

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF CTA EB NO. 3105
INTERNAL REVENUE, (CTA Case No. 10339)
Petitioner,

Present:

- versus -

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

PRUDENTIAL LIFE PLANS,
INC., herein represented by
ATTORNEY DIONNE MARIE
SANCHEZ, as Liquidator,
and the Insurance
Commission,
Respondent.

Promulgated:

SEP 11 2026

X -----X

DECISION

ANGELES, *J.*:

Before the Court of Tax Appeals (CTA) *En Banc* (Court *En Banc*) is a *Petition for Review*¹ filed personally and electronically on March 21² and 24,³ 2025, respectively, pursuant to Section 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended⁴ (RRCTA). Petitioner seeks the reversal and setting aside of the **Decision** dated

¹ *En Banc (EB)* Docket, pp. 9 to 23.

² *EB* Docket, p. 9.

³ *EB* Docket, p. 61.

⁴ Revised Rules of the Court of Tax Appeals (RRCTA), Section 4(b) provides:

SECTION 4. *Where to appeal; mode of appeal.* —

x x x

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on appeal. (n)

August 22, 2024⁵ (assailed Decision) and the **Resolution** dated February 06, 2025⁶ (assailed Resolution), both rendered by the Second Division of this Court (Court in Division) in CTA Case No. 10339, the dispositive portions of which respectively read:

Decision dated August 22, 2024:

“**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.

Accordingly, the Formal Assessment Notice dated December 12, 2023 and the Final Decision on Disputed Assessment dated June 22, 2020, issued against petitioner, for the deficiency income tax, value-added tax, expanded withholding tax, withholding tax on compensation, fringe benefit tax, and documentary stamp tax, inclusive of interests in the amount of ₱1,307,337,964.92, and compromise penalties in the sum of ₱195,000.00, or in the aggregate amount of ₱1,307,532,964.92, for the period April 1, 2008 to March 31, 2009, are **CANCELLED** and **SET ASIDE**.

Respondent and/or the concerned officers of the Bureau of Internal Revenue are hereby **ENJOINED** to **REFRAIN** from collecting the said amount from petitioner.

SO ORDERED.”⁷ (Emphases in the original)

Resolution dated February 06, 2025:

“**WHEREFORE**, in light of the foregoing considerations, the **Motion for Reconsideration Re: Decision dated 22 August 2024** is **DENIED** for lack of merit.

SO ORDERED.”⁸ (Emphases in the original)

THE PARTIES

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR) empowered to perform the duties of his office, including, among others, acting on disputed assessments as provided by law. He may be served with summons, notices, resolutions, and other processes, as well as the final judgment of this Court, at the 7th

⁵ *EB Docket*, pp. 32 to 53. The Resolution was penned by the then Associate Justice Corazon G. Ferrer-Flores, and concurred in by Associate Justice Maria Rowena Modesto-San Pedro. The then Associate Justice Ma. Belen M. Ringpis-Liban was on judicial leave.

⁶ *EB Docket*, pp. 55 to 60. The Resolution was penned by Associate Justice Corazon G. Ferrer-Flores, and concurred in by then Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro.

⁷ *EB Docket*, pp. 51 to 52.

⁸ *EB Docket*, p. 60.

Floor, Room 703, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.⁹

Respondent is a corporation declared as insolvent and dissolved by the Regional Trial Court (RTC) – Branch 147, Makati City, pursuant to its Order dated July 17, 2017 in Case No. R-MKT-17-02195-SP.¹⁰

FACTS OF THE CASE

The facts of the present case were set forth by the Court in Division in the assailed Decision,¹¹ as follows:¹²

THE ANTECEDENTS (ADMINISTRATIVE LEVEL)

On August 4, 2009, the BIR, through Officer-in-Charge Assistant Commissioner (OIC-ACIR) for Large Taxpayers Service (LTS) Zenaida G. Garcia, issued the *Letter of Authority* (LOA) No. 33828, authorizing Revenue Officers (ROs) Alexander Atienza, Melinda Lim, Nimfa Saga, and Gloria Morales, under Group Supervisor (GS) Theodore L. Maroket, to examine the books of accounts and other accounting records of [herein respondent] for all internal revenue taxes for FY 2009.

On October 7, 2011, [respondent] executed a *Waiver of the Statute of Limitations under the National Internal Revenue Code* (Waiver), extending the audit/investigation of [respondent]'s deficiency taxes for FY 2009 until December 31, 2013. The waiver was accepted by the [petitioner] on October 10, 2011.

Meanwhile, in the letters, both dated March 7, 2012, issued by the Insurance Commission (IC), the San Diego, Yensiano, Macias, Estoreo, Castañeda, Sanchez (SYMECS) Law Office was appointed as the Co-Conservator of [respondent], along with Atty. Rosario Bernaldo.

On September 19, 2012, the IC issued the *Directive* placing [respondent] under Receivership. Thereafter, in the letter dated October 19, 2012, the IC placed [respondent] under liquidation and SYMECS Law Office was appointed as the Liquidator.

On April 1, 2013, Mr. Edwin T. Guzman, OIC Chief-Regular Large Taxpayers Audit Division (RLTAD) 2 of the BIR, issued the *Memorandum of Assignment* (MOA) No. LOA-125-2013-162 assigning the case to RO Matias D. Fadri III and GS Marilyn P. San Diego for the continuation of the audit/investigation to replace the previously assigned ROs who resigned or were transferred to another district office. After the completion of his investigation, RO Fadri

⁹ *EB Docket*, pp. 32 to 33; citation omitted.

¹⁰ *EB Docket*, p. 32; citation omitted.

¹¹ *EB Docket*, pp. 32 to 53.

¹² *EB Docket*, pp. 33 to 38; citations omitted.

submitted the *Memorandum* dated November 14, 2013, which was noted by GS San Diego, recommending the approval of the deficiency tax assessments in the total amount of ₱841,571,221.53 and the issuance of a *Preliminary Assessment Notice* (PAN) against [respondent].

On November 19, 2013, [respondent] received, through its Liquidator, the PAN dated November 18, 2024 with the *Details of Discrepancies*, finding [respondent] liable for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), fringe benefits tax (FBT), documentary stamp tax (DST), with corresponding interests and compromise penalties, in the aggregate amount of ₱841,571,221.53.

On December 16, 2013, [respondent] received, through its Liquidator, the *Formal Assessment Notice* (FAN) dated December 12, 2013 together with the *Details of Discrepancies and Assessment Notices*, assessing [respondent] of alleged deficiency taxes in the gross amount of ₱850,197,620.75, inclusive of interests and compromise penalties, detailed as follows:

Type of tax	Assessment No.	Basic tax	Interest	Compromise penalty	Total
Income tax	IT-125-LA33828-08-13-0154	₱252,391,853.20	₱225,423,783.68	₱50,000.00	₱477,865,636.88
VAT	VT-125-LA33828-08-13-0155	151,924,478.26	142,433,756.11	50,000.00	294,408,234.37
EWT	WE-125-LA33828-08-13-0156	8,303,473.69	7,853,010.24	50,000.00	16,206,483.93
WTC	WC-125-LA33828-08-13-0157	29,419,575.84	27,823,563.85	50,000.00	57,293,139.69
FBT	WR-125-LA33828-08-13-0158	650,450.38	615,163.45	20,000.00	1,285,613.83
DST	D5-125-LA33828-08-13-0159	1,597,910.20	1,515,601.85	25,000.00	3,138,512.05
Total		₱444,287,741.57	₱405,664,879.18	₱245,000.00	₱850,197,620.75

On January 10, 2014, the Liquidator, on behalf of [respondent], filed a protest to the FAN, arguing that the assessment is without basis in law or in fact and should be cancelled.

Thereafter, the BIR through Mr. Mitchell L. Yu, OIC Chief-RLTAD 2 issued the MOA No. TVN-125-2014-12 dated April 16, 2014 referring the protest to RO Fadri and GS San Diego for reinvestigation.

In the interim, the RTC-Branch 147, Makati City, issued the Order dated July 17, 2017 in Case No. R-MKT-17-02195-SP entitled "*In the Matter of the Liquidation of Prudentiallife Plans, Inc. Insurance Commission, Petitioner*" declaring [respondent] as insolvent and dissolved. The Order directed all the creditors of [respondent] to file their claim with the Liquidator on or before September 28, 2017. The

said Order was published in "*Hataw*," a newspaper of general circulation, on August 16 and 23, 2017.

On May 25, 2018, the Liquidator submitted to the RTC-Branch 147, Makati City, the *Liquidation Plan*. It treated the BIR as one of the preferred creditors of [respondent] and made a recommendation on how to address the settlement of the amount of ₱3,835,659,031.09, representing final tax assessments inclusive of interests as of December 31, 2009.

On March 26, 2019, OIC-ACIR-LTS Teresita M. Dizon issued LOA No. eLA201600094192/LOA-125-2019-00000041, to replace the earlier LOA No. 33828 dated August 4, 2009, authorizing RO Fadri III and GS Ma. Daisy Dajao of the RLTA 2 to examine [respondent]'s books of accounts and other accounting records for all internal revenue taxes for the period from April 1, 2008 to March 31, 2009.

On July 3, 2020, [respondent], through its Liquidator, received the *Final Decision on Disputed Assessment* (FDDA) dated June 22, 2020 with *Assessment Notices*, denying [respondent]'s protest, and declaring [respondent] liable to pay deficiency income tax, VAT, EWT, WTC, FBT, and DST, in the gross amount of ₱1,307,337,964.92, broken down as follows:

Type of tax	Assessment No.	Basic tax	Interest	Total
Income tax	IT-125-0000041-08-13-087	₱252,391,853.20	₱485,256,148.71	₱737,648,001.91
VAT	VT-125-0000041-08-13-088	151,924,478.26	298,836,967.99	450,761,446.25
EWT	WE-125-0000041-08-13-089	8,303,473.69	16,401,270.33	24,704,744.02
WTC	WC-125-0000041-08-13-090	29,419,575.84	58,110,428.78	87,530,004.62
FBT	WR-125-0000041-08-13-091	650,450.38	1,284,789.10	1,935,239.48
DST	DS-125-LA33828-08-13-0159	1,597,910.20	3,160,618.44	4,758,528.64
Total		₱444,287,741.57	₱863,050,223.35	₱1,307,337,964.92

THE PROCEEDINGS BEFORE THIS COURT

On August 3, 2020, [respondent] filed via electronic mail the present *Petition for Review with Motion to Waive Filing Fees and for Leniency*. The hard copy of the petition was received by the Court on September 3, 2020. The case was initially raffled to the Third Division.

Anent [respondent]'s *Motion to Waive Filing Fees and for Leniency*, the Executive Clerk of Court III, Atty. Christine C. Maza-Guarin, informed [respondent] that it is not one of those exempt from paying legal fees as provided in Sections 18 and 21 of Rule 141 of the Rules of Court, and requested [respondent] to pay the required filing fees. In compliance thereof, [respondent] paid the said fees on October 21, 2020.

[Petitioner] filed his *Answer* on January 25, 2021.

The Pre-Trial Conference was initially set on June 3, 2021; however, it was reset to September 14, 2021 and further reset and held on February 15, 2022. Prior thereto, [respondent]'s *Pre-Trial Brief* and [petitioner]'s *Pre-Trial Brief* were both submitted to the Court on May 28, 2021.

On January 29, 2021, [petitioner] submitted the *BIR Records* consisting of 704 pages in one (1) folder.

[Respondent] filed a *Motion to Admit with Reply (Re: Answer dated January 22, 2021)* on February 15, 2021. In the Resolution dated February 24, 2021, the Court granted said *Motion* and admitted [respondent]'s *Reply*.

On March 16, 2022, [respondent] filed a *Manifestation (re: Order dated February 15, 2022)*, stating that, despite discussion with the [petitioner], the parties were unable to agree upon a joint stipulation of facts for the instant case; and that the parties will simply maintain their respective Pre-Trial Briefs, and proceed to trial without the benefit of a mutual narration of events.

In the Resolution dated March 24, 2022, the Court noted [respondent]'s *Manifestation* and deemed that the parties waived the filing of the Joint Stipulation of Facts. The Court then ordered the parties to submit their pre-marked documentary exhibits. In compliance therewith, [respondent] submitted its *Compliance (Re: Resolution dated March 24, 2024)* on April 11, 2022, while [petitioner] submitted his *Compliance* on April 12, 2022.

Thereafter, the Pre-Trial Order was issued on April 26, 2022, deeming the termination of the Pre-Trial.

Trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

[Respondent] offered the testimony of its authorized Liquidator, Atty. Dionne Marie M. Sanchez.

The *Formal Offer of Evidence* of [respondent] was filed on May 27, 2022. [Petitioner], however, failed to file his comment thereon. In the Resolution dated September 13, 2022, the Court admitted the offered exhibits of [respondent].

For his part, [petitioner] offered the testimony of RO Fadri.

On December 7, 2022, [petitioner] filed his *Formal Offer of Evidence*, to which [respondent] filed its *Comment/Opposition (Re:*

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[Petitioner]'s *Formal Offer of Evidence*) on December 23, 2022. In the Resolution dated February 8, 2023, the Court admitted all of [petitioner]'s offered exhibits.

On January 20, 2023, [petitioner] filed a *Manifestation* stating that he will adopt the arguments in his *Answer* as his *Memorandum*, considering that it already contains all the arguments subject of this case.

[Respondent]'s *Memorandum* was filed on March 17, 2023.

Per this Court's Resolution dated June 13, 2023, the present case was transferred to the Second Division of this Court.

The present case was considered submitted for decision on August 23, 2023.

On April 11, 2024, the Court in Division rendered the assailed Decision,¹³ granting the *Petition for Review*.¹⁴

Aggrieved, petitioner personally and electronically filed a *Motion for Reconsideration (Re: Decision dated 22 August 2024)*¹⁵ on September 19, and 20, 2024, respectively. The Court in Division, however, denied the *Motion* for lack of merit in the assailed Resolution.¹⁶

Petitioner thereafter sought an extension of time to file a petition for review, filing a *Motion for Extension of Time to File Petition for Review*¹⁷ personally¹⁸ and electronically¹⁹ on March 06, and 07, 2025, respectively. The Court granted the *Motion* in its Resolution dated March 07, 2025,²⁰ thereby giving petitioner until March 21, 2025 within which to file the petition.

On March 21, and 24, 2025, petitioner filed the present *Petition for Review*²¹ personally²² and electronically,²³ respectively.

In a Resolution dated April 23, 2025,²⁴ the Court directed respondent to file its comment on the *Petition* within ten (10) days

¹³ *EB Docket*, pp. 32 to 53.

¹⁴ *Division Docket – Vol. I*, pp. 15 to 39.

¹⁵ *Division Docket – Vol. III*, pp. 997 to 1007.

¹⁶ *EB Docket*, pp. 55 to 60.

¹⁷ *EB Docket*, pp. 1 to 4.

¹⁸ *EB Docket*, p. 1.

¹⁹ *EB Docket*, p. 7.

²⁰ *EB Docket*, p. 8.

²¹ *EB Docket*, pp. 9 to 23.

²² *EB Docket*, p. 9.

²³ *EB Docket*, p. 61.

²⁴ *EB Docket*, p. 62.

from notice. In compliance therewith, respondent personally²⁵ and electronically²⁶ filed its *Comment (Re: Petition for Review dated March 21, 2025)*²⁷ (*Comment*) on May 05, and 06, 2025, respectively.

Subsequently, in a Resolution dated May 27, 2025,²⁸ the Court noted respondent's *Comment*,²⁹ and referred the case to mediation before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA).

On August 15, 2025, the PMC-CTA informed the Court that the parties had failed to reach an agreement during mediation.³⁰ The Court thereafter noted the same in its Resolution dated September 10, 2025,³¹ wherein the case was likewise deemed submitted for decision.

ASSIGNMENT OF ERRORS

Petitioner submits the following assignment of errors³² for the resolution of the Court *En Banc*:

I.

WITH ALL DUE RESPECT, THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT IT CAN RULE ON MATTERS NOT RAISED DURING THE ADMINISTRATIVE PROCEEDINGS NOR THE COURT PROCEEDINGS.

II.

WITH ALL DUE RESPECT, THIS HONORABLE COURT IN DIVISION ERRED IN RULING THAT THE ASSESSMENT IS VOID.

ARGUMENTS OF THE PARTIES

Petitioner's arguments

Petitioner contends that respondent cannot raise for the first time on appeal the issue of the authority of the BIR officers who continued the audit, the same having never been questioned either during the administrative proceedings or before the Court in Division.

²⁵ *EB* Docket, p. 63.

²⁶ *EB* Docket, p. 83.

²⁷ *EB* Docket, pp. 63 to 81.

²⁸ *EB* Docket, p. 84.

²⁹ *EB* Docket, pp. 63 to 81.

³⁰ *EB* Docket, p. 85.

³¹ *EB* Docket, p. 86.

³² *EB* Docket, p. 13.

It maintains that a valid Letter of Authority (LOA) had been issued to the Revenue Officers (ROs) and Group Supervisor (GS) assigned to the case, and that the subsequent reassignment to RO Matias D. Fadri III (RO Fadri) and GS Marilyn P. San Diego (GS San Diego) did not divest the original LOA of its efficacy. Neither, petitioner asserts, did respondent dispute the authority of the BIR officers concerned. In any case, their authority was subsequently confirmed by the issuance of a new LOA, which respondent, through its liquidator, received. Accordingly, petitioner insists that the examination was conducted pursuant to a valid LOA.

Petitioner likewise maintains that respondent was not denied due process, as it was duly informed of the BIR officers who would continue the audit and investigation. The subsequent Memorandum of Assignment (MOA), according to petitioner, did not itself confer authority upon the BIR officers, but merely implemented the authority already granted under the original LOA. Thus, the source of the revenue officers' authority remained the LOA, while the MOA merely identified the officers who would continue the examination pursuant thereto.

Petitioner further argues that reliance on *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*³³ (*Medicard*) is misplaced. Unlike the present case, where a valid LOA was issued and subsequently supplemented by another LOA confirming the authority of the BIR officers who continued the examination, the assessment in *Medicard* was based solely on a Letter Notice, there being no LOA authorizing the examination.

Finally, petitioner invokes the presumption of correctness and good faith attending tax assessments, and argues that collection of the deficiency taxes should not be enjoined absent a final pronouncement from the Supreme Court declaring the assessments invalid. It emphasizes that taxes are the lifeblood of the government, and, as such, their collection should not be lightly restrained.

Respondent's counter-arguments

Respondent, for its part, counters that it is settled that the CTA is empowered to resolve not only the issues expressly raised by the parties, but also such related matters as may be necessary for the orderly disposition of the case. Indeed, the Supreme Court has, in a *catena* of cases, affirmed the CTA's authority to pass upon issues necessarily incidental to the resolution of the controversy, including

³³ G.R. No. 222743, April 05, 2017 [Per J. Reyes, Third Division].

the scope of the authority conferred upon the BIR officers named in an LOA. This necessarily encompasses the question of whether a revenue officer may validly derive authority from an LOA or from some other document purportedly issued in substitution thereof.

Respondent likewise disputes petitioner's assertion that the Court in Division improperly relied upon *Medicard*. It points out that nowhere in the assailed Decision did the Court in Division cite or rely upon *Medicard* in declaring the subject MOA invalid. Rather, the Court in Division anchored its ruling on *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*³⁴ (*McDonald's*), where the Supreme Court held that (i) a new or amended LOA is necessary to confer authority upon a substitute revenue officer to continue an audit or investigation; and (ii) the use of an MOA, Referral Memorandum, or any equivalent document directing an unauthorized BIR officer to continue an audit or investigation effectively usurps the functions of an LOA.

Respondent maintains that these pronouncements squarely apply to the present case. Thus, the MOA issued by petitioner could not have validly conferred authority upon the BIR officers named therein to conduct the audit and investigation, or, consequently, to issue the subject assessments. Absent a valid LOA authorizing the revenue officers who actually conducted the examination, the resulting assessments for deficiency taxes and compromise penalties are void.

Respondent further emphasizes that requiring a valid LOA as a prerequisite to a lawful tax investigation does not unduly hamper the BIR's operations, citing *Republic v. Robiegie Corp.*³⁵ (*Robiegie*).

Accordingly, respondent asserts that, pursuant to the doctrine of *stare decisis*, the CTA is bound to adhere to the doctrines laid down in *McDonald's* and *Robiegie*, as definitively settled by the Supreme Court.

Finally, respondent argues that petitioner is, in any event, precluded from enforcing the subject assessments by its own omissions and delay, particularly: (i) its failure to file the claim before the liquidation court; (ii) its failure to issue the subject assessments within the applicable prescriptive period; (iii) its failure to collect the alleged deficiency taxes within the period prescribed by law; and (iv) the consequent application of the doctrine of laches.

³⁴ G.R. No. 242670, May 10, 2021 [Per J. J.Y. Lopez, Third Division].

³⁵ G.R. No. 260261, October 03, 2022 [Per J. Gaerlan, Third Division].

RULING OF THE COURT *EN BANC*

At the outset, the Court finds that the *Petition for Review* was timely filed. Nonetheless, it must be dismissed for failure to establish the authority of the BIR lawyers who instituted the present proceedings. Even assuming *arguendo* that the BIR counsels were duly authorized to represent petitioner, the *Petition* is still devoid of merit.

Timeliness of the Petition for Review

The records disclose that petitioner and the Office of the Solicitor General (OSG) received copies of the assailed Resolution on February 19,³⁶ and 26,³⁷ 2025, respectively.

On March 06, and 07, 2025, petitioner personally³⁸ and electronically³⁹ filed, respectively, a *Motion for Extension of Time to File Petition for Review*.⁴⁰ The Court granted⁴¹ the *Motion*, thereby allowing petitioner until March 21, 2025 within which to file the petition.

Accordingly, the *Petition for Review*,⁴² which petitioner filed personally⁴³ and electronically⁴⁴ on March 21, and 24, 2025, respectively, was therefore seasonably filed within the extended period granted by the Court.

The BIR lawyers lack authority to institute the present Petition

Notwithstanding its timeliness, the *Petition for Review* must be dismissed for another, more fundamental, reason: petitioner failed to establish the authority of the BIR counsels who instituted the present proceedings.

It is well-settled that the authority to represent the State in appellate proceedings is primarily vested in the OSG, being the

³⁶ Division Docket – Vol. III, p. 1024.

³⁷ Division Docket – Vol. III, p. 1024.

³⁸ *EB* Docket, p. 1.

³⁹ *EB* Docket, p. 7.

⁴⁰ *EB* Docket, pp. 1 to 4.

⁴¹ *EB* Docket, p. 8.

⁴² *EB* Docket, pp. 9 to 15.

⁴³ *EB* Docket, p. 9.

⁴⁴ *EB* Docket, p. 61.

principal law officer and legal defender of the Government.⁴⁵ This mandate finds express statutory recognition in Section 35 (1), Chapter 12, Title III, Book IV of the Administrative Code of 1987,⁴⁶ which states:

SECTION 35. Powers and Functions. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:

- (1) **Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.**

x x x (Emphasis supplied)

The foregoing provision leaves no room for doubt. The OSG bears the primary responsibility for representing the State, its agencies and instrumentalities, and its officers in judicial proceedings. Thus, insofar as appellate proceedings are concerned, the OSG's authority to appear and act for the Government is neither incidental nor derivative, but proceeds directly from its statutory mandate as the Government's principal legal representative.

To be sure, Section 220 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that civil and criminal actions and proceedings instituted on behalf of the Government under the authority of the said law shall be conducted by legal officers of the BIR. This provision, however, cannot be construed as diminishing, much less supplanting, the OSG's statutory mandate and settled authority to represent the Government in appellate proceedings.

The Supreme Court has definitively settled this matter in *Commissioner of Internal Revenue v. La Suerte Cigar & Cigarette Factory*,⁴⁷ where it categorically held that while the institution of civil and criminal actions arising under the Tax Code may properly be

⁴⁵ Constituting the Office of the Solicitor General as an Independent and Autonomous Office Attached to the DOJ, Executive Order No. 300, July 26, 1987.

⁴⁶ Executive Order No. 292, July 25, 1987.

⁴⁷ G.R. No. 144942 (Resolution), July 04, 2002 [Per J. Vitug, *En Banc*].

undertaken by BIR legal officers, the prosecution of an appeal is a distinct matter, and remains subject to the OSG's primary responsibility to represent the Government in appellate proceedings. The Supreme Court explained:

The *institution or commencement* before a proper court of civil and criminal actions and proceedings arising under the Tax Reform Act which "shall be conducted by legal officers of the Bureau of Internal Revenue" is not in dispute. ***An appeal from such court, however, is not a matter of right. Section 220 of the Tax Reform Act must not be understood as overturning the long established procedure before this Court in requiring the Solicitor General to represent the interest of the Republic. This Court continues to maintain that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings.*** This pronouncement finds justification in the various laws defining the Office of the Solicitor General, beginning with Act No. 135, which took effect on 16 June 1901, up to the present Administrative Code of 1987. Section 35, Chapter 12, Title III, Book IV, of the said Code outlines the powers and functions of the Office of the Solicitor General which includes, but not limited to, its duty to —

"(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; **represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions** and special proceedings in which the Government or any officer thereof in his official capacity is a party.

"xxx xxx xxx

"(3) Appear in any court in any action involving the validity of any treaty, law, executive order or proclamation, rule or regulation when in his judgment his intervention is necessary or when requested by the Court." (Italics in the original; emphases and underscoring supplied; citations omitted)

Thus, Section 220 of the NIRC of 1997, as amended, cannot be read in isolation or construed as an implied withdrawal of the OSG's statutory authority. The provision merely recognizes the authority of the BIR legal officers to institute and conduct tax-related actions in the proper courts, but it does not confer upon them an independent authority to represent the Government in appellate proceedings.

Consistent with this doctrine, Revenue Memorandum Circular (RMC) No. 25-2010,⁴⁸ which embodies the Memorandum of

⁴⁸ Publishing the Full Text of the Memorandum of Agreement Between the BIR and the OSG, March 17, 2010.

Agreement between the OSG and the BIR, delineates the respective functions and responsibilities of the two (2) offices in the preparation and prosecution of tax cases. Significantly, insofar as appeals before the CTA *En Banc* are concerned, the Memorandum of Agreement authorizes the OSG to deputize BIR handling lawyers to continue the prosecution and litigation of appealed tax cases. Such deputation, however, is not self-executing. More importantly, it does not divest the OSG of its supervisory authority and control over the case.

Indeed, the very terms of RMC No. 25-2010 negate any notion of an unrestricted or blanket delegation of the OSG's authority to BIR lawyers. Rather, the Memorandum of Agreement establishes a definite mechanism by which the OSG may deputize qualified BIR handling lawyers, subject to the conditions and procedures therein prescribed. Among these express conditions is the requirement that **the BIR periodically submit to the OSG a list of its handling lawyers for purposes of deputation**. The pertinent provisions of RMC No. 25-2010 provide:

REVENUE MEMORANDUM CIRCULAR NO. 25-2010

X X X

"MEMORANDUM OF AGREEMENT"

X X X

WHEREAS, in the Resolution promulgated on 04 July 2002 in G.R. No. 144942 entitled *Commissioner of Internal Revenue vs. La Suerte Cigar and Cigarette Factory*, the Supreme Court *En Banc* ruled that "*it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings.*"

X X X

B. HANDLING CASES

X X X

2. Cases appealed before the Regional Trial Courts, Court of Appeals, and the Court of Tax Appeals *En Banc*.

a. The OSG hereby deputizes BIR handling lawyers to:

- i. Appear before the Courts; and
- ii. Continue the prosecution/litigation of appealed tax cases before the Regional Trial Courts, Court of Appeals and the Court of Appeals *En Banc*.

The BIR handling lawyer shall have the following responsibilities:

- i. To appear before the courts; and
 - ii. To prepare all pleadings, motions, orders, decisions, resolutions, communications and other papers/documents in connection with the case.
- b. **The BIR shall periodically submit a list of handling lawyers to the OSG for purposes of deputation.**
(Italics in the original; emphasis supplied)

Here, an examination of the *Petition for Review* and its attachments reveals a conspicuous omission: no deputation from the OSG authorizing the BIR special counsels to file the *Petition* or to represent petitioner in these proceedings was attached thereto. Neither does the record contain any other document showing that the OSG expressly authorized the BIR lawyers to institute the present appeal or to appear on its behalf.

Petitioner cannot cure this deficiency by relying on Revenue Delegation Authority Order (RDAO) No. 2-2007,⁴⁹ which was attached⁵⁰ to the *Petition for Review*. While RDAO No. 2-2007 delegates to designated BIR officials the authority to institute civil, administrative, and criminal actions for the recovery of taxes, and the enforcement of fines, penalties, and forfeitures under the NIRC of 1997, as amended, such authority emanates solely from the then CIR. It is not, and cannot be deemed, a deputation from the OSG.

The distinction is crucial. The authority granted by the CIR under RDAO No. 2-2007 pertains to the BIR's statutory functions in the administration and enforcement of internal revenue laws. It does not confer upon BIR lawyers the authority vested in the OSG to represent the Government in appellate proceedings. Since the RDAO was neither issued nor authorized by the OSG, it cannot serve as a substitute for the requisite OSG deputation.

The Court has consistently held that where the OSG's authority is required, a petition filed without its imprimatur is defective, and may be dismissed on that ground alone.⁵¹ This rule is not grounded on mere procedural technicalities, but on the fundamental allocation of legal authority within the Government: while the BIR is charged with the administration and enforcement of the tax laws, the OSG retains the

⁴⁹ Delegation of Authority to Institute Civil and Criminal Actions to Recover Taxes or Enforce Fines, Penalties or Forfeitures, March 01, 2007.

⁵⁰ *EB* Docket, pp. 27 to 28.

⁵¹ *Commissioner of Internal Revenue v. Second Division of the Court of Tax Appeals*, G.R. No. 280165, August 04, 2025 [Per J. Inting, Third Division].

authority and control over the Government's representation in appellate proceedings.

Accordingly, petitioner failed to establish that the BIR special counsels possessed the requisite authority to institute the instant *Petition for Review*. This defect, standing alone, warrants its dismissal.

Be that as it may, even assuming that the BIR lawyers were duly deputized by the OSG, the *Petition* would still fail. As discussed hereunder, petitioner's substantive arguments are bereft of merit, and do not warrant the reversal of the assailed Decision.

The Court in Division did not err in resolving an issue not raised before it or during the administrative proceedings

Petitioner contends that the validity of the authority of the BIR officers who continued the subject audit was raised for the first time on appeal. He maintains that respondent never questioned the authority of these officers during the administrative proceedings or before the Court in Division. According to petitioner, a valid LOA was issued to the ROs and GS who initially conducted the audit, and the subsequent assignment of RO Fadri and GS San Diego did not invalidate or otherwise affect the previously issued LOA. Petitioner further argues that respondent never challenged the authority of these officers during the examination, and, in any event, that their authority was subsequently confirmed by the issuance of a new LOA, which respondent, through its liquidator, received. Thus, petitioner insists that the examination of respondent's books of accounts and other accounting records for fiscal year (FY) 2009 was conducted pursuant to a valid LOA.

The Court disagrees.

Section 1, Rule 14 of the RRCTA provides:

RULE 14

JUDGMENT, ITS ENTRY AND EXECUTION

SECTION 1. *Rendition of judgment.* — x x x

In deciding a case, **the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** (Emphasis and underscoring supplied)

The language of the rule is unequivocal. In adjudicating a case, the CTA is not confined to the issues expressly raised or stipulated by the parties. It may likewise resolve related issues that are necessary to the orderly disposition of the controversy, even when such issues were not specifically raised by the parties.

This authority is not novel. In *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*⁵² (*Lancaster*), the Supreme Court expressly affirmed the CTA's authority to resolve an issue that had not been raised by the parties, *viz.*:

On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.

Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, **the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:

SECTION 1. *Rendition of judgment.* — x x x

In deciding the case, **the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**

The above section is clearly worded. On the basis thereof, **the CTA Division was, therefore, well within authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda.** The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter. (Emphases and underscoring supplied)

The pronouncement in *Lancaster* is particularly apropos. There, as here, the CTA considered the scope of authority of the BIR officers named in the LOA, notwithstanding that the issue had not been raised by the parties in their pleadings or memoranda. The Supreme Court sustained the CTA's action, recognizing that the matter fell within the Court's authority to resolve related issues necessary for the orderly disposition of the case.

⁵² G.R. No. 183408, July 12, 2017 [Per J. Martires, Second Division].

Petitioner's reliance, therefore, on the general rule that an issue not raised below may not be raised for the first time on appeal is misplaced. The rule cannot be invoked to curtail a power that the CTA's own rules expressly confer upon it. The Court's authority to resolve a related issue necessary to the proper disposition of the case does not depend upon the parties having first raised the issue themselves.

More importantly, the issue here is neither foreign nor collateral to the controversy. Whether the BIR officers who actually conducted the audit of respondent's books of accounts and other accounting records were duly authorized is integral to the validity of the resulting assessments. The authority of the BIR officers to undertake the audit necessarily precedes the validity of the assessments founded upon such examination. It is, therefore, a matter that the Court may properly inquire into in determining whether the assessments may stand.

The Court in Division, therefore, did not err in passing upon the authority of the BIR officers who conducted the examination. The issue was necessarily related to, and material for, the proper disposition of the assessment case. The Court may, consequently, proceed to determine whether the BIR officers who actually conducted the examination of respondent's books of accounts and other accounting records for FY 2009 were duly authorized to do so.

The Court in Division correctly declared the assessments void for want of a valid LOA authorizing the BIR officers who conducted the audit

Petitioner assails the Court in Division's finding that the BIR officers who examined respondent's books and accounts were not duly authorized, raising two (2) arguments.

First, petitioner contends that respondent was not deprived of due process because the MOA expressly identified the BIR officers who were to continue the audit and investigation. According to petitioner, the MOA did not itself confer authority upon the assigned officers but merely implemented the authority granted under the original LOA. Thus, petitioner maintains that the source of their authority remained the original LOA, and not the MOA.

Second, petitioner argues that the Court in Division erred in relying on *Medicard*, whose factual circumstances, he claims, are materially different from those obtaining here. Unlike in *Medicard*, where the assessment was based solely on a Letter Notice and no LOA had been issued, a valid LOA was initially issued in this case, followed by another LOA purportedly confirming the authority of the officers who continued the examination.

Neither argument persuades.

As to the *second* argument, petitioner’s reliance on *Medicard* is misplaced. The Court in Division neither relied upon nor invoked *Medicard* in finding that the BIR officers who examined respondent’s books and accounts were not duly authorized, and, on that basis, declaring the subject assessments void. Petitioner therefore assails a premise that does not form part of the ruling under review.

In any event, petitioner’s *first* argument likewise fails.

The relevant and undisputed factual antecedents are as follows:

Date	Particulars
August 04, 2009	The BIR, through the Officer-in-Charge Assistant Commissioner (OIC-ACIR) for Large Taxpayers Service (LTS), issued an LOA ⁵³ authorizing ROs Alexander Atienza (RO Atienza), Melinda Lim (RO Lim), Nimfa Saga (RO Saga), and Gloria Morales (RO Morales) , under GS Theodore L. Maroket (GS Maroket) , to examine respondent’s books of accounts and other accounting records for all internal revenue taxes covering the period April 01, 2008 to March 31, 2009, or FY 2009
April 01, 2013	The OIC Chief – Regular Large Taxpayers Division (RLTAD) ² issued an MOA ⁵⁴ assigning the case to RO Fadri and GS San Diego for the continuation of audit/investigation, replacing the previously assigned BIR officers who had resigned, retired, or been transferred to another district office
November 14, 2013	RO Fadri submitted a Memorandum , ⁵⁵ noted by GS San Diego , recommending the

⁵³ Exhibit “R-3.”
⁵⁴ Exhibit “R-1.”
⁵⁵ Exhibit “R-9.”

	approval of the deficiency tax assessments, and the issuance of a Preliminary Assessment Notice (PAN) against respondent
November 19, 2013	Respondent received the PAN ⁵⁶ through its liquidator
December 16, 2013	Respondent received the Formal Letter of Demand/Final Assessment Notices ⁵⁷ (FLD/FANs) dated December 12, 2013, assessing it for alleged deficiency taxes totaling ₱850,197,620.75, inclusive of interests and compromise penalties
January 10, 2014	Respondent, through its liquidator, filed a Protest ⁵⁸ against the FLD/FANs
April 16, 2014	The OIC Chief of RLTAD 2 issued another MOA , ⁵⁹ referring the Protest to RO Fadri and GS San Diego for reinvestigation
March 26, 2019	The OIC-ACIR-LTS issued a new LOA ⁶⁰ replacing the August 04, 2009 LOA, and authorizing RO Fadri and GS Ma. Daisy Dajao (GS Dajao) to examine respondent's books of accounts for FY 2009

The chronology is decisive.

The August 04, 2009 LOA⁶¹ specifically authorized only ROs Atienza, Lim, Saga, and Morales, under GS Maroket, to conduct the examination. Yet, when the examination that resulted in the subject assessments was undertaken, it was RO Fadri and GS San Diego—not the BIR officers named in the LOA—who conducted the audit. Their authority proceeded solely from the April 01, 2013 MOA⁶² issued by the OIC Chief of RLTAD 2.

That cannot suffice.

An LOA is not a general authority vested in the BIR or in any revenue officer who may subsequently be assigned to a case. It is a specific authority conferred upon the BIR officers named therein. The names appearing in the LOA are not mere administrative details; they establish the necessary nexus between the authority granted by the

⁵⁶ Exhibit "R-10."
⁵⁷ Exhibit "P-5;" Exhibit "R-12."
⁵⁸ Exhibit "P-6."
⁵⁹ Exhibit "R-13."
⁶⁰ Exhibit "R-2."
⁶¹ Exhibit "R-3."
⁶² Exhibit "R-1."

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Commissioner or the latter's duly authorized representative, and the officers who actually conduct the examination.

Thus, respondent's receipt of the MOA informing it of the reassignment did not cure the defect. A notice of reassignment is not equivalent to authority to conduct an examination. The former merely apprises the taxpayer of an internal administrative action; the latter must be conferred through an LOA issued by the CIR or his duly authorized representative in accordance with law and the applicable regulations.

The Supreme Court's pronouncement in *McDonald's* is instructive:

B. The Use of Memorandum of Assignment, Referral Memorandum, or Such Equivalent Document, Directing the Continuation of Audit or Investigation by an Unauthorized Revenue Officer Usurps the Functions of the LOA

It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers. However, notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.

The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. **But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.**

The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in

their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative. The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10 (c) and 13 of the NIRC. Hence, **the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.** (Emphases and underscoring supplied)

The April 01, 2013 MOA⁶³ therefore could not accomplish what the law requires to be done through an LOA. A subordinate BIR official cannot, by a mere internal memorandum, substitute the revenue officers specifically named in an LOA, and thereby extend the authority thereunder to officers whom the issuing authority did not authorize.

Nor does Revenue Memorandum Order (RMO) No. 8-2006⁶⁴ avail the petitioner. Even assuming that it permits the reassignment of cases when the originally assigned revenue officers have resigned, retired, or transferred, such administrative mechanism does not dispense with the separate requirement that the replacement officers be duly authorized to conduct the examination.

Verily, the Supreme Court in *McDonald's* recognized the continuing applicability of RMO No. 43-90,⁶⁵ Section D(5) of which expressly provides:

Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As. (Emphases and underscoring supplied)

The requirement admits of no ambiguity. The reassignment or transfer of a case to another revenue officer requires the issuance of a new LOA. The April 01, 2013 MOA⁶⁶ could not substitute for the LOA thus required.

⁶³ Exhibit "R-1."

⁶⁴ Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS), February 01, 2006.

⁶⁵ Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, September 20, 1990.

⁶⁶ Exhibit "R-1."

More fundamentally, the absence of a valid LOA is not a mere technical or internal administrative defect. It implicates respondent's right to due process. The LOA requirement assures the taxpayer, at the outset of the examination, that the revenue officers examining its books possess the authority to do so. As *McDonald's* explained, the taxpayer must be able to verify such authority from the LOA itself by determining whether the officers actually conducting the audit are the officers named therein. The identities of the authorized BIR officers thus form an essential link between the LOA and the validity of the examination. Thus:

The result of the absence of a LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process.

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

Consequently, when officers other than those named in the LOA conduct the examination, the taxpayer is deprived of the means to verify their authority. The defect thus arises at the inception of the examination and cannot be cured by the BIR's subsequent issuance of an LOA.

The March 26, 2019 LOA,⁶⁷ which named RO Fadri and GS Dajao, is of no avail. It was issued years after RO Fadri and GS San Diego had already conducted the examination, and after the resulting assessments had already been issued. It therefore could not retroactively confer authority upon RO Fadri and GS San Diego, or validate acts performed when they were not covered by a subsisting LOA. Authority to conduct an audit must exist at the time the examination is undertaken; it cannot be supplied retrospectively.

⁶⁷ Exhibit "R-2."

To hold otherwise would render the LOA requirement illusory. The BIR could permit an unauthorized officer to conduct an examination, and, years later, issue an LOA naming that officer, thereby attempting to validate the examination retroactively. Such a practice would defeat the very purpose of the LOA requirement and reduce a substantive due process safeguard to a mere post *hoc* formality.

Taken together, these considerations compel the conclusion that RO Fadri and GS San Diego conducted the examination that gave rise to the subject assessments without being named in a valid and subsisting LOA. The April 01, 2013 MOA⁶⁸ did not confer the requisite authority, while the March 26, 2019 LOA⁶⁹ could not cure the defect retroactively.

The Court in Division thus correctly declared the subject assessments void, there being no valid LOA authorizing the BIR officers when they actually conducted the audit of respondent's books for FY 2009. Petitioner's arguments afford no basis for disturbing this conclusion.

The assessments are, in any event, void for having been issued beyond the three (3)-year prescriptive period, absent a valid waiver

While the NIRC of 1997, as amended, vests the CIR with authority to assess taxpayers,⁷⁰ such power is not unbridled. It is circumscribed by a clear statutory limitation. As a general rule, the CIR may assess internal revenue taxes only within three (3) years from the last day prescribed by law for the filing of the return or from the date of actual filing thereof, whichever is later, pursuant to Section 203 of the NIRC of 1997, as amended, *viz.*:

Section 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 x x x 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

⁶⁸ Exhibit "R-1."

⁶⁹ Exhibit "R-2."

⁷⁰ National Internal Revenue Code (NIRC) of 1997, as amended, Title I, Section 6.

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.

The three (3)-year period is not a mere procedural limitation. It constitutes a substantive safeguard against the indefinite exposure of taxpayers to tax investigations and assessments. Upon the lapse of the statutory period, the taxpayer acquires the right to rely on the finality of its tax liability, subject only to the exceptions expressly provided by law.

One such exception is found in Section 222 of the NIRC of 1997, as amended, which permits the assessment period to be extended when, before the expiration of the period prescribed under Section 203, the CIR and the taxpayer agree in writing to an assessment beyond the ordinary prescriptive period, to wit:

Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.

X X X

- (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

X X X

The statutory requirement is thus unequivocal: the right to assess beyond the ordinary period must be founded upon a valid written agreement executed within the period sought to be extended. Absent such a valid waiver, the expiration of the statutory period operates as a complete bar to the assessment.

Here, the purported *Waiver of the Statute of Limitations under the National Internal Revenue Code*⁷¹ dated October 07, 2011 (*Waiver*) failed to comply with the requirements prescribed by the applicable BIR issuances, particularly RMO No. 20-90,⁷² and RDAO No. 05-01.⁷³ These requirements are not empty technicalities. They were adopted precisely to ensure that a taxpayer's relinquishment of the protection

⁷¹ Exhibit "P-18;" Exhibit "R-4."

⁷² Proper Execution of Waiver of Statute of Limitations Under the NIRC, Revenue Memorandum Order No. 20-90, April 04, 1990.

⁷³ Delegation of Authority to Sign and Accept Waiver of Defense of Prescription Under Statute of Limitations, August 02, 2001.

afforded by prescription is made knowingly, deliberately, and in accordance with prescribed safeguards. As held in *Commissioner of Internal Revenue v. Kudos Metal Corporation*:⁷⁴

Section 222 (b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:

1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after _____ 19 ____", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
2. **The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.**
3. The waiver should be **duly notarized**.
4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. **However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.**
5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.
6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement. (Emphases and underscoring supplied; citations omitted)

⁷⁴ G.R. No. 178087, May 05, 2010 [Per J. Del Castillo, Second Division].

The alleged *Waiver*⁷⁵ in this case suffers from the following fatal defects:

- (1) The *Waiver* was signed by respondent's then EVP-Comptroller, Mr. Rodrigo U. Cabrera, without written and notarized authority to execute the same on respondent's behalf;
- (2) The *Waiver* was not duly notarized; and
- (3) Before affixing his signature thereto, the OIC-ACIR-LTS failed to ascertain that the *Waiver* was in the prescribed form, duly notarized, and executed by the respondent or its duly authorized representative.

These defects are fatal to the purported extension of the prescriptive period. Consequently, the periods within which petitioner could assess respondent for the alleged income tax, value-added tax, expanded withholding tax, withholding tax on compensation, fringe benefit tax, documentary stamp tax, and compromise penalties for FY 2009 (i.e., April 01, 2008 to March 31, 2009) were not extended. The assessments⁷⁶ issued on December 12, 2013, and received by respondent on December 16, 2013, were thus made beyond the applicable three (3)-year prescriptive period. They are therefore void, and of no legal effect.

The foregoing conclusion is consistent with the settled policy underlying the statutory periods for the assessment and collection of internal revenue taxes. These periods serve as substantive safeguards against unreasonable and indefinite tax investigations, requiring the BIR to act with promptness while affording taxpayers security and finality after the lapse of the prescribed period. As the Supreme Court explained in *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*:⁷⁷

The NIRC, under Sections 203 and 222, provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation. Unreasonable investigation contemplates cases where the period for assessment extends indefinitely because this deprives the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time. As was held in *Republic of the Phils. v. Ablaza*:

⁷⁵ Exhibit "P-18;" Exhibit "R-4."

⁷⁶ Exhibit "P-5;" Exhibit "R-12."

⁷⁷ G.R. No. 162852, December 16, 2004 [Per J. Ynares Santiago, First Division].

The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such a legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. *The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommend the approval of the law.* (Italics in the original; citations omitted)

In sum, the case presents two (2) independent grounds for sustaining the invalidity of the assessments. **First**, the examination was conducted by BIR officers who were not named in a subsisting LOA, and whose authority could not be supplied by a mere MOA, or by a subsequent LOA issued years after the audit. **Second**, even assuming that the examination was valid, the assessments were issued after the statutory period had expired, there being no valid waiver that could have extended the three (3)-year prescriptive period.

WHEREFORE, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated August 22, 2024, and the assailed Resolution dated February 06, 2025, are hereby **AFFIRMED**.

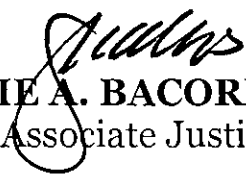
SO ORDERED.


HENRY S. ANGELES
Associate Justice

WE CONCUR:

(ON OFFICIAL BUSINESS)

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(ON OFFICIAL BUSINESS)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes - Fajardo
(Please see CDO.)
MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


PAOLO S. TESTON
Associate Justice


DEBBIE JEAN CENTENO-DIJAMCO
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.


JEAN MARIE A. BACORRO-VILLENA
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF CTA EB No. 3105
INTERNAL REVENUE, (CTA Case No. 10339)
Petitioner,

Present:

-versus-

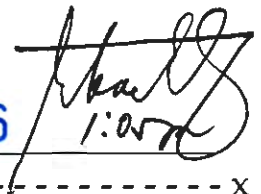
PRUDENTIAL LIFE PLANS,
INC., herein represented by
ATTORNEY DIONNE
MARIE SANCHEZ, as
Liquidator, and the Insurance
Commission,

Respondents.

RINGPIS-LIBAN, PJ,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES,
ANGELES,
TESTON, and
CENTENO-DIJAMCO, JJ.

Promulgated:

SEP 11 2026



X-----X

CONCURRING AND DISSENTING OPINION

REYES-FAJARDO, J.:

I agree with the conclusion that the deficiency internal revenue tax assessments slapped by the Bureau of Internal Revenue (BIR) against respondent Prudential Life Plans, Inc. (PLI), covering the period April 1, 2008 to March 31, 2009 (FY 2009) should be nullified because the formal assessment is a product of an invalid examination or audit by petitioner's tax agents.¹

I, however, differ from the finding that petitioner's right to assess respondent PLI for deficiency internal revenue taxes covering FY 2009 is barred by the three (3)-year prescriptive period to assess

¹ Pages 18-24, Decision in CTA EB No. 3105.



under Section 203 of the National Internal Revenue Code of 1997 (NIRC), as amended.²

Allow me to explain.

In *AFP General Insurance Corporation v. Commissioner of Internal Revenue (AGIC)*,³ therein taxpayer pleaded prescription on the BIR's right to assess internal revenue tax. However, therein taxpayer failed to present its pertinent tax returns. AGIC ruled that the lack of proof of actual filing of said tax returns renders the defense of prescription unavailable:

Prescription is a matter of defense. The taxpayer has the burden of proving that the prescriptive period has lapsed, including positively identifying when the prescriptive period began to run and exactly when it expired. **Consequently, [the taxpayer] cannot avail itself of the defense of prescription inasmuch as they failed to present proof of actual filing of their DST returns.**⁴

Then came *Commissioner of Internal Revenue v. Marily Development Corporation (MDC)*.⁵ There, therein respondent failed to offer in evidence its annual income tax and value-added tax returns for 2006. On account of said failure, MDC held that: (1) the defense of prescription of the right to assess is unavailing; and (2) it signifies omission to file the same, justifying the application of the ten (10)-year extraordinary prescriptive period to assess under Section 222(a) of the NIRC, as amended. Thus:

[Therein taxpayer] did not offer in evidence[,] its Annual Income Tax Return and VAT returns for 2006. We can only surmise [therein taxpayer]'s reasons for not offering in evidence these tax returns. **Thus, [therein taxpayer] cannot avail of the defense of prescription since it failed to present proof of actual filing of these returns. Since there is no presumption that the taxpayer duly filed its returns, the only conclusion is that no such returns were filed. The BIR had 10 years to make the assessment.**⁶

² Pages 24-28, Decision in CTA EB No. 3105.

³ G.R. No. 222133, November 4, 2020.

⁴ Boldfacing mine.

⁵ G.R. No. 263794, April 2, 2025.

⁶ Boldfacing mine.

Petitioner⁷ and respondent PLI⁸ did *not* offer any tax returns for FY 2009, rendering the defense of prescription of the BIR's right to assess respondent PLI for FY 2009 unavailable, pursuant to AGIC. Too, the parties' failure to offer said returns is indicative of respondent PLI's omission to file said tax returns per MDC; hence, the BIR had ten (10) years to make the formal assessment per Section 222(a) of the NIRC, as amended, and *not* three (3) years as discussed in the *ponencia*.

All said, I **CONCUR** in the *ponencia*, except for the declaration that the BIR's right to assess respondent for FY 2009 is barred by the three (3)-year prescriptive period under Section 203 of the NIRC, as amended.


MARIAN IVY F. REYES-FAJARDO
Associate Justice

⁷ Respondent [now petitioner]'s Formal Offer of Evidence. Docket (CTA Case No. 10339), pp. 908-918.

⁸ Petitioner [now respondent]'s Formal Offer of Evidence. *Id.* at pp. 748-756.