REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

BISAZZA PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9372

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

MAR 07 2018

x- x

DECISION

9:50 a.m.

MANAHAN, *J.:*

This involves a Petition for Review[1] under Section 3(a), Rule 8,[2] in relation to Section 3(a)(1), Rule 4[3] of the Revised Rules of the Court of Tax Appeals (RRCTA). The petition is filed by Bisazza Philippines, Inc. seeking to annul, set aside, and cancel the notices of assessment, including the Preliminary Collection Letter received on May 18, 2016, requiring petitioner to pay deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), fringe benefits tax (FBT), and compromise penalty for taxable year 2007.

[1] Docket, CTA Case No. 9372, Vol. 1, pp. 10-43.
[2] Rule 8 Procedure in Civil Cases
Sec. 3. Who may appeal; period to file petition. – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, ... may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on disputed assessments.
[3] Rule 4 Jurisdiction of the Court
Sec. 3. Cases within the jurisdiction of the Court in Divisions. – The Court in Divisions shall exercise:
(a) Exclusive original 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;

FACTS

Petitioner is a domestic corporation with TIN No. 209-893-137-000, and is engaged in the business of manufacturing and processing all kinds of tiles, which shall be sold at wholesale.[4]

Respondent Commissioner of Internal Revenue (CIR) is sued in his capacity as the government entity who issued the assailed Preliminary Collection Letter, Preliminary and Final Assessment Notices.[5]

On December 17, 2008, petitioner received a Letter of Authority (LOA)[6] from Revenue District Office No. (RDO) 54-Trece Martirez City, Cavite authorizing Revenue Officer Lloyd B. Patinglag and Group Supervisor Nena Joyce W. Geston to examine the books of account and other accounting records for all internal revenue taxes for the period from January 1 to December 31, 2007.[7]

On January 7, 2009, petitioner received a Second Request for Presentation of Records[8] dated December 18, 2008.[9]

On September 20, 2010, petitioner received a Notice of Informal Conference[10].[11]

On December 28, 2010, petitioner received a copy of the Preliminary Assessment Notice (PAN)[12] dated December 15, 2010 assessing a total deficiency tax of Php14,936,256.76.[13]

On January 10, 2011, petitioner filed its Reply[14] to the PAN dated January 5, 2011.[15]

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[4] Docket, Vol. 2, Joint Stipulation of Facts and Issues (JSFI), p. 685.
[5] Docket, Vol. 2, JSFI, p. 685.
[6] Docket, Vol. 2, Exhibit "P-2", p. 756; BIR Records, Exhibit "R-2", p. 31.
[7] Docket, Vol. 2, JSFI, p. 685.
[8] Docket, Vol. 2, Exhibit "P-3", p. 757.
[9] Docket, Vol. 2, JSFI, p. 686.
[10] Docket, Vol. 2, Exhibit "P-8", pp. 764-765; BIR Records, Exhibit "R-4", pp. 303-309.
[11] Docket, Vol. 2, JSFI, p. 686.
[12] Docket, Vol. 2, Exhibit "P-9" and submarkings, pp. 766-769; BIR Records, Exhibit "R-9", pp. 374-377.
[13] Docket, Vol. 2, JSFI, p. 686.
[14] Docket, Vol. 2, Exhibit "P-10" and submarkings, pp. 770-779.
[15] Docket, Vol. 1, Petition for Review (PFR), p. 13.

On January 18, 2011, petitioner received the Assessment Notices/Formal Letter of Demand (FAN/FLD)[16] dated January 7, 2011.[17] The FAN/FLD contained the following assessments for calendar year 2007:

I. INCOME TAX			
Taxable Net Income per Return			P -
Add: Discrepancy in Salaries & Wages			
Salaries & Wages per Alphalist	P 8,781,009.00		
Salaries & Wages per Financial Statements	5,618,730.95		3,162,278.05
Disallowed Inventory Write-off			3,138,576.00
Disallowed Bad Debts pursuant to RR 25-2002			201,013.00
Taxable Net Income per Audit			**P 6,501,867.05**
Tax due (35%)			2,275,653.47
Less: Income Tax Payment			-
Still Due			2,275,653.47
Add: Interest (4/16/2008-12/31/2010)	1,233,217.14		
Compromise	25,000.00		1,258,217.14
TOTAL AMOUNT DUE			**P 3,533,870.61**
II. VALUE ADDED TAX			
Sales per Financial Statements			P 77,276,915.00
Sales per VAT Return			22,194,753.98
Discrepancy			55,082,161.02
VAT Due (12%)			6,609,859.32
Add: Interest (1/26/2008-12/31/2010)	P 3,875,369.58		
Compromise	25,000.00		3,900,369.58
TOTAL AMOUNT DUE			**P10,510,228.90**
III. EXPANDED WITHHOLDING TAX			
Expenses subject to Expanded Withholding Tax	Tax Base	Rate	
Advertising	P 5,067,621.00	2%	P 101,352.42
Transportation and Travel	1,538,269.00	2%	30,765.38
Rental	3,847,713.33	5%	192,385.67
Commission	547,359.00	10%	54,735.90
Security Services	516,761.00	2%	10,335.22
Repair & Maintenance	428,315.00	2%	8,566.30
Professional Fees	207,229.00	10%	20,722.90
Raw Materials (as top 10,000)	54,803,804.00	1%	548,038.04
Office Supplies (as top 10,000)	217,252.00	1%	2,172.52
Fuel and oil (as top 10,000)	440,781.00	1%	4,407.81
Communication (as top 10,000)	994,278.00	2%	19,885.56
Direct Labor (Contractual)	3,521,127.00	2%	70,422.54
Expanded Withholding Tax Due			P 1,063,790.26
Less: Payments			484,519.79
Still Due			579,270.47
Add: Interest (1/16/2008-12/31/2010)	P 342,801.15		
Compromise	20,000.00		362,804.15
TOTAL AMOUNT DUE			**P 942,071.62**
IV. FRINGE BENEFITS TAX			
Fringe Benefits per ITR			P 291,765.00
Fringe Benefits per FBT Return			240,000.00
Discrepancy (Not subjected to FBT)			51,765.00

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[16] Docket, Vol. 2, Exhibit "P-11", pp. 815-824; BIR Records, Exhibits "R-10", "R-11" and submarking, pp. 378-386.
[17] Docket, Vol. 1, PFR, p. 13.

Grossed Up Monetary Value (/68%)				76,125.00
Fringe Benefits Tax Due (x32%)				24,360.00
Add: Interest (1/16/2008-12/31/2010)	P	14,415.78		
Compromise		6,500.00		20,915.78
TOTAL AMOUNT DUE			**P**	**45,275.78**

V. COMPROMISE PENALTY		
Failure to file Inventory List	P	1,000.00
Failure to file Monthly Alphalist of Payees (MAP)		12,000.00
Failure to supply necessary information on returns (1601-E December)		1,000.00
TOTAL AMOUNT DUE	**P**	**14,000.00**

On February 17, 2011, petitioner filed its Protest/Request for Reconsideration[18] to the FAN/FLD.[19] On April 15, 2011, respondent received petitioner's Supplemental Protest/Request for Reconsideration[20] to the FAN/FLD.[21]

On May 18, 2016, petitioner received a copy of the assailed Preliminary Collection Letter (PCL)[22] dated May 4, 2016 requiring petitioner to pay its deficiency taxes in the total amount of Php15,045,446.91.[23]

On June 16, 2016, petitioner filed the instant Petition for Review. After several extensions of time,[24] respondent filed an Answer[25] on October 3, 2016. On October 13, 2016, petitioner filed its Reply.[26]

Petitioner filed its Pre-Trial Brief[27] on November 4, 2016, while the Respondent's Pre-Trial Brief[28] was filed on November 23, 2016. The parties filed their Joint Stipulation of Facts and Issues (JSFI)[29] on December 27, 2016, which was approved in the Court's Pre-Trial Order[30] dated January 17, 2017.

[18] Docket, Vol. 2, Exhibit "P-14" and submarkings, pp. 832-847.
[19] Docket, Vol. 1, PFR, p. 14.
[20] Docket, Vol. 2, Exhibit "P-20" and submarkings, pp. 870-879.
[21] Docket, Vol. 1, PFR, p. 15.
[22] Docket, Vol. 2, Exhibit "P-1", p. 754.
[23] Docket, Vol. 1, PFR, p. 15.
[24] Docket, Vol. 1, Order dated July 21, 2016, p. 251; Order dated August 22, 2016, p. 256; and Order dated September 20, 2016, p. 274.
[25] Docket, Vol. 1, pp. 291-303.
[26] Docket, Vol.1, pp. 312-320.
[27] Docket, Vol. 1, pp. 325-347.
[28] Docket, Vol. 2, pp. 599-606.
[29] Docket, Vol. 2, pp. 685-702.
[30] Docket, Vol. 2, pp. 711-722.

Petitioner presented its sole witness, Mr. Ric Vincent G. Atienza[31] on March 13, 2017.[32] Petitioner filed its Formal Offer of Evidence (FOE)[33] on March 24, 2017, with respondent's Comment Re: Petitioner's Formal Offer of Evidence,[34] filed on April 3, 2017. The Court resolved petitioner's FOE on June 2, 2017, with several exhibits being denied.[35] This prompted petitioner's filing of Tender of Excluded Evidence,[36] which was noted in the Court's Resolution dated July 17, 2017.[37]

Respondent presented the following witnesses on June 28, 2017: (a) Morris g. Bihis,[38] (b) Melissa Carla R. Baes,[39] and (c) Richard E. Linatok[40].[41] Thereafter, respondent filed his FOE[42] on July 10, 2017, with petitioner's Comment and/or Opposition to Respondent's Formal Offer of Evidence dated 07 July 2017.[43] On August 4, 2017, the Court resolved respondent's FOE and admitted all of the offered exhibits.[44]

On October 9, 2017, respondent[45] and petitioner[46] filed their respective Memoranda. Hence, the case was deemed submitted for decision on October 12, 2017.[47]

ISSUES

The parties submit the following issues:[48]

a. Whether the Honorable Court has jurisdiction over the instant petition;

[31] Docket, Vol. 2, Exhibit "P-25" Judicial Affidavit (of Petitioner's Witness Ric Vincent G. Atienza), pp. 956-988.
[32] Docket, Vol. 2, Order dated March 13, 2017, p. 731.
[33] Docket, Vol. 2, pp. 732-753.
[34] Docket, Vol. 2, pp. 989-992.
[35] Docket, Vol. 2, pp. 994-995.
[36] Docket, Vol. 2, pp. 1005-1009.
[37] Docket, Vol. 2, p. 1018.
[38] Docket, Vol. 2, Exhibit "R-15" Judicial Affidavit of Revenue Officer Morris G. Bihis, pp. 629-636.
[39] Docket, Vol. 2, Exhibit "R-17" Judicial Affidavit of Revenue Officer Melissa Carla R. Baes, pp. 642-648.
[40] Docket, Vol. 2, Exhibit "R-16", Judicial Affidavit of Revenue Officer Richard E. Linatoc, pp. 653-660.
[41] Docket, Vol. 2, Order dated June 28, 2017, p. 997.
[42] Docket, Vol. 2, pp. 998-1004.
[43] Docket, Vol. 2, pp. 1011-1017.
[44] Docket, Vol. 2, Resolution, pp. 1021-1022.
[45] Docket, Vol. 2, pp. 1041-1050.
[46] Docket, Vol. 2, pp. 1051-1141.
[47] Docket, Vol. 2, p. 1036.
[48] Docket, Vol. 2, JSFI, pp. 686-688.

b. Whether petitioner is liable to pay its assessed delinquency Income Tax, VAT, EWT, FBT, and Compromise Penalty, plus 25% surcharge, 20% Deficiency and Delinquency interest pursuant to Sections 248 and 249 of the Tax Code;

c. Whether the issuance of the PAN dated 15 December 2010 is illegal and a "fruit of a poisonous tree" since it was issued after the expiration, on 16 April 2009, of the LOA No. 2008-00011590 dated 09 December 2008; and there was no revalidation made of said Authority;

d. Whether the issuance of the PAN dated 15 December 2010 is in violation of BIR Internal Memorandum dated 07 December 2010 directing all revenue officials and employees to suspend all tax enforcement activities during the holiday season covering the period 13 to 31 December 2010;

e. Whether the FAN/FLD dated 07 January 2011 were issued in utter disregard of petitioner's right to due process because they were issued three (3) days earlier from the filing, on 10 January 2011, of petitioner's Protest/Reply to the PAN dated 05 January 2011;

f. Whether the FAN/FLD dated 07 January 2011 were issued before the lapse of the fifteen (15) days reglementary period for petitioner to file its Protest/Reply to the PAN dated 15 December 2010;

g. Whether the FAN/FLD dated 07 January 2011 is void since the assessments are not supported by facts and laws and merely based on assumptions; and that no actual audit was conducted by respondent BIR;

h. Whether petitioner's right against double assessment was violated considering that, on 24 February 2011 or thirty six (36) days after the issuance of the FAN, and while the Administrative Protest/Request for Reconsideration to the FAN/FLD dated 07 January 2011 was pending, the BIR requested petitioner to submit all relevant documents, within sixty (60) days from notice, in support of the protest with respect to the tax liabilities for taxable year 2007 as per PAN dated 15 December 2010;

i. Whether petitioner's right to due process was violated when BIR conducted a re-investigation pursuant to the Protest/Reply to PAN dated 05 January 2011 without petitioner requesting for a re-investigation;

j. Whether petitioner's right to due process was violated when BIR conducted a re-investigation pursuant to the Protest/Reply to the PAN dated 05 January 2011 during the pendency of the Protest for reconsideration of the FAN/FLD dated 07 January 2011;

k. Whether BIR's right to assess for tax deficiencies for the period 01 January to 31 December 2007 already prescribed last 15 April 2011; and

l. Whether BIR's right to collect already prescribed pertaining to the Assessment Notice No. 54B-2007 issued on 07 January 2011 for the collection of tax deficiencies for taxable year ending 31 December 2007.

Petitioner's Arguments

Petitioner argues that the Court has jurisdiction over the instant case as the PCL received is tantamount to a denial of petitioner's protest; that the PAN was irregularly issued considering that the LOA dated December 9, 2008 had already lapsed on April 16, 2009; that the FAN/FLD were issued in utter disregard of petitioner's right to due process; the FAN/FLD are void for being unsupported by facts and laws; that respondent violated petitioner's right against double jeopardy when respondent conducted a new audit while the protest was pending and without petitioner requesting for reinvestigation; that respondent's right to make assessments has already prescribed; that respondent's right to collect has already prescribed; and, that the assessments have no factual and legal basis.[49]

Respondent's Counter-Arguments

Respondent argues that the assessments have become final for failure of petitioner to submit the supporting documents to its protest; that the assessments were issued pursuant to a valid LOA; that petitioner was afforded due process, through the notices and ample opportunity to contest the assessments; that the assessments have bases in facts and law as shown in the Details of Discrepancies attached to the

[49] Docket, Vol. 2, Petitioner's Memorandum, pp. 1065-1137.

FAN/FLD; and that assessments are presumed correct and made in good faith.[50]

RULING OF THE COURT

The petition has merit.

The Court has jurisdiction over the petition for review.

Under Rule 4, Section 3(a)(1) of the RRCTA, the Court in division has jurisdiction over decisions of the CIR in cases involving disputed assessments. In the instant case the FAN/FLD was issued on January 7, 2011 and received by petitioner on January 18, 2011. Petitioner timely filed its protest on February 17, 2011.

Petitioner's receipt of the PCL on May 18, 2016 is deemed the final decision on the disputed assessment,[51] which was properly appealed by petitioner to the Court on June 16, 2016. Hence, the Court has jurisdiction.

The LOA was valid even without revalidation after the lapse of 120 days.

Petitioner argues that the conduct of an audit must be finished and the report rendered within 120 days from the issuance of the LOA. In the instant case, the LOA dated December 9, 2008 was received on December 17, 2008. Petitioner states that no audit was conducted within the 120 days and the LOA lapsed on April 16, 2009[52]. Petitioner argues that the Notice of Informal Conference, and all other notices, which were received after the lapse of said 120-day period, are illegal. *cn*

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[50] Docket, Vol. 2, Respondent's Memorandum, pp. 1042-1048.
[51] *Organizational Change Consultants International Center for Learning, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 8625, February 10, 2017; citing *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue*, G.R. No. 148380, December 9, 2005.
[52] Should be April 17, 2009.

The Court does not agree.

Revenue Memorandum Order No. (RMO) 020-08[53] covering the audit and verification of 2007 internal revenue tax returns provides in **Part II, par. 9** that the audit policies in **RMO 12-07** shall be observed by revenue officers and officials, as follows:

> II. Policies
>
> xxx xxx xxx
>
> 9. For Revenue District Offices, the other audit policies and reporting requirements prescribed in RMO No. 12-2007 that are not inconsistent herewith shall be observed by the concerned Revenue Officers and Officials until amended through another revenue issuance.

Said **RMO 12-07**,[54] specifically covers the matter of revalidation in this wise:

> IV. Policies and Procedures
>
> xxx xxx xxx
>
> 30. xxx xxx xxx
>
> The revalidation of LA shall give rise to the extension of the period within which the concerned RO shall submit the required report of investigation to higher authorities for review and approval without the imposition of applicable administrative sanctions. Failure on the part of the RO to request for revalidation or the expiration of the "revalidation period" does not nullify the LA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued. However, this shall be considered as a ground for the imposition of disciplinary action and demerit in the performance rating of the concerned RO, including the reassignment of the case to another RO. (*Underscoring supplied*)

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[53] Guidelines for Preliminary Analysis and Audit/Verification of 2007 Internal Revenue Tax Returns, May 23, 2008.
[54] 2007 Audit Program for Revenue District Offices, July 3, 2007.

From the foregoing, it is clear that the failure to revalidate the LOA within the required period does not nullify the LOA but merely subjects the revenue officer to disciplinary action.

The Revenue Officer assigned to continue the audit of respondent's books was not named in a new LOA.

Section 13 of the 1997 National Internal Revenue Code, as amended (NIRC), provides for the authority of a revenue officer, as follows:

> Section 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. (*Underscoring supplied*)

With respect to reassignment or transfer of cases to another RO, **RMO 43-90**[55] specifically requires the issuance of a new LOA, *to wit*:

> Any reassignment/transfer of cases to another RO(s), 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. (*Underscoring ours*)

The use of the word "shall" in **RMO 43-90** can only mean that the issuance of a new LOA in cases of reassignment is mandatory.[56]

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[55] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, September 20, 1990.
[56] *CIR v. McDonald's Philippines Realty Corporation*, CTA EB No. 1535, January 4, 2018.

Unfortunately, respondent failed to comply with the issuance of a new LOA when the investigation of petitioner's books was transferred and reassigned.

In LOA No. 2008-00011590 dated December 9, 2008,[57] Revenue Officer (RO) Lloyd B. Patinglag and Group Supervisor (GS) Nena Joyce W. Geston were named as the authorized officers to examine petitioner's books for taxable year 2007.

On May 19, 2009, through a Memorandum,[58] RO Morris G. Bihis was directed to continue the audit/examination of petitioner's books for taxable year 2007.

On July 27, 2011, through a Memorandum of Assignment,[59] the continuation of the audit/verification of petitioner's internal revenue taxes for taxable year 2007 was referred to RO Melissa Carla Baez and GS Ruth Agustin.

Throughout the foregoing reassignments, no new LOA was issued pursuant to **RMO 43-90**, thus the investigation by the subsequent ROs Morris G. Bihis and Melissa Carla Baez are without the requisite authority.

In *CIR v. Sony Philippines, Inc.*,[60] the Supreme Court ruled on the necessity of an LOA, as follows:

> Based on Section 13 of the Tax Code, <u>a Letter of Authority of LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions</u>. 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
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> xxx xxx xxx
>
> Clearly, <u>there must be a grant of authority before any revenue officer can conduct an examination or assessment</u>. Equally important is that the revenue officer so authorized must not go beyond the authority given. <u>In</u>

[57] Docket, Vol. 2, Exhibit "P-2", p. 756; BIR Records, Exhibit "R-2", p. 31.
[58] BIR Records, Exhibit "R-1", p. 39.
[59] BIR Records, Exhibit "R-8", p. 568.
[60] G.R. No. 178697, November 17, 2010.

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

On this ground alone, the assessments against petitioner should be cancelled.

Respondent's right to collect on the deficiency assessments for taxable year 2007 has prescribed.

Even if the Court considers the assessments for taxable year 2007 as valid, the same can no longer be collected due to the prescription of respondent's right to collect.

The NIRC has the following provisions on the period to collect:

> Sec. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.
>
> Sec. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud, or omission: *Provided,* That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
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> xxx xxx xxx

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> (c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

From the foregoing provisions, Section 203 is silent as to collection of assessments made within the three-year period. On the other hand, Section 222(c), specifically provides a five (5)-year period to collect for assessments made pursuant to Section 222(a).

In *Jacinto-Henares v. Atlas Consolidated Mining and Development Corp.*,[61] the CTA *En Banc* interpreted Section 222(c) of the NIRC as follows:

> Section 222 (c) of the NIRC of 1997, as amended, provides that "<u>[a]ny internal revenue taxes which has been assessed within the period of limitation, *i.e.*, within the three-year or ten-year period whichever is appropriate</u>, **may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.**" (*Underscoring and emphasis in the original*)

In the instant case, the FAN/FLD dated January 7, 2011,[62] was sent through registered mail on January 10, 2011,[63] and received by petitioner on January 18, 2011.

Counting five years from January 10, 2011, respondent had until January 10, 2016 within which to collect on the assessment through distraint, levy, or court proceeding. Clearly, the PCL dated May 4, 2016 was issued beyond the five (5)-year prescriptive period and therefore null.

Considering the invalidity of the assessments due to the lack of a valid LOA, and the prescription of respondent's right to collect, assuming there is a valid assessment, the Court will no longer discuss the remaining issues raised by petitioner.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Assessment Notices dated January

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[61] CTA EB Case No. 1101, August 14, 2015.
[62] Docket, Vol. 2, Exhibit "P-11", pp. 815-818; BIR Records, Exhibit "R-10", pp. 378-381.
[63] BIR Records, Exhibit "R-11-A", p. 386-A.

7, 2011 for deficiency income tax, VAT, EWT, FBT and compromise penalty for taxable year 2007, and the Preliminary Collection Letter dated May 4, 2016 are **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(With Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
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.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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SECOND DIVISION

BISAZZA PHILIPPINES, INC.,
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- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9372

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MANAHAN, *JJ.*

Promulgated:

MAR 07 2018

9:50 a.m.

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SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.:*

I concur with the *ponencia* of my esteemed colleague, Associate Justice Catherine T. Manahan in granting the present Petition for Review and in cancelling and withdrawing respondent Commissioner of Internal Revenue's assessment for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), fringe benefits tax (FBT), and compromise penalty for taxable year 2007 on the ground that respondent's right to collect the deficiency taxes by virtue of such assessment has already prescribed. Moreover, I also concur with the *ponencia* in declaring as void respondent's assessment not on the basis of lack of a valid Letter of Authority as declared in the *ponencia*[1] but because of lack of the requisite

[1] Majority Opinion, p. 13.

authority on the part of the revenue officers who actually conducted the audit investigation of petitioner's books of accounts and other accounting records for taxable year 2007.

A review of the records revealed that Revenue Officer Lloyd B. Patinglag (RO Patinglag) and Group Supervisor Nena Joyce W. Geston (GS Geston) were originally authorized to conduct the audit investigation of petitioner's books of accounts and other accounting records for taxable year 2007 under Letter of Authority (LOA) No. 2008-00011590 dated December 9, 2008 issued by Regional Director Jaime B. Santiago of Revenue Region No. 9.[2]

On May 21, 2009, Revenue District Officer Rodolfo G. Mindanao, Jr. (RDO Mindanao) of Revenue District Office No. 054-B issued a letter[3] informing petitioner that in view of the newly created Revenue District Office which has the investigative jurisdiction over the case, the authority to examine petitioner's all internal revenue taxes for taxable year 2007 is reassigned to Revenue Officer Morris G. Bihis (RO Bihis) under the supervision of GS Geston.

On July 27, 2011, a Memorandum of Assignment[4] was issued by Revenue District Officer Carmelita B. Estolas (RDO Estolas) of Revenue District Office No. 054-B addressed to Revenue Officer Melissa Carla Baez (RO Baez) and Group Supervisor Ruth Agustin (GS Agustin) referring to them the audit/verification of petitioner's all internal revenue taxes for taxable year 2007 pursuant to LOA No. 2008-00011590 for the continuation of such audit investigation to replace the previously assigned Revenue Officers who resigned, retired or transferred to another revenue district.

One of the powers granted to the Commissioner of Internal Revenue (CIR) under the National Internal Revenue Code of 1997, as amended (1997 NIRC) is the power to make assessment of any deficiency tax. Section 6(A) of the 1997 NIRC is explicit on the matter, to wit:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* — *ja*

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[2] Exhibit "R-2", BIR Records, p. 31.
[3] Exhibit "R-3", *Id.*, p. 38.
[4] Exhibit "R-8", *Id.*, p. 568.

> (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.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. x x x" *(Emphasis supplied)*

In the exercise of his assessment powers, the CIR is also empowered to conduct by himself the examination of any taxpayer, or he may authorize other tax officers to conduct such examination. Section 6(A) of the 1997 NIRC likewise vested the CIR's duly authorized representatives the power to authorize the examination of any taxpayer for the purpose of collecting the correct amount of tax. The term "duly authorized representative" under Section 6(A) of the 1997 NIRC which may authorize examination of taxpayers refers to a Revenue Regional Director, in accordance with Sections 10 and 13 of the 1997 NIRC. The term likewise refers to other tax officials with the rank equivalent to a division chief or higher, pursuant to the CIR's authority to delegate powers vested in him under Section 7 of the 1997 NIRC. Notably, the issuance of LOAs for the examination of taxpayers is not one of those enumerated powers which the CIR cannot delegate. Section 7 of the 1997 NIRC reads as follows:

> "SEC. 7. *Authority of the Commissioner to Delegate Power.* — **The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* That the following powers of the Commissioner shall not be delegated:

(a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

(c) The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept." *(Emphasis supplied)*

Section 10 of the 1997 NIRC, in enumerating the powers of a Revenue Regional Director include, among others, the power to issue letters of authority for the examination of taxpayers within the region under his/her jurisdiction. The said provision, in part, reads:

"SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, **the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others**:

x x x x x x x x x

> **(c) Issue Letters of Authority for the examination of taxpayers within the region;**
>
> x x x x x x x x x
>
> (h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner." *(Emphasis supplied)*

On the other hand, Section 13 of the 1997 NIRC, in defining the authority of a revenue officer to conduct the examination of taxpayers for purposes of an assessment, provides as follows:

> "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)*

In relation to the foregoing provisions, Revenue Memorandum Order (RMO) No. 43-90 issued by the CIR identifies those officials who are authorized to issue and sign LOA. It may be noted that a Revenue District Officer is not included therein. The relevant portion of the said issuance reads:

> "D. Preparation and issuance of L/As.
>
> x x x x x x x x x
>
> 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 <u>but only upon prior authorization by the Commissioner himself</u>**." *(Emphasis and underscoring supplied)*

To reiterate, it is only the CIR or his duly authorized representatives who can authorize the audit examination of taxpayers for purposes of assessment of any deficiency taxes. Stated differently, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.[5]

Considering that only the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, it is only them who can effect any modification or amendment to a previously-issued LOA, should the need therefor arises.

Parenthetically, RMO No. 43-90 provides that any reassignment or transfer of cases to another revenue officers shall require the issuance of a new LOA. Be that as it may, I believe that the same would not necessarily negate the authority of the CIR and its duly authorized representatives to effect amendment or modification of a previously-issued LOA instead of issuing a new one in order for the assessment of a taxpayer to validly proceed. Note that RMO No. 43-90 itself does not state the legal effect in the event that the named revenue officers under the previously-issued LOA are transferred or reassigned and a new or replacement LOA is not issued. A duly issued LOA, valid in all other respects, does not become invalid just because the revenue officers named therein happened to be reassigned or transferred. Indeed, to construe it otherwise would be tantamount to the curtailment of the statutorily granted authority of the CIR and its duly authorized representatives to authorize the audit examination of taxpayers by a mere RMO provision. It must be emphasized that an RMO is just an internal issuance containing directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow and the like which are necessary to carry out programs or to achieve policy goals and objectives.[6] As such, they do not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR and may change from time to time as the

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[5] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[6] Revenue Administrative Order No. 001-12 dated April 2, 2012.

exigencies of service may require, or as may be allowed given particular factual contexts, provided only that due process or statutory rights are not subverted.[7]

In the present case, there is no question that LOA No. 2008-00011590 was duly issued by the Regional Director. However, the revenue officers named therein were different from those who actually examined petitioner's books of accounts and other accounting records for taxable year 2007. As it appears, RO Bihis and GS Geston conducted the audit examination on the basis of the letter issued by RDO Mindanao reassigning to them the conduct of examination of petitioner's books of accounts and other accounting records for taxable year 2007 while RO Baez and GS Agustin continued such audit examination based on a Memorandum of Assignment issued to them by RDO Estolas.

Guided by the foregoing disquisition, I submit that the letter issued by RDO Mindanao as well as the Memorandum of Assignment issued by RDO Estolas cannot validly grant RO Bihis, GS Geston, RO Baez and GS Agustin the authority to conduct the audit examination pursuant to LOA No. 2008-00011590. As Revenue District Officers, RDO Mindanao and RDO Estolas are bereft of any power to authorize audit examination of taxpayers or to effect any modification or amendment to a previously-issued LOA because, as mentioned earlier, only the CIR or his duly authorized representatives are granted such power. While it is true that under Section 11 of the 1997 NIRC,[8] a Revenue District Officer has the duty "to ensure that all laws, and rules and regulations affecting national internal revenue are faithfully executed and complied with", it does not follow that it

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[7] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 7948, June 5, 2014, penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino.

[8] Section 11 of the 1997 NIRC states:

> "SEC. 11. *Duties of Revenue District Officers and Other Internal Revenue Officers.* — It shall be the duty of every Revenue District Officer or other internal revenue officers and employees to ensure that all laws, and rules and regulations affecting national internal revenue are faithfully executed and complied with, and to aid in the prevention, detection and punishment of frauds or delinquencies in connection therewith.
>
> It shall be the duty of every Revenue District Officer to examine the efficiency of all officers and employees of the Bureau of Internal Revenue under his supervision, and to report in writing to the Commissioner, through the Regional Director, any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal revenue officer of which he may obtain knowledge, with a statement of all the facts and any evidence sustaining each case."

may exercise functions which the law has expressly granted to other tax officials such as the CIR and the Revenue Regional Director.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.,*[9] the Supreme Court held that absent any prior authority on the part of the revenue officers who conducted the audit examination of taxpayer's books of accounts and other accounting records, the deficiency tax assessment arising therefrom is a nullity.

In view of the foregoing, I vote to **GRANT** the present Petition for Review.

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

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[9] G.R. No. 178697, November 17, 2010, 649 Phil. 519.