REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2603** (CTA Case No. 9175)
	Present:
- versus -	**DEL ROSARIO,** ***P.J.*****, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** ***JJ.***
MEDICARD PHILIPPINES, INC., Respondent.	Promulgated: OCT 11 2023

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DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is the Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**), pursuant to Section 3(b)[2], Rule 8, in relation to Section

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[1] Filed on 12 May 2022, *Rollo*, pp. 7-25.

[2] **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.

2(a)(1)[3], Rule 4 of the Revised Rules of the Court of Tax Appeals[4] (**RRCTA**), assailing the Decision dated 28 October 2021[5] (**assailed Decision**) and Resolution dated 06 April 2022[6] (**assailed Resolution**), of the First Division[7] of this Court in CTA Case No. 9175, entitled *Medicard Philippines, Inc., v. Commissioner of Internal Revenue.*

PARTIES OF THE CASE

Petitioner is the head of the Bureau of Internal Revenue (**BIR**) with the power or authority to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended.

Respondent Medicard Philippines, Inc. (**respondent/Medicard**), on the other hand, is a corporation duly organized and existing under Philippine laws, with office address at 8/F The World Centre Building, 330 Sen. Gil J. Puyat Avenue, Makati City 1200.[8] It is engaged in the business of developing and promoting prepaid medical and health maintenance, and related services made available to the public.[9]

FACTS OF THE CASE

On 26 June 2009, respondent received from the BIR Large Taxpayers Services (**LTS**) a copy of Letter of Authority (**LOA**) No. LOA 2008 00033664 dated 23 June 2009[10], authorizing the audit of its accounting records for "all internal revenue taxes" for the period of 01 January 2008 to 31 December 2008 or taxable year (**TY**) 2008.

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3 **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[.]
...

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

5 Division Docket, Volume II, pp. 1093-1118.

6 Id., pp. 1171-1173.

7 Penned by Associate Justice Catherine T. Manahan, and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Marian Ivy F. Reyes-Fajardo.

8 Paragraph 1, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume I, p. 346.

9 See Amended Articles of Incorporation of Medicard Philippines, Inc., Exhibit "P-2-1", id., Volume II, p. 709.

10 Exhibit "P-7", id., p. 736.

On 25 July 2011, respondent received a Notice of Informal Conference (**NIC**) dated 11 July 2011[11] from the BIR LTS.

During the investigation, particularly on 05 October 2011, Elizabeth B. Laqui (**Laqui**), respondent's authorized representative, executed a Waiver of the Defense of Prescription (**first waiver**) under the Statute of Limitations of the NIRC of 1997, as amended, extending the period of assessment until 31 March 2012. Officer-in-Charge - Assistant Commissioner for LTS Alfredo V. Misajon (**OIC-ACIR Misajon**) accepted the same on 12 October 2011. The first waiver pertained to the assessment for income tax (**IT**), withholding taxes (**WT**) and value-added tax (**VAT**).[12] Allegedly, respondent also executed another waiver[13] (**second waiver**) extending the period of assessment until 30 June 2012. However, aside from not being notarized, it did not bear any date and signature from any of petitioner's authorized representatives.

Later, or on 28 November 2011, respondent received a copy of the Preliminary Assessment Notice (**PAN**) with Details of Discrepancies dated 14 November 2011.[14] The said PAN stated that after investigation, respondent was found liable for a deficiency VAT of ₱331,661,435.92. On 13 December 2011, respondent filed a Reply to the PAN[15] and opposed the deficiency tax assessments against it.

On 30 April 2012, respondent received a copy of the Formal Assessment Notice[16] (**FAN**) with Assessment Notice (**AN**). Except for the amount of interest and the deletion of the compromise penalty of ₱1,000.00, the FAN contained the same deficiency VAT assessments. On 24 May 2012, respondent filed its Protest[17] to the FAN and requested for a reconsideration of the alleged deficiency taxes.

On 03 June 2013, respondent received a copy of the Final Decision on Disputed Assessment (**FDDA**) dated 18 March 2013[18] demanding payment of the alleged deficiency taxes of ₱340,364,392.75.

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11 Exhibit "P-9", id., p. 751.
12 Exhibit "P-10", id., p. 752.
13 Exhibit "P-11", id., p. 753.
14 Exhibit "P-12", id., pp. 754-756.
15 Exhibit "P-13", id., pp. 757-759.
16 Dated 04 January 2012; Exhibit "P-14", id., pp. 760-764.
17 Exhibit "P-15", id., pp. 765-767.
18 Exhibit "P-16", id., pp. 768-773.

On 03 July 2013, respondent filed a motion for reconsideration (**MR to the FDDA dated 18 March 2013**) before the Office of the CIR. It also requested that the assessment be cancelled and withdrawn.[19]

On 23 September 2015, respondent received the FDDA of even date, denying its MR to the FDDA dated 18 March 2013.[20]

PROCEEDINGS BEFORE THE DIVISION

On 22 October 2015, respondent, as then petitioner, filed its Petition for Review[21] before this Court. The case was raffled to the Third Division and was docketed as CTA Case No. 9175.[22]

In petitioner's Answer[23] (as then respondent) to the aforementioned petition, he or she raised the following special and affirmative defenses: (**1**) respondent filed false VAT returns due to its exclusions of gross receipts that were earmarked for payment to third (3rd) party healthcare providers; (**2**) with the filing of false returns, the prescriptive period to assess respondent's accounting records shall be ten (**10**) years; (**3**) the first and second waivers are validly executed, thus the prescriptive period to assess was extended; and, (**4**) respondent cannot rely on BIR Ruling [DA-(VAT-054) 529-08][24] because it was issued beyond the TY that is the subject of the assessment, and it was later revoked by Revenue Memorandum Circular (**RMC**) No. 39-2010.[25]

Later, or on 02 August 2016, the parties filed their Joint Stipulation of Facts and Issues (**JSFI**).[26] The Court issued the Pre-Trial Order on 02 September 2016.[27] After the Court denied respondent's motion for the early resolution of the issue on prescription[28], the trial proceeded.

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19 Exhibit "P-17", id., pp. 774-790.
20 BIR Records, pp. 816-817.
21 Division Docket, Volume I, pp. 10-35.
22 The Third Division was then composed of Associate Lovell R. Bautista (Ret.), Associate Justice Esperanza R. Fabon-Victorino (Ret.), and Associate Justice Ma. Belen M. Ringpis-Liban.
23 Filed on 01 January 2016, Division Docket Volume I, pp. 109-113.
24 Dated 15 December 2008; Issued to Dela Cruz Tatunay & Co.
25 Verification of VAT Compliance of Health Maintenance Organizations.
26 Division Docket, Volume I, pp. 346-369.
27 Id., pp. 378-385.
28 See Motion for Preliminary Hearing to Resolve the Issue of Prescription, id., pp. 387-400; Resolution dated 15 November 2016, id., pp. 408-409; Motion for Reconsideration [of Resolution dated November 15, 2016], id., pp. 412-424; Resolution dated 09 February 2017, id., pp. 437-438.

Respondent presented the following witnesses, namely: (1) Sherwin B. Salvador (**Salvador**), respondent's Assistant Accounting Manager; (2) Mark Vincent Y. Borja (**Borja**), respondent's Accounting Manager; and, (3) Mary Ann C. Capuchino (**Capuchino**), the Court-commissioned Independent Certified Public Accountant (**ICPA**).

In his Judicial Affidavit[29], Salvador testified that: (1) respondent was the subject of a BIR tax examination for which an LOA was issued; (2) on 05 October 2011, respondent executed the first waiver of the defense of prescription which petitioner accepted on 12 October 2011; (3) due to the execution of the first waiver, the assessment was extended until 31 March 2012; (4) respondent executed a second waiver which was undated and without the signature of petitioner's representatives; (5) the second waiver appears to have been filed with petitioner's office since there was a stamp of the BIR-LTS dated 13 December 2012; (6) respondent filed its Reply to the PAN; (7) respondent filed its Protest to the FAN; (8) respondent filed an MR to the FDDA dated 18 March 2013 before the CIR; and, (9) after respondent received the FDDA dated 23 September 2015 (denying its MR) on even date, respondent timely filed its Petition for Review before this Court.

In his cross-examination, Salvador stated that he does not have knowledge whether the members of respondent's Board of Directors were aware of the executed waivers since he only forwarded the waivers to Laqui. When asked as to when respondent assailed the validity of the waivers, Salvador confirmed it was only when the present case was filed before this Court.[30]

On redirect examination, Salvador declared that petitioner did not ask for Laqui's authority to sign the waivers. In response to the Court's inquiry on Laqui's authority to sign the waivers, Salvador also explained that, *per* respondent's standard procedure on waivers relating to BIR assessments, it is Laqui who is tasked to execute them.[31]

No re-cross examination was conducted.

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29 Exhibit "P-33", id., Volume II, pp. 877-894.
30 TSN dated 21 November 2016, pp. 6-10.
31 Id., pp. 10-12.

Borja later on assumed the witness stand where he declared that: (1) petitioner's deficiency tax assessment against respondent is flawed since he or she erroneously included all the gross receipts without considering the nature of the services from which the receipts arose; (2) respondent has treated the gross receipts attributable to actual and direct medical, dental and hospital services to member clients as exempted from VAT pursuant to Section 109[32] of the NIRC of 1997, as amended; (3) respondent has treated the gross receipts attributable to intermediary services as either subject to VAT, eligible for zero-rated VAT or exempt from VAT; and, (4) BIR Ruling [DA-(VAT-054) 529-08] has affirmed respondent's VAT exemption treatment on the gross receipts earmarked for medical utilization.[33]

During his cross-examination[34], Borja clarified that respondent has a license to operate clinics providing the said medical and dental services. No redirect examination was conducted.

Capuchino was the last to take the witness stand. In her Judicial Affidavit[35], she declared that: (1) she verified and evaluated respondent's documents and records in relation to the subject assessment; (2) the results of her audit were summarized in the First Partial ICPA Report[36], Second Partial ICPA Report[37], and Final ICPA Report[38], which were all submitted to the Court; (3) out of the alleged deficiency VAT assessment of ₱209,469,749.00, respondent's possible tax deficiency is only ₱16,741,610.84; (4) the exempt sales of ₱1,019,587,133.34 was verified to have been earmarked for 3rd party healthcare providers, reimbursement of hospitalization expenses to members and direct payments to professionals; (5) the zero-rated sales were verified as receipts from Philippine Economic Zone Authority (**PEZA**)-registered entities; and, (6) the alleged unsupported input VAT of ₱1,519,069.00 is the difference between the VAT returns and the summary list of purchases (**SLP**).

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32 Sec. 109. *Exempt Transactions.*

33 See Judicial Affidavit of Mark Vincent Y. Borja, Exhibit "P-34", Division Docket, Volume II, pp. 895-914.

34 TSN dated 13 February 2017, pp. 6-11.

35 Exhibit "P-62", Division Docket, Volume II, pp. 575-580.

36 Filed on 23 May 2017, id., Volume I, p. 479.

37 Filed on 22 June 2017, id., p. 496.

38 Filed on 18 August 2017, Exhibit "P-60", id., Volume II, pp. 538-571.

When no cross-examination was conducted[39], the Court asked about the submission of the three (3) separate ICPA Reports. Capuchino explained that because of the voluminous records, she was unable to submit a complete audit in a single report within the initial period granted. She, however, declared that she nevertheless submitted the Second and Final Reports within the extended period that the Court allowed.[40]

Later, acting on respondent's "Formal Offer of Evidence [With Motion for Commissioner's Hearing for Permanent Marking]"[41] (**FOE**) and Manifestation[42], without petitioner's objection to the FOE[43], the Court resolved to admit respondent's exhibits except those that did not correspond with the documents actually marked, those that did not have originals for comparison and those that were not found in the records.[44] After respondent moved for reconsideration[45], the Court subsequently admitted some of the previously denied exhibits.

Still later, when petitioner manifested that he or she will no longer present any evidence, the Court directed the parties to file their memoranda.[46] On 06 March 2020, respondent filed its Memorandum[47], while petitioner failed to file his or her Memorandum despite the several extensions granted.[48]

Subsequently, the First Division promulgated the now assailed Decision.[49] The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the FAN/FLD with *Assessment Notice* No. LTDO-122-VT-2008-00006 and *Details of Discrepancies* dated January 4, 2012 issued against [respondent], are **CANCELLED** and **SET ASIDE**.

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39 TSN dated 19 February 2018, p. 12.
40 Id., pp. 12-13.
41 Filed on 09 March 2018, Division Docket, Volume II, pp. 673-706.
42 Filed on 24 April 2018, id., pp. 924-928.
43 See Comment (To Petitioner's Formal Offer of Evidence), id., pp. 915-916.
44 See Resolution dated 11 March 2019, id., pp. 947-950.
45 See Motion for Reconsideration (of the Resolution dated March 11, 2019), id., pp. 951-960 and Resolution dated 11 September 2019, id., pp. 979-982.
46 See Order dated 06 February 2020, id., pp. 995-996.
47 Id., pp. 1001-1031.
48 See Resolution dated 27 January 2021, id., pp. 1075-1077.
49 Supra at note 5; Emphasis in the original text.

> Moreover, the FDDA dated September 23, 2015 issued by then Commissioner of Internal Revenue, Ms. Kim S. Jacinto-Henares, holding [respondent] liable for deficiency VAT, inclusive of interest, in the aggregate amount of **P387,937,975.14** for calendar year 2008, is **REVERSED** and **SET ASIDE**.
>
> [Petitioner], his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from taking any further action against [respondent] arising from the above-mentioned FAN/FLD and FDDA.
>
> **SO ORDERED.**
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> ...

In the assailed Decision, the First Division held that the assessment has already prescribed. It explained that although the first waiver validly extended the period to assess until 31 March 2012, the second waiver failed to comply with the necessary requisites to extend the assessment period until 30 June 2012. Thus, when respondent received the FAN on 30 April 2012, it was already issued beyond the agreed period to assess, rendering the assessment invalid.

The First Division further ruled that the 10-year period to assess is inapplicable since respondent did not file any false or fraudulent returns. Citing *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[50] (**Medicard**), it reiterated that for VAT purposes, respondent properly excluded from its gross receipts the amounts that were earmarked for payment to medical service providers. Thus, petitioner's deficiency assessment based on respondent's whole gross receipts has no factual and legal basis.

Lastly, the First Division found that the revocation of BIR Ruling [DA-(VAT-054) 529-08] is of no consequence since the proper VAT treatments on the amounts earmarked for payment to 3rd parties were already provided in Revenue Regulations (**RR**) No. 16-2005[51] as amended by RR No. 4-2007.[52] Due to the foregoing reasons, the First Division opted to cancel the subject tax assessments.

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50 G.R. No. 222743, 05 April 2017.

51 Consolidated Value-Added Tax Regulations of 2005.

52 Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

Aggrieved, on 24 November 2021, petitioner filed an MR[53], to which respondent filed its Opposition[54] on 10 January 2022.

Thereafter, the First Division promulgated the assailed Resolution[55] denying petitioner's MR. The dispositive portion thereof reads:

> ...
>
> **WHEREFORE,** [petitioner's] *Motion for Reconsideration (Re: Decision dated 28 October 2021)* is **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

Unsatisfied, on 12 May 2022, petitioner filed before the Court *En Banc* the instant Petition for Review.[56] On 27 June 2022, respondent filed its Comment (Re: Petition for Review dated May 12, 2022).[57]

On 07 July 2022, the Court *En Banc* directed the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**) for conciliation proceedings.[58] However, the parties refused to have their case mediated[59] hence, the case was submitted for decision on 19 October 2022.[60]

ISSUES

Before Us, petitioner forwards the following issues for resolution:

> I.
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> WHETHER THE FIRST DIVISION ERRED IN RULING THAT THE SUBJECT ASSESSMENT FOR TAXABLE YEAR (TY) 2008 HAD ALREADY PRESCRIBED; AND,

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53 Division Docket, Volume II, pp. 1126-1140.
54 Id., pp. 1144-1167.
55 Supra at note 6; Emphasis in the original text.
56 Supra at note 1.
57 *Rollo*, pp. 94-120.
58 See Resolution dated 07 July 2022, id., pp. 123-124.
59 See No Agreement to Mediate, id., p. 125.
60 See Resolution dated 19 October 2022, id., pp. 127-128.

II.
WHETHER THE FIRST DIVISION ERRED IN RULING THAT THE SUBJECT WAIVERS ARE DEFECTIVE.

ARGUMENTS AND DISCUSSIONS

In support of the above issues, petitioner contends that there is a substantial underdeclaration of the VAT liabilities for TY 2008 since respondent only declared VAT payment of ₱68,756,387.04 out of the assessed aggregate amount of ₱278,226,134.04. With the foregoing, it is irrefutable that respondent filed false or fraudulent returns; thus, the prescriptive period to assess respondent's books of accounts and accounting records should have been 10 years pursuant to Section 222(a)[61] of the NIRC of 1997, as amended.

Assuming that what is applicable is the 3-year period to assess, the assessment has yet to prescribe when respondent received the FAN on 30 April 2012. Petitioner further claims that the first and second waivers were validly executed and thus, effectively extended the assessment period until 30 June 2012. He or she adds that respondent did not deny the existence of the executed waivers nor raised the alleged defects in its Reply to the PAN hence, it impliedly accepted the effects of the waiver notwithstanding the lack of signature on petitioner's part. Petitioner also claims that he or she was led to believe that the period to assess was extended since respondent submitted additional supporting documents to contest the PAN. With respondent's actions, it should be estopped from questioning the validity of the said waivers.

Petitioner also claims that the execution of a waiver is a unilateral act solely based on the taxpayer's discretion to voluntarily waive the prescription. Thus, his or her only obligation is to receive the executed waivers which is evident in the case records. Assuming that it is a bilateral agreement, the second waiver is still binding since both parties are *in pari delicto*.

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61 **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.
...

Respondent counters that the present Petition for Review before the Court *En Banc* is *pro forma* as the issues raised therein have been already resolved and passed upon in the assailed Decision. In fact, in the assailed Resolution, the First Division already denied petitioner's MR for being mere reiterations of the arguments raised in his or her Answer.

Respondent likewise contends that the First Division correctly struck down the assessment for being prescribed following petitioner's failure to prove that the 10-year prescriptive period to assess is applicable on account of the alleged false or fraudulent returns. Moreover, as the second waiver failed to comply with the mandatory requisites pursuant to Revenue Memorandum Order (**RMO**) No. 20-90[62] and Revenue Delegation Authority Order (**RDAO**) No. 05-01[63], it was defective and ineffectual.

Citing *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*[64], respondent echoes that petitioner cannot invoke the doctrine of estoppel to justify his or her failure to comply with the requisites under his or her own rules or issuances.

Respondent also maintains that a waiver is a bilateral agreement between two (2) parties to extend the assessment period. Contrary to petitioner's claim that he or she only needs to receive the waiver, there is a need for the latter to assent thereto before it becomes effective between them. Lastly, respondent argues that the rule pertaining to *in pari delicto* (where both parties are in equal fault) is inapplicable since petitioner failed to prove that the former is at fault in executing the waivers.

RULING OF THE COURT *EN BANC*

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

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62 Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.

63 Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations.

64 G.R. No. 220835, 26 July 2017.

Section 18 of Republic Act (**RA**) No. 1125[65], as amended by RA 9282[66], provides that a party adversely affected by a resolution of a Division of the Court of Tax Appeals (**CTA**) on an MR or new trial, may file a Petition for Review with the CTA *En Banc*.

Corollarily, Section 3(b)[67], Rule 8 of the RRCTA[68] states that the party affected should file the Petition for Review within fifteen (15) days from receipt of a copy of the questioned decision or resolution. This is without prejudice to an additional 15-day period from the expiration of the original period (within which to file the Petition for Review) that the Court may grant.

Applying the foregoing, petitioner received the assailed Resolution of 06 April 2022 on 12 April 2022.[69] Counting 15 days therefrom, petitioner had until 27 April 2022 to file the Petition for Review before the Court *En Banc*. However, on 27 April 2022, petitioner filed a "Motion for Extension of Time to File Petition for Review"[70] to which the Court granted a non-extendible period of 15 days from 27 April 2022, or until 12 May 2022, to file the petition.[71] The instant petition filed on 12 May 2022 has thus been timely filed and the Court *En Banc* successfully acquired jurisdiction over it.

We now proceed to the issues raised in the present petition.

A cursory examination of the petition readily reveals that the issues raised are mere reiterations that have already been duly taken into consideration, passed upon and properly resolved by the First Division in the assailed Decision of 28 October 2021. The allegations appear to be almost a word-for-word reproduction of petitioner's MR filed on 24 November 2021. For further emphasis, We will, nevertheless, endeavor to discuss anew below.

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65 AN ACT CREATING THE COURT OF TAX APPEALS.

66 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 OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

67 Supra at note 2.

68 Supra at note 4.

69 See Notice of Resolution dated 08 April 2012, *rollo*, p. 58.

70 Id., pp. 1-4.

71 See *En Banc* Minute Resolution dated 02 May 2022, id., p. 6.

THE SECOND WAIVER WAS NOT VALIDLY EXECUTED; THUS, IT DID NOT EXTEND THE PRESCRIPTIVE PERIOD TO ASSESS.

Under Section 203[72] of the NIRC of 1997, as amended, internal revenue taxes shall be assessed within 3 years from the last day prescribed by law for filing of the return or from the day the return was filed, whichever is later. Corollarily, Section 222(b)[73] of the same law provides for an exception to the period of limitation of assessment, *i.e.*, the execution of a waiver by the CIR, or his or her authorized representative, and the taxpayer to extend the period to assess.

In relation thereto, to guide the revenue officials and the taxpayers in the proper execution of the waiver of the statute of limitations, RMO No. 20-90 and RDAO No. 05-01 were issued on 04 April 1990 and 02 August 2001, respectively. These revenue orders require that:

1. The waiver must be in the form specified in RMO No. 20-90.

2. The phrase "but not after _____ 19__" should be filled up as it indicates the expiry date of the period agreed upon to assess/collect the tax after the regular 3-year period of prescription.

   The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.

3. The **waiver shall be signed** by:

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72 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.

73 SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —

...

(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.

...

a. the taxpayer themselves or their duly authorized representative, or, in the case of a corporation, its responsible officials; and

b. the CIR or his or her authorized revenue official, indicating that the BIR has accepted and agreed to the waiver.

The **date of the BIR's acceptance should be indicated in the waiver.**

The waiver shall be signed by the revenue officials authorized under RDAO No. 05-01.

4. The taxpayer's **date of execution of the waiver and BIR's date of acceptance 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.**

5. **The waiver should be duly notarized.**

6. The waiver must be executed in 3 copies, namely: 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 the file copy shall be indicated in the original copy.

7. The foregoing procedures shall be strictly followed.[74]

Applying the foregoing, the first waiver duly complied with the above requirements and had thus validly extended the period to assess until 31 March 2012. However, the same is not true for the second waiver. An examination thereof clearly reveals that it was not properly executed due to the following reasons: (1) petitioner or his or her authorized representative did not accept the waiver (thus lacking the required signature); (2) there is no date of respondent's execution nor date of petitioner's acceptance; (3) it was not notarized; and, (4) there is no

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74 *Universal Weavers Corporation v. Commissioner of Internal Revenue*, G.R. No. 233990, 12 May 2021; Emphasis supplied.

proof that respondent was notified of petitioner's acceptance. With the glaring defects in the second waiver, it failed to successfully extend the period of assessment until 30 June 2012. Thus, when respondent received the FAN on 30 April 2012, the assessment had already prescribed (since the period to assess was until 31 March 2012 only), and petitioner henceforth lost his or her right to enforce the collection thereof.

Moreover, We disagree with petitioner's contention that the equitable principles of *in pari delicto* and estoppel should be applied to sustain the validity of a defective waiver, citing as a basis the Supreme Court's ruling in *Commissioner of Internal Revenue v. Next Mobile, Inc. (Formerly Nextel Communications Phils., Inc.)*[75] (**Next Mobile**). Unfortunately, *Next Mobile* clearly has a different and peculiar *factual milieu* that prevents Us from applying it here.

There is equally no justification for the application of the doctrine of estoppel as an exception to the statute of limitations on the assessment of taxes in light of the detailed procedure for the proper execution of the waiver, which the BIR itself must strictly follow more so that there is nothing vague or ambiguous about the procedural guidelines. On the contrary, the CIR and the revenue officials were fully aware of the consequences of non-compliance with RMO No. 20-90 and RDAO No. 05-01, yet they failed to comply and heed the BIR's directives. Having caused or contributed in the defects in the waivers, the BIR must thus bear the consequence of its own omissions.[76]

PETITIONER FAILED TO PROVE THAT THE EXTRAORDINARY 10-YEAR PRESCRIPTIVE PERIOD TO ASSESS IS APPLICABLE.

Similarly, We cannot share petitioner's insistence that respondent filed false or fraudulent returns which necessitated the application of the 10-year prescriptive period (to assess).

As exhaustively discussed in the assailed Decision, respondent was correct in excluding the amounts earmarked for payment to medical service providers from its gross receipts for purposes of computing the

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75 G.R. No. 212825, 07 December 2015.
76 See *Universal Weavers Corporation v. Commissioner of Internal Revenue*, supra at note 74.

VAT. Invoking the Supreme Court ruling in *Medicard*[77], the First Division aptly ruled that respondent could not have filed false or fraudulent returns:

> ...
>
> It is not disputed that petitioner is rendering and performing medical, dental and hospital services directly to its member-clients. Section 109(1)(G) of the NIRC of 1997, as amended, clearly provides that "*medical, dental, hospital and veterinary services except those rendered by professionals*" are considered as one of the transactions exempt from the payment of VAT.
>
> More significantly, Section 4.108-4 of RR No. 16-2005, as amended by RR No. 4-2007, provides as follows:
>
> > "SEC. 4.108-4. *Definition of Gross Receipts*. — '**Gross receipts**' refers to the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for services rendered and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the VAT, **except those amounts earmarked for payment to unrelated third (3rd) party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor.**
> >
> > **A payment is a payment to a third (3rd) party if the same is made to settle an obligation of another person, e.g., customer or client, to the said third party, which obligation is evidenced by the sales invoice/official receipt issued by said third party to the obligor/debtor (e.g., customer or client of the payor of the obligation).**
> >
> > An advance payment is an advance payment on behalf of another if the same is paid to a third (3rd) party for a present or future obligation of said another party which obligation is evidenced by a sales invoice/official receipt issued by the obligee/creditor to the obligor/debtor (i.e., the aforementioned 'another party') for the sale of goods or services by the former to the latter.
> >
> > For this purpose, 'unrelated party' shall not include taxpayer's employees, partners, affiliates (parent, subsidiary and other related companies), relatives by consanguinity or affinity within the fourth (4th) civil degree, and trust fund

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77 Supra at note 50.

where the taxpayer is the trustor, trustee or beneficiary, even if covered by an agreement to the contrary.

xxx xxx xxx."

Based on the foregoing provision, it is clear that the amounts earmarked for payment to unrelated third (3rd) party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor are not included in the definition of "*gross receipts*" for purpose of the imposition of VAT.

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* (the "*Medicard case*"), the Supreme Court confirmed that the amounts earmarked and paid by petitioner to medical service providers do not form part of gross receipts for VAT purposes, *viz.*:

"**The amounts earmarked and eventually paid by MEDICARD to the medical service providers do not form part of gross receipts for VAT purposes**

xxx xxx xxx

Since an HMO like MEDICARD is primarily engaged in arranging for coverage or designated managed care services that are needed by plan holders/members for fixed prepaid membership fees and for a specified period of time, then MEDICARD is principally engaged in the sale of services. Its VAT base and corresponding liability is, thus, determined under Section 108(A) of the Tax Code, as amended by Republic Act No. 9337.

Prior to RR No. 16-2005, an HMO, like a pre-need company, is treated for VAT purposes as a dealer in securities whose gross receipts is the amount actually received as contract price without allowing any deduction from the gross receipts. This restrictive tenor changed under RR No. 16-2005. Under this RR, an HMO's gross receipts and gross receipts in general were defined, thus:

Section 4.108-3. x x x

x x x x

HMO's gross receipts shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax. **The compensation for their services representing their service fee, is presumed to be the total**

> **amount received as enrollment fee from their members plus other charges received.**
>
> **Section** 4.108-4. x x x. — '***Gross receipts***' refers to the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits applied as **payments for services rendered**, and advance payments actually or constructively received during the taxable period **for the services performed or to be performed** for another person, excluding the VAT.

In 2007, the BIR issued RR No. 4-2007 amending portions of RR No. 16-2005, including the definition of gross receipts in general.

According to the CTA [*E*]*n* [*B*]*anc*, the entire amount of membership fees should form part of MEDICARD's gross receipts because the exclusions to the gross receipts under RR No. 4-2007 does not apply to MEDICARD. What applies to MEDICARD is the definition of gross receipts of an HMO under RR No. 16-2005 and not the modified definition of gross receipts in general under the RR No. 4-2007.

The CTA [*E*]*n* [*B*]*anc* overlooked that the definition of gross receipts under RR No. 16-2005 merely presumed that the amount received by an HMO as membership fee is the HMO's compensation for their services. As a mere presumption, an HMO is, thus, allowed to establish that a portion of the amount it received as membership fee does NOT actually compensate it but some other person, which in this case are the medical service providers themselves. It is a well-settled principle of legal hermeneutics that words of a statute will be interpreted in their natural, plain and ordinary acceptation and signification, unless it is evident that the legislature intended a technical or special legal meaning to those words. The Court cannot read the word 'presumed' in any other way.

It is notable in this regard that the term gross receipts as elsewhere mentioned as the tax base under the NIRC does not contain any specific definition. Therefore, absent a statutory definition, this Court has construed the term gross receipts in its plain and ordinary meaning, that is, gross receipts is understood as comprising the entire receipts without any deduction. Congress, under Section 108, could have simply left the term gross receipts similarly undefined and its interpretation subjected to ordinary acceptation. Instead of doing so, Congress limited the scope of the term gross receipts for VAT purposes only to the amount that the taxpayer received for the services it performed or to the amount it received as advance payment for the services it will render in the future for another person.

In the proceedings below, the nature of MEDICARD's business and the extent of the services it rendered are not seriously disputed. As an HMO, MEDICARD primarily acts as an intermediary between the purchaser of healthcare services (its members) and the healthcare providers (the doctors, hospitals and clinics) for a fee. By enrolling membership with MEDICARD, its members will be able to avail of the pre-arranged medical services from its accredited healthcare providers without the necessary protocol of posting cash bonds or deposits prior to being attended to or admitted to hospitals or clinics, especially during emergencies, at any given time. **Apart from this, MEDICARD may also directly provide medical, hospital and laboratory services, which depends upon its member's choice.**

Thus, in the course of its business as such, MEDICARD members can either avail of medical services from MEDICARD's accredited healthcare providers or directly from MEDICARD. In the former, MEDICARD members obviously knew that beyond the agreement to pre-arrange the healthcare needs of its members, MEDICARD would not actually be providing the actual healthcare service. Thus, based on industry practice, MEDICARD informs its would be member beforehand that 80% of the amount would be earmarked for medical utilization and only the remaining 20% comprises its service fee. In the latter case, MEDICARD's sale of its services is exempt from VAT under Section 109(G).

The CTA's ruling and CIR's Comment have not pointed to any portion of Section 108 of the NIRC that would extend the definition of gross receipts even to amounts that do not only pertain to the services to be performed: by another person, other than the taxpayer, but even to amounts that were indisputably utilized not by MEDICARD itself but by the medical service providers.

It is a cardinal rule in statutory construction that no word, clause, sentence, provision or part of a statute shall be considered surplusage or superfluous, meaningless, void and insignificant. To this end, a construction which renders every word operative is preferred over that which makes some words idle and nugatory. This principle is expressed in the maxim *Ut magisvaleat quam pereat*, that is, we choose the interpretation which gives effect to the whole of the statute — it's every word.

In *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, the Court adopted the principal object and purpose object in determining whether the MEDICARD therein is engaged in the business of

insurance and therefore liable for documentary stamp tax. The Court held therein that an HMO engaged in preventive, diagnostic and curative medical services is not engaged in the business of insurance. x x x

x x x x x x x x x

In sum, the Court said that the main difference between an HMO and an insurance company is that HMOs undertake to provide or arrange for the provision of medical services through participating physicians while insurance companies simply undertake to indemnify the insured for medical expenses incurred up to a pre-agreed limit. In the present case, the VAT is a tax on the value added by the performance of the service by the taxpayer. It is, thus, this service and the value charged thereof by the taxpayer that is taxable under the NIRC.

To be sure, there are pros and cons in subjecting the entire amount of membership fees to VAT. But the Court's task however is not to weigh these policy considerations but to determine if these considerations in favor of taxation can even be implied from the statute where the CIR purports to derive her authority. This Court rules that they cannot because the language of the NIRC is pretty straightforward and clear. As this Court previously ruled:

> What is controlling in this case is the well-settled doctrine of strict interpretation in the imposition of taxes, not the similar doctrine as applied to tax exemptions. The rule in the interpretation of tax laws is that a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. **A tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication**. In answering the question of who is subject to tax statutes, it is basic that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import. As burdens, taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws.

For this Court to subject the entire amount of MEDICARD's gross receipts without exclusion, the authority should have been reasonably founded from the language of the statute. That language is wanting in

this case. In the scheme of judicial tax administration, the need for certainty and predictability in the implementation of tax laws is crucial. Our tax authorities fill in the details that Congress may not have the opportunity or competence to provide. The regulations these authorities issue are relied upon by taxpayers, who are certain that these will be followed by the courts. Courts, however, will not uphold these authorities' interpretations when clearly absurd, erroneous or improper. **The CIR's interpretation of gross receipts in the present case is patently erroneous for lack of both textual and non-textual support.**

As to the CIR's argument that the act of earmarking or allocations is by itself an act of ownership and management over the funds, the Court does not agree. On the contrary, it is MEDICARD's act of earmarking or allocating 80% of the amount it received as membership fee at the time of payment that weakens the ownership imputed to it. By earmarking or allocating 80% of the amount, MEDICARD unequivocally recognizes that its possession of the funds is not in the concept of owner but as a mere administrator of the same. For this reason, at most, MEDICARD's right in relation to these amounts is a mere inchoate owner which would ripen into actual ownership if, and only if, there is underutilization of the membership fees at the end of the fiscal year. Prior to that, MEDICARD is bound to pay from the amounts it had allocated as an administrator once its members avail of the medical services of MEDICARD's healthcare providers.

Before the Court, the parties were one in submitting the legal issue of whether the amounts MEDICARD earmarked, corresponding to 80% of its enrollment fees, and paid to the medical service providers should form part of its gross receipt for VAT purposes, after having paid the VAT on the amount comprising the 20%. It is significant to note in this regard that MEDICARD established that upon receipt of payment of membership fee it actually issued two official receipts, one pertaining to the VATable portion, representing compensation for its services, and the other represents the non-vatable portion pertaining to the amount earmarked for medical utilization. Therefore, the absence of an actual and physical segregation of the amounts pertaining to two different kinds of fees cannot arbitrarily disqualify MEDICARD from rebutting the presumption under the law and from proving that indeed services were rendered by its healthcare providers for which it paid the amount it sought to be excluded from its gross receipts.

xxx xxx xxx

In fine, the foregoing discussion suffices for the reversal of the assailed decision and resolution of the CTA *en*

> *banc* grounded as it is on due process violation. The Court likewise rules that **for purposes of determining the VAT liability of an HMO, the amounts earmarked and actually spent for medical utilization of its members should not be included in the computation of its gross receipts.**
>
> WHEREFORE, in consideration of the foregoing disquisitions, the petition is hereby GRANTED. x x x **The definition of gross receipts under Revenue Regulations Nos. 16-2005 and 4-2007, in relation to Section 108(A) of the National Internal Revenue Code, as amended by Republic Act No. 9337, for purposes of determining its Value-Added Tax liability, is hereby declared to EXCLUDE the eighty percent (80%) of the amount of the contract price earmarked as fiduciary funds for the medical utilization of its members.** x x x"

Based on the foregoing jurisprudence, it is plain that the amounts earmarked and eventually paid by petitioner to the medical service providers do not form part of gross receipts for VAT purposes.

In this case, it is undisputed that the subject VAT assessment is founded on the position of the BIR that petitioner "*is liable to VAT based on its gross receipts without the benefit of deductions for the amount paid to accredited doctors, hospitals and clinics.*" Clearly, on the basis of the aforequoted Section 4.108-4 of RR No. 16-2005, as amended by RR No. 4-2007, and the abovequoted jurisprudential pronouncements, respondent is utterly mistaken. Such being the case, petitioner's Quarterly VAT Returns for taxable year 2008 cannot be treated as false returns. Thus, the ten (10)-year prescriptive period under Section 222(a) of the NIRC of 1997 is *not* applicable in this case.[78]

...

Stare decisis et non quieta movere. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, similar cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[79]

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78 Supra at note 5; Citations omitted, emphasis, italics and underscoring in the original text.

79 *Nancy L. Ty v. Banco Filipino Savings & Mortgage Bank*, G.R. No. 144705, 15 November 2005.

Taking cue from the SC pronouncement in *Medicard* as regards the proper treatment of gross receipts pursuant to RR No. 4-2007, We find that the 10-year prescriptive period to assess is inapplicable in this case.

In sum, the Court *En Banc* does not find any reason to deviate from the First Division's ruling of cancelling petitioner's deficiency assessment against respondent.

WHEREFORE, in view of the foregoing, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 12 May 2022 is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 28 October 2021 and Resolution dated 06 April 2022, respectively, of the First Division in CTA Case No. 9175 entitled *Medicard Philippines, Inc. v. Commissioner of Internal Revenue,* are **AFFIRMED**.

Consequently, petitioner Commissioner of Internal Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from proceeding with the collection of the taxes assessed against respondent Medicard Philippines, Inc. as provided in the Final Decision on Disputed Assessment dated 23 September 2015 in the total amount of ₱485,969,817.68, representing deficiency value-added tax for taxable year 2008.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ON OFFICIAL BUSINESS
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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

ON LEAVE
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