

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF
INTERNAL REVENUE,
Petitioner,

CTA *EB* NO. 2762
(CTA Case Nos. 9403 &
9492)

Members:

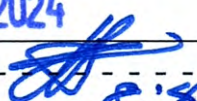
-versus-

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

ZILOG ELECTRONICS
PHILIPPINES, INC.,
Respondent.

Promulgated:

JUN 18 2024

X- - - - -X

8:45 a.m.

DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*¹ filed by the Commissioner of Internal Revenue (CIR) assailing the Decision dated November 23, 2022² (assailed Decision) and the Resolution dated May 23, 2023³ (assailed Resolution) of the Court's First Division (Court in Division) in CTA Case Nos. 9403 and 9492, with the following dispositive portions:

Assailed Decision dated November 23, 2022:

WHEREFORE, premises considered, the consolidated *Petitions for Review* are **GRANTED**. Accordingly, in CTA Case No. 9403, the FDDA dated May 13, 2016, and Final Decision

¹ *En Banc (EB)* Docket, pp. 7-23.

² *Id.*, pp. 32-67.

³ *Id.*, pp. 69-75.



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dated June 20, 2016 issued by respondent, as well as the deficiency income tax assessments embodied therein, in the amount of ₱121,325,525.10, inclusive of interests and penalty, for fiscal year ending March 31, 2010, are **CANCELLED** and **SET ASIDE**. In CTA Case No. 9492, the assessment issued by respondent against petitioner for the fiscal year ending March 31, 2011 covering deficiency Income Tax amounting to ₱7,526,365.84, inclusive of interest, is hereby **CANCELLED** and **WITHDRAWN** for lack of merit.

SO ORDERED.

Assailed Resolution dated May 23, 2023:

WHEREFORE, the Court resolves to **DENY**:

1. Respondent's *Motion for Reconsideration [re: Decision dated 28 November 2022]* posted on December 19, 2022 for being *pro forma*; and,
2. Respondent's *Motion for Leave to File and Admit the Attached Amended Motion For reconsideration* filed on February 23, 2023.

SO ORDERED.

THE PARTIES

Petitioner is the CIR, duly appointed and empowered to perform the duties of his office, including, among others, the power to decide, cancel and abate tax liabilities as provided by law, and holds office at the Bureau of Internal Revenue (BIR), National Office Building, BIR Road, Diliman, Quezon City.⁴

Respondent Zilog Electronics Philippines, Inc. is a corporation duly organized and existing under the laws of the Philippines with principal office at 2/F Team Pacific Building, Electronics Avenue, FTI Special Economic Zone, Taguig City.⁵

THE FACTS

The following are the facts as stated in the assailed Decision:



⁴ *Zilog Electronics Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case Nos. 9403 & 9492, November 23, 2022.

⁵ *Id.*

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CTA Case No. 9403:

On January 11, 2013, [respondent] received the *Letter of Authority* (LOA) dated January 7, 2013 (SN: eLA201100006962/LOA-116-2013-00000002), wherein Revenue Officers (ROs) Rogelio Gonzales, Aurora Pelayo, and Olivia Sison and Group Supervisor (GS) Olivia Aviles, were authorized to examine [respondent]'s books of accounts and other accounting records for all internal revenue tax liabilities for the period from April 1, 2009 to March 31, 2010.

On February 18, 2013, Cesar D. Escalada, Chief of the BIR's Regular LT Audit Division 1, issued the *Memorandum of Assignment* (MOA) (No. LOA-116-2013-0340), naming RO Josa C. Gomez and GS Olivia F. Aviles for the audit/verification of [respondent]'s internal revenue tax liabilities for taxable year (TY) 2010. On February 16, 2015, ROs Josa C. Gomez and Felina B. Guimbao submitted the Memorandum addressed to Nestor S. Valeroso, OIC-Assistant Commissioner, Large Taxpayers Service of the BIR, presenting their audit findings and recommending the issuance of a *Preliminary Assessment Notice* (PAN) against [respondent].

During its examination, [respondent] executed several *Waivers of The Defense of Prescription Under the National Internal Revenue Code*.

On March 24, 2015, [respondent] received the PAN, signed by OIC-Assistant Commissioner Nestor S. Valeroso, finding [respondent] liable for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WC), and documentary stamp tax (DST), including interests and compromise penalty, for fiscal year ending March 31, 2010. On April 8, 2015, [respondent] filed its *Reply to the PAN*.

On April 15, 2015, ROs Josa C. Gomez and Felina B. Guimbao submitted the Memorandum addressed to OIC-Assistant Commissioner Nestor S. Valeroso reiterating the assessment per PAN with interest adjusted up to May 31, 2015.

On April 28, 2015, [respondent] received the *Formal Letter of Demand* (FLD), accompanied by the corresponding *Audit Result/Assessment Notices*, demanding payment of alleged deficiency income tax, VAT, WC, EWT and DST, including interests and compromise penalty, in the total amount of ₱158,816,360.17.

On May 28, 2015, [respondent] filed with the BIR its *Request for Reinvestigation*. On July 27, 2015, and November 5, 2015, respectively, [respondent] filed its *Supplemental Protest Letters*.



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On June 9, 2015, Chief Cesar D. Escalada issued the MOA (No. LOA-116-2015-664), naming RO Josa C. Gomez and GS Olivia F. Aviles to act on [respondent]'s protest letter on the FLD dated May 28, 2015. On March 31, 2016, ROs Josa C. Gomez and Felina B. Guimbao submitted the Memorandum addressed to Assistant Commissioner Nestor S. Valeroso, presenting the result of their evaluation, and recommending the approval of the FDDA.

On March 22, 2016, [respondent] paid portions of the deficiency taxes assessed in the FLD, in the total amount of ₱4,703,988.71, composed of the following:

Tax	Amount
Income tax	₱2,168,626.97
VAT	339,711.06
WC	200,464.86
EWT	464,277.25
DST	1,530,908.58
TOTAL	₱4,703,988.72

On April 13, 2016, [respondent] received the FDDA dated April 13, 2016, accompanied by the *Audit Result/Assessment Notice*, wherein the BIR requested the payment of deficiency income tax amounting to ₱121,325,525.10, inclusive of interest and compromise penalty.

On May 13, 2016, [respondent] filed with the office of respondent a *Request for Reconsideration to FDDA*.

On May 19, 2016, Chief Cesar D. Escalada again issued a MOA (No. LOA-116-2016-1330), naming RO Josa C. Gomez and GS Olivia F. Aviles to act on [respondent]'s request for reconsideration to FDDA.

On June 20, 2016, ROs Josa C. Gomez and Felina B. Guimbao, and GS Olivia F. Aviles, submitted the Memorandum addressed to then Commissioner Kim S. Jacinto-Henares, recommending that said request for reconsideration be denied. Thus, on June 20, 2016, [petitioner] issued the assailed *Final Decision* denying [respondent]'s request for reconsideration.

CTA Case No. 9492:

On January 11, 2013, [respondent] received the LOA dated January 7, 2013 (SN: eLA201100006961/LOA-116-2013-00000001), wherein ROs Vivien Guillermo, and Shella Samaniego and GS Marivic Bautista were authorized to examine [respondent]'s books of accounts and other



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accounting records for all internal revenue taxes for the period from April 1, 2010 to March 31, 2011.

During its examination, [respondent] executed several *Waivers of the Defense of Prescription under the National Internal Revenue Code*.

On December 9, 2015, [respondent] received the PAN. On February 12, 2016, [respondent] submitted its *Reply to the PAN* and its supplemental reply.

On March 2, 2016, [respondent] received the FLD dated March 1, 2016, accompanied by the corresponding *Audit Result/Assessment Notices*, demanding payment of alleged deficiency income tax, EWT, and WC, including interests and compromise penalty, amounting to ₱24,108,812.72. On April 1, 2016, [respondent] then filed with the BIR its *Reply to the FLD* dated March 31, 2016, requesting for the cancellation and/or withdrawal of the alleged deficiency taxes for lack of factual and legal basis.

On September 16, 2016, [respondent] paid portions of the deficiency taxes assessed in the FLD, amounting to ₱3,343,667.27, broken down as follows:

Tax	Amount
Income tax	₱3,113,829.17
EWT	95,440.20
WC	84,397.90
Compromise penalty	50,000.00
TOTAL	₱3,343,667.27

Thereafter, [respondent] further paid the amount of ₱352,211.76, consisting of the following:

Tax	Amount
Income tax	₱334,934.73
EWT	9,252.72
WC	1,975.69
WC	6,048.62
TOTAL	₱352,211.76

In view of its partial tax payments, [respondent], on September 20, 2016, filed its letter, requesting the BIR to reconsider its position on the matter and thereafter, resolve and conclude the remaining tax issue as terminated without any further tax liability on the part of [respondent].

On October 11, 2016, [respondent] received the FDDA, accompanied by an *Audit Result/Assessment Notice*, requesting the payment for deficiency income tax amounting to ₱7,526,365.84, inclusive of interest.



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PROCEEDINGS BEFORE THIS COURT

CTA Case No. 9403:

On July 29, 2016, [respondent] filed the present *Petition for Review*. The case was docketed as CTA Case No. 9403 and was initially raffled to this Court's Third Division.

On January 3, 2017, the CIR filed her *Answer*.

On February 6, 2017, [petitioner] transmitted to the Court the *BIR Records* for this case, consisting of two (2) folders.

On February 7, 2017, [respondent] posted a *Motion to Declare Respondent in Default*. On March 1, 2017, [petitioner] filed her *Comment/Opposition (Re: [Respondent]'s Motion to Declare [Petitioner] in Default)*. In the Resolution dated March 27, 2017, the Court denied [respondent]'s *Motion to Declare [Petitioner] in Default*.

On March 1, 2017, [petitioner] transmitted to the Court additional *BIR Records* for this case, consisting of one (1) folder.

On March 20, 2017, [petitioner]'s *Pre-Trial Brief* was submitted, and on March 21, 2017, the *Pre-Trial Brief for [Respondent]* was posted.

On May 9, 2017, the Pre-Trial Conference proceeded as scheduled.

In the Resolution dated May 25, 2017, the Third Division of this Court consolidated CTA Case No. 9492 with CTA Case No. 9403 and set the Pre-Trial Conference for the cases on August 15, 2017.

On June 5, 2017, the parties submitted their *Joint Stipulation of Facts and Issues* for CTA Case No. 9403.

CTA Case No. 9492:

On November 9, 2016, [respondent] filed a *Petition for Review*. The case was docketed as CTA Case No. 9492 and was initially raffled to this Court's First Division.

On February 20, 2017, [petitioner] submitted her *Answer*.

On April 12, 2017, [respondent] posted a *Motion for Consolidation of Cases* for the consolidation of CTA Case No. 9492 with CTA Case No. 9403.

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On May 3, 2017, the *Pre-Trial Brief for [Respondent]* was posted, while on May 9, 2017, [petitioner] submitted her *Pre-Trial Brief* and transmitted to the Court the *BIR Records* of this case.

In the Resolution dated May 9, 2017, the First Division of this Court granted [respondent]'s *Motion for Consolidation of Cases* and directed the consolidation of CTA Case No. 9492 with CTA Case No. 9403, bearing the lower number, subject to the conformity of the Third Division of this Court.

CTA Case Nos. 9403 and 9492:

On August 10, 2017, the *Consolidated Pre-Trial Brief for [Respondent]*, and *[Petitioner]'s Consolidated Pre-Trial Brief*, were submitted to the Court.

On August 15, 2017, the Pre-Trial Conference for the consolidated cases proceeded.

On September 4, 2017, the parties filed their *Consolidated Joint Stipulation of Facts and Issue*. On September 13, 2017, the Court issued a Pre-Trial Order.

As trial ensued, [respondent] offered the testimonies of the following: (1) Lorina C. Imperial, [respondent]'s Acting Finance Manager and Treasurer; (2) Eduardo Billo; [respondent]'s Logistics Section Manager; (3) Harry A. Salas, [respondent]'s former Finance Manager and Treasurer; and (4) Rumer Bersamina; [respondent]'s Director of Information Technology Department.

On June 7, 2018, [respondent] filed its *Formal Offer of Evidence*. On June 18, 2018, [petitioner] submitted her *Comment (on [Respondent]'s Formal Offer of Evidence)*.

On August 8, 2018, [respondent] filed its *Formal Offer of Evidence (As amended)*. [Petitioner] failed to file his comment thereon. In the Resolution dated November 12, 2018, the Court admitted [respondent]'s offered exhibits, except for the following:

... ..

On September 25, 2018, the present consolidated cases were transferred to the First Division of this Court, pursuant to Administrative Circular No. 02-2018.

On April 12, 2019, [respondent] filed a *Motion for Partial Reconsideration (of the Resolution dated 12 November 2018 on [Respondent]'s Formal Offer of Evidence)*, praying for the partial reconsideration of this Court's Resolution dated November 12, 2018, and for the admission of Exhibits ..., as



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part of [respondent]'s evidence. [Petitioner] failed to file his comment thereon.

In the Resolution dated August 30, 2019, the Court allowed the recall of [respondent]'s witness, Ms. Lorina C. Imperial.

On October 14, 2019, [respondent] filed a *Motion for Leave to Present Additional Evidence and to Commission Independent Certified Public Accountant*. On November 29, 2019, [respondent] posted its *Supplemental Formal Offer of Evidence*. [Petitioner] failed to file his comment on said motion and pleading.

On January 10, 2020, [petitioner] filed a *Motion to Admit Comment (on [Respondent]'s Supplemental Formal Offer of Evidence)*.

In the Resolution dated July 1, 2020, the Court granted [respondent]'s *Motion for Leave to Present Additional Evidence and to Commission ICPA*, but its *Motion for Partial Reconsideration (of the Resolution dated 12 November 2018 on [Respondent]'s Formal Offer of Evidence)* and *Supplemental Formal Offer of Evidence* were held in abeyance.

Thus, Michael L. Aguirre was commissioned by this Court as Independent Certified Public Accountant (ICPA), and was presented by [respondent] as its witness.

On November 16, 2020, [respondent] submitted the ICPA's Report.

On December 1, 2020, [respondent] filed a *Second Supplemental Formal Offer of Evidence for [Respondent]*. [Petitioner] failed to file her comment thereon.

In the Resolution dated January 27, 2021, the Court: (1) granted [respondent]'s *Motion for Partial Reconsideration (of the Resolution dated 12 November 2018 on [Respondent]'s Formal Offer of Evidence)*; (2) granted [petitioner]'s *Motion to Admit Comment (on [Respondent]'s Supplemental Formal Offer of Evidence)*, and admitted [petitioner]'s *Comment (on [Respondent]'s Supplemental Formal Offer of Evidence)*; and (3) admitted Exhibits "P-7," "P-7-2" to "P-7-15," "P-7-14A," "P-31-3," "P-39," "P-39-A," "P-79," "P-79-A," "P-31-3," "P-77," "P-78," "P-80," "P-80-A," "P-81," "P-81-A," and "P-1-A-ICPA" to "P-42-E-ICPA, thereby resolving [Respondent]'s *Supplemental Formal Offer of Evidence* and *Second Supplemental Offer of Evidence*.

[Petitioner] offered the testimonies of the following BIR personnel, namely: (1) RO Vivien C. Guillermo; and (2) GS Olivia F. Aviles.



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On June 10, 2021, [petitioner] filed her *Formal Offer of Evidence*. On June 28, 2021, [respondent] sent through electronic mail, its *Comment (to Respondent's Formal Offer of Evidence)*. In the Resolution dated September 29, 2021, the Court admitted [petitioner]'s offered exhibits.

On November 19, 2021, [petitioner] sent through electronic mail, her *Memorandum*, while on November 24, 2021, [respondent] filed its *Memorandum for the [Respondent]*.

On December 16, 2021, the present consolidated cases were submitted for decision.

On November 23, 2022, the Court in Division promulgated the assailed Decision.⁶ The Court in Division held that the tax assessment for the fiscal year (FY) ending March 31, 2010 (CTA Case No. 9403) is void since the revenue officers (ROs) who investigated respondent were not armed with a Letter of Authority (LOA). Whereas, for FY ending March 31, 2011 (CTA Case No. 9492), the Court in Division found that respondent is not liable to pay deficiency income tax of ₱7,526,365.84, inclusive of interest, for lack of merit.

Aggrieved, petitioner filed a *Motion for Reconsideration [re: Decision dated 28 November 2022]*⁷ posted on December 19, 2022, to which respondent filed its *Comment (to Respondent's Motion for Reconsideration)* on February 13, 2023.⁸

On February 23, 2023, petitioner filed a *Motion for Leave to File and Admit the Attached Amended Motion for Reconsideration*,⁹ appending thereto an *Amended Motion for Reconsideration*.¹⁰

On March 3, 2023, respondent filed an *Opposition (to Respondent's Motion for Leave to File and Admit the Amended Motion for Reconsideration)*.¹¹

On May 23, 2023, the Court in Division promulgated the assailed Resolution denying petitioner's *Motion for Reconsideration [re: Decision dated 28 November 2022]* and *Motion for Leave to File and Admit the Attached Amended Motion for Reconsideration*.¹²

⁶ *Supra*, note 2.

⁷ Division Docket (CTA Case No. 9403) — Vol. III, pp. 1620-1638.

⁸ *Id.*, pp. 1643-1651.

⁹ *Id.*, pp. 1653-1656.

¹⁰ *Id.*, pp. 1658-1668.

¹¹ *Id.*, pp. 1672-1675.

¹² *Supra*, note 3.

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PROCEEDINGS BEFORE THE COURT EN BANC

On June 13, 2023, petitioner filed his *Motion for Extension of Time to File Petition for Review*,¹³ which was granted by this Court on June 19, 2023.¹⁴

On June 27, 2023, petitioner filed a *Petition for Review*.¹⁵

On July 6, 2023, the Court directed respondent to file a comment/opposition on the *Petition for Review* filed by petitioner.¹⁶

On July 25, 2023, respondent filed its *Comment/Opposition (on the Petition for Review)*.¹⁷

On August 14, 2023, this case was submitted for decision.¹⁸

THE ISSUES

Petitioner assigned the following errors before the Court *En Banc*:

I.

THE HONORABLE COURT IN DIVISION ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION AND MOTION FOR LEAVE OF COURT TO FILE AND ADMIT ATTACHED AMENDED ANSWER [*sic*].

II.

THE HONORABLE COURT IN DIVISION DEPRIVED PETITIONER OF ITS RIGHT TO DUE PROCESS WHEN IT RULED ON AN ISSUE NEVER RAISED BY THE PETITIONER, NEVER JOINED IN THE PLEADINGS, NEVER RAISED DURING PRE-TRIAL AND NEVER DEFINED BY THE COURT IN THE PRE-TRIAL ORDER.

III.

THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT RESPONDENT IS NOT LIABLE FOR THE ASSESSED DEFICIENCY TAXES IN CTA CASE NO. 9402.

¹³ EB Docket, pp. 1-4.

¹⁴ Minute Resolution, *id.*, p. 6.

¹⁵ *Supra*, note 1.

¹⁶ Minute Resolution, EB Docket, p. 76.

¹⁷ EB Docket, pp. 77-84.

¹⁸ Minute Resolution, *id.* (unpaginated).



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Petitioner's arguments:

Petitioner questions the Court in Division's denial of his *Motion for Reconsideration* and *Motion for Leave to File and Admit Attached Amended Motion for Reconsideration*. Petitioner argues that the technical rules of procedure are liberally construed to promote substantial justice. Upon realizing that there were statements in the *Motion for Reconsideration* that needed to be amended to clarify his arguments further and to bolster his defenses, petitioner filed a *Motion for Leave to File and Admit the Attached Amended Motion for Reconsideration* citing Sections 2 and 3, Rule 10 of the Rules of Court.

In addition, petitioner submits that he was deprived of the right to due process because he was not given the opportunity to be heard on the issue of the Revenue Officers (ROs)' authority, which had not been raised during the trial. Thus, petitioner asserts that it was erroneous for the Court in Division to rule on said issue.

Petitioner further argues that even if the Court may rule on an issue not raised in the pleadings, the assessment is valid as the ROs are authorized to conduct the audit. Petitioner submits that the Court in Division cannot retroactively apply the case of *Commissioner of Internal Revenue v. Mcdonald's Philippines Realty Corp.*¹⁹ (*Mcdonald's*) in concluding that the assessment is void because a Memorandum of Assignment (MOA) vested no authority to the ROs named therein. *Mcdonald's* did not exist yet at the time of the investigation and must, therefore, be treated as a new doctrine that should be applied prospectively.

Lastly, petitioner insists that respondent is liable to pay the assessed deficiency taxes for FY ending March 31, 2011, because the respondent failed to provide sufficient evidence and explanation to overturn the audit finding that there were sales invoices issued by the respondent that were not declared in its income tax return (ITR). Thus, respondent is assessed the corresponding deficiency income tax, which is justified in the absence of proof of error in the said assessment.



¹⁹ G.R. No. 242670, May 10, 2021.

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Respondent's arguments:

Respondent contends that the assailed Decision has attained finality because petitioner's *pro forma Motion for Reconsideration* did not suspend the running of the period to appeal.

Further, respondent argues that petitioner was not denied the right to due process since, pursuant to Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA), the Court validly ruled on the issue of the ROs' lack of authority to audit. Petitioner neither alleged any fact nor cited any evidence to refute the Court in Division's finding that the ROs had no authority to audit respondent's books of accounts. Respondent posits that *McDonald's* applies to this case, as it involved a LOA that was issued at an earlier date than the present LOA.

Respondent also refutes petitioner's claim that it failed to provide sufficient evidence and explanation to overturn petitioner's finding of undeclared sales in FY ending March 31, 2011. As discussed in the assailed Decision, the supposed undeclared sales are sales of Zilog, Inc. (US), not of respondent.

THE COURT EN BANC'S RULING

The Court in Division did not err in denying petitioner's Motion for Reconsideration and Motion for Leave to File and Admit the Attached Amended Motion for Reconsideration.

Petitioner's Motion for Reconsideration, being pro forma, did not toll the reglementary period of appeal. Hence, the assailed Decision of the Court in Division had already become final and executory.

On May 23, 2023, the Court in Division promulgated the assailed Resolution denying petitioners' *Motion for Reconsideration* for being *pro forma* and petitioner's *Motion for Leave to File and Admit the Attached Amended Motion for*



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Reconsideration. The Court in Division held that being *pro forma*, the *Motion for Reconsideration* did not toll the reglementary period of appeal; thus, when petitioner filed the *Motion for Leave to File and Admit the Attached Amended Motion for Reconsideration*, the assailed Decision had already attained finality.²⁰

Petitioner claims that his *Motion for Reconsideration* should not be declared *pro forma* because he assailed therein the Separate and Concurring Opinion of Presiding Justice Roman G. Del Rosario, which discussed the importance of the due date appearing in the assessment notices and that he filed a *Motion for Leave to File and Admit the Attached Amended Motion for Reconsideration* upon realizing that there were statements in the *Motion for Reconsideration* that needed to be amended to further clarify his arguments and to bolster his defenses.²¹

On the other hand, respondent points out that the *Petition for Review* should be perfunctorily denied since the *Motion for Reconsideration* did not suspend the running of the period to appeal and the assailed Decision had already attained finality.²²

After a careful review of the records of this case, the Court *En Banc* finds the subject *Motion for Reconsideration pro forma*.

Section 1, Rule 37 of the Revised Rules of Court states:

SEC. 1. *Grounds of and period for filing motion for new trial or reconsideration.* — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

... ..

Within the same period, **the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.** [*Emphasis supplied*]



²⁰ Resolution dated May 23, 2023, *EB Docket*, p. 74.

²¹ *EB Docket*, pp. 13-14.

²² *Id.*, pp. 77-78.

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Indeed, there are three (3) recognized grounds for reconsideration: 1) the damages awarded are excessive; 2) the evidence is insufficient to justify the decision or final order; or, 3) the decision or final order is contrary to law.

Section 2, Rule 37 of the Revised Rules of Court provides the contents of a motion for reconsideration, *viz.*:

SEC. 2. *Contents of motion for new trial or reconsideration and notice thereof.* — **The motion shall be made in writing stating the ground or grounds therefor**, a written notice of which shall be served by the movant on the adverse party.

... ..

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal. [*Emphasis supplied*]

In *Coquilla v. Commission on Elections*,²³ cited in *Valencia (Bukidnon) Farmers Cooperative Marketing Association, Inc. v. Heirs of Cabotaje*,²⁴ the Supreme Court enumerated the instances where motions for reconsiderations were held to be *pro forma*. These include cases wherein the motion for reconsideration:

- 1) was a second motion for reconsideration;
- 2) did not comply with the rule that the motion must specify the findings and conclusions alleged to be contrary to law or not supported by the evidence;
- 3) failed to substantiate the alleged errors in the decision or order sought to be reconsidered;
- 4) merely alleged that the decision in question was contrary to law; or
- 5) the adverse party was not given notice thereof.

²³ G.R. No. 151914, July 31, 2002.

²⁴ G.R. No. 219984, April 3, 2019.



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In the instant case, records reveal that for *CTA Case No. 9403*, the deficiency income tax assessment for FY ending March 31, 2010, amounting to ₱121,325,525.10, inclusive of interest and compromise penalty, including the Final Decision on Disputed Assessment dated April 13, 2016, and the Final Decision dated June 20, 2016, were rendered void for lack of authority of ROs Josa C. Gomez and Felina B. Guimbao to examine petitioner's books.

For *CTA Case No. 9492*, the deficiency income tax assessment for FY ending March 31, 2011 amounting to ₱7,526,365.84, inclusive of interest, is hinged on the following:

A. Undeclared sales	₱ 12,180,205.42
B. Net Operating Loss Carry Over (NOLCO)	₱ 11,749,226.45
C. Excess credit carried-over	₱ 2,942,350.00
D. Minimum Corporate Income Tax (MCIT)	₱ 720,501.00

As explained in the assailed Decision, the Court in Division sustained as undeclared sales only the amount of ₱1,175,136.53 out of the ₱12,180,205.42. However, it did not uphold petitioner's disallowance of the NOLCO, excess credit carried over to the succeeding period, and MCIT for lack of legal and factual bases. As such, the Court in Division found respondent in a net loss position subject to two percent (2%) MCIT. Since respondent has sufficient tax credits to cover its MCIT liability of ₱744,003.65, it was held not liable for any deficiency income tax for FY ending March 31, 2011, *viz.*:

MCIT per ITR		₱720,500.92
Add: MCIT on the undeclared sales (₱1,175,136.53 x 2%)		23,502.73
Total MCIT due		₱744,003.65
Less: Tax Credits/Payments		
Prior Year's Excess Credits other than MCIT	₱3,004,245.00	
Creditable Tax Withheld for the First Three Quarters	658,606.00	3,662,851.00
Excess Tax Credits/Overpayment		₱(2,918,847.35)

In his *Motion for Reconsideration*, petitioner did not address the above-stated findings of the Court in Division as regards *CTA Case Nos. 9403* and *9492*. As correctly observed by the Court in Division in the assailed Resolution, petitioner advanced the following arguments in his *Motion for Reconsideration*:



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- I. The *due date* for payment of assessed deficiency taxes need not be indicated in the assessment notices in order for the assessment to be valid;
- II. Granting for the sake of argument that a final assessment notice should indicate the *due date* for payment, the assessment is valid as there was a demand for payment within a prescribed period; and,
- III. The requirement of payment of the *bond* is indispensable to the suspension of collection of tax. Hence, the Court cannot arbitrarily restrain respondent from collecting the assessed deficiency tax liabilities of petitioner without ordering it to post or pay the required bond.

As to the *first* and *second* arguments, the Separate Concurring Opinion (SCO) of Presiding Justice Roman G. Del Rosario states that for *CTA Case No. 9492*—apart from the absence of liability for any deficiency income tax—the Formal Letter of Demand with Assessment Notice (FLD/FAN) is defective, rendering the assessment void. The pertinent portion of the SCO is quoted below:

Upon the issuance of an FLD, the taxpayer is first granted the opportunity to settle the deficiency taxes within the due date specified in the FLD and, thereafter, surcharge shall be imposed. **This presupposes that an FLD contains a due date which is later than the date of issuance of the FLD, so that the taxpayer may pay the assessed deficiency tax without incurring the surcharge.** To do otherwise would automatically make the taxpayer liable for surcharge.

Here, the ANs were issued on **March 1, 2016** and specified that the due date for payment of the assessments was **February 29, 2016**. Clearly, petitioner was not given the opportunity to settle the deficiency taxes without incurring the surcharge, as the latter was automatically imposed thereon upon the issuance of the FLD. **This pernicious practice prejudiced the taxpayer and violated its right to due process, thereby rendering the assessment void.** [Emphasis supplied]

While the SCO briefly touched on the issue of *due date*, the assailed Decision did not discuss the said issue at all.

Regarding the *third* argument, it is worth noting that respondent did not seek the suspension of tax collection in this case. Consequently, the “suspension of collection of tax” and the “posting or payment of bond” were never discussed by the



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Court in Division in the assailed Decision to be included as a ground in the *Motion for Reconsideration*.

Petitioner's *Motion for Reconsideration* clearly failed to specify the findings and conclusions in the assailed Decision that are contrary to law or unsupported by evidence. Additionally, it did not substantiate the errors in the assailed Decision through arguments and citations.

Given the foregoing, the Court *En Banc* sustains the Court in Division's ruling that petitioner's *Motion for Reconsideration* is *pro forma*. Being *pro forma*, it did not toll the reglementary period of appeal. Thus, the filing of the *pro forma Motion for Reconsideration* on December 19, 2022, the last day of the 15-day reglementary period for filing a motion for reconsideration, did not stop the assailed Decision from attaining finality.

Accordingly, the assailed Decision dated November 23, 2022 that was received by petitioner on December 2, 2022²⁵ had already become final and executory when petitioner filed a *Motion for Leave to File and Admit the Attached Amended Motion for Reconsideration* on February 23, 2023.²⁶ Hence, the said motion was correctly denied by the Court in Division.

As pointed out by petitioner, if his appeal is denied due course, the government stands to lose ₱128,851,890.94.²⁷ Since taxes are the lifeblood of the government, he submits that the case should not be decided on a mere technicality.²⁸ Regrettably, while the Court *En Banc* empathizes with this concern, the assailed Decision has already attained finality and is beyond the Court *En Banc*'s power to amend or revoke.

A decision that has acquired finality becomes *immutable* and *unalterable* and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it was made by the court that rendered it or by the highest court of the land.²⁹

Nonetheless, even if the Court *En Banc* were to give due course to petitioner's *Motion for Reconsideration* and *Amended Motion for Reconsideration*, the instant case would still fail, as discussed below.

²⁵ Petition for Review, *EB Docket*, p. 12.

²⁶ Resolution dated May 23, 2023, *EB Docket*, p. 74.

²⁷ *EB Docket*, p. 13.

²⁸ *Id.*

²⁹ *Roberto A. Torres, et al., v. Antonia F. Aruego*, G.R. No. 201271, September 20, 2017.

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CTA Case No. 9403:

The Court in Division did not deprive petitioner of his right to due process in ruling that the ROs who conducted the audit lacked the requisite authority.

Petitioner posits that the Court in Division may not consider the issue of the ROs' authority in the resolution of the case without violating petitioner's constitutional right to due process.

Petitioner's argument is not new.

The Supreme Court has consistently ruled that the Court of Tax Appeals is not confined to the issues stipulated by the parties when deciding a case but may also address related issues necessary for the orderly disposition of the case, pursuant to Section 1, Rule 14 of the RRCTA.³⁰

In *Tanduay Distillers, Inc. v. Commissioner of Internal Revenue*,³¹ the Supreme Court echoed the above ruling, citing Section 1, Rule 14 of the RRCTA,³² viz.:

The CTA is empowered to decide on issues beyond the stipulation of the parties.

...

It is a settled rule that the CTA is not bound strictly by the issues raised by the parties. Sec. 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that in deciding cases, **the CTA is not limited to "issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."** [*Emphasis supplied*]



³⁰ *Commissioner of Internal Revenue v. Geniographics, Inc.*, G.R. No. 264572 (Notice), July 26, 2023; *Prime Steel Mill, Inc. v. Commissioner of Internal Revenue*, G.R. No. 249153, September 12, 2022, citing *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017; *Republic v. First Gas Power Corp.*, G.R. No. 214933, February 15, 2022.

³¹ G.R. No. 256740 (Notice), February 13, 2023.

³² SEC. 1. *Rendition of judgment.* – ...

In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

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As the petition before the Court in Division prays for the cancellation of deficiency income tax assessment, it is imperative for the Court to look into all the factors pertaining to the validity of the assessment to resolve the case fully.

Thus, the Court in Division correctly ruled on the issue of the ROs' lack of authority even if the parties did not raise it during the trial, as it is essential in resolving whether the assessment is valid. After all, it is a fundamental principle that a void assessment bears no valid fruit.

Petitioner's contentions that an LOA is not required in the audit of respondent's books of accounts and that the Court cannot rely on the *McDonald's* case because it was promulgated after the issuance of the subject MOA are both without merit.

Petitioner is mistaken in thinking that the Court cannot apply the *McDonald's* doctrine in this case.

The Supreme Court's declaration in *McDonald's*—that due process demands that the RO should be armed with an LOA duly signed by the CIR, the Deputy Commissioners, or Regional Directors before proceeding with examination and assessment—is based upon *prevailing* laws and the BIR issuance, particularly Sections 6 (a), 10 (c) and 13 of the NIRC of 1997, as amended, and Section D (4) of Revenue Memorandum Order No. 43-90,³³ which are already existing at the time of the issuance of the subject MOA, *viz.*:

I. The Reassignment or Transfer of a Revenue Officer Requires the Issuance of a New or Amended LOA for the Substitute or Replacement Revenue Officer to Continue the Audit or Investigation

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The issuance of 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.

³³ Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

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Section 6 of the NIRC provides:

SECTION 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[.] [*Emphasis supplied*]

Section 10 (c) of the NIRC provides:

SECTION 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:

... ..

- (c) **Issue Letters of Authority** for the examination of taxpayers within the region[.] [*Emphasis supplied*]

Section 13 of the NIRC provides:

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

Section D (4) of RMO No. 43-90 dated September 20, 1990 provides:

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



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authorization by the Commissioner himself. [*Emphasis supplied*]

Pursuant to the above provisions, **only the CIR and his duly authorized representatives may issue the LOA**. The authorized representatives include the **Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR**.

Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. 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. **There must be a grant of authority, in the form of a LOA, before any revenue officer can conduct an examination or assessment**. 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**. [*Emphasis supplied*]

It is clear that *McDonald's ratio decidendi* is based on existing laws and issuance that predate the subject MOA issued on February 18, 2013.³⁴ Hence, there is no reason why petitioner could escape the fundamental requirements of due process and for the Court in Division to turn a blind eye to its violation even before the promulgation of *McDonald's*.

CTA Case No. 9492:

The Court in Division did not err in ruling that respondent is not liable for the deficiency income tax assessment for FY ending March 2011.

Petitioner argues that respondent failed to offer sufficient evidence to overturn the income tax deficiency finding, particularly that there were sales invoices issued by respondent that were not declared in its ITR.

We are still not swayed.

In the assailed Decision, the Court in Division discussed at length each component of respondent's deficiency income tax assessment for FY ending March 2011, *i.e.*, undeclared sales, NOLCO, excess credit carried over to the succeeding

³⁴ Exhibit "R-22", BIR Records (CTA Case No. 9403) — Folder II [Exhibit "R-39"], p. 242.



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period, and MCIT during the year carried over to the next year, to show that respondent is not liable for the said deficiency assessment.

We uphold the findings of the Court in Division.

As explained in the assailed Decision, respondent was able to prove that the questioned sales transactions, excluding ₱1,175,136.53, did not belong to respondent but to Zilog, Inc. (US), *viz.*:

To support the purchase and billing process in connection with the Service Agreement between [respondent] and Zilog, Inc. (US), [respondent] submitted in evidence the customers' Purchase Orders, [respondent]'s Commercial Invoices, Zilog, Inc.'s (US) Invoices, and snippet of Zilog, Inc.'s (US) Accounting System and Bank Statements.

Upon examination of the ICPA report and the supporting documents submitted by [respondent], the Court found that the sale referred to in the commercial invoices belongs to Zilog, Inc. (US), except for the amount of ₱1,175,136.53, by tracing the transactions from purchase orders, commercial invoices, and bank statements of Zilog, Inc. (US) showing fund transfers made by the customers to Zilog, Inc. (US) to pay the shipments of the Zilog products/electronic goods.

In this case, the sales referred to commercial invoices are supported by pertinent documents showing that it belongs to Zilog, Inc. (US), except for the amount of ₱1,175,136.53, which is not supported by necessary documents and cannot be properly traced to bank statements of Zilog, Inc. (US)[.]

Petitioner did not specifically refute any error (in law or in fact) on the exhaustive findings of the Court in Division. Taking together the testimonial and documentary evidence presented by respondent, the Court *En Banc* is convinced that respondent was able to prove that it is not liable to pay for deficiency income tax assessment for FY ending March 2011. Hence, the Court in Division did not err in cancelling the said assessment.

Indeed, even if petitioner's *Motion for Reconsideration* and *Amended Motion for Reconsideration [re: Decision dated 23 November 2022]* were given due course, the present *Petition for Review* would still fail as both motions did not present compelling arguments to warrant the reversal of the assailed Decision and Resolution of the Court in Division.



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All told, the assailed Decision dated November 23, 2022, of the Court's First Division, had already attained finality because petitioner's filing of a *pro forma* Motion for Reconsideration did not suspend the running of the period to appeal. Under the doctrine of immutability of judgment, the said Decision may no longer be modified even if it is meant to correct an erroneous conclusion of law and facts³⁵ of the Court in Division.

WHEREFORE, in view of the foregoing, the instant *Petition for Review* is **DISMISSED** due to lack of jurisdiction. Accordingly, the assailed Decision dated November 23, 2022 of the Court's First Division in CTA Case Nos. 9403 and 9492 had lapsed to finality and is already beyond our power to review.

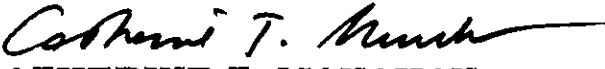
SO ORDERED.


LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

³⁵ *People v. Mallari, et al.*, G.R. No. 197164, December 4, 2019.

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~~ON OFFICIAL BUSINESS~~
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

Corazon G. Ferrer Flores
CORAZON G. FERRER-FLORES
Associate Justice

HA
HENRY S. ANGELES
Associate Justice

Mr

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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