



**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

CTA CASE NO. 10946

**ORICA NITRATES PHILIPPINES,
INC.,**

Petitioner,

- versus -

NOTICE OF RESOLUTION

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. SYLVIA R. ALMA JOSE
ATTY. AYESHA HANIA B. GUILING-MATANOG
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago
Diliman, Quezon City

CABRERA & COMPANY
28th Floor, AIA Tower (formerly Philamlife Tower)
8767 Paseo de Roxas
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **August 11, 2026**, a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 24, 2026.**


Atty. Mary Grace S. Ringpis
Executive Clerk of Court II

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

**ORICA NITRATES
PHILIPPINES, INC.,**

Petitioner,

CTA CASE NO. 10946

Members:

-versus-

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, JJ.

**COMMISSIONER OF
INTERNAL REVENUE,**
Respondent.

Promulgated:

AUG 11 2026 12:25PM

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RESOLUTION

CUI-DAVID, J.:

For resolution is respondent's ***Motion for Reconsideration (Re: Decision dated 15 April 2026)***, filed on May 7, 2026 and emailed on May 8, 2026, with petitioner's *Comment/Opposition Re: Respondent's Motion for Reconsideration dated 4 May 2026* dated 4 May 2026, filed on May 25, 2026 and emailed on May 28, 2026.

Respondent's *Motion for Reconsideration* seeks the reversal of the *Decision* promulgated by the Court on April 15, 2026, which granted petitioner's *Petition for Review*. The dispositive portion of the *Decision* reads:

WHEREFORE, premises considered, petitioner Orica Nitrates Philippines, Inc.'s *Petition for Review* is hereby **GRANTED**.

Accordingly, the Final Assessment Notice and Formal Letter of Demand, both dated October 7, 2021, are hereby **CANCELLED** and **SET ASIDE**.

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Furthermore, respondent Commissioner of Internal Revenue is **ENJOINED** and **PROHIBITED** from enforcing the collection of the subject ad valorem penalties assessment against petitioner.

SO ORDERED.

In the instant *Motion*, respondent reiterates his argument that, as the First and the Second Letters of Authority (**LOA**) were declared void, "there was no impediment in the issuance of the Third LOA."

Anent the observation of the Court that the assessment is void for having been conducted by unauthorized revenue officers (**ROs**), respondent argues that "the preparation of audit recommendations is distinct from the actual conduct of an audit" as "the recommendations is [sic] developed after the fieldwork is complete and findings have been finalized."

Respondent likewise maintains that his right to assess has not yet prescribed. He posits that "there is falsity in the returns filed by [petitioner]," considering that there is an underdeclaration of income, emanating from the underdeclared gain on sale of land and improvements exceeding 30%.

Respondent also claims that the deficiency assessments have factual and legal basis, citing extensively the various memoranda prepared by the ROs involved in the audit.

In its *Comment/Opposition*, petitioner argues that the assessment is already barred by prescription; that its filing does not fall under "false and fraudulent returns"; that the Third LOA violates the "One LOA per Taxable Year" rule; that the preparation of recommendations is not distinct from the actual conduct of an audit; and that the failure to state a definite due date in the Final Assessment Notice and Formal Letter of Demand (**FAN/FLD**) renders the assessment issued by the Bureau of Internal Revenue (**BIR**) void.

Respondent's *Motion* is unmeritorious.

In the assailed *Decision*, the Court already exhaustively discussed the three reasons why the validity of the Third LOA cannot be sustained, *viz.*:

However, the Third LOA is infirm.

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First, it violates the “One LOA per Taxable Year” rule. It overlaps with the coverage of the First and Second LOAs for the period **October 1, 2016 to March 31, 2017**, despite covering the same AIRT for substantially the same taxable period.

Second, the Third LOA does not fall within the recognized exceptions to the “One LOA per Taxable Year” rule. Even assuming the existence of fraud, irregularity, or mistake, these matters had already been the subject of audit and assessment under the Second LOA. Notably, the purported undeclared gain on sale of land and improvements for the first quarter covering October 1 to December 31, 2016, the very basis of the ad valorem penalties assessment under the Third LOA, was previously investigated but ultimately not sustained and was dropped in the FDDA issued pursuant to the Second LOA. Thus, the Third LOA merely seeks to revive an issue already considered and discarded in the prior assessment.

Third, the assessments under the Second LOA had already attained finality and were fully settled. On June 27, 2019, respondent issued two FDDAs assessing deficiency taxes in the amounts of **P666,378.94** (deficiency VAT and Compromise Penalties for the fiscal year ending September 30, 2016) and **P543,667.44** (deficiency Income Tax, VAT, and Suggested Compromise Penalties for the short period from October 1, 2016 to March 31, 2017). On June 28, 2019, petitioner voluntarily paid these amounts. Such payment effectively closed the audit and assessment process under the Second LOA.

In light of the foregoing, respondent’s attempt to reopen the audit through the issuance of the Third LOA cannot be sustained. The Third LOA not only violates the “One LOA per Taxable Year” rule, but also improperly seeks to reassess matters already covered, resolved, abandoned, and fully satisfied by petitioner. This runs afoul of the principles of finality of assessments and orderly tax administration.

Accordingly, the Court maintains its ruling that the Third LOA is void. Respondent cannot just invalidate the very LOAs that he himself issued to justify the issuance of another LOA. Consequently, the assessments issued pursuant to such void LOA are likewise void and without legal effect.

The Court likewise maintains its ruling that the assessment is void for having been conducted by unauthorized revenue officers, even if the validity of the Third LOA is upheld. As the Court found:

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In the present case, the Third LOA authorized **RO Luberas and GS Abay** to examine petitioner's books of accounts for FY 2017. However, the BIR Records reveal that, while RO Luberas and GS Abay initially recommended the issuance of the PAN through an undated *Memorandum*, another *Memorandum* dated March 16, 2021, likewise recommending the issuance of the PAN, was prepared by RO Elumir and GS Yanson,¹ who were not authorized under the LOA.

The participation of RO Elumir and GS Yanson in the audit and assessment process, absent a corresponding LOA, constitutes a fatal jurisdictional defect. Without proper authority, the audit itself is invalid, and the assessment issued pursuant thereto is necessarily void.

Respondent attempts to justify its actions by arguing that "the preparation of audit recommendations is distinct from the actual conduct of an audit" as "the recommendations is [sic] developed after the fieldwork is complete and findings have been finalized."

Respondent's argument fails to persuade.

As aptly argued by petitioner, Section 13 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, is clear that a LOA is required for a revenue officer "to recommend the assessment of any deficiency tax due," *viz.*:

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)

The foregoing provision is clear and unambiguous. The recommendation of a deficiency tax assessment requires authority conferred by a valid LOA. Given that RO Elumir and Group Supervisor Yanson were not named in any valid LOA, their assessment recommendation was void. Consequently, the entire assessment is likewise void and produces no legal effect.

¹ BIR Records, pp. 330-334, Exhibit "R-9".

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Anent the issue on prescription of respondent's power to assess, respondent merely reiterates arguments that have already been considered and passed upon by the Court. The Court thus maintains its ruling that respondent failed to establish the applicability of the extraordinary ten-year prescriptive period. Applying the ordinary three-year prescriptive period instead, the assessment is already time-barred.

Finally, respondent contends that a specific demand is not needed because the same is mandated by law. Respondent submits that under Section 228 of the NIRC of 1997, as amended, and Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, a taxpayer is given 30 days from receipt of the FAN/FLD within which to pay its deficiency taxes or to file its administrative protest, and upon the expiration of the period to protest the assessment becomes final executory and demandable by operation of law. In the same way, a taxpayer has 30 days from receipt of the Final Decision on Disputed Assessment (FDDA) to pay the deficiency taxes or to elevate its case to the CTA. As such, any due date indicated in the FAN/FLD and/or the FDDA which is less than or more than the 30-day prescribed period by law should only be viewed as recommendatory.

Respondent's contention is untenable.

As the Court held in the assailed *Decision*:

Clearly, there was **no date certain** by which petitioner was required to pay, no defined period for compliance, and thus **no valid demand for payment**. This defect is not a mere irregularity; it is a substantive violation of due process that, under *Fitness by Design* and subsequent jurisprudence, renders the subject FAN and FLD void.

All told, the Court finds no cogent reason to reverse or modify the assailed *Decision*.

WHEREFORE, premises considered, respondent's *Motion for Reconsideration (Re: Decision dated 15 April 2026)* is hereby **DENIED** for lack of merit.

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SO ORDERED.


LANEE S. CUI-DAVID
Associate Justice

I CONCUR:


JEAN MARIE A. BACORRO-VILLENA
Associate Justice