REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

NYK-FILJAPAN SHIPPING CORP.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9120

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

Promulgated:
JUN 25 2020
3:40 p.m.

X---X

DECISION

RINGPIS-LIBAN, *J*.:

The instant Petition for Review prays that judgment be rendered declaring null and void all the deficiency tax assessments under the Final Decision on Disputed Assessment (FDDA) for taxable year (TY) 2007 against Petitioner in the amount of ₱25,448,013.85, for utter lack of factual and legal basis.[1]

THE PARTIES

Petitioner Nyk-Filjapan Shipping Corporation is a domestic corporation primarily engaged in the business of acting as shipping agent and shipbroker, and other related business activities,[2] with principal office address at 2/F TDG-NYK Harbor Center Bldg. 1, A.C. Delgado corner 23rd and 24th Street, Port Area, Manila.[3]

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[1] Docket- – Vol. 3, p. 1445, Pre-Trial Order dated November 8, 2016, Summary of the Case.
[2] *Id.*, p. 1425, Par. 1, Joint Stipulation of Facts and Issues (JSFI), Summary of Admitted Facts.
[3] Docket – Vol. 4, pp. 1493 to 1502, and 1662 to 1672, respectively Exhibits "P-1" and "P-22".

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), the government agency tasked to, among others, to collect all national internal revenue taxes. He has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR, with office address at 5th Floor, BIR Building, Diliman, Quezon City.[4]

THE FACTS

On July 3, 2008, Petitioner received a copy of a letter with an attached Letter of Authority (LOA) No. 00035448 dated July 1, 2008, issued by Mr. Romulo L. Aguila, Jr., Head Revenue Executive Assistant, through Mr. Albino M. Galanza, Chief, LT Audit and Investigation Division I, authorizing the conduct of an audit of Petitioner's tax records for TY 2007.[5]

During the conduct of the audit and upon the request of the examiners of Respondent, Mr. Dan C. Florentino executed a series of Waivers of the Defense of Prescription Under the Statute of Limitations of the NIRC, as follows:[6]

a. On February 15, 2010, Mr. Florentino executed a Waiver extending the period granted to the Respondent to conduct his examination of Petitioner until September 30, 2010 (*First Waiver*), which was accepted by then Officer-in-Charge Assistant Commissioner (OIC-ACIR) for the Large Taxpayers Service (LTS), Mr. Nestor S. Valeroso, on the same day. A copy of the said accepted Waiver was received by Petitioner also on the same date.[7]

b. On August 5, 2010, Mr. Florentino executed a subsequent Waiver extending the period to Respondent to conduct his examination of Petitioner until March 31, 2011 (*Second Waiver*), which was accepted by OIC-ACIR Nestor S. Valeroso on the same date. A copy of the accepted Second Waiver was received by Petitioner on August 20, 2010.[8]

c. On November 2, 2010, Mr. Florentino executed another Waiver extending the period to assess to September 30, 2011 (*Third Waiver*). The same was accepted by OIC-ACIR Valeroso

[4] *Id.* at Note 1, pp. 1425 to 1426, JSFI, Summary of Admitted Facts, par. 2.
[5] *Id.*, p. 1426, par. 3; Docket – Vol. 4, p. 1548, Exhibit "P-9".
[6] *Id.*, p. 1426, par. 4.
[7] *Id.* at Note 3, p. 1574, Exhibit "P-12"; BIR Records, p. 57, Exhibit "R-10".
[8] *Id.*, p. 1575, Exhibit "P-13"; BIR Records, p. 284, Exhibit "R-11".

on the same day. A copy of the accepted Third Waiver was received by Petitioner on November 4, 2010.[9]

On July 14, 2010, Petitioner received the Notice for Informal Conference dated July 12, 2010, requesting Petitioner to discuss the matter with the Revenue Officers conducting the tax audit.[10]

On March 3, 2010, the OIC-Chief Edralin M. Silario of the LT Regular Audit Division I issued a Memorandum (Referral No. D-LOA-0310-0002),[11] referring the papers/entire docket of Petitioner to Revenue Officer (RO) William F. Sundiam and Group Supervisor (GS) Joriz U. Saldajeno, for the continuance of investigation on all of Petitioner's internal revenue taxes for TY 2007. Subsequently, OIC-Chief Silario issued another Memorandum (Referral No. D-LN-0310-0002) dated April 19, 2010 addressed again to RO Sundiam and GS Saldajeno,[12] stating the following:

> "Referred to you herewith is/are the enclosed paper(s)/entire docket(s) of NYK FIL-JAPAN SHIPPING CORPORATION relative to Letter of Notice No. 116-RLF-07-00-00060 dated February 23, 2010 for taxable year 2007, for appropriate action.
>
> Your report hereon should be submitted promptly."

On January 7, 2011, Petitioner received a copy of the Preliminary Assessment Notice (PAN) dated December 21, 2010,[13] which stated that after investigation, Petitioner has been found liable for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), and final withholding tax (FWT) for TY 2007 in the total amount of ₱37,025,578.52.[14] On January 27, 2011, Petitioner filed a Reply to the PAN on even date, with corresponding supporting documents, opposing the assessments contained in the PAN.[15]

On May 27, 2011, Petitioner received a copy of the Formal Letter of Demand (FLD) with Final Assessment Notice (FAN) dated May 20, 2011,[16] assessing Petitioner for deficiency income tax, VAT, EWT, WTC, and FWT in the total amount of ₱35,558,114.67, inclusive of interest and penalty, for TY

[9] *Id.* at Note 3, p. 1576, Exhibit "P-14"; BIR Records, p. 285, Exhibit "R-12".
[10] *Id.* at Note 2, p. 1426, par. 5.
[11] BIR Records, p. 58, Exhibit "R-1".
[12] *Id.*, p. 188, Exhibit "R-1-a".
[13] *Id.* at Note 3, pp. 1577 to 1581, Exhibit "P-15"; *id.* at Note 11, pp. 484 to 488, Exhibit "R-3.
[14] *Id.* at Note 2, p. 1426, par. 6.
[15] *Id.*, p. 1427, par. 7.
[16] *Id.*, par. 8.

2007.[17] Petitioner then disputed the said FLD-FAN on June 27, 2011, through the letter dated June 24, 2011.[18]

On September 26, 2014, Petitioner received a copy of the FDDA of even date.[19] The said FDDA contained deficiency tax assessments in the total amount of ₱25,448,013.85, inclusive of interests and penalties, broken down as follows:[20]

Assessment No.	Type of Tax	Amount
LTRAD 1-LOA-116-2007-IT-000004	Income Tax	₱ 11,154,963.86
LTRAD 1-LOA-116-2007-VT-000005	VAT	11,121,677.64
LTRAD 1-LOA-116-2007-EWT-000003	EWT	2,502,669.95
LTRAD 1-LOA-116-2007-WC-000003	WTC	658,702.40
LTRAD 1-LOA-116-2007-WF-000001	FWT	10,000.00
	Total Deficiency Assessment	₱ 25,448,013.85

Consequently, Petitioner administratively appealed the same FDDA before the Office of Respondent, formally requesting for the cancellation, withdrawal or reconsideration of the findings in the FDDA.[21]

On July 20, 2015, Petitioner received the letter dated June 2, 2015 issued by then Commissioner Kim S. Jacinto-Henares, denying, in effect, its administrative appeal.[22]

Petitioner filed the instant Petition for Review on August 18, 2015.[23]

On January 7, 2016, the Court received respondent's Answer,[24] interposing the following special and affirmative defenses, to wit:

"SPECIAL AND AFFIRMATIVE DEFENSES

5. Respondent adopts the abovementioned admissions and denials as part of her special and affirmative defenses.

RESPONDENT'S RIGHT TO ASSESS PETITIONER FOR TAXABLE YEAR 2009 DID NOT PRESCRIBE

[17] *Id.* at Note 4, pp. 1590 to 1631, Exhibit "P-17"; BIR Records, pp. 616 to 657, Exhibit "R-5".
[18] *Id.*, pp. 1632 to 1646, Exhibit "P-18".
[19] *Id.* at Note 11, pp. 1028 to 1035, Exhibit "R-7".
[20] *Id.* at Note 15, par. 9.
[21] *Id.*, par. 10; *id.* at Note 3, pp. 1647 to 1661, Exhibit "P-20".
[22] Docket – Vol. 1, p. 252, Exhibit "P-21"; *id.* at Note 11, p. 1455, Exhibit "R-9".
[23] *Id.*, pp. 10 to 62; *id.* at Note 15, par. 11.
[24] Docket – Vol. 2, pp. 505 to 516.

6. Petitioner alleged that [R]espondent's right to assess [P]etitioner's taxes for taxable year 2007 has prescribed pursuant to the three (3) year limitation period provided for under Section 203 of the 1997 National Internal Revenue Code ('Tax Code').

7. However, [R]espondent wishes to point-out that this issue was never raised by [P]etitioner in the administrative level. Similarly, nowhere in its protests to assessment notices did it raised, much less, invite the attention of [R]espondent that the government's right to assess it has prescribed. Respondent respectfully submits that issues and defenses not raised in the administrative level cannot be raised for the first time on appeal. As held in the case of *Aguinaldo Industries Corp. Fishing Nets Division v. Commissioner of Internal Revenue, et al., L-29790, Feb. 25, 1982:*

> 'To allow a litigant to assume a different posture when he comes before the Court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the Court - which is supposed to *review* administrative determinations-would not review, but determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.'

8. Likewise, the case of *Commissioner of Internal Revenue v. Guerrero, et al., L-19074, Jan. 31, 1967,* it was held that:

> 'Inasmuch as the tax court's jurisdiction is appellate in nature, it is essential that matters taken up in the appeal should be included in the contested assessment.'

9. Thus, the issue on prescription can no longer be raised for the first time on appeal before this Honorable Court.

10. Nevertheless, *assuming arguendo*, that the issue on prescription may be raised for the first time on appeal, [R]espondent respectfully submits that the government's right to

assess [P]etitioner has not yet prescribed, as hereunder be discussed.

11. Petitioner pointed-out that Section 222 of the Tax Code allows the government to extend its right to make an assessment against the taxpayer, to wit:

> Sec. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –
>
> xxx
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax **both the Commissioner and the taxpayer <u>have agreed in writing</u> to its assessment after such time, the tax may be assessed within the period agreed upon.** The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon. (Emphasis ours)

12. Consequently, a written agreement was reached through several waivers, to wit:

	DATE EXECUTED	SIGNATORY	EXTENSION AGREED UPON
1	February 15, 2010	Dan C. Florentino	September 30, 2010
2	August 5, 2010	Dan C. Florentino	March 31, 2011
3	November 2, 2010	Dan C. Florentino	September 30, 2011

13. As can be seen, the Formal Letter of Demand and Final Assessment Notices ('FLD/FAN') dated May 20, 2011, and received by petitioner seven (7) days after its issuance, or on May 27, 2011, was well within the period agreed upon by the parties.

14. However, in a laudable effort, [P]etitioner again interposed that [P]etitioner's signatory was not duly authorized through a board resolution. Hence, it cannot bind [P]etitioner.

15. Respondent begs to differ. The three (3) waivers which were executed by [P]etitioner through its President, Mr. Dan C. Florentino. Respondent strongly submits that the existence of a Board Resolution authorizing him to sign the waiver in behalf of the corporation is of no moment. Assuming for the sake of argument that the signatory for the first up to the third waivers was not authorized through a Board Resolution, the waivers are still valid and binds the corporation.

16. The Honorable Supreme Court in the case of *People's Aircargo and Warehousing Co, Inc. vs. Court of Appeals and Stefani Sano* made it explicit that it is a familiar doctrine that if a corporation knowingly permits one of its officers, or any other agent, to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those act; and thus, the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agent's authority.

17. In the case at hand, [P]etitioner cannot deny Mr. Florentino's authority to represent [P]etitioner. Again, Mr. Florentino is the ***President*** of the petitioner-corporation. More importantly, Mr. Florentino did not only execute one (1) but three (3) waivers, all of which were never disputed by [P]etitioner during the administrative level. Thus, [R]espondent submits that [P]etitioner impliedly ratified the acts of its officer when it allowed him to sign the subsequent waivers. Therefore, petitioner should be bound by the acts of its agent.

18. Respondent also puts emphasis that under the name and signature of Mr. Florentino in the alleged waivers, it is captioned:

'Taxpayer/Duly Authorized Signatory'

19. Mr. Florentino signed the three (3) waivers consistently holding himself to respondent as [P]etitioner's duly authorized signatory. Therefore, Mr. Florentino nor the [P]etitioner should not be the first to interpose the want of a board resolution authorizing the signing of the waivers.

20. Petitioner also alleged that the waivers are likewise defective because they were accepted by an Officer in Charge-Assistant Commissioner which is in violation of the Revenue Delegation Authority (RDAO) No. 05-01.

21. Respondent interposes that [P]etitioner failed to consider the entirety of RDAO No. 05-01, the Bureau's issuance which governs the authority of the BIR Officials to sign the waivers under the statute of limitations. The same RDAO specifically provides:

> **In order to prevent undue delay in the execution and acceptance of the waiver, the assistant heads of the concerned offices are likewise authorized to sign the same under meritorious**

circumstances in the absence of the abovementioned officials.

22. Based on the above quoted provision of the RDAO, it can be clearly discerned that the requirements laid down by the RDAO did not intend to delay the execution of the waivers by the absence of the enumerated officials. If the assistant head of the Large Taxpayer Service Division was authorized to sign the waiver in the absence of the head, more so that an Officer In Charge already exercising the functions of the Assistant Commissioner can sign the waiver.

23. Respondent strongly submits that [P]etitioner should not profit from its own misdeeds. Through the execution of the waivers, [R]espondent was misled to believe that [P]etitioner waived its right under the Statute of Limitations. A corporation like [P]etitioner is of knowledge *(sic)* of the effects and consequences of the execution of waivers. It is only when [P]etitioner received an adverse decision that it questioned the validity of its own actions and took stance contrary to its previous act.

24. Petitioner having executed a waiver extending the period to assess until September 30, 2011, the FLD/FAN issued and duly received by petitioner on May 27, 2011 are valid and subsisting.

PETITIONER IS ESTOPPED FROM ASSAILING THE VALIDITY OF THE WAIVERS IT EXECUTED

25. It is noteworthy to pinpoint [P]etitioner's conduct amounting to false representation or concealment of material facts calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert.

26. Respondent put emphasis that [P]etitioner executed not only one waiver, not two but three Waivers of Statute of Limitations. This fact alone will prove that if upon the execution of the first waiver, [P]etitioner believed that the same was invalid, it should not have executed the remaining two waivers. It can be deduced from the succeeding acts of [P]etitioner that it was its clear intention to give force and effect to the waivers.

27. Article 1431 of the Civil Code provides that in order that estoppel may apply to the person, to whom representations have been made and who claims the estoppel in his favor **must have relied or acted on such representations**. Article 1431 states that:

> *'Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.'*

28. On the other hand, Section 2(a) of Rule 131 of the Rules of Court, on burden of proof and presumptions, states as follows:

> '*SEC. 2 Conclusive presumptions.* – The following are instances of conclusive presumptions:
>
> (a) Whenever a party has, by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief he cannot in any litigation arising out of such declaration, act or omission, be permitted to falsify it;

29. Respondent humbly submits, that by [P]etitioner's acts or representation, and after benefiting from the effects of the waiver of the defense of prescription [P]etitioner should not be the first to impugn the validity of such agreement. Petitioner should not be allowed to profit from its misdoings.

30. Had it been that the parties intended not to extend the Statute of Limitations, [P]etitioner should have not been allowed to submit additional supporting documents in its favor. In the same way, [R]espondent should have issued the FAN based on already existing audit findings. Based on the foregoing, both parties with all good faith intended that the Statute of Limitations be extended by virtue of the waivers executed. Further, the execution of a subsequent waiver before a prior waiver losses validity is a clear indication of such intention by the parties.

31. In the case of *Norton Resources and Development Corporation vs. All Asia Bank Corporation,* the Honorable Supreme Court had the occasion to rule that Courts cannot make for the parties better or more equitable agreements than they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from the terms

which he voluntarily consented to, or impose on him those which he did not.

THE ASSESSMENTS WERE ISSUED IN ACCORDANCE WITH LAW AND THE RULES, ACCORDING PETITIONER ITS RIGHT TO DUE PROCESS

32. Petitioner interposed that the Letter of Authority was defective because it was served beyond the thirty (30) day period set out in the 'BIR General Audit Procedures and Documentation,' under the heading Taxpayer Bill of Rights. It asserts that the LOA was received only on September 30, 2008 or ninety-one (91) days after its issuance on July 1, 2008.

33. However, a perusal of the BIR Records, particularly page one (1) thereof, reveal that the LOA was actually received on July 3, 2008 by a certain Cynthia G. Gutierrez. Thus, all arguments against the LOA must necessarily fail.

THE ASSESSMENTS HAVE BASES BOTH IN FACT AND IN LAW.

34. Respondent strongly submits that the assessments have bases both in fact and in law which can be gleaned from the following discussion.

INCOME TAX

A) Unallowable Deductions (LOA):
Representation Expenses/Others

- **<u>Php 5,241,386.37</u>** – represents unallowable representation expenses in excess of limitation set forth under *Revenue Regulators (RR) No. 10-2002,* to wit:

Representation	Php	1,328,011.00
ISO Expenses- Representation		5,415,731.02
Total Claimed	Php	6,743,742.02
Allowable Representation Expense:		
Total Net Receipts (Services)	Php	150,235,564.96
Limitations per RR No. 10-2002		0.01

		1,502,355.65
Unallowable Representation Expense	Php	5,241,386.37

On the basis of the documents submitted, it cannot be established that the aforementioned are ordinary and necessary training expenses incurred by NYKFJSC's officers and employees. Furthermore, the summary of expenses in connection with the International Organization for Standardization (ISO) accreditation and The Environmental Management System (EMS) for year 2007 are lacking with proper documentation to back up the argument that the same should be allowed as deduction from gross income pursuant to Section 34 of 1997 National Internal Revenue Code (NIRC), as amended.

COLA and Other Benefits

- **Php 1,311,060.96** – represents compensation not subjected to withholding:

  Php 266,088.04 – Cost of living allowance (COLA) is not among those listed as non-taxable 'de minimis' benefits under RR No. 10-2000. COLA is neither among the 'de minimis' benefits enumerated under RR No. 10-2008 nor included among the income payments that are exempted from the requirement of withholding tax on compensation pursuant to Section 2.78.1. (B), RR No. 2-98, as amended.

  Php 1,044,972.92 – *Other Benefits* that were not reported in the alphalist of employees. Hence, not subjected to withholding pursuant to RR No. 2-98, as amended.

  The above-mentioned disallowed expenses due to non-withholding however, shall be allowed as deduction from gross income upon payment of the corresponding withholding tax and penalties thereof pursuant to Section 6. Of RR *No. 14-2002 amending Section 2.58.5 of* RR *2-1998 as amended.*

Provision – Retirement Fund/Cost and Expenses

- **Php 6,273,072.00** – represents unallowable contribution to retirement fund (Php

16,694,980.00 – Php 10,421,908.00) pursuant to Section 118 of RR No. 02-40.

Our assessment on the Provision for Retirement Fund/Cost and Expenses which pertains to contribution to retirement fund during the taxable year (2007) in the amount of Php 9,724,900.00 is allowed as a deduction under Section 118 of RR No. 02-40. However, only one tenth (1/10) of the contribution paid pertaining taxable year 2006 amounting to Php 697,008.00 (Php 6,970,080.00/10) is allowed as a deduction for the taxable year (2007). Hence, 9/10 of 2006 additional retirement fund paid in 2007 is disallowed or **Php 6,273,072.00** (6,970,080.00 * 9/10).

Provision for Contingencies

- **Php 501,887.75** – represents non-deductible Provision for Contingencies which remain in the assessment in violation to Section 34 (A) (1) (a) of 1997 NIRC, as amended, being not actually incurred during taxable year.

Capital Gains Tax

- **Php 193,496.41** – represents expenses on capital asset transactions (Capital Gains Tax) which are not ordinary business expense pursuant to Section 34 (A) (1) (a) of 1997 NIRC, as amended.

B) Additional Gross Income:

- **Php 475,822.27** – represents adjusted additional gross income on the under-declaration of purchases (Php 4,099,391.92/89.60%*10.40%) pursuant to Section 27 and 32 of 1997 NIRC, as amended (refer to Schedule 'IT/VAT-LN-FDDA')

VALUE-ADDED TAX

- **Php 4,603,245.51** – this represents output tax on import agency commission amounting to Php 38,360,379.27 not subjected to VAT pursuant to Revenue Memorandum Circular (RMC) No. 31-

2008 (Q & A No. 34) (refer to Schedule 'VAT-FDDA'/'VAT-FDDA1').

On the matter that portions of RMC 31-2008, including Q & A No. 34, have already been held as invalid by Branch 98 of the Regional trial Court of Quezon City in an order dated May 18, 2012 (the 'Order') in relation to a Petition for Declaratory Relief file before it. The Order of the Court was no longer appealed by the Honorable Commissioner and has already become final and executory on June 16, 2012.

The power to decide disputed assessment, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals (*Sec. 4. Power of the Commissioner to interpret Tax Laws and to Decide Tax Cases, 1997 NIRC, as amended*).

Our assessment on this item is maintained, despite NYKFJSC's position, as it differs from that of Bureau's position to subject the import agency commission amounting to Php 38,360,379.27 to VAT pursuant to RMC No. 31-2008 (Q & A No. 34).

- **Php 375.15** – this represents unallowable input tax (variance of input tax per reconciliation of summary list of purchases and returns) pursuant to Section 110 of 1997 NIRC, as amended.

- **Php 57,098.67** – represents deficiency basic tax due on adjusted additional gross income, as stated in IT, is also subject to VAT pursuant to Section 108, 1997 NIRC, as amended (refer to Schedule 'IT/VAT-LN-FDDA').

Expanded Withholding Tax

- **Php 941,742.42** – represents adjusted deficiency basic tax due on various income payees amounting to Php 42,929,854.18 not subjected to withholding tax pursuant to Revenue Regulations

(RR) No. 2-98, as amended (refer to Schedule 'WE-LOA-FDDA').

- **<u>Php 87,188.61</u>** – represents penalty interest on over-remittance of EWT in the current year but belong to previous year. NYKFJSC did not comment or submit document on this item, hence, our assessment is sustained.

- **<u>Php 89,855.70</u>** – this represents adjusted deficiency basic tax due on adjusted total under-declaration of purchases amounting to Php 4,550,112.26, which were not subjected to withholding pursuant to RR No. 2-98, as amended (refer to schedule 'WE-LN-FDDA').

Compensation Withholding Tax

- **<u>Php 277,354.43</u>** – this represents deficiency basic tax due on COLA and Other Benefits not subjected to withholding pursuant to RR No. 2-98, as amended, based on the alphalist submitted/presented per reinvestigation (refer to Schedule 'WC-FDDA').

Miscellaneous Tax

- **<u>Php 10,000.00</u>** – represents penalty for non-filing of Monthly Remittance Return of Final income Taxes Withheld (BIR Form N. 1601-F) for the months of January 2007 to June and August to November 2007 pursuant to Section 250 of 1997 NIRC, as amended (Php 1,000.00 * 10 mos.).

35. Foregoing considered, the assessments have bases both in law and in fact.

36. On a final note, the decision of the Honorable Supreme Court in the case of *Commissioner of Internal Revenue vs. Bank of Philippine Islands* can be well use as a guide, to wit:

> 'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. **<u>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. All</u>**

> **presumptions are in favor of the correctness of tax assessments.**' (Emphasis ours)"

On March 2, 2016, Petitioner paid the following amounts, leading to the cancellation of the relevant assessments:[25]

TAX TYPE		BASIC	INTEREST	PENALTIES	TOTAL
Income Tax	Representation Expense/Others	₱2,077,870.00	₱3,272,218.00	₱50,000.00	₱5,400,087.00
	Provisions – Contingencies				
	Capital Gains Tax				
	COLA and Other Benefits	-	-	-	-
VAT	Disallowed Input Tax on Purchases (SLP v. Returns)	375.00	607.00	25,000.00	25,983.00
EWT		1,031,598.00	1,673,167.00	25,000.00	2,729,765.00
WTC		277,354.00	449,846.00	16,000.00	743,201.00
FWT		-	-	10,000.00	10,000.00
TOTAL		**₱3,387,197.00**	**₱5,395,839.00**	**₱126,000.00**	**₱8,909,036.00**

Consequently, and apart from the issue of prescription, the only items subject of the assessment under the FDDA and the instant Petition for Review are the following:[26]

TAX TYPE		BASIC TAX DEFICIENCY ASSESSED
Income Tax	Contribution to Retirement Fund	₱2,195,575.20
	Undeclared purchases	166,537.79
VAT	Import-agency Commissions	4,603,245.51
	Undeclared purchases	57,098.67
	TOTAL	**₱7,022,457.00**

On January 29, 2016, the Court directed Respondent to certify and elevate the BIR Records pertaining to this case.[27] Respondent then submitted his Compliance and Explanation on February 3, 2016[28] with the entire BIR Records.[29]

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[25] *Id.* at Note 2, pp. 1427 to 1428, par. 12.
[26] *Id.*, par. 13.
[27] *Id.* at Note 24, pp. 523 to 524, Resolution dated January 29, 2016.
[28] *Id.*, pp. 525 to 526.
[29] Exhibit "R-13", entire Folder.

The pre-trial conference was initially set on March 29, 2016.[30] However, after the filing of Petitioner's Motion to Reset Pre-Trial Conference and Defer Submission of Pre-Trial Brief and Judicial Affidavits of Witnesses on March 22, 2016,[31] and Motion to Reset Pre-Trial Conference and Defer Submission of Judicial Affidavits of Witnesses on July 7, 2016,[32] the pre-trial conference was reset to, and eventually held on, September 20, 2016.[33]

The Pre-Trial Brief for Petitioner was filed on July 7, 2016;[34] while Respondent's Pre-Trial Brief was submitted on July 11, 2016.[35]

The parties filed their Joint Stipulation of Facts and Issues on October 17, 2016.[36]

On November 8, 2016, the Court issued the Pre-Trial Order and deemed the termination of the pre-trial.[37]

Trial of the case ensued.

During trial, Petitioner presented documentary and testimonial evidence. For its testimonial evidence, Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Nilo Palonpon,[38] Petitioner's Chief Accountant; (2) Atty. Melitha F. Gasapos,[39] Petitioner's Corporate Secretary; and (3) Ms. Cynthia A. Garcia,[40] Petitioner's Comptroller.

On March 27, 2017, Petitioner filed its Formal Offer of Evidence.[41] Respondent failed to file his comment thereon.[42] However, Respondent

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[30] *Id.* at Note 24, pp. 519 to 520, Notice of Pre-Trial Conference dated January 11, 2016.
[31] *Id.*, pp. 529 to 532.
[32] *Id.*, pp. 559 to 563.
[33] *Id.*, pp. 533, 538, 592, 605, and 610 to 611, Minutes of the hearing held on March 29, 2016, Resolution dated April 4, 2016, Order dated July 8, 2016, and Minutes of the hearing held on, and Order dated, September 20, 2016, respectively.
[34] *Id.*, pp. 548 to 558.
[35] *Id.*, pp. 593 to 596.
[36] *Id.* at Note 1, pp. 1425 to 1438.
[37] *Id.*, pp. 1445 to 1456.
[38] *Id.* at Note 24, pp. 635 to 651, Exhibit "P-42"; *id.* at Note 1, pp. 1457 to 1458, Minutes of the hearing held on, and Order dated, November 21, 2016.
[39] *Id.*, pp. 620 to 624, Exhibit "P-43"; *id.* at Note 1, pp. 1462 to 1463, Minutes of the hearing held on, and Order dated, January 16, 2017.
[40] *Id.*, pp. 884 to 893, Exhibit "P-44"; *id.* at Note 3, pp. 1464 to 1466, Minutes of the hearing held on, and Order dated February 20, 2017.
[41] *Id.* at Note 3, pp. 1482 to 1492.
[42] Docket – Vol. 5, p. 2161, Records Verification dated April 18, 2017 issued by the Judicial Records Division of this Court.

subsequently submitted a Motion to Admit Attached Comment on April 21, 2017.[43]

In the Resolution dated October 19, 2017,[44] the Court granted Respondent's Motion to Admit, thus, admitted the Comment attached thereon. In the same Resolution, the Court likewise admitted in evidence Petitioner's exhibits.

Respondent also presented his documentary and testimonial evidence. The sole testimony of Mr. William Sundiam,[45] Revenue Officer III of the BIR, formed part as Respondent's testimonial evidence.

On February 26, 2018, Respondent submitted his Formal Offer of Evidence.[46] Petitioner then filed its Comment and/or Opposition (To Respondent's Formal Offer of Evidence) on March 19, 2018.[47]

In the Resolution dated April 11, 2018,[48] the Court denied the admission of all Respondent's documentary exhibits for failure to identify.

Thus, Respondent filed his Omnibus Motion (A. Motion for Reconsideration of the Resolution dated 11 April 2018; B. To set case for hearing for the identification of the compliant judicial affidavit of witness and; C. To defer the submission of the parties' memoranda) on May 2, 2018.[49] Subsequently, Petitioner submitted its Comment (To Respondent's Omnibus Motion dated April 27, 2018) on May 22, 2018.[50] Thereafter, Respondent filed his Reply (To Comment on Respondent's Omnibus Motion) on May 28, 2018.[51]

In the Resolution dated June 22, 2018,[52] the Court admitted the Compliant Judicial Affidavit of RO William Sundiam attached in the aforesaid Omnibus Motion; set the instant case for the identification of said affidavit; deferred the submission of the parties' memoranda; and held in abeyance the resolution of the motion for reconsideration.

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[43] *Id.*, pp. 2164 to 2170.

[44] *Id.*, pp. 2178 to 2179.

[45] *Id.*, pp. 2227 to 2233, Exhibit "R-14"; pp. 2190 to 2192, Minutes of the hearing held on, and Order dated, February 5, 2018; pp. 2251 to 2253, Minutes of the hearing held on, and Order dated, September 17, 2018.

[46] *Id.*, pp. 2196 to 2202.

[47] *Id.*, pp. 2204 to 2212.

[48] *Id.*, pp. 2214 to 2215.

[49] *Id.*, pp. 2216 to 2222.

[50] *Id.*, pp. 2236 to 2240.

[51] *Id.*, pp. 2241 to 2244.

[52] *Id.*, pp. 2247 to 2248, Resolution dated June 22, 2018.

On September 18, 2018, Respondent filed anew his Formal Offer of Evidence.[53] In its Manifestation filed on October 1, 2018,[54] Petitioner stated that it would adopt the Comment and Opposition to Respondent's Formal Offer of Evidence dated March 19, 2018.

On January 17, 2019, the Court granted the Omnibus Motion (A. Motion for Reconsideration of the Resolution dated 11 April 2018), and thus, admitted in evidence all of Respondent's exhibits.[55]

Respondent filed his Memorandum on February 20, 2019;[56] while Petitioner filed its Memorandum on March 20, 2019.[57]

The instant case was deemed submitted for decision on March 28, 2019.[58]

THE ISSUES

The issues for this Court's resolution are as follows:

> "**Issues as to Petitioner:**
>
> 1. Whether or not Respondent's right to assess Petitioner for taxable year 2009 has already prescribed;
>
> 2. Whether or not the assessment is void for the Respondent's failure to comply with the applicable rules and regulations issued by the BIR itself, relative to the issuance of a valid assessment;
>
> **Issue Agreed Upon by the Parties:**
>
> 1. Whether or not Petitioner is liable for deficiency income tax and VAT for taxable year 2007 in the aggregate of &,022,457.00, as well as 25% Surcharge, 20% Deficiency and Delinquency interest pursuant to Sections 248 and 249 of the NIRC of 1997."

THE ARGUMENTS OF THE PARTIES

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[53] *Id.*, pp. 2254 to 2260.
[54] *Id.*, pp. 2262 to 2264.
[55] *Id.*, pp. 2267 to 2268, Resolution dated January 17, 2019.
[56] *Id.*, pp. 2274 to 2289.
[57] *Id.*, pp. 2297 to 2358.
[58] *Id.*, p. 2360, Resolution dated March 28, 2019.

Petitioner primarily argues that Respondent's right to assess its deficiency taxes for TY 2007 has already prescribed. It points out that the Waiver of the Statute of Limitations it executed is invalid and therefore, does not stall the running of the prescriptive period; that there was no Board Resolution authorizing the signatory to sign the Waivers on petitioner's behalf; that the RO who accepted the Waivers is equally not authorized to do so; and that the doctrine of estoppel cannot be made to apply to Petitioner with respect to the Waivers.

Moreover, Petitioner contends that the entire assessment is void for failure to comply with the applicable BIR rules and regulations; that no LOA was issued to authorize RO Sundiam to investigate and assess Petitioner; that the audit was conducted more than the 120-day period provided in the audit guidelines; that the LOA is void for failure to comply with the requirements set out in Revenue Memorandum Order No. 69-2010; and that a valid assessment must stem from a valid LOA.

Moreover, Petitioner avers that it is not liable for deficiency VAT; that it properly claimed its deductions for costs of contracts; that the general statements in the FDDA does not properly inform Petitioner why the subject expenses were not considered as ordinary and necessary business expenses, which renders said assessment void; that Petitioner properly deducted the COLA and other benefits from its gross income, in accordance with the prevailing rules and regulations during the subject taxable year; that considering that the provisions for contingencies were never utilized as expense for income tax purposes, and Petitioner did not derive any tax benefit from the aforementioned provisions, there is no basis to add said amounts to the taxable income of petitioner; and that the latter did not under-declare its purchases.

Lastly, Petitioner avers that it is not liable for deficiency VAT; that the deficiency assessment arising from alleged sales not subjected to VAT, due to the application of Revenue Memorandum Circular (RMC) No. 31-2008 is erroneous; and that there are no under-declaration of purchases to speak of which would give rise to deficiency VAT.

On the other hand, Respondent counters that his right to assess Petitioner for TY 2007 did not prescribe; that Petitioner is estopped from assailing the validity of the Waivers it executed; that the assessments were issued in accordance with the law and the rules, according Petitioner its right to due process; and that the assessments have bases in fact and in law.

THE RULING OF THE COURT

The instant Petition for Review has merit.

It is axiomatic that, at the heart of every assessment conducted by the BIR, there must be a valid grant of authority. This doctrine still prevails to this day almost a decade after it was embodied in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[59] where the Supreme Court pronounced 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."[60]

A Letter of Authority (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.[61] 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.[62]

Under Section 6(A) of the NIRC of 1997, as amended, the power to authorize examination of a taxpayer and issue assessments is primarily lodged with respondent CIR, thus:

> **SECTION 6.** *Power of Make Assessments and Requirements for Tax 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. x x x.

Section 7 of the 1997 NIRC likewise sets limits on which powers of the CIR may be delegated by him and which powers are to be exercised exclusively by him. The issuance of an LOA is not one of the non-delegable powers of the CIR, *viz:*

> **SECTION 7.** *Authority of the Commissioner to Delegate Power.* – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or

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[59] G.R. No. 178797, November 17, 2010.
[60] *Id.*
[61] *Id.*
[62] *Medicard Philippines vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:

(a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

(c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept."

On the contrary, issuing LOAs is a delegable power which the CIR may devolve to Revenue Regional Directors, as expounded on in Sections 10 and 13 of the 1997 NIRC, thus:

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:

x x x

(c) **<u>Issue Letters of authority for the examination of taxpayers</u> within the region;**

xxx

(h) **Perform such other functions as may be provided by law and as may be delegated by the Commissioner.**"[63]

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.

An LOA is, in essence, a contract of agency. Article 1868 of the Civil Code defines agency as a contract where "a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."

In the case of *Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.*[64], the Supreme Court had the occasion to expound on the elements of agency, to wit:

"The elements of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for him/herself; and (4) the agent acts within the scope of his/her authority. **As the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it.** Absent such mutual intent, there is generally no agency. It is likewise a settled rule that persons dealing with an assumed agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it."[65]

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[63] Emphasis and underscoring supplied.
[64] G.R. No. 188288, January 16, 2012.
[65] Emphasis supplied.

In an LOA, the CIR is the principal - as he is the one mandated by the law to make assessments - and the Revenue Regional Director (RRD), his agent. Apparently, while the power to make assessments is primarily lodged with Respondent, the power to issue LOA in relation thereto may be expressly delegated to the Revenue Regional Director.[66]

Now, may the RRD, the CIR's agent, appoint a sub-agent, in this case, the RO named in the LOA? Article 1892 of the Civil Code says that he can.

The said provision states:

> "Art. 1892. **The agent may appoint a substitute if the principal has not prohibited him from doing so**; but he shall be responsible for the acts of the substitute:
>
> (1) When he was not given the power to appoint one;
> (2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.
>
> All acts of the substitute appointed against the prohibition of the principal shall be void. (1721)"[67]

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to those who were originally named in the LOA, may be revoked, transferred and reassigned to RO William F. Sundiam and GS Joriz U. Saldajeno in the Memorandum Referrals for continuance of audit.

The Memorandum Referrals where such authority is transferred may be equivalent to an LOA. Several reasons support this. *First*, the only directive under Section 13 of the NIRC of 1997, as amended,[68] which requires that an assessment be done by ROs pursuant to an LOA, is that the grant of authority be done ***in writing***. In fact, an "[a]gency may be oral, unless the law requires a specific form."[69]

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[66] *Central Luzon Drug Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 8952, November 14, 2018.
[67] Emphasis supplied.
[68] SEC. 13. Authority of a Revenue Officers. - 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 supplied).
[69] Civil Code of the Philippines, Article 1869.

Second, although the document may not be entitled "Letter of Authority", it contains all the elements necessary to establish a contract of agency between the CIR and the new RO. The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[70] The title of the contract does not necessarily determine its true nature.[71] In fact, this Court has, time and again, declared certain documents emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.

In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the NIRC of 1997, as amended, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.[72] Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus.* This means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code.[73]

In this case, it must be recalled that on July 3, 2008, Petitioner received a copy of a letter with an attached LOA No. 00035448 dated July 1, 2008, issued by Mr. Romulo L. Aguila, Jr., Head Revenue Executive Assistant, authorizing the conduct of an audit of petitioner's tax records for TY 2007.[74] The authority to conduct the said audit was specifically granted to a certain RO Juan M. Luna, Jr.[75]

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[70] *Heirs of Dr. Mario S. Intac and Angelina Mendoza Intoc v. Court of Appeals and Spouses Marcelo Roy, Jr. and Josefina Mendoza-Roy and Spouses Dominador Lozada and Martina Mendoza-Lozada*, G.R. No. 173211, October 11, 2012 citing *Spouses Villaceran v. De Guzman*, G.R. No. 169055, February 22, 2012; *Ramos v. Heirs of Honorio Ramos, Sr.*, G.R. No. 140848, April 25, 2002, 381 SCRA 594, 601; Heirs of *Policronio M. Ureta, Sr. vs. Heris of Liberato M. Ureta*, G.R. Nos. 165748 & 165930, September 14, 2011 citing *Lopez v. Lopez*, G.R. No. 161925, November 25, 2009, 605 SCRA 358, 36.

[71] *Adelfo Properties, Inc. v. Court of Appeals*, G.R. No. 111238, January 25, 1995.

[72] *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, represented by Jose Mario Bunag, in his capacity as Commissioner of the Bureau of Internal Revenue, and John Doe and Jane Doe, who are persons acting for, in behalf or under the authority of Respondent*, G.R. No. 215427, December 10, 2014, citing *Lopez v. The Civil Service Commission*, 273 Phil. 147, 152 (1991).

[73] *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, June 22, 2010.

[74] *Id.* at Note 5, p. 1426.

[75] *Id.* at Note 3, p. 1548, Exhibit "P-9"; *id.* at Note 11, p. 1, Exhibit "R-13".

Thereafter, on March 3, 2010, Mr. Edralin M. Silario, OIC-Chief of the LT Regular Audit Division I issued a Memorandum (Referral No. D-LOA-0310-0002),[76] referring the papers/entire docket of petitioner to RO William F. Sundiam and GS Joriz U. Saldajeno, for the continuance of investigation on all of petitioner's internal revenue taxes for TY 2007.

RO Sundiam himself confirmed the foregoing in his *Judicial Affidavit* dated May 2, 2018,[77] as follows:

> "10Q Why are you familiar with the case?
> 10A I was the one who conducted the audit/investigation of petitioner NYK Fil-Japan Corp. wherein the said taxpayer is found to be liable for deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, Withholding Tax on Compensation and Final Withholding Tax for taxable year 2007.
>
> 11Q What was our authority to conduct the examination of [P]etitioner?
> 11A I was one of the revenue officers authorized to the conduct the audit/examination of [P]etitioner. Letter of Authority No. LOA No. 2007-00035448 dated 1 July 2008 was issued to RO Juan Luna. When Mr. Luna was reassigned to another office, Referral Letter No. D-LOA-0310-0002 dated 3 March 2010 was issued to me."

Moreover, records show that it is RO Sundiam and GS Saldajeno who recommended the issuance of the PAN dated December 21, 2010[78] against Petitioner.[79] It was also RO Sundiam who recommended the following:

(1) The approval and issuance of FLD dated May 20, 2011[80] against Petitioner;[81]
(2) The issuance of the FDDA dated September 26, 2014[82] to Petitioner to effect the collection of the tax still due;[83] and
(3) The denial of Petitioner's request for reconsideration due to lack of merit[84] which paved the way of the issuance of the letter dated June 2, 2015 issued by then Commissioner Kim S. Jacinto-Henares. [85]

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[76] *Id.* at Note 11, p. 58, Exhibit "R-1".
[77] *Id.* at Note 42, p. 2228, Exhibit "R-14".
[78] *Id.* at Note 3, pp. 1577 to 1581, Exhibit "P-15"; *id.* at Note 11, pp. 484 to 488, Exhibit "R-3".
[79] *Id.* at Note 11, pp. 434 to 441, Exhibit "R-2".
[80] *Id.* at Note 3, pp. 1590 to 1631, Exhibit "P-17; *id.* at Note 11, pp. 616 to 657, Exhibit "R-5".
[81] *Id.* at Note 11, pp. 533 to 546, Exhibit "R-4".
[82] *Id.*, pp. 1028 to 1035, Exhibit "R-7".
[83] *Id.*, pp. 984 to 989, Exhibit "R-6".
[84] *Id.*, pp. 533 to 546, Exhibit "R-4".
[85] *Id.* at Note 22, p. 252, Exhibit "P-21"; *id.* at Note 11, p. 1455, Exhibit "R-9".

Clearly, as per the LOA No. 2007-00035448 dated July 1, 2008[86], RO Sundiam and GS Saldajeno who recommended the issuance of the PAN, FLD, and FDDA, were not among those originally authorized to audit/examine Petitioner's books of account and other accounting records for TY 2007. In fact, the records reveal that the authority of RO Sundiam and GS Saldajeno to examine Petitioner for possible deficiency taxes pertaining to TY 2007 only emanated from Memorandum Referral Nos. D-LOA-0310-0002 issued on March 3, 2010[87] and D-LN-0310-0002 issued on April 19, 2010[88], both signed by Mr. Edralin M. Silario, OIC-Chief of the LT Regular Audit Division I of the BIR.

RO Sundiam and GS Saldajeno who conducted the examination of Petitioner's records may be deemed authorized to do so without need for a new LOA, **only if the Memorandum Referrals were signed by the Revenue Regional Director.**

In the instant case however, the said Memorandum Referrals were only signed by Mr. Edralin M. Silario, OIC-Chief of the LT Regular Audit Division I of the BIR. Considering that RO Sundiam and GS Saldajeno who conducted the examination of Petitioner's books of accounts and other accounting records for taxable year 2007, and who recommended the issuance of the PAN, FLD-PAN, and FDDA against Petitioner for the same taxable year, acted without authority when they performed the audit of Petitioner and, subsequently, recommended the issuance of the assailed assessment, the subject tax assessments issued by the Respondent against Petitioner are inescapably void. It must be emphasized that a void assessment bears no valid fruit.[89] Such being the case, the subject tax assessments cannot be enforced against Petitioner.

The rationale for requiring a valid LOA as a prerequisite to a valid assessment is not that difficult to perceive – it is to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to preserve its business while at the same time responding to the BIR's exercise of its statutory powers. The balance between the two is achieved by ensuring that any examination of a taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by statute.[90]

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[86] *Id.* at Note 5.
[87] *Id.* at Note 11.
[88] *Id.* at Note 12.
[89] *Commissioner of Internal Revenue vs. Azucena T. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006.
[90] *Central Luzon Drug Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 8952, March 6, 2019.

In view of the finding that the subject tax assessments are a nullity, it becomes unnecessary to resolve the issues and other respective matters raised by the parties.

It is to be noted, however, that the only items subject of the assessment under the FDDA and the instant Petition for Review were the deficiency Income Tax from the contribution to the retirement fund and undeclared purchases and the deficiency VAT from import-agency commissions and undeclared purchases. Petitioner has previously paid for the assessments for deficiency income tax for a) representation expense, b) contingencies, c) capital gains tax, and COLA and other benefits, deficiency VAT, EWT, WTC, and FWT in the total amount of ₱8,909,036.00, leading to the cancellation of those assessments, and their non-inclusion in the present Petition for Review.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency tax assessments under the FDDA dated September 26, 2014 for TY 2007 against Petitioner in the amount of ₱25,448,013.85, inclusive of interests and penalties, are **WITHDRAWN and SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO- SAN PEDRO
Associate Justice

ATTESTATION

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

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice