COURT OF TAX APPEALS
Quezon City

Third Division

TANN PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9433

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

Promulgated:
MAR 03 2020
3:40 p.m.

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DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

The instant case involves a *Petition for Review* and a *Supplemental Petition for Review* filed by petitioner Tann Philippines, Inc., praying that:

1) after due notice and hearing, this Court render judgment finding that petitioner not liable for the surcharge, interest and compromise penalty in the aggregate amount of ₱1,552,212.62, for the alleged late payment of the value-added tax (VAT) covering the 4th quarter of taxable year 2013;[1]

2) the *Warrant of Garnishment* dated August 16, 2016 be declared null and void; and

3) petitioner be refunded or issued a tax credit certificate in the amount previously garnished by respondent.[2]

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[1] Summary of the Case, Pre-Trial Order dated September 13, 2017, Docket – Vol. 1, p. 256.

[2] Resolution dated November 9, 2017, Docket – Vol. 1, pp. 316 to 320, vis-à-vis *Supplemental Petition for Review to Include Additional Prayer Claiming Refund*, Docket – Vol. I, pp. 303 to 309.

Petitioner Tann Philippines, Inc. is a corporation duly organized and existing under the laws of the Philippines, with principal business address at First Philippine Industrial Park, Brgy. Sta. Anastacia, Sto. Tomas, Batangas. It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number 216-405-611-000.[3]

On the other hand, respondent Commissioner of Internal Revenue is the head of the BIR, the government agency tasked to, among others, collect all national internal revenue taxes. As Commissioner of Internal Revenue, respondent has the power to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, including abatement and compromise of penalties, and other matters arising under the Tax Code and other laws administered by the BIR. He holds office at the 5th Floor, Bureau of Internal Revenue, National Office Bldg., BIR Road, Diliman, Quezon City.[4]

THE FACTS OF THE CASE

Petitioner filed its *Quarterly VAT Return* for the 4th quarter of 2013 on January 24, 2014, or one day before the due date of January 25, 2014, which is a Saturday.[5]

On January 28, 2014 (Tuesday), petitioner made a payment on the aforesaid 4th Quarterly VAT Return. However, the same was considered by the revenue examiner as one-day late payment, on which 25% surcharge, interest and compromise penalties were imposed.[6] Thus, on September 8, 2014, petitioner received the *Audit Results/Assessment Notice* No. 122-0159-14 (*Assessment Notice*) dated August 11, 2014, from the Large Taxpayers Division-Makati, signed by Mr. Nestor S. Valeroso, OIC-ACIR Large Taxpayers Service. The said *Assessment Notice* seeks to collect from petitioner the amount of ₱1,552,212.62 for the late of payment of the Quarterly VAT for the 4th quarter of 2013, broken down as follows:[7]

Basic Tax: ₱5,995,709.68

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[3] Par. 3, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 241, vis-à-vis Par. 4, *Petition for Review*, Docket – Vol. 1, p. 13.

[4] Par. 5, *Petition for Review*, Docket – Vol. 1, p. 13, vis-à-vis Par. 2, *Answer With Motion to Dismiss*, Docket – Vol. 1, p. 68.

[5] Par. 6, Summary of Admitted Facts, JSFI, Docket – Vol. 1, p. 242; Exhibit "P-9", Docket – Vol. 1, pp. 366 to 367; Refer also to Par. 7, *Petition for Review*, Docket – Vol. 1, p. 14, vis-à-vis Par. 3, *Answer With Motion to Dismiss*, Docket – Vol. 1, p. 68

[6] Par. 7, Summary of Admitted Facts, JSFI, Docket – Vol. 1, p. 241; Refer also to Par. 8, *Petition for Review*, Docket – Vol. 1, p. 14, vis-à-vis Par. 3, *Answer With Motion to Dismiss*, Docket – Vol. 1, p. 68.

[7] Par. 6, *Petition for Review*, Docket – Vol. 1, pp. 13 to 14, vis-à-vis Par. 3, *Answer With Motion to Dismiss*, Docket – Vol. 1, p. 68.

Surcharge	₱1,498,927.42
Interest 1/28/2014	3,285.20
Compromise	50,000.00
Deficiency Tax Due	₱1,552,212.62

On October 8, 2014, petitioner, through counsel, filed a protest against the subject *Assessment Notice*, through the letter dated October 5, 2014,[8] requesting for a reconsideration of the assessment by way of abatement of the surcharge of ₱1,498,927.42, and setting forth its reasons therefor.[9]

However, the *Collection Letter* dated April 29, 2015 was issued by the Large Taxpayers Division-Makati, advising petitioner to settle the deficiency tax of ₱1,552,212.62. This was followed by the *Final Notice Collection Letter* dated May 21, 2015 which was served on petitioner by registered mail, and received by petitioner on June 2, 2015.[10]

On June 5, 2015, petitioner filed an appeal, through its letter dated June 3, 2015,[11] to the Office of the Commissioner, appealing the decision of the Large Taxpayers Division-Makati, and reiterating thereunder its position as contained in its protest.[12]

Subsequently, on July 22, 2016, petitioner received the *Notice of Denial* dated May 10, 2016,[13] denying the application for abatement, and reiterating collection of the amount of ₱1,552,212.62, plus all increments incident to delinquency.[14]

On August 18, 2016, petitioner filed the instant *Petition for Review*,[15] praying that after due notice and hearing, this Court render judgment finding petitioner as not liable for the surcharge, interest and compromise penalty, in the aggregate amount of ₱1,552,212.62.

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8 Exhibit "P-5", Docket – Vol. I, pp. 350 to 353.

9 Par. 9, *Petition for Review*, Docket – Vol. 1, p. 14, vis-à-vis Par. 3, *Answer With Motion to Dismiss*, Docket – Vol. 1, p. 68; Par. 8, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 242.

10 Par. 10, *Petition for Review*, Docket – Vol. 1, p. 14, vis-à-vis Par. 3, *Answer With Motion to Dismiss*, Docket – Vol. 1, p. 68; Exhibit "P-6", Docket – Vol. I, p. 360; Par. 9, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 242.

11 Exhibit "P-7", Docket – Vol. I, pp. 362 to 363.

12 Par. 11, *Petition for Review*, Docket – Vol. 1, p. 14, vis-à-vis Par. 3, *Answer With Motion to Dismiss*, Docket – Vol. 1, p. 68; Par. 10, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 242.

13 Exhibit "P-8", Docket – Vol. I, p. 364; Par. 1, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 241.

14 Par. 12, *Petition for Review*, Docket – Vol. 1, p. 15, vis-à-vis Par. 3, *Answer With Motion to Dismiss*, Docket – Vol. 1, p. 68; Par. 11, Summary of Admitted Facts, JSFI, Docket – Vol. I, p. 242.

15 Docket – Vol. I, pp. 12 to 24.

On October 24, 2016, respondent filed through registered mail his *Answer with Motion to Dismiss*,[16] interposing certain special and affirmative defenses, one of which is that the deficiency surcharge, interest and compromise penalty assessments issued by the respondent to petitioner, amounting to ₱1,552,212.62, and subject of Audit Result/Assessment Notice No. 122-0159-14 dated August 11, 2014, has already been paid in fully paid and satisfied by petitioner on September 15, 2016 as evidenced by eFPS Payment Confirmation (Payment Transaction No. 164416056) and Payment Form No. 0605; and hence, there is no disputed assessment nor any justiciable issue for this Court to hear.

Thereafter, on December 16, 2016, petitioner filed its *Comment on Motion to Dismiss with Manifestation of Supervening Events and Motion to Include Additional Prayer to Petition for Review*,[17] arguing, *inter alia*, that there was no voluntary payment of tax; rather, there was a garnishment by the BIR of petitioner's bank account, without its knowledge and due notice.

In the Resolution dated January 6, 2017,[18] the Court noted petitioner's *Manifestation of Supervening Events*, and denied respondent's *Motion to Dismiss*; and ordered respondent to file his comment on petitioner's *Motion to Include Additional Prayer to Petition for Review*. On February 6, 2017, respondent then filed through registered mail his *Comment/Opposition (To Petitioner's Motion to Include Additional Prayer to its Petition for Review)*.[19]

In the Resolution dated March 2, 2017,[20] the Court granted petitioner's *Motion to Include Additional Prayer to Petition for Review*.

The pre-trial was initially set on May 30, 2017.[21] However, upon respondent's filing of *Urgent Ex-Parte Motion to Reset Pre-Trial Conference* on May 15, 2017,[22] the pre-trial conference was reset to, and held on, August 8, 2017.[23]

In the meantime, the *Respondent's Pre-Trial Brief* was filed on May 17, 2017;[24] while *Petitioner's Pre-Trial Brief* was submitted on May 25, 2017.[25]

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16 Docket – Vol. I, pp. 68 to 76.
17 Docket – Vol. I, pp. 80 to 89.
18 Docket – Vol. I, pp. 93 to 95.
19 Docket – Vol. I, pp. 99 to 101.
20 Docket – Vol. I, pp. 106 to 110.
21 Notice of Pre-Trial Conference dated March 6, 2017, Docket – Vol. I, pp. 111 to 112.
22 Docket – Vol. I, pp. 113 to 115.
23 Resolution dated May 17, 2017, Docket – Vol. I, p. 123; Minutes of the hearing held on, and Order dated, August 8, 2017, Docket – Vol. I, pp. 238 to 240.
24 Docket – Vol. I, pp. 117 to 120.
25 Docket – Vol. I, pp. 194 to 205.

The parties submitted their *Joint Stipulation of Facts and Issues* on August 23, 2017.[26] In the Pre-Trial Order dated September 13, 2017,[27] the Court deemed the Pre-Trial terminated.

On September 22, 2017, petitioner filed a *Motion to Amend and/or Correct the Pre-Trial Order* to include the final list of documentary evidence for petitioner.[28] Respondent failed to file his comment thereon.[29]

Respondent transmitted the *BIR Records* for the instant case on October 2, 2017.[30]

On October 27, 2017, petitioner filed its *Supplemental Petition for Review to Include Additional Prayer Claiming Refund.*[31] In this *Supplemental Petition for Review*, petitioner additionally prays that: (a) the *Warrant of Garnishment* dated August 16, 2016 be declared null and void for being improperly issued; and (b) petitioner be refunded the amount of ₱1,552,212.62 previously garnished by respondent, or that a tax credit certificate for the same amount be issued in favor of petitioner.

In the Resolution dated November 9, 2017,[32] the Court granted petitioner's *Motion to Amend and/or Correct the Pre-Trial Order*, admitted petitioner's *Supplemental Petition for Review*; and ordered respondent to file his *Answer* to petitioner's *Supplemental Petition for Review* within fifteen (15) days from notice.

On December 6, 2017, respondent filed his *Answer (To Petitioner's Supplemental Petition for Review)*,[33] interposing as special and affirmative defenses, that: Petitioner failed to comply with the mandatory requirements under Section 229 of the 1997 Tax Code; that it is incumbent upon petitioner to show that it has complied with the provisions *under Section 204 in relation to Section 229 of the 1997 Tax Code*; that claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation; that the Court has no jurisdiction to act on the instant petition; that petitioner has not been candid before the Court; that the deficiency surcharge, interest and compromise penalty assessments issued by the respondent to petitioner, amounting to P1,552,212.62 and subject of Audit Result/Assessment Notice No. 122-0159-14 dated August 11, 2014, has already been paid in full and satisfied by petitioner on September 15, 2016 as evidenced by eFPS Payment

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[26] Docket – Vol. I, pp. 241 to 247.
[27] Docket – Vol. I, pp. 256 to 264.
[28] Docket – Vol. I, pp. 268 to 275.
[29] Records Verification Report dated October 18, 2017 issued by the Judicial Records Division of this Court, Docket – Vol. I, p. 302.
[30] Refer to Docket – Vol. I, p. 284.
[31] Docket – Vol. I, pp. 303 to 310.
[32] Docket – Vol. I, pp. 316 to 320.
[33] Docket – Vol. I, pp. 323 to 330.

Confirmation (Payment Transaction No. 164416056) and Payment Form No. 0605, hence, there is no disputed assessment nor any justiciable issue for the CTA to hear; that the Audit Result/Assessment Notice No. 122-0159-14 dated August 11, 2014, bearing the deficiency surcharge, interest and compromise penalty assessments of petitioner, in the amount of P1,552,212.62 for late payment of the Quarterly VAT for the 4th Quarter of 2013 issued by the respondent to herein petitioner was made in accordance with law and regulations.

During trial, petitioner presented documentary and testimonial evidence. Petitioner offered the testimonies of the following witnesses, namely: (1) Ms. Rosseni De Leon,[34] petitioner's Accounting and Corporate Affairs Manager; and (2) Ms. Roanne Ramos,[35] petitioner's Financial Accounting Assistant.

On January 22, 2018, petitioner filed its *Formal offer of Evidence.*[36] Respondent, however, failed to file his comment thereon.[37]

In the Resolution dated February 22, 2018,[38] the Court admitted petitioner's Exhibits.

Respondent likewise presented his documentary and testimonial evidence. His lone witness is Ms. Annabelle DG. Bennett,[39] Revenue Officer III of the BIR.

On May 15, 2018, respondent filed, through registered mail, his *Formal Offer of Evidence.*[40] Petitioner failed to file its comment thereon.[41]

In the Resolution dated July 5, 2018,[42] the Court admitted respondent's Exhibits.

Subsequently, the *Memorandum for Petitioner* was filed on August 14, 2018.[43] On the other hand, respondent filed a *Manifestation and Motion* through

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[34] Exhibit "P-16", Docket – Vol. I, pp. 393 to 403; Minutes of the hearing held on, and Order dated, November 27, 2017, Docket – Vol. I, pp. 321 to 322.

[35] Exhibit "P-17", Docket – Vol. I, pp. 445 to 451; Minutes of the hearing held on, and Order dated, January 15, 2018, Docket – Vol. I, pp. 333 to 334.

[36] Docket – Vol. I, pp. 335 to 341.

[37] Records Verification Report dated February 9, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. I, p. 463.

[38] Docket – Vol. I, pp. 465 to 466.

[39] Exhibit "R-14", Docket – Vol. I, pp. 210 to 218; Minutes of the hearing held on, and Order dated, April 10, 2018; Docket – Vol. I, pp. 467 to 468.

[40] Docket – Vol. I, pp. 473 to 478.

[41] Records Verification Report dated June 14, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. I, p. 480.

[42] Docket – Vol. I, pp. 482 to 483.

[43] Docket – Vol. I, pp. 484 to 508.

registered mail on August 24, 2018, stating that he adopts all his arguments found in his special and affirmative defenses of his *Answer with Motion to Dismiss* dated October 21, 2016 and *Answer (To petitioner's Supplemental Petition for Review)* dated December 4, 2017, including the statement of purposes for which all the documentary evidences of respondent were formally offered and admitted, as well as the testimony and Sworn Judicial Affidavit dated July 27, 2017 of Revenue Officer Bennett, as part of respondent's *Memorandum.*[44]

On October 2, 2018, petitioner filed a *Motion to Admit Comment,* with attached *Comment on Respondent's Manifestation and Motion.*[45] Respondent failed to file his comment thereon.[46]

In a Resolution dated March 11, 2019,[47] the Court noted and denied respondent's *Manifestation and Motion*, granted petitioner's *Motion to Admit Comment*, admitted petitioner's *Comment*, and submitted the case for decision.

THE ISSUES

The issues submitted by the parties for resolution of this Court are as follows:[48]

"1. Whether or not petitioner is entitled to the abatement of surcharge for the late payment of VAT for the 4th quarter of 2013.
2. Whether or not there was valid issuance and enforcement of the Warrant of Garnishment against petitioner.
3. Whether or not petitioner has violated the requirements under Section 114 (A)(B) of the 1997 Tax Code, as implemented under Revenue Regulations No. 16-2005 relative to the payment of its VAT due for the 4th Quarter of taxable year 2013 in the amount of P5,977,112.34.
4. Whether or not petitioner is liable to pay the amount of P1,552,212.62, as deficiency surcharge, interest and compromise penalty for the late payment of its Quarterly VAT due for the 4th Quarter of taxable year 2013, pursuant to Sections 248 and 249 of the 1997 Tax Code.
5. Whether or not the amount of P1,552,212.62 collected by the BIR as deficiency surcharge, interest and compromise penalty for the late payment of petitioner's Quarterly VAT due for the 4th Quarter of taxable year 2013 by virtue of a Warrant of

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[44] Docket – Vol. I, pp. 515 to 517.
[45] Docket – Vol. II, pp. 522 to 527.
[46] Records Verification Report dated October 23, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. I, p. 532.
[47] Docket – Vol. II, pp. 536 to 539.
[48] Stipulation of Issues, JSFI, Docket – Vol. I, p. 244.

Garnishment dated August 16, 2016 was illegally collected, and thus, petitioner is entitled to a refund thereof."

THE ARGUMENTS OF THE PARTIES

Petitioner argues that tax regulations do not impose any penalty on taxpayers who filed earlier than their due dates but paid at a later date; that the surcharge sought to be imposed is excessive and unjustly assessed, thereby justifying its abatement; that surcharge can be imposed only on failure to file a return and pay the tax; that payment was made on the 1st amended return, not on the original return, thus, it cannot be said that there was late payment on which a surcharge may be imposed; and that the series of filings of amended VAT returns by petitioner points to its honest efforts to comply with the filing regulations and payment of the correct tax, which should not be used to justify imposition of a surcharge.

In addition, petitioner avers that the issuance of the *Warrant of Garnishment* dated August 16, 2016 is premature since petitioner has seasonably appealed the *Notice of Denial* to this Court. Thus, according to petitioner, the penalties sought to be collected against petitioner have not yet attained finality.

Finally, petitioner maintains that, under the circumstances obtaining in this case, it is a useless exercise to first claim a refund with respondent who would deny such claim since he had previously garnished petitioner's funds even before the expiration of the 30-day period within which to appeal his decision before this Court, and before the amount to be collected had become delinquent. Thus, direct recourse to this Court is justified.

On the other hand, respondent argues that taxes paid and collected by the BIR are presumed to have been made in accordance with law and implementing regulations, hence, not refundable.

Moreover, respondent claims that it is incumbent upon petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the 1997 Tax Code; and that failure to prove the same is fatal to its claim for refund.

Respondent further avers that this Court has no jurisdiction to act on the instant petition on the ground that the subject surcharge, interest and compromise penalty have already been paid by petitioner. Thus, there is no disputed assessment or any justiciable issue that this Court may resolve.

Lastly, respondent points out while petitioner filed its Quarterly VAT return for the 4th quarter of 2013 on January 24, 2014, it failed to pay the VAT due thereon on or before the due date on January 25, 2014. Thus, the subject

Assessment Notice bearing the deficiency surcharge, interest and compromise penalty in the amount of ₱1,552,212.62 for late payment of tax for the 4th Quarter of 2013 was made in accordance with law and regulations.

THE RULING OF THE COURT

Jurisdiction of the Court

Respondent argues that this Court has no jurisdiction over the case.

Section 7(a)(1) of Republic Act (RA) No. 1125,[49] as amended by RA No. 9282,[50] provides as follows, to wit:

> "SECTION 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **<u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" *(Emphases and underscoring ours)*

Based on the foregoing provisions, the appellate jurisdiction of this Court is *not* limited to cases which involve decisions of respondent on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the BIR.[51] The wording of the provision is clear and simple.[52]

In this case, what is appealed to this Court is the *Notice of Denial* dated May 10, 2016 issued by then Commissioner of Internal Revenue Kim S. Jacinto-Henares,[53] informing petitioner of the disapproval of its *Application for*

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[49] AN ACT CREATING THE COURT OF TAX APPEALS.

[50] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

[51] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

[52] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

[53] Exhibit "P-8", Docket – Vol. I, p. 364.

Abatement of Penalties filed pursuant to Section 204 of the NIRC of 1997, as amended, as implemented under Revenue Regulations No. 13-2001.

Indeed, the exercise of the power to abate or cancel a tax liability by respondent is one which arises from Section 204(B) of the NIRC of 1997, to wit:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – **The Commissioner may –**
>
> xxx xxx xxx
>
> (B) **Abate or cancel a tax liability**, when:
>
> (1) The tax or any portion thereof appears to be unjustly or excessively assessed; or
>
> (2) The administration and collection costs involved do not justify the collection of the amount due." *(Emphasis ours)*

Clearly, this Court is vested with jurisdiction to entertain the instant case, pursuant to Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282, in relation to Section 204(A) of the NIRC of 1997.

Having determined that this Court is endowed with jurisdiction, it shall proceed to determine whether *Assessment Notice* No. 122-0159-14 dated August 11, 2014 is valid.

Assessment Notice No. 122-0159-14 dated August 11, 2014 is invalid due to the absence of a Letter of Authority prior to the issuance thereof.

Section 6(A) of the NIRC of 1997 reads:

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

Commissioner from authorizing the examination of any taxpayer." *(Emphasis and underscoring supplied.)*

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

Relative thereto, Section 13 of the NIRC of 1997 provides that the authority of a revenue officer to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to a Letter of Authority (LOA), to wit:

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

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

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[54] the Supreme Court held:

> "**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:

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

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

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In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[55] the Court said that:

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

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Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or

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[55] 649 Phil. 519 (2010).

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.**

xxx xxx xxx

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

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

If there is one thing that stands out, upon a perusal of the pieces of evidence on record, is the absence of an LOA that was offered in evidence in this case. Even a careful examination of the *BIR Records*[56] of this case would reveal that no LOA was ever issued prior to the issuance of *Assessment Notice* No. 122-0159-14 dated August 11, 2014. Thus, it can be easily surmised that the proceedings that led to the imposition of the subject deficiency surcharge, interest, and compromise penalty assessments against petitioner, under *Assessment Notice* No. 122-0159-14 dated August 11, 2014, had no prior approval and authorization from respondent or his duly authorized representatives. Precisely, not having an LOA to investigate petitioner's tax returns in the first place, the said *Assessment Notice* issued by the BIR is inescapably void.

Nevertheless, even granting that the prior issuance of an LOA may be discarded, *Assessment Notice* No. 122-0159-14 dated August 11, 2014 is still void, for respondent's violation of the due process rights of petitioner.

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[56] Exhibit "R-1".

The absence of a Preliminary Assessment Notice and Formal Letter of Demand renders the assessment void. The subject Warrant of Garnishment is without any effect as it stems from a void assessment.

Section 228 of the NIRC of 1997 reads:

"Section 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:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayer 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.

xxx xxx xxx." *(Emphases ours)*

Based on the foregoing provision, as a general rule, the concerned taxpayer must first be informed that he is liable for deficiency taxes through the sending of a preassessment notice or a *Preliminary Assessment Notice* (PAN). Furthermore, the said taxpayer is required to be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Implementing the above-quoted Section 228, Section 3 of Revenue Regulations (RR) No. 12-99[57], as amended by RR No. 18-2013[58], provides, in part, as follows:

> "SECTION 3. ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** –
>
> 3.1 Mode of procedure in the issuance of a deficiency tax assessment:
>
> 3.1.1 *Preliminary Assessment Notice (PAN).* – If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, **the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment.** It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX 'A' hereof).
>
> If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.
>
> If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

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[57] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayers Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty

[58] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

3.1.2 ***Exceptions to Prior Notice of the Assessment.*** — Pursuant to Section 228 of the Tax Code, as amended, a PAN shall not be required in any of the following cases:

(i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or

(ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(iii) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(iv) When the excise tax due on excisable articles has not been paid; or

(v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

In the above-cited cases, a FLD/FAN shall be issued outright.

3.1.3 *Formal Letter of Demand and Final Assessment Notice.* — **The Formal Letter of Demand <u>and</u> Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative.** The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void* (see illustration in ANNEX 'B' hereof)." *(Emphases ours)*

On the basis of the foregoing provision, **parts of the due process requirement in the issuance of a deficiency tax assessment** are the following:

1) The issuance of a PAN, unless the case falls under any of the above-enumerated exceptions;

2) The issuance of a Formal Letter of Demand (FLD) and Final Assessment Notice (FAN); and
3) The said FLD and FAN must call for the payment of the taxpayer's deficiency tax or taxes, and must state the facts, the law, rules and regulations, or jurisprudence, on which the assessment is based; otherwise, the assessment is void.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*,[59] the Supreme Court said:

> "**Tax assessments issued in violation of the due process rights of a taxpayer are null and void.** **While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and is officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.**
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> xxx xxx xxx
>
> **The importance of providing taxpayer with adequate written notice of his or her tax liability is undeniable. Under Section 228, it is explicitly required that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. Section 3.1.2[60] of Revenue Regulation No. 12-99 requires the Preliminary Assessment Notice to show in detail the facts and law, rules and regulations, or jurisprudence on which the proposed assessment is based. Further, Section 3.1.4[61] requires the Final Letter of Demand must state the facts and law on which it is based; otherwise, the Final Letter of Demand and Final Assessment Notices themselves shall be void.** xxx.
>
> **'The use of the word 'shall' in Section 228 of the [National Internal Revenue Code] and in [Revenue Regulations] No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him [or her] is mandatory.' This is an essential requirement of due process and applies to the Preliminary Assessment Notice, Final Letter of Demand with the Final Assessment Notices**, and the Final Decision on Disputed Assessment.
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> xxx xxx xxx

[59] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[60] Now the aforequoted Section 3.1.1 of RR No. 12-99, as amended by RR 18-2013.
[61] Now the aforequoted Section 3.1.3 of RR No. 12-99, as amended by RR 18-2013.

The Commissioner's total disregard of due process rendered the identical Preliminary Assessment Notice, Final Assessment Notice, and Collection Letter null and void, and of no force and effect.

This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[62] this Court held that **failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void**. This Court explained:

> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. 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. (Citation omitted)

In *Commissioner of Internal Revenue v. Reyes*,[63] this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.

In *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*,[64] this Court ruled, among others, that the taxpayer was deprived of due process when the Commissioner failed to issue a notice of informal conference and a Preliminary Assessment Notice as required by Revenue Regulation No. 12-99, in relation to Section 228 of the Tax Code. Hence, the assessment was void.

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[62] 652 Phil. 172 (2010) [Per J. Mendoza, Second Division]
[63] 516 Phil. 176 (2006) [Per C.J. Panganiban, First Division].
[64] 565 Phil. 613 (2007) [Per J. Velasco, Jr., Second Division].

Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in *Commissioner of Internal Revenue v. Algue, Inc.*:[65]

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself.** It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
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> xxx xxx xxx
>
> **But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate...that the law has not been observed.** (Emphasis supplied)

xxx. ***[The Commissioner of Internal Revenue's]* disregard of the standards and rules renders the deficiency tax assessments null and void.** xxx." *(Emphases and underscoring ours)*

Based on the foregoing doctrinal pronouncements, one of the due process requirements in the issuance of tax assessments is that the taxpayer must be informed in writing of the law and of the facts on which the assessment is made. Such requirement must be embodied not only in the PAN, but also in the FLD and FAN. In case respondent or the BIR fails or effectively fails to observe, *inter alia*, the said requirement, it shall have the effect of rendering the subject deficiency tax assessment void, and of no force and effect, since such failure violates the due process rights of the concerned taxpayer.

In this case, there is no indication that a PAN or an FLD (embodying the facts and law, rules and regulations, or jurisprudence on which the proposed assessment or the assessment itself) was ever issued by the BIR against petitioner, before the same proceeded with the collection of the amount of ₱1,552,212.62. The record or evidence shows that only the *Assessment Notice* No. 122-0159-14 dated August 11, 2014 was issued to petitioner prior to the

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[65] 241 Phil. 829 (1988) [Per J. Cruz, First Division].

issuance of the *Collection Letter/Final Notice* dated May 21, 2015, and ultimately, the *Warrant of Garnishment* dated August 16, 2018.[66]

Correspondingly, respondent or the BIR violated petitioner's right to due process in the assessment of the amount of ₱1,552,212.62. Such being the case, *Assessment Notice* No. 122-0159-14 dated August 11, 2014 is still void.

Relative thereto, it must be emphasized that a void assessment bears no valid fruit.[67] Consequently, the *Warrant of Garnishment* dated August 16, 2018 issued by respondent, and the subsequent garnishment by the BIR of the amount of ₱1,552,212.62 from petitioner's bank account,[68] are without any legal effect as it stems from a void assessment.

In fine, since the subject tax assessment is void, as discussed above, the refund of the amount garnished by respondent from petitioner's bank account is in order.

In view of the finding of nullity of *Assessment Notice* No. 122-0159-14 dated August 11, 2014, it is no longer necessary to address the other issues or matters raised in the instant case.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* and *Supplemental Petition for Review* are **GRANTED.** Petitioner is not liable for the surcharge interest and compromise penalty in the aggregate amount of ₱1,552,212.62.

The *Assessment Notice* dated August 11, 2014 and *Warrant of Garnishment* dated August 16, 2016 issued against petitioner are declared **VOID** and thus, hereby **CANCELLED** and **SET ASIDE**.

Respondent is **ORDERED TO REFUND** petitioner, **or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in, the amount of **₱1,552,212.62**.

SO ORDERED.

Ma. Belen G

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[66] Exhibit "P-15-4", Docket – Vol. 1, p. 392; Exhibit "R-11", BIR Records (Exhibit "R-1"), p. 62.

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

[68] Refer to Exhibits "R-12" and "R-13", BIR Records (Exhibit "R-1"), pp. 71 and 73, respectively; and to Exhibits "P-14-3", "P-15-1", and "P-15-2", Docket – Vol. 1, p. 386, 389, and 390, respectively.

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 Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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