REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1542** (CTA Case No. 8668)
	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY,**
-versus-	**CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
VICTORIAS FOODS CORPORATION, *Respondent.*	Promulgated: FEB 19 2018 2:23 p.m.

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DECISION

BAUTISTA, J.:

The Case

This is a Petition for Review[1] under *Section 3(b)*[2], *Rule 8 of the Revised Rules of the Court of Tax Appeals*[3] *("RRCTA"),* seeking the partial

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[1] *Rollo, CTA EB No. 1542, Petition for Review ("PFR"),* pp. 6-80, with annexes.

[2] SECTION 3. *Who May Appeal; Period to File Petition.* – xxx

xxx xxx xxx

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

[3] *A.M. No. 05-11-07-CTA,* November 22, 2005.

[initials]

reversal and setting aside of the Decision[4] and the Resolution[5] promulgated by the Court of Tax Appeals ("CTA") Second Division ("Court in Division") dated May 20, 2016 and October 17, 2016, respectively; and the issuance of a new judgment ordering respondent to pay the total amount of Php10,131,843.31 representing deficiency income tax, value-added tax ("VAT"), and expanded withholding tax ("EWT") for fiscal year ("FY") ending August 31, 2009, plus twenty-five percent (25%) surcharge and twenty percent (20%) deficiency and delinquency interest, pursuant to *Sections 248 and 249 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*.[6]

The Parties[7]

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR"), who is responsible for the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected with such taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent is a domestic corporation organized in accordance with the laws of the Republic of the Philippines, principally engaged in the business of acquiring or owning factories and other manufacturing facilities by lease, purchase, or otherwise, and to operate the same for the processing, preservation, and packaging of food products, and to sell the same at wholesale. Its office address is located at the VMC Compound, Victorias City, Negros Occidental, Philippines.

The Facts

In a Letter of Authority ("LOA") dated February 18, 2011, which was received by respondent on March 2, 2011, petitioner authorized its revenue officers to examine respondent's books of account and other

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[4] *Records, CTA Case No. 8668, Vol. 4, May 20, 2016 Decision*, pp. 2334-2361; penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Caesar A. Casanova and Amelia R. Cotangco-Manalastas concurring.
[5] *Records, Vol. 4, October 17, 2016 Resolution*, pp. 2397-2403; penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Caesar A. Casanova concurring.
[6] *Rollo, PFR, Prayer*, p. 22.
[7] *Records, Vol. 4, May 20, 2016 Decision, Statement of Facts, pars. 1-3*, p. 2335.

accounting records for Calendar Year ("CY") ended December 31, 2009.[8]

In a letter dated March 2, 2011, respondent acknowledged the receipt of the LOA and requested for clarification as to whether petitioner would like to examine records for CY ended December 31, 2009 or for FY ended August 31, 2009.[9]

Thereafter, in three (3) transmittal letters, respondent submitted several documents to comply with the examination.[10]

In an LOA dated March 23, 2011 and in reply to respondent's letter dated March 2, 2011, petitioner amended the period covered by the examination to FY ended August 31, 2009.[11]

Subsequently, in a Notice of Informal Conference ("NIC") dated December 1, 2011, with attached Computation of Tax Deficiency, Summary of Disallowed Deduction, Summary of Disallowed Salaries, Wages and Other Employee Benefits, and Details of Discrepancy, petitioner invited respondent to discuss the foregoing findings of the examiners and to present evidence to refute the same. The NIC, with the computation, summaries, and details, which was received by respondent on December 2, 2011, informed the latter of its alleged income tax, VAT, and EWT deficiencies for FY ended August 31, 2009, amounting to Php9,634,172.07, computed as follows:

	INCOME TAX		VAT		EWT		TOTAL	
Basic	Php	5,691,827.91	Php	1,082,892.71	Php	73,173.21	Php	6,847,893.83
Interest		2,276,731.16		476,472.79		33,074.29		2,786,278.24
TOTAL	**PHP**	**7,968,559.07**	**PHP**	**1,559,365.50**	**PHP**	**106,247.50**	**PHP**	**9,634,172.07**[12]

Thereafter, petitioner issued a Preliminary Assessment Notice ("PAN") dated February 13, 2012, with attached Details of Discrepancy, assessing respondent of the total amount of Php10,007,436.01 as alleged deficiency income tax, VAT, and EWT, computed as follows:

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[8] *Records, Vol. 4, May 20, 2016 Decision, Statement of Facts,* p. 2335.
[9] *Id.*
[10] *Id.*
[11] *Id.* at 2336.
[12] *Id.*

	INCOME TAX	VAT	EWT	TOTAL
Basic	Php 5,691,827.91	Php 1,082,892.71	Php 73,173.21	Php 6,847,893.83
Interest	2,507,250.19	525,202.96	36,089.03	3,068,542.18
Compromise Penalties				91,000.00
TOTAL	**PHP 8,199,078.10**	**PHP 1,608,095.67**	**PHP 109,262.24**	**PHP 10,007,436.01**[13]

In a letter dated March 14, 2012, respondent acknowledged receipt of the PAN on February 23, 2012 and stated in detail the grounds for its Protest and enclosed therein supporting documents.[14] On May 8, 2012, petitioner acknowledged receipt of respondent's March 14, 2012 protest letter and its photocopied documents. In the May 8, 2012 letter, petitioner informed respondent that the docket of the case, including the Protest letter and the supporting documents enclosed with the same, will be "forwarded to Revenue District No. 76, Victorias City, for reinvestigation;" and requested respondent to submit the original copies of the supporting documents to the District Office on or before May 31, 2012.[15]

On May 14, 2012, petitioner again requested respondent to submit the original copies of the documents supporting its rebuttal of the PAN on or before May 31, 2012.[16] Respondent replied on May 27, 2012, requesting that the examination of the original documents be conducted in its office premises to facilitate the retrieval process and to prevent the loss of said originals.[17] However, on May 29, 2012, petitioner denied respondent's request and insisted on the "physical submission" of the documents to the office premises of the BIR.[18]

In a Memorandum dated June 5, 2012, petitioner's examiners stated that as of that date, respondent failed to submit the required documents, despite written notices to comply on or before May 31, 2012. Accordingly, the Memorandum addressed to the Regional Director Perfecto L. Aranas ("RD Aranas") recommended that the case be forwarded to the Assessment Division for issuance of a Final Assessment Notice ("FAN") and Demand Letter.[19]

In a transmittal letter dated June 13, 2012, respondent submitted original documents consisting of Check Vouchers, Journal Vouchers,

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[13] *Records, Vol. 4, May 20, 2016 Decision, Statement of Facts,* p. 2336.
[14] *Id.* at 2337.
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Records, Vol. 4, May 20, 2016 Decision, Statement of Facts,* p. 2337.

and other documents to comply with the May 29, 2012 letter of petitioner.[20]

In a letter dated July 4, 2012, which was mailed on July 6, 2012, RD Aranas upheld the assessment against respondent, and demanded payment for the amount of Php10,131,843.31 as deficiency income tax, VAT, and EWT. Said letter enclosed the FANs, the Formal Letter of Demand ("FLD"), Details of Discrepancy, and Computation of Tax Liabilities, summarized as follows:

	INCOME TAX		VAT		EWT		TOTAL	
Basic	Php	5,394,439.64	Php	1,082,892.71	Php	73,173.21	Php	6,550,505.56
Interest		2,831,465.00		616,606.03		42,266.72		3,490,337.75
Subtotal							**Php**	**10,040,843.31**
Compromise Penalties								91,000.00
TOTAL	**PHP**	**8,225,904.64**	**PHP**	**1,699,498.74**	**PHP**	**115,439.93**	**PHP**	**10,131,843.31**[21]

On July 11, 2012, respondent received the July 4, 2012 letter, FAN, FLD, Details of Discrepancy, and Computation of Tax Liabilities.[22]

In a letter dated August 9, 2012, respondent filed its protest against the FAN, which was denied by RD Aranas in a letter dated October 1, 2012. Thereafter, respondent sought for reconsideration of the October 1, 2012 denial in a letter dated December 6, 2012 addressed to then Commissioner of Internal Revenue ("CIR") Kim S. Jacinto Henares.[23]

On July 4, 2013, respondent filed a Petition for Review with the Court in Division.[24] Thereafter, a Decision was rendered on May 20, 2016, the dispositive portion[25] thereof reads as follows:

> **WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**.
>
> Accordingly, [respondent] is **ORDERED TO PAY** [petitioner] basic deficiency income and [VAT] for the fiscal year ending August 31, 2009 in the amount of One Million

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[20] *Records, Vol. 4, May 20, 2016 Decision, Statement of Facts,* p. 2337.
[21] *Id.* at 2338.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id., Dispositive Portion,* pp. 2359-2360.

Thirty Nine Thousand Five Hundred Fifty Eight and 37/100 Pesos ([Php]1,039,558.37), inclusive of 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic Deficiency	Surcharge (25%)	Total
Income tax	[Php] 563,695.49	[Php] 140,923.87	[Php] 704,619.36
VAT	267,951.21	66,987.80	334,939.01
TOTAL	[Php] 831,646.70	[Php] 207,911.67	[Php] 1,039,558.37

In addition, [respondent] is likewise **ORDERED TO PAY**:

(a) 20% per annum deficiency interest pursuant to Section 249(8) of the NIRC of 1997, as amended, on the basic deficiency income tax, and [VAT] computed from December 15, 2009 and September 25, 2009, respectively, until full payment thereof; and

(b) 20% per annum delinquency interest on the total amounts of [Php]704,619.36 and [Php]334,939.01 deficiency income tax and [VAT], respectively, and on the deficiency interest which have accrued as stated in (a) computed from July 31, 2012 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.[26]

On June 9, 2016, petitioner filed his Motion for Partial Reconsideration (Re: Decision Promulgated May 20, 2016)[27] with the Court in Division; to which respondent submitted its Comment/Opposition (To the Motion for Partial Reconsideration)[28] on August 2, 2016.

On October 17, 2016, the Court in Division promulgated a Resolution, the dispositive portion[29] thereof states the following:

There being no compelling reason to disturb the May 20, 2016 Decision of the Court, the CIR's Motion for Reconsideration is **DENIED** for lack of Merit.

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[26] Emphases retained.
[27] *Records, Vol. 4, Motion for Partial Reconsideration (Re: Decision Promulgated May 20, 2016),* pp. 2362-2376.
[28] *Id., Comment/Opposition (To the Motion for Partial Reconsideration),* pp. 2391-2394.
[29] *Id., Resolution,* pp. 2397-2403.

SO ORDERED.[30]

After being granted an extension,[31] petitioner filed the present Petition for Review[32] with the Court *En Banc* on November 18, 2016; while respondent submitted its Comment/Opposition[33] on February 21, 2017.

On March 17, 2017, the Court *En Banc* gave due course to the Petition for Review and ordered the parties to submit their respective memoranda within a period of thirty (30) days from receipt thereof.[34] Accordingly, petitioner filed its Memorandum[35] on May 2, 2017; while respondent submitted its Memorandum[36] on May 29, 2017.

On June 13, 2017, the Court promulgated a Resolution[37] submitting the case for decision; hence, this Decision.

The Assigned Errors/Issues[38]

WHETHER RESPONDENT IS LIABLE TO PAY THE TOTAL AMOUNT OF PHP10,131,843.31 REPRESENTING DEFICIENCY INCOME TAX, VAT, AND EWT FOR THE FY ENDING AUGUST 31, 2009.

Petitioner's Arguments[39]

Petitioner avers that the deficiency tax assessments were assessed within the three (3)-year period prescribed by law. As to income tax, petitioner insists that the Court in Division erred in deleting or reducing the items of overstatement of net operating loss carry-over ("NOLCO") for 2008, disallowed purchases, disallowed expenses due to non-withholding, overstatement of salaries and wages, and unreported purchases of food ingredients. With regard to

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[30] Emphases retained.
[31] *Rollo, Motion for Extension of Time to File Petition for Review,* pp. 1-4; *Rollo, Minute Resolution,* p. 5.
[32] *Rollo, PFR,* pp. 6-65, with annexes.
[33] *Id., Comment/Opposition,* pp. 77-80.
[34] *Id., Resolution,* pp. 81-83.
[35] *Id., petitioner's Memorandum,* pp. 88-108.
[36] *Id., respondent's Memorandum,* pp. 109-119, with annexes.
[37] *Id., Resolution,* pp. 121-122.
[38] *Rollo, PFR, Issues,* p. 11.
[39] *Id., petitioner's Memorandum, Arguments/Discussion,* pp. 93-106.

VAT, it claims that the zero-rated sales were not supported by sales invoices described as zero-rated sales, and that he correctly disallowed the presumptive income tax for failure to support purchases of primary agricultural products used as inputs for production, in violation of *Revenue Regulations ("RR") No. 16-2005.* Moving on to EWT, petitioner insists that respondent failed to withhold income payments, as one of the top 20,000 corporations. Lastly, as to compromise penalties, petitioner avers that respondent should be made liable therefor for failure to pay income tax and VAT, and failure to withhold and remit EWT on income payments.

***Respondent's Counter-Arguments*[40]**

Respondent counters that the Court in Division correctly held that prescription has set in; that the NOLCO for 2008 was not overstated; that the disallowed purchases and expenses due to non-withholding were properly substantiated; that as to the alleged overstatement of salaries and wages, the ICPA Report stated that this should only be a lower amount; that the unreported purchases of food ingredients should be cancelled; that petitioner's right to assess VAT for the first to third quarters has prescribed, and respondent already settled the VAT for the remaining fourth quarter; and that it is not liable for compromise penalty.

The Ruling of the Court En Banc

The Court *En Banc* finds no merit in the instant Petition for Review, and sees no ample justification to reverse the assailed Decision and Resolution.

The Court in Division did not err in holding that the period to assess income tax has not yet prescribed; but VAT for the first to third quarters, and EWT from September 2008 to May 2009 have prescribed.

Section 203 of the 1997 NIRC mandates that the BIR issue an assessment for deficiency taxes within three (3) years from the last day

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[40] *Rollo, respondent's Memorandum,* pp. 109-115.

prescribed by law to file the tax return or the actual date of filing of such return, whichever comes later; and any assessment notice issued beyond this prescriptive period shall not be valid, to wit:

> SECTION 203. *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.[41]

Petitioner points to *Section 223 of the 1997 NIRC* in claiming that the FANs were issued within the prescriptive period; that when respondent protested the PAN and requested for reinvestigation, petitioner granted the same; and that, accordingly, the running of the statute of limitations was suspended.

The Court *En Banc* does not agree. *Section 223 of the 1997 NIRC* provides the following:

> SECTION 223. *Suspension of Running of Statute of Limitations.* — The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, That, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his

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[41] Underscoring ours.

household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.[42]

Correlated thereto is *Section 3.1.4 of RR No. 12-99*, as amended by *RR No. 18-2013*, which states the following:

> 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.[43]

The Court *En Banc* notes that the request for reinvestigation petitioner is referring to was made in response to the PAN. What *Section 223* has in mind is an actual assessment, a FAN. Looking into respondent's protest[44] to the FAN, it is entitled "Motion for Reconsideration." Further, a reading of the body shows that respondent does not seek for a re-evaluation of the assessment due to newly-discovered or additional evidence, and it only insisted that the decision on its request for reinvestigation relating to the PAN is not in accord with law, and reiterated its grounds for RD Aranas to reconsider his decision. Neither did the RD Aranas grant respondent's request in its letter[45] dated October 1, 2012, as required by *Section 223 of the 1997 NIRC*. In fact, he advised respondent to request for another reinvestigation, which respondent never did, opting to file another request for reconsideration with the CIR instead.

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[42] Underscoring ours.
[43] Underscoring ours.
[44] *Records, Vol. 2, Exhibit "O," Motion for Reconsideration,* pp. 358-376.
[45] *Id., Exhibit "N," October 1, 2012 Letter,* pp. 355-357.

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Having settled that the prescriptive period to assess was not suspended due to a granted request for reinvestigation of the FAN, the Court *En Banc* shall determine the issue of prescription for all the assessed taxes. Since the instant case involves deficiency income tax, VAT, and EWT, the prescribed due dates for the filing of the returns, to be used as bases for the three (3)-year prescriptive period, vary accordingly.

Income Tax

Section 77(B) of the 1997 NIRC provides that the filing of the Annual Income Tax Return shall be on or before the fifteenth (15th) day of April, or the fifteenth (15th) day of the fourth (4th) month following the close of the FY, as the case may be, to wit:

> SECTION 77. *Place and Time of Filing and Payment of Quarterly Corporate Income Tax.* -
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> xxx xxx xxx
>
> (B) *Time of Filing the Income Tax Return.* - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. <u>The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.</u>[46]

Respondent's fiscal year ends on August 31, 2009, hence, the Income Tax Return should be filed on December 15, 2009. Assessment is deemed made when notice to this effect is released, mailed, or sent to the taxpayer.[47] Therefore, considering that the assessment was timely issued by petitioner on July 4, 2012, the assessment relative to income tax has not yet prescribed, as seen on the table provided below for reference:

DUE DATE FOR FILING OF RETURN	ACTUAL DATE OF FILING OF RETURN	EXHIBIT	BASIS	LAST DAY TO ASSESS
15-Dec-09	15-Dec-09	T-1[48]	15-Dec-09	15-Dec-12

[46] Underscoring ours.
[47] *Basilan Estates, Inc. v. Commissioner of Internal Revenue, et. al.,* G.R. No. L-22492, September 5, 1967, 21 SCRA 17.
[48] *Records, Vol. 2, Exhibit "T-1," BIR Form No. 1702,* pp. 592-676, with annexes.

Value-Added Tax

The filing of the Quarterly VAT Returns must be made within twenty-five (25) days after the close of each taxable quarter. *Section 114(A) of the 1997 NIRC* provides, as follows:

> SECTION 114. *Return and Payment of Value-added Tax.-*
>
> (A) In General. - Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of [his/her/its] gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.[49]

While the Court *En Banc* agrees with the Court in Division's decision relating to the prescription of VAT, a re-evaluation of the exhibits show that respondent filed amended returns for the second quarter. Said finding, while effectively changing the commencement of the running of the period to assess from March 19, 2009 to April 8, 2009, has no overall effect to the totality of the decision since either way, the period to assess has prescribed. However, the Court *En Banc* sees the need to expound on this matter.

As to the running of the three (3)-year period to assess relative to amended returns, the Supreme Court *En Banc* has settled this issue in the case of *Commissioner of Internal Revenue v. Phoenix Assurance Co., Ltd.*[50], which declared, in sum, that should the changes in the amended return be substantial, the counting of the prescriptive period should start from the date the same was filed. Otherwise, the period should commence from the filing date of the original return. The Court *En Banc* finds the amendments to the second quarter VAT Return substantial.

Therefore, in view of the assessment for VAT on July 4, 2012, respondent's right to assess the first to third quarters of 2009 has prescribed and only the fourth quarter remains, to wit:

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[49] Underscoring ours.
[50] G.R. No. L-19727 & L-19903, May 20, 1965, 14 SCRA 52.

QUARTER	DUE DATE FOR FILING OF RETURN	ACTUAL DATE OF FILING OF RETURN	EXHIBIT	BASIS	LAST DAY TO ASSESS
First	25-Dec-08	15-Dec-08	Q[51]	25-Dec-08	25-Dec-11
Second	25-Mar-09	19-Mar-09 (original)	Q-1[52]		
		19-Jun-09 (first amended)	Q-1[53]		
		8-Apr-09 (second amended)	Q-1[54]	8-Apr-09	8-Apr-12
Third	25-Jun-09	19-Jun-09	Q-2[55]	25-Jun-09	25-Jun-12
Fourth	25-Sep-09	18-Sep-09	Q-3[56]	25-Sep-09	**25-Sep-12**

Expanded Withholding Taxes

Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) must be filed within ten (10) days after the end of each month, if filed manually as the case of respondent. However, for the month of December, it shall be filed on or before January 15 of the following year. *Section 2.58(A)(2) of RR No. 2-98*[57], as amended by *RR No. 17-03*[58], provides *viz.*:

> SECTION 2.58. *Returns and Payment of Taxes Withheld at Source.*
>
> (A) *Monthly return and payment of taxes withheld at source* –
>
> xxx xxx xxx
>
> (2) *WHEN TO FILE* –
>
> (a) <u>For both large and non-large taxpayers, the withholding tax return, whether creditable or final</u> (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and

[51] *Records, Vol. 2, Exhibit "Q," BIR Form No. 2550Q, First Quarter,* pp. 381-407, with annexes.
[52] *Id., Exhibit "Q-1," BIR Form No. 2550Q, Second Quarter,* pp. 408-428, with annexes.
[53] *Id., First Amended,* p. 429.
[54] *Id., Second Amended,* p. 430.
[55] *Id., Exhibit "Q-2," BIR Form No. 2550Q, Third Quarter,* pp. 435-463, with annexes.
[56] *Id., Exhibit "Q-3," BIR Form No. 2550Q, Fourth Quarter,* pp. 464-474, with annexes.
[57] Implementing *Republic Act No. 8424,* "An Act Amending The National Internal Revenue Code, as Amended, "Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Tax," April 17, 1998.
[58] Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended, Providing for Additional Transactions Subject to Creditable Withholding Tax; Re-Establishing the Policy that the Capital Gains Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets Shall be Collected as a Final Withholding Tax, Thereby Further Amending Revenue Regulations Nos. 8-98 and 13-99, as Amended by Revenue Regulations No. 14-2000; and for Other Purposes, March 31, 2003.

> similar arrangements) <u>shall be filed and payments should be made, within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year</u>; and except for the final capital gains tax on the sale or other onerous disposition of real property considered as capital asset which must be taken/withheld from the seller by the buyer and remitted within thirty (30) days from the date of notarization of the transfer document to the collecting agent of the RDO having jurisdiction over the place where the property is located. xxx[59]

With the EWT assessment issued only on July 4, 2012, petitioner's right to assess the periods from September 2008 to May 2009 have prescribed, leaving the periods June to August 2009, *viz.*:

PERIOD	DUE DATE FOR FILING OF RETURN	ACTUAL DATE OF FILING OF RETURN	EXHIBIT	BASIS	LAST DAY TO ASSESS
Sep-08	10-Oct-08	10-Oct-08	R[60]	10-Oct-08	10-Oct-11
Oct-08	10-Nov-08	12-Nov-08	R-1[61]	12-Nov-08	12-Nov-11
Nov-08	10-Dec-08	9-Dec-08	R-2[62]	10-Dec-08	10-Dec-11
Dec-08	15-Jan-09	13-Jan-09	R-3	15-Jan-09	15-Jan-12
Jan-09	10-Feb-09	11-Feb-09	R-4[63]	11-Feb-09	11-Feb-12
Feb-09	10-Mar-09	11-Mar-09	R-5[64]	11-Mar-09	11-Mar-12
Mar-09	10-Apr-09	7-Apr-09	R-6[65]	10-Apr-09	10-Apr-12
Apr-09	10-May-09	11-May-09	R-7[66]	11-May-09	11-May-12
May-09	10-Jun-09	9-Jun-09	R-8[67]	10-Jun-09	10-Jun-12
Jun-09	10-Jul-09	9-Jul-09	R-9[68]	10-Jul-09	**10-Jul-12**
Jul-09	10-Aug-09	6-Aug-09	R-10[69]	10-Aug-09	**10-Aug-12**
Aug-09	10-Sep-09	9-Sep-09	R-11[70]	10-Sep-09	**10-Sep-12**

<u>The Court *En Banc* finds no error in the Court in Division's findings relating to respondent's taxes due.</u>

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[59] Underscoring ours.
[60] *Records, Vol. 2, Exhibit "R," BIR Form No. 1601E, September 2008,* pp. 482-488, with annexes.
[61] *Id., Exhibit "R-1," BIR Form No. 1601E, October 2008,* pp. 489-497, with annexes.
[62] *Id., Exhibit "R-2," BIR Form No. 1601E, November 2008,* pp. 498-509, with annexes.
[63] *Id., Exhibit "R-4," BIR Form No. 1601E, January 2009,* pp. 511-520, with annexes.
[64] *Id., Exhibit "R-5," BIR Form No. 1601E, February 2009,* pp. 521-524, with annexes.
[65] *Id., Vol. 2, Exhibit "R-6," BIR Form No. 1601E, March 2009,* pp. 525-529, with annexes.
[66] *Records, Vol. 2, Exhibit "R-7," BIR Form No. 1601E, April 2009,* pp. 530-536, with annexes.
[67] *Id., Exhibit "R-8," BIR Form No. 1601E, May 2009,* pp. 537-543, with annexes.
[68] *Id., Exhibit "R-9," BIR Form No. 1601E, June 2009,* pp. 544-551, with annexes.
[69] *Id., Exhibit "R-10," BIR Form No. 1601E, July 2009,* pp. 553-569, with annexes.
[70] *Id., Exhibit "R-11," BIR Form No. 1601E, August 2009,* pp. 570-580, with annexes.

As to petitioner's claims relating to the Court in Division's computations of taxes due, the Court *En Banc* finds no justifiable reason to reverse the same. Petitioner raised in the present Petition for Review the same arguments he raised in his Motion for Partial Reconsideration (Re: Decision Promulgated May 20, 2016) filed with the Court in Division, which the latter already settled in the assailed Resolution promulgated on October 17, 2016.

Lastly, with regard to compromise penalties, the imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[71] Absent any clear showing that petitioner consented to the compromise penalty, its imposition should be deleted.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Decision dated May 20, 2016 and Resolution dated October 17, 2016 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(See Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

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[71] *Commissioner of Internal Revenue v. Lianga Bay Logging Co., Inc., et. al.*, G.R. No. L-35266, January 21, 1991, 193 SCRA 86.

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(Joined PJ del Rosario's D.O.)
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(Joined PJ del Rosario's D.O.)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1542** (CTA Case No. 8668)
	Present:
- versus -	**DEL ROSARIO**, *PJ*, **CASTAÑEDA**, JR., **BAUTISTA**, **UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, and **MANAHAN**, *JJ.*
VICTORIAS FOODS CORPORATION, Respondent.	
	Promulgated: FEB 19 2018 2:23 p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I am constrained to withhold my assent to the *ponencia* of my esteemed colleague, the Honorable Associate Justice Lovell R. Bautista, denying the Petition for Review filed by petitioner Commissioner of Internal Revenue (CIR) for lack of merit.

I humbly submit that the Formal Letter of Demand (FLD) with Details of Discrepancies and Assessment Notices (FAN) issued against respondent Victorias Food Corporation (VFC) are void *ab initio* for having been issued by the CIR without a valid Letter of Authority. As such, the FLD and FAN could not have attained finality.

Revenue Officers who conducted audit of VFC were not authorized by a valid letter of authority (LOA)

Records disclose that LOA No. 076201100000045 dated February 18, 2011[1] and LOA No. 076201100000060 dated March 23, 2011[2] issued by the CIR, through Araceli L. Francisco in her capacity as Regional Director, Bacolod City, specifically authorized **Revenue Officer (RO) Jason Brian Ong and Group Supervisor Jean Bedonia**, to examine the books of accounts and other accounting records of VFC for income taxes for the period January 1, 2009 to December 31, 2009 and September 1, 2008 to August 31, 2009, respectively. The assailed FLD and FAN refer to VFC's tax liability for the fiscal year ending August 31, 2009. Notably, the audit and examination of VFC for fiscal year ending August 31, 2009, **which resulted in the issuance of the FLD and FAN**, was conducted or continued by ROs **other than those named in the LOAs**.

In the Judicial Affidavit of **RO Allan B. Arreglado**,[3] he admitted that he was assigned to continue the audit and investigation of VFC's books of accounts and other records for fiscal year ending August 31, 2009, pursuant to a Memorandum of Assignment (MOA) dated September 20, 2011. On the other hand, **RO Irene D. Poblacion** also admitted in her Judicial Affidavit[4] that she was the Group Supervisor and one of the ROs authorized under the same MOA, to conduct the audit of all internal revenue tax of VFC for fiscal year ending August 31, 2009. **There is, however, nothing in the parties' Joint Stipulation of Facts and Issues,[5] the Pre-Trial Order,[6] and the Exhibits submitted by the parties which would show the fact that a new LOA was issued in favor of RO Arreglado or RO Poblacion to conduct the audit and examination of VFC for the fiscal year ending August 31, 2009.**

While VFC failed to raise the issue of lack of authority of RO Arreglado and RO Poblacion to conduct the audit, I am of the view that the Court is not precluded from considering this issue as the absence of a valid LOA renders an assessment intrinsically void. A

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[1] Exhibit "R-2".
[2] Exhibit "R-3".
[3] Exhibit "R-15"; CTA Case No. 8668. Docket, pp. 232-236.
[4] Exhibit "R-16", CTA Case No. 8668. Docket, pp. 219- 224.
[5] CTA Case No. 8668. Docket, pp. 2064-2066.
[6] CTA Case No. 8668. Docket, pp. 2076-2081.

void assessment bears no fruit,[7] and it is settled that estoppel cannot operate to give an effect to an assessment which is *void ab initio*.

In ***Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,***[8] the Supreme Court reiterated that the CTA can resolve the issue on the authority of the ROs to conduct the audit, albeit the same was not raised by the parties in their pleadings or memoranda, *viz.*:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the **affirmative**.
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> xxx xxx xxx
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> xxx xxx xxx, **the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda.** The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter." (Boldfacing supplied)

For want of a valid LOA, ***Lancaster*** ultimately resolved to declare the assessment void.

As the crux of the controversy revolves around whether VFC may be held liable for deficiency taxes subject of the assessment issued by the CIR, the issue about the ROs' authority to conduct the audit necessarily relates thereto for its absence makes the assessment a nullity. The importance of the ROs' authority to conduct the audit cannot be over-emphasized as it goes into the issue of the validity of the assessment.

On this score, the Supreme Court's pronouncement in ***Medicard Philippines Inc. vs. Commissioner of Internal Revenue***[9] on the vital significance of an LOA to the validity of an assessment is instructive, viz.:

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

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[7] *Metro Star Superama, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185371, December 8, 2010.
[8] G.R. No. 183408, July 12, 2017.
[9] G.R. No. 222743, April 5, 2017.

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> **An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions.** Xxx xxx xxx. **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:
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> xxx xxx xxx
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> **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.** Xxx xxx xxx. **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
>
> **That the BIR officials herein were not shown to have acted unreasonably is beside the point <u>because the issue of their lack of authority was only brought up during the trial of the case.</u> 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. <u>Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.</u>"** (Citations omitted; boldfacing and underscoring supplied)

An officer of the Bureau of Internal Revenue (BIR) cannot simply subject a taxpayer to audit without valid authority issued for that purpose. Section 13 of the NIRC of 1997, as amended, provides:

> "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." (Boldfacing supplied)

RMO No. 43-90 specifies the policy guideline in the issuance of LOAs to audit. It likewise identifies and limits the BIR Officials who are authorized to issue LOAs, *viz.*:

"D. Preparation and issuance of L/As.

xxx xxx xxx

4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.**" (Boldfacing supplied)

RMO No. 43-90 is also explicit that the continuation of audit by a revenue officer other than the officer named in a previous LOA requires the issuance of a new LOA:

"C. Other policies for issuance of L/As.

xxx xxx xxx

5. **Any re-assignment/transfer of cases to another ROs, and revalidation of L/As which have already expired, shall require the issuance of a new L/A**, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As." (Boldfacing and underscoring supplied)

As oft-repeated, **the issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer is indispensable to the validity of an assessment.** In the language of ***Commissioner of Internal Revenue vs. Sony Philippines, Inc.,***[10] its absence makes the assessment or examination a nullity, *viz.*:

"Based on Section 13 of the Tax Code, **a Letter of Authority or 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.

xxx xxx xxx

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**

[10] G.R. No. 178697, November 17, 2010.

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> **of such an authority, the assessment or examination is a nullity."** (Boldfacing supplied)

Since the examination of VFC's records by RO Poblacion and RO Arreglado was made without the required authority as contained in an LOA, the assessment that resulted therefrom is a nullity. A void assessment bears no valid fruit.[11]

Finally, unless and until modified by the Supreme Court *En Banc*, the doctrines laid down in *Medicard, Lancaster* and *Sony* should be applied in determining the validity of assessments issued against taxpayers *sans* any LOA. Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.

All told, I VOTE to: (i) **DENY** the Petition for Review filed by petitioner Commissioner of Internal Revenue; and, (ii) **CANCEL** and **SET ASIDE** the Formal Letter of Demand with Details of Discrepancies and Assessment Notices, all dated July 4, 2012, issued against respondent Victorias Food Corporation.

ROMAN G. DEL ROSARIO
Presiding Justice

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[11] *Commissioner of Internal Revenue vs. Metro Star Superama Inc.*, G.R. No. 185371, December 8, 2010.