REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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ROBINSONS CONVENIENCE STORES, INC.,	**CTA Case No. 9178**
Petitioner,	***Members:***
	UY, *Chairperson,*
	RINGPIS-LIBAN, *and*
- versus -	**MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	***Promulgated:***
Respondent.	JUN 30 2020 4:10 p.m.

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DECISION

UY, J.:

Before this Court is a Petition for Review[1] filed on October 30, 2015, by petitioner, Robinsons Convenience Stores, Inc., against respondent, Commissioner of Internal Revenue, praying for the cancellation and withdrawal of the assessments for deficiency Income Tax, Value-Added Tax (VAT), Expanded Withholding Tax (EWT), and Withholding Tax on Compensation (WTC) for the taxable year 2010, in the amount of ₱3,583,693,014.79, inclusive of surcharges, interest and other penalties.

THE FACTS

Petitioner is a domestic corporation, duly organized and existing under Philippine laws, with principal office at 110 E. Rodriguez Jr. Ave. Libis, Quezon City.[2] Petitioner is duly registered

[1] Docket (Vol. 1), pp. 10 to 45.

[2] Exhibit "P-1," Amended Articles of Incorporation, Docket – Vol. 3, p.1135; Petitioner's Memorandum, Docket – Vol. 3, pp. 1472 to 1473.

with the Bureau of Internal Revenue with Tax Identification Number (TIN) 205-728-757-000.[3]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code of 1997 (the "Tax Code") and other tax laws, rules and regulations. He may be served summons, pleadings and other processes at his office at the 5th Floor BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

On September 19, 2011, Letter of Authority No. 116-2011-00000075[5] was issued, authorizing RO Meliza Wepee, Reynoso Bravo, William Sundiam, Miguel Sulit, Maribel Serafica / GS – Wilfredo Reyes of LT Regular Audit Division 1, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2010 to December 31, 2010, pursuant to Audit Criteria for Taxable Years 2009 and 2010.

Petitioner then executed a *Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* on May 23, 2013, extending the period to assess until March 31, 2014.[6]

Petitioner received a copy of the Preliminary Assessment Notice (PAN)[7] through facsimile transmission on March 29, 2014. The subject PAN proposed to assess petitioner for deficiency taxes in the aggregate amount of ₱3,507,088,450.06, broken down as follows:

Type of Tax	Total Amount
Income Tax	₱2,317,218,474.19
Value Added Tax	1,175,806,543.17
Expanded Withholding Tax	6,689,582.96
Withholding Tax on Compensation	7,373,849.74
TOTAL	**₱3,507,088,450.06**

[3] Exhibit "P-2," Certificate of Registration, Docket – Vol. 3, p. 1143; Petitioner's Memorandum, Docket – Vol. 3, pp. 1472 to 1473.
[4] Paragraph 2, JSFI, Admitted and Stipulated Facts, Docket – Vol. 1, pp. 466 to 467.
[5] Exhibit "P-3", Docket – Vol. 3, pp. 1145 to 1147.
[6] Exhibit "P-4", Docket – Vol.3, p. 1148; Exhibit " R-5," BIR Records, p. 10.
[7] Exhibit "P-9", Docket – Vol.3, pp.1158 to 1167; Exhibit "R-10," BIR Records, pp. 405 to 410.

In reply to the PAN, petitioner filed a protest[8] with respondent on April 11, 2014, requesting that the assessment be cancelled for lack of factual and legal basis.

Petitioner received a copy of respondent's Formal Letter of Demand (FLD) issued by the BIR Large Taxpayers Service Division, which demanded petitioner to pay alleged deficiency taxes for TY 2010 in the total amount of ₱3,324,939,818.35, inclusive of surcharges and interest, broken down as follows:[9]

Kind of Tax	Basic	Surcharge	Interest
Income Tax	₱1,033,082,622.55	₱516,541,311.27	₱646,454,989.01
Value-Added Tax	514,160,043.44	257,080,021.72	344,275,930.45
Expanded Withholding Tax	2,914,763.97	1,457,381.99	1,975,650.98
Withholding Tax on Compensation	3,212,910.53	1,606,455.27	2,177,737.17
Total	**₱1,553,370,340.49**	**₱776,685,170.25**	**₱994,884,307.61**
Total Tax Assessment			**₱3,324,939,818.35**

In accordance with Section 228, Tax Code, petitioner protested the FLD within thirty (30) days from receipt hereof by filing a protest letter with the BIR, Large Taxpayers Service Division on June 6, 2014.[10]

Respondent issued Final Decision on Disputed Assessment (FDDA) dated March 2, 2015 reiterating his finding that petitioner is liable to pay alleged deficiency taxes for TY 2010 in the total amount of ₱3,583,693,014.79, inclusive of surcharges and interest, broken down as follows:[11]

Kind of Tax	Basic	Surcharge	Interest
Income Tax	₱1,033,082,622.55	₱516,541,311.27	₱818,541,080.66
Value Added Tax	514,160,043.44	257,080,021.72	429,922,315.77
Expanded Withholding Tax	2,914,763.97	1,457,381.99	2,461,178.78
Withholding Tax on Compensation	3,212,910.53	1,606,455.27	2,712,928.84
Total	**₱1,553,370,340.49**	**₱776,685,170.25**	**₱1,253,637,504.05**
Total Tax Assessment			**₱3,583,693,014.79**

Petitioner filed with respondent on March 31, 2015, its request for reconsideration of the FDDA dated March 2, 2015.[12]

On October 2, 2015, petitioner received a copy of respondent's decision, denying its request for reconsideration and reiterating the

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[8] Exhibit "P-10", Docket – Vol. 3, pp. 1168 to 1178.
[9] Paragraph 3, JSFI, Admitted and Stipulated Facts, Docket – Vol. 1, p. 467.
[10] Paragraph 4, JSFI, Admitted and Stipulated Facts, Docket – Vol. 1, p. 467.
[11] Paragraph 5, JSFI, Admitted and Stipulated Facts, Docket – Vol. 1, p. 467.
[12] Paragraph 6, JSFI, Admitted and Stipulated Facts, Docket – Vol. 1, p. 467.

demand for payment of alleged deficiency internal revenue taxes for TY 2010.[13]

On October 30, 2015, petitioner filed the instant Petition for Review[14] praying for the cancellation and withdrawal of the assessments for deficiency Income Tax, Value-Added Tax (VAT), Expanded Withholding Tax (EWT), and Withholding Tax on Compensation (WTC) for the taxable year 2010, in the amount of ₱3,583,693,014.79, inclusive of surcharges, interest and other penalties.

Respondent filed his *Answer* on February 9, 2016,[15] interposing special and affirmative defenses. Respondent contends that the Court has no jurisdiction over the present Petition for Review, because petitioner failed to timely file its protest to the FLD. According to respondent, the FLD was sent on April 14, 2014, and received on April 16, 2014, contrary to petitioner's allegation that it was received on May 8, 2014. Thus, the protest letter to the FLD should have been filed on or before May 16, 2014, and not on June 6, 2014. As the protest to the FLD was filed out of time, the FLD has become final, executory and unappealable by operation of law.

Assuming that petitioner's protest to the FLD was timely filed, this Court still has no jurisdiction, as the instant case was filed on October 30, 2015, more than a year and four months from the time the protest to the FLD was filed. Clearly, this is beyond the one hundred and eighty (180) day period as provided under Section 228 of the Tax Code. Thus, the assessment has become final and executory.

Respondent likewise argues that the deficiency tax assessments were issued within the prescriptive period provided by law, as the applicable period to assess is ten (10) years after discovery of the falsity, fraud, or omission. Moreover, respondent notes that the waiver executed by petitioner on May 23, 2013, and accepted by the CIR, through Alfredo V. Misajon, extended the period to assess until March 31, 2014. Finally, respondent submits that the subject assessments have sufficient basis in fact and in law.

On March 21, 2016, petitioner filed its *Reply,*[16] alleging that: (a) this Court has jurisdiction over the Petition for Review; (b)

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[13] Paragraph 7, JSFI, Admitted and Stipulated Facts, Docket – Vol. I, pp. 466 to 467.
[14] Docket - Vol. 1, pp. 10 to 45.
[15] Docket – Vol. 1, pp. 282 to 313.
[16] Docket – Vol. 1, pp. 346 to 366.

respondent's deficiency tax assessments against petitioner for TY 2010 are null and void for violating petitioner's right to due process; (c) the Petition for Review was timely filed; and (d) the waiver did not validly extend the three-year prescriptive period to assess.

After the Pre-Trial Conference held on December 6, 2016,[17] the parties filed their *Joint Stipulation of Facts and Issues*[18] on December 27, 2016. Thereafter, the Court issued its Pre-Trial Order on January 19, 2017.[19]

On March 22, 2017, petitioner filed a *Motion to Commission an Independent Certified Public Accountant*[20] praying for the commissioning of Ria Anne P. Abanto. Said motion was granted by the Court during the hearing held on March 27, 2017.[21] As directed by the Court, Ria Anne P. Abanto submitted her ICPA Report[22] and Consolidated Report of the ICPA[23] on May 26, 2017 and August 1, 2017, respectively.

On April 18, 2017, respondent filed an *Omnibus Motion (I. Urgent Motion for Correction of Admitted/Stipulated Fact; and II. Urgent Motion to Reset Hearing Scheduled on 25 April 2017),*[24] praying that:

> "(1) Paragraph II. A. 4. of the Pre-Trial Order dated 19 January 2017 be **CORRECTED** to reflect the true intent and full defense of respondent;
>
> (2) Paragraph II. A. 4. of the Pre-Trial Order dated 19 January 2017 be **CORRECTED TO**: "<u>4. On June 6, 2014, petitioner protested the FLD through a letter dated June 6, 2014 filed before the BIR, Large Taxpayers Service Division.";</u>
>
> (3) The phrase "within thirty (30) days from receipt thereof in accordance with Section 228 of the tax Code." In the same paragraph II. A. 4. of the Pre-Trial Order be **DELETED**;

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[17] Docket – Vol. 1, pp. 464 to 465.
[18] Docket – Vol. 1, pp. 466 to 477.
[19] Docket - Vol. 1, pp. 483 to 494.
[20] Docket – Vol. 2, pp. 506 to 508.
[21] Docket – Vol. 2, p. 520.
[22] Docket – Vol. 2, pp. 601 to 638.
[23] Docket – Vol. 2, pp. 986 to 1028.
[24] Docket – Vol. 2, pp. 521 to 536.

(4) Paragraph 4 of the Admitted and Stipulated Facts of the Joint Stipulation of Facts and Issues be likewise **CORRECTED** accordingly; and

(5) Initial presentation of petitioner's evidence is set on **25 April 2017** be **CANCELLED and RESET** until after the instant Motions are resolved with finality."

On May 5, 2017, petitioner filed an *OPPOSITION (To the Omnibus Motion dated April 18, 2017),*[25] to which respondent filed on May 16, 2017, his *REPLY Re: Petitioner's Opposition (sic)(To the Omnibus Motion dated April 18, 2017) dated May 5, 2017*[26].

In the Resolution[27] dated June 15, 2017, respondent's *Omnibus Motion Urgent Motion for Correction of Admitted/Stipulated Fact* was denied by this Court.

On July 4, 2017, respondent filed a *Motion for Reconsideration Re: Resolution dated 15 June 2017,*[28] to which petitioner filed its *Comment/Opposition (Re: CIR's Motion for Reconsideration dated July 4, 2017)*[29] on August 10, 2017.

In the Resolution[30] dated September 13, 2017, the Court denied respondent's *Motion for Reconsideration (Re: Resolution dated 15 June 2017)* for failing to raise any new argument that would convince the Court to reverse or modify its earlier ruling.

During trial, petitioner presented the following witnesses: (1) Myleen B. Regania,[31] (2) Dennice Jose Garcia,[32] and (3) Ria Anne P. Mabanto.[33] Thereafter on October 23, 2017, petitioner filed its *Formal Offer of Evidence,*[34] while respondent filed his *Opposition (Re: Petitioner's Formal Offer of Evidence)*[35] on November 2, 2017. In the Resolution dated January 30, 2018,[36] the Court admitted petitioner's documentary evidence, with the exception of Exhibits "P-54.1,"

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[25] Docket – Vol. 2, pp. 584 to 596.
[26] Docket – Vol. 2, pp. 577 to 583.
[27] Docket – Vol. 2, pp. 641 to 648.
[28] Docket – Vol. 2, pp. 650 to 667.
[29] Docket – Vol. 3, pp. 1031 to 1044.
[30] Docket – Vol. 3, pp. 1094 to 1095.
[31] Exhibit "P-23", Docket – Vol. 2, pp. 671 to 705.
[32] Exhibit "P-24", Docket – Vol. 1, pp. 454 to 460.
[33] Exhibit "P-26", Docket – Vol. 3, pp. 1048 to 1063.
[34] Docket – Vol. 3, pp. 1109 to 1132.
[35] Docket – Vol. 3, pp. 1334 to 1337.
[36] Docket – Vol. 3, pp. 1393 to 1395.

"P-75.2993," "P-75.3101," "P-75.6699," "P-75.6977," "P-75.7964," "P-75.9800" to "P-75".9849"(Non-Trade), and "P-75.2213," "P-75.14705," "P-75.22908," "P-75.26240" (Trade).

Petitioner filed a *Motion for Reconsideration (Re: Resolution dated January 30, 2018)*[37] on February 15, 2018, while respondent filed his *Comment Re: Petitioner's Motion for Reconsideration (Re: Resolution dated January 30, 2018)*[38] on March 9, 2018.

In the Resolution dated March 22, 2018,[39] Exhibits ""P-54.1," "P-75.2993," "P-75.6699," "P-75.7964," "P-75.9800" to "P-75".9849" (Non-Trade); and "P-75.2213," and "P-75.26240" (Trade) were admitted, while the Court noted petitioner's withdrawal of its offer of Exhibits "P-75.3101," "P-75.6977" (Non-Trade); "P-75.14705" and "P-75.22908" (Trade).

For his part, respondent presented his sole witness, Revenue Officer Carolyn V. Mendoza, and filed his *Formal Offer of Evidence*[40] on July 27, 2018. Thereafter, petitioner filed its *Comment (Re: Respondent's Formal Offer of Evidence dated July 27, 2018)*[41] on August 24, 2018.

In the Resolution dated December 4, 2018,[42] all of respondent's documentary evidence were admitted, with the exception of Exhibit "R-14-A," for respondent's failure to submit the original for comparison.

On December 27, 2018, respondent filed an *Omnibus Motion Re: Resolution dated 4 December 2018,*[43] to which petitioner filed its *Comment (Re: Respondent's Omnibus Motion dated December 21, 2018)*[44] on January 28, 2019. In the Resolution[45] dated March 22, 2019, the Court granted respondent's *Omnibus Motion Re: Resolution dated 4 December 2018.* Accordingly, Exhibit "R-14-A" was admitted, while Exhibit "R-14" was denied, for failure to submit the original for comparison.

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[37] Docket – Vol. 3, pp. 1396 to 1400.
[38] Docket – Vol. 3, pp. 1403 to 1406.
[39] Docket – Vol. 3, pp. 1408 to 1410.
[40] Docket – Vol. 3, pp. 1416 to 1425.
[41] Docket – Vol. 3, pp. 1432 to 1436.
[42] Docket – Vol. 3, pp. 1441 to 1442.
[43] Docket – Vol. 3, pp. 1443 to 1447.
[44] Docket – Vol. 3, pp. 1459 to 1463.
[45] Docket – Vol. 3, pp. 1544 to 1545.

In the Resolution dated May 2, 2019,[46] this case was submitted for decision, taking into consideration petitioner's *Memorandum*[47] filed on February 26, 2019, and respondent's *Manifestation*[48] filed on April 26, 2019.

Hence, this Decision.

THE ISSUES

The parties raised the following issues for resolution, to wit:

> "A. Whether the Honorable Court has jurisdiction over the instant petition.
>
> B. Whether or not respondent's right to assess petitioner alleged deficiency Income Tax, VAT, EWT, and WTC for TY 2010, including the interest and surcharges, has already prescribed in view of the lapse of the three (3)-year prescriptive period provided under Section 203, Tax Code.
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> C. Whether or not petitioner's right to due process was violated by the manner in which respondent issued the assessment notices for petitioner's alleged deficiency taxes for TY 2010.
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> D. Assuming the Honorable Court assumes jurisdiction, whether petitioner is liable to pay the assessed deficiency Income Tax, VAT, EWT, WTC and increments for TY 2010, plus 25% surcharge, 20% deficiency and delinquency interest pursuant to Sections 248 and 249, Tax Code."[49]

Petitioner's arguments:

Petitioner argues that this Court has jurisdiction over this Petition for Review as petitioner has sufficiently demonstrated the timely filing of its administrative and judicial protests against the assessments.

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[46] Docket – Vol. 3, p. 1551.
[47] Docket – Vol. 3, pp. 1472 to 1540.
[48] Docket – Vol. 3, pp.1546 to 1549.
[49] JSFI, Stipulated Issues for Resolution, Docket – Vol. 1, pp. 468.

Allegedly, respondent's right to assess has already prescribed for failure of respondent to comply with the requirements set forth under Section 222, Tax Code, which states that all internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return. In cases where the return is filed beyond the period prescribed by law, the 3-year period shall be counted from the day the return was filed.

Assuming *arguendo* that the assessments have not prescribed, petitioner submits that respondent, in the entire duration of the assessment process, committed several violations of petitioner's sacred and fundamental right to procedural and substantive due process. According to petitioner, the PAN and FLD were not served through any of the prescribed methods for the service of assessments under the Tax Code and relevant regulations; the PAN and FLD were both undated and failed to indicate a definite period to pay; the FLD was not served upon the authorized representatives of petitioner; and the revenue officers who audited petitioner were not authorized to conduct the audit. Thus, the assessment is null and void.

Finally, petitioner avers that respondent has no legal and factual basis to issue the deficiency tax assessments.

Respondent's counter-arguments:

Respondent counter-argues that this Court has no jurisdiction over the subject Petition for Review because the petitioner failed to timely file its protest to the FLD. Assuming, without conceding, that petitioner's protest was timely filed, this Court still has no jurisdiction, as the instant case was filed on October 30, 2015, more than a year and four months since the protest to the FLD was filed. Clearly, this is beyond the one hundred and eighty (180) day period as provided under Section 228 of the Tax Code. Thus, the assessment has become final and executory.

Respondent also claims that the deficiency tax assessments were issued within the prescriptive period provided by law, as the applicable period to assess is ten (10) years after discovery of the falsity, fraud, or omission; and that the subject assessments have sufficient bases in fact and in law.

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In addition, respondent contends that the waiver executed by the petitioner is valid, and extended the period to assess until March 31, 2014.

THE COURT'S RULING

We find merit in the instant Petition for Review.

The Court has jurisdiction over the instant Petition for Review.

Respondent argues that petitioner failed to timely file its protest to the FLD, which was allegedly received by the petitioner on April 16, 2014. However, assuming that the protest was timely filed, the Court still has no jurisdiction over the case, as petitioner should have sought judicial relief after its protest was not acted upon by the respondent in one hundred eighty (180) days, as provided under Section 228 of the Tax Code.

We are not convinced.

At the outset, this Court notes that respondent already made a judicial admission in the parties' Joint Stipulation of Facts and Issues (JSFI) with regard to the timeliness of the filing of petitioner's protest to the FLD, to wit:

> "In accordance with Section 228, Tax Code, Petitioner protested the FLD within thirty (30) days from receipt thereof by filing a protest letter with the BIR, Large Taxpayers Service Division on June 6, 2014."[50]

From the foregoing judicial admission by respondent, it is apparent that he concedes to the fact that the protest to the FLD filed by petitioner on June 6, 2014, was well within the thirty (30) day reglementary period stated in Section 228 of the NIRC of 1997, as amended.

It bears stressing that this admission, while contested by respondent in his *Omnibus Motion (I. Urgent Motion for Correction of Admitted/Stipulated Fact; and II. Urgent Motion to Reset Hearing*

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[50] Paragraph 4, JSFI, Admitted and Stipulated Facts, Docket – Vol. 1, p. 467.

Scheduled on 25 April 2017)[51] filed on April 18, 2017, is fully binding upon respondent, as the subject matter has already been passed upon by this Court in the Resolutions dated June 15, 2017[52] and September 13, 2017.[53] Thus, respondent cannot escape the binding effect of his judicial admission.

As held in the case of *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue*,[54] a stipulated fact at pre-trial is categorized as a judicial admission, and does not require further proof, to wit:

> "The admission having been made in a stipulation of facts at pre-trial by the parties, it must be treated as a judicial admission. Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof. The admission may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made. The Court cannot lightly set aside a judicial admission especially when the opposing party relied upon the same and accordingly dispensed with further proof of the fact already admitted. **An admission made by a party in the course of the proceedings does not require proof.**" *(Emphasis supplied)*

It is well-settled that a judicial admission conclusively binds the party making it.[55] **A judicial admission also removes an admitted fact from the field of controversy.** Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and **all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not.** The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded.[56]

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[51] Docket – Vol. 2, pp. 521 to 536.
[52] Docket – Vol. 2, pp. 640 to 648.
[53] Docket – Vol. 3, pp. 1094 to 1095.
[54] G.R. No. 157594, March 9, 2010; *Commissioner of Internal Revenue vs. Petron Corporation*, G.R. No. 185568, March 21, 2012.
[55] *Viola Cahilig, et al. vs. Hon. Eustaquio G. Terencio, et al.*, G.R. No. 164470, November 28, 2011.
[56] *Oscar Constantino, et al., vs. Heirs of Pedro Constantino, Jr, etc.*, G.R. No. 181508, October 2, 2013.

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In this case, considering respondent's judicial admission with regard to the timeliness of the filing of the petitioner's protest to the FLD, the same is conclusively binding upon respondent, and the issues relating thereto are effectively removed from the field of controversy.

Anent respondent's assertion that petitioner should have elevated its appeal to this Court within thirty (30) days after the lapse of the one hundred eighty (180) day period allotted for the CIR to act upon its protest, reference must be made to Section 3.1.4. of Revenue Regulations No. 12-99,[57] as amended by RR No. 18-2013,[58] which enumerates the taxpayer's options in with regard to disputed assessments, to wit:

> "**SECTION 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** —
>
> xxx xxx xxx
>
> 3.1.4 *Disputed Assessment.* —
>
> xxx xxx xxx
>
> **If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may <u>either</u>**: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; **<u>or</u>** (ii) **<u>elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision.</u>** No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.
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> xxx xxx xxx
>
> **If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of**

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[57] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of the 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 a Suggested Compromise Penalty.

[58] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

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> **the protest, the taxpayer may __either__**: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; **__or__** (ii) **__await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.__**" *(Emphases and underscoring supplied)*

A reading of the aforequoted provision shows that in cases where a taxpayer's protest is denied by the CIR's duly authorized representative, a taxpayer is given a choice between two (2) available remedies wherein the taxpayer may opt to either: (a) appeal to this Court within thirty (30) days from the date of receipt of the representative's decision; or (b) to elevate his protest through a request for reconsideration to the Commissioner, within the same thirty (30) day period, otherwise referred to as an "administrative appeal."

If the taxpayer's administrative appeal is not acted upon by the CIR within one hundred eighty (180) days from the filing of the protest, the concerned taxpayer may either: (i) appeal to this Court within thirty (30) days after the expiration of the said 180-day period; *or* (ii) await the final decision of respondent on the disputed assessment, and appeal such final decision to this Court within thirty (30) days from receipt of a copy thereof.

In this case, it is undisputed that respondent issued the Final Decision on Disputed Assessment (FDDA) dated March 2, 2015.[59] Thereafter, petitioner filed with respondent on March 31, 2015, its request for reconsideration of the FDDA dated March 2, 2015.[60]

On October 2, 2015, petitioner received a copy of respondent's decision, denying its request for reconsideration and reiterating the demand for payment of alleged deficiency internal revenue taxes for TY 2010.[61] Subsequently, petitioner filed the instant Petition for Review[62] on October 30, 2015.

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[59] Paragraph 5, JSFI, Admitted and Stipulated Facts, Docket – Vol. 1, pp. 466 to 467.
[60] Paragraph 6, JSFI, Admitted and Stipulated Facts, Docket – Vol. 1, pp. 466 to 467.
[61] Paragraph 7, JSFI, Admitted and Stipulated Facts, Docket – Vol. 1, pp. 466 to 467.
[62] Docket - Vol. 1, pp. 10 to 45.

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As can be gleaned from the foregoing, when the protest was denied by respondent's duly authorized representative, OIC, Assistant Commissioner, Large Taxpayers Service, Nestor S. Valeroso in the Final Decision on Disputed Assessment (FDDA) dated March 2, 2015, petitioner had the option to elevate its appeal to this Court, or file an administrative appeal with the CIR. In this case, petitioner opted to avail of an administrative appeal pursuant to the aforecited Revenue Regulations, and elevated its protest, through a request for reconsideration of the FDDA, within the thirty (30) day reglementary period. Thereafter, when the CIR failed to act on its administrative appeal within the one hundred eighty (180) day period, petitioner chose to await the decision of respondent, instead of exercising its option to appeal to this Court. Thus, upon receipt of respondent's decision on October 2, 2015, petitioner filed the subject Petition for Review, within thirty (30) days from receipt thereof.

Considering that petitioner's actions are consistent with the foregoing remedies provided for under Section 3.1.4. of RR No. 12-99, as amended by RR No. 18-13, the instant Petition for Review was timely filed. Accordingly, this Court is vested with jurisdiction to entertain the same.

Only the assessment for deficiency income tax was issued within the prescriptive period provided by law, while the assessment for deficiency VAT, WTC and EWT were not.

Section 203 of the NIRC of 1997 provides the period of limitation upon the assessment of taxes, to wit:

> "**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." *(Emphasis supplied)*

Based on the above-quoted provision, internal revenue taxes must be assessed by the government within three (3) years from the last day prescribed by law for the filing of the tax return or from the date of actual filing of such return, whichever comes later. Accordingly, an assessment notice issued after the said three-year prescriptive period is no longer valid and effective.[63]

In the instant case, the subject assessments pertain to the following deficiency taxes: (1) income tax; (2) VAT; (3) WTC; and (4) EWT.

Petitioner argues that the deficiency tax assessments for TY 2010 were issued beyond the three year prescriptive period.

We partly agree with petitioner, but only with respect to the deficiency assessments for VAT, WTC and EWT, as discussed herein below.

Income Tax Assessment

Pursuant to Section 77 (B) of the NIRC of 1997,[64] the final adjusted income tax return of a corporate taxpayer is due to be filed on or before April 15 of the following calendar year, or on or before the 15th day of the 4th month following the close of the fiscal year, as the case may be. In this case, petitioner filed its Annual Income Tax Return for TY 2010 on April 11, 2011.[65] Consequently, respondent had until April 15, 2014, to validly issue any deficiency tax assessment.

In this case, the FLD was sent by respondent on April 14, 2014,[66] and is clearly issued **within** the three-year prescriptive period provided for under the aforequoted Section 203 of the NIRC of 1997, as amended.

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[63] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

[64] **SEC. 77.** ***Place and Time of Filing and Payment of Quarterly Corporate Income Tax.-***

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. 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.

[65] Exhibit "P-18," Docket – Vol.3, pp. 1287 to 1288.

[66] Answer, Docket – Vol. 1, pp. 282 to 313, at 285 and 292; FOE, Docket – Vol. 3, p. 1421; Exhibits "R-14" to "R-14-a," and "R-15," BIR Records, pp. 481 to 483, and 490.

VAT Assessment

Section 114(a) of the NIRC of 1997, as amended, provides that in general, every person liable to pay VAT, shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter. And that VAT-registered persons shall pay the value added tax on a monthly basis.

Based on the foregoing legal provision, and for easy reference, the due dates of filing of petitioner's Quarterly VAT Returns (BIR Form No. 2550-Q) for the 1st to 4th quarters of TY 2010, and the end of the three (3) year prescriptive period as provided for in Section 203 of the NIRC of 1997, as amended, are summarized as follows:

Exhibit	TY 2010	Due Date for Filing	Date of Filing	Prescriptive Period
"P-19-a"	1st Quarter	Apr 25, 2010	Apr 23, 2010	Apr 25, 2013
"P-19-b"	2nd Quarter	Jul 25, 2010	Jul 22, 2010	Jul 25, 2013
"P-19-c"	3rd Quarter	Oct 25, 2010	Oct 22, 2010	Oct 25, 2013
"P-19-d"	4th Quarter	Jan 25, 2011	Jan 24, 2011	Jan 25, 2014

From the foregoing, it is clear that the FLD sent by respondent on April 14, 2014,[67] with respect to the VAT assessment, was issued **beyond** the three-year prescriptive period under Section 203 of the NIRC of 1997, as amended.

WTC and EWT Assessments

Pursuant to Section 7 of Revenue Regulations No. 9-2001,[68] as amended by RR No. 26-02,[69] withholding tax returns for Group C, which includes Retail Sales, shall be filed and the tax due thereon shall be paid, within thirteen (13) days after the end of each month.

The dates of filing of petitioner's WTC Month Remittance Tax Returns (BIR Form No. 1601-C) for TY 2010, and the end of the three (3) year prescriptive period as provided for in Section 203 of the NIRC of 1997, as amended, are hereby summarized as follows:

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[67] Answer, Docket – Vol. 1, pp. 282 to 313, at 285 and 292; FOE, Docket – Vol. 3, p. 1421; Exhibits "R-14" to "R-14-a," and "R-15," BIR Records, pp. 481 to 483, and 491.
[68] SUBJECT: Electronic Filing of Tax Returns and Payment of Taxes.
[69] SUBJECT: Amending Further Revenue Regulations No. 9-2001, as Amended by Revenue Regulations No. 2-2002 and Revenue Regulations No. 9-2002, Providing for the Staggered Filing of Returns of Taxpayers Enrolled in the Electronic Filing and Payment System (EFPS) Based on Industry Classification.

WTC Monthly Remittance Tax Returns				
Exhibit	**Period**	**Due Date for Filing**	**Date of Filing**	**Prescriptive Period**
"P-21-a"	Jan-10	Feb 13, 2010	Feb 9, 2010	Feb 13, 2013
"P-21-b"	Feb-10	Mar 13, 2010	Mar 10, 2010	Mar 13, 2013
"P-21-c"	Mar-10	Apr 13, 2010	Apr 7, 2010	Apr 13, 2013
"P-21-d"	Apr-10	May 13, 2010	May 11, 2010	May 13, 2013
"P-21-e"	May-10	Jun 13, 2010	Jun 9, 2010	Jun 13, 2013
"P-21-f"	Jun-10	Jul 13, 2010	Jul 9, 2010	Jul 13, 2013
"P-21-g"	Jul-10	Aug 13, 2010	Aug 10, 2010	Aug 13, 2013
P-21-h"	Aug-10	Sept 13, 2010	Sept 8, 2010	Sept 13, 2013
"P-21-I"	Sep-10	Oct 13, 2010	Oct 11, 2010	Oct 13, 2013
"P-21-j"	Oct-10	Nov 13, 2010	Nov 10, 2010	Nov 13, 2013
"P-21-k"	Nov-10	Dec 13, 2010	Dec 9, 2010	Dec 13, 2013
"P-21-l"	Dec-10	Jan 13, 2011	Jan 11, 2011	Jan 13, 2014

On the other hand, the dates of filing of petitioner's EWT Monthly Remittance Tax Returns (BIR form No. 1601-E) for TY 2010, and the end of the three (3) year prescriptive period as provided for in Section 203 of the NIRC of 1997, as amended, are as follows:

EWT Monthly Remittance Tax Returns				
Exhibit	**Period**	**Due Date for Filing**	**Date of Filing**	**Prescriptive Period**
"P-20-a"	Jan-10	Feb 13, 2010	Feb 10, 2010	Feb 13, 2013
"P-20-b"	Feb-10	Mar 13, 2010	Mar 11, 2010	Mar 13, 2013
"P-20-c"	Mar-10	Apr 13, 2010	Apr 12, 2010	Apr 13, 2013
"P-20-d"	Apr-10	May 13, 2010	May 12, 2010	May 13, 2013
"P-20-e"	May-10	Jun 13, 2010	Jun 12, 2010	Jun 13, 2013
"P-20-f"	Jun-10	Jul 13, 2010	Jul 9, 2010	Jul 13, 2013
"P-20-g"	Jul-10	Aug 13, 2010	Aug 11, 2010	Aug 13, 2013
"P-20-h"	Aug-10	Sept 13, 2010	Sep 13, 2010	Sept 13, 2013
"P-20-I"	Sep-10	Oct 13, 2010	Oct 12, 2010	Oct 13, 2013
"P-20-j"	Oct-10	Nov 13, 2010	Nov 11, 2010	Nov 13, 2013
"P-20-k"	Nov-10	Dec 13, 2010	Dec 10, 2010	Dec 13, 2013
"P-20-l"	Dec-10	Jan 13, 2011	Jan 10, 2011	Jan 13, 2014

From the foregoing, it is clear that the FLD sent by the respondent on April 14, 2014,[70] with regard to the WTC and EWT deficiency assessments, were issued **beyond** the three-year prescriptive period under Section 203 of the NIRC of 1997, as amended.

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[70] Answer, Docket – Vol. 1, pp. 282 to 313, at 285 and 292; FOE, Docket – Vol. 3, p. 1421; Exhibits "R-14" to "R-14-a," and "R-15," BIR Records, pp. 481 to 483, and 491.

In this case, however, respondent seeks exception from the foregoing provision, and submits that the subject deficiency tax assessments were issued within the prescriptive period provided by law, because the applicable period to assess is allegedly ten (10) years after the discovery of falsity, fraud, or omission.[71]

We are not swayed.

Section 222 (a) of the NIRC of 1997, as amended, 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 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."

Clearly from the foregoing provision, in the three different instances 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 be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission.

In the case of *Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.*,[72] it was held that in order to apply the extraordinary prescriptive period of ten (10) years, it must first be proven that there was either fraud or intentional falsity on the part of the taxpayer, to wit:

> "In *Commissioner of Internal Revenue v. Javier*, this Court ruled that fraud is never imputed. The Court stated that it will not sustain findings of fraud upon circumstances which, at most, create only suspicion. The Court added that the mere understatement of a tax is not

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[71] Answer, Docket – Vol. 1, p. 289.
[72] G.R. No. 213943, March 22, 2017.

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itself proof of fraud for the purpose of tax evasion. The Court explained:

> xxx . The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. Negligence, whether slight or gross, is not equivalent to fraud with intent to evade the tax contemplated by law. It must amount to intentional wrong-doing with the sole object of avoiding the tax. xxx xxx.

In *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, the Court differentiated between false and fraudulent returns. Quoting *Aznar v. Court of Tax Appeals*, the Court explained in *Samar-I* the acts or omissions that may constitute falsity, thus:

> xxx xxx . Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situation into three different classes, namely "falsity," "fraud," and "omission." That there is a difference between "false return" and "fraudulent return" cannot be denied. While the first implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.

xxx xxx xxxx

Thus, while the filing of a fraudulent return necessarily implies that the act of the taxpayer was intentional and done with intent to evade the taxes due, the filing of a false return can be intentional or due to honest mistake. In *CIR v. B.F. Goodrich Phils., Inc.*, the Court stated that the entry of wrong information due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return. In this case, we do not find enough evidence to prove fraud or intentional falsity on the part of PDI." *(Citations omitted.)*

A perusal of the records shows that contrary to respondent's assertions, the Court finds no indication that there was fraud or intentional falsity on the part of petitioner. There being no evidence adduced that would establish the fact of fraud or any intentional falsity committed by the petitioner, there is no reason to apply the exception provided for under Section 222(a) of the NIRC of 1997, as amended. Rather, it is the three (3) year prescriptive period under Section 203 of the NIRC of 1997, as amended, which should be applied in this case.

Additionally, respondent contends that in any case, Section 203 of the NIRC of 1997, as amended, prescribes a limitation only as to the assessment for the collection of taxes, but not for penalties. In this case, petitioner is not being assessed for the collection of taxes, but merely penalized for its failure to comply with the withholding tax provision.[73]

We are not convinced.

The foregoing theory forwarded by the respondent has already been rejected by the Supreme Court in the case of *Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc.,*[74] to wit:

> "The CIR, however, forwards a novel theory that Section 203 is inapplicable in the present assessment of EWT and WTC deficiency against La Flor. It argues that withholding taxes are not contemplated under the said provision considering that they are not internal revenue taxes but are penalties imposed on the withholding agent should it fail to remit the proper amount of tax withheld.
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> xxx xxx xxx
>
> Under the existing withholding tax system, the withholding agent retains a portion of the amount received by the income earner. In turn, the said amount is credited to the total income tax payable in transactions covered by the EWT. On the other hand, in cases of income payments subject to WTC and Final Withholding Tax, the

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[73] Docket – Vol. 1, pp. 295 to 297.
[74] G.R. No. 211289, January 14, 2019.

> amount withheld is already the entire tax to be paid for the particular source of income. Thus, it can readily be seen that the payee is the taxpayer, the person on whom the tax is imposed, while the payor, a separate entity, acts as the government's agent for the collection of the tax in order to ensure its payment.
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> xxx xxx xxx
>
> It is true that withholding tax is a method of collecting tax in advance and that a withholding tax on income necessarily implies that the amount of tax withheld comes from the income earned by the taxpayer/payee. **Nonetheless, the Court does not agree with the CIR that withholding tax assessments are merely an imposition of a penalty on the withholding agent, and thus, outside the coverage of Section 203 of the NIRC**.
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> xxx xxx xxx
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> **Thus, withholding tax assessments such as EWT and WTC clearly contemplate deficiency internal revenue taxes. Their aim is to collect unpaid income taxes and not merely to impose a penalty on the withholding agent for its failure to comply with its statutory duty**. Further, a holistic reading of the Tax Code reveals that the CIR's interpretation of Section 203 is erroneous. Provisions of the NIRC itself recognize that the tax assessment for withholding tax deficiency is different and independent from possible penalties that may be imposed for the failure of withholding agents to withhold and remit taxes. For one, Title X, Chapter I of the NIRC provides for additions to the tax or deficiency tax and is applicable to all taxes, fees and charges under the Tax Code." *(Emphasis supplied.)*

In the aforequoted case, the Supreme Court held that a withholding tax assessment is *not* merely an imposition of penalty on the withholding agent. On the contrary, it was categorically held that the collection of withholding taxes falls squarely within the purview of Section 203 of the NIRC of 1997, as amended. Thus, the three (3) year prescriptive period under Section 203 of the NIRC of 1997, applies to withholding tax assessments, particularly to WTC and EWT assessments.

The assessments for deficiency VAT, WTC and EWT has already prescribed for being issued beyond the supposedly extended period indicated in the Waiver dated May 23, 2013.

Respondent contends,[75] however, that prescription has not set in, as petitioner executed a *Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* on May 23, 2013, extending the period to assess until March 31, 2014.[76]

For its part, petitioner counters that the subject waiver is void, for the following reasons: 1) the waiver did not specifically state the kind and amount of taxes; 2) the person who signed the waiver did not have any notarized written authority to sign the waiver on behalf of the petitioner; 3) the waiver could not be considered as duly notarized, because the acknowledgment portion does not indicate who subscribed and affirmed the veracity of the waiver before the notary public; and 4) since the assessment amounted to more than one million pesos (Php1,000,000.00), RMO No. 20-90 requires the CIR to sign for the BIR, while in this case, only OIC-Assistant Commissioner Misajon signed the waiver.[77]

This Court is not convinced.

Even without ruling on the validity of the subject waiver dated May 23, 2013 and its alleged infirmities, this Court notes that the said waiver only extends the period to assess until March 31, 2014. However, by respondent's own admission[78] and evidence,[79] the FLD was sent by the respondent only on April 14, 2014, or beyond the supposedly extended period indicated in the Waiver dated May 23, 2013.

Since the validity period of the Waiver is only until March 31, 2014, prescription has clearly set in at the time the FLD was sent to

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[75] Docket – Vol. 1, pp. 292 to 293.
[76] Exhibit "P-4", Docket – Vol.3, p. 1148; Exhibit " R-5," BIR Records, p. 10.
[77] Docket – Vol. 3, p. 1488 to 1492.
[78] Answer, Docket – Vol. 1, pp. 282 to 313, at 285 and 292; and FOE, Docket – Vol. 3, p. 1421.
[79] Exhibits "R-14" to "R-14-a," and "R-15," BIR Records, pp. 481 to 483, and 491.

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the petitioner on April 14, 2014. Consequently, the VAT, WTC, and EWT assessments are void for being issued beyond the prescriptive period provided by law.

To recapitulate, the period to assess the petitioner for VAT, WTC, and EWT has already prescribed. However, as earlier discussed, the deficiency income tax assessment was issued well within the three (3) year prescriptive period set forth in Section 203 of the NIRC of 1997, as amended. Accordingly, this Court will proceed to determine the validity of the subject deficiency income tax assessment.

The revenue officers who conducted the audit and subsequent reinvestigation of petitioner, were not authorized to examine the latter's books of accounts and other tax records. Thus, the subject tax assessments are void.

In the case at bar, petitioner argues that the revenue officers who conducted the audit were not authorized to do so.

We agree with the petitioner.

The purpose and significance of an LOA, and the authority it confers upon a revenue officer, relative to the performance of assessment functions, is discussed at length in the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,*[80] to wit:

> "**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:

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

> **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, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer</u>** 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.
>
> xxx xxx xxx

Based on the afore-quoted provision, it is clear that **unless authorized by the CIR himself or by his duly authorized representative, <u>through an LOA</u>**, 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 <u>without prior authority</u>**.

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 <u>before</u> 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.
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> 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**." *(Emphasis supplied.)*

Based on the foregoing pronouncement, revenue officers are required to be specifically authorized by a valid LOA, in order to exercise assessment functions. In the absence of a valid LOA issued specifically in favor of a revenue officer, the tax assessments issued by the BIR against such taxpayer shall be void.

Relative thereto, Section 13 of the NIRC of 1997, as amended, 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."

Accordingly, in order for a Revenue Officer to validly examine taxpayers and perform tax assessment and collection functions, the said Revenue Officer must first be clothed with authority by a valid LOA.

The importance of the LOA and the authority it confers upon the Revenue Officer, is further highlighted by RMO No. 43-90, which prescribes the revised policy guidelines for the audit/investigation and issuance of letters of authority to audit. Specifically, it requires that **all** audits/investigations should be conducted under a Letter of Authority, and requires the issuance of a **new LOA** in case of any reassignment or transfer of cases to another Revenue Officer, to wit:

> "C. Other policies for issuance of L/As.
>
> 1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.
>
> xxx xxx xxx
>
> 5. Any re-assignment/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."

In this case, Letter of Authority No. 116-2011-00000075[81] dated September 19, 2011, authorizes Revenue Officers (ROs) Meliza Wepee, Reynoso Bravo, William Sundiam, Miguel Sulit, Maribel Serafica/GS – Wilfredo Reyes of LT Regular Audit Division 1, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2010 to December 31, 2010, pursuant to Audit Criteria for Taxable Years 2009 and 2010.

However, it was ROs Reynante P. Martinez, Rosario A. Arriola, Carolyn V. Mendoza, Sheila C. Samaniego, and GS Rolando M. Balbido, who issued the following:

1. Memorandum[82] recommending the issuance of a Preliminary Assessment Notice against petitioner;
2. Memorandum[83] recommending the issuance of a Formal Letter of Demand against the petitioner;
3. Memorandum[84] recommending the issuance of an FDDA against the petitioner; and

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[81] Exhibit "P-3", Docket – Vol. 3, pp. 1145 to 1147.
[82] Exhibit "R-9," BIR Records, pp. 285 to 292.
[83] Exhibit "R-11," BIR Records, pp. 435 to 440.
[84] Exhibit "R-17," BIR Records, pp. 936 to 941. *rd*

4. Memorandum[85] recommending the denial of the request for reconsideration of the FDDA.

A perusal of the records, however, show that ROs Reynante P. Martinez, Rosario A. Arriola, Carolyn V. Mendoza, Sheila C. Samaniego, and GS Rolando M. Balbido were not validly authorized by a new LOA, when they exercised assessment functions, such as, but not limited to, the recommendation for the issuance of a PAN, FLD, FDDA, and denial of the request for reconsideration of the FDDA.

Considering that the ROs who acted on petitioner's case were not properly clothed with authority with a requisite LOA, the subject tax assessments, resulting from the investigation, audit, and recommendation of ROs Reynante P. Martinez, Rosario A. Arriola, Carolyn V. Mendoza, Sheila C. Samaniego, and GS Rolando M. Balbido are void. For being void, the same bears no valid fruit.[86]

Correspondingly, it becomes unnecessary to address the other issues raised by petitioner in the instant Petition for Review.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the subject assessment for deficiency income tax, VAT, EWT and WTC for taxable year 2010 issued against petitioner is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[85] Exhibit "R-19," BIR Records, pp. 1014 to 1017.
[86] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

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.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

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.

ROMAN G. DEL ROSARIO
Presiding Justice