**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**SECOND DIVISION**

**GLOBAL ENERGY SUPPLY CORPORATION,**
*Petitioner,*

- versus –

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA Case No. 9673**

Members:

**CASTAÑEDA, JR.,** *Chairperson,*
**MINDARO-GRULLA,** and
**BACORRO-VILLENA,** *JJ.*

Promulgated:

JUN 11 2020
2:00 p.m.

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# DECISION

**CASTAÑEDA, JR., *J.:***

## THE CASE

This *Petition for Review* filed by Global Energy Corporation on August 29, 2017 against the Commissioner of Internal Revenue, prays for the cancellation of respondent's tax assessments, which found petitioner liable for alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), and documentary stamp tax (DST) for taxable year ending December 31, 2013, in the aggregate amount of ₱31,299,622.04 and compromise penalty in the amount of ₱30,000.00.[1]

[1] Summary of the Case, Pre-Trial Order dated January 4, 2018, Docket – Vol. II, p. 756.

## THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Philippines which holds office at the 22/F GT Tower International, 6813 Ayala Ave. cor. H.V. Dela Costa St., Makati City, Metro Manila.[2] It is registered as a taxpayer under the jurisdiction of Revenue District Office (RDO) No. 50, Revenue Region No. 8 – Makati City.[3]

Respondent is the duly appointed Commissioner of Internal Revenue tasked to implement the National Internal Revenue Code (NIRC) of 1997, as amended, who is being represented in this case by the legal officers of the Legal Division, Revenue Region No. 8 – Makati City, with office address at the 2nd Floor, Legal Division, BIR Building, No. 313 Gil Puyat Ave., Makati City.[4]

## THE FACTS

On July 1, 2014, respondent issued *Letter of Authority* (LOA) SN eLA201100051565/LOA-050-2014-00000132 authorizing Revenue Officer (RO) Joey Fragante and Group Supervisor (GS) Roderick Cantillana of Revenue District Office (RDO) No. 50 – South Makati to examine the books of accounts of petitioner for taxable year 2013 pursuant to Section 6(A) and Section 10(C) of the NIRC of 1997, as amended.[5]

On April 19, 2016, BIR Revenue District Officer Rosita U. Meniano issued a *Memorandum of Assignment* to Revenue Officer Ma. Carmen V. Sy and Group Supervisor Josalyn E. Tan referring to them the subject case/docket for continuation of the audit/investigation to replace the previously assigned Revenue Officer, RO Joey Fragante, who transferred to another District office and for further appropriate action.[6]

Thereafter, *Memorandum of Assignment* dated June 17, 2016 was issued by BIR Revenue District Officer Meniano to RO Angeline S. Ifurung and GS Carmen V. Sy referring the subject case/docket for continuation of the audit/investigation to replace the previously

[2] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 746.
[3] Par. 3, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 746.
[4] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. II, p. 749.
[5] Par. 4, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 747; Exhibit "P-2", Docket – Vol. III, p. 1115.
[6] Par. 4, Stipulation of Facts, JSFI, Docket – Vol. II, p. 750.

assigned Revenue Officer, RO Sy, who was promoted as supervisor per RTAO # 113-2016.[7]

On December 8, 2016, respondent issued a two-part *Preliminary Assessment Notice* (PAN) finding petitioner liable for deficiency income tax, VAT, EWT, WTC, and DST in the aggregate amount of ₱30,916,765.04 and for compromise penalty of ₱30,000.00 for the taxable year ended December 31, 2013.[8]

Petitioner received the PAN on December 12, 2016. Petitioner then filed its protest to the PAN on December 27, 2016 though a letter dated December 23, 2016.[9]

On December 28, 2016, respondent issued the *Formal Assessment Notice* (FAN), together with six *Assessment Notices*, for taxable year 2013 in the aggregate amount of ₱31,299,622.04.[10] Except for the increase in deficiency interest, the assessments in the FAN and the PAN are the same.[11]

On January 19, 2017, respondent issued a letter to petitioner acknowledging receipt of its protest to the PAN and stating that it will form part of the tax docket. In the same letter, respondent reminded petitioner to submit its protest against the PAN within 30 days from receipt thereof.[12]

On February 1, 2017, petitioner filed its protest to the FAN through a letter evenly dated, submitted all the supporting documents to prove its defenses against the assessments and requested for reinvestigation of the assessments.[13]

Petitioner then filed the present *Petition for Review* with this Court on August 29, 2017.[14]

Respondent filed his *Answer* on October 24, 2017,[15] interposing the following special and affirmative defenses, to wit:

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[7] Exhibit "R-3", *BIR Records*, p. 473.
[8] Par. 5, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 747.
[9] Par. 6, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 747.
[10] Par. 7, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 747.
[11] Par. 8, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 747.
[12] Par. 9, Summary of Admitted Facts, JSFI, Docket – Vol. II, pp. 747 to 748.
[13] Par. 10, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 748.
[14] Docket – Vol. I, pp. 10 to 26.

"**SPECIAL AND AFFIRMATIVE DEFENSES**

4) Respondent reiterates and repleads the preceding paragraphs of the Answer as part of the Special and Affirmative Defenses.

5) Petitioner's claims and allegations must have supporting documents.

6). No deduction shall be allowed 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.

**Income Tax Assessment**

7) Respondent disallowed petitioner expenses in amount of P 53,541,156.00 due to non-withholding of withholding tax. Comparison of Income payments subject to withholding tax claimed per financial statement/income tax return against petitioner returns (BIR Form 1601-E) disclosed that there were not subjected to withholding tax hence said expenses were disallowed pursuant to Section 34(K) of the National Internal Revenue Code of 1997 (NIRC), as amended.

**Unaccounted Income Payment of Php 41,571.00**

8) Verification disclosed that management fee declared per return of BIR Form 1601-E was not explained or accounted for in the financial statement/income tax return. Said amounts were considered declared source of income as cited in the case of Perez vs. CTA, CIR L-9193 dated May 29, 1957 for it has been held that sources of funds that are not accounted for in the taxpayer's return led to the inference that part of his income had not been reported, thus, subject to income tax rate pursuant to Section 27 of the

[15] Docket – Vol. I, pp. 76 to 84.

Tax Code in relation to Section 32 of the same code, as amended.

**Disallowed Salaries and Wages due to non-withholding the amount of Php 6,995,083.00**

9) Verification disclosed that there were salaries and wages which were not subjected to withholding tax on compensation after comparing the salaries and wages per Petitioner Tax Return of BIR Form 1601-C against petitioner's Financial Statements, which was deemed not subject to withholding tax, hence, disallowed in the computation of the corrected taxable income pursuant to Section 34 (K) of the NIRC, as amended.

**Receipts not subjected to VAT amounting to Php8,453,199.04**

Comparison of Gross Receipts computed based on vatable sales reported per VAT returns against adjusted vatable sales per books showed that there are receipts not subjected to Vat amounting to Php 8,453,199.04. Hence, petitioner is assessed pursuant to Section 108 of the NIRC, as amended.

**Expanded Withholding Tax**

10) Verification disclosed that the petitioner failed to withhold and remit corresponding tax due on income payments amounting to Php 1,070,646.12, hence, the same was assessed pursuant to Section 2.57.2 of Revenue Regulations No. 2-98, as amended by Revenue Regulations No. 17-2003.

**Withholding Tax on Compensation**

11) Verification disclosed that petitioner failed to withhold and remit corresponding Withholding Tax on Compensation due on salaries and wages amounting to Php 405,378.24, hence, the same was assessed pursuant to Section 32 (B)(7)(e) of the NIRC in relation to Section 79(A) of the NIRC, as amended, and implemented under Section 2.78 of Revenue Regulations 2-98. Jc

**Documentary Stamp Tax**

12) Verification disclosed that the subject taxpayer failed to pay the Documentary Stamp Tax (DST) due on the (1) issuance/subscription of shares and (2) on reported loan availments/advances to and from related parties and employees amounting to Php 149,500,000.00, hence, petitioner is liable to pay Php 747,500.00, the corresponding DST pursuant to Section 173 of the NIRC, as amended.

**3 Year Period Prescription Not Applicable**

13) The running of the three-year statute of limitation as provided under Section 203 of the 1997 NIRC is not applicable in this case but rather the 10 year prescriptive period pursuant to Section 222(a) of the NIRC which states that:

> "SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.
>
> (a) In the case of a **false or fraudulent return** with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten **(10) years after the discovery of the falsity, fraud or omission:** Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof."(Emphasis Provided)

14) Under 1997 Tax Code provides that under declaration of sales, receipts or income in an amount exceeding 30 percent of that declared per return, and overstatement of the deductions claimed by an amount exceeding 30 percent shall be construed as substantial, thus, creating a prima facie case of a false or fraudulent return.

15) The petitioner paid PHP 262,648.79 for VAT, while it is assessed for VAT deficiency amounting to PHP 1,601,336.98. In this case there is a prima facie case of a false or fraudulent return. Thus, the petitioner can be assessed within 10 years from the time of filing of the Petitioner's VAT returns.

16) The petitioner omitted to file returns or filed false returns for the assessed VAT, DST, Expanded Withholding Tax, and Withholding Tax on Compensation. Thus, the petitioner can still be assessed within 10 years from discovery.

17) On the issue of compromise penalties, it has long been held that tax laws imposing penalties for delinquencies are intended to hasten tax payments by punishing evasions or neglect of duty in respect thereof. If penalties could be condoned for flimsy reasons, the law imposing penalties for delinquencies would be rendered nugatory, and the maintenance of the Government and its multifarious activities will be adversely affected.

18) Further, the Supreme Court has likewise explained that it is mandatory to collect penalty and interest at the stated rate in case of delinquency. The intention of the law is to discourage delay in the payment of taxes due the Government and, in this sense, the penalty and interest are not penal but compensatory for the concomitant use of the funds by the taxpayer beyond the date when he is supposed to have paid them to the Government.

*19)* The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right (Tan Guan vs. Court of Tax Appeals, et. al., 19 SCRA 903 [1967] Collector of Internal Revenue vs. Bohol Land Transportation Co., 107 Phil 967 [1960])

20) Taxes are the lifeblood of the nation, the Court has always applied the doctrine of strict interpretation in construing tax exemptions (Commissioner of Internal Revenue vs. Court of Appeals, 271 SCRA 613, April 1997).

21) Assessment are presumed correct and official functions are regularly done. The burden of proving that the assessments are not correct rests on the petitioner.

22) All presumptions are in favor of the correctness of tax assessments. (Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290)."

The pre-trial conference was set to, and held on, November 23, 2017.[16]

Respondent transmitted the *BIR Records* on November 23, 2017.[17]

*Respondent's Pre-Trial Brief* was submitted on November 16, 2017;[18] while the *Pre-Trial Brief* for petitioner was filed on November 20, 2017.[19]

Thereafter, the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI) on December 7, 2017.[20]

On January 4, 2018, the Court issued the Pre-Trial Order, approving and adopting the parties' JSFI, and deeming the termination of the Pre-Trial.[21]

Petitioner then filed on January 16, 2018 a *Motion to Substitute Witness, Admit the Judicial Affidavit of Ms. Pamela Grace S. Tangso and Amend Pre-Trial Order,* praying that the Court issue an Order (i) allowing Ms. Pamela Grace S. Tangso to testify in place of Ms. Mary Ann C. Vergara; (ii) admitting the Judicial Affidavit in lieu of Direct Examination of Pamela Grace S. Tangso; and (iii) Amending the Pre-Trial Order to substitute Ms. Mary Ann C. Vergara with Ms. Pamela Grace S. Tangso as witness and list the Judicial Affidavit in lieu of Direct Examination of Pamela Grace S. Tangso as Exhibit "P-16".[22] In the Resolution dated January 22, 2018,[23] the Court granted

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[16] Notice of Pre-Trial Conference, Docket – Vol. I, pp. 86 to 87; Minutes of the Hearing held on, and Order dated, November 23, 2017, Docket – Vol. II, pp. 743 and 742, respectively.
[17] Docket – Vol. II, p. 744.
[18] Docket – Vol. II, pp. 735 to 740.
[19] Docket – Vol. I, pp. 119 to 132.
[20] Docket – Vol. II, pp. 746 to 754.
[21] Docket – Vol. II, pp. 756 to 761.
[22] Docket – Vol. II, pp. 762 to 766.
[23] Docket – Vol. II, p. 895.

petitioner's *Motion* and admitted the Judicial Affidavit of Ms. Pamela Grace S. Tangso.[24]

The trial of the case proceeded.

During trial, petitioner presented documentary and testimonial evidence. As for its testimonial evidence, petitioner offered the testimonies of (1) Mr. Philip D. Dasalla,[25] petitioner's Vice President for Commercial Operations; (2) Ms. Pamela Grace S. Tangso,[26] petitioner's Tax Manager; and (3) Mr. Emmanuel Y. Mendoza,[27] the Court-commissioned Independent Certified Public Accountant (ICPA).[28]

On April 20, 2018, petitioner filed an *Urgent Motion for Leave to File Supplemental ICPA Report, to Recall ICPA as Witness, and Defer Filing of Formal Offer of Evidence.*[29] Respondent failed to file his comment on petitioner's *Urgent Motion.*[30] Thus, in the Resolution dated May 30, 2018,[31] the Court granted petitioner's *Urgent Motion,* subject to the payment of a fine of ₱5,000.00 to be paid five days from notice, and cancelled and reset the initial presentation of respondent's evidence until further orders from the Court.

The *ICPA Report* and *Supplemental ICPA Report* were submitted on March 20, 2018[32] and June 30, 2018,[33] respectively.

Petitioner filed its *Formal Offer of Evidence with Manifestation* on June 22, 2018, praying that the Court admit in evidence all the documentary exhibits described therein in relation to the purposes for which the same documentary exhibits are offered together with the testimonies of Mr. Lasala, Ms. Tangso, and Mr. Mendoza, and the

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[24] Exhibit "P-20", Docket – Vol. II, pp. 767 to 792.
[25] Exhibit "P-17", Docket – Vol. II, pp. 440 to 454; Minutes of the hearing held on, and Order dated, January 31, 2018, Docket – Vol. II, pp. 905 and 906, respectively.
[26] Exhibit "P-20", Docket – Vol. II, pp. 767 to 791; Minutes of the hearing held on, and Order dated, January 31, 2018, Docket – Vol. II, pp. 905 and 906, respectively.
[27] Exhibit "P-18", Docket – Vol. II, pp. 916 to 931; Minutes of the hearing held on, and Order dated, April 16, 2018, Docket – Vol. III, p. 934; Minutes of the hearing held on, and Order dated, June 20, 2018, Docket – Vol. III, p. 1087 and Docket – Vol. IV, pp. 1395 to 1396, respectively.
[28] *Oath of Commission* dated February 15, 2018, Docket – Vol. II, p. 907; *Judicial Affidavit of Emmanuel Y. Mendoza (In Lieu of Direct Examination),* Docket – Vol. I, pp. 104 to 107; Minutes of the hearing held on, and Order dated, January 31, 2018, Docket – Vol. II, pp. 905 and 906, respectively.
[29] Docket – Vol. II, p. 939.
[30] Records Verification dated May 22, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 958.
[31] Docket – Vol. III, pp. 964 to 966.
[32] Docket, Vol. II, p. 910.
[33] Docket – Vol. III, p. 1071.

said documentary and testimonial evidence be favorably considered and acted upon in the adjudication of petitioner.[34]

Respondent likewise presented documentary and testimonial evidence. His lone witness is Ms. Angeline S. Ifurung,[35] a Revenue Officer of the BIR.

On June 25, 2018, respondent filed his *Formal Offer of Evidence*.[36]

On July 2, 2018, respondent filed a *Motion to Admit Comment (With Comment to Petitioner's Formal Offer of Evidence)*.[37] On even date, petitioner filed its *Comment to the Respondent's Formal Offer of Evidence*.[38] In the Resolution dated July 10, 2018,[39] the Court granted respondent's *Motion* in the interest of substantial justice, admitted respondent's *Comment*[40] and noted petitioner's *Comment*.

Acting on petitioner's FOE *with Manifestation* and respondent's FOE, the Court, in the Resolution dated December 5, 2018,[41] admitted petitioner's and respondent's Exhibits, *except* for the following Exhibits of petitioner and respondent:

1) Exhibits "P-8-2" and "P-11-2", for failure to present their originals for comparison;

2) Exhibits "P-16", "P-21", "P-22", "P-23-1" & "P-23-2", "P-24", "P-24-1", "P-24-2", "P-25", "P-25-1", "P-25-2", "P-26-1" to "P-26-5", "P-26-6" to "P-26-19", "P-27-1", "P-28-1" to "P-28-15", "P-29", "P-30-1" to "P-30-15", "P-32", "P-33-1" & "P-33-2", "P-34-1" & "P-34-2", "P-35-1" & "P-35-2", "P-36-1" & "P-36-2" and "P-38-13", for not being found in the records of the case; and

3) Exhibits "R-2" and "R-2-a", for failure to have the exhibits identified.

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[34] Docket – Vol. III, pp. 1089 to 1108.
[35] Exhibit "R-30", Docket – Vol. III, pp. 970 to 996; Minutes of the hearing held on, and Order dated June 20, 2018, Docket – Vol. III, p. 1087 and Docket – Vol. IV, pp. 1395 to 1396, respectively.
[36] Docket – Vol. IV, pp. 1309 to 1326.
[37] Docket – Vol. IV, pp. 1304 to 1326.
[38] Docket – Vol. IV, pp. 1299 to 1301.
[39] Docket – Vol. IV, pp. 1398.
[40] Docket – Vol. IV, pp. 1307 to 1308.
[41] Docket – Vol. IV, pp. 1400 to 1403.

In the same Resolution, the Court gave the parties a period of thirty (30) days from notice to file their respective memorandum and noted petitioner's *Manifestation.*[42]

On December 27, 2018, petitioner filed a *Motion for Partial Reconsideration [of the Resolution dated December 5, 2018] and Submission with Motion to Defer Filing of Memorandum,* praying for the admission of Exhibits "P-8-2", "P-11-2", "P-16", "P-21", "P-22", "P-23-1" & "P-23-2", "P-24", "P-24-1", "P-24-2", "P-25", "P-25-1", "P-25-2", "P-26-1" to "P-26-5", "P-26-6" to "P-26-19", "P-27-1", "P-28-1" to "P-28-5", "P-29", "P-30-1" to "P-30-15", "P-32", "P-33-1" & "P-33-2", "P-34-1" & "P-34-2", "P-35-1" & "P-35-2", "P-36-1" & "P-36-2", as evidence of petitioner; and the deferment of the filing of petitioner's *Memorandum* to 30 days from the date of petitioner's receipt of this Court's resolution of the present motion.[43] Respondent failed to file his comment on petitioner's *Motion for Partial Reconsideration and Submission with Motion to Defer Filing.*[44]

In the Resolution dated March 18, 2019,[45] the Court partially granted and noted petitioner's *Motion for Partial Reconsideration and Submission*; admitted Exhibits "P-8-2", "P-11-2", "P-16", "P-21", "P-22", "P-23-1" & "P-23-2", "P-24", "P-24-1", "P-24-2", "P-25", "P-25-1", "P-25-2", "P-26-1" to "P-26-5", "P-26-6" to "P-26-19", "P-27-1", "P-28-1" to "P-28-5", "P-29", "P-30-1" to "P-30-15", "P-32", "P-33-1" & "P-33-2", "P-34-1" & "P-34-2", "P-35-1" & "P-35-2", "P-36-1" & "P-36-2"; but still denied the admission of Exhibits "P-28-6" to "P-28-15", and "P-38-13" for not being found in the records of the case. In the same Resolution, the Court gave the parties a period of thirty (30) days from notice to file their respective memorandum.

The *Memorandum (of the Petitioner)* was submitted on April 24, 2019;[46] while the *Memorandum for Respondent* was filed on April 25, 2019.[47]

The present case was considered submitted for decision on May 10, 2019.[48] *ja*

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[42] *Id.*
[43] Docket – Vol. IV, pp. 1410 to 1421.
[44] Records Verification dated February 1, 2019 issued by the Judicial Records Division of this Court, Docket Vol. IV, p. 1463.
[45] Docket – Vol. IV, pp. 1465 to 1467.
[46] Docket – Vol. IV, pp. 1470 to 1515.
[47] Docket – Vol. IV, pp. 1518 to 1528.
[48] Docket – Vol. IV, p. 1529.

## THE ISSUES

The parties submitted the following issue[49] for the Court's resolution, to wit:

> "Whether or not Petitioner is liable for deficiency income tax, VAT, EWT, withholding tax on compensation, and DST in the aggregate amount of ₱P31,299,622.04, and the Compromise Penalty in the amount of ₱30,000.00 for taxable year 2013."

***Petitioner's arguments:***

Petitioner argues that the deficiency tax assessments are null and void considering that there is no LOA which authorized RO Ifurung to conduct the examination of petitioner and that it is not liable to pay the alleged deficiency income tax, deficiency VAT, deficiency EWT, deficiency WTC, and deficiency DST, inclusive of increments, and compromise penalty.

***Respondent's counter-arguments:***

Respondent, on the other hand, counter-argues that petitioner's claims and allegations must have supporting documents; that the running of the three-year statute of limitations as provided under Section 203 of the NIRC of 1997, as amended, is not applicable in this case but rather the 10-year prescriptive period because petitioner omitted to file returns or filed false returns for the assessed VAT, DST, EWT, and WTC; that tax laws imposing penalties for delinquencies are intended to hasten tax payments by punishing evasions or neglect of duty in respect thereof; and that assessments are presumed correct and official functions regularly done.

## THE COURT'S RULING

The present *Petition for Review* is meritorious.

***The revenue officer was not duly authorized to conduct the audit investigation on***

[49] Stipulation of Issues, JSFI, Docket – Vol. II, p. 751.

***petitioner, and to recommend the assessment of any deficiency taxes due against the latter.***

Section 6(A) of the NIRC of 1997, as amended, reads:

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

Based on the foregoing, an authority emanating from respondent or his duly authorized representative is required before an examination and an assessment may be made against a taxpayer.

Relative thereto, Section 13 of the NIRC of 1997, as amended, provides that the authority of an RO to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to an LOA, to wit:

> "SEC. 13. *Authority of a Revenue Officer.* – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Emphasis and underscoring supplied.)* ƒ

Thus, a grant of authority, through an LOA, must be made assigning an RO, to perform tax assessment functions, in order that such officer may examine taxpayers and collect the correct amount of tax, or to recommend the assessment of any deficiency tax due.

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[50] the Supreme Court emphasized the importance and significance of an LOA in examining the books of accounts and other accounting records of taxpayers and in assessing internal revenue taxes, to wit:

> "An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. **It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.** An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:
>
> > SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
> >
> > (A) Examination of Return and Determination of Tax Due. – After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer</u>** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
> >
> > x x x x (Emphasis and underlining Ours)

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

Based on the afore-quoted provision, it is clear that **unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.** The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**

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In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[51] the Court said that:

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

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Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. **To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial**

[51] 649 Phil. 519 (2010).

**records but only on whether a taxpayer is being subject to examination.**

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That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void**." *(Emphases and underscoring supplied)*

Based on the foregoing, an RO must be authorized, through an LOA, in order that the said officer may validly examine the books of accounts and other accounting records of a taxpayer. In the absence of an LOA, the tax assessments issued by the BIR against such taxpayer shall be void.

In the present case, the examination of petitioner's books of accounts and other accounting records for internal revenue taxes for taxable year 2013 was authorized under LOA SN eLA201100051565/LOA-050-2014-00000132 dated July 1, 2014, authorizing RO Joey Fragante and GS Roderick Cantillana of Revenue District Office No. 50 – South Makati to examine the books of accounts of petitioner for taxable year 2013 pursuant to Section 6(A) and Section 10(C) of the NIRC of 1997, as amended.[52] However, RO Fragante was unable to complete the audit because he transferred to another District office.[53] With his transfer, the audit of petitioner's record was reassigned, through the *Memorandum of Assignment* dated April 19, 2016, to RO Ma. Carmen V. Sy and GS Josalyn E. Tan, who continued the audit.[54] Thereafter, the *Memorandum of Assignment* dated June 17, 2016 was issued reassigning the case to RO Angeline S. Ifurung and GS Ma. Carmen V. Sy to continue the audit.[55]

[52] Par. 4, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 747; Exhibit "P-2", Docket – Vol. III, p. 1115.
[53] Par. 4, Stipulation of Facts, JSFI, Docket – Vol. II, p. 750.
[54] Par. 4, Stipulation of Facts, JSFI, Docket – Vol. II, p. 750.
[55] Exhibit "R-3", BIR Records, p. 473.

Applying the Supreme Court's ruling in the *Medicard* case to the present case, the *Memorandum of Assignment* issued to RO Ifurung is not equivalent to the LOA, as required under the law.

The records fail to show that an LOA authorizing RO Ifurung or GS Sy to examine petitioner's financial books and records was ever issued. Only the said *Memoranda of Assignment* dated June 17, 2016[56] was issued to RO Ifurung and GS Sy for audit/verification of all internal revenue taxes for taxable year 2013 of petitioner pursuant to e-Letter of Authority No. 201100051565 dated April 19, 2016 [*sic*].

The issuance of the same *Memorandum of Assignment* was confirmed in the testimony of RO Ifurung herself, in her Judicial Affidavit,[57] to wit:

> "Q: How did you come to know the petitioner in this case?
>
> A. I came to know the petitioner in this case when Revenue District Officer Rosita U. Meniano issued *Memorandum of Assignment* No. RR8-050-REA-062016-728 dated June 17, 2016, authorizing me to determine the tax liability of ALL INTERNAL REVENUE TAXES of GLOBAL SUPPLY ENERGY CORP. for the year 2013 with TIN: 234-621-270 pursuant to Letter of Authority with No. 201100051565 dated July 1, 2014."

It bears noting, however, that the record is bereft of any evidence showing that a new LOA was issued specifically authorizing the RO Ifurung to conduct the audit investigation. As mentioned earlier, the LOA dated July 1, 2014 only authorizes RO Joey Fragante and GS Roderick Cantillana of RDO No. 50 – South Makati to conduct the audit of petitioner.

Moreover, it must be noted that the failure of respondent or his duly authorized representative to issue a new LOA runs counter to Revenue Memorandum Order No. 43-90 dated September 20, 1990, which lays down the guidelines for the

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[56] Exhibit "R-3", BIR Records, p. 473.
[57] Exhibit "R-30", Docket – Vol. III, p. 970 to 996, at p. 971.

audit/investigation and issuance of LOA (referred to below as L/A), pertinent portions of which state:

> "C. Other policies for issuance of L/As.
>
> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority.**
>
> xxx xxx xxx
>
> 5. **Any re-assignment/transfer of cases to another RO(s)**, and revalidation of L/As which have already expired, **shall require the issuance of a new L/A**, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As." *(Emphases and underscoring supplied)*

It is explicit from the foregoing that all audit investigations must be conducted by a duly designated RO authorized to perform audit and examination of taxpayer's books and accounting records, pursuant to a Letter of Authority. In case of re-assignment or transfer of cases to another RO, it is mandatory that a new L/A or LOA be issued with the corresponding notation thereto.

In the present case, no new LOA was issued, and the only basis for the revenue officer's authority was the above-mentioned *Memorandum of Assignment*.

Considering that RO Ifurung and GS Sy were not duly authorized by a new LOA, the subject tax assessments, which came about as a result of their examination of petitioner's books of accounts and accounting records for taxable year 2013, are void. It must be emphasized that a void assessment bears no valid fruit.[58]

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[58] *Commissioner of Internal Revenue* vs. *Azucena T. Reyes,* G.R. Nos. 159694 & 163581, January 27, 2006.

***The subject compromise penalty should not be imposed against petitioner.***

Respondent insists that petitioner is liable for the imposed compromise penalty. He reasons that if penalties could be condoned for flimsy reasons, the law imposing penalties for delinquencies would be rendered nugatory, and the maintenance of the Government and its multifarious activities will be adversely affected.

We do not agree.

A compromise implies agreement. One party cannot impose it upon the other.[59] In other words, a compromise is, by its nature, mutual in essence.[60]

Considering that there is no indication that petitioner agrees to the payment of compromise penalty, and since petitioner is, in fact, disputing the imposition thereof, petitioner must not be held liable therefor.

With the foregoing ruling, it becomes unnecessary to address the other grounds raised in the present case.

**WHEREFORE**, the present *Petition for Review* is **GRANTED**. Accordingly, the subject assessments for deficiency income tax, VAT, EWT, WTC, and DST for taxable year ending December 31, 2013, in the aggregate amount of ₱31,299,622.04, and compromise penalty in the amount of ₱30,000.00, issued by respondent against petitioner, for taxable year 2013 are **CANCELLED** and **SET ASIDE**, for being invalid.

**SO ORDERED.**

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

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[59] *Commissioner of Internal Revenue vs. Abad*, G.R. No. L-19627, June 27, 1968.
[60] *De San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.

*WE CONCUR:*

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
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.

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
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