REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2566** (CTA CASE NO. 9409)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
PHILUSA CORPORATION, *Respondent.*	Promulgated: SEP 13 2023 3:05 p.m.

x - x

DECISION

RINGPIS-LIBAN, *J.:*

The Case

Before the Court *En Banc* is the Petition for Review filed by the Commissioner of Internal Revenue (CIR) seeking the reversal of the May 31, 2021 Decision[1] and the December 7, 2021 Resolution[2] of the First Division.

The dispositive portion of the assailed decision states:

> "In view of the finding that the subject tax assessments are void, the Court no longer finds it necessary to discuss the other arguments raised by the parties in this case.

---

[1] *Rollo,* pp. 31-55.
[2] *Id.*, pp. 57-63.

> **WHEREFORE**, in light of the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, the undated FLD and FANs, assessing petitioner for deficiency IT, VAT, EWT and compromise penalty, for calendar year 2009, in the aggregate amount of ₱902,560,270.47 are **CANCELLED** and **SET ASIDE**.
>
> Furthermore, the undated *FDDA* issued by respondent demanding the payment of deficiency IT, VAT, EWT and compromise penalty in the aggregate amount ₱182,629,162.63 is **REVERSED** and **SET ASIDE**.
>
> Respondent, his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from taking any further action against petitioner arising from the undated FLD, FANs, and FDDA.
>
> **SO ORDERED**."

The dispositive portion of the assailed resolution reads:

> "**WHEREFORE**, respondent's *Motion for Reconsideration (re: Decision dated 31 May 2021)* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

The Parties

Petitioner is the duly appointed CIR vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office including, *inter alia*, the power to decide disputed assessments and to cancel and abate tax liabilities, pursuant to the pertinent provisions of the 1997 National Internal Revenue Code (1997 NIRC), as amended, and its implementing rules and regulations. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.[3]

Respondent taxpayer, Philusa Corporation, is a corporation duly organized and existing under Philippine laws, with registered office address at 28 Shaw Boulevard, corner Pioneer Street, Pasig City. It is a registered taxpayer of the BIR-Large Taxpayers (LT) Service, as shown by its Certificate of Registration dated February 18, 1997, with Taxpayer's Identification No. 000- 281-014-000.[4]

The Facts

Proceedings Before the BIR

On May 18, 2010, the taxpayer received a *Letter of Authority* (LOA) with Serial Number LOA-116-2010-00000094 dated May 14, 2010 from the BIR

[3] May 31, 2021 Decision, *Rollo*, p. 32.
[4] *Id.*, p. 31.

authorizing the examination of its books of accounts and other financial records for all internal revenue taxes for Calendar Year (CY) 2009. The LOA authorized Revenue Officers (ROs) Jan Andre Abellera, Gilquin Tolentino, Amelia Molinos, Pearl Marie Sta. Maria, Ruby Anne Oradia, Johnro Galicia, and Group Supervisor Edgar Espiritu of the LT Regular Audit 1 to conduct the examination.[5]

On November 12, 2012, the taxpayer executed a document entitled *Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code* (1st Waiver) in connection with the investigation of all its internal revenue tax liabilities for CY 2009. The 1st Waiver was accepted by the Officer-in-Charge (OIC)-Assistant Commissioner (ACIR) Alfredo V. Misajon of the BIR - LT Service on November 27, 2012, which indicated that it has extended the period of tax assessment and/or collection until June 30, 2013.[6]

Another waiver (2nd Waiver) was executed by the taxpayer on May 21, 2013, which was accepted also by OIC-ACIR Misajon on May 31, 2013 and indicated that the period of tax assessment and/or collection is further extended until December 31, 2013.[7]

On November 7, 2013, the taxpayer received a *Preliminary Assessment Notice* (PAN) dated October 23, 2013 with attached *Details of Discrepancies* indicating a proposed deficiency income tax (IT), value-added tax (VAT) and expanded withholding tax (EWT) assessments for CY 2009, in the aggregate amount of PhP868,311,285.37.

On November 26, 2013, the taxpayer filed its protest to the PAN.[8]

A third waiver was executed by the taxpayer on November 26, 2013 and accepted by OIC-ACIR Misajon on November 28, 2013. It indicated that the period of tax assessment and/or collection was extended until June 30, 2014.[9]

On December 21, 2013, the taxpayer received a *Formal Letter of Demand* (FLD) with attached *Details of Discrepancies and Audit Result/Assessment Notices* (FANs). In the FLD, the CIR ordered the taxpayer to settle the alleged deficiency IT, VAT, and EWT in the total amount of PhP902,560,270.47.[10]

In its letter dated January 20, 2014, which was also filed with the BIR on even date, the taxpayer protested the findings in the FLD and FANs.[11]

On July 4, 2016, the taxpayer received a *Final Decision on Disputed Assessment* (FDDA) with attached Details of Discrepancies and FANs, where the CIR

---

[5] *Id.*, p. 32.
[6] *Id.*
[7] *Id.*, pp. 32-33.
[8] *Id.*, p. 33.
[9] *Id.*
[10] *Id.*
[11] *Id.*

ordered the payment the alleged deficiency IT, VAT, and EWT for CY 2009 in the aggregate amount of PhP182,629,162.63.[12]

Proceedings Before the Court of Tax Appeals (CTA) Third and First Divisions

Aggrieved, the taxpayer filed a *Petition for Review* with the court *a quo* on August 2, 2016.[13]

On August 26, 2016, however, the taxpayer filed a *Motion for Leave to File Supplemental Petition for Review*, with attached *Supplemental Petition for Review*. No comment on the motion was filed by the CIR.[14]

On September 7, 2016, the CIR filed a *Motion to Admit Answer* with attached *Answer*, which interposed the following special and affirmative defenses:

1. The waivers, duly executed by the taxpayer's duly authorized representative, extended the period to assess it;

2. The taxpayer is liable for deficiency IT;

3. The taxpayer is liable for deficiency VAT;

4. The taxpayer is liable for deficiency EWT; and,

5. The compromise penalty was included as a suggestion for the taxpayer to avoid criminal prosecution.[15]

The CIR filed his *Supplemental Answer* on September 19, 2016, specifically denying paragraphs 1 to 12 of the taxpayer's *Supplemental Petition for Review*.[16]

On October 6, 2016, the taxpayer filed its *Comment (Re: Motion to Admit Answer) (With Motion to Declare Respondent in Default)*, while the CIR posted his *Reply to Comment to Respondent's Motion to Admit Answer* on October 14, 2016.[17]

In a Resolution dated November 23, 2016, the court *a quo*: (1) Granted the taxpayer's *Motion for Leave to File Supplemental Petition for Review* with attached *Supplemental Petition for Review* filed on August 26, 2016; (2) Admitted the attached *Supplemental Petition for Review* to form part of the records of the case; (3) Granted the CIR's *Motion to Admit Answer*, and, (4) Admitted the attached *Answer* to form part of the records of the case.[18]

---

[12] *Id.*, pp. 33-34.
[13] *Id.*, p. 34.
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*, p. 35.
[18] *Id.*

The CIR's *Pre-Trial Brief* was filed on March 9, 2017, while that of the taxpayer was filed on March 16, 2017. Thereafter, *Pre-Trial Conference* proceeded on March 21, 2017.[19]

In the meantime, the BIR Records were transmitted to the court *a quo* on January 6, 2017.[20]

On May 5, 2017, the parties filed their *Joint Stipulation of Facts and Issues.* Consequently, the court *a quo* issued a *Pre-Trial Order* dated May 15, 2017, which terminated the Pre-Trial Conference.[21]

Trial proceeded.

The taxpayer presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely:

1. Ms. Rowena C. Africa, Finance Manager; and,

2. Michael L. Aguirre, the Court-commissioned Independent Certified Public Accountant (ICPA).[22]

The Report of the ICPA was submitted on July 14, 2017.[23]

On September 7, 2017, the taxpayer filed its *Formal Offer of Evidence (with Motion to Recall Witness)*, without any comment filed by the CIR.[24]

In a Resolution dated October 19, 2017, the court *a quo*: (1) Granted the taxpayer's *Motion to Recall Witness*; (2) Set the case for the recall of witness, Ms. Rowena C. Africa, on February 26, 2018; (3) Directed the taxpayer to submit the Judicial Affidavit of the said witness at least five (5) days before the scheduled hearing; and, (4) Held in abeyance the resolution on the taxpayer's *Formal Offer of Evidence.*[25]

On February 26, 2018, the taxpayer recalled Ms. Africa to the witness stand.[26]

Thereafter, the taxpayer submitted its *Supplemental Formal Offer of Evidence* on March 5, 2018, without a comment from the CIR.[27]

---

[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*, pp. 35-36.
[23] *Id.*, p. 36.
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*

The Court, in its Resolution dated May 18, 2018, admitted the taxpayer's Exhibits, except for Exhibits "P-26-A", "P- 29.1-A", and "P-31-A", as they are not found in the records of the case.[28]

Consequently, on June 11, 2018, the taxpayer filed a *Motion for Reconsideration (Re: Resolution dated May 18, 2018)* without a comment from the CIR.[29]

Pursuant to CTA Administrative Circular No. 02-2018 dated September 18, 2018, which reorganized the three divisions of the CTA, the case was transferred from the CTA Third Division to the First Division.[30]

In a Resolution dated October 1, 2019, the court *a quo*: (1) Granted the taxpayer's *Motion for Reconsideration (Re: Resolution dated May 18, 2018)*; and, (2) Admitted its Exhibits "P-26-A", "P-29.1-A" and "P-31-A", as part of the records of the case.[31]

The CIR, likewise, presented his documentary and testimonial evidence. He offered the sole testimony of Mr. Jan Andre Abellera, a Revenue Officer II of the BIR.[32]

Subsequently, on December 12, 2019, the CIR filed his *Formal Offer of Evidence*, with the taxpayer's *Comment (Re: Respondent's Formal Offer of Evidence)* filed on January 22, 2020. In a Resolution dated February 26, 2020, the court *a quo* admitted the CIR's Exhibits, and directed the parties to submit their respective memorandum within thirty (30) days from receipt of the Resolution.[33]

The taxpayer then filed its *Memorandum* on June 26, 2020, while the CIR's *Memorandum* was filed on July 1, 2020.[34]

On July 23, 2020, the case was submitted for decision.[35]

On May 31, 2021, the court *a quo* issued the assailed Decision, which granted the petition, cancelled the assessments and reversed and set aside the undated FDDA.[36]

On June 17, 2021, the CIR filed a *Motion for Reconsideration (re: Decision dated 31 May 2021)*.

---

[28] *Id.*
[29] *Id.*, pp. 36-37.
[30] *Id.*, p. 37; Order dated September 25, 2018, Division Docket, Vol. 3, p. 1402.
[31] May 31, 2021 Decision, *Rollo*, p. 37.
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Rollo*, p. 54.

In its December 7, 2021 Resolution, the court *a quo* denied the CIR's Motion for Reconsideration for lack of merit.[37]

Hence, the appeal before the Court *En Banc.*

Proceedings Before the CTA En Banc

On January 10, 2022, the CIR filed a *Motion for Extension to File Petition for Review* by registered mail.[38]

On February 2, 2022, the CIR filed a *Petition for Review* before the Court *En Banc* also by registered mail.[39]

On February 21, 2022, the Court *En Banc* issued a *Minute Resolution*, which resolved to consider the CIR's *Motion for Extension to File Petition for Review* as deemed granted.[40]

In a *Resolution* dated March 28, 2022, the Court ordered the CIR to submit an Affidavit of Service and the corresponding registry receipt, as evidence of proper service to the adverse party, within five (5) days from notice.[41] On April 18, 2022, petitioner CIR filed a *Compliance.* [42]

In a *Resolution* dated May 25, 2022, Court noted the CIR's April 18, 2022 *Compliance* but ordered the CIR to submit the original copies of the Affidavit of Service and the registry receipt, within five (5) days from notice.[43] On June 2, 2022, the CIR filed a *Compliance* by submitting an *Affidavit of Service* dated February 2, 2022 and *Registry Receipt* No. RE 534954022ZZ.[44]

On June 15, 2022, the Court issued a *Resolution*, which noted the CIR's June 2, 2022 *Compliance.* The Court also ordered respondent taxpayer to file its comment within ten (10) days from notice.[45]

Accordingly, on June 27, 2022, the taxpayer filed its *Comment (Re: Petition for Review dated January 31, 2022).*[46]

On July 7, 2022, the Court issued a *Resolution*, which referred the parties to the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA).[47]

---

[37] *Rollo*, p. 62.
[38] *Rollo*, pp. 1-4.
[39] *Id.*, pp. 7-25.
[40] *Id.*, p. 65.
[41] *Id.*, pp. 67-70.
[42] *Id.*, pp. 71-72.
[43] *Id.*, pp. 76-77.
[44] *Id.*, pp. 78-79.
[45] *Id.*, pp. 83-84.
[46] *Id.*, pp. 85-96.
[47] *Id.*, pp. 98-99.

However, the PMC-CTA issued a *No Agreement to Mediate* dated August 30, 2022.[48]

In a Resolution dated September 13, 2022, the Court noted the *No Agreement to Mediate* and finally submitted the case for decision.[49]

The Issues

As grounds for its appeal before the Court *En Banc,* the CIR stated that the court *a quo* erred:

1. In ruling that the CIR's right to assess had prescribed on the ground that the waivers executed by the taxpayer were not valid;

2. In ruling on an issue never raised by respondent taxpayer, never joined by the pleadings, never raised during pre-trial and never defined by the court *a quo* in the pre-trial order. Petitioner CIR's right to due process was violated when the court *a quo* ruled to grant the petition on the ground of want of authority of the revenue officers; *and,*

3. Assuming the court a quo may decide the case based on an issue that was never raised by respondent taxpayer, never joined by the pleadings, never raised during pre-trial, never defined by the court *a quo* in the pre-trial order and never tried by the parties, the assessments are still valid and not contrary to law as there was no violation of the taxpayer's right to due process.[50]

The Arguments of the Parties

The CIR's Arguments

Petitioner CIR assails the decision and resolution of the court *a quo* on the grounds that (a) Its right to assess the taxpayer has not yet prescribed;[51] (b) Its basic right to fair play and due process was violated when the court *a quo* ruled on a matter not raised as an issue by the taxpayer in its petition or Pre-Trial Brief, not joined by the parties or defined in the Pre-Trial Order;[52] and, (c) Finally, assuming the court *a quo* may decide the case based on an issue that was never raised by respondent taxpayer, never joined by the pleadings, never raised during pre-trial, never defined by the court *a quo* in the pre-trial order and never tried by

[48] *Id.*, p. 100.
[49] *Id.*, pp. 102-103.
[50] Petition for Review, *Rollo*, pp. 10-11.
[51] *Id., Rollo*, pp. 11-15.
[52] *Id., Rollo*, pp. 15-20.

the parties, the assessments are still valid and not contrary to law as there was no violation of the taxpayer's right to due process.[53]

The Taxpayer's Arguments

Respondent taxpayer asserts that the (a) CIR's right to assess respondent for deficiency income tax, VAT, and EWT for taxable year 2009 had prescribed;[54] (b) Court *a quo* is not limited by the issues stipulated by the parties;[55] (c) Lastly, the FAN/FLD is null and void for having been issued without a definite due date.[56]

The Ruling of the Court *En Banc*

The petition was seasonably filed.

This is an appeal under Section 18 of Republic Act No. (RA) 1125,[57] as amended, from the (a) Decision of the court *a quo*, which *cancelled* the deficiency the income tax, VAT, EWT assessments and the compromise penalty for taxable year 2009 in the aggregate amount of PhP902,560,270.47 and *reversed* and *set aside* the undated FDDA of the CIR; and, (b) Its Resolution, which denied the *CIR's Motion for Reconsideration (re: Decision dated 31 May 2021)* for lack of merit.

From the records, petitioner CIR received the assailed decision on June 4, 2021.[58] Under Rule 15 Section 1 of the Revised Rules of the Court of Tax Appeals (RRCTA), the CIR had fifteen (15) days to file his motion for reconsideration, or until June 19, 2021. The CIR's *Motion for Reconsideration (re: Decision dated 31 May 2021)* was filed on June 17, 2021,[59] thus, it was timely filed.

Thereafter, on December 16, 2021,[60] the CIR received a copy of the *Resolution*, which denied the motion for lack of merit. Under Rule 8, Sections 3(b) and 4(b) of the RRCTA, the aggrieved party has fifteen (15) days to file a petition with the Court *En Banc*, with one extension;

---

[53] *Id., Rollo*, pp. 20-23.
[54] *Comment (Re: Petition for Review dated January 31, 2022), Rollo*, pp. 87-91.
[55] *Id., Rollo*, pp. 91-93.
[56] *Id., Rollo*, pp. 93-95.
[57] R.A. 1125, as amended by R.A. 9282, Section 18:

"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*."

[58] *Notice of Decision*, Division Docket, Vol. 3, p. 1523.
[59] Division Docket, Vol. 3, p. 1549.
[60] *Notice of Resolution*, Division Docket, Vol. 3, p. 1612.

"SECTION 3. *Who May Appeal; Period to File Petition.* — (a) xxx.

(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. (*Rules of Court, Rule 42, sec. 1a*)

xxx xxx xxx

SECTION 4. *Where to Appeal; Mode of Appeal.* — (a) xxx.

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal. (n)" (*Underscoring supplied*)

Accordingly, the CIR had until December 31, 2021 to file the petition. However, due to Super Typhoon Odette, the Court issued CTA Circular No. 02-2021 dated December 21, 2021, which extended *until January 11, 2022* the deadlines for the filing of all pleadings and other court submissions.[61]

On January 10, 2022, the CIR filed a *Motion for Extension of Time to File Petition for Review* asking for an extension of fifteen (15) days from January 10, 2021, or until January 25, 2022, within which to file a petition.

However, in Administrative Circular No. 01-2022 dated January 10, 2022, the Supreme Court extended *until February 1, 2022* the January 2022 deadlines for the filing of all pleadings and other court submissions in light of the alarming number of Covid-19 infections and the effects of Super Typhoon Odette.[62]

---

[61] It states in part:

"In view of the adverse effects of super typhoon Odette, and following the lead of the Supreme Court in Administrative Circular No. 102-2021, dated 20 December 2021, the filing of any and all pleadings and other court submissions with the Court of Tax Appeals is **SUSPENDED** from December 21, 2021 to January 3, 2022

The filing periods of any and all pleadings and other court submissions that fell due or would fall due during the said period are hereby **EXTENDED** for seven (7) calendar days counted from January 4, 2022."

[62] It states in part:

"In view of the alarming number of Covid-19 infections, the effects of super typhoon Odette, and the request of the 25th Board of Governors of the Integrated Bar of the Philippines, the filing periods of any and all pleadings and other court submissions falling due in the month of January 2022 in all courts are hereby **EXTENDED** until February 1, 2022."

Finally, since February 1, 2022, was declared as a Special Non-Working in Proclamation No. 1236 dated October 21, 2021, the filing of the *Petition for Review* by registered mail on *February 2, 2022*, thus, fell *within* the reglementary period.

No reversible error was committed when the court* a quo *resolved the issue of prescription that was, allegedly,* neither *raised by the taxpayer in the petition* nor *stipulated or tried by the parties.

In its second and third assignments of error, petitioner questioned the power of the court to decide the case based on the issue of prescription. Allegedly, this issue was *not* raised by respondent taxpayer, *not* joined by the pleadings, *not* raised during pre-trial, *not* defined by the court *a quo* in the pre-trial order and *not* tried by the parties.

Petitioner's contention is contradicted by the facts of the case.

First, petitioner should note that the prescription of his right to assess the taxpayer for deficiency income tax, VAT and EWT for taxable year 2009 was, in fact, the very first point raised in the petition filed with the court *a quo*.[63] This issue, based on the Pre-Trial Order, was also stipulated by the parties.[64] It was also covered by the testimony of Ms. Rowena Africa, the taxpayer's Finance Manager,[65] who stated that the deficiency tax assessment was issued beyond the three (3)-year prescriptive period, thus:

> "**Q36: You stated that the BIR's deficiency tax assessment for CY 2009 was issued beyond the three-year prescriptive period. What is the basis of your statement?**
>
> A: It is petitioner's position that the BIR's right to collect the deficiency tax assessment for CY 2009 had already prescribed because it was issued more than three years from the time petitioner filed its Annual Income Tax Return (ITR), Quarterly VAT Returns (BIR Form No. 2550Q), and Monthly Remittance Returns of Creditable Taxes Withheld (Expanded) (BIR Form No. 1601-E). Moreover, the Waivers of Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code of 1997 ('Waiver') are null and void. Hence, since the prescriptive period to assess deficiency income tax, VAT, and EWT were not extended by these waivers, the deficiency tax assessment for CY 2009 had already prescribed.
>
> **Q37: You mentioned the Waivers are null and void. What Waivers are you referring to?**

---

[63] *Petition for Review*, Division Docket, Vol. 1, pp. 15-22.
[64] Pre-Trial Order, Division Docket, Vol. 1, p. 416.
[65] Exhibit P-29, *Sworn Statement of Rowena C. Africa to Questions Propounded by Atty. Karissa Inez A. Segundo*, Division Docket, Vol. 1, pp. 241-261.

A: In compliance with the BIR's request, petitioner executed three waivers on November 12, 2012 ('First Waiver'), May 21, 2013 ('Second Waiver'), and November 26, 2013 ('Third Waiver').

Q38: You mentioned that the BIR requested petitioner to execute the waivers. How did petitioner execute the First Waiver?

A: The BIR gave petitioner a template form of the Waiver and asked petitioner to supply only the following information:

xxx xxx xxx"[66] (*Underscoring supplied*)

Prescription of the CIR's right to assess under Section 203 of the 1997 NIRC, as amended,[67] was also covered by the ICPA report, as part of its audit objectives.[68]

Petitioner, therefore, cannot claim that his right to due process was violated. During trial, he was given ample opportunity to cross-examine the witnesses and oppose the admission of the taxpayer's evidence pertaining to this issue.

Second, the court *a quo* is not bound to adjudicate cases based solely on issues agreed upon by the parties. Rule 14, Section 1 of the RRCTA, expressly grants it the *latitude* to take up related issues necessary to achieve an orderly disposition of the case:

"**RULE 14**
JUDGEMENT, ITS ENTRY AND EXECUTION

SECTION 1. *Rendition of judgment.* — The Court shall decide the cases brought before it in accordance with Section 15, paragraph (1), Article VIII of the 1987 Constitution. The conclusions of the Court shall be reached in consultation by the Members on the merits of the case before its assignment to a Member for the writing of the decision. The presiding justice or chairman of the Division shall include the case in an agenda for a meeting of the Court en banc or in Division, as the case may be, for its deliberation. If a majority of the justices of the Court *en banc* or in Division agree on the draft decision, the ponente shall finalize the decision for the signature of the concurring justices and its immediate promulgation: Any justice of the Court *en banc* or in Division may submit a separate written concurring or dissenting opinion within twenty days from the date of the voting on the case. The concurring and dissenting

[66] Exhibit P-30, Division Docket, Vol. 1, pp. 469, 470-472.

[67] "**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."

[68] Exhibit P-20, Division Docket, Vol. 1, pp. 469, 470-472.

opinions, together with the majority opinion, shall be jointly promulgated and attached to the rollo.

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

This authority under Rule 14, Section 1 of the RRCTA was expressly recognized by the Supreme Court in *Republic v. First Gas Power Corporation.*[69] In that case, the Supreme Court affirmed the cancellation of the FAN and the FLD against the taxpayer notwithstanding the CIR's contention that the taxpayer could not raise the issue of prescription for the first time on appeal:

"Meanwhile, petitioner's contention that respondent could not raise the issue of prescription for the first time on appeal has long been settled in the case of *Bank of the Philippine Islands v. Commissioner of Internal Revenue.* Therein, it was only when the case ultimately reached this Court that the issue of prescription was brought up. Nevertheless, this Court ruled that the CIR could no longer collect the assessed tax due to prescription, thus:

xxx xxx xxx

In the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, this Court categorically ruled that the Revised Rules of the CTA clearly allowed it to rule on issues not stipulated by the parties to achieve an orderly disposition of the case, thus:

> On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
> > SECTION 1. Rendition of judgment. — x x x
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter. (Citations omitted)

[69] G.R. No. 214933, February 15, 2022.

> In view of the foregoing, the CTA correctly ruled on the issue of prescription even if it was only raised for the first time on appeal." (*Citations omitted; underscoring supplied*)

The relevant section in the RRCTA is clearly worded. On the basis thereof, the court *a quo* was, therefore, well within its authority decide the case on the question of prescription.

No reversible error was committed when the court* a quo *ruled that:

(a) The deficiency tax assessments were a nullity for failure to state the due date for the payment of the tax liabilities arising from the same; and,

(b) The deficiency tax assessments are barred by prescription.

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*,[70] the Supreme Court ruled that "it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."

In 2022, *Philippine National Bank v. Commissioner of Internal Revenue*[71] also stated that the Supreme Court "will not disturb the CTA's evaluation and calibration of the pieces of evidence presented before it" and reiterated that:

> "Indeed, whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the CTA. In this regard, We abide by the fundamental principle that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties. The findings of fact of the CTA are binding on this Court and in the absence of strong reasons for this Court to delve into facts, only questions of law are open for determination.
>
> The Supreme Court will not set aside lightly the conclusion reached by the CTA which, by the very nature of its function, is dedicated exclusively to

[70] G.R. No. 188016, January 14, 2015, citing *Sea-Land Service, Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001.
[71] Supreme Court *Resolution*, G.R. Nos. 242647 & 243814 & 242842-43, March 15, 2022.

> the consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority. No such exception obtains in this case and thus, we presume that the CTA rendered a decision which is valid in every respect." (*Underscoring supplied and citations omitted*)

(a) The deficiency tax assessments were a nullity for failure to state the due date for the payment of the tax liabilities arising from the same.

In the absence of both allegation and proof by the CIR that the CTA in Division committed grave abuse of discretion, the Court *En Banc* adopts its factual findings on the undated FLD and FANs:

> "Based on the foregoing, a valid tax assessment must not only contain a computation of tax liabilities, it must also include a demand upon the taxpayer for the settlement of a tax liability that is definitely set and fixed. It is further required that the due date in the final assessment notice be stated.
>
> A careful scrutiny of the subject undated FLD and FANs reveals that said undated FLD does not contain any due date for the payment of the assessed taxes. Neither does this Court find any due date in the corresponding undated Audit Result/Assessment Notice Nos. IT-116-LOA-000094-09-13-212, IT-116-LOA-000094-09-13-214 and IT-116-LOA-000094-09-13-213. Particularly, the respective spaces in these FANs where the due date is to be stated 'remained unaccomplished', similar to the *Fitness By Design* case.
>
> Verily, the subject tax assessments are indeed void. It must be emphasized that a void assessment bears no valid fruit. Such being the case, the subject tax assessments cannot be enforced against petitioner."[72] (*Underscoring supplied*)

A FAN is a notice to the effect that the amount therein stated is due as tax and a demand for payment thereof. This *demand for payment* signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies. Thus, it must be "sent to and received by the taxpayer, *and must demand payment of the taxes described therein within a specific period.*"[73] A substantive prerequisite to tax collection is the issuance of a *valid* FAN, which should contain not only a computation of tax liabilities but also a demand for payment of a definite amount of tax liability within a prescribed period.[74]

---

[72] Decision, *Rollo*, p. 55.
[73] *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, G.R. No. 215957, November 9, 2016; *Italics supplied.*
[74] *Commissioner of Internal Revenue v. Dominador Menguito*, G.R. No. 167560, September 17, 2008.

In *Commissioner of Internal Revenue v. Fitness by Design, Inc.* (Fitness by Design),[75] the Supreme Court invalidated *a FAN* which did *not* have the definite amount of tax liability and did *not* contain a definite due date for payment by the taxpayer, thus:

"IV

The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Neither the National Internal Revenue Code nor the revenue regulations provide for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.

A pre-assessment notice 'do[es] not bear the gravity of a formal assessment notice.' A pre-assessment notice merely gives a tip regarding the Bureau of Internal Revenue's findings against a taxpayer for an informal conference or a clarificatory meeting.

A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.'

The disputed Final Assessment Notice is not a valid assessment.

First, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.' Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. Thus:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. Please note, however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004. (*Emphasis Supplied*)

Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last

[75] G.R. No. 215957, November 9, 2016.

paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:

> In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice. (*Emphasis in the original*)

However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.

Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.

Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.

The Court of Tax Appeals did not err in cancelling the Final Assessment Notice as well as the Audit Result/Assessment Notice issued by petitioner to respondent for the year 1995 covering the 'alleged deficiency income tax, value-added tax and documentary stamp tax amounting to P10,647,529.69, inclusive of surcharges and interest' for lack of due process. Thus, the Warrant of Distraint and/or Levy is void since an invalid assessment bears no valid effect.

Taxes are the lifeblood of government and should be collected without hindrance. However, the collection of taxes should be exercised 'reasonably and in accordance with the prescribed procedure.'

The essential nature of taxes for the existence of the State grants government with vast remedies to ensure its collection. However, taxpayers are guaranteed their fundamental right to due process of law, as articulated in various ways in the process of tax assessment. After all, the State's purpose is to ensure the well-being of its citizens, not simply to deprive them of their fundamental rights." (*Underscoring supplied; citations omitted*)

Recently, in the case of *Republic v. First Gas Power Corporation* (First Gas),[76] the Supreme Court applied *Fitness* in voiding the 2000 and 2001 deficiency income tax assessments against a taxpayer:

> "As regards the validity of the FAN and the Formal Letter of Demand for taxable year 2001, this Court also agrees with the ruling of the CTA that the same were not valid because they failed to indicate a definite due date for payment.

[76] G.R. No. 214933, February 15, 2022.

In *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, this Court held that a Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer, thus:

> **Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:**
>
> > In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice.
>
> However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.
>
> > Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay. (*Emphasis supplied; citations omitted*)

Similarly, in this case, as pointed out by the CTA, the last paragraph of each of the assessments stated the following:

> In view thereof, you are requested to pay your aforesaid deficiency income tax liability/penalties through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice.

However, the due date in each of the FAN was left blank. Clearly, the FAN did not contain a definite due date and actual demand to pay. Accordingly, the FAN and the Formal Letter of Demand for taxable year 2001 are not valid assessments.

In sum, the CTA did not err in cancelling the FAN and the Formal Letters of Demand, all dated July 19, 2004. They are all invalid assessments because the period of petitioner to issue the same for taxable year 2000 has already prescribed, and the assessments for taxable year 2001 did not contain a definite due date for payment by respondent." (*Underscoring supplied; citations omitted*)

In the absence of any *due date for payment* in the FLD and FAN, the CIR was unable to notify the taxpayer that its tax liability should have been settled within a definite and prescribed period. Therefore, applying both the *Fitness by Design* and *First Gas* cases, the court *a quo* is correct in declaring the FAN *invalid.*

An invalid FLD and FAN, renders the assessment *void.* A *void* assessment bears no fruit.[77] It does not give rise to a *legal obligation* on the part of the taxpayer to pay any deficiency tax due. Neither does it give rise to any *legal right* on the part of the CIR to *collect* from the taxpayer by virtue of the void assessment.

(b) The deficiency tax assessments are barred by prescription.

The CIR's right to assess and collect an internal revenue tax is limited only to three (3) years by Section 203 of the 1997 NIRC, as amended:

> "**SEC. 203.** *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, internal revenue taxes shall be assessed within three 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." (*Underscoring supplied*)

This provision governs the question of prescription or the limitation placed in the government's right to assess internal revenue taxes to safeguard the interests of taxpayers from unreasonable investigation by not *indefinitely* extending the period of assessment and depriving the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.[78]

As a general rule, under Section 203, the CIR only has three (3) years, counted from the date of actual filing of the tax returns or from the last date prescribed by law for the filing of such return, whichever comes later, to assess a national internal revenue tax or to begin a court proceeding for the collection thereof without an assessment.[79]

One of the exceptions to the three (3)-year prescriptive period, however, is that provided for under Section 222(b) of the 1997 NIRC, as amended, which states:

---

[77] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[78] *Commissioner of Internal Revenue v. Standard Chartered Bank*, G.R. No. 192173, July 29, 2015.
[79] *Id.*

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

In this case, three (3) documents entitled "Waiver of the Defense of Prescription Under the Statute of Limitations of the Internal Revenue Code" (waivers) were executed by the taxpayer.[80] However, the court *a quo* held that the waivers were *not* valid and, thus, could *not* have extended the three (3)-year limitation under Section 203 of the 1997 NIRC, as amended. Specifically, the court *a quo* stated that, since the waivers failed to indicate the nature and amount of tax due, they did *not* validly extend the CIR's right to assess the taxpayer.[81]

Petitioner CIR points out that "when the waiver executed by the taxpayer pertains to the extension of the period to assess, the nature and amount of tax due need not be specifically stated in the waiver. This is because at the stage the investigation is still on-going." The CIR is still determining the deficiency tax due from the respondent taxpayer. The nature and amount of the tax due will only be determinable upon the termination of the investigation, which is upon the

---

[80] Decision, *Rollo*, pp. 32-33; See also *Pre-Trial Order* dated May 15, 2017, Admitted Facts, pars. 5,6 & 8, Division Docket, Vol. 1, pp. 415-416.
[81] *Id.*, Rollo, pp. 41-51.

issuance of the FLD and/or FAN. In this case, since the three (3) waivers were executed prior to the issuance of the FLD, the CIR states that the waivers need *not* specifically state the nature and the amount of tax due.[82]

The Court *En Banc* is not persuaded by the CIR's arguments.

In *Commissioner of Internal Revenue v. Standard Chartered Bank* (Standard Chartered),[83] the Supreme Court discussed the nature of a waiver:

> "In the landmark case of *Philippine Journalists, Inc. v. CIR* (PJI case), we pronounced that a waiver is not automatically a renunciation of the right to invoke the defense of prescription. A waiver of the Statute of Limitations is nothing more than 'an agreement between the taxpayer and the Bureau of Internal Revenue (BIR) that the period to issue an assessment and collect the taxes due is extended to a date certain.' It is a bilateral agreement, thus necessitating the very signatures of both the CIR and the taxpayer to give birth to a valid agreement. Furthermore, indicating in the waiver the date of acceptance by the BIR is necessary in order to determine whether the parties (the taxpayer and the government) had entered into a waiver 'before the expiration of the time prescribed in Section 203 (the three-year prescriptive period) for the assessment of the tax.' When the period of prescription has expired, there will be no more need to execute a waiver as there will be nothing more to extend. Hence, no implied consent can be presumed, nor can it be contended that the concurrence to such waiver is a mere formality." (*Underscoring supplied*)

In *Commissioner of Internal Revenue v. Kudos Metal Corporation* (Kudos Metal),[84] the Supreme Court summarized the rules governing the proper execution of waivers under Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 and held that due to the defects in the waivers, the period to assess or collect taxes was not extended:

> "Section 222 (b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-9017 issued on April 4, 1990 and RDAO 05-0118 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:
>
> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after _____ 19 _', which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by

[82] Petition for Review, *Rollo*, p. 12.
[83] G.R. No. 192173, July 29, 2015.
[84] G.R. No. 178087, May 5, 2010.

the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement." (*Underscoring supplied*)

The *Standard Chartered* case, moreover, explained that the provisions of the RMO and RDAO are "mandatory", "requiring strict compliance." Hence, failure to comply with *any* of the requisites renders a waiver defective and ineffectual. Consequently, it affirmed the CTA when it cancelled and set aside the FLD and Assessment Notices because they were barred by prescription for having been issued beyond the three-year prescription in Section 203. Notably, the Supreme Court found that the waivers were *defective* because, among others, they did *not specify the kind and amount of the tax due.*

"Applying the rules and rulings, the waivers in question were defective and did not validly extend the original three-year prescriptive period. As correctly found by the CTA in Division, and affirmed in toto by the CTA *En Banc*, the subject waivers of the Statute of Limitations were in clear violation of RMO No. 20-90:

1) This case involves assessment amounting to more than ₱1,000,000.00. For this, RMO No. 20-90 requires the Commissioner of Internal Revenue to sign for the BIR. A perusal of the First and Second Waivers of the Statute of Limitations shows that they were signed by Assistant Commissioner-Large Taxpayers Service Virginia L. Trinidad and Assistant Commissioner-Large Taxpayers Service Edwin R. Abella respectively, and not by the Commissioner of Internal Revenue;

2) The date of acceptance by the Assistant Commissioner-Large Taxpayers Service Virginia L. Trinidad of the First Waiver was not indicated therein;

> 3) The date of acceptance by the Assistant Commissioner-Large Taxpayers Service Edwin R. Abella of the Second Waiver was not indicated therein;
>
> 4) The First and Second Waivers of Statute of Limitations did not specify the kind and amount of the tax due; and
>
> 5) The tenor of the Waiver of the Statute of Limitations signed by petitioner's authorized representative failed to comply with the prescribed requirements of RMO No. 20-90. The subject waiver speaks of a request for extension of time within which to present additional documents, whereas the waiver provided under RMO No. 20-90 pertains to the approval by the Commissioner of Internal Revenue of the taxpayer's request for re-investigation and/or reconsideration of his/its pending internal revenue case." (*Underscoring supplied*)

Subsequently, in *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.* (STI),[85] the Supreme Court again ruled that the Waivers of Statute of Limitations, being *defective and invalid because they did not specify the kind of tax and the amount of tax due*, did *not* extend the CIR's three (3)-year period to issue the assessments. As a result, the right of the government to assess or collect the alleged deficiency taxes was already barred by prescription:

> "Tested against the requirements of RMO 20-90 and relevant jurisprudence, the Court cannot but agree with the CTA's finding that the waivers subject of this case suffer from the following defects:
>
> 1. At the time when the first waiver took effect, on June 2, 2006, the period for the CIR to assess STI for deficiency EWT and deficiency VAT for fiscal year ending March 31, 2003, had already prescribed. To recall, the CIR only had until April 17, 2006 (for EWT) and May 25, 2006 (for VAT), to issue the subject assessments.
>
> 2. STI's signatory to the three waivers had no notarized written authority from the corporation's board of directors. It bears to emphasize that RDAO No. 05-01 mandates the authorized revenue official to ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same; and in case the authority is delegated by the taxpayer to a representative, as in this case, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. The waiver should not be accepted by the concerned BIR office and official unless notarized.
>
> 3. Similar to *Standard Chartered Bank*, the waivers in this case did not specify the kind of tax and the amount of tax due. It is established that a waiver of the statute of limitations is a bilateral agreement between the taxpayer and the BIR to extend the period to assess or collect deficiency taxes on a certain date. Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated. Hence, specific information in the waiver is necessary for its validity.

[85] G.R. No. 220835, *July 26, 2017.*

> Verily, considering the foregoing defects in the waivers executed by STI, the periods for the CIR to assess or collect the alleged deficiency income tax, deficiency EWT and deficiency VAT were not extended. xxx." (*Underscoring supplied; citations omitted*)

Finally, the Supreme Court affirmed the CTA in finding that the waivers were defective because they failed to comply with RMO No. 20-90 as they did not specify the kind and amount of tax involved in *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.* (La Flor):[86]

> "In the present case, the September 3, 2008, February 16, 2009 and December 2, 2009 Waivers failed to indicate the specific tax involved and the exact amount of the tax to be assessed or collected. As above-mentioned, these details are material as there can be no true and valid agreement between the taxpayer and the CIR absent these information. Clearly, the Waivers did not effectively extend the prescriptive period under Section 203 on account of their invalidity. The issue on whether the CTA was correct in not admitting them as evidence becomes immaterial since even if they were properly offered or considered by the CTA, the same conclusion would be reached — the assessments had prescribed as there was no valid waiver." (*Underscoring supplied*)

Based on the pronouncements in *Standard Chartered*, *STI* and *La Flor*, the kind and amount of tax are details that are material to the validity of a waiver. Without these details, there can be no true and valid agreement between the taxpayer and the CIR. Clearly, on account of their invalidity, the three waivers did not effectively extend the prescriptive period under Section 203 of the 1997 NIRC, as amended.

As a final note, even if the Court were to disregard the foregoing infirmity, the three waivers still suffer from another.

The Court notes that, in violation of the requirement in *Kudos Metal*, both the *dates of execution* by the taxpayer and *dates of acceptance* by the BIR occurred *after* prescription had set in for the following taxes (shaded rows):

- EWT for January, February, March, July, August, September and October of CY 2009; and,
- VAT for the 1st, 2nd and 3rd Quarters of CY 2009.

Exhibit	Form	Period Covered	End of Three-Year Prescription[87]	Dates of Execution by the Taxpayer	Dates of Acceptance by the BIR
P-12	Income 1702	Calendar Year (CY) 2009	April 15, 2013	(1st) November 12, 2012 (2nd) May 21, 2013 (3rd) November 26, 2013	November 27, 2012 May 31, 2013 November 28, 2013

[86] *G.R. No. 211289, January 14, 2019.*
[87] Decision, *Rollo*, p. 50.

Exhibit	Form	Period Covered	End of Three-Year Prescription[87]	Dates of Execution by the Taxpayer	Dates of Acceptance by the BIR
P-17	EWT 1601-E	January 2009	February 12, 2012	(1st) November 12, 2012 (2nd) May 21, 2013 (3rd) November 26, 2013	November 27, 2012 May 31, 2013 November 28, 2013
P-18	EWT 1601-E	February 2009	March 12, 2012	(1st) November 12, 2012 (2nd) May 21, 2013 (3rd) November 26, 2013	November 27, 2012 May 31, 2013 November 28, 2013
P-19	EWT 1601-E	March 2009	April 13, 2012	(1st) November 12, 2012 (2nd) May 21, 2013 (3rd) November 26, 2013	November 27, 2012 May 31, 2013 November 28, 2013
P-20	EWT 1601-E	April 2009	January 20, 2013 (Amended return)	(1st) November 12, 2012 (2nd) May 21, 2013 (3rd) November 26, 2013	November 27, 2012 May 31, 2013 November 28, 2013
P-21	EWT 1601-E	May 2009	January 20, 2013 (Amended return)	(1st) November 12, 2012 (2nd) May 21, 2013 (3rd) November 26, 2013	November 27, 2012 May 31, 2013 November 28, 2013
P-22	EWT 1601-E	June 2009	January 20, 2013 (Amended return)	(1st) November 12, 2012 (2nd) May 21, 2013 (3rd) November 26, 2013	November 27, 2012 May 31, 2013 November 28, 2013
P-23	EWT 1601-E	July 2009	August 10, 2012	(1st) November 12, 2012 (2nd) May 21, 2013 (3rd) November 26, 2013	November 27, 2012 May 31, 2013 November 28, 2013
P-24	EWT 1601-E	August 2009	September 12, 2012	(1st) November 12, 2012 (2nd) May 21, 2013 (3rd) November 26, 2013	November 27, 2012 May 31, 2013 November 28, 2013
P-25	EWT 1601-E	September 2009	October 10, 2012	(1st) November 12, 2012 (2nd) May 21, 2013 (3rd) November 26, 2013	November 27, 2012 May 31, 2013 November 28, 2013
P-26	EWT 1601-E	October 2009	November 13, 2012	(1st) November 12, 2012 (2nd) May 21, 2013 (3rd) November 26, 2013	November 27, 2012 May 31, 2013 November 28, 2013
P-27	EWT 1601-E	November 2009	December 13, 2012	(1st) November 12, 2012 (2nd) May 21, 2013 (3rd) November 26, 2013	November 27, 2012 May 31, 2013 November 28, 2013
P-28	EWT 1601-E	December 2009	January 15, 2013	(1st) November 12, 2012 (2nd) May 21, 2013 (3rd) November 26, 2013	November 27, 2012 May 31, 2013 November 28, 2013
P-13	VAT 2550-Q	1st Quarter CY 2009	July 27, 2012	(1st) November 12, 2012 (2nd) May 21, 2013 (3rd) November 26, 2013	November 27, 2012 May 31, 2013 November 28, 2013
P-14	VAT 2550-Q	2nd Quarter CY 2009	July 29, 2012	(1st) November 12, 2012 (2nd) May 21, 2013 (3rd) November 26, 2013	November 27, 2012 May 31, 2013 November 28, 2013
P-15	VAT 2550-Q	3rd Quarter CY 2009	October 26, 2012	(1st) November 12, 2012 (2nd) May 21, 2013 (3rd) November 26, 2013	November 27, 2012 May 31, 2013 November 28, 2013
P-16	VAT 2550-Q	4th Quarter CY 2009	January 25, 2013	(1st) November 12, 2012 (2nd) May 21, 2013 (3rd) November 26, 2013	November 27, 2012 May 31, 2013 November 28, 2013

Based on the foregoing discussion, petitioner CIR evidently failed to raise any issue that has convinced the Court *En Banc* to modify or reverse the assailed Decision and Resolution of the court *a quo*.

WHEREFORE, premises considered, the Petition for Review filed by petitioner is **DENIED** for lack of merit. The assailed May 31, 2021 Decision and December 7, 2021 Resolution of the court *a quo* are hereby **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

I concur solely on the ground stated in my Concurring Opinion on the assailed decision.
ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

I join the Presiding Justice's concurrence solely on the ground stated in his Concurring Opinion on the assailed decision.
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

With due respect, I join Presiding Justice's Concurring Opinion concurring solely on the ground stated in his Concurring Opinion in the Decision assailed.
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice