REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

PORT BARTON DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9674

Members:

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

Promulgated:
MAR 08 2022
11:00 a.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

The *Amended Petition for Review* prays for the:

1) Cancellation of the income tax and value-added tax ("VAT") assessment for calendar year 2011 due to the failure of the Bureau of Internal Revenue ("BIR") to serve the *Formal Assessment Notices* ("FAN") in violation of due process mandated under Section 228 of the National Internal Revenue Code ("NIRC") of 1997, as amended; and

2) The *Final Notice Before Seizure* ("FNBS") be declared void as it has not become final and executory due to BIR's failure to serve the requisite FAN.[1]

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1 Docket, Pre-Trial Order dated November 14, 2018, Statement of the Case, p. 264.

The Facts

Petitioner Port Barton Development Corporation is a domestic corporation organized under the laws of the Philippines with principal office at 3/F Alegria Building, 2294 Pasong Tamo Extension, Makati City.[2]

Respondent is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including among others, the power to authorize the examination of taxpayer's books of accounts, to issue and decide deficiency assessments of internal revenue taxes.[3]

On March 07, 2013, Petitioner received *Letter Notice* ("LN") No. 048-RLF-11-11-00174 dated February 26, 2013,[4] informing Petitioner of a certain discrepancy on its local purchases, specifically, an alleged under-declaration thereof amounting to Php6,443,358.00 for the calendar year ended 2011.

Thereafter, on June 20, 2016, Petitioner received the *Preliminary Assessment Notice* ("PAN") dated June 16, 2016 on the BIR's finding of deficiency income tax and VAT for calendar year 2011.[5] The formal written protest[6] was submitted to BIR Makati Regional No. 08 Director's Office on July 4, 2016.[7]

The PAN correctly indicated Petitioner's business address at – G/F Alegria Building, 2229 Pasong Tamo Extension, Makati City.[8]

The next written communications received by Petitioner were the *Preliminary Collection Letter* ("PCL") dated July 11, 2017[9] and the FNBS dated July 24, 2017.[10] Petitioner received both letters on August 01, 2017.[11] This time around, the addresses in the PCL and FNBS were indicated to be – 58 San Bernardo St., Pasig City 1600.[12] Respondent seeks to collect deficiency income

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2 *Id.*, *Joint Stipulation of Facts and Issues* (JSFI), Stipulation of Facts, Par. 1, p. 250.
3 *Id.*, JSFI, Stipulation of Facts, Par. 2, p. 250.
4 *Id.*, Exhibits "R-1" to "R-1-c", pp. 317.
5 *Id.*, Exhibits "R-9", "R-9-A", and "R-10", pp. 324 to 327.
6 *Id.*, Exhibits "R-11" to "R-11-C", pp. 328 to 330.
7 *Id.*, JSFI, Stipulation of Facts, Par. 3, p. 251.
8 *Id.*, JSFI, Stipulation of Facts, Par. 4, p. 251.
9 BIR Records, Part of Exhibit "P-2", at p. 74.
10 *Id.*, Part of Exhibit "P-2", at p. 77.
11 Docket, JSFI, Stipulation of Facts, Par. 5, p. 251.
12 *Id.*, JSFI, Stipulation of Facts, Par. 6, p. 251.

tax and VAT assessments, including the applicable penalty, interest, surcharge and penalties, as follows:[13]

Deficiency Tax	***Amount***
Income tax	Php4,571,250.20
VAT	Php1,862,812.26
Total	**Php6,434,062.46**

On August 30, 2017, Petitioner filed its *Petition for Review*.[14] The case was initially raffled to this Court's First Division.

Noting that the *Verification and Certification Against Forum Shopping* and *Special Power of Attorney* attached to the *Petition for Review* bore no date of execution, the Court issued the Resolution dated September 19, 2017,[15] directing the Petitioner to submit duly dated documents. In compliance thereto, Petitioner submitted the duly dated and notarized documents on November 02, 2017.[16] On even date, Petitioner also filed a *Motion to Amend Petition for Review* on November 02, 2017,[17] praying for the amendment of paragraph 3 of, and of the prayer stated in, the said *Petition for Review*. In the Resolution dated December 07, 2017, the Court granted Petitioner's *Motion to Amend*.[18]

On January 05, 2018, Petitioner filed a *Motion to Admit Amended Petition for Review*, attaching therewith its *Amended Petition for Review*.[19] In the Resolution dated January 22, 2018,[20] the Court denied the said *Motion to Admit* on the following grounds, to wit: (1) the *Certification/Verification* and the *Special Power of Attorney* attached to the *Amended Petition for Review* were mere photocopies bearing no date of execution, while their respective dates of acknowledgment and subscription appear to be earlier than the said *Amended Petition for Review*; and (2) paragraph 2 of the said *Certification/Verification* attached to the *Amended Petition for Review* refers only to the preparation and filing of the *Petition for Review*, not to the *Amended Petition for Review*.

Petitioner then filed a *Motion for Reconsideration (on Motion to Admit Amended Petition for Review)* on February 9, 2018,[21] praying for: (1) the admission of the attached *Certification/Verification on Non-Forum Shopping, Secretary's*

[13] *Id.*, JSFI, Stipulation of Facts, Pars. 7 and 7.1, p. 251.
[14] *Id.*, pp. 10 to 19.
[15] *Id.*, pp. 36 to 37.
[16] *Id.*, pp. 40 to 44.
[17] *Id.*, pp. 46 to 48.
[18] *Id.*, pp. 51 to 53.
[19] *Id.*, pp. 54 to 67.
[20] *Id.*, pp. 86 to 87.
[21] *Id.*, pp. 88 to 95.

Certificate on Adoption of Board Resolution, and *Special Power of Attorney*, and (2) the reconsideration of the Court's denial to admit the *Amended Petition for Review*.

In the Resolution dated February 20, 2018,[22] the Court granted Petitioner's *Motion for Reconsideration* and admitted the submitted documents, as well as the *Amended Petition for Review*, in the interest of justice.

Respondent posted his *Answer* on April 10, 2018.[23]

On May 22, 2018, Respondent transmitted the *BIR Records* for this case.[24]

The Pre-Trial Conference was initially scheduled on June 07, 2018.[25]

On June 04, 2018, *Respondent's Pre-Trial Brief* was filed.[26]

At the Pre-Trial Conference held on June 07, 2018, Petitioner's counsel manifested that the *Answer* filed by Respondent was not responsive to the *Amended Petition for Review*, and thus, he did not file a *Pre-Trial Brief*. Respondent's counsel then prayed that he be allowed to file an *Amended Answer* which was granted by the Court. Thus, the scheduled Pre-Trial Conference was cancelled and reset to August 16, 2018.[27]

On June 22, 2018, Respondent posted a *Manifestation/ Compliance*,[28] submitting, *inter alia*, his *Answer*.[29] In his *Answer*, Respondent interposed the following special and affirmative defenses, to wit:

> "8. Petitioner did not refute or reconcile the computerized matching conducted by this Bureau on information/data provided by third party sources against Petitioner declarations per VAT returns disclosed the following discrepancy indicated in Letter Notice No. 048-RLF-11-00-000174 dated February 26, 2013:

Per Summary List of Sales	6,442,358.09

22 *Id.*, pp. 99 to 100.
23 *Id.*, pp. 107 to 109.
24 *Id.*, Respondent's undated letter, p. 114.
25 *Id.*, Resolution dated April 23, 2018, pp. 112.
26 *Id.*, pp. 120 to 124.
27 *Id.*, Minutes of the hearing held on, and Order dated, June 07, 2018, pp. 126 to 129.
28 *Id.*, pp. 143 to 145.
29 *Id.*, pp. 147 to 152.

submitted by your suppliers	
Domestic Purchases per Tax Returns filed	
Under-declaration of Local Purchases	6,442,358.09
Percentage (%) of Discrepancy	100.00

9. Petitioner did not submit any accounting books or documents to reconcile the discrepancy found by the BIR in Letter Notice No. 048-RLF-11-00-000174 dated February 26, 2013.

xxx xxx xxx

11. In this case, BIR Records shows that the Petitioner moved out in order, thus, it did not receive the FAN sent by the BIR. Moreover, Petitioner moved out without notifying BIR or without updating its registration.

Attached herein as Annex 'C' and forms integral part hereof is the photocopy of the returned FAN date July 1, 2016 as proof that the Petitioner move out, thus, the Petitioner was not able to receive the FAN. Also attached herein as Annex 'D' is the photocopy of the returned BIR's letter dated August 1, 2016 as proof that the pertinent moved out, thus, it was not able to receive BIR's letter dated August 1, 2016.

12. It must be noted that applicable in this case is Section 11 of BIR Revenue Regulation No. 12-85 which states:

> "Sec. 11. Change of Address. – In case of change of address, the taxpayer must give a written notice thereof to the Revenue District Officer or the district having jurisdiction over his former legal residence and/or place of business, copy furnished the Revenue District Officer having jurisdiction over his new legal residence or place of business, the Revenue Computer Center and the Receivable Accounts Division, BIR, National Office, Quezon City, and in case of failure to do so, any communication referred to in these regulations previously sent to his former legal residence or business address as appearing in is [*sic*] tax return for

> the period involved shall be considered valid and binding for purposes of the period within which to reply.

13. Considering that the BIR records shows that the Petitioner moved out, applicable in this case is Section 223 of the National Internal Revenue Code as amended which provides:

> SEC. 223. Suspension of Running of Statute of Limitations. – X X X; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, that, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; X X X

14. 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 also that the taxpayer is right (Tan Guan vs. Court of Tax Appeals, et. Al., 19 SCRA 903 [1967] Collector of Internal Revenue vs. Bohol Land Transportation Co., 107 Phil 967 [1960])

15. Assessments are presumed correct and official functions are regularly done. The burden of proving that the assessments are not correct rests on the Petitioner. All presumptions are in favour of the correctness of tax assessments. (Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290).

16. Tax assessments by 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 favor of the correctness of tax assessments."

Petitioner filed its *Pre-Trial Brief* on July 13, 2018.[30]

[30] *Id.*, pp. 215 to 219.

The Pre-Trial Conference was further reset to, and held on, September 13, 2018.[31]

Pursuant to the Order dated September 26, 2018,[32] the present case was transferred to the Third Division of this Court.

On October 25, 2018, the parties filed a *Joint Motion to Admit Joint Stipulation of Facts and Issues*, attaching therewith their *Joint Stipulation of Facts and Issues* ("JSFI"), and praying for the admission thereof.[33] In the Resolution dated November 5, 2018,[34] the Court granted the parties' *Joint Motion* and admitted the said JSFI, and deemed the termination of the Pre-Trial. Subsequently, the Pre-Trial Order dated November 14, 2019 was issued.[35]

As trial ensued, Petitioner presented its testimonial and documentary evidence. It offered the testimony of its General Manager, Mr. Roberto B. Bidaña.[36]

The *Formal Offer of Evidence for the Petitioner* was filed on April 17, 2019.[37] Respondent's *Comment (To Petitioner's Formal Offer of Evidence)* was then filed on April 26, 2019.[38] In the Resolution dated May 21, 2019,[39] the Court admitted all of Petitioner's offered exhibits.

For his part, Respondent likewise presented his testimonial and documentary evidence. He offered the testimony of Revenue Officer ("RO") Angelo P. San Ramon.[40]

Respondent's Formal Offer of Evidence was filed on August 16, 2019.[41] Petitioner, however, failed to file its comment thereon.[42]

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31 *Id.*, Minutes of the hearing held on, and Order dated, August 16, 2018, pp. 235 to 237; Minutes of the hearing held on, and Order dated, September 13, 2018, pp. 241 to 245.
32 *Id.*, p. 246.
33 *Id.*, pp. 248 to 260.
34 *Id.*, p. 262.
35 *Id.*, pp. 264 to 271.
36 *Id.*, Exhibit "P-1", pp. 223 to 231; Minutes of the hearing held on, and Order dated, April 02, 2019, pp. 291 to 293.
37 *Id.*, pp. 294 to 296.
38 *Id.*, pp. 298 to 299.
39 *Id.*, pp. 304 to 305.
40 *Id.*, Exhibit "R-16", pp. 166 to 177; Minutes of the hearing held on, and Order dated, August 01, 2019, pp. 306 to 308.
41 *Id.*, pp. 309 to 316.
42 *Id.*, Records Verification Report dated September 11, 2019 issued by the Judicial Records Division of this Court, p. 339.

On October 03, 2019, Petitioner filed an *Urgent Motion to Postpone [Hearing November 14, 2019]*,[43] requesting for the deferment of the submission of its rebuttal witness' Judicial Affidavit and postponement of the court hearing.

In the Resolution dated October 09, 2019,[44] the Court admitted all of Respondent's offered exhibits; and granted Petitioner's *Urgent Motion to Postpone.*

On February 06, 2020, Petitioner filed an *Urgent Motion To Postpone [Hearing of February 11, 2020]*,[45] which was granted by the Court in the Resolution dated February 11, 2020.[46] Thereafter, on August 28, 2020, Petitioner filed another *Urgent Motion To Postpone [Hearing of September 02, 2020]*,[47] which was likewise granted by the Court in the Resolution dated September 02, 2020.[48]

On November 27, 2020 Petitioner filed a *Compliance*,[49] submitting the *Sworn Statement of Ms. Lourdes Pantola* dated November 26, 2020.[50] It then offered the testimony of Ms. Lourdes Pantola, its Accountant, as a rebuttal witness.[51]

Subsequently, the *Formal Offer of Evidence on Rebuttal For the Petitioner* was filed on December 11, 2020.[52] On December 10, 2020, Respondent posted his *Comment (To Petitioner's Formal Offer of Evidence on Rebuttal).*[53] In the Resolution dated February 02, 2021,[54] the Court admitted all of Petitioner's exhibits.

The *Memorandum For Respondent* was posted on March 11, 2021.[55] Petitioner, however, failed to file its memorandum.[56]

This case was deemed submitted for decision on July 05, 2021.[57]

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43 *Id.*, pp. 342 to 343.
44 *Id.*, pp. 348 to 349.
45 *Id.*, pp. 351 to 352.
46 *Id.*, p. 356.
47 *Id.*, pp. 358 to 360.
48 *Id.*, p. 365.
49 *Id.*, pp. 367 to 368.
50 *Id.*, pp. 369 to 373.
51 *Id.*, Exhibit "P-3", pp. 385 to 389; Minutes of the hearing held on, and Order dated, December 02, 2020, pp. 378 to 380.
52 *Id.*, pp. 381 to 383.
53 *Id.*, pp. 397 to 398.
54 *Id.*, pp. 403 to 404.
55 *Id.*, pp. 405 to 414.
56 *Id.*, Records Verification Report dated June 14, 2021 issued by the Judicial Records Division of this Court, p. 418.
57 *Id.*, Resolution dated July 05, 2021, p. 420.

The Issues

As stipulated by the parties, the issues for the Court's resolution are as follows, *viz.*:

> "8. Whether Respondent Commissioner of Internal Revenue made proper service, and whether Petitioner received the Formal Assessment Notices for Income Tax and Value Added Tax for CY 2011.
>
> 9. Whether the deficiency Income Tax and VAT assessments for CY 2011, and the Final Notice Before Seizure should be cancelled for failure of service of FAN."[58]

Petitioner's Arguments

Petitioner argues that it did not receive the FAN, and hence, the alleged income tax and VAT assessments did not become final; that the non-service of the FAN violated due process in the issuance of assessments required under Section 228 of the NIRC of 1997, as amended; that it follows also that the FNBS did not attain the status of finality, and it cannot be enforced by the BIR; that in the formal protest to the PAN, Petitioner protested the income tax assessment that was based solely on computerized matching conducted by the BIR on information/data provided by third party suppliers against Petitioner's domestic purchase per returns; that regarding the imposition of the fifty percent (50%) fraud penalty, assumption could not give rise to valid assessments without the resulting violation under Section 228; that being a zero-rated taxpayer, there is no output tax on its export sales; and that there is no legal basis for the imposition of the VAT assessment, and the same should be cancelled.

Respondent's Counter-arguments

Respondent counter-argues that Section 11 of Revenue Regulations No. 12-85 is applicable to the instant case, and Petitioner acted in bad faith and in abuse of right in changing its address during a pending tax investigation, thus, the service of assessment notice to its old registered address is valid; that Petitioner violated the clean hand doctrine; that the FAN was already final, executory and demandable; and that consequently, the Court has no jurisdiction to take cognizance of this case.

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[58] *Id.*, JSFI, Issues, Pars. 8 and 9, p. 252.

Discussion/Ruling

The Court of Tax Appeals has jurisdiction over this case

Respondent concludes that the Court has no jurisdiction over the instant case since he is of the view that the FAN has already become final, executory and demandable.

The Court rules otherwise.

Section 7(a)(1) of Republic Act ("RA") No. 1125[59], as amended by RA No. 9282[60], provides:

> "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 Code or other laws administered by the Bureau of Internal Revenue**;"[61]

Based on the foregoing provision, the appellate jurisdiction of this Court is not limited to cases which involve decisions of Respondent on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC of 1997, as amended, or related laws administered by the BIR.[62]

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59 An Act Creating The Court Of Tax Appeals.

60 An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (Cta), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Or Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes.

61 *Emphasis supplied.*

62 Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc., G.R. No. 169225, November 17, 2010.

The FNBS dated July 24, 2017,[63] being substantially a collection letter, constitutes as an act of Respondent on "other matters" arising under the NIRC, which pursuant to *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*,[64] may be the subject of an appropriate appeal before this Court.[65] Such being the case, this Court has jurisdiction to entertain the present *Amended Petition for Review* as it assails the said FNBS. Correspondingly, this Court may look into the validity of the same FNBS issued by the BIR against Petitioner, and in case it finds the same as unfounded or invalid, it may enjoin the enforcement thereof.

The tax assessment in this case is void

Be that as it may, this Court cannot sustain the said FNBS, as it is dependent and based on the subject tax assessments, which are void. The said tax assessments are a nullity since LN No. 048-RLF-11-11-00174 dated February 26, 2013[66] was not converted into a *Letter of Authority* ("LOA").

To stress, the LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[67]

In *AFP General Insurance Corporation v. Commissioner of Internal Revenue*,[68] the Supreme Court held as follows, *viz.*:

> "The power to assess necessarily includes the authority to examine any taxpayer for purposes of determining the correct amount of tax due from him. Verily, the law vests the BIR with general powers in relation to the 'assessment and collection of all internal revenue taxes.' However, certainly, not all BIR personnel may *motu proprio* proceed to audit a taxpayer. Only 'the CIR or his duly authorized representative may *authorize the examination of any taxpayer*' and issue an assessment against him.
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> **That a representative has in fact been authorized to audit a taxpayer is <u>evidenced by the LOA</u>**, which 'empowers a designated [r]evenue [o]fficer to examine, verify, and scrutinize a

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63 BIR Records, Part of Exhibit "P-2", at p. 77.
64 G.R. No. 162852, December 16, 2004.
65 Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., *et seq.*, G.R. Nos. 201398-99 and 201418-19, October 03, 2018.
66 Docket, Exhibits "R-1" to "R-1-c", pp. 317.
67 Commissioner of Internal Revenue v. De La Salle University, Inc., et seq., G.R. Nos. 196596, 198841, and 198941, November 09, 2016.
68 G.R. No. 222133, November 04, 2020.

> taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.'
>
> **In cases where the BIR conducts an audit without a valid LOA,** or in excess of the authority duly provided therefor, **the resulting assessment shall be void and ineffectual.** xxx."[69]

Based on the foregoing jurisprudential pronouncements, it can be discerned that an assessment must be preceded by a valid LOA, before the BIR may conduct an investigation of a taxpayer; otherwise, the resulting tax assessment shall be void and ineffectual.

Moreover, in *Commissioner of Internal Revenue vs. Sony Philippines, Inc.,*[70] the Supreme Court held as follows:

> "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.**"[71]

On the basis of the foregoing, it must be emphasized that the issuance of LOA prior to examination and assessment is a requirement of due process; and that the issuance of an LN to taxpayer is not sufficient if no corresponding or subsequent LOA was issued. To be sure, due process demands that after an LN has serve its purpose, the RO should have properly secured an LOA before

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[69] *Emphasis and underscoring supplied.*
[70] G.R. No. 242670, May 10, 2021.
[71] *Emphasis supplied.*

proceeding with the further examination and assessment of the concerned taxpayer. The result of the absence of an LOA renders the examination and assessment a nullity, based on the taxpayer's right to due process.

Consistent with the foregoing principles, the High Court held, in the more recent case of *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*,[72] a similar pronouncement, to wit:

> "In *Medicard Philippines, Inc. v. CIR*, the Court nullified the deficiency VAT assessment against Medicard Philippines because there was no LOA issued by the CIR prior to the issuance of PAN and FAN. **The Letter of Notice earlier sent to Medicard Philippines was not validly converted into a LOA.** According to the Court in Medical Philippines:
>
> > 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)."[73]

In this case, there is no indication that an LOA was issued. As borne out by the records in this case, there is only LN No. 048-RLF-11-11-00174 dated February 26, 2013[74] which preceded the subject PAN and FAN.

In the PAN dated June 16, 2016 addressed to Petitioner,[75] the BIR stated, *inter alia*, the following:

> "Please be informed that after computerized matching conducted by the Bureau on information/data provided by third party sources against your declaration per Tax / VAT returns <u>per **Letter Notice (LN) No. 048-RLF-11-00-00174 dated February 26, 2013**</u>, there has been found due from you deficiency Income Tax and Value-Added Tax for the taxable year **<u>2011</u>**, ..."[76]

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72 G.R. No. 241848, May 14, 2021.
73 *Emphasis supplied.*
74 Docket, Exhibits "R-1" to "R-1-c", pp. 317.
75 *Id.*, Exhibit "R-9", p. 324.
76 *Underscoring supplied.*

And in the FAN dated July 12, 2016,[77] the BIR merely reiterated verbatim the foregoing paragraph.

Thus, it is clear that there is no LOA which has been issued prior to the issuance of the above-stated PAN and FAN.

As a corollary, it is shown that it is RO Angelo P. San Ramon who conducted the audit and investigation of Petitioner, as evidenced by the *Revenue Officer's Audit Report on Income Tax* and the *Revenue Officer's Audit Report on Value-Added Tax* he submitted,[78] which apparently became the basis of the subject FAN. Such being the case, RO San Ramon was not validly authorized, by virtue of an LOA, to conduct such audit and investigation of Petitioner. In other words, RO San Ramon lacked the proper authority to conduct the examination and assessment of Petitioner.

Apropos, the importance of the lack of the RO's authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment.[79] To emphasize, in the absence of such authority, the assessment or examination is a nullity.[80]

Correspondingly, the subject tax assessments issued against Petitioner for taxable year 2011 are void, for lack of authority of the RO Angelo P. San Ramon to examine Petitioner's books for calendar year 2011. Being void, the said tax assessments bear no fruit.[81] Hence, the FAN dated July 12, 2016,[82] and FNBS dated July 24, 2017,[83] which was based on the said FAN, cannot be legally enforced against Petitioner. As such, it becomes already unnecessary to address the issues and the remaining arguments raised by the parties, especially as regards whether or not the said FAN was validly served to Petitioner.

WHEREFORE, in light of the foregoing considerations, the present *Amended Petition for Review* is **GRANTED**. Accordingly, the subject income tax and VAT assessments, including the interests, surcharges and penalties, for taxable year 2011, in the aggregate amount of Php6,434,062.46 are declared as **INVALID**, and therefore, are **CANCELLED** and **SET ASIDE**.

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[77] BIR Records, Exhibit "R-12", p. 54.

[78] Docket, Exhibits "R-5" and "R-6", pp. 322 to 323.

[79] Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue, G.R. No. 241848, May 14, 2021.

[80] Commissioner of Internal Revenue v. Sony Philippines, Inc., G.R. No. 178697, November 17, 2010.

[81] Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue, G.R. No. 241848, May 14, 2021.

[82] BIR Records, Exhibits "R-12", "R-12-A", and "R-13", pp. 51 to 54; Part of Exhibit "P-2", at pp. 55 to 56.

[83] *Id.,* Part of Exhibit "P-2", at p. 77.

Furthermore, Respondent or any person duly acting on his behalf is **ENJOINED** from taking any further action against Petitioner arising from the subject tax assessments.

Moreover, the PCL dated July 11, 2017 and FNBS dated July 24, 2017 issued against Petitioner are likewise **CANCELLED** and **SET ASIDE.**

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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

ERLINDA P. UY
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