22-000095-0041

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10795

FABTECH KITCHENS UNLIMITED, INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. ABRILLIUS RAFFY C. LAGUESMA
Bureau of Internal Revenue-Revenue Region No. 8A
36th Floor, Legal Division, Export Bank Plaza Building
Sen. Gil Puyat Ave., corner Chino Roces Ave., Makati City

DIVINALAW
8th Floor, Pacific Star Building
Sen. Gil Puyat Avenue corner Makati Avenue
Makati City

GREETINGS:

You are hereby notified by these presents that on **February 12, 2025,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 13, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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FIRST DIVISION

FABTECH KITCHENS UNLIMITED, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10795

Members:

DEL ROSARIO, *P.J., Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:

FEB 12 2025 11:40 AM

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Fabtech Kitchens Unlimited, Inc. (**petitioner**), pursuant to Rule 8, Section 3(a)[2] in relation to Rule 4, Section 3(a)(1)[3] of the Revised Rules of the Court of

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[1] Filed on 02 March 2022, Division Docket, Volume I, pp. 6-65.

[2] **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[3] **SEC. 3.** *Cases Within the Jurisdiction of the Court in Division.* — The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

Tax Appeals (**RRCTA**). It seeks to cancel and set aside the Final Decision on Disputed Assessment[4] (**FDDA**) that respondent Commissioner of Internal Revenue (**respondent/CIR**) issued to petitioner for its alleged tax deficiency assessment in the aggregate amount of ₱53,771,480.83 for the fiscal year ending 31 March 2017 (**FY 2017**).

PARTIES OF THE CASE

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office address at Phase 1, Block 3, Lots 2 & 3 Santiago St., Paseo de Magallanes Commercial Center, Makati City.[5] Petitioner claims to be primarily engaged in providing its clients with top quality food commercial equipment.

Respondent, on the other hand, is the duly appointed CIR vested with the authority to carry out the functions, duties, and responsibilities of the said office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by the Bureau of Internal Revenue (**BIR**).

FACTS OF THE CASE

On 12 October 2018, respondent issued a Letter of Authority (**LOA**) No. 048-2018-00000147/eLA201500087682[6], authorizing Revenue Officer Jemaruh Cajuday (**RO Cajuday**) and Group Supervisor Fatima Pre (**GS Pre**) of Revenue District No. 048, West-Makati, to examine petitioner's books of accounts for all internal revenue taxes for the period of 01 April 2016 to 31 March 2017, or FY 2017. Petitioner's authorized representative, Shari Anne A. Manuel (**Manuel**), received the LOA on 17 October 2018.

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(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[.]

4 Dated 27 January 2022; Exhibits "P-1", Division Docket, Volume I, pp. 99-100.

5 See Paragraph 1, Parties, Petition for Review, supra at note 1, p. 6.

6 BIR Records, p. 2.

On 02 May 2019, 08 May 2019, 10 May 2019 and 14 May 2019, RO Cajuday, GS Cadidia Carim (**GS Carim**) and RO Theodoro Mandigma (**RO Mandigma**) visited petitioner's office to conduct an audit.[7]

Later, or on 28 May 2019, petitioner received a Notice for Informal Conference[8] (**NIC**) informing it of the assessment for deficiency taxes in the aggregate amount of ₱52,364,303.34.

On 25 June 2019, petitioner paid the assessed deficiency Withholding Tax on Compensation (**WTC**), Expanded Withholding Tax (**EWT**), and Documentary Stamp Tax (**DST**), in the amounts of ₱193,398.84, ₱845,504.70 and ₱1,290,453.96, respectively, including the interests, surcharges and penalties.[9]

On 17 February 2020, petitioner also received the Preliminary Assessment Notice[10] (**PAN**), with Details of Discrepancies, where it was stated that it has been assessed with deficiency value-added tax (**VAT**), fringe benefit tax (**FBT**), and improperly accumulated earnings tax (**IAET**) in the total amount of ₱44,629,435.68. On 19 June 2020, petitioner also received the [Final] Assessment Notice/Formal Letter of Demand[11] (**FAN/FLD**) with Details of Discrepancies, where it was directed to pay its deficiency tax liabilities on or before 08 July 2020.[12]

Subsequently, on 17 July 2020, disagreeing with respondent's findings, petitioner filed a Protest[13] (in the nature of a request for reconsideration) to the FAN/FLD (**Protest to FAN**) before the BIR National Office – Large Taxpayer Service.

Thereafter, on 24 August 2020, petitioner received a Letter dated 28 July 2020[14] from Regional Director Maridur V. Rosario (**RD Rosario**) of Revenue Region No. 8A-Makati City, informing it of the grant of its

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7 Exhibits "P-22-A" to "P-22-E", Division Docket, Volume I, pp. 185-190.
8 Id., pp. 121-125.
9 Exhibits "P-15" to "P-15-B", id., pp. 126-137.
10 Exhibits "P-16", id., pp. 138-144.
11 Exhibits "P-17" to "P-17-C", Exhibit "P-18", id., pp. 145-154.
12 Exhibits "P-17" to "P-17-C", id., pp. 145-148, see also the stamp receiving copy.
13 Exhibit "P-19", id., pp. 155-165.
14 Exhibit "P-20", id., p. 176.

Protest to FAN. Likewise, petitioner was informed that its case will be forwarded to RDO No. 48-West Makati.

On 31 January 2022, petitioner received the FDDA (dated 27 January 2022[15]) issued and signed by RD Rosario stating that its Protest to FAN lacked legal and factual basis, thus, the assessment against it had become final. Further, it was directed or demanded to settle its tax liabilities composed of VAT, FBT, IAET and compromise penalty in the aggregate amount of ₱53,771,480.83. The FDDA indicated that the due date of payment was on or before 15 March 2022.

PROCEEDINGS BEFORE THE COURT

On 02 March 2022, petitioner filed a "Petition for Review"[16] before this Court. The case was raffled to the Second Division and was docketed as CTA Case No. 10795. Later, with the issuance of the Summons, the Second Division ordered respondent to file his or her Answer to the instant petition.[17]

Still later, after being granted an extension of time to file an Answer[18], respondent filed the same on 10 May 2022.[19] In his or her Answer, respondent interposed the following defenses: (1) the revenue officer (**RO**) who conducted the audit is duly authorized; (2) petitioner was afforded its right to due process in all stages of the audit; (3) an audit was conducted pursuant to the minimum audit procedures prescribed; (4) the imposition of FBT on petitioner's housing benefits for its managerial employee is correct; (5) the period to assess deficiency FBT has not yet prescribed; and, (6) petitioner failed to submit the relevant supporting documents in relation to its IAET liability.[20]

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15 Supra at note 4.

16 Supra at note 1.

17 See Summons dated 07 March 2022, Division Docket, Volume I, p. 332.

18 See Order dated 26 April 2022, id., p. 338.

19 Id., pp. 339-356.

20 See Respondent's Answer, id.

Subsequently, both parties filed their respective Pre-Trial Briefs[21] on 04 August 2022 and, thereafter, the pre-trial proceeded on 08 August 2022.[22]

During the pre-trial, the Second Division: (1) ordered the parties to appear before the Philippine Mediation Center-Court of Tax Appeals (**PMC-CTA**) for conciliation proceedings on 31 August 2022; (2) granted the parties until 30 September 2022 to file their Joint Stipulation of Facts and Issues (**JSFI**); and, (3) set the dates for the Commissioner's Hearing and the presentation of petitioner's and respondent's respective evidence.

In the *interim*, respondent submitted the BIR Records[23] which the Second Division noted in a Resolution dated 01 September 2022.[24] Later, the PMC-CTA, through a Report, informed the Second Division that the parties decided not to proceed with the mediation proceedings.[25]

On 30 September 2022, the parties filed their "[JSFI]".[26] On 07 November 2022, the Second Division issued the Pre-Trial Order[27] And declared the pre-trial terminated.

In the trial that ensued, petitioner presented its witness, Maria Teresa K. Go (**Go**), who testified by way of a Judicial Affidavit dated 01 March 2022[28] and declared that: (1) she is the manager of petitioner's Finance and Accounting Department; (2) petitioner is primarily engaged in providing clients with top quality food commercial equipment; (3) it received the FDDA dated 27 January 2022 on 31 January 2022; (4) RO Cajuday, GS Carim and RO Mandigma visited petitioner's office on 02 May 2019, 08 May 2019, 10 May 2019 and 14 May 2019, to conduct an audit[29]; (5) on 28 May 2019, petitioner received an NIC[30]; (6) on 25 June 2019, it settled the assessed deficiency WTC, EWT, and DST, in the

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[21] See Petitioner's Pre Trial-Brief and Respondent's Pre Trial-Brief, id., pp. 447-464 and 399-404, respectively.
[22] See Minutes of the Hearing and Order, both dated 08 August 2022, id., Volume I, p. 468 and Volume II, pp. 469-471, respectively.
[23] See Submission of BIR Records, Division Docket, Volume II, p. 474.
[24] Id., p. 477.
[25] See No Agreement to Mediate dated 31 August 2022, id., p. 476.
[26] Id., pp. 489-494.
[27] Id., pp. 498-506.
[28] Exhibit "P-36", id., Volume I, pp. 66-98.
[29] Supra at note 7.
[30] Supra at note 8.

amounts of ₱193,398.84, ₱845,504.70 and ₱1,290,453.96, respectively[31]; (7) on 17 February 2020, it also received the PAN, with Details of Discrepancies, stating that it had deficiency VAT, FBT and IAET amounting to ₱30,240,337.46, ₱2,522,782.53 and ₱11,866,315.69, respectively[32]; (8) on 19 June 2020, it received the FAN/FLD with Details of Discrepancies[33]; (9) on 17 July 2020, it filed a Protest to FAN in the nature of a request for reconsideration[34]; (10) on 24 August 2020, it received a Letter dated 28 July 2020 from RD Rosario, informing it that its Protest to FAN has been granted[35]; (11) the BIR failed to consider its explanations and evidence submitted since the PAN, FAN/FLD and FDDA were identical; (12) the BIR examiners who conducted the tax audit were not duly authorized - the LOA dated 12 October 2018 named RO Cajuday and GS Pre as the duly authorized BIR examiners but GS Carim and RO Mandigma replaced GS Pre without the issuance of a new LOA; (12) the period to assess the deficiency VAT for the first three (3) quarters of FY 2017 had already prescribed; (13) petitioner contested the FBT assessment because the lease payments arising from the subject contract are for its convenience and not as fringe benefits of the occupants; (14) the period to assess the FBT had already prescribed; and, (15) IAET should not be imposed since there was no improper accumulation of retained earnings as it was made for reasonable business needs - acquisition of land and building that it will use as its headquarters.

During cross-examination, Go stated that: (1) RO Cajuday was duly authorized to conduct the audit; (2) the BIR officers went to petitioner's office to conduct the actual examination of check vouchers, sales invoices and official receipts (which were, however, not attached to the Judicial Affidavit); and, (3) the corporate expansion or construction project did not push through after petitioner closed its business.[36]

On redirect examination, Go testified that: (1) GS Carim and RO Mandigma replaced GS Pre without being issued with a new LOA; (2) GS Carim and RO Mandigma visited petitioner's office for four (4) days and examined all of its records, files and check vouchers; (3) the

31 Supra at note 9.
32 Supra at note 10.
33 Supra at note 11.
34 Supra at note 13.
35 Supra at note 14.
36 TSN dated 17 November 2022, pp. 8-11.

check vouchers, sales invoices and official receipts were not attached to the Judicial Affidavit because the FAN/FLD was received during the height of the pandemic and most of its employees did not report for work; (4) the BIR already checked the said documents earlier mentioned during their four (4) days visit in its premises; and, (5) its management had the intention of pursuing the construction of the headquarters as of 31 March 2017.[37]

Respondent did not conduct any re-cross examination.[38]

Having presented its witnesses, on 25 November 2022, petitioner filed its Formal Offer of Evidence[39] (**FOE**) and offered Exhibits "**P-1**" to "**P-36**", inclusive of the sub-markings. Respondent filed his or her Comment thereto on 07 December 2022.[40] In a Resolution dated 04 January 2023[41], the Second Division admitted all of petitioner's offered exhibits.

In another Resolution dated 29 May 2023, the Second Division transferred the case to the First Division pursuant to Administrative Circular No. 01-2023 dated 23 May 2023.[42]

For his or her part, respondent presented RO Cajuday as the sole witness.[43] In her Judicial Affidavit[44], RO Cajuday declared that: (1) she is the RO assigned to audit petitioner's books of accounts and other accounting records for FY 2017; (2) she served a copy of the LOA and Checklist of Requirements to petitioner on 17 October 2018; (3) petitioner received the NIC dated 28 May 2019 on the same date; (4) based on her audit, she prepared a memorandum recommending the issuance of PAN; (5) GS Carim signed the memorandum; (5) on 17 February 2020, petitioner received a copy of the PAN; (6) on 19 June 2020, petitioner received a copy of the FAN/FLD assessing petitioner deficiency VAT, FBT, IAET and interests in the aggregate amount of

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37 Id., pp. 11-13.
38 Id., p. 14.
39 Filed personally, Division Docket, Volume II, pp. 511-525.
40 See Motion to Admit Attached Comment/Opposition, id., pp. 563-570.
41 Id., pp. 578-580.
42 Reorganizing the Divisions of the Court following the retirement of Associate Justice Erlinda P. Uy, id., p. 582.
43 Minutes of the hearing held on and Order, both dated 16 August 2023, id., pp. 584A-584C and pp. 585-586, respectively.
44 Exhibit "R-22", id., Volume I, pp. 408-418.

₱47,701,119.02; (7) petitioner filed its Protest to FAN requesting for a reconsideration through a Letter dated [17] July 2020; (8) after re-evaluation of petitioner's case an FDDA was issued, upholding the FAN/FLD, finding petitioner liable for deficiency taxes in the total amount of ₱53,771,480.83, inclusive of interest; and, (9) petitioner's Protest to FAN lacked legal and factual basis for it failed to submit evidence in support of its contentions.

During her cross-examination, RO Cajuday testified further that: (1) the names of the BIR examiners are to be indicated in the LOA as they are the ones authorized to conduct the audit; (2) the LOA issued to petitioner indicated her name and GS Pre's as the authorized examiners to carry out the audit; (3) no other LOA was issued to petitioner for FY 2017; and, (4) she prepared a Memorandum (Exhibit "R-6") which contained her audit findings, and it was GS Carim that acted as her supervisor.[45] No redirect and re-cross examination followed.[46]

Later, the First Division granted the "Motion to Admit the Attached [FOE]"[47], that respondent belatedly filed on 30 August 2023.[48] Petitioner filed its comment thereto on 08 September 2023.[49] On 17 January 2024, the First Division issued a Resolution that admitted all of respondent's exhibits.[50]

On 16 February 2024, petitioner filed its Memorandum[51], while respondent filed his or her Memorandum[52] on 21 February 2024. On 12 March 2024, the case was then deemed submitted for decision.[53]

ISSUE

The parties put forward this sole issue for this Court's resolution –

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45 TSN dated 16 August 2023, pp. 11-15.
46 Id., p. 16.
47 See Resolution dated 08 September 2023, Division Docket, Volume II, p. 601.
48 Id., pp. 588-597.
49 Id., pp. 602-611.
50 See Resolution dated 17 January 2024, id., pp. 616-617.
51 Id., pp. 618-679.
52 Id., pp. 681-699.
53 See Resolution dated 12 March 2024, id., p. 703.

WHETHER PETITIONER FABTECH KITCHENS UNLIMITED, INC. IS LIABLE TO PAY DEFICIENCY VALUE-ADDDED TAX (VAT), FRINGE BENEFIT TAX (FBT), IMPROPERLY ACCUMULATED EARNINGS TAX (IAET) AND COMPROMISE PENALTY IN THE TOTAL AMOUNT OF ₱53,771,480.83, FOR THE FISCAL YEAR (FY) 2017.

ARGUMENTS

In support of the petition, petitioner claims that the disputed assessments were issued in violation of petitioner's right to due process. The BIR examiners who conducted the tax audit investigation were not duly authorized. According to petitioner, Section 13[54] of the NIRC of 1997, as amended, requires that an RO must be duly authorized before conducting an audit of the taxpayer.[55]

Petitioner adds that respondent violated its right to due process as the former failed to give due consideration to its arguments and evidence.[56] It contends further that the subject assessment is void for respondent's failure to inform petitioner of the facts and the law on which the assessment was made.[57]

Petitioner explains further that the deficiency VAT assessment issued against it is invalid for the following reasons: (1) the period to assess the deficiency VAT already prescribed; (2) respondent's formula in computing petitioner's receipt subjected to VAT is insufficient to form the basis of the assessment; (3) respondent ignored its submitted documents and made a sweeping generalization that all claimed input tax is not supported by evidence; and, (4) there were erroneous duplications in respondent's computation of unsupported input tax.[58]

Petitioner also claims that the deficiency FBT assessment issued against it is invalid since: (1) the lease payments considered as fringe benefits were made primarily for the employer's convenience; (2) the period to assess the deficiency FBT already prescribed; and,

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54 SEC. 13. *Authority of a Revenue Officer.*
55 See Petitioner's Memorandum, Division Docket, Volume II, p. 630.
56 Id., p. 639.
57 Id., p. 645.
58 Id., pp. 651-662.

(3) the computation of the FBT is improper because the fringe benefit should only be fifty percent (50%) of the lease payments.[59]

Finally, petitioner contends that the deficiency IAET assessment is likewise invalid since: (1) there was no improper accumulation of retained earnings as the retention was for the reasonable needs of the business; and, (2) respondent's computation of improperly accumulated earnings was erroneous.[60]

Responding to petitioner's arguments, respondent prays for the dismissal of the present Petition. According to respondent, the due process requirements were observed in petitioner's assessment. The RO for petitioner's audit for FY 2017 was duly authorized and had, in fact, conducted a quality audit. In addition, he or she insists that the FBT's imposition on the housing benefit of petitioner's managerial employees is correct, and that the period to assess the deficiency FBT was yet to prescribe.[61]

Respondent also claims that petitioner failed to submit the relevant supporting documents in relation to its IAET liability. Finally, he or she maintains that tax assessment enjoys a presumption of regularity and correctness, and respondent utterly failed to overcome such presumption.[62]

RULING OF THE COURT

At the outset, it bears emphasis that the CTA, being a court of special jurisdiction, can only take cognizance of matters which are clearly within its jurisdiction.[63] Section 7(a)(1) of Republic Act (**RA**) No. 1125[64], as amended by RA 9282[65], provides:

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59 Id., pp. 662-669.

60 Id., pp. 669-677.

61 See Respondent's Memorandum, id., pp. 681-693.

62 Id., pp. 693-697.

63 *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, 25 March 2019, citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, 22 October 2014.

64 AN ACT CREATING THE COURT OF TAX APPEALS.

65 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.

...

Sec. 7. *Jurisdiction.* — The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. **<u>Decisions</u> of the Commissioner of Internal Revenue in cases involving <u>disputed assessments</u>**, 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[.][66]

...

It is well-settled that the perfection of an appeal in the manner and within the period pursuant to the relevant provisions of the law is not only mandatory but jurisdictional, and non-compliance with these legal requirements is fatal to a party's cause.[67]

The law is clear on the period to appeal to this Court if a decision on the protest is denied in whole or in part by the CIR. Section 228 of the NIRC of 1997, as amended, in part, reads 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[.] ...

...

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.

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66 Emphasis and underscoring supplied.

67 *Team Pacific Corporation v. Josephine Daza in her capacity as Municipal Treasurer of Taguig*, G.R. No. 167732, 11 July 2012.

> **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.**[68]
>
> ...

The afore-quoted Section 228 is implemented by RR No. 12-99[69], as amended by RR No. 18-2013[70], issued on 28 November 2013. Relevant portions of Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, provides the taxpayer's options on disputed assessments, to wit:

> ...
>
> Sec. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> ...
>
> Sec. 3.1.4. *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation as follows:
>
> (i) ***Request for reconsideration* — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.**
>
> (ii) *Request for reinvestigation* — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.
>
> ...
>
> For request for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter protest, otherwise, the

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[68] Italics in the original text, emphasis and underscoring supplied.

[69] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

[70] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

> assessment shall become final. The term "*relevant supporting documents*" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. ...
>
> ...
>
> **If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may <u>either</u>: <u>(i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision</u>**; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.[71]
>
> ...

In applying the foregoing rules, the Supreme Court, in the cases of *Philippine Amusement and Gaming Corporation v. Bureau of Internal Revenue, et al.*[72] (**PAGCOR**) and *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*[73], explained that there are three (3) options by which a taxpayer may appeal the denial of its administrative protest, to wit:

> ...
>
> Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:
>
>> **1. If the protest is wholly or partially denied by the CIR <u>or</u> his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.**
>>
>> 2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.

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71 Italics in the original text, emphasis and underscoring supplied.

72 G.R. No. 208731, 27 January 2016; Citation omitted, emphasis, italics and underscoring in the original text and supplied.

73 G.R. No. 221780, 25 March 2019.

> 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.

...

Based on the foregoing provisions and jurisprudence, where the CIR, through his or her authorized representative, denies a taxpayer's protest, the latter may appeal to the CTA within thirty (30) days from the date of receipt of the CIR's decision.

In this case, the following are the pertinent dates and events in determining the timeliness of the Petition for Review:

Date	Event
19 June 2020	Petitioner received respondent's FAN/FLD dated 08 June 2020.[74]
17 July 2020	Petitioner filed its Request for Reconsideration (Protest against the FAN/FLD) dated 17 July 2020[75] within the 30-day reglementary period.
24 August 2020	Petitioner received respondent's Letter dated 28 July 2020[76], giving due course the Request for Reconsideration.
31 January 2022	Petitioner received respondent's FDDA dated 27 January 2022[77], signed by RD Rosario.
02 March 2022	Petitioner filed its Petition for Review[78] within the 30-day reglementary period.

As shown above, the instant Petition for Review[79] was timely filed on <u>02 March 2022</u>, as counted from petitioner's receipt of respondent's FDDA on 31 January 2022. The Court then has validly acquired jurisdiction over the case.

We now proceed to the merits of the case.

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[74] Exhibit "P-17" and "P-18", supra at note 11.
[75] Exhibit "P-19", supra at note 13.
[76] Exhibit "P-20", supra at note 14.
[77] Exhibit "P-1"/Exhibit "R-1", supra at note 4.
[78] Supra at note 1.
[79] Supra at note 1.

Petitioner centrally attacks the absence of a valid authority on the part of the BIR examiners who conducted the audit. Particularly, RO Mandigma and GS Carim were without any new LOA when they replaced GS Pre (the person duly named in the LOA). In contrast, respondent is firm that the BIR examiner who conducted and concluded petitioner's audit FY 2017 was duly authorized by an LOA.[80] According to him or her, since an LOA was issued authorizing RO Cajuday to conduct petitioner's audit, the assessment of petitioner is regular and valid.[81]

Respondent completely misses the point. It is not RO Cajuday's authority that is questioned but that of the other BIR examiners (RO Mandigma and GS Carim) who proceeded with petitioner's audit without an LOA. Consistently, We have held that the RO and GS tasked to examine the books of accounts of taxpayers must be authorized by an LOA. Otherwise, the assessment for deficiency taxes resulting therefrom is void. Section 6(A) of the NIRC of 1997, as amended, reads:

> ...
>
> **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.[82]
>
> ...

Section 10(c) of the NIRC of 1997, as amended, provides:

> ...
>
> **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**

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80 Supra at note 6.

81 See Respondent's Memorandum, Division Docket, Volume II, p. 684.

82 Emphasis supplied and italics in the original text.

> **Director** shall, within the region and district offices under his jurisdiction, among others:
>
> ...
>
> > (c) **Issue Letters of Authority** for the examination of taxpayers within the region[.][83]
>
> ...

Section 13 of the NIRC of 1997, as amended, likewise requires that the RO assigned to examine the taxpayer's books of accounts must be armed with an LOA, *viz*:

> ...
>
> **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.[84]
>
> ...

Under the said provision, an RO must be clothed with authority, through an LOA, to conduct the audit or investigation of the taxpayer. Absent such grant of authority through an LOA, the RO cannot conduct the audit of taxpayer's books of accounts and other accounting records because such right is statutorily conferred only upon the CIR.

In addition, the **CIR's own rules, specifically Section C(5) of RMO No. 43-90[85], mandate the issuance of a new LOA in cases of reassignment or transfer of examination to another RO.** It reads —

> ...
>
> C. Other policies for issuance of L/As.
>
> ...

[83] Emphasis supplied and italics in the original text.
[84] Emphasis supplied and italics in the original text.
[85] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

> 5. **Any reassignment/transfer of cases to another RO(s)**, and revalidation of [LOAs] which have already expired, **shall require the issuance of a new [LOA]**, with the corresponding notation thereto, including the previous [LOA] number and date of issue of said [LOAs].[86]
>
> ...

Also, in the case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[87] **(McDonald's)**, the Supreme Court has already highlighted the importance of the issuance a new LOA in case of transfer or re-assignment in this wise:

> ...
>
> It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may **notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers**. However, **notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing**. The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.
>
> The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. **But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.**
>
> **The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative**. The memorandum of assignment,

86 Emphasis and underscoring supplied.
87 G.R. No. 242670, 10 May 2021; Emphasis supplied.

> referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10(c) and 13 of the NIRC. Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.
>
> ...

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[88], the Supreme Court underscored the importance of an LOA, *viz*:

> ...
>
> **An 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. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** ...
>
> ...
>
> 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 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.**
>
> ...
>
> ... 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.
>
> ...

[88] G.R. No. 222743, 05 April 2017; Citation omitted and emphasis supplied.

The Supreme Court, citing the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[89], went on to state:

> ...
>
> 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. **<u>In the absence of such an authority, the assessment or examination is a nullity.</u>**
>
> ...

Further, the Supreme Court in *McDonald's*[90] concluded that:

> ...
>
> In summary, **We rule that the <u>practice of reassigning or transferring revenue officers originally named in the LOA</u> and substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA <u>(i) violates the taxpayer's right to due process in tax audit or investigation</u>; <u>(ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer</u>; and <u>(iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990</u>.**
>
> ...

In the case at bar, the records indisputably show that the LOA[91] only named RO Cajuday and GS Pre as the duly authorized BIR examiners that could conduct an examination of petitioner's books. Without issuing a new LOA, RO Mandigma and GS Carim could not be deemed to have been validly clothed with the proper authority to continue the audit and recommend the issuance of the assessments against petitioner. Thus, considering the absence of a new and valid LOA authorizing them to examine petitioner's books of accounts and other accounting records (as a result of the reassignment/transfer of the case to them), the deficiency tax assessment issued against petitioner is inescapably void.

---

89 G.R. No. 178697, 17 November 2010; Emphasis and underscoring supplied.

90 Supra at note 87; Emphasis and underscoring supplied.

91 Supra at note 6.

The pieces of evidence on record also show that RO Mandigma and GS Carim visited petitioner's premises to conduct a BIR audit on 02 May 2019, 08 May 2019, 10 May 2019 and 14 May 2019. These pieces of evidence are: (1) Exhibits "P-22" to "P-22-B" - petitioner's logbook - showing the names RO Mandigma and GS Carim; and, (2) Exhibits "P-22-C" and "P-22-E" - RO Mandigma and GS Carim's visitors pass.[92]

The extent of GS Carim's participation in petitioner's tax audit is also evident when: (1) she received petitioner's documents when it submitted its compliance to BIR's Second and Final Notice[93]; and, (2) she was named as the group supervisor in both the PAN[94] and FAN/FLD.[95]

As for RO Cajuday, she admitted during her cross examination that no new or other LOA was issued to petitioner for FY 2017 and GS Carim acted as her supervisor during the course of petitioner's tax audit. We quote below the relevant portion of RO Cajuday's testimony:

...
ATTY. BARRION

Q: I am showing you a copy of the [LOA], it was marked as Exhibit "R-1". Would you mind telling the Court who are the names indicated in the [LOA]?

MS. CAJUDAY

A: This is my name as the lead or the [RO] Jemaruh Cajuday and **my then [GS] Fatima Pre.**

ATTY. BARRION

Q: Thank you. Do you confirm that there are **no other [LOA]** that was issued to Fabtech for the taxable year 2017?

MS. CAJUDAY
A: **Not that I know of Atty.**
...

92 Supra at note 7.
93 See Letter dated 16 May 2019, Exhibit "P-12", Division Docket, Volume I, pp. 118-119.
94 Supra at note 10.
95 Exhibits "P-17" and "P-18", supra at note 11.

ATTY. BARRION

Q: Do you confirm that in the said Memorandum, **Cadidia Carim acted as your [GS]** in relation to the tax audit of the petitioner?

MS. CAJUDAY

A: Yes Atty.[96]

...

RO Cajuday's testimony is consistent with the declarations of petitioner's lone witness, Go, during her re-direct examination on the witness stand, her declarations are clear, *viz*:

...

ATTY. MAGSOMBOL

Q: Ms. Witness, during your cross examination, you were asked by the opposing counsel if [RO] Cajuday is authorized to conduct the tax investigation of Fabtech Kitchens Unlimited, Inc. to which you answered, yes. Then why do you claim that the [BIR] examiner who conducted the tax audit were not duly authorized?

A: Because aside from [RO] Jemaruh Cajuday [named] in the [LOA], it also named [GS] Fatima Pre to conduct the audit of Fabtech Books of Accounts and **without issuing a new [LOA] GS Fatima Pre was replaced by GS Cadidia Carim and another [RO] Theodoro Mandigma joined the team in conducting the audit of Fabtech Books of Accounts for tax audit.**[97]

...

In *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*[98], the Supreme Court further reiterated that only the ROs actually named in the LOA are authorized to examine the taxpayer, to wit:

...

Likewise, the CTA EB correctly held that the deficiency tax assessments were invalid due to the revenue officers' lack of authority to do so. Under prevailing jurisprudence, a LOA is statutorily required

[96] TSN dated 16 August 2023, pp. 12-13; Emphasis supplied.
[97] TSN dated 17 November 2022, p. 11; Emphasis supplied.
[98] G.R. Nos. 249883-84 (Resolution), 27 January 2020; Citations omitted and emphasis supplied.

> under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers. **It is axiomatic that only the revenue officers actually named under the LOA are authorized to examine the taxpayer. ... In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void.**
>
> ...

In *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*[99], where the tax audit investigation of petitioner therein was reassigned to another RO without the issuance of a new LOA, the Supreme Court nullified the FAN/FLD issued against the said petitioner-taxpayer. It held, thusly:

> ...
>
> A perusal of the records of the case discloses that electronic LOA SN: eLA201000017400 LOA-039-2010-00000072 issued against petitioner specifically authorized revenue officer Cacdac and group supervisor Andaya, to examine the books of accounts of petitioner for taxable year 2009[.] ...
>
> ...
>
> However, it appeared that Cacdac was not the revenue officer who actually conducted the audit of petitioner's books of accounts. It was revenue officer Bagauisan who audited petitioner by virtue of a memorandum of assignment signed by revenue district officer Nacar[.] ...
>
> ...
>
> The reassignment of the examination of petitioner's books of accounts pursuant to electronic LOA SN: eLA201000017400 LOA-039-2010-00000072 from revenue officer Cacdac to revenue officer Bagauisan necessitates the issuance of a new LOA. This is clear under Revenue Memorandum Order (RMO) No. 43-90 or "An Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit"[.] ...
>
> ...
>
> Here, there was no new LOA issued naming Bagauisan as the new revenue officer who would conduct the examination of petitioner's books of accounts. The authority of Bagauisan is anchored only upon the memorandum of assignment signed by revenue district officer Nacar.

[99] G.R. No. 241848, 14 May 2021.

> Section 13 of the NIRC requires that a revenue officer must be validly authorized before conducting an audit of a taxpayer[.]
>
> ...

Well-entrenched is the principle that in cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessments shall be void and ineffectual.[100]

With the above disquisition, We see no need to proceed with an exhaustive discussion or resolution of the other issues raised.

WHEREFORE, with the foregoing premises, the Petition for Review filed by petitioner Fabtech Kitchens Unlimited, Inc. on 02 March 2022 is hereby **GRANTED.** Accordingly, the deficiency Value-Added Tax, Fringe Benefit Tax, Improperly Accumulated Earnings Tax and Compromise Penalty for the fiscal year 2017, in the aggregate amount of ₱53,771,480.83, as found in the Final Decision on Disputed Assessment, are hereby **CANCELLED** and **SET ASIDE**.

Consequently, respondent Commissioner of Internal Revenue or any person duly acting on his behalf is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount from petitioner.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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100 See *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, supra at note 88.

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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