REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

GOLDEN DONUTS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9676

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
AUG 3 0 2023

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review (with Urgent Motion for the Issuance of a Temporary Restraining Order [TRO] and/or Writ of Preliminary Injunction)[1] treated as a Petition for *Certiorari*[2] filed by petitioner Golden Donuts, Inc. (**petitioner/GDI**) on 31 August 2017, pursuant to Section 1[3], Rule 65 of the Rules of Court, as

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[1] Division Docket, Volume I, pp. 8-46.

[2] Pursuant to the Supreme Court Resolution in G.R. No. 252816, 03 February 2021. *Per* the Supreme Court's directive, the case shall be treated as a Petition for *Certiorari* under Rule 65 of the Rules of Court, as amended.

[3] Sec. 1. *Petition for certiorari.* – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

amended.[4] It seeks to nullify the: (1) Letter of Authority (**LOA**) No. LOA-211-2017-00000037/eLA201500081454 dated 27 April 2017[5] authorizing the examination of petitioner's books of accounts for all internal revenue taxes including Documentary Stamp Tax (**DST**) and other taxes (miscellaneous tax) for the period of 01 January 2007 to 31 December 2007, or taxable year (**TY**) 2007; and, (2) *Subpoena Duces Tecum* with No. M-2017-0021 dated 23 August 2017[6], both issued by respondent Commissioner of Internal Revenue (**respondent/CIR**).

PARTIES OF THE CASE

Petitioner is a corporation duly organized and existing under the Philippine laws and with principal office address at GDI Building, Reliance corner Sheridan Streets, Mandaluyong City.[7]

Respondent CIR, on the other hand, is vested with the power to assess and collect taxes and rule on disputed assessments, among others, with office address at the Bureau of Internal Revenue (**BIR**) National Office Building, BIR Road, Diliman, Quezon City.[8]

FACTS OF THE CASE

On 20 June 2008, petitioner received LOA No. 2007 00016170 dated 17 June 2008[9] (**LOA 2008**) authorizing the examination of its books of accounts and accounting records for all internal revenue taxes (Refundable) for TY 2007. The said LOA authorized Revenue Officer (**RO**) Renato M. Atos (**Atos**) and Group Supervisor (**GS**) Roummel A. Bernos (**Bernos**) to conduct the audit.

Later, however, through a Memorandum dated 10 November 2008[10], RO Othello E. Dalanon (**Dalanon**) and GS Gregorio S.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

4 A.M. No. 19-10-20-SC.
5 Exhibit "P-16", Division Docket, Volume II, p. 965.
6 Exhibit "P-22", id., pp. 999-1001.
7 Paragraph (Par.) 1, Part II, Petition for Review, supra at note 1, p. 10.
8 Par. 2, id.
9 Exhibit "P-1", Division Docket, Volume II, p. 789.
10 Exhibit "P-30", id., p. 1055.

Tumanguil (**Tumanguil**) (of Revenue District Office [**RDO**] No. 41 - Mandaluyong City) were assigned anew to continue the investigation and examination of petitioner's books of accounts for TY 2007 due to the transfer of RO Atos to another district.

On 12 January 2009, petitioner received the Notice of Informal Conference (**NIC**) dated 09 January 2008 with attached Preliminary Audit Findings (**PAF**), wherein respondent assessed the former with an alleged tax deficiency of ₱1,163,260,098.13.[11] On 02 March 2009, petitioner filed its Reply to the NIC.[12]

After a series of meetings between petitioner, RO Dalanon and GS Tumanguil, respondent issued a revised PAF on account of the adjustments made.[13] Later, on 22 June 2009, respondent issued a Final Audit Findings (**FAF**).[14]

Addressing the bulk of the assessment for income tax (**IT**) and value-added tax (**VAT**), petitioner wrote respondent a letter dated 27 November 2009[15] containing the result of the manual verification of their general ledger (**GL**) accounts. Therein, petitioner explained that the assessment was based on erroneous data generated by a faulty computer program. In addition, the alleged undeclared income was based on a mere assumption and has no factual basis (because respondent failed to consider the nature of the franchise fee payment under the License Agreement between petitioner and Dunkin Donut USA).

On 07 May 2010, petitioner sought the withdrawal and cancellation of the assessment covered by LOA 2008 on the ground that the BIR officers failed to file any reports of investigation despite the lapse of the 120-day period prescribed under Revenue Memorandum Order (**RMO**) No. 12-07.[16] The said request was, however, denied.[17]

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11 Exhibit "P-2", id., pp. 791-822.
12 Exhibit "P-3", id., pp. 823-826.
13 Exhibit "P-4", id., pp. 827-838.
14 Exhibit "P-5", id., pp. 863-872.
15 Exhibit "P-6", id., pp. 873-886.
16 Exhibit "P-8", id., pp. 888-889.
17 Exhibit "P-9", id., p. 890.

After receiving the Post Reporting Notice dated 19 July 2010[18], petitioner received the Preliminary Assessment Notice[19] (**PAN**) on 01 October 2010 containing the total alleged deficiency taxes of ₱1,538,545,812.61.

On 15 October 2010, petitioner filed its Protest to the PAN[20] contesting the assessments against it. According to petitioner, respondent's findings were based on mathematical errors in the GL accounts. When it called the attention of the assigned examiners about the errors, they allegedly refused to reconsider because the GL accounts are supposedly a conclusive evidence of their contents.

On 05 November 2010, petitioner received the Formal Letter of Demand (**FLD**) dated 29 October 2010[21] containing the same tax assessments in the PAN (except for the adjusted interest). In addition, attached in the FLD are the Assessment Notices (**ANs**) demanding payment of the tax deficiencies on or before 29 November 2010.[22]

On 30 November 2010, petitioner also filed its Protest to the FLD[23] and reiterated its arguments in its prior Protest (to the PAN), and claimed that the assessments are void *ab initio*. Moreover, petitioner argued that prescription already barred the assessment for VAT, final withholding tax (**FWT**), and expanded withholding tax (**EWT**).

Subsequently, respondent, through RO Stanley P. Ong (**Ong**) (under the supervision of GS Tumanguil), conducted a reinvestigation of petitioner's books of accounts for TY 2007. In their Memorandum[24], RO Ong considered petitioner's arguments and explanations and reconciled them with the previous assessments of RO Dalanon. As a result of the reinvestigation and further verification, petitioner was assessed anew with deficiency taxes in the amount of ₱4,003,081.30. The latter did not interpose any objection and agreed to pay the said amount. Later, petitioner and respondent executed an Agreement

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18 Exhibit "P-10", id., pp. 891-894.
19 Exhibit "P-11", id., pp. 895-901.
20 Exhibit "P-12", id., pp. 902-920.
21 Exhibit "P-13", id., pp. 921-926.
22 Exhibits "P-13-A", "P-13-B, "P-13-C", "P-13-D", "P-13-E", "P-13-F", and "P-13-G", id., pp. 927-933.
23 Exhibit "P-14", id., pp. 934-938.
24 Exhibit "P-39", id., pp. 1146-1160.

Form[25] (where the signatories for respondent was Revenue District Officer [**RDOr**] Isabel A. Paulino [**Paulino**] with *conforme* of RO Ong and GS Tumanguil) and paid the said amount on 01 October 2012 as evidenced by BTR-BIR Deposit Slips and Payment forms (BIR Form No. 0605).[26]

On 27 April 2017, respondent, through the National Investigation Division (**NID**), issued LOA-211-2017-00000037 authorizing the examination of petitioner's books of accounts for all internal revenue taxes including DST and other taxes (miscellaneous tax) for TY 2007 pursuant to the Run After Tax Evader or R.A.T.E. program (referred hereinafter as **RATE LOA**).[27] On 02 May 2017, petitioner received the RATE LOA together with the request for the presentation of documents. The RATE LOA was issued pursuant to a Memorandum dated 10 April 2017.[28]

Consequently, through a letter dated 09 May 2017, petitioner sought to clarify legal issues related to the RATE LOA's issuance.[29] It averred that its 2007 books of accounts were already a subject of a full-blown assessment and was subsequently terminated after payment of the deficiency taxes. Petitioner also asserted that if there were findings of alleged fraud, then it should have been first informed of the fraud's nature; otherwise, the RATE LOA would be violative of its constitutional right to due process. In addition, petitioner claimed that instead of submitting the documents again, RDO No. 41 could already forward most of the documents since they were already in its possession.

Before a response to petitioner's legal inquiry could be made, respondent requested petitioner to present its records (with a warning that a *Subpoena Duces Tecum* will be issued if the latter refuses to do so).[30] In return, petitioner asked for the deferment of the issuance of the *Subpoena Duces Tecum* until its legal inquiry should have already been

25 Exhibit "P-15", id., p. 958.
26 Exhibits "P-15-A", "P-15-B, and "P-15-C, id., pp. 959-964.
27 Exhibit "P-16", id., pp. 965-970.
28 Exhibit "P-42", id., pp. 1163-1168.
29 Exhibit "P-17", id., pp. 971-973.
30 Second Request for Presentation of Records, Exhibit "P-17-A", id., p. 974; Final Request for Presentation of Records, Exhibit "P-18-A", id., p. 977.

resolved.[31] Eventually though, despite its request for deferment, petitioner submitted documents and accounting records to the NID.[32]

Later, in an undated letter[33] signed by Deputy Commissioner of Legal and Enforcement Group Jesus Clint O. Aranas (**Aranas**), respondent replied to petitioner's legal query. There, respondent stated that based on an information from a former RO, the BIR conducted a thorough review of the available records and discovered that petitioner underdeclared 56% of its sales based on the franchise fee and management fee for TY 2007. Thus, it was concluded that there was a *prima facie* evidence of fraud (which necessitated the issuance of a new LOA to reopen the case). Respondent averred that the RO in the district level (who conducted the reinvestigation) overlooked the underdeclaration. Moreover, petitioner was advised to submit documents that were not previously submitted to RDO No. 41.

On 11 August 2017, petitioner responded to Aranas' undated letter and requested for the withdrawal and cancellation of the RATE LOA on the following grounds: (1) the assessment had already prescribed; and, (2) the findings of the alleged existence of *prima facie* fraud was already raised, discussed, and sufficiently rebutted in its Protest to the PAN (which was adopted in *toto* in its Protest to the FLD). Thus, as the existence of a *prima facie* fraud was properly contradicted by evidence, the RATE LOA no longer had a leg to stand on. Also, petitioner reiterated its request that the issuance of the *Subpoena Duces Tecum* be held in abeyance until its request for the cancellation of the RATE LOA shall have already been resolved.[34]

On 24 August 2017, petitioner received a *Subpoena Duces Tecum* dated 23 August 2017.[35] Aggrieved, petitioner filed this Petition for Review on 31 August 2017[36] praying for the Court to restrain respondent from enforcing the *Subpoena Duces Tecum* and to declare the RATE LOA as null and void. The case was raffled to the First Division.[37]

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31 See Letter dated 06 June 2017, Exhibit "P-18", id., p. 975-976; Letter dated 20 June 2017, Exhibit "P-19", id., pp. 978-980.
32 Exhibits "P-19-A", "P-19-B", "P-19-C", "P-19-D", "P-19-E", "P-19-F", id., pp. 981-986.
33 Exhibit "P-20", id., pp. 987-990.
34 Exhibit "P-21", id., pp. 991-998.
35 Supra at note 6.
36 Supra at note 1.
37 Consisting of Presiding Justice Roman G. Del Rosario, Associate Justice Erlinda P. Uy (Ret.) and Associate Justice Cielito N. Mindaro-Grulla (Ret.).

PROCEEDINGS BEFORE THE COURT

After the parties were notified that the case was set for hearing on 14 September 2017[38] and following petitioner's request for an issuance of a *Subpoena Duces Tecum* and *Ad Testificandum* to the Chief of BIR-NID - Atty. Victoriano S. Villegas (**Atty. Villegas**) was granted[39], a hearing on the urgent motion for the issuance of a TRO and/or writ of Preliminary Injunction was conducted.[40] There, petitioner presented two (2) witnesses, namely Marilyn O. Blancaflor (**Blancaflor**) and Atty. Villegas.

Through her Judicial Affidavit[41], Blancaflor testified that: (1) she is petitioner's Director for Finance and IT services; (2) petitioner's 2007 books of accounts were subjected to an investigation; (3) the assigned BIR examiners assessed petitioner with an undeclared income of ₱384,741,670.34; (4) the examiners based the assessment on the franchise fees paid by petitioner to Dunkin Donut USA which amounted to ₱23,668,908.00. The said amount was then divided with the royalty rate of one percent (1%) and the grossed-up value of ₱2,366,890,800.00 was assumed to be petitioner's sales for TY 2007. After a comparison of the grossed-up value with the declared sales *per* return, respondent assessed petitioner with underdeclaration of sales resulting to underdeclaration of income; (5) respondent's method of grossing-up is flawed because it is merely an assumption and devoid of factual basis. Under the License Agreement between Dunkin Donut USA and petitioner, the latter is obliged to pay franchise fees equivalent to 1% of the net sales of each shop whether company-owned or sublicensed to others *(franchisees)*. Hence, the grossed-up value is actually composed of petitioner's sales and sales from its franchisees. However, its franchisees' sales do not form part of petitioner's income and thus, it should not be assessed as petitioner's alleged underdeclared income; (6) petitioner committed a mistake (with the use of computerized accounting software [CAS]) when it generated the GL accounts for TY 2007 and submitted them to respondent. The GL was overstated because the supposed sales for the month of December was actually comprised of the sales for the whole TY 2007 (January to December 2007). Upon verification of both the GL and the subsidiary ledgers (SLs), petitioner

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38 Notice of Hearing dated 07 September 2017, Division Docket, Volume I, p. 722.
39 See Request for *Subpoena Duces Tecum* and *Ad Testificandum*, id., pp. 724-727; Order dated 13 September 2017, id., p. 733.
40 See Order dated 14 September 2017, id., Volume II, pp. 740-742.
41 Exhibit "P-27", id., Volume I, pp. 367-393.

confirmed that the computer-generated GL double-counted the sales reflected in the SLs; (7) in its Reply to the NIC and in the series of meetings with respondent, petitioner raised the said errors to address the discrepancies in the assessment; (8) RO Dalanon did not consider petitioner's explanations and made minor adjustments in the issued audit findings; (9) despite petitioner's protest to the PAN, respondent issued the FLD reiterating the findings in the PAN; (10) upon filing of the protest to the FLD, respondent (through RO Ong) conducted a reinvestigation of petitioner's books of accounts for TY 2007 which resulted in the reduction of the assessed deficiency taxes to ₱4,003,081.30; (11) petitioner executed an Agreement Form with respondent and paid the new assessment of deficiency taxes; (12) petitioner was able to secure Tax Clearances[42] from BIR to confirm that it has no outstanding tax liability; (13) RO Dalanon disclosed to the public (through social media, personal blogs, and news interviews) the details of the tax investigation conducted on petitioners books of accounts for TY 2007; (14) petitioner received the RATE LOA in 2017 which authorized the examination of its books of accounts for the same TY covered by the LOA 2008; (15) petitioner appealed for the cancellation of the RATE LOA; and, (16) petitioner prayed that the enforcement of *Subpoena Duces Tecum* with No. M-2017-0021 be held in abeyance.

No cross-examination was conducted.

As for Atty. Villegas, a commissioner's hearing was set for the comparison of the photocopies of petitioner's documents (in its possession) with the original documents in his possession. Likewise, no cross-examination was conducted.[43]

Later, upon the Court's inquiry, Atty. Villegas explained that in 2016, a preliminary investigation was conducted on petitioner's books of accounts for TY 2007 that established the existence of *prima facie* fraud. According to Atty. Villegas, there was a need to reopen petitioner's books of accounts for TY 2007 (even if the same was subjected to an earlier assessment) due to the findings of *prima facie* fraud. When asked if he was able to confer with the previous BIR officers who conducted the first assessment of petitioner, Atty. Villegas responded in the

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[42] Exhibits "P-26-A" and "P-26-B", id., Volume II, pp. 1020-1021.
[43] See Commissioner's Report for hearing on 15 September 2017, id., pp. 744-748.

negative. He declared that the case was only transferred to him at that time, and he simply relied on the available BIR records.[44]

Thereafter, petitioner filed its Formal Offer of Evidence (**FOE**) on 18 September 2017[45]; to which respondent filed a Comment on 22 September 2017.[46] Similarly, respondent filed his or her "Opposition with Motion to Dismiss" on 19 September 2017[47] and manifested in open court that he or she will no longer present any witnesses on account of the opposition he or she earlier filed.[48] Petitioner then filed its Reply to the Opposition.[49] The Court resolved petitioner's FOE and submitted respondent's Motion to Dismiss for resolution.[50] Lastly, respondent filed his or her Answer to the Petition for Review on 23 October 2017.[51]

On 24 January 2018, the First Division promulgated the Resolution which granted respondent's Motion to Dismiss and dismissed the Petition for Review.[52] Petitioner moved for the reconsideration[53] of the said dismissal (which respondent opposed[54]) but to no avail.[55]

Still later, petitioner appealed the dismissal of its case before the Court *En Banc*[56], however, the same was denied.[57] Petitioner then elevated the matter to the Supreme Court *via* a Petition for *Certiorari* under Rule 65 of the Rules of Court, as amended.[58] It was docketed as G.R. No. 252816.

On 03 February 2021, the Supreme Court's First Division issued a Resolution[59] of even date remanding the case to this Court for the determination of whether the BIR committed grave abuse of discretion,

44 TSN dated 14 September 2017, pp. 41-51.
45 Division Docket, Volume II, pp. 757-772.
46 Id., pp. 1171-1174.
47 Id., pp. 773-787.
48 See Order dated 28 September 2017, id., pp. 1186-1187.
49 Filed on 02 October 2017, id., pp. 1189-1206.
50 See Resolution dated 18 October 2017, id., pp. 1219-1221.
51 Id., pp. 1222-1238.
52 Id., pp. 1252-1261.
53 See Motion for Reconsideration (of the Resolution dated January 24, 2018), id., pp. 1262-1277.
54 See Opposition (Re: Petitioner's Motion for Reconsideration), id., pp. 1300-1307.
55 See Resolution dated 10 May 2018, id., pp. 1313-1318.
56 See Petition for Review filed on 18 June 2018, id., pp. 1322-1350; and Motion for Reconsideration filed on 06 December 2019, id., pp. 1525-1543.
57 See *En Banc* Decision dated 19 November 2019, *Rollo*, pp. 220-232; and Resolution dated 30 June 2020 for CTA EB No. 1866 (CTA Case No. 9676), id., pp. 301-304.
58 Filed on 28 August 2020 through registered mail, id., pp. 309-349.
59 Dated 03 February 2023, id., pp. 433-439.

amounting to lack or excess of jurisdiction, in issuing the RATE LOA and the *Subpoena Duces Tecum*. Accordingly, the Supreme Court declared petitioner's initial Petition for Review filed before this Court to be treated as a Petition for *Certiorari*.[60]

Hence, this case is now before Us.

ISSUE

WHETHER RESPONDENT COMMISSIONER OF INTERNAL REVENUE (CIR) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE OR SHE ISSUED *(1)* LETTER OF AUTHORITY (LOA) NO. LOA-211-2017-00000037/ELA201500081454, DATED 27 APRIL 2017, AUTHORIZING THE EXAMINATION OF PETITIONER GOLDEN DONUT, INC.'S BOOKS OF ACCOUNTS FOR ALL INTERNAL REVENUE TAXES, INCLUDING DOCUMENTARY STAMP TAX (DST) AND OTHER TAXES (MISCELLANEOUS TAX) FOR THE PERIOD OF 01 JANUARY 2007 TO 31 DECEMBER 2007, AND *(2)* THE *SUBPOENA DUCES TECUM* WITH NO. M-2017-0021 DATED 23 AUGUST 2017.

ARGUMENTS

In insisting that respondent gravely abused his or her exercise of discretion, petitioner maintains that under Section 235[61] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, inspection of the books of accounts and other related accounting records of a taxpayer shall be made only once in a TY. In its case, both the LOA 2008 and the RATE LOA pertain to the same TY 2007. Hence, the subsequent RATE LOA is already issued in violation of Section 235.

Petitioner also argues that respondent's right to assess the former's books of accounts for TY 2007 has already prescribed pursuant to Section 203[62] of the same law. Allegedly, respondent only had until 15 April 2011, or three (3) years from 15 April 2008 (the last day to file the annual income tax return for TY 2007), to assess petitioner's books of accounts. Petitioner adds that it is only required to preserve its books of

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60 Id.
61 SEC. 235. *Preservation of Books of Accounts and Other Accounting Records.*
62 SEC. 203. *Period of Limitation Upon Assessment and Collection.*

accounts and accounting records until the last day within which the respondent can make an assessment or, in this case, only until 15 April 2011.

Moreover, petitioner contends that respondent failed to adduce any evidence that could warrant the application of the ten (10)-year prescriptive period to assess its TY 2007 as provided under Section 222[63] of the NIRC of 1997, as amended. In stating so, petitioner points out that fraud, being an exception to the rule on prescription, must not be taken lightly and must be proved by clear and convincing evidence. In this case, however, respondent merely based its allegation of fraud on inferences and assumption as he or she simply compared the entries in petitioner's GL accounts and the annual tax returns. Petitioner posits that such assumption could not amount to clear and convincing evidence of fraud. Thus, in the absence of clear evidence of fraud, irregularity, or mistake, respondent is precluded by law from issuing the RATE LOA (beyond the 3-year prescriptive period to assess) and the related *Subpoena Duces Tecum*.

Petitioner further avers that when the BIR made an initial assessment based on the taxpayer's books of accounts and the latter paid the resulting deficiency taxes, BIR was already without authority to issue another assessment for that same TY as ruled in the cases of *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc. (now Sime Darby International Tire Co., Inc.), et al.*[64] and *The Professional Services, Inc. v. Commissioner of Internal Revenue* (**Professional Services**).[65]

Likewise, petitioner alleges that the RATE LOA and the *Subpoena Duces Tecum* were issued in violation of procedural rules under RMO Nos. 27-2010[66] and 24-2008[67], hence, violative of its right to due process. According to petitioner, no preliminary investigation was conducted prior to the issuance of the memorandum recommending the issuance of the RATE LOA. It was then impossible for respondent to establish *prima facie* fraud.

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63 SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*

64 G.R. No. 104171, 24 February 1999.

65 CTA Case No. 9502, 13 August 2019.

66 Re-invigorating the Run After Tax Evaders (RATE) Program, and Amending Certain Portions of RMO No. 24-2008.

67 Policies and Guidelines for RATE Cases.

Assuming there was a finding of *prima facie* fraud, petitioner asserts that the alleged basis of 56% underdeclaration of sales was already addressed in its separate protest to the PAN and to the FLD, thus it sufficiently rebutted the findings of the supposed existence of fraud. However, respondent failed to consider the arguments in both of its protests since the original case docket was only transmitted to them on 09 May 2017 (after the questioned RATE LOA was already issued on 27 April 2017).

Finally, petitioner claims that the issuance of the RATE LOA and *Subpoena Duces Tecum* was predicated on RO Dalanon's uncorroborated findings and unfounded assertions which were fueled with the latter's hostility towards petitioner. With the foregoing, petitioner maintains that it is only proper for this Court to step in to protect a taxpayer's right against unscrupulous assessments.

Adopting the Answer to the Petition for *Certiorari*, respondent is firm in his or her findings that *per* evaluation of petitioner's records, it made a 56% underdeclaration of its sales (as shown between the GL accounts and the amounts reflected in the annual tax return). According to respondent, the underdeclaration already constituted *prima facie* fraud under Section 248[68] of the NIRC of 1997, as amended. Thus, contrary to petitioner's claims, respondent is not precluded from examining the latter's books of accounts for TY 2007 since the finding of *prima facie* fraud is one of the exceptions under Section 235 of the said law.

As for the supposed violation of petitioner's right to due process, respondent claims that BIR-NID conducted a preliminary investigation in accordance with RMO Nos. 27-2010 and 24-2008.

RULING OF THE COURT

After a careful study of the records and the parties' contrasting arguments, the Court is constrained to deny the present petition.

At the onset, it bears noting that our tax laws do not absolutely bar the issuance of a second LOA covering the same TY as can be gleaned from Section 235 of the NIRC of 1997, as amended, to wit:

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68 **SEC. 248.** *Civil Penalties.*

...

SEC. 235. *Preservation of Books and Accounts and Other Accounting Records.* - All the books of accounts, including the subsidiary books and other accounting records of corporations, partnerships, or persons, shall be preserved by them for a period beginning from the last entry in each book until the last day prescribed by Section 203 within which the Commissioner is authorized to make an assessment. The said books and records shall be subject to examination and inspection by internal revenue officers: *Provided,* **That for income tax purposes, such examination and inspection shall be made only once in a taxable year, <u>except</u> in the following cases:**

(a) **Fraud, irregularity or mistakes, as determined by the Commissioner;**

(b) The taxpayer requests reinvestigation;

(c) Verification of compliance with withholding tax laws and regulations;

(d) Verification of capital gains tax liabilities; and

(e) In the exercise of the Commissioner's power under Section 5(B) to obtain information from other persons in which case, another or separate examination and inspection may be made. Examination and inspection of books of accounts and other accounting records shall be done in the taxpayer's office or place of business or in the office of the Bureau of Internal Revenue. All corporations, partnerships or persons that retire from business shall, within ten (10) days from the date of retirement or within such period of time as may be allowed by the Commissioner in special cases, submit their books of accounts, including the subsidiary books and other accounting records to the Commissioner or any of his deputies for examination, after which they shall be returned. Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability.

Any provision of existing general or special law to the contrary notwithstanding, the books of accounts and other pertinent records of tax-exempt organizations or grantees of tax incentives shall be subject to examination by the Bureau of Internal Revenue for purposes of ascertaining compliance with the conditions under which they have been granted tax exemptions or tax incentives, and their tax liability, if any.[69]

...

[69] Emphasis and underscoring supplied.

In addition, RMO No. 27-2010[70] sanctions the issuance of another LOA covering the same taxable period even though the previous investigation had already been concluded, to wit:

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> A. *Development of RATE Cases*
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> ...
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> 4. **Upon the discovery of evidence of fraud** in the course of a regular audit investigation, the RDO/LTS District Office or Division shall immediately transmit the records of the case to the NID or the SID concerned, for investigation under the RATE Program.
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> ...
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> B. *Issuance of Letters of Authority for RATE Cases*
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> ...
>
> 4. If, however, it is disclosed that an LA was **previously issued for the concerned taxpayer**, and that the **corresponding investigation has already been commenced or concluded**, the DCIR-LIG shall include in the request for issuance of an LA a recommendation and justification for the re-assignment to, or re-opening of the investigation by, the NID/SID concerned. **The Commissioner shall then decide whether the investigation shall be continued by the present investigating office, or if the investigation shall be re-assigned to/re-opened by the NID/SID concerned.**[71]
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> ...

Moreover, in *Commissioner of Internal Revenue v. Hon. Raul M. Gonzalez, et al.*[72], the Supreme Court held that a prior terminated assessment cannot bar the issuance of a second LOA for the same taxable period if there is a *prima facie* evidence of fraud, as follows:

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> Respondent Secretary's other ground for assailing the course of action taken by petitioner in proceeding with the audit and investigation of LMCEC — the alleged violation of the general rule in Section 235 of the NIRC allowing the examination and inspection of taxpayer's books of accounts and other accounting records only once in a taxable year — is likewise untenable. **As correctly pointed out by petitioner, the discovery of substantial underdeclarations of**

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[70] Supra at note 65.

[71] Emphasis supplied.

[72] G.R. No. 177279, 13 October 2010; Citations omitted and emphasis supplied.

> **income by LMCEC for taxable years 1997, 1998 and 1999 upon verified information provided by an "informer" under Section 282 of the NIRC,** as well as the necessity of obtaining information from third parties to ascertain the correctness of the return filed or evaluation of tax compliance in collecting taxes (as a result of the disobedience to the summons issued by the Bureau against the private respondents), **are circumstances warranting exception from the general rule in Section 235.**
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> As already stated, the substantial underdeclared income in the returns filed by LMCEC for 1997, 1998 and 1999 in amounts equivalent to **more than 30% (the computation in the final assessment notice showed underdeclarations of almost 200%) constitutes *prima facie* evidence of fraudulent return under Section 248(B) of the NIRC.** Prior to the issuance of the preliminary and final notices of assessment, the revenue officers conducted a preliminary investigation on the information and documents showing substantial understatement of LMCEC's tax liabilities which were provided by the Informer, following the procedure under RMO No. 15-95. Based on the *prima facie* finding of the existence of fraud, petitioner issued LA No. 00009361 for the TFD to conduct a formal fraud investigation of LMCEC. Consequently, respondent Secretary's ruling that the filing of criminal complaint for violation of Sections 254 and 255 of the NIRC cannot prosper because of lack of prior determination of the existence of fraud, is bereft of factual basis and contradicted by the evidence on record.
>
> ...

Based on the records of the case, respondent anchored the issuance of the RATE LOA for the TY 2007 on the finding of *prima facie* evidence of fraud as evinced by the Memorandum[73] recommended by the chief of respondent's NID to respondent CIR, which is one of the exceptions under Section 235 of the NIRC of 1997, as amended. This *alone* is sufficient reason for the Court to deny petitioner's claim that respondent committed grave abuse of discretion in issuing another LOA for the same TY.

Further, the Court finds it propitious to discuss below the grounds why We sustain respondent's actions.

[73] Supra at note 28.

i. THERE WERE IRREGULARITIES IN THE ASSESSMENT CONDUCTED PURSUANT TO THE LETTER OF AUTHORITY DATED 17 JUNE 2008 (LOA 2008).

Firstly, it is noted that petitioner alleges that the prior assessment is closed and terminated. However, it did not present any Termination Letter or Authority to Cancel Assessment (ATCA) or BIR Form No. 17.58 to evidence the cancellation of the assessment pursuant to RMO No. 23-06[74] which provides:

> ...
> SEC. 2. Scope. — The following cases may, upon compliance with the basis and conditions set forth in Section 204 of the Code and RR 15-2006 as reiterated in this Order, be the subject matter of abatement:
>
> ...
>
> 2.4 **Cases Under administrative protest pending in the** Regional Offices (ROs), **Revenue District Offices (RDOs)**, Legal Service (LS), Large Taxpayer Service (LTS), Collection Service (CS), Enforcement Service (ES) and other offices in the National Office (NO) except those cases where the PCGG has an interest and/or there is a need to coordinate with the PCGG;
>
> 2.5 **Assessed cases, whether preliminary or final, disputed or not, as of June 30, 2006** except those cases where the PCGG has an interest and/or there is a need to coordinate with the PCGG;
>
> ...
>
> 4.7 Within fifteen (15) days after payment of the basic tax, the following procedures shall be followed:
>
> 4.7.1 Attached proof of payment (Revenue Official Receipt/BIR Form 0605 with machine validation) and the application form to the docket of the case;
>
> 4.7.2 **Prepare Termination Letter (Annex B) for every tax type for the signature of the Commissioner of Internal Revenue**;
>
> 4.7.3 **Prepare Authority to Cancel Assessment (Form 17.58-ATCA) to cancel assessments for penalties (surcharge, interest and compromise penalty), following the existing rules and**

[74] Prescribing the Guidelines and Procedures on the One-Time Administrative Abatement of all Penalties/Surcharges and Interest on Delinquent Accounts and Assessments (Preliminary or Final, Disputed or Not) as of June 30, 2006 as implemented by Revenue Regulations No. 15-2006.

procedures in RDAO 6-2001, to be signed only after the Termination Letter has been issued;[75]

...

Relative thereto, Revenue Delegation Authority (**RDAO**) No. 06-01[76] states that it is the Regional Director who shall sign the ATCA for cases under reinvestigation and/or reconsideration within their jurisdiction:

...

I. *Instances When an Authority to Cancel Assessment (ATCA) Should Be Issued*

Any change in the amount of tax assessments and/or delinquent accounts arising from the following cases shall require the issuance of ATCA:

1. **Cases under reinvestigation or reconsideration where the final assessment as originally issued was either modified, amended, or otherwise canceled in its entirety;**

...

II. *Delegated Authority*

The authority of the Commissioner of Internal Revenue to sign the ATCA, after the appropriate report or action docket has been approved by the appropriate approving officer authorized under existing laws, regulations and other issuances, is hereby delegated to designated officials as follows:

...

5. Regional Directors — For Regional cases under reinvestigation/ reconsideration[77]

...

Applying the foregoing, it is apparent that the subject assessment here is covered by the provisions of RMO No. 23-06 in relation to RDAO No. 06-01, thus the need for the execution of the said documentary requirements in case the assessment has been modified or amended.

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[75] Emphasis supplied.

[76] Delegation of Authority to Approve and Sign Authority to Cancel Assessment (ATCA) by the Regional Offices, Large Taxpayers Service (LTS), Enforcement Service (ES), Collection Service (CS) and Legal Service (LS).

[77] Emphasis supplied.

However, a perusal of the records reveals that the petitioner's very basis (in alleging that the prior assessment is already closed and terminated) is only an Agreement Form[78], without the corresponding termination letter and ATCA.

Moreover, an examination of the said Agreement Form that petitioner's representative signed bears the following notation:

> ...
>
> I/We understand that the report of verification submitted by the Revenue Officer is **subject to review and approval by higher authorities,** and also, **without prejudice to whatever <u>letter notice</u>, if any, be issued by the National Office later on.**[79]
>
> ...

Clearly, absent the required documents and the express stipulation in the Agreement Form, We are not convinced that the assessment for petitioner's books of accounts for TY 2007 has been closed and terminated accordingly as the former so insists.

Secondly, the prior assessment did not follow the proper procedures laid down in Section 228[80] of the NIRC of 1997, as amended,

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78 Supra at note 25.

79 Emphasis and underscoring supplied.

80 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:

...

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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

and implemented by Revenue Regulations (**RR**) No. 12-99[81], as amended by RR No. 18-13[82]:

> ...
>
> 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 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).
>
> 3.1.4 *Disputed Assessment.* — The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:
>
> > (i) *Request for reconsideration* — refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.
> >
> > **(ii) *Request for reinvestigation* — refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.**
>
> The taxpayer shall state in his **protest** (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered *void and without force and effect.*
>
> ...
>
> For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final. The term "*relevant supporting*

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

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

documents" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and **the FDDA shall consequently be denied.**

...

3.1.5 *Final Decision on a Disputed Assessment (FDDA).* — **The decision of the Commissioner or his duly authorized representative** shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void* (see illustration in ANNEX "C" hereof), and (ii) **that the same is *his final decision*.**[83]

...

Corollarily, RMO No. 26-16[84] provides:

...

II. *Policies and Guidelines*

1. A taxpayer must be given an opportunity, if he/she/it so chooses, to explain his/her/its objection to an assessment and present necessary document in support his/her/its objection, before a FDDA is issued.

...

3. Formal Letter of Demand and Final Assessment Notice (FLD)/(FAN) shall be issued fifteen (15) days from date of receipt by the taxpayer of the PAN, whether the same was protested or not.

...

5. Within thirty (30) days from receipt of the FLD/FAN, the taxpayer shall either:
   a. Accept the assessment, fully or partially, and pay the amount due on the assessment accepted, or

   b. Protest the assessment fully or partially by filing either of the following remedy, and the filing of one precludes the filing of the other remedy:

[83] Emphasis supplied and italics in the original text.
[84] Policies and Guidelines in Handling Disputed Assessments.

i. Request for Reconsideration if the taxpayer is not going to submit any other additional evidence or documents and merely pleas for a re-evaluation of an assessment;

ii. **Request for a Reinvestigation on the basis of newly discovered evidence or if the taxpayer intends to present or submit additional evidence or documents.**

6. After the issuance of the FAN/FLD, the taxpayer accepts and settles/pays the assessment in full, Payment Form 0605 shall be duly prepared, filed and paid as evidenced of the settlement of the assessment. If the taxpayer accepts and settle/pays the assessment in part, and protest the remaining portion, Payment Form 0605 shall be prepared, filed and paid for that portion of the assessment accepted and settled, and a FDDA shall be issued for the portion of the assessment not settled and resolved. **For that portion of the assessment resolved in favor of the taxpayer, an Authority to Cancel Assessment (ATCA) shall be prepared to evidence the cancellation of the assessment.**

7. If a request for Reinvestigation was made, the taxpayer shall submit all the relevant supporting documents in support of his/her/its protest within sixty (60) days from the date of the filing of the taxpayer's letter of protest. Evaluation of the protest shall be based exclusively on the documents submitted within this period, and no further document shall be accepted after the expiration of the said period. The assessment shall become final and executory in the event the taxpayer fails to submit the relevant supporting documents within this 60 days period, and a Collection Letter and other collection remedies such as but not limited garnishment, warrant and levy shall be issued against the taxpayer.

8. **All decisions on protest to the FAN, whether the taxpayer's protest is accepted or denied partially or wholly, <u>shall</u> be communicated to the taxpayer through the issuance of a Final Decision on a Disputed Assessment (FDDA).**[85]

...

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[85] Emphasis and underscoring supplied.

A textual reading of the foregoing provisions shows that if a taxpayer files a protest in the form of request for reinvestigation, such as the instant case[86], the CIR or the duly authorized representative must issue a Final Decision on Disputed Assessment (**FDDA**) (regardless of whether the taxpayer's protest is accepted or denied partially or wholly) to serve as the final decision of the CIR or the duly authorized representative on the disputed assessment. Consequently, the taxpayer may pay wholly or partially the amount of deficiency taxes, surcharges and interest **based on the FDDA** or if the taxpayer still does not agree, it may file an administrative appeal before the CIR or a judicial appeal before this Court within thirty (30) days from the receipt of the FDDA. However, in the case at bar, *no FDDA was ever issued to petitioner.* Petitioner allegedly settled its deficiency taxes, surcharges and interest for the TY 2007 only on the basis of a *mere Memorandum*[87] prepared by RO Ong and noted by GS Tumanguil. Unfortunately, <u>the said Memorandum could not be considered as the FDDA</u> for the following reasons:

1) It was not issued by then Officer-In-Charge Assistant Regional Director Jonas DP. Amora (**OIC-ARD Amora**), who was the signatory in the PAN and the FLD;

2) Based on the tenor of the Memorandum, the officers merely recommended for the case to be closed and terminated, to wit: *"Aside from the aforementioned facts, no other matters are deemed necessary to note. In view thereof, it is hereby* ***recommended*** *that this case be approved and considered closed and terminated*";

3) It was addressed to the RDOr of RDO No. 41 and not to the taxpayer; and,

4) There is no indication therein that the same constitutes as the final decision of the Commissioner's duly authorized representative, OIC-ARD Amora.

[86] See Protest to the FLD, supra at note 23.
[87] Supra at note 24.

Lastly, the closure or termination of an assessment by way of an Agreement Form[88] pursuant to Executive Order (**EO**) No. 175[89] dated 03 November 1999, as implemented by Revenue Administrative Order (**RAO**) No. 10-2000[90] dated 07 August 2000, is not one of the powers and functions of the RDO. It is evident from the said RAO that *only the Regional Office has the authority to prepare and issue ATCA when an assessment is cancelled or when a previously assessed deficiency tax is reduced as a result of reinvestigation/reconsideration of protested cases.* Nowhere in the aforementioned RAO was the use of an Agreement Form mentioned as a means of closing or terminating an assessment.

ii. RESPONDENT CONDUCTED A PRELIMINARY INVESTIGATION WHICH RESULTED IN THE FINDINGS OF *PRIMA FACIE* FRAUD.

Likewise, petitioner's contention that respondent did not comply with RMO No. 27-2010 in issuing the RATE LOA is bereft of merit. What is only required from the said RMO prior to the issuance of an LOA for RATE cases is a preliminary investigation to establish *prima facie* evidence of fraud or tax evasion. The same is present in the instant case.

As previously discussed, respondent prepared a Memorandum[91] to document the preliminary investigation conducted by respondent, which the Court finds as sufficient and in accordance with the said RMO. It must be noted that a preliminary investigation is not the occasion for the full and exhaustive display of the parties' respective evidence[92] but the presentation only of such evidence as may engender a well-grounded belief that fraud or tax evasion exists. In contradistinction to the contentions put forth by petitioner, it is worthy to note that respondent considered the issue on the matter of fraud (which petitioner asserts to have been previously disputed and or rebutted). However, despite giving due regard and consideration to petitioner's arguments, respondent still arrived at the conclusion that

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88 Supra at note 25.
89 Organizational Restructuring of the Bureau of Internal Revenue to Improve Administrative Control Over Certain Categories of Taxpayers.
90 Organization and Functions of the Regional Offices Including the Divisions and Revenue District Offices Under Them Down to Section Level.
91 Supra at note 28.
92 See *Commissioner of Internal Revenue, et al. v. The Honorable Court of Appeals, et a.*, G.R. No. 119322, 04 June 1996.

fraud or tax evasion existed, as can be gleaned from the following portions of the Memorandum:

> ...
>
> The GL was contained in a compact disk (CD) submitted to the RO originally assigned in this case and **duly validated per entries and/or adjustments made by the auditor.** As defined, a General Ledger is a master set of accounts that summarizes all transactions occurring within an entity. It holds account information that is needed to prepare financial statements and includes accounts for assets, liabilities, owner's equity, revenues and expenses. Quite evidently, **the Company's internal accountant and external auditors should have knowledge on the existence of mathematical errors of the Company's CAS in the course of preparing the quarterly and annual financial statements covering the TY 2007.** The allegations of GDI that its internal accountants and/or external auditors confined and/or made used (*sic*) of the figures reflected in the source documents is (*sic*) unacceptable and is (*sic*) bereft of merit. Accountants are bound to validate and support by a sub-schedule for every figures (*sic*) they reported and/or reflected in the financial statements they have prepared unless it maintained two (2) set of books of accounts. **It is therefore not possible for internal accountants and external auditors to have not checked and validated the monthly account balances and year-end totals** which are very material in amount and obvious **especially the external auditors whose responsibility is to note unexplained and/or material changes** of the real and nominal accounts in the financial statements.[93]
>
> ...

The above sufficiently established a well-grounded belief that fraud or tax evasion existed. It also bears noting that the investigation under the RATE LOA is to be conducted by the NID of respondent's national office for the sole purpose of determining the existence of fraud or tax evasion, and not by the same persons from RDO No. 41 which previously conducted the regular audit examination. For this reason, the case of *Professional Services*[94] that was mentioned by petitioner in its memorandum[95] bears no relevance nor applicability to the instant case. This is due to the fact that in the aforementioned case, two regular audits covering the same TY involving the same taxpayer were conducted.

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[93] Supra at note 28, p. 1167; Emphasis supplied.
[94] Supra at note 65.
[95] Division Docket, Volume II, pp. 1349-1392.

As to petitioner's insistence that respondent should prove fraud by clear and present convincing evidence to apply the 10-year extraordinary prescription period under Section 222[96] of the NIRC of 1997, as amended, We find such argument erroneous, if not preposterous. It must be emphasized that what is under scrutiny in the instant case is the issuance of the RATE LOA. It is important to note that an LOA merely initiates the audit process and informs the taxpayer that he or she shall be investigated for possible or potential deficiency tax assessment.[97] Given that respondent had yet to start the examination of the books of accounts during this particular phase, it is premature for petitioner to expect or even demand that a clear and convincing evidence of fraud must be provided. It is also well-settled that the issue of the prescription of the right to assess goes into the merits of the assessment.[98] Simply stated, the same can be appropriately addressed subsequent to the issuance of the assessment and not prior to the commencement of the examination or audit.[99]

At this point, We emphasize that the present action aims to pin down the existence of a supposed grave abuse of discretion, amounting to lack or excess of jurisdiction on the part of respondent. In other words, whether he or she has exceeded the jurisdiction of his or her office when the RATE LOA and the *Subpoena Duces Tecum* were issued against petitioner.

Grave abuse of discretion has been defined as that capricious or whimsical exercise of judgment which is tantamount to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of

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96 SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* -
(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
...
(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.
...

97 *AFP General Insurance Corporation v. Commissioner of Internal Revenue*, G.R. No. 222133, 04 November 2020.

98 See *Republic of the Philippines v. Ker & Company, Ltd.*, G.R. No. L-21609, 29 September 1966.

99 Id.

passion and hostility.[100] The party alleging the same should be able to clearly establish that the agency blatantly abused its discretion such that it was deprived of its authority to dispense justice. In herein petition, We do not find this to be the case.

WHEREFORE, in view of the foregoing, the Petition for *Certiorari* filed by petitioner Golden Donuts, Inc. on 31 August 2017 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

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100 *People of the Philippines v. Jose C. Go, et al.*, G.R. No. 191015, 06 August 2014 citing *Benjamin B. Bangayan, Jr. v. Sally Go Bangayan*, G.R. No. 172777, 19 October 2011.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting 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