REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1306** (CTA Case No. 8367)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA,** and **RINGPIS-LIBAN,** *JJ.*
FARCON MARKETING CORPORATION, Respondent.	***Promulgated:*** NOV 21 2016 2:57 p.m.

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DECISION

UY, *J.*:

This *Petition for Review* filed before the Court of Tax Appeals *En Banc* on May 21, 2015,[1] seeks the reversal of the Decision dated February 3, 2015, promulgated by the Second Division of this Court (Court in Division) in CTA Case No. 8367, entitled "*Farcon Marketing Corporation, Petitioner, vs. Bureau of Internal Revenue, Respondent,*" the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, the deficiency income tax assessment in the amount of P516,502.26, inclusive of interest, for calendar year 2007 is hereby **CANCELLED** and **WITHDRAWN**.

[1] EB Docket, pp. 6 to 16.

SO ORDERED."

THE FACTS

Petitioner Commissioner of Internal Revenue is the representative of the Bureau of Internal Revenue (BIR), the government agency mandated by law to decide disputed assessments and to enforce the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws.

On the other hand, respondent Farcon Marketing Corporation is a domestic corporation organized, registered and existing under Philippine laws.

On June 13, 2008, a *Tax Verification Notice* (TVN) was issued by the BIR, authorizing Revenue Officer Francisco M. Diokno to verify respondent's supporting documents and/or pertinent records relative to all its revenue taxes. The TVN was revalidated on January 9, 2009. Meanwhile, by virtue of the said TVN, Revenue Officer Francisco M. Diokno sent several requests for presentation of records on June 16, 2008, on July 1, 2008, and on July 24, 2008 to respondent.

On June 1, 2010, respondent received from Revenue Officer Jeffrey R. Ordonez the letter dated May 30, 2010, requesting respondent to submit its books of accounts and other accounting records necessary for the BIR's examination.

On June 4, 2010, the BIR received the letter dated June 3, 2010 from respondent, stating that it is not possible for respondent to present its books of accounts and other accounting records because these documents were destroyed and damaged by typhoons *Ondoy* and *Pepeng*.

Thereafter, respondent received an undated *Notice of Informal Conference* with attached Computation of Deficiency Tax in the amount of ₱511,441.08, inclusive of interest and compromise charges.

On March 28, 2011, respondent received from Regional Director Nestor S. Valeroso of Revenue Region No. 7-Quezon City, the *Preliminary Assessment Notice* (PAN) dated March 11, 2011, with Details of Discrepancies assessing respondent the amount of

₱506,168.71.

On April 15, 2011, respondent sent to Regional Director Nestor S. Valeroso a letter asking for a period of thirty (30) days from said date to reconstruct its accounting records and to dispute or protest its alleged tax liability.

However, on April 28, 2011, respondent received an *Assessment Notice* (FAN) under Demand No. 45-B023-07 with a *Formal Letter of Demand* (FLD) issued on April 14, 2011, demanding payment of ₱516,502.26, inclusive of interest, and supported by *Details of Discrepancies.* Thus, respondent sent to petitioner its protest letter dated May 30, 2011, which was received by the latter on May 31, 2011. Subsequently, on June 22, 2011, respondent received a letter from petitioner granting its request for reinvestigation.

On July 6, 2011, respondent received a letter from Assistant Revenue District Officer Jose G. Luna, with the information that the investigation is to be continued by Revenue Officer Kelly C. Chong.

On October 5, 2011, respondent received petitioner's final decision through OIC-Regional Director Jonas DP. Amora, reiterating the assessed tax deficiency of ₱516,502.26. Consequently, respondent filed a *Petition for Review* before the Court in Division on November 4, 2011. The case was docketed as CTA Case No. 8367.

Petitioner filed his *Answer* in said case on December 26, 2011, raising certain special and affirmative defenses, to wit:

> "5. All presumptions are in favor of the correctness of the assessment. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue Examiner and approved by his superior officers will not be disturbed;
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> 6. The Preliminary Assessment Notice (PAN) and Formal Letter of Demand and Assessment Notice No. 45-B023-07 (FAN) dated 17 March 2011 and 14 April 2011 respectively were issued in compliance with the provisions of Section 228 of the National Internal Revenue Code (NIRC) and in accordance to existing Revenue Rules and Regulations in relation to the right of the taxpayer and in the instant case, the petitioner to be informed of the

factual and legal bases upon which the assessments were made;

7. xxx Petitioner was fully appraised of the facts and the law on which the Final Assessment was issued. The Preliminary Assessment Notice (PAN) and Formal Letter of Demand and Assessment Notice No. 45-B023-07 (FAN) which have been sent to and received by the Petitioner provide in detail the manner of computation, the facts and provisions of the law, rules and regulations on which the assessments were based. xxx

xxx xxx xxx

9. The same case also pointed out the elements to be considered as a formal assessment:

a. It should be addressed to the taxpayers;
b. There should be demand made on the taxpayers to pay the tax liability and should have a period for payment set therein;
c. The letter should be mailed or sent to the taxpayers by the Commissioner.

All these elements are present in the Preliminary Assessment Notice (PAN) and Formal Letter of Demand and Assessment Notice No. 45-B023-07 (FAN) dated 17 March 2011 and 14 April 2011 respectively. Furthermore, the receipt of the former and the latter were admitted by the Petitioner.

10. Assuming *arguendo* that these notices are not assessment per se as alleged by the Petitioner, the right of the Respondent to assess the income tax deficiency against the Petitioner had not yet prescribed. The running of the prescriptive period on the making of an assessment and collection of taxes is likewise suspended when the taxpayer requests for a reinvestigation which is granted by the Commissioner. In the case at bar, the Petitioner requested for the reinvestigation of the Assessment Notice No 45-B023-07 for taxable year 2007 as evidence by their letter dated 30 May 2011. The same was granted by the Commissioner through the Regional Director of

Revenue Region No. 7 of Quezon City. Clearly, prescription is never an issue.

11. Furthermore, Revenue Memorandum Order No. 31-2009 provides for the Requirements for the Filing of Claims of Casualty Loss:

a. Sworn Declaration of Loss to be filed within forty-five (45) days after the date of the event, stating the following:

- Nature of the event that gave rise to such loss(es), and the time of its occurrence;
- Description and location of the damaged property(ies);
- Items needed to compute the loss(es), such as: a.) cost or other basis of the property(ies); b.) depreciation allowed, if any; c.) value of the property(ies) before and after the event; d.) cost of repair.
- Amount of insurance or other compensation received or receivable.

a.1. The Sworn Declaration of loss must be supported by the following documents:

- The Financial Statement for the year immediately preceding the event; and,
- Copies of the Insurance Policy(ies), if any, for the concerned property(ies).

b. Proof of the elements of the loss(es) claimed, such as, but not limited to, the following:

- Photographs of the property(ies) before the typhoon and after the typhoon, showing the extent of the damage sustained;
- Documentary evidence for determining the cost or valuation of the damaged property(ies), such as, but not limited to: cancelled checks, vouchers, receipts, and other evidence of costs;
- Insurance policy, in the event that there is an insurance coverage for the property(ies);

• Police report, in cases of robbery/theft during the typhoon and/or as a consequence of looting.

All documents and other evidence submitted to prove such loss(es) shall be subject to verification by the concerned Bureau office, and should be kept by the taxpayer as part of his tax records, and be made available to the duly authorized Revenue Officer(s), upon audit of his Income Tax Return and the declaration of loss.

The Barangay Certification and Affidavit of Loss mentioned and attached in the Petition, although made and/or issued within the 45 days after the date of the event, did not prove or show that they were filed or received by the Bureau within 45 days as mandated by RMO No. 31-2009. Therefore, non-compliance with the rule will not excuse the Petitioner from the requirements of keeping the books of accounts as provided by the Tax Code;

12. Absence of the required documents **within the time fixed by laws or rules and regulations** will not prevent the Respondent from making the assessment and therefore the Petitioner should be assessed based on Best Evidenced Obtainable Rule as provided by Section 6B of the Tax Code which says:

> 'B) Failure to Submit Required Returns, Statements, Reports and other Documents. – When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable. xxx

13. And lastly, the disallowance of expenses is just and right and proper as it is within the bounds of law. Section 34A (1) (b) of the Tax Code required the substantiation of all the expenses. It says:

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> 'b) Substantiation Requirements. - No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records; (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer.' "

During pre-trial held on February 16, 2012, the parties' counsel were given a period of thirty (30) days to file their Joint Stipulation of Facts and Issues (JSFI).[2] On March 19, 2012, the parties submitted their *Joint Stipulation of Facts and Issues*[3], which was approved by the Court in its Resolution dated March 21, 2012.[4]

During trial, respondent presented as witness, Atty. Virgilio S. Farcon, its President/Director. On the other hand, petitioner presented the following witnesses: Francisco M. Diokno — Revenue Officer of the BIR; Fidel B. Martinez— Revenue Officer III of the BIR; and Kelly C. Chong— Revenue Officer of the BIR.

CTA Case No. 8367 was submitted for decision on May 30, 2014, after respondent filed its *Memorandum* on January 7, 2014 and petitioner filed his *Memorandum* on May 27, 2014.

In the assailed Decision dated February 3, 2015, the Court in Division granted the *Petition for Review*, whereby it cancelled and withdrew the deficiency income tax assessment in the amount of ₱516,502.26, inclusive of interest, for calendar year 2007.

Aggrieved, petitioner filed a *Motion for Reconsideration (Decision of 03 February 2015)* filed on February 20, 2015.[5] Thereafter, respondent filed its *Opposition (To the Motion for Reconsideration dated February 20, 2015)* on March 20, 2015.[6] In

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[2] Docket (CTA Case No. 8367), p. 67
[3] Docket (CTA Case No. 8367), pp. 74-77
[4] Docket (CTA Case No. 8367), p. 79
[5] Docket (CTA Case No. 8367), pp. 483 to 488.
[6] Docket (CTA Case No. 8367), pp. 494 to 497.

the Resolution dated April 16, 2015,[7] the Court in Division denied herein petitioner's *Motion for Reconsideration* for lack of merit.

On May 6, 2015, petitioner filed a *Motion For Extension Of Time To File Petition For Review* En Banc.[8] In the Resolution dated May 11, 2015,[9] the Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from May 6, 2015, or until May 21, 2015, within which to file his *Petition for Review.*

On May 21, 2015, petitioner filed his *Petition for Review.*[10] In the Resolution dated May 28, 2015,[11] respondent was ordered to file its Comment thereto, within ten (10) days from notice.

On June 22, 2015, respondent filed an *Urgent Motion for Extension of Time to File Comment.*[12] In the Resolution dated June 24, 2015, respondent was granted a final and non-extendible period of fifteen (15) days from June 25, 2015, or until July 10, 2015, within which to file its Comment. On July 13, 2015, respondent filed a *Motion for Leave to Admit Comment*[13] with attached *Comment (To the Petition for Review dated May 21, 2015).*[14]

In the Resolution dated July 24, 2015,[15] the Court *En Banc* resolved to grant respondent's *Motion for Leave to Admit Comment* and deemed the *Comment* as part of the record of the case, as well as, to require the parties to file their respective memorandum within a period of thirty (30) days from notice.

On September 3, 2015, petitioner filed a *Motion for Extension of Time to File Memorandum,*[16] which was granted by the Court *En Banc* in the Resolution dated September 7, 2015.[17] Nevertheless however, counsel for the petitioner still failed to file his memorandum.[18] Respondent, for its part, filed its *Memorandum* on

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[7] Docket (CTA Case No. 8367), pp. 502 to 506.
[8] EB Docket, pp. 1 to 4.
[9] EB Docket, p. 5.
[10] EB Docket, pp. 6 to 16.
[11] EB Docket, pp. 45 to 46.
[12] EB Docket, pp. 47 to 49.
[13] EB Docket, pp. 52 to 54.
[14] EB Docket, pp. 56 to 61.
[15] EB Docket, pp. 65 to 66.
[16] EB Docket, pp. 67 to 71.
[17] EB Docket, p. 78.
[18] Records Verification dated October 20, 2015 issued by this Court's Judicial Records Division, EB Docket, p. 80.

September 3, 2015.[19] The instant *Petition for Review* was submitted for decision on November 26, 2015.[20]

Hence, this Decision.

THE ISSUE

In accordance with the assignment of error raised by petitioner in the instant petition, the issue for the resolution of this Court *En Banc* is as follows:

> Whether or not the Second Division of the Honorable Court of Tax Appeals erred in cancelling and withdrawing the deficiency income tax assessment because the assessment is valid.[21]

Petitioner's arguments:

Petitioner contends that Assessment Notice with Demand No. 45-B023-07, Exhibit "4", and Formal Letter of Demand with Details of Discrepancies, Exhibit "4-A", clearly state the factual and legal bases and foundation of the assessment.

According to petitioner, the Formal Letter of Demand shows that the income, as declared in the Income Tax Return of the respondent, and the unsupported expenses were the bases and foundation of the assessment. On the other hand, the Details of Discrepancies shows that the expenses, which include purchases, gas and oil, postage, telephone and telegraph amounting to ₱877,202.63, ₱16,339.29, and ₱19,713.53, respectively, were disallowed because they failed to meet the substantiation requirements as provided by Section 34 (A)(1)(b) of the NIRC of 1997.

Moreover, petitioner points out that respondent failed to present proof that the assessment is erroneous or arbitrary; and that such failure will justify the judicial affirmance of the said assessment. Allegedly, it was the respondent who failed to substantiate their claim

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[19] EB Docket, pp. 72 to 77.
[20] EB Docket, pp. 82 to 83.
[21] EB Docket, p. 11.

for expenses which resulted in the disallowance; and that whether it is willful or not, those unsupported expenses should be disallowed.

Lastly, petitioner contends that the Best Evidence Obtainable Rule in the *Hantex* case is useful to determine income; that this is not applicable and necessary in the instant case when it is the declaration of the respondent in his ITR which becomes the basis of the deficiency income taxes; that it is not the duty of the BIR to substantiate the expenses claimed by the taxpayer; and that what the BIR should do is to disallow the expenses if they are not substantiated.

Respondent's counter-arguments:

Respondent counters that it did not fail to substantiate its claimed expenses; and that what is clearly reflected in the records of the case is that respondent was hit by a Best Evidence Obtainable Assessment even before it could substantiate the expenses with a reconstructed accounting record.

It is the position of respondent that the concept of an assessment based on the best evidence obtainable is very different from the concept of failing to substantiate claimed expenses. Respondent asserts that in the former, there would be naturally no occasion for substantiation precisely because the records of the taxpayer are not forthcoming, such as when the records are destroyed by flood; while failure to substantiate claimed expenses under Section 34(A)(1)(b) of the NIRC assumes that the taxpayer did submit some sort of substantiation.

Respondent then exemplified that if petitioner allowed the respondent to reconstruct its records, but such records were deemed insufficient substantiation, then that would indeed be a case of failure to substantiate claimed expenses. In this case, however, the records of the case clearly show that there was no such circumstance and that respondent was immediately issued a FAN even without its records and accounts.

In the words of the *Hantex* ruling, "The presumption of the correctness of an assessment being a mere presumption, cannot be made to rest on another presumption." Other credible evidence must still be relied upon even in just arriving in an estimation of tax liability.

Moreover, respondent submits that all the petitioner had to do was to follow in its own directive under Revenue Memorandum Circular (RMC) No. 23-00 dated November 27, 2000, regarding existing revenue procedures on the Assessment of Deficiency Internal Revenue Taxes Based on the "Best Evidence Obtainable". In this connection, respondent avers that under this RMC, examples of other credible evidence that petitioner could have resorted to include: net worth method of investigation, comparative determination of reasonable business expenses by other taxpayers, or resort to the records of the pertinent government agency on the industry's revenue. According to respondent, petitioner failed to avail of these methods; and notably, the RMC does not authorize the mere use of the FAN or the ITR to make an assessment.

THE COURT *EN BANC*'S RULING

The instant Petition for Review lacks merit.

The subject assessment is a naked assessment, or one that is utterly without foundation, arbitrary and capricious.

Section 6(B) of the NIRC of 1997 provides as follows:

> "SEC. 6. ***Power of the Commissioner to Make Assessments*** *and Prescribe Additional Requirements for Tax Administration and Enforcement.—*
>
> xxx xxx xxx
>
> (B) *Failure to Submit Required Returns, Statements, Reports and other Documents.* — **When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations** or when there is reason to believe that any such report is false, incomplete or erroneous, **the Commissioner <u>shall assess the proper tax</u> on the best evidence obtainable.**
>
> In case a person fails to file a required return or other document at the time prescribed by law, or willfully

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> or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be prima facie correct and sufficient for all legal purposes." *(Emphases supplied)*

The foregoing provision plainly states that *"(w)hen a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous,"* the Commissioner of Internal Revenue *"shall assess the proper tax on the best evidence obtainable"* . In other words, the Commissioner of Internal Revenue is duty-bound or mandated to assess the proper tax on the best evidence that he can obtain in case of the said situations or scenarios.

The mandatory nature of the said provision is apparent by the use of the word "shall". In *Gonzales vs. Chavez, et al.*,[22] the Supreme Court said:

> "**Under the principles of statutory construction, so familiar even to law students, the term 'shall' is nothing if not mandatory.**
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>> 'In common or ordinary parlance and in its ordinary significance, **the term 'shall' is a word of command, and one which has always and which must be given a compulsory meaning, and it is generally imperative or mandatory.** It has the invariable significance of operating to impose a duty which may be enforced, particularly if public policy is in favor of this meaning or when public interest is involved or where the public or persons have rights which ought to be exercised or enforced, unless a contrary intent appears.'
>>
>> '**The presumption is that the word 'shall' in a statute is used in an imperative, and not in a directory, sense.** If a different interpretation is sought, it must rest upon something in the character of the legislation or in the context which

[22] G.R. No. 97351, February 4, 1992.

will justify a different meaning.' *(Emphases supplied)*

Thus, **in the absence of accounting records or other documents necessary for the proper determination of the taxpayer's internal revenue tax liability**, Section 6(B) of the NIRC of 1997 **requires** that the assessment of the tax be determined based on the *"Best Evidence Obtainable"*.[23]

In this case, it is undisputed that the records of petitioner were lost due to the devastation of its office located in Marikina City with flood waters caused by the typhoons *Ondoy* and *Pepeng*.[24] Thus, the tax assessment against respondent should have been made on the best evidence obtainable. However, petitioner did not do so. This is apparent on the basis of the subject tax assessment, which stated in the *Details of Discrepancies*[25] supporting the FLD dated April 14, 2011[26], to wit:

DEFICIENCY INCOME TAX

Unsupported expenses (P 913,255.45) – Verification disclosed that expenses as shown hereunder failed to meet substantiation requirements under Section 34(A)(1)(b) of the NIRC of 1997, as amended. Therefore, disallowed as expense and assessed with corresponding income tax.

Purchases	P	877,202.63
Gas & Oil		16,339.29
Postage, telephone and telegraph		19,713.53
Unsupported expenses	**P**	**913,255.45**

Contrary to the assertion of petitioner, respondent's ITR[27] cannot become or be used as the factual basis for the subject deficiency income taxes. For one, this is so because tax returns filed with the BIR enjoy the presumption that these are in accordance with the law. Tax returns are also presumed correct since these are filed under the penalty of perjury.[28] For another, respondent's ITR does not prove that there are unsupported expenses, for it merely shows

[23] Section 1 of RMC 23-00 dated November 27, 2000.
[24] Exhibits "D", "D-1", and "D-2", Division Docket (CTA Case No. 8367), pp. 85 to 87.
[25] Exhibit "H-2", Division Docket (CTA Case No. 8367), p. 97.
[26] Exhibit "H-1", Division Docket (CTA Case No. 8367), p. 96.
[27] BIR Records, pp. 1 and 8.
[28] *SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014.

the results of operation of respondent for taxable year 2007 and the income tax due for the same year.

Correspondingly, since petitioner did not follow the requirements of the above-quoted Section 6(B) of the NIRC of 1997, particularly, the *"best evidence obtainable"* rule, the subject tax assessment is void.

Thus, there being no factual basis for the subject deficiency income tax assessment, the Court in Division correctly considered the same as a "naked assessment", *i.e.*, without any foundation of character, pursuant to the case of *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*,[29] wherein it was held as follows :

> "We agree with the contention of the petitioner that, as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a prima facie case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.
>
> **However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a 'naked assessment,' *i.e.*, without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice**

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[29] G.R. No. 136975, March 31, 2005.

> **disappears.** ***Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.***
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> xxx xxx xxx
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> xxx. The petitioner cannot rely on the presumption that she and the other employees of the BIR had regularly performed their duties. As the Court held in *Collector of Internal Revenue v. Benipayo*, **in order to stand judicial scrutiny, the assessment must be based on facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.**" *(Emphases supplied)*

The assessment issued by petitioner in this case is a nullity, because there was no valid grant of authority.

Considering that the issue raised in the instant Petition for Review is the validity of the subject tax assessment, this Court finds it worthy to note, in addition to the above disquisition, that there is another ground which renders the said assessment a nullity.

Sections 6(A), 10 and 13 of the NIRC of 1997 provide as follows, to wit:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
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> xxx xxx xxx." *(Emphasis supplied)*

> "SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:
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> xxx xxx xxx
>
> (c) **Issue Letters of Authority for the examination of taxpayers within the region**;
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> xxx xxx xxx." *(Emphasis supplied)*
>
> "SEC. 13. *Authority of a Revenue Officer.* — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, <u>pursuant to a Letter of Authority issued by the Revenue Regional Director</u>**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Emphasis and underscoring supplied)*

In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*,[30] the Supreme Court said:

> "Based on Section 13 of the Tax Code, a Letter of Authority or 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. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
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> xxx xxx xxx
>
> **Clearly, there must be a grant of authority**

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

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

In this case, the authority to examine and verify respondent's records for taxable year 2007 was made only pursuant to TVN No. 2001 00144729 dated June 13, 2008,[31] signed by Revenue District Officer Florante C. De Castro, which authorized Revenue Officer (RO) Francisco M. Diokno and Group Supervisor (GS) Godofredo V. San Diego to conduct the said examination and verification.

Thus, considering that the said authority was not given by the pertinent Regional Director, the subject tax assessment or examination is a nullity.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **DENIED** for lack of merit. The assailed Decision dated February 3, 2015 and Resolution dated April 16, 2015 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

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[31] Exhibit "6," BIR Records, p. 7.

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice