REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

KOKOLOKO NETWORK CORPORATION,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9574

Members:

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

Promulgated:

SEP 24 2019
1:10 p.m.

x---x

DECISION

CASTAÑEDA, JR., *J.:*

This is a Petition for Review[1] filed by Kokoloko Network Corporation pursuant to the provisions of the National Internal Revenue Code of 1997, as amended (1997 NIRC) in relation to Section 3, Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), praying that judgment be rendered ordering the cancellation of its deficiency assessment for income tax, value-added tax (VAT), expanded withholding tax (EWT), and improperly accumulated earnings tax (IAET) for taxable year 2012.

---

[1] Docket, Vol. I, pp. 14-38.

THE FACTS

Petitioner Kokoloko Network Corporation is a corporation duly organized and registered under the laws of the Philippines, with its principal address at San Francisco Street corner Arayat Boulevard, Angeles City, Pampanga.[2] It is primarily engaged in trading, marketing, distribution, marketing at wholesale and retail of all kinds of petroleum products, as shown in its Articles of Incorporation.[3] Petitioner is registered with the Bureau of Internal Revenue (BIR), as evidenced by its BIR Certificate of Registration bearing Tax Identification No. 007-038-539-000 and numbered OCN 3RC0000539565.[4]

Respondent Commissioner of Internal Revenue (CIR) is the head of the BIR, vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office including, *inter alia*, the power to decide disputed assessments and to cancel and abate tax liabilities, pursuant to the pertinent provisions of the 1997 NIRC and other tax laws, rules and regulations. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On August 6, 2014, petitioner received from respondent a Letter of Authority (LOA) dated May 19, 2014 with Reference No. eLA 201100068137/LOA-43B-2014-00000164 and a Letter Notice (LN) dated June 4, 2014.[5]

On January 3, 2017, petitioner received a Collection Letter dated December 15, 2016 issued by respondent demanding payment of the alleged deficiency income tax, VAT, EWT, and IAET amounting to One Hundred Five Million Eight Hundred Ninety-Nine Thousand Six Hundred Twenty-Four Pesos and 10/100 (₱105,899,624.10).[6]

In a letter dated January 6, 2017, petitioner replied to the Collection Letter protesting the alleged assessment and requesting for

---

[2] Paragraph 1, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 451; Exhibit "P-1", Docket, Vol. II, pp. 561-564.
[3] Paragraph 3, JSFI, Docket, Vol. II, p. 452.
[4] Paragraph 4, JSFI, Docket, Vol. II, p. 452.
[5] Paragraph 9, Petition for Review, Docket, Vol. I, p. 16; Exhibit "P-19, Docket, Vol. II, p. 594.
[6] Paragraph 5, JSFI, Docket, Vol. II, p. 452.

the cancellation of the tax deficiencies previously demanded by respondent.[7]

On January 16, 2017, petitioner submitted the following documents in support of the previous letter dated January 6, 2017:[8]

a. Quarterly VAT Returns (1st to 4th Quarter[s] for TY 2012)
b. Monthly VAT Returns (TY 2012)
c. Expanded Withholding Tax Returns (TY 2012)
d. Annual Income Tax Return and Audited Financial Statement[s] (TY 2012)

On March 13, 2017, petitioner received the BIR's reply-letter dated February 20, 2017 demanding petitioner to settle the alleged assessment within five (5) days from receipt thereof.[9]

On April 11, 2017, petitioner filed the present Petition for Review.

Within the extended time granted by the Court,[10] respondent filed his Answer[11] on July 17, 2017. Petitioner filed his Reply[12] on July 31, 2017.

Pre-trial conference for the case was held on August 17, 2017.[13] Petitioner filed his Pre-Trial Brief[14] on July 31, 2017 while respondent filed his Pre-Trial Brief[15] on August 17, 2017.

On September 19, 2017, petitioner filed a Motion to Admit Amended Petition for Review with attached Amended Petition for Review.[16] During the hearing dated September 20, 2017, this Court granted respondent a period of five (5) days within which to file a Comment to petitioner's Motion to Admit Amended Petition for

---

[7] Paragraph 6, JSFI, Docket, Vol. II, p. 452; Exhibit "P-24", Docket, Vol. II, pp. 607-614.
[8] Paragraph 7, JSFI, Docket, Vol. II, p. 452.
[9] Annex "R" of the Petition for Review, Docket, Vol. I, pp. 99-100.
[10] Order dated June 22, 2017, Docket, Vol. I, p. 112.
[11] Docket, Vol. I, pp. 113-116.
[12] *Id.*, pp. 126-129.
[13] Minutes of the Hearing dated August 17, 2017, Docket, Vol. I, p. 298.
[14] Docket, Vol. I, pp. 130-137.
[15] *Id.*, pp. 300-305.
[16] *Id.*, pp. 318-354.

Review.[17] In a Resolution dated November 3, 2017,[18] this Court granted petitioner's Motion to Admit and admitted petitioner's Amended Petition for Review.

On November 23, 2017, the parties filed their Joint Stipulation of Facts and Issues[19], which this Court approved and adopted in the Pre-Trial Order[20] dated December 5, 2017.

During trial, petitioner presented the following as its witnesses: (1) Ms. Glaiza A. De Leon, petitioner's General Manager;[21] and (2) Ms. Rose Marie S. Nacpil, the Court-commissioned Independent Certified Public Accountant (ICPA).[22]

On April 30, 2018, petitioner filed its Formal Offer of Evidence (FOE).[23] Thus, on July 24, 2018, the Court issued a Resolution[24] resolving petitioner's FOE. On August 6, 2018, petitioner filed an Urgent Omnibus Motion [Re: 1. For Partial Reconsideration to Resolution dated 24 July 2018 and 2. To Recall Witnesses Ms. Rose S. Nacpil and Ms. Glaiza A. De Leon and 3. To Admit Clear/Legible Copies of Exhibits and Transfer of Markings].[25] This Court resolved petitioner's Urgent Omnibus Motion in Resolutions dated October 2, 2018[26] and January 7, 2019,[27] respectively.

Respondent, on the other hand, presented as his sole witness, Mr. Gilbert M. Bercasio, Revenue Officer II of the BIR Revenue District Office No. 43-Pasig City.[28]

Respondent filed his Formal Offer of Evidence on April 29, 2019.[29] In a Resolution[30] dated June 3, 2019, the Court admitted

---

[17] Minutes of the Hearing dated September 20, 2017, Docket, Vol. I, p. 428.
[18] Docket, Vol. II, pp. 432-435.
[19] *Id.*, pp. 451-454.
[20] *Id.*, pp. 456-462.
[21] Minutes of the Hearing dated March 21, 2018, Docket, Vol. II, p. 497; Minutes of the Hearing dated October 17, 2018, Docket, Vol. III, p. 994.
[22] Minutes of the Hearing dated April 18, 2018, Docket, Vol. II, p. 537; Minutes of the Hearing dated October 17, 2018, Docket, Vol. III, p. 994.
[23] Docket, Vol. II, pp. 544-560.
[24] *Id.*, pp. 624-626.
[25] Docket, Vol. II, pp. 630-637.
[26] Docket, Vol. III, pp. 991-993.
[27] *Id.*, pp. 1094-1097.
[28] Minutes of the Hearing dated April 3, 2019, Docket, Vol. III, p. 1224.
[29] Docket, Vol. III, pp. 1229-1233.
[30] *Id.*, pp. 1270-1271.

Exhibits "R-1", "R-2", "R-2-A", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", "R-13", "R-14", "R-15", "R-16", "R-17", "R-18", and "R-18-A. In the same Resolution, the Court granted the parties a period of thirty (30) days within which to file their memoranda.

Within the extended period granted by this Court, petitioner filed its Memorandum[31] on July 30, 2019. Respondent failed to file his Memorandum as per Records Verification Report dated July 31, 2019[32] issued by this Court's Judicial Records Division.

In a Resolution[33] dated August 9, 2019, this Court submitted the present case for decision.

THE ISSUES

The parties agreed that the issues to be resolved by this Court are the following:[34]

a. Whether or not petitioner is liable for: (1) deficiency income tax in the amount of ₱65,302,076.18; (2) deficiency VAT in the amount of ₱34,346,115.47; (3) deficiency EWT in the amount of ₱6,033,169.94; (4) IAET in the amount of ₱198,262.51; and (5) compromise penalty in the amount of ₱20,000.00 for taxable year 2012;

b. Whether or not petitioner received the PAN and FAN/FDL (sic) issued by respondent;

c. Whether respondent's right to assess deficiency taxes against petitioner for taxable year 2012 has already prescribed;

d. Whether the Letter of Authority was served to petitioner beyond 30 days from its issuance;

e. Whether automated computerized matching of third[-]party information is a valid basis of tax assessments; and

---

[31] *Id.*, pp. 1273-1313.
[32] *Id.*, p. 1322.
[33] *Id.*, p. 1328.
[34] JSFI, Docket, Vol. II, pp. 452-453.

f. Whether or not the assessment and collection notice issued by respondent are valid and meritorious.

THE COURT'S RULING

After judicious study of the relevant facts gathered from the case records and evidence duly presented as well as the respective arguments of the parties vis-à-vis the relevant laws, rules and regulations, and applicable jurisprudence, this Court finds that the present Petition for Review should be granted.

The Letter of Authority (LOA) is invalid for having been served beyond thirty (30) days from date of its issuance.

Section 13 of the 1997 NIRC states that a revenue officer assigned to perform assessment functions in any district may, pursuant to an LOA 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. This rule was further amplified in Revenue Memorandum Order (RMO) No. 43-90 dated September 20, 1990,[35] which provides that all audit investigations, whether field audit or office audit, should be conducted under an LOA.

On March 17, 2000, the BIR issued Revenue Audit Memorandum Order (RAMO) No. 1-00.[36] The said issuance explicitly mandates that an LOA must be served or presented to the taxpayer within thirty (30) days from its date of issue; otherwise, it becomes null and void unless revalidated. For ready reference, the relevant portions of RAMO No. 1-00 are quoted below:

"C. *Contact With Taxpayer*

---

[35] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

[36] Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000).

x x x x x x x x x

2. *Serving of Letter of Authority*

2.1 On the first opportunity of the Revenue Officer to have personal contact with the taxpayer, he should present the Letter of Authority (LA) together with a copy of the Taxpayer's Bill of Rights. The LA should be served by the Revenue Officer assigned to the case and no one else. He should have the proper identification card and should be in proper attire.

2.2 A Letter of Authority authorizes or empowers a designated Revenue Officer to examine, verify and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.

2.3 **A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue; otherwise, it becomes null and void unless revalidated.** The taxpayer has all the right to refuse its service if presented beyond the 30-day period depending on the policy set by top management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words 'Revalidated on ____________' on the face of the copy of the Letter of Authority issued." *(Emphasis supplied)*

In the present case, it appears that LOA No. eLA 201100068137/LOA-43B-2014-00000164 was issued on **May 19, 2014** but was served to petitioner only on **August 6, 2014**. Based on the above rule, such LOA should have been served not later than **June 18, 2014**, the 30th day from date of its issuance. These facts were likewise readily admitted by respondent's own witness during cross-examination, as follows:

"ATTY. COMPARATIVO:

Q. Mr. Witness, in your Question and Answer No. 6 & 7 of your Judicial Affidavit, you mentioned and identified a Letter of Authority dated May 19, 2014 marked as Exhibit R-1 and likewise, you mentioned and identified a Letter Notice ꝑ

dated June 4, 2014. I am showing to you the said Letter of Authority and Letter Notice dated May 19, 2014 and dated June 4, 2014, respectively, do you agree with me that the said documents were received by one, Rosario Mamaril on August 6, 2014?

MR. BER[C]ASIO:
A. Based on the records.

ATTY. COMPARATIVO:
Q. Yes or no only, Mr. Witness?

MR. BER[C]ASIO:
A. Yes.

ATTY. COMPARATIVO:
Q. Letter Notice dated June 4, 2014?

MR. BER[C]ASIO:
A. Yes.

ATTY. COMPARATIVO:
Q. Is it not true Mr. Witness, that the Letter Notice dated June 4, 2014 was subsequently issued to the petitioner because both the Letter of Authority and the LN dated May 19, 2014 and dated June 4, 2014 were simultaneous received (sic) by one, Rosario Mamaril on the same date, August 6, 2014? Yes or no, Mr. Witness?

MR. BER[C]ASIO:
B. Based on the records, yes.

ATTY. COMPARATIVO:
Q. Based on the documents itself, (sic) which you identified in your Judicial Affidavit... *(interrupted)*

JUSTICE CASTAÑEDA:
Counsel, why are you asking him these questions when the best evidence is the document itself. *Je*

ATTY. COMPARATIVO:
A. Yes, Your Honors, we just want to emphasize, Your Honors, that the Letter of Authority of (sic) dated May 19, 2014 was issued beyond the 30[-]day period [within] which the said Letter of Authority should be served to the petitioner, Your Honors.

JUSTICE CASTAÑEDA:
All right, proceed.

ATTY. COMPARATIVO:
Q. Based on the document itself, which you identified in your Judicial Affidavit, would you agree with me that the Letter of Authority dated May 19 was presented and served to the petitioner on August 6, 2014, more than two (2) months from the date of issuance of the said LOA?

MR. BER[C]ASIO:
A. Yes." *(Emphasis supplied)*[37]

There was no indication or proof whatsoever that the said LOA was revalidated. Accordingly, the said LOA is considered null and void and cannot be used as basis for audit examination of petitioner's books of accounts and other accounting records for taxable year 2012. On this basis alone, the assessment should be cancelled.

The revenue officers who actually conducted the audit examination have no authority to do so.

Even assuming that the above LOA is valid, still, the deficiency tax assessment should be deemed void because the revenue officers who actually conducted the audit examination of petitioner's books of accounts and other accounting records for taxable year 2012 have no authority to do so.

[37] Transcript of Stenographic Notes (TSN) of the Hearing dated April 3, 2019, pp. 7-9.

While the lack of authority of the revenue officers to conduct the audit was not specifically raised as an issue, this Court is not precluded from considering the same given that a void assessment bears no fruit.[38]

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[39] the Supreme Court also emphatically ruled that the Court of Tax Appeals can resolve an issue which was not raised by the parties. The Supreme Court said:

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

---

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

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

One of the powers granted to the CIR under the 1997 NIRC is the power to assess deficiency tax. Section 6(A) of the 1997 NIRC is explicit on this point, to wit:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. —*
>
> (A) *Examination of Returns and Determination of Tax Due. —* After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax, notwithstanding any law requiring the prior authorization of any government agency or instrumentality**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. x x x" *(Emphasis supplied)*

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

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

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

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

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

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

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

"SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, **the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others**:

x x x x x x x x x

(c) Issue Letters of Authority for the examination of taxpayers within the region;

x x x x x x x x x

(h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner." *(Emphasis supplied)*

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

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

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

"D. Preparation and issuance of L/As.

x x x x x x x x x

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

To reiterate, only the CIR or his duly authorized representatives who can authorize the examination of taxpayers for purposes of assessment of any deficiency taxes. Stated differently, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.[40]

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

Parenthetically, RMO No. 43-90 provides that any reassignment or transfer of cases to another revenue officers shall require the issuance of a new LOA. Be that as it may, this Court is of the view that the same would not necessarily negate the authority of the CIR and his duly authorized representatives to effect amendment or modification of a previously-issued LOA instead of just issuing a new one in order for the assessment of a taxpayer to validly proceed. Note that RMO No. 43-90 itself does not state the legal effect in the event that the named revenue officers under the previously-issued LOA are transferred or reassigned and a new or replacement LOA is not issued. A duly issued LOA, valid in all other respects, does not automatically become invalid just because the revenue officers named therein happened to be reassigned or transferred. Indeed, to construe it

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

otherwise would be tantamount to the curtailment of the statutorily granted authority of the CIR and its duly authorized representatives to authorize the audit examination of taxpayers by a mere RMO provision. It must be emphasized that an RMO is merely an internal issuance containing directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow and the like which are necessary to carry out programs or to achieve policy goals and objectives.[41] As such, they do not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR and may change from time to time as the exigencies of service may require, or as may be allowed given particular factual contexts, provided only that due process or statutory rights are not subverted.[42]

In the present case, the revenue officers named under LOA No. eLA 201100068137/LOA-43B-2014-00000164 dated May 19, 2014 were different from those who actually examined petitioner's books of accounts and other accounting records for the period from January 1, 2012 to December 31, 2012. As it appears, Revenue Officer Gilbert M. Bercasio (RO Bercasio) and Group Supervisor Melecio F. Cantara (GS Cantara) conducted the audit merely on the basis of Memorandum of Assignment No. 2016-43B-00000199[43] issued by Ms. Honorata S. Aguilar (RDO Aguilar), Revenue District Officer of BIR Revenue District Office No. 43B – West Pasig, reassigning to them the conduct of examination of petitioner's books of accounts and other accounting records.

Guided by the foregoing disquisition, this Court holds that the Memorandum of Assignment No. eLA 201100068137/LOA-43B-2014-00000164 issued by RDO Aguilar cannot validly grant RO Bercasio and GS Cantara the requisite authority to conduct the examination pursuant to LOA No. eLA 201100068137/LOA-43B-2014-00000164 dated May 19, 2014. In her capacity as a Revenue District Officer, RDO Aguilar is bereft of any power to authorize the examination of taxpayers or to effect any modification or amendment to a previously issued LOA because, as mentioned earlier, only the CIR or his duly authorized representatives are granted such power.

---

[41] Revenue Administrative Order No. 001-12 dated April 2, 2012.

[42] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 7948, June 5, 2014, penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino.

[43] Exhibit "R-7", BIR Records, p. 252.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[44] the Supreme Court held that absent any prior authority on the part of the revenue officers who conducted the audit/examination of taxpayer's books of accounts and other accounting records, the deficiency tax assessment arising therefrom is a nullity.

The assessment is void because of violation of petitioner's due process rights.

Even assuming the above LOA is valid and the revenue officers who actually conducted the audit investigation have the requisite authority to do the same, still, the deficiency assessment should be deemed void and must be cancelled because, as the records show, petitioner's due process rights were violated.

Section 228 of the 1997 NIRC prescribes the procedure to be observed in issuing deficiency tax assessments. The said provision, in relevant part, 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.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice." *(Emphasis supplied)*

---

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

To implement the foregoing provision, Revenue Regulations (RR) No. 12-99, as amended,[45] provides as follows:

"**SECTION 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*** —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 ***Preliminary Assessment Notice (PAN).*** — If after review and evaluation by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer a Preliminary Assessment Notice (PAN) for the proposed assessment. It shall show in detail the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in 'ANNEX A' hereof).

If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

If the taxpayer, within fifteen (15) days from date of receipt of the PAN, responds that he/it disagrees with the findings of deficiency tax or taxes, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

xxx xxx xxx

3.1.3 ***Formal Letter of Demand and Final Assessment Notice (FLD/FAN).*** — The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the

[45] As amended by RR No. 18-2013 dated November 28, 2013.

taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based; *otherwise, the assessment shall be void* (see illustration in ANNEX 'B' hereof).

xxx xxx xxx

3.1.6 *Modes of Service.* – The notice (PAN/FLD/FAN/FDDA) to the taxpayer herein required may be served by the Commissioner or his duly authorized representative through the following modes:

(i) The notice shall be served through personal service by delivering personally a copy thereof to the party at his registered or known address or wherever he may be found. A *known address* shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

In case personal service is not practicable, the notice shall be served by substituted service or by mail.

(ii) Substituted service can be resorted to when the party is not present at the registered or known address under the following circumstances:

The notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

If no person is found in the party's registered or known address, the revenue officers concerned shall bring a barangay official and two (2) *ge* disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

Should the party be found at his registered or known address or any other place but refuse to receive the notice, the revenue officers concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signatures of the witnesses.

'*Disinterested witnesses*' refers to persons of legal age other than employees of the Bureau of Internal Revenue.

(iii) Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail.

The server shall accomplish the bottom portion of the notice. He shall also make a written report under oath before a Notary Public or any person authorized to administer oath under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person/barangay official/professional courier service company who received the same and such other relevant information. The registry receipt issued by the post office or the official receipt issued by the professional courier company containing sufficiently identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

Service to the tax agent/practitioner, who is appointed by the taxpayer under circumstances prescribed in the pertinent regulations on accreditation of tax agents, shall be deemed service to the taxpayer."

In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,*[46] the Supreme Court categorically held that failure to strictly comply with the notice requirements prescribed under Section 228 of the 1997 NIRC and RR No. 12-99 is tantamount to denial of due process. The Supreme Court further stressed that the absence of PAN will render nugatory any assessment made by the tax authorities. As aptly explained by the Supreme Court:

"Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations — that taxpayers should be able to present their case and adduce supporting evidence.

xxx xxx xxx

From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities. The use of the word *'shall'* in subsection 3.1.2 ✍

[46] G.R. No. 185371, December 8, 2010, 637 SCRA 633, 646.

> describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. **Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void**." *(Emphasis supplied and citations omitted)*

Meanwhile, in the case of *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*,[47] the Supreme Court enunciated the rule in cases where the taxpayer denies the receipt of assessment notices. The Supreme Court held:

> "If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. x x x"

Indeed, the rule is that in case the taxpayer denies receipt of the assessment notices from the BIR, the latter has the burden to prove by competent evidence that the required notices were actually received by the taxpayer.

In its Amended Petition for Review, petitioner categorically denies having received the Preliminary Assessment Notice (PAN) and the Final Assessment Notice (FAN).[48] It also claims that the individuals who allegedly received the PAN as well as the FAN were not its employees.[49] Given these denials, the respondent has the corresponding burden to prove otherwise. However, this Court finds that respondent failed to overcome this burden.

In his Answer, respondent asserts that the PAN was duly received by petitioner on May 20, 2016 while the Formal Letter of Demand (FLD) was received on June 10, 2016. To support this assertion, respondent presented RO Bercasio who testified in his

[47] G.R. No. 202695, February 29, 2016, 785 SCRA 258-259.
[48] Docket, Vol. I, pp. 333-334.
[49] *Id.*

Judicial Affidavit that the PAN and FAN were served on the foregoing dates. No other evidence was presented to buttress the allegation that the subject assessment notices were served on the said dates and that such notices were indeed received by petitioner.

Upon his cross-examination during the hearing dated April 3, 2019, however, RO Bercasio effectively negated his testimony in his Judicial Affidavit when he testified as follows:[50]

> **"ATTY. COMPARATIVO:**
> **Q. You also mentioned and identified a Preliminary Notice, Assessment Notice with details of discrepancies dated May 19, 2016 marked as Exhibit R-9, and likewise, you stated and identified an Affidavit of Service marked as Exhibit R-10 stating that you personally leave and tendered the copy of the said PAN dated 19 May 2016 to one, Arthur Angeles, a Pump Attendant on May 20, 2016?**
>
> **MR. BER[C]ASIO:**
> **A. Yes.**
>
> **ATTY. COMPARATIVO:**
> **Q. And also, you identified a Preliminary Assessment Notice with receipt by one, Arthur Angeles, a Pump Attendant on June 20, 2016?**
>
> **MR. BER[C]ASIO:**
> **A. Yes. Based on record, yes.**
>
> **ATTY. COMPARATIVO:**
> **Q. Would you agree with me Mr. Witness that the Affidavit of Service of the PAN was executed earlier than the actual receipt of the PAN by one Arthur Angeles, a Pump Attendant? Yes or no, Mr. Witness?**
>
> **JUSTICE CASTAÑEDA:**
> **Are you aware of these things?**

[50] TSN of the Hearing dated April 3, 2019, pp. 9-11.

MR. BER[C]ASIO:
A. There is typographical error, Your Honor.

JUSTICE CASTAÑEDA:
Do you have any knowledge of this service?

MR. BER[C]ASIO:
A. Yes but there is typographical error, Your Honor.

ATTY. COMPARATIVO:
Q. So you mean, it should be?

MR. BER[C]ASIO:
A. June 20.

ATTY. COMPARATIVO:
Q. June 20?

MR. BER[C]ASIO:
A. Yes.

ATTY. COMPARATIVO:
Q. So the PAN will prevail over the...

MR. BER[C]ASIO:
A. Yes. Yes.

ATTY. COMPARATIVO:
Q. Likewise Mr. Witness, you mentioned and identified in your Judicial Affidavit a Formal Letter of Demand dated June 10, 2016 with details of discrepancies marked as Exhibit R-11 to R-16. In your Affidavit of Service marked as Exhibit R-17, that you personally served the Formal Letter of Demand to one, Lexel Marie Abuan on June 10, 2016?

MR. BER[C]ASIO:
A. Yes.

ATTY. COMPARATIVO:

Q. Based on the documents you mentioned and identified in your Judicial Affidavit Mr. Witness, would you agree with me that the Formal Letter of Demand dated June 10, 2016 was served and received by the petitioner on June 10, 2016 and the FAN with receipt by one Arthur Angeles on June 20, 2016 ten (10) days earlier from the FAN, Mr. Witness?

MR. BER[C]ASIO:

A. Yes." *(Emphasis supplied)*

Respondent's witness basically admitted during cross-examination that the PAN was served to petitioner's alleged employee on **June 20, 2016** and not on May 20, 2016 as stated in his Affidavit of Service duly marked and presented as evidence as Exhibit R-10. Respondent's witness readily admitted that the date indicated on his Affidavit of Service was merely a typographical error. This admission essentially matches with the marking on the PAN itself wherein it appears that the same was received by *"Arthur B. Angeles, Pump Attendant, on 6-20-16"*.[51]

Moreover, respondent's witness also categorically admitted that the PAN was only served ten (10) days after the FLD was served on **June 10, 2016**. With these admissions, it is clear that petitioner's due process rights were violated because there is failure on respondent's part to strictly observed the mandatory procedure for issuing deficiency tax assessments. The service of FLD prior to the service of the PAN certainly violates petitioner's right to be informed of the facts and the law on which the assessment was made, as required by Section 228 of 1997 NIRC.

Given the above findings, there is no need to discuss the other issues raised in this Petition for it is settled that a void assessment bears no fruit.[52]

---

[51] Exhibit "P-29 (Exhibit "R-9"), BIR Records, pp. 300-306.

[52] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006, 480 SCRA 396; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633.

WHEREFORE, the present Petition for Review is **GRANTED**. Accordingly, the deficiency assessment against petitioner for income tax, VAT, EWT, and IAET for taxable year 2012 as well as the Collection Letters issued pursuant thereto are **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

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

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice