REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

RIECKERMANN PHILIPPINES, INC.,	**CTA CASE NO. 9613**
Petitioner,	Members: **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	JUL 2 2 2021 4:00 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review ("Petition"), filed by petitioner **RIECKERMANN PHILIPPINES, INC.**, against respondent **COMMISSIONER OF INTERNAL REVENUE** ("CIR"), praying that this Court render judgment setting aside and declaring as null and void respondent's Final Decision on Disputed Assessment No. 43-A-B02-2006, dated 12 May 2017 ("FDDA"), which found petitioner liable for deficiency taxes for the taxable year 2006, comprising the following:[1]

1. Deficiency income tax amounting to three million nine hundred seventy eight thousand eighty six and 03/100 pesos (Php3,978,086.03);

2. Deficiency value added taxes ("VAT") amounting to one million nine hundred ninety three thousand four hundred seventy nine and 39/100 pesos (Php1,993,479.39); and

3. Deficiency expanded withholding tax ("EWT") amounting to one hundred eighty four thousand three hundred seventy five and 65/100 pesos (Php184,375.65).

[1] See Statement of the Case in the Pre-Trial Order, Records, Vol. 2, p. 429.

The Parties

Petitioner is a domestic corporation organized and existing under Philippine laws, with address at 89 West Capitol Drive, Kapitolyo, Pasig City, represented herein by its treasurer and accountant, Ms. Julieta G. Zapanta.[2]

Respondent is the head of the Bureau of Internal Revenue ("BIR"). He is vested with authority to administer all laws pertaining to internal revenue taxes and has the jurisdiction to decide disputed tax assessments.[3]

The Facts

On 29 April 2010, petitioner received a Preliminary Assessment Notice ("PAN"), dated 23 April 2010, finding it liable for deficiency taxes for the taxable year 2006.[4] In response, petitioner filed with respondent on 13 May 2010 its Reply to the PAN, dated 11 May 2010.[5]

On 24 May 2010, respondent issued the Formal Letter of Demand and its corresponding Assessment Notices ("FLD/FAN"). Petitioner received a copy of the FLD/FAN on 1 June 2010.[6] On 15 June 2010, petitioner filed its Protest to the FLD/FAN, dated 4 June 2010, along with its relevant supporting documents.[7]

On 12 August 2010, respondent issued Tax Verification Notice No. 00123593 ("TVN"), stating that revenue officer Janice Solomon will conduct the reinvestigation requested in the Protest to the FLD/FAN. The TVN was received by petitioner on 17 August 2010.[8]

On 15 August 2011, petitioner received a Letter from respondent, stating that revenue officer Carmencita Villanueva, under the supervision of group supervisor Antonio Ilagan, has been authorized "to continue the audit and investigation" of petitioner's internal revenue taxes for taxable year 2006.[9]

Subsequently, on 8 November 2012, petitioner received a Letter, dated 25 October 2012, from respondent, providing that the assessments issued against petitioner have become final and executory as petitioner failed to controvert the assessment made in the FLD/FAN considering that the

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[2] See Petition, Records, Vol. 1, p. 12; See Annex "A" of the Petition, Records, *id.*, pp. 26-27.
[3] See Petition, Records, *id.*, p. 12; See Statement of Facts and Issues, Pre-Trial Order, Records, Vol. 2, p. 430.
[4] See Memorandum. Records, *id.*, p. 838; Exhibit "P-1", Records, *id.*, pp. 618-621.
[5] *Ibid.*; Exhibit "P-2", *id.*, pp. 622-634.
[6] *Ibid.*; Exhibit "P-3", *id.*, pp. 640-646.
[7] *Ibid.*; Exhibit "P-4", *id.*, pp. 647-700.
[8] *Id.*, p. 839; Exhibit "P-5", *id.*, p. 701.
[9] *Ibid.*; Exhibit "P-6", *id.*, p. 702.

supporting documents submitted by petitioner to accompany its Protest only contained summaries and schedules without the necessary receipts, invoices, and other documents to support the same.[10]

On 18 December 2012, petitioner submitted to respondent a Letter, dated 14 December 2012 and addressed to Regional Director Jonas D.P. Amora, explaining that the Protest contained schedules and other information that would disprove the deficiency tax assessments and that while some documents were not attached due to volume, these were easily verifiable with petitioner had respondent's revenue officers exerted even a little time and effort. In the said Letter, petitioner also requested the approval to submit its consideration letter addressed to Revenue District Officer Florante R. Aninag with the photocopies of petitioner's receipts, invoices, and other documents in support of its Protest.[11]

On 1 February 2013, respondent, through his then Chief of the Legal Division, Atty. Amado Rey B. Pagarigan, issued his Denial Letter, disapproving the requests made by petitioner in its Letter, dated 14 December 2012. He similarly reiterated therein the conclusion reached in his Letter, dated 25 October 2012, that the deficiency tax assessments have become final and executory due to petitioner's failure to submit the necessary supporting documents. Petitioner received this Denial Letter, dated 1 February 2013, on 14 February 2013.[12]

On 4 February 2014, petitioner submitted a Letter, dated 2 December 2013, to Atty. Rommel Curiba, respondent's Chief of the Legal Division on said date, requesting for assistance on the denial made by the previous Chief of the Legal Division, Atty. Pagarigan.[13]

On 12 May 2017, petitioner received the FDDA.[14]

This led to petitioner's filing of the instant Petition on 8 June 2017.[15] Summons were then issued to respondent on 27 June 2017.[16]

On 19 July 2017, respondent filed a Motion for Extension of Time to File Answer,[17] which was granted in a Resolution, dated 21 July 2017.[18]

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[10] *Ibid.*; Exhibit "P-7", *id.*, p. 703.
[11] *Ibid.*; Exhibit "P-8", *id.*, pp. 704-717.
[12] *Ibid.*; Exhibit "P-9", *id.*, pp. 718-722.
[13] *Id.*, p. 840; Exhibit "P-10", *id.*, pp. 723-725.
[14] *Ibid.*; Exhibit "P-11", *Id.*, at pp. 726-729.
[15] Records, Vol. 1, pp. 12-140.
[16] *Id.*, pp. 141-143.
[17] *Id.*, pp. 144-147.
[18] *Id.*, pp. 148-149.

On 18 August 2017, respondent filed another Motion for Extension of Time to File Answer,[19] which was allowed by this Court in a Resolution, dated 31 August 2017.[20]

On 15 September 2017, respondent filed his third Motion for Extension of Time to File Answer,[21] which was granted in a Resolution, dated 25 September 2017.[22]

On 18 October 2017, respondent filed his fourth Motion for Extension of Time to File Answer,[23] which was allowed for the last time by this Court in a Resolution, dated 30 October 2017.[24]

On 16 November 2017, respondent filed his Answer.[25]

On 23 November 2017, this Court issued a Notice of Pre-Trial Conference, setting the Pre-Trial Conference on 22 February 2018, at 9:00 a.m.[26]

On 15 February 2018, petitioner filed a Compliance,[27] submitting the Judicial Affidavit of its witness, Ms. Julieta G. Zapanta.[28] On 19 February 2018, petitioner filed its Pre-Trial Brief.[29] These were noted in the Resolution, dated 21 February 2018.[30]

On same date, respondent filed a Motion to Reset Pre-Trial Conference,[31] which was granted in the Resolution, dated 21 February 2018.[32]

On 26 April 2018, respondent filed another Motion to Reset Pre-Trial Conference,[33] which was allowed in the Resolution, dated 7 May 2018.[34]

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[19] *Id.*, pp. 150-153.
[20] *Id.*, pp. 154-156.
[21] *Id.*, pp. 157-159.
[22] *Id.*, pp. 160-162
[23] *Id.*, pp. 163-170.
[24] *Id.*, pp. 171-173.
[25] *Id.*, pp. 174-179.
[26] *Id.*, pp. 180-183.
[27] *Id.*, pp. 184-185.
[28] *Id.*, pp. 186-320.
[29] *Id.*, pp. 321-329.
[30] *Id.*, pp. 333-334.
[31] *Id.*, pp. 330-332.
[32] *Supra* note 30.
[33] Records, Vol. 1, pp. 335-339.
[34] *Id.*, pp. 340-343.

On 2 July 2018, respondent filed a third Motion to Reset Pre-Trial Conference,[35] which was granted by this Court in the Resolution, dated 3 July 2018.[36]

On 15 August 2018, respondent filed his fourth Motion to Reset Pre-Trial Conference,[37] which was allowed by this Court for the last time in a Resolution, dated 22 August 2018.[38] The Pre-Trial was re-scheduled for the last time on 9 September 2018, 9:00 a.m.

On 5 September 2018, respondent filed his Pre-Trial Brief.[39]

On 9 September 2018, the Pre-Trial Conference ensued.[40]

On 11 September 2018, petitioner filed a Compliance, submitting the Amended Articles of Partnership of its counsel, Cochingyan and Partners Law Offices,[41] which was noted in a Resolution, dated 21 September 2018.[42]

On 20 September 2018, petitioner filed a Motion for the Appointment of an Independent Certified Public Accountant ("ICPA"), seeking the appointment of Mr. George V. Villaruz as its ICPA who would inspect, examine, and verify the voluminous documents and records which are the subject of the present case.[43]

On 2 October 2018, a Notice of Hearing was issued by this Court, setting the hearing of the above Motion and the hearing for the examination of petitioner's witness, Ms. Julieta G. Zapanta, on 6 November 2018, 9:00 a.m.[44]

On 4 October 2018, petitioner filed a Motion to Reset the 6 November 2018 Hearing as the proposed ICPA was out of the country.[45] This Motion was granted in a Resolution, dated 9 October 2018, by this Court.[46] The hearing for the commissioning of the ICPA was moved to 15 November 2018, 9:00 a.m., but the hearing for petitioner's witness, Ms. Julieta G. Zapanta, was set to continue on 6 November 2018.

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[35] *Id.*, pp. 344-346.
[36] *Id.*, pp. 347-350.
[37] *Id.*, pp. 351-353.
[38] *Id.*, pp. 354-355.
[39] *Id.*, pp. 356-359.
[40] *Id.*, pp. 360-368.
[41] *Id.*, pp. 369-376.
[42] Records, Vol. 2, p. 407.
[43] *Id.*, pp. 377-406.
[44] *Id.*, p. 408.
[45] *Id.*, pp. 410-413.
[46] *Id.*, pp. 414-415.

On 12 October 2018, petitioner filed a Motion for Commissioner's Hearing for the marking of petitioner's documentary evidence attached to the Judicial Affidavit of its witness, Ms. Julieta G. Zapanta.[47] This Motion was granted by this Court in a Resolution, dated 19 October 2018.[48]

On 5 November 2018, a Pre-Trial Order was issued.[49]

On 6 November 2018, petitioner presented its witness, Ms. Julieta G. Zapanta.[50]

On 13 November 2018, petitioner filed a Compliance,[51] submitting the Judicial Affidavit of Mr. George V. Villaruz[52] in relation to his proposed appointment as ICPA for the case at bar.

On 15 November 2018, petitioner presented Mr. George V. Villaruz for purposes of his commissioning as the ICPA for the present case. He was then commissioned as the ICPA who will inspect, examine and verify petitioner's voluminous documents and records which are subject of the present case.[53]

On 27 November 2018, petitioner submitted through a Manifestation various documents pertaining to Mr. George V. Villaruz previously required during the ICPA commissioning hearing.[54] These documents were noted and admitted in a Resolution, dated 3 December 2018, by this Court.[55]

In a Resolution, dated 11 December 2018, this Court ordered respondent to elevate the BIR Records.[56]

On 17 December 2018, the ICPA submitted his ICPA Report for the case at bar,[57] which was noted by this Court in a Resolution, dated 19 December 2018.

On 15 January 2019, petitioner filed a Compliance,[58] submitting the Judicial Affidavit of Mr. George V. Villaruz in relation to his ICPA Report.[59]

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[47] *Id.*, pp. 418-420.
[48] *Id.*, pp. 421-423.
[49] *Id.*, pp. 428-437.
[50] *Id.*, pp. 438-.440.
[51] *Id.*, pp. 441-443.
[52] *Id.*, pp. 444-448.
[53] *Id.*, pp. 449-452.
[54] *Id.*, pp. 453-462.
[55] *Id.*, p. 467.
[56] *Id.*, pp. 468-469.
[57] *Id.*, pp. 470-570.
[58] *Id.*, pp. 572-573.
[59] *Id.*, pp.574-580.

On 18 January 2019, respondent's counsel filed a Withdrawal of Appearance,[60] which was noted by this Court in the Resolution, dated 22 January 2019.[61] Respondent was ordered to cause the appearance of his new counsel for the case at bar within ten (10) days from receipt.

In a Resolution, dated 23 January 2019, this Court again ordered respondent to elevate the BIR Records for the present case.[62]

On 1 February 2019, respondent elevated the BIR Records before this Court,[63] which was noted by this Court in the Resolution, dated 6 February 2019.[64]

On 8 February 2019, respondent's counsel filed an Entry of Appearance[65] and similarly filed a Motion for Resetting of Hearing.[66] These submissions were noted and granted by this Court in the Resolution, dated 11 February 2019,[67] respectively.

On 14 February 2019, petitioner filed a Motion to Reset Hearing,[68] as the ICPA would be out of the country on the re-scheduled hearing for the examination of the ICPA's testimony in relation to the ICPA Report he prepared for the instant case. This Motion was granted by this Court in a Resolution, dated 19 February 2019.[69] The hearing for the presentation of the testimony of Mr. George V. Villaruz was reset to 13 June 2019, 9:00 a.m.

On 13 June 2019, petitioner presented Mr. George V. Villaruz who testified with respect to the ICPA Report he prepared for the instant case.[70]

On 1 July 2019, petitioner filed its Formal Offer of Evidence,[71] to which respondent interposed no objections.[72]

On 15 July 2019, respondent filed a Manifestation with Motion to Admit the Attached Judicial Affidavits of Revenue Officer Carmencita Villanueva and Revenue Officer Troy D.J. Dela Cruz,[73] with Compliance[74]

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[60] *Id.*, pp. 581-582.
[61] *Id.*, p. 583.
[62] *Id.*, pp. 584-586.
[63] *Id.*, p. 587.
[64] *Id.*, p. 588.
[65] *Id.*, pp. 592-593.
[66] *Id.*, pp. 589-591.
[67] *Id.*, pp.594-595.
[68] *Id.*, pp. 596-599.
[69] *Id.*, pp. 600-601.
[70] *Id.*, pp. 602-604.
[71] *Id.*, pp. 605-755.
[72] See Resolution, dated 22 July 2019, *id.*, pp. 787-788.
[73] Records, Vol. 2, pp. 757-759.
[74] *Id.*, pp. 760-761.

submitting the Judicial Affidavit of Revenue Officer Carmencita Villanueva[75] and Compliance[76] submitting the Judicial Affidavit of Revenue Officer Troy D.J. Dela Cruz.[77]

On 22 July 2019, this Court issued a Resolution requiring petitioner to file a comment on the Manifestation with Motion to Admit the Attached Judicial Affidavits of Revenue Officer Carmencita Villanueva and Revenue Officer Troy D.J. Dela Cruz filed by respondent.[78]

In a Resolution, dated 8 August 2019, this Court admitted petitioner's Exhibits "P-1", "P-2", "P-3, "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-13-a", "P-14", "P-14-a", "P-15", "P-15-a", "P-15-b", "P-16.1 to P-16.64", "P-17.1 to P-17.12", "P-18.1 to P-18.15", "P-19.1 to P-19.72", "P-20.1 to P-20.190", "P-21.1 to P-21.32", "P-22.1 to P-22.21", "P-22.23 to P-22.28", "P-22.30 to P-22.84", "P-23", and "P-23-a" but denied admission of Exhibits "P-22.22" and "P-22.29".[79]

On 16 August 2019, petitioner filed a Comment interposing no objection to the Manifestation with Motion to Admit the Attached Judicial Affidavits of Revenue Officer Carmencita Villanueva and Revenue Officer Troy D.J. Dela Cruz filed by respondent.[80]

On 27 August 2019, this Court issued a Resolution noting respondent's Manifestation and granting his Motion to Admit the Attached Judicial Affidavits of Revenue Officer Carmencita Villanueva and Revenue Officer Troy D.J. Dela Cruz.[81]

On 23 September 2019, petitioner filed a Motion for Partial Reconsideration with Judicial Affidavit of George V. Villaruz seeking the admission of Exhibits "P-22.22" and "P-22.29".[82] Respondent failed to comment on this Motion[83] despite being ordered to do so by this Court.[84] This Motion was granted by this Court in the Resolution, dated 22 November 2019.[85]

On 28 November 2019, respondent presented his witnesses, Revenue Officers Carmencita Villanueva and Troy D.J. Dela Cruz.[86]

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[75] *Id.*, pp. 762-774.
[76] *Id.*, pp. 775-776.
[77] *Id.*, pp. 777-784.
[78] *Id.*, pp. 786-788.
[79] *Id.*, pp. 790-791.
[80] *Id.*, pp. 792-794.
[81] *Id.*, pp. 795-797.
[82] *Id.*, pp. 798-807.
[83] *Id.*, p. 810; see Resolution, dated 13 November 2019, Records, *id.*, pp. 811-812.
[84] See Resolution, dated 2 October 2019, Records, *id.*, pp. 808-809.
[85] Records, Vol. 2, pp. 813-816.
[86] *Id.*, pp. 817-819.

On 17 December 2019, respondent filed his Formal Offer of Evidence.[87] On 3 January 2020, petitioner filed a Comment to Respondent's Formal Offer of Evidence.[88] In a Resolution, dated 5 February 2020, this Court admitted respondent's Exhibits "R-1", "R-2", "R-2-a", "R-3", "R-3-a", "R-3-b", "R-3-c", "R-4", "R-5", "R-5-a", "R-6", "R-6-a", "R-7", and "R-7-a".[89]

On 12 March 2020, petitioner filed its Memorandum,[90] which was noted by this Court in a Resolution, dated 13 March 2020.[91] Meanwhile, respondent failed to file his Memorandum.[92]

As such, on 23 July 2020, this Court issued a Resolution submitting the instant Petition for decision.[93]

Hence, this Decision.

The Issues[94]

> WHETHER OR NOT THE PETITIONER IS LIABLE TO PAY FOR DEFICIENCY INCOME TAX AMOUNTING TO THREE MILLION NINE HUNDRED SEVENTY EIGHT THOUSAND EIGHTY SIX AND 03/100 PESOS (PHP3,978,086.03) FOR TAXABLE YEAR 2006;
>
> WHETHER OR NOT THE PETITIONER IS LIABLE FOR DEFICIENCY VAT AMOUNTING TO ONE MILLION NINE HUNDRED NINETY THREE THOUSAND FOUR HUNDRED SEVENTY NINE AND 39/100 PESOS (PHP1,993,479.39) FOR TAXABLE YEAR 2006;
>
> WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY EWT AMOUNTING TO ONE HUNDRED EIGHTY FOUR THOUSAND THREE HUNDRED SEVENTY FIVE AND 65/100 PESOS (PHP184,375.65) FOR TAXABLE YEAR 2006.

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[87] *Id.*, pp. 822-826.
[88] *Id.*, pp. 828-831.
[89] *Id.*, pp. 834-836.
[90] *Id.*, pp. 837-858.
[91] *Id.*, p. 859.
[92] *Id.*, p. 860.
[93] *Id.*, pp. 861-862.
[94] See Issues in the Pre-Trial Order; Records, *id.*, p. 432.

WHETHER OR NOT THE ASSESSMENT BECAME FINAL AND EXECUTORY FOR FAILURE OF THE PETITIONER TO FILE A VALID PROTEST.

Arguments of the Parties

Petitioner's Arguments[95]

Petitioner avers the following in its Memorandum:

a) Petitioner filed a valid Protest and the assessments issued are not final and executory;

    i. Revenue officer Carmencita Villanueva did not have the proper authority to conduct the reinvestigation of petitioner;

b) Petitioner is not liable for the assessed deficiency income tax for taxable year 2006 amounting to three million nine hundred seventy eight thousand eighty six and 03/100 pesos (Php3,978,086.03);

c) Petitioner is not liable for the assessed deficiency VAT for taxable year 2006 amounting to one million nine hundred ninety three thousand four hundred seventy nine and 39/100 pesos (Php1,993,479.39); and

d) Petitioner is not liable for the assessed deficiency EWT for taxable year 2006 amounting to one hundred eighty four thousand three hundred seventy five and 65/100 pesos (Php184,375.65).

Respondent's Counter-Arguments[96]

Respondent counter argues the following in his Answer:

a) Petitioner failed to controvert the FLD-FAN as the Protest it filed only contained summaries and schedules without the necessary receipts, invoices and other documents to support the same. Photocopies of the necessary receipts, invoices, and other documents attached to support the Protest were belatedly submitted beyond the mandated sixty (60) day period. Due to this, the assessments against petitioner have become final and executory; and

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[95] See Memorandum, *id.*, pp. 841-856.
[96] See Answer, Records, Vol. 1, pp. 174-177.

b) Petitioner is liable for deficiency income tax, VAT, and EWT as set forth in the FDDA.

The Ruling of the Court

The instant Petition is impressed with merit.

A revenue officer must first be duly authorized before conducting an examination of a taxpayer for the purpose of collecting the correct amount of tax.

A Letter of Authority ("LOA") is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[97] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[98]

It is imperative, then, that 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.

Moreover, an LOA is premised on the fact that the examination of a taxpayer who has already filed its tax returns is a power that statutorily belongs only to respondent himself or his duly authorized representatives.[99] This is expressly provided under ***Section 6(A) of the National Internal Revenue Code of 1997, as amended ("NIRC")***, to wit:

> "**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

[97] Medicard Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 222743, 5 April 2017.
[98] Commissioner of Internal Revenue v. De La Salle University, Inc., et. al., G.R. Nos. 196596, 198841, and 198941, 9 November 2016.
[99] *Supra* note 97.

> prevent the Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. x x x"
> (Emphasis, Ours)

Corollary thereto is ***Section 13 of the NIRC***, which provides:

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

Following these provisions, an examination of a taxpayer for the purpose of collecting the correct amount of taxes cannot be made by a revenue officer without proper authorization from respondent or his duly authorized representatives. There must be a grant of authority before any revenue officer can conduct an examination or assessment. In the absence of such an authority, the assessment or examination is a nullity.[100]

Respondent failed to present and offer evidence on the authority of his revenue officers to conduct an audit and examination of petitioner's books of accounts and other accounting records.

An examination of the records of the present case would show that no LOA has been attached or incorporated therein, much less offered in evidence.

The Court notes that a certain LOA No. 00009175 was mentioned in a) the Notice of Informal Conference[101] and Memorandum, dated 10 December 2009,[102] which are both found in the BIR Records, which allegedly conferred authority to revenue officer Rosalina T. Reyes and group supervisor

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[100] Commissioner of Internal Revenue v. Sony Philippines, Inc., G.R. No. 178797, 17 November 2010; Commissioner of Internal Revenue v. Capitol Steel Corporation, CTA EB Case No. 1796, CTA Case No. 9240, 28 May 2019.
[101] BIR Records, pp. 181-182.
[102] *Id.*, pp. 320-321.

Antonino L. Ilagan to examine petitioner's books of accounts and other accounting records to determine the correct internal revenue taxes for taxable year 2006; and b) the Letter to Atty. Pagarigan, which is attached to the Letter, dated 2 December 2013, to Atty. Curiba,[103] which, in turn, allegedly authorized revenue officer Rosalina T. Reyes and group supervisor Roberto Dureza to examine petitioner's documents. But as mentioned, said LOA was not attached or made part of the records nor offered in evidence.

Consequently, there are no means by which this Court can determine first, whether LOA No. 00009175 properly conferred authority to the revenue officers named therein to conduct an examination of petitioner's books of accounts and other accounting records for the purpose of collecting the correct internal revenue taxes for taxable year 2006; and second, assuming that there was, indeed, such authority, that said revenue officers performed their functions within said authority.

The need to examine the actual LOA No. 00009175 or its certified true copy cannot be overemphasized as this would prove that the examination of petitioner was duly authorized and, as such, that the deficiency tax assessments issued from such examination were valid.

What is more, the fact that the parties provide different details of LOA No. 00009175 highlights the need to have the actual LOA No. 00009175 presented to the Court so that it may be perused and examined. Indeed, while petitioner refers to the group supervisor named therein as Roberto Dureza[104], respondent identifies the named group supervisor as Antonino L. Ilagan.[105]

The failure to offer in evidence LOA No. 00009175 or any other LOA is detrimental to respondent's cause as there is no proof that the revenue officers who initially examined petitioner's books of accounts were indeed authorized to do so. Without proof that the examination of petitioner was properly authorized, said examination must be deemed as not authorized at all. Thus, all resulting assessments from such examination are null and void.

In ***Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.***,[106] the Supreme Court had the occasion to rule that each party-litigant should prove every minute aspect of a tax assessment case:

> Under Section 8 of Republic Act (R.A.) No. 1125, the CTA is categorically described as a court of record. As such, it shall have the power to promulgate rules and regulations for the conduct of its business, and as may be needed, for the uniformity of decisions within its jurisdiction. Moreover, **as**

[103] Exhibit "P-10", Records, Vol. 2, p. 724.
[104] See Records, Vol. 2, p. 724.
[105] See Notice of Informal Conference, BIR Records, p. 180.
[106] G.R. No. 197515, 2 July 2014

cases filed before it are litigated de novo, party-litigants shall prove every minute aspect of their cases. Thus, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Revised Rules on Evidence which reads:

> SEC. 34. Offer of evidence. – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

Although in a long line of cases, we have relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court, we exercised extreme caution in applying the exceptions to the rule, as pronounced in Vda. De Oñate v. Court of Appeals, thus:

> From the foregoing provision, it is clear that for evidence to be considered, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In Interpacific Transit, Inc. v. Aviles[186 SCRA 385, 388-389 (1990)], we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.

However, in People v. Napat-a[179 SCRA 403 (1989)] citing People v. Mate[103 SCRA 484 (1980)], we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court provided the following requirements are present, viz.: first, the same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case.

The **evidence may, therefore, be admitted provided the following requirements are present: (1) the same must have been duly identified by testimony duly recorded; and (2) the same must have been incorporated in the records of the case. Being an exception, the same may only be applied when there is strict compliance with the requisites**

> **mentioned above;** otherwise, the general rule in Section 34 of Rule 132 of the Rules of Court should prevail."
> (Citations omitted) (Emphasis, Ours)

Consequently, party-litigants in a tax assessment case (*i.e.*, both the taxpayer and the Commissioner of Internal Revenue) are duty bound to present and offer their corresponding pieces of evidence to prove every minute aspect of their respective cases. One party cannot simply rely on the weakness of the other party's evidence to win a deficiency tax assessment case. The party to whom the judgment will be favorable should be that party who proved, through the evidence adduced, that said party is indeed entitled to such ruling.

Following this, and to the point of being repetitive, LOA No. 00001975 cannot be considered in determining whether the examinations of petitioner in relation to the subject deficiency tax assessments have been properly authorized since respondent failed to offer the said LOA, or any other LOA for that matter, as part of his evidence and especially since he failed to even merely attach or incorporate a copy of the same as part of this Court's records nor identify it through the testimony of his witnesses. To stress, without proof that the examination was properly authorized, all assessments that were derived from such examination are null and void.

The TVN and the Memorandum of Assignment did not properly transfer and re-assign the examination of petitioner's books of accounts and other accounting records to the revenue officers named therein.

Even assuming that LOA No. 00009175 was offered as part of respondent's evidence and provides definite proof of authority of the revenue officers named therein (*i.e.,* revenue officer Rosalina T. Reyes and group supervisor Antonino L. Ilagan or Roberto Dureza), the examination of petitioner's accounting records had already been transferred and re-assigned to other revenue officers, namely, Janice Solomon via the TVN and Carmencita Villanueva through Memorandum of Assignment No. 043A-0000339 ("MOA").[107] As such, there is still a need to determine whether such transfer or re-assignment was properly made and conferred authority to said new revenue officers to examine the books of accounts of petitioner.

[107] Exhibit "R-1", Records, Vol. 2, p. 767.

Revenue Memorandum Order No. 43-90 ("RMO 43-90")[108] governs the re-assignments and transfers of cases among revenue officers. It expressly provides, to wit:

> "**Any reassignment/ transfer of cases to another RO(s),** and revalidation of L/As which have already expired, **shall require the issuance of a new L/A,** with the corresponding notation thereto, including the previous L/ A number and date of issue of said L/As."
> (Emphasis, Ours)

It stands clear that in re-assignments and transfers of cases, the new revenue officer assigned to examine a taxpayer's accounting records should be armed with a new LOA. A cardinal rule in statutory construction is that where the law speaks in clear and categorical language, or the terms of the statute are clear and unambiguous and free from doubt, there is no room for interpretation or construction and no interpretation or construction is called for; there is only room for application. The use of the word "shall" connotes a mandatory order, denotes an imperative obligation, and is inconsistent with the idea of discretion.[109] Hence, the use of the word "shall" in ***RMO 43-90*** can only mean that the issuance of a new LOA in cases of transfer of audits to another set of revenue officers is mandatory.

But what can be classified as a valid LOA? The nomenclature of a document will certainly not determine whether such is a valid LOA. To be effective, an LOA should authorize a revenue officer to examine a taxpayer's books of accounts and other accounting records to collect the correct amount of taxes. Equally important is the requisite that it must be issued either by respondent himself or by his duly authorized representative, who under ***Section 13 of the NIRC***, is the Revenue Regional Director. Subsequently, under ***Section D(4) of RMO 43-90***, respondent expanded his list of duly authorized representatives who may issue LOAs that will authorize the examination of taxpayers for deficiency taxes to include the following:

> "1. Regional Directors;
> 2. Deputy Commissioners;
> 3. Commissioner; and
> 4. Other officials that may be authorized by the Commissioner for the exigencies of service."[110]

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[108] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, 20 September 1990.
[109] Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, G.R. Nos. 175707, 180035, and 181092, 19 November 2014.
[110] Commissioner of Internal Revenue v. Sugar Crafts, Inc., CTA EB No. 1757, CTA Case No. 8738, Resolution, dated 10 September 2019.

Accordingly, a Memorandum of Assignment or a Referral Memorandum, Tax Verification Notice, or any other letter emanating from the BIR which seeks to authorize the audit/tax investigation of a taxpayer may be considered a valid LOA, provided that it was issued by any of the persons listed above.

In the case at bar, the examination of petitioner was initially transferred Revenue Officer Janice Solomon through the TVN. A perusal of the said TVN[111] shows that the same was issued by Mr. Florante R. Aninag, a Revenue District Officer.

Applying the above discussions, the TVN did not properly authorize Revenue Officer Janice Solomon to continue the audit of petitioner's books of accounts as the authority to do so did not emanate from respondent himself or any of his duly authorized representatives. Mr. Florante R. Aninag, a Revenue District Officer, is not a duly authorized representative who may issue LOAs for respondent.

With respect to the transfer of the case to Ms. Carmencita Villanueva, the same was made through the MOA. A perusal of the said MOA would show that it was similarly issued by Revenue District Officer Mr. Florante R. Aninag for the purpose of continuing the audit as a result of the transfer to another district office of the previous revenue officer assigned to the case. This was confirmed in the Letter issued by Revenue District Officer Mr. Florante R. Aninag to petitioner informing the latter of such transfer.[112]

As in the TVN, above, Mr. Florante R. Aninag, a Revenue District Officer, is not a duly authorized representative who may issue LOAs for respondent.

Moreover, Ms. Carmencita Villanueva admitted that aside from the MOA, she was not issued any other document authorizing her to perform the audit of petitioner, to wit:[113]

> "ATTY. BARTOLOME
>
> Good morning, ma'am. Ma'am, in item 10 of your Judicial Affidavit, you answered that your proof that you were assigned to conduct the reinvestigation of Riechermann Philippines, Inc. in your Memorandum of Assignment No. 043A0000339 dated August 9, 2011.

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[111] Exhibit "P-5", Records, Vol. 2, p. 701.
[112] Exhibit "R-2", *id.*, p. 768.
[113] TSN, Hearing dated 28 November 2019, pp. 8-9.

Q Ma'am, aside from this Memorandum of Assignment, do you have a letter of authority designating you specifically to conduct the reinvestigation on Riechermann?

MS. VILLANUEVA

A No, your Honor. Can I answer?

ATTY. BARTOLOME

That's all, ma'am. I'm showing you a copy of your Memorandum of Assignment. So I'm showing you a copy of the Memorandum of Assignment you mentioned marked as Exhibit R-1. It states that pursuant to Tax Verification Notice No. 00123593 dated August 12, 2010. So, ma'am, I'm showing you a Tax Verification Notice No. 00123593 dated August 12, 2010 which is marked as Exhibit P-5 of the petitioner which is also page 463 of the BIR records.

Q Ma'am, can you tell this court who is the revenue officer designated in this Tax Verification Notice?

MS. VILLANUEVA

A The name was Ms. Janice Solomon.

ATTY. BARTOLOME

Q Ma'am, do you have a Tax Verification designating you specifically for the reinvestigation?

MS. VILLANUEVA

A No, ma'am. As I've said, there was a Memorandum of Assignment."

All told, with the absence of proof showing the authority of Revenue Officers to conduct any audit, whether at the first instance or upon re-assignment, against petitioner, the resulting deficiency tax assessment charged against petitioner is null and void.

Given the above discussions, the Court deems it unnecessary to tackle the other issues raised in the Petition.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the subject FLD/FAN, dated 24 May 2010, and the FDDA dated 12 May 2017, assessing petitioner for deficiency income tax, VAT and EWT, and DST, for taxable year 2006, are hereby **CANCELLED** and **SET ASIDE**. Consequently, Respondent is

ENJOINED and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice