REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL SECOND DIVISION

PHILIPPINE HYDRO (PH) INC.,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 11179

Present:

RINGPIS-LIBAN, *P.J., Chairperson,*
MODESTO-SAN PEDRO, and
FERRER-FLORES, *JJ.*

Promulgated:
MAY 06 2026

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DECISION

FERRER-FLORES, J.:

At bar is a *Petition for Review* filed on June 2, 2023 by petitioner **Philippine Hydro (PH) Inc.**, praying that the assessments for alleged deficiency income tax, and value-added tax (VAT), in the total amount of **₱425,142,892.82**, inclusive of surcharges and interests, for taxable years 2008 to 2012, be cancelled and set aside.[1]

THE PARTIES

Petitioner Philippine Hydro (PH) Inc. is a domestic corporation duly registered with the Securities and Exchange Commission, with principal office at G/F MWSS Engineering Bldg., MWSS Compound, Balara, Katipunan, Avenue, Quezon City.[2] It is registered with the Bureau of Internal Revenue (BIR), under Taxpayer Identification Number 204-906-011-000.[3]

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1 Summary of the Case, Pre-Trial Order dated April 3, 2024, Docket – Vol. III, p. 951.
2 Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. III, p. 904.
3 Exhibit "P-4-1", Docket – Vol. II, p. 295.

Respondent **Commissioner of Internal Revenue (CIR)** is the chief of the BIR, the government agency vested with the authority to administer and enforce national internal revenue taxes, including, among others, the assessment and collection of all internal revenue taxes, fees, and charges. His official station is at Litigation Division, Room 703, BIR National Office Building, BIR Road, Quezon City.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On October 2, 2015, petitioner received the Letter of Authority (LOA) No. LOA-211-2015-00000220 (SN: eLA201100095641) dated September 15, 2015 (First LOA), authorizing Revenue Officers (ROs) Mary Grace Alonzo, Gary Anastacio, Gertrudes Eito, and Group Supervisor (GS) Evangeline Catotal of the National Investigation Division, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes covering the taxable period from January 1, 2006 to December 31, 2012.[5]

On the same date, petitioner received the letter dated May 6, 2015 from the BIR, requesting copies of various records, documents, and schedules.[6]

Thereafter, on February 26, 2021, respondent issued a new LOA No. LOA-211-2021-00000009 (SN: eLA201900006387) (Second LOA), authorizing ROs Mary Grace Alonzo, Josephine Duran, Veneracion Prado, and GS Alexander Manguba, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2008 to December 31, 2012.[7]

On April 21, 2021, respondent issued the Second and Final Request for the Presentation of Records, which specifically requested the presentation of the books of account and other accounting records of the petitioner. Further, it recommends that a subpoena duces tecum (SDT) be issued against petitioner.[8]

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4 Par. 3, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 905.

5 Par. 4, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 905; Exhibit "P-5", Docket – Vol. II, p. 296; Exhibit "R-1", BIR Records – Folder 1 (Exhibit "R-13"), p. 32.

6 Par. 5, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 905; Exhibit "R-1", BIR Records – Folder 1 (Exhibit "R-13"), pp. 29 to 31.

7 Par. 6, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 905; Exhibit "R-2", BIR Records – Folder 3 (Exhibit "R-13-b"), p. 1890.

8 Par. 7, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 905; Exhibits "P-9" and "R-4", BIR Records – Folder 3 (Exhibit "R-13-b"), p. 1897.

On July 29, 2021, the Subpoena Duces Tecum No. M-2021-0035 dated July 28, 2021,[9] addressed to petitioner's President, Mr. John Patrick C. Gregorio, was received by petitioner, ordering petitioner to appear before the BIR National Office on August 11, 2021 and to submit various documents indicated therein.[10]

On January 5, 2022, the BIR proceeded with the issuance of the Notice of Discrepancy (NOD) which was received by petitioner on the same date.[11]

In the NOD, the BIR assessed petitioner for alleged deficiency income tax and VAT in the total amount of **₱697,413,273.97** for taxable years 2008 to 2012, broken down as follows:[12]

TAX TYPE	2008 (in Pesos)	2009 (in Pesos)	2010 (in Pesos)	2011 (in Pesos)	2012 (in Pesos)	TOTAL (in Pesos)
Income tax	43,953,687.50	52,018,748.50	60,265,171.00	68,944,229.50	3,927,094.50	**229,108,931.00**
VAT	68,865,471.42	66,390,584.79	102,620,352.94	110,108,014.75	120,319,919.07	**468,304,342.97**
TOTAL	**112,819,158.92**	**118,409,333.29**	**162,885,523.94**	**179,052,244.25**	**124,247,013.57**	**697,413,273.97**

On February 8, 2022, petitioner received the Preliminary Assessment Notice (PAN) dated February 7, 2022, assessing it of alleged deficiency income tax and VAT for TYs 2008 to 2012, in the total amount of ₱425,142,892.82, broken down as follows:[13]

INCOME TAX

YEAR	BASIC	SURCHARGE	INTEREST	TOTAL
2008	₱15,383,790.63	₱7,691,895.31	₱35,113,818.21	₱ 58,189,504.15
2009	15,605,624.55	7,802,812.28	32,499,033.79	55,907,470.61
2010	17,352,201.30	8,676,100.65	32,665,875.50	58,694,177.45
2011	19,674,816.10	9,837,408.05	33,092,501.64	62,604,725.79
2012	712,432.37	356,216.19	1,055,805.25	2,124,453.81
TOTAL INCOME TAX DEFICIENCY				**₱237,520,331.81**

VAT

YEAR	BASIC	SURCHARGE	INTEREST	TOTAL
2008	₱ 8,241,245.45	₱4,120,622.73	₱19,172,072.16	₱ 31,533,940.33
2009	7,894,930.17	3,947,465.09	16,787,433.44	28,629,828.70
2010	12,314,442.35	6,157,221.18	23,722,001.94	42,193,665.47
2011	13,002,240.58	6,501,120.29	22,446,498.18	41,949,859.05
2012	14,315,271.93	7,157,635.96	21,842,359.57	43,315,267.46
TOTAL VAT DEFICIENCY				**₱187,622,561.01**
TOTAL TAX DEFICIENCIES				**₱425,142,892.82**

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9 Exhibit "R-6", BIR Records – Folder 3 (Exhibit "R-13-b"), p. 1985.

10 Par. 8, Summary of Admitted Facts, JSFI, Docket – Vol. III, pp. 905 to 906.

11 Par. 9, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 906; Exhibit "P-13", Docket – Vol. II, pp. 335 to 336; Exhibit "R-8", BIR Records – Folder 3 (Exhibit "R-13-b"), pp. 2023 to 2024.

12 Par. 10, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 906.

13 Par. 11, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 906; Exhibit "P-15", Docket – Vol. II, pp. 350 to 355; Exhibit "R-9", BIR Records – Folder 4 (Exhibit "R-13-c"), pp. 2197 to 2203.

Petitioner filed the letter in reply to the PAN on February 22, 2022.[14]

On March 9, 2022, respondent issued the Formal Letter of Demand (FLD) and Assessment Notices, which was received by petitioner on the same day. In the FLD, respondent reiterated its findings on the alleged deficiency income tax and VAT against petitioner for taxable years 2008 to 2012, broken down as follows:[15]

INCOME TAX

YEAR	BASIC	SURCHARGE	INTEREST	TOTAL
2008	₱15,383,790.63	₱7,691,895.31	₱35,113,818.21	₱ 58,189,504.15
2009	15,605,624.55	7,802,812.28	32,499,033.79	55,907,470.61
2010	17,352,201.30	8,676,100.65	32,665,875.50	58,694,177.45
2011	19,674,816.10	9,837,408.05	33,092,501.64	62,604,725.79
2012	712,432.37	356,216.19	1,055,805.25	2,124,453.81
TOTAL INCOME TAX DEFICIENCY				**₱237,520,331.81**

VAT

YEAR	BASIC	SURCHARGE	INTEREST	TOTAL
2008	₱ 8,241,245.45	₱4,120,622.73	₱19,172,072.16	₱ 31,533,940.33
2009	7,894,930.17	3,947,465.09	16,787,433.44	28,629,828.70
2010	12,314,442.35	6,157,221.18	23,722,001.94	42,193,665.47
2011	13,002,240.58	6,501,120.29	22,446,498.18	41,949,859.05
2012	14,315,271.93	7,157,635.96	21,842,359.57	43,315,267.46
TOTAL VAT DEFICIENCY				**₱187,622,561.01**
TOTAL TAX DEFICIENCIES				**₱425,142,892.82**

Petitioner filed a protest to the protest to the FLD, in a form of a request for reconsideration on April 7, 2022.[16]

On May 2, 2023, petitioner received the Final Decision on Disputed Assessment (FDDA) dated April 26, 2023 denying in its entirety petitioner's protest dated April 7, 2022. In the FDDA, respondent assessed petitioner for alleged deficiency income tax and VAT for TYs 2008 to 2012 in the total amount of ₱425,142,892.82, inclusive of interest and surcharges.[17]

PETITION FOR CERTIORARI
(CTA CASE No. 10618/ CTA EB No. 2783)

After the issuance of the SDT, on September 27, 2021, petitioner filed before this Court a *Petition for Certiorari* against respondent, docketed as

[14] Exhibit "P-16", Docket – Vol. II, pp. 356 to 368.
[15] Par. 12, Summary of Admitted Facts, JSFI, Docket – Vol. III, pp. 906 to 907; Exhibit "P-17", Docket – Vol. II, pp. 369 to 384; Exhibit "R-10", BIR Records – Folder 4 (Exhibit "R-13-c"), pp. 2318 to 2344.
[16] Exhibit "P-18", Docket – Vol. II, pp. 385 to 401.
[17] Par. 13, Summary of Admitted Facts, JSFI, Docket – Vol. III, p. 907; Exhibit "P-1", Docket – Vol. II, pp. 271 to 278; Exhibit "R-12", BIR Records – Folder 4 (Exhibit "R-13-c"), pp. 2488 to 2495.

CTA Case No. 10618. The *Petition for Certiorari* prayed for the following: (a) annul and set aside the SDT No. M-2021-0035 dated July 28, 2021; (b) declare the obligation of petitioner to retain and preserve books of account and other accounting records has already elapsed; (c) declare the right of respondent to assess petitioner has already prescribed; and, (d) declare the Second LOA issued by respondent void.

On March 6, 2023, the Court's First Division[18] granted the *Petition for Certiorari*, the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, petitioner's Petition for Certiorari is **GRANTED**. Accordingly, the Subpoena Duces Tecum (SDT), with SDT No. M-2021-0035, issued on July 28, 2021 and Letter of Authority (LOA) with LOA No. 211-2021-00000009 dated February 26, 2021, both issued by respondent, are hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**

Respondent filed a *Motion for Reconsideration (Re: Decision Promulgated on 06 March 2023)* on March 24, 2023, but the same was denied by the Court's First Division in the Resolution dated June 29, 2023.

Aggrieved, respondent filed on August 4, 2023 a *Petition for Review* before the Court *En Banc*, docketed as CTA EB No. 2738. The Court *En Banc,* however, dismissed the same for being filed out of time in the Resolution dated December 4, 2023.

Respondent's *Motion for Reconsideration (Re: Resolution Promulgated 04 December 2023)* was likewise denied by the Court *En Banc* in the Resolution dated May 30, 2024.

Undeterred, respondent elevated the abovementioned Resolutions of the Court *En Banc* before the Supreme Court, entitled *Commissioner of Internal Revenue vs. Philippine Hydro (PH) Inc.*, and was docketed as G.R. No. 274107.

On November 6, 2024, the Supreme Court Second Division issued a Resolution denying the petition for failure to show any substantial, special or important reason to warrant the exercise of the Court's discretionary appellate jurisdiction, or any reversible error in the assailed resolutions.

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[18] Penned by (Ret.) Associate Justice Catherine T. Manahan, and concurred in by (Ret.) Presiding Justice Roman G. Del Rosario and Associate Justice Marian Ivy F. Reyes-Fajardo.

Subsequently, the Supreme Court Second Division issued an Entry of Judgment stating that the November 6, 2024 Resolution has become final and executory on January 30, 2025.

PROCEEDINGS BEFORE THIS COURT

On June 2, 2023, petitioner filed the present *Petition for Review.*[19]

Thereafter, on June 8, 2023, petitioner filed an *Urgent Motion to Suspend the Collection of Tax, and Dispense with Payment of Bond,*[20] to which respondent filed his *Comment/Opposition (Re: Urgent Motion to Suspend the Collection of Tax, and Dispense with Payment of Bond)* on July 21, 2023.[21]

Within the period granted by the Court,[22] respondent filed his *Answer* on August 22, 2023,[23] interposing the following special and affirmative defenses, to wit: (1) the period to assess has not prescribed; (2) the LOA issued is valid; (3) the conduct of the audit investigation and the resulting assessments are valid as the same were in accordance with law and rules; (4) petitioner is liable to pay the deficiency taxes due; and, (5) the assessment issued against petitioner is valid and lawful.

The hearing for petitioner's *Urgent Motion to Suspend the Collection of Tax, and Dispense with Payment of Bond* was held on September 14, 2023.[24]

On October 9, 2023, petitioner filed its *Formal Offer of Evidence (With Motion to Set Additional Commissioner's Hearing and Defer Resolution of the Formal Offer of Evidence).*[25] Respondent, however, failed to file his comment thereon.[26] Subsequently, on December 7, 2023, petitioner filed its *Motion to Admit Memorandum (with Attached Memorandum (Re: Petitioner's Urgent Motion to Suspend the Collection of Tax and Dispense with Payment of Bond) dated December 7[, 2023]).*[27] In

[19] Docket – Vol. I, pp. 6 to 60.
[20] Docket – Vol. I, pp. 106 to 126.
[21] Docket – Vol. I, pp. 208 to 217.
[22] Respondent's *Motion for Extension of Time to File Answer* dated July 20, 2023, Docket – Vol. I, pp. 201 to 204; Minute Resolution dated July 25, 2023, Docket – Vol. I, p. 207.
[23] Docket – Vol. I. pp. 220 to 243.
[24] Minutes of the hearing held on, and Order dated, September 14, 2023, Docket – Vol. II, pp. 248 to 249.
[25] Docket – Vol. II, pp. 257 to 269.
[26] Records Verification dated October 25, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 837.
[27] Docket – Vol. III, pp. 847 to 897.

the Resolution dated January 10, 2024,[28] the Court admitted all of petitioner's offered exhibits relative to its *Urgent Motion to Suspend the Collection of Tax, and Dispense with Payment of Bond.*

Subsequently, in the Resolution dated June 6, 2024,[29] the Court granted petitioner's *Motion to Admit Memorandum*, but denied petitioner's *Urgent Motion to Suspend the Collection of Tax, and Dispense with Payment of Bond*. Petitioner, thus, filed on on June 26, 2024 a *Motion for Reconsideration (Re: Resolution Promulgated on June 6, 2024)*,[30] to which respondent filed his *Comment/Opposition (Motion for Reconsideration dated 26 June 2024)* on July 16, 2024.[31] Thereafter, the Court issued its Resolution dated August 16, 2024,[32] still denying petitioner's *Motion for Reconsideration (Re: Resolution Promulgated on June 6, 2024).*

Petitioner's *Pre-Trial Brief* was filed on October 10, 2023,[33] while respondent's *Pre-Trial Brief* was submitted on October 13, 2023.[34] The Pre-Trial Conference was held on October 17, 2023,[35] wherein the parties were ordered to appear before this Court's Mediation Office on January 22, 2024.

On November 16, 2023, the parties submitted their *Joint Stipulation of Facts and Issues*,[36] which was admitted and approved by the Court in its Resolution dated January 3, 2024,[37] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated April 3, 2024 was then issued.[38]

In the meantime, on February 21, 2024, the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) submitted the *No Agreement to Mediate* dated January 31, 2024, stating that the parties decided not to have their case mediated by the PMC-CTA.[39]

On January 25, 2024, respondent transmitted to this Court the entire BIR Records for this case, consisting of four folders.[40]

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28 Docket – Vol. III, pp. 926 to 927; *Cf:* Resolution dated February 21, 2024, Docket – Vol. III, pp. 940 to 941.
29 Docket – Vol. III, pp. 1028 to 1032.
30 Docket – Vol. III, pp. 1035 to 1047.
31 Docket – Vol. III, pp. 1050 to 1052.
32 Docket – Vol. III, pp. 1059 to 1062.
33 Docket – Vol. II, pp. 800 to 825.
34 Docket – Vol. II, pp. 827 to 831.
35 Notice of Pre-Trial Conference dated September 4, 2023, Docket – Vol. I, pp. 246 to 247; Minutes of the hearing held on, and Order dated, October 17, 2023, Docket – Vol. II, pp. 833, and 835 to 836, respectively.
36 Docket – Vol. III, pp. 904 to 922.
37 Docket – Vol. III, p. 924.
38 Docket – Vol. III, pp. 951 to 961.
39 Docket – Vol. III, p. 942.
40 *Compliance* dated January 25, 2024, Docket – Vol. III, pp. 934 to 936.

Trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

Petitioner presented and offered the testimony of Mr. Erwin O. Cabatingan,[41] its Finance Head.

On May 27, 2024, petitioner filed its *Formal Offer of Evidence (With Motion to Set Additional Commissioner's Hearing and Defer Resolution of the Formal Offer of Evidence)*.[42] Respondent, however, failed to file his comment thereon.[43] In the Resolution dated July 29, 2024,[44] the Court granted petitioner's *Motion to Set Additional Commissioner's Hearing and Defer Resolution of the Formal Offer of Evidence*.

Thereafter, on August 14, 2024, petitioner filed its *Amended Formal Offer of Evidence.*[45] In the Resolution dated September 18, 2024,[46] the Court admitted all of petitioner's offered exhibits.

For his part, respondent presented the testimony of RO Alonzo.[47]

On October 4, 2024, respondent filed his *Formal Offer of Evidence*,[48] to which petitioner filed its *Comment (on Respondent's Formal Offer of Evidence dated August 27, 2024)* on October 21, 2024.[49] In the Resolution dated February 3, 2025,[50] the Court admitted all of respondent's offered exhibits.

Petitioner's *Memorandum* was filed on March 11, 2025.[51] Respondent, however, failed to file his memorandum.[52]

This case was considered submitted for decision on May 6, 2025.[53]

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[41] Exhibit "P-53", Docket – Vol. I, pp. 66 to 97; Minutes of hearing held on, and Order dated, April 16, 2024, Docket – Vol. III, pp. 962 to 964.
[42] Docket – Vol. III, pp. 970 to 987.
[43] Records Verification dated June 18, 2024 issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 1033.
[44] Docket – Vol. III, p. 1057.
[45] Docket – Vol. III, pp. 1064 to 1084.
[46] Docket – Vol. III, pp. 1163 to 1164.
[47] Exhibit "R-15", Docket – Vol. III, pp. 1151 to 1158; Minutes of hearing held on, and Order dated, September 19, 2024, Docket – Vol. III, pp. 1165 to 1166.
[48] Docket – Vol. III, pp. 1168 to 1173.
[49] Docket – Vol. III, pp. 1177 to 1182.
[50] Docket – Vol. III, p. 1187.
[51] Docket – Vol. III, pp. 1189 to 1242.
[52] Records Verification dated May 2, 2025 issued by the Judicial Records Division of this Court, Docket – Vol. III, p. 1245.
[53] Minute Resolution dated May 6, 2025, Docket – Vol. III.

THE STIPULATED ISSUE

The sole issue to be resolved by the Court, as stipulated by the parties, is whether petitioner is liable for the alleged deficiency income tax and VAT in the total amount of **Four Hundred Twenty-Five Million One Hundred Forty-Two Thousand Eight Hundred Ninety-Two Pesos and 82/100 (₱425,142,892.82)**, inclusive of interest and surcharges for taxable periods 2008 to 2012.[54]

Petitioner's arguments:

In support of its *Petition for Review*, petitioner forwards the following arguments:

First, that respondent's right to assess and collect its alleged deficiency taxes for taxable periods 2008 to 2012 has already prescribed.

Second, the Second LOA issued by respondent is void as it covers the same taxable period previously investigated by respondent which has already been closed and terminated; and, it covers more than one taxable year.

Third, that the assessment is void for respondent's failure to give reasons for the denial of petitioner's defenses and arguments. Further, respondent violated its right to due process when it was obliged to present books of accounts and other accounting records when the duty to retain and preserve them has already lapsed.

Fourth, the PAN and the FLD are void for being issued without authority of law; and, the assessment is void because there was no demand for payment within a specified period.

Lastly, petitioner is not liable for the alleged deficiency income tax and VAT assessed for taxable periods 2008 to 2012.

Respondent's counter-arguments:

In his *Answer,* respondent avers: 1) that the period to assess has not prescribed; 2) that the LOA issued is valid; thus, the conduct of the audit investigation and the resulting assessments are valid as the same were in

[54] Statement of the Issue, JSFI, Docket – Vol. III p. 907.

accordance with the law and rules; 3) that petitioner is liable to pay the deficiency taxes due; and, 4) that the assessment issued against petitioner is valid and lawful.

THE COURT'S RULING

The *Petition for Review* is impressed with merit.

The Court has jurisdiction

Sections 7(a)(1) and 11 of Republic Act (R.A.) No. 1125,[55] as amended by R.A. No. 9282,[56] provides:

> SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue 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; xxx *(Emphasis added)*
>
> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling** or inaction **of the Commissioner of Internal Revenue...may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> **Appeal shall be made by filing a petition for review** under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure **with the CTA within thirty (30) days from the receipt of the decision or ruling** or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. xxx.
>
> xxx xxx xxx. *(Emphases supplied)*

The parties stipulated that petitioner received the FDDA on May 3, 2023.[57] Considering such stipulation, the filing of the present *Petition for Review* on June 2, 2023 was within the 30-day reglementary period.

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[55] AN ACT CREATING THE COURT OF TAX APPEALS.

[56] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

[57] Par. 13, Summary of Admitted Facts, JSFI, Docket - Vol. III p.907.

The Court will now delve into the merits of this case.

The Second LOA is void

The assessment issued against petitioner for deficiency income tax and VAT for the years 2008 to 2012 is void as it sprung from a void LOA.

The parties stipulated on the following in relation to the assessment subject of this *Petition for Review*:[58]

> 4. On October 2, 2015, Petitioner received Letter of Authority No. **LOA-211-2015-00000220 (SN: eLA201100095641) dated September 15, 2015**, authorizing Revenue Officers Mary Grace Alonzo, Gary Anastacio, Gertrudes Eito, and Group Supervisor Evangeline Catotal of National Investigation Division, to examine Petitioner's books of accounts and other accounting records for all internal revenue taxes covering the taxable period from January 1, 2006 to December 31, 2012.
>
> xxx xxx xxx
>
> 6. On February 26, 2021, Respondent issued a new **LOA No. LOA-211-2021-00000009 (SN: eLA201900006387)**, authorizing Revenue Officer Mary Grace Alonzo, Josephine Duran, Veneracion Prado, and Group Supervisor Alexander Manguba to examine Petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from **January 1, 2008 to December 31, 2012.** *(Emphasis supplied)*

In *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue,*[59] the Supreme Court elucidated that the admission made in the stipulation of facts at pre-trial by the parties must be treated as a judicial admission, thus, requires no proof, to wit:

> Pre-trial is an answer to the clarion call for the speedy disposition of cases. Although it was discretionary under the 1940 Rules of Court, it was made mandatory under the 1964 Rules and the subsequent amendments in 1997. It has been hailed as "the most important procedural innovation in Anglo-Saxon justice in the nineteenth century."
>
> The nature and purpose of a pre-trial have been laid down in Rule 18, Section 2 of the Rules of Court:
>
> > Sec. 2. *Nature and purpose.* — The pre-trial is mandatory. The court shall consider:

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58 Summary of Admitted Facts, JSFI, Docket – Vol. III, p.905.
59 G.R. No. 157594, March 9, 2010.

> (a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;
> (b) The simplification of the issues;
> (c) The necessity or desirability of amendments to the pleadings;
> (d) <u>The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;</u>
> (e) The limitation of the number of witnesses;
> (f) The advisability of a preliminary reference of issues to a commissioner;
> (g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;
> (h) The advisability or necessity of suspending the proceedings; and
> (i) Such other matters as may aid in the prompt disposition of the action.
>
> <u>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.</u> 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. <u>An admission made by a party in the course of the proceedings does not require proof.</u>
>
> In the instant case, among the facts expressly admitted by the CIR and Toshiba in their CTA-approved Joint Stipulation are that Toshiba "is a duly registered value-added tax entity in accordance with Section 107 of the Tax Code, as amended [,]" that "is subject to zero percent (0%) value-added tax on its export sales in accordance with then Section 100 (a) (2) (A) of the Tax Code, as amended." The CIR was bound by these admissions, which he could not eventually contradict in his Motion for Reconsideration of the CTA Decision dated October 16, 2000, by arguing that Toshiba was actually a VAT-exempt entity and its export sales were VAT-exempt transactions. Obviously, Toshiba could not have been subject to VAT and exempt from VAT at the same time. Similarly, the export sales of Toshiba could not have been subject to zero percent (0%) VAT and exempt from VAT as well. *(Underscoring supplied)*

It is, thus, conclusive between the parties that the assessment issued for 2008 to 2012 was made pursuant to the LOA dated September 15, 2025 (First LOA) and the LOA dated February 26, 2021 (Second LOA).

Tellingly and consistent with the above admissions, respondent's witness, RO Alonzo, testified that she was part of the group assigned to conduct the audit and examination of petitioner's books of accounts for TYs 2008 to 2012 pursuant to the First LOA and Second LOA. An excerpt from her Judicial Affidavit provides:

> 8. Q. Why are you familiar with the case?
> A. I was part of the group that was assigned to conduct the audit and examination of Philippine Hydro (PH) Inc., the petitioner in this case, under a Letter of Authority (LOA) for taxable years 2008-2012.
>
> 9. Q. You mentioned of a Letter of Authority, I am no showing this document entitled Letter of Authority dated 15 September 2015, found in page 29-32, of the BIR Records marked as **Exhibit "R-1"**, for the respondent. What relation does this document have to the Letter of Authority that you mentioned?
> A. This is the same LOA I mentioned.
>
> xxx xxx xxx
>
> 14. Q. What happened next, after the series of events that has transpired, if any?
> A. A new Letter of Authority was issued together with the Checklist of Requirements pursuant to the change of the group members and revalidation of the previous Letter of Authority because of the change in the administration.
>
> 15. Q. You mentioned of a new Letter of Authority, I am now showing this document entitled Letter of Authority dated 26 February 2021, found in page 1890, of the BIR Records marked as **Exhibit "R-2"**, for the respondent. What relation do these documents have to the new letter of Authority that you mentioned?
> A. This is the new Letter of Authority that I mentioned.

It bears noting that the Second LOA corresponds to the period of assessment subject of this case (2008 to 2012). The PAN and FLD were also issued after the issuance of the Second LOA. There is, thus, no logical conclusion other than the assessment for 2008 to 2012 was made pursuant to the Second LOA.

To recall, the Second LOA became the subject of the *Petition for Certiorari* filed before us, docketed as CTA Case No. 10618. Petitioner sought the nullification of the Second LOA as respondent allegedly issued the same with grave abuse of discretion amounting to lack or excess of jurisdiction.

As earlier mentioned, the Court's First Division granted the *Petition for Certiorari*. In arriving at the judgment, the Court's First Division found that respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the SDT and Second LOA. It reasoned as follows:

First, period covered by the First LOA and Second LOA were substantially the same, with the First LOA covering January 1, 2006 to December 31, 2012, whereas the Second LOA was for January 1, 2008 to December 31, 2012. Further, the two LOAs both covering more than one taxable year are invalid as they violate respondent's own rules and regulations, as ruled by the Supreme Court in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[60]

Second, respondent's right to assess petitioner's internal revenue taxes for TYs 2008 to 2012 had already prescribed when the Second LOA was issued on February 26, 2021. Considering that there was no indication in either the SDT and the Second LOA that the tax examination was a result of fraud, the three-year period should be applied. The issuance of the SDT has no legal basis.

Third, the holding period on petitioner's books of accounts and other accounting records had already lapsed.

Considering that the ruling in CTA Case No. 10618 has attained finality in view of the Entry of Judgment of Supreme Court Resolution in G.R. No. 274107 denying respondent's petition, the nullification of the Second LOA is conclusive between the parties and can no longer be relitigated.

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It lays the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit.[61]

Section 47 of Rule 39 of the Rules of Court encompasses the principle of *res judicata,* to wit:[62]

> Section 47. *Effect of judgments or final orders.* — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
>
> xxx xxx xxx

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

[61] *Aguila v. Perfect Dimension Corp.,* G.R. No. 243317, August 4, 2025.

[62] *2019 Amendments to the 1997 Rules of Civil Procedure*, A.M. No. 19-10-20-SC, Effective May 1, 2020.

> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest, by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
>
> (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto. (49a)

The principle of *res judicata* embraces two concepts: 1) bar by prior judgment in Section 47(b); and, 2) conclusiveness of judgment in Section 47(c). The Supreme Court in *Aguila vs. Perfect Dimension Corporation*,[63] citing *Spouses Ocampo vs. Heirs of Dionisio*,[64] distinguished the two concepts, viz.:

> There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal.
>
> **But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of res judicata known as "conclusiveness of judgment." Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.** (Emphasis supplied)

Res judicata in the concept of conclusiveness of judgment applies in the present case. Conclusiveness of judgment exists when there is identity of parties and subject matter but the causes of action are completely distinct. The first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein.[65]

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[63] G.R. No. 243317, August 4, 2025.
[64] G.R. No. 191101, October 1, 2014.
[65] *Tellez vs. Spouses Joson*, G.R. No. 233909, November 11, 2024.

Here, the parties in the present case and CTA Case No. 10618 are the same and involved the same Second LOA issued to petitioner. The two cases, however, involve distinct causes of action. The cause of action in the present case is the alleged issuance of an invalid assessment; whereas in CTA Case No. 10618, it is the alleged grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Second LOA.

Therefore, the validity of the Second LOA, an issue directly adjudged in CTA Case No. 10618, is conclusive and must be considered as such in determining the validity of the 2008 to 2012 assessment that is subject of the present case.

The assessment for 2008 to 2012 is void

In view of the ruling that the Second LOA is void, the revenue officers effectively lacked the requisite authority to conduct the audit investigation on petitioner's books of accounts. Inevitably, the assessment for deficiency income tax and VAT that stemmed from the Second LOA is likewise void.

The Supreme Court has, time and again, settled that the lack of a valid LOA authorizing the revenue officers to conduct an audit makes the assessment void. This was elucidated in *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*[66] citing the earlier ruling in *Commissioner of Internal Revenue vs. Sony Philippines, Inc.,*[67] and *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,*[68] to wit:

> ***The lack of a valid LOA authorizing Revenue Officer Bagauisan to conduct an audit on petitioner makes the assessment void.***
>
> A 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.
>
> In *Commissioner of Internal Revenue v. Sony Philippines, Inc.* the Court nullified the deficiency VAT assessment made against Sony Philippines because the revenue officers went beyond their authority when they based the assessment on records from January to March 1998 or

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[66] G.R. No. 241848, May 14, 2021
[67] G.R. No. 178697, November 17, 2010.
[68] G.R. No. 222743, April 5, 2017.

using the fiscal year which ended in March 31, 1998 when the LOA covered only "the period 1997 and unverified prior years." According to the Court:

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

In *Medicard Philippines, Inc. v. CIR*, the Court nullified the deficiency VAT assessment against Medicard Philippines because there was no LOA issued by the CIR prior to the issuance of PAN and FAN. The Letter of Notice earlier sent to Medi card Philippines was not validly converted into a LOA. According to the Court in Medicard Philippines:

> 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.**

Here, as comprehensively discussed, there was no new LOA issued by the CIR or his duly authorized representative giving revenue officer Bagauisan the power to conduct an audit on petitioner's books of accounts for taxable year 2009. The importance of the lack of the revenue officer's authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment. The lack of authority of the revenue officers is tantamount to the absence of a LOA itself which results to a void assessment. Being a void assessment, the same bears no fruit. (Emphasis and italics in the original)

All told, considering that the Second LOA is void, the assessment that stemmed from it is likewise void. Petitioner is, thus, not liable to pay deficiency income tax and VAT for the years 2008 to 2012.

ACCORDINGLY, the **Petition for Review** is **GRANTED**. The Formal Letter of Demand dated March 9, 2022 assessing petitioner of deficiency income tax and value-added tax for the period from 2008 to 2012 in the total amount of **₱425,142,892.82** is hereby **CANCELLED** and **SET ASIDE**.

Correspondingly, respondent is **ENJOINED** from collecting the said amount from petitioner.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice