioner testified that he does not have the financial capacity to pay the supposed tax deficiencies. To bolster his claim, he presented his Annual Income Tax Return for the year 2022[33], and the business's statement of financial positions for the comparative years of 2021[34] and 2022[35] (which he also submitted to the BIR).[36] When asked if the financial statement (reflecting the comparative statements of financial positions) was audited, petitioner answered in the negative.[37]

On cross-examination, petitioner denied that he received a warrant of distraint and/or levy (**WDL**) after the issuance of the Notice of Denial. In addition, he relayed that his business, Jonrem, is still in operation.[38] In response to the Court's inquiry regarding the effects of the BIR's collection efforts, petitioner answered that his business will incur more debts that will greatly impact Jonrem's day-to-day operations.[39]

Escobal took the witness stand next and recounted that: (1) she received the Notice of Denial in the afternoon of 15 June 2023 from Ray Andrew B. Pasanting (**Pasanting**), respondent's Seizure Agent; and (2) on the same day, petitioner retrieved the said Notice of Denial from her possession.[40] She was not subjected to a cross-examination.[41]

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33 Exhibit "P-25", id., pp. 371-375.
34 Exhibit "P-25-1", id., p. 376.
35 Exhibit "P-25-2", id.
36 TSN dated 29 November 2023, pp. 14-15.
37 Id., pp. 12-16.
38 Id., pp. 16-18.
39 Id., pp. 18-20.
40 Exhibit "P-27", Judicial Affidavit of Diana Wester Escobal, Division Docket, pp. 221-226.
41 See Order dated 29 November 2023, id., pp. 268-269.

On 11 December 2023, petitioner filed his "Formal Offer of Evidence (Re: [Motion to Suspend])"[42] (**FOE**) while respondent filed a "Comment with Manifestation (Re: Petitioner's [FOE])"[43] on 08 January 2024.

Pending the resolution of the Motion to Suspend, respondent filed his or her Answer *Ad Cautelam*[44] on 12 January 2024. Additionally, he or she transmitted the BIR Records (consisting of 250 pages) on 06 May 2024.[45]

In a Resolution dated 17 May 2024[46], the Court resolved petitioner's FOE, granted petitioner's Motion to Suspend and dispensed the posting of the bond based on the findings that respondent's right to collect had already prescribed. The dispositive portion of the resolution reads –

> ...
>
> **ACCORDINGLY**, with the foregoing premises, the Motion to Suspend Collection of Taxes as incorporated in the Petition for Review filed on 13 July 2023 is **GRANTED**. For the reasons stated above, the bond requirement is hereby **DISPENSED** with.
>
> Considering that respondent's right to collect the alleged deficiency tax assessments for TYs 2006 and 2007 is barred by prescription, respondent Commissioner of Internal Revenue and any of his or her authorized officers/employees are **ENJOINED** from collecting the deficiency taxes on the basis of the said assessments.
>
> Meanwhile, both parties are hereby **ORDERED** to submit their respective Memoranda as to whether this case shall be submitted for judgment on the pleadings or summary judgment, within a NON-EXTENDIBLE PERIOD of thirty (30) days from receipt hereof.
>
> **SO ORDERED.**
>
> ...

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42 Id., pp. 439-444.
43 Id., pp. 453-456.
44 Id., pp. 459-472.
45 See Compliance and Manifestation with Apologies, id., pp. 487-489.
46 Id., pp. 495-516.

Aggrieved, on 06 June 2024, respondent filed a "Motion for Reconsideration (Re: Resolution dated 2 May 2024)"[47] (**MR**) instead of a memorandum.[48] On 08 July 2024, petitioner filed his Opposition thereto.[49] On the other hand, petitioner filed his Memorandum[50] (on 24 June 2024) on the issue of whether the case is for summary judgment or judgment on the pleadings.

On 08 November 2024, respondent filed a "Motion to Admit [Memorandum] with Apologies"[51] (**Motion to Admit**), attaching his or her Memorandum.[52] The Court ordered petitioner to comment thereon.[53] In the *interim*, on 03 December 2024, it also issued a Resolution[54] which denied respondent's MR for lack of merit and submitted the case for summary judgment.

On 23 December 2024, respondent filed an "[MR] (Re: Resolution dated 3 December 2024)"[55] (**second MR**) to insist that summary judgment is not applicable to the case at bar. On 03 February 2025, the Court ordered petitioner to file a comment on the second MR; noted that petitioner failed to file a comment on respondent's Motion to Admit[56]; and submitted the Motion to Admit for resolution.[57]

On 17 February 2025, petitioner filed his Opposition[58] (to respondent's second MR). However, as the same only consists of one (1) copy[59], the Court ordered him to file additional three (3) copies for compliance.[60] Simultaneously, the second MR was also submitted for resolution.[61]

Before We proceed with the disposition of the case, We shall first resolve the pending motions.

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47 Id., pp. 517-530.
48 See Records Verification dated 01 July 2024, id., p. 551.
49 Id., pp. 553-559.
50 Id., pp. 534-547.
51 Id., pp. 564-568.
52 Id., pp. 571-583.
53 See Minute Resolution dated 25 November 2024, id., p. 585.
54 Id., pp. 589-596.
55 Id., pp. 597-610.
56 See Records Verification dated 26 December 2024, id., p. 614.
57 See Minute Resolution dated 03 February 2025, id., pp. 615-616.
58 Id., pp. 619-622.
59 See Records Verification dated 24 February 2025, id., p. 618.
60 See Minute Resolution dated 02 April 2025, id., p. 626.
61 Id.

RESPONDENT'S MOTION TO ADMIT MEMORANDUM WITH APOLOGIES

Considering that this Court has already submitted the instant case for summary judgment, *sans* respondent's memorandum, the Motion to Admit [with the attached Memorandum] is merely noted without further action.

RESPONDENT'S MOTION FOR RECONSIDERATION (MR)

As regards respondent's second MR, he or she seeks reconsideration of the Court's resolution submitting the case for summary judgment, arguing that genuine issues of material fact remain unresolved. Respondent maintains that the denial of the Motion to Suspend was interlocutory and cannot substitute for a full trial on the merits. Citing Rule 35[62] of the Rules of Court (**ROC**), as amended, respondent asserts that factual questions, such as: (1) whether petitioner abandoned its protest; (2) whether estoppel applies due to partial payment; and (3) whether the prescriptive period was tolled, require presentation of evidence. Respondent insists that summary judgment would prematurely cut off this right and violate procedural due process.

Respondent further argues that petitioner's application for compromise and partial tax payment constitutes implied admission of liability and estoppel. Respondent likewise contends that the compromise application tolled the three (3)-year period to collect taxes, and that the denial of compromise in January 2023 restarted the prescriptive clock. Finally, respondent argues that the delayed filing of his or her memorandum should not be equated with waiver, as substantial factual and legal issues remain for resolution through a full-blown trial.

On the other hand, in his Opposition, petitioner argues that despite respondent's insistence that the case is not for summary judgment, he or she failed to support this with plausible arguments. Except for respondent's recycled arguments that petitioner is already estopped from questioning the assessments, or that the period to assess

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62 Summary Judgments.

was effectively suspended, respondent showed no genuine factual issues that could be threshed in a full-blown trial. Evident from the records is the latter's non-submission of the relevant judicial affidavits of the intended witness/es, and the documentary and/or object evidence to support his or her claim. Hence, due to respondent's own negligence, the Court could not be faulted for submitting the case for summary judgment.

We resolve.

After a careful consideration of respondent's second MR, We are constrained to deny the same for lack of merit.

Summary judgment is warranted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.[63] The Supreme Court has consistently held that genuine issue of fact is an issue which calls for the presentation of evidence, one that is not "sham, fictitious, contrived, set up in bad faith and patently unsubstantial".[64] When pleaded facts appear to be uncontested or undisputed, then there is no question as to those facts and summary judgment is called for.[65] Even when a genuine issue appears to have been raised in the pleadings, the trial judge must go beyond the pleadings and examine the affidavits, depositions, and admissions presented by the movant showing that there is no genuine issue.[66] The movant has the burden to establish the absence of a genuine issue, and any doubt as to its existence is resolved against the movant.[67] After the burden has been discharged, the opposing party "has the burden to show facts sufficient to entitle him [or her] to defend."[68]

Given that petitioner, as the movant, had already discharged the burden of establishing the absence of a genuine issue as to whether respondent's right to collect has already prescribed, it is now incumbent upon respondent to show facts that would call for the presentation of evidence.

63 *Yulo-Gomez, et al. v. Philippine Agri-Business Center Corporation*, G.R. No. 191838, 20 October 2014.

64 *Spouses Pascual v. First Consolidated Rural Bank (Bohol), Inc., et. al.*, G.R. No. 202597, 08 February 2017.

65 *D.M. Consunji, Inc. v. Duvaz Corporation*, G.R. No. 155174, 04 August 2009.

66 *Eland Philippines, Inc. v. Garcia, et al.*, G.R. No. 173289, 17 February 2010.

67 *Angelica Viajar and Celso Viajar v. Hon. Numeriano G. Estenzo*, G.R. No. L-43882, 30 April 1979.

68 *Gregorio Estrada v. Honorable Francisco Consolacion*, G.R. No. L-40948, 29 June 1976.

In this case, respondent's arguments, such as the alleged abandonment of protest and estoppel due to partial payment, merely pertain to the validity of the deficiency assessments and do not, in any measure, refute the core issue of whether respondent's right to collect has already prescribed. While the presumption of regularity in the performance of official duties ordinarily operates in respondent's favor, it cannot override the propriety of summary judgment where petitioner has clearly demonstrated irregularities. In particular, petitioner has established that more than thirteen (13) years have lapsed since its undisputed receipt of the FAN on 13 January 2011[69] for TY 2006, and over twelve (12) years since its receipt of the FAN on 31 March 2011[70] for TY 2007—facts which, on their face, signify that respondent's right to collect has long prescribed.

Moreover, respondent's contention that the running of the prescriptive period was tolled by petitioner's application for compromise and partial payment is a purely legal issue. Respondent failed to show that the underlying facts surrounding this assertion are genuinely disputed or require further evidentiary scrutiny.

In sum, respondent's arguments fail to demonstrate the existence of genuine issues of material fact that would preclude summary judgment. The case is thus ripe for summary disposition in accordance with Rule 35 of the Rules of Court, as amended, as amended, and prevailing jurisprudence[71], which favor the expeditious resolution of cases where only legal issues remain and no factual matters require trial.

We now proceed to the resolution of the main case.

ISSUE

The parties put forward this sole issue for our resolution –

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69 Exhibit "P-8-1", Division Docket, p. 300.

70 Exhibit "P-17-1", id., p. 330.

71 *Yulo-Gomez, et al. v. Philippine Agri-Business Center Corporation*, supra at note 63; *D.M. Consunji, Inc. v. Duvaz Corporation*, supra at note 65; *Eland Philippines, Inc. v. Garcia, et al.*, supra at note 67; *Gregorio Estrada v. Honorable Francisco Consolacion*, supra at note 68.

WHETHER RESPONDENT COMMISSIONER OF INTERNAL REVENUE'S RIGHT TO COLLECT THE SUBJECT ASSESSMENTS HAD ALREADY PRESCRIBED.

ARGUMENTS

In the main action for Petition for Review, petitioner mainly insists that respondent's right to collect the taxes for the assessments for TYs 2006 and 2007 had already prescribed.

Citing Section 222[72] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.*[73] (**CIR v. CTA**), petitioner points out that for assessment issued within the three (3)-year ordinary prescriptive period, BIR has another three (3) years to initiate collection. However, for assessments issued within the extraordinary period of ten (10) years, BIR has five (5) years to initiate collection. In both instances, the collection period is reckoned from the time when the FAN (or the Formal Letter of Demand [**FLD**]) is mailed to the taxpayer.

With the foregoing, petitioner alleges that the assessments for TYs 2006 and 2007 were issued to petitioner on 29 December 2010 and 14 March 2011, respectively. Counting three (3) years therefrom (on the premise that the ordinary prescriptive period to assess is applicable), BIR had until 29 December 2013 and 14 March 2014, respectively, to initiate collection. Even assuming that the assessments were issued within the extraordinary period to assess, BIR only had until 29 December 2015 and 14 March 2016, respectively, to enforce the collection. However, considering that BIR only attempted to collect the assessments through the Notice of Denial issued on 17 January 2023, the same is already beyond the allowable period to collect (of three [3] and five [5] years).

Petitioner also adds that an application for compromise does not toll nor suspend the running of the prescriptive period to collect since it is not one of the permissible instances enumerated in Section 223[74] of

[72] **SEC. 222**. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*
[73] G.R. No. 258947, 29 March 2022.
[74] **SEC. 223**. *Suspension of Running of Statute of Limitations.*

the NIRC of 1997, as amended. Thus, as the records clearly indicate, respondent no longer has any right to enforce or initiate collection for the subject assessments.

Further, petitioner asserts that he is entitled to the refund of the assessment for TYs 2006 and 2007 as he did not receive any LOA for both assessments. Citing *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[75], he echoes the Supreme Court's pronouncement that the absence of valid LOA makes the assessment void.

On the other hand, in the Answer *Ad Cautelam*, respondent reiterates that this Court has no jurisdiction over the case. He or she submits that the authority to approve (or deny) applications for compromise is purely an executive function and could not be judicially appealed. Thus, the Notice of Denial may not be considered as within the scope of "other matters" as petitioner so insists.

Assuming the Court has jurisdiction, respondent maintains that petitioner's partial payments of the subject assessments after filing the application for compromise is already considered as a positive act acknowledging that he has deficiency taxes for TYs 2006 and 2007. Hence, he is already estopped from questioning the validity of the subject assessments.

Moreover, respondent highlights that the right to collect the deficiency taxes has not yet prescribed. He or she counters that BIR was prohibited from proceeding with any collection efforts as petitioner had voluntarily filed an application for compromise and made partial payments thereto. Thus, as opposed to petitioner's claim, the application for compromise effectively tolled the running of the prescriptive period.

Lastly, respondent contends that petitioner is not entitled to the refund. Apart from his partial payment (which is considered an implied admission of the deficiency taxes), the subject assessments are duly supported with factual and legal bases. Nonetheless, petitioner also

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[75] G.R. No. 222743, 05 April 2017.

failed to observe the proper procedure for filing a refund claim pursuant to Sections 204[76] and 229[77] of the NIRC of 1997, as amended.

RULING OF THE COURT

Before proceeding to the merits of the case, We shall first determine if the Court has jurisdiction over the subject matter of the Petition for Review.

THIS COURT HAS JURISDICTION OVER THE CASE.

Section 7(a)(1) of Republic Act (**RA**) No. 1125[78], as amended by RA 9282[79] provides:

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

Based on the foregoing provision, the exclusive appellate jurisdiction of the Court of Tax Appeals (**CTA**) Division is not limited to cases involving decisions of the CIR or matters relating to assessments or refunds. In *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*[80], the Court held that the issue of prescription of the

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76 **SEC. 204**. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*

77 **SEC. 229**. *Recovery of Tax Erroneously or Illegally Collected.*

78 AN ACT CREATING THE COURT OF TAX APPEALS.

79 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.

80 G.R. No. 169225, 17 November 2010; Emphasis supplied.

CIR's right to collect taxes is covered by the term "other matters" over which the CTA has appellate jurisdiction:

> ...
> [T]he issue of prescription of the BIR's right to collect taxes may be considered as covered by the term "other matters" over which the CTA has appellate jurisdiction.
>
> Furthermore, the phraseology of Section 7, number (1), denotes an intent to view the CTA's jurisdiction over disputed assessments and over "other matters" arising under the NIRC or other laws administered by the BIR as separate and independent of each other. This runs counter to petitioner's theory that the latter is qualified by the status of the former, *i.e.*, an "other matter" must not be a final and unappealable tax assessment or, alternatively, must be a disputed assessment.
> ...
>
> To be sure, **the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed. This issue of prescription, being a matter provided for by the NIRC, is well within the jurisdiction of the CTA to decide.**
> ...

Considering that Our previous Resolution of 17 May 2024[81] had thoroughly and exhaustively tackled the material issues, *i.e.*, the validity of the assessments and the prescription of respondent's right to collect, We find it propitious to reiterate the said findings and rulings below.

THE FINAL ASSESSMENT NOTICES (FANs) FOR TAXABLE YEARS (TYs) 2006 AND 2007 ARE FINAL AND EXECUTORY.

Section 228 of the NIRC of 1997, as amended, provides for the manner of protesting an assessment:

[81] Supra at note 46.

> ...
>
> **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: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> ...
>
> 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.**
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[82]
>
> ...

Relative thereto, Section 3.1.3 and the pertinent portions of 3.1.4 of Revenue Regulations (**RR**) No. 12-99[83]:

> ...
>
> 3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of

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

[83] 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.

demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

3.1.5 *Disputed Assessment.* — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.* If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required 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, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

> If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.
>
> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.
>
> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: *Provided*, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.[84]
>
> ...

Based on the foregoing, a taxpayer may protest the assessment either through a request for reconsideration or a request for reinvestigation. If the taxpayer opted for the latter, he or she should submit all the relevant documents supporting the protest within sixty **(60)** days from the date of filing of the said protest. Otherwise, his or her failure to do so would render the assessment final. Likewise, if the taxpayer failed to file a valid protest within thirty **(30)** days from the receipt of the FAN, the assessment shall also become final, executory, and demandable.

For clarity, the sequence of events that transpired in this case is summarized on the following tabulation:

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84 Emphasis supplied and italics in the original text.

Assessment for TY 2006	
Date	**Event**
24 February 2010	The BIR issued the FAN assessing petitioner with alleged deficiency IT of ₱74,845,562.42 and VAT of ₱28,692,253.70 for TY 2006.[85] Based on the FAN, the assessment was issued pursuant to LOA No. 2007-00034097 dated 07 August 2009 and LN No. 054-AS-06-00-00099 dated 31 October 2007.
24 March 2010	Petitioner filed a Legal Formal Protest Notice claiming that he did not receive a copy of the said LOA and LN.[86]
14 October 2010	The BIR issued an Amended PAN assessing petitioner with reduced deficiency IT of ₱11,302,650.88 and VAT of ₱4,723,357.87 for TY 2006.[87]
24 December 2010	Petitioner filed a Legal Preliminary Protest Notice against the Amended PAN.[88]
28 December 2010	The BIR issued a second FAN reiterating the assessment against petitioner (of deficiency IT of ₱11,302,650.88 and VAT of ₱4,723,357.87) for TY 2006.[89]
20 January 2011	Petitioner filed a Legal Formal Protest Notice against the second FAN.[90] Petitioner alleged that the said protest is a Motion for Reinvestigation.
28 January 2011	Petitioner executed a Waiver of Defense of Prescription for TY 2006 extending the period of assessment until 31 July 2011.[91]

85 Supra at note 8.
86 Supra at note 10.
87 Supra at note 11.
88 Supra at note 12.
89 Supra at note 13.
90 Supra at note 15.
91 Exhibit "P-10" evidencing the waiver was denied admission. However, for purposes of determining prescription, the execution thereof is included in the summary of the events, Division Docket, p. 306.

Assessment for TY 2007	
Date	**Event**
29 January 2010	The BIR issued LOA No. LOA 2008 00046758 authorizing the assessment of petitioner's books for TY 2007.[92]
-o-	The BIR issued an undated NIC to petitioner.[93]
24 November 2010	The BIR issued the PAN assessing petitioner with alleged deficiency IT of ₱12,986,447.49 and VAT of ₱5,384,338.17 for TY 2007.[94]
26 February 2011	Petitioner filed a Legal Petition Notice for Compromise Settlement for assessment covering TYs 2006 and 2007.[95]
10 March 2011	The BIR issued the FAN assessing petitioner with alleged deficiency IT of ₱13,207,390.26 and VAT of ₱5,072,133.35 for TY 2007.[96]
14 March 2011	The BIR issued a letter denying petitioner's Legal Formal Protest Notice for TY 2006 and explaining that it will treat petitioner's Legal Petition for Compromise Settlement as a total abandonment of his protests against the assessments.[97] In addition, the letter directed petitioner to accomplish BIR Form No. 2107 in relation to his intent to offer a compromise settlement.
21 March 2011	Petitioner executed a Waiver of Secrecy of Bank Deposit in relation to the compromise settlement.[98]
30 March 2011	Petitioner executed the following BIR Form No. 2107 and offered to pay the compromised amounts in six (6) equal installments: 1. For TY 2006: Petitioner offered to pay ₱1,039,324.22 for IT[99] and ₱390,898.58 for VAT.[100]

92 Supra at note 16.
93 Supra at note 17.
94 Supra at note 18.
95 Supra at note 21.
96 Supra at note 19.
97 Supra at note 22.
98 Exhibit "P-19", Division Docket, pp. 341-342.
99 Supra at note 23, p. 343.
100 Id., p. 344.

	2. For TY 2007: Petitioner offered to pay ₱1,282,612.10 for IT[101] and ₱482,179.54 for VAT.[102]
01 April 2011	Petitioner paid the first installment of the offered compromised amounts: 1. For TY 2006: Petitioner paid ₱173,220.70 for IT[103] and ₱65,149.76 for VAT.[104] 2. For TY 2007: Petitioner offered to pay ₱213,768.68 for IT[105] and ₱80,363.26 for VAT.[106]
17 January 2023	The BIR issued the Notice of Denial of the Application for Compromise Settlement for TYs 2006 and 2007.[107] Moreover, BIR requested petitioner to pay the alleged deficiency taxes ₱34,396,794.42.

i. ASSESSMENT FOR TAXABLE YEAR (TY) 2006

Petitioner received the second FAN dated 28 December 2010 on **13 January 2011**.[108] Petitioner filed his Legal Formal Protest Notice on the second FAN on 20 January 2011.[109] Allegedly, the said protest is a motion for reinvestigation as indicated therein. However, an examination of the document reveals that it is actually a motion for reconsideration. The case of *Bank of the Philippine Islands v. Commissioner of Internal Revenue*[110] (**BPI**) presents a similar scenario where the Supreme Court ruled that the protest therein is one for reconsideration:

> ...
>
> In the present case, the protest letter of BPI essentially raises the same question of law, that is whether BPI was liable for DST on its sales of foreign bills of exchange to the Central Bank in the taxable year 1985. Although it raised the issue of being taxed twice, the BIR

101 Id., p. 345.
102 Id., p. 346.
103 Supra at note 24, p. 349.
104 Id., p. 355.
105 Id., p. 361.
106 Id., p. 367.
107 Supra at note 4.
108 Supra at note 69.
109 See number 1 of Factual Antecedents of Letter dated 14 March 2011, Exhibit "P-18", supra at note 21.
110 G.R. No. 181836, 09 July 2014; Citations omitted, emphasis in the original text and supplied.

> admitted that **BPI did not present any new or additional evidence to substantiate its allegations.** In its letter dated 4 August 1998, the BIR itself referred to the protest of BPI as a request for reconsideration, found the arguments in it legally untenable, and **denied the request. Hence, we find that the protest letter of BPI was a request for reconsideration,** which did not suspend the running of the prescriptive period to collect.
>
> ...

In the case at bar, We have observed that petitioner did not submit any additional documents to support the arguments laid down in the protest. Instead, he filed a Legal Petition for Compromise Settlement on 26 February 2011. Thus, similar to *BPI*, We have determined that the Legal Formal Protest Notice is actually a motion for reconsideration.

Thereafter, petitioner also received respondent's letter dated 14 March 2011[111] which not only addressed the Legal Formal Protest Notice but also explicitly stated that the former's application for compromise settlement has been deemed as an abandonment of his previous protest against the assessments. The pertinent portions of the letter state:

> ...
>
> **1.) In your letter of January 20, 2011**
>
> **Contention:** The BIR must prepare (your) tax returns and compute potential tax obligation using available records and evidences (you) have supplied with reference to the financial statement and tax returns of (your) competitors, if the BIR believes the returns are not credible, invoking Section 6(A) and 13 [of the] NIRC; that the use of presumption should be disallowed if available records and evidences are in the control and possession of the BIR; and that if the basis of the assessment is untrue, then the assessment is also untrue and incorrect.
>
> ***Discussion:***
>
> ...
>
> It is unfortunate that your failure to report correct revenues did not only establish a basis for deficiency assessment but also estopped you from making deductions not claimed in your declarations per

[111] Exhibit "P-18", supra at note 22.

> returns. Hence, the profit rate declared were considered valid for tax purposes.
>
> ...
>
> **3.) Letter of February 26, 2011 entitled**
>
> - **LEGAL PETITION NOTICE FOR YOUR COMPROMISE SETTLEMENT.**
>
> ...
>
> With due respect, we will treat the above letter as signifying total abandonment of your vehement protest against our assessments. ...
>
> ...
>
> Considering that you are offering for a compromise settlement on this case, it is our understanding that you have admitted the findings of our office, thus pursuant to Section 204, of [the] NIRC, as implemented under Revenue Regulation No. 6-2000 as last amended by Revenue Regulation 8-2004, you are hereby directed to accomplish BIR Form No. 2107 as soon as possible within five (5) working [days] from receipt hereof.[112]
>
> ...

Despite receipt of the said letter, petitioner did not object to the above conclusions and findings therein. Instead, he executed the application forms for the compromise settlement. Hence, based on petitioner's actions, We deemed that he accepted the assessment for IT and VAT deficiency taxes for TY 2006 as indicated in the second FAN of 28 December 2010. Accordingly, the second FAN became final and demandable.

ii. ASSESSMENT FOR TAXABLE YEAR (TY) 2007

As for TY 2007, petitioner received the FAN dated 10 March 2011 on **31 March 2011**.[113] However, petitioner did not file any protest thereto. Thus, similarly, the assessment as reflected in the FAN became final and executory.

With the above disquisitions, We shall proceed to discuss respondent's right to collect taxes.

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[112] Emphasis and italics in the original text.
[113] Supra at note 70.

RESPONDENT'S RIGHT TO COLLECT TAXES HAS ALREADY PRESCRIBED.

Section 203 of the NIRC of 1997, as amended, provides for the prescriptive period in the assessment and collection of internal revenue taxes:

> ...
>
> **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.
>
> ...

In *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*[114] (**United Salvage**), the Supreme Court ruled that in cases of valid assessment issued within the three (3)-year period, the BIR has another three (3) years to collect the taxes reckoning from the date the assessment notice had been released, mailed or sent to the taxpayer:

> ...
>
> The statute of limitations on assessment and collection of national internal revenue taxes was shortened from five (5) years to three (3) years by virtue of Batas Pambansa Blg. 700. Thus, petitioner has three (3) years from the date of actual filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment. **However, when it validly issues an assessment within the three (3)-year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding. The assessment of the tax is deemed made and the three (3)-year period for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent to the taxpayer.**
>
> ...

[114] G.R. No. 197515, 02 July 2014; Citations omitted and emphasis supplied.

However, in cases of fraud under Section 222 of the NIRC of 1997, as amended, the period of collection extends to five (5) years. In *CIR v. CTA*[115], the Supreme Court explained:

> ...
> The five-year period for collection of taxes only applies to assessments issued within the extraordinary period of 10 years in cases of false or fraudulent return or failure to file a return. Indeed, Section 222 of the NIRC, as amended, provides:
>
>> 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.
>> xxxx
>>
>> (c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in **paragraph (a) hereof** may be collected by distraint or levy or by a proceeding in court **within five (5) years** following the assessment of the tax. (Emphasis supplied)
>
> ...

Applying the ordinary period of three (3) years, for TY 2006 assessment and considering there was no allegation as to when the second FAN dated 28 December 2010 had been released, mailed or sent to petitioner, the latest reckoning date must be petitioner's actual receipt thereof on **<u>13 January 2011</u>**.[116] Petitioner filed his Legal Formal Protest Notice on the second FAN on 20 January 2011.[117] As determined above, the same is a motion for reconsideration which, as ruled in *BPI*, does not toll the running of the prescriptive period to collect. Thus, from petitioner's receipt of the second FAN on 13 January 2011, respondent had until **<u>13 January 2014</u>** (or three (3) years therefrom) to initiate collection measures against petitioner.

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115 Supra at note 73.
116 Supra at note 69.
117 Supra at notes 15 and 109.

If the Court were to consider respondent's letter dated 14 March 2011 (which ruled against petitioner's protest and treated the application for compromise as an abandonment of his previous protest), based on the records, the Court will deem that petitioner received the said letter on **13 April 2011.**[118] Nonetheless, petitioner did not raise any issue on the contents of the said letter, especially on the abandonment of his protest. Thus, there being no contest to the same, the second FAN dated 28 December 2010 became final and executory on **13 April 2011**. Counting three (3) years from the release of the letter to petitioner, respondent had until **13 April 2014** to collect the taxes.

On the other hand, for TY 2007, since there was no allegation as to when the FAN dated 10 March 2011 had been released, mailed or sent to petitioner, the latest reckoning date must be petitioner's actual receipt thereof on **31 March 2011**.[119] However, petitioner did not file his protest thereto. Instead, he filed an application for compromise. Nonetheless, the filing of the said application did not toll the running of the prescriptive period. Thus, the FAN dated 10 March 2011 became final and executory. Consequently, counting three (3) years from the release of the FAN to petitioner, respondent had until **31 March 2014** to collect the taxes.

If We apply the five (5)-year collection period as alleged above, the following shall be the prescriptive period for collection –

1. For TY 2006, counting five (5) years from the receipt of the second FAN on 13 January 2011, respondent should had collected until **13 January 2016**;

2. If We reckon the counting of five (5)-year period from the receipt of respondent's letter (which ruled against petitioner's protest and treated the application for compromise as an abandonment of his previous protest) on 13 April 2011, respondent should have collected until **13 April 2016**; and,

3. For TY 2007, counting five (5) years from the receipt of the FAN on 31 March 2011, respondent should have collected until **31 March 2016**.

---

118 Exhibit "P-18-1", Division Docket, p. 340.
119 Supra at note 70.

Applying *United Salvage* and *CIR v. CTA*, it is clear that in both assessments, *respondent failed to collect the alleged deficiency taxes within the prescribed period*. Based on the cross-examination of petitioner himself, he declared that did not receive a WDL[120]:

...
ATTY. RAMO:

Q: Have you received a Warrant of Distraint and/or Levy from the BIR prior to this hearing?

MR. TALAVER:

A: No, I don't think so.

ATTY. RAMO:

Q: After the receipt of the Notice of Denial of the Compromise Agreement you have not received any document from the BIR?

MR. TALAVER:

A: No.
...

Upon the Court's inquiry, respondent's counsel candidly retorted:

...
[PRESIDING] JUSTICE DEL ROSARIO:
...

... [On] certain procedure regarding the BIR. Kindly clarify this, when a Final Assessment Notice becomes final and executory, how many years could the BIR effect collection?

ATTY. RAMO:

That will be three (3) years, your Honors, from the issuance of the Final Assessment Notice becomes final and executory already.

120 TSN dated 29 November 2023, pp. 16-17.

[PRESIDING] JUSTICE DEL ROSARIO:

So, from the date of finality you only have three (3) years within which to collect?

ATTY. RAMO:

Yes, your Honors.

[PRESIDING] JUSTICE DEL ROSARIO:

So, we are talking here of suspension.

You have heard the testimony of the petitioner. Credibility wise, there is a lot to be desired. Nonetheless, you were saying [there] was ... a Warrant of Distraint and/or Levy and Warrant of Garnishment issued. Is it still legally feasible to issue a Warrant of Garnishment if the Final Assessment Notices here became final and executory in 2011?

You just guide the Court and be objective.

ATTY. RAMO:

Your Honors, as I am aware of this case, as I have read this there was an issue of prescription, but from the documents that they have presented, (interrupted).

[PRESIDING] JUSTICE DEL ROSARIO:

Only for collection purpose. I'm just asking if there is a Final Assessment Notice that became final and executory in 2011, that is the starting point, is it still legally feasible for the BIR to issue a Warrant of Distraint and Levy?

ATTY. RAMO:

Excluding the Notice of Denial, your Honors, (interrupted).

[PRESIDING] JUSTICE DEL ROSARIO:

Yes, excluding that.

ATTY. RAMO:

It should only be at least five (5) years because we are contesting that this case based on fraud because they have not filed their Income Tax.

[PRESIDING] JUSTICE DEL ROSARIO:

So, if it is based on fraud, five (5) years, we're talking five (5) years to collect?

ATTY. RAMO:

Yes, your Honors.

[PRESIDING] JUSTICE DEL ROSARIO:

And if it became final and executory again in 2011, it's already 2023, do you think the BIR would still be legally feasible to effect collection?

ATTY. RAMO:

If we will exclude the Notice of Denial, your Honors, it would appear that there would be no collection anymore. But if we will consider the Notice of Denial which is only received as of this date which could be considered as the final decision of the BIR, then, we can still collect.

[PRESIDING] JUSTICE DEL ROSARIO:

Final Decision has nothing to do with the Final Assessment Notice, right?

The finality of a, because, apparently there was no protest, right? There was no protest. There is a finality of a Final Assessment Notice.[121]

...

It is noteworthy that the Notice of Denial dated 17 January 2023 is not a means or method of collection sanctioned under Sections 205[122] and 207[123]of the NIRC of 1997, as amended.

To reiterate, the BIR's collection efforts are initiated by distraint, levy, or court proceeding.[124] The distraint and levy proceedings are validly begun or commenced by the issuance of a WDL and service

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121 Id., pp. 33-36.

122 **SEC. 205.** *Remedies for the Collection of Delinquent Taxes.*

123 **SEC. 207.** *Summary Remedies.*

124 *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.*, supra at note 73.

thereof on the taxpayer.[125] Meanwhile, a judicial action for the collection of a tax is initiated: (**a**) by the filing of a complaint with the court of competent jurisdiction; or (**b**) where the assessment is appealed to the CTA, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for.[126] However, in this case, no WDL was served on petitioner and respondent did not initiate any judicial proceedings within the prescriptive period to collect. Hence, absent any valid and legal collection efforts within the prescriptive period (to collect), respondent's right to demand payment is no longer feasible and sanctioned under the law.

PETITIONER IS NOT ENTITLED TO THE REFUND.

In view of the above circumstance, We deem that petitioner is not entitled to any refund.

First, as exhaustively discussed above, the FANs for TYs 2006 and 2007 became final and executory. Based on his actions, petitioner had already waived any opportunity to contest the assessments on the alleged absence of a valid LOA.

Second, as respondent pointed out, petitioner failed to observe the proper process of claiming refund, that is, filing an administrative claim and judicial claim for refund within two (2) years from the payment of tax pursuant to Sections 204 and 229 of the NIRC of 1997, as amended.

WHEREFORE, premises considered, petitioner Remie R. Talaver's Petition for Review filed on 13 July 2023 is hereby **PARTIALLY GRANTED**. As to petitioner's prayer to declare null and void the Final Assessment Notices (FANs) dated 24 February 2010, 28 December 2010, and 10 March 2011, as well as the Notice of Denial dated 17 January 2023, the same is **DENIED**. Consequently, the prayer for the refund of ₱532,502.40 paid as compromise settlement is likewise **DENIED**.

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125 Id.
126 Id.

Additionally, the prayer to enjoin the enforcement and collection of the remaining deficiency taxes is **GRANTED**, on the ground that the right of respondent Commissioner of Internal Revenue to collect the same has prescribed. Consequently, respondent Commissioner of Internal Revenue or any person duly acting on his or her behalf is thus **ENJOINED** and **PROHIBITED** from collecting the remaining deficiency taxes against petitioner Remie R. Talaver.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

See Separate Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

LANEE S. CUI-DAVID
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

REMIE R. TALAVER, Petitioner,	**CTA Case No. 11211**
- versus -	*Members:* **DEL ROSARIO, *P.J.*, BACORRO-VILLENA,** and **CUI-DAVID, *JJ.***
HON. ROMEO D. LUMAGUI, JR., in his capacity as the COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 2 2 2025 11:40 a.m.

x- -x

SEPARATE OPINION

DEL ROSARIO, P.J.:

I vote to grant the Petition for Review on the ground that the Formal Letter of Demand (FLD) and Assessment Notices are void for lack of due date.

Section 3.1.3 of RR No. 12-99, as amended by RR No. 18-2013, pertinently states:

> "*3.1.3 Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* - The Formal Letter of Demand **and** Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN **calling for payment of the taxpayer's deficiency tax** or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void* (see illustration in ANNEX "B" hereof)." *(Boldfacing and underscoring supplied)*

Clearly, a formal letter of demand AND an assessment notice are indispensable in the assessment of a taxpayer. The use of the word "shall" in Section 3.1.3 of RR No. 12-99, as amended by RR No.18-2013, indicates the mandatory nature of the requirement.[1]

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[1] *Commissioner of Internal Revenue vs. Enron Subic Power Corporation*, G.R. No. 166387, January 19, 2009.

In *Commissioner of Internal Revenue vs. Pascor Reality and Development Corporation*,[2] the Supreme Court underscored the necessity for an assessment to expressly state a demand for payment within a definite and prescribed period, *viz*:

> To start with, an assessment must be sent to and received by a taxpayer, and **must demand payment of the taxes described therein <u>within a specific period</u>**. Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20 percent *per annum*, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment.
>
> The issuance of an assessment is vital in determining the period of limitation regarding its proper issuance and the period within which to protest it. Section 203 of the NIRC provides that internal revenue taxes must be assessed within three years from the last day within which to file the return. Section 222, on the other hand, specifies a period of ten years in case a fraudulent return with intent to evade was submitted or in case of failure to file a return. Also, Section 228 of the same law states that said assessment may be protested only within thirty days from receipt thereof. **Necessarily, the taxpayer must be certain that a specific document constitutes an assessment. Otherwise, confusion would arise regarding the period within which to make an assessment or to protest the same, or whether interest and penalty may accrue thereon.**
>
> xxx
>
> In the present case, the revenue officers' Affidavit merely contained a computation of respondents' tax liability. **It did not state a demand or a period for payment.** Worse, it was addressed to the justice secretary, not to the taxpayers. *(Boldfacing and underscoring supplied)*

The Supreme Court reiterated this doctrine in *Commissioner of Internal Revenue v. Fitness by Design, Inc.*,[3] where it **invalidated** an assessment for failing to indicate the specific due date for the payment of the tax liabilities, to wit:

> **<u>The disputed Final Assessment Notice is not a valid assessment</u>**.
>
> xxx xxx xxx
>
> Second, **there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment.**

[2] G.R. No. 128315, June 29, 1999.
[3] G.R. No. 215957, November 9, 2016.

ON

> **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:**
>
> > In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice*. (Emphasis in the original)
>
> However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained unaccomplished**.
>
> Contrary to petitioner's view, **April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.**
>
> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation. (*Boldfacing and underscoring supplied*)

Thus, the requirement to indicate a fixed and definite period or a date certain within which a taxpayer must pay the assessed deficiency tax liabilities is indispensable to the validity of the assessment. Otherwise stated, an assessment *sans* a categorical demand for payment within a specific date or period is, in legal contemplation, void.

In the case at bar, a scrutiny of the FLD and Assessment Notices[4] reveals the absence of any stated due date for the payment of the tax liabilities. The spaces for the due date in the Assessment Notices were conspicuously left blank, to wit:

> "PLEASE PRESENT THIS NOTICE TO THE NEAREST REVENUE DISTRICT OFFICE OR OTHER DULY AUTHORIZED ISSUING OFFICE FOR THE ISSUANCE OF LN PAYMENT FORM (BIR FORM NO. 0611A) AND PAY THE TOTAL AMOUNT PAYABLE ON OR BEFORE __________ TO ANY ACCREDITED BANK WHERE YOU ENROLLED OR TO __________."

[4] Exhibit "P-4", Division Docket, pp. 278-279; Exhibit "P-8", Division Docket, pp. 297-298; Exhibit "P-17", Division Docket, pp. 327-238.

To reiterate, a final assessment notice must not only indicate the legal and factual bases of the assessment but must also state a clear and categorical demand for payment of the computed tax liabilities within a specific period.[5] It bears stressing that the CIR must indicate with absolute clarity the categorical demand for payment within a specific date in the Assessment Notices, lest it be declared fatally infirm.

Absent a valid demand, as in this case, the FLD and Assessment Notices are void. Being void assessments, they bear no fruit and must be slain at sight. Consequently, the issue of the taxpayer's failure to file a valid protest is of no moment, it being a settled principle that a void assessment produces no legal effect.[6]

ALL TOLD, I vote to **GRANT** the Petition for Review, declare the assessments issued against petitioner for taxable years 2006 and 2007 **CANCELLED** and **WITHDRAWN**, and order the **REFUND** to petitioner of the amount of ₱532,502.40, representing payment made as compromise settlement.

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] Supra note 3.
[6] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010 citing *Commissioner of Internal Revenue v. Azucena T. Reyes, G.R.* No. 159694 & G.R. No. 163581, January 27, 2006.