REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TRIDHARMA MARKETING CORPORATION, Petitioner,	**CTA CASE NO. 9155**
	Members:
-versus-	Castañeda, Jr., *Chairperson,* Mindaro-Grulla, and, Bacorro-Villena, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** OCT 09 2019 3:35 pm

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DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

This is a Petition for Review[1] filed by petitioner Tridharma Marketing Corporation against respondent Commissioner of Internal Revenue, seeking to set aside the assailed Decision of the respondent finding petitioner liable for alleged deficiency income tax, value-added tax (VAT) and compromise penalty in the total amount of ₱43,386,774.95, for taxable year 2009.

THE FACTS

Petitioner is a domestic corporation organized to buy, sell distribute and market, at wholesale or retail, all kinds of goods, commodities, wares and merchandise of every kind and description.

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[1] Docket vol. I, pp. 10-32.

Its principal office is located at GPH Properties Corp. Plaridel Street, Barangay Umapad, Mandaue City, Cebu.[2]

On the other hand, respondent is the chief official of the Bureau of Internal Revenue (BIR), tasked with enforcement of internal revenue laws with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

On June 22, 2011, the BIR issued Letter Notice (LN) No. 116-RLF-09-00-00051[4] pertaining to petitioner's importations in taxable year (TY) 2009, alleging discrepancy between importation data provided by the Bureau of Customs (BOC) and the reported VAT payments on importations in petitioner's VAT returns for 2009.[5]

In response to LN No. 116-RLF-09-00-00051, petitioner sent the BIR a letter dated July 1, 2011,[6] explaining the discrepancy between the importation data was due to timing difference.

Thereafter, petitioner executed through Ms. Joy de la Paz two (2) Waivers of the Defense of Prescription of the Statute of Limitations under the National Internal Revenue Code, on May 25, 2012, which extended the period to assess until December 31, 2012,[7] and then on December 12, 2012, which extended the period to assess petitioner until June 30, 2013.[8]

On May 2, 2013, petitioner received the Preliminary Assessment Notice (PAN)[9] signed by OIC-Assistant Commissioner Alfredo V. Misajon of the Large Taxpayers Service assessing deficiency income tax and VAT in the amounts of ₱17,715,403.36 and ₱100,971,809.58, respectively, inclusive of surcharge and interest.[10]

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[2] Par. 1, The Parties, Petition for Review with Motion to Suspend Collection of Taxes, docket vol. I, p. 10; Certificate of Incorporation, Exhibits "P-1" and Certificate of Filing of Amended Articles of Incorporation, "P-2", docket vol. III, pp. 1013-1024.
[3] Par. 1, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket vol. II, p. 783.
[4] Exhibit "P-16", docket vol. III, p. 1172; Exhibit "R-3", BIR Records, p. 26.
[5] Par. 2, Joint Stipulation of Facts, JSFI, docket vol. II, p. 783.
[6] Exhibits "P-17" and "P-17-a", docket vol. III, pp. 1183-1184.
[7] Exhibit "R-6", BIR Records, p. 65.
[8] Exhibit "R-8", BIR Records, p. 66-A.
[9] Exhibit "P-20", docket vol. III, pp. 1189-1194; Exhibit "R-11", BIR Records, pp. 91-95.
[10] Par. 3, Joint Stipulation of Facts, JSFI, docket vol. II, pp. 783-784.

Petitioner replied to the PAN via two (2) separate letters, signed by its president, Rene D. dela Calzada and its authorized representative, Allan A. Malapitan, filed with the BIR on May 15, 2013[11] and June 3, 2013,[12] respectively.

On June 26, 2013, petitioner received the BIR issued Assessment Notices Nos. IT-116-LN-0051-09-13-092[13] and VT-116-LN-00051-09-13-093,[14] together with the Formal Letter of Demand (FLD)[15] signed by OIC-Assistant Commissioner Misajon assessing deficiency income tax of ₱6,440,183.56 and VAT of ₱36,921,591.39 both inclusive of surcharge and interest, as well as Compromise Penalty of ₱25,000.00.[16]

On July 7, 2013, petitioner received a letter[17] from OIC-Assistant Commissioner Misajon acknowledging the receipt of its two (2) protest letters to the PAN and informing petitioner that it had thirty (30) days from receipt of the FLD to file a protest.

On July 25, 2013, petitioner through its duly authorized representative, Mr. Malapitan filed a notarized Affidavit of Protest,[18] maintaining that the assessments are void and respondent's right to assess taxes for TY 2009 has already prescribed.

In a letter dated July 31, 2013,[19] signed by OIC-Assistant Commissioner Misajon, the BIR informed petitioner that it disregarded the Affidavit of Protest filed by Allan A. Malapitan for petitioner and considered petitioner to have failed to file a valid protest against the FLD.[20]

On August 30, 2013, petitioner filed an application for compromise settlement[21] dated August 29, 2013, on the ground of doubtful validity of the BIR's assessments under Section 204 of the National Internal Revenue Code (NIRC) of 1997, as amended. ɣ

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[11] Exhibit "P-21", docket vol. III, pp. 1195-1210.
[12] Exhibit "P-22", docket vol. III, pp. 1211-1212.
[13] Exhibit "R-14-a", BIR Records, p. 143.
[14] Exhibit "R-14-b", BIR Records, p. 142.
[15] Exhibit "P-23", docket vol. III, pp. 1213-1219.
[16] Par. 4, Joint Stipulation of Facts, JSFI, docket vol. II, p. 784; *Id.*
[17] Exhibit "P-24", docket vol. III, p. 1220.
[18] Exhibit "P-25", docket vol. III, pp. 1221-1222.
[19] Exhibit "P-27", docket vol. III, pp. 1223-1224.
[20] Par. 5, Joint Stipulation of Facts, JSFI, docket vol. II, p. 784; *Id.*
[21] Exhibits "P-29", "P-30" and "P-31", docket vol. III, pp. 1233-1248 and 1248.

Petitioner paid ₱10,231,290.22,[22] representing 40% of the basic taxes assessed in the FLD.[23]

On September 16, 2015, petitioner received the Notice of Denial[24] issued by the BIR on August 26, 2015, directing it to pay the amount of ₱33,155,484.73 net of ₱10,231,290.22 which was previously paid plus all the increments incident to delinquency.[25]

Thus, on October 1, 2015, petitioner filed the instant Petition for Review with Motion to Suspend Collection of Taxes.[26]

On October 6, 2015, respondent issued a Warrant of Levy and/or Distraint[27] and Service of Warrant[28] seeking to collect ₱43,361,774.95 based on the FLD detailed as follows:[29]

ASSESSMENT NO.	TAX TYPE	RETURN PERIOD	BASIC TAX	SURCHARGE	INTEREST	TOTAL AMOUNT DUE
IT 116 LN 00051 09 13 002	IT	2009	3,884,115.99	0.00	2,556,067.57	64,407,183.56
VT 116 LN 00051 09 13 003	VT	2009	21,694,109.56	0.00	15,227,481.83	36,921,591.39
TOTAL			**25,578,225.55**	**0.00**	**17,783,549.40**	**43,361,774.95**

On October 15, 2015, during the hearing on the Motion to Suspend Collection of Taxes, petitioner presented as its witness, Mr. Joselito R. Albaño,[30] its Chief Finance Officer.

[22] Exhibit "P-30-A", "P-30-B", "P-30-C", "P-31-A", "P-31-B" and "P-31-C", docket vol. III, pp. 1245-1247 and 1249-1251.
[23] Par. 6, Joint Stipulation of Facts, JSFI, docket vol. II, p. 784.
[24] Exhibit "P-32", docket vol. III, p. 1252.
[25] Par. 7, Joint Stipulation of Facts, JSFI, docket vol. II, p. 784.
[26] Docket vol. I, pp. 10-33.
[27] Exhibit "P-33", docket vol. III, p. 1253.
[28] Exhibit "P-33", docket vol. III, p. 1254.
[29] Par. 8, Joint Stipulation of Facts, JSFI, docket vol. II, p. 784.
[30] Minutes of the Hearing dated October 15, 2015, docket vol. II. pp. 224-228; Exhibit "P-9", Judicial Affidavit of Joselito R. Albaño in Support of the Motion to Suspend Collection of Taxes, docket vol. I, pp. 310-318;

Thereafter, petitioner filed its Formal Offer of Documentary Exhibits in Support of Petitioner's Motion to Suspend Collection of Taxes[31] on October 19, 2015.

On October 27, 2015, petitioner filed an Urgent Motion to Resolve Motion to Suspend Collection of Taxes[32].

In the Resolution dated November 6, 2015,[33] the Court admitted petitioner's Exhibits "P-1 and P-1-a", "P-2", "P-3 and P-3-a", "P-4 and P-4-a", "P-5 and P-5-a", "P-6 and P-6-a", "P-8 and P-8-a", and "P-9 and P-9-a". However, the Court denied the admission of Exhibit "P-7 and P-7-a". Moreover, the Court granted petitioner's Motion for Suspension of Collection of Tax subject to petitioner's depositing a cash bond in the amount of ₱25,578,225.55 or posting of a GSIS bond or other surety bond in the amount equivalent to one and a half (1½) of the amount being collected or ₱38,367,338.00.

On November 16, 2015, petitioner filed a Manifestation of Compliance with Submission of Surety Bond.[34] This was resolved by the Court in the Resolution[35] dated December 9, 2015, wherein the Court approving the surety bond filed by petitioner. Accordingly, the Court enjoined respondent and any of the BIR's officers and/or employees from collecting from petitioner the amount of tax subject of the present Petition for Review.

On December 28, 2015, within the extended time granted by the Court,[36] respondent filed his Answer (to the Petition for Review dated 30 September 2015).[37] Respondent interposed the following special and affirmative defenses:

> "**SPECIAL AND AFFIRMATIVE DEFENSES**
>
> 4. Respondent adopts the abovementioned admissions and denial as part of her special and affirmative defenses.
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> **WITH ALL DUE RESPECT, THE HONORABLE COURT HAS NO** *gc*

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[31] Docket vol. I, pp. 233-243.
[32] Docket vol. I, pp. 344-347.
[33] Docket vol. I, pp. 351-358.
[34] Docket vol. I, pp. 360-362.
[35] Docket vol. I, pp. 385-386.
[36] Order dated October 28, 2015 and Resolution dated December 11, 2015, docket vol. I, pp. 348 and 389; December 27, 2015 fell on a Sunday.
[37] Docket vol. I, pp. 390-411.

JURISDICTION OVER THE INSTANT PETITION. THE ASSESSMENT HAS ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE.

5. A taxpayer's right to contest assessments, particularly the right to appeal to the Court of Tax Appeals, may be waived or lost as in this case. The Bureau of Internal Revenue ("BIR"), issued the Formal Letter of Demand ("FLD") and Assessment Notices (BIR Form 0401) for taxable year 2009. Both were dated 26 June 2013 and were received by petitioner on even date.

6. As contained in paragraph 11 of the instant petition, petitioner admits that it received the FLD and the Assessment Notices for taxable year 2009 on 26 June 2013.

7. Section 228 of the Tax Code provides for the manner of protesting an assessment, to wit:

> Section 228. **Protesting of Assessment**- When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings.
>
> xxx
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made otherwise, the assessment shall be void.
>
> Within the period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, **the assessment shall become final.** (Emphasis ours)

8. Based on the above quoted provision, the taxpayer has thirty (30) days from receipt of the FLD and Assessment Notices within which to file its protest.

9. Further, Section 3.1.5 of Revenue Regulations No. 12-99 [Subject: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the

Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code through Payment of Suggested Compromise Penalty], explicitly provides:

> **3.1.5 Disputed Assessment**. - The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. xxx
>
> If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, **the assessment shall become final, executor and demandable**. (Emphasis ours)

10. Here, from the receipt of the FLD and Assessment Notices on 26 June 2013, petitioner had until 26 July 2013 within which to file a valid protest on the assessment with the respondent.

11. Petitioner interposed that it filed a notarized affidavit of protest on 25 July 2013 (Attached as Annex "J" to the petition) through its duly authorized representative, Mr. Malapitan. Respondent submits that there was no valid protest as contemplated by the Tax Code and the Rules. The alleged affidavit of protest was not executed by petitioner nor its authorized representative.

12. Per verification of respondent, Mr. Malapitan is not among the employees with capacity to transact official matters with the Bureau. Neither was there a duly executed document attached to the alleged affidavit of protest authorizing him to represent petitioner m the tax investigation. Assuming, petitioner sought the assistance of Mr. Malapitan to represent it, nonetheless, he is still not capacitated since he is not among the accredited practitioners as published in the BIR official website as of January 2, 2013.

13. Such accreditation is a mandatory requirement under Section 6 of Revenue Regulation 14-2010 (SUBJECT: Amending Pertinent Provisions of Revenue Regulations Nos. 11-2006 and 4-2010 on the Accreditation of Tax Practitioners/Agents as a Prerequisite to Their Practice and Representation Before the Bureau of Internal Revenue), viz:

> Effects of Accreditation. - Section 9 of RR No. 11-2006 is hereby amended to read as follows:
>
> Section 9. Effects of Accreditation. — <u>Only those Tax Agents/Practitioners, Partners or Officers of General Professional Partnerships, or Officers or Directors of Corporate entities engaged in tax practice who have been issued Certificate of Accreditation or ID card shall be allowed to represent a taxpayer or transact business</u>

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with the Bureau of Internal Revenue in representation of a taxpayer for the purpose(s) defined in these regulations. The Commissioner or his authorized representative shall only consider as valid document/attachments to tax returns, information returns or other statements or reports required by the Code or Regulations, the financial statements prepared, signed and certified by duly accredited tax practitioners. The BIR can refuse to transact official business with tax practitioners who are not accredited before it and shall require that certain official statements such as returns, financial statements, reports, protests, requests for ruling, official correspondence and other statements, papers or documents filed on behalf of a taxpayer be signed or certified to by accredited persons which shall bear the following information below the signature of the latter.

For individual's (CPA's, members of GPPs, and others)

a.1. Tax Identification Number (TIN); and
a.2. BIR Accreditation Number, Date of Issue, and Date of Expiry.

B. For members of the Philippine Bar (Lawyers)
b.1. Tax Identification Number (TIN);
b.2. Attorney's Roll Number; HITAEC
b.3. Mandatory Continuing Legal Education (MCLE) Compliance Number; and
b.4. BIR Accreditation Number, Date of Issue, and Date of Expiry. (Underscoring supplied)

14. In addition, pertinent provision of Revenue Regulation No. 18-2013 (Subject: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment) provides specifically:

3.1.4 Disputed Assessment. - The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

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

> (ii) Request for reinvestigation – refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. (Underscoring supplied)

15. With the failure of the petitioner to file a valid protest, the assessment has long become due and demandable.

WITH ALL DUE RESPECT, THE HONORABLE COURT HAS NO JURISDICTION OVER THE INSTANT PETITION. THE DECISION APPELLABLE TO THE HONORABLE COURT IS A DECISION ON DISPUTED ASSESSMENT AND NOT A DECISION DENYING THE APPLICATION FOR COMPROMISE. HENCE, PETITIONER DOES NOT HAVE ANY CAUSE OF ACTION AGAINST RESPONDENT.

16. Petitioner contends that it received on 16 September 2015 a copy of the Decision of respondent denying its application for compromise settlement. Hence, it has thirty days (30) days from receipt of respondent's decision or until 16 October 2015 within which to file this petition.

17. Petitioner's contention has no basis. The decision contemplated by law which is within the jurisdiction of the Honorable Court, is a decision on disputed assessment and not the denial on the application for compromise settlement.

18. Section 7 of Republic Act 9282 or the Act Expanding the Jurisdiction of the Court of Tax Appeals provides:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided: *ju*

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue; (Underscoring ours)

19. To emphasize, the decision contemplated in the law is one rendered on a disputed assessment. Thus, it is primordial that the assessment be disputed first. Since, petitioner failed to file a valid protest to the FLD within the period provided by law, the assessments have become final, executory and demandable. Being such, the assessments are not subject to judicial scrutiny and beyond the jurisdiction of this court.

20. In addition, by filing the instant petition and praying that the alleged decision of respondent denying the application for compromise settlement be reversed, petitioner directly attacked the decision of respondent denying its application for compromise settlement. The same is among the discretionary powers of respondent which cannot be properly passed upon by the Honorable Court.

21. To reiterate, the authority of respondent to accept compromise payment is enshrined in Section 204 of the Tax Code, viz:

SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. - The Commissioner may -

(A) Compromise the payment of any internal revenue tax, when:

(1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or
(2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

The compromise settlement of any tax liability shall be subject to the following minimum amounts:

For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and

For other cases, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax. Jr

> Where the basic tax involved exceeds One million pesos (P1,000.000) or where the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the approval of the Evaluation Board which shall be composed of the Commissioner and the four (4) Deputy Commissioners.

22. Respondent humbly submits that her discretion not to accept the compromise settlement cannot be the subject of judicial determination. Therefore, she cannot be compelled by court action to exercise a power that is not ministerial but discretionary.

23. In addition, petitioner does not have a cause of action against respondent. Worthy to note that petitioner anchored its petition on the denial by respondent of its application for compromise agreement. Indirectly, petitioner is now questioning the validity of the assessment after the application for compromise agreement has been denied by respondent. Petitioner does not have a cause of action against respondent for the denial of the application for compromise agreement.

24. In the case of *Soloil, Inc. vs. Philippine Coconut Authority*, the Honorable Supreme Court ratiocinated:

> Rule 2 of the Rules of Court defines a cause of action as:
>
> Sec. 2. *Cause of action, defined.* A cause of action is the act or omission by which a party violates a right of another.
>
> The essential elements of a cause of action are (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) **<u>an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.</u>** (Emphases ours)

25. Having failed to establish the existence of any violation of the right of petitioner, the petition must necessarily fail.

26. In *Allied Banking Corporation v. Commissioner of Internal Revenue* the Honorable Supreme Court made it explicit that the CTA being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction. *gc*

27. The assessments for taxable year 2009 being undisputed became final, executory and demandable. Jurisprudentially, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.

ASSUMING FOR THE SAKE OF ARGUMENT THAT THE HONORABLE COURT CAN EXERCISE JURISDICTION OVER THE INSTANT CASE, RESPONDENT'S RIGHT TO ASSESS PETITIONER FOR TAXABLE YEAR 2009 DID NOT PRESCRIBE AS THE THREE (3) YEAR PERIOD WITHIN WHICH TO MAKE THE ASSESSMENT FINDS NO APPLICATION TO THE INSTANT CASE.

28. Petitioner alleged that respondent's right to assess petitioner's taxes for taxable year 2009 has prescribed considering that petitioner received the FLD and Assessment Notices beyond the three (3) year period prescribed by the Tax Code. Petitioner went further by arguing that the only exception to the three (3) year period within which to issue the assessment is by an agreement between the taxpayer and the Commissioner in accordance with Section 222(b) of the Tax Code, which provides:

> Sec. 222. **Exceptions as to Period of Limitation of Assessment and Collection of Taxes. -**
>
> xxx
> (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. (Emphasis ours)

29. Petitioner questions the validity of the waiver executed in the instant case by interposing that the formalities and requisites of a valid waiver have not been complied with.

30. Respondent respectfully disagrees. Petitioner failed to consider Section 222 (a) of the Tax Code which specifically provides:

> 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 10 years after the discovery of the falsify, 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. (Emphases ours)

31. In the instant case, preliminary review disclosed that petitioner failed to declare its correct Taxable Income subject to Income Tax. Perusal of the Formal Letter of Demand revealed that there was under declaration of sales in the amount of P180,784,246.31. As a result of such under declaration in sales, the same resulted to an under declared taxable income in the amount of P12,947,054.64. In addition, the same also resulted to an under declared VAT liability in the amount of P21,694,109.56.

32. The Honorable Supreme Court in the case of *Aznar vs. CTA*, had the occasion to define fake [false] or fraudulent return in this wise:

> That there is a difference between "false return" and "fraudulent return" cannot be denied. While the first merely implies **deviation from the truth, whether intentional or not**, the second implies intentional or deceitful entry with intent to evade the taxes due. (Emphasis ours)

33. Since the correct sales of petitioner did not appear in its VAT returns and the correct taxable income in its Income Tax return, there can only be one inevitable conclusion - that there was a **substantial under-declaration** of sales in its VAT and Income Tax Returns.

34. To reiterate, a false return implies **deviation from the truth, whether intentional or not**. Although the Aznar case distinguishes what constitute "false returns" referring to mistake, carelessness or ignorance, from that of "fraudulent returns" referring to intent to evade taxes, the same case does not make a distinction as regards the prescriptive period of 10 years. Indeed, in the same case of Aznar, the Supreme Court ruled in favor of the CIR for an extension of 10 year to assess the taxpayer, thus:

> The ordinary period of prescription of 5 years (now 3 years) within which to assess tax liabilities under Sec. 331 of the National Internal Revenue Code should be applicable to normal circumstances, **but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent return intended to evade payment of**

> **tax or failure to file returns, the period of 10 years** provided for in Section 332 (a) NIRC, from the time of the discovery of the falsify, fraud or omission even seems to be inadequate and **should be the one enforced**.
>
> There being undoubtedly false tax returns in this case. We affirm the conclusion of the respondent CTA that Section 332 (a) (now Sec. 222) of the NIRC should apply and that the period of 10 years within which to assess petitioner's tax liability **had not expired** at the time said assessment was made. (Emphases ours)

35. It is, therefore clear from the statutory provision in Section 222 of the NIRC of 1997 in the three different case of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may begin without assessment, at any time within 10 years after the discovery of the (1) falsify, (2) fraud, (3) omission. Respondent, could therefore, rightfully invoke Section 222 because her right to assess has not yet prescribed.

ASSUMING ARGUENDO THAT THE HONORABLE COURT CAN EXERCISE JURISDICTION OVER THE INSTANT CASE AND ASSUMING FURTHER THAT THE THREE (3) YEAR PERIOD FINDS APPLICATION TO THE INSTANT CASE, RESPONDENT'S RIGHT TO MAKE THE ASSESSMENT HAS NOT YET PRESCRIBED WITH THE VALID EXECUTION OF THE WAIVERS IN ACCORDANCE WITH LAW.

36. Section 222 of the NIRC provides:

> Sec. 222. **Exceptions as to Period of Limitation of Assessment and Collection of Taxes. -**
>
> xxx
>
> (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. (Emphasis ours)

37. Petitioner's taxable year subject of assessment is that of taxable year 2009. Thus, pursuant to Section 203 of the NIRC respondent only has three (3) years from the date prescribed by law for the filing of the return for the applicable tax to make its assessment if it does not fall within the exceptions provided under Section 222.

38. Assuming arguendo that petitioner regularly filed the required Tax Returns for taxable year 2009 within the period required by law, respondent interposes that its right to assess petitioner for deficiency taxes did not prescribe with the valid execution of Waivers.

39. On 13 June 2012, Ms. Joy Z. Dela Paz, petitioner's Accounting Manager, executed a waiver of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2009 until 31 December 2012. The waiver was accepted for the respondent by Assistant Commissioner Nestor S. Valeroso, Large Taxpayer Service on 26 June 2012. Contrary to the allegation of petitioner, a copy of the notarized and accepted waiver was received for the petitioner by the same officer who executed it on 03 July 2012.

40. On 12 December 2012, before the first waiver loses its validity, petitioner, through its Accounting Manager, Ms. Joy Dela Paz, executed another waiver of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2009 until 30 June 2013. A copy of the notarized and accepted waiver was received for the petitioner by the same officer who executed it on 14 December 2012.

41. Petitioner interposed that petitioners signatory was not duly authorized through a board resolution. Hence, it cannot bind petitioner.

42. Respondent begs to differ. Respondent strongly submits that the existence of a Board Resolution authorizing her to sign the waiver in behalf of the corporation is of no moment. Assuming for the sake of argument that the signatory for the waiver was not authorized through a Board Resolution, the waiver is still valid and binds the corporation.

43. The Honorable Supreme Court in the case of *People's Aircargo and Warehousing Co, Inc. vs. Court of Appeals and Stefani Sano* made it explicit that it is a familiar doctrine that if a corporation knowingly permits one of its officers, or any other agent, to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those acts; and thus, the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agent's authority.

44. In *Francisco vs. Government Service Insurance System*, the Honorable Supreme Court held that if a corporation intentionally or negligently clothe its officers or agents with apparent power to perform acts for it, the corporation will be estopped to deny that such apparent authority is real, as to innocent third persons dealing in good faith with such officers or agents.

45. Further, based on the acknowledgment of the alleged waiver, Ms. Dela Paz appeared before a notary public acknowledging that the execution of the waiver is her voluntary act and deed and that she is authorized to sign the same. Quoted below is the acknowledgment of the waiver before a notary public, viz:

> "In the City of Quezon, on this 12th day of December 2012, personally appeared before me, in his/her capacity as representative of Tridharma Corporation, known to me and to me known to be the same person who executed the foregoing waiver for and in behalf of the said taxpayer, and he/she acknowledged to me that the same is the voluntary act and deed of waiver, and that he/she is duly authorized to sign the same."

46. In the case at hand, petitioner cannot deny Ms. Dela Paz's authority to represent petitioner. Further, contrary to the allegation of the petitioner, the accepted waivers on record clearly indicate that the copies were received by petitioner on 03 July 2012 and December 2012 respectively. Examination of the waivers on record reveals on its face substantial compliance with what has been allegedly wanting as submitted by petitioner.

47. It is also noteworthy to note that in a letter dated 25 May 2012, Ms. Joy Dela Paz authorized petitioner's Tax Consultant Ms. Norma N. Herrera to attend the Informal Conference scheduled on 25 May 2012. It is clear that if Ms. Joy Dela Paz can actually authorize someone to represent petitioner in the conduct of the audit investigation, more so that she is authorized to execute the waivers in relation to this case.

48. Article 1431 of the Civil Code provides that in order that estoppel may apply to the person, to whom representations have been made and who claims the estoppel in his favor **must have relied or acted on such representations**. Article 1431 is instructive, viz:

> *"Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon."*

49. On the other hand, Section 2(a) of Rule 131 of the Rules of Court, on burden of proof and presumptions, states as follows:

> SEC. 2 *Conclusive presumptions.* - The following are instances of conclusive presumptions:
>
> (a) Whenever a party has, by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief a particular thing true, and to act upon such declaration, act or omission, be permitted to falsify it;

50. Respondent humbly submits, that by petitioner's acts or representation, and after benefiting from the effects of the waiver of the defense of prescription petitioner should not be the first to impugn the validity of such agreement

51. Respondent strongly submits that petitioner should not profit from its own misdeeds. Through the execution of the waiver, respondent was misled to believe that petitioner waived its right under the Statute of Limitations. A corporation like petitioner is of knowledge of the effects and consequences of the execution of waivers. Further, when petitioner was allowed to submit additional documents in relation to the case, the same were considered in the audit investigation. Thus, there was a substantial reduction in the amount assessed in the Preliminary Assessment Notice (PAN) as compared to the Formal Letter of Demand (FLD). It is noteworthy that petitioner now questions the validity of the waiver in the petition before the Honorable Court.

52. In addition, the petitioner's Board did not make any action to impugn much less to impose sanctions against its officer who allegedly executed a waiver without an authority. Instead, it chose to not act on the same giving the presumption of its adherence to the acts of its officer.

53. Petitioner having executed waivers extending the period to assess until 30 June 2013, the Final Assessment Notice ("BIR Form 0401") and Formal Letter of Demand ("FLD") issued on 26 June 2013 and duly received by petitioner on even date are valid and subsisting.

THE ASSESSMENTS AGAINST PETITIONER FOR DEFICIENCY INCOME TAX AND VALUE-ADDED TAX (VAT) AND CORRESPONDING COMPROMISE PENALTY HAVE BASES BOTH IN FACT AND IN LAW.

54. Petitioner argued that the assessments against petitioner for deficiency Income Tax and Value-Added Tax (VAT)

were erroneous. Petitioner went further by arguing that it was illegally assessed by respondent with compromise penalties pertaining to the above assessments.

55. Respondent strongly differs. The assessments against petitioner have bases both in fact and in law.

56. Verification made between reported importations per Value-Added Tax Returns and the Bureau of Customs (BOC) importation data provided by the System Development Division thru LN No. 116-RLF-09-00-00051. Per BOC data, the input tax on Importations of petitioner for the period September 2008 to August 2009 amounted to P74,166,597.00. Cross matching the BOC importation data against petitioner's Import Entry Declaration submitted would result to an unsupported input tax on importations in the amount of P20,140,463.00. The said unsupported input tax would result translate [sic] to undeclared purchases from importation in the amount of P167,837,191.67. Funds used on the said importations were not accounted for and were declared to be sourced from unreported sales/revenue per audit. Thus, the corresponding deficiency income tax and Value-Added Tax (VAT) from such unreported sales is being assessed pursuant to Sections 32 and 108 of the Tax Code.

57. Petitioner argued that respondent merely relied on assumptions without obtaining any evidence corroborating such findings.

58. Respondent's audit investigation for deficiency taxes is not confined to the examination of the documents provided or obtained from petitioner. The Commissioner has the power to promulgate rules to ensure the accuracy and truthfulness of the taxes declared and paid by taxpayers. Such power of the Commissioner of Internal Revenue to obtain information from other sources is enshrined in Section 5 of the Tax Code which specifically provides:

> Sec. 5. **Power of the Commissioner to Obtain Information, and to Summon/Examine, and Take Testimony of Persons.** - In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:
>
> A. To examine any book, paper, record, or other data which may be relevant or material to such inquiry;
>
> **B. <u>To obtain on a regular basis from any person other than the person whose</u>** *x*

internal revenue tax liability is subject to audit or investigation xxx (Emphasis ours)

59. Petitioner also argued that the compromise penalty cannot be unilaterally impose by respondent. A compromise penalty implies mutual agreement between the tax payer, on one hand, and the Commissioner, on the other. Since petitioner did not agree to the penalty, the same may not be demanded.

60. Respondent submits that the imposition of the compromise penalties were [sic] pursuant to the failure of petitioner to comply with the requirements of Revenue Regulation No. 16-2005 (Subject: Consolidated Value-Added Tax Regulations of 2005). The compromise penalty is not only for settlement of criminal liability but for certain violations of the Tax Code such as but not limited to failure to submit Summary List of Importations for the period September 2008 to August 2009.

THE LETTER NOTICE (LN), PRELIMINARY ASSESSMENT NOTICE (PAN), FORMAL LETTER OF DEMAND (FLD) AND FINAL ASSESSMENT NOTICE (FAN) WERE ISSUED IN ACCORDANCE WITH LAW, RULES AND JURISPRUDENCE.

61. As can be deduced from the following narrations of facts, the procedure prescribed under Revenue Regulations No. 12-99 had been complied with by respondent, viz:

> 61.1 Letter Notice (LN) No. 116-RLF-09-00-00051dated 22 June 2011 was issued and received by petitioner on even date.
>
> 61.2 On 13 June 2012, Ms. Joy Z. Dela Paz, petitioner's Accounting Manager, executed a waiver of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year 2009 until 31 December 2012. The waiver was accepted for the respondent by Assistant Commissioner Nestor S. Valeroso, Large Taxpayer Service on 26 June 2012. Contrary to the allegation of petitioner, a copy of the notarized and accepted waiver was received for the petitioner by the same officer who executed it on 03 July 2012.
>
> 61.3 On 12 December 2012, before the first waiver loses its validity, petitioner, through its Accounting Manager, Ms. Joy Dela Paz, executed another waiver of the defense of prescription under the statute of limitations of the National Internal Revenue Code extending the period to assess petitioner for its internal revenue tax liabilities for taxable year

2009 until 30 June 2013. A copy of the notarized and accepted waiver was received for the petitioner by the same officer who executed it on 14 December 2012.

61.4 On 02 May 2013 the Preliminary Assessment Notice (PAN) was issued and served upon petitioner on even date. Petitioner was assessed deficiency Income Tax, Value-Added Tax (VAT) and the corresponding interest charges and compromise penalties.

61.5 On 26 June 2013, the Formal Letter of Demand and the Assessment Notices (BIR Forms 0401) Nos. IT-116-LN-00051-09-13-092 and VT-116-LN-00051-09-13-093 were issued and duly received by petitioner on even date.

61.6 Petitioner did not file a valid protest to dispute the assessment. Hence, the assessment became final, due and demandable.

62. Based on the foregoing, the finding of deficiency Income Tax and Value-Added Tax (VAT), against petitioner for taxable year 2009 is proper in all respects. The Formal Letter of Demand provides for the details of the assessment as follows:

Tax Type	**Assessment No.**	**Amount**
Income Tax Payable	IT-116-LN-00051-09-13-092	P6,440,183.56
Value-Added Tax	VT-116-LN-00051-09-13-093	36,946,59139
Total Amount Payable		**P 43,386,774.95**

63. On a final note, the decision of the Honorable Supreme Court in the case of *Commissioner of Internal Revenue vs. Bank of Philippine Islands* can be well use [sic] as a guide, to wit:

> 'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. **In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.**' (Emphasis ours)" (*Citations omitted*)

The Pre-Trial Conference was set on March 10, 2016.[38]

[38] Notice of Pre-Trial Conference, docket vol. I, pp. 413-414.

On February 5, 2016, petitioner filed an Urgent Motion for Inspection and Copying of Documents.[39] This was denied by the Court in the Resolution[40] dated April 13, 2016.

Meanwhile, the Respondent's Pre-Trial Brief[41] was filed on March 3, 2016 and the petitioner's Pre-Trial Brief[42] on March 4, 2016. Thereafter, on April 11, 2016, petitioner filed a Motion to Admit Supplement to Pre-Trial Brief.[43] This was granted by the Court during the Pre-Trial Conference on April 14, 2016[44] and petitioner's Supplement to Pre-Trial Brief[45] was admitted.

On May 4, 2016, the parties filed their Joint Stipulation of Facts and Issues (JSFI).[46] In a Resolution dated May 6, 2016,[47] the Court approved the JSFI and terminated the Pre-Trial. The Court issued the Pre-Trial Order[48] on June 10, 2016.

On July 21, 2016, upon motion of petitioner,[49] the Court commissioned Mr. Romeo De Jesus, Jr., as the Independent Certified Public Accountant (ICPA).[50]

On October 14, 2016, petitioner filed a Request for Subpoena Duces Tecum et ad Testificandum.[51] This was granted by the Court in the Resolution[52] dated January 24, 2017.

During trial, petitioner presented the following witnesses: Ms. Joy Z. Dela Paz,[53] its Accounting Manager; Mr. Elvin John M. Santos,[54] its Director of Supply Chain and Logistics Department; Mr. Niño Beb A.

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[39] Docket vol. I, pp. 423-426.
[40] Docket vol. II, pp. 771-773.
[41] Docket vol. II, pp. 447-454.
[42] Docket vol. II, pp. 457-470.
[43] Docket vol. II, pp.
[44] Minutes of the Hearing dated April 14, 2016 and Order dated April 14, 2016, docket vol. II, pp. 775-778 and 781-782.
[45] Docket vol. II, pp. 767-769.
[46] Docket vol. II, pp. 783-795.
[47] Docket vol. II, p. 798.
[48] Docket vol. II, pp. 828-841.
[49] Docket vol. II, pp. 809-812.
[50] Oath of Commission, docket vol. II, p. 854.
[51] Docket vol. II, pp. 886-889.
[52] Docket vol. II, pp. 925-931.
[53] Minutes of the Hearing dated August 16, 2016, docket vol. II, pp. 865-867; Exhibit "P-35", Judicial Affidavit of Joy Z. Dela Paz, docket vol. II, pp. 484-506.
[54] Minutes of the Hearing dated September 13, 2016, docket vol. II, pp. 872-873; Exhibit "P-104", Judicial Affidavit of Elvin John M. Santos, docket vol. II, pp. 479-483.

Virtudazo,[55] a licensed customs broker and Officer-in-Charge (OIC) of Operations of Fil-port Express Brokerage; and Mr. Romeo De Jesus, Jr.,[56] the court-commissioned ICPA.

Thereafter, petitioner filed its Formal Offer of Documentary Exhibits with Motion to Correct Markings[57] on February 26, 2018. In the Resolution dated May 7, 2018,[58] the Court admitted Exhibits "P-1", "P-2", "P-3", "P-3-a", "P-4", "P-4-a", "P-4-b", "P-5", "P-5-a", "P-5-b", "P-5-c", "P-6", "P-6-a", "P-6-b", "P-7", "P-7-a", "P-7-b", "P-8", "P-8-a", "P-8-b", "P-8-c", "P-9", "P-9-a", "P-9-b", "P-10", "P-10-a", "P-10-b", "P-11", "P-11-a", "P-11-b", "P-11-c", "P-12", "P-12-a", "P-12-b", "P-13", "P-13-a", "P-13-b", "P-14", "P-14-a", "P-14-b", "P-14-c", "P-15", "P-15-a", "P-15-b", "P-16", "P-16-a", "P-17", "P-17-a", "P-18", "P-18-a", "P-18-b", "P-18-c", "P-18-d", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-30-a", "P-30-b", "P-30-c", "P-31", "P-31-a", "P-31-b", "P-31-c", "P-32", "P-33", "P-34", "P-34-a", "P-35", "P-35-a", "P-37" to "P-102" as pre-marked by the ICPA, "P-103", "P-104", "P-104-a", "P-105", "P-105-a", "P-106", "P-106-a", "P-107" and "P-107-a".

On May 29, 2018, respondent presented his sole witness, Revenue Officer Jennifer L. Almedilla-Potot.[59] Thereafter, respondent filed his Formal Offer of Evidence[60] on June 13, 2018. In the Resolution dated August 6, 2018,[61] the Court admitted Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-11-a", "R-12", "R-13", "R-14", "R-14-a", "R-14-b", and "Entire BIR Records".

Respondent filed his Memorandum[62] on September 13, 2018 while petitioner filed its Memorandum[63] on September 26, 2018. Hence, in the Resolution dated October 24, 2018,[64] the case was deemed submitted for decision.

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[55] Minutes of the Hearing dated June 8, 2017, docket vol. II, pp. 965-966; Exhibit "P-34", Judicial Affidavit of Niño Beb A. Virtudazo, docket vol. II, pp. 959-964.
[56] Minutes of the Hearing dated August 17, 2017, docket vol. II, pp. 970-971; Exhibit "P-38", Judicial Affidavit of Romeo A. de Jesus, Jr., docket vol. II, pp. 909-916.
[57] Docket vol. III, pp. 994-1012.
[58] Docket, pp. 377-378.
[59] Minutes of the Hearing dated May 29, 2018, docket vol. III, pp. 1267-1270; Exhibit "R-19", Judicial Affidavit of Revenue Officer Jennifer L. Almedilla-Potot, docket vol. II, pp. 436-446.
[60] Docket vol. III, pp. 1273-1280.
[61] Docket vol. III, pp. 1298-1299.
[62] Docket vol. III, pp. 1300-1318.
[63] Docket vol. III, pp. 1324-1355.
[64] Docket vol. III, p. 1357.

THE ISSUES

The parties stipulated the following issues[65] to be resolved in this case:

1. Whether the Honorable Court has jurisdiction over the instant Petition.

2. Whether Tridharma is liable to pay the total amount of ₱43,361,774.95 for deficiency income tax, VAT and compromise penalty for taxable year 2009, as well as 25% / 50% surcharge and 20% deficiency and delinquency interest pursuant to Sections 248 and 249 of the NIRC of 1997.

PETITIONER'S ARGUMENTS

Petitioner argues that the assessments for deficiency income tax, VAT and the compromise penalty against petitioner for TY 2009 are null and void. It contends that the tax investigation for TY 2009 was conducted by the BIR without an LOA, in violation of petitioner's right to due process. Petitioner argues that the Letter Notice issued by the BIR cannot substitute a valid LOA.

Moreover, petitioner contends that assessments against it for TY 2009 were issued beyond the three-year period to assess taxes for TY 2009. It submits that the three-year prescriptive period provided under Section 203 of the NIRC of 1997, as amended applies in this case. Petitioner avers that none of the instances provided in Section 222 of the NIRC of 1997, as amended, exists in this case that would allow for an exception of the three-year prescriptive period.

Finally, petitioner argues that the assessments have no factual or legal basis. *jc*

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[65] Statement of the Issues, JSFI, docket vol. II, p. 784.

RESPONDENT'S ARGUMENTS

On the other hand, respondent argues that the Court has no jurisdiction over the instant petition. He contends that the assessment has already become final, executory and demandable for failure to file a valid protest.

Respondent alleges that petitioner had until July 26, 2013 within which to file a valid protest on the assessment with respondent. He submits that the notarized affidavit of protest filed by petitioner through its duly authorized representative, Mr. Allan A. Malapitan, is not a valid protest as contemplated by the rules. Respondent contends that Mr. Malapitan is not among petitioner's employees with capacity to transact official matters with the Bureau nor is he an accredited practitioner that may represent petitioner.

Moreover, respondent avers that the decision appealable to this Court is a decision on disputed assessment and not a decision denying the application for compromise. Hence, respondent alleges that petitioner does not have any cause of action against respondent.

Furthermore, assuming that the Court has jurisdiction over the instant case, respondent contends that his right to assess petitioner for taxable year 2009 did not prescribe as the three (3) year period within which to make the assessment finds no application to the instant case. Even if the three (3) year period is applied, respondent alleges that his right to make the assessment has not yet prescribed with the valid execution of waivers.

Finally, respondent argues that the assessments against petitioner for deficiency income tax and value-added tax (VAT) and corresponding compromise penalty have bases both in fact and in law.

THE COURT'S RULING

This Court has jurisdiction on the instant case.

First, this Court shall determine whether this Court has jurisdiction on the instant case.

The Court of Tax Appeals is a court of special jurisdiction and, as such, can only take cognizance of such matters as are clearly within its jurisdiction.[66] The jurisdiction of the CTA is conferred by Republic Act No. 1125, as amended by Republic Act No. 9282, which provides:

> "SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue Code in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue**;" (*Emphasis supplied*)

In relation thereto, Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* - The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" (*Emphasis supplied*)

Applying the foregoing provisions, the Supreme Court in the case of *Philippine Journalists, Inc. v. Commissioner of Internal Revenue,*[67] made the following pronouncement:

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[66] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.),* G.R. No. 169778, March 12, 2014.
[67] G.R. No. 162852, December 16, 2004.

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision [Section 7 (1) of Republic Act 1125] covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected."

Further, Section 11 of R.A. No. 1125, as amended by R.A. Nos. 9282 and 9503, expresses that any party adversely affected by a decision or ruling of the Commissioner of Internal Revenue may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling.

In this case, the Notice of Denial[68] dated August 26, 2015 is the decision or ruling of respondent. Since the said Notice of Denial denied petitioner's request for compromise settlement, it involves the interpretation and application of Section 204 of the NIRC of 1997, as amended, it falls under the phrase "other matters" arising from the NIRC, pursuant to Section 7(a)(1) of R.A. No. 1125, as amended by R.A. Nos. 9282 and 9503.

The record shows that petitioner received the Notice of Denial[69] dated August 26, 2015, on September 16, 2015. Counting thirty days therefrom, it had until October 16, 2015 to file a Petition for Review with this Court. Consequently, the Petition for Review with Motion to Suspend Collection of Taxes[70] filed on October 1, 2015 was filed within the 30-day prescriptive period. Thus, the Court has jurisdiction to hear and determine the instant case.

The assessments issued by respondent are a nullity in the absence of a valid Letter of Authority. gr

[68] Exhibit "P-32", docket vol. III, p. 1252.
[69] Exhibit "P-2", docket vol. 5, p. 2494.
[70] Docket vol. I, pp. 10-32.

It must be emphasized that before any revenue officer can conduct a tax audit or examination, there must be a valid grant of authority for that purpose.

Section 6(A) of the NIRC of 1997, as amended, vests unto the CIR the power to authorize the examination and the assessment of the correct amount of tax due of any taxpayer, to wit:

> "SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.
>
> (A) *Examination of Returns and Determination of Tax Due.* After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."

In relation thereto, Section 13 of the NIRC of 1997, as amended, provides that a Letter of Authority is the authority given to the appropriate revenue officer assigned to perform assessment functions, to wit:

> "**SEC. 13**. *Authority of a Revenue Officer.* — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (*Emphasis supplied*)

Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.[71] *gr*

[71] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

Moreover, in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[72] the Supreme Court held that the absence of an LOA would violate the taxpayer's right to due process, to wit:

"The absence of an LOA violated MEDICARD's right to due process

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:

> **SEC. 6**. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) **Examination of Return and Determination of Tax Due.**- After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> x x x x (Emphasis and underlining ours)

Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.

xxx xxx xxx

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[72] G.R. No. 222743, April 5, 2017.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.,* the Court said that:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**. (Emphasis and underlining ours)
>
> xxx xxx xxx
>
> Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.
>
> xxx xxx xxx
>
> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void." (*Citations omitted*)

Thus, before an examination of the taxpayer may be validly done, there must first be a LOA issued to the concerned revenue officers authorizing the conduct of an examination. Without such a LOA, the resulting assessment or examination is a nullity.

The records show that no Letter of Authority (LOA) was issued authorizing Revenue Officer Jennifer L. Almedilla-Potot to examine petitioner financial books and records for TY 2009. Instead Memorandum of Assignment LN-116-2011-322[73] dated June 6, 2011, and Memorandum of Assignment LN-116-2013-0514[74] dated March 5, 2013 were issued to ROs Reynoso C. Bravo and Jennifer L. Almedilla-

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[73] Exhibit "R-2", BIR Records, p. 27.
[74] Exhibit "R-1", BIR Records, p. 85.

Potot, respectively, for audit/verification of petitioner for TY 2009. This was testified to by RO Jennifer L. Almedilla-Potot in her Judicial Affidavit, to wit:

> "9Q You mentioned that you were tasked to continue the audit of petitioner for taxable year 2009, under what authority were you tasked to conduct the audit and examination of petitioner?
>
> 9A I was authorized under a Memorandum of Assignment (MOA) No. LN-116-2013-0514 dated 05 March 2013.
>
> xxx xxx xxx
>
> 12Q You mentioned earlier that certain Revenue Officer was originally tasked to conduct the audit examination of petitioner for taxable year 2009, who was this Revenue Officer?
>
> 12A He was Revenue Officer Reynoso C. Bravo.
>
> 13Q How do you know this?
>
> 13A When I was tasked to continue the audit of petitioner, the entire BIR Records of the case was also transferred in my custody. Amongst the documents included in the case docket was a Memorandum of Assignment authorizing Revenue Officer Reynoso C. Bravo to conduct the audit of petitioner for taxable year 2009.
>
> 14Q You mentioned that a Memorandum of Assignment was issued authorizing certain Revenue Officer Reynoso C. Bravo to conduct the audit of petitioner, if this Memorandum of Assignment will be shown to you, will you be able to identify the same?
>
> 14A Yes.
>
> 15Q I have with me a document entitled Memorandum of Assignment (MOA) No. LN-116-2011-322 dated 06 June 2011 found in page 27, Folder No. One (1) of the BIR Records and marked as Exhibit "R-2" for the respondent, what relation does this document has to the Memorandum of Assignment that you mentioned earlier?
>
> 15A This is the Memorandum of Assignment that I was referring to earlier."[75]

[75] Exhibit "R-19", Judicial Affidavit of Revenue Officer Jennifer L. Almedilla-Potot, docket vol. II, pp. 437-438.

Moreover, respondent only issued a Letter Notice (LN) No. 116-RLF-09-00-00051[76] dated June 22, 2011 to petitioner alleging a discrepancy between the importation provided by the Bureau of Customs and the reported VAT payments on importations in petitioner's VAT returns for TY 2009. Respondent failed to issue the required Letter of Authority.

In *Medicard*, the Supreme Court ruled that the mere issuance of an LN and the absence of the required LOA is fatal to any investigation conducted by the BIR on a particular taxpayer, to wit:

> "Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.
>
> xxx xxx xxx
>
> In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid . . . x x x
>
> xxx xxx xxx
>
> The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an 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, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. **Simply put, LN is entirely different and serves a different purpose than an LOA. Due process**

[76] Exhibit "P-16", docket vol. III, p. 1172; Exhibit "R-3", BIR Records, p. 26.

> **demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner.** Unfortunately, this was not done in this case.
>
> . . . an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination." (*Emphasis supplied*)

Thus, in line with the foregoing jurisprudence, the issuance of a mere LN and the absence of an LOA in the conduct of said examination or investigation renders such without valid authority. Therefore, all subsequent notices of assessment issued by petitioner were null and void in violation of respondent's right to due process.

Considering that the examination and assessments were issued pursuant to a Letter Notice, the subject assessments against petitioner for deficiency income tax, VAT and compromise penalty are void for lack of authority.

In view of the foregoing, the Court finds it no longer necessary to discuss the other issues raised.

WHEREFORE, premises considered, the Petition for Review filed by petitioner Tridharma Marketing Corporation is **GRANTED**. Accordingly, the assessments issued against petitioner for deficiency income tax, value-added tax (VAT) and compromise penalty in the total amount of ₱43,386,774.95 for taxable year 2009 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice