REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

LIFEBANK FOUNDATION, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8836

Members:
Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, *JJ.*

Promulgated:
JUN 23 2017
11:17 a.m.

x --- x

DECISION

BAUTISTA, J:

This is a Petition for Review[1] filed on June 16, 2014, pursuant to *Section 7(a)(1)*[2] *of Republic Act ("RA") No. 1125*[3], as amended, in relation to *Section 228*[4] *of the 1997 National Internal Revenue Code*[5], *as amended ("1997 NIRC")*, praying that judgment be rendered:[6]

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[1] *Records, CTA Case No. 8836, Vol. 1, Petition for Review ("PFR")*, pp. 6-96, with annexes.

[2] 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;

[3] An Act Creating the Court of Tax Appeals, as amended.

[4] SEC. 228. *Protesting of Assessment*. –

xxx xxx xxx

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of said decision, or from lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[5] Republic Act No. 8424, January 1, 1998.

[6] *Records, Vol. 1, PFR, Prayer*, pp. 29-30.

1. Declaring the Final Notice Before Seizure ("Final Notice") void for lack of factual and legal basis;

2. Declaring petitioner not liable for alleged deficiency income tax ("IT"), value-added tax ("VAT"), and administrative penalties for taxable year 2009 ("TY 2009") in the aggregate amount of Php282,055,951.22, inclusive of interest and penalties;

3. Ordering the said deficiency assessments withdrawn and cancelled; and

4. Other reliefs just and equitable under the premises.

The Parties[7]

Petitioner Lifebank Foundation, Inc. is a corporation organized and existing under the laws of the Philippines, with registered address at Gov. Fermin Caram St., Brgy. Ma. Clara, Iloilo City.[8] It is a non-stock and non-profit corporation engaged in the creation and support of initiatives that advance comprehensive sustainable development in rural areas, such as integrated social services and micro-financing activities.[9]

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR")[10] who is tasked to assess and collect all national internal revenue taxes, fees, and charges; and to enforce all forfeitures, penalties, and fines connected therewith. He holds office at the Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City.

The Facts

On July 18, 2005, Revenue Region No. 11 of the BIR issued *Ruling No. 021-05 ("Ruling")* confirming petitioner's exemption from IT on amounts received by it as such association; and therefore, need not file an IT return for the same.[11]

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[7] *Records, Vol. 1, Joint Stipulation of Facts and Issues ("JSFI"), pars. 1-3,* p. 401.
[8] *Id., Exhibit "P-3," BIR Certificate of Registration,* p. 455.
[9] *Id., Exhibit "P-1," SEC Certificate of Registration, Annex: Amended Articles of Incorporation,* p. 448.
[10] Formerly her Honorable CIR Kim S. Jacinto-Henares, now his Honorable CIR Ceasar R. Dulay.
[11] *Records, Vol. 1, JSFI, par. 4,* p. 402.

On October 18, 2010, petitioner received Letter of Authority ("LOA") No. 074-2010-00000233[12] dated October 15, 2010 issued by Regional Director Glen A. Geraldino authorizing Revenue Officers ("ROs") Princess Rae Dy and Cecil Rey Panelo, and Group Supervisor ("GS") Marichu Gloria Espinosa to examine petitioner's books of accounts and other financial records for all internal revenue taxes for TY 2009.[13]

On September 8, 2011, a Memorandum of Assignment[14] was issued by Revenue District Officer Nelia A. Demalata ("RDO Demalata") to RO Joenifer S. Jolito ("RO Jolito") and RO Revina D. Gascon ("RO Gascon"), and GS Cecil Rey F. Panelo ("GS Panelo"), authorizing the latter to continue the audit and investigation of petitioner's books of accounts due to the reassignment of previous ROs named in the LOA.

Thereafter, on February 7, 2012, petitioner received a Notice of Informal Conference[15] ("NIC") dated February 6, 2012 issued by RDO Demalata of RDO No. 74, proposing to assess petitioner deficiency IT, VAT, WTC, EWT, DST, Final Tax and compromise penalties in the aggregate amount of Php308,549,407.98.[16]

On April 3, 2012, petitioner filed its reply to the NIC through a letter[17] dated March 31, 2012.[18] The arguments raised therein were found to be without bases in a letter[19] dated June 8, 2012 issued by RDO Demalata.

On July 2, 2013, petitioner received a Preliminary Assessment Notice[20] ("PAN") dated February 12, 2013 from Regional Director Romulo L. Aguila, Jr. ("RD Aguila"), informing petitioner that it has deficiency IT, VAT and suggested compromise penalties in the

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[12] *BIR Records, Exhibits "P-7" and "R-2," Letter of Authority ("LOA")*, p. 9.
[13] *Records, Vol. 1, JSFI, par. 5*, p. 402.
[14] *BIR Records, Exhibit "R-1," Memorandum of Assignment*, p. 56.
[15] *Id., Exhibits "P-8" and "R-6," Notice of Informal Conference ("NIC")*, pp. 112-148.
[16] *Records, Vol. 1, JSFI, par. 6*, p. 402.
[17] *Id., Vol. 2, Exhibit "P-8.1," Reply to the NIC*, pp. 521-523.
[18] *Id., Vol. 1, JSFI, par. 7*, p. 402.
[19] *BIR Records, Exhibit "R-8," Letter dated June 8, 2012*, pp. 188-190.
[20] *Records, Vol. 2, Exhibit "P-9," Preliminary Assessment Notice ("PAN")*, pp. 524-525; *BIR Records, Exhibit "R-10," PAN*, pp. 300-305.

aggregate amount of Php274,687,894.25, inclusive of interest and compromise penalty.[21]

Petitioner filed its reply to the PAN[22] through a letter dated July 9, 2013 ("Reply to PAN") on July 16, 2013, disputing the proposed assessments set forth therein.[23]

On August 2, 2013, petitioner received a Formal Letter of Demand with attached Final Assessment Notices[24] ("FLD/FAN") dated April 25, 2013 from the same RD Aguila, assessing petitioner for supposed deficiency IT and VAT in the aggregate amount of Php282,055,951.22, inclusive of interest, compromise and other administrative penalties.[25]

Thereafter, a Memorandum of Assignment[26] dated August 30, 2013 ("August 30, 2013 Memorandum") was issued by RDO Demalata of RDO No. 74 to RO Jolito, RO Gascon, and GS Panelo, referring the case for reinvestigation.[27] This was received by petitioner on September 5, 2013.[28]

On January 16, 2014, petitioner received a Final Notice[29] dated January 14, 2014 from OIC-Revenue District Officer Luis A. Alberto, Jr. ("OIC-RDO Alberto") of RDO No. 74 with an assessment for deficiency IT in the amount of Php146,185,993.46, deficiency VAT of Php135,789,957.76, and compromise penalty of Php80,000.00.[30]

On February 20, 2014, petitioner filed its protest[31] to the Final Notice with RDO No. 74, addressed to RD Aguila and OIC-RDO Alberto, *via* registered mail.[32]

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[21] *Records, Vol. 1, JSFI, par. 8,* p. 402.
[22] *Records, Vol. 2, Exhibit "P-9.1," Reply to PAN,* pp. 526-531; *BIR Records, Exhibit "R-11," Reply to PAN,* pp. 319-323.
[23] *Records, Vol. 1, JSFI, par. 9,* p. 402.
[24] *Records, Vol. 2, Exhibit "P-10," Formal Letter of Demand/Final Assessment Notice ("FLD/FAN"),* pp. 532-543; *BIR Records, Exhibit "R-20," FLD/FAN,* pp. 306-317.
[25] *Records, Vol. 1, JSFI, par. 10,* pp. 402-403.
[26] *Records, Vol, 2, Exhibit "P-11," Memorandum of Assignment,* p. 544; *BIR Records, Memorandum of Assignment,* p. 335.
[27] *Records, Vol. 1, JSFI, par. 11,* p. 403.
[28] *BIR Records, Memorandum of Assignment,* p. 335.
[29] *Records, Vol, 2, Exhibit "P-12," Final Notice,* p. 545; *BIR Records, Exhibit "R-12," Final Notice,* p. 348.
[30] *Records, Vol. 1, JSFI, par. 12,* p. 403.
[31] *BIR Records, Exhibit "P-12.1," Protest to Final Notice,* pp. 376-389.
[32] *Records, Vol. 1, JSFI, par. 13,* p. 403.

On May 15, 2014, petitioner received a letter-reply[33] dated March 4, 2013 from OIC-RDO Alberto denying petitioner's protest.[34]

Consequently, on June 16, 2014, petitioner filed the instant Petition for Review.[35]

After being granted two (2) extensions,[36] respondent filed his Answer[37] by registered mail on August 26, 2014.

Thereafter, respondent filed a Motion to Admit Attached Amended Answer[38] on September 5, 2014; which was granted by the Court in a Resolution[39] dated October 20, 2014, thereby admitting the attached Amended Answer[40].

In his Amended Answer, respondent interposed the following Special and Affirmative Defenses, in sum: *(1)* that the Court is bereft of jurisdiction to hear the present Petition for Review; *(2)* that the assessment for deficiency IT, VAT and compromise penalties were issued in accordance with law, rules and jurisprudence; and *(3)* that petitioner is not exempt from IT and VAT.

Petitioner and respondent filed their Pre-trial Briefs on December 5, 2014[41] and April 29, 2015[42], respectively.

On March 20, 2015, respondent filed an Omnibus Motion *(1)* Motion for Leave to Admit Respondent's Amended Pre-Trial Brief; *(2)* Motion to Defer Filing of Joint Stipulation of Facts and Issues; *(3)* Motion to Defer Transmittal of BIR Records[43] ("Omnibus Motion") which was granted by the Court in a Resolution[44] dated June 18, 2015, and admitting the attached Respondent's Amended Pre-trial Brief[45].

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[33] *Records, Vol. 2, Exhibit "P-14," Letter Reply,* pp. 562-563.
[34] *Id., Vol. 1, JSFI, par. 14,* p. 403.
[35] *Id., PFR,* pp. 6-96, with annexes.
[36] *Records, Vol. 1,* pp. 99-102, 104, 105-107 and 155-156.
[37] *Id., Answer,* pp. 108-128.
[38] *Id., Motion to Admit Attached Amended Answer,* pp. 129-133.
[39] *Id., Vol. 1,* pp. 166-168.
[40] *Id., Amended Answer,* pp. 134-153.
[41] *Id., petitioner's Pre-trial Brief,* pp. 308-320.
[42] *Records, Vol. 1, respondent's Pre-trial Brief,* pp. 332-339.
[43] *Id., Omnibus Motion,* pp. 365-370.
[44] *Id., Vol. 1,* pp. 394-396.
[45] *Id., respondent's Amended Pre-trial Brief,* pp. 371-376.

Thereafter, on July 3, 2015, the parties filed their Joint Stipulation of Facts and Issue[s][46]; thus, a Pre-Trial Order[47] was issued on July 20, 2015.

On September 18, 2015, petitioner filed its Formal Offer of Evidence With Motion for Permanent Marking[48], offering *Exhibits* "P-1," "P-2," "P-3," "P-4," "P-5," "P-5.1," "P-6," "P-7," "P-8," "P-8.1," "P-9," "P-9.1," "P-10," "P-11," "P-12," "P-12.1," "P-13," "P-13.1," "P-14," "P-15," and "P-15.1" as evidence. This was resolved by the Court in a Resolution[49] dated December 11, 2015, admitting all of the foregoing exhibits.

On March 29, 2016, Respondent's Formal Offer of Evidence[50] was filed, offering *Exhibits* "R-1," "R-2," "R-3," "R-4," "R-5," "R-6," "R-7," "R-8," "R-9," "R-10," "R-11," "R-12," "R-13," "R-14," "R-15," "R-16," "R-17," "R-18," "R-19," "R-20," "R-21," and "R-21-a" as evidence. The Court admitted all the offered evidence in a Resolution[51] dated June 7, 2016.

On July 12, 2016, petitioner filed its Memorandum[52]; and after being granted an extension,[53] respondent also filed his Memorandum (For Respondent)[54] on August 8, 2016 *via* registered mail.

On August 26, 2016, the Court promulgated a Resolution[55] submitting the case for decision; hence, this Decision.

The Issues[56]

WHETHER THE FLD/FAN AND FINAL NOTICE ARE VOID; AND

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[46] *Records, Vol. 1, JSFI,* pp. 401-412.
[47] *Id., Pre-Trial Order ("PTO"),* pp. 414-422.
[48] *Id., Vol. 1,* pp. 436-445.
[49] *Id., Vol. 2,* pp. 597-598.
[50] *Id., Formal Offer of Evidence,* pp. 611-624.
[51] *Id., Vol. 2,* pp. 640-641.
[52] *Records, Vol. 2, petitioner's Memorandum,* pp. 646-675.
[53] *Id., Vol. 2,* pp. 642,645, 677.
[54] *Id., respondent's Memorandum,* pp. 679-691.
[55] *Id., Vol. 2,* p. 693.
[56] *Id., Vol. 1, PTO, Issues,* pp. 417-418.

WHETHER PETITIONER IS LIABLE FOR DEFICIENCY IT, VAT, AND COMPROMISE PENALTIES IN THE AMOUNT OF PHP146,185,993.46, PHP135,789,957.76, AND PHP80,000.00, RESPECTIVELY.

Petitioner's Arguments[57]

Petitioner avers that the FLD/FAN cannot be considered as the final notice which would warrant the collection of taxes, in view of the August 30, 2013 Memorandum issued by RDO No. 74 referring the case for reinvestigation; that in the absence of such final demand, there is no notice of assessment that can be protested, hence, the Final Notice is premature; and that even assuming that the FLD/FAN can be considered as the final demand, the same is void for being issued in violation of petitioner's right to due process considering that the FLD/FAN was prepared and issued even before the PAN was received by petitioner.

Petitioner further claims that even assuming that the FLD/FAN and Final Notice are valid, these should be withdrawn and cancelled for lack of factual and legal basis; that for IT, petitioner is exempt under *Section 30 of the 1997 NIRC* being a non-stock and non-profit organization rendering socio-cultural and economic services to the poor; that petitioner's IT exemption is confirmed in the *Ruling* which was not validly revoked; and that assuming, but not granting, that the *Ruling* has been validly revoked, the retroactive application of such revocation violates *Section 246 of the 1997 NIRC*.

As regards alleged deficiency VAT, petitioner posits that its interest income was derived from the pursuit of its primary function of uplifting the socio-cultural and economic services to the poor, hence, not subject to VAT; that with respect to Membership Fees & Dues and Other Income, the BIR did not provide the factual and legal basis for imposing VAT thereon, thereby violating *Section 228 of the 1997 NIRC*; that even assuming that the assessment for Membership Fees & Dues is valid, the same was not derived from the sale of services or goods in the course of trade or business; and that it is erroneous for the BIR to subject to VAT its interest income from bank deposits since there was no actual sale of goods or services which can serve as the basis for the imposition thereof.

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[57] *Records, Vol. 2, petitioner's Memorandum*, pp. 651-672.

Finally, petitioner claims that since it did not agree or conform to the imposition of the compromise penalty, there is no basis for the BIR to impose the same.

Respondent's Counter-Arguments[58]

Respondent counters that the Court has no jurisdiction over the case because petitioner failed to file a protest to the FLD/FAN within thirty (30) days from receipt thereof, thereby making the assessment final, executory and demandable; that petitioner was not deprived of its right to due process since the PAN and the FLD/FAN were both received by petitioner; and that assuming, without conceding, that the assessment did not become final, executory and demandable, petitioner is still liable for *(1)* deficiency IT, because it is excluded from the enumeration of exempt entities under *Section 30 of the 1997 NIRC;* and *(2)* deficiency VAT, because it is considered as a lending investor.

The Ruling of the Court

The Court dismisses the instant Petition for Review for lack of jurisdiction.

Section 228 of the 1997 NIRC lays out the procedure to be followed in protesting tax assessments, thus:

> SEC. 228. *Protesting of Assessment.* -
>
> xxx xxx xxx
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> <u>Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations</u>. Within sixty (60) days from filing of the protest,

[58] *Records, Vol. 2, respondent's Memorandum,* pp. 681-688.

> all relevant supporting documents shall have been submitted; <u>otherwise, the assessment shall become final.</u>
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[59]

In this relation, *Section 3.1.5 of Revenue Regulations ("RR") No. 12-1999*[60], implementing the above *Section 228 of the 1997 NIRC,* reads:

> 3.1.5 *Disputed Assessment.* - <u>The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.</u>
>
> xxx xxx xxx
>
> <u>If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.</u>
>
> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.
>
> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be

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[59] Underscoring ours.

[60] 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 Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.

considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.

If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.[61]

Moreover, in *Commissioner of Internal Revenue v. Bank of the Philippine Islands*[62], the Supreme Court held, to wit:

The inevitable conclusion is that BPI's failure to protest the assessments within the 30-day period provided in the former Section 270 meant that they became final and unappealable. Thus, the CTA correctly dismissed BPI's appeal for lack of jurisdiction. BPI was, from then on, barred from disputing the correctness of the assessments or invoking any defense that would reopen the question of its liability on the merits. Not only that. There arose a presumption of correctness when BPI failed to protest the assessments.[63]

Based on the foregoing, failure of the taxpayer to file an appeal within the reglementary period shall render the assessment final and executory, and the Court has no jurisdiction to review the correctness of the assessment.

Records reveal that petitioner received a PAN on July 2, 2013, with the following assessments:

TAX	BASIC TAX	25% SURCHARGE	INTEREST	COMPROMISE PENALTY	TOTAL
IT	Php 77,251,146.30	Php 19,312,786.58	Php 45,709,503.27	Php 50,000.00	Php 142,323,436.15
VAT	70,109,993.16	17,527,498.29	44,596,966.65	50,000.00	132,284,458.10
CP				80,000.00	80,000.00
GRAND TOTAL					PHP 274,687,894.25

Petitioner then filed a reply to the PAN on July 16, 2013. Thereafter, it received an FLD/FAN on August 2, 2013, with the

[61] Underscoring ours.
[62] G.R. No. 134062, April 17, 2007, 521 SCRA 373.
[63] Underscoring ours.

following assessments, in which there was no change in the taxes and penalties and the interest was only updated:

TAX	BASIC TAX	25% SURCHARGE	INTEREST	COMPROMISE PENALTY	TOTAL
IT	Php 77,251,146.30	Php 19,312,786.58	Php 49,572,060.58	Php 50,000.00	Php 146,185,993.46
VAT	70,109,993.16	17,527,498.29	48,102,466.31	50,000.00	135,789,957.76
CP				80,000.00	80,000.00
GRAND TOTAL					PHP 282,055,951.22

A Memorandum of Assignment dated August 30, 2013 was then issued by RDO Demalata to the ROs and GS assigned, referring the case for reinvestigation.

Counting thirty (30) days from receipt of the FLD/FAN on August 2, 2013, petitioner had until September 2, 2013[64] within which to file its protest, which it failed to do.

Thereafter, on January 16, 2014, petitioner received a Final Notice, with assessments for deficiency IT of Php146,185,993.46, deficiency VAT of Php135,789,957.76, and compromise penalty of Php80,000.00. Note that these are the same amounts found in the FLD/FAN. Petitioner then filed its protest to the Final Notice on February 20, 2014.

In this case, petitioner filed a protest disputing the assessment only to the PAN[65], and subsequently, to the Final Notice[66]. However, petitioner failed to file a protest to the FLD/FAN[67], which it received on August 2, 2013[68]. For failure to file a protest, the assessment has attained finality by mere lapse of time.

Nevertheless, petitioner contends that the referral of audit investigation to RO Jolito, RO Gascon, and GS Panelo in view of the August 30, 2013 Memorandum removes the character of the FLD/FAN as a final demand, hence, there can be no notice that can be protested; and that accordingly, the Final Notice is premature. The Court finds no merit in petitioner's argument.

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[64] September 1, 2013 falls on a Sunday.
[65] *Records, Vol. 2, Exhibit "P-9.1," Reply to PAN,* pp. 526-531.
[66] *Id., Exhibit "P-12.1," Protest,* pp. 546-559.
[67] *Id., Exhibit "P-10," FLD/FAN,* pp. 532-543.
[68] *Id., Vol. 1, JSFI,* p. 402.

The August 30, 2013 Memorandum[69] reads as follows:

REVENUE DISTRICT OFFICE NO. 74, ILOILO CITY
Memorandum of Assignment

No.: 074-2013-LA-003476
Date: 08/30/2013

MEMORANDUM TO:
Revenue Officer/s: Joenifer S. Jolito/Revina D. Gascon
Group Supervisor: Cecil Rey F. Panelo

Subject : Audit/Verification of the AIRT Tax Liabilities/Claim for _____ Tax Credit/Refund for Taxable Year/Period 2009 of TVN No. eLA No.: 074-2010-00000233 dated 10/15/10

Referred to you is the subject case/docket for:

[ ] xxx xxx xxx

[ ] xxx xxx xxx

[ ] xxx xxx xxx

[ ] xxx xxx xxx

[x] Reinvestigation per protest letter/request for reinvestigation filed by the subject taxpayer.

[ ] xxx xxx xxx

[ ] Other (specify) ____

The docket with the report of the case shall be submitted to the undersigned within the time frame prescribed under existing revenue issuances.

For your information and strict compliance.

(signature)
NELIA B. DEMALATA
Revenue District Officer
Name of Authorized Revenue
Official/Head, Investigating
Office

Received by:	Date Received
Joenifer S. Jolito/Revina D. Gascon Revenue Officer/s	___________
Cecil Rey F. Panelo Group Supervisor	___________

A careful reading of the above will show that the Memorandum of Assignment is merely an internal communication among the BIR

[69] *Records, Vol, 2, Exhibit "P-11," Memorandum of Assignment,* p. 544; *BIR Records, Memorandum of Assignment,* p. 335.

officers to guide the assigned ROs in proceeding with the assessment. It is not even addressed to petitioner. Petitioner was given a copy only for its information and records.

The Memorandum of Assignment appears to be an offshoot of the Reply to PAN filed by petitioner on July 16, 2013. Records reveal that subsequent to the August 30, 2013 Memorandum, OIC-RDO Alberto informed petitioner of its decision to the Reply to PAN in a letter[70] dated October 8, 2013, addressed to Medelene Perales, and received by a certain Jonemae Legada on October 11, 2013, which reads as follows:

Republic of the Philippines
Department of Finance
BUREAU OF INTERNAL REVENEU
Revenue District Office No. 74
Iloilo City

October 8, 2013

MEDELENE PERALES
Supervisor, Finance & Accounts Department
Lifebank Foundation, Inc.
Lifebank Bldg., Gov. Fermin Caram St.
Iloilo City

RE: Letter of Authority No. 074-2010-00000233
on 2009 All Internal Revenue Taxes

Madam:

This has reference to your letter of protest dated July 9, 2013 in relation to the Preliminary Assessment Notice sent to Lifebank Foundation, Inc.

Please be informed that your company has failed to introduce evidence refuting our previous findings/assessment. The bases of your protest on the Preliminary Assessment Notice were already discussed in our previously issued Notice of Informal Conference dated February 6, 2012, as well as in our reply letter dated June 8, 2012. As such, this office still maintains its position on your taxability on income tax and value-added tax.

In view thereof, please be further informed that the complete docket of the case was returned to the Office of the Regional Director for appropriate action. Kindly direct your concerns regarding this matter to the said Office.

Please be guided accordingly.

Very truly yours,

(signature)
LUIS A. ALBERTO, JR.
OIC-Revenue District Officer

LAA/CMJV/redg

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[70] *BIR Records, Letter dated October 8, 2013*, p. 336.

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cc: Patrocinio G. Pudadera, Jr., CPA (signature)

Received by: (signature)
Jonemae Legada
10/11/13[71]

Taking everything into consideration, the Court concludes that the August 30, 2013 Memorandum was not issued to revoke the previously issued FLD/FAN. It was issued in view of the Reply to PAN filed by petitioner. Otherwise, the ROs will have nothing to "[r]einvest[e] per protest letter/request for reinvestigation filed by [petitioner]" considering that there was no protest to the FLD/FAN filed by petitioner as of date. Petitioner itself knows for a fact that it did not file any protest to the FLD/FAN to initiate the process of reinvestigation of the assessment; hence, it is illogical for it to think that the reinvestigation arose from its protest to the FLD/FAN instead of from the PAN, to which it actually filed a reply.

Most importantly, the Memorandum, although dated August 30, 2013, was actually received by petitioner on September 5, 2013[72], through a certain Mary Grace C. Barrios. Thus, petitioner could not have known about its existence until September 5, 2013, or four (4) days after the thirty (30)-day period to file a protest to the FLD/FAN has already lapsed. Prudence dictates that petitioner should have filed the protest on or before September 2, 2013[73], if only to protect its interest. Petitioner simply slept on its rights.

Further, petitioner avers that assuming that the FLD/FAN can be considered as final demand from which petitioner is now required to file a protest, it is still void for being prepared and issued prior to petitioner's receipt of the PAN, citing *Puratos Phil., Inc. v. Commissioner of Internal Revenue*[74]. Petitioner's argument must necessarily fail.

An assessment is deemed made when notice to this effect is released, mailed or sent to the taxpayer.[75] Thus, in *Collector of Internal Revenue v. Bautista*[76], the Supreme Court held:

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[71] Underscoring ours.
[72] *BIR Records, Memorandum of Assignment,* p. 335.
[73] September 1, 2013 falls on a Sunday.
[74] CTA Case No. 6980, October 4, 2010.
[75] *Basilan Estates, Inc. v. Commissioner of Internal Revenue, et al.,* G.R. No. L-22492, September 5, 1967, 21 SCRA 17; *Clark Water Corp. v. Commissioner of Internal Revenue,* CTA Case No. 8865, November 23, 2016.

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> Section 331 of the Tax Code provides that the deficiency assessment must be made within five (5) years after the return was filed, and the assessment is deemed made when the notice to this effect is released, mailed or sent by the Commissioner of Internal Revenue to the taxpayer, for the purpose of giving effect to said assessment. Said Section 331 does not require that the notice be received by the taxpayer within the aforementioned period of five (5) years.[77]

While the FLD/FAN[78] was dated April 25, 2013, it was presented to the taxpayer only on August 2, 2013[79], as evidenced by the receipt of a certain Roberto H. Alfaras[80]. On the other hand, the PAN[81] was received by petitioner on July 2, 2013, to which it filed its Reply to PAN[82] on July 16, 2013.

Clearly, not only did respondent complied with the mandatory requirement of issuance of PAN prior to the FLD/FAN, petitioner was even given thirty-one (31) days from receipt of the PAN to file its protest thereto before respondent had the FLD/FAN received by petitioner.

Petitioner's reliance on the case of *Puratos Phil., Inc. v. Commissioner of Internal Revenue*[83] *("Puratos case")* is also misplaced, if not erroneous. It cannot take refuge in the conclusion made by the Supreme Court that taxpayers are denied their right to due process when the FAN was issued on the same day taxpayers received the PAN, hence, a clear violation of *Section 228 of the 1997 NIRC* and *RR Nos. 12-1985 and 12-1999*, as well as *Revenue Memorandum Order No. 37-1994*, which gives taxpayers a period of fifteen (15) days within which to file a reply to the PAN.

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[76] G.R. No. L-12250, May 27, 1959, cited in *Commissioner of Internal Revenue v. Special Services Corp.*, CA-G.R. SP No. 24475, April 17, 1991.
[77] Underscoring ours.
[78] *Records, Vol. 2, Exhibit "P-10," FLD/FAN,* pp. 532-543; *BIR Records, Exhibit "R-20," FLD/FAN,* pp.306-317.
[79] *Records, Vol. 1, JSFI, par. 10,* p. 402.
[80] *Records, Vol. 2, Exhibit "P-10," FLD/FAN,* pp. 532-543; *BIR Records, Exhibit "R-20," FLD/FAN,* pp.306-317.
[81] *Records, Vol. 2, Exhibit "P-9," PAN,* pp. 524-525; *BIR Records, Exhibit "R-10," PAN,* pp. 300-305.
[82] *Records, Vol. 2, Exhibit "P-9.1," Reply to PAN,* pp. 526-531; *BIR Records, Exhibit "R-11,"Reply to PAN,* pp. 319-323.
[83] CTA Case No. 6980, October 4, 2010.

A careful reading of *Puratos case* shows that the FLD/FAN was declared void because it was issued on the same day that the PAN was issued. In the case at hand, the FLD/FAN, although dated April 25, 2013, was received by petitioner thirty-one (31) days after it received the PAN, or only on August 2, 2013, and even seventeen (17) days after receipt of petitioner's Reply to PAN on July 16, 2013.

Having said the foregoing, the Court hereby finds that it has no jurisdiction over the case as no protest was filed within the prescriptive period, thus, rendering the assessment final, executory, and demandable.

In view of the above discussions, the Court finds no cogent reason to rule on the remaining issue.

WHEREFORE, in view of the foregoing, the Petition for Review filed by petitioner Lifebank Foundation, Inc. is hereby **DENIED** due to lack of jurisdiction.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
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