Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL FIRST DIVISION

MONTALBAN METHANE POWER CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9408
For: Assessment

Members:

DEL ROSARIO, P.J., *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

JUN 14 2019 10:10 am

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on July 24, 2018 is the Petition for Review[1] filed on August 1, 2016 by Montalban Methane Power Corporation to seek the cancellation of the deficiency value-added tax (VAT) and expanded withholding tax (EWT) assessments for taxable year 2009 in the respective amounts of ₱4,387,352.66 and ₱479,220.63.

Petitioner Montalban Methane Power Corporation is a corporation organized and existing under Philippine laws, with office address at the 5th Floor, BMMC Building, De La Rosa Street corner Adelantado Street, Legaspi Village, Makati City.[2] It is registered with the Bureau of Internal Revenue (BIR), with Tax Identification No. 006-604-154-000.[3]

[1] Docket, pp. 6-25
[2] Exhibit "P-1", Docket, pp. 452-469; Exhibit "P-2", Docket, p. 470
[3] Exhibit "P-3", Docket, p. 471

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On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

As stated in its Articles of Incorporation, petitioner's primary purpose is:

> "To engage in the Clean Development Mechanism (CDM) Project defined under the Kyoto Protocol of the United Nations Framework Convention on Climate change, through the processes of capturing, recovering, harnessing and appropriating the various gases, chemical reactions or byproducts emitted from solid/liquefied wastes deposited in the landfill, in order to effect a reduction thereof, thereby minimizing the various gases emitted to the environment produced by the wastes or garbage in the said landfill, and integrating these processes in the generation and sale of safe and reliable electricity insofar as may be permitted by law through the collection of landfill gases (LFG), the main constituent of which is methane, derived from the process of solid wastes combustion, and the sale of Certified Emission Reductions (CERS) Certificates obtained pursuant to the CDM Project."[4]

Petitioner was issued a Certificate of Registration No. 2007-156[5] by the Board of Investments (BOI) as a "New Operator of 14.8 Mega Watt Power Generation Plant (Waste to Energy Conversion – Montalban Landfill) on August 31, 2007. Under Section 8(e)[6] of the Specific Terms and Conditions, the sale of power generated by petitioner as well as its purchases of goods, properties and services needed for the development, construction and installation of its plant facilities and the whole process of exploration and development of renewable energy (RE) sources up to its conversion into power shall be subject to zero percent value-added tax pursuant to the NIRC. Likewise, the BIR issued BIR Ruling No. DA (VAT-018) 335-2008[7] on

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[4] Exhibit "P-1", Docket, p. 452
[5] Exhibit "P-13", Docket, p. 481
[6] Exhibit "P-13-1", Docket, p. 485
[7] Exhibit "P-14", Docket, pp. 487-490

October 23, 2008, confirming petitioner's opinion that its sale of electricity and CERS Certificates are automatically VAT zero-rated.

On May 22, 2009, petitioner received from the BIR a Notice for Inclusion as Top 20,000 Private Corporations[8] dated December 15, 2008, informing petitioner that it has been determined as one of the Top 20,000 Private Corporations for purposes of EWT regulations under Revenue Regulations (RR) No. 17-2003, as amended, and as such, petitioner is required to withhold one percent (1%) creditable expanded withholding tax on purchase of goods and two percent (2%) on purchase of services.

On November 24, 2009, petitioner entered into an Agreement[9] dated November 24, 2009 with International Solid Waste Integrated Management Specialist, Inc. ("SWIMS" for brevity) and the Provincial Government of Rizal. In the Agreement, SWIMS assigned in favor of petitioner all methane gas that may be collected from the Rizal Provincial Sanitary Landfill Project in consideration of ₱112,470,000.00.

For taxable year 2009, petitioner filed its Quarterly VAT Return for the first quarter[10] on April 15, 2009, and the VAT Returns for the second[11], third[12] and fourth[13] quarters on September 7, 2010.

On May 21, 2010, a Letter of Authority No. LOA-121-2010-00000019[14] dated May 14, 2010, together with the Checklist of Requirements[15], was issued, authorizing Group Supervisor Ma. Luisa Lim and Revenue Officers Reynante Martirez, Resurreccion Ang, Teresa Divina Holgado, and Criscela Lacsamana from the Large Taxpayers Excise Audit Division I of the Large Taxpayers Services to conduct an examination of the books of accounts and other accounting records of petitioner for all internal revenue taxes for taxable year 2009.

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[8] Exhibit "P-24", Docket, p. 532
[9] Exhibit "P-25", Docket, pp. 533-542
[10] Exhibits "P-6", "P-6-1", and "P-6-2", Docket, p. 474
[11] Exhibits "P-7", "P-7-1", "P-7-2", "P-8", and "P-8-1", Docket, pp. 475-476
[12] Exhibits "P-9", "P-9-1", "P-9-2", "P-10", and "P-10-1", Docket, pp. 477-478
[13] Exhibits "P-11", "P-11-1", "P-11-2", "P-11-3", "P-11-4", "P-12", and "P-12-1", Docket, pp. 479-480
[14] Exhibit "R-1", BIR Records, p. 34
[15] Exhibit "R-2", BIR Records, pp. 32-33

Petitioner filed its Applications for Tax Credits/Refunds on June 30, 2011 and on September 5, 2011 for the amounts of ₱38,352.78[16] and ₱2,299,886.78[17], respectively. However, respondent issued a letter to petitioner denying the application.[18]

On December 15, 2011, petitioner received from respondent a Notice of Informal Conference with Details of Discrepancies[19] dated December 14, 2011.

On December 26, 2011, petitioner executed a Waiver of the Defense of Prescription of the Statute of Limitations under the National Internal Revenue Code[20] ("1st Waiver" for brevity), extending the period to assess not later than December 31, 2012.

On October 24, 2012, petitioner received a Preliminary Assessment Notice[21] (PAN) with Details of Discrepancies, assessing petitioner for alleged deficiency VAT, final tax, withholding tax on compensation (CWT), EWT, documentary stamp tax (DST), and penalties in the aggregate amount of ₱31,883,489.33, broken down as follows:

TAX TYPE	BASIC	INTEREST	COMPROMISE PENALTY	SURCHARGE	TOTAL
VAT	₱2,168,698.94	₱1,599,480.53	₱25,000.00		₱ 3,793,179.47
Final Tax	4,792,206.30	3,767,201.29	25,000.00	₱1,198,051.58	9,782,459.17
CWT	240,000.00	188,666.40	16,000.00		444,666.40
EWT	8,776,493.63	6,899,289.42	50,000.00		15,725,783.05
DST	1,239,206.00	₱ 870,195.24	₱25,000.00		2,134,401.24
Administrative Penalties	₱ 3,000.00				3,000.00
TOTAL					**₱31,883,489.33**

On November 19, 2012, petitioner executed a 2nd Waiver[22] extending the period to assess not later than December 31, 2013.

[16] Exhibits "P-15" and "P-15-1", Docket, p. 491
[17] Exhibit "P-16" and "P-16-1", Docket, p. 492
[18] Exhibit "P-17", Docket, p. 493
[19] Exhibit "R-5", BIR Records, pp. 526-528
[20] Exhibit "R-6", BIR Records, p. 530
[21] Exhibit "R-8", BIR Records, pp. 617-627
[22] Exhibit "R-9", BIR Records, p. 628

On March 4, 2013, respondent issued a Letter[23] informing petitioner of the change in authorized revenue examiner pursuant to Memorandum of Assignment (MOA) No. D-02-13-061[24] dated February 28, 2013, replacing Revenue Officer Criscela M. Lacsamana with Revenue Officers Evangeline Casipe, Denver Gomez, Roque Doloiras, and Ednalyn Naty Dayacap under the direct supervision of Group Supervisor Lanie Luna. The said letter was received by petitioner on March 20, 2013.

On November 8, 2013, petitioner executed a 3rd Waiver extending the period to assess not later than December 31, 2014.

Petitioner filed its Reply[25] to the PAN on December 16, 2013. Subsequently, petitioner filed a Letter[26] dated February 27, 2014, requesting for an additional period of sixty (60) days to submit the relevant supporting documents relative to its protest.

On May 20, 2014, petitioner received a Formal Letter of Demand (FLD) with Details of Discrepancies together with the Final Assessment Notice (FAN), for the following alleged tax liabilities:[27]

TAX TYPE	BASIC	INTEREST	COMPROMISE PENALTY	SURCHARGE	TOTAL
VAT	₱2,168,698.94	₱2,193,653.72	₱25,000.00		₱ 4,387,352.66
Final Tax	4,792,206.30	5,028,534.28	25,000.00	₱1,198,051.58	11,043,792.16
CWT	240,000.00	251,835.62	16,000.00		507,835.62
EWT	8,776,493.63	9,209,570.30	50,000.00		18,036,063.93
DST	1,239,206.00	₱1,202,029.82	₱25,000.00		2,466,235.82
Administrative Penalties	₱ 3,000.00				3,000.00
TOTAL					**₱36,444,280.19**

In reply to the FLD, petitioner filed its Protest[28] dated June 18, 2014 on June 19, 2014.

In a Letter[29] dated September 12, 2014, which was filed on September 22, 2014, petitioner agreed to pay the principal amount of

[23] Exhibit "R-11", BIR Records, p. 632
[24] Exhibit "R-10", BIR Records, p. 631
[25] Exhibits "P-21", "P-21-1", and "P-21-2", Docket, p. 524
[26] Exhibit "R-13", BIR Records, pp. 647-648
[27] Exhibit "P-19", Docket, pp. 505-515; Exhibit "R-15", BIR Records, pp. 730-734
[28] Exhibit "P-22", Docket, pp. 525-529
[29] Exhibit "P-23", Docket, pp. 530- 531

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its assessed tax liabilities amounting to ₱9,503,079.97 on September 15, 2014, to wit:

TAX TYPE	BASIC
VAT	₱ 2,168,698.94
CWT	240,000.00
EWT	6,804,105.87
DST	290,275.16
TOTAL	**₱9,503,079.97**

In the same letter, petitioner requested that it be allowed to pay in installments the interest, and the compromise and administrative penalties amounting to ₱10,619,244.48, within one (1) year from September 15, 2014, payable in twelve (12) monthly installments on the fifteenth (15th) day of each month.

On June 30, 2016, petitioner received the Final Decision on Disputed Assessment[30] (FDDA). In the FDDA, after considering the payments made by petitioner, the amount of alleged tax liabilities was reduced to ₱3,598,193.07, computed as follows:

TAX TYPE	BASIC	INTEREST	COMPROMISE PENALTY	TOTAL
VAT	₱ 460,642.08	₱ 67,140.16		₱ 527,782.24
CWT	51,196.36	7,462.04		58,658.40
EWT	2,567,688.63	374,249.41		2,941,938.04
DST	₱ 60,933.17	₱ 8,881.22		69,814.39
TOTAL				**₱3,598,193.07**

As a result, petitioner filed the present Petition for Review on August 1, 2016.

Respondent filed his Answer[31] on November 9, 2016, interposing the following special and affirmative defenses:

THE ASSESSMENTS HAS NOT PRESCRIBED SINCE VALID WAIVERS WERE EXECUTED BY AND BETWEEN PETITIONER AND RESPONDENT.

[30] Exhibits "R-18", "R-19", "R-19-1", "R-19-2", and "R-19-3", BIR Records, pp. 1022-1029
[31] Docket, pp. 132-142

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6. Petitioner alleges that the assessment for deficiency VAT has already prescribed and that the Waiver executed is invalid.

7. Respondent posits that such contention is manifestly misplaced as will be discussed hereunder in seriatim.

8. First, the deficiency VAT assessment has not prescribed; petitioner's allegation that the FLD/FAN was issued beyond the prescriptive period provided under Section 203 of the NIRC of 1997 has no basis in fact and law.

9. On the contrary, three (3) Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code ("WAIVER") was executed extending the period to assess petitioner until December 31, 2014.

10. Assuming that the Formal Letter of Demand / Final Assessment Notice was allegedly received on May 20, 2014, then the aforesaid assessment was clearly received way before the 31 December 2014 deadline.

11. Second, anent petitioner's allegation that the deficiency VAT had already prescribed supposedly since the Waiver was executed out of time.

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9. In the instant case, petitioner omitted the first ("1st") Waiver which was executed on December 26, 2011 extending the period to assess until December 31, 2012. Subsequently, another two Waivers was again executed.

10. Based on the foregoing, the execution of the first ("1st") Waiver on December 26, 2011 was way before the alleged December 31, 2012 and September 06, 2013 deadline to execute the Waiver.

11. Third, the execution of Waivers by both parties proved to be beneficial to petitioner considering that the Waivers constituted as a tool for petitioner to be provided for

sufficient time to gather voluminous documents/records to support its position vis a vis respondent's assessment.

12. Besides, it is at the height of unfairness for petitioner to impugn the validity of the Waivers when it executed the said documents three (3) times. It did not even bother questioning the validity of the first two (2) Waivers and even executed a Third (3rd) Waiver which is a clear acquiescence on its part.

13. Now, the very same Waivers utilized by petitioner for its own advantage is used against respondent to defeat the validity of the Waivers which both parties voluntarily executed.

14. A party, having performed affirmative acts upon which another person based his subsequent action, cannot thereafter refute his acts or renege on the effects of the same, to the prejudice of the latter. This is a clear case of estoppel.

15. Article 1431 of the New Civil Code is quite instructive in providing that an admission or representation is rendered conclusive upon the person making it and cannot be denied against the person relying upon it. A party, having performed affirmative acts upon which another person based his subsequent action, cannot thereafter refute his acts or renege on the effects of the same, to the prejudice of the latter.

16. In the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, the Supreme Court held:

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17. The very soul of the doctrine enunciated in the PJI case is that the Waiver of the Statute of Limitations can never be used as an instrument of malice. However, respondent would like to point out that this doctrine was never meant to favor one party over another where both were at fault.

18. In the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc., (Nextel Communications Phils., Inc.)*, the Honorable Supreme Court held:

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> "First, the parties in this case are in *pari delicto* or in equal fault. In *pari delicto* connotes that the two parties to a controversy are equally culpable or guilty and they shall have no action against each other. However, although the parties are in *pari delicto*, the Court may interfere and grant relief at the suit of one of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by one party who is in equal guilt with the other.

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19. Besides, petitioner argued that it allegedly made monthly installment payments.

20. Assuming without admitting that petitioner indeed made partial payments, then any supposed defect or invalidity or prescription would already been deemed waived or abandoned.

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22. Accordingly, the period of respondent to assess petitioner for deficiency VAT did not lapse.

RESPONDENT OBSERVED BOTH PROCEDURAL AND SUBSTANTIAL DUE PROCESS IN ISSUING THE ASSESSMENT.

23. Respondent posits that she observed both procedural and substantial due process in issuing the assessment subject of this case.

24. Petitioner was informed of the factual and legal basis of the assessment. The Preliminary Assessment Notice with attached Details of Discrepancies and Assessment Notices, Formal Letter of Demand and Final Assessment Notice with attached Details of Discrepancies and Final Decision on Disputed Assessment with Assessment Notices indicated not only the deficiency tax involved and interest due

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thereon, but also sufficiently stated the facts, the law, rules and regulations on which the assessment is based.

25. Likewise, the Letter of Authority with attached Checklist of Requirements and First Request for Presentation of Records, First Notice, Preliminary Assessment Notice with attached Details of Discrepancies and Assessment Notices, Formal Letter of Demand and Final Assessment Notice with attached Details of Discrepancies and Final Decision on Disputed Assessment with Assessment Notices were issued in accordance with law, rules and jurisprudence.

THE ASSESSMENT ISSUED AGAINST PETITIONER IS VALID AND LAWFUL.

26. 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 GR. No. 120880 June 5, 1997)**

27. 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).** The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting. Hence, the assessment issued against petitioner is imbued with factual and legal bases.

28. All presumptions are in favor of the correctness of tax assessments (*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.

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THE ASSESSMENT ISSUED AGAINST PETITIONER HAS FACTUAL AND LEGAL BASES.

29. The Revenue Officer performed comprehensive audit procedures and techniques. Petitioner's Financial Statements and books of accounts were examined, comprehensive study of petitioner's pertinent accounting records disclosed that it is liable to pay deficiency tax assessments.

DEFICIENCY VAT

30. Petitioner is liable to pay for deficiency VAT for taxable year 2009. The following is the computation prepared by the Revenue Examiner as a result of the investigation conducted, quoted herewith, to wit:

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32. Anent petitioner erroneous allegation that "respondent cannot feign ignorance of the fact that, due to said denial by the BIR itself, petitioner never applied any input VAT for taxable year ending 31 December 2009 as a tax credit to any of its other tax liabilities."

33. With all due respect, it would seem that petitioner is confused.

34. The overstated input VAT amounting to P2,168,698.94 was carried over to the succeeding period as shown in its own VAT Return that is why respondent assessed petitioner with deficiency VAT for that same amount.

35. In the instant case, petitioner carried over the amount of input VAT in the amount of P25,656,026.82 when the excess input tax that should have been carried over to the succeeding period amounted only to P23,487,327.88.

36. It would have been different if petitioner amended its succeeding VAT Return and corrected therein the excess input VAT from P25,656,026.82 to P23,487,327.88; however, this was not the case here; thus, respondent was correct in assessing petitioner for deficiency VAT.

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DEFICIENCY EWT

37. Petitioner is liable to pay for deficiency EWT for taxable year 2009. Portion of the Final Decision on Disputed Assessment is quoted herewith, to wit:

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38. As decreed by the Honourable Supreme Court:

> "Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favour of the correctness of tax assessments."

A Notice of Pre-Trial Conference[32] was issued by the Court, setting the case for pre-trial conference on February 22, 2017, which was cancelled and reset to May 4, 2017[33]. Accordingly, petitioner's Pre-Trial Brief[34] was filed on February 17, 2017, while respondent's Pre-Trial Brief[35] was filed on May 2, 2017.

The pre-trial conference ensued.[36] Despite earnest efforts, the parties failed to agree on any stipulation of facts.[37] Noting the manifestation of petitioner, the Court issued a Resolution[38] dated June 21, 2017 stating that the parties' right to file their Joint Stipulation of Facts and Issues is deemed waived and the pre-trial is terminated. The Court issued a Pre-Trial Order[39] on August 4, 2017.

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[32] Docket, pp. 144-145
[33] Order dated February 17, 2017, Docket, p. 171
[34] Docket, pp. 173-187
[35] Docket, pp. 282-287
[36] Order dated May 4, 2017, Docket, pp. 323-325
[37] Manifestation, filed on June 6, 2017 by petitioner, Docket, pp. 346-347
[38] Docket, pp. 363-364
[39] Docket, pp. 375-384

During the trial, petitioner presented the testimony of its witness, Ms. Kristine F. Sorrera, by way of Judicial Affidavits[40] in lieu of direct examination.

Petitioner filed its Formal Offer of Exhibits[41] on September 7, 2017, consisting of Exhibits "P-1", "P-2", "P-3", "P-4", "P-4-1", "P-4-2", "P-5" "P-6" "P-6-1", "P-6-2", "P-7", "P-7-1", "P-7-2", "P-8" "P-8-1", "P-9", "P-9-1", "P-9-2", "P-10", "P-10-1", "P-11", "P-11-1", "P-11-2", "P-11-3", "P-11-4", "P-12", "P-12-1", "P-13", "P-13-1", "P-14", "P-14-1", "P-15", "P-15-1", "P-16", "P-16-1", "P-17", "P-18", "P-19", "P-20", "P-21", "P-21-1", "P-21-2", "P-22", "P-22-1", "P-22-2", "P-22-3", "P-23", "P-23-1", "P-23-2", "P-23-3", "P-24", "P-25", "P-25-1", "P-25-2", "P-25-3", "P-25-4", "P-25-5", and "P-27". Thereafter, the Court admitted all the formally offered exhibits of petitioner via Resolution[42] dated October 30, 2017.

Petitioner's documentary evidence are as follows:

Exhibit:	Description:
P-1	Petitioner's Articles of Incorporation
P-2	Certificate of Incorporation dated 25 January 2007
P-3	Certificate of Registration dated 25 January 2007
P-4, P-4-1 and P-4-2	March 2009 signed by Danilo B. Cantiller and Security Bank's stamp
P-5	Security Bank Deposit Slip dated 5 March 2009
P-6, P-6-1 and P-6-2	Quarterly VAT Return for the first quarter of taxable year ending 31 December 2009 signed by Danilo B. Cantiller and respondent's stamp
P-7, P-7-1 and P-7-2	Quarterly VAT Return for the second quarter of taxable year ending 31 December 2009 signed by Kristine F. Sorrera and Security Bank's stamp
P-8 and P-8-1	Security Bank Deposit Slip dated 7 September 2010 with Security Bank's stamp
P-9, P-9-1 and P-9-2	Quarterly VAT Return for the third quarter year ending 31 December 2009 signed by Kristine F. Sorrera and Security Bank's stamp
P-10 and P-10-1	Security Bank Deposit Slip dated 7 September 2010 with Security Bank's stamp
P-11, P-11-1, P-11-2, P-11-3,	Quarterly VAT Return for the fourth quarter year ending 31 December 2009 signed by

[40] Exhibit "P-29", Docket, pp. 386-390 and 409-413
[41] Docket, pp. 442-450
[42] Docket, pp. 575-576

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and P-11-4	Kristine F. Sorrera and Security Bank's stamp and Item 22 and Item 24
P-12 and P-12-1	Security Bank Deposit Slip dated 7 September 2010 with Security Bank's stamp
P-13 and P-13-1	Certificate of Registration dated 31 August 2007 issued by the Board of Investments, including item 8(e) thereof
P-14 and P-14-1	Respondent's tax opinion no. DA (VAT-018) 335-2008 dated 23 October 2008
P-15 and P-15-1	BIR Form No. 1914 for the application of tax credits for the second quarter of taxable year ending 31 December 2009 signed by Peregrino P. Fernandez, Jr.
P-16 and P-16-1	BIR Form No. 1914 for the application of tax credits for the second half of taxable year ending 31 December 2009 signed by Peregrino P. Fernandez, Jr.
P-17	Respondent's letter denying petitioner's applications for tax credits for taxable year ending 31 December 2009
P-18	Respondent's Preliminary Assessment Notice (PAN)
P-19	Respondent's Formal Letter of Demand (FLD)
P-20	Respondent's Final Decision on Disputed Assessment (FDDA)
P-21, P-21-1 and P-21-2	Petitioner's letter dated 13 December 2013 signed by Robert M. Renfrew with respondent's stamp
P-22, P22-1, P-22-2 and P-22-3	Petitioner's letter dated 18 June 2014 signed by Robert M. Renfrew with respondent's stamps
P-23, P-23-1, P-23-2, P-23-3	Letter dated 12 September 2014 signed by Robert M. Renfrew with respondent's stamps
P-24	Respondent's Notice of Inclusion as Top 20,000 Private Corporations dated 15 December 2008
P-25, P-25-1, P-25-2, P-25-3, P-25-4 and P-25-5	Agreement dated 24 November 2009 signed by Peregrino P. Fernandez, including the seventh, eight and ninth WHEREAS Clauses, Section 2, Section 3.2, Section 3.3 and Section 9
P-27	eFPS Payment Details dated 26 April 2017

Respondent presented his witnesses, Revenue Officers Criscela M. Lacsamana and Evangeline M. Casipe, who testified by way of Judicial Affidavits[43] in lieu of direct examination.

[43] Exhibits "R-20" and "R-21", Docket, pp. 295-304 and 310-317, respectively

Respondent filed his Formal Offer of Evidence[44] on March 14, 2018, offering Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-10-1", "R-10-2", "R-11", "R-12", "R-12-1", "R-13", "R-14", "R-15", "R-16", "R-16-1", "R-16-2", "R-16-3", "R-16-4", "R-16-5", "R-17", "R-18", and the entire BIR Records. The Court admitted the enumerated exhibits in the Resolution[45] dated May 23, 2018.

The documentary exhibits offered by the respondent are as follows:

Exhibit:	Description:
R-1	Letter of Authority (LOA) No. LOA-121-2010-00000019 dated 14 May 2010
R-2	Checklist of Requirements and First Request for Presentation of Records
R-3	First Notice dated 17 June 2010
R-4	Memorandum recommending the Issuance of a Notice of Informal Conference dated December 14, 2012 (sic) with attached Computations and Details of Discrepancies
R-5	Notice of Informal Conference dated December 14, 2011 with attached Computations and Details of Discrepancies
R-6	Waiver of Defense of Prescription under the Statute of Limitations, dated 26 December 2011 extending the period to assess not later than 31 December 2012
R-7	Memorandum dated 01 October 2012, recommending the issuance of the Preliminary Assessment Notice (PAN) with Matrices of Computations and Revenue Officer's Audit Reports
R-8	PAN with Details of Discrepancies and Audit Results (BIR Forms 0401) dated 23 October 2012
R-9	Waiver of Defense of Prescription under the Statute of Limitations, dated 19 November 2012 extending the period to assess not later than 31 December 2013
R-10	Memorandum of Assignment (MOA) No. D-02-13-061 dated 28 February 2013
R-10-1	Petitioner's Reconciliation of Purchases for taxable year 2009
R-10-2	Schedule of VAT payable for taxable year 2009

[44] Docket, pp. 586-595
[45] Docket, pp. 609-610

R-11	Letter dated 04 March 2013 informing petitioner of the change in revenue officer who will be conducting the audit
R-12	Waiver of the Statute of Limitation Under the National Internal Revenue Code dated 08 November 2013 extending the period to assess not later than 31 December 2014
R-12-1	Secretary's Certificate, found in pages 633 to 636 of the BIR Records
R-13	Letter reply to the PAN dated 27 February 2014
R-14	Memorandum dated 25 April 2014 with Matrices of Computations and Revenue Officers Report recommending the issuance of the Formal Letter of Demand (FLD)
R-15	FLD with attached Details of Discrepancies
R-16	Final Asssessment Notice (FAN)/ BIR Forms 0401 Assessment Notice of Deficiency Value-Added Tax (VAT)
R-16-1	Assessment Notice for Deficiency Final Withholding Tax
R-16-2	Assessment Notice for Deficiency Withholding Tax on Compensation
R-16-3	Assessment Notice for Deficiency Expanded Withholding Tax
R-16-4	Assessment Notice for Deficiency Documentary Stamp Tax
R-16-5	Assessment Notice for Penalties
R-17	Memorandum with attached Revenue Officers Report recommending the issuance of the Final Decision on Disputed Assessment (FDDA), dated 08 June 2016, found in pages 997 to 1017 of the BIR Records
R-18	Final Decision on Disputed Assessment (FDDA)
	Entire BIR Records

The Court declared the case submitted for decision on July 24, 2018,[46] considering respondent's Memorandum[47] filed on June 27, 2018 and petitioner's Memorandum[48] filed through registered mail on July 9, 2018 and received by the Court on July 13, 2018.

[46] Resolution dated July 24, 2018, Docket, p. 685
[47] Docket, pp. 611-624
[48] Docket, pp. 659-681

The parties submitted the following issue[49] for the Court's determination:

> Whether or not petitioner is liable to pay the aggregate amount of ₱4,387,352.66 for deficiency VAT and the aggregate amount of ₱479,220.63 for deficiency EWT for taxable year 2009 plus surcharge and 20% deficiency and 20% delinquency interests in accordance with Sections 248 and 249 of the NIRC of 1997.

Petitioner's Arguments[50]

In its Petition for Review, petitioner initially argues that the right to assess and collect any deficiency VAT had prescribed and that the waiver issued in favor of respondent is invalid.[51] Petitioner claims that for the taxable year ending December 31, 2009, the VAT Return for the first quarter was filed on April 15, 2009, while the VAT Returns for the second, third, and fourth quarters were filed on September 7, 2010. Petitioner contends that since it received the Final Letter of Demand on May 20, 2014 and the FDDA on June 30, 2016, the period to assess for deficiency VAT had already expired. Further, the execution of a Waiver on November 8, 2013 and the acceptance by the BIR on November 13, 2013 were made after the expiration of the statute of limitations.

On the deficiency VAT, petitioner argues that it is not liable to pay on the basis that respondent did not disclose to petitioner the facts on which the alleged overclaimed input tax (₱12,706.20) and alleged input tax claimed from non-VAT suppliers (₱155,992.54) were made. Thus, petitioner was not afforded due process pursuant to Section 228 of the NIRC of 1997, as amended.

With regard to the alleged excess input tax carried over to the next period amounting to ₱2,000,000.20, based on petitioner's 4th Quarter VAT Return, it reflected a value of ₱25,656,026.61 in Item 25 (Net VAT Payable) instead of ₱23,656,026.61 which resulted from a typographical error in Item 24 (Total Allowable Input Tax) reflecting the additional ₱2,000,000.00.

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[49] Issues, Pre-Trial Order dated August 4, 2017, Docket, p. 376
[50] Docket, pp. 659-681
[51] Petition for Review, Docket, pp. 16-18

Petitioner further argues that the Board of Investments issued a Certificate of Registration[52] dated August 31, 2007 in favor of petitioner, which entitles it to the incentives under Republic Act No. 9513[53], including zero-percent VAT rating for its sale of electricity and for its purchases of goods, properties and services needed for the development, construction and installation of its plant facilities and the whole process of exploration and development of RE sources up to its conversion into power. In addition, respondent rendered a tax opinion[54] dated October 23, 2008, confirming the zero-rating of petitioner's sale of electricity and Certified Emission Reduction Certificates. Hence, petitioner is a VAT-registered entity whose sales and purchases are zero-rated, and whose transactions will not result in output tax.

On the deficiency EWT, petitioner avers that the payment to SWIMS is not subject to the two percent (2%) EWT for sale of services, rather, it is subject to the one percent (1%) EWT for sale of goods since the Agreement involves the sale of goods (*i.e.*, methane gas) and not a sale of services.

Respondent's Arguments[55]

Respondent counters that the assessments have not prescribed since valid waivers were executed. In contradiction to the allegation of petitioner, three (3) Waivers were executed extending the period to assess until December 31, 2014. Assuming the FLD/FAN was allegedly received on May 20, 2014, then the said assessment was clearly received before December 31, 2014. In this regard, petitioner is also estopped from assailing the validity of the Waivers.

On the violation of due process, respondent posits that he observed both procedural and substantial due process in issuing the assessment subject of this case. The LOA with attached Checklist of Requirements and First Request for Presentation of Records, First Notice, PAN with attached Details of Discrepancies and Assessment Notices, FLD and FAN with attached Details of Discrepancies, and

[52] Exhibits "P-13" and "P-13-1", Docket, pp. 481 and 485, respectively
[53] An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for Other Purposes
[54] Exhibits "P-14" and "P-14-1", Docket, pp. 487-490
[55] Docket, pp. 611-624

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FDDA with Assessment Notices were issued in accordance with law, rules and jurisprudence.

Respondent further asserts that the assessment issued against petitioner is valid and lawful and has factual and legal bases. Hence, petitioner is liable for deficiency VAT and EWT for taxable year 2009.

DISCUSSION/FINDINGS

The Court shall determine first whether it has jurisdiction over the Petition for Review in relation to the assessment issued by respondent against petitioner.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy. It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[56]

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

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

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[56] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue,* G.R. No. 185666, February 4, 2015.

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

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

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

In relation thereto, Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282, states in part:

"SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: *Provided, however,* That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*."

Based on the foregoing provision, petitioner has thirty (30) days either (1) from receipt of denial of the protest or (2) from the lapse of the 180-day period fixed by law for the BIR Commissioner to act upon the protest, within which to file an appeal before this Court.

In the case of *Lascona Land Co., Inc. vs. Commissioner of Internal Revenue*[57], the Supreme Court held that in case the BIR Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: (1) file a Petition for Review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the BIR Commissioner on the disputed assessments and appeal such final decision to the CTA within 30 days after receipt of a copy of such decision, to wit:

> "Therefore, as in Section 228, when the law provided for the remedy to appeal the inaction of the CIR, it did not intend to limit it to a single remedy of filing of an appeal after the lapse of the 180-day prescribed period. Precisely, when a taxpayer protested an assessment, he naturally expects the CIR to decide either positively or negatively. A taxpayer cannot be prejudiced if he chooses to wait for the final decision of the CIR on the protested assessment. More so, because the law and jurisprudence have always contemplated a scenario where the CIR will decide on the protested assessment.
>
> It must be emphasized, however, that **in case of the inaction of the CIR on the protested assessment, while we reiterate – the taxpayer has two options, either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, these options are mutually exclusive and**

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[57] G.R. No. 171251, March 5, 2012

resort to one bars the application of the other." (*Emphasis supplied*)

In this regard, a taxpayer can opt to wait for the final decision of the BIR Commissioner on the protested assessment. A taxpayer has the right to appeal such final decision to the CTA by filing a Petition for Review within 30 days after receipt of a copy of such decision or ruling, even if the 180-day period fixed by law for the BIR Commissioner to act on the disputed assessments has already expired.

In this case, petitioner opted to wait for the final decision of respondent. Petitioner received the FLD on May 20, 2014 and filed a protest on June 19, 2014. After two years, petitioner then received the FDDA[58] on June 30, 2016, denying its protest letter dated June 18, 2014. Counting 30 days from June 30, 2016, petitioner had until August 1, 2016, since July 30, 2016 fell on a Saturday, within which to file its appeal before this Court. Petitioner filed the instant Petition for Review on August 1, 2016.

Since the Petition for Review was filed on time, this Court has jurisdiction to take cognizance of the same pursuant to Section 11 of RA No. 1125, as amended.

Even though the petition was timely filed, there is a question of fact, particularly, on the authority of the revenue officers who conducted the examination or assessment pursuant to a MOA, raised during the trial which affects the jurisdiction of this Court. For this reason, it is also necessary to rule first on whether the Court has jurisdiction to decide on the scope of authority of the revenue officers to conduct the examination of petitioner, although this issue was not raised by the parties in their respective pleadings.

In the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*[59], the Supreme Court confirmed the power and jurisdiction of this Court to resolve the issue as to the extent of authority of revenue officers to conduct the audit, even though the same was not raised by the parties in their pleadings or memoranda, as follows:

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[58] Exhibits "R-18", "R-19", "R-19-1", "R-19-2", and "R-19-3", BIR Records, pp. 1022-1029
[59] G.R. No. 183408, July 12, 2017

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"The law vesting unto the CTA its jurisdiction is Section 7 of Republic Act No. 1125 *(R.A. No. 1125)* which in part provides:

> Section 7. *Jurisdiction.* – The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other penalties imposed in relation thereto, or ***other matters*** arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue; xxx (emphasis supplied)

Under the aforecited provision, the jurisdiction of the CTA is not limited only to cases which involve decisions or inactions of the CIR on matters relating to assessments or refunds but also includes other cases arising from the NIRC or related laws administered by the BIR. Thus, for instance, we had once held that the question of whether or not to impose a deficiency tax assessment comes within the purview of the words '*other matters arising under the National Internal Revenue Code.*'

The jurisdiction of the CTA on such ***other matters arising under the NIRC*** was retained under the amendments introduced by R.A No. 9282. Under R.A. No. 9282, Section 7 now reads:

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

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> 2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or ***other matters*** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; xxx.' (emphasis supplied)

Is the question on the authority of revenue officers to examine the books and records of any person cognizable by the CTA?

It must be stressed that the assessment of internal revenue taxes is one of the duties of the BIR. Section 2 of the NIRC states:

> Sec. 2. *Powers and Duties of the Bureau of Internal Revenue.* – The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the ***assessment*** and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts.
>
> The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws. (emphasis supplied)

In connection therewith, the CIR may authorize the examination of any taxpayer and correspondingly make an assessment whenever necessary. Thus, to give more teeth to such power of the CIR, to make an assessment, the NIRC authorizes the CIR to examine any book, paper, record, or data of any person. The powers granted by law to the CIR are intended, among other things, to determine the liability of any person for any national internal revenue tax.

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It is pursuant to such pertinent provisions of the NIRC conferring the powers to the CIR that the petitioner (CIR) had, in this case, authorized its revenue officers to conduct an examination of the books of account and accounting records of Lancaster, and eventually issue a deficiency assessment against it.

From the foregoing, it is clear that the issue on whether the revenue officers who had conducted the examination on Lancaster exceeded their authority pursuant to LOA No. 00012289 may be considered as covered by the terms 'other matters' under Section 7 of R.A. No. 1125 or its amendment, R.A. No. 9282. The authority to make an examination or assessment, being a matter provided for by the NIRC, is well within the exclusive and appellate jurisdiction of the CTA.

On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.

Under Section 1, Rule 4 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.* – xxx
>
> 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 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."

Hence, the issue on the authority of revenue officers to conduct an examination of petitioner pursuant to a MOA shall be resolved first by the Court.

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Pursuant to Section 6(A) of the NIRC of 1997, as amended, the Commissioner of Internal Revenue is vested with the power to authorize the examination of any taxpayer and the assessment of the correct amount of tax due, 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**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." (*Emphasis supplied*)

As provided by the above provision, a valid grant of authority from the BIR Commissioner or his duly authorized representative is required before a revenue officer can conduct an examination or issue an assessment.

Such grant of authority is in the form of a Letter of Authority, pursuant to Section 13 of the NIRC of 1997, as amended, which states:

> "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*)

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The Supreme Court discussed the importance of the issuance of an LOA in the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.* ("*Sony* case" for brevity).[60] The High Court held:

> "Based on Section 13 of the Tax Code, a Letter of Authority or 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. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
>
> xxx xxx xxx
>
> **Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity**." (*Emphasis supplied*)

Based on the above *Sony* case, the LOA is a crucial document to revenue officers as this grant them the authority to conduct examination or assess the taxpayer. Absence of the LOA would result in the nullity of the examination or assessment.

Moreover, in the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[61] ("*Medicard* case" for brevity), the Supreme Court held that before a revenue officer proceeds with the further examination and assessment of the taxpayer, there must be an authority from the BIR Commissioner or from his duly authorized representatives. The pertinent parts of the decision state:

> "Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be

[60] G.R. No. 178697, November 17, 2010
[61] G.R. No. 222743, April 5, 2017

> assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**
>
> xxx xxx xxx
>
> Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.
>
> xxx xxx xxx
>
> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. **Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.**" (*Emphasis supplied*)

Pursuant to the *Sony* case and the *Medicard case*, the revenue officer must show that he has been granted authority through an LOA to conduct the examination or assessment. Otherwise, the said examination or assessment is void.

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Furthermore, Section C(1) and (5) of Revenue Memorandum Order (RMO) No. 43-90[62] requires the issuance of a new LOA in cases of re-assignment/transfer of cases to another revenue officer, as follows:

> "C. Other policies for issuance of L/As.
>
> 1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.
>
> xxx xxx xxx
>
> 5. **Any re-assignment/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 supplied*)

In the present case, a careful perusal of the records shows that Letter of Authority No. LOA-121-2010-00000019[63] dated May 14, 2010 was issued to authorize Group Supervisor Ma. Luisa Lim and Revenue Officers Reynante Martirez, Resurreccion Ang, Teresa Divina Holgado, and Criscela Lacsamana to conduct a tax examination/audit of the books of accounts and other accounting records of petitioner for all internal revenue taxes for taxable year 2009.

However, on March 4, 2013, respondent issued a Letter[64] informing petitioner of the change in authorized revenue examiner pursuant to Memorandum of Assignment No. D-02-13-061[65] dated February 28, 2013, replacing Revenue Officer Criscela M. Lacsamana with Revenue Officers Evangeline Casipe, Denver Gomez, Roque Doloiras and Ednalyn Naty Dayacap under the direct supervision of Group Supervisor Lanie Luna. No new LOA was attached to the MOA.

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[62] Amendment of Revenue Memorandum Order No. 37-90, Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit
[63] Exhibit "R-1", BIR Records, p. 34
[64] Exhibit "R-11", BIR Records, p. 632
[65] Exhibit "R-10", BIR Records, p. 631

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Moreover, the non-issuance of a new LOA on the reassignment of the case was confirmed by RO Evangeline Casipe during the trial. Below are the clarifications made during the hearing:[66]

JUSTICE DEL ROSARIO:
You actually prepared the Final Assessment Notice against the petitioner?

REVENUE OFFICER CASIPE:
A. Yes, Your Honors.

JUSTICE DEL ROSARIO
And who were with you in that document? You signed this document. You and who else? There are signatories. . .(interrupted).

REVENUE OFFICER CASIPE:
A. Yes. Two signatories, Your Honors, mine, and my partner in audit, Edelyn Naty Dayacap.

JUSTICE DEL ROSARIO:
Q. Would you know if a Letter of Authority was actually issued to the two signatories of that Final Assessment Notice?

REVENUE OFFICER CASIPE:
A. We were only issued a Memorandum of Assignment, Your Honors, because the original LOA, based on the BIR issuances, Your Honors, there should be only one LOA for Taxable Year. So, when the original examiner was transferred to another division, only a Memorandum of Assignment was assigned.

JUSTICE DEL ROSARIO:
I see. So, it is very clear that the Letter of Authority issued to conduct an examination of petitioner's books does not include the name of the signatories to the FAN?

REVENUE OFFICER CASIPE:
A. No, Your Honors.

[66] Transcript of Stenographic Notes, March 1, 2018, pp. 41-42

JUSTICE DEL ROSARIO:
They do not. By no, it means that the signatories to the FAN are not the same as those listed or named in the Letter of Authority?

REVENUE OFFICER CASIPE:
A. **No, Your Honors. They are different from the Letter of Authority.** (*Emphasis supplied*)

Considering that the assessment, particularly the FAN, was issued pursuant to an examination conducted by revenue officers who were not authorized to conduct such examination via LOA, the said assessment is void. Thus, the Court will no longer discuss the submitted issue.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the deficiency VAT and EWT assessments for taxable year 2009 under the Formal Letter of Demand/Final Assessment Notice issued on May 20, 2014 and the Final Decision on Disputed Assessment issued on June 30, 2016 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, 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
Chairperson, Special 1st Division