REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

STRAWBERRY FOODS CORPORATION, *Petitioner,*	**CTA Case No. 10282**
	Members:
- versus -	**MANAHAN**, *Chairperson,* **REYES-FAJARDO**, and **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 12 2024 3:15 p.m.

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DECISION

REYES-FAJARDO, *J.*:

We resolve the Amended Petition dated August 14, 2020,[1] filed by Strawberry Foods Corporation, which seeks to overturn the Final Decision on Disputed Assessment dated February 28, 2020, issued by the Commissioner of Internal Revenue, through the Regional Director of Revenue Region No. 7B – East NCR, holding the former liable for deficiency Income Tax (IT), Value-Added Tax (VAT), Withholding Tax on Compensation (WTC), Final Withholding Tax (FWT), and Compromise Penalty (CP), covering Taxable Year (TY) 2014, in the total amount of ₱2,896,505.69, inclusive of interest.

FACTS

Petitioner Strawberry Foods Corporation is a duly organized corporation under Philippine law, with principal office address at SFC Building, No. 78 Gen. Luna Street, Gitnang Bayan I, San Mateo,

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1 Docket (Vol. I), pp. 89-105.

Rizal 1850. Petitioner is duly represented in this case by its Certified Public Accountant - Tax Agent Rolando S. Conte.[2]

Respondent Commissioner of Internal Revenue is the duly-appointed Commissioner of the Bureau of Internal Revenue (BIR), with authority, among others, to decide, approve and collect deficiency tax liabilities of taxpayers, and holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City 1101, where he may be served with summons and other court processes.[3]

On December 23, 2016, a Letter of Authority (LOA) was issued by Regional Director Alfredo V. Misajon (RD Misajon), authorizing Revenue Officer Milton Tamayo (RO Tamayo) under Group Supervisor Monica Dimaculangan (GS Dimaculangan) to examine petitioner's books of account and other accounting records, for the period January 1, 2014 to December 31, 2014.[4] Included therein is the 1st Notice for Presentation of Records and Checklist of Requirements.[5]

On several dates, the BIR issued several notices for presentation of records to petitioner, detailed as follows:

Document	Date Issued	Exhibit
First Request for Presentation of Books & Other Accounting Records	January 20, 2017	"R-3"[6]
Second and Final Request for Presentation of Records	February 7, 2017	"R-4"[7]

On November 28, 2017, OIC Regional Director Marina C. De Guzman (RD De Guzman) issued a Preliminary Assessment Notice (Parts I and II) with Details of Discrepancy, encapsulating the proposed deficiency IT, VAT, Expanded Withholding Tax (EWT), WTC, Documentary Stamp Tax (DST), FWT, and CP against petitioner, covering TY 2014.[8]

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2 See paragraph 1, under the heading "I. The Parties," Docket (Vol. I), p. 30. Admitted in paragraph 5 of respondent's Answer.

3 See paragraph 2, under the heading "I. The Parties," Docket (Vol. I), p. 30. Admitted in paragraph 5 of respondent's Answer.

4 Exhibit "R-1." Docket (Vol. II), p. 522.

5 Exhibit "R-2." *Id.* at p. 523.

6 *Id.* at p. 524.

7 *Id.* at p. 525.

8 Exhibit "R-10." *Id.* at pp. 532-538.

On January 15, 2018, petitioner received RD De Guzman's Formal Letter of Demand (Parts I and II) with Details of Discrepancies,[9] and Final Assessment Notices for IT,[10] VAT,[11] EWT,[12] WTC,[13] DST,[14] FWT,[15] and CP[16] (FLD/FAN), all of which were of even date, assessing the former for said deficiency taxes and penalty, all pertaining to TY 2014.

On February 14, 2018, petitioner filed its administrative protest by way of a request for reconsideration, assailing RD De Guzman's FLD/FAN of January 15, 2018.[17]

Through Letter dated March 16, 2018, RD De Guzman gave due course to petitioner's protest, and indorsed the entire tax docket, as well as said protest letter to Revenue District Office No. 45 - Marikina City.[18] RO Tamayo was again tasked to evaluate petitioner's protest on the FLD/FAN.[19]

In the Letter dated May 3, 2018, Revenue District Officer Amparo M. Duque (RDO Duque) informed petitioner that its request for re-investigation was granted. Accordingly, the latter was reminded to submit documents in support thereof, within sixty (60) days from the filing of its protest.[20]

By Letter dated June 11, 2018, petitioner clarified with the BIR that: (1) its protest on the FLD/FAN of February 14, 2018 is a request for reconsideration, and *not* a request for reinvestigation; (2) Rolando S. Conte is its authorized representative, among others; and (3) it submitted documents in view of the absence of a proper forum to refute the findings in the PAN and FLD/FAN, and *not* as additional documents in support of request for reinvestigation.[21]

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9 Exhibit "R-12." *Id.* at pp. 540-544.
10 Exhibit "R-13." *Id.* at p. 545.
11 Exhibit "R-14." *Id.* at p. 546.
12 Exhibit "R-15." *Id.* at p. 547.
13 Exhibit "R-16." *Id.* at p. 548.
14 Exhibit "R-17." *Id.* at p. 549.
15 Exhibit "R-18." *Id.* at p. 550.
16 Exhibit "R-19." *Id.* at p. 551.
17 Exhibit "P-7." Docket (Vol. I), pp. 32-37.
18 Exhibit "R-22." Docket (Vol. II), p. 554.
19 Memorandum of Assignment dated April 24, 2018, issued by Revenue District Officer Amparo M. Duque. Exhibit "R-23." *Id.* at p. 555.
20 Exhibit "R-24." *Id.* at p. 556.
21 BIR Records (Exhibit "R-34"), pp. 1381-1382.

On October 18, 2018, petitioner received the BIR's Notice of Informal Conference dated October 15, 2018, recognizing petitioner's protest as one for a request for reconsideration, and submission of documents and reconciliation schedules. Further, after evaluation thereof, a copy of the BIR's *adjusted* audit findings was furnished to petitioner. Additionally, the latter was invited to appear at Revenue District Office No. 45 - Marikina City to discuss such findings. [22]

On March 4, 2020, petitioner received Regional Director Romulo L. Aguila, Jr.'s Final Decision on Disputed Assessment (FDDA) [23] dated February 28, 2020 with Details of Discrepancies, finding the former liable for deficiency IT, VAT, WTC, FWT, and CP, covering TY 2014, in the total amount of ₱2,896,505.69, inclusive of interest, broken down as follows:

Tax Type	Basic Tax	Interest	Compromise Penalty	Total
IT	₱684,918.17	₱554,314.65		₱1,239,232.82
VAT	273,967.27	233,735.37		507,702.64
WTC	18,096.55	15,538.25		33,634.80
FWT	586,956.71	503,978.72		1,090,935.43
CP			₱25,000.00	25,000.00
TOTAL				**₱2,896,505.69**

On June 25, 2020, petitioner filed its Original Petition, [24] docketed as CTA Case No. 10282, initially raffled before the First Division of the Court.

In the Resolution dated July 14, 2020, petitioner was directed to make necessary amendments on its Original Petition, to conform with the provision of the 2019 Amendments to the Revised Rules of Procedure.[25]

By Compliance filed on August 17, 2020,[26] petitioner filed its Amended Petition.[27]

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22 Exhibit "R-26." Docket (Vol. II), p. 558.
23 Exhibit "R-33," Docket (Vol. II), pp. 495-502. Exhibit "P-6," Docket (Vol. I), pp. 22-31.
24 *Id.* at pp. 6-20.
25 *Id.* at p. 86.
26 *Id.* at pp. 87-88.
27 *Supra* note 1.

In the Resolution dated September 9, 2020, petitioner's Compliance of August 17, 2020 was noted. Additionally, the latter was directed to submit the original or certified true copy of the secretary's certificate, authorizing Rolando S. Conte to sign the verification and certification on non-forum shopping.[28]

On November 10, 2020, petitioner filed its Compliance with CTA Resolution & Request for Stoppage Order for BIR-Issued Warrant of Distraint & Levy.[29]

Through Resolution dated November 24, 2020, it was found that petitioner's submission of two (2) copies of Secretary's Certificate, certified by the National Archives of the Philippines as reproduced copies, duly certified and taken from an original, is deemed compliant with the directive set forth in the Resolution dated September 9, 2020. For this reason, the Court directed that summons be issued on respondent. Additionally, a hearing was set on May 11, 2021, at 9:00 a.m., for petitioner's plea for stoppage of the execution or recall of the WDL[30]

On February 1, 2021, respondent filed his Answer.[31]

In the hearing held on May 11, 2021, petitioner's Compliance with CTA Resolution & Request for Stoppage Order for BIR-Issued Warrant of Distraint & Levy was found to be irregular, because it was filed by a non-lawyer individual, *i.e.*, Rolando S. Conte; thus, petitioner's counsel was directed to submit the proper Motion for Suspension of Collection of Taxes. In the meantime, the hearing for petitioner's plea for suspension of collection of tax was set on June 15, 2021.[32]

On May 17, 2021, in compliance with the directive in hearing held on May 11, 2021, petitioner's counsel filed a Motion for Suspension of Tax Collection and Nullity of the Warrant of Distraint

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28 Docket (Vol. I), p. 245.
29 *Id.* at pp. 253-256.
30 *Id.* at pp. 279-282.
31 *Id.* at pp. 303-307.
32 Order dated May 11, 2021. *Id.* at pp. 328-329.

and/or Levy prematurely issued by the BIR,[33] which was met by respondent's Comment/Opposition.[34]

In the hearing held on June 15, 2021, petitioner presented Rolando S. Conte as witness in support of its Motion for Suspension of Tax Collection and Nullity of the Warrant of Distraint and/or Levy.[35]

On June 23, 2021, petitioner filed [36] its Formal Offer of Evidence[37] in support of its Motion for Suspension of Tax Collection and Nullity of the Warrant of Distraint and/or Levy, to which respondent filed his Comment[38] on July 1, 2021.

In the hearing held on July 8, 2021, pre-trial conference was held. There, the parties agreed to submit a Joint Stipulation of Facts and Issues, embodying, among others, the following issues: (1) whether petitioner liable for deficiency taxes duly assessed by respondent and/or his representatives for TY 2014; and (2) whether the FDDA dated February 28, 2020 is null and void. Further, the respective schedule of the parties' presentation of evidence was set. Moreover, the parties were directed to appear for mediation.[39]

On July 28, 2021, the parties filed their Joint Stipulation of Admitted Facts and Issues, [40] which was approved, through Resolution dated October 20, 2021.[41]

Via Resolution dated July 29, 2021, the pieces of evidence offered by petitioner in support of its plea for tax suspension were admitted. Moreover, judicial notice was taken on: (1) Presidential Proclamation No. 929, dated March 16, 2020; (2) BIR Revenue Memorandum Circular (RMC) No. 31-2020; and (3) Presidential Declaration made on May 28, 2020.[42]

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[33] *Id.* at pp. 330-334.
[34] *Id.* at 389-397.
[35] Order dated June 15, 2021. *Id.* at pp. 418-420.
[36] Recognized in the Resolution dated July 8, 2021. *Id.* at pp. 476-477.
[37] *Id.* at pp. 430-440.
[38] *Id.* at pp. 459-460.
[39] Order dated July 8, 2021. *Id.* at pp. 483-484.
[40] Docket (Vol. II), pp. 573-579.
[41] *Id.* at pp. 589-590.
[42] *Id.* at pp. 582-584.

By Resolution dated October 21, 2021, petitioner's Motion for Suspension of Tax Collection and Nullity of the Warrant of Distraint and/or Levy, was denied.[43]

On December 13, 2021, a Pre-Trial Order was issued.[44]

The parties endeavored, but failed[45] to reach an amicable settlement. In view thereof, trial followed.[46]

Petitioner presented Rolando S. Conte as its sole witness.[47]

On August 10, 2022, petitioner filed its Formal Offer of Evidence in the main case,[48] *sans* respondent's comment.[49]

Under Resolution dated October 19, 2022, the exhibits offered by petitioner were admitted as evidence. The latter rested its case.[50]

Respondent presented: (1) Revenue Officer Raymond Joseph C. Escalona;[51] and (2) RO Tamayo,[52] as witnesses.

On March 2, 2023, respondent filed his Formal Offer of Evidence,[53] to which petitioner filed its Comment on March 20, 2023.[54]

By Resolution dated May 9, 2023, the exhibits offered by respondent were admitted as evidence.[55]

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43 *Id.* at pp. 593-597.
44 *Id.* at pp. 608-621.
45 Mediator's Report dated May 4, 2022. *Id.* at p. 636.
46 Resolution dated May 27, 2022. *Id.* at p. 642.
47 Order dated July 26, 2022. *Id.* at pp. 647-648.
48 *Id.* at pp. 663-668.
49 Records Verification dated September 7, 2022, prepared by the CTA Judicial Records Division. *Id.* at p. 669.
50 *Id.* at pp. 672-673.
51 Order dated November 22, 2022. *Id.* at pp. 676-677.
52 Order dated February 15, 2023. *Id.* at pp. 688-689.
53 *Id.* at pp. 690-697.
54 *Id.* at pp. 772-776.
55 *Id.* at pp. 781-782.

In the Resolution dated June 2, 2023, CTA Case No. 10282 was transferred from the First Division to the Third Division of the Court.[56]

Through Minute Resolution[57] dated July 14, 2023, CTA Case No. 10282 was submitted for decision, considering: (1) Memorandum for Respondent,[58] posted on June 21, 2023; and (2) Petitioner's Memorandum,[59] filed on June 29, 2023.

ISSUE

Is petitioner liable for deficiency IT, VAT, WTC, FWT, and CP, covering TY 2014?[60]

ARGUMENTS

Petitioner argues that the examination conducted by respondent's tax agents for TY 2014 is illegal because: (1) the LOA dated December 23, 2016 was served to an individual not authorized to receive said document in its behalf—Jessie B. Montederamos; (2) the handling RO continued with the audit and examination, despite the lapse of the 120-day period, *sans* revalidation of such LOA, relying on *AFP General Insurance Corporation v. Commissioner of Internal Revenue (AGIC)*[61] as authority.

Granting, the examination conducted by respondent's agents for TY 2014 is valid, the findings of deficiency taxes covering said year are based on assumptions, and *not* facts. To this end, petitioner explains:

> *First.* The deficiency IT and VAT on unaccounted purchases were solely pivoted on the variance between its summary list of purchases (SLP) and VAT Returns. Purchases are simply expenses. *Sans* the event of sale and flow of wealth, deficiency IT and VAT may not be imposed against it. Besides, its reconciliation schedule

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56 Notice prepared by Attorney Johoanna F. Chan-Te, Executive Clerk of Court II – CTA First Division. *Id.* at p. 783.

57 *Id.* at p. 801.

58 *Id.* at pp. 784-791.

59 *Id.* at pp. 793-799.

60 *Supra* note 39.

61 G.R. No. 222133, November 4, 2020.

> demonstrates that the difference between its SLP and VAT Returns is a measly ₱8.33.
>
> *Second.* The deficiency FWT on dividends is invalid because the audit report submitted by the handling RO did *not* contain an assessment for said tax.

In closing, petitioner declares that it is not liable for the BIR's deficiency taxes covering TY 2014.

On the other hand, respondent counters that: (1) there was valid service of the LOA dated December 23, 2016 to Jessie B. Montederamos; (2) the revalidation requirement invoked by petitioner is no longer controlling, in view of Revenue Memorandum Order (RMO) No. 44-2010; and (3) the large difference between the figures found in the FLD/FAN vis-à-vis FDDA was a result of through consideration and evaluation of petitioner's administrative protest on the FLD/FAN.

RULING

We grant the Petition.

Do we have jurisdiction over CTA Case No. 10282?

Yes.

Section 7(a)(1) of Republic Act (RA) No. 1125,[62] as amended by RA No. 9282 reads:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
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> 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 other matters arising under the National

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62 An Act Creating the Court of Tax Appeals.

> Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> ...[63]

Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals[64] clarified that the CTA in Division has jurisdiction over respondent or his authorized representative's decision involving disputed assessments, among others.[65] For the decision of respondent or his duly authorized representatives to be elevated on appeal before the CTA in Division, there must first be a disputed assessment.[66] To properly dispute a final assessment, a valid administrative protest by the taxpayer must be made pursuant to Section 228 of the NIRC, as amended, which states:

> Section 228. *Protesting of Assessment.* — ...
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> ...
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> 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.**
>
> 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.[67]

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63 Boldfacing supplied.

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

65 SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* - The Court in Divisions shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal the following:
(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 other matters arising under the National Internal Revenue Code** or other laws, administered by the Bureau of Internal Revenue; (Boldfacing supplied)

66 See *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation,* G.R. No. 215534, April 18, 2016.

67 Boldfacing supplied.

In turn, the validity of the administrative protest rests upon the meeting of two (2) conditions, namely: *first*, it must be filed within thirty (30) days from the receipt of the final assessment; and *second*, it must be in such form and manner as may be prescribed by implementing rules and regulations.[68] Section 3.1.4 of Revenue Regulations (RR) No. 18-2013, prescribes the form and manner of filing of an administrative protest:

> 3.1.4 Disputed Assessment. — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
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> (i) Request for reconsideration — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
>
> (ii) Request for reinvestigation — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.

As it stands, the taxpayer has thirty (30) days from receipt of the final assessment to file a valid administrative protest. Upon receipt of the FDDA, the taxpayer has another thirty (30) days to appeal the same, with the CTA in Division.

Petitioner received the FLD/FAN on January 15, 2018.[69] Counting thirty (30) days therefrom, petitioner had until February 14, 2018 to file a valid administrative protest thereto; thus, it timely protested the FLD/FAN, by way of request for reconsideration on February 14, 2018.[70] Said protest, too, contained: (1) date of receipt of the FLD/FAN on January 15, 2018; (2) statement that it is a request

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68 See *Commissioner of Internal Revenue v. Court of Tax Appeals – Third Division and Citysuper Incorporated*, G.R. No. 239464, May 10, 2021.

69 Lower right portion of page 1, FLD (Part I). *Supra* note 9.

70 *Supra* note 17.

for reconsideration; (3) the factual and legal basis of said protest, *i.e.*, service of the LOA to an unauthorized person and violation of due process.[71] Hence, petitioner filed a valid request for reconsideration against the FLD/FAN.

On March 4, 2020, petitioner received the FDDA dated February 28, 2020.[72] Counting thirty (30) days from March 4, 2020, petitioner had until April 3, 2020 to seek judicial recourse. Considering that April 3, 2020 fell during the Enhanced Community Quarantine,[73] the following Supreme Court issuances must be consulted:

Issuance	Date Issued	Pertinent Content
AC No. 31-2020[74]	March 16, 2020	6. The filing of petitions and appeals, complaints, motions, pleadings, and other court submissions that fall due during the period from 15 March 2020 until 15 April 2020 is EXTENDED for THIRTY (30) calendar days counted from 16 April 2020. However, those who prefer to file the said pleadings within the reglementary period without the need of the extension granted may do so by facsimile or by transmitting them through electronic means, if available.
AC No. 39-2020[75]	May 14, 2020	Considering that the Inter-Agency Task Force for the Management of Emerging Infectious Diseases has placed certain areas in the country, *i.e.*, National Capital Region … under Modified Enhanced Community Quarantine (MECQ) until 31 May 2020, all the courts in the said areas under MECQ shall operate as follows during the said period: … 4. The filing of petitions, appeals, complaints, motions, pleadings and other submissions that fall due up to 31 May 2020 before the courts in areas under MECQ areas is extended for 30 calendar days, counted from 1 June 2020, but pleadings and other court submissions may still be filed by the parties within the reglementary period on or before 31 May 2020 through electronic means, if preferred and able. In the same manner, the periods for court actions with prescribed periods of courts in areas under MECQ are likewise extended for 30 calendar days counted from 1 June 2020. …

71 *Ibid.*
72 Lower right portion, page 1, FDDA. *Supra* note 23.
73 See Section 2 of Proclamation No. 929, s. 2020, entitled "DECLARING A STATE OF CALAMITY THROUGHOUT THE PHILIPPINES DUE TO CORONA VIRUS DISEASE 2019."
74 RE: RISING CASES OF COVID-19 INFECTION.
75 RE: MODIFIED ENHANCED COMMUNITY QUARANTINE IN CERTAIN AREAS UNTIL 31 MAY 2020.

Following said issuances, the *original* last day for petitioner to institute an appeal before the Court on April 3, 2020 was *extended* until July 1, 2020. Ponder on the following presentation:

Original last day to appeal before the Court	Appeals covered by AC No. 31-2020	Last day to appeal under AC No. 31-2020	Appeals covered by AC No. 39-2020	**New** Last day to appeal before the Court under AC No. 39-2020
April 3, 2020	Those falling due from March 15, 2020 to April 15, 2020	May 16, 2020[76]	Those falling due up to May 31, 2020	July 1, 2020[77]

Ergo, the timely filing of petitioner's Original Petition on June 25, 2020[78] endowed us with jurisdiction over CTA Case No. 10282.

Next, the merits.

We differ from petitioner's posture that the LOA dated December 23, 2016 is void because it was *not* revalidated, despite the handling RO's conduct of audit beyond the 120-day period from date of its issuance, as commanded by *AGIC*.

Item IV (8) of RMO No. 44-2010[79] states:

> *IV. Policies and Guidelines*
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> ...
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> 8. **Beginning June 1, 2010, the rule on the need for revalidation of LAs for failure of the revenue officials to complete the audit within the prescribed period shall be withdrawn.** Accordingly, **there is no need for revalidation of the LA even if the prescribed audit period has been exceeded.** However, the failure of the RO to complete the audit within the prescribed period shall be subject to the applicable administrative sanctions.[80]

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76 Extension of thirty (30) days, counted from April 16, 2020. *Supra* note 74.
77 Extension of thirty (30) days, counted from June 1, 2020. *Supra* note 75.
78 Docket (Vol. I), p. 6.
79 SUBJECT: Electronic Issuance of Letters of Authority.
80 Boldfacing supplied.

Truly, beginning June 1, 2010, RMO No. 44-2010 brushed aside the revalidation requirement, if the assigned RO failed to complete the audit, within one hundred twenty (120) days from issuance of the LOA. Since the period covered by LOA dated December 23, 2016[81] is from January 1, 2014 to December 31, 2014, the failure of RO Tamayo to complete the audit within such 120-day period, *sans* revalidation of such LOA, does not result in the nullification of said BIR audit or examination for TY 2014.

Neither may petitioner invoke *AGIC* here. Specifically, the audit/examination performed by the BIR in *AGIC* is for TY 2006, covered by LOA dated May 7, 2008, which was *prior* to the issuance of RMO No. 44-2010. On other hand, the audit/examination conducted by the BIR in this case is for TY 2014, covered by LOA dated December 23, 2016, which was *after* the issuance of RMO No. 44-2010. Owing to the variance between the prevailing BIR issuances here and in *AGIC*, they cannot be adjudicated, much less, be treated alike.

We nonetheless agree with petitioner that the BIR conducted an invalid examination on it for TY 2014, because the LOA dated December 23, 2016 was improperly served to Jessie B. Montederamos.

Item III.23[82] of RMO No. 19-2015[83] states that the RO assigned to the case shall present or serve the eLA to the taxpayer or its representative in accordance with Section 3.1.6 of Revenue Regulations (RR) No. 12-99,[84] as amended by RR No. 18-2013,[85] which reads, in part:

> 3.1.6 Modes of Service. — The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be

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81 *Supra* note 4.

82 III. Policies and Procedures

...

23. The RO assigned to the case shall present or serve the eLA to the taxpayer or his representative in accordance with Section 3.1.6 of RR No. 12-99 as amended by RR No. 18-2013.

83 SUBJECT: BIR Audit Program.

84 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 Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

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

> served by the Commissioner or his duly authorized representative through the following modes:
>
> (i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.
>
> In case personal service is not practicable, the notice shall be served by substituted service or by mail.
>
> (ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:
>
> The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.
>
> If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

To recall, in the LOA dated December 23, 2016, RD Misajon authorized, among others, RO Tamayo to conduct the examination of petitioner for TY 2014. [86] RO Tamayo said that he served to, and petitioner received said LOA on January 6, 2017.[87] RO Tamayo then clarified in open court that he served said LOA on Montederamos,[88] *sans* verification of the position he held on petitioner.[89] The reason for RO Tamayo's failure to confirm the position held by Montederamos as petitioner's driver is revealed by the following exchange:

> ATTY. ABDULLAH:
>
> Q: Mr. Witness, you earlier stated that you were not able to verify the position of [Montederamos], which is the company driver of petitioner. Am I correct? Why were [you] not able to verify the position of Montederamos, the person who received the Letter of Authority?

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86 *Supra* note 4.

87 Answer to Question No. 6, Judicial Affidavit of Milton A. Tamayo dated July 12, 2021 (Exhibit "R-35" and "R-35-A"). Docket (Vol. II), p. 510.

88 Page 8, Transcript of Stenographic Notes (TSN) of hearing held on February 15, 2023.

89 Page 9, TSN of hearing held on February 15, 2023.

MR. TAMAYO:

A: What transpired was when we arrived at the gate, we were not allowed to enter by the security guard on duty, and he called the accounting office or anyone who should receive the Letter of Authority. And when somebody arrived, I let him received the Letter of Authority, without knowing that he is the driver of the company.[90]

Calubad v. Ricaren Development Corporation[91] ordained that "[t]he general principles of agency govern the relationship between a corporation and its representatives. Article 1317 of the Civil Code similarly provides that the principal must delegate the necessary authority before anyone can act on his or her behalf." *Yun Kwang Byun v. Philippine Amusement and Gaming Corporation*[92] added that the law makes no presumption of agency and proving its existence, nature and extent is incumbent upon the person alleging it.

RO Tamayo admittedly failed to verify the position of Montederamos as petitioner's driver. The security guard who allegedly called the accounting office or anyone who should receive the LOA dated December 23, 2016, and the individual who could possibly shed light on the *source* of Montederamos' authority to receive such document was *not* presented as witness. It means that respondent fell short in establishing Montederamos' proper authority to receive said LOA on behalf of petitioner. These observations veer towards a single conclusion—there was *no* valid service, let alone, receipt by petitioner of the LOA dated December 23, 2016, rendering the BIR's examination and resultant tax assessments for TY 2014 void and ineffectual against it.

Lastly, we find it preposterous for respondent to fault Montederamos, as to "why did [he] accept and receive the LoA that was addressed to the Petitioner and sign the receiving portion thereof as an authorized representative? If Mr. Montederamos knew that he, in fact, did not have authority to do so, he had every right to refuse the service of the LOA."[93]

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[90] Page 20, TSN of hearing held on February 15, 2023.
[91] G.R. No. 202364, August 30, 2017.
[92] G.R. No. 163553, December 11, 2009.
[93] Page 5, respondent's Memorandum. Docket, (Vol. II), p. 788.

Respondent, through RO Tamayo, took the risk of dealing with Montederamos, by relying on the latter's act of receiving the LOA dated December 23, 2016, as ample proof of authority to receive said document on petitioner's behalf. Yet, such action alone would not suffice. Positive or affirmative acts or conduct *originating from petitioner*, tacitly permitting Montederamos to receive said document, must, at the very least, be shown and proven, which were wanting in this case. Precisely, it is apt to reiterate the pronouncement in *Country Bankers Insurance Corporation v. Keppel Cebu Shipyard, et al.*[94] as proper closing:

> [T]he ignorance of a person dealing with an agent as to the scope of the latter's authority is no excuse to such person and the fault cannot be thrown upon the principal. **A person dealing with an agent assumes the risk of lack of authority in the agent. He [or she] cannot charge the principal by relying upon the agent's assumption of authority that proves to be unfounded**....[95]

WHEREFORE, the Amended Petition dated August 14, 2020, filed by Strawberry Foods Corporation, is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated February 28, 2020, finding the latter liable for deficiency Income Tax, Value-Added Tax, Withholding Tax on Compensation, Final Withholding Tax, and Compromise Penalty covering Taxable Year 2014, is **REVERSED** and **SET ASIDE**.

Respondent, his agents, and other persons acting in his behalf, are **PROHIBITED** from collecting on Strawberry Foods Corporation, the deficiency Income Tax, Value-Added Tax, Withholding Tax on Compensation, Final Withholding Tax, and Compromise Penalty covering Taxable Year 2014.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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94 G.R. No. 166044, June 18, 2012, citing *Manila Memorial Park Cemetery, Inc. v. Linsangan*, G.R. No. 151319, November 22, 2004.

95 Boldfacing supplied.

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

HENRY S. ANGELES
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.

CATHERINE T. MANAHAN
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice