CTA Form No. 8

22-000250-0047

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRDST DIVISION

CTA CASE NO. 10867

NOATUM LOGISTICS PHILIPPINES, INC. (formerly MIQ LOGISTICS PHILIPPINES, INC.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

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

ATTY. SHERYLL P. CACAYURAN
ATTY. FELY ROSE R. DAGANTA
Bureau of Internal Revenue
Legal Division, Revenue Region 8B- South NCR
2nd Floor, BIR Regional Office Building
No. 313 Sen. Puyat Avenue
Makati City

SYMECS Law
3109 One Corporate Center
Julia Vargas corner Meralco Avenue
Ortigas Center, Pasig City

GREETINGS:

You are hereby notified by these presents that on **July 30, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **August 4, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

NOATUM LOGISTICS PHILIPPINES, INC. (formerly MIQ LOGISTICS PHILIPPINES, INC.), Petitioner,	**CTA CASE NO. 10867**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 30 2025; 4:00PM

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Noatum Logistics Philippines, Inc. (formerly MIQ Logistics Philippines, Inc. (**petitioner/NLPI**), pursuant to Section 3(a)[2], Rule 8 in relation to

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[1] Filed on 26 May 2022, Division Docket, pp. 6-22.

[2] **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. In case of inaction of the Commissioner of Internal Revenue 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.

Section 3(a)(1)[3], Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**).[4] It seeks the cancellation and setting aside of respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) Final Decision dated 26 April 2022[5], for deficiency income tax (**IT**), value-added tax (**VAT**) and expanded withholding tax (**EWT**) for the taxable year (**TY**) 2013 in the aggregate amount of **₱8,011,178.98**, inclusive of interest.

PARTIES OF THE CASE

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at Unit 112 Skyfreight Building, Ninoy Aquino Avenue, Barangay San Dionisio, Parañaque City.[6] It is primarily engaged in the business of international non-vessel operating common carrier services, as well as international freight and cargo forwarding. Its operations include hauling, carrying, handling, distributing, loading and unloading of general cargoes, including but not limited to cargo consolidation.[7]

Respondent, on the other hand, is the duly appointed CIR, vested with the authority to carry out the functions, duties, and responsibilities of the said office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by the Bureau of Internal Revenue (**BIR**).

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[3] **SEC. 3.** *Cases Within the Jurisdiction of the Court in Division.* — The Court in Division shall exercise:
(a) Exclusive original over 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[.]

[4] A.M. No. 05-11-07-CTA.

[5] Exhibit "R-8" / Exhibit "P-8", BIR Records, pp. 897-901.

[6] See paragraph 5, Parties, Petition for Review, supra at note 1, p. 7.

[7] See par. 7, III. Statement of Material Dates and Facts, id.

FACTS OF THE CASE

On 08 July 2014, respondent issued a Letter of Authority (**LOA**) No. 052-2014-00000075/eLA201100078074[8], authorizing Revenue Officer (**RO**) Ragelyn Roma Cruz (**Cruz**) and Group Supervisor (**GS**) Jocelyn Yamsuan (**Yamsuan**) of Revenue District Office (**RDO**) No. 52 - Parañaque, to examine petitioner's books of accounts for all internal revenue taxes for the period from 01 January 2013 to 31 December 2013, or TY 2013. Petitioner's authorized representative, Gladys April Gumaroy (**Gumaroy**), received the LOA on 21 July 2014.

On 24 February 2015, respondent issued a "First Request for Presentation of Records"[9] (**First Notice**). In the said First Notice, the BIR directed petitioner to present its books of accounts and other related accounting records within ten (10) days from receipt.

After examination of petitioner's records[10], on 28 December 2016, respondent issued the Preliminary Assessment Notice[11] (**PAN**), with Details of Discrepancies[12], which assessed petitioner for deficiency IT, VAT and EWT in the total amount of ₱9,776,187.67.

Subsequently, on 13 January 2017, respondent issued against petitioner a "[Final] Assessment Notice/Formal Letter of Demand"[13] (**FAN/FLD**), with Details of Discrepancies.[14] Then Officer-in-Charge Clavelina S. Nacar (**OIC Nacar**) of the Office of the Regional Director, Region No. 8, Makati City, signed the FAN/FLD. There, the BIR reiterated the findings stated in the PAN and found petitioner liable for deficiency IT, VAT and EWT in the amounts of ₱4,930,671.98, ₱911,249.75, and ₱4,053,422.86, respectively.

Within the thirty (30)-day period from receipt of the FAN/FLD, or on 20 February 2017, petitioner filed a Protest[15] thereto and requested

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8 Exhibit "R-1", BIR Records, p. 410.
9 Exhibit "R-2", id., p. 413.
10 A review of the BIR records shows that petitioner duly submitted the documents required under the First Notice.
11 Exhibit "R-5" / Exhibit "P-3", BIR Records, pp. 705-706.
12 Exhibit "P-3-1", id., pp. 703-704.
13 Exhibit "R-6" / Exhibit "P-4", id., pp. 718-719.
14 Exhibit "P-4-1", id., pp. 715-717.
15 Exhibit "R-9" / Exhibit "P-5", id., pp. 736-739.

reconsideration to clarify the basis of the alleged tax deficiencies. In the said Protest, petitioner intimated that: (1) it received the PAN on 11 January 2017 and the FAN/FLD on 20 January 2017—less than fifteen (15) days after receipt of the PAN; (2) the discrepancy between the amount reported in BIR Form No. 1601E[16] and the amount reported in the Audited Financial Statements (**AFS**) and the Income Tax Return (**ITR**) for TY 2013 is mainly due to timing differences; (3) the BIR should not have disallowed payments made to Jaycee Domingo (**Domingo**) and Transglobal Consolidated Inc. (**TCI**) as deductible expenses for failure to withhold taxes, because those amounts were not income payments but reimbursements of advances; and (4) as an international freight forwarder, its freightage, as reflected in its AFS, is not subject to EWT.

On 22 May 2018, petitioner received the Final Decision on Disputed Assessment[17] (**FDDA**) dated 26 April 2018, which then Regional Director Glen A. Geraldino (**RD Geraldino**) issued and signed. The FDDA sustained the findings of tax deficiency against petitioner and directed it to immediately pay the deficiency taxes, inclusive of interest, in the aggregate amount of ₱8,011,178.98.

On 21 June 2018, petitioner filed a Request for Reconsideration[18] against the FDDA. There, petitioner reiterated the same arguments raised in its Protest to the FAN/FLD and added that respondent's deficiency tax assessment lacked factual and legal bases.

Notwithstanding petitioner's Request for Reconsideration, respondent issued a Final Decision dated 26 April 2022[19], which upheld all findings stated in the FDDA. Respondent ruled as follows: (1) petitioner failed to present sufficient evidence to prove that its payments to Domingo and TCI were reimbursements and not income payments; (2) petitioner failed to provide any concrete basis to support its claim that respondent's deficiency tax assessment lacked factual and legal bases; (3) petitioner failed to cite any legal basis to support its assertion that freightage of international freight forwarders is not

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[16] Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded).
[17] Exhibit "R-7" / Exhibit "P-6", BIR Records, pp. 794-801.
[18] Exhibit "R-10" / Exhibit "P-7", id., pp. 827-829.
[19] Supra at note 5.

subject to EWT; and (4) a deficiency tax assessment is presumed correct and made in good faith, and it is the taxpayer's duty to prove otherwise.

PROCEEDINGS BEFORE THE COURT

On 26 May 2022, within 30 days from receipt of the Final Decision, petitioner filed the instant Petition for Review[20] before the Second Division[21], docketed as CTA Case No. 10867.

After the Court issued the Summons[22] on respondent, and upon the grant of a time extension[23], respondent eventually filed an Answer[24] on 01 August 2022. In the Answer, respondent interposed the following defenses: (1) petitioner was properly assessed deficiency taxes in the total amount of ₱8,011,178.98; (2) petitioner failed to submit sufficient evidence to refute the deficiency tax assessment; (3) tax assessments are presumed correct and made in good faith; (4) petitioner failed to raise the issue of prescription at the administrative level, and thus, estoppel by laches has set in; (5) the period to assess petitioner for deficiency EWT has not yet prescribed; and (6) respondent did not violate petitioner's right to due process, as the former fully informed the latter of the factual and legal basis of the assessment.[25]

Later, the Second Division directed both parties to undergo conciliation proceedings before the Philippine Mediation Center-Court of Tax Appeals (**PMC-CTA**).[26] Unfortunately, the mediation failed[27], and the Pre-Trial Conference was thus set to proceed on 11 May 2023.[28]

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20 Supra at note 1.
21 The Second Division is composed of Associate Justice Juanito C. Castañeda, Jr. (Ret.), as Chairperson, and Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.
22 Division Docket, p. 177.
23 See Order dated 12 July 2022, id., p. 183.
24 Id., pp. 184-205.
25 Id.
26 See Resolution dated 07 October 2022, id., p. 250.
27 See Notice dated 18 September 2023, id., p. 410.
28 See Minutes of the Hearing and Order, both dated 02 March 2023, id., pp. 271 and 272-273, respectively.

Subsequently, the parties filed their Pre-Trial Briefs[29] on 23 February 2023 and 01 March 2023, respectively. During the pre-trial[30], the Second Division: (1) granted the parties a period of 30 days to file their Joint Stipulation of Facts and Issues (**JSFI**) and petitioner the same period to file a Motion to Commission an Independent Certified Public Accountant (**ICPA**); and (2) scheduled the presentation of their respective witnesses. In the same proceeding, the Second Division noted and adopted both parties' Pre-Trial Briefs. The Court also granted respondent until 30 October 2023 to file the Judicial Affidavit of GS Annie Rojas Callao (**Callao**).

Subsequently, in view of the reorganization of the three (3) Divisions of the Court effective 29 May 2023[31], the present case was transferred to the First Division.[32]

Since both parties failed to file their JSFI[33], despite due notice, the First Division deemed them to have waived the filing thereof.[34] On 14 September 2023, the First Division issued the Pre-Trial Order[35], declaring the pre-trial terminated.[36] Thereafter, on 08 August 2023, respondent submitted the BIR Records[37], which the First Division noted in a Resolution dated 11 August 2023.[38]

In the trial that thereafter ensued[39], petitioner presented its sole witness, Nelia N. Ecija (**Ecija**), who testified by way of her Judicial Affidavit dated 24 May 2022.[40] There, she stated that: (1) she is petitioner's Treasurer and authorized representative; (2) petitioner is engaged in the business of international non-vessel operating common carrier, international freight and cargo forwarding; (3) on 11 January 2017,

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29 See Petitioner's Pre Trial-Brief and Respondent's Pre Trial-Brief, id., pp. 279-289 and 254-269, respectively.
30 See Minutes of the Hearing and Order, both dated 11 May 2023, id., pp. 294 and 295-297, respectively.
31 See Notice dated 29 May 2023, id., p. 299.
32 The First Division is composed of Presiding Justice Roman G. Del Rosario, as Chairperson, and Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lanee S. Cui-David, as Members.
33 See Records Verification dated 19 June 2023, Division Docket, p. 301.
34 See Resolution dated 06 July 2023, id., p. 304.
35 Id., pp. 347-363.
36 Supra at note 34.
37 See Compliance dated 07 August 2023, Division Docket, p. 330.
38 Id., p. 331.
39 See Order dated 05 September 2023, id., p. 340.
40 Exhibit "P-10", id., pp. 97-107.

petitioner received the PAN dated 28 December 2016; (4) on 20 January 2017, petitioner received the FAN/FLD dated 13 January 2017; (5) after receipt of the FAN/FLD, petitioner filed a Protest dated 20 February 2017; (6) the BIR ultimately denied the Protest in the FDDA dated 26 April 2018 and made petitioner liable to pay deficiency taxes in the amounts of ₱3,269,689.28 for IT, ₱45,668.63 for VAT, and ₱4,695,821.07 for EWT; (7) on 21 June 2018, petitioner filed a Request for Reconsideration; (8) on 27 April 2022, petitioner received the Final Decision dated 26 April 2022; (9) the BIR should not have disallowed payments made to Domingo and TCI as deductible expenses for failure to withhold taxes, because those amounts were not income payments but reimbursements of advances; and (10) the BIR can no longer assess or collect EWT for the period covering January 2013 to November 2013, since it issued the FAN/FLD beyond the three (3)-year prescriptive period.

During her cross-examination, Ecija testified that the payments made to Domingo and TCI were supported by invoices and receipts issued in petitioner's name. She explained that, as an international freight forwarder, petitioner initially shoulders all related expenses on behalf of its clients and subsequently bills these amounts to them.[41] No redirect examination followed.[42]

On 15 September 2023, after completing the presentation of its testimonial evidence, petitioner filed its "Formal Offer of Evidence"[43] (**FOE**), consisting of Exhibits "P-1" to "P-10", inclusive of sub-markings. Respondent did not file a Comment thereto.[44] In a Resolution dated 28 December 2023[45], the First Division admitted all of petitioner's offered exhibits.

Subsequently, owing to respondent's failure to submit the Judicial Affidavit of GS Callao[46], despite due notice, the presentation of GS Callao to the witness stand was declared as waived.[47] Instead, respondent

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[41] TSN dated 05 September 2023, pp. 10-11.
[42] Id, p. 12.
[43] Division Docket, pp. 364-370.
[44] See Records Verification dated 06 October 2023, id., p. 412.
[45] Id., pp. 418-419.
[46] See Records Verification dated 16 November 2023, id., p. 415.
[47] See Resolution dated 09 January 2024, id., p. 422.

presented RO Cruz who testified by way of her Judicial Affidavit dated 01 August 2022.[48]

On the witness stand, RO Cruz declared that: (1) she has been employed at the BIR since 2004; (2) she is currently assigned as RO II at RDO No. 50; (3) she served a copy of the LOA and Checklist of Requirements on petitioner; (4) she obtained the written name and signature of petitioner's authorized representative, Gumaroy, on the LOA's receiving copy; (5) on 03 March 2015, she served a copy of the First Notice on petitioner; (6) based on her investigation, she prepared a Memorandum finding petitioner liable for deficiency IT, VAT and EWT; (7) the BIR issued the PAN dated 28 December 2016 to petitioner; (8) the BIR issued the FAN/FLD dated 13 January 2017 to petitioner; (9) since petitioner substantially underdeclared its income payments in failing to report income exceeding 30% of the amount declared in its returns, the presumption arose that it filed a false return; and (10) in cases involving a false return, the prescriptive period to assess for deficiency EWT extends to 10 years.[49]

During her cross-examination, RO Cruz further testified that: (1) the BIR's regular prescriptive period to assess is three (3) years; (2) as regards the present case, the last document she signed and issued was a Memorandum Report in 2016; (3) after issuing the said Memorandum Report, she transferred to RDO No. 47 in May 2016; (3) the BIR did not send any written communication informing petitioner that it was being assessed beyond three-(3) year period on the ground of a false or fraudulent return; and (4) in 2013, she verbally informed petitioner (without any written correspondence) of the BIR's finding of fraud or false return.[50] No redirect and re-cross examination followed.[51]

When the Court inquired why the surcharge was not reflected in the FAN/FLD despite the BIR's finding that petitioner underdeclared its income by more than 30%, RO Cruz simply stated that although the BIR issued the FAN/FLD on 13 January 2017, she had already transferred to RDO No. 47 in April 2016 (earlier than the period she mentioned during

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48 Exhibit "R-13", id., pp. 207-220. *Per* the Judicial Affidavit, RO Cruz has changed her last name, and she is now using the name Ragelyn RC. Dicta.

49 Id.

50 TSN dated 23 January 2024, pp. 9-17.

51 Id., p. 17.

her cross-examination). Thus, she could not explain the absence of the surcharge in the FAN/FLD.

Later, respondent filed his or her FOE[52] on 02 February 2024. Petitioner, however, failed to file a Comment thereto[53] despite due notice. In a Resolution dated 20 May 2024[54], the First Division admitted all of respondent's exhibits.

On 01 July 2024, petitioner filed its Memorandum[55], while respondent belatedly filed a Memorandum[56] on 19 July 2024. On 30 July 2024, the First Division: (1) noted without action respondent's Memorandum for having been filed out of time; and (2) submitted the case for decision, taking into consideration only petitioner's Memorandum.[57]

ISSUE

The sole issue for the Court's determination is as follows:

WHETHER PETITIONER NOATUM LOGISTICS PHILIPPINES, INC. IS LIABLE TO PAY ASSESSED DEFICIENCY INCOME TAX (IT), VALUE-ADDDED TAX (VAT), AND EXPANDED WITHHOLDING TAX (EWT) IN THE AMOUNT OF ₱3,269,689.28, ₱45,668.63 AND ₱4,695,821.07, RESPECTIVELY, INCLUSIVE OF, INTEREST FOR THE TAXABLE YEAR (TY) 2013.

ARGUMENTS

In support of the petition, petitioner essentially argues that its payment to Domingo and TCI do not constitute income but are reimbursements for actual expenses, costs, and fees previously advanced. As such, these payments are not subject to EWT. Since these payments to Domingo and TCI were not subject to EWT, petitioner contends that the BIR erred in disallowing the corresponding expenses

[52] Division Docket, pp. 474-481.
[53] See Records Verification dated 08 April 2024, id., p. 497.
[54] Id., pp. 504-505.
[55] Id., pp. 506-528.
[56] Id., pp. 531-549.
[57] Id., p. 551.

for failure to withhold, pursuant to Section 34(K) of the NIRC of 1997, as amended.[58]

Petitioner further argues that respondent can no longer assess any deficiency EWT for the period covering January 2013 to November 2013, since the BIR issued the FAN/FLD beyond the three (3)-year prescriptive period.[59] Petitioner also contends that respondent failed to comply with due process requirements in invoking the extraordinary prescriptive period for assessment, citing the following reasons: (1) the FAN/FLD did not state that the BIR was applying the 10-year extraordinary prescriptive period; and (2) the BIR failed to act in a manner consistent with its invocation of the extraordinary prescriptive period.[60]

Finally, petitioner maintains that respondent failed to present any factual and/or legal basis for the deficiency VAT assessment. According to petitioner, respondent issued the assessment without examining petitioner's books of accounts. Instead, respondent merely assumed that the accounts receivable reported in petitioner's AFS should have been subjected to VAT.[61]

In response to petitioner's arguments, respondent asserts that the BIR properly assessed petitioner for deficiency taxes totalling ₱8,011,178.98.[62] Respondent also argues that petitioner failed to submit sufficient evidence to refute the subject deficiency tax assessment.[63] In addition, respondent maintains that tax assessments are presumed correct and made in good faith.[64] Moreover, petitioner failed to raise the issue of prescription at the administrative level. As a result, estoppel by laches has set in, and the period to assess petitioner for EWT has not yet prescribed.[65]

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58 See Petitioner's Memorandum, id., pp. 512-515.
59 Id., pp. 515-517.
60 Id., pp. 518-523.
61 Id., pp. 523-526.
62 See par. 21 of Respondent's Answer, id., p. 186; supra at note 24.
63 Id., p. 191.
64 Id., p. 192.
65 Id., pp. 193-195.

Finally, respondent maintains that there was no violation of petitioner's right to due process, as the BIR fully informed petitioner of the factual and legal bases of the subject deficiency tax assessment.[66]

RULING OF THE COURT

At the outset, the Court must first determine whether it has jurisdiction to hear and resolve the case. It bears emphasis that the CTA, being a court of special jurisdiction, may only take cognizance of matters that clearly fall within its jurisdiction.[67] Section 7(a)(1) of Republic Act (**RA**) No. 1125[68], as amended by RA 9282[69], provides:

> ...
>
> **Sec.** 7. *Jurisdiction.* — The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 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 or other laws administered by the Bureau of Internal Revenue[.][70]
>
> ...

The perfection of an appeal in the manner and within the period pursuant to the relevant provisions of the law is not only mandatory but jurisdictional and non-compliance with these legal requirements is fatal to a party's cause.[71] The law is clear on the period to appeal to this Court if a decision on the protest is denied in whole or in part by the CIR. Section 228 of the NIRC of 1997, as amended, in part, reads as follows:

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66 Id., pp. 199-201.

67 *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, 25 March 2019, citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.

68 AN ACT CREATING THE COURT OF TAX APPEALS.

69 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

70 Italics in the original text, emphasis and underscoring supplied.

71 *Team Pacific Corporation v. Josephine Daza in her capacity as Municipal Treasurer of Taguig*, G.R. No. 167732, 11 July 2012.

> ...
>
> **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[.] ...
>
> ...
>
> 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.
>
> 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.
>
> **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 <u>receipt</u> of the said decision**, or from the lapse of the one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable.**[72]
>
> ...

The afore-quoted Section 228 is implemented by Revenue Regulations (**RR**) No. 12-99[73], as amended by RR No. 18-2013.[74] Relevant portions of Section 3.1.4 of the said implementing regulation outline the taxpayer's options in disputing assessments, to wit:

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

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72 Italics in the original text, emphasis and underscoring supplied.

73 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

74 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

Sec. 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 as follows:

(i) ***Request for reconsideration*** **— refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.**

(ii) *Request for reinvestigation* — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

...

For request for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter protest, otherwise, the assessment shall become final. The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. ...

...

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may <u>either</u>: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or **<u>(ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision.</u>** 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.

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

> **If the** protest or **administrative appeal,** as the case may be, **is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision.** Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.
>
> If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may <u>either</u>: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.
>
> It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other.[75]
>
> ...

In applying the foregoing rules, the Supreme Court in the case of *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*[76] (**PAGCOR**) and later on in *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*[77], explained that there are three (3) options by which a taxpayer may appeal the denial of its administrative protest, to wit:

> ...
>
> Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:

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75 Italics in the original text, emphasis and underscoring supplied.

76 G.R. No. 208731, 27 January 2016; Citation omitted, italics, underscoring and emphasis in the original text and supplied.

77 G.R. No. 221780, 25 March 2019.

> 1. If the protest is wholly or partially denied by the CIR <u>or</u> his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.
>
> **2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.**
>
> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.
>
> ...

Based on the foregoing provisions and jurisprudence, when the CIR's duly authorized representative denies a taxpayer's protest, the taxpayer has two (2) alternative remedies. The aggrieved taxpayer may either:

(1) File an appeal with the CTA within 30 days from receipt of the decision of the CIR's duly authorized representative; or,

(2) **Elevate the protest through a request for reconsideration to the CIR within the same 30-day period, otherwise referred to as an "administrative appeal."**

When the taxpayer chooses the second of the two (2) alterative remedies above, and its administrative appeal is not acted upon by the CIR within the 180-day period counted from the filing of the protest, the concerned taxpayer may then either:

(1) File an appeal to the CTA within 30 days after the expiration of the 180-day period (counted from the filing of the protest if the protest is a request for reconsideration or from the submission of supporting

documents if the protest is a request for reinvestigation); or,

(2) **<u>Await the final decision of the CIR on the disputed assessment, and appeal such final decision to the CTA within 30 days from receipt of a copy thereof.</u>**

In this case, the following are the pertinent dates and events in determining the timeliness of present petition:

Date	Event
22 May 2018	Petitioner received the FDDA dated 26 April 2018[78], which was signed by RD Geraldino.
21 June 2018	Petitioner filed a Request for Reconsideration.[79]
26 April 2022	Respondent issued a Final Decision.[80]
26 May 2022	Petitioner filed the instant Petition for Review[81] within the 30-day reglementary period (reckoned from the issuance of the Final Decision).

An examination of respondent's Final Decision, marked as Exhibit "P-8" and Exhibit "R-8", reveals that it does not reflect petitioner's date of receipt. It is also worth noting that, in the Answer[82], respondent specifically denied petitioner's allegation that it received the said Final Decision on 27 April 2022.

Absent any other competent evidence showing petitioner's receipt of respondent's Final Decision, the earliest possible date of receipt is its date of issuance, *i.e.*, on 26 April 2022. Counting 30 days therefrom, petitioner had until 26 May 2022 to file an appeal. Accordingly, petitioner timely filed the instant Petition for Review on **<u>26 May 2022</u>**. The Court thus validly acquired jurisdiction over the case.

Having established that this Court has jurisdiction, We now turn to the procedural question of whether respondent issued the subject

[78] Exhibit "R-7"/ Exhibit "P-6", supra at note 17.
[79] Exhibit "R-10"/ Exhibit "P-7", supra at note 18.
[80] Supra at note 5.
[81] Supra at note 1.
[82] See Par. 3 of Respondent's Answer, supra at note 24.

deficiency tax assessment within the prescriptive period provided by law.

Petitioner primarily argues that when the BIR issued the FAN dated 13 January 2017, the period to assess deficiency EWT for the months of January 2013 to November 2013 had already prescribed.

In addition, petitioner contends that respondent violated petitioner's right to due process in applying the 10-year prescriptive period to assess for the following reasons: (1) the FAN/FLD failed to indicate that the BIR was applying the extraordinary prescriptive period; and (2) tax authorities misled petitioner into believing that only the ordinary prescriptive period would apply.

In contrast, respondent disagrees and asserts that the BIR issued the deficiency tax assessment well within the applicable prescriptive period. Respondent also maintains that petitioner failed to raise the issue of prescription at the administrative level. As a result, estoppel by laches has set in, and the right to assess petitioner for deficiency EWT has not yet prescribed.

This Court likewise notes that petitioner did not raise the issue of prescription on respondent's right to assess the other types of deficiency taxes (*i.e.*, IT and VAT) in the subject assessment. Nonetheless, the Court will address this matter to ensure a complete and thorough resolution of the case.

THE PRESCRIPTIVE PERIOD TO ASSESS PETITIONER IS THREE (3) YEARS.

Sections 203 and 222(a) of the NIRC of 1997, as amended, provide:

> ...
>
> **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.
>
> ...
>
> **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.[83]
>
> ...

Furthermore, Section 248(B) of the NIRC of 1997, as amended, states what constitutes *prima facie* evidence of a false or fraudulent return:

> ...
>
> **SEC. 248.** *Civil Penalties.* -
>
> ...
>
> (B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided*, That **a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return: *Provided, further*, <u>That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, shall render the taxpayer liable for</u>**

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83 Emphasis supplied and italics in the original text.

> **substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein**.[84]
>
> ...

Based on the foregoing provision, *prima facie* evidence of a false or fraudulent return is either a substantial *underdeclaration* of sales, receipts or income, or a substantial *overstatement* of deductions. A substantial under declaration of sales, receipts or income occurs when there is a failure to report sales, receipts or income exceeding 30% of that declared *per* return. Conversely, a substantial overstatement of deductions happens when the total amount of claimed deductions exceeds 30% of the actual deductions.

In the instant case, *there is neither a substantial underdeclaration of sales, receipts or income nor a substantial overstatement of deductions, based on the 30%-threshold established by law* or relevant regulations. This can be gleaned from the nature of the itemized findings for deficiency IT, VAT and EWT, as well as from the Details of Discrepancies attached to the PAN and the FAN/FLD.

Further, it is worth noting that, in the present case, respondent neither imputed nor established the existence of actual fraud, nor expressly invoked the application of the 10-year prescriptive period. None of the PAN, the FLD/FAN, the FDDA, or the corresponding memoranda submitted by the investigating teams in support of these issuances contained any discussion on the filing of a false or fraudulent return, or any reference to the 10-year prescriptive period. In fact, during cross-examination[85], RO Cruz admitted that the BIR failed to inform petitioner that it was applying the extraordinary 10-year prescriptive period, to wit:

> ...
>
> [PRESIDING] JUSTICE DEL ROSARIO
>
> Yes. What is your answer? But the question I'm asking you now is, **did you send any letter to the taxpayer telling the taxpayer, taxpayer you're being assessed beyond three years because you**

[84] Italics in the original text, emphasis and underscoring supplied.
[85] TSN dated 23 January 2024, p. 16.

have filed a false or fraudulent [r]eturn? Did you send any communication to that effect?

MS. DICTA

None, your Honors, since I have (interrupted).[86]

...

Additionally, the breakdown of the tax due under the subject deficiency tax assessment (covering IT, VAT and EWT) does not reflect respondent's imposition of the 50% surcharge under Section 248[87] of the NIRC of 1997, as amended, thereby further negating the application of the 10-year prescriptive period.

Considering the requisites for invoking the *prima facie* presumption of a false or fraudulent return under Section 248 of the NIRC of 1997, as amended, respondent's bare allegation—made solely in the Answer—is insufficient to support the application of the 10-year prescriptive period.

Moreover, while petitioner vigorously asserted the applicability of the three (3)-year period for assessment, respondent merely offered a blanket denial and failed to present any compelling legal basis to justify the application of the 10-year assessment period.

The Supreme Court case of *McDonald's Philippines Realty Corporation v. Commissioner of Internal Revenue*[88] exemplifies the circumstances that support a valid invocation of the extraordinary prescriptive period for assessment:

...

F. Summary: Conditions for a Valid Extension of Assessment Period in Case of a False Return

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86 Emphasis supplied.
87 Supra at p. 18.
88 G.R. No. 247737, 08 August 2023; Citation omitted, emphasis and italics in the original text, and underscoring supplied.

i. *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.*

Consequently, the Court's ruling in *Aznar* which applied the extraordinary 10-year assessment period under Section 222(a) to false returns in general, *i.e.*, regardless of whether the deviation is intentional or not, is abandoned.

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 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/overdeclaration* 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.

...

In this case, aside from the absence of any circumstance that could be construed as petitioner's act of filing a false or fraudulent return, respondent also never invoked the application of the extraordinary 10-year prescriptive period at any point during the administrative proceedings. Moreover, neither the parties' allegations nor the BIR Records indicate that they executed any waiver of the prescriptive period throughout the administrative process.

Taken collectively, the following circumstances support the application of the ordinary three (3)-year prescriptive period for assessment: (1) the Assessment Notices (**ANs**)[89] failed to clearly state that the BIR was applying the extraordinary prescriptive period of 10-years; (2) the ANs did not clearly identify the factual or legal bases for the alleged falsity or fraud; and (3) the BIR did not impose the 50% surcharge under Section 248 of the NIRC of 1997, as amended, despite respondent's finding that petitioner underdeclared income payments by more than 30%. Thus, **the applicable prescriptive should be three (3) years, reckoned from the last day prescribed by law for the filing of the return, pursuant to Section 203[90] of the NIRC of 1997, as amended.**

Correspondingly, anent the deficiency IT, respondent's right to assess was set to expire on **15 April 2017**—the end of the three (3)-year ordinary prescriptive period counted from the last day to file the Annual ITR for TY 2013, which was 15 April 2014 (considering the earlier filing of petitioner's 2013 Annual ITR[91] on 14 April 2014).

As for the deficiency VAT and EWT, the applicable prescriptive periods for respondent's right to assess are outlined below:

Period Covered	**Date of Actual Filing**	**Last Day Prescribed by Law to File the Return**[92]	**Last Day to Assess under Section 203 of the NIRC of 1997, as amended**
VAT[93][94]			
First Quarter of 2013	22 April 2013	25 April 2013	25 April 2016
Second Quarter of 2013	22 July 2013	25 July 2013	25 July 2016

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89 See PAN dated 28 December 2016 and FAN/FLD dated 13 January 2017, supra at notes 11 and 13, respectively.

90 Supra at pp. 17-18.

91 Exhibit "R-12", BIR Records, pp. 356-373.

92 Revenue Regulations (RR) No. 2-98, Section 2.58(A)(2).

93 Exhibit 'R-12", BIR Records, pp. 569, 583, 590 and 600, respectively.

94 Section 114(A), NIRC of 1997, as amended.

SEC. 114. *Return and Payment of Value-added Tax.* —

(A) In General. — Every person liable to pay the value-added tax imposed under this Title shall **file a quarterly return** of the amount of his gross sales or receipts **within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis[.] (Emphasis supplied)

Period Covered	Date of Actual Filing	Last Day Prescribed by Law to File the Return[92]	Last Day to Assess under Section 203 of the NIRC of 1997, as amended
Third Quarter of 2013	21 October 2013	25 October 2013	25 October 2016
Fourth Quarter of 2013	14 January 2014	25 January 2014	25 January 2017
EWT[95][96]			
January 2013	11 February 2013	12 February 2013	12 February 2016
February 2013	08 March 2013	12 March 2013	12 March 2016
March 2013	10 April 2013	12 April 2013	12 April 2016
April 2013	09 May 2013	13 May 2013*	12 May 2016
May 2013	10 June 2013	13 June 2013*	13 June 2016
June 2013	10 July 2013	12 July 2013	12 July 2016
July 2013	12 August 2013	12 August 2013	12 August 2016
August 2013	11 September 2013	12 September 2013	12 September 2016
September 2013	08 October 2013	14 October 2013*	14 October 2016
October 2013	11 November 2013	12 November 2013	12 November 2016
November 2013	11 December 2013	12 December 2013	12 December 2016
December 2013	14 January 2014	13 January 2014*	13 January 2017
* Deadline fell on a weekend or holiday.			

Clearly from the foregoing, when the BIR issued the subject FAN/FLD[97] was issued on **13 January 2017**, respondent had already lost the right to assess petitioner for deficiency VAT for the 1st to 3rd quarters of TY 2013 and for deficiency EWT covering the period from January 2013 to November 2013.

Consequently, as established above, respondent's right to assess petitioner for deficiency IT, for deficiency VAT for the 4th quarter of TY

95 Exhibit "P-9"; Division Docket, pp. 374-375.

96 Section 58(A), NIRC of 1997, as amended; Cf.: Section 7, RR No. 9-2001 (Electronic Filing of Tax Returns and Payment of Taxes), as amended by RR No. 26-02 dated 05 December 2002 [Amending Further Revenue Regulations No. 9-2001, as Amended by Revenue Regulations No. 2-2002 and Revenue Regulations No. 9-2002, Providing for the Staggered Filing of Returns of Taxpayers Enrolled in the Electronic Filing and Payment System (eFPS) Based on Industry Classification].

As a freight forwarding service provider, petitioner belongs to Group D of eFPS filers. For Group D eFPS filers, the due date for filing monthly withholding tax returns—excluding withholding on Value-Added Tax (VAT)—is the twelfth (12th) day following the end of each month.

97 Supra at note 13.

2013, and for deficiency EWT for December 2013 *had not yet prescribed* when the BIR issued the FAN/FLD, as it fell within the three (3)-year prescriptive period allowed by law.

It bears to note, however, that while the Court finds respondent's right to assess petitioner for deficiency VAT (for the 1st to 3rd quarters of TY 2013) and for deficiency EWT (for January 2013 to November 2013) have prescribed, a further examination of the evidence remains necessary to **clearly distinguish the portion of the alleged deficiency that corresponds to the prescribed periods from those that have not**. Consequently, in the absence of proof to the contrary, the Court would be constrained to attribute the entire alleged deficiency for the taxes under scrutiny (*i.e.*, VAT and EWT) to the portion of TY 2013 that has *not* yet prescribed.

Having resolved the issue of prescription in assessment, the Court now turns to the matter of whether respondent's right to collect has likewise prescribed.

RESPONDENT'S PERIOD TO COLLECT
HAS ALREADY PRESCRIBED.

As for the right to collect taxes, Section 203 of the NIRC of 1997, as amended, sets the reckoning date by which respondent's authority to collect commences. The provision reads:

> ...
>
> 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.[98]
>
> ...

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[98] Emphasis supplied and italics in the original text.

In *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*[99], the Supreme Court clarified that, when the BIR issues the assessment within the three(3)-year prescriptive period, it has another three (3) years, counted from the date the assessment notice is released, mailed or sent to the taxpayer, within which to collect the tax due by distraint, levy or court proceeding as follows:

> ...
> [P]etitioner 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 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.**
> ...

Relative to the running of the said three (3)-year prescriptive period, Section 223 of the NIRC of 1997, as amended, categorically provides that when the CIR grants a taxpayer's request for reinvestigation, the running of the period to collect is *tolled*:

> ...
> 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 or 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

[99] G.R. No. 197515, 02 July 2014; Citations omitted and emphasis supplied.

> household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.[100]
>
> ...

Based on the foregoing, respondent had three (3) years from the issuance of the assessment on 13 January 2017[101] within which to collect the deficiency taxes—whether through distraint, levy or court proceeding. Here, respondent opted to pursue collection by filing an Answer to the present Petition for Review, which constitutes a judicial action for the collection of tax.[102]

A thorough reading of the Protest[103] to the FAN/FLD shows that petitioner did not request a reinvestigation but merely sought a reconsideration. Accordingly, the three (3)-year period to collect the deficiency assessments was set to expire on **12 January 2020**.[104] By the time respondent filed an Answer on **01 August 2022**[105], **the said right to collect petitioner's deficiency IT, VAT and EWT for TY 2013 had already prescribed.**

In *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*[106], the Supreme Court explained the injurious effects of delay in the collection and assessment of taxes, to wit:

> ...
>
> It bears stressing that, in a number of cases, this Court has explained that the statute of limitations on the collection of taxes primarily benefits the taxpayer. In these cases, the Court exemplified the detrimental effects that the delay in the assessment and collection of taxes inflicts upon the taxpayers. Thus, in *Commissioner of Internal Revenue v. Philippine Global Communication, Inc.*, this Court echoed Justice Montemayor's disquisition in his dissenting opinion in *Collector of Internal Revenue v. Suyoc Consolidated Mining Company*,

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100 Emphasis supplied and italics in the original text.
101 Supra at note 13.
102 *See Philippine National Oil Company v. The Hon. Court of Appeals, et al.*, G.R No. 109976 & 112800, 26 April 2005 and *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 197945 & 204119-20, 09 July 2018.
103 Supra at note 15.
104 Respondent's issuance of the FAN/FLD was on 13 January 2017, hence, the end of three [3]-year period to collect is on 12 January 2020. See *Commissioner of Internal Revenue v. Primetown Property Group, Inc.*, G.R. No. 162155, 28 August 2007.
105 Supra at note 24.
106 G.R No. 198677, 26 November 2014; Citations omitted, italics in the original and emphasis supplied.

regarding the potential loss to the taxpayer if the assessment and collection of taxes are not promptly made, thus:

> Prescription in the assessment and in the collection of taxes is provided by the Legislature for the benefit of both the Government and the taxpayer; for the Government for the purpose of expediting the collection of taxes, so that the agency charged with the assessment and collection may not tarry too long or indefinitely to the prejudice of the interests of the Government, which needs taxes to run it; and for the taxpayer so that within a reasonable time after filing his return, he may know the amount of the assessment he is required to pay, whether or not such assessment is well founded and reasonable so that he may either pay the amount of the assessment or contest its validity in court . . . **It would surely be prejudicial to the interest of the taxpayer for the Government collecting agency to unduly delay the assessment and the collection because by the time the collecting agency finally gets around to making the assessment or making the collection, the taxpayer may then have lost his papers and books to support his claim and contest that of the Government,** and what is more, the tax is in the meantime accumulating interest which the taxpayer eventually has to pay.

Likewise, in *Republic of the Philippines v. Ablaza*, this Court elucidated **that the prescriptive period for the filing of actions for collection of taxes is justified by the need to protect law-abiding citizens from possible harassment.** Also, in *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, it was held **that the statute of limitations on the assessment and collection of taxes is principally intended to afford protection to the taxpayer against unreasonable investigations as the indefinite extension of the period for assessment** deprives the taxpayer of the assurance that he will no longer be subjected to further investigation for taxes after the expiration of a reasonable period of time. Thus, in *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc.*, this Court ruled that **the legal provisions on prescription should be liberally construed to protect taxpayers and that, as a corollary, the exceptions to the rule on prescription should be strictly construed.**

...

Incidentally, while petitioner raised an issue on the supposed premature issuance of the FAN/FLD (*i.e.*, before the lapse of the 15-day period to reply to the PAN), this claim is not clearly supported by the records of the case. An examination of both the PAN[107] dated 28 December 2016 and the FAN/FLD[108] dated 13 January 2017 reveals that they do not contain any notation to confirm: (1) when these BIR issuances were actually received; and (2) who received them. In other words, there is no proof of the alleged receipt of the PAN and the FAN/FLD on 11 January 2017 and 20 January 2017, respectively.

Assuming *ex gratia in argumenti* that petitioner's claim is correct, it bears noting that this will no longer alter the outcome of the case.

WHEREFORE, premises considered, the instant Petition for Review filed by petitioner Noatum Logistics Philippines, Inc. on 26 May 2022 is hereby **GRANTED**. Accordingly, since respondent Commissioner of Internal Revenue's right to collect the alleged deficiency Income Tax, Value-Added Tax and Expanded Withholding Tax for the taxable year 2013 has already prescribed, respondent and his or her duly authorized representatives are **PERMANENTLY ENJOINED** from enforcing collection of the aforementioned deficiency taxes.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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107 Supra at note 11.
108 Supra at note 13.

LANEE S. CUI-DAVID
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice