REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILPLANS FIRST, INC.,
Petitioner,

CTA Case No. 9404

Members:

CASTAÑEDA, JR., *Chairperson,*
and
BACORRO-VILLENA, *JJ.*

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 17 2020
2:55 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

This is a Petition for Review[1] filed on July 29, 2016 by petitioner Philplans First, Inc. against respondent Commissioner of Internal Revenue (CIR), seeking to annul, reverse and set aside the Final Decision on Disputed Assessment (FDDA)[2] dated June 29, 2016, assessing petitioner in the total amount of ₱416,578,539.35, allegedly

[1] Docket, Vol. I, pp. 10-46.
[2] Exhibits "P-4" and "R-11", Docket, Vol. I, pp. 47-60 and BIR Records, Folder 4, pp. 240-253.

representing its Income Tax, Value Added Tax (VAT) and Documentary Stamp Tax (DST) for calendar year (CY) 2009.

THE FACTS

Petitioner is a corporation duly organized and existing under Philippine laws, with principal office located at the 12th Floor, iAcademy Building, 6764 Ayala Avenue, Makati City.[3]

Its primary purpose is to create and provide a lawful institutional medium capable of developing, maintaining, conducting, operating, marketing, selling any and all types of securities (without acting as stock broker), including but not limited to life plans, educational assistance plans, pension, retirement income, or retirement plans, with all the requisite facilities and services, merchandise or articles necessary or relevant to such securities and services to be delivered in the future to the purchasers, subscribers, planholders and enrollees.[4] It is licensed with the Securities and Exchange Commission (SEC) and with the Insurance Commission[5] to engage in providing Education, Life and Pension Plans in the Philippines.[6]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code of 1997, as amended (1997 NIRC) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR Building, Diliman, Quezon City.

On June 9, 2010, petitioner received Letter of Authority (LOA)[7] No. 124-2010-00000102 dated May 28, 2010 issued by then CIR, Joel L. Tan-Torres, authorizing Revenue Officers (ROs) Denver Gomez, Lizette Mallari, Evangeline Casipe, Roque Doloiras under Group Supervisor (GS) Lanie Luna of Large Taxpayers Excise Audit Division 2, to examine its books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2009 to

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[3] Exhibit "P-1-1", Docket, Vol. III, p. 1221.
[4] Par. 1.1, Joint Stipulation of Facts and Issue (JSFI), Docket, Vol. II, p. 788 and Exhibit "P-1-1", Docket, Vol. III, p. 1218
[5] Exhibit "P-2", Docket, Vol. III, p. 1228.
[6] Par. 1.2, JSFI, Docket, Vol. II, p. 788 and BIR Records, Folder 1, p. 6, respectively.
[7] Exhibits "P-29" and "R-2", Docket, Vol. II, p. 676.

December 31, 2009. The BIR also issued a Checklist of Requirements[8] dated June 9, 2010, requiring petitioner to present for examination several documents related to respondent's audit for CY 2009. Petitioner submitted to the BIR various tax returns on July 22, 2010.[9]

On September 6, 2010, petitioner received from the BIR First Notice for Presentation of Records[10] dated August 2, 2010, requesting petitioner to present the complete documents/accounting records as listed in the first request for the conduct of the required examination for internal revenue tax purposes.

On September 9, 2010, the BIR received a Letter[11] dated September 6, 2010, stating that petitioner will re-submit the documents it previously submitted on July 22, 2010 and it will submit other documents for the completion of the requested documents enumerated in the checklist of requirements.

Pursuant to Memorandum of Assignment (MOA) No. ELTAD II-2013-MOA-0159[12] dated June 13, 2013, OIC-Chief, Excise Large Taxpayers Audit Division (ELTAD) II, Lindagrace B. Sagun referred the case in favor of new ROs Reynoso C. Jovero Jr., Meliza C. Wepee, Catherine Ann J. Senador, Ma. Nimfa P. Saga under Group Supervisor Jesus F. Cabasal for the continuation of the audit/investigation of petitioner's internal revenue tax liabilities for CY 2009, pursuant to LOA No. 124-2010-00000102 dated May 28, 2010.

On September 6, 2013, petitioner received Letter[13] dated September 4, 2013 issued by OIC-Chief, ELTAD II, Lindagrace B. Sagun, informing it that the audit of its internal revenue taxes for CY 2009, pursuant to LOA No. 124-2010-00000102 dated May 28, 2010 was reassigned to ROs Reynoso C. Jovero Jr., Meliza C. Wepee, Catherine Ann J. Senador, Ma. Nimfa P. Saga under Group Supervisor Jesus F. Cabasal. On the same date, petitioner received a Second and Final Request for Presentation of Books of Accounts and Other Accounting Records[14] dated September 4, 2013 from OIC-Chief, ELTAD II, Lindagrace B. Sagun, requesting it to furnish the required records

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[8] Exhibit "P-29-1", Docket, Vol. II, pp. 678-680.
[9] Exhibit "P-30", Docket, Vol. II, p. 684.
[10] Exhibit "P-31", Docket, Vol. II, p. 685.
[11] Exhibit "P-32", Docket, Vol. II, pp. 686-687.
[12] Exhibit "R-1", BIR Records, Folder 1, p. 623.
[13] Exhibits "P-33" and "R-1-A", Docket, Vol. II, p. 688 and BIR Records, Folder 1, p. 654, respectively.
[14] Exhibit "P-33-1", Docket, Vol. II, p. 689.

in electronic format or the corresponding manual books of accounts be made available for verification including supporting documents for the required examination of all its internal revenues taxes for CY 2009.

On October 1, 2013, petitioner wrote a Letter[15] to the BIR for the submission of documents for the completion of BIR's requested documents enumerated in the checklist of requirements.

On November 6, 2013, petitioner received a Notice of Informal Conference[16] dated October 30, 2013 from the BIR, inviting it to appear for a conference to present its objections and/or submit documentary evidence in support of its claim.

The re-assigned ROs prepared a Memorandum Report[17] dated November 22, 2013 which recommended the issuance of the Preliminary Assessment Notice (PAN) against petitioner. On December 6, 2013, petitioner received the PAN dated November 29, 2013 with Details of Discrepancies[18] from respondent.[19] On December 20, 2013, petitioner filed its Reply to the PAN[20] dated December 19, 2013.

Thereafter, the re-assigned ROs prepared a Memorandum Report[21] dated December 23, 2013 which recommended the issuance of the Formal Letter of Demand (FLD) against petitioner. On December 26, 2013, petitioner received Formal Letter of Demand of even date with Details of Discrepancies and Assessment Notices (FLD-FAN)[22], assessing petitioner for Income Tax, Withholding Tax on Compensation (WTC), Expanded Withholding Tax (EWT), VAT and DST for CY 2009. On January 24, 2014, petitioner filed its Protest[23] to the FLD-FAN of even date.

Then, the re-assigned ROs prepared a Memorandum Report[24] dated June 20, 2016 which recommended the issuance of the FDDA

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[15] Exhibit "P-34", Docket, Vol. II, pp. 691-692.
[16] Exhibits "P-35" and "R-4", Docket, Vol. II, p. 693 and BIR Records, Folder 3, p. 83, respectively.
[17] Exhibit "R-5", BIR Records, Folder 3, pp. 249-266.
[18] Exhibits "P-36" and "P-36-1" and "R-6", Docket, Vol. II, pp. 694-707 and BIR Records, Folder, pp. 269-283, respectively.
[19] Par. 1.4, JSFI, Docket, Vol. II, p. 789.
[20] Exhibit "P-37", Docket, Vol. II, pp. 708-711.
[21] Exhibit "R-7", BIR Records, Folder 4, pp. 13-30.
[22] Exhibits "P-6", "P-6-1", "P-6-2", "P-6-3", "P-6-4", "P-6-5", "P-6-6" and "P-6-7" and "R-8" and "R-9", Docket, Vol. II, pp. 568-586 and BIR Records, Folder 4, pp. 44-63, 32-36, respectively.
[23] Exhibit "P-5", Docket, Vol. II, p. 544-567.
[24] Exhibit "R-10", BIR Records, Folder 4, pp. 150-169.

against petitioner. On June 30, 2016, petitioner received the FDDA dated June 29, 2016 issued by respondent[25], assessing it for income tax, VAT and DST in the total amount of ₱416,578,539.35 for CY 2009. Petitioner filed the present Petition for Review on July 29, 2016.

On November 3, 2016, respondent filed his Answer[26], interposing the following Special and Affirmative Defenses:

> **"SPECIAL AND AFFIRMATIVE DEFENSES**
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> 4. Respondent re-pleads and adopts the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses.
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> ***THE ASSESSMENT WAS ISSUED WITHIN THE PERIOD PRESCRIBED BY LAW.***
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> 5. Section 203 of the Tax Code provides the period within which assessment should be made, to wit:
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> > '**SECTION 203. Period of Limitation Upon Assessment and Collection.** – Except as provided in Section 222, internal revenue taxes shall be assessed <u>within three (3) years</u> after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.' (Underscoring supplied)
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> 6. Since internal revenue taxes shall be assessed within three (3) years after the last day prescribed by

[25] Par. 1.5, JSFI, Docket, Vol. II, p. 789.
[26] Docket, Vol. I, pp. 194-217.

law for the filing of the return, and the last day for filing of return for taxable year 2009 is on 15 April 2010, petitioner's internal revenue taxes can be assessed three (3) years therefrom, or until 15 April 2013.

7. As an exception to the three (3) year prescriptive period, Section 222 (b) of the Tax Code allows an extension of the period to assess provided there is a valid waiver of the statute of limitations.

8. A perusal of the BIR Records revealed that before expiration of the three (3) year period to assess, petitioner executed a waiver which validly extended the period to assess. Thus, on 25 January 2013, a waiver of the statute of limitations under the National Internal Revenue Code (NIRC) was executed by Monico V. Jacob, petitioner's President and CEO, extending the period to assess until 31 December 2013.

9. The authority of petitioner's representative, Mr. Monico V. Jacob to issue a waiver of the statute of limitations cannot be impugned by petitioner considering that the requirements for the issuance of a valid waiver were faithfully complied with and respondent acted in good faith and relied on the waiver in delaying the issuance of the Formal Letter of Demand and Assessment Notice.

10. Revenue Memorandum Order No. 20-90 (RMO 20-90) which implements Sections 203 and 222 (b) of the Tax Code provides that the waiver shall be signed by the taxpayer himself or his duly authorized representative, and that in case of a corporation, it must be signed by any of its responsible officials.

11. It is undisputed that Mr. Monico V. Jacob, President and CEO of petitioner, is one of the responsible officials who can represent petitioner in its transactions with the Bureau of Internal Revenue (BIR). Moreover, he was also the signatory in the Income Tax Return for taxable year 2009 filed by petitioner.

12. Considering that petitioner executed valid waiver extending the period to assess until 31 December 2013, respondent's Formal Letter of Demand (FLD) and Final Assessment Notices (FAN) which were received by petitioner on 26 December 2013 had not prescribed.

13. Moreover, as regards the assessment for income tax in particular, arising from the discrepancies due to non-withholding, since there were violations of Section 34 (K) of the Tax Code, the assessment on income remains. Section 34 (K) of the Tax Code reads:

> **(K) Additional Requirements for Deductibility of Certain Payments.** – Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be **allowed as a deduction** <u>only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue</u> in accordance with this Section 58 and 81 of this Code. (Emphases supplied)

14. Further, as an exception to the three (3) year prescriptive period, Section 222 (a) of the Tax Code also allows extension of the period to assess in case of false or fraudulent return with intent to evade tax or of failure to file a return, viz:

(a) In the case of a <u>false or fraudulent return with intent to evade tax or of failure to file a return</u>, the **tax may be assessed**, or a proceeding in court for the collection of such tax may be filed without assessment, at any time <u>within ten (10) years</u> after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. (Emphases supplied) *Je*

15. In the assessment for value-added tax, petitioner committed fraud with intention to evade tax from which fifty percent (50%) surcharge under Section 248 (B) of the Tax Code was imposed. Pursuant to the aforesaid provision, respondent was allowed by law to assess petitioner for VAT within ten (10) years from the discovery of fraud as in this case where petitioner had unreported revenues.

16. With regard to documentary stamp tax, Section 200 of the Tax Code provides the filing of return and paying the tax upon any documents, or as an exception, the DST may be paid either through purchase and affixture, or by imprinting the stamps through a documentary stamp metering machine on the taxable document. The discrepancies discovered arose from taxable documents not included in the DST returns that petitioner filed during the taxable year.

17. Section 200 of the Tax Code provides:

SEC. 200. Payment of Documentary Stamp Tax. –

(A) In General. – The provisions of Presidential Decree No. 1045 notwithstanding, any person liable to pay documentary stamp tax upon any document subject to tax under Title VII of this Code shall file a tax return and pay the tax in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

(B) Time for Filing and Payment of the Tax. – Except as provided by rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner, the tax return prescribed in this Section shall be filed within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed.

(C) Where to File. Except in cases where the Commissioner otherwise permits, the aforesaid tax return shall be filed with and the tax due shall be paid through the authorized agent bank within the territorial jurisdiction of the Revenue District Office which has jurisdiction over the residence or principal place of business of the taxpayer. In places where there is no authorized agent bank, the return shall be filed with the Revenue District Officer, collection agent, or duly authorized Treasurer of the city or municipality in which the taxpayer has his legal residence or principal place of business.

(D) Exception. – In lieu of the foregoing provisions of this Section, the tax may be paid either through purchase and actual affixture; or by imprinting the stamps through a documentary stamp metering machine, on the taxable document, in the manner as may be prescribed by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

18. Considering that no return or payment was made on the taxable documents not included in the DST returns, it warrants the imposition of twenty five percent (25%) surcharge under Section 248 (A) (1), and renders the ten (10) year prescriptive period to assess from the discovery of such omission applicable.

19. In light of the foregoing, assessment against petitioner for income tax, value added tax, and documentary stamp tax, was issued within the period prescribed by law.

THE ASSESSMENT HAS BASES BOTH IN FACT AND IN LAW.

20. Petitioner's contentions in its petition are bereft of merit. The assessment issued against it has bases in

fact and in law. After the conduct of investigation, records reveal that there is due from petitioner deficiency income tax, value-added tax, and documentary stamp tax for taxable year 2009.

21. Petitioner challenged the assessment contending that the same was based on only on table audit. However, respondent maintains that the discrepancies resulting to assessment were ascertained in accordance with actual facts and law.

22. The discrepancies were discovered pursuant to Section 5 of the Tax Code which provides the power of the Commissioner of Internal Revenue (CIR) to ascertain the correctness of the return filed in order to determine the liability for any internal revenue tax, thus:

> **'SEC. 5. Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.** – In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

(A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry;

(B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual

> fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members;
>
> xxx xxx

23. Corollary to such power the CIR has the authority to determine the correct tax. Section 6 of the Tax Code provides:

> **'SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.** –
>
> (A) Examination of Returns and Determination of Tax Due. – After a return has been filed as required under the provisions of this Code, <u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>: Provided, however; That failure to file a return shall not 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.
>
> Any return, statement of declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: Provided, further, That no notice for audit or investigation of such return, statement or declaration has in the meantime been actually served upon the taxpayer.
>
> (B) Failure to Submit Required Returns, Statements, Reports and Other Documents. – When a report required by law as a basis for

the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.

In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be prima facie correct and sufficient for all legal purposes.

(C) Authority to Conduct Inventory-taking, surveillance and to Prescribe Presumptive Gross Sales and Receipts. – The Commissioner may, at any time during the taxable year, order inventory-taking of goods of any taxpayer as a basis for determining his internal revenue tax liabilities, or may place the business operations of any person, natural or juridical, under observation or surveillance if there is reason to believe that such person is not declaring his correct income, sales or receipts for internal revenue tax purposes. The findings may be used as the basis for assessing the taxes for the other months or quarters of the same or different taxable years and such assessment shall be deemed prima facie correct.

When it is found that a person has failed to issue receipts and invoices in violation of the requirements of Sections 113 and 237 of this Code, or when there is reason to believe that the books of accounts or other records do not correctly reflect the declarations made or to be made in a return required to be filed under the provisions of this Code, the Commissioner, after

> taking into account the sales, receipts, income or other taxable base of other persons engaged in similar businesses under similar situations or circumstances or after considering other relevant information may prescribe a minimum amount of such gross receipts, sales and taxable base, and such amount so prescribed shall be prima facie correct for purposes of determining the internal revenue tax liabilities of such person.'

24. Consistent with the foregoing provisions of law, audit procedures adopted by respondent include analysis of the accounting system, reconciliation of books of accounts against per returns, matching of data, sampling, and verification of revenue as to whether income reported by petitioner truly reflects the actual results of its business operations.

25. Said reconciliation, matching of data, and verification include, among others, the RELIEF System (Reconciliation of Listing for Enforcement) which is purposely to detect tax leaks by matching the data available under the Bureau's Integrated Tax System (ITS) with data gathered from third party sources. **Through the consolidation and cross-referencing of third party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over claimed purchases (goods and services). Timely recognition and accurate reporting of unregistered taxpayers and non-filers can be made possible.**

26. Furthermore, the Tax Reconciliation System (TRS) is geared towards enhancing revenue collection by computerized matching of data available under the Bureau's Integrated Tax System (ITS). **Through the consolidation and cross-referencing of data from withholding agents (WAs) and declaration of income recipients, discrepancy reports can be generated to uncover violations on tax rules and regulations such under declaration of income,**

non-declaration of income, under remittance and/or non-remittance of taxes withheld, over withholding, under withholding, over declaration of credits to name a few. Timely recognition and accurate reporting of unregistered taxpayers and non-filers will also be possible.

27. Petitioner cannot contend that respondent did not consider the explanations in its reply to the Preliminary Assessment Notice, and protest to the Final Assessment Notice. Respondent in fact, examined and scrutinized such protests and the supporting documents, compared the same with other relevant records, after which the discrepancies were still maintained.

28. All presumptions are in favor of the correctness of tax assessment *(Sy Po vs. Court of Tax Appeals, 164 SCRA 524)*. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notice.

29. Petitioner is liable to pay deficiency income tax, value-added tax, and documentary stamp tax assessments for taxable year 2009.

A. DEFICIENCY INCOME TAX

30. Respondent assessed deficiency income tax of petitioner based on, among others, non-withholding of corresponding taxes, unreported purchases, unreported revenues, and unsupported tax credits claimed.

31. The Final Decision on Disputed Assessment (FDDA) dated 29 June 2016 explains how respondent arrived to its assessment of income tax against petitioner, thus:

(1.) Commission expense not subjected to withholding tax based in the reconciliation of expense vs. 1604-E (Php10,608,766.88) – Reconciliation of commission expense vs. the amount subjected to withholding tax or included in the Alpha list of Form 1604 E had shown expenses not subjected to withholding tax. The discrepancy in the amount not subjected to withholding tax violates the provision of Section 34 (K) of the NIRC, RR 2-98, as amended, which provides that for any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income shall be allowed as deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue. You failed to submit the required documents in support of your protest within sixty (60) days from date of filing of your protest, therefore the issue had become final, executory, and demandable pursuant to RR 12-99.

(2.) Unreported revenue based on SLS vs. revenue reflected in Forms 2307 (Php15,155,897.30) – Reconciliation of Summary List of Sales and the amount of revenue reflected in the Forms 2307 had resulted in various discrepancies. The discrepancy in the unreported revenue violates the provision of Section 32 of the NIRC. You failed to submit the required documents in support of your protest within sixty (60) days from date of filing of your protest, therefore the issue had become final, executory, and demandable pursuant to RR 12-99.

(3.) Unreported Purchases based on the matching of SLP vs. 1604E Alpha list resulting in the unreported sources of cash (Php89,687,634.08) – Matching in the summary list of purchases and the amount subjected to withholding tax or included in the alpha list of Form 1604 E had shown purchases subjected to withholding tax higher than the amount reported in the Summary List of Purchases. The discrepancies in the purchases were considered as unreported sources of cash that violate the provision of Section 32 of the NIRC. You failed to submit the required documents in support of your protest within sixty (60) days from date of filing of your protest, therefore the issue has become final, executory, and demandable pursuant to RR 12-99.

(4.) Unreported Purchases based on the matching of SLP vs. 1604E Alpha list resulting in the unreported sources of cash (Php10,748,206.91) – Matching conducted in the Summary List of Purchases and the amount subjected to withholding tax or included in the alpha list of Form 1604 E had shown purchases subjected to withholding tax higher than the amount reported in the Summary List of Purchases. The discrepancies in the purchases were considered as unreported sources of cash that violate the provision of Section 32 of the NIRC. You failed to submit the required documents in support of your protest within sixty (60) days from date of filing of your protest, therefore the issue had become final, executory, and demandable pursuant to RR 12-99.

(5.) Purchases not subjected to withholding tax based on the matching of SLP vs. 1604-E (Php4,298,666.76) – Matching conducted in the Summary List of Purchases and the amount subjected to withholding tax or included in the alpha list of Form 1604 E had shown lesser amount of withholding. The discrepancy in the amount not subjected to withholding tax violates the provision of Section 34 (K) of the NIRC, RR 2-98, as amended, which provides that for any amount paid or payable which is otherwise deductible from, or taken into the account in computing gross income shall be allowed as deduction only if it is shown that the tax required to be deducted or withheld therefrom has been paid to the Bureau of Internal Revenue. You failed to submit the required documents in support of your protest within sixty (60) days from date of filing of your protest, therefore the issue had become final, executory, and demandable pursuant to RR 12-99.

(6.) Purchases not subjected to withholding tax based on the matching of SLP vs. 1604-E (Php688,850.07) – Matching conducted in the Summary List of Purchases and the amount subjected to withholding tax or included in the alpha list of Form 1604 E had shown purchases not subjected to withholding tax. The discrepancy in the amount not subjected to withholding tax violates the provision of Section 34 (K) of the NIRC, RR 2-98, as amended, which provides that for any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income shall be allowed as deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue. You failed to submit the required documents in support of your protest within sixty (60) days from date of filing of your protest, therefore the issue had become final, executory, and demandable pursuant to RR 12-99.

(7.) Purchase of service not subjected to withholding tax based on the matching of SLP vs. 1604-E (Php154,318.17) – Matching conducted in the Summary List of Purchases and the amount subjected to withholding tax or included in the alpha list of Form 1604 E had shown purchases not subjected to withholding tax. The discrepancy in the amount not subjected to withholding tax violates the provision of Section 34 (K) of the NIRC, RR 2-98, as amended, which provides that for any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income shall be allowed as deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue. You failed to submit the required documents in support of your protest within sixty (60) days from date of filing of your protest, therefore the issue had become final, executory, and demandable pursuant to RR 12-99.

(8.) Unreported Purchases based in the comparison of expenses/increase in assets vs. 1604E Alpha list resulting in the unreported sources of cash (Php77,131,683.36) – Comparison conducted in the expenses/increase in assets and the amount subjected to withholding tax or included in the alpha list of Form 1604 E had shown purchases subjected to withholding tax higher than the amount reported as expense and recorded purchases of assets. The discrepancy in the comparison of expenses/purchases of assets was considered as unreported sources of cash that violates the provision of Section 32 of the NIRC. You failed to submit the required documents in support of your protest within sixty (60) days from date of filing of your protest, therefore the issue had become final, executory, and demandable pursuant to RR 12-99.

(9.) Salaries and wages not subjected to withholding tax based in the reconciliation of salaries per FS/ITR vs. 1604-CF (Php18,973,134.85) – Reconciliation of salaries and wages per FS/Income tax return as against the amount of gross compensation income as reflected in the Alpha list of employees subjected to withholding tax had shown salaries not subjected to withholding tax. The discrepancy in the amount not subjected to withholding tax violates the provision of Section 34 (K) of the NIRC and RR 2-98, as amended, which provides that for any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income shall be allowed as deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue. You failed to submit the required documents in support of your protest within sixty (60) days from date of filing of your protest, therefore the issue had become final, executory, and demandable pursuant to RR 12-99.

(10.) Unsupported purchases – Based on the tally of totals of Summary list of Purchases, the input tax claimed was overstated by Php1,137.47, thus violating the provision of Section 110 (A) of the NIRC. (1,137.47/.12=9,478.92) You failed to submit the required documents in support of your protest within sixty (60) days from date of filing of your protest, therefore the issue had become final, executory and demandable pursuant to RR 12-99.

(11.) Unreported Purchases based on the matching of SLP vs. 1604E Alpha list resulting in the unreported sources of cash (Php102,212.37) – Matching conducted in the Summary List of Purchases and the amount subjected to withholding tax or included in the alpha list of Form 1604 E had shown purchases subjected to withholding tax higher than the amount reported in the Summary List of Purchases. The discrepancies in the purchases were considered as unreported sources of cash that violate the provision of Section 32 of the NIRC. (originally part of Php5,421,016.56) You failed to submit the required documents in support of your protest within sixty (60) days from date of filing of your protest, therefore the issue had become final, executory and demandable pursuant to RR 12-99.

(12.) Unreported Professional fee based on the matching of SLP vs. 1604E Alpha list resulting in the unreported sources of cash (Php2,925,000.00) – Matching conducted in the Summary List of Purchases and the amount subjected to withholding tax or included in the alpha list of Form 1604 E had shown purchases subjected to withholding tax higher than the amount reported in the Summary List of Purchases. The discrepancies in the purchases were considered as unreported sources of cash that violate the provision of Section 32 of the NIR. (originally part of Php604,318.17). You failed to submit the required documents in support of your protest within sixty (60) days from date of filing of your protest, therefore the issue had become final, executory and demandable pursuant to RR 12-99.

(13.) Purchases not subjected to withholding tax based on the matching of SLP vs. 1604-E (Php375,369.80) – Matching conducted in the Summary List of Purchases and the amount subjected to withholding tax or included in the alpha list of Form 1604 E had shown purchases not subjected to withholding tax. The discrepancy in the amount not subjected to withholding tax violates the provision of Section 34 (K) of the NIRC, RR 2-98, as amended, which provides that for any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income shall be allowed as deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue. You failed to submit the required documents in support of your protest within sixty (60) days from date of filing of your protest, therefore the issue had become final executory and demandable pursuant to RR 12-99.

(14.) Purchases not subjected to withholding tax based on the matching of SLP vs. 1604-E (Php479,125.58) – Matching conducted in the Summary List of Purchases and the amount subjected to withholding tax or included in the alpha list of Form 1604 E had shown purchases not subjected to withholding tax. The discrepancy in the amount not subjected to withholding tax violates the provision of Section 34 (K) of the NIRC, RR 2-98, as amended, which provides that for any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income shall be allowed as deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue. You failed to submit the required documents in support of your protest within sixty (60) days from date of filing of your protest, therefore the issue had become final, executory and demandable pursuant to RR 12-99.

(15.) Unsupported creditable tax withheld at source (Form 2307) Php606,350.66 – Unsupported creditable tax withheld at source violates the provisions of Section 58 D of the NIRC and 2.58.3 of RR 2-98 which prescribed that the amount of creditable tax withheld shall be allowed as tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received. You failed to submit the required documents in support of your protest within sixty (60) days from date of filing of your protest, therefore the issue had become final, executory and demandable pursuant to RR 12-99.

32. Respondent informed petitioner in writing of the law and facts on which the assessment was made; he clarified the assessment in the issued Preliminary Assessment Notice (PAN), Formal Letter of Demand (FLD), and Final Decision on Disputed Assessments (FDDA).

33. Considering that the assessments are prima facie correct, respondent need not prove the presumption of regularity of the assessment.

34. Section 3, Rule 131 of the Rules of Court provides:

> **Section 3.** *Disputable presumptions.* – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> xxx xxx
>
> (m) That official duty has been regularly performed;

35. Assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. *(Marcos II vs. Court of Appeals, G.R. No. 120880, June 5, 1997.)*

36. It was repeatedly stated in the FDDA that petitioner failed to submit the required documents in support of its protest within sixty (60) days from date of filing of its protest, therefore the issue had become final, executory, and demandable pursuant to RR 12-99. As can be gleaned, petitioner failed to substantiate its allegations to prove irregularities in the assessment.

37. 'The basic rule is that mere allegation is not evidence, and is not equivalent to proof.'

38. In the case of *Perez vs. Court of Tax Appeals, et. al.* the Honorable Supreme Court made it explicit that **unreflected sources of funds not accounted for in the taxpayer's returns leads to the inference that part of his income had not been reported.**

39. Thus, petitioner is correctly assessed of deficiency income tax for taxable year 2009.

B. DEFICIENCY VALUE ADDED TAX

40. The Final Decision on Disputed Assessment (FDDA) expounds petitioner's deficiency VAT liability with regard to its unreported revenue, viz:

(1.) Unreported revenue based in Revenue per FS/ITR vs. Output tax per VAT returns – Reconciliation of Revenue/Income per Financial Statement/Income tax return vs. Output tax per VAT returns had resulted in a discrepancy amounting to Php23,442,833.57. The unreported revenue violates the provision of Section 108 of the NIRC, Section 4.108-3 (j) of RR 16-2005 as amended and RMC 74-07 dated November 12, 2007. You failed to submit the required documents in support of your protest within sixty (60) days from date of filing of your protest, therefore the issue had become final, executory and demandable pursuant to RR 12-99.

41. As regards unreported revenues based on SLS vs. revenue reflected in Forms 2307 and all other unreported purchases as stated in the FDDA, the same were already discussed in the assessment for income tax as explained above.

42. Pursuant to Section 106 of the Tax Code, the corresponding findings of discrepancies will not only

make petitioner liable for deficiency income tax but also value-added tax (VAT).

43. It was also repeatedly stated in the FDDA that petitioner failed to submit the required documents in support of its protest within sixty (60) days from date of filing of its protest, therefore the issue had become final, executory, and demandable pursuant to RR 12-99. Clearly, petitioner failed to substantiate its allegations to prove irregularities in the assessment.

44. For failure of petitioner to controvert the investigation made by respondent, i.e. its failure to present documentary evidence that will substantiate its claims, the assessed deficiency taxes must be maintained.

45. Settled is the rule that, 'bare allegations unsubstantiated by evidence, are not equivalent to proof' *(Domingo vs Robles, 453 SCRA 812, March 18, 2005).*

46. Also, petitioner was assessed for deficiency VAT on account of trust fund contribution. As the FDDA provides:

(2.) Trust Fund Contribution – Verification disclosed that trust fund contribution is subject to VAT pursuant to the provisions of Section 108 of the NIRC, SECTION 4.108-3 (j) of RR 16-2005 as amended and clarified by RMC 74-07 dated November 12, 2007. Furthermore, under Section 248 (B) of the NIRC, substantial under declaration of sales, receipts or income exceeding thirty percent (30%) shall constitute prima facie evidence of false or fraudulent return. The discrepancy on trust fund contribution compared with the amount of output tax reported by Philplans First Inc. in spite of the clarification issued by the BIR under RMC 74-07 amounts to Seventy-seven and 14/100 percent (77.14%) thus, rendering the returns filed on Value Added tax false or fraudulent and the penalty to be imposed shall be fifty percent (50%) of the deficiency tax. (955,632,064.06/1.12=Php853,242,914.34)

47. Revenue Regulations No. 16-2005 has become the basis for liability of petitioner for VAT, as a pre-need company, for providing services to plan holders.

48. This matter was further expounded by the Honorable Court of Tax Appeals in *Transnational Plans, Inc. vs. Commissioner of Internal Revenue*:

> RR No. 16-05, which took effect on November 1, 2005, defines a pre-need company and provides the basis for the computation of its VATable gross receipts as follows:
>
> > 'SECTION 4.108-3. Definitions and Specific Rules on Selected Services. –
> >
> > XXX XXX XXX
> >
> > (j) Pre-need Companies are corporations registered with the Securities and Exchange Commission and authorized/licensed to sell or offer for sale pre-need plans, whether a single plan or multi-plan. They are engaged in business as seller of services providing services to plan holders by managing the funds provided by them and making payments at the time of need or maturity of the contract.
> >
> > As service providers, the compensation for their services is the premiums or payments received from the plan holders.
> >
> > XXX XXX XXX
> >
> > SECTION 4.108-4. Definition of Gross Receipts. – 'Gross receipts' refers to the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for

> services rendered and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding VAT.'

Based above, the taxable base for pre-need companies for VAT purposes should be the entire receipts (including amounts collected for the trust fund contributions of planholders) without any deduction except VAT.

Even though the foregoing provisions were amended under RR No. 04-07, which became effective on April 7, 2007, the trust fund contributions remained VATable, to wit:

> 'SECTION 11. Gross Receipts. – Sec. 4.108-4 of RR No. 16-2005 is hereby amended to read as follows:
>
> 'SEC. 4.108-4. Definition of Gross Receipts. – 'Gross receipts' refers to the total amount of money or its equivalent representing the contract price, compensation, service fee rental or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for services rendered and advance payments actually of constructively received during the taxable period for the services performed or to be performed for another person, excluding the VAT, except those amounts earmarked for payment to unrelated third (3rd) party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor.

> A payment is a payment to a third (3rd) party if the same is made to settle an obligation of another person, e.g., customer or client, to the said third party, which obligation is evidenced by the sales invoice/official receipt issued by said third party to the obligor/debtor (e.g., customer or client of the payor of the obligation).
>
> An advance payment is an advance payment on behalf of another if the same is paid to a third (3rd) party for a present or future obligation of said another party which obligation is evidence by a sales invoice/ official receipt issued by the obligee/ creditor to the obligor/ debtor (i.e., the aforementioned 'another party') for the sale of goods or services by the former to the latter.
>
> For this purpose 'unrelated party' shall not include taxpayer's employees, partners, affiliates (parent, subsidiary and other related companies}, relatives by consanguinity or affinity within the fourth (4th) civil degree, and trust fund where the taxpayer is the trustor, trustee or beneficiary, even if covered by an agreement to the contrary.' (Emphasis supplied)

On November 12, 2007, the BIR issued Revenue Memorandum Circular (RMC) No. 74-07 emphasizing that:

> 'It is hereby clarified that the taxable base of Preneed Companies for VAT purposes shall be the gross

> receipts without any deduction. Such contribution is similar or equated to the recorded 'Reserve' in the case of insurance companies, whether life or non-life. Reserve is not deductible, for purposes of determining the taxable gross direct premium/writing for non-life insurance companies as well as life insurance companies. The said tax treatments have already been clarified and reiterated under Revenue Regulations (RR) No. 16-2005, as amended.'

49. Thus, petitioner's entire receipts, including amounts collected for the trust fund contributions of plan holders, are considered as gross receipts which are subject to VAT pursuant to Section 108 of the Tax Code.

50. Considering the foregoing, petitioner cannot escape its liability for value added tax assessment.

C. DEFICIENCY DOCUMENTARY STAMP TAX

51. The assessment for documentary stamp tax is properly imposed against petitioner. The FDDA states:

(1.) Leases of Real Property (45,947,100.74) – Verification disclosed that lease expense is subject to documentary stamp tax under Section 194 of the NIRC. You failed to submit the required documents in support of your protest within sixty (60) days from date of filing of your protest, therefore the issue had become final, executory and demandable pursuant to RR 12-99.

(2.) Discrepancy of payment of DST in Direct Premium (Php68,926,239.50) – Verification disclosed that the total direct Premium from pre-need plans of 1,891,481,138.00 less the amount reported per return of 1,822,554,898.50 resulted in a discrepancy amounting to 68,926,239.50 that was not subjected to Documentary Stamp tax of Php .20 for every 200 pesos, thus, violating the provision of Section 186 of the NIRC. You failed to submit the required documents in support of your protest within sixty (60) days from date of filing of your protest, therefore the issue had become final, executory and demandable pursuant to RR 12-99.

52. While petitioner contends that it had paid the DST on its lease agreements and on all its premiums, noteworthy to state that petitioner failed to prove the same with the required documents to support its allegations.

53. Again, petitioner failed to controvert the investigation made by respondent, and its failure to present documentary evidence that will substantiate its claims renders the assessed deficiency taxes valid and uncontroverted.

THE ASSESSMENT ISSUED AGAINST PETITIONER IS VALID AND LAWFUL.

54. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands. *(Commissioner of Internal Revenue vs. Hantex Trading Co. Inc., G.R No. 136975, March 31, 2005.)*

55. All told, petitioner's assertions that the assessment issued to it by respondent has no basis in fact and law are mere fallacy. Above discussions disprove petitioner's claim. Thus, it is reiterated that petitioner is liable for the assessed deficiency Income Tax, Value-Added Tax, and Documentary Stamp Tax for taxable year 2009."

Petitioner filed its Reply[27] on November 21, 2016. The Pre-Trial Conference[28] was set on February 16, 2017. Respondent's Pre-Trial Brief[29] was filed on February 8, 2017; while petitioner's Pre-Trial Brief[30] was filed on February 13, 2017. *jr*

[27] Docket, Vol. I, pp. 232-256.
[28] Notice of Pre-Trial Conference dated November 7, 2016, Docket, Vol. I, pp. 221-222.
[29] Docket, Vol. I, pp. 313-318.
[30] Docket, Vol. II, pp. 740-761.

On March 17, 2017, the parties filed their Joint Stipulation of Facts and Issue[31], which was approved by the Court in the Resolution[32] dated March 29, 2017. The Pre-Trial Order[33] was issued on May 23, 2017.

Petitioner presented its witnesses, Ms. Maria Melinda C. Bustamante[34], Atty. Arsenio C. Cabrera, Jr.[35] and Independent Certified Public Accountant (ICPA), Mr. Glenn Ian D. Villanueva.[36]

On July 23, 2018, petitioner filed its Formal Offer of Evidence[37], offering Exhibits "P-1", "P-1-1", "P-2", "P-3", "P-4", "P-4-1" to "P-4-52", "P-5", "P-6", "P-6-1", "P-6-2", "P-6-3", "P-6-4", "P-6-5", "P-6-6". "P-6-7" "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-24-1", "P-24-2", "P-24-3", "P-24-4", "P-24-5", "P-24-6", "P-25", "P-26", "P-27", "P-28", "P-28-1", "P-29", "P-29-1", "P-30", "P-31", "P-32", "P-33", "P-33-1", "P-33-2", "P-34", "P-35", "P-36", "P-36-1", "P-37", "P-38", "P-38-1", "P-38-2", "P-39", "P-39-1", "P-40", "P-40-1", "P-41", "P-41-1", "P-42", "P-42-1", "P-43", "P-43-1", "P-44", "P-44-1", "P-45", "P-46", "P-47", "P-48", "P-48-1", "P-48-2", "P-48-3", "P-48-4", "P-48-5", "P-48-6", "P-48-7", "P-48-8", "P-48-9", "P-48-10", "P-48-11", "P-48-12", "P-49", "P-49-1", "P-49-2", "P-49-3", "P-49-4", "P-49-5", "P-49-6", "P-49-7", "P-49-8", "P-49-9", "P-49-10", "P-49-11", "P-49-12", "P-50", "P-50-1", "P-50-2", "P-50-3", "P-50-4", "P-50-5", "P-50-6", "P-50-7", "P-50-8", "P-50-9", "P-50-10", "P-50-11", "P-50-12", "P-51", "P-52", "P-52-1", "P-52-2", "P-52-3", "P-52-4", "P-53", "P-54", "P-54-1", "P-54-2", "P-54-3", "P-54-4", "P-54-5", "P-54-6", "P-54-7", "P-54-8", "P-54-9", "P-54-10", "P-54-11", "P-54-12", "P-55", "P-56", "P-57", "P-58", "P-59", "P-59-1", "P-59-2", "P-59-3", "P-59-4", "P-59-5", "P-60", "P-61", "P-61-1", "P-61-2", "P-61-3", "P-61-4", "P-61-5", "P-61-6", "P-62", "P-62-1", "P-62-2", "P-63", "P-64", "P-64-1", "P-64-2", "P-64-3", "P-64-4", "P-64-5", "P-64-6", P-64-7", "P-64-8", "P-64-9", P-64-10", "P-64-11", "P-64-12", "P-65", "P-66", "P-67", "P-68", "P-69", "P-69-1", "P-69-2", "P-69-3", "P-69-4", "P-70", "P-70-1", "P-70-2", "P-70-3", 'P-71", "P-71-1", "P-71-2", "P-71-3", "P-71-4", "P-71-5", "P-71-6", P-71-7", "P-71-8", "P-71-9", "P-71-10", "P-71-11", "P-71-12", "P-71-13", "P-72", "P-72-

[31] Docket, Vol. II, pp. 788-797.
[32] Docket, Vol. II, p. 800.
[33] Docket, Vol. II, pp. 828-840.
[34] Minutes of the hearing on July 11, 2017 and Order dated February 13, 2018, Docket, Vols. II and III, pp. 862-866, 1146-1148, respectively.
[35] Order dated February 13, 2018, Docket, Vol. III, pp. 1146-1148.
[36] Order dated February 13, 2018, Docket, Vol. III, pp. 1146-1148.
[37] Docket, Vol. III, pp. 1179-1214.

1", "P-72-2", "P-72-3", "P-72-4", "P-72-5", "P-72-6", P-72-7", "P-72-8", "P-72-9", "P-73", "P-74", "P-75", "P-75-1", "P-75-2", "P-76", "P-76-1", "P-76-2", "P-77", "P-78", "P-79", "P-80", "P-81", "P-81-1", "P-82", "P-83", "P-84", "P-85", "P-86", "P-87", "P-87-1", "P-88", "P-88-1", "P-89" and "P-89-1", as its documentary evidence. Respondent filed his Comment Re: Petitioner's Formal Offer of Evidence[38] on August 1, 2018.

In the Resolution[39] dated December 17, 2018, the Court admitted all the exhibits formally offered by petitioner except Exhibits "P-31", "P-33-2", P-67", "P-75-1", "P-48", "P-49", "P-50", "P-52", "P-54", "P-57", "P-59", "P-61", "P-62", "P-64", " "P-69", "P-70", 'P-71", "P-72", "P-75" and "P-76".

Respondent presented its only witness, Revenue Officer Meliza Wepee.[40]

On March 8, 2019, respondent filed his Formal Offer of Evidence[41], offering Exhibits "R-1", "R-1-A", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11" and "R-12" as his documentary evidence. Petitioner filed its Comment/Opposition (To Respondent's Formal Offer of Evidence)[42] on March 19, 2019.

The Court admitted all the exhibits formally offered by respondent in the Resolution[43] dated April 17, 2019.

On June 3, 2019, respondent filed his Manifestation[44] stating that he is adopting the arguments he raised in his Answer filed before the Court as his Memorandum. On the other hand, petitioner filed its Memorandum[45] on June 17, 2019. The case was submitted for decision on June 28, 2019.[46]

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[38] Docket, Vol. III, pp. 1377-1380.
[39] Docket, Vol. III, pp. 1385-1388.
[40] Minutes of the hearing on March 6, 2019, Docket, Vol. IV, p. 1417.
[41] Docket, Vol. IV, pp. 1419-1426.
[42] Docket, Vol. IV, pp. 1427-1430.
[43] Docket, Vol. IV, pp. 1432-1433.
[44] Docket, Vol. IV, pp. 1441-1444.
[45] Docket, Vol. IV, pp. 1451-1508.
[46] Resolution dated June 28, 2019, Docket, Vol. IV, p. 1509.

THE ISSUES

> Whether or not petitioner is liable to pay the assessed deficiency Income Tax, VAT and DST for taxable year 2009, plus surcharge, 20% deficiency and delinquency interest pursuant to Sections 248 and 249 of the Tax Code.[47]

THE COURT'S RULING

Section 228 of the 1997 NIRC provides as follows:

> SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings xxx
>
> xxx xxx xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

In the present case, petitioner received the FLD/FAN, assessing petitioner for Income Tax, WTC, EWT, VAT and DST for CY 2009 on

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[47] JSFI, Docket, Vol. II, p. 789.

December 26, 2013. Within thirty (30) days from receipt of the FLD on December 26, 2013, petitioner filed its administrative protest to the FLD/FAN on January 24, 2014.

On June 30, 2016, petitioner received the FDDA dated June 29, 2016 issued by respondent, assessing it for Income Tax, VAT and DST in the total amount of ₱416,578,539.35 for CY 2009.

Applying Section 228 of the 1997 NIRC, the taxpayer adversely affected by the decision of the respondent may appeal to this Court within thirty (30) days from receipt of said decision.

Thus, petitioner has a period of thirty (30) days from June 30, 2016, or until August 1, 2016[48], within which to file its Petition for Review before this Court. Petitioner filed the present Petition for Review on July 29, 2016. The Court has acquired the jurisdiction over the present case.

The assessment is void due to lack of authority on the part of the revenue officers who actually conducted the audit of petitioner's books of account and other accounting records.

After careful evaluation of the case records, more particularly the evidence duly presented by the parties, this Court finds the deficiency tax assessments issued by respondent against the petitioner to be intrinsically void and thus, shall be cancelled and set aside. The invalidity of such deficiency tax assessments springs from the absence of authority on the part of the revenue officers who conducted the examination of petitioner's books of accounts and other accounting records.

While the lack of authority of the revenue officers to conduct the audit was not specifically raised as an issue, this Court is not precluded

[48] July 30, 2016 fell on a Saturday.

from considering the same given that a void assessment bears no fruit.[49]

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[50] the Supreme Court also emphatically ruled that the Court of Tax Appeals can resolve an issue which was not raised by the parties. The Supreme Court said:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> **Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:
>
> > SECTION 1. *Rendition of judgment.* — x x x
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. **On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda.** The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." *(Emphasis supplied and citation omitted)* ℛ

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[49] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006, 516 Phil. 176, 189-190; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633; *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014, 743 SCRA 113; *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014, 744 SCRA 459; *Commissioner of Internal Revenue v. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016, 808 SCRA 422.

[50] G.R. No. 183408, July 12, 2017.

One of the powers granted to the Commissioner of Internal Revenue (CIR) under the National Internal Revenue Code of 1997, as amended (1997 NIRC) is the power to assess deficiency tax. Section 6(A) of the 1997 NIRC is explicit on the matter, to wit:

> "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, notwithstanding any law requiring the prior authorization of any government agency or instrumentality**: *Provided, however,* That failure to file a return shall not 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 supplied)*

In the exercise of his assessment powers, the CIR is also empowered to conduct by himself the examination of any taxpayer, or he may authorize other tax officers to conduct such examination. Section 6(A) of the 1997 NIRC likewise vested the CIR's duly authorized representatives the power to authorize the examination of any taxpayer for the purpose of collecting the correct amount of tax. The term "duly authorized representative" under Section 6(A) of the 1997 NIRC which may authorize examination of taxpayers refers to a Revenue Regional Director, in accordance with Sections 10 and 13 of the 1997 NIRC. The term likewise refers to other tax officials with the rank equivalent to a division chief or higher, pursuant to the CIR's authority to delegate powers vested in him under Section 7 of the 1997 NIRC. Notably, the issuance of LOAs for the examination of taxpayers is not one of those enumerated powers which the CIR cannot delegate. Section 7 of the 1997 NIRC reads as follows:

"SEC. 7. *Authority of the Commissioner to Delegate Power.* — **The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* That the following powers of the Commissioner shall not be delegated:

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

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

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

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

Section 10 of the 1997 NIRC, in enumerating the powers of a Revenue Regional Director include, among others, the power to issue letters of authority for the examination of taxpayers within the region under his/her jurisdiction. The said provision, in part, reads:

> "SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, **the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others**:
>
> x x x x x x x x x
>
> **(c) Issue Letters of Authority for the examination of taxpayers within the region;**
>
> x x x x x x x x x
>
> (h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner." *(Emphasis supplied)*

On the other hand, Section 13 of the 1997 NIRC, in defining the authority of a revenue officer to conduct the examination of taxpayers for purposes of an assessment, provides as follows:

> "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 supplied)* *Jc*

In relation to the foregoing provisions, Revenue Memorandum Order (RMO) No. 43-90 issued by the CIR identifies those officials who are authorized to issue and sign LOA. It may be noted that the OIC-Chief of Excise Large Taxpayers Audit Division (ELTAD) II is not included therein. The relevant portion of the said issuance reads:

> "D. Preparation and issuance of L/As.
>
> x x x x x x x x x
>
> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner**. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority <u>but only upon prior authorization by the Commissioner himself</u>**." *(Emphasis and underscoring supplied)*

To reiterate, only the CIR or his duly authorized representatives who can authorize the examination of taxpayers for purposes of assessment of any deficiency taxes. Stated differently, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.[51]

Considering that only the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, logically speaking, it is only them who can effect any modification or amendment to a previously issued LOA, should the need therefor arises.

In the present, the records show that ROs Denver Gomez, Lizette Mallari, Evangeline Casipe, Roque Doloiras under Group Supervisor Lanie Luna of Large Taxpayers Excise Audit Division II, were specifically authorized to conduct the audit of petitioner's books of accounts and other accounting records for all internal revenue taxes for CY 2009 pursuant to LOA No. 124-2010-00000102 dated May 28,

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[51] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

2010. However, the case was re-assigned, through Memorandum of Assignment No. ELTAD II-2013-MOA-0159 dated June 13, 2013 issued by OIC-Chief, Excise LT Audit Division (ELTAD) II, Lindagrace B. Sagun, in favor of ROs Reynoso C. Jovero Jr., Meliza C. Wepee, Catherine Ann J. Senador, Ma. Nimfa P. Saga under Group Supervisor Jesus F. Cabasal who continued the audit and recommended the issuance of PAN, FLD and FDDA.

Notably, the supposed authority of ROs Reynoso C. Jovero Jr., Meliza C. Wepee, Catherine Ann J. Senador, Ma. Nimfa P. Saga under Group Supervisor Jesus F. Cabasal, emanated only through Memorandum of Assignment No. ELTAD II-2013-MOA-0159 dated June 13, 2013 issued by OIC-Chief, ELTAD II, Lindagrace B. Sagun.

This was confirmed by respondent's witness, RO Meliza Wepee in his Judicial Affidavit[52] dated March 5, 2019, as follows:

> "10Q **Why are you familiar with the case?**
>
> 10A Because when I was in Excise LT Audit Division II, I was one of the revenue officers who were assigned to continue the conduct of audit/investigation of petitioner, Philplans First, Inc. for the taxable year 2009.
>
> 11Q **You mentioned that you were one of the revenue officers who was assigned to continue the conduct of audit/investigation of petitioner for the taxable year 2009, what was your authority to do so?**
>
> 11A I am one of the revenue officers assigned in Memorandum of Assignment (MOA) to audit or examine petitioner's accounting records for taxable year 2009 pursuant to Letter of

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[52] Exhibit "R-13", Docket, Vol. IV, p. 1407.

Authority No. LOA 124-2010-00000102."

Guided by the foregoing disquisition, this Court holds that the Memorandum of Assignment No. ELTAD II-2013-MOA-0159 dated June 13, 2013 issued by OIC-Chief, ELTAD II, Lindagrace B. Sagun cannot validly grant ROs Reynoso C. Jovero Jr., Meliza C. Wepee, Catherine Ann J. Senador, Ma. Nimfa P. Saga and GS Jesus F. Cabasal the authority to conduct the examination pursuant to LOA No. 124-2010-00000102 dated May 28, 2010. In his capacity as OIC-Chief of ELTAD II, Ms. Lindagrace B. Sagun is bereft of any power to authorize the examination of taxpayers or to effect any modification or amendment to a previously issued LOA because, as mentioned earlier, only the CIR or his duly authorized representatives are granted such power.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[53] the Supreme Court held that absent any prior authority on the part of the revenue officers who conducted the audit/examination of taxpayer's books of accounts and other accounting records, the deficiency tax assessment arising therefrom is a nullity.

WHEREFORE, the Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated June 29, 2016, assessing petitioner in the total amount of ₱416,578,539.35 allegedly representing its Income Tax, Value Added Tax and Documentary Stamp Tax for calendar year (CY) 2009, is **CANCELLED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

[53] G.R. No. 178697, November 17, 2010, 649 Phil. 519.

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice