REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

MISNET EDUCATION INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9941

Members:

RINGPIS-LIBAN, *Chairperson and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUL 03 2023
4:20 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

The *Petition for Review* prays that judgment be rendered in favor of petitioner as follows:

1. Declaring that the respondent's right to collect any tax due on the assessment for the taxable year 2007 in the total amount of Php7,310,234.42 has already prescribed; and

2. Reversing the assailed *Final Decision on Disputed Assessment* ("FDDA") dated September 04, 2018, issued by respondent as represented by Mr. Glen A. Geraldino, Regional Director of Revenue Region No. 8 of the Bureau of Internal Revenue ("BIR").[1]

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[1] Docket, Pre-Trial Order dated February 04, 2020, Statement of the Case, p. 463.

The Facts

Petitioner Misnet Education Inc. is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at 2402 Antel 2000 Corporate Center, 121 Valero Street, Salcedo Village, Makati City, Philippines.[2]

Respondent is the duly appointed Commissioner of Internal Revenue vested with authority and power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or portions thereof administered by the BIR and may be served with summons and other legal processes of the Court at the Legal Division, Revenue Region No. 8, 2/F BIR Building, No. 313 Sen. Gil Puyat Avenue, Makati City.[3]

On August 15, 2008, petitioner received respondent's *Letter of Authority* ("LOA") No. 2007-00047942 dated August 11, 2008, with *First Notice for Presentation of Documents* (*First Notice*), and a letter informing petitioner that Revenue Officer ("RO") Ma. Amable B. Tan to assist in the investigation.[4]

Thereafter, on August 29, 2008, respondent issued a *Second Notice of Presentation of Records* (*Second Notice*), which was received by petitioner on September 04, 2008.[5]

Petitioner transmitted the documents requested in the BIR *First Notice* and *Second Notice* in the letter dated September 12, 2008, which was received by the BIR Revenue District Office No. 50 on September 15, 2008.[6]

On October 24, 2008, petitioner received the BIR *Final Request for Presentation of Books of Accounts and Other Accounting Records* (BIR *Final Notice*) dated October 22, 2008.[7]

Petitioner then sent the letter-reply dated October 24, 2008 and received by the BIR on October 27, 2008, stating that documents had already been submitted to the BIR.[8]

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2 *Id.*, *Joint Stipulation of Facts and Issues* ("JSFI"), Stipulation of Facts, Par. 1, p. 443.
3 *Id.*, JSFI, Stipulation of Facts, Par. 2, p. 443.
4 Docket, JSFI, Stipulation of Facts, Par. 4, p. 444; Exhibits "P-1", "P-2", and "P-1-A", pp. 271 to 274; and BIR Records, Exhibit "R-3", p. 1092.
5 Docket, JSFI, Stipulation of Facts, Par. 5, p. 444; and Exhibit "P-3", p. 275.
6 *Id.*, JSFI, Stipulation of Facts, Par. 6, p. 444; and Exhibit "P-4", p. 276.
7 *Id.*, JSFI, Stipulation of Facts, Par. 7, p. 444; and Exhibit "P-5", pp. 277 to 278.

On June 02, 2009, petitioner received the letter dated May 25, 2009 from respondent, informing petitioner that RO Divina Santos, under the supervision of Ms. Almira Navarro, was authorized to continue the BIR Audit under the BIR LOA.[9]

On June 29, 2009, petitioner received the *Last Appeal* letter dated June 23, 2009 from the BIR on the submission of additional documents.[10]

Petitioner replied to said BIR's *Last Appeal* in the letter dated June 30, 2009 and received by the BIR on July 02, 2009, informing the latter that it has submitted all required documents, and requested clarification on the list of additional documents which purportedly was not provided.[11]

Subsequently, on February 23, 2010, the BIR wrote another letter informing petitioner of another change in the authorized revenue examiner by the name of Mr. Wilfredo A. Pongase under the supervision of Ms. Ma. Cristina Carsolin.[12]

On February 25, 2010, the BIR sent the petitioner a letter entitled *Addendum to Final Notice.*[13]

On April 13, 2010, the BIR sent a *Post Reporting Notice* which was received by petitioner on April 19, 2010, detailing the initial findings of the BIR.[14]

An *Amended Post Reporting Notice* was issued by the BIR through Revenue District Officer Ricardo B. Espiritu on April 29, 2010, inviting the latter to an informal conference scheduled on May 17, 2010.[15]

On December 29, 2010, a *Preliminary Assessment Notice* ("PAN") together with Annex "A" thereof, *i.e.*, the *Details of Discrepancies*, was sent by the BIR to the petitioner.[16]

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[8] *Id.*, JSFI, Stipulation of Facts, Par. 8, p. 444; and Exhibit "P-6", p. 279.
[9] *Id.*, JSFI, Stipulation of Facts, Par. 9, p. 444.
[10] *Id.*, JSFI, Stipulation of Facts, Par. 10, p. 444; and Exhibit "P-7", p. 280.
[11] *Id.*, JSFI, Stipulation of Facts, Par. 11, p. 444; and Exhibit "P-8", p. 281.
[12] *Id.*, JSFI, Stipulation of Facts, Par. 12, p. 444.
[13] *Id.*, JSFI, Stipulation of Facts, Par. 13, p. 444.
[14] *Id.*, JSFI, Stipulation of Facts, Par. 14, p. 445; and Exhibit "P-9", pp. 282 to 284.
[15] Docket, JSFI, Stipulation of Facts, Par. 15, p. 445; Exhibit "P-10", p. 285; and BIR Records, Exhibit "R-2", p. 1125.

Then, on January 14, 2011, respondent issued a *Formal Assessment Notice* ("FAN"), together with the Annex "A" thereof, *i.e.*, *Details of Discrepancies*,[17] which was received by petitioner on January 19, 2011.[18]

Petitioner filed the letter-protest dated January 14, 2011[19] against the FAN which was received by the BIR on February 17, 2011.[20]

On March 24, 2011, the BIR sent a letter to petitioner it received on April 01, 2011, stating its comments on petitioner's protest and requested additional document necessary to resolve the issues raised in the assessment.[21]

Thereafter, on September 12, 2012, the BIR sent another letter, replying in part to the positions espoused by petitioner, which was received by petitioner on September 17, 2012.[22]

On September 04, 2018, the assailed FDDA was issued by the BIR.[23] It provided for assessment for alleged deficiency income tax, value-added tax ("VAT"), and withholding tax on compensation ("WTC"), as follows:[24]

Tax type	Basic	Surcharge	Interest	Total
Income tax	Php 1,170,733.03		Php 2,448,596.15	Php 3,619,329.18
VAT	792,974.24	Php 396,487.12	1,694,140.57	2,883,601.93
WTC	256,946.03		550,357.28	807,303.31
			TOTAL	**Php7,310,234.42**

On October 05, 2018, petitioner filed its *Petition for Review*.[25]

On December 04, 2018, respondent filed a *Motion for Extension of Time*,[26] which was granted by the Court in its Resolution dated December 10, 2018.[27]

[16] Docket, JSFI, Stipulation of Facts, Par. 16, p. 445; Exhibit "P-11", pp. 286 to 292; and BIR Records, Exhibits "R-7" and "R-8", pp. 1215 to 1219.
[17] Docket, Exhibit "P-12", pp. 293 to 301; and BIR Records, Exhibits "R-9" and "R-10", pp. 1196 to 1200.
[18] Docket, JSFI, Stipulation of Facts, Par. 17, p. 445; and Exhibit "P-12-A", p. 293.
[19] *Id.*, Exhibit "P-13", pp. 302 to 304.
[20] *Id.*, JSFI, Stipulation of Facts, Par. 18, p. 445; and Exhibit "P-13-A", pp. 302 to 304.
[21] *Id.*, *Petition for Review*, Par. 2.19, vis-à-vis *Answer*, Par. 1, pp. 14 and 171, respectively.
[22] *Id.*, *Petition for Review*, Par. 2.21, vis-à-vis *Answer*, Par. 1, pp. 14 and 171, respectively.
[23] Docket, Exhibit "P-19", pp. 339 to 343; and BIR Records, Exhibit "R-16", pp. 1236 to 1240.
[24] Docket, *Petition for Review*, Par. 3.14, vis-à-vis *Answer*, Par. 1, pp. 19 and 171, respectively.
[25] *Id.*, pp. 10 to 29; JSFI, Stipulation of Facts, Par. 19, p. 445.
[26] *Id.*, pp. 165 to 166.
[27] *Id.*, p. 168.

Thereafter, on January 09, 2019, respondent transmitted the *BIR Records* for this case.[28] In the Resolution dated January 16, 2019,[29] the Court ordered respondent to certify and elevate pages 920 to 928 of the *BIR Records* of this case, since the said pages are missing. Thereafter, respondent submitted the said missing pages to the Court.[30]

In the meantime, respondent posted his *Answer* on January 14, 2019,[31] interposing the following special and affirmative defenses, to wit:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

xxx xxx xxx

The right of the respondent to collect the tax has not yet prescribed

The period to assess and collect the petitioner's Income Tax (IT), Withholding Tax on Compensation (WTC) and Value Added Tax (VAT) Liabilities has not yet prescribed

13. The running of the three (3)-year Statute of Limitations as provided under Section 203 of the 1997 NIRC, as amended is not applicable with respect to the IT and VAT liabilities of the respondent, but rather to the ***ten (10)-year prescriptive period*** pursuant to ***Section 222(a)*** of the 1997 NIRC, as amended, to wit:

Section 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,

28 *Id.*, Respondent's *Compliance*, p. 169.
29 *Id.*, p. 181.
30 *Id.*, Respondent's *Compliance*, p. 209 to 221.
31 *Id.*, pp. 171 to 179.

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**.

Petitioner is liable for the deficiency Income Tax Expanded Withholding Tax, Withholding Tax on Compensation and Value Added Tax Liabilities

INCOME TAX - Disallowed Salaries and Wages due to non-withholding, P1,512,040.26

14. Reconciliation of Salaries and Wages and Other Benefits per Financial Statement vs. amount subjected to withholding tax per alphalist filed disclosed that there were salaries not subjected to withholding tax amounting to P795,369.10. Hence, this amount was disallowed as deduction from gross income for income tax purposes pursuant to Sec. 34(K) of the 1997 NIRC, as amended;

15. During reinvestigation, petitioner argued that the discrepancy pertains to non-taxable items such as insurance, Christmas, outing, quarterly benefits and others. However, petitioner failed to submit pertinent documents to warrant its cancellation. Hence, assessment is hereby reiterated;

Undeclared Income from Unaccounted Expenses, P499,717.07

16. Investigation disclosed that there were unaccounted expenses amounting to P499,717.07. These were then treated as unaccounted source of cash which was considered as undeclared income pursuant to Sec. 32 of the 1997 NIRC, as amended, as what has been held in the case of *Perez vs. CTA and CIR, L-10507 dated May 30, 1958* for it has been held that unreflected sources of funds not accounted for in the taxpayer's tax returns led to the inference that part of his income had not been reported;

17. Petitioner failed to submit the supporting documents to validate its claim that there is no unaccounted rental expense amounting to P499,717.07. Hence, the assessment on this issue is hereby reiterated;

Overclaimed Depreciation Expense, P196,875.00

18. Investigation disclosed that there is discrepancy between the depreciation expense reported in the income statement and the depreciation expense reported in the property, plant and equipment section of the notes to financial statement in the amount of P196,875.00, as computed. Hence, the difference herewith assessed as an additional income from unaccounted source of cash pursuant to Sec. 32 of the 1997 NIRC, as amended;

Unsupported Creditable Withholding Tax, P397.711.71

19. Verification disclosed that petitioner's creditable withholding tax claimed per ITR amounting to P397,711.71 was not supported with sufficient evidence in violation of Sec. 2.58.3(B) of RR No. 02-1998 in relation to Sec. 57 of the 1997 NIRC, as amended;

20. During reinvestigation, petitioner still failed to submit pertinent documents to support the creditable withholding taxes, hence, the assessment is hereby reiterated;

Excess credits carried forward to succeeding year, P73.204.12

21. Verification disclosed as per income tax return that there was an excess income tax payment, hence cannot be allowed as tax credit in the computation of deficiency income tax for the current year, considering that the excess amount shall be credited as against the income tax due for the taxable quarters/years immediately succeeding taxable quarters/years in which the excess credit arose pursuant to Sec. 2.58.3 under RR No. 2.98;

<u>VALUE ADDED TAX - Receipts not subjected to VAT P6,608,118.63</u>

22. Comparison of receipts computed based on the data reported per Income Tax Return as against the amount of receipts subjected to VAT per VAT returns showed that there are receipts not subjected to VAT amounting to P6,608,118.63, hence assessed and subjected to 12% VAT pursuant to Sections 105 and 108 of the 1997 NIRC, as amended;

23. During reinvestigation, petitioner submitted a Summary List of 2007 zero-rated sales amounting to P12,260,181.06 with attached supporting invoices and copies of zero-rated certificates from various customers which validated the existence of zero-rated and exempt sales, hence deducted from gross receipts not subjected to VAT. The receipts not subjected to VAT was reduced to P6,608,118.63;

<u>WITHOLDING TAX ON COMPENSATION - Basic Deficiency Tax, P256,946.03</u>

24. Since petitioner failed to withhold/remit the corresponding withholding tax on the Salaries and Wages previously disallowed from gross income, petitioner is still liable to pay the withholding compensation, pursuant to Sec 79(A) of the 1997 NIRC, as amended and implemented under Sec 2.78 of RR 2.98.

25. During reinvestigation, petitioner failed to submit invoices/contracts, paid checks to support its contention that the discrepancy pertains to non-taxable items such as HMO Insurance, Christmas, outing, quarterly expenses, and others. Hence, assessment is hereby reiterated…"

The Pre-Trial Conference was initially set on May 02, 2019.[32]

In the Resolution dated January 23, 2019,[33] the Court referred the case to mediation in the Philippine Mediation Center – Court of Tax Appeals ("PMC-CTA"). Thus, the Pre-Trial Conference scheduled on May 02, 2019 was

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[32] *Id., Notice of Pre-Trial Conference* dated January 17, 2019, pp. 182 to 183.
[33] *Id.*, pp. 185 to 186.

cancelled. However, the parties decided not to have their case mediated by the PMC-CTA.[34]

On January 31, 2019, petitioner posted its *Reply (to the Respondent's Answer).*[35]

In its Resolution dated March 05, 2019,[36] in view of the failure of the parties to enter into mediation, the Court set the Pre-Trial Conference on June 18, 2019.

Petitioner filed its *Pre-Trial Brief* on June 03, 2019.[37]

On June 06, 2019, respondent filed an *Urgent Motion to Reset,*[38] praying that the Pre-Trial Conference set on June 18, 2019 be cancelled and reset. Thus, in the Order dated June 10, 2019,[39] the Court reset the Pre-Trial Conference to October 01, 2019.

However, on October 01, 2019, respondent filed another *Urgent Motion to Reset,*[40] praying that the Pre-Trial Conference previously set on October 01, 2019 be reset to another date. Thus, the Pre-Trial Conference was further reset to, and held on, November 13, 2019.[41] Prior thereto, *Respondent's Pre-Trial Brief* was posted on October 30, 2019.[42]

On December 03, 2019, the parties submitted their *Joint Stipulation of Facts and Issues,*[43] which the Court admitted and approved in the Resolution dated December 06, 2019,[44] thereby deeming the termination of the Pre-Trial. Subsequently, the Pre-Trial Order dated February 40, 2020 was issued.[45]

As trial ensued, the parties presented their respective testimonial and documentary evidence.

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[34] *Id., No Agreement to Mediate* dated February 21, 2019 issued by the PMC-CTA, p. 205.
[35] *Id.*, pp. 187 to 192.
[36] *Id.*, pp. 224 to 225.
[37] *Id.*, pp. 226 to 238.
[38] *Id.*, pp. 240 to 242.
[39] *Id.*, p. 243.
[40] *Id.*, pp. 248 to 251.
[41] *Id.*, Minutes of the hearing held on, and Order dated, October 01, 2019, pp. 253 to 254; Resolution dated October 09, 2019, p. 256; Minutes of the hearing held on, and Order dated, November 13, 2019, pp. 427 and 436 to 437, respectively.
[42] *Id.*, pp. 366 to 375.
[43] *Id.*, pp. 443 to 446.
[44] *Id.*, p. 448.
[45] *Id.*, p. 463 to 475.

Petitioner offered the testimony of its Assistant Corporate Secretary and the overall Accounting Manager of the Misnet Group of Companies, Ms. Josefina R. De Gala.[46]

On June 22, 2020, petitioner filed a *Motion for Leave to File Formal Offer Evidence,* with an attached *Formal Offer of Evidence.*[47]

Thereafter, on July 15, 2020, respondent posted a *Motion for Leave to File Demurrer to Evidence*, attaching therewith a *Demurrer of Evidence*;[48] while petitioner posted its *Opposition To Motion for Leave to File Demurrer* on July 23, 2020.[49]

In the Resolution dated July 30, 2020,[50] the Court granted, *inter alia*, the said *Motion for Leave*, and admitted the *Formal Offer of Evidence* attached thereto.

On the other hand, in the Resolution dated September 30, 2020,[51] the Court denied respondent's *Motion for Leave to File Demurrer to Evidence*, for being moot and academic, and the admission of the attached *Demurrer to Evidence.*

Respondent's *Comment Ad Cautelam (To Petitioner's Formal Offer of Evidence)* was posted on October 21, 2020.[52] In the Resolution dated January 04, 2021,[53] the Court admitted all of petitioner's offered exhibits.

For his part, respondent offered the testimony of RO Gloria C. Beltran.[54]

On April 20, 2021, *Respondent's Formal Offer of Evidence* was filed.[55] However, petitioner failed to file its comment thereon.[56]

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[46] *Id.*, Exhibit "P-20", pp. 259 to 270; Minutes of the hearing held on, and Order dated, February 27, 2020, pp. 476 to 478.
[47] *Id.*, p. 479 to 489.
[48] *Id.*, p. 496 to 505.
[49] *Id.*, p. 512 to 519.
[50] *Id.*, p. 509
[51] *Id.*, pp. 539 to 543.
[52] *Id.*, pp. 544 to 549.
[53] *Id.*, pp. 564 to 565.
[54] *Id.*, Exhibit "R-17", pp. 349 to 356; Minutes of the hearing held on, and Order dated, April 29, 2021, pp. 571 to 573.
[55] *Id.*, pp. 574 to 582.
[56] *Id.*, Records Verification Report dated June 14, 2021 issued by the Judicial Records Division of this Court, p. 584.

In the Resolution dated October 18, 2021,[57] the Court admitted respondent's offered Exhibits, except for Exhibit "R-9-A", for not being found in the records of the case.

The *Memorandum (For Petitioner Misnet Education Inc.)* was posted on April 26, 2022,[58] while the *Memorandum (For Respondent)* was submitted on May 02, 2022.[59]

In its Resolution dated May 20, 2022,[60] the case was deemed submitted for decision. However, on May 20, 2022, petitioner filed a *Motion for Leave to File Formal Comment to Respondent's Memorandum*, with attached *Comment (To Respondent's Memorandum)*.[61]

In the Resolution dated July 20, 2022,[62] the Court granted petitioners' *Motion for Leave*, and admitted its *Comment* as part of the records of the case.

Thereafter, the case was submitted for decision anew per this Court's Resolution dated August 04, 2022.[63]

The Issues

As stipulated by the parties, the issues[64] for the Court's resolution are as follows, *viz.*:

1. Whether or not the right of the respondent to collect the assessment has prescribed; and

2. Whether or not petitioner is liable for (1) deficiency income tax in the amount of Php3,619,329.18, (2) deficiency value-added tax in the amount of Php2,883,601.93, and (3) deficiency withholding tax on compensation in the amount of Php807,303.31, inclusive of penalties, for the taxable year 2007.

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57 *Id.*, pp. 588 to 590.
58 *Id.*, pp. 591 to 609.
59 *Id.*, pp. 610 to 626.
60 *Id.*, p. 631.
61 *Id.*, pp. 632 to 638.
62 *Id.*, pp. 641 to 642.
63 *Id.*, p. 644.
64 *Id.*, JSFI, Statement of Issues, p. 445.

Petitioner's Arguments

Petitioner argues that the FAN issued by respondent is null and void; that ROs Pongase and Beltran who conducted the audit and reinvestigation, respectively, of petitioner's books of accounts were not authorized to conduct the same through a valid LOA; that the use of *Memorandum of Assignment* ("MOA") directing the continuation of audit or reinvestigation is violative of its right to due process; that both ROs Pongase and Beltran were not authorized to continue the investigation of petitioner's books of accounts rendering the FAN void; that petitioner was deprived the opportunity to respond to the PAN prior to the issuance of the FAN; that the procedure prescribed under Revenue Regulations ("RR") No. 12-99, as amended, should be strictly observed; that the deprivation of opportunity to respond to the PAN constitutes denial of due process making the FAN null and void; that the right of the respondent to collect the tax has prescribed; and that the running of the prescriptive period was suspended but continued to run starting September 21, 2012.

Respondent's Counter-arguments

Respondent contends that the RO assigned to continue the audit investigation of respondent's books for all internal revenue taxes for CY 2007 is duly authorized; that the right of the respondent to collect the assessment has not yet prescribed; that the statute of limitations for the collection of the assessed taxes is suspended by petitioner's request for reinvestigation; that the respondent has five (5) years from the issuance of the FDDA within which to collect the assessed taxes; that the FAN dated December 14, 2012 is validly issued; and that petitioner is in default for failure to file its reply to the PAN within fifteen (15) days from receipt thereof.

Discussion/Ruling

The present *Petition for Review* has merit.

The petition was timely filed

Under Section 11 of Republict Act ("RA") No. 1125[65], as amended by RA No. 9282[66], a taxpayer aggrieved by a decision of the Commissioner of

65 An Act Creating The Court Of Tax Appeals, June 16, 1954.
66 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, March 30 2004.

Internal Revenue may file an appeal with the Court of Tax Appeals within thirty (30) days from the receipt thereof:

> "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**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **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."[67]

In the case at bar, Petitioner's witness testified that the FDDA was received on September 07, 2018.[68] This was not disproved by Respondent during cross-examination or through presentation of contrary evidence. Accordingly, we shall treat September 07, 2018 as the date of receipt of the FDDA. Counting thirty (30) days therefrom, Petitioner had until October 07, 2018 within which the file its petition. Therefore, the "Petition for Review" was timely filed on October 05, 2018.

The subject tax assessments are void, since the RO who conducted the investigation of petitioner was not duly authorized to do so

An LOA is the authority given to the appropriate RO assigned to perform assessment functions. It empowers or enables said RO to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[69] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[70]

There must be a grant of authority before any RO can conduct an examination or assessment. Equally important is that the RO so authorized

67 *Emphasis and underscoring supplied.*
68 Docket, Exhibit "P-20", "Judicial Affidavit of Josefina R. De Gala", Q43, p.267.
69 *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.
70 *Commissioner of Internal Revenue v. De La Salle University, Inc., et seq.*, G.R. Nos. 196596, 198841, and 198941, November 09, 2016.

must not go beyond the authority given. In the absence of such authority, the assessment or examination is a nullity.[71]

The importance of the lack of the RO's authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment. The lack of authority of the ROs is tantamount to the absence of a LOA itself which results to a void assessment. Being a void assessment, the same bears no fruit.[72]

In *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*,[73] the Supreme Court held:

> "The power to assess necessarily includes the authority to examine any taxpayer for purposes of determining the correct amount of tax due from him. Verily, the law vests the BIR with general powers in relation to the 'assessment and collection of all internal revenue taxes.' However, certainly, not all BIR personnel may *motu proprio* proceed to audit a taxpayer. Only 'the CIR or his duly authorized representative may *authorize the examination of any taxpayer'* and issue an assessment against him.
>
> That a representative has in fact been authorized to audit a taxpayer is evidenced by the LOA, which 'empowers a designated [r]evenue [o]fficer to examine, verify, and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.'
>
> **In cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, <u>the resulting assessment shall be void and ineffectual</u>**..."[74]

Moreover, in *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*,[75] the Supreme Court has made the following ruling relative to the necessity of a new or amended LOA for the substitute or replacement RO to continue the audit or investigation, to wit:

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[71] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.
[72] *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.
[73] G.R. No. 222133, November 04, 2020.
[74] *Emphasis and underscoring supplied.*
[75] G.R. No. 242670, May 10, 2021.

"The practice of reassigning or transferring revenue officers originally named in the Letter of Authority (*LOA*) and substituting or replacing them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the Commissioner of Internal Revenue (*CIR*) or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing Bureau of Internal Revenue (*BIR*) rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his duly authorized representative to examine the taxpayer's books of accounts.

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<u>The Court hereby puts an end to this practice</u>.

The Reassignment or Transfer of a Revenue Officer Requires the Issuance of a New or Amended LOA for the Substitute or Replacement Revenue Officer to Continue the Audit or Investigation

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Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. Unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority. There must be a grant of authority, in form of a LOA, before any revenue officer can conduct any of these kinds of examination or assessment. The revenue officer so authorized must not go beyond the authority given. **<u>In the absence of such an authority, the assessment or examination is a nullity.</u>**

A. Due Process Requires Identification of Revenue Officers Authorized to Continue the Tax Audit or Investigation

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To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.

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B. The Use of Memorandum of Assignment, Referral Memorandum, or Such Equivalent Document, Directing the Continuation of Audit or Investigation by an Unauthorized Revenue Officer Usurps the Functions of the LOA

It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and transfer of cases. However, notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. **The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by**

> **the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts.** It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.
>
> The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. But **an LOA is not a general authority to any revenue officer. It is a <u>special authority</u> granted to a particular revenue officer.**
>
> xxx xxx xxx
>
> In summary, **We rule that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer;** and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990."[76]

Lastly, in the recent case of *Republic of the Philippines Vs. Robiegie Corporation*,[77] the Supreme Court reiterated this ruling and stressed that "**<u>the reassignment of a taxpayer investigation to a different revenue officer must also be made pursuant to a LOA</u>**, the one LOA-per-taxpayer rule notwithstanding. When a taxpayer investigation is transferred from one revenue officer to another, the responsible BIR official with authority to issue LO As shall issue a new LOA to the new revenue officer assigned to the investigation. The old LOA in favor of the reassigned revenue officer shall be deemed cancelled, and the new LOA issued to the subsequently designated revenue officer shall prevail..."[78]

[76] *Emphasis and underscoring supplied.*
[77] G.R. No. 260261, October 03, 2022.
[78] *Emphasis and underscoring supplied.*

In the case at bar, in the LOA No. 200700047942 dated August 11, 2008 issued by OIC-Regional Director Ma. Nieva A. Guerrero,[79] the latter had authorized RO Melinda Lim and Group Supervisor ("GS") Teodore Maroket of Revenue District Office No. 50 – South Makati, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 01, 2007 to December 31, 2007.

In the Memorandum dated February 16, 2010 signed by Revenue District Officer Ricardo B. Espiritu,[80] petitioner's case was referred to RO Wilfredo A. Pongase, thru GS Ma. Cristina S. Carsolin, for continuance of investigation and immediate report. Thus, RO Pongase submitted an undated Memorandum addressed to the Regional Director recommending the issuance of a PAN against petitioner.[81]

Thereafter, in MOA No. No. RR8-050-0311-000043 dated March 7, 2011 issued by RDO Espiritu,[82] the case/docket of petitioner for taxable year 2007 was referred to RO Gloria C. Beltran and GS Ma. Cristina S. Carsolin, for reinvestigation per protest letter/request for reinvestigation filed by the petioner (*for evaluation and appropriate action under FAN dated January 14, 2011*). By virtue of the said MOA, RO Gloria C. Beltran has come up with the undated Memorandum addressed to the Regional Director,[83] showing a re-computation of the VAT liability of petitioner, and maintaining the BIR's anent the petitioner's other tax liabilities.

It is noteworthy that no new LOA was issued in the name of ROs Wilfredo A. Pongase and Gloria C. Beltran to conduct the audit or investigation of petitioner for taxable year 2007. Moreover, there is no indication that the LOA No. 200700047942 dated August 11, 2008 was ever amended or modified to include the said ROs. Hence, the authority under which ROs Pongase and Beltran respectively continued the audit or investigation of petitioner was not made pursuant to the statutory power of respondent or his duly authorized representative to grant the authority to examine the said taxpayer's books of accounts.

Moreover, it must be pointed out that when Revenue District Officer Ricardo B. Espiritu issued the above-stated Memorandum dated February 16, 2010 and the said MOA, he, in effect, usurped the statutory power of respondent and his duly authorized representative, which in this case is the Regional Director. In this case, in issuing the same Memorandum and MOA,

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79 Docket, Exhibit "P-1", p. 271; BIR Records, Exhibit "R-3", p. 1092.
80 BIR Records, Exhibit "R-1", p. 1122.
81 *Id.*, Exhibit "R-6", p. 1133 to 1136.
82 *Id.*, Exhibit "R-14", p. 1220.
83 *Id.*, Exhibit "R-15", pp. 1231 to 1232.

Revenue District Officer Espiritu, in effect, exercised a power which was not vested in him, specifically, the power to amend or modify the LOA earlier issued by a BIR official who is higher in rank than him.

To be sure, the authority of ROs Wilfredo A. Pongase and Gloria C. Beltran is not sufficient to continue the examination of petitioner's books of accounts and other accounting records, there being no new nor revised LOA issued in their favor.

Such being the case, the subject tax assessments issued against petitioner for taxable year 2007 are void, for lack of authority of the ROs Wilfredo A. Pongase and Gloria C. Beltran to examine petitioner's books. Being a void assessment, the same bears no fruit.[84] Hence, the subject tax assessments cannot be legally enforced against petitioner.

Be that as it may, this Court finds another reason why the subject tax assessments should be considered a nullity.

The BIR failed to comply with due process requirements in the issuance of the subject tax assessments.

Section 228 of the National Internal Revenue Code ("NIRC") of 1997, as amended, provides:

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: . . .
>
> xxx xxx xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said

[84] *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.

notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings."

The law mandates that the taxpayer shall be required to respond to the PAN, "[w]*ithin a period to be prescribed by implementing rules and regulations,*" and that in case such taxpayer fails to respond, respondent or his duly authorized representative shall issue an assessment based on his findings.

Implementing Section 228 of the NIRC of 1997, as amended, is Section 3.1.2 of RR No. 12-99[85], as amended by RR No. 18-2013[86], which reads as follows:

"SECTION 3. ***Due Process Requirement in the Issuance of Deficiency Tax Assessment.*** —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 *Preliminary Assessment Notice* (PAN). — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).

If the taxpayer fails to respond <u>within fifteen (15) days from date of receipt of the PAN</u>, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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85 SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extrajudicial Settlement of a Taxpayer's Criminal Violation of the code through payment of a Suggested Compromise Penalty.

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

> **<u>If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response</u>**, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties."[87]

On the basis thereof, part of the due process in the issuance of deficiency tax assessments is that the taxpayer shall have fifteen (15) days from receipt of the PAN to respond thereto, and only after it fails to do so, within such period, will it be considered in default and a *Formal Letter of Demand* ("FLD") and FAN will be issued. In other words, respondent or his duly authorized representative is duty bound to wait for the expiration of fifteen (15) days from the date of receipt of the PAN before issuing the FLD and FAN. As a corollary, the taxpayer has fifteen (15) days from date of receipt of the PAN to respond to the said notice. Only after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN.[88]

To stress, such a process or procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment.

In this case, by respondent's own evidence, it is shown that petitioner received the PAN dated December 29, 2010 on January 03, 2011.[89] Counting fifteen (15) days from January 3, 2011, petitioner had until January 18, 2011, within which to respond to the said PAN. However, without giving opportunity to petitioner to respond to the PAN, respondent already issued the FAN on January 14, 2011[90] or before the expiration of the above-stated fifteen (15)-day period. Such being the case, there is a clear violation of petitioner's right to due process in the issuance of the subject tax assessments.

Consequently, in view of the violation of petitioner's right to due process provided under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99, as amended by RR No. 18-2013, the subject FAN and the assailed FDDA are considered void.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing

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87 *Emphasis and underscoring supplied.*

88 *Commissioner of Internal Revenue v. Yumex Philippines Corporation*, G.R. No. 222476, May 05, 2021.

89 BIR Records, Exhibit "R-7-A", p. 1219.

90 Docket, Exhibit "P-12", pp. 293 to 301; and BIR Records, Exhibits "R-9" and "R-10", pp. 1196 to 1200.

the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizens right is amply protected by the Bill of Rights under the Constitution. Thus, while taxes are the lifeblood of the government, the power to tax has its limits, in spite of all its plenitude.[91] Even as We concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[92]

In other words, the persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the respondent to strictly comply with the requirements laid down by law and the BIR's own rules is a denial of the taxpayer's right to due process.[93]

In view of the nullity of the subject tax assessments, it is no longer necessary to address or discuss the remaining issue and arguments respectively raised by the parties.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**.

Accordingly, the FDDA dated September 04, 2018, requesting petitioner to pay deficiency income tax, VAT, and WTC, in the aggregate amount of Php7,310,234.42 for taxable year 2007, and the FAN dated January 14, 2011 issued against petitioner, are **CANCELLED and SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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91 *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 08, 2010.

92 *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 02, 2014, *citing Commissioner of Internal Revenue vs. Algue, Inc.*, 241 Phil. 829, 836 (1988).

93 Refer to *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 08, 2010, *citing Tupas v. Court of Appeals*, G.R. No. 89571, February 06, 1991.

I CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice