REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

TEKTITE INSURANCE BROKERS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAl REVENUE,
Respondent.

CTA Case No. 8555

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

FEB 14 2018
4:00 p.m.

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DECISION

***Fabon-Victorino, J.*:**

This Petition for Review[1] filed by Tektite Insurance Brokers, Inc. on October 10, 2010, seeks to cancel and set aside the tax deficiency assessments under Formal Letter of Demand (FLD) No. 043A-B110-07 dated October 24, 2011, issued against it for calendar year 2007.

Petitioner Tektite Insurance Brokers, Inc. is a domestic corporation, with office at the 20th Floor, East Tower, Philippine Stock Exchange Centre, Exchange Road, Ortigas Center, Pasig City.[2] It is registered with the Bureau of Internal Revenue (BIR) on April 11, 1997 and was issued Tax Identification (TIN) No. 000-188-338-000, per BIR Certificate of Registration bearing RDO Control No.

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[1] Docket vol. 1, pp. 6-20.
[2] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket vol. 2, p. 736.

3RC0000493115.[3] Petitioner is authorized to operate as an insurance broker by the Insurance Commission.[4]

Respondent is the Commissioner of Internal Revenue, with the authority to assess and collect all national internal revenue taxes, fees, and charges. He holds office at 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 15, 2008, petitioner filed with the BIR Revenue District Office (RDO) No. 43 its Annual Income Tax Return (ITR) for calendar year 2007, reporting a revenue from its sale of services in the amount of ₱3,605,778.00.[5]

On November 10, 2008, BIR RDO No. 43 issued a Tax Verification Notice (TVN) No. 00121502[6] authorizing Revenue Officer (RO) Albert C. Eya to verify the supporting documents and/or pertinent records relative to petitioner's internal revenue taxes for calendar year 2007.

Thereafter, petitioner received a *First Request for the Presentation of Records*[7] dated November 17, 2008, for petitioner's submission/presentation of documents for examination.

Due to the transfer of RO Albert C. Eya to the Large Taxpayer's Section Division - National Office on January 5, 2010, a Revalidation Notice was issued authorizing RO Ma. Lourdes Morales and Group Supervisor Aurea S. Guevarra to continue the audit/investigation of petitioner's internal revenue taxes for calendar year 2007.[8]

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[3] Par. 5, Admitted Facts, JSFI, docket vol. 2, p. 737; Exhibit "P-3", docket vol. 1, p. 431.
[4] Par. 3, Admitted Facts, JSFI, docket vol. 2, p. 736; Exhibit "P-28", docket vol. 5, p. 2236.
[5] Par. 6, Admitted Facts, JSFI, docket vol. 2, p. 737; Exhibits "P-4" and "P-4-A", docket vol. 1, pp. 432-439.
[6] Exhibit "P-8", docket vol. 1, p. 440.
[7] Exhibit "P-9", docket vol. 1, pp. 441-442.
[8] Par. 8, Admitted Facts, JSFI, docket vol. 2, p. 737.

On May 5, 2010, petitioner executed a *Waiver of the Defense of Prescription under the Statute of Limitations,*[9] under Section 222 of the NIRC until December 31, 2011.

In a *Post Reporting Notice*[10] dated September 20, 2010, petitioner was informed about the assessment against it for deficiency income tax (IT), value-added tax (VAT), and expanded withholding tax (EWT) for calendar year 2007 in the aggregate amount of ₱11,601,145.79, inclusive of penalties.

Several months thereafter, or on July 21, 2011, petitioner received an *Amended Notice of Informal Conference,*[11] containing the result of the investigation of its 2007 internal revenue taxes, as follows:

TAX TYPE	BASIC	SURCHARGE	INTEREST	COMP. PENALTY	TOTAL
IT	2,947,982.04	-	1,867,055.29	-	4,815,037.33
VAT	1,491,917.69	-	1,019,477.08	-	2,511,394.77
Exp. WHT	5,043.86	-	3,446.63	-	8,490.49
Total	**4,444,943.59**	**-**	**2,889,979.00**	**-**	**7,334,922.59**

In a Letter[12] dated August 25, 2011, petitioner requested for a reinvestigation to reconcile figures gathered and to ascertain the validity of the findings of the BIR examiner.

Subsequently, respondent issued the Preliminary Assessment Notice[13] (PAN) dated October 6, 2011, assessing petitioner of the following deficiency taxes for calendar year 2007, as follows:

TAX TYPE	AMOUNT
Income Tax	₱4,975,224.49
Value-added Tax	2,584,083.19
Expanded Withholding Tax	8,763.88

[9] BIR Record, p. 212.
[10] Exhibit P-13, docket vol. 1, pp. 446-447.
[11] Par. 13, Admitted Facts, JSFI, docket vol. 2, p. 738; Exhibit "P-14", docket vol. 1, pp. 448-449; and Exhibit "R-4", docket vol. 6, p. 2782.
[12] Exhibit "P-17", docket vol. 1, p. 452.
[13] Exhibit "R-8", docket vol. 6, pp. 2786-2788.

TOTAL	₱7,568,071.56

On October 24, 2011, petitioner requested for a reinvestigation of the PAN through a Letter[14] dated October 14, 2011.

On November 20, 2011, petitioner received the Final Assessment Notice (FAN) with FLD No. 043A-B110-07[15], finding petitioner liable for deficiency IT, VAT and EWT, as follows:

TAX TYPE	AMOUNT
Income Tax	₱5,075,375.11
Value-added Tax	2,634,767.51
Expanded Withholding Tax	8,935.23
TOTAL	₱7,719,077.85

On December 2, 2011, petitioner protested[16] the FAN/FLD by way of a request for reinvestigation with Regional Director Jonas Amora of BIR Revenue Region No. 7, attaching thereto the reconciliation of revenue in refutation of the assessments.[17]

On March 1, 2012, petitioner received a Letter from the BIR Revenue Region No. 7 dated February 20, 2012, indicating that its administrative protest was forwarded to BIR RDO No. 43A for appropriate action.[18]

On September 10, 2012, petitioner received the Decision[19] dated August 30, 2012, denying its administrative protest thereby affirming the FAN/FLD No. 43A-B110-07 dated October 24, 2011.[20]

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[14] Exhibit "P-19", docket vol. 1, p. 456.
[15] Exhibit "P-19", docket vol. 1, p. 457-461; and Exhibit "R-9", docket vol. 6, pp. 2789-2790.
[16] Exhibit "P-21", docket vol. 1, pp. 462-463.
[17] Par. 20, Admitted Facts, JSFI, docket vol. 2, p. 739.
[18] Par. 21, Admitted Facts, JSFI, docket vol. 2, p. 739.
[19] Exhibit "R-12", docket vol. 6, p. 2799.
[20] Par. 22, Admitted Facts, JSFI, docket vol. 2, p. 739.

Thus, petitioner elevated its case *via* a Petition for Review before the Court on October 10, 2012.

In his Answer[21] filed on December 27, 2012, respondent counters that the Assessment/FLD No. 043A-B110-07 issued against petitioner for calendar year 2007 is in compliance with Section 228 of the NIRC of 1997, as amended, and with Revenue Rules and Regulations relative to the right of the taxpayer to be informed of the factual and legal bases upon which the assessment was issued. Verification of petitioner's internal revenue taxes disclosed that it: (1) failed to fully report in its financial statement certain revenues which was deemed as unaccounted source of cash leading to an inference of an undeclared income; (2) failed to pay the corresponding EWT on certain income payments, hence, disallowed as deductions from gross income; and (3) its taxable sales for 2007 were not fully subjected to VAT. Finally, respondent invokes the presumptions in favor of the correctness of his assessment.

A pre-trial conference was conducted on the basis of which a Pre-Trial Order[22] was issued on September 9, 2013.

To prove its case, petitioner presented as witnesses (1) its Customer Services Manager, Cynthia Cuyugan Andal; (2) its President, Antonio Reyes-Cuerva; (3) its Accountant and Bookkeeper, Josefa Maria Bernadette Dizon; and (4) the Court-commissioned Independent CPA, Michael L. Aguirre.

Witness **Cynthia Cuyugan Andal** testified[23] that as petitioner's Customer Services Manager, she is primarily in charge of servicing accounts, particularly, negotiating the best rates from insurance companies for their clients. She also assists in other aspects of petitioner's business, such as administration, cashiering, credit and collection, among others.

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[21] Docket vol. 1, pp. 97-100.
[22] Docket vol. 2, pp. 760-771.
[23] Exhibit "P-29", docket vol. 3, pp. 1305-1313.

Petitioner is an authorized insurance broker catering to all kinds of non-life insurance lines, like motor car, property, marine, surety bonds, engineering. As an insurance broker, petitioner acts as a broker for any company or organization who may require or who would like to secure a non-life insurance policy, at the best negotiated rate with any insurance company licensed by the Insurance Commission.

As an insurance broker, petitioner earns its income from commissions paid by the insurance company for every policy issued by them as a result of petitioner's referral. The commissions are based on a percentage of the amount of the premium that petitioner remits to the insurance company. The insurance company issues official receipts to the assured for the premium paid. On the other hand, petitioner issues official receipts to the insurance companies for the commission earned.

Witness **Antonio Reyes-Cuerva**, testified[24] that as petitioner's President, he exercises general supervision and management of its business affairs. He caused the preparation and filing of the present case with the Court to cancel the deficiency tax assessments issued against petitioner for calendar year 2007.

Petitioner is challenging the findings of the BIR that it has undeclared revenue for calendar year 2007 in the amount of ₱8,631,982.98. As an insurance broker, petitioner only earns commission income from the insurance premiums it collects for the account of the insurance companies. The collected insurance premiums are remitted to the insurance companies.

According to the witness, the BIR erroneously computed petitioner's VAT for 2007 by including the premium payments which it received from the various assured and subsequently remitted to the insurance companies. For VAT purposes, the BIR should have computed only the commissions which petitioner received as

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[24] Exhibit "P-40", docket vol. 3, pp. 1224-1238.

an insurance broker and not include the entire insurance premiums collected for taxable year 2007. Petitioner is also protesting the deficiency EWT as the FAN did not specify the professional fees that were disallowed.

Witness **Josefa Marie Bernadette Dizon**, declared[25] that as petitioner's Accountant and Bookkeeper, she is in-charge of preparing remittances and tax returns to different government agencies like the BIR. She also reviews the transactions record of petitioner and other financial documents. She likewise assists in the preparation of any requirements for BIR audit and answers assessment, if any.

Witness Dizon further testified that the present case arose from the issuance of TVN No. 00121502 by the BIR RDO No. 43 on November 10, 2008, for the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for calendar year 2007. Petitioner submitted its books of accounts and transactional documents on December 15, 2008 to the BIR in compliance with its First Request for the Presentation of Records dated November 17, 2008. Thereafter, petitioner received a Post Reporting Notice dated September 20, 2010, containing assessment for deficiency IT, VAT, and EWT for calendar year 2007 in the total amount of ₱11,601,145.79. This was followed by an Amended Notice of Informal Conference, to which petitioner replied through a letter dated July 22, 2011, requesting for the supporting schedules of the assessment. There being no action taken on its request, petitioner requested for fifteen (15) days within which to study the details of BIR's computation. Petitioner also explained in the letter dated August 24, 2011, that it only earns commissions from the insurance premiums it collects for the insurance companies.

Upon receipt of the PAN dated October 6, 2011, petitioner wrote a letter dated October 14, 2011 to respondent, requesting for a reinvestigation of the assessment for deficiency IT, VAT and EWT. On December

[25] Exhibit "P-41", docket vol. 3, pp. 914-939.

14, 2011, petitioner received the FAN which it protested by way of a request for reinvestigation on even date. On September 10, 2012, petitioner received respondent's Decision dated August 30, 2012, denying its protest and affirming the FAN/FLD. Hence, petitioner filed the instant case on October 10, 2012 to (1) to challenge the findings of the BIR that it has undeclared revenue for calendar year 2007 in the amount of ₱8,631,982.98 resulting in deficiency IT; (2) to establish that respondent failed to explain the basis of the assessments; and (3) to prove that the assessments have no factual and legal bases.

ICPA **Michael L. Aguirre**, for his part, declared[26] that per his audit and verification of petitioner's supporting documents, petitioner may be held liable for deficiency VAT in the amount of ₱551,240.09, exclusive of interest, surcharge and compromise penalties.

In the Resolutions dated July 20, 2015, [27] September 22, 2015, [28] and October 28, 2015[29], the Court admitted all the documents formally offered in evidence by petitioner.

Respondent, on the other hand, presented ROs Maria Lourdes D. Morales and Elmer O. Jimenez, as his witnesses.

RO **Maria Lourdes D. Morales**, testified[30] that she continued the audit/investigation of all internal revenue taxes of petitioner for calendar year 2007 pursuant to TVN No. 00121502 dated November 10, 2010. Upon receipt of the Memorandum Referral No. 043A-A-0548 signed by RDO Florante R. Aninag, she reviewed the BIR Record of petitioner to determine the extent and result of the investigation conducted by the previous examiner. Thereafter, she sent letters to petitioner requesting for presentation of its books of accounts and other accounting records and started the required audit and investigation.

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[26] Exhibit "P-45", docket vol. 4, pp. 1815-1826.
[27] Resolution dated July 20, 2015, docket vol. 6, pp. 2739-2741.
[28] Docket vol. 6, pp. 2753-2754.
[29] Docket vol. 6, pp. 2766-2767.
[30] Exhibit "R-17", docket vol. 6, pp. 2774-2778.

Her audit revealed that petitioner has IT, VAT and EWT deficiencies in the amounts of ₱8,013,552.00, ₱3,544,000.00, and ₱43,593.35, respectively, inclusive of increments. In her Memorandum Report, she recommended the issuance of an assessment against petitioner. She informed petitioner of her finding and the basis thereof in the Post Reporting Notice dated September 20, 2010. A PAN was subsequently issued which was followed by a FAN.

RO **Elmer O. Jimenez**, testified[31] that he conducted the re-investigation of the audit/examination of RO Ma. Lourdes Morales on petitioner's 2007 tax case by virtue of Memorandum of Assignment No. 043A-000612 signed by RDO Florante R. Aninag. After a review of the BIR Record of petitioner to determine the extent and result of the previous investigation, he requested petitioner to submit documents to substantiate its protest. But since no documents were submitted, he submitted a Memorandum Report reiterating the findings of the previous examiner.

On December 5, 2016, respondent rested his case with the admission of all his documentary exhibits. [32]

On February 23, 2017, the instant case was deemed submitted for decision with petitioner's Memorandum[33] filed on February 6, 2017 and the Report[34] of the Judicial Records Division dated February 8, 2017 that respondent, despite directive, failed to file his memorandum.

THE ISSUES

Per the parties' stipulation, the issues[35] for the Court's determination are as follows:

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[31] Exhibit "R-18", docket vol. 6, pp. 2791-2795.
[32] Docket vol. 6, pp. 2873-2874.
[33] Docket vol. 6, pp. 2879-2919.
[34] Docket vol. 6, p. 2920.
[35] Issues To Be Resolved, JSFI, docket vol. 2, p. 740.

I. Whether the Assessment/Demand Letter against the petitioner was issued in compliance with the provisions of Section 228 of the National Internal Revenue Code and in accordance to existing revenue rules and regulations relative to the right of the taxpayer/petitioner to be informed of the factual and legal basis upon which the assessment was made.

II. Whether the assessment against the petitioner has factual and legal bases.

III. Whether petitioner is liable for the deficiency income tax, value added tax and expanded withholding tax for the year 2007.

THE COURT'S RULING

As in other assessment cases, the timeliness of the filing of the instant Petition for Review must first be ascertained.

Section 228[36] of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that a taxpayer

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[36] 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 pre-assessment 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. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

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

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

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adversely affected by the decision of the Commissioner of Internal Revenue may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from receipt of the said decision; otherwise, the same shall become final, executory and demandable.

It is undisputed that on September 10, 2012, petitioner received respondent's decision dated August 30, 2012 denying its protest and reiterating the assessment per FLD No. 043A-B110-07. Thus, petitioner had thirty (30) days from September 10, 2012, or until October 10, 2012, within which to appeal respondent's adverse decision. Evidently, the instant Petition for Review was seasonably filed on October 10, 2012.

In fine, the Court has jurisdiction to take cognizance of the case pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282.[37]

Now, on the merits.

Respondent's assessment issued against petitioner is invalid for lack of authority.

Section 6(A) of the National Internal Revenue Code of 1997, as amended, vests upon respondent the power to authorize the examination of any taxpayer and the assessment of the correct amount of tax due, to wit:

> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* -

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

> (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*)

It is however elementary that before any revenue officer can conduct an examination or assessment, there must first be a valid grant of authority to the assigned RO for that purpose as may be contained in a Letter of Authority (LOA).

Section 13 of the NIRC of 1997, as amended, provides that a Letter of Authority is the authority given to the appropriate revenue officer assigned to perform assessment functions, to wit:

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

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In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*,[38] the Supreme Court discussed the significance of a Letter of Authority as follows:

> Based on Section 13 of the Tax Code, a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
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> xxx xxx xxx
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> **Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity**. (*Boldfacing supplied*)

The above pronouncement was echoed in the more recent case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,*[39] where the Supreme Court ruled that the absence of an LOA violates the taxpayer's right to due process, as follows:

> ***The absence of an LOA violated MEDICARD's right to due process***
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> An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It

[38] G.R. No. 178697, November 17, 2010.
[39] G.R. No. 222743, April 5, 2017.

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**. Section 6 of the NIRC clearly provides as follows:

xxx xxx xxx

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.**

xxx xxx xxx

In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore, no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute

> the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid.
>
> xxx xxx xxx
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> The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. *(Emphasis supplied)*

Clearly, a revenue officer must be clothed with proper authority to conduct the assigned task before proceeding with an examination or assessment. In fact, the assigned RO must furnish the subject taxpayer with a copy of the LOA before he or she could commence the audit. The said authority must be embodied in a Letter of Authority and not in a mere notice to the taxpayer as in the present case. As ruled in the above cited case, a LN cannot be converted into the LOA required by law even if issued by respondent himself.

Evidence show that the assessment and examination of petitioner's internal revenue taxes for calendar year 2007 was precipitated by a mere Tax Verification Notice issued to RO Albert C. Eya for the purpose of verifying the supporting documents and/or other records pertinent to petitioner's internal revenue taxes for calendar year 2007. To be sure, the said Tax Verification Notice is not the valid LOA contemplated under the law. Thus, considering that the revenue officer who conducted the examination was not validly authorized to do so, the assessment is void. The subsequent issuance of the Revalidation Notice to RO Ma. Lourdes Morales and Group Supervisor Aurea S. Guevarra directing them to continue the audit did not cure the said infirmity in the process. Besides, the one who authorized the assessment or examination was not a Revenue Regional Director.

WHEREFORE, the Petition for Review filed by Tektite Insurance Brokers, Inc. on October 10, 2012, is hereby **GRANTED**. Accordingly, the tax deficiency assessments under Formal Letter of Demand No. 043A-B110-07 dated October 24, 2011, are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice