REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2877** (CTA Case No. 10308)
- versus -	Present: **RINGPIS-LIBAN,** *Acting P.J.,* **MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
JIMMY KHO, Respondent.	Promulgated: NOV 18 2025 4:27pm

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**) pursuant to Section 11[2] of

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1 Filed on 01 March 2024, *rollo*, pp. 8-13.

2 **Section. 11.** Section 18 of the same Act is hereby amended as follows:
SEC. 18. *Appeal to the Court of Tax Appeals En Banc.* - No civil proceeding involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*.

Republic Act (**RA**) No. 9282.[3] It seeks to reverse and set aside the Decision dated 14 September 2023[4] (**assailed Decision**) and the Resolution dated 08 January 2024[5] (**assailed Resolution**) of this Court's Special Third Division[6] in CTA Case No. 10308, entitled *"Jimmy Kho v. Commissioner of Internal Revenue"*. Both assailed Decision and Resolution granted respondent Jimmy Kho's (**respondent**'s) prior "Petition for Partial Review"[7] (**prior petition**) before the Special Third Division and cancelled the deficiency value-added tax (**VAT**) assessment and compromise penalty as contained in the Decision of 21 May 2020[8] (**Final Decision**) and Warrant of Distraint and/or Levy (**WDL**) No. RR7A-11-23-2020-0915[9] that the Bureau of Internal Revenue (**BIR**) had issued against him.

Petitioner is the CIR who is charged with, among others, the duty of assessing and collecting internal revenue taxes, fees or other charges, and penalties imposed under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by the BIR. He or she holds office at the BIR, National Office Building, BIR Road, Diliman, Quezon City.[10]

Respondent, on the other hand, is the sole proprietor of Hayashi Racing Sales Center, with address at 148 Bayani St., Araneta Subdivision, Brgy. Doña Imelda, Quezon City.[11]

FACTS OF THE CASE

On 13 December 2012, respondent received Letter of Authority (**LOA**) No. LOA-V07-2012-00000115/eLA201100035216 dated

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3 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.

4 Division Docket, pp. 269-283.

5 Id., pp. 298-299.

6 Penned by Associate Justice Maria Rowena Modesto-San Pedro and concurred by Associate Justice Ma. Belen M. Ringpis-Liban.

7 Division Docket, pp. 6-27.

8 Id., pp. 67-76.

9 BIR Records, p. 310.

10 See Paragraph 1, Summary of Admitted Facts, Respondent's Pre-Trial Brief, Division Docket, p. 154.

11 Summary of Admitted Facts, Petitioner's Pre-Trial Brief, id., p. 143.

28 November 2012[12], authorizing Revenue Officer (**RO**) Mary Jun Pagulayan (**Pagulayan**) and Group Supervisor (**GS**) Roan Bautista (**Bautista**) of Revenue District No. V07-Assessment Division, to examine respondent's books of accounts for VAT for the period of 01 January 2012 to 30 June 2012.

On 21 October 2014[13], respondent, through Raiza A. Ladiao (**Ladiao**), received the Preliminary Assessment Notice[14] (**PAN**) of even date, together with the Details of Discrepancies.[15] There, respondent was initially assessed with a deficiency VAT of ₱25,553,989.08, inclusive of a compromise penalty of ₱25,000.00. Allegedly, respondent presented various supporting documents to contest the assessment.[16]

Thereafter, or on 06 November 2014, petitioner issued the Formal Letter of Demand[17] (**FLD**) with Details of Discrepancies[18] and the Assessment Notices[19] (**ANs**), which imposed additional interests (thus increased the deficiency VAT assessment to ₱25,894,651.20), and retained the compromise penalty of ₱25,000.00. Respondent, through Ladiao, received the said notices on 14 November 2014.[20]

On 12 December 2014, unable to agree with the BIR's issuances, respondent, by way of a Request for Reconsideration, filed his Protest, against the FLD.[21] Acting on the Protest, petitioner issued a Memorandum of Assignment[22] (**MOA**) dated 02 February 2015 to designate RO Mathew Micheal Torio (**Torio**) and GS Enrico D. Cruz (**Cruz**) for the continuation of the investigation. Based on their Memorandum[23], respondent failed to support his arguments in the Protest for lack of documentary evidence. Hence, petitioner issued the

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12 BIR Records, p. 1.
13 See Affidavit of Service of Preliminary Assessment Notice/Final Assessment Notice dated 22 October 2014, BIR Records, p. 144. Also the written notations in the lower left portion of the Preliminary Assessment Notice (PAN) and the Details of Discrepancies, id., pp. 142-143.
14 Id., p. 143.
15 Id., p. 142.
16 See Par. 12, Statement of Facts, Petition for Review, Division Docket, p. 8.
17 BIR Records, pp. 176-177.
18 Id., p. 175.
19 Id., pp. 178-179.
20 See Affidavit of Service of Preliminary Assessment Notice/Final Assessment Notice dated 18 November 2014, id., p. 180. Also, the written notations in the lower right portion of the Formal Letter of Demand (FLD), Details of Discrepancies, and Assessment Notice (AN), id., pp. 175-179.
21 Id., pp. 186-191.
22 Id., p. 196.
23 Designated as Memorandum addressed to Norma P. Ceroma, id., p. 204.

Final Decision on Disputed Assessment[24] (**FDDA**) on 04 September 2015, which respondent received on the same date.[25]

Undaunted, respondent filed a Request for Reconsideration of the FDDA[26] on 01 October 2015. Denying the said appeal, on 21 May 2020, petitioner issued the Final Decision[27] which demanded the payment of the deficiency VAT assessment and compromise penalty in the total amount of ₱28,440,795.24. Allegedly, respondent received the said notice on 04 July 2020.[28]

PROCEEDINGS BEFORE THE COURT IN DIVISION

Aggrieved, on 28 July 2020, respondent (then petitioner) filed the prior petition[29] before this Court. The same was docketed as CTA Case No. 10308 and it was raffled to the Court's Third Division.[30]

Initially, the Third Division ordered respondent to file a correct Verification and Certification of Non-Forum Shopping. It also directed respondent to submit the proof of receipt of the Final Decision.[31] In the prior petition, respondent alleged that the Final Decision was received on 04 July 2020.

Subsequently, respondent filed his Compliance.[32] He submitted an Amended Verification and Certification of Non-Forum Shopping[33] and a Certification[34] from the Quezon City Central Post Office (**Certification**) with attachments.[35] Respondent represented that, *per* the said Certification, the Final Decision was sent through registered mail with number RE 158 141 194 ZZ and was delivered to respondent's address on 03 July 2020. He received a copy thereof on the following day.

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24 Id., pp. 205-209.
25 See written notations on the lower portion of the Final Decision on Disputed Assessment (FDDA), id.
26 Id., pp. 231-235.
27 Supra at note 8.
28 As alleged in paragraph 8, Petition for Partial Review, Division Docket, p. 97.
29 Supra at note 7.
30 Then composed of (ret.) Associate Justice Erlinda P. Uy as chairperson, Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro as members.
31 See Resolution dated 26 August 2020, Division Docket, pp. 92-93.
32 Id., pp. 94-95.
33 See Annex "A-1", id., pp. 118-119.
34 See Annex "B", id., p. 120.
35 See Annex "B-1" and "B-2", id., pp. 121-122.

After the Third Division noted the Compliance[36], Summons[37] was thereafter issued.

While the case was pending, on 04 December 2020, respondent received WDL No. RR7A-11-23-2020-0915 for the collection of the deficiency VAT assessment and compromise penalty.[38]

Thereafter, or on 14 December 2020, petitioner filed an "Answer to the Petition for Review"[39] (**Answer**) where he or she countered that: (1) respondent failed to disprove the tax assessment; and (2) he failed to timely file the prior petition which rendered the Final Decision executory and incontestable. According to petitioner, the Final Decision was served on respondent on 21 May 2020.

Later, the Pre-Trial Conference was set on 29 April 2021.[40] However, the same was moved to 27 October 2021 due to petitioner's delay in elevating the BIR Records.[41] The Third Division then received respondent's and petitioner's Pre-Trial Briefs[42] on 15 October 2021 and 27 October 2021, respectively.

During the Pre-Trial Conference which proceeded *via* video conference[43], the parties were directed to submit their Joint Stipulation of Facts (**JSF**) and their witnesses' judicial affidavits on or before 26 November 2021.[44] After an extension of time[45] was granted unto the parties to file the same, the Court received the parties' JSF on 21 February 2022.[46]

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36 See Resolution dated 07 October 2020, id., p. 124.
37 Id., p. 125.
38 Supra at note 9.
39 Division Docket, pp. 127-131.
40 Notice of Pre-Trial Conference dated 28 December 2020, id., pp. 133-134.
41 See Resolution dated 06 September 2021, id., pp. 141-142.
42 Jimmy Kho's Pre-Trial Brief, id., pp. 143-146; Commissioner of Internal Revenue's Pre-Trial Brief, id., pp. 154-159.
43 See Notice of Hearing dated 21 October 2021, id., pp. 150-151; Order dated 27 October 2021, id., pp. 163-165.
44 See Order dated 27 October 2021, id.
45 See Motion to Reset (Due to Belated Coordination for Joint Stipulation of Facts by Respondent), id., pp. 177-178; Resolution dated 28 February 2022, id., pp. 189-190.
46 Id., pp. 185-187.

In the same proceeding, while respondent requested for additional time to file the judicial affidavit of his witnesses[47], the Third Division received respondent's "Motion for Summary Judgment" on 16 March 2022.[48] In the said Motion, respondent contended that using the parties' stipulations and the admission in the JSF, there are no more genuine issues on the relevant facts and the Third Division may then proceed to rule on the legal issues relating to prescription of collection, RO Torio's apparent want of authority to conduct an audit, and the inclusion of Winplus Sales Center, Inc. (**Winplus**) in the subject assessment.

Respondent went on to explain that the parties had stipulated that the FLD and the Final Decision were served on him on 14 November 2014 and 21 May 2020, respectively.[49] Likewise, the parties had admitted the genuineness and due execution of the LOA, BIR's Acknowledgment Receipt of the Protest Letter, MOA, FDDA and Winplus's Certificate of Registration (**COR**).[50] Thus, he prayed for the rendition of summary judgment.

Despite due notice[51], petitioner failed to file a comment on the said motion.[52] Accordingly, the motion was submitted for resolution.[53]

In a Resolution dated 14 September 2022[54], the Third Division granted respondent's Motion for Summary Judgment. In so ruling, it declared that there is no genuine issue on the material facts relating to the following: (1) prescription of collection; (2) RO's want of authority to conduct an audit on respondent's books; and (3) the lack of jurisdiction over a taxpayer who is not named in the LOA.

For the issue of prescription (on petitioner's right to collect), the Third Division noted that petitioner admitted in the JSF the genuineness and due execution of the LOA, FLD, Protest Letter (by way of a Request

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47 See Manifestation with Omnibus Motion (To Defer Hearing or For Extension to File Judicial Affidavit of ICPA), id., pp. 169-171; Urgent Omnibus Motion (Motion for Extension to file Judicial Affidavit, for Marking of Exhibits, to Defer the Designation of the ICP[A]), id., pp. 191-193.

48 Id., pp. 204-213.

49 See Par. 7 of the Motion for Summary Judgment, id., p. 208.

50 See Par. 12, id., p. 209; Par. 17, id., p. 211.

51 See Resolution dated 24 March 2022, id., p. 249.

52 See Records Verification dated 28 April 2022, id., p. 256.

53 See Resolution dated 05 May 2022, id., p. 258.

54 Id., pp. 260-266.

for Reconsideration) to the FLD, FDDA, Request for Reconsideration to the FDDA and the Final Decision. Moreover, petitioner also admitted that the FLD was served on respondent on 14 November 2014, while the Final Decision (which denied the Request for Reconsideration) to the FDDA) was served on 21 May 2020.

Likewise, as for the other two (2) matters, the Third Division gave great weight to the parties' admission of the genuineness and due execution of the relevant documents (enumerated above) and, thus, ruled that the facts thereon are *undisputed.*

With the foregoing admissions, the Third Division agreed that only questions of law remained for its resolution. Consequently, the case was submitted for decision.[55] It held:

> ...
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> From the foregoing, the issues left for the Court's resolution involve pure questions of law on: (1) whether [petitioner's] right to collect the subject assessed taxes have already prescribed; (2) whether the continuation of the audit investigation by a person not named in the LOA would render an assessment void; and (3) whether an assessment is rendered invalid by the act of examining the books of accounts of a taxpayer not identified in the LOA.
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> In sum, the Court finds sufficient basis to grant [respondent's] Motion for Summary Judgment considering that there are no genuine issues on material facts pertaining to the validity of the assessment. In the absence of genuine issues with respect to material facts on the validity of the assessment, [respondent] is entitled to judgment as a matter of law.
>
> **WHEREFORE**, premises considered, [respondent's] Motion for Summary Judgment is hereby **GRANTED**. Accordingly, the Petition for Review filed by [respondent] Jimmy Kho is hereby submitted for decision.[56]
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> ...

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55 See dispositive portion of the Resolution dated 14 September 2022, id., p. 266.
56 Id.

In the *interim*, pursuant to Administrative Circular No. 01-2022[57], reorganizing the divisions of the Court of Tax Appeals (**CTA**), the case stayed with the Special Third Division.[58]

Still later, or on 14 September 2023, the Special Third Division promulgated its assailed Decision[59] cancelling and setting aside petitioner's deficiency VAT assessment against respondent. The dispositive portion reads:

> ...
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> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Partial Review is **GRANTED.** Accordingly, the deficiency VAT assessment issued against [respondent] for the taxable period from 1 January 2012 to 30 June 2012, in the aggregate amount of twenty[-]eight million four hundred forty thousand seven hundred ninety[-]five and 24/100 pesos (Php28,440,795.24) inclusive of interest and compromise penalty contained in the Denial Letter and WDL is hereby **CANCELLED** and **SET ASIDE.** Consequently, [petitioner] is **ENJOINED** and **PROHIBITED** from collecting the said amount against [respondent] and Winplus Sales Center, Inc.
>
> **SO ORDERED.**
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> ...

In resolving respondent's prior petition, the Special Third Division ruled that it has jurisdiction over the case. It followed respondent's allegation in the prior petition that the Final Decision was received on 04 July 2020. Counting thirty (30) days therefrom, respondent had until 03 August 2020 to file the judicial appeal. As the prior petition was filed on 28 July 2020, the same was then timely filed.[60]

As for the substantive aspect, the Special Third Division declared that the BIR officers who conducted the audit or examination of respondent's books of account were validly authorized with an LOA. It was through the efforts of RO Pagulayan and GS Bautista that the deficiency VAT assessment (as contained in the PAN and FLD) were made against respondent. The Special Third Division further elaborated that RO Torio and GS Cruz were only assigned to resolve respondent's

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57 Reorganizing the Second and Third Divisions of the Court.
58 The same composition with the exclusion of Associate Justice Erlina P. Uy who retired.
59 Supra at note 4.
60 Last Paragraph in the Decision of 14 September 2023, Division Docket, p. 273.

Protest (to the FLD) and not to conduct another round of audit. Hence, on that aspect, respondent's right to due process was not violated.

The Special Third Division also ruled that petitioner's right to collect the deficiency taxes had already prescribed. Citing the case of *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.*[61] (**QL Development**), in cases of assessments issued within the three (3)-year period (such as the instant case), petitioner only had three (3) years to collect the taxes thereon. Here, the three (3)-year prescriptive period started to run from the time the FLD was released, mailed or sent to respondent, *i.e.*, on 06 November 2014. Since respondent's Protest against the FLD is only a Request for Reconsideration, it did not toll the running of the prescriptive period (pursuant to Section 223[62] of the NIRC of 1997, as amended). Thus, counting three (3) years from 06 November 2014, petitioner had until 06 November 2017 to initiate the collection efforts. However, as petitioner only issued the WDL to respondent on 04 December 2020, the same was already beyond the allowed period to collect. Hence, prescription had set in.

Lastly, the Special Third Division declared that the LOA only authorized the audit of respondent's books of account. With this, the assessment made in relation to Winplus, a separate juridical entity with its own TIN[63] registered with the BIR, is inevitably null and void.

Expectedly, petitioner filed his or her Motion for Reconsideration[64] (**MR**) on 03 November 2023, stating that the Special Third Division erred: (1) in not dismissing respondent's petition; and (2) in not dismissing the same for lack of jurisdiction since it was filed out of time. According to petitioner, respondent already admitted that he received the Final Decision on 21 May 2020, yet it filed the petition only on 28 July 2020, or after the lapse of the 30-day period to appeal.[65] Unfortunately, the Special Third Division did not find any significant arguments to refute the conclusions reached in the assailed Decision. Thus, it denied relief to petitioner.[66]

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[61] G.R. No. 258947, 29 March 2022.
[62] **SEC. 223.** *Suspension of Running of Statute of Limitations.*
[63] See Annex "J", Division Docket, p. 77.
[64] Id., pp. 284-288.
[65] Id.
[66] Supra at note 5.

In disagreement with the Special Third Division's action, petitioner filed his or her Petition for Review[67] before the Court *En Banc* on 01 March 2024. After respondent filed his Comment or Opposition[68] on 26 April 2024, the case was referred to the Philippine Mediation Center - Court of Tax Appeals (**PMC-CTA**) for mediation.[69] Unfortunately, the parties opted to not proceed with the conciliation meeting at the PMC.[70] Subsequently, the instant petition was submitted for decision.[71]

ISSUE

Before Us, the main issue for resolution is —

WHETHER THE SPECIAL THIRD DIVISION ERRED IN NOT DISMISSING THE PETITION FOR REVIEW FILED BY RESPONDENT JIMMY KHO FOR FAILURE TO DISPROVE THE VALIDITY AND ENFORCEABILITY OF THE SUBJECT ASSESSMENT.

In support of the above issue, petitioner contends that tax assessments enjoy the presumption of correctness. However, as respondent failed to refute the deficiency VAT assessment, the same shall stand against him.

Petitioner also avers that respondent's prior petition was filed out of time. He or she reiterated that respondent had already categorically admitted the existence and genuineness of the Final Decision dated 21 May 2020 and that it was served on him. With the admission, the 30-day period should be reckoned from the said date. As respondent only filed the prior petition on 28 July 2020, the same was already beyond the reglementary period to file it.

Respondent, on the other hand, counters that the arguments in the instant petition are mere reiterations of those that the Special Third Division had passed upon and resolved in the assailed Decision and assailed Resolution. Moreover, even assuming that the deficiency VAT

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67 Supra at note 1.
68 See Comment/Opposition (To Petition for Review), *rollo*, pp. 35-39.
69 See Resolution dated 23 May 2024, id., p. 43.
70 See PMC-CTA Form 6 – No Agreement to Mediate dated 01 August 2024, id., p. 44.
71 See Resolution dated 19 September 2024, id., p. 45.

assessment is valid, petitioner failed to collect the said taxes within the three (3)-year prescriptive period. Hence, petitioner's right to collect had prescribed.

RULING OF THE COURT *EN BANC*

Before going into the merits of the case, We deem it propitious to first determine whether the Court *En Banc* has jurisdiction over the present petition.

THE COURT *EN BANC* HAS JURISDICTION OVER THE PRESENT PETITION.

The Special Third Division issued the assailed Resolution[72] denying petitioner's MR on 08 January 2024. Petitioner, through the Office of the Solicitor General (**OSG**), received the said assailed Resolution on 01 February 2024.[73]

Under Section 2(a)(1)[74], Rule 4 in relation to Section 3(b)[75], Rule 8 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), petitioner had fifteen (15) days from 01 February 2024, or until 16 February 2024, within which to file an appeal before this Court. On **14 February 2024**[76], petitioner requested an additional 15 days to file the petition[77], hence, he or she had until **01 March 2024**[78] to file it. Accordingly, within the

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72 Supra at note 5.

73 See Notice of Resolution dated 18 January 2024, Division Docket, p. 297.

74 **SEC. 2**. *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.] (Emphasis supplied)

75 **SEC. 3**. *Who may appeal; period to file petition.* — ...
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

76 Registered mail was posted on 14 February 2024, *rollo*, pp. 1 and 4.

77 See Motion for Extension of Time to file Petition for Review, id., pp. 1-3.

78 See Resolution dated 27 February 2024, id., p. 5.

allowed extended period, petitioner timely filed this petition on **01 March 2024**.[79]

Given that the Court *En Banc* has jurisdiction over the present petition, We shall now proceed to discuss the merits thereof.

As earlier stated, petitioner anchors his or her bid to reverse the Special Third Division's action on two grounds: (1) the assessment against respondent was valid and proper; and (2) respondent's prior petition with the Court in Division was filed out time, hence the Court failed to acquire jurisdiction over the same.

For an orderly discussion, We shall first thresh out the issue on the timeliness of the filing of respondent's prior petition with the Court in Division and whether jurisdiction was validly acquired.

THE PRIOR PETITION FOR REVIEW WAS FILED ON TIME.

Petitioner vehemently insists that the prior petition was filed out of time. Mainly anchoring on the parties' stipulation in the JSF, respondent averred that there was an admission that the Final Decision was served on respondent on 21 May 2020. Counting 30 days from such date, petitioner argues that respondent should have filed the prior petition on or before 20 June 2020. Thus, the prior petition filed only on 28 July 2020 was already time barred.

We disagree.

The CTA's jurisdiction over disputed assessment is conferred by a statute. Section 7 of RA 1125[80] as amended by RA 9282[81] provides for the exclusive jurisdiction of the CTA over decisions of the CIR on disputed assessments –

79 Supra at note 1.
80 AN ACT CREATING THE COURT OF TAX APPEALS.
81 Supra at note 3.

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

Relative thereto, Section 11 of the same law provides for the prescribed period to appeal the CIR's decision before this Court, *viz* –

> ...
> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> **Appeal shall be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days from the receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon.[82]
>
> ...

From the foregoing, it is clear that the CTA's jurisdiction over disputed assessment shall attach when a petition for review is filed within 30 days from the <u>**receipt**</u> of the decision or ruling of the CIR.

In the case at bar, respondent's prior petition alleged that he received the Final Decision on <u>04 July 2020</u>. He declared –

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82 Emphasis supplied.

...

8. After 4 long years, [**petitioner**] **issued a** [FINAL] **DECISION received by** [**respondent**] **on July 4, 2020.**

...

18. **On July 4, 2020,** [**respondent**] **received the subject** [FINAL] **DECISION** denying his Request for Reconsideration...

...

20.2 On **July 4 2020,** [**respondent**] **received the** [FINAL] **DECISION** denying his protest dated May 21, 2020.

...

24. Said protest filed on October 1, 2015 was only resolved via subject [FINAL] **DECISION received last July 4, 2020.**

...

27. To summarize, the FLD was received on November 14, 2014. [Petitioner] therefore had until November 14, 2019 to collect this. **The** [FINAL] **DECISION over the PROTEST** was issued on May 21, 2020 and **received on July 4, 2020.** Both these dates were issued already beyond the 5-year period to collect. [83]

...

Although respondent initially failed to attach to his prior petition the proof of his supposed receipt of the Final Decision on 04 July 2020; he, nevertheless, immediately forwarded a Certification[84] and the attachments[85] thereto, after being directed by the Third Division to show proof of such receipt. The Certification showed that the Final Decision was delivered at respondent's address on 03 July 2020 and was received by security guard Villanueva.

Indisputably, the Certification that respondent submitted is a public document. Section 19(a), Rule 132 of the Rules on Evidence, as amended[86], defines one type of a public document as a <u>written official act</u>, or record of the sovereign authority, official bodies and tribunals, and <u>public officers</u>, whether of the Philippines, or of a foreign country. Relative thereto, Section 23 of the same Rule provides that documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated.

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83 Supra at note 7, pp. 7, 9-10, 13 and 23; Citations omitted, emphasis in the original and supplied.
84 Supra at note 34.
85 Supra at note 35.
86 A.M. No. 19-08-15-SC.

Here, the Certification[87] from the Quezon City Central Post Office was issued by Postmaster VI Cecilia T. Tabares. It states –

> ...
>
> This is to certify that, as per available records of this Office **Registered [L]etter [N]o. RE 158 141 194 ZZ** posted on 23 June 2020 and addressed to **JIMMY SO KHO** at **148 Bayani Street, Araneta Subd. Brgy Doña, Quezon City** was delivered by Acting Letter Carrier Mark Jess Climosa on **July 03, 2020** and duly received by **S/G L. VILLANUEVA**[88]
>
> ...

The Certification, being a public document, is thus a *prima facie* evidence of the facts stated therein.

On the other hand, petitioner alleged in his or her then Answer to respondent's prior petition, MR and the present petition that the Final Decision was served on respondent on 21 May 2020. Petitioner hinges this assertion plainly on the supposed admission of respondent that he was served with the Final Decision on the said date.

While it is true that the parties made a stipulation in the JSF, it must be noted that respondent only admitted the "service" of the Final Decision on him on 21 May 2020 –

> ...
>
> 2.2 **The [FINAL] DECISION denying his protest was served on [respondent] on May 21, 2020**[.]
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> ...

Under Section 2, Rule 13 of the Rules of Civil Procedure, as amended[89], "service" is defined as follows:

> ...
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> **Service is the act of providing a party with a copy of the pleading or any other court submission.** If a party has appeared by counsel, service upon such party shall be made upon his or her counsel, unless service upon the party and the party's counsel is ordered by the court. Where one counsel appears for several parties,

87 Annex "B", supra at note 34.
88 Emphasis in the original.
89 A.M. No. 19-10-20-SC.

> such counsel shall only be entitled to one copy of any paper served by the opposite side.[90]
>
> ...

In the case of *Francis C. Servantes v. City Service Corporation and Valentin Prieto, Jr.*[91], the Supreme Court also proffered a similar definition, *viz* –

> ...
>
> In practice, **service means the delivery or communication of a pleading, notice or some other paper in a case, to the opposite party so as to charge him with receipt of it and subject him to its legal effect**. The purpose of the rules on service is to make sure that the party being served with the pleading, order or judgment is duly informed of the same so that he can take steps to protect his interests; *i.e.*, enable a party to file an appeal or apply for other appropriate reliefs before the decision becomes final.
>
> ...

Black Law's Dictionary also defined "service" as the exhibition or delivery of a writ, summons and complaint, criminal summons, notice, order, *etc.* by an authorized person, to a person who is thereby officially notified of some action or proceeding on which he or she is concerned, and is thereby advised or warned of some action or step which he is commanded to take or to forbear.[92]

From the foregoing, "service" equates to "delivery" and *not* receipt. Thus, when the parties stipulated on the service of the Final Decision (on 21 May 2020), We could only thus understand and treat the same as "service". Pursuant to the afore-quoted legal parameters, the Court *En Banc* could not stretch the meaning of "service" to actual "receipt."

Furthermore, even when respondent used the stipulation in the JSF to move for summary judgment, he was consistent in claiming that the Final Decision was only served on him on 21 May 2020. He *never* claimed that he also "received" the Final Decision on the said date. Excerpts of the relevant parts in the Motion for Summary Judgment tell –

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90 Emphasis supplied and italics in the original text.

91 G.R. No. 191616, 18 April 2016; Citation omitted and emphasis supplied.

92 Black Law's Dictionary (6th ed.).

> ...
>
> 7. That the FLD was served on November 14, 2014 and the denial of [respondent's] protest was served on May 21, 2020, the right to collect had already prescribed half a year earlier on November 14, 2019. The court may therefore render summary judgment because by virtue of the stipulations, there is no question of fact, and the law may be properly applied on the matter.
>
> ...
>
> 9. Clearly, in this case there is no "genuine issue" necessitating the presentation of evidence over a question of fact. **Both parties expressly stipulated that the FLD was served upon [respondent] on November 14, 2014, and the denial of its protest was served on May 21, 2020. Thus, the Hon. Court may validly rule upon the prescription of the collection of the subject tax in this case.**[93]
>
> ...

Interestingly, although respondent had insisted that he received the Final Decision on 04 July 2020 while, at the same time, stipulating that the service of the same was on 21 May 2020, petitioner never raised an issue that there still existed a genuine issue of fact (as to the Final Decision's receipt). Based on the records, no opposition was forwarded to respondent's Motion for Summary Judgment before the Court in Division.

With the Certification's *prima facie* proof of delivery and the absence of any genuine issue of fact on the service of the Final Decision and the actual receipt, the Special Third Division did not err in determining that respondent received the Final Decision on 04 July 2020 and, thus, reckoned the 30-day prescriptive period to appeal therefrom. As aptly ruled in the assailed Decision, the filing of the prior Petition for Review on 28 July 2020 was well within the reglementary period of 30 days from the receipt of CIR's decision pursuant to Section 11[94] of RA 9282.[95] Clearly, the Court in Division had jurisdiction over the case.

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93 Supra at note 48, pp. 205 and 208; Emphasis and underscoring in the original text and supplied.

94 **Section 9**. Section 11 of the same Act is hereby amended to read as follows:
SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

95 Supra at note 3.

PETITIONER'S RIGHT TO COLLECT THE TAXES HAD ALREADY PRESCRIBED.

Respondent avers that even if the deficiency VAT assessment is valid, petitioner's right to collect the taxes thereon had prescribed.

We agree.

In *QL Development*[96], as cited in the assailed Decision, the Supreme Court clarified that in cases of assessments issued within the three (3)-year prescriptive period, CIR has another three (3) years to collect the taxes, *viz* –

> ...
>
> Section 203 of the NIRC, as amended, which provides for the prescriptive period in the assessment and collection of internal revenue taxes, 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.
>
> In *CIR v. United Salvage and Towage (Phils.), Inc.*, the Court held that in cases of assessments issued within the three-year ordinary period, the CIR has another three years within which to collect taxes, thus:
>
> > The statute of limitations on assessment and collection of national internal revenue taxes was shortened from five (5) years to three (3) years by virtue of Batas Pambansa Blg. 700. Thus, petitioner has three (3) years from the date of actual filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment. However, **when it validly issues an assessment within the three (3)-year period, it has another three (3) years within which**

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96 Supra at note 61; Citations omitted, italics and emphasis in the original.

> **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.**
>
> Applying the foregoing ruling, the Court holds that the CTA Division erred when it applied the five-year period to collect taxes. The five-year period for collection of taxes only applies to assessments issued within the extraordinary period of 10 years in cases of false or fraudulent return or failure to file a return. ...
>
> ...
>
> Here, given that the subject assessment was issued within the three-year ordinary prescriptive period to assess, the CIR had another three years to initiate the collection of taxes by distraint or levy or court proceeding. Accordingly, since the FAN/FLD was mailed on December 12, 2014, the CIR had another three years reckoned from said date, or until December 12, 2017, to enforce collection of the assessed deficiency taxes. Verily, prescription had already set in when the CIR initiated its collection efforts only in 2020. The Court also notes that regardless of which period to apply, *i.e.*, five years as determined by the CTA Division or three years, the CIR's collection efforts were, as they are, barred by prescription.
>
> ...

Here, respondent, through Ladiao, received the FLD, Details of Discrepancies and ANs on **14 November 2014**, as evidenced by the handwritten notations at the lower right portion of the notices[97] and RO Pagulayan's Affidavit of Service of Preliminary Assessment Notice/Final Assessment Notice dated 18 November 2014.[98] Counting three (3) years from the said date, petitioner had until **14 November 2017** to initiate a collection effort, otherwise the same shall be barred by prescription.

Although respondent filed a Protest by way of a Request for Reconsideration to the FDDA, the same did not toll the running of the prescriptive period. In *Commissioner of Internal Revenue v. Philippine Global Communication, Inc.*[99], the Supreme Court consistently ruled that only a request for reinvestigation granted by the CIR himself or herself could suspend the running of the prescriptive period. The relevant portions state –

[97] Supra at note 20.
[98] Id.
[99] G.R. No. 167146, 31 October 2006; Citations omitted, italics and emphasis in the original text and supplied.

...

Revenue Regulations No. 12-85, the Procedure Governing Administrative Protests of Assessment of the Bureau of Internal Revenue, issued on 27 November 1985, defines the two types of protest, the request for reconsideration and the request for reinvestigation, and distinguishes one from the other in this manner:

> Section 6. Protest. — The taxpayer may protest administratively an assessment by filing a written request for reconsideration or reinvestigation specifying the following particulars:
>
> xxx xxx xxx
>
> For the purpose of protest herein —
>
> (a) *Request for reconsideration — refers to a plea for a 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.*
>
> (b) *Request for reinvestigation —* refers to a plea for re-evaluation of an assessment on the basis of newly-discovered evidence or additional evidence that a taxpayer intends to present in the investigation. It may also involve a question of fact or law or both.

The main difference between these two types of protests lies in the records or evidence to be examined by internal revenue officers, whether these are existing records or newly discovered or additional evidence. **A re-evaluation of existing records which results from a request for reconsideration does not toll the running of the prescription period for the collection of an assessed tax. Section 271 distinctly limits the suspension of the running of the statute of limitations to instances when reinvestigation is requested by a taxpayer and is granted by the CIR.** The Court provided a clear-cut rationale in the case of *Bank of the Philippine Islands v. Commissioner of Internal Revenue* explaining why a request for reinvestigation, and not a request for reconsideration, interrupts the running of the statute of limitations on the collection of the assessed tax:

> Undoubtedly, a reinvestigation, which entails the reception and evaluation of additional evidence, will take more time than a reconsideration of a tax assessment, which will be limited to the evidence already at hand; this justifies why the former can suspend the running of the statute of limitations on collection of the assessed tax, while the latter cannot.

...

As the three (3)-year prescriptive period to collect was not suspended, and petitioner belatedly instituted the collection of the subject taxes on 04 December 2020 (when the WDL was served to respondent), evidently, more than three (3) years had lapsed from when the CIR should have collected the deficiency taxes. Indubitably, the collection efforts are already barred by prescription.

WHEREFORE, with the foregoing, petitioner Commissioner of Internal Revenue's Petition for Review filed on 01 March 2024 is **DENIED** for lack of merit. Accordingly, the assailed Decision dated 14 September 2023 and assailed Resolution dated 08 January 2024, of the Special Third Division in CTA Case No. 10308, entitled *"Jimmy Kho v. Commissioner of Internal Revenue"*, are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

With Concurring Opinion
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice

With Concurring Opinion
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

x - x

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2877** (CTA CASE NO. 10308)
- versus -	Present: **RINGPIS-LIBAN,** *Acting P.J.,* **MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
JIMMY KHO, Respondent.	Promulgated: NOV 18 2025

x- -x

CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

With due respect, I concur with the *ponencia* that Petitioner's right to collect had already prescribed.

After a second hard look, I am of the opinion however that the regular prescriptive period to collect under Section 222 of the National Internal Revenue Code ("NIRC") of 1997, as amended, is five (5) years rather three (3) years.

The taxable year under review in *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*[1], which was cited in the case of *Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.*[2],

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[1] G.R. No. 197515, July 02, 2014.

[2] G.R. No. 258947, March 29, 2022.

pertains to 1992 and 1994. During that time, the NIRC of 1977[3], as amended by Batas Pambansa ("BP") Blg. 700[4] applies.

Before the amendment, the prescriptive period to collect under Section 319 of the NIRC of 1977 was five (5) years, *viz*:

> "SECTION 319. *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 a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> (b) Where before the expiration of the time prescribed in the preceding section for the assessment of the tax, both the Commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
>
> (c) Where the assessment of any internal revenue tax has been made within the period of limitation above-prescribed, such tax may be collected by distraint or levy or by a proceeding in court, but only if began (1) **within five years after assessment** of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer **before the expiration of such five-year period**. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."[5]

BP Blg. 700 shortened the period from five (5) years to three (3) years:

> "SECTION 2. Section 319 of the same Code is hereby amended to read as follows:
>
> > Sec. 319. 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 a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be

[3] Presidential Decree No. 1158, A Decree to Consolidate and Codify all the Internal Revenue Laws of the Philippines, June 03, 1977.

[4] An Act Amending Sections 318 and 319 of the National Internal Revenue Code, as Amended, so as to Reduce the Period of Limitation for Assessment of Internal Revenue Taxes from Five to Three (3) Years, April 05, 1984.

[5] *Emphasis supplied.*

begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(b) If before the expiration of the time prescribed in the preceding section for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(c) Any internal revenue tax which has been assessed within the period of limitation above-prescribed may be collected **within three years following the assessment** of the tax.

(d) Any internal revenue tax which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing **before the expiration of the three-year period**. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) Provided, however, That nothing in the immediately preceding section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax returns filed in accordance with the provisions of any tax amnesty law or decree."[6]

When the NIRC of 1997[7] was promulgated, Section 319 became Section 222. As currently drafted, the prescriptive period to collect is now restored to five (5) years, to wit:

"SECTION 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

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6 *Emphasis supplied.*

7 Republic Act No. 8424, An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes, December 11, 1997.

> or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> (c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court **within five (5) years following the assessment** of the tax.
>
> (d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing **before the expiration of the five (5)-year period**. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.
>
> (e) Provided, however, That nothing in the immediately preceding Section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree."[8]

In the case at bar, records show that Respondent received the FLD on November 14, 2014. Petitioner has five (5) years under Section 222 of the NIRC of 1997, as amended, or until November 14, 2019 to collect Respondent's alleged VAT deficiency through distraint, levy or a collection suit instituted before the Court of Tax Appeals. However, Petitioner took no action to collect from Respondent within the said 5-year period. Respondent received the Warrant of Distraint and/or Levy No. RR 7A-11-23-2020-0915 only on December 04, 2020, or more than a year after the end of the 5-year prescribed period.

From all the foregoing, I vote to deny the instant petition for lack of merit and affirm the Decision dated September 14, 2023 and Resolution dated January 08, 2024 of the Special Third Division in CTA Case No. 10308.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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8 *Emphasis supplied.*

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2877** *(CTA Case No. 10308)*
-versus-	Present: **RINGPIS-LIBAN,** *Acting P.J.* **MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
JIMMY KHO, *Respondent.*	Promulgated: NOV 18 2025 4:27

x -- x

CONCURRING OPINION

MODESTO-SAN PEDRO, J.:

I concur with the *ponencia* of the present Decision and the denial of the instant Petition for Review. In particular, I concur that the Commissioner of Internal Revenue ("CIR") has *three* years after the issuance of an assessment within which to collect deficiency taxes and disagree with the position of my esteemed colleague, Hon. Associate Justice Ma. Belen M. Ringpis-Liban, who, in her Concurring Opinion to the present Decision, held that the CIR has five years from the issuance of an assessment to collect deficiency taxes.

Hon. Associate Justice Ringpis-Liban's position here is primarily based on *Sections 222(c) and (d) of the National Internal Revenue Code of 1997, as amended* ("*NIRC*"). I reproduce subsections *(a) to (d)*, below:

> SEC. 222. ***Exceptions*** as to Period of Limitations of Assessment and Collection of Taxes.—

(a) *In the case of a false or fraudulent return with intent to evade tax or of failure to file a return*, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That *in a fraud assessment* which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(b) *If* before the expiration of the time prescribed in Section 203 for the assessment of the tax, *both the Commissioner and the taxpayer have agreed in writing to its assessment after such time*, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

(c) *Any internal revenue tax which has been assessed within the period of limitation* ***as prescribed in paragraph (a) hereof*** may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

(d) *Any internal revenue tax, which has been assessed within the period agreed upon* ***as provided in paragraph (b) hereof*** may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. . . .

. . . .

(Emphasis and italics, supplied.)

Notably, *Section 222 of the NIRC* only identifies a five-year period in subsections *(c) and (d)*. These subsections, however, include specific conditions: *(c)* is only applicable in cases of false or fraudulent returns, as covered in *(a)*, while *(d)* is only applicable when the CIR and the taxpayer has previously agreed to extend the period for assessment, as covered in *(b)*. Indeed, subsections *(c) and (d)* begin with these conditions before mentioning the five-year period.

This is further bolstered by the fact that *Section 222*'s title presents the provision in its entirety as listing *exceptions* to the general or regular rules regarding the CIR's periods to assess and collect. Thus, the periods identified here must be understood as *special* periods or *exceptions* which are only applicable under certain circumstances.

From this, we can conclude that the five-year period mentioned in *Section 222* is applicable *only* when either the case involves false or fraudulent returns or when the CIR and the taxpayer has previously agreed to extend the period for assessment.

We *cannot*, however, conclude that the five-year period is applicable to cases which do not fall under the aforementioned categories, such as the case at bar. To do so would generalize *Sections 222(c) and (d) of the NIRC* beyond their coverage. It would ignore the clear conditions written into the law itself and ignore that these constitute *special* rules and exceptions.

With this in mind, I reiterate my use of *Commissioner of Internal Revenue v. Court of Tax Appeals and QL Development, Inc.*[1] in the assailed Decision to hold that, under regular circumstances, the CIR has only three years from assessment within which to collect deficiency taxes.

I add that the disagreement seems to be rooted in the *NIRC*'s lack of a clear-cut period for collection under regular circumstances. While *Section 203 of the NIRC* is entitled "Period of Limitation Upon Assessment *and Collection*," the actual body of the provision lacks an explicit identification of a period for collection under regular circumstances. And as discussed, *Section 222 of the NIRC* provides exceptions which, by definition, cannot be applied as general rules. The result is a gap in the law itself. Said gap can be filled in via reference to jurisprudence, by it can still result in ambiguity and disagreements, as here.

As such, I also believe that the issue should be referred to legislation. A further amendment to the *NIRC* to include a clear, explicit, and unambiguous period for the collection of deficiency taxes would undoubtedly benefit taxpayers, the Bureau of Internal Revenue, and the courts.

All told, I **CONCUR** with the current *ponencia*.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[1] G.R. No. 258947, March 29, 2022.