CTA Form No. 8

24-000210-0047

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 11484

MICHAEL S. VELOSO,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

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

COMMISSIONER OF INTERNAL REVENUE
Bureau of Internal Revenue
BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

ATTY. SYLVIA R. ALMA JOSE
A TTY. AYESHA HANIA B. GUILING-MATANOG
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
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ATTY. GREGORIO B. AUSTRAL, CPA
Austral Law & Accounting Office
3rd Floor, Cristal Towers, 50 Ma. Clara Street
Tagbilaran City, Bohol

GREETINGS:

You are hereby notified by these presents that on **July 31, 2026** Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 3, 2026.**

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

REPUBLIC OF THE PHILIPPINES
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MICHAEL S. VELOSO,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 11484

Members:

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

Promulgated:

JUL 3 1 2026 ; 1:10PM

x -x

DECISION

CUI-DAVID, J.:

At bar is a *Petition for Review*,[1] filed on April 23, 2024, seeking the cancellation and nullification of the deficiency assessments for income tax, value-added tax (VAT), expanded withholding tax (EWT), annual registration fee (ARF), and compromise penalties for taxable year (TY) 2014, in the total amount of ₱22,216,106.88.[2]

THE PARTIES

Petitioner Michael S. Veloso is the sole proprietor of TMV Caltex Station and MIKRO Beer Distributor, which are engaged in the distribution of Caltex petroleum products and San Miguel Beer products, respectively.[3] TMV Caltex Station is situated in Can-Upao, Jagna, Bohol, while MIKRO Beer Distributor used to have two outlets situated in Cahayag, Tubigon, Bohol, and Dao, Tagbilaran City.[4]

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1 Docket, pp. 6-44.
2 *Id.* at 44, Petition for Review (PFR), Prayer.
3 *Id.* at 7, PFR, par. 4.
4 *Id.* at 7-8, PFR, par.4.

Respondent is the duly appointed Commissioner of Internal Revenue (CIR), vested by law with the authority to carry out all functions, duties, and responsibilities of the Bureau of Internal Revenue (BIR).[5]

THE FACTS AND PROCEEDINGS BEFORE THE COURT

On October 12, 2016, OIC-Regional Director Hermeno A. Palamine of Revenue Region No. 13-Cebu City issued Letter of Authority (LOA) No. LOA-084-2016-00000047 (SN: eLA201000047688),[6] authorizing Revenue Officer (RO) Benedict Bandala and Group Supervisor (GS) Emma Alabat of Revenue District Office No. 84, Tagbilaran City, Bohol, to examine petitioner's books of accounts and other accounting records covering all internal revenue taxes for TY 2014. Petitioner received the LOA on October 21, 2016.[7]

Thereafter, a *Preliminary Assessment Notice* (PAN), together with the Details of Discrepancies[8] dated December 20, 2017, was issued. Petitioner received the PAN on January 8, 2018.[9]

The issuance of the *Formal Letter of Demand* (FLD)/*Final Assessment Notice* (FAN) dated January 24, 2018, with Details of Discrepancies[10] followed. Petitioner received the FLD/FAN on January 31, 2018.[11]

On March 1, 2018, petitioner filed a *Letter Protest* [12] in the form of a request for reinvestigation. In a letter dated March 7, 2018,[13] petitioner's request for reinvestigation was given due course, subject to the submission of a valid *Waiver of Defense of Prescription under the Statute of Limitations* (Waiver), extending the period within which respondent could assess and/or collect the alleged deficiency taxes for TY 2014.

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[5] *Id.* at 255, Pre-Trial Order (PTO), III. Summary of Admitted Facts (1).
[6] BIR Records (Exhibit "R-12"), p. 1, Exhibit "R-1".
[7] *Id.*
[8] *Id.* at 462-465, Exhibits "R-3" and "R-3-1".
[9] *Id.* at 467, *Affidavit of Service of Preliminary Assessment Notice*; Docket, p. 11, PFR, par. 14.
[10] *Id.* at 470-478, Exhibits "P-2", "P-2-a", "R-4", "R-4-1", and "R-4-2".
[11] *Id.* at 480, *Affidavit of Service of Formal Letter of Demand with FAN*; Docket, p. 379, *Petitioner's Memorandum*, 2nd par.
[12] *Id.* at 78-94, Exhibit "P-3".
[13] *Id.* at 95, Exhibit "P-4".

In compliance therewith, petitioner executed a Waiver on April 10, 2018,[14] extending the assessment period until December 31, 2018.

On July 30, 2018,[15] petitioner received the *Final Decision on Disputed Assessment* (FDDA)[16] dated July 20, 2018, issued by Regional Director Eduardo R. Pagulayan, Jr.

Aggrieved, petitioner filed a *Request for Reconsideration*[17] on August 28, 2018. However, the same was denied in respondent's *Decision* dated March 8, 2024.[18]

Unsatisfied with respondent's *Decision*, petitioner filed the present *Petition for Review* on April 23, 2024.

The summons was served upon respondent on June 4, 2024, and upon the Office of the Solicitor General on June 5, 2024.[19]

On August 5, 2024, within the extended period granted by the Court,[20] respondent filed his *Answer (Re: Petition for Review dated April 22, 2024)*,[21] raising the following special and affirmative defenses: (1) petitioner executed a Waiver of the Defense of Prescription, which explicitly extended the assessment period; (2) petitioner's attempt to raise the issue of prescription is invalid due to the execution of a valid Waiver; and (3) petitioner is liable for deficiency income tax, VAT, EWT, ARF, and compromise penalties in the aggregate amount of ₱22,216,106.88 for TY 2014.

On August 14, 2024, the Court referred the case to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for mediation.[22]

On September 17, 2024, the Court received the *No Agreement to Mediate Form*,[23] stating that the parties had decided not to submit the case to mediation before the PMC-

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14 BIR Records (Exhibit "R-12"), p. 515, Exhibit "R-10".
15 *Id.* at 548, Exhibit "R-12", *Affidavit of Service of Final Decision on Disputed Assessment*; Docket, p. 12, PFR, par. 16.
16 *Id.* at 536-539, Exhibits "P-5" and "R-5".
17 Docket, pp. 100-122, Exhibit "P-5-1".
18 *Id.* at 60-70, Exhibit "P-1".
19 *Id.* at 130; 131, Return of Summons.
20 *Id.* at 138, Notice of Resolution dated July 17, 2024.
21 *Id.* at 139-155.
22 *Id.* at 157, Notice of Resolution dated August 14, 2024.
23 *Id.* at 167.

CTA. Thus, the Court set the case for pre-trial conference on November 21, 2024.[24]

Respondent's Pre-Trial Brief[25] was filed on November 8, 2024, while the *Pre-Trial Brief (for the Petitioner)*[26] was filed on November 12, 2024.

During the pre-trial conference, the parties were directed, among others, to file their *Joint Stipulation of Facts and Issues* (JSFI) on or before December 12, 2024.[27] In compliance therewith, the parties jointly filed their JSFI[28] on December 6, 2024.

Following the approval of the parties' *JSFI* on January 21, 2025, the pre-trial proceedings were terminated.[29] On February 11, 2025, the Court issued the Pre-Trial Order.[30]

Trial ensued. Petitioner presented his sole witness, Ms. Aileen R. Salinas[31] who testified on direct examination through her Judicial Affidavit.[32]

On February 17, 2025, *Petitioner's Formal Offer of Exhibits*[33] was filed. On February 24, 2025, respondent filed his *Comment (on Petitioner's Formal Offer of Exhibits).*[34] In a Resolution dated April 10, 2025,[35] the Court admitted in evidence all of petitioner's offered exhibits and deemed petitioner to have rested his case.

On August 6, 2025, respondent presented his sole witness, Revenue Attorney Jan Michael A. Rivera who testified on direct examination through his Judicial Affidavit.[36] Thereafter, respondent orally offered his documentary exhibits. Petitioner interposed no objection to the admissibility of respondent's exhibits. Accordingly, the Court admitted all of respondent's offered exhibits in evidence and deemed respondent to have rested his case.[37]

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24 *Id.* at 168, Notice of Resolution dated September 30, 2024.
25 *Id.* at 174-178.
26 *Id.* at 195-201.
27 *Id.* at 211-213, 217-219.
28 *Id.* at 220-224.
29 *Id.* at 232, Resolution dated January 21, 2025.
30 *Id.* at 250-260.
31 *Id.* at 262-264, 268-270, Order dated February 11, 2025.
32 *Id.* at 48-58, Exhibit "P-6".
33 *Id.* at 272-289.
34 *Id.* at 296-298.
35 *Id.* at 310-311.
36 *Id.* at 182-192, Exhibit "R-13".
37 *Id.* at 332-339, Order dated August 6, 2025.

On October 14, 2025, the Court submitted the case for decision in view of the filing of respondent's *Memorandum*[38] on September 5, 2025 and *Petitioner's Memorandum*[39] on September 8, 2025.[40]

THE ISSUE

As stipulated by the parties, the issue for the Court's resolution is:

> WHETHER PETITIONER IS LIABLE TO PAY THE ALLEGED DEFICIENCY INCOME TAX, VAT, EWT, ANNUAL REGISTRATION FEE, AND COMPROMISE PENALTIES IN THE AGGREGATE AMOUNT OF P22,216,106.88.[41]

Petitioner's Arguments

Petitioner claims that the Court has jurisdiction over the present *Petition,* having timely protested the assessment and seasonably appealed respondent's adverse decision to the Court. Petitioner insists that he is not liable for the alleged deficiency taxes for TY 2014 because the assessment is void. Allegedly:

1. GS Marylou Torres, one of the revenue officers who conducted the reinvestigation, was not named in the LOA.

2. The right of the government to make an assessment for VAT and EWT and to collect on the deficiency income tax, VAT, EWT, ARF, and compromise penalties, has already prescribed.

3. The Waiver could not extend the right to assess that has already prescribed.

4. Respondent cannot invoke estoppel since the inaction of his authorized representatives was the proximate cause of the government's loss of its right to make an assessment.

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38 *Id.* at 343-360.
39 *Id.* at 364-398.
40 *Id.* at 406, Notice of Resolution dated October 14, 2025.
41 *Id.* at 255, PTO, IV. Issue to be Tried or Resolved.

5. Prescription, being a matter of public policy and substantive law, may be raised at any stage, even for the first time on appeal, if the records clearly show that the action has prescribed.

6. The extraordinary period of prescription of 10 years does not apply in this case.

7. The assessment was based on a presumption; hence, the same is void for lack of factual and legal bases.

Respondent's counter-arguments

Respondent, on the other hand, submits that petitioner executed a Waiver of the Defense of Prescription, which explicitly extended the assessment period. Thus, petitioner's attempt to raise the issue of prescription is invalid due to the execution of a valid waiver.

Respondent further claims that petitioner failed to disprove the factual and legal bases of the assessment against him. Consequently, petitioner is liable for deficiency income tax, VAT, EWT, ARF, and compromise penalties in the aggregate amount of ₱22,216,106.88 for TY 2014.

THE COURT'S RULING

The *Petition for Review* is meritorious.

The Petition for Review was timely filed.

Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, confers upon the Court of Tax Appeals (CTA) exclusive appellate jurisdiction to review decisions of the CIR, thus:

> SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:

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> (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[.] (Emphasis supplied)

Likewise, Section 11 of RA No. 1125, as amended by RA No. 9282, provides the period for filing an appeal before the CTA, *viz.*:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling**, or inaction **of the Commissioner of Internal Revenue ... may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. (Emphasis supplied)

The above provisions are reiterated in Section 3(a)(1), Rule 4,[42] and Section 3(a), Rule 8[43] of the Revised Rules of the Court of Tax Appeals (RRCTA).

Based on the foregoing, the Court has exclusive appellate jurisdiction to review, by appeal, decisions of the CIR involving disputed assessments, provided that the appeal is filed within thirty (30) days from the taxpayer's receipt of the assailed decision.

In this case, petitioner received respondent's Decision dated March 8, 2024, sustaining the FDDA, on March 25, 2024, as evidenced by: (1) the Certification dated April 11, 2024, issued by the Philippine Postal Corporation; [44] and (2) the Memorandum dated May 28, 2024,[45] by Maria Pacita M. Cebedo, OIC-Chief of the Assessment Division of BIR Revenue Region No. 13 - Cebu City, informing Salina Marinduque, Head Revenue Executive Assistant of the Collection Service, that,

[42] SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
(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.

[43] SEC. 3. *Who may appeal; period to file petition.* –
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments.

[44] Docket - Vol. I, p. 8, PFR, pars. 6 and 12; 71, Exhibit "P-1-1"; 72, Exhibit "P-1-2".

[45] BIR Records (Exhibit "R-12"), p. 788.

upon inquiry with the Appellate Division, the Decision was received on March 25, 2024, by Maria Rosario Isabel A. Baron.

Thus, the filing of the present *Petition for Review* on April 23, 2024, was well within the prescribed 30-day period to appeal; hence, the Court validly acquired jurisdiction over the *Petition.*

The alleged lack of authority of GS Torres does not invalidate the FLD/FAN.

Petitioner argues that the assessment should be declared void because one of the revenue officers, GS Torres, who allegedly participated in the reinvestigation and recommended the issuance of the FDDA, was not named in the LOA.

It is settled that the NIRC of 1997, as amended, requires prior authority from the CIR or his duly authorized representative before an examination of a taxpayer may be made.

While the law expressly requires that an LOA be issued in favor of the revenue officers who will conduct the examination of the taxpayer's books of accounts and other accounting records and recommend the issuance of a PAN and FLD/FAN, it does not impose the same requirement upon those who participate in the review of a taxpayer's protest for purposes of recommending the issuance of a FDDA.

Needless to say, the requirement for the issuance of an LOA by the CIR or his duly authorized representative, as mandated under Sections 6 and 13 of the NIRC of 1997, as amended, pertains to such stage where the designated RO and GS examine the taxpayer's books of accounts and other accounting records after the filing of the relevant tax returns and determine whether deficiency taxes should be assessed. The law does not contemplate the issuance of a separate LOA for purposes of conducting a **reinvestigation** incident to the resolution of a taxpayer's protest against the FLD/FAN.

Even assuming that an LOA is required for purposes of conducting such **reinvestigation**, the absence of the LOA would affect only the validity of the **resulting decision** on the protest, such as the FDDA, and <u>not the validity of the</u>

underlying assessment itself. On this point, the Supreme Court, in *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,*[46] explained that a void FDDA does not *ipso facto* render the assessment void:

> A void FDDA does not
> ipso facto render the
> assessment void
>
> The CIR and Liquigaz are at odds with regards to the effect of a void FDDA. Liquigaz harps that a void FDDA will lead to a void assessment because the FDDA ultimately determines the final tax liability of a taxpayer, which may then be appealed before the CTA. On the other hand, the CIR believes that a void FDDA does not ipso facto result in the nullification of the assessment.
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> In resolving the issue on the effects of a void FDDA, it is necessary to differentiate an "assessment" from a "decision." In St. Stephen's Association v. Collector of Internal Revenue, the Court has long recognized that a "decision" differs from an "assessment," to wit:
>
>> In the first place, we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it, and that consequently, the period of thirty days prescribed by section 11 of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a "disputed assessment" that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, in accordance with paragraph (1) of section 7, Republic Act No. 1125, conferring appellate jurisdiction upon the Court of Tax Appeals to review "decisions of the Collector of Internal Revenue in cases involving disputed assessment . . .
>
> The difference is likewise readily apparent in Section 7 of R.A. 1125, as amended, where the CTA is conferred with appellate jurisdiction over the decision of the CIR in cases involving disputed assessments, as well as inaction of the CIR in disputed assessments. From the foregoing, it is clear that

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[46] G.R. Nos. 215534 & 215557, April 18, 2016 [Per J. Mendoza, Second Division].

> what is appealable to the CTA is the "decision" of the CIR on disputed assessment and not the assessment itself.
>
> An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.
>
> Clearly, **a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other — unless the law or regulations otherwise provide.**
>
> Section 228 of the NIRC provides that an assessment shall be void if the taxpayer is not informed in writing of the law and the facts on which it is based. It is, however, silent with regards to a decision on a disputed assessment by the CIR which fails to state the law and facts on which it is based. This void is filled by RR No. 12-99 where it is stated that failure of the FDDA to reflect the facts and law on which it is based will make the decision void. It, however, does not extend to the nullification of the entire assessment. (Emphasis supplied; citation omitted)

The Supreme Court distinguished an "assessment" from a "decision" on a disputed assessment, emphasizing that what is appealable to the CTA is the decision of the CIR on the protest, and not the assessment itself. Thus, the invalidity of the FDDA does not necessarily invalidate the assessment, absent any law or regulation to the contrary.

The Court further explained that Section 228 of the NIRC of 1997, as amended, expressly provides that an assessment shall be void if the taxpayer is not informed in writing of the facts and the law upon which it is based. However, while Revenue Regulations No. 12-99 declares void an FDDA that fails to state the facts and the law supporting the decision, neither the NIRC nor the regulations extend such invalidity to the entire assessment.

In fine, the invalidity of an FDDA does not necessarily result in the invalidity of the corresponding FLD/FAN, unless the law or applicable regulations expressly provide otherwise.

In the present case, the records show that the PAN was issued upon the recommendation of RO Bandala and GS Alabat,[47] both of whom were specifically authorized under LOA No. LOA-084-2016-00000047 (SN: eLA201000047688) dated October 12, 2016.[48] Likewise, the FDDA was issued upon the recommendation of GS Alabat, who was also among those authorized under the same LOA.[49]

Thus, even assuming that GS Torres participated in the reinvestigation without the requisite authority, such circumstance would not invalidate the PAN or the FLD/FAN, which were issued pursuant to the recommendations of duly authorized revenue officers. At most, the alleged defect would affect only the validity of the FDDA.

Accordingly, petitioner's argument that the assessment should be voided solely because GS Torres was not named in the LOA deserves scant consideration.

The Waiver executed by petitioner complies with the requisites set forth in Revenue Memorandum Order (RMO) No. 14-2016.

Petitioner's Waiver[50] executed on April 10, 2018, waived "the defense of prescription under the statute of limitations prescribed in Sections 203 and 222, and other related provisions of the [NIRC], which would otherwise specifically prescribe on **April 15, 2018**," and consented to the assessment of such taxes for TY 2014 as may be found due after reinvestigation, but not later than **December 31, 2018**.

At the time of the execution of the Waiver, the relevant BIR issuance governing waivers of the defense of prescription was RMO No. 14-2016,[51] issued on April 4, 2016.

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47 BIR Records (Exhibit "R-12"), pp. 453-455, Exhibit "R-8".
48 *Id.* at 1, Exhibit "R-1".
49 *Id.* at 530-531, Exhibit "R-9".
50 BIR Records (Exhibit "R-12"), p. 515, Exhibit "R-10".
51 Subject: Guidelines on the Execution of Waivers from the Defense of Prescription Pursuant to Section 222 of the National Internal Revenue Code of 1997, As Amended.

Under RMO No. 14-2016, a waiver of the defense of prescription need not strictly conform to the format prescribed under RMO No. 20-90 or Revenue Delegation Authority Order (RDAO) No. 05-01. However, the waiver must be executed before the expiration of the period to assess or collect taxes; specifically indicate the date of execution; be signed by the taxpayer or the taxpayer's duly authorized representative; and indicate the expiry date of the extended period agreed upon by the parties after the lapse of the original prescriptive period. Moreover, while a waiver extending the period to assess need not specify the particular taxes to be assessed or the amount thereof, a waiver extending the period to collect taxes must indicate the particular taxes assessed.

An examination of petitioner's Waiver reveals that it complies with the requisites of RMO No. 14-2016. The Waiver was executed by petitioner himself. It expressly states the date of its execution, i.e., April 10, 2018, and the agreed expiry date of the extended period, i.e., December 31, 2018. Further, petitioner neither denies having executed the Waiver nor alleges flaws that would render the Waiver invalid or ineffective.

Petitioner, however, asserts that, notwithstanding the Waiver, respondent's right to assess certain tax liabilities could no longer be extended because the Waiver was executed only after the prescriptive period to assess some of the taxes had already expired; or the assessments were issued beyond the extended period agreed upon in the Waiver.

The Court agrees that a valid Waiver cannot revive a right that has already prescribed. A waiver of the defense of prescription merely extends an existing period within which the government may assess or collect taxes; it cannot restore a right that has already been lost by operation of law. Thus, insofar as the government's right to assess particular tax liabilities had already prescribed prior to the execution of the Waiver, the latter could no longer validly extend the period for the assessment of such taxes.

Accordingly, it becomes necessary to determine, on a tax-by-tax basis, whether respondent's right to assess had already prescribed before the execution of the Waiver or whether the corresponding assessments were issued within the extended period ending on December 31, 2018.

The three-year prescriptive period to assess taxes applies in the present case, except with respect to the annual registration fee.

Section 203 of the NIRC of 1997, as amended, provides for the ordinary three-year prescriptive period within which the BIR may assess and collect taxes:

> SEC. 203. *Period of Limitation Upon Assessment and Collection.* — **Except as provided in Section 222**, internal revenue taxes shall be assessed **within three (3) years** after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. (Emphasis supplied)

In *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.*,[52] the Supreme Court reiterated its ruling in *CIR v. United Salvage and Towage (Phils.), Inc.*[53] that when an assessment is validly issued within the three-year period under Section 203, the CIR has another three years within which to collect the assessed taxes through distraint, levy, or judicial action, *viz.*:

> In *CIR v. United Salvage and Towage (Phils.), Inc.*, the Court held that **in cases of assessments issued within the three-year ordinary period, the CIR has another three years within which to collect taxes**, thus:
>
>> The statute of limitations on assessment and collection of national internal revenue taxes was shortened from five (5) years to three (3) years by virtue of Batas Pambansa Blg. 700. Thus, petitioner has three (3) years from the date of actual filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment. However, **when it validly issues an assessment within the three (3)-year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding.** The assessment of the tax is deemed

[52] G.R. No. 258947, March 29, 2022 [Per J. Caguioa, First Division].
[53] G.R. No. 197515, July 2, 2014 [Per J. Peralta, Third Division].

> made and the three (3)-year period for collection of the assessed tax **begins to run on the date the assessment notice had been released, mailed or sent to the taxpayer.**
>
> . . . .
>
> Here, **given that the subject assessment was issued within the three-year ordinary prescriptive period to assess, the CIR had another three years to initiate the collection of taxes by distraint or levy or court proceeding**. (Emphasis supplied, citations omitted)

On the other hand, Section 222 of the NIRC of 1997, as amended, provides exceptions to the ordinary three-year period to assess and collect taxes, to wit:

> SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> . . . .
>
> (a) **In the case of a false or fraudulent return with intent to evade tax or of failure to file a return**, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time **within ten (10) years after the discovery of the falsity, fraud or omission**: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, **both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.** The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> (c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof **may be collected by distraint or levy or by a proceeding in court within five (5) years** following the assessment of the tax. (Emphasis supplied)

As such, when the BIR validly issues an assessment within the prescribed three-year period under Section 203 of the NIRC of 1997, as amended, it has another three years to collect the tax. There are two exceptions: *first,* when the assessment is issued within the extraordinary period of 10 years in cases of false or fraudulent returns or failure to file a return under Section 222 of the NIRC of 1997, as amended, the BIR has five (5) years to pursue collection efforts; *second*, when both the CIR and the taxpayer have agreed in writing to extend the period for assessment and collection, the tax may be assessed or collected within the period agreed upon.

Further, Section 223 of the NIRC of 1997, as amended, provides that the running of the prescriptive periods under Sections 203 and 222 is suspended, among others, when the taxpayer requests a reinvestigation and such request is granted by the CIR, *viz.*:

> SEC. 223. *Suspension of Running of Statute of Limitations*. - **The running of the Statute of Limitations provided in Sections 203 and 222** on the making of assessment and **the beginning of distraint or levy a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period** during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; **when the taxpayer requests for a reinvestigation which is granted by the Commissioner**; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, that, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines. (Emphasis supplied)

In *Bank of the Philippine Islands v. Commissioner of Internal Revenue*,[54] the Supreme Court clarified that the request for reinvestigation must have been granted by the CIR or the latter's duly authorized representative, and such grant must have been communicated to the taxpayer.

In the instant case, petitioner claims that the extraordinary 10-year assessment period does not apply. Respondent, without categorically stating his position on the applicable prescriptive period for assessment and collection, merely relies on petitioner's Waiver extending the period to assess and collect until December 31, 2018.

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[54] G.R. No. 174942, March 7, 2008 (Per J. Tinga, Second Division].

Hence, the threshold issue is whether the assessments against petitioner are governed by the ordinary three-year period under Section 203 or the extraordinary ten-year period under Section 222(a) of the NIRC.

On this point, the Court finds *McDonald's Philippines Realty Corp. v. Commissioner of Internal Revenue*[55] **(McDonald's)** highly instructive in determining the applicable period to assess and collect, *viz.:*

> *F. Summary: Conditions for a Valid Extension of Assessment Period in Case of a False Return*
>
> *a. Requisites under Section 222 (a) of the 1997 Tax Code*
>
> - *General Rule — Proof of False or Fraudulent Return*
>
> Pursuant to Section 222 (a) of the 1997 Tax Code, the extraordinary 10-year assessment period may apply in case the taxpayer: (1) filed a false return, (2) filed a fraudulent return, or (3) failed to file a return.
>
> A fraudulent return "implies intentional or deceitful entry with intent to evade the taxes due," while a false return simply "implies deviation from the truth, whether intentional or not."
>
> It must be stressed, however, that a false return within the meaning of Section 222 (a) does not refer to false returns in general. To be sure, the extraordinary 10-year assessment period applies to a *false return* when:
>
> (1) the return contains an error or misstatement, and (2) **such error or misstatement was *deliberate or willful.***
>
> . . . .
>
> It shall be the CIR's burden to establish the existence of the above-enumerated statutory requisites with ***clear and convincing evidence.***
>
> - *Exception — Prima Facie Evidence of a False or Fraudulent Return (30% Threshold)*
>
> **The CIR may be relieved from the above-mentioned burden of proof when there is *prima facie evidence of***

[55] G.R. No.247737, August 8, 2023 [Per J. Inting, *En Banc*].

> ***falsity or fraud,*** as defined under Section 248 (B) of the 1997 Tax Code.
>
> (1) The CIR ascertains that there is a *misstatement/misdeclaration* in the return, in particular,
>
> **(a) an *understatement/underdeclaration* of sales, receipts, or income or**
>
> (b) an *overstatement/over declaration* of expenses or other deductions, and
>
> (2) the misstatement is *substantial,* such that exceeds the corresponding amount declared in the return by 30%.
>
> ***30% threshold satisfied.*** There is *prima facie* evidence of falsity or fraud, and the burden of proof shifts to the taxpayer. If the taxpayer fails to overcome the presumption, the *prima facie* evidence shall be sufficient to justify the application of the 10-year period.
>
> ***Taxpayer refutes presumption.*** If the taxpayer is successful in overturning the presumption (*e.g.,* demonstrating that the misstatement as ascertained by the CIR had been inadvertent or attributable to a mistake or was not deliberate or willful on the part of the taxpayer), the CIR cannot rely on the presumption in proving the taxpayer's *intent to evade.*
>
> *ii.* ***Due Process Requirements***
>
> (1) First Due Process Requirement. The *assessment notice* issued to the taxpayer must clearly state the following:
>
> (a) that extraordinary prescriptive period (not the basic three-year period) is being applied, and
>
> (b) the bases of allegations of falsity or fraud, *e.g.,* if the CIR seeks to rely on the *presumption of falsity or fraud* particularly, the formal notice to the taxpayer *must set out the computation by which it ascertained that the misdeclaration in the return surpassed the 30% threshold.*
>
> **(2) Second Due Process Requirement. The tax authorities have not acted in a manner that is inconsistent with the invocation of the extraordinary prescriptive period or have otherwise misled the taxpayer that the basic period will be applied.** (Emphasis supplied; citation omitted)

As explained in *McDonald's,* the extraordinary ten-year period under Section 222(a) applies only in cases where the taxpayer: (1) filed a false return; (2) filed a fraudulent return; or (3) failed to file a return.

Ordinarily, the burden rests upon the CIR to establish these circumstances through clear and convincing evidence. However, under Section 248(B) of the NIRC of 1997, as amended, *prima facie* evidence of falsity or fraud exists when there is a substantial understatement of sales, receipts, or income, or an overstatement of deductions, exceeding thirty percent (30%) of the amounts declared in the return. In such cases, the burden shifts to the taxpayer to overcome the presumption.

Equally important, *McDonald's* emphasized that the application of the extraordinary period is subject to due process requirements. ***First***, the assessment notice itself must clearly state that the extraordinary 10-year prescriptive period is being applied, along with the basis for the allegations of falsity or fraud. ***Second***, the tax authorities must not have acted in a manner inconsistent with the invocation of the extraordinary prescriptive period or have otherwise misled the taxpayer into believing that the ordinary period would apply.

Applying the foregoing principles, the Court finds that respondent failed to satisfy the ***first* due process requirement.**

While the PAN, FLD/FAN, and FDDA uniformly imposed the 50% surcharge, none of these issuances expressly stated that the extraordinary ten-year prescriptive period was being invoked. Neither did they specify that the assessments were premised on falsity, fraud, or substantial underdeclaration exceeding the statutory thirty-percent threshold.

While the purported underdeclaration may be inferred from the breakdown of the income tax and VAT assessment provided in the Details of Discrepancies attached to the PAN and FLD/FAN, the same is insufficient as the PAN and FLD/FAN failed to explain how respondent arrived at the alleged underdeclaration or how the requirements for the application of the extraordinary period had been satisfied.

Noticeably, it was only in respondent's *Decision* on petitioner's protest that underdeclaration was expressly cited as the basis for imposing the fifty percent surcharge and, by implication, invoking the ten-year period:

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> As for the imposition of the fifty percent (50%) surcharge, Section 248(B) of the NIRC of 1997, as amended, states:
>
> . . . .
>
> In the instant case, and based on audit and examination of the case, it was noted even by the then OIC-Regional Director of R.R. No. 13 – Cebu City that **undeclared purchases resulted to an undeclared sales of more than 30%** of that declared per return, which led to the imposition of 50% surcharge to the deficiency IT and VAT per RO report dated November 24, 2017.[56]

The Court also notes that respondent's *Decision* discussing the underdeclaration relied on various internal BIR memoranda, including the Memorandum to the Revenue District Officer of Revenue District Office No. 84 dated November 8, 2017;[57] Memorandum for the Chief of the Assessment Division of Revenue Region No. 13 dated November 24, 2017;[58] and Memorandum for the Regional Director of Revenue Region No. 13 dated November 24, 2017.[59] These documents, however, were **internal communications** among BIR personnel, and were not furnished to petitioner during the assessment proceedings.

Hence, respondent's subsequent explanation in his *Decision* cannot cure the deficiency in the assessment notices. *McDonald's* clearly mandates that the invocation of the 10-year prescriptive period and the factual basis thereof, be stated in the **assessment notice itself**, such as the PAN and the FLD/FAN, which constitute respondent's official act of informing the taxpayer of the factual and legal bases of the assessment. By the time respondent rendered his *Decision* on petitioner's administrative appeal, the assessment process had already been completed.

Even assuming that the Court overlooks such serious non-compliance with the due process requirements, the explanation articulated in respondent's *Decision* to justify the application of the extraordinary ten-year prescriptive period remains untenable.

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[56] Docket, pp. 69-70, Exhibit "P-1".
[57] BIR (Exhibit "R-12"), p. 413.
[58] *Id.* at 456-457.
[59] *Id.* at 453-455, Exhibit "R-8".

This Court has consistently held that the underdeclaration of purchases does not, by itself, warrant the assessment of deficiency income tax[60] or VAT.[61]

Indeed, tax assessments are generally accorded the presumption of correctness. Such presumption of correctness, however, must not be based on another presumption,[62] as obtaining in this case.

Here, the records reveal that respondent's finding of **underdeclared sales** of beer and gasoline was based on petitioner's alleged **underdeclared purchases**, to wit:

<u>Income Tax (Section 24 of NIRC)</u>:

> Reconciliation of Beer purchases per purchase invoices against that per Summary List of Purchases (SLP) and VAT Return revealed an undeclared sales of P3,101,904.05.

Beer purchases per Audit	P	242,838,369.19
Beer purchases declared		141,929,072.45
Underdeclared purchases		100,909,296.74
Gross-up		97.02%
Undeclared Sales of Beer		104,008,757.72
Multiply by Gross Profit Ratio		2.98%
Taxable sales based on purchases		3,099,460.98

. . . .

> Reconciliation of Gasoline sales per sales book as against that per SLSP revealed an undeclared sales of P19,842, 875.98.

<u>Value Added Tax (Section 106 of NIRC)</u>:

> Undeclared sales based on Beer purchases amounting to P 104,008,747.72 as mentioned above was also subject to VAT.

. . . .

> Additional input tax allowed was based on undeclared beer purchases mentioned above. ...[63]

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[60] *Philippine Trigon Shipyard Corporation v. Commissioner of Internal Revenue*, CTA Case No. 10607, January 19, 2026; *Grand Union Supermarket v. Commissioner of Internal Revenue*, CTA Case No. 10390, December 17, 2024; *Steel Corporation of the Philippines v. Commissioner of Internal Revenue*, CTA Case No. 9866, May 17, 2022; *Meridien Business Leader, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9316, February 23, 2021; *Altus Angeles, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9164, October 8, 2019; *Parity Packaging Corporation v. Commissioner of Internal Revenue*, CTA Case No. 8825, September 19, 2017; *Philippine Daily Inquirer v. Commissioner of Internal Revenue*, CTA Case No. 7853, February 16, 2012.

[61] *Steel Corporation of the Philippines v. Commissioner of Internal Revenue*, CTA Case No. 9866, May 17, 2022; *Parity Packaging Corporation v. Commissioner of Internal Revenue*, CTA Case No. 8825, September 19, 2017; *Agrinurture, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 8345, May 29, 2013.

[62] *Commissioner of Internal Revenue v. Hantex Trading, Co., Inc.*, G.R. No. 136975, March 31,2005 [Per J. Callejo, Sr., Second Division]; *The Collector of Internal Revenue v. Benipayo*, G.R. No. 13656, January 31, 1962 [Per J. Dizon, *En Banc*].

[63] BIR Records (Exhibit "R-12"), p. 463, Exhibit "R-3-1"; 471, Exhibit" R-4-1".

Evidently, respondent merely presumed that the alleged undeclared purchases translated into undeclared income or additional taxable sales, which would in turn increase petitioner's income tax and VAT liabilities.

In *Commissioner of Internal Revenue v. The Court of Appeals,*[64] the Supreme Court explained that the determining factor for the imposition of income tax is whether any gain or profit was derived from a transaction. Such being the case, in the imposition or assessment of income tax, it must be established that there was an income, and such income was received by the taxpayer. The mere underdeclaration of purchases does not, by itself, establish the existence of taxable income.

It is likewise unwarranted to presume that petitioner had VATable sales simply because it had undeclared purchases.

Under Section 106(A) of the NIRC of 1997, as amended, VAT is assessed on the "gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor". And, under Section 108 of the NIRC of 1997, as amended, VAT is assessed on the "gross receipts from the sale or exchange of services, including the use or lease of properties".

Thus, VAT may be imposed only upon a showing that the taxpayer received consideration, in money or its equivalent, from the sale, barter, or exchange of goods or properties, or from the sale or exchange of services, and not merely because there are underdeclared purchases.

Even assuming the existence of such underdeclared purchases, the same does not automatically amount to falsity or fraud with intent to evade taxes. Clearly, there is no *prima facie* evidence to justify the application of the extraordinary 10-year period to assessunder Section 222(a) of the NIRC. In the absence of clear and convincing evidence establishing falsity or fraud, the Court rejects respondent's invocation of the extraordinary prescriptive period with respect to the deficiency income tax, VAT, and EWT assessments.

Nevertheless, with respect to the ARF, a different period applies.

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[64] G.R. No. 108576, January 20, 1999 [Per J. Austria-Martinez, First Division].

Petitioner does not deny the existence of the supposed two branches as alleged in the PAN, FLD/FAN, and FDDA, nor does it dispute respondent's findings regarding the non-filing of the prescribed return, and the non-payment of the corresponding ARF. [65] Moreover, petitioner did not offer in evidence proof of the filing of BIR Form No. 0605 and payment of ARF. In the absence of such evidence, the Court finds that petitioner failed to establish compliance with its obligation to file the required return and pay the corresponding ARF.

Absent evidence to the contrary, the Court is constrained to adhere to the rule that tax assessments are "presumed correct and made in good faith."[66] Consequently, pursuant to Section 222(a) of the NIRC of 1997, as amended, the applicable period within which to assess the ARF is ten (10) years due to petitioner's failure to file the required return.

With respect to the ***second* due process requirement**, the Supreme Court explained in *McDonald's*:

> Second, they are likewise proscribed from adopting a position inconsistent with the invocation of the extended period or that which will mislead the taxpayer and prejudice its defense (Second Due Process Requirement).
>
> In the past, the Court regarded the following acts performed by the tax authorities as contradictory to the application of the 10-year prescriptive period: (a) **prior execution of waivers meant to extend the basic three-year period (Inquirer)**; (b) hasty issuance of an assessment notice in order to meet the basic three-year deadline (*i.e.*, one day before the last day of the three-day prescriptive period, as in *Unioil*). (Emphasis supplied)

Following *McDonald's*, the Court finds that respondent acted inconsistently with the invocation of the extraordinary ten-year period. Specifically, respondent granted petitioner's request for reinvestigation subject to the execution of a waiver extending the ordinary period to assess. Such conduct indicates respondent's recognition that the assessments were governed by the ordinary three-year prescriptive period, thereby contradicting the subsequent invocation of the extraordinary period.

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65 Docket, p. 40, PFR, par. 85.

66 *Commissioner of Internal Revenue v. Hantex Trading Co, Inc.*, G.R. No. 136975, March 31, 2005 [Per J. Callejo, Sr., Second Division].

In sum, the Court holds that the extraordinary **ten-year** prescriptive period applies only to the assessment of the ARF due to petitioner's failure to file the required return. On the other hand, the ordinary **three-year** prescriptive period applies to the deficiency income tax, VAT, and EWT assessments, as respondent failed to establish the substantive and procedural requisites for the application of the extraordinary period under*McDonald's.*

Consequently, respondent had **five years** from the date of issuance of the FLD/FAN to collect the ARF, while the collection of the assessed deficiency income tax, VAT, and EWT remained subject to the ordinary **three-year** period.

Respondent's right to assess deficiency VAT for the 1st to 3rd quarters of TY 2014 and EWT for TY 2014 has prescribed. Similarly, respondent's right to collect the remaining unprescribed assessment is already time-barred.

With respect to income tax, Section 51(C),[67] NIRC of 1997, as amended, requires that the annual income tax return be filed on or before April 15 of each year, covering the income earned during the preceding taxable year.

For VAT purposes, Section 4.114-1[68] of Revenue Regulations (RR) No. 16-2005[69] provides that quarterly VAT returns shall be filed within twenty-five (25) days after the close of each taxable quarter.

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67 Sec. 51. Individual Return –

. . . .

(C) When to File. –

(1) The return of any individual specified above shall be filed on or before the fifteenth (15th) day of April of each year covering income for the preceding year.

68 SEC. 4.114-1. Filing of Return and Payment of VAT. –

(A) Filing of Return.- Every person liable to pay VAT shall file a quarterly return of the amount of his quarterly gross sales or receipts within twenty-five (25) days following the close of taxable quarter using the latest version of Quarterly VAT Return.

69 Subject: Consolidated Value-Added Tax Regulations of 2005.

As regards EWT, under Section 2.58[70] of RR No. 02-98[71], as amended by RR No. 17-03,[72] requires the withholding tax return to be filed on or before the 10th day of the following month, except for the month of December, for which the return shall be filed on or before January 15 of the following year.

With respect to the ARF, Section 236(B)[73] of the NIRC of 1997, as amended, provides that it shall be paid upon registration and every year thereafter, on or before the last day of January.

An assessment is deemed made only on the date the assessment notice was **released, mailed, or sent to the taxpayer**.[74] Furthermore, it is clear that the assessment contemplated in Sections 203 and 222 of the NIRC of 1997, as amended, refers to the service of the FLD/FAN refers to the upon the taxpayer.[75]

Summarized below are the due dates of the filing of petitioner's returns, actual filing dates, and last day for respondent to make an assessment:

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[70] Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.
(A) *Monthly return and payment of taxes withheld at source.—*
. . . .
(2) WHEN TO FILE —
(a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year[.]

[71] Subject: Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

[72] Subject: Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended, Providing for Additional Transactions Subject to Creditable Withholding Tax; Re-Establishing the Policy that the Capital Gains Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets Shall be Collected as a Final Withholding Tax, Thereby Further Amending Revenue Regulations Nos. 8-98 and 13-99, as Amended by Revenue Regulations No. 14-2000; and for Other Purposes.

[73] Section 236. Registration Requirements. –
. . . .
(B) Annual Registration Fee. An Annual Registration Fee in the amount of Five hundred pesos (Php500) for every separate or distinct establishment or place of business, including facility types where sales transactions occur, sball be paid upon registration and every year thereafter on or before the last day of January: *Provided, however,* That cooperatives, individuals earning purely compensation income, whether locally or abroad, and overseas workers are not liable to the registration fee herein imposed.

[74] *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, G.R. No. 181836, July 9, 2014 [Per J. Carpio, Second Division].

[75] *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*, G.R. No. 227544, November 22, 2017 [Per J. Leonen, Third Division].

TAX TYPE	COVERED PERIOD	DUE DATE TO FILE TAX RETURN	ACTUAL FILING DATE OF PETITIONER'S TAX RETURN	LAST DAY TO MAKE AN ASSESSMENT
Income Tax	**2014**	**April 15, 2015**	**April 15, 2015[76]**	**April 15, 2018**
Value Added Tax	1st Quarter	April 25, 2014	March 21, 2014[77]	April 25, 2017
	2nd Quarter	July 25, 2014	July 25, 2014[78]	July 25, 2017
	3rd Quarter	October 27, 2014 (October 25, 2014 was a Saturday)	October 27, 2014[79]	October 27, 2017
	4th Quarter	**January 26, 2015** (January 25, 2015 was a Sunday)	**January 27, 2015[80]**	**January 27, 2018**
Expanded Withholding Tax	**TY 2014**	**DUE DATE**	**ACTUAL FILING DATE OF PETITIONER'S RETURN**	**LAST DAY TO MAKE AN ASSESSMENT**
	January 2014	February 10, 2014	February 10, 2014[81]	February 10, 2017
	February 2014	March 10, 2014	March 10, 2014[82]	March 10, 2017
	March 2014	April 10, 2014	April 10, 2014[83]	April 10, 2017
	April 2014	May 12, 2014 (May 10, 2014 was a Saturday)	May 12, 2014[84]	May 12, 2017
	May 2014	June 10, 2014	June 10, 2014[85]	June 10, 2017
	June 2014	July 10, 2014	July 10, 2014[86]	July 10, 2017
	July 2014	August 11, 2014 (August 10, 2014 was a Sunday)	August 11, 2014[87]	August 11, 2017
	August 2014	September 10, 2014	September 10, 2014[88]	September 10, 2017
	September 2014	October 10, 2014	October 10, 2014[89]	October 10, 2017
	October 2014	November 10, 2014	November 10, 2014[90]	November 10, 2017
	November 2014	December 10, 2014	December 10, 2014[91]	December 10, 2017
	December 2014	January 15, 2015	January 12, 2015[92]	January 15, 2018
Annual Registration Fee	**2014**	**January 31, 2014**	-	**January 31, 2024**

As shown in the foregoing table, the FLD/FAN was issued only on **January 24, 2018,** which was beyond the three-year prescriptive period to assess deficiency VAT for the 1st to 3rd quarters of TY 2014 and EWT for January to December 2014.

76 BIR Records (Exhibit "R-12"), pp. 281-293.
77 *Id.* at 223-224.
78 *Id.* at 230-231.
79 *Id.* at 236-238.
80 *Id.* at 243-244.
81 *Id.* at 178-180.
82 *Id.* at 181-182.
83 *Id.* at 185-186.
84 *Id.* at 187-189.
85 *Id.* at 190-192.
86 *Id.* at 193-195.
87 *Id.* at 196-198.
88 *Id.* at 199-201.
89 *Id.* at 202-204.
90 *Id.* at 205-208.
91 *Id.* at 209-210.
92 *Id.* at 211-213.

Consequently, respondent's right to assess petitioner for these taxes had already prescribed.

Since the period to assess these taxes had already lapsed prior to the execution of the Waiver on **April 10, 2018**, the Waiver could no longer validly extend the period for assessment. Thus, **only the assessments for deficiency income tax, VAT for the 4th quarter of TY 2014, and ARF remained enforceable**:

TAX TYPE	COVERED PERIOD	DATE OF ISSUANCE OF FLD/FAN	LAST DAY TO COLLECT THE ASSESSMENT
Income Tax	TY 2014	January 24, 2018	January 24, 2021
VAT	4th Quarter, TY 2014	January 24, 2018	January 24, 2021
Annual Registration Fee	TY 2014	January 24, 2018	January 24, 2023

As tabulated, respondent had only until **January 24, 2021** to collect the assessed deficiency income tax and 4th Quarter VAT, and until **January 24, 2023** to collect the unpaid ARF, considering petitioner's failure to file the required return.

Anent petitioner's *Letter Protest* dated March 1, 2018 by way of a request for reinvestigation, petitioner offered to "[adduce] additional documents to prove that the deficiency tax assessments would have resulted to lesser amount, such as, but not limited to, payroll summaries, Summary of Purchases provided by its suppliers, vouchers showing payment of professional fees, among others."[93]

The records reveal, however, that despite such statement, the only document submitted by petitioner to support its request for reinvestigation was the Waiver.[94] No supporting documents were presented to substantiate petitioner's request for reinvestigation.

As a result, petitioner's request for reinvestigation should be treated merely as a request for reconsideration, which does not suspend the running of the prescriptive period for collection. Thus, notwithstanding respondent's grant of the request for reinvestigation and communication of its approval to petitioner, petitioner's failure to submit supporting documents rendered the request for reinvestigation ineffective for purposes of suspending the running of the period to collect.

[93] Docket, p. 94, Exhibit "P-3".
[94] BIR Records (Exhibit "R-12"), p. 531, Memorandum dated May 18, 2018.

Had petitioner submitted the necessary supporting documents, the period to collect would have been suspended from **March 28, 2018**[95] when petitioner was notified that his request for reinvestigation had been granted, and resumed again upon the issuance of the FDDA on **July 20, 2018** or for a total period of **one hundred fourteen (114) days**. Consequently, respondent's right to collect would have been extended until **May 18, 2021,** with respect to the assessed deficiency income tax and VAT, and until **May 18, 2023** for the unpaid ARF.

At any rate, even if the Court accounts for the period that would have suspended the period to collect, petitioner's right to collect would still have already prescribed when respondent tried to collect on the subject assessment.

The Court also takes judicial notice of the laws, various resolutions of the Inter-Agency Task Force (IATF) for the Management of Emerging Infectious Diseases and executive issuances issued which tolled statutory periods for filing, payment, and collection of taxes between March 16, 2020 and September 15, 2021 due to the imposition of Enhanced Community Quarantine (ECQ) and Modified Enhanced Community Quarantine (MECQ) over certain jurisdictions.

The province of Bohol and Tagbilaran City where petitioner's businesses are located were not placed under ECQ or MECQ. However, Cebu City and the island of Cebu where Revenue Region No. 13, which exercises jurisdiction over petitioner's places of business, is located was placed under ECQ and MECQ on March 28 to May 31, 2020; June 16 to July 31, 2020; and, August 1 to September 7, 2021. These quarantine windows resulted in a 329-day suspension of the period to collect, *viz.*:

Quarantine Window	Days in Quarantine	Post-Lifting Tolling	Total Suspension Days	Legal Basis
March 28 to May 31, 2020 (ECQ)	65	60	125	"Bayanihan to Heal As One Act" or Republic Act No. 11469 (March 24, 2020); Proclamation No. 929 (March 16, 2020); IATF Resolution Nos. 20 (April 6, 2020, 2020), 28 (April 23, 2020) & 37 (May 27, 2020); Executive Order (EO) No. 64 (March 26, 2020) issued by Mayor

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[95] Docket, p. 61, Exhibit "P-1".

				Edgardo C. Labella; BIR Revenue Regulations (RR) No. 12-2020; Revenue Memorandum Circular (RMC) No. 34-2020, 74-2020, 136-2020 & 93-2021
June 16 to July 31, 2020 (ECQ/MECQ)	46	60	106	IATF Resolution Nos. 46-A (June 16, 2020) & 50-A (June 29, 2020), 54 (July 11, 2020); EO Nos. 82 (June 16,2020) & 83 (July 1, 2020) issued by Mayor Edgardo C. Labella; BIR RMC Nos. 74-2020, 136-2020 & 93-2021
August 1 to September 7, 2021 (MECQ)	38	60	98	IATF Resolution Nos. 134 (August 19, 2021) and 135-A (August 15, 202; BIR RMC No. 93-2021
Total suspension days:	149	180	329	

Adding 329 days, petitioner's right to collect on the assessment is extended until **December 19, 2021** to collect on the FLD/FAN with respect to the assessed deficiency income tax and VAT and until **December 19, 2023** with respect to the ARF, *viz.*:

LAST DAY TO COLLECT THE ASSESSMENT	+329 days due to COVID 19 Quarantine Window	+114 days due to the grant of request for reinvestigation, *if considered*
January 24, 2021	**December 19, 2021**	April 12, 2022
January 24, 2023	**December 19, 2023**	April 11, 2024

As mentioned, the BIR's collection efforts are initiated by distraint, levy, or court proceeding.[96] Administrative collection proceedings are initiated through distraint or levy which are validly commenced by the issuance and service upon the taxpayer of a Warrant of Distrain of Levy/ Warrant of Garnishment. Judicial collection proceedings, on the other hand, are commenced either: (a) by the filing of a complaint with the court of competent jurisdiction; or (b) where the assessment has been appealed to the CTA, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for.

[96] *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division*, G.R. No. 258947, March 29, 2022 [Per J. Caguioa, First Division].

In this case, respondent's collection effort was by way of judicial action through respondent's *Answer* to the present petition filed on **August 5, 2024**.[97]

Evidently, respondent's right to collect the remaining unprescribed assessments for deficiency income tax, VAT and ARF was already time-barred when respondent sought to enforce collection through the filing of the *Answer* on August 5, 2024.

Petitioner is not liable for the compromise penalties.

Asian Transmission Corporation v. Commissioner of Internal Revenue (Asian Transmission),[98] explains that the imposition of compromise penalty is improper in the absence of the taxpayer's agreement and imposition of criminal tax liability, *viz*:

> In *San Miguel Corp. v. Commissioner of Internal Revenue* (*San Miguel*), the Court clarified that a compromise penalty should not be imposed if the taxpayer does not agree to a compromise considering that a compromise, by its very nature, must be mutual. Further, the Court explained that since compromise penalties are amounts suggested in the settlement of criminal tax liability, there must first be an imposition of criminal tax liabilities. Otherwise, a compromise penalty should not be imposed and collected. Thus:
>
>> [T]he compromise penalty should not be imposed on SMC, as compromise is, by its nature, mutual in essence. The records do not show that SMC agreed to the compromise penalty. This is bolstered by the fact that SMC disputed the assessment made by the CIR. It must also be noted that compromise penalty are amounts suggested in the settlement of criminal tax liability. Since SMC's case does not involve criminal tax liabilities, the compromise penalty should not have been imposed and collected. (Citations omitted)

Following *Asian Transmission*, the absence of compromise agreement between the parties and considering that the present case does not involve the settlement of criminal tax liability by

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97 Docket, p. 139.
98 G.R. Nos. 242489 & 247397, November 8, 2023 [Per J. Singh, Third Division].

way of compromise, the imposition of a compromise penalty is improper.

WHEREFORE, premises considered, the *Petition for Review* filed by Michael S. Veloso is hereby **GRANTED**.

Accordingly, the Formal Letter of Demand/Final Assessment Notice dated January 24, 2018, is hereby **CANCELLED and SET ASIDE**. The Final Decision on Disputed Assessment dated July 20, 2018, and the Decision dated March 8, 2024, are **REVERSED and SET ASIDE**.

The Commissioner of Internal Revenue or his authorized representative is **ENJOINED** from enforcing the collection of the subject deficiency tax assessments or undertaking any further collection proceedings in relation thereto.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

(With Separate Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Acting Chairperson

ATTESTATION

I attest 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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Special First Division Acting Chairperson's Attestation, 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

MICHAEL S. VELOSO,
Petitioner,

CTA Case No. **11484**

- versus -

Members:

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 3 1 2026; 1:10PM

x - x

SEPARATE OPINION

BACORRO-VILLENA, J.:

I concur in the result.

Petitioner Michael S. Veloso's (**petitioner**'s) Petition for Review should be granted, and the subject assessment should no longer be enforced. I write separately, however, to explain why I am unable to join the *ponencia* of my esteemed colleague, Associate Justice Lanee S. Cui-David, insofar as it rests the cancellation of the assessment on the prescription of respondent Commissioner of Internal Revenue's (**respondent**'s) right to assess.

With due respect, I submit that the disposition of this case need not, and should not, turn on the prescription of the right to assess where the evidentiary basis for computing the three (3)-year prescriptive period remains open to serious procedural doubt. The case may be fully resolved in petitioner's favor on the independent and sufficient ground that respondent's right to collect had already prescribed.

The *ponencia* relies on the filing dates of petitioner's tax returns to determine the commencement of the three (3)-year period under Section 203 of the National Internal Revenue Code (**NIRC**) of 1997, as amended. The difficulty, however, lies in the evidentiary source of those filing dates. The tax returns from which the dates are derived were not separately marked, identified and formally offered as individual exhibits by petitioner or respondent for the specific purpose of proving the actual dates of filing of the returns and, correspondingly, the commencement of the prescriptive period to assess.

Section 34, Rule 132 of the Revised Rules on Evidence (**RRE**), as amended, is categorical: "[t]he court shall consider no evidence which has not been formally offered . . . [t]he purpose for which the evidence is offered must be specified."

This rule is not a mere technicality. The formal offer of evidence performs a vital function in adjudication. It informs the court of the evidentiary purpose for which a document is submitted, and it gives the opposing party the opportunity to object, explain, qualify or controvert the document.[1] The Supreme Court has repeatedly held that evidence not formally offered has no evidentiary value and may not be considered by the court, subject only to limited exceptions.[2]

It may be argued that the tax returns form part of the Bureau of Internal Revenue (**BIR**) Records, which respondent formally offered and which the Court admitted into evidence. From this premise, it might be reasoned that the entire BIR Records were offered to prove the factual and legal bases of the subject assessment and that, therefore, the tax returns contained therein may properly be considered in determining prescription of the right to assess.

I, respectfully, disagree.

There is a material distinction between the admission of the BIR Records as a set of administrative records and the use of specific documents embedded therein to prove specific operative facts — particularly the actual dates of filing of the tax returns and the identity of the returns from which prescription should be reckoned. The fact that the BIR Records were admitted for the general purpose of proving the factual and legal bases of the assessment does not necessarily mean that every document found therein was thereby admitted for every conceivable evidentiary purpose.

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[1] See *Joenar Vargas Agravante v. Commission on Elections, et al.*, G.R. No. 264029, 08 August 2023; see *Republic of the Philippines v. Fe Roa Gimenez and Ignacio B. Gimenez*, G.R. No. 174673, 11 January 2016.

[2] *Commissioner of Internal Revenue v. Jerry Ocier*, G.R. No. 192023, 21 November 2018.

The Rules require that the purpose for which evidence is offered must be specified. This requirement would be rendered inutile if a general offer of a voluminous administrative record were treated as a blanket formal offer of every document contained therein for all possible purposes. The adverse party would be deprived of a fair opportunity to interpose meaningful objections directed at the particular document and at the particular purpose for which it is being used.[3]

This is especially significant in prescription cases. The date from which prescription runs is not a collateral or incidental matter. In tax cases, the taxpayer bears the burden of proving that the full prescriptive period has expired.[4] Thus, where a taxpayer seeks cancellation of an assessment on the ground that the right to assess has prescribed, the taxpayer must establish by competent evidence the facts necessary to sustain that conclusion.[5]

It might also be urged that every court has the positive duty to consider and give due regard to everything on record that is relevant and competent to the resolution of the ultimate issue, citing *Commissioner of Internal Revenue v. Jerry Ocier* (**Ocier**).[6] I agree with that proposition. However, the study of Evidence presents two distinct questions: *first*, whether a piece of evidence is admissible; and *second*, whether it has been properly presented so that the court may consider it in resolving the issues and deciding the case.[7] Evidence may be admissible in itself, yet the court may not admit or consider it unless it has been properly presented. That is where the present case faltered. Every piece of evidence, regardless of its nature, must pass through the proper processes of presentation. Documentary evidence, such as the tax returns, must be *marked*, *identified* as the document it is claimed to be, *authenticated* if it is a private document by proof of due execution and genuineness, and *formally offered* after the proponent's witnesses have testified.[8] Otherwise, the Court may give it no consideration.

In *Ocier*, the Supreme Court declined to consider documents contained in the BIR Records because they were not marked or identified by the witness, notwithstanding that the BIR Records had been incorporated into the records of the case, to wit:

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3 See *Heirs of Pedro Pasag, et al. v. Sps. Lorenzo and Florentina Parocha, et al.*, G.R. No. 155483, 27 April 2007.

4 *Commissioner of Internal Revenue v. Marily Development Corporation*, G.R. No. 263794, 02 April 2025.

5 See id.

6 Supra at note 2.

7 See Evidence Benchbook for Trial Court Judges, available at https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/44/50146 (accessed last 22 July 2026).

8 See Evidence Benchbook for Trial Court Judges, id., citing Revised Rules of Evidence, as amended, Rule 132, Sec. 35.

> ...
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> It must be pointed out, however, that respondent failed to meet the two (2) requirements set forth therein which would have allowed application of the invoked exception, namely, *first*, the same (evidence) must have been duly identified by testimony duly recorded and, *second*, the same must have been incorporated in the records of the case.
>
> **In the instant case, although the BIR records were duly incorporated as part of the records of this case by virtue of the mandatory transmittal of the BIR records to this Court, the documents contained in the BIR Records were not marked or identified by respondent's lone witness, Josephine D. Madera.**[9]
>
> ...

The ruling underscores, rather than weakens, the need for identification and proper evidentiary linkage. **It teaches that incorporation into the record is not enough.** There must be testimony or an equivalent evidentiary basis identifying the documents and connecting them to the factual proposition for which they are offered.[10]

The same reasoning applies when it is suggested that, because the BIR Records were formally offered and admitted in evidence, the tax returns contained therein thereby became part of the evidentiary record of the case. I do not disagree that the BIR Records, as admitted, form part of the record. The point is more precise. The question is whether the tax returns embedded in those records may be used as competent proof of the exact filing dates and of the operative returns that commenced the running of the prescriptive period to assess.

On this point, I submit that the record is insufficient.

The concern becomes more concrete when one considers amended returns. Under Section 203 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, the Government's right to assess generally prescribes within three (3) years after the last day prescribed by law for the filing of the return, or from the day the return was actually filed, whichever is later.[11] Jurisprudence recognizes that, where a substantially amended return is filed, such amended return may become material in reckoning the prescriptive period because it may supersede the original return for purposes of assessment.[12]

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9 Supra at note 2; Emphasis supplied and italics in the original text.
10 See *Commissioner of Internal Revenue v. Jerry Ocier*, supra at note 2.
11 See *Lapanday Foods Corporation v. Commissioner of Internal Revenue*, G.R. No. 186155, 17 January 2023.
12 See id.

Thus, the Court must know not merely that some return appears in the BIR Records, but that the return relied upon is the **operative return** for the relevant period, and that no substantial amended return affects the computation.

Here, no witness appears to have identified the returns for the specific purpose of showing that they were the final operative returns filed by petitioner for taxable year 2014. No testimony established that the returns contained in the BIR Records were the controlling returns for purposes of prescription. No party appears to have placed in issue whether amended returns were filed. Thus, in using the returns to compute the prescriptive period to assess, **the Court would necessarily assume that the returns found in the BIR Records were the operative returns and that no substantial amendments were filed.**

I am unable to make that assumption on the present evidentiary record.

It may be further suggested that, should respondent possess evidence that petitioner filed amended returns affecting the computation of the prescriptive period, respondent remains free to raise the matter in a motion for reconsideration. With respect, this reverses the proper order of proof. The Court should not first declare prescription of the right to assess on an evidentiary assumption and then await a motion for reconsideration to correct or qualify that assumption. The burden lies on petitioner to establish the facts necessary to support prescription in the first instance. Where the record does not competently establish the operative filing dates, the Court should avoid resting its judgment on that ground.

This does not mean that the Petition for Review must be denied. It only means that the Court should grant relief on firmer ground.

The record, as I understand it, contains **sufficient formally offered** and **admitted evidence** to establish that respondent's right to collect had already prescribed. Even assuming the validity and timeliness of the assessment, respondent was still required to collect within the period prescribed by law.[13] The lapse of the period to collect bars enforcement of the assessment. Prescription of the right to collect is independently fatal to respondent's cause.[14]

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[13] *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.*, G.R. No. 258947, 29 March 2022.

[14] Id.

The distinction matters.

The right to assess and the right to collect are separate governmental powers governed by separate prescriptive periods.[15] A valid assessment does not remain enforceable indefinitely.[16] Once the period to collect expires, the Government may no longer pursue collection, whether by distraint, levy, court action, or other legally recognized means. The taxpayer may then obtain relief from further enforcement.

Thus, even if the Court were to assume *arguendo* that the assessment was timely issued, respondent's right to collect had prescribed. This is enough to grant the petition.

I therefore concur in the grant of the petition and in the cancellation of the enforceability of the subject assessment. However, I vote to do so solely on the ground that respondent's right to collect had prescribed. I respectfully withhold concurrence from the portion of the *ponencia* declaring that respondent's right to assess had prescribed, because that conclusion rests on tax returns whose use for that specific purpose remains insufficiently supported by the formal offer and identification requirements under Section 34, Rule 132 of the RRE, as amended.

Accordingly, I vote to **GRANT** the Petition for Review on the ground of prescription of respondent's right to collect.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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15 Id.

16 *Commissioner of Internal Revenue v. Standard Insurance Co., Inc.*, G.R. No. 259729, 17 November 2025.