REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION
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EDMUND U. BERMEJO IV, Petitioner,	**CTA Case No. 9310**
	Members:
- versus -	**DEL ROSARIO,** P.J., Chairperson, **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** AUG 05 2019 · 1:56pm

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DECISION

UY, J.:

This *Petition for Review*[1] filed on March 22, 2016 by Edmund U. Bermejo IV, seeks to annul, cancel and set aside the *Formal Letter of Demand* (FLD) dated December 4, 2015 issued against him, requiring the payment of deficiency income tax, value added tax (VAT), and expanded withholding tax (EWT), in the total amount of ₱2,098,996.42 for year ended December 31, 2011.

THE FACTS

Petitioner Edmund U. Bermejo, Jr. is the owner and proprietor of a small gasoline station under the business name and style EUB4 Gasoline Service Station, with address at 198E and 198F Gen. Luiz St., Brgy. Nagkakaisang Nayon, Novaliches, Quezon City, duly registered under the Philippine Laws.[2] He is an accredited dealer of

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[1] Docket – Vol. I, pp. 13 to 33.
[2] Par. 1, Joint Stipulation of Facts/Issues (JSFI) and Supplemental JSFI, Docket – Vol. II, pp. 607 and 645.

Seaoil petroleum products by virtue of a Franchise Agreement dated May 13, 2009 with Seaoil Philippines, Inc. [3]

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue, mandated by law to enforce and implement the National Internal Revenue Code (NIRC) and related statutes, including, among others, the power to cancel disputed assessments.[4]

On April 13, 2012, petitioner filed his *Annual Income Tax Return* for taxable year 2011.[5]

On January 14, 2013, the *Letter of Authority* (LOA) No. 028-2012-00000500 dated October 22, 2012[6] was received by petitioner, informing him that Revenue Officer (RO) Joel Angeles and Group Supervisor (GS) Milo Morales of Revenue District Office (RDO) No. 028 – Novaliches, were authorized by Regional Director Jonas DP Amora to examine his books of accounts for taxable year January 1 to December 31, 2011.[7]

On July 21, 2014, petitioner executed a *Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code*, wherein petitioner consented *"to the assessment and/or collection of the taxes which may be found due after investigation/re-investigation/re-evaluation at any time before or after the lapse of the period of limitations fixed by ...the National Internal Revenue Code but not later than* ***December 31, 2015****"*.[8]

Subsequently, on November 11, 2015, petitioner received a *Preliminary Assessment Notice* (PAN) of even date,[9] giving him a period of fifteen (15) days from said receipt, to pay deficiency income tax, VAT, and EWT for taxable year 2011.

On November 26, 2015, petitioner filed, through registered mail, the Letter Protest dated November 18, 2015 against the said PAN.[10]

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[3] Exhibit "P-1", Docket – Vol. III, pp. 709 to 721.
[4] Par. 2, JSFI and Supplemental JSFI, Docket – Vol. II, pp. 607 and 645.
[5] Exhibit "P-7", Docket – Vol. III, pp. 736 to 737.
[6] Exhibit "P-8", Docket – Vol. III, p. 738; Exhibit "R-1", BIR Records, p. 2.
[7] Pars. 3 and 4, JSFI and Supplemental JSFI, Docket – Vol. II, pp. 607 and 645
[8] Exhibit "P-14", Docket – Vol. III, p. 744; Exhibit "R-3", BIR Records, p. 120b.
[9] Exhibit "P-15", Docket – Vol. III, pp. 745 to 749; Exhibit "R-6", BIR Records, pp. 164 to 168.
[10] Exhibit "P-16", Docket – Vol. III, pp. 750 to 757.

Thereafter, on December 4, 2015, petitioner received the subject FLD with *Assessment Notices* and *Details of Discrepancies* dated December 4, 2015,[11] finding him liable for the following deficiency taxes:

I. INCOME TAX			
Taxable Income per Income Tax Return (ITR)			₱ –
Add: Adjustment per investigation			
Undeclared income		₱ 212,112.48	
Sales not subjected to Income Tax		278,891.20	
Unaccounted expenses		21,586.73	
Disallowed expenses		45,194.43	557,784.84
Adjusted Taxable Income			₱ 557,784.84
Income Tax Due			₱ 143,491.15
Less: Tax Credits and Payments per ITR/ITS			
Creditable tax withheld		₱ 4,939.44	
Less: Excess tax credits carried over to succeeding period		4,939.44	
Deficiency Income Tax Due			₱ 143,491.15
Add: Interest (4/16/12 to 12/13/15)			105,122.01
TOTAL AMOUNT DUE			**₱ 248,613.16**
II. VALUE-ADDED TAX			
Vatable Sales per Returns			₱49,175,395.02
Add: Adjustments per investigation			
Undeclared sales not subjected to VAT		₱8,383,892.64	
Sales not subjected to VAT		278,891.20	8,662,783.84
Adjusted Vatable Sales			₱57,838,178.86
Output Tax Due (12%)			₱ 6,940,581.46
Less: Allowed Tax Credits/Payments			
Input tax carried over from previous period		₱ 119,267.15	
Input tax on current purchases		5,840,979.12	
Payments		25,622.01	
Total		₱5,985,868.28	
Less: Excess input tax carried forward to succeeding period	₱84,820.88		
Disallowed input tax	1,560.01	86,380.89	5,899,487.39
Deficiency Value-Added Tax Due			₱ 1,041,094.07
Add: Interest (1/26/12 to 12/13/15)			808,915.83
TOTAL AMOUNT DUE			**₱1,850,009.90**
III. EXPANDED WITHHOLDING TAX			
Basic Tax Due			₱ 209.46
Add: Interest (1/16/12 to 12/13/15)			163.90
TOTAL AMOUNT DUE			**₱ 373.36**

[11] Exhibit "R-7", BIR Records, pp. 175 to 182.

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Thereafter, on March 7, 2016, petitioner's counsel received the letter dated March 2, 2016 from Regional Director Alfredo V. Misajon,[12] denying his protest letter dated November 18, 2015 to the PAN, and also informing him that the FLD dated December 4, 2015 has already become final and executory for his failure to file a valid protest thereto.

Consequently, petitioner filed the instant *Petition for Review* before this Court on March 22, 2016.[13]

However, on May 27, 2016, respondent filed a *Motion to Compel Petitioner to Amend Petition for Review*,[14] primarily praying that an order be issued by this Court compelling petitioner to amend his *Petition for Review* to comply with Section 2(a), Rule 7 of the Revised Rules of Court, which requires that the "*allegations in the body of the pleading shall be divided into paragraphs so numbered as to be readily identified*".

The Court granted respondent's *Motion* in the Resolution dated June 3, 2016,[15] thereby directing petitioner to amend his *Petition for Review* within fifteen (15) days. In compliance thereto, petitioner filed an *Amended Petition for Review* on June 24, 2016.[16]

On July 20, 2016, respondent filed his *Answer*,[17] interposing certain special and affirmative defenses, to wit: (a) the herein assessment has become final, executory and demandable by reason of the failure of petitioner to file a valid protest against the assessment; (b) the same assessment has become final, executory and demandable, by reason of the failure of petitioner to timely file the petition for review, pursuant to the provisions of Section 228 of the Tax Code of 1997, as amended; and (c) petitioner failed to make allegations with respect to the timeliness of the filing of the *Amended Petition for Review*.

During the pre-trial conference held on February 1, 2016, the parties agreed to submit their *Joint Stipulation of Facts/Issues* not later than February 21, 2017. Thereafter, on February 22, 2017, the

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[12] Exhibit "P-18", Docket – Vol. III, p. 773; Exhibit "R-8", BIR Records, p. 226.
[13] Docket – Vol. I, pp. 13 to 33.
[14] Docket – Vol. I, pp. 231 to 233.
[15] Docket – Vol. I, p. 236.
[16] Docket – Vol. I, pp. 237 to 259.
[17] Docket – Vol. I, pp. 337 to 342.

parties submitted their *Joint Stipulation of Facts/Issues.*[18] However, in the Resolution dated March 8, 2017,[19] this Court found that the parties failed to indicate the complete list of documentary exhibits, names of witnesses, and trial dates agreed upon in their JSFI. Thus, as directed by the Court, the parties filed on March 20, 2017, through registered mail, a *Manifestation and Compliance*,[20] attaching therewith a *Supplemental Joint Stipulation of Facts/Issues*,[21] in compliance with this Court's directive. Finding it sufficient, this Court issued a Pre-Trial Order on June 5, 2017[22] which deemed the pre-trial terminated.

During trial, petitioner's counsel presented as witnesses, the petitioner himself, Edmund U. Bermejo IV,[23] as the owner of EUB4 Gasoline Service Station, and his wife, Carmela Bermejo,[24] as the Manager thereof. Their direct testimonies were by way of *Judicial Affidavits.*[25]

Thereafter, petitioner filed his *Formal Offer of Evidence* on July 10, 2017.[26] In the Resolution dated September 20, 2017,[27] this Court admitted petitioner's evidence, except for Exhibits "P-18", "P-19", "P-20" to "P-23" and "P-26", for failure to correctly mark, identify or present the original exhibits.

On October 11, 2017, petitioner filed, through registered mail, a *Motion for Reconsideration*,[28] praying for the admission of the denied exhibits explaining that it was mainly mere inadvertence on their part.

In the Resolution dated January 17, 2018,[29] this Court partially granted the petitioner's motion by admitting the previously denied exhibits, except for Exhibit "P-26", which remained denied but was, however, noted as a tender of excluded evidence.

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[18] Docket – Vol. II, pp. 607 to 609.
[19] Docket – Vol. II, pp. 622 to 623.
[20] Docket – Vol. II, pp. 639 to 644.
[21] Docket – Vol. II, pp. 645 to 650.
[22] Docket – Vol. II, pp. 674 to 682.
[23] Minute Resolution at the hearing held on, and Order dated, May 30, 2017, Docket – Vol. II, pp. 665 to 670.
[24] Minute Resolution at the hearing held on, and Order dated, June 20, 2017, Docket – Vol. III, pp. 683 to 686.
[25] Exhibits "P-24" and "P-25", Docket – Vol. II, pp. 784 to 811, and 516 to 542, respectively.
[26] Docket – Vol. III, pp. 688 to 708.
[27] Docket – Vol. III, pp. 980 to 982.
[28] Docket – Vol. III, pp. 1020 to 1027.
[29] Docket – Vol. III, pp. 1041 to 1044.

On the part of respondent, his sole witness, Joel D. Angeles,[30] Revenue Officer I, of RDO No. 24 – Valenzuela City, also testified on direct examination by way of *Judicial Affidavit.*[31]

Thereafter, respondent filed his *Formal Offer of Evidence* on April 13, 2018.[32] In the Resolution dated July 5, 2018,[33] this Court admitted all of respondent's evidence, and gave the parties a period of thirty (30) days within which to submit their respective memoranda.

On August 15, 2018, respondent's *Memorandum*[34] was filed simultaneously with petitioner's *Memorandum*[35], in compliance with this Court's directive. With the filing of the parties' respective memorandum, this case was submitted for decision in the Resolution dated August 22, 2018.[36]

Hence, this Decision.

THE ISSUES

The parties stipulated the following issues[37] for this Court's resolution, to wit:

> "(a) Whether or not prescription has set in against the assessment of the taxes for the taxable year 2011; and,
>
> (b) Whether or not the petitioner is liable for income tax deficiencies for the taxable year 2011 including the penalties, surcharge and interest."

Petitioner's arguments:

Petitioner argues that respondent could no longer assess petitioner after its right to assess had lapsed; and that prescription

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[30] Order dated April 5, 2018, Docket – Vol. III, pp. 1069 to 1070.
[31] Exhibits "R-10" and "R-11", Docket – Vol. III, pp. 990 to 995, and 1047 to 1049, respectively.
[32] Docket – Vol. III, pp. 1072 to 1076.
[33] Docket – Vol. III, pp. 1096 to 1097.
[34] Docket – Vol. III, pp. 1098 to 1109.
[35] Docket – Vol. III, pp. 1115 to 1139.
[36] Docket – Vol. III, p. 1141.
[37] Par. 5, Supplemental JSFI, Docket – Vol. II, p. 646.

had set in against the assessment of taxes for taxable year 2011.

Relative thereto, petitioner avers that the assessment of the tax liability of petitioner that was made by respondent on December 4, 2015 already prescribed on April 12, 2015; that the waiver signed by petitioner is invalid, as the same was not duly notarized in violation of Revenue Memorandum Order (RMO) No. 20-90, as amended; and that the deficiency taxes being claimed by respondent in his FLD dated December 4, 2015 was obtained from an invalid and void tax audit for failure to revalidate the LOA.

Furthermore, petitioner contends that he is not liable for income tax deficiency for taxable year 2011, as the assessment was arbitrary and against due process of law.

In support of the said contention, petitioner claims that respondent gravely erred in assessing that there is undeclared income of ₱212,112.48, since it lacks substantial evidence and therefore, arbitrary. Allegedly, respondent erroneously made an assessment of alleged sales not subjected to income tax in the amount of ₱278,891.20, as the same is considered double taxation. Petitioner claims that respondent's arbitrary disallowance of expenses in the amount of ₱45,194.43 has no basis in fact and in law, considering that petitioner substantiated the same during the investigation; that respondent made an erroneous assessment as there is no undeclared sales of ₱8,383,892.64 not subjected to VAT; that respondent failed to consider the supplier's certification on the correct amount of purchases of petitioner; and that the sales of ₱278,891.20 not subjected to value-added tax should not be assessed, as the same is already double taxation.

Respondent's counter-arguments:

Respondent contends that his right to assess petitioner of its taxable obligation has not yet prescribed due to petitioner's voluntary execution of the *Waiver of the Statute of Limitations* which complies with the provisions laid down in RMO No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01.

Moreover, respondent claims that petitioner is liable for income tax deficiencies for taxable year 2011, due to its failure to timely file its protest to the *Final Assessment Notice* (FAN). Hence, this *Petition for Review* was allegedly filed without a cause of action and warrants a dismissal thereof, inasmuch as no jurisdiction was acquired by this Court, for failure of petitioner to file its administrative protest on the FAN, pursuant to Section 228 of the NIRC of 1997, as amended, in relation to Section 3.5 of Revenue Regulations No. 12-99.

Lastly, respondent points out that well-settled is the rule that tax assessments by examiners are presumed correct and made in good faith; that it is the taxpayer and not the BIR who has the duty of proving otherwise; and that equally settled is the rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

THE COURT'S RULING

The stipulated issues in this case are inter-related. The first issue pertains to whether or not prescription has set in against the assessment of the taxes for the taxable year 2011, and, if resolved in the negative, then this Court must resolve whether or not petitioner is liable for income tax deficiencies for taxable year 2011 including the penalties, surcharge and interest.

To determine whether prescription has set in against the assailed assessment, it is necessary that the Letter of Authority (or LOA) be lawful and valid. Perforce, for an audit and examination of books to be considered as lawful, the same must be based on a valid LOA.

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.[38] 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 respondent himself or his duly authorized representatives.[39] This is explicitly provided under Sections 6(A) and 13 of the NIRC of 1997, which provide as follows:

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[38] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.
[39] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

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> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." *(Emphasis supplied)*
>
> "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, <u>pursuant to a Letter of Authority</u> 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."

Based on the foregoing provisions, it is clear that unless authorized by respondent himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.[40] Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment.[41] In the absence of such an authority, the assessment or examination is a nullity.[42]

It must be ensured that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.[43]

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[40] *Ibid.*
[41] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, supra.
[42] *Ibid.*
[43] Refer to *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

Relative thereto, RMO No. 43-90[44] directs that audits conducted by BIR revenue officers should be conducted under an LOA, to wit:

> "C. Other policies for issuance of L/As.
>
> 1. All audits/investigations, whether field audit or office audit, **<u>should</u> be conducted under a Letter of Authority.**
>
> xxx xxx xxx." *(Emphasis and underscoring supplied)*

Moreover, Revenue Audit Memorandum Order (RAMO) No. 1-00[45] mandates that an LOA must be served within 30 days from the time it is issued, viz:

> "VIII. *Preliminary Approach to Examination*
>
> xxx xxx xxx
>
> C. *Contact With Taxpayer*
>
> xxx xxx xxx
>
> 2. *Serving of Letter of Authority*
>
> xxx xxx xxx
>
> 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 **<u>must</u> be served** or presented to the taxpayer **within 30 days from its date of issue; otherwise <u>it becomes null and void</u>**, unless revalidated. The taxpayer has the right to refuse its service if presented beyond the 30-day period depending on the

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

[45] SUBJECT: Updated Handbook on Audit Procedures and Techniques Volume I (Revision – Year 2000)

> policy set up by 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 and underscoring supplied)*

Clearly from the foregoing provisions, an LOA must be served or presented to the concerned taxpayer within thirty (30) days from its date of issuance; otherwise, it becomes null and void, unless revalidated. In other words, an LOA is valid only for thirty (30) days from date of issue,[46] unless revalidated.

It is well-settled that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation. The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws and provisions of a taxing act are not to be extended by implication.[47] A plain reading of the above-stated BIR issuances shows that the service of the LOA within the said 30-day period is mandatory.

In this case, while the subject LOA No. 028-2012-00000500 was issued on October 22, 2012, records reveal, however, that it was served only on January 14, 2013, or eighty-four (84) days after the date of its issuance. Thus, for failure of the concerned revenue officers to observe the 30-day mandatory period, the issued LOA has already become void, and was already without force and effect when it was served on petitioner.

Respondent did not controvert, in his *Memorandum*[48] or *Answer*[49], the fact that the authorized revenue officer of the BIR failed to serve the subject LOA within the required period. He instead asserts that the validity of an assessment is not affected by the failure of the concerned revenue officer to serve the LOA within thirty (30) days from issuance thereof, or by the failure to revalidate the same, considering that the only effect thereof is to subject the revenue officer concerned to administrative sanctions.

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[46] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.
[47] *Commissioner of Internal Revenue vs. Julieta Ariete*, G.R. No. 164152, January 21, 2010.
[48] Docket – Vol. III, pp. 1098 to 1109.
[49] Docket – Vol. I, pp. 337 to 342.

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This Court is not convinced.

It is clear from the earlier quoted provision of RAMO No. 1-00 that failure to serve the LOA to petitioner within the 30-day mandatory period renders the same void. In turn, a void LOA makes the authority of the revenue officers named therein as non-existent and not legally binding. Such being the case, the said revenue officers are deemed to have no authority at all to carry out the examination of the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period covering the year 2011.

Considering that the revenue officers who conducted the examination of petitioner's books of accounts and other accounting records for taxable year 2011 did not have the authority to do so in the first place, the subject tax assessment issued by the respondent is inescapably void.

It must be emphasized that a void assessment bears no valid fruit.[50] Such being the case, the subject tax assessment cannot be enforced against petitioner. Correspondingly, it is no longer necessary to address the other arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the FLD dated December 4, 2015 issued against petitioner is **CANCELLED AND SET ASIDE.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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[50] *Commissioner of Internal Revenue vs. Azucena T. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006.

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.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, Special 1st Division