REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

ZENOREX MARKETING CORPORATION, Petitioner,	CTA Case No. 10175
	Members:
- versus -	**BACORRO-VILLENA,** *Acting Chairperson,* and **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 10 2023

x - x

9:11 a.m.

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Zenorex Marketing Corporation (**petitioner/Zenorex**) pursuant to Section 3(a)[2], Rule 8, in relation to Section 3(a)(1)[3], Rule 4, of the Revised Rules

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[1] Filed on 01 October 2019, Division Docket, Volume I, pp. 6-19.

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

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

of the Court of Tax Appeals[4] (**RRCTA**). It seeks to declare as void on the ground of prescription the Formal Assessment Notice (**FAN**) dated 14 January 2011[5] and the Final Decision on Disputed Assessment (**FDDA**) dated 07 June 2016[6], assessing petitioner for deficiency expanded withholding taxes (**EWT**) and withholding taxes on compensation (**WTC**) for taxable year (**TY**) 2007. Furthermore, petitioner also prays that the Decision (**Final Decision**) rendered by respondent Commissioner of Internal Revenue (**respondent/CIR**) dated 15 August 2019[7], upholding the deficiency EWT and WTC assessments against it in the aggregate amount of ₱5,366,351.19, be reversed and set aside.

PARTIES TO THE CASE

Petitioner is a corporation organized and existing under the laws of the Philippines with principal business address at 2510 Cityland 10 Tower 1, Ayala Avenue corner H.V. de la Costa Street, Salcedo Village, Makati City, Philippines.[8] On the other hand, respondent is impleaded herein in his or her official capacity as the head of the Bureau of Internal Revenue (**BIR**).[9]

FACTS OF THE CASE

On 03 December 2010, petitioner received a Preliminary Assessment Notice[10] (**PAN**) with Details of Discrepancies[11], both dated 26 November 2010, assessing petitioner with deficiency EWT and WTC for TY 2007 in the amount of ₱898,772.43 and ₱2,246,795.07, respectively, or for an aggregate amount of ₱3,145,567.50.

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]

...

4 A.M. No. 05-11-07-CTA dated 22 November 2005.

5 Exhibit "P-3", Division Docket, Volume I, pp. 389-391; Exhibit "R-5", BIR Records, pp. 184-187.

6 Exhibit "P-5", Division Docket, Volume I, pp. 398-399; Exhibit "R-6", BIR Records, pp. 213-214.

7 Exhibit "R-7", BIR Records, pp. 287-294.

8 Paragraph 3.01 of the Petition for Review, Division Docket, Volume I, p. 7, as admitted by respondent in par. 3 of his or her Answer, id., p. 129.

9 Par. 3.02 of the Petition for Review, id., p. 7, as admitted by respondent in par. 3 of his or her Answer, id., p. 129.

10 Exhibit "P-2", id., pp. 385-387; Exhibit "R-3", BIR Records, p. 146.

11 Exhibit "R-4", BIR Records, pp. 144-145.

On 04 January 2011, petitioner filed a reply to the PAN dated 29 December 2010[12] contesting the assessment and claiming that the right of the government to assess had already prescribed. In the same letter, petitioner also manifested its refusal to execute a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (**Waiver of Defense of Prescription**). Thereafter, on 14 January 2011[13], petitioner received the FAN of the same date.

On 14 February 2011 or within thirty (30) days from the date of receipt of the FAN, petitioner filed a Protest[14] (**Protest**) in the form of a request for reconsideration reiterating that the BIR's authority to assess had already prescribed. In response to the BIR's letter dated 19 August 2014, petitioner submitted another letter dated 14 October 2014[15] where it maintained that the government's right to assess had already prescribed. It also submitted a reconciliation of the items of assessment being made against it.

On 13 June 2016, petitioner learned of the denial of its protest when it received the FDDA dated 07 June 2016[16] issued by Regional Director Jonas DP. Amora (**RD Amora**). On 20 June 2016, petitioner appealed[17] the FDDA to respondent. On 30 August 2019, petitioner received respondent's Final Decision[18] denying its Administrative Appeal. On 01 October 2019 or on the next working day[19] following the end of the 30-day period to appeal, petitioner filed the instant Petition for Review[20] with this Court.

On 28 November 2019, respondent filed his or her "Answer (with Special and Affirmative Defenses)"[21], interposing the following defenses: (1) the assessments were issued in accordance with law, rules and jurisprudence; (2) petitioner failed to demonstrate that the assessments subject of the case, which enjoy the presumption of regularity and

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[12] Exhibit "P-32", BIR Records, pp. 177-178.
[13] Supra at note 5.
[14] Exhibit "P-33", BIR Records, pp. 189-191.
[15] Exhibit "P-34", id., pp. 205-208.
[16] Supra at note 6.
[17] Exhibit "P-6", Division Docket, Volume I, pp. 400-403.
[18] Supra at note 7.
[19] The Supreme Court suspended work in all courts in the National Capital Judicial Region due to a scheduled transport strike.
[20] Supra at note 1.
[21] Division Docket, Volume I, pp. 129-136.

correctness, are null and void; and, (3) the assessments are valid and binding since the same were issued within the prescriptive period.

On 09 December 2019, respondent transmitted to the Court the BIR Records of the case with one (1) folder consisting of 400 pages.[22] Later, petitioner and respondent separately filed their Pre-Trial Briefs on 24 January 2020[23] and 27 January 2020[24], respectively.

During the initial pre-trial conference, upon agreement of the parties, the case was referred to mediation.[25] However, on 15 September 2020, the parties decided to forego the conciliation proceedings before the Philippine Mediation Center (**PMC**)[26], thus, the case was set for pre-trial conference anew.[27]

On 07 December 2020, the pre-trial conference proceeded whereby the parties were given a period of 30 days within which to file their Joint Stipulation of Facts and Issues (**JSFI**).[28] In compliance with the above, the parties submitted their JSFI[29] on 06 January 2021. Subsequently, the Court issued the Pre-Trial Order[30] on 13 January 2021.

Thereafter, trial ensued.

On 15 February 2021, petitioner presented as its lone witness its Accounting Manager, Cheryl R. Samonte (**Samonte**).[31] Samonte testified by direct examination, through her Amended Direct Examination[32], that: (1) petitioner filed and paid its "Monthly Remittance Return of Income Taxes on Compensation" (BIR Form No. 1601-C)[33] and "Monthly Remittance Return of Creditable Income Taxes

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22 See Compliance filed by petitioner on 09 December 2019 and Notice of Minute Resolution dated 11 December 2019, id., pp. 140 and 141, respectively.
23 Id., pp. 143-154.
24 Id., pp. 304-307.
25 See Order dated 30 January 2020, id., p. 316.
26 PMC-CTA Form 6 – No Agreement to Mediate dated 15 September 2020, id., p. 321.
27 See Resolution dated 22 September 2020, id., p. 323.
28 See Order dated 07 December 2020, id., p. 331.
29 Id., pp. 336-339.
30 Id., pp. 342-347.
31 See Order dated 15 February 2021, Division Docket, Volume II, p. 509.
32 Exhibits "P-31" and "P-31-A", id., Volume I, pp. 364-382. See also Submission filed on 02 March 2021, id., Volume II, pp. 510-512.
33 Exhibits "P-7" to "P-18", inclusive of submarkings, id., pp. 404-460

Withheld (Expanded)" (BIR Form No. 1601-E)[34] every month during the TY 2007; (2) petitioner received the PAN on 03 December 2010; (3) petitioner filed a response to the PAN on 04 January 2011; (4) petitioner was requested to execute and submit a Waiver of Defense of Prescription before 29 December 2010, which petitioner refused through a letter dated 29 December 2010; (5) petitioner received the FAN on 14 January 2011; (6) petitioner protested the FAN by filing a request for reconsideration on 14 February 2011; (7) on 13 June 2016, petitioner received the FDDA denying its Protest; (8) petitioner thereafter filed an Administrative Appeal with respondent; and (9) petitioner received on 30 August 2019 respondent's Final Decision denying the Administrative Appeal.

On cross-examination, Samonte further testified that: (1) petitioner was able to submit the required documents in support of its reconciliation[35]; (2) the period of assessment being claimed to have already prescribed is from January to November of TY 2007[36]; and, (3) petitioner was able to submit documents to the BIR to substantiate the assessment for December 2007.[37] Petitioner did not conduct any redirect examination.[38]

On 10 March 2021, petitioner filed its [Formal] Offer of Evidence[39] (**FOE**), to which respondent filed his or her "Comment (To Petitioner's Offer of Evidence)"[40] on 24 March 2021. In its Resolution dated 28 June 2021[41], the Court admitted all of petitioner's documentary evidence, except Exhibit "P-4".[42]

On 04 October 2021, respondent presented his or her lone witness, Revenue Officer (**RO**) Raul M. Aquino (**Aquino**), who testified by direct examination, through his Judicial Affidavit[43], that: (1) he came to know of petitioner pursuant to Letter of Authority (**LOA**) No. 200700048222 dated 25 July 2008[44] issued to it as well as through Memorandum of

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34 Exhibits "P-19" to "P-30", inclusive of submarkings, id., pp. 461-507.
35 TSN dated 15 February 2021, p. 5.
36 Id., p. 6.
37 Id., p. 7.
38 Id.
39 Division Docket, Volume II, pp. 516-524.
40 Id., pp. 530-532.
41 Id., pp. 536-542.
42 Protest Letter dated 14 February 2011.
43 Division Docket, Volume II, pp. 551-563.
44 Exhibit "R-1", BIR Records, p. 1.

Assignment (**MOA**) No. 050-0201-TO-033 dated 01 February 2010; (2) after the service of the said LOA to petitioner on 01 August 2008, he proceeded with the conduct of the examination on petitioner's internal revenue taxes for TY 2007; (3) he prepared a Memorandum Report[45] detailing his findings and recommendation for a PAN to be issued for deficiency EWT and WTC; (4) verification of the Financial Statements and Income Tax Returns *vis-à-vis* the Alphalist disclosed that petitioner failed to pay EWT on rents and purchases of goods; (5) in addition, petitioner also failed to withhold and remit the correct withholding tax due on compensation; (6) the PAN was issued dated 26 November 2010[46]; (7) the basis of the deficiency tax assessments are contained in the Details of Discrepancies[47] attached as Annex A to the PAN; (8) after the service of the PAN, the FAN[48] with Details of Discrepancies and Assessment Notices (**ANs**), all dated 14 January 2011, were issued; (9) petitioner filed a Protest against the FAN; (10) thereafter, the FDDA with Details of Discrepancies dated 07 June 2016[49] were issued; (11) subsequently, petitioner filed a request for reconsideration (through an Administrative Appeal) disputing the FDDA; (12) however, the Final Decision[50] was issued by then CIR Caesar R. Dulay denying the said request for reconsideration and affirming in all aspects the FDDA; and, (13) a letter dated 16 September 2019[51] was issued by Regional Director Maridur V. Rosario (**RD Rosario**) informing petitioner of the denial of its request for reconsideration.

On cross-examination, Aquino further testified, among others, that: (1) he computed the deficiency EWT and WTC on an annual basis and not on specific monthly transactions[52]; (2) he was the one who supplied Schedules 1 and 2 of the Details of Discrepancies[53]; and, (3) the FAN did not address the issue of prescription that petitioner stated in its reply nor explained the reason for which it found the reconciliation of the tax assessment unsatisfactory.[54]

45 Exhibit "R-2", id., pp. 115-116.
46 Supra at note 10.
47 Supra at note 11.
48 Supra at note 5.
49 Supra at note 6.
50 Exhibit "R-7", supra at note 7.
51 Exhibit "R-8", id., p. 301.
52 TSN dated 04 October 2021, pp. 14-15.
53 Id., pp. 16-17.
54 Id., p. 22

During the continuation of Aquino's cross-examination on 13 December 2021[55], aside from stipulating on the existence of the Reply dated 29 December 2010[56], Protest dated 14 February 2011[57] and letter dated 14 October 2014[58], which were all culled from the BIR Records, he further testified that: (1) the FDDA did not address the issue of prescription[59] as well as the reconciliation of the assessments items that petitioner[60] offered; and, (2) Schedules 1 and 2 of the Details of Discrepancies did not state the specific monthly transactions or the specific month from which the deficiency EWT and WTC assessments were derived.[61]

On redirect examination, RO Aquino further testified that petitioner was not able to substantiate its allegation on the specific portion of the assessments which has already prescribed.[62] Petitioner did not conduct any re-cross examination.[63]

On 08 April 2022, respondent filed his or her FOE[64], to which petitioner filed its Comment[65] on 25 April 2022. In its 19 May 2022 Resolution[66], the Court admitted all of respondent's documentary evidence.

After, respondent and petitioner filed their separate Memoranda on 21 June 2022[67] and 24 June 2022[68], respectively, the Court submitted the case for decision on 19 July 2022.[69]

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55 See Order dated 13 December 2021, Division Docket, Volume II, p. 593.
56 Exhibit "P-32", supra at note 12.
57 Exhibit "P-33", supra at note 14.
58 Exhibit "P-34", supra at note 15.
59 TSN dated 13 December 2021, pp. 10-11.
60 Id., p. 11.
61 Id., pp. 11-12.
62 Id., p. 12.
63 Id., pp. 12-13.
64 Division Docket, Volume II, pp. 604-608.
65 Id., pp. 613-617.
66 Id., pp. 620-621.
67 Id., pp. 633-645.
68 Id., pp. 648-674.
69 Id., p. 677.

ISSUES

As the parties so stipulated in their JSFI[70], the issues to be resolved are as follows:

I.

WHETHER PETITIONER ZENOREX MARKETING CORPORATION IS LIABLE FOR DEFICIENCY EXPANDED WITHHOLDING TAX ("EWT") AND WITHHOLDING TAX ON COMPENSATION ("WTC") IN THE AGGREGATE AMOUNT OF ₱5,366,351.19, INCREMENTS INCLUDED, FOR TAXABLE YEAR (TY) 2007, AS INDICATED IN THE FINAL DECISION ON DISPUTED ASSESSMENT (FDDA), DATED 7 JUNE 2016; AND,

II.

WHETHER THE RIGHT OF RESPONDENT COMMISSIONER OF INTERNAL REVENUE TO ASSESS PETITIONER ZENOREX MARKETING CORPORATION HAS PRESCRIBED.

ARGUMENTS

Petitioner argues that respondent has only three (3) years from the last day prescribed for the filing of the return or actual filing thereof (if the same was filed beyond the period prescribed) within which to assess a taxpayer. For EWT and WTC, the deadline for filing of the monthly returns is ten (10) days after the end of each month, except for the month of December, which must be filed on or before January 15 of the following year. This means that each taxable month of EWT and WTC have their own prescriptive period. Here, respondent's right to assess petitioner for EWT and WTC for the months of January to November 2007 of TY 2007 has already prescribed since the FAN was issued only on 14 January 2011. Citing *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*[71] (**La Flor**), petitioner maintains that the 3-year prescriptive period applies to assessments for EWT and WTC.

Petitioner also contends that respondent's authorized representative never addressed in the FAN and in the FDDA either of petitioner's claim of prescription or the reconciliation it made for EWT and WTC assessments. By deliberately ignoring petitioner's claim for

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[70] Id., Volume I, pp. 339.

[71] G.R. No. 211289, 14 January 2019.

prescription and its reconciliation of EWT and WTC assessments, petitioner was left unaware of how respondent or his or her authorized representative appreciated the explanations or defenses that it raised.

Similarly, petitioner claims that its right to administrative due process was aggravated when it was not informed of the facts upon which the EWT and WTC assessments have been based. Petitioner notes that the assessment for deficiency EWT and WTC were computed on an annual basis despite the fact that EWT and WTC returns were being filed and paid on a monthly basis. Thus, by computing the EWT and WTC assessments on an annual basis, the assessments are to be deemed void for failing to inform petitioner of the factual basis thereof, *i.e.*, the specific monthly transactions from which the deficiency EWT and WTC assessments were derived.

On the other hand, respondent claims that the deficiency EWT and WTC assessments for the months of January to November of TY 2007 have not yet prescribed as the 3-year period provided in Section 203[72] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, does not apply.

Respondent expounds that withholding tax assessments are not internal revenue taxes. Rather, such assessments are issued for the taxpayer's failure to withhold the correct taxes it is duty-bound to collect as agent. Since deficiency EWT and WTC assessments are in the nature of penalty (rather than taxes), the same are actually imprescriptible. In any case, respondent insists that even assuming that EWT and WTC assessments are subject to prescription, the subject assessments have yet to prescribe since what applies here is the 10-year prescriptive period pursuant to Section 222(a)[73] of the NIRC of 1997, as amended.

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72 SEC. 203. *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

73 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.
...

Respondent explains that in herein case, there was failure on petitioner's part to report its proper expenses and compensation subject to withholding taxes in an amount exceeding thirty percent (30%) which, in turn, constitutes substantial underdeclaration. As such, petitioner's returns are considered false returns within the purview of Section 222(a) of the NIRC of 1997, as amended. Respondent also contends that petitioner failed to prove which portion of the assessments have already prescribed. In the absence of such proof, the validity and correctness of the assessments should be upheld and petitioner should be liable to pay the assessed deficiency EWT and WTC.

RULING OF THE COURT

In deciding the case at bar, the Court finds it most propitious to first rule on the issues raised by the parties; followed by other related issues necessary to achieve an orderly disposition of the case as authorized under Section 1[74], Rule 14 of the RRCTA and as interpreted in the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[75] (**Lancaster**).

THE DEFICIENCY TAX ASSESSMENTS
HAVE NOT PRESCRIBED.

Petitioner's claim that prescription has set in is anchored on Section 203 of the NIRC of 1997, as amended, which provides:

> ...
>
> SEC. 203. *Period of Limitation Upon Assessment and Collection.* - **Except as provided in Section 222, <u>internal revenue taxes</u> shall be assessed within three (3) years after the <u>last day prescribed by law</u> for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed

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74 **SEC. 1.** *Rendition of judgment.* — ...
...
In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

75 G.R. No. 183408, 12 July 2017.

> by law for the filing thereof shall be considered as filed on such last day.[76]
>
> ...

Relatedly, Sections 2.58(A)(2)(a) and 2.81 of Revenue Regulation (RR) No. 2-98[77], as amended by RR No. 17-03[78] and RR No. 06-01[79], respectively, provides for the last day to file monthly withholding tax returns, as follows:

> ...
>
> **Sec. 2.58.** *RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE.*
>
> (A) *Monthly return and payment of taxes withheld at source.—*
>
> (1) . . .
>
> (2) WHEN TO FILE —
>
> (a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements) shall be filed and payments should be made, **within ten (10) days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year**; and except for the final capital gains tax on the sale or other onerous disposition of real property considered as capital asset which must be taken/withheld from the seller by the buyer and remitted within thirty (30) days from the date of notarization of the transfer document to the collecting

76 Emphasis and underscoring supplied.

77 Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

78 Amending Further Pertinent Provisions of Revenue Regulations No. 2-98, as Amended, Providing for Additional Transactions Subject to Creditable Withholding Tax; Re-Establishing the Policy that the Capital Gains Tax on the Sale, Exchange or Other Disposition of Real Property Classified as Capital Assets Shall be Collected as a Final Withholding Tax, Thereby Further Amending Revenue Regulations Nos. 8-98 and 13-99, as Amended by Revenue Regulations No. 14-2000; and for Other Purposes.

79 Amending Pertinent Provisions of Revenue Regulations Nos. 1-98, 2-98, as Amended, and 7-95, as Amended, and Revenue Memorandum Circular No. 1-98 Relative to the Inclusion of Additional Taxpayers to be Subject to Final Withholding Tax, Revision of the Withholding Tax Rates on Certain Income Payments Subject to Creditable Withholding Tax, Time for the Filing of Various Tax Returns and Payment of the Taxes Due Thereon and Others.

agent of the RDO having jurisdiction over the place where the property is located.

...

Sec. 2.81. *FILING OF RETURN AND PAYMENT OF INCOME TAX WITHHELD ON COMPENSATION (FORM NO. 1601).* — Every person required to deduct and withhold the tax on compensation, including large taxpayers as determined by the Commissioner, **shall make a return and pay such tax on or before the 10th day of the month following the month** in which withholding was made to any authorized agent bank within the Revenue District Office (RDO) or in places where there are no agent banks, to the Revenue District Officer of the City or Municipality where the withholding agent/employer's legal residence or place of business or office is located; *[P]rovided, however*, that **taxes withheld from the last compensation (December) for the calendar year shall be paid not later than January 15 of the succeeding year**; *Provided, however*, that with respect to taxpayers, whether large or non-large, who availed of the EFPS, the deadline for electronically filing the aforesaid withholding tax return and paying the tax due thereon via the EFPS shall be five (5) days later than the deadlines set above.[80]

...

Based on the foregoing, petitioner posits that since the FAN was issued only on 14 January 2011, the assessment periods for EWT and WTC for the months of January to November have already prescribed as illustrated below:[81]

Month	Date of actual filing	Last day prescribed by law to file the return	Last day to assess under Section 203 of the NIRC of 1997
January 2007	February 9, 2007	February 10, 2007	February 10, 2010
February 2007	March 12, 2007	March 10, 2007	March 12, 2010
March 2007	April 13, 2007	April 10, 2007	April 13, 2010
April 2007	May 11, 2007	May 10, 2007	May 11, 2010
May 2007	June 8, 2007	June 10, 2007	June 10, 2010
June 2007	July 9, 2007	July 10, 2007	July 10, 2010
July 2007	August 9, 2007	August 10, 2007	August 10, 2010
August 2007	September 11, 2007	September 10, 2007	September 11, 2010
September 2007	October 10, 2007	October 10, 2007	October 10, 2010
October 2007	November 13, 2007	November 10, 2007	November 13, 2010
November 2007	December 12, 2007	December 10, 2007	December 12, 2010
December 2007	January 11, 2008	January 15, 2008	January 15, 2011

80 Emphasis supplied.
81 Petition for Review, supra at note 1, p. 14.

On the other hand, respondent contends that: (1) the statute of limitations under Section 203 of the NIRC of 1997, as amended, does not apply to withholding tax assessments owing to their nature as a penalty instead of being internal revenue taxes; and, (2) the instant case falls under Section 222, thus, the extraordinary prescriptive period of 10 years from the discovery of falsity, fraud or omission governs.

We partly agree with respondent.

i. THE STATUTE OF LIMITATIONS APPLIES TO WITHHOLDING TAX ASSESSMENTS

This issue is not novel as this has long been settled in *La Flor*[82] where the Supreme Court ruled that:

> ...
>
> It is true that withholding tax is a method of collecting tax in advance and that a withholding tax on income necessarily implies that the amount of tax withheld comes from the income earned by the taxpayer/payee. Nonetheless, **the Court does not agree with the CIR that withholding tax assessments are merely an imposition of a penalty on the withholding agent, and thus, outside the coverage of Section 203 of the NIRC.**
>
> ...
>
> A careful analysis of the above-quoted decision, however, reveals that the Court did not equate withholding tax assessments to the imposition of civil penalties imposed on tax deficiencies. The word "penalty" was used to underscore the dynamics in the withholding tax system that it is the income of the payee being subjected to tax and not of the withholding agent. **It was never meant to mean that withholding taxes do not fall within the definition of internal revenue taxes**, especially considering that income taxes are the ones withheld by the withholding agent. **Withholding taxes do not cease to become income taxes just because it is collected and paid by the withholding agent.**
>
> ...
>
> **Thus, withholding tax assessments such as EWT and WTC clearly contemplate deficiency internal revenue taxes.** Their aim is to collect unpaid income taxes and not merely to impose a penalty on the withholding agent for its failure to comply with its statutory

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82 Supra at note 71; Citations omitted and emphasis supplied.

> duty. **Further, a holistic reading of the Tax Code reveals that the CIR's interpretation of Section 203 is erroneous.** Provisions of the NIRC itself recognize that the tax assessment for withholding tax deficiency is different and independent from possible penalties that may be imposed for the failure of withholding agents to withhold and remit taxes. ...
>
> ...
>
> Based on the above-cited provisions, it is clear to see that the "penalties" are amounts collected on top of the deficiency tax assessments including deficiency withholding tax assessments. **Thus, it was wrong for the CIR to restrict the EWT and WTC assessments against La Flor as only for the purpose of imposing penalties and not for the collection of internal revenue taxes.**
>
> ...

Clearly, internal revenue taxes include EWT and WTC, hence assessments therefor are also subject to prescription under Sections 203 and 222(a) of the NIRC of 1997, as amended.

ii. THE EXTRAORDINARY PRESCRIPTIVE PERIOD APPLIES IN THE INSTANT CASE

Section 222(a) of the NIRC of 1997, as amended, states:

> ...
>
> SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) **In the case of a <u>false</u> 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.[83]
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> ...

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83 Emphasis and underscoring supplied.

In *Commissioner of Internal Revenue v. Fitness By Design, Inc.*[84], the Supreme Court elucidated on the preceding provision, to wit:

> ...
>
> The prescriptive period in making an assessment depends upon whether a tax return was filed or whether the tax return filed was either false or fraudulent. When a tax return that is neither false nor fraudulent has been filed, the Bureau of Internal Revenue may assess within three (3) years, reckoned from the date of actual filing or from the last day prescribed by law for filing. However, in case of a false or fraudulent return with intent to evade tax, Section 222(a) provides:
>
> ...
>
> In *Aznar v. Court of Tax Appeals*, this Court interpreted Section 332 (now Section 222[a] of the [NIRC, as amended]) by dividing it in **three (3) different cases: first, in case of false return; second, in case of a fraudulent return with intent to evade; and third, in case of failure to file a return.** Thus:
>
> > Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax and failure to file a return is strengthened immeasurably by the last portion of the provision which aggregates the situations into three different classes, namely "falsity", "fraud" and "omission."
>
> This Court held that there is a difference between "false return" and a "fraudulent return." **A false return simply involves a "deviation from the truth, whether intentional or not" while a fraudulent return "implies intentional or deceitful entry with intent to evade the taxes due."**
>
> ...

In herein case, the basis for invoking the 10-year prescriptive period is the supposed filing of false returns resulting from underdeclaration of income payments subject to withholding taxes.

Section 248(B) of the NIRC of 1997, as amended, states what constitutes as *prima facie* evidence of false or fraudulent return:

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[84] G.R. No. 215957, 09 November 2016; Citations omitted, italics in the original text and emphasis supplied.

...

SEC. 248. *Civil Penalties.* —

...

(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided*, That **a substantial under-declaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return: *Provided, further*, <u>That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein</u>**.[85]

...

Based on the foregoing provision, there is *prima facie* evidence of a **false** or fraudulent **return** if the deficiency exceeds the 30% ceiling of that declared *per* return. As correctly noted by respondent, there is *prima facie* evidence of false returns in the instant case, as shown below:

Tax	Income Payments *per* Returns Filed	Income Payments *per* Investigation	Under-declaration	Percentage of Under-declaration
EWT	₱1,490,610.74	₱56,954,667.00	₱55,464,056.26	3,720.89%
WTC	13,011,423.58	20,872,019.00	7,860,595.42	60.41%

In *Commissioner of Internal Revenue v. Asalus Corporation*[86] (**Asalus**), the Supreme Court held that, pursuant to the above-cited Section 248(B) of the NIRC of 1997, as amended, when there is a showing that a taxpayer has substantially underdeclared, there is a presumption that it has filed a false return and the CIR need not immediately present evidence to support the falsity of the return, to wit:

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[85] Emphasis and underscoring supplied.

[86] G.R. No. 221590, 22 February 2017; Citations omitted, italics in the original text and emphasis supplied.

> ...
>
> Under Section 248(B) of the NIRC, there is a *prima facie* evidence of a false return if there is a substantial underdeclaration of taxable sales, receipt or income. The failure to report sales, receipts or income in an amount exceeding 30% what is declared in the returns constitute substantial underdeclaration. A *prima facie* evidence is one which that will establish a fact or sustain a judgment unless contradictory evidence is produced.
>
> In other words, **when there is a showing that a taxpayer has substantially underdeclared its sales, receipt or income, there is a presumption that it has filed a false return. As such, the CIR need not immediately present evidence to support the falsity of the return**, unless the taxpayer fails to overcome the presumption against it.
>
> Applied in this case, the audit investigation revealed that there were undeclared [VATable] sales more than 30% of that declared in Asalus' VAT returns. Moreover, Asalus' lone witness testified that not all membership fees, particularly those pertaining to medical practitioners and hospitals, were reported in Asalus' VAT returns. The testimony of its witness, in trying to justify why not all of its sales were included in the gross receipts reflected in the VAT returns, supported the presumption that the return filed was indeed false precisely because not all the sales of Asalus were included in the VAT returns.
>
> **Hence, the CIR need not present further evidence as the presumption of falsity of the returns was not overcome. Asalus was bound to refute the presumption of the falsity of the return and to prove that it had filed accurate returns. Its failure to overcome the same warranted the application of the ten (10)-year prescriptive period for assessment under Section 222 of the NIRC. To require the CIR to present additional evidence in spite of the presumption provided in Section 248(B) of the NIRC would render the said provision inutile.**
>
> ...

Since there is *prima facie* evidence of false returns, it is incumbent upon petitioner to proffer evidence to the contrary. However, petitioner only submitted a self-serving reconciliation schedule devoid of any corroborating evidence. Moreover, in the subject Petition for Review, petitioner solely raised the issue of prescription[87], which it simply reiterated in its Memorandum.[88] As such, petitioner failed to refute the

[87] Supra at note 1.
[88] Supra at note 68.

prima facie evidence of substantial underdeclaration of income payments subject to withholding taxes.

Applying the above-cited Section 222(a) of the NIRC of 1997, as amended, the issuance of the FAN[89] on 14 January 2011 was well within respondent's period to assess.

Having disposed of the issues raised by the parties, the Court will now proceed to tackle related issues necessary to achieve a full and orderly disposition of the case. Such related issues include the determination of whether the ROs who conducted the examination were duly authorized pursuant to existing laws, rules and regulations. The Supreme Court ruled in *Lancaster*[90] that:

> ...
>
> Is the question on the authority of revenue officers to examine the books and records of any person cognizable by the CTA?
>
> It must be stressed that the assessment of internal revenue taxes is one of the duties of the BIR. ...
>
> ...
>
> It is pursuant to such pertinent provisions of the NIRC conferring the powers to the CIR that the petitioner (CIR) had, in this case, authorized its revenue officers to conduct an examination of the books of account and accounting records of Lancaster, and eventually issue a deficiency assessment against it.
>
> From the foregoing, it is clear that the issue on whether the revenue officers who had conducted the examination on Lancaster exceeded their authority pursuant to LOA No. 00012289 may be considered as covered by the terms "other matters" under Section 7 of R.A. No. 1125 or its amendment, R.A. No. 9282. The authority to make an examination or assessment, being a matter provided for by the NIRC, is well within the exclusive and appellate jurisdiction of the CTA.
>
> On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by

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89 Exhibit "R-5", supra at note 5.

90 Supra at note 75; Citation omitted and italics in the original text.

> the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
> > SECTION 1. *Rendition of judgment.* - x x x
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda[.] The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter.
>
> ...

Thus, notwithstanding petitioner's failure to raise such issue, the Court finds it necessary to determine whether the ROs who conducted the examination of petitioner were duly authorized to do so.

THE REVENUE OFFICER (RO) AND GROUP SUPERVISOR (GS) WHO CONTINUED THE AUDIT OF PETITIONER WERE NOT AUTHORIZED BY A DULY ISSUED LETTER OF AUTHORITY (LOA).

The audit process normally commences with the issuance by the CIR of an LOA. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment and, at the same time, it authorizes or empowers a designated RO to examine, verify and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[91] The authority given to ROs to conduct audit and examine taxpayer's books is a continuing requirement and any gap in authorization will violate the taxpayer's right to due process.

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91 *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, supra at note 75.

In the instant case, LOA No. 200700048222 dated 25 July 2008[92] was issued authorizing RO Corazon Levardo and Group Supervisor (**GS**) Elizabeth Santos to examine petitioner's books of accounts and other accounting records. However, due to the reassignment of the aforementioned ROs, RO Aquino and GS Celestino Viernes (**Viernes**) took over the audit by virtue of a referral letter dated 01 February 2010[93] and a Memorandum of Assignment (**MOA**) dated 04 November 2010[94], both issued by Revenue District Officer Ricardo Espiritu (**RDO Espiritu**). On 16 June 2017, RO Aquino issued an undated Memorandum Report[95] addressed to the Revenue Regional Director, which was noted by GS Viernes and approved by RDO Espiritu, recommending the issuance of a PAN.

Moreover, RO Aquino testified during the cross-examination[96] that he was the one who performed the audit, to wit:

> ...
>
> ATTY. GESMUNDO:
>
> Now, Mr. Aquino, can you please confirm that you stated in your Answer in No. 13 of your Judicial Affidavit that you **conducted an audit examination of the petitioner's internal taxes for the taxable year 2007**. Correct?
>
> WITNESS:
>
> Yes, Your Honors.
>
> ATTY. GESMUNDO:
>
> And you stated in the same Answer No. 13 of your Judicial Affidavit that you **prepared a memorandum Report** containing your findings. Correct?
>
> WITNESS:
>
> Correct.[97]
>
> ...

---

92 Exhibit "R-1", supra at note 44.
93 Id, p. 3.
94 Id, p. 129.
95 Exhibit "R-2", supra at note 45.
96 TSN dated 04 October 2021, p. 11.
97 Emphasis supplied.

Relatedly, the Memorandum Report[98] reveals that RO Aquino and GS Viernes' authority was from a mere referral letter that was signed only by RDO Espiritu, to wit:

> ...
> Memorandum for:
> The Revenue Regional Director
> Revenue Region No. 8, Makati City
> Thru Channels
>
> Subject: ZENOREX MARKETING CORPORATION
> Recommendation for Preliminary Assessment Notice
> For the year ended December 31, 2007
>
> This memorandum report is pursuant to the original investigation of the subject taxpayer for all internal revenue taxes for the taxable year ended December 31, 2007 **pursuant to Letter of Authority No. 48222 dated July 25, 2008, <u>originally issued to Revenue Officer Corazon Levardo</u>** and **Referral No. 050-0201t0-033** dated February 1, 2010 issued to hereunder Revenue Officer.
> ...

It is worthy to note that the referral letter and the corresponding change of the RO and GS happened prior to the issuance of the PAN on 26 November 2010 and FAN on 14 January 2011. Sections 6 and 13 of the NIRC of 1997, as amended, provide:

> ...
> **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.
> ...
>
> **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**

[98] Exhibit "R-2", supra at note 45; Emphasis and underscoring supplied.

> 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.[99]
>
> ...

For the examination to be valid, an LOA must be issued either by the CIR himself or herself or by his or her duly authorized representative. Pursuant to the aforementioned Section 13, in relation to Section 10(c)[100] of the NIRC of 1997, as amended, as well as Revenue Memorandum Order (**RMO**) Nos. 43-90[101] and 29-2007[102], the CIR's duly authorized representatives are: (1) Regional Directors; (2) Deputy Commissioners; (3) Assistant Commissioner/Head Revenue Executive Assistants (for Large Taxpayers); and, (4) other officials but only upon prior authorization by the CIR himself or herself.

In this case, the referral letter and MOA relied upon by RO Aquino as his authority to conduct the examination were both executed by RDO Espiritu, a subordinate official who is *not* authorized to issue LOAs.

In *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[103] (**McDonald's**), the Supreme Court highlighted the importance of issuing a substitute or amended LOA upon transfer or reassignment of ROs in this wise:

> ...
>
> It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may **notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers**. However, **notice of the**

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[99] Emphasis supplied.

[100] **SEC. 10.** *Revenue Regional Director.* - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:
...
(c) Issue Letters of Authority for the examination of taxpayers within the region[.]
...

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

[102] Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.

[103] G.R. No. 242670, 10 May 2021; Emphasis supplied.

> **fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.**
>
> The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.
>
> **The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative.** The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10(c) and 13 of the NIRC. **Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.**
>
> ...

Also, in *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*[104], the Supreme Court further reiterated that only the ROs **actually named** in the LOA are authorized to examine the taxpayer, to wit:

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[104] G.R. Nos. 249883-84, 27 January 2020 (Resolution); Citations omitted.

> ...
> ... Likewise, the CTA *EB* correctly held that the deficiency tax assessments were invalid due to the revenue officers' lack of authority to do so. Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe [the] revenue officers with authority to examine taxpayers. It is axiomatic that only the revenue officers actually named under the LOA are authorized to examine the taxpayer... In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void.
> ...

Furthermore, as most recently reiterated in *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital)*[105]:

> ...
> Evidently, contrary to the CIR's argument, if the revenue officers that were previously indicated in a LOA were reassigned or transferred to another case and as such, a new revenue officer will handle the case that was previously assigned to them, the issuance of a new LOA in favor of the new handling revenue officer is required. Therefore, without the new LOA, RO Evangelista was not authorized to conduct the examination and assessment of the tax liabilities of MMS because LOA No. 2007-0034491, dated July 14, 2009, was issued to "RO E. Demadura/J. Macuha and Group Supervisor J. Tabor of the Special Investigation and Division," and not to her.
>
> To emphasize, the Court has consistently held that in cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessment shall be void and ineffectual. Hence, as a result of RO Evangelista's lack of authority, the assessment against MMS was therefore void.
> ...

Applying the above principles to the case at bar, a mere referral letter and an MOA issued by an RDO do not and could not confer authority to RO Aquino and GS Viernes, who were not named in the LOA, to continue the audit or investigation of petitioner's books of accounts for TY 2007. As both are neither authorized through an LOA nor the subordinate official who conferred authority upon them are

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105 G.R. No. 255473, 13 February 2023; Citation omitted.

authorized to do so, their investigation and subsequent assessment of petitioner's tax deficiency could not be sanctioned.

As early as in 2010 in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[106], the Supreme Court already ruled that:

> ...
>
> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **<u>In the absence of such an authority, the assessment or examination is a nullity.</u>**
>
> ...

It bears noting that the Supreme Court in *McDonald's*[107] observed that "the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA, (i) **violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his [or her] duly authorized representative to grant the power to examine the books of account of a taxpayer;** and (iii) **does not comply with the existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990**".

In consideration of the foregoing, the deficiency tax assessments issued against petitioner for TY 2007 are inescapably void for lack of authority on the part of the officers who conducted the tax audit.

Thus, notwithstanding Our findings that the deficiency EWT and WTC assessments have not prescribed, We still cannot allow the assessment and subsequent collection of said deficiency taxes for being void. Well-entrenched are the principles that in the absence of such an authority, the assessment or examination is a nullity[108] and a void assessment bears no fruit.[109]

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[106] G.R. No. 178697, 17 November 2010; Emphasis and underscoring supplied.
[107] Supra at note 103; Emphasis supplied.
[108] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.
[109] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, 08 December 2010.

WHEREFORE, in view of all the foregoing, the Petition for Review filed by petitioner Zenorex Marketing Corporation on 01 October 2019 is hereby **GRANTED**. Accordingly, the Final Decision of respondent Commissioner of Internal Revenue dated 15 August 2019 upholding the deficiency Expanded Withholding Tax (**EWT**) and Withholding Tax on Compensation (**WTC**) assessments against petitioner for taxable year 2007 in the aggregate amount of ₱5,366,351.19 is hereby **REVERSED** and **SET ASIDE**. Consequently, respondent or any person duly acting on his or her behalf is hereby **ENJOINED** from proceeding with the collection of the taxes arising therefrom.

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

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