REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

\- *versus* -

COMMISSION ON ELECTIONS,
Respondent.

CTA EB NO. 3141
(CTA Case No. 10588)

Present:

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

Promulgated:

MAY 2 1 2026 3:25 p.m.

x---x

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (CIR) against respondent Commission on Elections (COMELEC), within an extended period[2] granted by this Court,[3] seeking to set aside the Decision dated November 13, 2024[4] (the "Assailed Decision") and the Resolution dated April 22, 2025[5] (the "Assailed Resolution") rendered by the First Division of this Court in CTA Case No. 10588.

At the outset, the Court notes a discrepancy in the caption of the Petition for Review as filed before this Court. The CIR carried over the Division-level caption — where COMELEC appeared as the petitioner and the CIR as the respondent — without reversing the party designations to reflect the actual posture of the case before the *En Banc*. It is the CIR who seeks review of the Assailed Decision and Resolution; accordingly,

---

[1] *Rollo*, pp. 7-29 with Annexes "A" to "B", pp. 30-59.
[2] *Id.*, pp. 1-5.
[3] *Id.*, p. 6.
[4] *Id.*, pp. 30-56 (Decision dated November 13, 2024).
[5] *Id.*, pp. 57-58 (Resolution dated April 22, 2025).

the CIR is the petitioner and COMELEC is the respondent before this Court. The Court corrects this *motu proprio*, in the interest of accuracy and expediency, and shall use the corrected caption throughout this Decision.

The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **GRANTED**.
>
> Accordingly, the Formal Letter of Demand and Final Assessment Notice No. 33-2010 to 2013-B7730-19-340 (WT) issued on January 16, 2020, are **CANCELLED** and **SET ASIDE**. Furthermore, the Final Decision on Disputed Assessment issued on June 10, 2021, assessing petitioner Commission on Elections for deficiency withholding taxes covering taxable years 2012 and 2013 are **REVERSED** and **SET ASIDE.**
>
> Further, respondent is **ENJOINED** and **PROHIBITED** from enforcing the collection of the subject deficiency taxes.
>
> **SO ORDERED.**"[6]

The dispositive portion of the Assailed Resolution reads:

> "**WHEREFORE,** in light of the foregoing, respondent's Motion for Reconsideration (Re: Decision dated November 13, 2024) is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"[7]

<u>THE PARTIES</u>

Petitioner Commissioner of Internal Revenue (CIR) is the duly appointed head of the Bureau of Internal Revenue (BIR), the agency mandated by law to assess and collect all national internal revenue taxes. The CIR holds office at the

[6] *Id.*, p. 55 (verbatim dispositive portion of the Assailed Decision).
[7] *Id.*, pp. 59 (verbatim dispositive portion of the Assailed Resolution).

BIR National Office Building, BIR Road, Diliman, Quezon City, and is represented before this Court by the Office of the Solicitor General (OSG) through BIR lawyers of Revenue Region No. 6, Manila.

Respondent Commission on Elections (COMELEC) is one of the three Constitutional Commissions of the Philippines, tasked by the Constitution to enforce and administer all laws and regulations relative to the conduct of elections, plebiscites, initiatives, referenda, and recall elections. COMELEC is registered with BIR Revenue District Office (RDO) No. 33 and holds office at the 8th Floor, Palacio del Gobernador Building, General Luna Street corner Andres Soriano, Jr. Avenue, Intramuros, Manila.

THE FACTS

As found by the First Division and as culled from the records.

On November 20, 2014, the CIR issued a Letter of Authority (LOA) No. LOA-033-2014-00000360, authorizing Revenue Officers (RO) Reigna Bernardo, Jhonelle Fahad Dimakuta, and Jaypee Legaspi, and Group Supervisor (GS) Jessie Parugrug, to examine COMELEC's books of accounts and other accounting records for all internal revenue taxes covering the period from January 1, 2010 to December 31, 2013.[8]

On April 30, 2019, COMELEC received an undated Notice of Informal Conference (NIC) from the CIR, reflecting a 50% surcharge on the deficiency withholding taxes assessed for TY 2012 and 2013.[9]

On September 30, 2019, COMELEC received a Preliminary Assessment Notice (PAN) dated September 27, 2019. Although the PAN reflected a 50% surcharge rate, the actual amounts imposed were equivalent to only 25% of the basic tax due.[10]

On October 15, 2019, COMELEC filed its Reply to the PAN.[11]

On January 21, 2020, COMELEC received a Final Assessment Notice with Formal Letter of Demand (FAN/FLD), Demand No. 33-2010 to 2013-B7730-19-340, and Details of Discrepancy dated January 16, 2020. The FAN/FLD reinstated the 50% surcharge and assessed COMELEC of deficiency withholding taxes — specifically WTC, EWT, and W-VAT — for TY 2012 and 2013 in the following amounts:[12]

---

[8] *Docket*, p. 416, Joint Stipulation of Facts and Issues (JSFI), Admitted Facts, par. 10; Exhibit "P-4-A" and "R-1".
[9] *Id.*, par. 11; Exhibit "P-4".
[10] *Id.*, pars. 12-14.
[11] *Id.*, par. 15.
[12] *Id.*, par. 16; Exhibits "P-1", "P-1-A", "P-2", and "P-3".

	2012	2013
Basic tax due	₱55,267,629.88	₱151,106,506.79
50% surcharge	27,633,814.94	75,553,253.40
20% interest	54,813,375.39	119,643,234.14
12% interest	14,118,229.62	38,600,467.65
Total amount due	₱151,833,049.82	₱384,903,461.98
Total		**₱536,736,511.80**

On February 18, 2020, COMELEC protested the FAN/FLD.[13]

On June 24, 2021, COMELEC received the Final Decision on Disputed Assessment (FDDA) dated June 10, 2021, issued by Regional Director Jethro M. Sabariaga, which reduced the total deficiency withholding tax assessment to ₱289,957,810.79.[14]

Dissatisfied, COMELEC filed a Petition for Review before the First Division on July 14, 2021. After proceedings, the case was submitted for decision on April 19, 2024. On November 13, 2024, the First Division rendered the Assailed Decision granting COMELEC's Petition for Review and cancelling the subject assessments on the ground of prescription.[15]

Proceedings Before the Court *En Banc*

On December 9, 2024, the CIR filed a Motion for Reconsideration (MR) assailing the Assailed Decision. On April 22, 2025, the First Division issued the Assailed Resolution dismissing the MR for lack of jurisdiction, having been filed four days beyond the fifteen-day reglementary period reckoned from the OSG's receipt of the Notice of Decision on November 20, 2024.

On May 9, 2025, the CIR filed a Motion for Extension of Time to File Petition for Review before the En Banc, praying for an additional period of fifteen (15) days or until May 29, 2025, which was granted. On May 27, 2025, the CIR filed the instant Petition for Review[16] before this Court within the extended period.

On June 20, 2025, this Court issued a Resolution ordering COMELEC to file its Comment within ten (10) days from notice.[17] COMELEC filed its Comment[18] on July 7, 2025. The case was thereafter submitted for resolution.

---

[13] *Id.*, p. 417, JSFI, Admitted Facts, par. 20; Exhibit "P-6".
[14] *Id.*, par. 21; Exhibit "P-7".
[15] *Id.* at Note 4.
[16] *Id.* At Note 1.
[17] *Id.*, p. 61.
[18] *Id.*, pp. 62-79 (Comment filed July 7, 2025).

ASSIGNMENT OF ERRORS

Petitioner Commissioner of Internal Revenue claims that the First Division erred, first, in granting COMELEC's Petition for Review and cancelling the subject deficiency withholding tax assessments on the ground that only the three-year ordinary prescriptive period — and not the extraordinary ten-year period under Section 222(a) of the National Internal Revenue Code (NIRC) of 1997, as amended — applies; and second, in dismissing the CIR's Motion for Reconsideration on the ground of lack of jurisdiction, contrary to the CIR's position that the reglementary period should be reckoned from BIR counsel's receipt of the Notice of Decision, not from the OSG's receipt thereof.

THE ARGUMENTS OF THE PARTIES

The CIR argues that the ten-year extraordinary prescriptive period under Section 222(a) of the NIRC applies because COMELEC failed to file returns for undeclared creditable withholding taxes — and alternatively, filed false returns. The CIR maintains that the mere non-filing of returns for undeclared creditable taxes withheld suffices to trigger the ten-year period independently of any showing of fraudulent intent. The CIR further contends that the First Division erred in requiring the presentation of a COA representative as a witness, since COA reports are public documents that are *prima facie* evidence of the facts stated therein and are admissible without further proof under the Rules on Evidence. As to the timeliness of the MR, the CIR argues that the BIR lawyers are the "handling lawyers" under Revenue Memorandum Circular (RMC) No. 25-2010 and that service on them reckons the period to file pleadings.

COMELEC, in its Comment, urges this Court to deny the Petition and affirm the Assailed Decision and Resolution in their entirety. COMELEC maintains that the First Division correctly applied *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue* in holding that the ten-year period requires clear and convincing evidence of deliberate or willful falsity — a standard the CIR failed to meet — and that the CIR's inconsistent surcharge impositions violated the Second Due Process Requirement under that ruling. As to the MR, COMELEC contends that service on the OSG as principal counsel properly reckons the reglementary period, and that the CIR cannot disavow OSG representation after having litigated entirely under the OSG's name throughout the proceedings below.

THE RULING OF THE COURT

The Petition is DENIED.

The Motion for Reconsideration was filed out of time; the First Division correctly dismissed it for lack of jurisdiction.

Section 11 of Republic Act (RA) No. 1125,[19] as amended by RA No. 9282,[20] provides that a party adversely affected by a ruling, order, or decision of a Division of the CTA may file a motion for reconsideration before the same Division within fifteen (15) days from notice thereof. The threshold question is whether this period runs from service on the BIR lawyers or from service on the OSG.

The rule is settled: the OSG retains supervision and control over its deputized counsel. Service on a deputized lawyer is not binding on the OSG as principal until actually received by the latter.[21] The First Division was therefore correct in reckoning the fifteen-day period from the OSG's receipt of the Notice of Decision on November 20, 2024, making the deadline December 5, 2024. The MR was filed only on December 9, 2024 — four days late.

The CIR's reliance on RMC No. 25-2010 to argue that BIR lawyers are the proper recipients of service deserves scant consideration. RMC No. 25-2010 defines the internal responsibilities of BIR and OSG lawyers in handling tax cases but does not alter the established principle on proper service. The movant's insistence notwithstanding, the rule is settled. Moreover, it is a long-standing doctrine that where a party is represented by several counsels, notice to one is sufficient and binds the party.[22] Throughout the proceedings before the First Division, the CIR filed all pleadings under the OSG's name, consistently referencing the Solicitor General as its principal counsel. Having clothed the OSG with such representation, the CIR cannot now selectively disavow it solely to rescue a late filing. Such inconsistency is fatal.

The Assailed Decision having become final, executory, and unappealable upon the lapse of the reglementary period without a timely MR, the First Division was deprived of jurisdiction to entertain the belated motion. The Assailed Resolution dismissing the MR for lack of jurisdiction was therefore correct.

The three-year prescriptive period applies; the CIR's right to assess COMELEC for deficiency withholding taxes has already prescribed.

---

[19] An Act Creating the Court of Tax Appeals, June 16, 1954.
[20] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), March 30, 2004.
[21] *Baldavino-Torres v. Torres, et al.*, G.R. No. 248675, July 20, 2022, citing *National Power Corporation v. National Labor Relations Commission, et al.*, G.R. Nos. 90933-61, May 29, 1997.
[22] *Philippine Asset Growth Two, Inc. v. Fastech Synergy Philippines, Inc.*, G.R. No. 206528, June 28, 2016.

Basic is the rule that withholding taxes are internal revenue taxes subject to the three-year prescriptive period under Section 203 of the NIRC of 1997, as amended. This was definitively settled in *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*[23] The CIR does not seriously contest this; its argument is that the extraordinary ten-year period under Section 222(a) applies.

Under *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue,*[24] the extraordinary ten-year assessment period requires: (i) as a substantive requisite, that the taxpayer filed a false return with deliberate or willful error, a fraudulent return, or failed to file a return; and (ii) compliance with two due process requirements — the assessment notice must clearly state that the extraordinary period is being applied and its factual bases (First Due Process Requirement), and the BIR must not have acted in a manner inconsistent with the invocation of the extraordinary period (Second Due Process Requirement). Applying these conditions, the Court finds that the ten-year period does not apply.

On the substantive requisite: The CIR's sole basis for alleging that COMELEC filed false returns or failed to file returns for undeclared creditable withholding taxes was the Commission on Audit (COA) report. The Revenue Officers who testified on behalf of the CIR had no personal knowledge of the COA findings and could only relay what the COA reported. Critically, the CIR neither presented the COA officer who prepared the report as a witness nor formally offered the report in evidence. The Court is not persuaded by the argument that COA reports, being public documents, are self-proving and establish deliberate falsity without more. It bears stressing that while public documents are *prima facie* evidence of the facts stated therein, admissibility is distinct from sufficiency. The clear and convincing evidence standard mandated by *McDonald's* for proving that errors or misstatements in a return were deliberate or willful demands more than relying on an unverified report through a witness without direct knowledge of its accuracy. The CIR failed to meet this standard. A void assessment bears no valid fruit.

On the due process requisites: The Court likewise finds a violation of the Second Due Process Requirement. The records reveal that the CIR imposed a 50% surcharge in the NIC, which was then reflected at 50% in the PAN but computed at amounts equivalent to only 25% of the basic tax due, and subsequently reinstated to 50% in the FAN/FLD. These inconsistent actions — reflecting the BIR's own uncertainty as to whether a 25% or 50% surcharge was warranted — misled COMELEC as to the applicable prescriptive period and prejudiced its defense. Such inconsistency is fatal to the invocation of the ten-year period, as squarely recognized in *McDonald's.*

---

[23] *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*, G.R. No. 211289, January 14, 2019.

[24] *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue*, G.R. No. 247737, August 8, 2023.

The three-year prescriptive period having been established as the governing rule, the Court determines whether the assessments were timely issued. COMELEC filed its monthly withholding tax remittance returns — BIR Forms 1601-C, 1601-E, and 1600 — for all taxable periods covered by the assessment.[25] The latest deadline to assess — reckoned three years from the last day to file the December 2013 WTC return (January 15, 2014) — fell on January 15, 2017. The FAN/FLD was issued on January 16, 2020, more than three years after the last day to assess had lapsed. Respondent's right to assess COMELEC for deficiency withholding taxes for TY 2012 and 2013 has therefore already prescribed.

In fine, the Court finds no palpable error of law, grave abuse of discretion, or misappreciation of evidence in either the Assailed Decision or the Assailed Resolution. The CIR's arguments before this Court *En Banc* are a mere rehash of the same grounds already thoroughly considered and correctly rejected by the Court in Division. The Petition must be denied.

WHEREFORE, premises considered, the Petition for Review filed by petitioner Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. The Decision dated November 13, 2024 and the Resolution dated April 22, 2025 of the Court of Tax Appeals First Division in CTA Case No. 10588 are **AFFIRMED** in their entirety.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

---

[25] Revenue Regulation (RR) No. 2-1998, sec. 2.81, as amended by RR No. 6-2001; *id.* at sec. 2.58(2)(a); *id.* at sec. 4.114.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice