REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*,	**CTA *EB* NO. 2076** *(CTA OC No. 020)*
-*versus*-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
RYAN NEIL ERASMO ALVEZ, *Respondent.*	Promulgated: OCT 08 2020 3:39 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review[1] under ***Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***,[2] asking the Court to reverse and set aside the Decision, promulgated on 8 November 2018, and Resolution, dated 17 May 2019, of the Court of Tax Appeals ("CTA") Special First Division ("Court in Division"), and to render judgment ordering respondent to pay the total amount of ₱4,280,420.42 representing deficiency income tax, value-added tax ("VAT"), and expanded withholding tax ("EWT"), inclusive of interests, surcharges, and penalties as provided under Sections 248 and 249 of the National Internal Revenue Code of 1997 (hereinafter referred to as the "Tax Code") and Section 249 of the Tax Reform for Acceleration and Inclusion ("TRAIN") Law, as implemented by Revenue Regulation ("RR") No. 21-2018.

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[1] Petition for Review, *Rollo*, pp. 6-47, with annexes.
[2] A.M. No. 05-11-07-CTA, 22 November 2005.

The Parties

Petitioner Commissioner of Internal Revenue ("CIR") is vested by law with the authority to carry out all the functions, duties, and responsibilities of said office, including *inter* alia, the power to make assessments, collect taxes, decide, approve, and grant tax protests. He holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent Ryan Neil Erasmo Alvez, of legal age, Filipino, and is doing business under the name of Alvera Builders and Construction Supply which is registered with the Department of Trade and Industry. Respondent holds office at Luray 1, Toledo City, Cebu where he may be served with summons and other court processes.

The Facts

On 27 July 2010, respondent received Letter of Authority ("LOA") No. LOA-2009-00025791 dated 25 June 2010. The LOA was issued by the Revenue Regional Director of Cebu City, Jose N. Tan, authorizing Revenue Officers ("RO") Alben Zabala and Group Supervisor Mary Nizalani Arnoco to examine the books of accounts and other accounting records of respondent for taxable year 2009.[3] Subsequently, an electronic LOA No. eLA201000021108, dated 30 June 2011, was issued replacing LOA-2009-00025791. The electronic LOA authorized the same RO and Group Supervisor to conduct respondent's audit investigation.[4]

On 29 September 2011, respondent received a Reassignment Notice, dated 23 September 2011, issued by Revenue District Officer ("RDO") Rogelio T. Balanga, authorizing RO Jennifer S. Tenio to continue the examination of his books of accounts and other accounting records.[5]

This was followed, on 17 October 2011, by a Notice of Informal Conference informing respondent of his tax liabilities for deficiency income tax, EWT and VAT. He was, likewise, requested to appear before the BIR for an informal conference.[6]

Thereafter, on 28 February 2012, the BIR issued a Preliminary Assessment Notice ("PAN") and Details of Discrepancies, assessing respondent for deficiency income tax, EWT, and VAT, inclusive of surcharge, interest and penalties in the total amount of ₱4,161,478.58. The PAN and the Details of Discrepancies were served upon respondent via registered mail on

[3] Decision, *Rollo*, pp. 28-43.
[4] *Ibid.*
[5] *Ibid.*
[6] *Ibid.*

8 March 2012. The same was received by Carmen Tomarong on 15 March 2012.[7]

On 14 May 2012, the BIR issued a Formal Letter of Demand ("FLD") with attached Details of Discrepancies and Assessment Notices Nos. 83-it-13-2009-2012-05-152, 83-vt-13-2009-2012-05-153, and 83-we-13-2009-2012-05-154, assessing respondent for deficiency income tax, EWT, and VAT, inclusive of interests, surcharges, and penalties in the total amount of ₱4,280,420.42. The FLD was served via registered mail and was received by Carmen Tomarong on 4 June 2012.[8]

On 10 October 2012, the BIR issued a Preliminary Collection Letter demanding payment of the unpaid tax liabilities within ten (10) days from receipt of said Letter. It was served upon respondent via registered mail on 18 October 2012.[9]

Afterwards, the BIR issued the Final Notice Before Issuance of Warrant, dated 23 October 2012, demanding payment of the unpaid deficiency taxes, inclusive of interests, penalties, and surcharges in the amount of ₱4,295,839.62. The same was served via registered mail on 23 October 2012.

Thereafter, petitioner filed the original Complaint with the Court in Division on 29 January 2016 asking it to order respondent to pay petitioner deficiency taxes, inclusive of interests, penalties, and surcharges in the amount of ₱4,295,839.62.[10]

On 8 November 2018, the Court in Division issued the assailed Decision[11] denying the Complaint. The dispositive portion is hereby quoted, as follows:

> **WHEREFORE**, premises considered, the subject Complaint is hereby **DENIED**. Accordingly, the Formal Letter of Demand dated May 14, 2012 together with Details of Discrepancies and Formal Assessment Notices Nos. 83-it-13-2009-2012-05-152, 83-vt-13-2009-2012-05-153, and 83-we-13-2009-2012-05-154, assessing defendant for deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, inclusive of interests, surcharges and penalties in the total amount of ₱4,280,420.42, and the Final Notice Before Issuance of Warrant dated October 23, 2012, are hereby **CANCELLED** and **SET ASIDE**.
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> **SO ORDERED.**

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[7] *Ibid.*
[8] *Ibid.*
[9] *Ibid.*
[10] *Ibid.*
[11] *Ibid.*

In so ruling, the Court in Division found that the RO who conducted the audit of respondent was not authorized pursuant to a valid LOA and thus, the resulting assessment and collection efforts of the petitioner were void.[12]

Aggrieved, petitioner filed a Motion for Reconsideration (Re: Decision dated 8 November 2018) on 28 November 2018, which was met by respondent's Opposition to the Motion for Reconsideration (Re: Decision dated 8 November 2018), filed on 26 February 2019.[13]

On 17 May 2019, the Court in Division issued the assailed Resolution denying petitioner's Motion for Reconsideration (Re: Decision dated 8 November 2018) for lack of merit.[14] The said Resolution was received by petitioner on 21 May 2019.

Subsequently, petitioner filed a Motion for Extension of Time to File Petition for Review on 4 June 2019, asking the CTA *En Banc* to grant him an additional period of fifteen (15) days to file his Petition for Review.[15] The CTA *En Banc* granted the said Motion and gave him until 20 June 2019 to file the instant Petition.[16] Petitioner the timely filed his Petition for Review on 19 June 2019.[17]

On 1 July 2019, the CTA *En Banc* issued a Resolution ordering the respondent to file his Comment,[18] and said Comment was filed on 27 August 2019.[19]

On 18 September 2019, the CTA *En Banc* promulgated a Resolution submitting the case for decision.[20] Hence, this Decision.

The Issues

Petitioner raises the following issues for the CTA *En Banc*'s resolution, to wit:

> WHETHER THE ASSESSMENT HAS ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE AND NOW BEYOND THE SCOPE OF JUDICIAL REVIEW; AND

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[12] *Ibid.*
[13] Resolution, *Rollo*, pp. 44-47.
[14] *Ibid.*
[15] Motion for Extension of Time to File Petition for Review, *Rollo*, pp. 1-4.
[16] Minute Resolution dated 6 June 2019, *Rollo*, p. 5.
[17] Petition for Review, *Rollo,* pp. 6-47, with annexes.
[18] Resolution, *Rollo*, pp. 49-50.
[19] Comment to the Petition for Review, *Rollo*, pp. 51-53.
[20] Resolution dated 18 September 2019, *Rollo*, pp. 56-58.

ASSUMING WITHOUT ADMITTING, THAT THE COURT CAN SCRUTINIZE THE VALIDITY OF A DEMANDABLE ASSESSMENT, WHETHER THE REVENUE OFFICER HAS AUTHORITY TO CONDUCT THE AUDIT INVESTIGATION OF RESPONDENT'S TAX LIABILITY FOR TAXABLE YEAR 2009.[21]

Arguments of the Parties

Petitioner's Arguments[22]

Petitioner argues that since respondent failed to file his protest to the FLD, the assessment issued against him had already become final, executory, and demandable, therefore, beyond the scope of judicial review.

Petitioner explains that the original Complaint is a collection case of a final and executory assessment. Hence, the CTA can no longer rule on the validity of the assessment.

However, assuming that the CTA can rule on the validity of the FLD, petitioner avers that the assessment did not automatically become invalid just because the RO who conducted the audit is different from the RO named in the LOA. He argues that the reassignment of the audit investigation to RO Jennifer S. Tenio was validly supported by a Reassignment Notice duly signed by the Head of the Investigating Office. He opines that the Court in Division's reliance upon Revenue Memorandum Order ("RMO") No. 43-90 is misplaced since the said RMO was already superseded by RMO No. 8-2006 which allows the issuance of a Memorandum of Assignment ("MOA") in case an audit investigation is transferred to another RO.

Furthermore, petitioner counters that the ruling of the Court in Division requiring the issuance of another LOA in case of reassignment of audit to new RO violates the rule under RMO No. 36-2000 which limits the issuance of an LOA once per taxable year (hereinafter referred to as "One LOA Per Year Rule").

Lastly, petitioner contends that there is no requirement in law that the RO must be identified in the LOA. He argues that the LOA is used only to inform the taxpayer that an audit of his person has been authorized by the CIR and not to give authority to the ROs. He alleges that once the LOA is served, any duly authorized RO can conduct the audit. The authority to conduct the audit may either be in an LOA or in another document issued by the CIR or his duly authorized representative.

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[21] Petition for Review, *Rollo*, pp. 6-47, with annexes.
[22] *Ibid.*

Respondent's Arguments[23]

Respondent counters that the issues raised in the Petition for Review have already been addressed by the Court in Division and, therefore, should be dismissed for lack of merit.

He also echoes the ruling of the Court in Division finding the assessment and collection efforts against him void.

The Ruling of the Court

After going through the arguments raised by the petitioner in the instant Petition for Review, the CTA *En Banc* finds no cogent reason to warrant the reversal of the assailed Decision and Resolution.

Assessments arising from an unauthorized audit investigation render the assessment process void and inexistent which, therefore, cannot ripen into a valid collection claim

Petitioner argues that the present Petition involves a collection case. He insists that the CTA is already precluded from ruling on the validity of the assessments since the respondent failed to file his protest to the FLD within the period provided for by the Tax Code, rendering the same final, executory, and demandable.

The CTA *En Banc* disagrees with the contention of the petitioner.

Assessment is defined as "a notice to the effect that the amount therein stated is due as a tax and a demand for the payment thereof".[24] ***Section 228 of the Tax Code*** provides for the rules on assessment, to wit:

> "SEC. 228. Protesting of Assessment. - When the **Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings**: Provided, however, That a pre-assessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

[23] Comment to the Petition for Review, Rollo, pp. 51-54.
[24] Republic of the Philippines v. Yu, GR No. L-17438, 30 April 1964.

> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, **the Commissioner or his duly authorized representative shall issue an assessment based on his findings**.
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> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**
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> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."[25]

As discussed, a taxpayer is given the remedy to file its protest within thirty (30) days from its receipt of the assessment. Failure to file the protest within the stated period renders the same final, executory and demandable. However, a close reading of the ***Tax Code*** proves that the commencement of the period to file the protest is anchored on the taxpayer's receipt of an assessment which is ***based on the findings of the CIR or his duly authorized representative***.

To the CTA *En Banc's* mind, without an assessment arising from a valid audit investigation conducted by the CIR or his duly authorized representative, the period to file the protest ceases to commence since the assessment is deemed inexistent for being intrinsically void.

An assessment issued arising from the audit findings of an unauthorized RO is akin to a decision rendered by a Court having no jurisdiction over a case which are both considered void and ineffectual decisions that do not attain finality despite failure of the aggrieved party to appeal the same. This is so since in these scenarios both decisions are considered non-existent in legal contemplation. The case of ***Buenaflor v. Ramirez***[26] illustrates this point, to wit:

> "The void and ineffectual decision of the RTC did not attain finality despite the supposedly belated appeal by Buenaflor. As emphasized in Nazareno v. Court of Appeals, a void judgment – being non-existent in legal contemplation – does not become final and executory even with the belated filing of an appeal. Moreover, the Court has pronounced in National Housing Authority v. Commission on Settlement of Land Problems that because a void judgment does not attain finality, a petition for certiorari to declare its nullity should not be dismissed for untimeliness. Under the

[25] Emphasis supplied.
[26] GR No. 201607, 15 February 2017.

> circumstances, the CA should have heard and granted the petition for certiorari of Buenaflor instead of dismissing it for the reasons advanced in the assailed resolutions."

The foregoing discussion is consistent with the time honored principle that a void assessment bears no valid fruit. As such, any effort to proceed with tax collection on the basis of a void assessment is violative of the taxpayer's right to due process which is a substantive rather than a formal requirement.[27]

In fact, the Supreme Court in the case of ***Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation,***[28] citing the cases of ***Commissioner of Internal Revenue v. Reyes,***[29] and ***Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.,***[30] emphasized this point, to wit:

> "**In the normal course of tax administration and enforcement, the BIR must first make an assessment then enforce the collection of the amounts so assessed. "An assessment is not an action or proceeding for the collection of taxes. x x x It is a step preliminary, but essential to warrant distraint, if still feasible, and, also, to establish a cause for judicial action." <u>The BIR may summarily enforce collection only when it has accorded the taxpayer administrative due process, which vitally includes the issuance of a valid assessment.</u>** A valid assessment sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf.
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> In Commissioner of Internal Revenue v. Reyes (Reyes Case), the petitioner issued an assessment notice and a demand letter for alleged deficiency estate tax against the taxpayer estate. The assessment notice and demand letter simply notified the taxpayer estate of petitioner's findings, without stating the factual and legal bases for said assessment. **<u>The Court, absent a valid assessment, refused to accord validity and effect to petitioner's collection efforts - which involved, among other things, the successive issuances of a collection letter, a final notice before seizure, and a warrant of distraint and/or levy against the taxpayer estate - and declared that</u>**:
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>> x x x [P]etitioner violated the cardinal rule in administrative law that the taxpayer be accorded due process. Not only was the law here disregarded, but no valid notice was sent, either. **A void assessment bears no valid fruit.**
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>> **The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations**: that taxpayers should be able to present their case and adduce supporting evidence. In

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[27] Commissioner of Internal Revenue v. Reyes, GR Nos. 159694 & 163581, 27 January 2006.
[28] GR No. 197945, 9 July 2018.
[29] GR Nos. 159694 & 163581, 27 January 2006.
[30] GR No. 198677, 26 November 2014.

> the instant case, respondent has not been informed of the basis of the estate tax liability. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made. The haphazard shot at slapping an assessment, supposedly based on estate taxation's general provisions that are expected to be known by the taxpayer, is utter chicanery.
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> Even a cursory review of the preliminary assessment notice, as well as the demand letter sent, reveals the lack of basis for - not to mention the insufficiency of - the gross figures and details of the itemized deductions indicated in the notice and the letter. This Court cannot countenance an assessment based on estimates that appear to have been arbitrarily or capriciously arrived at. Although taxes are the lifeblood of the government, their assessment and collection "should be made in accordance with law as any arbitrariness will negate the very reason for government itself." (Emphasis supplied.)

The Court similarly found that there was no valid assessment in Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc. (BASF Coating Case) as the assessment notice therein was sent to the taxpayer company's former address. **Without a valid assessment, the Court pronounced that petitioner's issuance of a First Notice Before Issuance of Warrant of Distraint and Levy to be in violation of the taxpayer company's right to due process and effectively blocked any further efforts by petitioner to collect by virtue thereof.** The Court ratiocinated that:

> It might not also be amiss to point out that petitioner's issuance of the First Notice Before Issuance of Warrant of Distraint and Levy violated respondent's **right to due process because no valid notice of assessment was sent to it**. **An invalid assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence**. In the instant case, respondent has not properly been informed of the basis of its tax liabilities. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.
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> xxx xxx xxx
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> It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law .and the equal protection of the laws on the other, the scales

> must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.
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> It is worthy to note that in the Reyes Case and BASF Coating Case, **there were assessments actually issued against the taxpayers therein, except that said assessments were adjudged invalid for different reasons** (i.e., for failing to state the factual and legal bases for the assessment in the Reyes Case and for sending the assessment to the wrong address in the BASF Coating Case). In the instant cases, petitioner did not issue at all an assessment against respondents prior to his issuance of the 1998 and 2002 Collection Letters. Thus, there is even more reason for the Court to bar petitioner's attempts to collect the alleged deficiency excise taxes through any summary administrative remedy.[31]

In these cases, the Supreme Court highlighted the rule that the BIR may only proceed with its collection efforts on the basis of a valid assessment. The High Court reiterated that no fruit may arise in situations where the assessment is invalid or when no assessment was at all made.

The aforementioned rule was, likewise, echoed in ***Commissioner of Internal Revenue v. Metro Star Superama, Inc.***,[32] where the Supreme Court invalidated an assessment despite the taxpayer's failure to file a timely protest, to wit:

> "From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities. The use of the word "shall" in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void.
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> xxx xxx xxx
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> **The Court need not belabor to discuss the matter of Metro Star's failure to file its protest, for it is well-settled that a void assessment bears no fruit**."[33]

The cases cited by the petitioner, namely ***Marcos II v. Court of Appeals, et al.***,[34] ***Pagente v. Hon. Tabule et. al.***,[35] ***CIR v. Hambrecht & Quist Philippines, Inc.***,[36] and ***La Flor Dela Isabela, Inc. v. CIR***,[37] are not applicable

[31] Emphasis supplied.
[32] GR No. 185371, 8 December 2010.
[33] Emphasis supplied.
[34] GR No. 120880, 5 June 1997.
[35] CTA EB Case No. 1030, 30 January 2015.
[36] GR No. 169225, 17 November 2010.
[37] CTA EB No. 672, 2 February 2012.

in the instant Petition since the facts in these cases are not in all fours with the one herein. None of these cases focused on the invalidity of the assessment on account of the RO's lack of authority to conduct the audit investigation of the taxpayer.

Considering the foregoing, the CTA *En Banc* rules that an assessment arising from an audit investigation conducted by an unauthorized RO, regardless whether a timely protest was filed or not, is void, inexistent, and will never attain finality. Applying the same in the case at bar, regardless of respondent's failure to protest the FLD, the assessment herein does not give rise to an enforceable tax liability against defendant.

The RO does not have the pre-requisite authority to conduct respondent's audit, hence the assessments are void.

Petitioner argues that assuming the Court still has the authority to determine the validity of the assessment despite respondent's failure to file a timely protest, he opines that the Court in Division erred in ruling that the FLD and assessment notices are void for want of authority of the RO who conducted the audit investigation of respondent.

He explains that the RO who conducted the audit was authorized pursuant to a Reassignment Notice issued by the RDO, as Head of the Investigating Office. The petitioner faults the Court in Division for relying upon RMO No. 43-90 when the same was already superseded by RMO No. 8-2006 which allows the issuance of a MOA in case an audit investigation is transferred to another RO. He also insists that the view of the Court in Division requiring the issuance of a new LOA is violative of the One LOA Per Year Rule. Finally, he argues that the LOA is not an instrument used to delegate authority to a RO but is merely a document to inform the taxpayer that an audit of his person has been authorized by the CIR or his duly authorized representative.

The position of the petitioner is without merit.

Section 6(A) of the Tax Code grants the petitioner or his duly authorized representative the power to authorize the examination and assessment of a taxpayer, to wit:

> "SEC. 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:** Provided, however, that failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."[38]

Corollary thereto is ***Section 13 of the Tax Code*** which mandates all audit investigation to be conducted by a RO duly designated in an LOA issued by the Revenue Regional Director, to wit:

"SEC. 13. Authority of a Revenue Offices. - 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.**"[39]

Based on the foregoing, the Tax Code is clear that an audit investigation against a taxpayer may only be conducted by an authorized RO pursuant to an LOA issued by the CIR or his authorized representative. Failure to comply with the aforementioned standard will render the resulting assessment void as discussed in the case of ***Commissioner of Internal Revenue v. Sony Philippines, Inc.***,[40] to wit:

Based on Section 13 of the Tax Code, **a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer**.

xxx xxx xxx

Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**.[41]

As mentioned in the aforementioned case, it is clear that the LOA is not merely an instrument used to inform a taxpayer that his person will be subjected to audit but is a document granting authority to the RO to perform

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[38] Emphasis supplied.
[39] Emphasis supplied.
[40] G.R. No. 178697, 17 November 2010.
[41] Emphasis supplied.

the examination of the taxpayer's books. Hence, without a LOA granting authority to a RO, the same cannot examine a taxpayer. Any assessment emanating from the audit of an unauthorized RO is void.

Furthermore, petitioner's argument that the reissuance of another LOA violates the One LOA Per Year Rule under ***RMO No. 36-2000***[42] is misplaced since the said BIR issuance only covers taxable years 1997 up to 1999 and, therefore, is not applicable in this case.

As for the contention of the petitioner that a MOA or a Reassignment Notice is sufficient to authorize the reassignment of an audit investigation to a new RO, the CTA *En Banc* finds the argument partially meritorious.

In ***Commissioner of Internal Revenue v. San Miguel Foods, Inc.,***[43] the CTA *En Banc* described the LOA as a document or instrument similar to a Contract of Agency which establishes the relationship between the CIR or his duly authorized representative and the RO. Simply stated, this is the document where the authority, as well as the scope of said authority, is granted to the RO.

In the same case, the CTA *En Banc* held that the authority granted to the RO may be embodied in a document other than an LOA. The said document, either a MOA or a Reassignment Notice, may be considered as an equivalent of a LOA provided that the grant of authority is given by the CIR or his duly authorized representative in writing, to wit:

> This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to ROs Cletofel Parungao, Myrna Ramirez, Ma. Salud Maddela, Zenaida Paz, Allan Maniego, Joel Aguila, and GS Glorializa Samoy who were originally named in the LOA may be revoked, transferred and reassigned to RO Maria Gracielle Cecilia F. San Pedro and GS Juvy S. De la Peiia for continuance of audit.
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> **Said document where such authority is transferred may be equivalent to an LOA**. Several reasons support this. *First,* **the only directive under Section 13 of the NIRC of 1997, as amended, which requires that assessment be done by ROs pursuant to an LOA, is that the grant of authority be done in writing.** In fact, an "[a]gency may be oral, unless the law requires a specific form."
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> *Second*, **although the document may not be entitled "Letter of Authority" but otherwise, it can contain all the elements necessary to establish a contract of agency between the CIR and the new Revenue Officer.** The primary consideration in determining the true nature of a contract is the intention of the parries. **If the words of a contract appear to contravene the evident intention of the parries, the latter shall**

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[42] Prescribing an Office Audit Program in the Assessment Division of Revenue Regional Offices, 26 July 2000.

[43] CTA EB No. 1880, 6 August 2019.

> **prevail.** Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parries. The title of the contract does not necessarily determine its true nature. In fact, this Court has, rime and again, declared certain documents emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.
>
> In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the NIRC of 1997, as amended, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner. Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code."[44]

Applying the same in the case at bar, in order to prove that the Reassignment Notice authorizing RO Jennifer S. Tenia to continue the examination of respondent's books of accounts and other accounting records is valid, the petitioner must show that the same was signed by the CIR or his duly authorized representative.

Unfortunately, the petitioner failed to discharge the said burden.

Section 10(C) of the Tax Code identifies the Revenue Regional Director as petitioner's authorized representative, and the person authorized by law to issue an LOA, on behalf of the CIR, to wit:

> "SEC. 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:
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> xxx xxx xxx
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> **(c) Issue Letters of authority for the examination of taxpayers within the region;**"[45]

In this case, the audit investigation of respondent was initially assigned to RO Alben Zabala and Group Supervisor Mary Nizalani Arnoco by virtue of LOA No. eLA201000021108. Subsequently, a Reassignment Notice was

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[44] Emphasis supplied.
[45] Emphasis supplied.

issued by RDO Rogelio T. Balanga authorizing RO Jennifer S. Tenio to continue the audit investigation of the respondent.[46]

It was on the basis of the Reassignment Notice that RO Jennifer S. Tenio conducted the audit investigation of the respondent and recommended the issuance of the PAN, FLD, and Assessment Notices.[47]

Apropos, the CTA *En Banc* reiterates, to the point of being repetitive, that the Reassignment Notice may only be considered as an equivalent of an LOA if it was signed by the CIR or the Revenue Regional Director (as the CIR's duly authorized representative). Unfortunately, in this case, it is clear from the aforementioned facts that the Reassignment Notice was only signed by RDO Rogelio T. Balanga, who is neither the CIR nor the Revenue Regional Director.

The records are bereft of any evidence to show that RDO Rogelio T. Balanga is one of the CIR's authorized representatives who has the necessary power to sign the Reassignment Notice. Therefore, on this account, RO Jennifer S. Tenio has no authority to continue respondent's audit.

Hence, the CTA *En Banc* rules that the assessment issued against the respondent is void for lack of RO Jennifer S. Tenio's authority. Therefore, it follows, that the assessment cannot be used to enforce the collection of respondent's tax liability.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Decision promulgated on 8 November 2018 and Resolution dated 17 May 2019 are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

---

[46] Decision, *Rollo*, pp. 28-43.
[47] *Ibid.*

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I join the D.O. of J. Villena)
CATHERINE T. MANAHAN
Associate Justice

(With due respect, please see Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution*, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

RYAN NEIL ERASMO ALVEZ,
Respondent.

CTA EB NO. 2076
(CTA OC NO. 020)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
OCT 08 2020
3:39 p.m.

x - x

DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect to our esteemed colleague, Honorable Justice Rowena Modesto-San Pedro, I differ in opinion as regards both the ratio and the conclusion reached in her *ponencia* in the above-titled case.

At the outset, it must be underscored that the case that herein petitioner filed before the Special First Division is a collection case. The fact that the Bureau of Internal Revenue (**BIR**) seeks to collect payment presupposes that the assessment (on which it is based) has become final, executory and demandable. Thus, this Court's judicial review of petitioner's assessment against respondent could no longer be invoked. Put differently, the Court no longer has jurisdiction over it. The final and executory nature of the assessment makes any ruling thereon moot and academic.

The Supreme Court in *The Province of North Cotabato, et al. v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), et al.*[1] explained:

> ...
> An issue or a case becomes moot and academic when it ceases to present a justiciable controversy so that a determination thereof would be without practical use and value. In such cases, there is no actual substantial relief to which the petitioner would be entitled to and which would be negated by the dismissal of the petition...
> ...

In the assailed 08 November 2018 Decision, the Special First Division cancelled the BIR's assessment of petitioner on the ground of the first LOA's defective issuance. **However, as earlier stated, the case appealed from was one for collection and *not* of a disputed assessment.** In *Hambrecht*, the Supreme Court stated that:

> ...
> **To be sure, the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal.** However, the validity of the assessment itself is a separate and distinct issue from the issue of whether the right of the CIR to collect the validly assessed tax has prescribed.[2]
> ...

In cancelling the assessment, the Special First Division, in effect, treated the collection case similar to a duly filed Petition for Review. However, a perusal of the Revised Rules of the Court of Tax Appeals[3]

1 G.R. No. 183591, 14 October 2008.
2 Emphasis supplied.
3 Section 3, Rule 4, A.M. No. 05-11-07-CTA.

(RRCTA) reveals that these two types of cases and their subject matter are totally separate from one another, hence:

> ...
> **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions 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;
>
> ...
>
> (c) **Exclusive jurisdiction over tax collections cases**, to wit:
>
> > (1) **Original jurisdiction in tax collection cases involving final and executory assessments for taxes**, fees, charges and penalties, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more[.][4]
>
> ...

From the foregoing rules, to my mind, the Division may only take cognizance of issues regarding disputed assessments of national taxes on appeal from the decisions of the Commissioner of Internal Revenue (**CIR**). Logically, such appeal would be filed by none other than the aggrieved taxpayer *via* a Petition for Review. Hence, Rule 8, Section 3 of the RRCTA provides:

> ...
> **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

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4 Emphasis supplied.

> **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. In case of inaction of the Commissioner of Internal [R]evenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.[5]
>
> ...

On the other hand, a collection suit for unpaid national taxes originally filed before this Court could only be instituted by the CIR. Moreover, Section 3(c)(1) of the RRCTA, states:

> ...
>
> **SEC. 3.** Cases within the jurisdiction of the Court in Divisions. – The Court in Divisions shall exercise:
>
> ...
>
> c) Exclusive jurisdiction over tax collections cases, to wit:
>
> (1) Original jurisdiction in tax collection cases involving **final and executory assessments for taxes, fees, charges and penalties,** where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more; and
>
> ...

Therefore, to allow the taxpayer to question the assessment's validity through a defense or counterclaim in a collection suit would be improper given that a separate remedy is provided therefor under the RRCTA.

It is noted that, it is Section 228 of the NIRC of 1997, as amended, along with RR 12-99, as amended by RR 18-13, that governs the procedure in challenging the BIR. The pertinent provisions of RR 12-99 read:

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[5] Emphasis supplied.

...

SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —*

3.1 Mode of procedure in the issuance of a deficiency tax assessment:

3.1.1 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based.

If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

...

3.1.3 *Formal Letter of Demand and Final Assessment Notice (FLD/FAN).* — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void.*

3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation...

...

> If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.
>
> If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.[6]

...

Surely enough, respondent has failed to raise the issue of the assessment's validity in the manner and within the reglementary period provided by the foregoing rules.

As culled from the records, respondent never filed a protest against the Formal Letter of Demand[7] (**FLD**). Despite his receipt of a Preliminary Collection Letter[8] (**PCL**) and Final Notice Before Seizure[9] (**FNBS**), he still remained idle. His inaction allowed the BIR's findings to become final and executory and resultantly, barring him from raising before this Court any question regarding the assessment's legality. As aptly held by the Supreme Court in the case of *Commissioner of Internal Revenue v. Jose Concepcion, et al.*[10]:

> ...
>
> ...Once, the matter has reached the stage of finality in view of the failure to appeal, it logically follows, in the appropriate language of Justice Makalintal, in *Morales v. Collector of Internal Revenue*, that it

---

6 Underscoring supplied and italics in the original text.
7 Exhibit "P-10", Division Docket, pp. 188 and 231.
8 Exhibit "P-12", id., pp. 189 and 259.
9 Exhibit "P-14", id., pp. 190 and 259.
10 G.R. No. L-23912, 15 March 1968; Citation omitted.

> "could no longer be reopened through the expedient of an appeal from the denial of petitioner's request for cancellation of the warrant of distraint and levy."
>
> ...

In the case of *Marcos II v. Court of Appeals, et al.*[11] (**Marcos II**), a similar principle was observed by the Supreme Court when it explained the effect of a taxpayer's failure to file a protest against a tax assessment in the manner prescribed by prevalent law, to wit:

> ...
>
> ... Since the estate tax assessment had become final and unappealable by the **petitioner's default as regards protesting the validity of the said assessment, there is now no reason why the BIR cannot continue with the collection of the said tax. Any objection against the assessment should have been pursued following the avenue paved in Section 229 [now Section 228] of the NIRC** on protests on assessments of internal revenue taxes.
>
> ...
>
> **Moreover, these objections to the assessments should have been raised, considering the ample remedies afforded the taxpayer by the Tax Code**, with the Bureau of Internal Revenue and the Court of Tax Appeals, as described earlier, and cannot be raised now via Petition for *Certiorari*, under the pretext of grave abuse of discretion. **The course of action taken by the petitioner reflects his disregard or even repugnance of the established institutions for governance in the scheme of a well-ordered society. The subject tax assessments having become final, executory and enforceable, the same can no longer be contested by means of a disguised protest...**
>
> ...

The doctrine in *Marcos II* was reaffirmed with its application in the case of *Commissioner of Internal Revenue v. Hon. Raul M. Gonzales and L.M. Camus Engineering Corporation*[12] (**Camus**) wherein the Supreme Court in upholding the finality of an assessment found thusly:

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[11] G.R. No. 120880, 05 June 1997; Emphasis supplied.
[12] G.R. No. 177279, 13 October 2010; Emphasis supplied.

> ...
>
> Records bear out that the assessment notice and Formal Letter of Demand dated August 7, 2002 were duly served on LMCEC on October 1, 2002. Private respondents did not file a motion for reconsideration of the said assessment notice and formal demand; neither did they appeal to the Court of Tax Appeals. Section 228 of the NIRC provides the remedy to dispute a tax assessment within a certain period of time. It states that an assessment may be protested by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment by the taxpayer. No such administrative protest was filed by private respondents seeking reconsideration of the August 7, 2002 assessment notice and formal letter of demand. **Private respondents cannot belatedly assail the said assessment, which they allowed to lapse into finality**, by raising issues as to its validity and correctness during the preliminary investigation after the BIR has referred the matter for prosecution under Sections 254 and 255 of the NIRC.
>
> ...

Much like in the cases of *Marcos* II and *Camus*, herein respondent belatedly raised issues regarding the validity of the BIR's assessment before the Special First Division. **The defenses respondent raised to challenge the BIR's right to *collect* was in reality nothing more than a protest to the assessment. However, as previously discussed in the foregoing cases, respondent's right to assail the assessment had long prescribed.** These decisions are consistent with the basic principle that "the law aids the vigilant, not those who slumber on their rights."[13] A contrary ruling would in effect create a scenario wherein a taxpayer (barred by prescription from contesting the correctness and legality of the BIR's assessment) may nevertheless be allowed to reopen such issues in its defense in a *collection suit* or even in *criminal complaint* instituted by the BIR.

Put differently, if respondent filed a Petition for Review before this Court at the time the collection case was instituted, the Court would have undoubtedly dismissed the petition for having been filed out of time. Therefore, to void an assessment that could no longer be reviewed by this Court in a collection suit would neither be logical nor based on duly established legal principles.

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[13] *Bienvenida Salandan, et al. v. The Court of Appeals, et al.*, G.R. No. 127783, 05 June 1998.

The circumstance illustrated above would not only be in complete contravention of Section 228 of the NIRC of 1997, as amended, and RR 12-99, as amended, but the same will also effectively render the need for administrative protests and appeals of disputed assessments before this Court ineffective, if not useless.

If a taxpayer who failed to timely protest the assessment is given a new forum to question it (despite its final and executory nature), then errant taxpayers would likely be encouraged to just ignore the BIR's demands and instead burden the State with initiating collection cases where the remedies of a duly filed petition for review could still apparently be provided them regardless of their neglect infringing upon the timeless legal precept that, "what one cannot do directly, he cannot do indirectly."[14]

Although it can also be argued that the assailed Decision resulted from the parties' agreement to place the validity of the assessment in issue, it must be remembered that "jurisdiction is conferred by law and [is] not within the courts, let alone the parties, to themselves determine or conveniently set aside".[15] Thus, any judgment on the assessment's validity, after the same had become final, vested this Court with no jurisdiction and any action taken (without said jurisdiction) has no legal effect. As the Supreme Court held in *Rene H. Imperial, et al. v. Hon. Edgar L. Armes, et al.*[16], "a judgment rendered without jurisdiction is a void judgment."

It must be noted as well that the *ponencia's* reliance on the case of *CIR v. Pilipinas Shell Petroleum Corporation*[17] (**Shell**) is, with due respect, misplaced. It must be recalled that in *Shell,* the right of the CIR to collect the taxes due Shell was invalidated by the Supreme Court on the ground of *res judicata* since, the assessment's invalidity

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14 *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, G.R. No. 166471, 22 March 2011.

15 *People of the Philippines v. Rosalina Casiano*, G.R. No. L-15309, 16 February 1961; *See also Metromedia Times Corp. and/or Robina Gokongwie-Pe v. Johnny Pastorin*, G.R. No. 154295, 29 July 2005.

16 G.R. Nos. 178842 & 195509, 30 January 2017.

17 G.R. Nos. 197945 and 204119-20, 09 July 2018.

had already been settled earlier in 2007 and 2010[18] cases thus, barring re-litigation of the same matters.

Furthermore, these 2007 and 2010 cases, as quoted below from *Shell*, stemmed from cases of disputed assessment *timely* filed before this Court thus, placing the wheels of judicial review in motion, to wit:

> ...
>
> B.1 The 2007 Shell Case
>
> Respondent Shell raised petitioner's denial of its protest through a petition for review before the CTA, docketed as CTA Case No. 6003. The CTA Division rendered a Decision dated August 2, 2004 granting said petition and cancelled and set aside the assessment against respondent Shell; but then the CTA en banc, in its Decision dated April 28, 2006, set aside the CTA Division's judgment and ordered respondent Shell to pay petitioner deficiency excise tax, surcharges, and interest. Hence, respondent Shell filed a petition for review before this Court docketed as G.R. No. 172598, the 2007 Shell Case.
>
> In its Decision in the 2007 Shell Case, the Court cancelled the 1999 assessment against respondent Shell and disposed thus:
>
>> WHEREFORE, the petition is GRANTED. The April 28, 2006 CTA En Banc Decision in CTA EB No. 64 is hereby REVERSED and SET ASIDE, and the August 2, 2004 CTA Decision in CTA Case No. 6003 disallowing the assessment is hereby REINSTATED. The assessment of respondent for deficiency excise taxes against petitioner for 1992 and 1994 to 1997 inclusive contained in the April 22, 1998 letter of respondent is cancelled and declared without force and effect for lack of legal basis. No pronouncement as to costs.
>
> In nullifying petitioner's assessments, the Court upheld the TCCs' validity, respondent Shell's qualifications as transferees of said TCCs, respondent Shell's status as a transferee in good faith and for value, and respondent Shell's right to due process.
>
> The 2007 Shell Case became final and executory on March 17, 2008.

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18 Referred to in the Shell case as "The 2007 Shell case" and "The 2010 Petron case"; Citation omitted.

B.2 The 2010 Petron Case

Considering petitioner's inaction on its protest, respondent Petron likewise filed a petition for review with the CTA, docketed as CTA Case No. 6136, to challenge the assessment. In a Decision dated August 23, 2006, the CTA Division denied the petition and ordered respondent Petron to pay petitioner deficiency excise taxes, surcharges, and interest. Said judgment was subsequently affirmed by the CTA En Banc in. its Decision dated October 30, 2007. This prompted respondent Petron to seek relief from this Court through a petition for review, docketed as G.R. No. 180385, the 2010 Petron Case.30

Citing the 2007 Shell Case, the Court similarly cancelled the 1999 assessment against respondent Petron and decided the 2010 Petron Case as follows:

> WHEREFORE, premises considered, the petition is GRANTED and the October 30, 2007 CTA En Banc Decision in CTA EB No. 238 is, accordingly, REVERSED and SET ASIDE. In lieu thereof, another is entered invalidating respondent's Assessment of petitioner's deficiency excise taxes for the years 1995 to 1997 for lack of legal bases. No pronouncement as to costs.

Entry of Judgment was made in the 2010 Petron Case on November 2, 2010.

...

The instant case is one for collection of taxes and *not* a petition for review of a disputed assessment which is the precise reason why the principles laid down in *Shell* cannot apply herein. A simple perusal of *Shell* will show that its factual backdrop bears no semblance with the case at bar, nor could the ratio of the Supreme Court's therein (voiding the CIR's collection by reason of "conclusiveness of judgment") have any application in the present case.

The above-cited portion of the Supreme Court decision in *Shell* makes evident that the taxpayers in said case raised their petitions before this Court from the CIR's denial of their protests, while in the present case, it is equally clear and undisputed that respondent did not file any protest against the CIR's decision despite his receipt of the FLD. Therefore, petitioner CIR's resort to an action for collection is but the logical consequence of respondent's failure to protest against his findings thereby, allowing the same to lapse into finality.

A careful examination of the evidence on record reveals that petitioner issued the FLD in May 2012. According to Section 203, in relation to Section 222(a) of the NIRC of 1997, as amended, the BIR has five (5) years within which to enforce collection of taxes to wit:

> ...
>
> **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 a 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.[19]
>
> ...
>
> **SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* -
>
> ...
>
> (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.**[20]
>
> ...

Applying the cited provisions, petitioner had five (5) years from the FLD's issuance within which to enforce the collection of respondent's tax liabilities before this Court. In this case, the FLD was issued on 14 May 2012 therefore, petitioner had until <u>14 May 2017</u> to file a collection suit based on the subject FLD.

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19 Emphasis supplied.
20 Emphasis supplied.

Petitioner filed before this Court his Complaint for Collection on 29 January 2016, which was well within the reglementary period. Finding no other reason to restrain the BIR from collecting the tax liabilities due petitioner, it is my humble opinion that the Court should proceed to calculate the amount of respondent's liabilities.[21]

---

[21] **Taxable Year 2009**

	Income Tax	**VAT**	**EWT**	**TOTAL**
Basic Tax Due	1,578,296.42	1,219,032.83	52,792.00	2,850,121.25
Penalties for late filing/payment of Q3 1701Q with basic tax due of P1,506.46				
25% surcharge	376.62			376.62
20% interest from 11/16/2009 to 11/20/2009	3.30			3.30
Compromise Penalty	200.00			200.00
Surcharge			13,198.00	13,198.00
Compromise Penalty			4,000.00	4,000.00
Add: 20% Deficiency Interest				
From 4/16/2010 to 5/31/2012 (P1,578,296.42 x 20% x 777/365)	671,965.11			671,965.11
From 1/26/2010 to 5/31/2012 (P1,219,032.83 x 20% x 857/365)		572,444.46		572,444.46
From 1/16/2010 to 5/31/2012 (P52,792.00 x 20% x 867/365)			25,079.82	25,079.82
Total Amount Due, 5/31/2012	**2,250,841.45**	**1,791,477.29**	**95,069.82**	**4,137,388.56**
Add: 20% Deficiency Interest				
From 6/1/2012 to 12/31/2017 (P1,578,296.42 x 20% x 2040/365)	1,764,232.71			1,764,232.71
From 6/1/2012 to 12/31/2017 (P1,219,032.83 x 20% x 2040/365)		1,362,644.92		1,362,644.92
From 6/1/2012 to 12/31/2017 (P52,792.00 x 20% x 2040/365)			59,011.33	59,011.33
Add: 20% Delinquency Interest From 6/1/2012 to 12/31/2017 (P2,250,841.45 x 20% x 2040/365)	2,516,009.07			2,516,009.07
From 6/1/2012 to 12/31/2017 (P1,791,477.29 x 20% x 2040/365)		2,002,528.04		2,002,528.04
From 6/1/2012 to 12/31/2017 (P95,069.82 x 20% x 2040/365)			106,269.83	106,269.83
Total Amount Due, 12/31/2017	**6,531,083.23**	**5,156,650.25**	**260,350.98**	**11,948,084.46**
Add: 12% Delinquency Interest				
From 1/1/2018 to 4/30/2020 (P2,250,841.45 x 12% x 851/365)	629,742.27			629,742.27
From 1/1/2018 to 4/30/2020 (P1,791,477.29 x 12% x 851/365)		501,220.99		501,220.99
From 1/1/2018 to 4/30/2020 (P95,069.82 x 12% x 851/365)			26,598.71	26,598.71
Total Amount Due*	**7,160,825.50**	**5,657,871.24**	**286,949.69**	**13,105,646.43**
Compromise Penalties				144,400.00
TOTAL				**13,250,046.43**

**The interest amounts included and computed until 30 April 2020.*

The foregoing considered, I **VOTE** to: (1) **GRANT** petitioner's Petition for Review filed on 19 June 2019; (2) **REVERSE** and **SET ASIDE** the Decision dated 08 November 2018 and Resolution dated 17 May 2019 of the Special First Division in CTA OC No. 020, entitled *Commissioner of Internal Revenue v. Ryan Neil Erasmo Alvez*; (3) **DEEM FINAL AND EXECUTORY** the Final Letter of Demand; and, (4) **ORDER** respondent to **PAY** his deficiency tax liabilities.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice