REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

PMFTC, INC.,
Respondent.

CTA EB No. 3009
(CTA Case No. 10714)

Present:

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

Promulgated:
APR 13 2026 2:20pm

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DECISION

ANGELES, *J.*:

THE CASE

Before the Court *En Banc* is a *Petition for Review*[1] filed by petitioner, the Commissioner of Internal Revenue (CIR), assailing the Decision dated June 19, 2024 (assailed Decision),[2] promulgated by this Court's Second Division (Court in Division) in CTA Case No. 10714, which cancelled and set aside the Assessment Letter dated July 27, 2021, the Denial of Protest Letter dated August 23, 2021, and the Denial of Request for Reconsideration dated September 30, 2021, which assessed respondent PMFTC, Inc. for deficiency value-added tax (VAT) in the aggregate amount of ₱1,964,172,729.83, inclusive of increments and penalties. Petitioner likewise assails the Resolution

[1] *Petition for Review*, EB Docket, pp. 10 to 16.
[2] Decision dated June 19, 2024, EB Docket, pp. 23 to 47; Docket (CTA Case No. 10714) – Vol. 2, pp. 739 to 763.

dated September 13, 2024 (assailed Resolution),[3] which denied petitioner's *Motion for Reconsideration*.

THE PARTIES

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency in charge of, among others, the assessment and collection of all national internal revenue taxes, fees, and charges.[4] He may be served with summons, notices and other court processes through his legal counsels at Litigation Division, Room 703, BIR National Office Building, Diliman, Quezon City.[5]

Respondent PMFTC, Inc., is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at Plants C & D Champaca Street, Brgy. Fortune, Marikina City. It is registered with the BIR as a VAT taxpayer with Taxpayer's Identification Number (TIN) 007-51-588-000, under the jurisdiction of Revenue District Office No. 124 – Large Taxpayers Service.[6]

Respondent is engaged in the business of, among others, manufacturing, processing, packing, buying, exporting, selling on wholesale, distributing, marketing, leasing, and otherwise dealing in various products including but not limited to, paper, chemicals, cigarettes, and tobacco sticks intended for heating as well as blue tooth and/or wifi enabled aerosol generating electronic devices, software, devices with radio frequency, other communication equipment, and other related equipment and their components and accessories, and the plants, machineries, and equipment used for the same.[7]

ANTECEDENT FACTS

The relevant facts as found by the Court in Division are as follows:[8]

> On April 21, 2021, the Securities and Exchange Commission ("SEC") approved the corporate merger of petitioner [herein

[3] Resolution dated September 13, 2024, EB Docket, pp. 48 to 49; Docket (CTA Case No. 10714) – Vol. 2, pp. 781 to 782.
[4] Petition for Review, EB Docket, p. 11.
[5] *The Parties*, Decision dated June 19, 2024, EB Docket, p. 24.
[6] *The Parties*, Decision dated June 19, 2024, EB Docket, p. 23.
[7] *The Parties*, Decision dated June 19, 2024, EB Docket, p. 24.
[8] EB Docket, pp. 24 to 27.

respondent] and Philip Morris Philippines Manufacturing, Inc. ("PMPMI"), with the latter being the absorbed corporation and petitioner [respondent] being the surviving corporation.

Prior to the merger, PMPMI was engaged in the business of, among others, manufacturing, processing, packing, buying, exporting, selling on wholesale, distributing, and otherwise dealing in cigarettes and cigarette flavorings, casings, tobacco, packaging, labels, filters, plants, machines, equipment, instruments, and apparatuses. PMPMI is registered with the BIR as a VAT taxpayer with TIN 205-933-884-000, also under the jurisdiction of RDO No. 124 - LTS.

Based on the Articles and Plan of Merger approved by the SEC, the effective date of the merger of PMFTC and PMPMI was on June 1, 2021.

On June 14, 2021, the BIR LTS issued Letters of Authority ("LOA") Nos. LOA-124-2021-00000052 and LOA-124-202100000051, both dated June 2, 2021, to petitioner [respondent] and PMPMI, respectively, authorizing the examination of the books of accounts and other accounting records of the said entities, for all internal revenue tax liabilities, from January 1, 2020 to May 31, 2021.

Meanwhile, on July 22, 2021, petitioner [respondent] filed its Q2 2021 VAT return reflecting allowable input tax, excluding current transactions and deductions, in the amount of ₱4,153,414,026.13, broken down as follows:

Field No. (Form 2550-Q)	**Particulars**	**Amount**
20A	Input Tax Carried Over from Previous Period	₱317,165,144.88
20E	Others	3,836,248,881.25
20F	Total	₱4,153,414,026.13

On July 27, 2021, respondent [herein petitioner] issued a letter ("Assessment Letter") assessing PMFTC for alleged deficiency VAT amounting to ₱1,964,172,729.83, computed as follows:

Input Tax forwarded as a consequence of merger		₱3,836,248,881.25
Less: Excess Input VAT Return		2,277,421,317.89
		1,558,827,563.36
Add: Penalties		
Surcharge	389,706,890.84	
Interest (July 16, 2021 to August 25, 2021)	15,588,275.63	
Compromise Penalty	50,000.00	405,345,166.47
Total Deficiency VAT for Return Period June 30, 2021		₱1,964,172,729.83

In the said Assessment Letter, the BIR questioned PMFTC's utilization of the excess input VAT declared by PMPMI in its May 2021 monthly VAT declaration, amounting to ₱3,836,248,881.25 (i.e., "Others" in field 20E above), as the surviving corporation in the subject merger. Such utilization resulted in PMFTC having no output VAT payable and an excess input VAT amounting to ₱2,277,421,317.89 for Q2 TY2021, which it then carried over to the succeeding month.

Conversely, in PMPMI's Q2 TY2021 VAT Return, the amount of ₱3,836,248,881.25 was deducted from PMPMI's available input VAT credits.

However, the BIR advanced in its Assessment Letter that the application of excess input in favor of PMFTC as the surviving corporation is premature, pending the completion of the BIR's audit investigation of both parties to the merger.

On August 11, 2021, petitioner [respondent] filed a letter ("Protest Letter") to dispute the Assessment Letter.

On August 31, 2021, petitioner [respondent] received a letter from the BIR LTS dated August 23, 2021 ("Denial of Protest Letter") denying the former's Protest Letter and maintaining the BIR's position in the Assessment Letter.

Citing *Revenue Regulations ("RR") No. 7-12* and *No. 13-2018*, the BIR-LTS ruled that PMPMI, as the absorbed corporation, must comply first with these regulations which provide for procedures for the cessation/cancellation of status of VAT-registered person, whether it chooses to (1) pass on the unutilized input taxes or (2) apply for a refund. According to the BIR LTS, both require an application for cancellation of registration. Such cancellation of registration shall be signified by the issuance of tax clearance by the BIR, after full settlement of tax liabilities relative to the cessation of business or change of status of the taxpayer.

On the same day of receipt of the Denial of Protest Letter, the BIR issued a letter dated August 31, 2021 ("Amortization Acceptance Letter") confirming that it interposed no objection to the proposed amortization by PMFTC of the remaining input VAT credits amounting to ₱2,277,421,317.89 in its monthly VAT declarations and quarterly VAT returns for July 2021 to December 2021. Pursuant thereto, petitioner [respondent] proceeded to amortize the remaining input VAT credits within the said period.

On September 15, 2021, petitioner [respondent] filed a Request for Reconsideration, signed on even date, with the Office of the Commissioner of Internal Revenue ("Request for Reconsideration Letter"). Petitioner [respondent] reiterated that PMFTC's use of excess input VAT of PMPMI is in accordance with prevailing jurisprudence, law and tax regulations and that, contrary to respondent's [petitioner's] position, the deferral of utilization of input VAT has no legal basis.

> In response to the Request for Reconsideration Letter, the CIR issued a letter, dated September 30, 2021 ("Denial of Request for Reconsideration"), which was received by petitioner [respondent] on November 23, 2021. Respondent [Petitioner] denied petitioner's [respondent's] request and affirmed the BIR LTS' position that PMPMI had to obtain a tax clearance prior to the utilization of the excess input tax by petitioner [respondent] as the surviving corporation.
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> Aggrieved, petitioner [respondent] appealed to this Court through the instant Petition (with Urgent Motion to Suspend Collection of Taxes), filed on December 22, 2021.
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> After being granted an extension of time by the Court, respondent [petitioner] submitted his Answer on May 10, 2022.
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> On July 20, 2022, the hearing for the Urgent Motion was conducted *via* videoconference. Petitioner [Respondent] presented the testimony of its lone witness, Mr. Charleston Amurao (Amurao), who identified his Judicial Affidavit dated December 22, 2021 and the exhibits attached thereto.
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> On August 5, 2022, petitioner [respondent] submitted its Formal Offer of Evidence in support of the Urgent Motion, to which respondent [petitioner] filed his Comment on August 10, 2022.

Trial then ensued, with respondent presenting and offering its documentary and testimonial evidence.[9]

Respondent filed its *Memorandum* and the case was submitted for resolution.[10]

On June 19, 2024, the Court in Division promulgated the assailed Decision,[11] the dispositive portion of which reads:

> **ACCORDINGLY**, premises considered, the Petition for Review is hereby **GRANTED**. The BIR's Assessment Letter, dated July 27, 2021, Denial of Protest Letter, dated August 23, 2021, and Denial of Request for Reconsideration, dated September 30, 2021, assessing petitioner [respondent] for deficiency VAT in the aggregate amount of ₱1,964,172,729.83, inclusive of increments and compromise penalties, for second quarter of 2021, are hereby **CANCELLED** and **SET ASIDE**.

The Court in Division ruled that it has jurisdiction over the case. It held that although the Assessment Letter and the Denial of Protest Letter were not the usual assessment notices issued by the BIR, they

[9] EB Docket, pp. 27 to 28.
[10] *Id.*
[11] *Supra* note 2.

nonetheless contained the requirements of a valid assessment notice.[12]

The Court in Division likewise ruled in favor of respondent and held that its right to due process was violated because the Revenue Officer (RO) who conducted the audit was not validly authorized by a Letter of Authority (LOA). The Court in Division further found that respondent's right to due process was violated when petitioner failed to issue a Notice of Discrepancy (NOD) and a Preliminary Assessment Notice (PAN) prior to the issuance of the Assessment Letter. Consequently, the Court in Division held that the resulting assessment is void.[13]

The Court in Division further held that respondent is entitled to claim the unutilized input taxes of Philip Morris Philippines Manufacturing, Inc. (PMPMI) pending the issuance of a tax clearance since a merger takes effect upon the issuance of the Securities and Exchange Commission (SEC) of the certificate of merger. It ruled that pursuant to Section 79 of the Revised Corporation Code, the transfer of all the rights and privileges of the absorbed corporation occurs by operation of law. Thus, the Court in Division held that respondent may utilize the unutilized input taxes of PMPMI pending the issuance of a tax clearance.[14]

Thereafter, on July 5, 2024, petitioner posted his *Motion for Reconsideration (Re: Decision dated June 19, 2024)*[15] seeking the reversal of the assailed Decision. On August 2, 2024, respondent filed its *Comment/Opposition (To the Motion for Reconsideration dated 5 July 2024).*[16]

On September 13, 2024, the Court in Division issued the assailed Resolution,[17] denying petitioner's *Motion for Reconsideration*, the dispositive portion of which reads:

> **ACCORDINGLY**, petitioner's *Motion for Reconsideration (Re: Decision dated 19 June 2024)* is hereby **DENIED** for lack of merit. The Decision, dated June 19, 2024, is hereby **AFFIRMED**.

Hence, this Petition.

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[12] EB Docket, pp. 30 to 36.
[13] EB Docket, pp. 36 to 39.
[14] EB Docket, pp. 40 to 46.
[15] Docket (CTA Case No. 10714) – Vol. 2, pp. 764 to 768.
[16] Docket (CTA Case No. 10714) – Vol. 2, pp. 771 to 776.
[17] *Supra* note 3.

PROCEEDINGS BEFORE THE COURT *EN BANC*

On October 11, 2024, petitioner posted his *Motion for Extension of Time to File Petition for Review.*[18]

In the Resolution dated October 22, 2024,[19] the Court granted the *Motion for Extension of Time to File Petition for Review.*

On October 28, 2024, petitioner filed his *Petition for Review.*[20]

In the Resolution dated February 19, 2025,[21] the Court noted the *Petition for Review.* The Court likewise observed that since petitioner received the assailed Resolution on September 26, 2024, petitioner should have sought the extension of time to file the Petition for Review from October 11, 2024 until October 26, 2024, instead of from September 26, 2024 until October 11, 2024.

In the same Resolution,[22] the Court directed respondent to file its comment to the Petition for Review.

On March 3, 2025, respondent filed its *Comment (To Petition for Review dated 22 October 2024).*[23]

Thereafter, on March 13, 2025, the case was submitted for decision.[24]

ASSIGNMENT OF ERRORS

Petitioner assigns the following errors allegedly committed by the Court in Division, to wit:[25]

I. The Honorable Court in Division erred in ruling that it has jurisdiction over the instant case; and

II. The Honorable Court in Division erred in ruling that respondent's right to due process was violated.

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[18] EB Docket, pp. 2 to 5.
[19] EB Docket, p. 9.
[20] EB Docket, pp. 10 to 16.
[21] EB Docket, pp. 52 to 54.
[22] EB Docket, pp. 52 to 54.
[23] EB Docket, pp. 56 to 67.
[24] Resolution dated March 13, 2025, EB Docket, unpaginated.
[25] *Assignment of Error*, Petition for Review, EB Docket, p. 12.

ARGUMENTS OF THE PARTIES

Petitioner's arguments

Petitioner contends that the Court in Division erred in ruling that it has jurisdiction over the case. He argues that the Assessment Letter and the Denial of Protest Letter are not the assessment notices contemplated by law. Petitioner further asserts that the jurisdiction of this Court to review a decision of the CIR under Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, refers to a decision of the CIR on a disputed assessment. According to petitioner, since no assessment notice or Formal Letter of Demand/Final Assessment Notice (FLD/FAN) was issued in this case, there could be no decision on a disputed assessment. Consequently, petitioner maintains that the Court does not have jurisdiction over the case.[26]

Petitioner likewise argues that the Court in Division erred in ruling that respondent's right to due process was violated. He contends that the issuance of an LOA was unnecessary considering that the deficiency assessment did not arise from an examination of respondent's books of accounts and other accounting records. Instead, petitioner asserts that the assessment resulted from respondent's act of utilizing the excess input tax it absorbed from the merger with PMPMI prior to securing a tax clearance.[27]

Respondent's counter-arguments

Respondent contends that petitioner's *Motion for Extension of Time* and *Petition for Review* were filed out of time. Consequently, respondent argues that the assailed Decision and Resolution have already attained finality and have become final and executory.[28]

Respondent further maintains that the Court in Division correctly ruled that it has jurisdiction over the case. Respondent asserts that the Assessment Letter and the Denial of Protest Letter contain the requirements of a valid assessment notice. Thus, respondent posits that the CIR's decision constitutes a decision on a disputed assessment which is appealable to the Court of Tax Appeals (CTA).[29]

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[26] EB Docket, pp. 13 to 14.
[27] EB Docket, pp. 14 to 15.
[28] EB Docket, pp. 56 to 60.
[29] EB Docket, pp. 61 to 63.

Respondent likewise maintains that the Court in Division did not err in declaring the assessment void. Respondent argues that since the Assessment Letter and Denial of Protest Letter are in the nature of assessment notices, a valid LOA must precede their issuance. While two (2) LOAs were issued, respondent points out that these only covered the period from January 1, 2020 to May 31, 2021. On the other hand, the subject assessment arose from the filing of the VAT return for the quarter ending June 30, 2021. Hence, respondent asserts that because the period covered by the assessment falls outside the period covered by the LOA, a new LOA should have been issued and without such, the resulting assessment is void.[30]

RULING OF THE COURT

The Court denies the Petition for Review.

The present Petition for Review was filed on time.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> **RULE 8**
> **PROCEDURE IN CIVIL CASES**
>
> xxx xxx xxx
>
> SEC. 3. Who may appeal; period to file petition. –
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> xxx xxx xxx
>
> (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.** (Emphasis supplied)

Based on the foregoing, a party adversely affected by a resolution of the Court has fifteen (15) days from the receipt of the

[30] EB Docket, pp. 63 to 65.

assailed resolution within which to file a petition for review before the Court *En Banc*. The Court, however, may grant an additional period of not exceeding fifteen (15) days from the expiration of the original period to file the petition, subject to the condition that the motion for extension is filed before the expiration of the reglementary period.

Respondent argues that petitioner received the assailed Resolution on September 24, 2024, and not on September 26, 2024. Hence, respondent contends that counting fifteen (15) days therefrom, petitioner only had until October 9, 2024 within which to file either a Petition for Review or a Motion for Extension of Time. Respondent points out that petitioner filed his *Motion for Extension of Time* on October 11, 2024. Consequently, respondent maintains that the motion was filed out of time and, therefore, petitioner's *Petition for Review* was likewise belatedly filed. As such, respondent asserts that the assailed Decision and Resolution have already become final and executory.[31]

Respondent's arguments are without merit.

The Supreme Court has consistently held that when the government is represented by the Office of the Solicitor General (OSG), the reckoning period to appeal an adverse decision or resolution is the date of receipt by the OSG, and not the date of receipt by the deputized counsel.

In *National Power Corporation v. National Labor Relations Commission*,[32] the Supreme Court ruled that:

> Although jurisprudence regarding mandatory service of orders and decision on the OSG and not merely to its deputized special attorneys, pertain to court cases involving land registration and naturalization, the same rule should be observed in cases before the Labor Arbiter and the NLRC. **The underlying justification for compelling service of pleadings, orders, notices and decisions on the OSG as principal counsel is one and the same.** As the lawyer for the government or the government corporation involved, the OSG is entitled to the service of said pleadings and decisions, whether the case is before the courts or before a quasi-judicial agency such as respondent commission. Needless to say, a uniform rule for all cases handled by the OSG simplifies procedure, prevents confusion and thus facilitates the orderly administration of justice.
>
> From the foregoing, we conclude that service of the Labor Arbiter's decision on the deputized special attorney is insufficient

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[31] EB Docket, pp. 57 to 60.
[32] G.R. No. 90933-61, May 29, 1997.

> and not valid and binding on the Solicitor General, who was himself entitled to such service. **The period to appeal an adverse decision should be reckoned from the date the OSG, and not the deputized lawyer, received a copy of the decision.** Since service was not made on the OSG, the period to file an appeal was suspended and did not commence to run. The appeal memorandum, having been filed on July 17, 1989, it was filed on time and should have been entertained by the NLRC. Consequently, respondent Commission committed grave abuse of discretion when it promulgated its decision on October 6, 1989 dismissing petitioner's appeal for having been filed late. (Emphasis supplied)

Similarly, in *Republic of the Philippines v. Viaje*,[33] the Supreme Court reiterated that:

> The power of the OSG to deputize legal officers of government departments, bureaus, agencies and offices to assist it in representing the government is well settled. The Administrative Code of 1987 explicitly states that the OSG shall have the power to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases." But it is likewise settled that **the OSG's deputized counsel is "no more than the 'surrogate' of the Solicitor General in any particular proceeding" and the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions**. In this case, records show that it was the OSG that first entered an appearance in behalf of the Republic; hence, it remains the principal counsel of record. The appearance of the deputized counsel did not divest the OSG of control over the case and did not make the deputized special attorney the counsel of record. Thus, the RTC properly acted within bounds when it relied on the rule that it is the notice to the OSG that is binding.
>
> Nonetheless, the OSG also pointed out that it specifically requested the RTC to likewise furnish its deputized counsel with a copy of its notices. Records show that the deputized counsel also requested that copies of notices and pleadings be furnished to him. Despite these requests, it was only the OSG that the RTC furnished with copies of its notices. It would have been more prudent for the RTC to have furnished the deputized counsel of its notices. All the same, doing so does not necessarily clear the OSG from its obligation to oversee the efficient handling of the case. **And even if the deputized counsel was served with copies of the court's notices, orders and decisions, these will not be binding until they are actually received by the OSG**. More so in this case where the OSG's Notice of Appearance and its Letter deputizing the LRA even contained the caveat that it is only notices of orders, resolutions and decisions served on the OSG that will bind the Republic, the entity, agency and/or official represented. **In**

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[33] G.R. No. 180993, January 27, 2016.

> **fact, the proper basis for computing a reglementary period and for determining whether a decision had attained finality is service on the OSG.** xxx (Emphasis supplied)

Based on the foregoing jurisprudence, it is clear that the reckoning point for the computation of the period to appeal is the date of receipt of the resolution by the OSG.

In the present case, it is undisputed that the BIR NOB Litigation Division received the assailed Resolution on September 24, 2024.[34] However, a perusal of the records reveals that the OSG received the assailed Resolution only on September 26, 2024.[35] Consequently, petitioner had fifteen (15) days therefrom, or until October 11, 2024, within which to file either a Petition for Review or a Motion for Extension of Time to File a Petition for Review.

Records show that on October 11, 2024, petitioner posted his *Motion for Extension of Time to File Petition for Review.*[36] Thereafter, the Court granted petitioner a non-extendible period of fifteen (15) days, or until October 28, 2024 within which to file his *Petition for Review.*[37]

On October 28, 2024, petitioner filed his *Petition for Review.*[38] Accordingly, the Petition for Review was timely filed.

The Court in Division did not err in ruling that the CTA has jurisdiction over the case.

Petitioner argues that since no FLD/FAN was issued by the BIR, there was no assessment to speak of. Consequently, petitioner contends that there was no decision on a disputed assessment rendered by the CIR which could be appealed to the CTA.

Petitioner's arguments are untenable.

Section 7(a)(1) of RA No. 1125, as amended, provides for the jurisdiction of the CTA regarding decisions of the CIR, thus:

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[34] Docket (CTA Case No. 10714) – Vol. 2, p. 780.
[35] Docket (CTA Case No. 10714) – Vol. 2, p. 780.
[36] EB Docket, pp. 2 to 5.
[37] Resolution dated February 19, 2025, EB Docket, pp. 52 to 54.
[38] EB Docket, pp. 10 to 16.

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;

As correctly ruled by the Court in Division, the CTA has jurisdiction over the present case. While the Assessment Letter dated July 27, 2021 and the Denial of Protest Letter dated August 23, 2021 are not the usual assessment notices issued by the BIR, they nonetheless contain the requirements of a valid assessment notice.

In *Commissioner of Internal Revenue v. Menguito*,[39] the Supreme Court reiterated that an assessment must include a computation of tax liabilities and a demand for payment within a prescribed period. This demand for payment signals the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine the remedies.[40] Moreover, pursuant to Section 228 of the Tax Code, the assessment shall likewise state the law and the facts on which the assessment is made.[41]

We affirm the finding of the Court in Division that the Assessment Letter dated July 27, 2021 and the Denial of Protest Letter dated August 23, 2021 constitute valid assessment notices. Both letters contain a computation of respondent's alleged deficiency VAT amounting to ₱1,964,172,729.83. They likewise state the factual and legal bases for the alleged deficiency VAT. Both letters also provide respondent a period of fifteen (15) days from receipt within which to pay the alleged deficiency VAT.

Notably, the Assessment Letter dated July 27, 2021 expressly refers to Section 228 of the Tax Code, thus:[42]

Sir/Madam:

We refer to PMFTC, Inc.'s Value Added Tax (VAT) return for the quarter ended 30 June 2021 filed on 22 July 2021.

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[39] G.R. No. 167560, September 17, 2008.
[40] *Id.*
[41] *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*, G.R. No. 215534, April 18, 2016.
[42] Exhibit "P-12," Docket (CTA Case No. 10714) – Vol. 1, pp. 196 to 197.

> An examination of the subject return shows that it bears an excess input tax in the amount of P2,277,421,317.89. It appears that the excess input tax is attributable to the merger between PMFTC and Philip Morris Phils Manufacturing Inc. (PMPMI), with the latter's input tax of P3,836,248,881.25 being absorbed by your company (as a surviving entity), as a consequence of the subject merger.
>
> xxx xxx xxx
>
> **Pursuant to the provisions of Section 228 of the NIRC and its implementing Revenue Regulations, you are hereby given fifteen (15) days from receipt hereof to pay the aforesaid deficiency Value Added Tax Due for the quarter ended 30 June 2021.** (Emphasis supplied)

Similarly, the Denial of Protest Letter dated August 23, 2021 likewise makes reference to Section 228 of the Tax Code. The letter also provided for the consequence in case respondent failed to pay within the prescribed period, to wit:[43]

> Dear Sir/Madam:
>
> This refers to your utilization of excess input tax as a consequence of the merger of PMFTC, Inc. (PMFTC, the surviving corporation) and Philip Morris Phils Manufacturing Inc. (PMPMI, the absorbed corporation).
>
> We again underscore and emphasize that as a result of the merger, both companies (PMFTC and PMPMI) are currently under investigation for the taxable period covering January 1, 2020 up to May 31, 2021 to determine tax liabilities, if any.
>
> xxx xxx xxx
>
> **In accordance with Section 228 of the NIRC (as amended) and its implementing rules and regulations, you are hereby given fifteen (15) days from receipt hereof to pay the aforesaid deficiency Value Added Tax due for the month ended 31 July 2021. Otherwise, the assessment shall be considered and deemed as final.** (Emphasis supplied)

It bears emphasis that Section 228 of the Tax Code provides:

> SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:
>
> xxx xxx xxx

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[43] Exhibit "P-14," Docket (CTA Case No. 10714) – Vol. 1, pp. 209 to 211.

> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**
>
> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.** (Emphasis supplied)

From the foregoing, Section 228 of the Tax Code lays down the requirements of a valid assessment and the procedure through which a taxpayer may protest such assessment. By expressly invoking Section 228 of the Tax Code in the letters, the BIR effectively acknowledged that the Assessment Letter dated July 27, 2021 and the Denial of Protest Letter dated August 23, 2021 constitute assessments. Thus, the CIR's Decision dated September 30, 2021[44] is considered a decision on a disputed assessment which properly falls within the jurisdiction of the CTA.

The Court in Division did not err in ruling that the assessment is void.

Petitioner argues that the Court in Division erred in declaring the assessment void on the ground that it was conducted without a valid LOA. Petitioner insists that the issuance of an LOA was unnecessary because the deficiency VAT assessment arose from respondent's utilization of PMPMI's excess input taxes and not from an examination of respondent's books of accounts and accounting records.

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[44] Exhibit "P-18," Docket (CTA Case No. 10714) – Vol. 1, pp. 225 to 228.

Petitioner's arguments are unavailing.

We affirm the Court in Division's finding that respondent's right to due process was violated when it was assessed without a valid LOA.

Section 13 of the Tax Code unequivocally provides that an RO may perform assessment functions only pursuant to a valid LOA, thus:

> 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.** (Emphasis supplied)

In *Commissioner of Internal Revenue v. Marily Development Corp.*,[45] the Supreme Court emphasized the importance of an LOA:

> The power to authorize the examination of a taxpayer is lodged solely with the CIR. This power is not extended to all BIR personnel. Recognizing this statutory limitation on the power of assessment, the Tax Code allows the CIR and the Revenue Regional Director to delegate the authority to assess to Revenue Officers through a LoA. **A LoA empowers the revenue officer to examine the books of account and other tax records of a taxpayer to collect the correct amount of tax. There is however, no presumption that a Revenue Officer is authorized to issue assessments. The importance of the LoA cannot be understated.**
>
> **In cases where the BIR conducts an audit without a valid LoA, or in excess of the authority duly provided therefore, the resulting assessment shall be void and ineffectual. This is because the issuance of a LoA is part and parcel of the taxpayer's right to due process.** (Emphasis supplied)

In the present case, it is undisputed that the BIR issued two (2) LOAs. LOA No. LOA-124-2021-00000052 dated June 2, 2021,[46] issued to respondent, and LOA No. LOA-124-2021-00000051 dated

[45] G.R. No. 263794, April 2, 2025.
[46] Exhibit "P-7," Docket (CTA Case No. 10714) – Vol. 1, pp. 184 to 186.

June 2, 2021,[47] issued to PMPMI. A perusal of the LOAs reveals that they authorized the examination of respondent's and PMPMI's books of accounts and other accounting records for all internal revenue taxes for the period from **January 1, 2020 to May 31, 2021.**

However, the Assessment Letter dated July 27, 2021 and the Denial of the Protest Letter dated August 23, 2021 assessed respondent for **alleged deficiency VAT for the quarter ended June 30, 2021.** Clearly, **the assessment pertains to a period beyond the coverage of the LOAs.**

In *Commissioner of Internal Revenue v. De La Salle University, Inc.*,[48] the Supreme Court explained the rationale behind the requirement that the LOA specify the taxable period covered:

> **The requirement to specify the taxable period covered by the LOA is simply to inform the taxpayer of the extent of the audit and the scope of the revenue officer's authority.** Without this rule, a revenue officer can unduly burden the taxpayer by demanding random accounting records from random unverified years, which may include documents from as far back as ten years in cases of fraud audit. (Emphasis supplied)

Similarly, in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[49] where the taxpayer was assessed for deficiency taxes outside the period covered by the LOA, the Supreme Court held:

> The CIR insists that LOA 19734, although it states "the period 1997 and unverified prior years," should be understood to mean the fiscal year ending in March 31, 1998. The Court cannot agree.
>
> xxx xxx xxx
>
> 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. In the absence of such an authority, the assessment or examination is a nullity.**
>
> As earlier stated, LOA 19734 covered "the period 1997 and unverified prior years." For said reason, the CIR acting through its revenue officers went beyond the scope of their authority because the deficiency VAT assessment they arrived at was based on records from January to March 1998 or using the fiscal year which ended in March 31, 1998. **As pointed out by the CTA-First Division in**

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[47] Exhibit "P-8," Docket (CTA Case No. 10714) – Vol. 1, pp. 187 to 189.
[48] G.R. Nos. 196596, 198841 & 198941, November 9, 2016.
[49] G.R. No. 178697, November 17, 2010.

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> **its April 28, 2005 Resolution, the CIR knew which period should be covered by the investigation. Thus, if CIR wanted or intended the investigation to include the year 1998, it should have done so by including it in the LOA or issuing another LOA.** (Emphasis supplied)

Furthermore, in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[50] the Supreme Court clarified that the issuance of an LOA is required regardless of whether the taxpayer's books of accounts are physically examined:

> Contrary to the ruling of the CTA en banc, **an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined.** To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made. **The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.**
>
> The BIR's RELIEF System has admittedly made the BIR's assessment and collection efforts much easier and faster. The ease by which the BIR's revenue generating objectives is achieved is no excuse however for its non-compliance with the statutory requirement under Section 6 and with its own administrative issuance. In fact, apart from being a statutory requirement, **an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers**. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute. (Emphasis supplied)

Based on the foregoing, the BIR was required to issue another LOA authorizing the examination of respondent's books of accounts for all internal revenue taxes for the quarter ended June 30, 2021. This requirement applies even if the BIR claims that the deficiency VAT assessment was based on respondent's utilization of PMPMI's excess input taxes and not on an examination of respondent's books of accounts. As clarified by the Supreme Court, the issuance of an LOA is necessary whenever a taxpayer is subjected to an examination

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[50] G.R. No. 222743, April 5, 2017.

or audit, regardless of whether the taxpayer's books of accounts are actually examined.

The Supreme Court has consistently ruled that in cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessment shall be void and ineffectual.[51]

In this case, the deficiency VAT assessment was issued outside the period covered by the LOAs. Consequently, the BIR effectively conducted the audit and assessment without a valid LOA. Accordingly, the resulting assessment is void.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. Accordingly, the Decision and Resolution, dated June 19, 2024 and September 13, 2024, respectively, in CTA Case No. 10714 are **AFFIRMED**.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[51] *Commissioner of Internal Revenue v. Manila Medical Services, Inc.*, G.R. No. 255473, February 13, 2023; *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. G.R. No. 222743, April 5, 2017.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice