REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

CENTRAL LUZON DRUG CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. **10045**

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
MAY 0 2 2024 4:00 p.m.

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Central Luzon Drug Corporation (**petitioner**) pursuant to Section 3(a)[2], Rule 8 in relation to Section 3(a)(2)[3], Rule 4 of the Revised Rules of the Court of

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1 Filed on 05 March 2019, Division Docket, Volume I, pp. 10-47.

2 **SEC. 3**. *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

3 **SEC. 3**. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

Tax Appeals[4] (**RRCTA**). It seeks the cancellation of respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) deficiency tax assessments against petitioner in the total amount of ₱1,565,675,063.68 for taxable year (**TY**) 2010.

PARTIES OF THE CASE

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office at No. 7, Richmond Avenue, Bagumbayan, Quezon City. It operates the drug stores bearing the name Mercury Drug located in Central Luzon under a Franchise Agreement with Mercury Drug Corporation.[5]

Respondent, on the other hand, is the CIR who is charged with, among others, the duty of assessing and collecting internal revenue taxes, fees or other charges, penalties imposed under the National Internal Revenue Code (**NIRC**) of 1997, as amended or other laws or portions thereof administered by the Bureau of Internal Revenue (**BIR**).[6] He or she holds office at the BIR, National Office Building, BIR Road, Diliman, Quezon City.

FACTS OF THE CASE

On 22 September 2011, petitioner received Letter of Authority (**LOA**) No. LOA-116-2011-00000028/eLA201100002957 dated 20 September 2011[7], authorizing Revenue Officers (**ROs**) Zenaida Paz (**Paz**), Myrna Ramirez (**Ramirez**), Ma. Salud Maddela (**Maddela**), Cletofel Parungao (**Parungao**), Allan Maniego (**Maniego**), Joel Aguila (**Aguila**), and Group Supervisor (**GS**) Glorializa Samoy (**Samoy**) of Large Taxpayer (**LT**) Audit Division 1, to examine petitioner's books of

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(2) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action...*Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code[.]

4 A.M. No. 05-11-07-CTA.

5 Exhibit "P-1", Division Docket, Volume I, pp. 294-295.

6 Paragraph 1, Admitted Facts, Pre-Trial Order, id., Volume II, p. 644.

7 Exhibit "P-15", id., Volume I, p. 243.

accounts for all internal revenue taxes for the period of 01 January 2010 to 31 December 2010, or for TY 2010 (**first LOA**).

On 07 March 2013, petitioner received respondent's letter dated 04 March 2013[8] informing it of the reassignment of the audit of its books to RO Rosario A. Arriola (**Arriola**) and GS Rolando M. Balbido (**Balbido**). The said letter was signed by the Chief of the Regular LT Audit Division 1, Cesar D. Escalada (**Chief Escalada**).[9] This was pursuant to Memorandum of Assignment (**MOA**) No. LOA-116-2013-0446 dated 25 February 2013.[10]

Subsequently, petitioner received another letter dated 18 April 2013[11], which Chief Escalada also signed, informing it of the designation of ROs Shella Samaniego (**Samaniego**), Carolyn Mendoza (**Mendoza**) and Reynante Martirez (**Martirez**) in the audit team, thus, they were also authorized to assist in the audit of petitioner's books for TY 2010.[12]

In the *interim*, petitioner's President, Jacinto J. Concepcion (**President Concepcion**), executed a series of Waivers of the Defense of Prescription (**waivers**) under the Statute of Limitations of the NIRC, as follows:

a. On 21 May 2013, petitioner executed the <u>first (1st) waiver</u> to extend the period of assessment until 30 June 2014. Then Officer-in-Charge - Assistant Commissioner for LT Services Alfredo V. Misajon (**OIC-ACIR Misajon**), accepted the waiver on 31 May 2013.[13]

b. On 05 May 2014, petitioner also executed the <u>second (2nd) waiver</u> to extend the period of assessment until 31 December 2014. Then OIC-ACIR Misajon accepted the same on 09 May 2014.[14]

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8 Exhibit "P-16", id., p. 244.
9 See par. 3, Admitted Facts, supra at note 6.
10 Exhibit "R-3", BIR Records, Folder 4, p. 636.
11 Exhibit "P-17", Division Docket, Volume I, p. 245.
12 See par. 4, Admitted Facts, supra at note 6.
13 Exhibit "P-18", Division Docket, Volume I, p. 248.
14 Exhibit "P-19", id., p. 249.

c. On 16 September 2014, petitioner executed a third (3rd) waiver to extend the period of assessment until 30 June 2015. Then OIC-ACIR Misajon accepted it on 24 September 2014.[15]

Later, on 09 February 2015, respondent issued a Preliminary Assessment Notice (**PAN**) with Details of Discrepancies[16], finding petitioner liable for alleged deficiency income tax (**IT**), value-added tax (**VAT**), expanded withholding tax (**EWT**), and documentary stamp tax (**DST**).

On 02 March 2015, respondent issued a Formal Letter of Demand (**FLD**) with Details of Discrepancies[17], together with the Assessment Notices[18] (**ANs**), demanding the payment of the alleged deficiency taxes of ₱1,379,350,286.34. Unable to agree with the BIR's findings and issuances, petitioner filed its Protest (by way of a request for reinvestigation) on 30 March 2015.[19]

On 27 May 2015, petitioner forwarded its documents to support its claim in the Protest.[20] In response, on 29 June 2016, respondent issued the Final Decision on Disputed Assessment[21] (**FDDA**) (with Details of Discrepancies and the ANs) alleging that petitioner is liable for IT, VAT, EWT and DST in the aggregate amount of ₱1,567,244,729.09 for TY 2010.

Aggrieved, on 29 July 2016, petitioner filed a Request for Reconsideration[22] where it maintained that the assessments in the FDDA are bereft of any factual and legal bases, thus, must be cancelled.

After two (2) years, or on 30 January 2019, petitioner received another LOA with No. 116-2011-00000028/eLA201600056703, dated 08 January 2019[23], authorizing RO Mendoza and GS Arriola[24] to conduct the audit of petitioner's books and accounting records for all internal

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15 Exhibit "P-20", id., p. 250.
16 Exhibit "P-2", id., pp. 296-305.
17 Exhibit "P-4", id., pp. 349-358.
18 Exhibit "P-5", id., pp. 372-375.
19 Exhibit "P-6", id., pp. 376-397.
20 Exhibit "P-7", id., pp. 398-423.
21 Exhibit "P-8", id., pp. 424-433.
22 Exhibit "P-9", id., pp. 449-463.
23 Exhibit "P-10", Division Docket, Volume II, p. 545.
24 Based on the document, Arriola's position is indicated therein as Group Supervisor (GS). However, based on her Judicial Affidavit, her position is still indicated as a Revenue Officer (RO). For purposes of discussion, We shall use the position as an RO for uniformity.

revenue taxes for TY 2010 (**second LOA**). OIC-ACIR Teresita M. Dizon (**Dizon**) signed this second LOA.

Thereafter, petitioner received respondent's letter dated 04 February 2019[25] that denied its prior Request for Reconsideration and maintained the deficiency tax assessments of ₱1,565,675,063.68. The said letter was deemed as respondent's final decision on the subject assessments.

Unsatisfied with the result, within 30 days from the receipt of the letter of 04 February 2019, petitioner filed its Petition for Review[26] before this Court on 05 March 2019. It was docketed as CTA Case No. 10045 and was initially raffled to the Court's Third Division.

On 29 May 2019, respondent filed his or her Answer[27] to petitioner's Petition for Review invoking the following defenses: (1) petitioner is not allowed to attack the validity of the waivers and the assessments (for the supposed lack of authority of the ROs who conducted the audit) for the first time on appeal; (2) likewise, matters that were not considered in the administrative level should not be raised anew in the judicial level; (3) petitioner was accorded due process; and, (4) respondent's right to assess had not yet prescribed.

Per Order dated 30 May 2019, the parties were referred to the Philippine Mediation Center - Court of Tax Appeals (**PMC-CTA**) for mediation proceedings.[28] However, they have decided not to have their case mediated[29], hence the Pre-Trial Conference was set on 08 October 2019.[30] Respondent also filed his or her Pre-Trial Brief[31] on 02 October 2019 while petitioner filed its Pre-Trial Brief[32] on 04 October 2019. After the Pre-Trial Conference[33], the parties submitted their Joint Stipulation of Facts and Issues[34] (**JSFI**) on 24 October 2019. The Court then issued

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25 Exhibit "P-11", id., pp. 546-548.
26 Supra at note 1.
27 Division Docket, Volume I, pp. 158-192.
28 Id., pp. 194-195.
29 See No Agreement to Mediate, id., p. 196.
30 See Resolution dated 01 July 2019, id., pp. 201-202.
31 Id., pp. 208-213.
32 Id., Volume II, pp. 578-585.
33 See Order dated 08 October 2019, id., pp. 591-593.
34 Id., pp. 594-601.

the Pre-Trial Order[35] on 19 November 2019 which adopted the JSFI and set the hearing dates for the reception of evidence.

During the trial proper, petitioner presented its witnesses, namely: (1) Vilma L. Quiambao (**Quiambao**), petitioner's bookkeeper; (2) Michael L. Aguirre (**Aguirre**), the Court-commissioned Independent Certified Public Accountant (**ICPA**); and, (3) Adelia Sarmiento (**Sarmiento**), petitioner's Accounting Manager.

Quiambao was the first to assume the witness stand where she identified her Judicial Affidavit[36] and testified that as petitioner's bookkeeper: (1) she handles matters relating to BIR tax audits and reconciliation of any deficiency tax assessments; (2) she received the first LOA that Chief Escalada signed (which named certain BIR officers) authorizing the audit of petitioner's books for TY 2010; (3) she then received the letter dated 04 March 2013 which assigned RO Arriola and GS Balbido (pursuant to an MOA) to audit petitioner's books for TY 2010 but she did not receive a copy of the supposed MOA; (4) petitioner executed a series of waivers through the request of ROs Arriola, Martirez and GS Balbido; (5) she attended to ROs Arriola, Martirez and GS Balbido when they conducted field works in August 2013; and, (6) the BIR officers failed to conduct an informal conference to discuss the audit findings. As regards the waivers, she added that the BIR officers prepared the waivers and petitioner merely executed them after the former sent the softcopies *via* email.

On cross-examination, Quiambao stated that it was RO Arriola who sent the softcopies of the waivers to them by email. However, she failed to present any written document to support her statement.[37] No redirect examination was conducted.[38]

As for Aguirre, he declared, through his Judicial Affidavit[39], that: (1) he is the Court-commissioned ICPA; (2) he performed audit procedures to verify documents relating to petitioner's claim to set aside the deficiency assessments against it; (3) the results of his audit were

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35 Id., pp. 643-653.
36 Exhibit "P-22", Judicial Affidavit of Vilma L. Quiambao, id., Volume I, pp. 235-242.
37 TSN dated 06 February 2020, pp. 6-8.
38 Id., p. 8.
39 Exhibit "P-23", Judicial Affidavit in *lieu* of direct examination of Mr. Michael L. Aguirre, Division Docket, Volume IV, pp. 1814-1824.

summarized in the updated ICPA Report dated 05 February 2020[40] which superseded the ICPA Report dated 12 January 2020; (4) the scanned copies of the documents examined were saved in a USB flash drive[41] which was submitted to this Court; and, (5) based on the audit, he opined that: (*i*) there is no basis for the deficiency assessments for IT and VAT on the senior citizen discounts since these are not considered as a taxable event; (*ii*) the alleged underdeclared purchases could not be verified for lack of relevant information, *i.e.*, Audit Information Tax Exemption and Incentives Division (**AITEID**) documents; and, (*iii*) the alleged related party transaction where the DST assessment was imposed should be reversed since these are actually trade transactions that are not subject to tax. No cross-examination was conducted.[42]

Sarmiento was the last to take the witness stand. In her Judicial Affidavit[43], she declared that: (1) petitioner has franchise agreements with Mercury Drug Corporation to operate Mercury drugstores in Central Luzon; (2) in the conduct of assessment, petitioner, through Cyre M. Clores (**Clores**), received the PAN assessing it with alleged deficiency taxes (higher than its total assets); (3) after petitioner received the FLD, it immediately filed its Protest (by way of a request for reinvestigation) and submitted documents in support of its Protest; (4) After petitioner received the FDDA, it filed its Request for Reconsideration; (5) while its request was pending before the CIR, petitioner received the second LOA authorizing new BIR officers to conduct audit on petitioner's books for all internal revenue taxes for TY 2010; (6) after receipt of respondent's letter denying the Request for Reconsideration, petitioner filed the present Petition for Review; and, (7) petitioner assails the deficiency assessments for lack of factual and legal bases.

On cross-examination[44], Sarmiento explained that petitioner did not file any protest letter to the PAN. As to the related party transactions wherein the deficiency DST was imposed, she said the amounts owed by related parties were classified as assets; while amounts owed to related parties were reflected as liabilities. No redirect examination was conducted.

40 Filed on 07 February 2020, id., pp. 1583-1613.
41 Exhibit "P-24-b".
42 TSN dated 21 October 2020, p. 6.
43 Exhibit "P-21", Judicial Affidavit of Adelia Sarmiento, Division Docket, Volume I, pp. 258-293.
44 TSN dated 21 October 2020, pp. 9-10.

While the trial was ongoing, petitioner filed an "Urgent Motion (To declare Warrant of Distraint and/or Levy [**WDL**] Null and Void and Suspend its Enforcement or Collection)"[45] (**Urgent Motion**) on 04 November 2020. In the said motion, petitioner asserted that respondent issued WDL No. 116-2020-044[46] (dated 06 October 2020) based on the subject assessments of the instant case pending before this Court. The Urgent Motion was set for hearing on 19 November 2020[47] wherein petitioner again presented Sarmiento.[48] Petitioner then filed its "Formal Offer of Evidence for Petitioner (Re: Urgent Motion (to declare Warrant of Distraint and/or Levy Null and Void and Suspend its Enforcement or Collection)"[49] (**FOE on Urgent Motion**) on 24 November 2020.

Respondent belatedly filed its "Comment/Opposition (on Petitioner's Urgent Motion to Declare Warrant of Distraint and/or Levy Null and Void and Suspend its Enforcement or Collection)"[50] on 01 December 2020. Simultaneously, he or she also filed a "Comment (to Petitioner's Formal Offer of Evidence)".[51]

Still on the same subject assessments, on 07 December 2020, petitioner filed an "Urgent Motion (To lift and declare Warrant of Garnishment [**WOG**] Null and Void and Suspend its Enforcement or Collection and Supplemental to the Urgent Motion dated 30 October 2020)"[52] (**Motion on WOG**), praying that WOG No. 116-2020-044[53] be likewise nullified.

In the Resolution dated 08 January 2021[54], the Court admitted the exhibits pertaining to the FOE (on the Urgent Motion). Moreover, the Motion on WOG was set for hearing on 26 January 2021[55], wherein petitioner presented Clores as its witness.[56] A day after or on 27 January 2021, petitioner filed its "Formal Offer of Evidence for Petitioner (Re: Urgent Motion (to lift and declare Warrant of Garnishment Null and

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45 Division Docket, Volume IV, pp. 1840-1873.
46 Annex "A", id., p. 1875.
47 See Resolution dated 10 November 2020, id., Volume V, pp. 2062-2063.
48 See Order dated 19 November 2020, id., pp. 2065-2066.
49 Id., pp. 2071-2079.
50 Id., pp. 2083-2090.
51 Id., pp. 2092-2093.
52 Id., pp. 2106-2121.
53 Annex "F", id., p. 2139.
54 Id., pp. 2191-2193.
55 Id.
56 See Order dated 26 January 2021, id., pp. 2195-2196.

Void and Suspend its Enforcement or Collection and Supplemental to the Urgent Motion dated 30 October 2020)[])]"[57] (**FOE on Motion on WOG**).

Acting on all the suspension motions and the related FOEs, in a Resolution dated 27 May 2021[58], the Court resolved to: (1) admit the exhibits pertaining to the FOE on Motion on WOG; and, (2) grant the Urgent Motion and Motion on WOG. It ordered respondent to cease and desist in collecting the subject assessments and excused petitioner from posting a bond.

Respondent filed a "Motion for Reconsideration [re: Resolution dated June 1, 2021]"[59] (**MR**) calling for the Court to instead deny the motions for suspension. After petitioner filed its "Comment (to Respondent's [MR] dated 17 June 2021)"[60], the Court denied it for lack of merit.[61]

Reverting to the main case, on 24 June 2021, petitioner filed a "Motion for Leave to File and Admit the Attached Supplement to the Petition for Review and Allow the Presentation of witness Cyre M. Clores".[62] Without respondent's comment[63], the Court granted the said motion, and admitted the supplement to the petition[64] and recalled Clores as witness.[65]

On the witness stand, Clores testified through his Judicial Affidavit[66] that: (1) he is an authorized signatory and representative for petitioner's various bank accounts; (2) he learned that petitioner's bank account in Unionbank was debited with ₱7,374,982.48 which pertained to WOG No. 116-2020-044; and, (3) the said amount was already remitted to the BIR Large Taxpayers – Collection Enforcement Division.

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57 Id., pp. 2199-2205.
58 Id., pp. 2234-2251.
59 Filed on 18 June 2021, id., pp. 2252-2265.
60 Filed on 23 July 2021, Manifestation and Submission, id., pp. 2309-2319.
61 See Resolution dated 18 November 2021, id., pp. 2326-2337.
62 Id., pp. 2267-2274.
63 See Records Verification dated 17 March 2022, id., p. 2537.
64 See Supplement to the Petition for Review dated 4 March 2019, id., pp. 2278-2284.
65 See Resolution dated 06 April 2022, id., pp. 2541-2544.
66 Exhibit "P-32", Judicial Affidavit of Cyre M. Clores, id., pp. 2285-2291.

On cross-examination, when asked if petitioner filed a refund claim with the BIR, Clores answered that he could not recall if there was an administrative claim for refund filed.[67] No redirect examination was conducted.

Petitioner then filed its "Supplemental Formal Offer of Evidence for Petitioner"[68] (**Supplemental FOE**) on 04 July 2022. Together with the previous "Formal Offer of Evidence for Petitioner"[69] (**FOE**) filed on 05 November 2020, the Court admitted only a few of the offered exhibits since some exhibits could not be found in the records or are unreadable.[70] Unsatisfied, petitioner filed a Motion for Partial Reconsideration[71] (**MPR**) and explained that: (1) the ICPA did not use some of the denied exhibits; (2) the ICPA vouched for and traced the blurred exhibits; and, (3) the other exhibits can be found in the USB flash drive submitted to the Court. Moreover, petitioner turned over the relevant exhibits that were previously found missing from the records.[72] Thereafter, the Court directed petitioner to submit clearer copies of the blurred exhibits[73], to which petitioner duly complied with through its Manifestation and Submission filed on 13 December 2022.[74] With the said compliance, the Court admitted the exhibits previously denied (except for those not used by the ICPA).[75]

After petitioner rested its case, respondent presented his or her lone witness, RO Arriola, who testified through her Judicial Affidavit[76] that: (1) petitioner's books of account for TY 2010 was subjected to an audit pursuant to LOA Nos. LOA-116-2013-00000028 and LOA-116-2011-00000028; (2) she was reassigned to continue the audit of petitioner's books pursuant to MOA No. LOA-116-2013-0446; (3) prior to the reassignment, the previous officer, RO Paz executed a Memorandum dated 11 January 2013[77] which contained the status report of petitioner's audit; (4) during the course of the audit, petitioner executed waivers which respondent accepted; and, (5) based on her investigation, she

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67 TSN dated 22 June 2022, pp. 5-6.
68 Division Docket, Volume VI, pp. 2555-2562.
69 Id., Volume V, pp. 2012-2032.
70 See Resolution dated 25 August 2022, id., Volume VI, pp. 2579-2596.
71 See Motion for Partial Reconsideration (of the Resolution dated 25 August 2022 on Petitioner's Formal Offer of Evidence, id., pp. 2636-2662.
72 See Manifestation and Submission, id., pp. 2667-2670.
73 See Resolution dated 22 November 2022, id., pp. 2681-2690.
74 See Manifestation and Submission, id., pp. 2691-2700.
75 See Resolution dated 05 January 2023, id., pp. 2708-2714.
76 Exhibit "R-24", id., Volume I, pp. 219-230.
77 Exhibit "R-2", BIR Records, Folder 4, p. 635.

executed several Memoranda[78] which recommended the issuance of the PAN, FLD, FDDA and the letter denying petitioner's Request for Reconsideration.

On cross-examination[79], RO Arriola confirmed that she recommended the issuance of the PAN and the FLD. Moreover, she also declared that her name only appeared in the second LOA dated 08 January 2019. No redirect examination was conducted. When the Court asked if petitioner received the PAN, RO Arriola answered that petitioner's Finance Manager received the same as evidenced by her written name and signature on the PAN.[80]

On 29 June 2022, the case was transferred to the Court's Second Division.[81] On 15 February 2023, respondent filed his or her FOE.[82] After petitioner filed its Comment[83], the Court admitted respondent's exhibits and directed the parties to file their respective memoranda.[84] Petitioner and respondent both filed their Memorandum[85] on 03 May 2023. On 18 May 2023, the Court submitted the case for decision.[86]

ISSUE

As culled from the allegations raised by the parties in the Pre-Trial Order[87], the main issue for the Court's resolution is —

> WHETHER PETITIONER CENTRAL LUZON DRUG CORPORATION IS LIABLE FOR THE DEFICIENCY INCOME TAX (IT), VALUE-ADDED TAX (VAT), EXPANDED WITHHOLDING TAX (EWT) AND DOCUMENTARY STAMP TAX (DST) IN THE AGGREGATE AMOUNT OF ₱1,565,675,063.68 FOR TAXABLE YEAR (TY) 2010.

78 See Exhibit "R-11", Memorandum dated 07 January 2015, Exhibit "R-13", Memorandum dated 12 February 2015, Exhibit "R-17", Memorandum dated 22 June 2016, BIR Records, Folder 4, pp. 847-851, pp. 897-901, and pp. 995-1000, respectively; and, Exhibit "R-21", Memorandum dated 28 February 2018, BIR Records, Folder 3, pp. 227-228.

79 TSN dated 25 January 2023, pp. 8-9.

80 Id., p. 10-11.

81 Division Docket, Volume VI, p. 2554.

82 See Motion to Admit Attached Formal Offer of Evidence, id., pp. 2718-2721; Formal Offer of Evidence, id., pp. 2723-2730.

83 See Comment (to Respondent's Formal Offer of Evidence), id., pp. 2735-2736.

84 See Resolution dated 24 March 2023, id., pp. 2744-2746.

85 See Memorandum for petitioner, id., pp. 2749-2819; Memorandum for respondent, id., pp. 2823-2858.

86 See Resolution dated 18 May 2023, id., p. 2860.

87 Supra at note 35.

ARGUMENTS

In support of the above issue, petitioner contends that the named BIR officers in the first LOA did not conduct the investigation of its books for TY 2010. Rather, it was ROs Arriola, Martirez, and GS Balbido who actually conducted the said audit despite not having any valid LOA authorizing them to perform it. Petitioner points out that even RO Arriola admitted such fact during her cross-examination.

Petitioner also asserts that respondent's attempt to cure the lack of authority (by issuing the second LOA bearing RO Arriola's name) has no legal effect. It explains that the second LOA was issued long after the investigation had been completed and after respondent had already issued the PAN, FLD and FDDA. Petitioner maintains that the second LOA cannot operate retroactively to confer authority on RO Arriola in the audit of petitioner's books for TY 2010. Any resulting tax assessments from an investigation conducted without any valid LOA is void as stated in respondent's own issuance under Revenue Memorandum Circular (**RMC**) No. 75-2018.[88]

Relying on the cases of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[89] (**Medicard**) and *Splash Corporation v. Commissioner of Internal Revenue*[90], petitioner reiterates that the issuance of an LOA prior to the conduct of the audit is indispensable for the validity of the assessment. Moreover, in the case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[91] (**McDonald's**), the Supreme Court have already ruled that an MOA cannot validly replace an LOA. Thus, as previously observed by the Third Division in the Resolution of 27 May 2021 (which granted the suspension of collection)[92], considering that the BIR officers who conducted the audit has no authority to examine petitioner's books, the resulting PAN, FLD, FDDA, and the letter denying the Request for Reconsideration are all void.

88 The Mandatory Statutory Requirement and Function of a Letter of Authority.
89 G.R. No. 222743, 05 April 2017.
90 CTA Case No. 8483, 06 April 2017.
91 G.R. No. 242670, 10 May 2021.
92 Supra at note 58.

As regards the deficiency assessments, petitioner claims that these are equally void for the following reasons, to wit: (1) respondent failed to inform petitioner of the factual and legal bases for the IT and VAT deficiency pursuant to Section 228[93] of the NIRC of 1997, as amended; (2) despite its explanations, respondent merely reiterated his or her findings on the disallowances; and, (3) the assessments for IT, VAT and EWT had already prescribed before respondent issued the FLD.

Respondent, on the other hand, counters that this Court, being an appellate court, should not rule on matters that were not considered in the administrative level. It must limit its ruling on issues contained in the FDDA and the letter denying petitioner's Request for Reconsideration.

Respondent also maintains that petitioner should not be allowed to attack the validity of the waivers and the assessment on the alleged absence of authority of the conducting officers for the first time on appeal.

Moreover, respondent claims that the assessments were made pursuant to a valid LOA in accordance with Section 13[94] of the NIRC of 1997, as amended. He or she adds that there is no statutory requirement requiring the BIR officers to be named in the LOA as long as there is a permission from the CIR to allow officers to conduct the audit of a taxpayer's books.

Respondent further avers that RO Arriola and GS Balbido were issued with an MOA to authorize them to continue the audit of petitioner's books for TY 2010 as sanctioned under Revenue Memorandum Order (**RMO**) No. 8-2006.[95] In the same vein, respondent opines that *Medicard* is inapplicable since it is not in all fours with the instant case. Here, there is an LOA issued which authorized the audit of petitioner's books, whereas in *Medicard*, there is only a Letter Notice.

As for the deficiency assessments, respondent counters that petitioner was accorded due process since the latter was given the

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93 SEC. 228. *Protesting of Assessment*. – …

94 SEC. 13. *Authority of a Revenue Officer*. – …

95 Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS).

opportunity to refute the assessment findings. Also, he or she highlights *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*[96] (**Liquigaz**), where this Court ruled that an assessment does not require full explanation of every legal and factual basis. Applying *Liquigaz*, respondent declares that the PAN, FLD, and FDDA are sufficient in information. Lastly, respondent states that his or her right to assess had not yet prescribed given validity of the duly executed waivers.

RULING OF THE COURT

Before the Court proceeds to discuss the issues raised, We deem it propitious to state at the outset that the instant petition was filed on time.

As the records show, petitioner received the letter denying its Request for Reconsideration on 04 February 2019. Pursuant to Section 3(a)[97], Rule 8 of the RRCTA, counting thirty (30) days from the receipt of the said letter denial, petitioner had until 06 March 2019 to file the petition. Considering that petitioner filed the Petition for Review on 05 March 2019 or within the allowed period, We have jurisdiction over the case.

Proceeding to the merits of the case, after a careful review of the records of the case, We find that the subject assessments herein (that arose from the audit of petitioner's books for TY 2010) are void for want of authority on the part of the ROs who conducted the same.

REVENUE OFFICERS (ROs) ROSARIO ARRIOLA, SHELLA SAMANIEGO, CAROLYN MENDOZA, REYNANTE MARTIREZ AND GROUP SUPERVISOR (GS) ROLANDO BALBIDO WERE NOT DULY AUTHORIZED TO CONTINUE WITH THE EXAMINATION AND INVESTIGATION OF PETITIONER'S BOOKS FOR TAXABLE YEAR (TY) 2010.

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96 CTA EB Nos. 989 and 990, 22 May 2014.
97 Supra at note 2.

The issue of lack of authority is not novel and has consistently been declared to be fatal in cases where assessments are disputed. Repeatedly, We have held that the RO tasked to audit or examine the books of accounts of taxpayer must be clothed with the proper LOA. Otherwise, any assessment resulting from such audit is void. 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 Return 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.[98]

...

Section 10(c) of the NIRC of 1997, as amended, provides:

...

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:

...

(c) **Issue Letters of Authority** for the examination of taxpayers within the region[.][99]

...

Section 13 of the NIRC of 1997, as amended, likewise requires that the RO assigned to examine the taxpayer's books of accounts must be armed with an LOA, *viz*:

---

98 Emphasis supplied.
99 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, 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.[100]

...

Under the said provision, an RO must be armed with authority, through an LOA, to conduct the audit or investigation of the taxpayer. Absent such grant of authority through an LOA, the RO cannot conduct the audit of taxpayer's books of accounts and other accounting records because such right is statutorily conferred only upon petitioner CIR.

Corollarily, Section D(4) of RMO No. 43-90[101] dated 20 September 1990, provides:

...

D. Preparation and issuance of L/As.

...

4. For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the **Regional Directors**, the **Deputy Commissioners** and the **Commissioner**. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.[102]

...

From the foregoing, only the CIR and his or her duly authorized representatives (*i.e.*, Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR) may issue the LOA. Here, the authority of RO Arriola and GS Balbido merely sprung from an MOA that Chief Escalada issued. As for ROs Samaniego, Mendoza and Martirez, their authority to assist in the examination of

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100 Emphasis supplied.

101 Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit dated 20 September 1990.

102 Emphasis supplied.

petitioner's books for TY 2010 were only indicated in the letter of 18 April 2013, which Chief Escalada had also signed. It is noted that the documents were issued, and the corresponding change in the ROs and GS (to continue with petitioner's audit) occurred prior to the issuance of the PAN, FLD, and FDDA on 09 February 2015, 02 March 2015, and 29 June 2016, respectively.

Consequently, as the records bear, ROs Arriola, Samaniego, Martirez, Mendoza and GS Balbido signed off the Memoranda[103] that recommended the issuance of the PAN, FLD and FDDA to petitioner:

> ...
>
> In view of the foregoing, it is respectfully recommended that a [PAN] be issued to Central Luzon Drug Corp. pursuant to Section 228 of the [NIRC] of 1997, as implemented by [RR] No. 12-99.
>
> Signed Signed
> **ROSARIO A. ARRIOLA/REYNANTE DP MARTIREZ**
>
> Signed Signed
> **CAROLYN V. MENDOZA/SHELLA C. SAMANIEGO**
> Revenue Officers
>
> Reviewed by:
>
> Signed
> **ROLANDO M. BALBIDO**
> Group Supervisor
>
> ...
>
> In view of the foregoing, it is respectfully recommended that a [FLD] be issued to Central Luzon Drug Corp. pursuant to Section 228 of the [NIRC] of 1997, as implemented by [RR] No. 12-99.
>
> Signed
> **ROSARIO A. ARRIOLA/REYNANTE DP MARTIREZ**
>
> Signed Signed
> **CAROLYN V. MENDOZA/SHELLA C. SAMANIEGO**
> Revenue Officers

---

103 BIR Records, pp. 847, 897 and 995.

Reviewed by:

Signed
ROLANDO M. BALBIDO
Group Supervisor

...

In view of the foregoing, it is respectfully recommended that a [FDDA] be issued to Central Luzon Drug Corp. pursuant to Section 228 of the [NIRC] of 1997, as implemented by [RR] No. 12-99.

Signed Signed Signed
ROSARIO A. ARRIOLA/ CAROLYN V. MENDOZA/SHELLA C. SAMANIEGO
Revenue Officers

Reviewed by:

Signed
ROLANDO M. BALBIDO
Group Supervisor

...

In addition, **respondent's own rules, specifically Section C(5) of RMO No. 43-90[104], mandate the issuance of a new LOA in cases of reassignment or transfer of examination to another RO.** It reads —

...

C. Other policies for issuance of L/As.

...

5. **Any re-assignment/transfer of cases to another RO(s),** and revalidation of [LOAs] which have already expired, **shall require the issuance of a new [LOA]**, with the corresponding notation thereto, including the previous [LOA] number and date of issue of said [LOAs].[105]

...

Also, in the case of *McDonald's*[106], the Supreme Court has already highlighted the difference between an MOA and an LOA in this wise:

---

104 Supra at note 101.
105 Emphasis and underscoring supplied.
106 Supra at note 91; Emphasis supplied.

...

It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may **notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers.** However, **notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.**

The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.

The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative. The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10(c) and 13 of the NIRC. **Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.**

...

Incidentally, while it may be gainsaid that *McDonald's* does not do away with the reassignment by the CIR himself or herself, such is not the case here.

In *Medicard*[107], the Supreme Court underscored the importance of an LOA, *viz*:

> ...
>
> **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.** ...
>
> ...
>
> 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.**
>
> ...
>
> ... 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 Supreme Court, citing the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[108], went on to state:

107 Supra at note 89; Citation omitted and emphasis supplied.

108 G.R. No. 178697, 17 November 2010; Emphasis and underscoring supplied.

> ...
>
> 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. **<u>In the absence of such an authority, the assessment or examination is a nullity.</u>**
>
> ...

Further, the Supreme Court in *McDonald's*[109] concluded that:

> ...
>
> In summary, **We rule that the <u>practice of reassigning or transferring revenue officers originally named in the LOA</u> and substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA <u>(i) violates the taxpayer's right to due process in tax audit or investigation</u>; <u>(ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer</u>; and <u>(iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990</u>**.
>
> ...

In the case at bar, the records indisputably show that ROs Arriola, Samaniego, Martirez, Mendoza and GS Balbido continued the audit and/or investigation of petitioner's books of account solely by virtue of an MOA and a mere letter.[110] Furthermore, only Chief Escalada (an official who is <u>*not*</u> among those authorized to issue LOAs pursuant to existing laws and regulations, particularly Section 13[111] in relation to Section 10(c)[112] of the NIRC of 1997, as amended, Item D(4) of RMO No. 43-90[113] and Item II(2)[114] of RMO No. 29-07[115]) signed the said MOA and the letter.

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109 Supra at note 91; Emphasis and underscoring supplied.
110 Supra at notes 8 and 11.
111 Supra at p. 16.
112 Supra at p. 15.
113 Supra at p. 16.
114 **II. AUDIT POLICIES AND GUIDELINES.**
...
2. All Letters of Authority (LOAs) shall be issued and approved by the Assistant Commissioner/ Head Revenue Executive Assistants.
115 Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.

Further, in *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*[116], the Supreme Court reiterated that only the ROs **actually named** in the LOA are authorized to examine the taxpayer, to wit:

> ...
>
> ... Likewise, the CTA EB correctly held that the deficiency tax assessments were invalid due to revenue officers' lack of authority to do so. Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe the revenue officers with authority to examine taxpayers. It is axiomatic that **only the revenue officers actually named under the LOA are authorized to examine the taxpayer**... In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void.
>
> ...

As earlier stated, ROs Arriola, Samaniego, Martirez, Mendoza and GS Balbido could not be deemed to have been validly clothed with the proper authority to continue the audit and recommend the issuance of the assessments against petitioner. Considering the absence of a new and valid LOA authorizing said officers to examine petitioner's books of accounts and other accounting records (as a result of the reassignment/transfer of the case to them), the deficiency tax assessments issued against respondent are inescapably void.

Moreover, We do not share petitioner's sentiment that the issuance of the second MOA validly authorized RO Arriola to conduct the assessment. As ruled in *McDonald's*, "**the issuance of an LOA *prior* to examination and assessment is a requirement of due process**". Clearly in this case, the second MOA was only issued after the PAN, FLD and FDDA were furnished to petitioner. Thus, the conduct of the assessment was already concluded when RO Arriola was granted with such authority.

Well-entrenched is the principle that in cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessments shall be void and ineffectual.[117]

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[116] G.R. Nos. 249883-84, 27 January 2020 (Resolution); Citations omitted and emphasis supplied.

[117] See *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, supra at note 89.

Lastly, We implore the BIR to be more conscientious and careful in carrying out the important functions and duties it is tasked to perform. As stated, the issue here is not novel. Repeatedly for years passed, the law and rules requiring the observance of due process have already been emphasized and clearly ordained in many court decisions. Simply, these are very basic matters that may easily be complied with. Lest the government's efforts to collect taxes be compromised, the taxes being the lifeblood of every government, the officers selected to carry this mandate should take their duties to heart. Non-observance of the most fundamental requirements is detrimental to our government's delivery of services to its citizen and to its very existence.

As enunciated by the Supreme Court in the case of *Commissioner of Internal Revenue v. Algue, Inc., et al.*[118] —

> ...
>
> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
>
> ...
>
> It is said that taxes are what we pay for civilization society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.
>
> ...

WHEREFORE, premises considered, the instant Petition for Review filed by petitioner Central Luzon Drug Corporation filed on 05 March 2019 is hereby **GRANTED**. Accordingly, the letter dated 04 February 2019, holding petitioner liable for deficiency income tax

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118 G.R. No. L-28896, 17 February 1988.

(IT), value-added tax (VAT), expanded withholding tax (EWT) and documentary stamp tax (DST) in the aggregate amount of ₱1,565,675,063.68, for taxable year (TY) 2010, is **CANCELLED** and **SET ASIDE**.

Consequently, respondent Commissioner of Internal Revenue or any person duly acting on his behalf is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice