REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SQUARE TOP, INC., *Petitioner,*	**CTA CASE NO. 10571**
	Present:
- versus -	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** and **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 24 2025 2:08 pm

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DECISION

ANGELES, J.:

Before the Court is a *Petition for Review*[1] filed by Square Top, Inc. (Petitioner) on July 2, 2021 praying that the alleged deficiencies for taxable year (TY) 2009 relative to income tax, fringe benefits tax (FBT), improperly accumulated earnings tax (IAET), final withholding tax (FWT), and compromise penalty in the aggregate amount of Twenty-Six Million Three Hundred Twenty-One Thousand Six Hundred Six Pesos and 3/100 Centavos (₱26,321,606.03) be cancelled and withdrawn.[2]

THE PARTIES

Petitioner Square Top, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines. It is one of the absorbed corporations upon its merger with, *inter alia*, Max's Kitchen, Inc. (the surviving corporation).[3]

On the other hand, respondent is the duly appointed Commissioner (CIR) of the Bureau of Internal Revenue (BIR), vested under the appropriate laws with authority to carry out the functions, duties, and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, grant tax refunds, and issue tax

[1] Division Docket, pp. 6 to 19.
[2] Statement of the Case, Pre-Trial Order dated June 24, 2022, Docket, p. 268.
[3] Exhibit "P-2", Docket, pp. 462 to 486.

credit certificates, pursuant to the provisions of the National Internal Revenue Code of 1997, as amended, (NIRC) and other tax laws, rules, and regulations.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On April 15, 2010, petitioner filed with the BIR its Annual Income Tax Return (ITR) for TY ending December 31, 2009.[5]

The BIR, through Regional Director Jaime B. Santiago, issued a *Letter of Authority* (LOA) dated May 20, 2010 (LOA 2009 00005805),[6] authorizing Revenue Officer (RO) Philipp King S. Cartagena/Group Supervisor (GS) Teodoro V. Malabanan, Jr., to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, for the period from January 1, 2009 to December 31, 2009 (First LOA). Subsequently, the BIR, through the same Regional Director, issued another LOA dated October 19, 2010 (SN: eLA201000036658/LOA-052-2010-00000593),[7] authorizing the same RO/GS to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, for the same taxable year (Second LOA).

Thereafter, on September 28, 2012 a *Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code* (First Waiver),[8] was executed extending the assessment and/or collection of taxes for 2009 which may be found due after investigation/reinvestigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by Sections 203 and 222 of the NIRC, but not later than June 30, 2013. The said First Waiver was accepted by respondent, through Revenue District Officer Maria Socorro O. Lozano, on the same day of the execution thereof.[9]

On December 17, 2012, another waiver (Second Waiver),[10] containing the same information found in the First Waiver was executed. The Second Waiver was accepted on December 27, 2012 by respondent, through Officer-In-Charge Revenue District Officer Regina C. Dela Cruz (OIC-RDO Dela Cruz).[11]

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[4] Par. 1, Facts Admitted, *Joint Stipulation of Fac*[t]*s and Issues* (JSFI), Docket, p. 257.
[5] Exhibit "P-3", Division Docket, p. 487.
[6] Exhibit "R-1", BIR Records, p. 42.
[7] Exhibit "R-2", BIR Records, p. 45.
[8] Exhibit "R-3", BIR Records, p. 339.
[9] *Id.*
[10] Exhibit "R-12", BIR Records, p. 376.
[11] *Id.*

Subsequently, on December 20, 2012, petitioner received a letter dated December 19, 2012 of OIC-RDO Dela Cruz,[12] requesting for an informal conference relative to the findings of the BIR. In reply, petitioner filed with the latter its letter dated December 26, 2012,[13] expressing its position on the proposed deficiency tax assessments for TY 2009.

RO Philipp King S. Cartagena (RO Cartagena) then submitted to then Commissioner Kim S. Jacinto-Henares (CIR Henares) and Regional Director Nestor S. Valeroso (RD Valeroso) the *Memorandum Report* dated February 25, 2013,[14] recommending the issuance of a formal assessment against petitioner.

The BIR, through RD Valeroso, then issued the *Preliminary Assessment Notice* (PAN) dated April 8, 2013,[15] informing petitioner that after investigation, there has been found due from the latter deficiency income tax, FBT, IAET, and FWT, including surcharges, interests, and compromise penalties, in the aggregate amount of ₱20,242,946.23. On May 7, 2013, petitioner filed a Protest (letter of even date) against the said PAN.[16]

On June 25, 2013, petitioner received the *Formal Assessment Notice* and *Assessment Notices* (FLD/FANs), all dated June 24, 2013, assessing petitioner of income tax amounting to ₱2,159,233.67, FBT amounting to ₱2,491,242.36, IAET amounting to ₱15,834,912.35, FWT amounting to ₱272,843.04, including increments, and compromise penalties in the aggregate amount of ₱95,000.00, for TY 2009.[17] Consequently, on July 23, 2013, petitioner filed a Protest Letter (letter of even date) against the said FLD/FANs.[18]

Thereafter, RO Cartagena submitted to Regional Director Jonas DP Amora (RD Amora) the *Memorandum Report* dated October 9, 2015,[19] recommending that the protest of petitioner be denied for utter lack of merit, after taking into consideration its partial payments of income tax and IAET, amounting to ₱1,260,937.00 and ₱2,197,753.56, respectively.

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[12] Exhibit "R-4", BIR Records, p. 393.
[13] Exhibit "R-5", BIR Records, pp. 400 to 401.
[14] Exhibit "R-7", BIR Records, pp. 471 to 480.
[15] Exhibits "P-18" and "R-8", BIR Records, pp. 512 to 516.
[16] Par. 2, Facts Admitted, JSFI, Docket, p. 258; and Exhibits "P-8" and "R-9", BIR Records, pp. 529 to 537.
[17] Exhibits "P-9", "P-10" to "P-10-4", and "R-10", BIR Records, pp. 547 to 556. Refer also to par. 3, Facts Admitted, JSFI, Docket, p. 258.
[18] Exhibits "P-11" and "R-11", BIR Records, pp. 585 to 577; and par. 4, Facts Admitted, JSFI, Docket, p. 258.
[19] Exhibit "R-14-A", BIR Records, pp. 634 to 638.

Revenue District Officer Cristina Barroga issued the *Memorandum of Assignment* (MOA) dated June 7, 2016 addressed to RO Rio Virgo T. Cruz (RO Cruz) and GS Ruben C. Fuerte,[20] for the continuation of the audit/investigation of petitioner to replace the lead RO who was retired/resigned/transferred to another revenue district office. RO Cruz then submitted to RD Amora the *Memorandum* dated July 25, 2016,[21] stating that the protest of petitioner on the total deficiency tax on the improperly accumulated retained earnings contained in the FLD/FANs dated June 24, 2013, as adjusted by partial payments made, must necessarily fail for lack of factual and legal basis.

On February 6, 2018, petitioner received the *Final Decision on Disputed Assessment* (FDDA) dated February 1, 2018 which is signed by Regional Director Glen A. Geraldino of Revenue Region No. 8 – Makati City,[22] finding that petitioner is still liable to pay the total amount of ₱26,321.606.03,[23] broken down as follows:

	Basic tax	**Surcharge**	**Interest**	**TOTAL**
Income tax	₱491,756.60		₱783,073.21	₱1,274,829.81
FBT	1,270,588.24	₱ 317,647.06	2,085,797.65	3,674,032.95
IAET	7,757,284.30	1,939,321.08	11,182,901.05	20,879,506.43[24]
FWT	150,753.42		247,483.42	398,236.84
Compromise penalty				95,000.00
			TOTAL	**₱26,321.606.03**

Petitioner then filed its *Appeal* dated March 5, 2018 with the Office of respondent on March 8, 2018.[25]

On June 3, 2021, petitioner received the *Final Decision* dated May 21, 2021 signed by then Commissioner Caesar R. Dulay, affirming the said FDDA.[26]

PROCEEDINGS BEFORE THIS COURT

On July 2, 2021, the present *Petition for Review* was filed.[27]

[20] Exhibit "R-13", BIR Records, p. 619.
[21] Exhibit "R-14", BIR Records, pp. 641 to 648.
[22] Refer to par. 5, Facts Admitted, JSFI, Docket, p. 258.
[23] Refer to Exhibits "P-12" and "R-15", BIR Records, pp. 656 to 666.
[24] The amount stated in the FDDA (*i.e.*, ₱29,887,363.73) is erroneous.
[25] Refer to par. 6, Facts Admitted, JSFI, Docket, p. 258; and Exhibits "P-13" and "R-17", BIR Records, pp. 683 to 692.
[26] Par. 7, Facts Admitted, JSFI, Docket, p. 258; and Exhibits "P-14" and "R-18", BIR Records, pp. 738 to 747.
[27] Docket, pp. 6 to 19. Refer also to par. 8, Facts Admitted, JSFI, Docket, p. 258.

Within the extended period granted by the Court,[28] respondent posted his *Answer* on November 26, 2021,[29] interposing the following special and affirmative defenses: (1) the RO who examined the books of account of petitioner has the authority to assess the latter; (2) the FAN is valid and was timely issued; (3) the FDDA has legal basis and is correct; and (4) the BIR's right to collect the deficiency taxes of petitioner has not prescribed.

On December 6, 2021, respondent, through counsel, transmitted the BIR Records for this case, consisting of one (1) white folder, with 848 pages.[30]

In the Resolution dated December 16, 2021,[31] this Court referred the case to mediation in the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA), and ordered the parties to immediately proceed and to personally appear or through their authorized representative before the same. However, the parties decided not to have their case mediated by the PMC-CTA.[32]

Thereafter, the Pre-Trial Conference was set and held on May 17, 2022.[33] Prior thereto, petitioner's *Pre-Trial Brief* was submitted on May 6, 2022;[34] while respondent's *Pre-Trial Brief (With Attached Special Power of Attorney)* was filed on May 12, 2022.[35]

On May 31, 2022, the parties filed their *Joint Stipulation of Fac[t]s and Issues*,[36] which was admitted and approved by the Court in its Resolution dated June 7, 2022,[37] thereby deeming the termination of the Pre-Trial. Thereafter, the Pre-Trial Order dated June 24, 2022 was issued.[38]

Subsequently, on August 18, 2022, the parties filed a *Joint Manifestation and Motion*,[39] praying that the present case be referred back to the PMC-CTA in order to give the parties an opportunity to reach a compromise. Thus, in the Resolution dated August 31, 2024,[40] the Court granted the said *Motion*. However, even after the Court

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[28] *Motion for Extension of Time to File Answer*, Docket, pp. 83 to 86; and Resolution dated November 12, 2021, Docket, p. 89.
[29] Docket, pp. 90 to 111.
[30] Respondent's *Compliance* dated December 6, 2021, Docket, pp. 220 to 224.
[31] Docket, pp. 226 to 227.
[32] *No Agreement To Mediate* dated February 15, 2022, Docket, p. 228.
[33] Resolution dated February 28, 2022, Docket, pp. 230 to 231; and Minutes of the hearing held on, and Order dated, May 17, 2022, Docket, pp. 253 to 256.
[34] Docket, pp. 232 to 237.
[35] Docket, pp. 239 to 246.
[36] Docket, pp. 257 to 264.
[37] Docket, p. 266.
[38] Pre-Trial Order dated June 24, 2022, Docket, pp. 268 to 275.
[39] Docket, pp. 304 to 307.
[40] Docket, pp. 309 to 310.

granted a request for extension from the Mediator,[41] and further suspension of the trial, and while the BIR-National Evaluation Board evaluates petitioner's Offer of Compromise, upon motion of petitioner,[42] the mediation was still unsuccessful.[43]

As trial ensued, the parties presented their respective testimonial and documentary evidence.

Petitioner offered the lone testimony of Ms. Maria Rochelle S. Diaz,[44] Treasurer of Max's Kitchen, Inc.

On September 4, 2023, petitioner filed its *Formal Offer of Exhibits*,[45] to which respondent filed his *Comment/Opposition (To Petitioner's Formal Offer of Evidence dated 01 September 2023)* on October 3, 2023.[46] In the Resolution dated November 29, 2023,[47] the Court admitted petitioner's offered exhibits.

For his part, respondent offered the testimony of RO Cruz.[48]

On December 12, 2023, respondent filed *via* accredited courier his *Formal Offer of Evidence*,[49] to which petitioner filed its *Comment to Respondent's Formal Offer of Evidence* on December 14, 2023.[50] In the Resolution dated February 23, 2024,[51] the Court admitted respondent's offered exhibits.

On March 20, 2024, the *Memorandum (For the Petitioner)* was submitted;[52] and on March 26, 2024, respondent's *Memorandum* was filed *via* accredited courier.[53]

The present case was submitted for decision on April 12, 2024.[54]

Hence, this Decision.

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[41] The Mediator's *Request for Extension* vis-à-vis the Resolution dated January 6, 2023, Docket, pp. 314 and 316, respectively.
[42] Petitioner's *Compliance and Manifestation* dated March 23, 2023 vis-à-vis the Resolution dated April 11, 2023, Docket, pp. 319 to 321, and 331 to 335, respectively.
[43] *Mediator's Report* dated May 8, 2023, Docket, p. 336.
[44] Exhibit "P-17", Docket, pp. 292 to 300; and Minutes of the hearing held on, and Order dated, July 26, 2023, Docket, pp. 345 to 347.
[45] Docket, pp. 451 to 460.
[46] Docket, pp. 574 to 581.
[47] Docket, pp. 584 to 585.
[48] Exhibit "R-16", Docket, pp. 364 to 376; and Minutes of the hearing held on, and Order dated, November 29. 2023, Docket, pp. 586 and 589 to 590, respectively.
[49] Docket, pp. 592 to 596.
[50] Docket, pp. 599 to 602.
[51] Docket, pp. 607 to 608.
[52] Docket, pp. 609 to 630.
[53] Docket, pp. 631 to 651.
[54] Minute Resolution dated April 12, 2024, Docket, p. 655.

THE ISSUE

The parties stipulated the issue for this Court's resolution as:

> **"Whether petitioner is liable to pay the aggregate amount of P26,321,606.03 representing alleged deficiencies in Income Tax, Fringe Benefits Tax, Improperly Accumulated Earnings Tax, Final Withholding Tax and Compromise Penalty for taxable year 2009."**[55]

Petitioner's arguments:

Petitioner argues that: 1) this Court has jurisdiction over the present case; 2) the issuance of the FLD/FANs dated June 24, 2013 is already barred by prescription; 3) the *First Waiver* is defective and did not validly extend the prescriptive period to audit petitioner; 4) the audit was conducted by a person not named in a valid LOA; 5) the FLD/FANs failed to discuss the bases for disregarding the issues/defenses raised in petitioner's Protest dated April 8, 2013; 6) the FLD/FANs did not set and fix the tax liability, which is still subject to modification or adjustment; and 7) the period to collect alleged deficiency taxes pursuant to Section 222(c) of the NIRC has already lapsed.

Respondent's counter-arguments:

Respondent contends that: 1) the RO who examined the books of account of petitioner has authority to assess the latter; 2) the FLD/FANs are valid and timely issued; 3) the BIR's right to collect the deficiency taxes of petitioner has not prescribed; and 4) the FDDA has legal basis and is correct.

JURISDICTION AND TIMELINESS OF THE APPEAL

The Petition for Review was filed on time.

As provided in Section 7 (a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282 (CTA Law), and the Revised Rules of the Court of Tax Appeals (RRCTA),[56] the CTA Division has exclusive jurisdiction to review decisions of the CIR. The party adversely affected by such decision has a period of thirty (30) days to elevate the matter before the CTA Division, to wit:

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[55] Issue, JSFI, Docket, p. 259.
[56] Revised Rules of the Court of Tax Appeals, A.M. No. 05-11-07-CTA, November 22, 2005

> 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 Code or other laws administered by the Bureau of Internal Revenue; *(Emphasis supplied)*
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> **RULE 4**
> *Jurisdiction of the Court*
>
> SECTION 3. *Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> > (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> **RULE 8**
> *Procedure in Civil Cases*
>
> SECTION 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. xxx *(Emphasis Supplied)*

In the present case, the parties did not dispute the fact that on June 3, 2021, herein petitioner received the CIR's Decision.[57] Thus, on July 2, 2021, or twenty-nine (29) days from the petitioner's receipt of the CIR's Decision, the present *Petition for Review* was filed before this Court. Hence, the appeal was timely made.

We now proceed to address the merits of the appeal.

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[57] Par. 7, Facts Admitted, JSFI, Docket, p. 258; Exhibits "P-14" and "R-18", BIR Records, pp. 738 to 747.

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THE COURT'S RULING

The *Petition for Review* is granted.

The Court finds that the circumstances surrounding the assessment process is tainted with defects which effectively render the same as invalid. Hence, the petitioner cannot be made liable thereto as will be discussed below.

The RO who conducted the audit was properly armed with a LOA.

At the outset, petitioner argues that the audit was conducted by a person not named in the LOA when one GS Rebecca Victoria B. Martinez (GS Martinez) actively participated therein by signing the Memorandum Reports[58] that led to the issuance of the PAN and the denial of its protest to the FLD/FANs.

We qualify.

Well-settled is the rule that before a taxpayer may be assessed in order to arrive at the correct amount of taxes to be paid, the examination of the latter's books and other accounting records must first be authorized by the CIR or his or her authorized representative. The NIRC provides:

> Sec. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. —
>
> (A) Examination of Return and Examination of Tax Due. — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

Such authority comes in the form of a LOA, as the Supreme Court confirmed in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*:[59]

> The audit process normally commences with the issuance by the CIR of a **Letter of Authority**. The LOA **gives notice to the taxpayer**

[58] Exhibit "R-7", BIR Records, pp. 471 to 480; Exhibit "R-14-A", BIR Records, pp. 634 to 638.
[59] G.R. No. 183408, July 12, 2017.

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> **that it is under investigation for possible deficiency tax assessment**; at the same time it authorizes or empowers a **designated revenue officer** to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period. *(Emphasis Supplied)*

Additionally, in *Commissioner of Internal Revenue v. Manila Medical Services, Inc.*,[60] it was likewise ruled:

> To emphasize, a **LOA is the authority given to the appropriate revenue officer** assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. *(Emphasis Supplied)*

In the instant case, a perusal of the First LOA and Second LOA[61] offered as evidence by herein respondent named RO Cartagena/GS Malabanan, Jr. as authorized to conduct the audit of petitioner.

From the tenor of Section 13 of the NIRC, as long as an RO is assigned to perform assessment functions pursuant to a LOA, it may then pursue such examination:

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

In the case at hand, it is clear that RO Cartagena is properly named in the LOA. It is likewise RO Cartagena who submitted a *Memorandum Report* dated February 25, 2013 to then Commissioner Henares and RD Valeroso,[62] recommending the issuance of a formal assessment against petitioner.

The fact that the signature of one GS Rebecca Victoria B. Martinez appears in the *noted* portion does not invalidate RO Cartagena as duly authorized in the LOAs.[63]

Moreover, as regards the authority of one RO Cruz, it is apparent from the records that the FLD/FANs were already issued when the case

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[60] G.R. No. 255473, February 13, 2023.
[61] Exhibits "R-1" and "R-2".
[62] Exhibit "R-7", BIR Records, pp. 471 to 480.
[63] Exhibits "R-1" and "R-2".

was re-assigned to RO Cruz by virtue of a *Memorandum of Assignment*. RO Cruz merely entered into the picture for the conduct of petitioner's *administrative appeal* to the FLD/FANs. From the language of Section 13 of the NIRC, an LOA is required for an RO to perform *assessment functions* – or the relevant procedures and examinations to be made prior to the issuance of a FAN.

Nevertheless, although this Court determines that RO Cartagena was properly authorized to conduct the audit, the Court finds that the assessment is invalid on the ground of prescription.

The prescriptive period for the assessment has already lapsed.

Petitioner argues that it is not liable for the assessed deficiency taxes on the ground that it has already been barred by prescription. It contends that from the filing of its ITR for TY 2009 on April 15, 2010, herein respondent only had until April 15, 2013 to issue a FAN. Considering that the subject FLD/FANs[64] were only issued on June 24, 2013, the deficiency assessments have already prescribed.

Respondent, on the other hand, counters by offering in evidence the *First Waiver* executed on September 28, 2012.[65] It insists that by virtue of such waiver, the period to assess has been extended until June 13, 2013.

The Court finds that the *First Waiver* did not validly extend the period to assess petitioner.

As a general rule, the NIRC provides that a taxpayer should be assessed within three (3) years from the last day of filing a return or from the time of its actual filing – whichever comes later:

> 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, 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.

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[64] Exhibits "P-9", "R-10", BIR Records, p. 556.
[65] Exhibit "R-3", BIR Records, p. 339.

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However, the rule is not without any exceptions. The NIRC also provides that whenever a taxpayer and the CIR agreed to have the period of assessment extended, the same must be reduced into writing and executed before the expiration of the original period, *viz.*:

> Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –
> xxx
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> (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.

On the other hand, Revenue Memorandum Order No. 20-90 (RMO 20-90),[66] provides pertinent guidelines relative to the execution of waivers, and called for its strict compliance:

> Pursuant to Section 223 of the Tax Code, internal revenue taxes may be assessed or collected after the ordinary prescriptive period, if before its expiration, both the Commissioner and the taxpayer have agreed in writing to its assessment and/or collection after said period. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. This written agreement between the Commissioner and the taxpayer is the so-called Waiver of the Statute of Limitations. In the execution of said waiver, the **following procedures should be followed**:
>
> 1. The waiver must be in the form identified hereof. This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase "but not after _______ 19 ____" should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.
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> 2. **The waiver shall 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.**
>
> Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the

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[66] Proper Execution of Waiver of Statute of Limitations Under the NIRC, Revenue Memorandum Order No. 20-90, April 4, 1990.

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> expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.
> 3. The following revenue officials are authorized to sign the waiver.
>
> xxx *(Emphasis supplied)*

Subsequently, Revenue Delegation Authority Order No. 05-01 (RDAO 05-01),[67] imposes the duty on the BIR to ensure that waivers are duly executed and when entered into by an authorized representative of the taxpayer, the latter's authority is duly reduced in writing:

> The authorized revenue official shall ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same. In case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. The "WAIVER" should not be accepted by the concerned BIR office and official unless duly notarized.

Moreover, in *Commissioner of Internal Revenue v. Kudos Metal Corporation,*[68] the Supreme Court pronounced that:

> 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:
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> 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. <u>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.</u>**
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> 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**

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[67] Delegation of Authority to Sign and Accept Waiver of Defense of Prescription Under Statute of Limitations, Revenue Delegation Authority Order No. 05-01, August 2, 2001.
[68] G.R. No. 178087, May 5, 2010.

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> **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.
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> 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. *(Emphasis and underscoring supplied)*

The Court finds that the *First Waiver* dated September 28, 2012[69] as offered by the respondent is defective for the following reasons: a) the signatory, Marifloss Alilio (Ms. Alilio), was not authorized in writing to enter into such waiver on behalf of petitioner; b) the waiver was not properly notarized; and c) the BIR failed to ensure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

An examination thereof shows no competent proof that Ms. Alilio was validly acting on behalf of the petitioner corporation, Square Top, Inc. There are no attached written authorizations which would support that indeed, petitioner is willing to extend the period of assessment. Basic is the general rule that:

> "in the absence of an authority from the board of directors, no person, not even the officers of the corporation, can validly bind the corporation." A corporation is a juridical person, separate and distinct from its stockholders and members, having "powers, attributes and properties expressly authorized by law or incident to its existence."
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> Section 23 [100] of the Corporation Code provides that "the corporate powers of all corporations . . . shall be exercised, all business conducted and all property of such corporations [shall] be controlled and held by the board of directors[.]"[70]

It is apparent that the BIR was remiss in its duty to ensure that such waiver is in order since it accepted the same despite the absence of the authority of Ms. Alilio. There is also no showing of any effort to have at least verified the latter's authority. Hence, the BIR cannot benefit from a defective waiver and justify the belated assessments imposed on petitioner.

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[69] Exhibit "R-3", BIR Records, p. 339.
[70] Development Bank of the Philippines v. Sta. Ines Melale Forest Products Corp., G.R. Nos. 193068 & 193099, February 1, 2017.

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Furthermore, not only did the waiver lack the required authorization, it is also wanting in details that would demonstrate its *proper* notarization. While it is true that it was notarized by one Atty. Gervacio B. Ortiz, Jr. on September 28, 2012, it appears to be irregular as it only bears the date on which the affiants supposedly appeared before him. The portion where the details of their identities must be entered are left blank.

Again, as required by RDAO 05-01, the responsible revenue official should ensure the due execution of the waiver before signing the same. It should not even accept waivers which are not duly notarized:

> The authorized revenue official shall ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same. **In case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. The "WAIVER" should not be accepted by the concerned BIR office and official unless *duly* notarized.**[71] *(Emphasis supplied)*

The Court is mindful that in recent BIR issuances, a waiver is no longer required to be in a strict and specific form. It is likewise no longer required to be notarized and even gives the duty to the taxpayer to ensure that the waiver is properly executed – such that the latter can no longer later invalidate the same on the basis of lack of authority.[72]

However, the recent rule is inapplicable to the case at hand considering that at the time the waivers were executed, the strict compliance provided in RMO No. 20-90 is mandated. In fact, the pronouncement of the Supreme Court in the *Kudos* case is relevant:

> The prescriptive period on when to assess taxes benefits both the government and the taxpayer. **Exceptions extending the period to assess must, therefore, be strictly construed.**[73]

Bearing in mind that execution of waivers in relation to assessment of taxes entails to a certain extent, a derogation of the taxpayer's right to security against prolonged and unscrupulous

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[71] Delegation of Authority to Sign and Accept Waiver of Defense of Prescription Under Statute of Limitations, Revenue Delegation Authority Order No. 05-01, August 2, 2001.
[72] Reiterating the Salient Points Arising from RMO No. 14-16 on the Proper Execution of Waivers of the Defense of Prescription and Providing an Illustration of the Basic Requirements Thereof, Revenue Memorandum Circular No. 141-19, December 20, 2019.
[73] Commissioner of Internal Revenue v. Kudos Metal Corporation, G.R. No. 178087, May 5, 2010.

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investigations, it is only proper that it must be carefully and strictly construed.[74]

In light of the foregoing, as a consequence of the defective *First Waiver*, the period to assess herein petitioner was not validly extended. Thus, the FLD/FANs dated June 24, 2013 are already barred by prescription.

Even assuming that the period to assess has been extended, the Court finds that there is a violation of the petitioner's right to due process of law when the BIR did not take into consideration the merits of its protest to the PAN, when it issued a strikingly similar FLD/FANs.

The right of petitioner to due process of law was violated when the FAN failed to address petitioner's Reply to the PAN.

In the oft-cited case of *Ang Tibay v. Court of Industrial Relations,*[75] administrative due process requires not only that a party is given an opportunity to be heard and present his case, but the tribunal must likewise consider the same and decide in such a way that the parties may know of its basis.

In relation to tax cases, such concept is bolstered in the landmark case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*,[76] where the Supreme Court held that while it is true that the BIR is not obliged to favorably give credence to the taxpayer's explanations as regards the assessments, it must still state the reasons as to why the same lacks merit or could not be given consideration.

In the case at hand, the FLD/FANs[77] dated June 24, 2013 appear to be a mere restatement of the basic deficiency tax assessments contained in the PAN[78] dated April 8, 2013, save for the imposition of interests.

Although the FLD/FANs contain an acknowledgement of petitioner's letter of protest to the PAN, it did not address the merits of

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[74] Salient Features of SC Decision on Waiver of the Statute of Limitations Under the Tax Code, Revenue Memorandum Circular No. 06-05, February 2, 2005.
[75] G.R. No. 46496, February 27, 1940.
[76] G.R. Nos. 201398-99 & 201418-19, October 3, 2018.
[77] Exhibit "P-9" and "R-10", BIR Records, p. 556.
[78] Exhibit "P-18" and Exhibit "R-8", BIR Records, p. 516.

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the same. Worse, it merely stated that the protest *could be* given credence, but in order to protect the interest of the government, the FLD/FANs should be issued. The taxpayer was then advised that it has the option to just reiterate the same later:

> In reply, we hereby acknowledge your protest letters and **could be** given credence and shall form part of the docket. However, since you failed to execute a Waiver of Defense of Prescription under the Statute of Limitations extending the period of prescription or at least six (6) months from the lapse of the previous waiver as contemplated under Section 203 and 222 of the National Internal Revenue Code which we have already requested in our Preliminary Assessment Notice and letter dated May 23, 2013, this Formal Assessment Notice (FAN) has been issued to protect the interest of the government. However, please be informed that you may still file/reiterate your protest against this FAN within thirty (30) days from date of receipt hereof in accordance with the provisions of Revenue Regulations No. 12-99.[79] *(Emphasis and underscoring supplied)*

In failing to take into account the protest of petitioner to the PAN, it appears that the FLD/FANs were rashly issued due to the taxpayer's failure to execute a waiver. Due to time constraints, the BIR disregarded the protest and instead aimed to meet the supposed extended period to issue an assessment on June 30, 2013 – to which this Court rules to have not been validly extended.

We find that the foregoing is not a valid excuse to disregard the protest without any basis, as the BIR had ample time to address the same.

Contrary to respondent's argument, addressing the matter in the FDDA does not cure the defect – for an assessment is different from a decision as the Supreme Court enunciated in *Commissioner of Internal Revenue v. Liquigaz Philippines Corp.*:[80]

> In resolving the issue on the effects of a void FDDA, **it is necessary to differentiate an "assessment" from a "decision."** In St. Stephen's Association v. Collector of Internal Revenue, **the Court has long recognized that a "decision" differs from an "assessment,"** to wit: xxx

In light of such difference, the Supreme Court in the same case even ruled that a void FDDA does not affect the whole prior assessment process:

> Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not

[79] Exhibit "P-9", "R-10", BIR Records, p. 556.
[80] G.R. Nos. 215534 & 215557, April 18, 2016.

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> necessarily result to the invalidity of the other — unless the law or regulations otherwise provide.

Applying the same wisdom in the present case, an FDDA which purports to addresses the previous protests to the assessment does not validate and erase the fact that at the assessment stage, petitioner was deprived of due process. Stated otherwise, an assessment remains invalid notwithstanding the issuance of such an FDDA.

All told, considering that the defective waiver did not validly extend the period to assess petitioner, and given that the latter was denied due process, We find the assessments contained in FLD/FANs are void. Therefore, the corresponding FDDA and Final Decision of the CIR are likewise void. The petitioner cannot be made liable to pay the deficiency taxes subject of this case. The CIR likewise has no right to collect the same and the issue on the prescription of collection is irrelevant and shall no longer be discussed.

> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a **taxpayer to file a reply or otherwise to submit comments or arguments** with supporting documents **at each stage in the assessment process**. Due process requires the Bureau of Internal Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and **taints the administrative proceedings with invalidity.**[81]

WHEREFORE, premises considered, the *Petition for Review* is **GRANTED.**

Thus, the deficiencies in income tax, fringe benefits tax, improperly accumulated earnings tax, final withholding tax, and compromise penalty, for taxable year 2009, in the aggregate amount of ₱26,321,606.03 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

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[81] Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., G.R. Nos. 201398-99 & 201418-19, October 3, 2018.

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

ATTESTATION

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

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice