REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

3M PHILIPPINES, INC.,
Respondent.

CTA EB No. 2872
(CTA Case No. 9841)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
AUG 20 2025 3:55 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

In its bid to reverse the Special First Division's Decision[1] promulgated on 19 September 2023 (**assailed Decision**) and its Resolution[2] (**assailed Resolution**) issued on 26 January 2024, petitioner Commissioner of Internal Revenue (**petitioner/CIR**) filed the present Petition for Review[3] pursuant to Section 2(a)(1)[4], Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

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1 *Rollo*, pp. 44-69. Penned by Associate Justice Marian Ivy F. Reyes-Fajardo and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan.

2 Id., pp. 71-74.

3 Filed *via* registered mail on 04 March 2024, id., pp. 7-38. The Petition for Review was filed subsequent to the grant of a fifteen (15)-day extension by the Court *En Banc* pursuant to a

In the assailed Decision and Resolution, the Special First Division granted respondent 3M Philippines, Inc.'s, (**respondent**'s) prior Petition for Review and, thereby, declared void petitioner's assessment, comprised of deficiency income tax (**IT**), value-added tax (**VAT**), expanded withholding tax (**EWT**), final withholding VAT (**FWVAT**), and documentary stamp tax (**DST**) in the aggregate amount of ₱37,286,558.75, including interest and compromise penalties, for the calendar year ended 31 December 2014 (**CY 2014**), forming part of the deficiency set forth in the Final Decision on Disputed Assessment (**FDDA**). It likewise ordered petitioner to refund respondent the amount of ₱13,398,898.25, that the latter had paid under protest on 30 April 2018 in connection with the said assessment.

PARTIES TO THE CASE

Petitioner is the CIR who is charged with, among others, the duty of assessing and collecting internal revenue taxes, fees or other charges, penalties imposed under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof, administered by the Bureau of Internal Revenue (**BIR**). He or she holds office at the BIR National Office Building, Sen. Miriam P. Defensor-Santiago Avenue, Diliman, Quezon City.[5]

Respondent, on the other hand, is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at 10th and 11th Floors, The Finance Centre, 26th Street corner 9th Avenue, Bonifacio Global City, Taguig City.[6] It is primarily engaged in the manufacture and sale of various goods and products.[7]

"Motion for Extension of Time to File Petition for Review" *per En Banc* Minute Resolution dated 20 February 2024, id., p. 6.

4 **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* - The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motion for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
   1. Cases arising from administrative agencies - Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.]

5 Par. 2, Facts adopted in the Pre-Trial Conference. See Minutes of the Hearing dated 14 March 2019, Division Docket, Volume II, p. 802.

6 Respondent's "Notice of Change of Address and of Firm Name" dated 11 February 2019, id., Volume I, p. 461.

7 Exhibit "P-2", id., Volume VI, p. 3130.

FACTS OF THE CASE

On 07 January 2016, the BIR's Large Taxpayers Service (**LTS**) issued a Letter of Authority (**LOA**) with Reference No. AUDM36/005693/2015[8] (SN: eLA201200042213) through then Assistant Commissioner of the LTS, Nestor S. Valeroso (**ACIR Valeroso**). The LOA authorized Group Supervisor (**GS**) Rolando Balbido (**Balbido**) and Revenue Officers (**RO**) Rosario A. Arriola (**Arriola**) and Shella Samaniego (**Samaniego**) to examine respondent's books of accounts and other accounting records for all internal revenue taxes for CY 2014. Respondent received a copy of the said LOA on 21 January 2016.

On 20 February 2017, Shirley A. Calapatia (**Chief Calapatia**), then Chief of Regular LT Audit Division I (**RLTAD-1**), issued Memorandum of Assignment[9] (**MOA**) No. LOA-116-2017-0098, referring respondent's case to RO Abigail N. Cayabyab (**Cayabyab**), with Arriola taking over as GS. Therein, it indicated that RO Cayabyab would continue the audit due to Arriola's designation as GS.

On the same date, then Officer-in-charge ACIR Teresita M. Angeles (**OIC-ACIR Angeles**) issued a letter[10] informing respondent that RO Cayabyab is "authorized to continue the examination of [respondent's] books of accounts and other accounting records pursuant to MOA No. LOA-116-2017-0098 dated February 20, 2017 and in accordance with Sec. 6(A) and Sec. 10(c) of the NIRC of 1997, as amended". Respondent received a copy thereof on 08 March 2017.[11]

On the same date, Chief Calapatia issued another letter[12] addressed to respondent, informing the latter that ROs Maria Gracielle Cecilia S. Anaban (**Anaban**), Riza F. Budano (**Budano**), Carolyn V. Mendoza (**Mendoza**), and Tito R. Monforte (**Monforte**), were authorized to assist RO Cayabyab under GS Arriola.

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8 Exhibit "R-1", BIR Records, Folder 1, p. 3.
9 Exhibit "P-59", id., p. 724.
10 Exhibit "P-7", id., p. 729.
11 Id.
12 Exhibit "P-6", id., p. 727.

Later, as a result of the audit team's investigation, ROs Cayabyab, Anaban, Budano, Monforte, and Mendoza recommended the issuance of a Preliminary Assessment Notice (**PAN**) through a Memorandum dated 10 May 2017.[13] The same underwent GS Arriola's review, with recommendations for approval from Chief Calapatia and Olivia O. Lao, Head Revenue Executive Assistant (**HREA Lao**) of LTS-Regular. OIC-ACIR Angeles ultimately approved the PAN's issuance.[14]

Pursuant thereto, on 19 May 2017, the BIR issued the PAN.[15] It assessed respondent with alleged deficiency IT, VAT, EWT, and Final Withholding Tax (**FWT**), documentary stamp tax (**DST**), and improperly accumulated earnings tax (**IAET**) totaling ₱497,622,251.11, inclusive of interest and compromise penalties, to wit:

Tax Type	Basic Tax Due	Surcharge	Interest	Total Due
IT	₱201,990,117.95	-	₱89,207,690.45	₱291,197,808.39
VAT	40,346,783.18	-	17,597,829.81	57,944,612.99
WTC	1,025,134.83	-	503,299.07	1,528,433.90
EWT	13,651,143.39	-	6,702,150.40	20,353,293.79
FWT	24,970,502.53	-	12,259,490.56	37,229,993.09
FWVAT	30,064,428.25	-	14,760,398.75	44,824,827.00
DST	104,949.00	-	52,100.71	157,049.71
IAET	25,182,817.40	₱6,295,704.35	12,570,710.49	44,049,232.24
Compromise	337,000.00	-	-	337,000.00
Total	**₱337,672,876.53**	**₱6,295,704.35**	**₱153,653,670.24**	**₱497,622,251.11**

Respondent received a copy thereof on the same day.[16] In response thereto, on 02 and 09 June 2017, respectively, respondent filed a Reply[17] and a Supplemental Reply[18] to the PAN. There, respondent explained its positions, with the corresponding factual and legal bases for each item of the deficiency assessment as set forth in the PAN. In both the Reply and Supplemental Reply, respondent prayed for the PAN's cancellation.

13 Exhibit "R-4", id., pp. 728-735.
14 Id.
15 Exhibit "P-8", Division Docket, Volume VI, pp. 3147-3158; Exhibit "R-5", BIR Records, Folder 1, pp. 739-746.
16 Par. 7, Facts adopted in the Pre-Trial Conference. See Minutes of the Hearing dated 14 March 2019, Division Docket, Volume II, p. 803.
17 Exhibit "P-9", id., Volume VI, pp. 3159-3176.
18 Exhibit "P-10", id., pp. 3177-3186.

Thereafter, in another Memorandum dated 22 June 2017[19], ROs Cayabyab, Anaban, Budano, Monforte, and Mendoza recommended the issuance of a Formal Letter of Demand with Details of Discrepancies and Final Assessment Notices (**FLD/FAN**). As with the earlier memorandum recommending the PAN's issuance, GS Arriola reviewed the latter memorandum, while Chief Calapatia and HREA Lao recommended approval (with OIC-ACIR Angeles approving the same).

Accordingly, on 05 July 2017, the BIR issued the FLD/FAN.[20] It demanded from respondent anew the payment of its alleged deficiency taxes for CY 2014, this time amounting to ₱267,783,954.76 after adjustments, broken down as follows:

Tax Type	Basic Tax Due	Interest	Total Due
IT	₱128,672,520.08	₱59,013,095.51	₱187,685,615.59
VAT	14,897,910.01	6,750,998.12	21,648,908.13
EWT	9,456,978.55	4,803,626.91	14,260,605.47
FWVAT	29,058,080.50	14,759,912.67	43,817,993.17
DST	104,949.00	53,883.40	158,832.40
Compromise	212,000.00	-	212,000.00
Total	**₱182,402,438.14**	**₱85,381,516.61**	**₱267,783,954.76**

Respondent received a copy of the said FLD/FAN on the same day as its issuance.[21] Accordingly, on 03 August 2017, respondent filed with the BIR its Letter-Protest.[22] Once again, it discussed its arguments for each item of the deficiency assessment and thereafter requested for the reinvestigation of the remaining deficiency taxes. On 02 October 2017, it transmitted the necessary supporting documentation in support of its request for reinvestigation.[23]

Later, on 27 April 2018[24], petitioner received from respondent an undated FDDA.[25] After considering petitioner's Letter-Protest,

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19 Exhibit "R-6", BIR Records, Folder 1, pp. 971-982.

20 Exhibits "P-11", "R-7", and "P-62-1" to "P-62-7", id., Folder II, pp. 647-665.

21 Id.; Par. 8, Facts adopted in the Pre-Trial Conference. See Minutes of the Hearing dated 14 March 2019, Division Docket, Volume II, p. 803.

22 Exhibit "P-12", id., Volume VI, pp. 3187-3196.

23 Exhibit "P-13", BIR Records, Folder II, pp. 974-981.

24 Par. 9, Facts adopted in the Pre-Trial Conference. See Minutes of the Hearing dated 14 March 2019, Division Docket, Volume II, p. 803.

25 Exhibit "P-16", Division Docket, Volume VI, pp. 3197-3204; Exhibits "R-9" and "P-63-1" to "P-63-7", BIR Records, Folder 1, pp. 1116-1134.

respondent reduced various items of the deficiency assessment, resulting in an updated total amount due of ₱83,356,710.88, as summarized below:

Tax Type	Basic Tax Due	Interest	Penalty[26]	Total Due
IT	₱11,493,070.26	₱6,990,305.75	-	₱18,483,376.00
VAT	1,207,484.02	787,345.74	-	1,994,829.77
EWT	8,523,734.87	5,604,647.59	₱182,948.33	14,311,330.78
FWVAT	29,058,080.50	19,106,683.07	-	48,164,763.57
DST	117,504.00	77,906.76	-	195,410.76
Compromise	207,000.00	-	-	207,000.00
Total	**₱50,606,873.65**	**₱32,566,888.91**	**₱182,948.33**	**₱83,356,710.88**

On 03 May 2018, respondent filed a Letter dated 02 May 2018[27] with the BIR, informing the latter that it had paid certain portions of the disputed assessment either (**a**) under protest, or (**b**) without qualifications. It had also opted not to pay any amount, with respect to select items. Likewise, it manifested that it was reserving its right to elevate its case to this Court. Respondent's payments under protest, as detailed in its Letter, are outlhined as follows:

Tax Type	Amount paid, per BIR Payment Form (BIR Form No. 0605)
EWT	₱7,224,550.00[28]
FWVAT	5,967,348.25[29]
Compromise	207,000.00[30]
Total	**₱13,398,898.25**

On 23 May 2018, respondent filed with the BIR another Letter[31] of even date, asking for the refund of the total amount of ₱13,398,898.25 that it had earlier paid under protest. Respondent stated therein that the corresponding items of the deficiency tax assessment lacked legal and factual bases and were already prescribed. Along with the said Letter, respondent attached an accomplished Application for Tax Credits/Refunds form (BIR Form No. 1914).[32] Respondent also declared that it had decided to proceed with filing a case before this Court.

26 Indicated as "*Penalty on Late Remittance*".
27 Exhibit "P-17", Division Docket, Volume VI, pp. 3205-3207.
28 Exhibit "P-17-3", id., pp. 3212-3213.
29 Exhibit "P-17-5", id., pp. 3216-3217.
30 Exhibit "P-17-8", id., pp. 3222-3223.
31 Exhibit "P-18", id., pp. 3224-3227.
32 Exhibit "P-18-1", id., p. 3228.

On 25 May 2018, pursuant to Section 228[33] of the NIRC of 1997, as amended, respondent filed a Petition for Review, docketed as CTA Case No. 9841.[34] The case was initially raffled to this Court's Third Division.

PROCEEDINGS BEFORE THE THIRD DIVISION

On 06 June 2018, the Third Division served Summons[35] on petitioner, requiring the latter to submit an Answer within fifteen (15) days from service. Petitioner received a copy thereof on 11 June 2018, thus he or she had until 26 June 2018 to file an Answer.

Accordingly, on 25 June 2018, interposing that he or she was yet to receive the BIR Records for the present case, petitioner filed a "Motion for Additional Time to File Answer"[36], asking the Court for an additional thirty (30) days therefrom, or until 26 July 2018, to file his or her Answer. The Third Division granted the same in a Resolution dated 04 July 2018.[37] Additionally, it ordered petitioner to transmit the complete BIR Records for this case within ten (10) days after filing an Answer.

However, on 26 July 2018, petitioner filed another "Urgent Motion for Additional Time to File Answer"[38], stating that he or she needed more time to review the case's records before it could be finalized, considering the complexity of the issues involved. In line with this, petitioner asked for a further 10-day extension, or until 05 August 2018, which the Third Division granted in its Resolution dated 03 August 2018.[39]

On 03 August 2018, petitioner was able to file an Answer.[40] There, he or she essentially cited the following special and affirmative

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33 SEC. 228. *Protesting of Assessment.* — ...
If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

34 Division Docket, Volume I, pp. 19-46, with annexes.

35 Id., p. 316.

36 Id., pp. 318-320.

37 Id., p. 323.

38 Id., pp. 324-327.

39 Id., pp. 330-331.

40 Id., pp. 332-359.

defenses: (1) the deficiency tax assessments for CY 2014 issued against respondent arose from a valid BIR examination and audit; (2) the factual and legal bases of the deficiency taxes assessed, as well as the imposition of penalties, were valid; (3) the BIR correctly disallowed respondent's write-off of destroyed inventories due to lack of supporting documentation; (4) the BIR aptly treated as income respondent's significant trade discounts amounting to ₱144,491,000; and, (5) the deficiency assessment is not barred by prescription as it was either imprescriptible, or still covered by the extraordinary 10-year prescriptive period; and (6) considering the assessment's validity, respondent's claim for the refund of the amounts it paid under protest should be rejected.[41]

On 08 August 2018, with the admission of petitioner's Answer, the Third Division set the case's Pre-Trial Conference on 23 October 2018.[42]

On 29 August 2018, respondent filed a "Manifestation with Motion"[43], asking the Third Division to compel petitioner to deliver the BIR Records immediately, pointing out that the 10-day period *per* the Court's directive had already lapsed. Respondent argued that it still needed to study the BIR Records to check for relevant and essential pieces of evidence. The Third Division, in the meantime, directed petitioner to show cause for the delay.[44] By 30 August 2018, petitioner had already transmitted the complete BIR Records for the case.[45] Thus, the Third Division resolved and deemed respondent's motion as moot.[46]

On 24 August 2018, respondent filed a Reply to petitioner's Answer.[47] There, respondent insinuated that petitioner's Answer proffered only general denials. For respondent, matters not specifically denied shall be considered admitted.

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41 Id.
42 See Notice of Pre-Trial Conference on 08 August 2018, id., pp. 361-362.
43 Id., pp. 364-367.
44 See Resolution dated 31 August 2018, id., p. 373.
45 Id., pp. 368-370. Consists of seven (7) folders, with 982, 1163, 201, 222, 257, 250, and 276 pages, respectively.
46 See Resolution dated 07 September 2018, id., p. 394.
47 Respondent's "Reply (Answer dated July 25, 2018)" dated 24 August 2018, id., pp. 374-391.

On 27 September 2018, the case was transferred to the First Division of this Court.[48] In the latter Division, the previously scheduled Pre-Trial Conference was cancelled and adjusted in its calendar of cases.

PROCEEDINGS BEFORE THE FIRST DIVISION

On 28 September 2018, petitioner filed a "Rejoinder with Leave of Court"[49] (**Rejoinder**) to address the matters that respondent raised in its earlier Reply. Petitioner stated essentially that he or she was able to specifically deny all pertinent allegations in the Petition for Review, contrary to respondent's insinuations. He or she likewise manifested that the issues in the case are best threshed out in a full-blown trial.

In a Resolution dated 08 October 2018[50], the First Division noted both respondent's Reply and petitioner's Rejoinder, then set the Pre-Trial Conference anew on 29 November 2018. Ahead of the same, petitioner filed his or her Pre-Trial Brief[51] on 22 November 2018, while respondent did so on 26 November 2018.[52]

On 26 November 2018[53], the First Division ultimately deferred the Pre-Trial Conference and instead directed the parties to appear before the Philippine Mediation Center - Court of Tax Appeals (**PMC-CTA**) for mediation proceedings on 11 January 2019, pursuant to Parts I.1.A[54] and

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48 See Order dated 27 September 2018, id., pp. 395. The First Division was comprised of Presiding Justice Roman G. Del Rosario, as Chairperson, with Associate Justices Catherine T. Manahan and Marian Ivy F. Reyes-Fajardo, as Members.

49 Id., pp. 397-400.

50 Id., p. 403.

51 Id., pp. 418-421.

52 Id., pp. 426-436.

53 See Resolution dated 26 November 2018, id., pp. 438-439.

54 I. *Coverage*
I.1. The following cases may be referred to mediation:
A. *Cases within the jurisdiction of the Divisions*
1. Decisions of the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC), or other laws administered by the Bureau of Internal Revenue (BIR);
2. Inaction by the CIR in cases involving disputed assessments, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR, where the NIRC provides a specific period for action, in which case the inaction shall be deemed a denial upon the lapse of said period[.]

II[55] of A.M. No. 11-1-5-SC-PHILJA or the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.

On 07 December 2018, respondent filed a "Motion to Reset Hearing"[56], asking the Court to push back the mediation proceedings to 24 January 2019 due to its counsels' unavailability. The First Division granted the same in its Order dated 13 December 2018.[57]

Although the mediation meeting went as scheduled, the parties decided not to pursue the same.[58] On 28 January 2019, the PMC-CTA forwarded a Report dated 24 January 2019, stating that the conciliation proceedings failed.[59] The First Division noted the same in its Resolution dated 06 February 2019[60] and accordingly set the Pre-Trial Conference anew on 14 March 2019. Ahead of the conference, respondent filed a Supplemental Pre-Trial Brief on 11 March 2019.[61]

The Pre-Trial Conference proceeded as rescheduled and the First Division then had set the dates for the presentation of the parties' witnesses (the first of which was set on 11 June 2019).[62] The First Division also allotted 16 May 2019 for the possible commissioning of an Independent Certified Public Accountant (**ICPA**).[63] On 03 May 2019, the First Division issued the Pre-Trial Order.[64]

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55 II. *Referral to Mediation*

The referral to mediation shall be made after the filing of the Comment in cases pending with the Court *En Banc* and, before or during the pre-trial for cases pending with the Court in Division.

A Resolution (FORM NO. 1) shall be issued by the Court *En Banc* or in Division, referring the covered civil case to mediation and requiring the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) at a specified date and time. Said Resolution shall suspend the proceedings for the duration of the period of mediation stated in Section VIII below.

56 Division Docket, Volume I, pp. 442-444.

57 Id., p. 445.

58 Id., p. 447.

59 Id.

60 Id., p. 460.

61 Id., Volume II, pp. 794-796.

62 See Minutes of the Hearing and Order, both dated 14 March 2019, id., pp. 801-805 and 809-810, respectively.

63 Id.

64 Id., pp. 857-872.

Meanwhile, on 22 April 2019, respondent filed a "Motion for Commissioning of ICPA".[65] The 16 May 2019 hearing for the ICPA's commissioning proceeded, as scheduled. Therein, absent any objections from petitioner, the First Division granted respondent's motion, designating Maricel Sumio-Ammogawen (**ICPA Sumio-Ammogawen**) as ICPA for the present case and giving her until 25 June 2019 to submit an ICPA Report.

On 27 May 2019, respondent filed a "Manifestation with Motion" dated 24 May 2019[66] asking the Court to amend the Pre-Trial Order. Respondent wanted to clarify that, as opposed to the wordings therein, it only admitted the existence and genuineness (and not the due execution) of the BIR's issuances (*i.e.*, the LOA, PAN, FLD/FAN, among others) over the course of the audit. It likewise sought that the Pre-Trial Order reflect an additional witness that it intended to present, a representative from respondent's third-party service provider. The First Division gave petitioner an opportunity to file a comment thereto.[67]

On 11 June 2019[68], trial ensued with respondent presenting Eugenio T. Miranda (**Miranda**), respondent's Warehouse Supervisor, as its first witness. On the witness stand, Miranda identified the exhibits he had referred to in his Judicial Affidavit.[69] These exhibits mainly dealt with supporting documentation for inventory disposals that respondent made during CY 2014. Relative thereto, he testified that he was responsible for finalizing a list of items to be disposed or destroyed, which was to be forwarded to their Finance team for valuation and approval. He clarified that the destruction or disposal is a laborious and hazardous process, and as such, respondent usually outsources the same to a third-party provider, Cleanway Technology Corporation (**Cleanway**).[70]

During his cross-examination, Miranda explained that he only handles the warehouse department, and that his participation in the

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65 See Minutes of the Hearing and Order, both dated 16 May 2019, id., pp. 887-889 and 891, respectively.
66 Id., pp. 906-909.
67 See Resolution dated 31 May 2019, id., p. 912.
68 See Minutes of the Hearing and Order, both dated 11 June 2019, id., pp. 928-930 and 931, respectively.
69 Exhibit "P-35", id., pp. 812-820.
70 Later on referred to interchangeably with "Cleanway Environment Management Solutions, Inc."

destruction and disposal is limited to preparing the list of inventories to be disposed. He added that it is respondent's team from its Finance Department that handles the matter and, as such, he does not have a copy of the application for disposal. Miranda also confirmed that he signed the list of items to be disposed, along with respondent's representative from its Finance team and one RO Nimfa Nadal.[71]

The Court interposed clarificatory inquiries towards the end of Miranda's testimony. In response, he confirmed that respondent enlisted the services of a subcontractor, Cleanway, to perform the actual destruction of materials. Miranda stated that they trusted that Cleanway destroyed the inventories to be disposed, in line with the Certificate of Destruction that it issued. He clarified that Cleanway is contractually bound to carry out the actual destruction in its own facilities.[72]

On 26 June 2019, ICPA Sumio-Ammogawen filed the ICPA Report, with the accompanying exhibits in a USB Drive.[73]

In the 09 July 2019 hearing, Maria Lizbeth U. Ignacio (**Ignacio**) took the stand as respondent's second witness.[74] Through her Judicial Affidavit[75] and Supplemental Judicial Affidavit[76], she testified that when the events of the case transpired in 2014, she served as respondent's Senior Plant Accounting Analysis. As such, she was responsible for inventory accounting and analysis of their plant's operating expenses. She outlined her participation in the protocols for disposing and destroying inventories which was basically limited to preparing documentation and witnessing the procedures. She laid out the documentation that respondent kept for the disposals made in 2014 and identified the correspondingly marked Exhibits.

During her cross-examination, Ignacio confirmed that the BIR's employees inspected the inventories earmarked for destruction. She

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[71] TSN dated 11 June 2019, pp. 8-12.
[72] Id., pp. 12-15.
[73] Letter of Transmittal dated 25 June 2019, Division Docket, Volume II, p. 935.
[74] See Minutes of the Hearing and Order, both dated 09 July 2019, id., Volume III, pp. 1050-1055 and 1056-1057, respectively.
[75] Exhibit "P-33", id., Volume II, pp. 832-839.
[76] Exhibit "P-34", id., pp. 941-952.

attested that they did not issue any Certificate of Destruction, though they did sign the Inventory List for Destruction. She stated further that she was not present during the actual destruction. According to her, while the BIR's officers were present during the inspection and at the beginning of the destruction process, they did not see it through the end.[77]

In her redirect examination that followed, Ignacio declared that Inventory Lists for the months from June to October were signed by the Supervisor and BIR representative. She clarified that she was present during the inspection and during the initial stages of the destruction. As to Cleanway's participation, it was selected as the third-party company to destroy the inventory as it handled waste disposals, adding that the disposed inventory ended up in Cleanway's open landfill. Ignacio confirmed that Cleanway then issued a Certificate of Destruction as proof that it actually destroyed the inventory.[78]

In her re-cross examination, Ignacio explained that the Inventory List is the BIR's own template, which their officers signed to confirm that they had inspected the inventories to be destroyed.[79]

In response to clarificatory questions raised by the Court during the hearing, she clarified that the items for destruction consisted of items which were either defective or no longer moving in inventory. She likewise confirmed that no excess inventory is returned to respondent subsequent to the destruction.[80]

During the same hearing, the First Division acted on the "Manifestation with Motion" that respondent filed on 27 May 2019 and granted the same (absent any objections from petitioner), prompting amendments to the Pre-Trial Order as respondent prayed for.[81]

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[77] TSN dated 09 July 2019, pp. 15-20.
[78] Id., pp. 20-26.
[79] Id., pp. 26-28.
[80] Id., pp. 28-36.
[81] Supra at note 74.

In the next hearing on 06 August 2019, respondent presented ICPA Sumio-Ammogawen to testify on her Report.[82] Through her Judicial Affidavit[83], she declared that she conducted an examination of petitioner's supporting documents in connection with the CY 2014 assessment. She identified her Report and the corresponding exhibits she had referred to in her Judicial Affidavit.

ICPA Sumio-Ammogawen also outlined the scope of her examination and the procedures she performed. In validating each item of the deficiency assessment, she essentially concluded that respondent was not liable for a substantial portion of the items in the deficiency assessment, to the extent that respondent should be entitled to a tax refund amounting to ₱11,070,711.10 after accounting for the amounts it had previously paid to the BIR under protest, and depending on how the Court would treat the supposedly prescribed portion of the EWT deficiency.

Petitioner's counsel did not conduct cross-examination.[84]

On 10 September 2019[85], Darlene Clarin-San Manuel (**San Manuel**), 3M Service Center APAC, Inc.'s former Finance Manager, appeared as respondent's next witness, to testify through her Amended Judicial Affidavit.[86] On the witness stand, she identified the exhibits she had referred to in her Judicial Affidavit. These exhibits mainly dealt with the BIR documents issued to respondent over the course of the examination of its books (from the LOA to the FDDA). Relative thereto, she likewise testified as to the events that transpired prior to the filing of the instant Petition and her role in the proceedings leading to the eventual filing of the case before this Court. She echoed respondent's defenses and justifications as they were laid out in the Petition for Review before the Court in Division. In particular, she highlighted the BIR's alleged due process violations in issuing an assessment pursuant to an investigation carried out without the prerequisite authority conferred by a valid LOA.

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82 See Minutes of the Hearing and Order, both dated 06 August 2019, Division Docket, Volume III, pp. 1149-1152 and 1153-1154, respectively.

83 Exhibit "P-37", id., pp. 1064-1085.

84 Supra at note 82.

85 See Minutes of the Hearing and Order, both dated 10 September 2019, Division Docket, Volume III, pp. 1209-1210 and 1211-1212, respectively.

86 Exhibit "P-38", id., pp. 1169-1187.

During her cross-examination, San Manuel clarified that while she did inquire into the authority of the new group of ROs conducting the audit, she has no evidence to support this assertion. Neither did respondent specifically question the ROs' authority when it replied to the PAN. She also attested to not having been physically present when respondent's inventories were being destroyed and disposed.[87]

In the redirect examination that followed, San Manuel confirmed that while she did not personally witness the destruction of inventory, her duties included the validation of applications of disposal, ascertaining the correctness and completeness of the service provider's work.[88] No re-cross examination followed.[89]

On 14 October 2019, while preparing for respondent's next witness, respondent filed a "Motion to Reset", asking to move the hearing scheduled on 22 October 2019, to accommodate Cleanway's request for additional time to collate the records necessary for its representative's testimony.[90] The First Division granted the same in its Order dated 16 October 2019, moving the hearing to 26 November 2019.[91]

However, on 22 November 2019, respondent filed another "Motion to Reset"[92], this time stating that Cleanway was still in the process of retrieving the needed documentation. The First Division again granted a postponement, moving the next hearing to 06 February 2020.[93] By 03 February 2020, respondent was able to submit the Judicial Affidavit for Marisol A. Rosel (**Rosel**), its upcoming witness.[94]

The 06 February 2020 hearing proceeded as re-scheduled[95], with Cleanway's Pollution Control Officer, Rosel, testifying through her Judicial Affidavit.[96] There, she explained that at the time the relevant

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87 TSN dated 10 September 2019, pp. 6-12.
88 Id., pp. 12-13.
89 Id., p. 13.
90 Division Docket, Volume III, pp. 1243-1245.
91 Id., p. 1247.
92 Id., pp. 1251-1253.
93 See Order dated 25 November 2019, id., p. 1255.
94 Exhibit "P-54", id., pp. 1259-1273.
95 See Minutes of the Hearing and Order, both dated 06 February 2020, id., pp. 1322-1323 and 1324-1325, respectively.
96 Supra at note 94.

events in the present case transpired in 2014, she served as Cleanway's Permitting Leader, tasked with overseeing applications with the Department of Environment and Natural Resources (**DENR**) for permits to transport hazardous waste, as well as ensuring compliance with the DENR's regulations for transporting hazardous waste, and validating waste treatments and disposals as a precursor to the issuance of Certificates of Treatment and Disposal. She attested to having respondent as a long-time client, whom Cleanway has regular agreements and transactions. She vouched for respondent's 2014 disposals and identified the documentation supporting the disposal process.

In her cross-examination, Rosel clarified that she participates in handling applications with the BIR but she is not usually present during disposals. In relation to originals of documents pertaining to disposals (such as Waste Disposal Agreements and Memoranda of Agreement), she confirmed that Cleanway is unable to produce the originals as the documents in question are older than what their company usually retains on record. In response to an inquiry from petitioner's counsel, she did not deny that she did not attempt to retrieve a copy from the notary public, considering the documents were previously notarized.[97]

In any case, during Rosel's redirect examination, she affirmed that their company exerted diligent efforts to locate the originals, though they do not keep records older than three (3) years old. She likewise discussed attempts to check for duplicates of the said documents that may have been retained in other departments within their company. As to the goods subject for disposal, she claimed that there are no incidents wherein items intended to be disposed were instead pilfered or otherwise taken from the company without their consent.[98]

Then, as part of Rosel's responses to the Court's clarificatory questions, she explained that her certifications were based from reports of Cleanway's personnel from other departments who are involved directly in the destruction processes. She further declared that while Cleanway had a multitude of clients for disposals, it was her first time to

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97 TSN dated 06 February 2020, pp. 10-14.
98 Id., pp. 14-19.

be called to testify or encounter an issue regarding the veracity of the disposals.[99] No re-cross examination followed.[100]

Noting that some supporting documentation (that would have served as respondent's primary evidence) had been destroyed, respondent sought to have its previous witness, San Manuel, recalled to the witness stand to support the presentation of secondary evidence. The First Division then directed respondent's counsels to file the appropriate motion for the purpose, along with San Manuel's Judicial Affidavit, within 15 days. It likewise gave petitioner five (5) days from receipt thereof, to file a Comment or Opposition.[101] Accordingly, on 21 February 2020 and 02 March 2020, respondent respectively filed an "Omnibus Motion (to Recall Witness and to Set Commissioner's Hearing"[102] (**Omnibus Motion**) and San Manuel's Supplemental Judicial Affidavit.[103] Petitioner, however, did not file any Comment.[104]

Thus, in a Resolution 28 July 2020[105], the First Division granted respondent's Omnibus Motion and set San Manuel's presentation on 20 October 2020 (as well as scheduled additional Commissioner's Hearings).

On 20 October 2020[106], San Manuel returned to the witness stand as respondent's final witness. This time through her Supplemental Judicial Affidavit[107], she testified to make clear that respondent is similarly unable to produce duplicate originals of the documents identified by Rosel that were primarily in Cleanway's custody. In an effort to support the admission of copies thereof as secondary evidence, she outlined respondent's own efforts to retrieve the documents in question, both within and outside their company. Petitioner's counsel did not proceed with a cross-examination.[108]

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99 Id., pp. 19-25.
100 Id, p. 25.
101 Supra at note 95.
102 Division Docket, Volume III, pp. 1327-1331.
103 Exhibit "P-58", Supplemental Judicial Affidavit of Darlene Clarin-San Manuel dated 02 March 2020, id., pp. 1333-1340.
104 See Records Verification dated 08 June 2020, id., p. 1392.
105 Id., pp. 1397-1398.
106 See Minutes of the Hearing and Order, both dated 20 October 2020, id., pp. 1425-1426 and 1427-1428, respectively.
107 Exhibit "P-58", supra at note 103.
108 TSN dated 20 October 2020, p. 6.

In the same hearing, interposing that a number of documents that the previous witness, Rosel, identified remained provisionally marked (as they had not been compared with their originals), respondent's counsel requested that a *subpoena duces tecum* (**SDT**) be issued against Cleanway to produce the said documents. The First Division declared that it was inclined to grant the same, provided that respondent file the request by the next day, or on 21 October 2020. Additionally, with San Manuel being respondent's last witness, its turn to present evidence had thus ended. The First Division thus gave it 30 days, or until 19 November 2020, to file its Formal Offer of Evidence (**FOE**). Correspondingly, respondent was given 20 days from receiving a copy of the FOE to file a Comment thereon. The First Division also set the hearing for respondent's initial presentation of evidence on 04 February 2021.[109]

On 21 October 2020, respondent filed the necessary "Manifestation with Request for [SDT]".[110] Accordingly, on 09 November 2020, the First Division issued an SDT[111] to Cleanway (through Rosel or any of its authorized representatives), directing it to deliver to the Court by 12 November 2020 the documents identified by Rosel supporting Cleanway's line of business and agreements with respondent.

On 19 November 2020, respondent was able to file its FOE.[112] Petitioner, however, failed to file a Comment.[113] Thus, in the Resolution dated 03 February 2021[114], the First Division acted upon petitioner's FOE, admitting most of its offered exhibits, but also denying several exhibits, mostly for not being found in the case's records, or lacking markings or bearing incorrect or conflicting markings, or for the document marked not matching the document offered in the FOE.

On 04 February 2021, trial continued with petitioner presenting his or her lone witness, GS Arriola.[115]

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109 Supra at note 106.
110 Division Docket, Volume III, pp. 1433-1435.
111 Id., p. 1467.
112 Id., Volume IV, pp. 1471-2290.
113 See Records Verification dated 17 December 2020, id. Volume V, p. 3120.
114 Id., Volume VI, pp. 3540-3602.
115 See Minutes of the Hearing and Order, both dated 04 February 2021, id., pp. 3605-3607 and 3608-3609, respectively.

By way of her Judicial Affidavit[116], GS Arriola testified that her group conducted the examination of respondent's books of accounts for CY 2014. She confirmed that she derives her authority to audit and investigate respondent's records from LOA No. eLA201200042213 dated 07 January 2016. She recounted the circumstances surrounding her participation in the BIR's investigation, beginning from when they asked respondent to present its records, up until petitioner issued the FDDA. In particular, she stated that her group recommended the issuance of a PAN and FLD/FAN through respective Memoranda for the purpose. She continued that the PAN, FLD/FAN was eventually served on respondent, which it likewise protested, leading them to recommend the issuance of the FDDA.

In her cross-examination, GS Arriola attested to having personally served the LOA on respondent. She added that she found that the LOA's recipient is respondent's legal counsel, based on what she read on the face of the checklist of requirements. She further confirmed that to an extent, respondent was able to present its records to the BIR, enabling her to study the same and produce the memorandum that would later on lead to the PAN's issuance. As to her promotion to GS, she outlined the BIR's internal policies *vis-à-vis* the issuance of an MOA for the incoming ROs that would handle the audit as she took over as GS for the case. She claimed, however, that she was also present when the ROs carried out the investigation at respondent's premises.[117]

During her redirect examination, GS Arriola stressed that a GS should not have an inventory of cases as her function revolves around the oversight of the ROs reporting to her. She clarified that, nonetheless, there were no prohibitions against actually participating in an investigation.[118] Respondent's counsel proceeded with a re-cross examination, but raised no further inquiries and merely asked GS Arriola to read an excerpt from the LOA.[119]

Having no witnesses left to present, the First Division directed respondent to file his or her FOE within 10 days, or until 15 February 2021. In turn, it gave petitioner five (5) days from receiving a copy

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116 Exhibit "R-11", id., Volume I, pp. 410-417.
117 TSN dated 04 February 2021, pp. 10-26.
118 Id., pp. 27-29.
119 Id., p. 29.

thereof, to file its Comment.[120] Accordingly, petitioner filed his or her FOE[121] on 11 February 2021. On 05 March 2021, respondent filed its Comment[122] thereto. On 08 June 2021, the First Division resolved to admit all of petitioner's offered Exhibits.[123]

Meanwhile, on 19 February 2021, respondent filed its Motion for Partial Reconsideration[124] (**MPR**) of the Resolution dated 03 February 2021[125], wherein the Court acted upon its FOE. It addressed the First Division's findings, submitting a USB Drive containing the missing offered Exhibits, among others. Accompanying the MPR, respondent likewise filed an Amended FOE and Supplemental FOE (for pieces of evidence contained in the BIR Records which petitioner's witness identified during cross-examination by respondent's counsel). In the Resolution dated 19 May 2021[126], the Court directed petitioner to file his or her respective comments to all of the foregoing, but the latter failed to do so.[127]

Later, in a Resolution dated 27 June 2022[128], the First Division partially granted respondent's MPR, admitting all but one (Exhibit "P-15"[129]) of petitioner's first batch of offered Exhibits covered in its Amended FOE. On the other hand, the First Division admitted all of petitioner's offered Exhibits in its second batch of offered Exhibits in its Supplemental FOE. In the same Resolution, the First Division gave each of the parties 30 days (from receipt of a copy of the Resolution) to file a Memorandum.

In line with the First Division's directive, on 01 August 2022[130] and 26 August 2022[131], petitioner and respondent filed their respective Memoranda. In consideration thereof, the First Division submitted the

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120 Supra at note 115.
121 Division Docket, Volume VII, pp. 3620-3623.
122 Id., Volume VIII, pp. 4459-4462.
123 See Resolution dated 08 June 2021, id., p. 4466.
124 Id., Volume VII, pp. 3625-3641.
125 Supra at note 114.
126 Division Docket, Volume VIII, p. 4464.
127 See Records Verification dated 18 June 2021, id., p. 4467.
128 Id., pp. 4510-4525.
129 Exhibit "P-15". Offered as "Letter dated 26 April 2018". Denied admission for respondent's failure to mark the said Exhibit.
130 Division Docket, Volume VIII, pp. 4526-4557.
131 Id., pp. 4559-4594.

case for decision through its Minute Resolution dated 19 September 2022.[132]

In the now assailed Decision of 19 September 2023[133], the members of the First Division, sitting as the Special First Division[134], granted respondent's Petition for Review. The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, the Petition for Review filed on May 25, 2018, by 3M Philippines, Inc., is **GRANTED**. Accordingly, we **RESOLVE** to:
>
> a. **CANCEL** and **SET ASIDE** the deficiency Income Tax, Expanded Withholding Tax, Withholding Tax-Final Value-Added Tax assessments, their corresponding interests and compromise penalties in the total amount of P37,286,558.75, for the Taxable Year 2014;
>
> b. **ORDER** [petitioner] to **REFUND** [respondent] the amount of ₱13,398,898.25, representing the amount it paid under protest on April 30, 2018; and,
>
> c. **ENJOIN** [petitioner], his [or her] representatives, agents, or other persons acting in his [or her] behalf, from collecting on [respondent], the deficiency tax assessments covering Taxable Year 2014.
>
> **SO ORDERED.**
>
> ...

In granting respondent's Petition for Review, the Special First Division mainly held that: (1) the deficiency tax assessment that petitioner issued against respondent for CY 2014 is void as the same resulted from an illegal examination conducted by the BIR; and (2) as a consequence thereof, the amounts paid by respondent under protest pursuant to the said deficiency assessment were unlawfully collected by the BIR and should be returned.[135]

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132 Id., p. 4596.
133 Supra at note 1.
134 For the instant case, the members of the First Division sat as the Special First Division, similarly comprised of Presiding Justice Roman G. Del Rosario, as Chairperson, with Associate Justices Catherine T. Manahan and Marian Ivy F. Reyes-Fajardo, as Members.
135 Id.

On 09 October 2023, petitioner filed a "Motion for Reconsideration (Re: Decision dated 19 September 2023)"[136] (**MR**). On 06 November 2023, respondent filed its Comment thereto.[137] On 26 January 2024, the Special First Division issued the assailed Resolution denying petitioner's MR.[138] In the assailed Resolution, the Special First Division shut down petitioner's position that the assigned ROs station at the BIR's LTS, which was under the Office of the CIR, meant that they can carry out investigations without the need for a valid LOA. The Special First Division adhered to its pronouncements in the assailed Decision, proclaiming the BIR's examination a nullity.[139]

PROCEEDINGS BEFORE THE COURT *EN BANC*

Unsatisfied with the Special First Division's actions, on 04 March 2024, petitioner filed the present petition[140] *via* registered mail (following a 15-day extension of time granted to petitioner[141]). On 22 April 2024, respondent filed its "Comment (To Petition for Review dated March 1, 2024)".[142]

On 13 May 2024, the Court *En Banc* referred the instant case to the PMC-CTA for mediation proceedings on 15 July 2024.[143] The parties, however, decided not to have their case mediated.[144]

On 06 August 2024, the Court *En Banc* noted that the PMC-CTA failed to persuade the parties to enter into an amicable settlement, then submitted the case for decision.[145]

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136 Id., pp. 4625-4641.
137 Id., pp. 4644-4654.
138 Supra at note 2.
139 Id.
140 Supra at note 3.
141 See *En Banc* Minute Resolution dated 20 February 2024, *rollo*, p. 6.
142 Id., pp. 77-119.
143 See *En Banc* Minute Resolution dated 13 May 2024, id., p. 122.
144 See No Agreement to Mediate dated 15 July 2024, id., p. 123.
145 See *En Banc* Minute Resolution dated 06 August 2024, id., p. 124.

ISSUES

Before Us, the parties put forward the following core issues for the Court *En Banc*'s resolution —

I.

WHETHER THE SPECIAL FIRST DIVISION ERRED IN DECLARING VOID THE DEFICIENCY INCOME TAX (IT), EXPANDED WITHHOLDING TAX (EWT), AND FINAL WITHHOLDING VALUE-ADDED TAX (FWVAT) ASSESSMENT ISSUED AGAINST RESPONDENT 3M PHILIPPINES, INC. IN THE TOTAL AMOUNT OF ₱37,286,558.75, INCLUDING INTEREST AND COMPROMISE PENALTIES FOR THE PERIOD 01 JANUARY 2014 TO 31 DECEMBER 2014; AND,

II.

WHETHER THE SPECIAL FIRST DIVISION ERRED IN RULING THAT RESPONDENT 3M PHILIPPINES, INC. IS ENTITLED TO THE RETURN OF THE TOTAL AMOUNT OF ₱13,398,898.25 THAT IT HAD PAID UNDER PROTEST ON 30 APRIL 2018.

ARGUMENTS OF THE PARTIES

In support of its petition, petitioner argues that the present assessment is valid and that the Special First Division erroneously found that the ROs were not duly authorized to carry out the investigation of respondent's books.

Petitioner further contends that the items of the deficiency assessment have sufficient factual and legal basis and should be upheld.

With respect to the amounts respondent supposedly paid under protest, petitioner insists that respondent is not entitled to the refund it prayed for. For petitioner, respondent failed to demonstrate that there was an erroneous or illegal collection of tax, or a penalty collected without authority, or a sum excessively or wrongfully collected. Moreover, petitioner adduces that the burden of proof is upon respondent to establish its right to the refund that it is claiming.

On the other hand, respondent counters that the assessment is void. It echoed the pronouncements of the Special First Division when the latter invalidated the subject assessment for the lack of the necessary written authority for the BIR's officers that conducted the audit. Respondent avers that a tax audit conducted by anyone apart from the CIR must be supported by a valid LOA.

Moreover, respondent maintains that it is not liable for the deficiency taxes laid out in the assessment.

Finally, respondent avers that the Special First Division correctly granted the refund of the amounts it had paid under protest. Respondent insinuates that the alternative would result in unjust enrichment in favor of the government.

RULING OF THE COURT

Before delving into the merits of the case, We find it propitious to first determine whether this Court has jurisdiction over the instant petition.

At the outset, it is noted that the present petition before the Court *En Banc* was filed out of time.

Petitioner received a copy of the assailed Resolution on 30 January 2024.[146] Petitioner had 15 days from receipt of the assailed Resolution, pursuant to Section 3(b)[147], Rule 8 of the RRCTA, or until 14 February 2024, to file a Petition for Review before the Court *En Banc*. Thus, on 16 February 2024, petitioner belatedly filed a "Motion for Extension of Time to File Petition for Review"[148] (**Motion for**

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[146] See Notice of Resolution dated 29 January 2024, Division Docket, Volume VIII, p. 4657.

[147] **SEC. 3.** *Who may appeal; period to file petition.* —

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[148] *Rollo*, pp. 1-4.

Extension). The Court *En Banc* conditionally granted the said motion and allowed petitioner until 03 March 2024 to file the instant Petition, provided that the Motion for Extension had been timely filed.[149] Considering that 03 March 2024 fell on a Sunday, petitioner timely filed the present Petition for Review on 04 March 2024, the next immediate working day.[150]

However, with the belated filing of the Motion for Extension, there was no longer any period to extend. The Petition for Review had thus been filed out of time.

In any case, even assuming that the Court had been able to acquire jurisdiction over the case, We nevertheless hold that, following an assiduous review of the case records and the parties' contrasting arguments, the petition is bereft of merit.

RESPONDENT'S ASSESSMENT IS VOID FOR HIS OR HER FAILURE TO ISSUE THE NECESSARY LETTER OF AUTHORITY (LOA) IN FAVOR OF REVENUE OFFICERS (ROs) CAYABYAB, ANABAN, BUDANO, MONFORTE, AND MENDOZA.

An assessment "refers to the determination of amounts due from a person obligated to make payments".[151] "In the context of national internal revenue collections, it refers to the determination of the taxes due from a taxpayer under the [NIRC of 1997, as amended]".[152] The assessment process starts with the filing of tax return and payment of tax by the taxpayer.[153] It culminates with the issuance of the FDDA, or in appropriate cases, the CIR's decision on a request for reconsideration filed by the taxpayer.[154]

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149 Supra at note 141.
150 Supra at note 3.
151 *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, 09 November 2016.
152 Id.
153 Id.
154 See Revenue Regulations No. 12-99, as amended by Revenue Regulations No. 18-2013.

Under the NIRC of 1997, as amended, it is the CIR who principally exercises the power to make assessments. The same law, however, also delegates this power to the Revenue Regional Directors (**RRDs**). The NIRC of 1997, as amended, provides:

> ...
>
> **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> *(A) Examination of Return and Determination of Tax Due.* After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax, notwithstanding any law requiring the prior authorization of any government agency or instrumentality**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> ...
>
> **SEC. 10.** *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, **the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others**:
>
> (a) Implement laws, policies, plans, programs, rules and regulations of the department or agencies in the regional area;
>
> **(b)** Administer and enforce internal revenue laws, and rules and regulations, **including the assessment and collection of all internal revenue taxes, charges and fees;**
>
> (c) **Issue Letters of authority** for the examination of taxpayers within the region[.][155]
>
> ...

While the CIR and the RRDs may perform assessments themselves by the express authority of the NIRC of 1997, as amended, assessments are usually carried out by ROs by way of delegation. This delegation is in the form of an LOA.

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155 Emphasis supplied and italics in the original text.

The LOA is the authority given to the appropriate RO assigned to perform assessment functions.[156] It empowers or enables said RO to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[157] An RO may only examine taxpayers, in the course of carrying out, in conformance to or agreement with, or according to, a validly issued LOA.[158] Stated differently, under the NIRC of 1997, as amended, the investigatory powers of the ROs flow from the LOA, which is the statutorily designated means by which the CIR delegates its investigative powers to the BIR ROs.[159]

Section 13 of the NIRC of 1997, as amended, provides:

...

> **SEC.** 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.[160]

...

Based on the afore-quoted provision, the authority under an LOA is two-fold: (1) the authority to examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax; and/or, (2) **the authority to examine taxpayers and recommend the assessment of any deficiency tax due.**

In the instant case, the records clearly show that the assessment against respondent (the progression of the administrative proceedings for which were brought to its knowledge across each of the successive

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156 *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, 14 May 2021.

157 *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.

158 *Republic of the Philippines v. Robiegie Corporation*, G.R. No. 260261, 03 October 2022.

159 Id.

160 Emphasis supplied and italics in the original text.

stages through the issuance of the PAN and FLD/FAN) arose from recommendations set forth in the memoranda (for each relevant stage of the proceedings) prepared by ROs Cayabyab, Anaban, Budano, Monforte, and Mendoza (as reviewed by GS Arriola), which they collectively signed. The same formed part of petitioner's evidence before the Court in Division.

To recapitulate, the said ROs prepared and submitted a Memorandum dated 10 May 2017[161] recommending the issuance of the PAN to respondent. The same group later on prepared and submitted a Memorandum dated 22 June 2017[162] recommending the issuance of the FLD/FAN. It can be gleaned from either memoranda that GS Arriola (who previously handled the same case as RO) participated as a reviewer. Notably, GS Balbido (the GS originally designated in the LOA) nor RO Samaniego (the second RO designated in the LOA alongside Arriola) had no participation in the recommendations.

Backtracking further, the LOA dated 07 January 2016[163] issued by ACIR Valeroso authorized GS Balbido, then RO Arriola, and RO Samaniego to conduct the investigation over respondent's records for CY 2014 as the original audit team.

ROs Cayabyab, Anaban, Budano, Monforte, and Mendoza and GS Arriola took over after the issuance of the MOA dated 20 February 2017.[164] The MOA indicated that RO Cayabyab is being assigned to respondent's case "for continuation of the audit due to designation of [Arriola] as Group Supervisor". As it appears, no new LOA (nor any document of equivalent validity) had been issued beyond the said MOA.

It is noteworthy to observe that apart from the MOA, the BIR issued two (2) letters addressed to respondent on 20 February 2017.

The first Letter[165] stipulated that RO Cayabyab had been authorized to continue the examination of respondent's books

161 Exhibit "R-4", supra at note 13.
162 Exhibit "R-6", supra at note 19.
163 Exhibit "R-1", supra at note 8.
164 Exhibit "P-59", supra at note 9.
165 Exhibit "P-7", supra at note 10.

pursuant to the MOA. It stated that "the [LOA] has been reassigned to another [GS]/[RO] on even date due to [c]ontinuation of the audit/investigation due to referral of the case by same group but with new lead [RO] per letter request dated February 20, 2017."

At the onset, We note that "reassigning" LOAs is not sanctioned under the law nor the BIR's regulations. Indeed, it would not be farfetched to assert the alternative, as the prevailing requirement has been to issue a fresh or replacement LOA (as would be discussed further below).

The second Letter[166] announced that ROs Anaban, Budano, Monforte, and Mendoza were authorized to assist RO Cayabyab under GS Arriola. We take note that none of the aforementioned ROs were named in the LOA nor even the MOA.

Generally, only the CIR, Deputy Commissioners, and the RRDs are authorized to issue an LOA. Other officials may be authorized to issue and sign LOAs but *only* upon prior authorization by the CIR himself and *only* in furtherance of the exigencies of the service. Section D(4) of Revenue Memorandum Order (**RMO**) No. 43-90[167] dated 20 September 1990, provides:

> ...
>
> D. Preparation and issuance of [LOAs].
>
> ...
>
> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, the **only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner.** For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.**[168]
>
> ...

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166 Exhibit "P-6", supra at note 12.

167 Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

168 Emphasis supplied.

RMO No. 29-07[169] expands the above issuance and specifies other officials with the authority to sign and issue an LOA:

> ...
> **II. AUDIT POLICIES AND GUIDELINES**
> ...
>
> 2. All Letters of Authority (LOAs) shall be issued and approved by the Assistant Commissioner/Head Revenue Executive Assistants.
>
> ...

In any case, as mentioned above, in addition to the afore-cited Sections 6(A), 10(c) and 13 of the NIRC of 1997, as amended, which provide that only the CIR and his or her duly authorized representatives (*i.e.*, Deputy Commissioners, the RRDs, and such other officials as may be authorized by the CIR) may issue the LOA, **petitioner's own rules, specifically, RMO No. 43-90[170] mandates the issuance of a new LOA in cases of reassignment or transfer of examination to another RO.** It reads —

> ...
> C. Other policies for issuance of [LOAs]
>
> 5. **<u>Any reassignment/transfer of cases to another RO(s),</u>** and revalidation of [LOAs] which have already expired, **<u>shall require the issuance of a new [LOA]</u>**, with the corresponding notation thereto, including the previous [LOA] number and date of issue of said [LOAs].[171]
>
> ...

Moreover, in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[172] (**McDonald's**), the Supreme Court highlighted the difference between an MOA and an LOA in this wise:

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169 Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.
170 Supra at note 167.
171 Emphasis and underscoring supplied.
172 G.R. No. 242670, 10 May 2021; Emphasis supplied.

...

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.**

...

Applying the above principles to the case at bar, the MOA signed by the Division Chief of RLTAD-1 did not and could not confer authority to the new batch of ROs to continue the audit or investigation of respondent's books of accounts for CY 2014. In the absence of the authority conferred by a valid and duly issued LOA, the investigation and subsequent assessment of respondent's supposed tax deficiencies could not be sanctioned.

Incidentally, while it may be gainsaid that *McDonald's* does not do away with the reassignment by the CIR himself, such is not the case here. In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[173], the Supreme Court underscored the importance of an LOA, *viz*:

> ...
>
> **An 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. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. ...**
>
> ...
>
> Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**
>
> ...

[173] G.R. No. 222743, 05 April 2017; Citation omitted and emphasis supplied.

> ... To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made.
>
> ...

The Supreme Court, citing the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[174], went on to state:

> ...
>
> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **<u>In the absence of such an authority, the assessment or examination is a nullity.</u>**
>
> ...

Further, the Supreme Court in *McDonald's*[175] concluded that:

> ...
>
> In summary, **We rule that the <u>practice of reassigning or transferring revenue officers originally named in the LOA</u> and substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA <u>(i) violates the taxpayer's right to due process in tax audit or investigation</u>; <u>(ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer</u>; and <u>(iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990</u>**.
>
> ...

In this case, the records indisputably demonstrated that ROs Cayabyab, Anaban, Budano, Monforte, and Mendoza continued the audit and/or investigation of respondent's books of accounts solely by virtue of an MOA. They had begun participating in the audit prior to the issuance of the PAN and FLD/FAN, and it had precisely been their documentation of findings and recommendations that eventually led to the issuance thereof.

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[174] G.R. No. 178697, 17 November 2010; Emphasis and underscoring supplied.

[175] Supra at note 172; Emphasis and underscoring supplied.

Furthermore, only the Division Chief of RLTAD-1 (an official who is not among those authorized to issue LOAs pursuant to existing laws and regulations, particularly Section 13[176] in relation Section 10(c)[177] of the NIRC of 1997, as amended, Item D(4) of RMO No. 43-90[178] and Item II(2)[179] of RMO No. 29-07[180]) signed the MOA. It is thus apparent that the lead officer tasked to carry out the investigation had not been validly clothed with the proper authority to continue the audit and to recommend the issuance of the assessments against petitioner.

Although We are not unaware that GS Arriola was named in the LOA (as then RO Arriola) and was also a signatory (as a reviewer) in the memoranda (which recommended the issuance of the PAN, and later the FLD/FAN), the fact remains that **the ROs that continued and conducted the actual audit lacked the necessary authority from a valid LOA.**

To be clear, this lapse is not rectified by the participation of at least one (1) of the individuals named in the LOA. Taking such a stance is logically fallacious. Even if we were to assume that GS Arriola herself had participated in the examination to some degree[181], the involvement of the unauthorized ROs taints the investigation.

In *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*[182], the Supreme Court further reiterated that **only the ROs actually named in the LOA** are authorized to examine the taxpayer, to wit:

> ...
> Likewise, the CTA *EB* correctly held that the deficiency tax assessments were invalid due to the revenue officers' lack of authority to do so. Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers. **It is axiomatic that only the revenue officers actually named under the LOA are authorized to examine the taxpayer. . . . In**

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176 Supra at p. 27.
177 Supra at p. 26.
178 Supra at note 167.
179 Supra at p. 30.
180 Supra at note 169.
181 Supra at note 117.
182 G.R. Nos. 249883-84 (Notice), 27 January 2020; Citations omitted and emphasis supplied.

the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void.

...

In H*imlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*[183], which also involved a reassignment of a deficiency tax investigation to another RO without the issuance of a new LOA, the Supreme Court nullified the FLD/FAN issued against the taxpayer on the basis of such investigation, thus:

> ...
>
> A perusal of the records of the case discloses that electronic LOA SN: eLA201000017400 LOA-039-2010-00000072 issued against petitioner specifically authorized revenue officer Cacdac and group supervisor Andaya, to examine the books of accounts of petitioner for taxable year 2009[.] ...
>
> ...
>
> However, it appeared that Cacdac was not the revenue officer who actually conducted the audit of petitioner's books of accounts. It was revenue officer Bagauisan who audited petitioner by virtue of a memorandum of assignment signed by revenue district officer Nacar[.] ...
>
> ...
>
> The reassignment of the examination of petitioner's books of accounts pursuant to electronic LOA SN: eLA201000017400 LOA-039-2010-00000072 from revenue officer Cacdac to revenue officer Bagauisan necessitates the issuance of a new LOA. This is clear under Revenue Memorandum Order (RMO) No. 43-90 or "An Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit"[.] ...
>
> ...
>
> Here, there was no new LOA issued naming Bagauisan as the new revenue officer who would conduct the examination of petitioner's books of accounts. The authority of Bagauisan is anchored only upon the memorandum of assignment signed by revenue district officer Nacar.

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183 G.R. No. 241848, 14 May 2021.

> Section 13 of the NIRC requires that a revenue officer must be validly authorized before conducting an audit of a taxpayer[.]
>
> ...

Thus, in consideration of the foregoing, We find that the Special First Division did not err in striking down the present assessment against respondent. We echo its findings (as laid out in the assailed Decision[184]) with affirmation:

> ...
> *Ergo*, the absence thereof taints the whole examination process, and resultant tax assessments issued against [respondent] covering said year with invalidity.
>
> We, too, are cognizant that GS Arriola was named in the LOA dated January 7, 2016, issued by ACIR-LTS Valeroso. Equally true is that in the Memoranda dated May 10, 2017, and June 22, 2017, GS Arriola *reviewed* the findings of ROs Cayabyab, Anaban, Budano, Monforte, and Mendoza. However, there was nothing for GS Arriola to review or check, since the findings unearthed by ROs Cayabyab, Anaban, Budano, Monforte, and Mendoza are a patent nullity.
>
> Therefore, we declare the deficiency tax assessments covering TY 2014 void, for being a product of illegal audit and examination by [petitioner]'s tax agents.
>
> ...

Well-entrenched is the principle that in cases where the BIR conducts an audit without a valid LOA, any resulting assessment shall be void and ineffectual.[185] Without such prerequisite authority, an RO lacks the power to recommend the assessment of any deficiency tax. Considering the absence of a new and valid LOA (or equivalent document) authorizing the replacement ROs to examine respondent's books of accounts and other accounting records (as a result of the assignment of the case to them subsequent to the issuance of the original LOA), the deficiency tax assessment issued against respondent is *inescapably void.*

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184 Supra at note 1, pp. 66-67; Citations omitted and italics in the original text.

185 See *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, supra at note 173.

RESPONDENT IS ENTITLED TO THE RETURN OF THE AMOUNTS THAT IT HAD PREVIOUSLY PAID UNDER PROTEST.

Finally, as to respondent's claim for refund of the amounts it had paid under protest, as a consequence of the above, We similarly affirm the Special First Division's conclusions:

> ...
>
> [T]he deficiency tax assessments issued against [respondent] for TY 2014 are void because the same was a result of an illegal examination conducted by the BIR. *A fortiori*, the EWT, FWVAT, and Miscellaneous Tax (compromise penalties) for TY 2014, paid under protest by [respondent], in the total amount of ₱13,398.898.25, were unlawfully collected by the BIR. Precisely, refund thereof must ensue.[186]
>
> ...

As respondent aptly pointed out in its Comment, petitioner did not dispute before the Court *En Banc* respondent's timeliness in filing an administrative and judicial claims for refund.[187] Meanwhile, as We have already rendered an exhaustive discussion above on the invalidity of the assessment, there should no longer be any doubt as to respondent's entitlement to the return of amounts it previously paid to the BIR *pursuant to a void assessment*.

Considering Our earlier discussions, finding petitioner's assessments void for a clear violation of the due process requirements, We deem it just and proper that the amounts erroneously paid be returned to respondent. While the proceedings have thus been voided, petitioner has retained the payments in question (from respondent). Truth to tell, with the Court's finding that the assessment is inescapably void, respondent's entitlement to the amounts it erroneously paid has been established, irrespective of the refund claims.

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186 Supra at note 1, p. 68.

187 Respondent's "Comment (to Petition for Review dated March 1, 2024)", *rollo*, p. 116.

It is a well-settled rule that a void assessment bears no valid fruit.[188] It is clear from the records that the said payments were made over the course of the assessment process or administrative proceedings before the BIR, as part of respondent's response in its participation therein. **If an invalid assessment bears no valid fruit, with more reason will no such fruit arise if there was no assessment in the first place.[189] With the entirety of the assessment thus declared void, all proceedings in pursuit thereof should likewise be struck down as plain nullity and ineffectual.**

Upon the Court's determination that the subject assessment is void, to reiterate, it only logically follows perforce that the amounts remitted by respondent pursuant to the assessment (and the proceedings that attended it) cannot be validly retained by the BIR. These should not have been paid by respondent. Even if we are to deem that respondent's payments were voluntary, the basis of such payment (*i.e.*, a void assessment) could not make such payment legal (to the effect that the BIR can continuously hold on to it). Such would be anathema or completely antithetical to all sense of logic and fairness.

In any event, We sustain the Special First Division's findings on the matter when it found that respondent made timely claims:

> ...
>
> In line with *Carrier*, [respondent] had two (2) years from April 30, 2018, or until April 30, 2020, to file both its administrative and judicial claims for refund in the order stated. [Respondent] seasonably instituted: *one*, its administrative claim for refund on May 23, 2018; *two*, its Petition for Review filed on May 25, 2018.[190]
>
> ...

With all of Our disquisitions thus far, the Court *En Banc* finds no reversible error or any cogent or compelling reason to deviate from the Special First Division's findings and conclusions.

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188 *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*, G.R. No. 249153, 12 September 2022.

189 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. Nos. 197945, & 204119-20, 09 July 2018.

190 Supra at note 1, p. 63; Citations omitted and italics in the original text.

WHEREFORE, with the foregoing considered, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 04 March 2024 is **DISMISSED** for being filed out of time. In any event, even if timely filed, the same is denied for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

x - x

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice