IN DEFENSE OF THE TAXPAYER: 2017 IN REVIEW*

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ABSTRACT

Tax jurisprudence keeps on developing, and the past year saw tax cases being decided more in favor of the taxpayer based on procedural infirmities committed in the assessment process by the Bureau of Internal Revenue (BIR). This Note is a survey of tax cases decided by the Supreme Court in 2017 where it laid down new interpretations of provisions provided by the Tax Code and the rules promulgated by the BIR in evaluating whether a proper assessment was undertaken. Likewise, the Court interpreted provisions with regard to the procedural rules in appealing final assessments or decisions on disputed assessments, thereby expanding the authority vested in the Court of Tax Appeals to review the controversies brought before it.

I. INTRODUCTION

2017 has been a good year for the taxpayer. The Supreme Court, in five important cases, laid down new doctrines that would make it easier for the taxpayer to contest an assessment made by the Commissioner of Internal Revenue (CIR). The principles in these cases are primarily procedural in character, and even jurisdictional, in that non-compliance therewith would easily result in an assessment being thrown out. In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[1] the Court emphasized the importance of the Letter of Authority (LOA) as the starting point of all assessments to be made against the taxpayer, the absence of which renders the assessment void. In *Commissioner of Internal Revenue v. Philippine Daily*

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[1] G.R. No. 222743, Apr. 5, 2017.

Inquirer, Inc.,[2] the Court looked at the validity of waivers and the necessity of their proper execution for there to be a valid assessment. The case of *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*[3] also tackled the same issue on the validity of waivers. In *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*,[4] the Court clarified the jurisdiction of the Court of Tax Appeals (CTA) *En Banc*. It must be stressed that the structure and jurisdiction of the CTA are peculiar, based as they are on the law that created it[5] and the procedural rules that govern the cases before it.[6] The specialized procedure for tax cases, as compared to ordinary civil cases, offers a different interpretation that may be used by the taxpayer in contesting an assessment. Finally, in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[7] the Supreme Court empowered the CTA to review the procedural issues in a case, even though they were not raised by the parties. Simply, the Court has granted the CTA the authority to *motu proprio* determine if it has jurisdiction in a given case based on the validity of a LOA, and thereafter dismiss it if found baseless. In sum, the use of the principles laid down in these cases makes it easier for the taxpayer to raise legal defenses against assessments, especially when the issue has reached the courts.

II. TAX ASSESSMENT PROCESS

Disputes on taxes arise upon the assessment made by the Bureau of Internal Revenue (BIR) for any deficiency payments. The process starts when the CIR or his duly authorized representative sanctions the examination of any taxpayer.[8] This is embodied in a LOA issued by the CIR or his representative to the revenue officer who conducts the audit. Simply, the LOA "empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of

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[2] G.R. No. 213943, Mar. 22, 2017.

[3] G.R. No. 220835, July 26, 2017.

[4] G.R. No. 201530, Apr. 19, 2017.

[5] Rep. Act No. 1125 (1954), *as amended by* Rep. Act Nos. 9282 (2004) *and* 9503 (2008).

[6] A.M. No. 05-11-07-CTA, Nov. 11, 2005. Revised Rules of the Court of Tax Appeals.

[7] G.R. No. 183408, July 12, 2017.

[8] TAX CODE, § 6(A). The National Internal Revenue Code or Rep. Act No. 8324 (1997).

collecting the correct amount of tax."[9] The importance of the LOA cannot be gainsaid as its absence renders the assessment void.[10]

Upon the presentation of the LOA to the taxpayer, the examination of the taxpayer's books may commence, and preliminary findings may be prepared. Previously, the BIR and the taxpayer sit in an "Informal Conference" where the revenue officer presents his findings and the taxpayer is given the opportunity to refute the findings or to present additional evidence for consideration in the audit. This step, which is not statutory, was removed in 2013 to speed up the process[11] but recently revived by the BIR.[12] The findings of the revenue officer shall then be reviewed by the Assessment Division of the Revenue Regional Office of the BIR, or the CIR himself, and after finding sufficient basis for the tax deficiency, such will be embodied in a Preliminary Assessment Notice (PAN).[13] Once a PAN is issued, the taxpayer is given 15 days to file an answer.[14] This is in line with the due process requisite of notifying the taxpayer the basis of the deficiency for him to be able to present his case and adduce supporting evidence; hence the issuance of the PAN is a substantive and not merely procedural requirement.[15]

Non-filing of the answer renders the taxpayer in default, in which case a Formal Letter of Demand or Final Assessment Notice (FLD/FAN) is issued calling for the payment of the deficiency tax.[16] If the taxpayer files an answer positing disagreements with the findings, the FLD/FAN is issued within 15 days from the filing of the response.[17] The Tax Code[18] provides that "[t]he taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."[19] It has been held that when there are defects in the FAN which do not show

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[9] Comm'r of Internal Revenue v. Sony Philippines, Inc., G.R. No. 178697, 635 SCRA 234, 242, Nov. 17, 2010.

[10] *Id.* at 243.

[11] *See* Bureau of Internal Revenue (BIR) Rev. Reg. No. 18-2013 (2013).

[12] *See* BIR Rev. Reg. No. 7-2018 (2018).

[13] BIR Rev. Reg. No. 12-99 (1999), § 3.1.2. Rev. Reg. No. 7-2018 inserted a new provision, § 3.1.1 on Notice of Informal Conference, hence the provision on the Preliminary Assessment Notice embodied in § 3.1.1 of Rev. Reg. No. 18-2013 was appropriately renumbered.

[14] BIR Rev. Reg. No. 12-99 (1999), § 3.1.2, *as amended.*

[15] Comm'r of Internal Revenue v. Metro Star Suprema, Inc., G.R. No. 185371, 637 SCRA 633, 644, Dec. 8, 2010.

[16] BIR Rev. Reg. No. 12-99 (1999), § 3.1.2.

[17] § 3.1.2.

[18] Rep. Act No. 8424 (1997). National Internal Revenue Code of 1997.

[19] TAX CODE, § 228.

the factual and legal bases of the assessment, the assessment is considered void.[20]

The BIR is given a period of only three years from the last day prescribed by law for the filing of the return, or the actual date when such return was filed if filed beyond the period prescribed, to make an assessment.[21] However, in the case of false or fraudulent returns with intent to evade tax or of failure to file a return, the tax may be assessed within ten years from discovery of the falsity, fraud or omission.[22] As the Supreme Court held in the oft-cited case of *Aznar v. Court of Tax Appeals*,[23] the extended prescriptive period of ten years applies in only three instances—when there is: (a) a false return; (b) a fraudulent return with intent to evade tax; and (c) failure to file a return. This classification is material because the Court, as held in the recent case of *Commissioner of Internal Revenue v. Asalus Corporation*,[24] empowered the BIR in assessing what it considers to be a "false" return, to wit: "[A] mere showing that the returns filed by the taxpayer were false, notwithstanding the absence of intent to defraud, is sufficient to warrant the application of the ten (10) year prescriptive period under Section 222 of the NIRC."[25]

To avoid the immediate issuance of the FLD/FAN before the expiration of the prescriptive period, and to afford the taxpayer more time to submit supporting documents, the taxpayer and the BIR may agree in writing to waive the statute of limitations before the expiration of the three-year period.[26] The general rule is that when a waiver does not comply with the requisites for its validity specified under the rules, it is invalid and ineffective to extend the prescriptive period to assess taxes.[27] In a number of cases, the Court has invalidated the waivers executed for non-compliance with the provisions of the then implementing rules: Revenue Memorandum Order (RMO) No. 20-90 dated April 4, 1990 and Revenue Delegation of

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[20] *See* Comm'r of Internal Revenue v. Azucena, G.R. No. 159694, 480 SCRA 382, 392-397, Jan. 27, 2006; *and* Comm'r of Internal Revenue v. Metro Star Suprema, Inc., 637 SCRA at 644.

[21] TAX CODE, § 203.

[22] § 222(a).

[23] G.R. No. 20569, 58 SCRA 519, Aug. 23, 1974.

[24] G.R. No. 221590, Feb. 22, 2017.

[25] *Id. But see* Comm'r of Internal Revenue v. B.F. Goodrich Phils., Inc., G.R. No. 104171, 303 SCRA 546, 555, Feb. 24, 1999, where the Court held that a return containing wrong information due to mistake, carelessness or ignorance do not constitute a false return alone.

[26] TAX CODE, § 222(b).

[27] Comm'r of Internal Revenue v. Next Mobile, Inc., G.R. No. 212825, 776 SCRA 343, 357, Dec. 7, 2015.

Authority Order (RDAO) No. 05-01 dated August 2, 2001.[28] Of course, the general rule offers exceptions, and in the case of *Commissioner of Internal Revenue v. Next Mobile, Inc.*,[29] the Court allowed the assessment despite the invalid waiver because: (1) both the taxpayer and the BIR were *in pari delicto*; (2) both should not benefit from their mistakes; (3) the taxpayer was estopped from questioning the validity of the waivers; and (4) the taxpayer, after voluntarily executing the waivers, suspiciously insisted on their invalidity by raising the defects it caused. Interestingly, sensing that it was losing collections because of simple defects in waivers, the BIR issued RMO No. 14-2016 dated April 4, 2016, which laid down new (and lax) guidelines on the execution of waivers. The application of the new rules is yet to be seen.

Once a FLD/FAN is issued, the taxpayer is obligated to pay the deficiency tax. However, the taxpayer is not necessarily without recourse. He is given the opportunity to protest the assessment administratively before the CIR by filing for reconsideration or reinvestigation within 30 days from the receipt of the FLD/FAN.[30] Within 60 days from the filing of said protest, all relevant supporting documents shall be submitted by the taxpayer; otherwise, the assessment becomes final.[31] If the protest is denied in whole or in part as embodied in a Final Decision on Disputed Assessment (FDDA), or if the CIR fails to act on the protest within 180 days from the date of submission of supporting documents, the taxpayer adversely affected may appeal before the CTA within 30 days from receipt of said decision, or from the lapse of the 180-day period.[32] Failure to file a petition for review before the CTA renders the assessment final, executory and demandable.[33] The Court has interpreted these overlapping periods to mean that a taxpayer can either: (1) file a petition for review before the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the CIR on the disputed assessment, even if such decision were rendered after the 180-day period, and appeal such final decision to the CTA within 30

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[28] *See* Phil. Journalists, Inc. v. Comm'r of Internal Revenue [hereinafter "Phil. Journalists"], G.R. No. 162852, 447 SCRA 214, Dec. 16, 2004; Comm'r of Internal Revenue v. FMF Development Corp., G.R. No. 167765, 556 SCRA 698, June 30, 2008; Comm'r of Internal Revenue v. Kudos Metal Corp., G.R. No. 178087, 620 SCRA 232, May 5, 2010; Comm'r of Internal Revenue v. The Stanley Works Sales (Phils.), Inc., G.R. No. 187589, 743 SCRA 642, Dec. 3, 2014; *and* Comm'r of Internal Revenue v. Standard Chartered Bank, G.R. No. 192173, 764 SCRA 174, July 29, 2015.

[29] 776 SCRA at 357.

[30] TAX CODE, § 228.

[31] § 228.

[32] § 228.

[33] § 228.

days after receipt of a copy of such decision.[34] These options are mutually exclusive and resort to one bars the application of the other.[35] Thereafter, the CTA in one of its three divisions[36] will decide the case. A decision of a division may be appealed to the CTA *En Banc*,[37] and thereafter via petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure before the Supreme Court.[38]

III. NEW DEFENSES FOR THE TAXPAYER

A. Validity of Letter of Authority

The LOA, being the reckoning point of the assessment process, is a prime target of the taxpayer's defense. It is a statutory requirement,[39] hence its absence is fatal to any assessment.

In the case of *Medicard*, taxpayer Medicard Philippines, Inc. (Medicard) is a health maintenance organization (HMO), which is an "entity that provides, offers or arranges for coverage of designated health services needed by plan members for a fixed prepaid premium."[40] It filed its Value Added Tax (VAT) return electronically.

Recognizing advances in technology, the BIR issued RMO No. 30-2003 which prescribed the guidelines and procedure for the use of data in its Reconciliation of Listing for Enforcement (RELIEF) System. The RELIEF System detects tax leaks by comparing the data in the BIR's Integrated Tax System with data gathered from third parties. This was supplemented by RMO No. 42-2003 prescribing the "no-contact audit approach," which entails the computerized matching of sales and purchases data under the RELIEF System. The discrepancies are then communicated to the taxpayer

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[34] Lascona Land Co., Inc. v. Comm'r of Internal Revenue, G.R. No. 171251, 667 SCRA 455, 461-462, Mar. 5, 2012, *citing* Rizal Commercial Banking Corp. v. Comm'r of Internal Revenue, G.R. No. 168498, 522 SCRA 144, Apr. 24, 2007.

[35] *Id.*

[36] Rep. Act No. 9503. This law enlarged the composition of the CTA by adding a third division composed of three new additional Associate Justices.

[37] Rep. Act No. 1125, *as amended*, § 18. Appeal to the Court of Tax Appeals *En Banc*.

[38] § 19. Review by Certiorari.

[39] TAX CODE, § 6(A).

[40] Phil. Health Care Providers, Inc. v. Comm'r of Internal Revenue, G.R. No. 167330, 600 SCRA 413, 426, Sept. 18, 2009, *citing* Rep. Act No. 7875 (1995), *as amended by* Rep. Act No. 9241 (2004), § 4(o)(3).

through the issuance of a Letter Notice (LN) by the CIR,[41] which serves as a discrepancy notice to the taxpayer similar to a Notice for Informal Conference.[42] Realizing that in both issuances there contain no mention of the statutory requirement for a LOA, the BIR issued RMO No. 32-2005, which prescribed the procedure for the conversion of issued LNs to LOAs.

In this case, the CIR issued only a LN against Medicard. Subsequently, the CIR also issued a PAN and, thereafter, a FAN for deficiency VAT for taxable year 2006 in the total amount of **PHP** 196,614,476.69, inclusive of penalties. The CIR argued that Medicard only arranges for medical or hospital services and does not actually provide such services, which under the law are VAT exempt.[43] To this, Medicard protested, and a revenue officer was authorized through a Tax Verification Notice to review the supporting documents submitted by the taxpayer. Ultimately, the CIR issued a FDDA denying Medicard's protest.

Medicard then filed a petition for review before the CTA within the time fixed by law. In its Decision, the CTA Division affirmed with modification the FDDA issued by the CIR, and ordered taxpayer Medicard to pay **PHP** 223,173,208.35, inclusive of surcharge, plus 20% deficiency interest. The CTA Division reasoned that in lieu of the LOA, the LN operated to inform Medicard of the discrepancies in its tax returns, and that Medicard was estopped from questioning the absence of the LOA because the assessment issued against it contained the factual and legal bases that put Medicard on notice of the deficiency. Its motion for reconsideration denied by the CTA Division, Medicard appealed before the CTA *En Banc*, which partially granted its petition for review. The CTA *En Banc* reduced the tax deficiency of Medicard to **PHP** 220,234,609.48.

On appeal, the Supreme Court applied the strict requirement for the issuance of a LOA under Section 6(A) of the Tax Code. Interestingly, that provision never mentioned any "Letter of Authority." What it plainly provides is that the CIR or his representative may *authorize* a revenue officer to examine a taxpayer for the purpose of assessing a tax deficiency; hence, be it denominated as a LOA or not, what is essentially required is that: (1) there is an express grant of authority by the CIR or his representative to the revenue officer so named to conduct the examination of the taxpayer's

[41] BIR Rev. Memo. Order No. 42-2003, item II, no. 4.

[42] Item III, no. 5.

[43] TAX CODE, § 109(1)(G).

books; (2) the revenue officer did not go beyond such authority;[44] and (3) such authority must have been received by the taxpayer within 30 days from its issuance.[45]

In *Medicard*, there was clearly no mention of a LOA or any valid authority to conduct an assessment of the taxpayer. On this note, the Supreme Court disagreed with the CTA in holding that the LN acted as a substitute for the LOA. The differences between the two were put by the Court in this way:

> *First*, a[ ] LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while a[ ] LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. *Second*, a[ ] LOA is valid only for 30 days from date of issue while an LN has no such limitation. *Third*, a[ ] LOA gives the revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas a[ ] LN does not contain such a limitation.[46]

Moreover, RMO No. 32-2005 provided that LNs be converted to LOAs; hence this is an admission on the BIR's part that there is clearly a difference between LNs and LOAs, for what would the conversion be for if the LN is purported to be the same as a LOA? It must be noted that RMO No. 42-2003 also states that a LN only acts as a Notice of Informal Conference, which is different from a LOA. Also, the CIR did not dispute the applicability of said RMO to this case, which required the existence of a LOA for the assessment to be valid. On this procedural defect alone, Medicard's right to due process was violated, warranting the reversal of the CTA *En Banc*'s decision.

The principle held in *Medicard* sustains the view that the absence of a LOA renders the subsequent assessment void. Any alternative document issued by the BIR which does not meet the requirements of a valid authority has the same effect as that of an absent LOA. This doctrinal extension has

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[44] Comm'r of Internal Revenue v. Sony Philippines, Inc., G.R. No. 178697, 635 SCRA 234, 242, Nov. 17, 2010.

[45] Dakay Construction and Development Corp. v. Comm'r of Internal Revenue, CTA EB No. 1294 (Ct. of Tax Appeals Sept. 20, 2016), *citing* BIR Rev. Audit Memo. Order No. 1-00 (2000), item 2.3. "A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue; otherwise it becomes null and void, unless revalidated."

[46] Medicard Philippines, Inc. v. Comm'r of Internal Revenue, G.R. No. 222743, Apr. 5, 2017. (Emphasis supplied.)

been applied by the Tax Court. In *Splash Corp. v. Commissioner of Internal Revenue*,[47] the CTA First Division invalidated the assessment made by the BIR for deficiency income tax, VAT, expanded withholding tax (EWT), and compromise penalty for taxable year 2008 in the total amount of **PHP** 256,946,058.68 for lack of a valid LOA. In that case, the original LOA was issued authorizing three revenue officers of the Large Taxpayers Audit and Investigation Division to examine the books of Splash Corporation. However, continuation of the examination was transferred, pursuant to a *memorandum*, to three other revenue officers, who ultimately recommended the issuance of the PAN and FAN against Splash. Even though there was a memorandum, and the original LOA was revalidated with the names of the new revenue officers, this did not cure the infirmity that attended the examination of taxpayer's books. Citing the BIR's own rules,[48] the CTA First Division held that what is required is the issuance of a new LOA, and that the absence of a valid LOA as held in *Medicard* renders the assessment void.

B. Validity of Waiver of Statute of Limitations

There are two cases decided by the Court in 2017 concerning waivers. In these cases, the Court sustained the general rule that waivers shall be strictly construed because it is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations.[49] In *Philippine Daily Inquirer*, the newspaper company (PDI) was finally assessed by the BIR for deficiency VAT in the amount of **PHP** 3,154,775.56 and deficiency income tax of **PHP** 1,524,229.99 for taxable year 2004. Prior to this, PDI received a LN in 2006 and it executed a waiver of the statute of limitations received by the BIR in March 2007. A second waiver was executed by PDI and received by the BIR on June 2007. After receiving the PAN on December 2007, PDI executed a third waiver which was received by the BIR in the same month. The FLD was issued on April 2008. PDI administratively protested the assessment, and after the lapse of the 180-day period due to the CIR's inaction, PDI filed a petition for review before the CTA.

The CIR contended that since there was under-declaration of input tax and purchases leading to taxable income for income tax purposes and taxable gross receipts for VAT purposes, the return filed by PDI was false;

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[47] CTA Case No. 8483. (Ct. of Tax Appeals Aug. 18, 2017).

[48] BIR Rev. Memo. Order No. 43-90 (1990), item C, no. 5.

[49] *Phil. Journalists*, 447 SCRA 214, 227, *citing* Ouano v. Ct. of Appeals, G.R. No. 129279, 398 SCRA 525, Mar. 4, 2003.

hence the prescriptive period is 10 years, and the action to assess PDI had not prescribed. The CTA First Division rejected this theory and held that the applicable prescriptive period is three years. Because of this, there was a need to examine the waivers executed by PDI to determine whether the assessments were made beyond the time agreed upon. The factual findings of the CTA First Division as stated by the Court are as follows:

> [W]hile the [f]irst and [s]econd [w]aivers were executed in three copies, the BIR failed to provide the office accepting the waivers with their respective third copies. The CTA First Division found that the third copies were still attached to the docket of the case. The CTA First Division also found that the BIR failed to prove that the [t]hird [w]aiver was executed in three copies. Further, the revenue official who accepted the [t]hird [w]aiver was not authorized to do so.[50]

With the FLD issued only in 2008 and there being no valid waiver, the assessment was declared void. The CTA *En Banc* dismissed the CIR's petition for review and affirmed *in toto* the CTA First Division's findings.

Before the Supreme Court, the primary issue raised was whether or not the assessment made against PDI was valid. The Court ruled that it was not. Preliminarily, the Court found that there was not enough evidence to prove fraud or intentional falsity on the part of PDI; hence, the regular prescriptive period of three years applied. The assessment being made in 2008 for taxable year 2004, the Court then looked at the validity of PDI's waivers, and compared it with the requirements set forth in *Commissioner of Internal Revenue v. Kudos Metal Corp.*:[51]

> 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 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:
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> 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.

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[50] Comm'r of Internal Revenue v. Phil. Daily Inquirer, G.R. No. 213943, Mar. 22, 2017.

[51] G.R. No. 178087, 620 SCRA 232, May 5, 2010.

> 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 the taxpayer to a representative, such delegation should be in writing and duly notarized.
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> 3. The waiver should be duly notarized.
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> 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.
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> 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.
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> 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.[52]

The Court found that the waivers executed by PDI were defective. The sixth requirement calls for three copies of the waiver, with the original attached to the docket, the second copy for the taxpayer, and the third one for the BIR office accepting it. This is a rather practical requirement that satisfies procedural due process. Adopting the factual findings of the CTA, the Court ruled that the sixth requirement of the guidelines was not complied with by the CIR. Hence, from the execution of the very first waiver, the prescriptive period was not extended, and the assessment issued beyond such period was declared void.

The case of *Systems Technology Institute* offers the same guidance as that of *Philippine Daily Inquirer*. Here, taxpayer Systems Technology Institute, Inc. (STI) was assessed, as embodied in a FAN issued in 2007, to pay deficiency income tax, VAT, and EWT for taxable year 2003 in the total

[52] *Id.* at 241-244.

amount of **PHP** 161,835,737.98. Prior to this, STI executed three waivers to extend the application of the statute of limitations. Contesting the said assessment, STI filed its administrative protest. Two years later, the CIR rendered a FDDA finding STI liable to pay deficiency taxes in the reduced amount of **PHP** 124,257,764.20. Not amenable to paying this amount, STI filed a petition for review before the CTA.

In its decision, the CTA Second Division granted the petition and effectively threw out the assessment on the ground of prescription. It held that the waivers executed by STI were defective for failing to comply with the rules. The CIR then appealed to the CTA *En Banc*, which affirmed the judgment of the CTA Second Division.

The Supreme Court ruled to affirm the decision of the CTA *En Banc*. Citing the same requirements enunciated in *Kudos Metal Corp.*, the waivers executed by STI were found to have the following defects: (1) at the time the first waiver was executed, the periods to assess deficiency EWT and VAT had already prescribed, in violation of Sec. 222(b) of the Tax Code; (2) STI's signatory to the three waivers had no notarized written authority from the corporation's board of directors, in violation of the second requirement under *Kudos Metal Corp.*; and (3) the waivers did not specify the kind of tax and the amount of tax due, similar to the invalid waivers in *Commissioner of Internal Revenue v. Standard Chartered Bank*.[53] The Court likewise disagreed with the CIR's invocation of *Rizal Commercial Banking Corp. (RCBC) v. Commissioner of Internal Revenue*,[54] where the taxpayer's partial payment of the assessment was held to be an implied admission of the validity of the waivers. The Court held that STI cannot be estopped from questioning the validity of the assessment because while in the *RCBC* case, the taxpayer had already paid the deficiency tax, while here, STI merely protested its assessment and later got a reduced amount.

Both *Philippine Daily Inquirer* and *Systems Technology Institute* applied the rigid standard set forth by jurisprudence, which is a natural offshoot of the general rule that a waiver is strictly construed against the BIR.[55] However, it must be noted that such rigid standard is only based on the issuances of the BIR itself. The decision in *Kudos Metal Corp.* summarized what RMO No. 20-

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[53] G.R. No. 192173, 764 SCRA 174, July 29, 2015.

[54] G.R. No. 170257, 657 SCRA 70, Sept. 7, 2011.

[55] *Phil. Journalists*, 447 SCRA 214, 227, *citing* Ouano v. Ct. of Tax Appeals, G.R. No. 129279, 398 SCRA 525, Mar. 4, 2003. ("A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed.")

90[56] and RDAO No. 05-01[57] provided. RMOs are "issuances that provide directives or instructions; prescribe guidelines; and outline processes, operations, activities, workflows, methods and procedures necessary in the implementation of stated policies, goals, objectives, plans and programs of the B[IR] in all areas of operations, except auditing[,]"[58] while RDAOs pertain to "functions delegated by the Commissioner to revenue officials in accordance with law."[59] Even though merely denominated as memorandum or delegation orders, both RMO No. 20-90 and RDAO No. 05-01 clearly provide the procedure for the proper implementation of Sec. 222(b) of the Tax Code, and as such their effect is the same as that of a law.[60] As the Court held in *Abakada Guro Party List v. Purisima*:[61]

> Administrative regulations enacted by administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law and are entitled to respect. Such rules and regulations partake of the nature of a statute and are just as binding as if they have been written in the statute itself. As such, they have the force and effect of law and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court.[62]

It was therefore apt for the Court to cite the BIR's own rules in measuring the validity of a waiver. However, the jurisprudential justification for their strict application will be put to the test with the issuance of RMO No. 14-2016,[63] which provides for a more lenient procedure for waiver execution. RMO No. 14-2016 has a number of problematic provisions. *First*, it provides that waivers may be executed, but not necessarily, in the form prescribed by RMO No. 20-90 and RDAO No. 05-01. The taxpayer's failure to follow the forms would not invalidate the waiver as long as: (a) it is executed before the expiration of the period and the date of execution is

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[56] BIR Rev. Memo. Order No. 20-90 (1990). Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.

[57] BIR Rev. Delegation of Authority Order No. 05-01 (2001). Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations.

[58] BIR, *Revenue Issuances*, *available at* http://www.bir.gov.ph/index.php/revenue-issuances.html (last visited Feb. 28, 2018).

[59] *Id.*

[60] People v. Maceran, G.R. No. 32166, 79 SCRA 450, 460, Oct. 18, 1977.

[61] G.R. No. 166715, 562 SCRA 251, Aug. 14, 2008.

[62] *Id.* at 288-289.

[63] BIR Rev. Memo. Order No. 14-2016 (2016). Guidelines for the Execution of Waivers from the Defense of Prescription Pursuant to Section 222 of the National Internal Revenue Code of 1997, As Amended.

specifically indicated therein; (b) the waiver is signed by the taxpayer himself or his representative; and (c) the expiry date of the period agreed upon to assess or collect the tax after the three-year period is indicated. However, this is a clear derogation of the Court's holding in *Systems Technology Institute*, where it was held that the requirements under RMO No. 20-90 and RDAO No. 05-01 are "mandatory and must strictly be followed." *Second*, RMO No. 14-2016 provides that it is not mandatory to specify the particular taxes to be assessed, nor the amount thereof, and the revenue officer may simply state "all internal revenue taxes." This requirement directly contradicts the findings of the Court in *Systems Technology Institute* and *Standard Chartered Bank*, where waivers that did not specify which type of tax was being assessed were found to be defective. *Last*, it charges the taxpayer with the burden of ensuring that the waiver is validly executed by its authorized representative. RMO No. 14-2016 shifts the obligation to prove the waiver's validity to the taxpayer, but this provision goes against the principle that the waiver is generally construed against the taxman.[64] Moreover, it is fair to note that a "waiver is not a unilateral act by the taxpayer or the BIR, but is a bilateral agreement between two parties to extend the period to a date certain."[65] In its pursuit of learning from its past mistakes and seeing the prospect of losing millions of pesos in potential revenues, the BIR thought that RMO No. 14-2016 would do the trick. But from a facial examination of its provisions comes the question of its constitutionality. It remains to be seen how it will be settled, as no case involving RMO No. 14-2016 has been decided by the Supreme Court.

C. Appeal to the CTA *En Banc*

The CTA's jurisdiction includes the review of any decision of the CIR with regard to a disputed assessment.[66] A division composed of three justices hears the appeal of the adversely affected taxpayer.[67] The appeal is in the form of a petition for review analogous to that provided under Rule 42 of the Rules of Civil Procedure.[68]

The judgment of the CTA in division is embodied in a decision or final resolution, stating clearly and distinctly the findings of fact and conclusions of law reached.[69] The aggrieved party may file a motion for reconsideration of such decision or for a new trial within 15 days from the

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[64] *Phil. Journalists*, 447 SCRA 214, 227.
[65] *Id.* at 228.
[66] Rep. Act No. 9282 (2004), § 7(a)(1).
[67] § 11.
[68] § 11.
[69] Rev. Rules of the Court of Tax Appeals, Rule 14, § 2.

date he received notice of said judgment.[70] In disposing of said motion, the CTA in division may then promulgate an amended decision or a resolution denying it. An amended decision is defined as "[a]ny action modifying or reversing a decision of the [CTA] *en banc* or in [d]ivision,"[71] while a resolution is "[a]ny disposition of the [CTA] *en banc* or in [d]ivision other than on the merits."[72]

Peculiarly, a decision of the CTA in division may be appealed to the CTA *En Banc*, where the three justices who decided the case in the division level are joined by six other justices. Section 18 of Republic Act (R.A.) No. 1182, as amended by R.A. No. 9282, states that "[a] party adversely affected by a resolution of a [d]ivision of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*."

This is the bone of contention in the case of *Asiatrust*. Here, taxpayer Asiatrust Development Bank, Inc. (Bank) was assessed for deficiency taxes for taxable years 1996, 1997, and 1998 in the total amount of **PHP** 199,144,230.18, which was partially paid by the Bank. However, the assessment was still appealed before the CTA. The CTA Division partially granted the petition and held that the tax assessments for 1996 were void for being issued beyond the three-year prescriptive period. Most taxes for 1997 and 1998 were ordered cancelled because of the compromise reached between the Bank and the BIR, and the partial payment of the assessments. However, it sustained the deficiency documentary stamp tax (DST) for taxpayer's special savings account and final withholding tax for 1997 and 1998 in the total amount of **PHP** 142,777,785.91.

Of this decision by the CTA Division, the Bank filed a motion for reconsideration, attaching certain documents that aimed to prove that it validly availed of the Tax Abatement Program during those years. The CIR, on the other hand, also filed a motion for partial reconsideration questioning the finding of prescription and cancellation of certain assessments. The CTA Division issued a resolution denying the motion of the CIR while partially granting the motion of the Bank. The CTA Division maintained that the Bank was not able to prove that it validly availed of the benefits of the Tax Abatement Program; nonetheless, it set the case for hearing for the presentation of the originals of the documents attached to the Bank's motion for reconsideration with regard to its availment of the Tax Amnesty

[70] Rule 15, § 1.
[71] Rule 14, § 3.
[72] § 4.

Law,[73] which was passed during the pendency of the case and allegedly availed of by the Bank

Meanwhile, the CIR filed a petition for review before the CTA *En Banc* assailing the decision and resolution of the CTA Division. The CTA *En Banc*, however, dismissed the petition for prematurity as the proceedings were still pending before the CTA Division.

Thereafter, the CTA Division rendered an amended decision finding that the Bank is entitled to the benefits granted by the Tax Amnesty Law, but sustaining the finding as to its inability to prove availment of the Tax Abatement Program. Still unsatisfied, the Bank moved for partial reconsideration, but the CTA Division denied this motion. Both the Bank and the CIR then filed their respective appeals before the CTA *En Banc*. Both appeals were denied.

On this procedural note, the Supreme Court held that the petition for review filed by the CIR before the CTA *En Banc*, without the prerequisite filing of its *own* motion for reconsideration was found to be violative of the Rules. Citing Section 1, Rule 8 of the Revised Rules of the CTA, the Court concluded that

> a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. Failure to do so is a ground for the dismissal of the appeal as the word "must" indicates that the filing of a prior motion is mandatory, and not merely directory.[74]

Hence, the Court ruled that the CIR's failure to move for a reconsideration of the amended decision is ground for the dismissal of its appeal before the CTA *En Banc*. This ruling raises several questions—isn't it that the CIR had already filed its own motion for partial reconsideration of the original decision? Isn't this motion the requirement of the law? Isn't filing a new motion for reconsideration considered a second motion for reconsideration which is a prohibited pleading?[75] The Court ruled in the negative. Citing the case of *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue*,[76] the Court simply held that an amended

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[73] Rep. Act No. 9480 (2006).

[74] Asiatrust Dev. Bank, Inc. v. Comm'r of Internal Revenue, G.R. No. 201530, Apr. 19, 2017, *citing* Comm'r of Customs v. Marina Sales, Inc., G.R. No. 183868, 635 SCRA 606, Nov. 22, 2010.

[75] Rev. Rules of the Court of Tax Appeals, Rule 15, § 7.

[76] G.R No. 200841, 768 SCRA 269, 275, Aug. 26, 2015.

decision is a different decision, and thus, is a proper subject of a *new* motion for reconsideration.

However, a more nuanced application of this doctrine has been advanced. For one, caution is implored in the use of *denominations* to the judgments of the CTA. It can be the case that a judgment was denominated as an amended decision, when in essence it only resolved the points raised in a motion for reconsideration with no new relief or re-computation granted. There is the view that

> the Revised Rules of the Court of Tax Appeals [...] merely specifies the proper "denomination" of the Court's action modifying or reversing a previously issued Decision.
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> The fact that an amended decision is eventually issued does not necessarily deviate from its nature, which may in certain instances, be strictly a mere resolution of a motion for reconsideration. If the amended decision results from a reevaluation of the parties' respective positions which the Court originally rejected but which it eventually considered as meritorious (in whole or in part), [...] a second motion for reconsideration of the amended decision is unwarranted. To allow a second motion for reconsideration raising the same ground which the amended decision already considered would render the proscription against a second [m]otion for [r]econsideration meaningless even as it would result to unnecessary delay in the disposition of cases.[77]

Also, there is a view that only the party adversely affected by the assailed amended decision should move for its reconsideration. [78] In *Asiatrust*, there was a formal hearing that was held, which became the basis of the CTA Division's amended decision. There was a threshing out of the issue of whether the Bank validly applied for the Tax Amnesty Law. But, in instances where there is no such hearing, or other analogous proceeding, and where an amended decision was promulgated on the basis only of a motion for reconsideration of, say, the taxpayer, then such taxpayer is no longer required to file a new motion for reconsideration of the amended

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[77] Tulay sa Pag-unlad, Inc. v. Comm'r of Internal Revenue, CTA EB No. 1478 (Ct. of Tax Appeals Sept. 15, 2017). (Del Rosario, *P.J., concurring and dissenting*), *citing* Comm'r of Internal Revenue v. Fort Bonifacio Development Corp., CTA EB Nos. 1410 and 1414 (Ct. of Tax Appeals July 11, 2017).

[78] *Id.* (Del Rosario, *P.J., concurring and dissenting*).

decision.[79] The taxpayer would only be forced to reiterate its arguments found in its original motion for reconsideration.[80] As stated in one opinion in a case before the Tax Court:

> [T]o apply the rule in *Asiatrust* to include all situations involving issuance of an [a]mended [d]ecision despite the fact that the issues to be raised in the "second motion for reconsideration" were already included in the motion for reconsideration filed and passed upon by the court when it promulgated the [a]mended [d]ecision would set a dangerous and mischievous precedent. A second motion for reconsideration which contains mere iterations and reiterations of the same points and arguments over and over again becomes, in effect, a mere dilatory strategy and consequently nothing more than pro forma.
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> To reiterate, the use of precedents should not be mechanical. Application of a particular doctrine is appropriate only in cases involving similar facts. When the facts vary, one should analyze and re-examine if the same doctrine would still apply.[81]

The argument against these theories is based on the plain interpretation of the ruling in *Asiatrust*. The Supreme Court made no qualifications or conditions in cases of amended decisions. The CTA has no power or authority to alter or modify the rulings of the Court, which is part of the law of the land.[82] Hence, there is no need to argue what the proper denomination of a court action is, depending on whether an entirely new relief was granted or just a mere modification thereof. [83]

Even with these varying opinions, one thing is sure—that using the holding in this case, a new defense for taxpayer may be formulated: for those with pending cases before the courts, the taxpayer may actively invoke this ruling upon perusal that no motion for reconsideration has been filed by the CIR in the amended decision of the CTA in division.

D. "Expanded" Jurisdiction of the CTA

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[79] *Id.* (Ringpis-Liban, *J.*, *concurring and dissenting*).

[80] *Id.*

[81] *Id.*

[82] CIVIL CODE, art. 8.

[83] Tulay sa Pag-unlad, Inc. v. Comm'r of Internal Revenue, CTA EB No. 1478 (Ct. of Tax Appeals Sept. 15, 2017). (Casanova, *J.*, *concurring*).

There are five requisites for the exercise of jurisdiction by a court in an ordinary civil action, namely jurisdiction over the: (a) plaintiff or petitioner; (b) defendant or respondent; (c) subject-matter; (d) issues of the case; and (e) *res* or the property or thing which is the subject of the litigation.[84] A court may *motu proprio* dismiss a complaint when it is evident that the court has no jurisdiction over the subject matter, or that the case is barred by *litis pendentia*, *res judicata*, or prescription.[85]

It is a rule in statutory construction that specific laws prevail over general ones—*lex specialis derogat generali.*[86] This was applied in *Lancaster*, where the legal maxim resulted in an interpretation that "expanded" the jurisdiction of the CTA. In this case, Lancaster Philippines, Inc. was issued a LOA in 1999 covering taxable year 1998 up to an unspecified date. Thereafter, a PAN was issued for a total deficiency tax of PHP 6,466,065.50, citing Lancaster's overstatement of its purchases and non-compliance with generally accepted accounting principles (GAAP). Lancaster replied to the PAN, but a FAN was nevertheless issued in 2002 for a total of PHP 11,496,770.18 covering until taxable year 1999.

Due to the inaction of the CIR over the protest to the FAN, Lancaster filed its petition for review before the CTA. Before the CTA Division, there were only two questions raised by Lancaster and the CIR: (1) whether or not Lancaster complied with GAAP in the proper matching of its cost and revenue; and (2) whether or not the deficiency tax assessment should be cancelled. The CTA Division granted the petition and cancelled the assessment against Lancaster. After denial of its motion for reconsideration, the CIR filed his appeal before the CTA *En Banc*. The latter ultimately affirmed the CTA Division's decision.

The Supreme Court ruled to deny the CIR's petition for review of the CTA *En Banc*'s decision. Even though not raised as an issue between the parties, the Court ruled that the CTA is empowered to look into the veracity of the preliminary processes undertaken by the BIR in the course of the assessment, specifically the validity of the LOA.

Initially, the Court held that the validity of the LOA is part of the "other matters" for which the CTA is granted jurisdiction in cases of disputed assessments and grant of refunds of internal revenue taxes, fees,

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[84] FLORENZ D. REGALADO, I REMEDIAL LAW COMPENDIUM 8-9 (2010).

[85] RULES OF COURT, Rule 9, § 1.

[86] Air Canada v. Comm'r of Internal Revenue, G.R. No. 169507, 778 SCRA 131, 173 & n.119, Jan. 11, 2016.

other charges, and penalties.[87] Then, the Court held that even though the issue of the LOA's validity was not raised by the parties, 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,"[88] citing Section 1, Rule 14 of the Revised Rules of the CTA. Concluding on this point, the Court held that

> 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.[89]

This liberal application of the rules does not augur well with the BIR's goal of increasing government revenues. Now, the CTA is explicitly empowered by the Supreme Court to look into *all* "other matters" that precede the issuance of an assessment against a taxpayer, which includes the issuance of the LOA. The expanded reading of what constitutes "other matters" virtually vests the CTA with the authority (and obligation) to look into the validity of the LOA even though such issue was not raised in the taxpayer's petition for review.[90] The short of the long is that all processes initiated before the issuance of an assessment, which includes the LOA, is jurisdictional on the part of the CTA, which is mandated to determine their validity, even though such question was not raised in the pleadings.

The logical extension of the principle in *Lancaster* is that the CTA may likewise *motu proprio* dismiss the case based on an invalid waiver of the prescriptive period, even though such issue was not raised in the pleadings because the waiver is part of the "other matters" for which the CTA has jurisdiction to decide, being a condition precedent for a valid assessment issued beyond the three-year prescriptive period, and for which, under

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[87] Rep. Act No. 9282 (2004), § 7(a)(1).

[88] Comm'r of Internal Revenue v. Lancaster Philippines, Inc., G.R. No. 183408, July 12, 2017.

[89] *Id.*

[90] Rev. Rules of the Court of Tax Appeals, Rule 6, § 2. "The petition for review shall contain allegations showing the jurisdiction of the Court, a concise statement of the complete facts and a summary statement of the issues involved in the case, as well as the reasons relied upon for the review of the challenged decision. The petition shall be verified and must contain a certification against forum shopping as provided in Section 3, Rule 46 of the Rules of Court. A clearly legible duplicate original or certified true copy of the decision appealed from shall be attached to the petition."

jurisprudential standards, the BIR is duty-bound to ensure that it be properly executed.[91]

With the ruling in *Lancaster*, the CTA may now examine all preliminary matters regarding an assessment, and apply thereunder the principles laid down in *Medicard*, *Philippine Daily Inquirer*, *Systems Technology Institute*, *Asiatrust*, and all other jurisprudence regarding the validity of LOAs, waivers, PANs and FANs, even if such is not raised as an issue by the parties.[92] This emphasizes the duty of the Tax Court from being a regular adversarial forum between the BIR and the taxpayer, to one which has been empowered to *review* the actions of the BIR, sans being raised as an issue, in terms of assessments when a case is brought before it,[93] and after evaluating whether it has jurisdiction based on the periods prescribed in the filing of an appeal.[94]

Meanwhile, on the merits of *Lancaster*, the Court, after examining the LOA in that case, found that it was defective as it covered only until taxable year 1998 but the assessment involved disallowed expenses extending to 1999. The Court went on to discuss, in an informative fashion (beneficial to law students confused with tax and accounting concepts), the differences between financial accounting and tax accounting. Though undertaken based on wholly different purposes, both are not mutually exclusive, as the Tax Code itself recognizes the importance of applying GAAP.[95] Here, the Court recognized that Lancaster, as a business entity engaged in the production and marketing of tobacco, was authorized to adopt the "crop method of accounting,"[96] which is not explicitly stated in the Tax Code. It was the CIR's contention that, under ordinary matching, the purchases made by Lancaster in 1998 should not have been recognized in 1999, as they should have been deducted in 1998. However, applying the "crop method of accounting," Lancaster was authorized to deduct such expenses on the date the sale of crops is realized, which in this case happened in 1999. Hence, under latter method, there was proper matching.

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[91] Comm'r of Internal Revenue v. Stanley Works Sales (Phils.), Inc., G.R. No. 187589, 743 SCRA 642, 653, Dec. 3, 2014. "The BIR has the burden of ensuring compliance with the requirements of RMO No. 20-90, as they have the burden of securing the right of the government to assess and collect tax deficiencies."

[92] *See* Rev. Rules of the Court of Tax Appeals, Rule 14, § 1. "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."

[93] Rep. Act No. 9282 (2004), § 7(a). "Exclusive appellate jurisdiction to review by appeal [...]"

[94] TAX CODE, § 228.

[95] *See* TAX CODE, title II, chap. VIII.

[96] BIR Rev. Audit Memo. No. 2-95 (1995), part II, item F.

IV. CONCLUSION

Because of procedural infirmities committed by the BIR, the government lost a total of **PHP** 545,796,776.31 in potential revenues in the five cases discussed. More than half a billion pesos being lost due to technicalities is not ideal for the BIR, the revenue target of which recently increased,[97] especially with the enactment of the TRAIN Law.[98] This is only good news for the taxpayer, not only for the parties in the cases, but to all. The Supreme Court has laid down new procedural doctrines that may be used by the taxpayer as defenses whenever the taxman comes knocking at his door. Procedural rules are designed to help in the resolution of rival claims, in pursuance to the constitutional right guaranteeing the speedy disposition of cases.[99] Clearly, the Court, as evidenced here, has chosen not to put a price, even as high as half a billion pesos, on the due process rights of these taxpayers.

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[97] Elijah Tubayan. *Tax bureau outlines priorities for 2018*, BUSINESS WORLD, Jan. 19, 2018, *available at* http://bworldonline.com/tax-bureau-outlines-priorities-2018/.

[98] Rep. Act No. 10963 (2017). Tax Reform for Acceleration and Inclusion (TRAIN). *See also* Chino S. Leyco, *BIR 2018 collection target raised after tax reform*, MANILA BULLETIN, Jan. 4, 2018, *available at* https://business.mb.com.ph/2018/01/04/bir-2018-collection-target-raised-after-tax-reform/.

[99] Comm'r of Internal Revenue v. Mirant Pagbilao Corp., G.R. No. 159593, 504 SCRA 484, 495, Oct. 16, 2006, *citing* Fortich v. Corona, G.R. No. 131457, 298 SCRA 678, 690-691, Apr. 24, 1998.

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