REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

EDS MANUFACTURING, INC.,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8830

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MANAHAN, *JJ.*

Promulgated:

AUG 0 3 2017 3:50 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

The Petition for Review filed by EDS Manufacturing, Inc. prays that the Final Decision on Disputed Assessment (FDDA) issued by the Commissioner of Internal Revenue dated May 9, 2014, finding petitioner liable for alleged deficiency taxes for the fiscal year (FY) ended March 2009 in the aggregate amount of ₱67,663,010.38, be declared null and void.[1]

THE FACTS

Petitioner EDS Manufacturing, Inc. is a corporation duly organized and existing under Philippine laws. Petitioner is a registered taxpayer since June 22, 1994, with Taxpayer Identification No. (TIN) 000-289-584-000.[2] It is also registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Export Enterprise at the EMI-Special Economic Zone since November 25, 2002.[3] As such, its transactions with local suppliers of goods, properties, and services are allegedly qualified for VAT zero-rating for the year 2009.[4]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who 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. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On July 7, 2009, petitioner filed its Annual Income Tax Return (ITR) for fiscal year 2009.[5] Petitioner likewise filed its Quarterly Value-added Tax (VAT) Returns for the four quarters of fiscal year 2009 on July 16, 2008, on October 23, 2008, on January 21, 2009, and on April 23, 2009, respectively.[6]

On March 20, 2012, respondent issued a Memorandum of Assignment[7] addressed to Revenue Officers Reynoso C. Bravo and Wilfredo S. Reyes, pursuant to Memorandum[8] dated February 21, 2012.

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[1] Summary of the Case, Pre-Trial Order, docket, vol. I, p. 323.
[2] Exhibit "P-2", docket, vol. II, p. 607.
[3] Exhibit "P-3-b", docket, vol. II, p. 611.
[4] Exhibits "P-3" and "P-3-a", docket, vol. II, pp. 608 and 609 to 610, respectively.
[5] Exhibit "P-7", docket, vol. II, pp. 622 to 625.
[6] Exhibits "P-8", "P-8-a", "P-9", "P-9-a", "P-10", "P-10-a", "P-11", and "P-11-a", docket, vol. II, pp. 627, 628 to 630, 631, 632 to 634, 635, 636 to 637, 638, and 639 to 640, respectively.
[7] Exhibit "R-1", BIR records, p. 46.
[8] Exhibit "R-1-1", BIR records, p. 44.

On April 18, 2012, respondent informed petitioner that there was a proposed assessment against the latter upon review and investigation of its internal revenue tax.[9] Consequently, petitioner replied through a letter dated May 8, 2012, which was received by respondent on May 9, 2012.[10]

Pursuant to a Memorandum[11], a Preliminary Assessment Notice[12] (PAN) was issued on May 24, 2012 by respondent and received by petitioner on June 5, 2012,[13] assessing petitioner for alleged deficiency income tax and value-added tax, computed as follows:

Income Tax (IT)			
		Special Rate-5%	**Regular Rate-35%**
Sales/Revenue		5,988,901,356.00	
Cost of Sales/Service per ITR	6,013,847,513.00		
Less: Disallowed Cost per review	735,636,140.40	5,278,211,372.60	
Gross Income		710,689,983.40	
Add: Non-Operating & Taxable Other income per ITR			30,908,976.00
Total Gross income		710,689,983.40	30,908,976.00
Less: Deductions per ITR			
Taxable Income		710,689,983.40	30,908,976.00
Tax Rate		5%	35/30%
Income Tax		35,534,499.17	
Less: Share of Other Agencies (RA 7916/8748)		14,213,799.67	
Add: Tax due to the BIR on Transaction under special rate			21,320,699.50
Aggregate Income Tax Due			31,752,478.90
Less: Tax payments/Credits per return			939,208.00
Basic Deficiency Income Tax			30,813,270.90
Add: Interest (20% per annum)		17,973,380.92	
Compromise penalty		50,000.00	18,023,380.92
Total Deficiency Tax			48,836,651.82
Value-added Tax (VAT)			
Sales of Scrap			28,137,758.00
Miscellaneous Income			794,906.00
Proceeds from Disposal of PPE	$24,537.00 x 46.20		1,133,609.40
Total Taxable Sales			30,066,273.40
Output Tax (12%)			3,607,952.81
Add: Interest (20%)		2,284,916.51	
Compromise Penalty		25,000.00	2,309,916.51
Total Deficiency VAT			5,917,869.32
TOTAL DEFICIENCY TAXES			54,760,730.84

Petitioner protested the said PAN on June 20, 2012.[14]

[9] Exhibit "P-12", docket, vol. II, p. 641; Exhibit "R-2", BIR records, p. 59.
[10] Exhibit "P-13", docket, vol. II, pp. 642 to 649.
[11] Exhibit "R-3", BIR records, pp. 70 to 73.
[12] Exhibit "P-14", docket, vol. II, pp. 650 to 654; Exhibit "R-4", BIR records, pp. 74 to 78.
[13] Par. 12, Statement of Facts and Case, Petition for Review, docket, vol. I, p. 11.
[14] Exhibit "P-15", docket, vol. II, pp. 655 to 670.

Subsequently, upon recommendation of Revenue Officer Bravo and Group Supervisor Reyes,[15] respondent issued a Formal Letter of Demand[16] with Details of Discrepancies[17] and Assessment Notices[18] on July 3, 2012, which petitioner received on July 18, 2012,[19] assessing petitioner for the following deficiency income tax and VAT:

Income Tax (IT)			
		Special Rate-5%	**Regular Rate-35%**
Sales/Revenue		5,988,901,356.00	
Cost of Sales/Service per ITR	6,013,847,513.00		
Less: Disallowed Cost per review	735,636,140.40	5,278,211,372.60	
Gross Income		710,689,983.40	
Add: Non-Operating & Taxable Other income per ITR			30,908,976.00
Total Gross income		710,689,983.40	30,908,976.00
Less: Deductions per ITR			
Taxable Income		710,689,983.40	30,908,976.00
Tax Rate		5%	35/30%
Income Tax		35,534,499.17	
Less: Share of Other Agencies (RA 7916/8748)		14,213,799.67	
Add: Tax due to the BIR on Transaction under special rate			21,320,699.50
Aggregate Income Tax Due			31,752,478.90
Less: Tax payments/Credits per return			939,208.00
Basic Deficiency Income Tax			30,813,270.90
Add: Interest (20% per annum)		18,487,962.54	
Compromise penalty		50,000.00	18,537,962.54
Total Deficiency Tax			49,351,233.44
Value-added Tax (VAT)			
Sales of Scrap			28,137,758.00
Miscellaneous Income			794,906.00
Proceeds from Disposal of PPE	$24,537.00 x 46.20		1,133,609.40
Total Taxable Sales			30,066,273.40
Output Tax (12%)			3,607,952.81
Add: Interest (20%)		2,345,169.33	
Compromise Penalty		25,000.00	2,370,169.33
Total Deficiency VAT			5,978,122.13
TOTAL DEFICIENCY TAXES			55,329,355.58

Petitioner disputed the afore-mentioned Formal Letter of Demand (FLD) on August 15, 2012.[20] Petitioner later submitted the supporting documents to its protest on October 10, 2012.[21]

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[15] Exhibit "R-5", BIR records, pp. 112 to 115.
[16] Exhibit "P-16", docket, vol. II, pp. 676 to 677.
[17] Exhibit "R-6", BIR records, pp. 118 to 120.
[18] Exhibits "R-6-1" and "R-6-2", BIR records, pp. 116 to 117.
[19] Par. 14, Statement of Facts and Case, Petition for Review, docket, vol. I, pp. 11 to 12.
[20] Exhibit "P-17", docket, vol. II, pp. 678 to 694.
[21] Exhibit "P-18", docket, vol. II, pp. 695 to 696.

On February 27, 2013, the continuation of the audit/verification of petitioner's protest on the FLD was transferred to Revenue Officer Reynante DP. Martinez and Group Supervisor Rolando M. Balbido.[22]

Upon the recommendation of Revenue Officer Martirez and Group Supervisor Balbido,[23] respondent denied petitioner's protest via the FDDA on May 9, 2014.[24]

Thus, petitioner filed this Petition for Review[25] on June 5, 2014.

Then, respondent interposed the following special and affirmative defenses in his Answer[26] filed on September 4, 2014:

> "Respondent hereby repleads the above admission and denials as part of her special and affirmative defenses.
>
> Petitioner is liable for deficiency Income Tax and Value Added Tax in an aggregate amount of Sixty Seven Million Six Hundred Sixty Three Thousand Ten Pesos and 38/100 (₱67,663,010.38) inclusive of interest and penalties. Based on the audit examination conducted by the BIR examiners, it was found that petitioner reported miscellaneous income for the sale of scrap in the amount of ₱28,137,758, subject to the special tax of 5%. However, the said transaction is not a PEZA registered activities, therefore it should be subject to 30% and 35% regular income tax provided in Section 32 of the National Internal Revenue Code of 1997, as amended.
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> **SEC. 32 *Gross Income.* –**
>
> **(A)** ***General Definition.*** – Except when otherwise provided in this Title, gross income means all income derived from whatever

[22] Exhibit "R-7", BIR records, p. 179.
[23] Exhibit "R-8", BIR records, pp. 184 to 189.
[24] Exhibits "P-19", "P-19-a", and "P-19-b", docket, vol. II, pp. 697 to 700, 701, and 702, respectively; Exhibits "R-9", "R-9-1", and "R-9-2", BIR records, pp. 196 to 197, 193, and 192, respectively.
[25] Docket, vol. I, pp. 6 to 37.
[26] Docket, vol. I, pp. 169 to 192.

> source, including (but not limited to) the following items:
>
> (1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;
> (2) Gross income derived from the conduct of trade or business or the exercise of a profession;
> (3) Gains derived from dealings in property;
> (4) Interests;
> (5) Rents;
> (6) Royalties;
> (7) Dividends;
> (8) Annuities;
> (9) Prizes and winnings;
> (10) Pensions; and
> (11) Partner's distributive share from the net income of the general professional partnership.
>
> xxx xxx xxx

Petitioner's indirect labor and other employees benefit, royalty on inventory obsolescence, repairs and maintenance and other cost in the amount of ₱735,636,140.40 were disallowed as part of cost of sales in computing petitioner's gross income subject to 5%, pursuant to Revenue Regulation No. 11-2005 and Section 24 of Republic Act 7916. Further, petitioner's failure to use its inventory to produce the inventory sold justifies disallowance of inventory obsolescence as part of cost of sales. The same should form part of operating expenses as provided in Section 34 of the NIRC of 1997, as amended. Revenue Regulation No. 11-2005 and Sections 24 of Republic Act 7916 and Section 34 of NIRC of 1997, as amended, provide as follows:

REVENUE REGULATIONS NO. 11-2005

SECTION 1. Scope. Pursuant to the provisions of Section 244 and 245 of the National Internal Revenue Code of 1997, as amended, these regulations are hereby promulgated to define gross income earned to implement the tax incentive provision of Section 24 of Republic Act No. 7916, thus, revoking Section 7 of Revenue Regulations No. 2-2005.

SECTION 3. Gross Income Earned – for purposes of implementing the tax incentive of registered Special Economic zone (ECOZONE) enterprises in Section 24 of Republic Act No. 7916, the term 'gross income earned' shall refer to gross sales or gross revenues derived from business activity within the ECOZONE, net of sales discounts, sales returns and allowances and minus costs of sales or direct costs but before any deduction is made for administrative, marketing, selling and/or operating expenses or incidental losses during a given taxable period.

For purposes of computing the total five percent (5%) tax rate imposed, the following direct costs are included in the allowable deductions to arrive at gross income earned for specific types of enterprises:

1. ECOZONE Export Enterprises, Free Trade enterprises, Free Trade Enterprises and Domestic Market Enterprises:

- Direct salaries, wages or labor expenses
- Production supervision salaries
- Raw materials used in the manufacture of products
- Decrease in Goods in Process Account (Intermediate goods) *gr*

- Decrease in Finished Goods Account
- Supplies and fuels used in production
- Depreciation of machinery and equipment used in production, and of that portion of the building owned or constructed that is used exclusively in the production of goods
- Rent and utility charges associated with building, equipment and warehouses used in production
- Financing charges associated with fixed assets used in production the amount of which were not previously capitalized

2. ECOZONE Developer/Operator, Facilities, Utilities and Tourism Enterprises:
- Direct salaries, wages or labor expense
- Service supervision salaries
- Direct materials, supplies used
- Depreciation of machineries and equipment used in the rendition of registered services, and of that portion of the building owned or constructed that is used exclusively in the rendition of registered service
- Rent and utility charges for buildings and capital equipment used in the rendition of registered services
- Financing charges associated with fixed assets used in the registered services business the amount of which were not previously capitalized.

SECTION 2. Suspension of Certain Provisions of Revenue Regulations No. 2-2005 – The effectivity of Sections 3, 4, and 6 of Revenue Regulations No. 2-2005 is hereby suspended in so far as it applies to enterprises registered under R.A. 7916, pending the issuance of a new regulations pertaining on the matter related thereto.

xxx xxx xxx

Republic Act 7916

SECTION 24. Exemption from Taxes Under the National Internal Revenue Code. – Any provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government. This five percent (5%) shall be shared and distributed as follows:
(a) Three percent (3%) to the national government;
(b) One percent (1%) to the local government units affected by the declaration of the ECOZONE in proportion to their population, land area, and equal sharing factors; and
(c) One percent (1%) for the establishment of a development fund to be utilized for the development of municipalities outside and contiguous to each ECOZONE: Provided, however, That the respective share of the affected local government units shall be determined on the basis of the following formula:
(1) Population – fifty percent (50%);
(2) Land area – twenty-five percent (25%); and
(3) Equal sharing – twenty-five percent (25%).

xxx xxx xxx

SEC. 34. *Deductions from Gross Income.* – Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under subsection (M) *Jr* hereof, in computing taxable income subject to income tax under Sections 24 (A); 25 (A); 26; 27 (A), (B) and (C); and 28 (A) (1), there shall be allowed the following deductions from gross income;

(A) ***Expenses.*** **-**

(1) ***Ordinary and Necessary Trade, Business or Professional Expenses.*** – (a) In General. – There shall be allowed as deduction from gross income all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession, including: (i) A reasonable allowance for salaries, wages, and other forms of compensation for personal services actually rendered, including the grossed up monetary value of fringe benefit furnished or granted by the employer to the employee: *Provided*, That the final tax imposed under Section 33 hereof has been paid; (ii) A reasonable allowance for travel expenses, here and abroad, while away from home in the pursuit of trade, business or profession; (iii) A reasonable allowance for rentals and/or other payments which are required as a condition for the continued use or possession, for purposes of the trade, business or profession, of property to which the taxpayer has not taken or is not taking title or in which he has no equity other than that of a lessee, user or possessor; (iv) A reasonable allowance for entertainment, amusement and recreation expenses during the taxable year, that are directly connected to the development, management and operation of the trade, business or profession of the taxpayer, or that are directly related to or in furtherance of the conduct of his or its trade, business or exercise

> of a profession not to exceed such ceilings as the Secretary of Finance may, by rules and regulations prescribe, upon recommendation of the Commissioner, taking into account the needs as well as the special circumstances, nature and character of the industry, trade, business, or profession of the taxpayer: *Provided*, That any expense incurred for entertainment, amusement or recreation that is contrary to law, morals public policy or public order shall in no case be allowed as a deduction.
>
> (b) *Substantiation Requirements.* – No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records; (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer.

Petitioner has sales in the amount of ₱30,066,273.40. These sales were generated from non-PEZA registered activities such as sales of scrap and proceeds from disposal of equipment. Therefore, the total taxable sales is subject to 12% output tax as provided in Sections 106 and 108 of the NIRC of 1997, as amended:

> **SEC. 106. *Value-Added Tax on Sale of Goods or Properties. –***
>
> **(A) *Rate and Base of Tax.*** – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to ten percent (10%) of the gross selling price or gross value in money of the goods or properties sold,

bartered or exchanged, such tax to be paid by the seller or transferor.

(1) The term '*goods*' or '*properties*' shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include: (a) Real properties held primary for sale to customers or held for lease in the ordinary course of trade or business; (b) The right or the privilege to use patent, copyright, design or model, plan, secret formula or process, goodwill, trademark, trade brand or other like property or right; (c) The right or the privilege to use in the Philippines of any industrial, commercial or scientific equipment; (d) The right or the privilege to use motion picture films, tapes and discs; and (e) Radio, television, satellite transmission and cable television time.

The term '*gross selling price*' means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax.

The excise tax, if any, on such goods or properties shall form part of the gross selling price.

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) **Export Sales.** – The term '*export sales*' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country,

irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;

(4) Sale of gold to the Bangko Sentral ng Pilipinas (BSP); and

(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws.

(b) ***Foreign Currency Denominated Sale.*** – The phrase *'foreign currency denominated sale'* means sale to a nonresident of goods, except those mentioned in Sections 149 and 150, assembled or manufactured in the Philippines for delivery to a resident in the Philippines, paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

(c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate.

(B) ***Transactions Deemed Sale.*** – The following transactions shall be deemed sale: (1) Transfer, use or consumption not in the course of business of goods or properties originally intended for sale or for use in the course of business; (2) Distribution or transfer to: (a) Shareholders or investors as share in the profits of the VAT-registered persons; or (b) Creditors in payment of debt; (3) Consignment of goods if actual sale is not made within sixty (60) days following the date such goods were consigned; and (4) Retirement from or cessation of business, with respect to inventories of taxable goods existing as of such retirement or cessation.

(C) ***Changes in or Cessation of Status of a VAT-registered Person.*** – The tax imposed in Subsection (A) of this Section shall also apply to goods disposed of or existing as of a certain date if under circumstances to be prescribed in rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, the status of a person as a VAT-registered person changes or is terminated.

(D) ***Determination of the Tax.*** – (1) The tax shall be computed by multiplying the total amount indicated in the invoice by one-eleventh (1/11).

(2) *Sales Returns, Allowances and Sales Discounts.* – The value of goods or properties sold and subsequently returned or for which allowances were granted by a VAT-registered person may be deducted from the gross sales or receipts for the quarter in which a refund is made or a credit memorandum or refund is issued.

Sales discount granted and indicated in the invoice at the time of sale and the grant of which does not depend upon the happening of a future event may be excluded from the gross sales within the same quarter it was given.

(3) *Authority of the Commissioner to Determine the Appropriate Tax Base.* – The Commissioner shall, by rules and regulations prescribed by the Secretary of Finance, determine the appropriate tax base in cases where a transaction is deemed a sale, barter or exchange of goods or properties under Subsection (B) hereof, or where the gross selling price is unreasonably lower than the actual market value.

SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase *'sale or exchange of services'* means the performance of all kinds or services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire another domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties.

The phrase 'sale or exchange of services' shall likewise include:

(1) The lease or the use of or the right or privilege to use any copyright, patent, design or model, plan secret formula or process, goodwill, trademark, trade brand or other like property or right; Je

(2) The lease of the use of, or the right to use of any industrial, commercial or scientific equipment;

(3) The supply of scientific, technical, industrial or commercial knowledge or information; (4) The supply of any assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of any such property, or right as is mentioned in subparagraph (2) or any such knowledge or information as is mentioned in subparagraph (3); (5) The supply of services by a nonresident person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any brand, machinery or other apparatus purchased from such nonresident person.

(6) The supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme; (7) The lease of motion picture films, films, tapes and discs; and (8) The lease or the use of or the right to use radio, television, satellite transmission and cable television time.

Lease of properties shall be subject to the tax herein imposed irrespective of the place where the contract of lease or licensing agreement was executed if the property is leased or used in the Philippines.

The term *'gross receipts'* means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

(B) ***Transactions Subject to Zero Percent (0%) Rate.*** – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate.

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); (2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate; (4) Services rendered to vessels engaged exclusively in international shipping; and (5) Services performed by subcontractors and/or contractors in processing, converting, of manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of total annual production.

(C) ***Determination of the Tax.*** – The tax shall be computed by multiplying the total amount indicated in the official receipt by one-eleventh (1/11).

Petitioner classified its income as subject to the 5% special rate, which, in fact, is subject to the regular income tax rate. Its expenses which should be charged to operating expenses were made part of production/direct cost which run counter with the provisions of Revenue Regulation No. 11-2005. Such act is tantamount to filing a false return, as provided in Section 222 of the NIRC of 1997, as amended.

As stated in the Final Decision on Disputed Assessment, petitioner failed to introduce evidence to controvert audit findings. Petitioner did not present purchase invoices/vouchers to prove that the disallowed cost of sales were attributable to its production; and sales invoices issued by Benami Manufacturing Corporation to prove that the scrap were sold to a PEZA registered enterprise.

The assessment issued against petitioner is valid and lawful. It is misplaced to contend that the entire assessment is valid without a Letter of Authority, and that the same is imperative before the Bureau of Internal Revenue can apply the correct income tax rate. Section 6 (B) of the National Internal Revenue Code of 1997, as amended, provides:

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

> Any return, statement of declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided, That* within three (3) years from the date of such filing, the same may be modified, changed, or amended: *Provided, further*, That no notice for audit or investigation of such return, statement or declaration has in the meantime been actually served upon the taxpayer.
>
> (B) *Failure to Submit Required Returns, Statements, Reports and other Documents* – When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.
>
> In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be prima facie correct and sufficient for all legal purposes.
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In the case of Commissioner of Internal Revenue vs. Sony Philippines, Inc., the function of letter of authority was defined as the authority given to the appropriate revenue officer to perform assessment functions. It empowers or enables a revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. Since there are no factual issues to be resolved, there is no need to investigate the books of accounts of petitioner, hence, a Letter of Authority need not be issued anymore.

In its Petition for Review, petitioner alleged that due process were not observed in issuing the Final Decision on Disputed Assessment. Respondent disagrees. Due process has been defined as giving an opportunity to be heard before judgment is rendered. Further, in the case of Flores vs. Montemayor, the Honorable Supreme Court ruled that:

> The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met. What is offensive to due process is the denial of the opportunity to be heard. This Court has repeatedly stressed that parties who choose not to avail themselves of the opportunity to answer charges against them cannot complain of a denial of due process.

Petitioner was afforded due process when it was notified of its tax deficiencies. Petitioner was apprised that an assessment was being made against it when it received a Notice of Informal Conference with detailed computation of petitioner's tax deficiencies. Petitioner likewise received Preliminary Assessment Notice (PAN), Formal Letter of Demand (FLD) and Final Decision on Disputed Assessment (FDDA) all of the said notices have attached details of discrepancies.

Petitioner was apprised of its tax liabilities. It must be noted that petitioner was able to effectively protest the tax assessment against it. The chance afforded to petitioner is a clear opportunity to be heard to refute the findings of its tax deficiency assessment. As such, procedural due process was satisfied. In the case of

Ledesma vs. Court of Appeals, the Supreme Court elaborates on the well established doctrine of due process in administrative proceedings as follows:

> 'The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.'

In the case of Sta. Maria vs. Department of Agrarian Reform Adjudication Board the Supreme Court held:

> 'Finally, anent petitioner's lamentation that they had been denied due process, we differ. In administrative proceedings, a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process. As we held in *Casimiro v. Tandog*: The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. 'To be heard' does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.

In its Petition for Review, petitioner contends that respondent 'did not bother to explain on how the figures were arrived at...' and that according to petitioner 'respondent should have informed petitioner on how she arrived at with her computations...' Respondent reiterates that factual and legal basis on the assessment were stated in the assessment itself and on the attached details of discrepancies. The law does not require respondent to explain how each and every figure in the computations were arrived. The requirement is to state factual and legal basis, in which respondent has already satisfied. Again, petitioner was able to effectively protest the tax assessment against it. Such fact belies petitioner's claim that it was left in the dark, unable to identify the reasons of the assessment.

Respondent's right to assess has not yet prescribed. As stated in the Final Decision on Disputed Assessment dated May 9, 2014:

> 'The taxpayer filed a return clearly showing at its face the misclassification of income supposedly subject to regular income tax rate was subjected to special rate of five (5) percent, while expenses chargeable to operating expenses were classified as part of production/direct cost, in violation of Revenue Regulation No. 11-2005 tantamount to filing a false return by the taxpayer pursuant to Section 222 of the NIRC, as amended. The assessment is also pursuant to Section 6(B) of the NIRC, as amended, in connection with Section 3.1.3(i) of Revenue Regulation 12-99.

Misclassification of income using the special tax rate of 5%, which should have been subjected to regular income tax rate is a deviation from the truth hence petitioner's return is considered as false return. Thus, Section 222 (a) of the National Internal Revenue Code as to the ten (10) year prescriptive period applies.

> **SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –**
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a

proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

xxx xxx xxx

In the case of Commissioner of Internal Revenue vs. Tulio the Supreme Court held that Section 222 specifies three (3) instances when the running of the three-year prescriptive period **<u>does not apply</u>**. These are: (1) filing a false return, (2) filing a fraudulent return with intent to evade tax or (3) failure to file a return. Therefore, the period within which to assess tax is ten (10) years from discovery of the fraud, falsification or omission.

'xxx xxx xxx

Section 223 (now Section 222) of the National Internal Revenue Code provides:

'Section 223. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –

(a) In the case of a false or fraudulent return with intent to evade tax or of **failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission**: *Provided*, That in a

> fraud assessment which had become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> x x x
>
> (c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof **may be collected by distraint or levy or by a proceeding in court within three (3) years following the assessment of the tax.**'

Section 223 specifies three **(3) instances when the running of the three-year prescriptive period does not apply. These are: (1) filing a false return, (2) filing a fraudulent return with intent to evade tax or (3) failure to file a return. The period within which to assess tax is ten years from discovery of the fraud, falsification or omission.**

Here, respondent failed to file his tax returns for 1986 and 1987. On September 14, 1989, petitioner found respondent's omission. Hence, the running of the ten-year prescriptive period within which to assess and collect the taxes due from respondent commenced on that date until September 14, 1999. (emphasis supplied)

xxx xxx xxx

In the case of Aznar vs. Commissioner of Internal Revenue, the Supreme Court explained the difference between 'false return' and 'fraudulent return'. The first merely implies deviation from the truth, whether intentional or not while the second implies intentional or deceitful entry with intent to evade the taxes due.

> 'We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely 'falsity', 'fraud' and 'omission'. That there is a difference between 'false return' and 'fraudulent return' cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.'

A tax return is false when it merely does not reflect the truth and done with or without intent. As explained by the Supreme Court in the case of Commissioner of Internal Revenue vs Estate of Benigno Toda, Jr. (G.R. No. 147188 September 14, 2004):

xxx

> And even assuming arguendo that there was no fraud, **we find that the income tax return filed by CIC for the year 1989 was false. It did not reflect the true or actual amount gained from the sale** of the Cibeles property. Obviously, such was done with intent to evade or reduce tax liability. (emphasis supplied) x x x.

Further, in the case of Republic vs. Marcos II, the Supreme Court ruled:

> 'This conclusion is supported by the provisions of the NIRC as well as previous Court decisions which show that with regard to the filing of an income tax return, the NIRC considers three distinct violations: (1) a false return, (2) a fraudulent return with intent to evade tax, and (3) failure to file a return.
>
> The same is illustrated in Section 51(b) of the NIRC which reads:
>
> (b) Assessment and payment of deficiency tax – xxx
>
> In case a **person fails to make and file a return or** list at the time prescribed by law, **or makes willfully or otherwise, false or fraudulent return** or list x x x. (Emphasis Supplied)
>
> Likewise, in *Aznar v. Court of Tax Appeals*, this Court observed:
>
> To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, ✓

> by resorting to a proper interpretation of Section 332 of the NIRC. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of **(1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return**, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, and (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely, 'falsity,' 'fraud' and 'omission.' (Emphasis Supplied)
>
> xxx xxx xxx

Based on the foregoing, respondent has ten (10) years within which to assess and collect taxes due from petitioner. Clearly, the assessment made by respondent is well within the prescriptive period.

Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by the Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments. As a logical consequence of this presumption, the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong, but that he is right. It is an elementary rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment."

Petitioner's Pre-Trial Brief[27] was filed on October 3, 2014; while respondent's Pre-Trial Brief[28] was filed October 8, 2014.

Upon motion of petitioner,[29] the Court commissioned Mr. Glenn Ian D. Villanueva as the Independent Certified Public Accountant (CPA) for the case on December 4, 2014.[30]

The parties submitted their Joint Stipulation of Facts and Issues[31] on December 19, 2014. Thereafter, a Pre-Trial Order[32] was issued on January 13, 2015, approving the parties' joint stipulations and terminating the pre-trial.

As trial ensued, petitioner presented the following witnesses: Ms. Ma. Socorro A. Cruz, Mr. Nestor Loreto Pascual, Ms. Myrla A. Daña, Ms. Maridel M. Paredes, Mr. Glenn Ian D. Villanueva, and Ms. Eloisa M. Altejos. Subsequently, petitioner formally offered its testimonial and documentary evidence, which were all admitted by the Court, except for Exhibit "P-20-b".[33]

On the other hand, respondent presented Revenue Officers Reynoso C. Bravo and Rolando M. Balbido, as its witnesses. Then, respondent formally offered his testimonial and documentary evidence, which were all admitted by the Court.[34]

The instant case was declared submitted for decision on August 15, 2016,[35] considering the filing of the Memorandum [For the

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27 Docket, vol. I, pp. 203 to 210.
28 Docket, vol. I, pp. 213 to 219.
29 Motion for the Appointment of an Independent Certified Public Accountant, docket, vol. I, pp. 295 to 299.
30 Resolution dated December 22, 2014 and Oath of Commission, docket, vol. I, pp. 316 to 317 and 313, respectively.
31 Docket, vol. I, pp. 318 to 320.
32 Pre-Trial Order, docket, vol. I, pp. 323 to 329.
33 Resolutions dated September 15, 2015 and February 5, 2016, docket, vol. III, pp. 857 to 859 and pp. 1026 to 1028, respectively.
34 Resolution dated June 28, 2016, docket, vol. III, pp. 1081 to 1082.
35 Resolution, docket, vol. III, p. 1163.

Petitioner][36] on August 10, 2016 and of respondent's Manifestation[37] on August 10, 2016, stating that respondent is adopting all the arguments raised in the Answer filed on September 4, 2014 as his Memorandum.

THE ISSUES

The parties submitted the following stipulated issue for this Court's resolution:

> Whether or not petitioner is liable for alleged deficiency taxes in the total amount of Sixty-Seven Million Six Hundred Sixty-Three Thousand Ten Pesos and 38/100 (₱67,663,010.38) for FY 2009.[38]

Petitioner likewise raised the following issues in its Pre-Trial Brief, which respondent was not willing to stipulate:[39]

1. Whether or not the assessment is invalid for having been made in the absence of a valid Letter of Authority and for failure to comply with the essential and fundamental right to due process; and

2. Whether or not the right of respondent to assess petitioner for deficiency tax has already prescribed.

THE COURT'S RULING

The Court shall determine first whether or not the Petition for Review was timely filed.

Section 228 of the National Internal Revenue Code of 1997, as amended, provides: 𝒥𝓇

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[36] Docket, vol. III, pp. 1093 to 1158.
[37] Docket, vol. III, pp. 1160 to 1161.
[38] Stipulation of Issues, Joint Stipulation of Facts and Issues (JSFI), docket, vol. I, p. 319.
[39] Par. V, Pre-Trial Brief, docket, vol. I, pp. 204 to 205; Stipulation of Issues, JSFI, docket, vol. I, p. 319.

"SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

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

Based on the afore-quoted provision, petitioner had thirty (30) days from receipt of the denial of the protest within which to file an *ge* appeal before this Court. Considering that petitioner received the Final Decision on Disputed Assessment on May 9, 2014[40], petitioner had until June 8, 2014 within which to appeal the said FDDA.

Since the instant Petition for Review was filed on June 5, 2014, it is well-within the 30-day reglementary period provided in Section 228 of the NIRC of 1997, as amended.

Petitioner contends that the assessment is null and void because respondent assessed the former without a valid Letter of Authority (LOA). Allegedly, respondent has admitted that no LOA was issued against petitioner. Petitioner pointed out that the revenue officers proceeded to conduct their examination even without the LOA and were only authorized by virtue of an alleged memorandum purportedly issued by respondent.

On the other hand, respondent posits that the assessment is valid and lawful. Respondent argues that, by definition, a Letter of Authority is the authority given to the appropriate revenue officer to perform assessment functions. According to respondent, it empowers or enables a revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. Respondent further claims that since there are no factual issues to be resolved, there is no need to investigate the books of accounts of petitioner; thus, a LOA need not be issued anymore.

A void assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[41]

Accordingly, before the Court proceeds to resolve the stipulated issue, the Court deems it proper to determine first whether the assessment is valid or not for having been made in the absence of a valid LOA and for failure to comply with the essential and fundamental

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[40] Par. 17, Statement of Facts and Case, Petition for Review, docket, vol. I, p. 12.

[41] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

right to due process. Although the said issue is not one of the issues stipulated by the parties, it is one of the issues submitted by petitioner in its Pre-Trial Brief that respondent was not willing to stipulate.

In the recent case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[42], the Supreme Court held that the absence of a LOA would violate the taxpayer's right to due process, to wit:

> "An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:
>
> > **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
> >
> > (A) **Examination of Return and Determination of Tax Due.** - After a return has been filed as required under the provisions of this Code, **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 x (Emphasis and underlining ours)
>
> Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly

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

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.

xxx xxx xxx

In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid. xxx.

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

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

The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. xxx" *Ja*

The High Court has further ruled in the afore-mentioned case that the LOA cannot be dispensed with even if the financial books or records of the taxpayer have not been examined, *viz*:

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

In the instant case, there was no LOA issued by respondent. Only a Memorandum of Assignment dated March 20, 2012 was issued to Revenue Officer Reynoso C. Bravo and Group Supervisor Wilfredo S. Reyes for the audit/verification of immediate collection of differential income tax amounting to ₱23,069,039.93.[43] Further, Revenue Officer Bravo admitted that there was no LOA issued in this case:[44]

> "JUSTICE CASTANEDA:
> Let's go direct to the point. Was there a Letter of Authority in this case?
>
> MR. BRAVO:
> A. No, sir.
>
> JUSTICE CASTANEDA:
> No. Now, in this case, why did you proceed to examine even if there's no Letter of Authority?
>
> MR. BRAVO:
> A. Based on the Memorandum issued to us by the Assessment Service as a result of their pre-audit on

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[43] Exhibit "R-10", docket, vol. I, p. 227; Exhibit "R-1", BIR records, p. 46.
[44] Transcript of Stenographic Notes (TSN) dated February 10, 2016, p. 7.

the availment of the taxpayer, EDS Manufacturing, Inc. for the availment of the five (5%) percent special rate.

JUSTICE CASTANEDA:

You mentioned that there are exemptions as to the Letter of Authority, is this one among those exemptions?

MR. BRAVO:

A. I believe, sir."

On the other hand, Revenue Officer Rolando M. Balbido testified during his cross-examination that there was authority to investigate and that a Letter of Authority was issued, to wit:[45]

"ATTY. TAGANAS:

Q. Mr. Witness, when you say 'partially', you have reviewed a bit of the records of the taxpayer. And in these records, did you see a Letter of Authority issued to the taxpayer?

MR. BALBIDO:

A. Yes. Going over the docket, and if I may be allowed to say so, these are cases that we inherited from some examiners who are transferred.

ATTY. TAGANAS:

Q. Just to verify Mr. Witness, you said that there was a Letter of Authority issued for this assessment?

MR. BALBIDO:

A. Only authority to investigate.

ATTY. TAGANAS:

Q. A Letter of Authority, not a mere Memorandum as you have mentioned in your Judicial Affidavit?

[45] TSN dated May 4, 2016, pp. 8 to 9.

MR. BALBIDO:
A. Well, the Memorandum is issued to whoever case officer will continue the investigation as a result of the transfer of the previously assigned case officer or officers.

ATTY. TAGANAS:
Q. In this Memorandum of Assignment, is the Letter of Authority attached to the Memorandum of Assignment?

MR. BALBIDO:
A. Well, I consider it to attach because the copy, the original is already with the taxpayer.

ATTY. TAGANAS:
Q. But you have a copy of the Letter of Authority?

MR. BALBIDO:
A. In the docket, case docket.

ATTY. TAGANAS:
Q. For this assessment, Mr. Witness, did you see any Letter of Authority issued?

MR. BALBIDO:
A. Well, the issuance, I saw the Letter of Authority but I did not see who issued the authority. But I know, there is an authority, and I saw it in the docket."

The Court has thoroughly scrutinized and reviewed the submitted BIR records; however, the Court did not find such Letter of Authority.

Applying the Supreme Court's ruling in the *Medicard* case to the present case, the Memorandum of Assignment issued to Revenue Officer Bravo cannot be converted into the LOA required under the law even if the same was issued by respondent. As a consequence, the revenue officers had no authority to examine petitioner's financial books and records. Even if respondent or the revenue officers did not examine the accounting books and records of petitioner, they still had no authority to examine or investigate petitioner in relation to its taxes. Thus, the assessment issued against petitioner is void.

Accordingly, the Court deems it no longer necessary to discuss the other issues.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Consequently, the Final Decision on Disputed Assessment dated May 9, 2014 and the Assessment Notices are declared **NULL and VOID**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice