REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Second Division

ALBERTO LIM TANGSO/ A.L. ELECTRICAL SHOP & PARTS SUPPLY,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10367

Members:
RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:
JUN 18 2024 4:15 pm

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DECISION

RINGPIS-LIBAN, J.

THE CASE

The *Petition for Review* filed on October 2, 2020 prays that the Court:

1. Declare as invalid respondent's *Letter of Authority* (LOA) and accordingly declare as void the assessment issued against petitioner; and

2. Issue an order to suspend the collection of tax.[1]

THE PARTIES

Petitioner Alberto Lim Tangso is of legal age, Filipino citizen, with postal address at #357 P. Sevilla St. 10th Avenue, West Grace Park, Caloocan City. He is the sole proprietor of A.L. Electrical Shop.[2]

[1] Statement of the Case, Pre-Trial Order dated December 4, 2021, Docket, p. 372.
[2] Par. 1, Joint Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 281.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, with principal office address at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City. He is vested with the power to decide tax cases, including disputed assessments pursuant to Section 4 of the National Internal Revenue Code (NIRC).[3]

On October 1, 2012, the BIR issued against petitioner a Letter of Authority (LOA) No. LOA-027-2012-00000850 with Serial No. eLA No. 201100009271 dated September 19, 2012, authorizing Revenue Officer (RO) Irene Calalang and Group Supervisor (GS) Teresa Anasco, for the examination of petitioner's books of accounts and other accounting records for the period from January 1, 2011 to December 31, 2011.[4]

Thereafter, on May 5, 2014, the BIR issued the *Preliminary Assessment Notice* (PAN) dated April 25, 2014, finding petitioner liable for deficiency taxes in the total amount of ₱3,261,446.71.[5]

On July 22, 2014, the BIR issued against petitioner the *Formal Letter of Demand* (FLD) dated July 14, 2014 (with accompanying *Assessment Notices* with No. 33557), finding the latter liable for deficiency taxes in the total amount of ₱3,315,749.98, consisting of deficiency income tax, VAT, and expanded withholding tax (EWT), plus compromise penalties, for taxable year 2011.[6]

On August 20, 2014, petitioner filed his *Legal Petition Notice* dated August 9, 2014, to move for reconsideration of the Assessment No. 33557 dated July 14, 2014.[7] Regional Director Gerardo R. Florendo then issued the letter dated October 21, 2014, advising petitioner that since he submitted new or additional evidence for evaluation, he remanded petitioner's case to Revenue District Office No. 27, Caloocan City, for reinvestigation. Attached to the said letter is the BIR Form No. 0605 for the payment of petitioner's deficiency EWT.[8]

The BIR subsequently issued the *Final Decision on Disputed Assessment* (FDDA) dated March 28, 2016,[9] denying petitioner's request for reinvestigation/reconsideration to the subject FLD and *Assessment Notices* dated July 14, 2014, covering the 2011 deficiency income tax and VAT. The FDDA

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[3] Par. 2, Joint Stipulation of Facts, JSFI, Docket, p. 281.
[4] Par. 3, Joint Stipulation of Facts, JSFI, Docket, pp. 281 to 282; Exhibit "P-1", Docket, p. 300; Exhibit "R-3", BIR Records, p. 662.
[5] Par. 4, Joint Stipulation of Facts, JSFI, Docket, p. 282; Exhibit "P-2", Docket, pp. 302 to 304; Exhibit "R-8" to "R-8-B", BIR Records, pp. 1229 to 1231.
[6] Refer to par. 5, Joint Stipulation of Facts, JSFI, Docket, p. 282; Exhibit "P-3", Docket, pp. 305 to 311; Exhibits "R-10", "R-11", "R-12", "R-13", "R-13-A", "R-13-B", "R-14", BIR Records, pp. 1233 to 1239.
[7] Exhibit "P-4", Docket, pp. 312 to 327.
[8] Exhibit "P-5", Docket, pp. 328 to 330.
[9] Par. 6, Joint Stipulation of Facts, JSFI, Docket, p. 373; Exhibit "P-8", BIR Records, pp. 1464 to 1465.

was followed by the issuance of the *Preliminary Collection Letter* dated September 6, 2016,[10] and the *Final Notice Before Seizure* dated September 22, 2016.[11]

In the meantime, on August 1, 2016, petitioner filed with the BIR his *Motion for Reconsideration*,[12] which was denied by respondent in his Decision dated August 17, 2020.[13]

On October 2, 2020, petitioner filed the present *Petition for Review with Motion to Suspend Collection of Taxes.*[14]

The hearing on petitioner's *Motion to Suspend Collection of Taxes* was initially set on January 20, 2021.[15]

At the hearing held for petitioner's *Motion to Suspend Collection of Taxes,* petitioner presented his Assistant Manager, Ms. Analyn T. Palumnar.[16] Petitioner submitted his *Formal Offer of Evidence (Re: Motion to Suspend Collection of Taxes)* on January 25, 2021.[17] No comment was filed thereon by respondent.[18] In the Resolution dated February 18, 2021,[19] the Court admitted petitioner's Exhibits "P-1-TRO", "P-2-TRO", "P-3-TRO", "P-4-TRO", and "P-4-A-TRO".

Respondent filed his *Answer* on March 8, 2021,[20] interposing the following special and affirmative defenses, *viz.*: (i) petitioner's request for reconsideration against the FDDA was filed by petitioner one (1) day late from the end of the thirty (30) day period to file the same, thereby rendering the subject assessments final, executory and demandable; (ii) the LOA that authorized RO Irene M. Calalang, as well as the result of her audit investigation, is valid; and (iii) there was no-reassignment to speak of, as said RO was duly authorized by an LOA to conduct audit.

In the Resolution dated March 16, 2021,[21] the Court: (1) granted petitioner's *Motion to Suspend Collection of Taxes* and, thus, suspended the collection of taxes; (2) ordered petitioner to post a cash bond equivalent to the amount claimed of ₱2,292,702.50, or a surety bond in the amount equivalent to one and

[10] Exhibit "P-11", BIR Records, p. 1470.
[11] Par. 7, Joint Stipulation of Facts, JSFI, Docket, p. 373.
[12] Exhibit "P-9", Docket, pp. 335 to 367.
[13] Exhibit "P-10", Docket, pp. 74 to 85.
[14] Docket, pp. 8 to 25.
[15] Resolution dated December 16, 2020, Docket, p. 125.
[16] Exhibit "P-4", Docket, pp. 128 to 134; Minutes of the hearing held on, and Order dated, January 20, 2021, Docket, pp. 138 to 140.
[17] Docket, pp. 143 to 146.
[18] Records Verification dated February 3, 2021 issued by the Judicial Records Division of this Court, Docket, p. 150.
[19] Docket, pp. 159 to 160.
[20] Docket, pp. 161 to 165.
[21] Docket, pp. 196 to 202.

a half of the amount claimed, or ₱3,439,053.81, within ten (10) days from notice; and (3) reminded respondent to submit the *BIR Records* of the present case.

On March 17, 2021, respondent then transmitted the entire *BIR Records* of this case, consisting of 1,652 pages, contained in one (1) folder.[22]

The Pre-Trial conference was set and held on July 15, 2021.[23] Prior thereto, *Respondent's Pre-Trial Brief* was filed on July 8, 2021,[24] while petitioner's *Pre-Trial Brief* was submitted on July 9, 2021.[25]

On October 21, 2021, the parties submitted their *Joint Stipulation of Facts and Issues*,[26] which was admitted and approved by this Court in its Resolution dated November 15, 2021,[27] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated December 4, 2021 was then issued.[28]

Trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimony of his lone witness, Ms. Divine Grace Fresco,[29] petitioner's Tax Consultant.

On November 2, 2021, petitioner filed his *Formal Offer of Evidence,*[30] sans respondent's comment.[31] In the Resolution dated May 26, 2022,[32] the Court admitted petitioner's evidence.

In the meantime, in the Resolution dated December 14, 2021,[33] the Court gave petitioner a final period of thirty (30) days within which to file the required bond, with warning that failure to do so, will result to the setting aside of the suspension of collection of taxes.

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[22] *Compliance* dated March 17, 2021, Docket, pp. 203 to 204.
[23] Notice of Pre-Trial Conference dated March 22, 2021, Docket, pp. 206 to 207; Minutes of the hearing held on, and Order dated, July 15, 2021, Docket, pp. 240 to 243.
[24] Docket, pp. 209 to 213.
[25] Docket, pp. 214 to 221.
[26] Docket, pp. 281 to 287.
[27] Docket, p. 369.
[28] Docket, pp. 372 to 378.
[29] Exhibits "P-15", Docket, pp. 247 to 258; Minutes of the hearing held on, and Order dated, October 21, 2021, Docket, pp. 246, and 262 to 263, respectively.
[30] Docket, pp. 292 to 299.
[31] Records Verification dated April 27, 2022 issued by the Judicial Records Division of this Court, Docket, p. 383.
[32] Docket, pp. 387 to 388.
[33] Docket, p. 381.

In the Resolution dated August 17, 2022,[34] the Court, set aside the suspension of the collection of taxes since petitioner failed to file the required bond.

For his part, respondent presented the testimonies of ROs Irene M. Calalang[35] and Bryan D. Dela Cruz.[36]

On October 17, 2022, respondent filed his *Formal Offer of Evidence*;[37] but no comment was filed thereon by petitioner.[38] In the Resolution dated February 2, 2023,[39] the Court admitted all of respondent's exhibits.

Petitioner then filed, on April 20, 2023, a *Motion to Admit Memorandum*,[40] attaching therewith its *Memorandum*.[41] The said *Motion to Admit* was granted by the Court in its Minute Resolution dated May 5, 2023[42] and, thus, the said *Memorandum* was admitted. No memorandum, however, was filed by respondent.[43]

The present case was considered submitted for decision on June 27, 2023.[44]

THE STIPULATED ISSUES

The issues submitted by the parties for resolution of this Court are as follows:

> "1. WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX, VALUE ADDED TAX, AND EXPANDED WITHHOLDING TAX FOR TAXABLE YEAR 2011 IN THE AGGREGATE AMOUNT OF THREE MILLION THREE HUNDRED FIFTEEN THOUSAND SEVEN HUNDRED FORTY-NINE PESOS AND 98/100 (P3,315,749.98) INCLUSIVE OF INTEREST AND SURCHARGES.

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[34] Docket, pp. 392 to 393.
[35] Judicial Affidavit of RO Irene M. Calalang, Docket, pp. 166 to 169; Minutes of the hearing held on, and Order dated, October 5, 2022, Docket, pp. 394 to 395.
[36] Judicial Affidavit of RO Bryan D. Dela Cruz, Docket, pp. 177 to 180; Minutes of the hearing held, and Order dated, on October 5, 2022, Docket, pp. 394 to 395.
[37] Docket, pp. 398 to 400.
[38] Records Verification dated December 1, 2022 issued by the Judicial Records Division of this Court, Docket, p. 402.
[39] Docket, pp. 406 to 407.
[40] Docket, pp. 417 to 419.
[41] Docket, pp. 420 to 435.
[42] Docket, p. 436.
[43] Records Verification dated December 1, 2022 issued by the Judicial Records Division of this Court, Docket, p. 437.
[44] Resolution dated June 27, 2023, Docket, p. 440.

2. WHETHER OR NOT THE ASSESSMENT HAVE ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE."[45]

THE ARGUMENTS OF THE PARTIES

Petitioner's arguments:

Petitioner argues that while the LOA was initially valid, the same became invalid when petitioner's case was reassigned to another RO and, thus, any assessment made after such reassignment is void; that the assessment for income tax and value-added tax (VAT) remained unchanged from the FLD to the FDDA, which indicates that petitioner's protest was not considered by the BIR in violation of due process, pursuant to the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing*; that the audit criteria for 2009-2010 cannot be for other taxable years—particularly taxable year 2011; and that petitioner is not liable for alleged deficiency income tax and VAT because the alleged undeclared sales for taxable year 2011 were reported to taxable year 2012.

Respondent's counter-arguments:

Respondent contends that petitioner's request for reconsideration against the FDDA was filed by petitioner one (1) day late from the end of the thirty (30) day period to file the same, thereby rendering the subject assessments final, executory and demandable; that the LOA that authorized RO Irene M. Calalang, as well as the result of her audit investigation, is valid; and that there was no-reassignment to speak of, since said RO was duly authorized by an LOA to conduct audit.

THE COURT'S RULING

This Court has jurisdiction to entertain the present appeal.

In his *Answer*, respondent points out that the copy of the FDDA was received by petitioner on July 1, 2016. Thus, petitioner has thirty (30) days to file his request for reconsideration, or until July 31, 2016. However, the said request was only filed on August 1, 2016. Consequently, the filing thereof was one (1) day late. Consequently, respondent has no more power to act on the said request for reconsideration considering that the assessment has already become final, executory and demandable due to petitioner's failure to meet the above-stated reglementary period.

[45] Joint Statement of Issue To Be Tried or Resolved, JSFI, Docket, p. 282.

The Court does not agree.

Sections 7(a)(1) and (2), and 11 of Republic Act (RA) No. 1125,[46] as amended by RA No. 9282,[47] confers jurisdiction to this Court relative to decisions and inactions of respondent, and states the manner of appealing the same in this wise:

> "SEC. 7. *Jurisdiction.* – **The CTA shall exercise**:
>
> (a) **Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> (2) **Inaction by 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, **where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial**;" *(Emphases added)*
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> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue...may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**
>
> xxx xxx xxx." *(Emphasis added)*

Based on the foregoing provisions, this Court has appellate jurisdiction over decisions, rulings or inactions of respondent. The appeal must be filed within thirty (30) days from receipt of such decision or ruling, or after the expiration of the period fixed by law for action.

[46] AN ACT CREATING THE COURT OF TAX APPEALS.

[47] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

In this case, it is undisputed that petitioner received the subject FDDA on July 1, 2016.[48] And, as pointed out earlier, counting thirty (30) days from the said date, and pursuant to the afore-quoted Section 11 of RA No. 1125, as amended by RA No. 9282, petitioner has until July 31, 2016 to appeal the said FDDA. The said date fell on a Sunday and, thus, the filing of petitioner's *Motion for Reconsideration* on August 1, 2016,[49] the next working day, was timely made following Section 1, Rule 22 of the Revised Rules of Court, to wit:

> "Section 1. *How to compute time.* — In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. **If the last day of the period, as thus computed, falls on a Saturday**, a Sunday, or a legal holiday in the place where the court sits, **the time shall not run until the next working day**." *(Emphases added)*

Thus, contrary to the claim of respondent, the subject assessments remain disputed.

Considering further that respondent's Decision dated August 17, 2020[50] was received by petitioner on September 2, 2020,[51] the latter, therefore, has a period of thirty (30) days, or until October 2, 2020 within which to file an appeal before this Court. Thus, the filing of the instant *Petition for Review with Motion to Suspend Collection of Taxes* on October 2, 2020 was likewise timely made.

Therefore, this Court has jurisdiction to entertain the appeal.

The assessment notices are valid.

Petitioner argues that RO Agripina Vallestero and GS Alfredo O. Pagbilao, Jr. have no authority to conduct audit and reinvestigation because they were not armed with a valid LOA. Petitioner further claims that the assessment was void, since the assessments for income tax and value-added tax remained unchanged from FAN to the FDDA showing that petitioner's protest was not considered by the BIR. Hence, there was violation of due process.

Contrary to petitioner's claims, the assessment notices are valid for the following reasons:

[48] Par. 6, Admitted Facts, JSFI, Docket, p. 373; Exhibit "P-8", BIR Records, pp. 1464 to 1465.
[49] Exhibit "P-9", Docket, pp. 335 to 367.
[50] Exhibit "P-10", Docket, pp. 74 to 85.
[51] Par. 9, Timeliness of the Petition, *Petition for Review with Motion to Suspend Collection of Taxes*, Docket, p. 11.

First, an LOA is not necessary to authorize RO Vallestero to reinvestigate respondent's deficiency tax assessments.

Sections 6 and 13 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

> "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. x x x" *(Emphasis supplied)*

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

From the foregoing, an LOA is the authority given to the appropriate RO assigned to perform assessment functions. It empowers or enables said RO to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[52] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[53]

In the case at bar, there is no doubt that an LOA was issued. RO Irene Calalang was one of the Revenue Officers authorized to conduct examination of petitioner's books of accounts. She filed her Memorandum Report recommending the issuance of the PAN and FAN. After the issuance of the FAN and due to the motion for reconsideration (or appeal) made by petitioner, RO Vallestero was assigned to examine the records of petitioner.

[52] *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 241828, May 21, 2021.
[53] *Commissioner of Internal Revenue vs. De La Salle University, Inc., et seq.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.

A new LOA however is not needed because the audit investigation process was already done.

In fact, the Supreme Court in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[54] emphasized than an LOA's purpose is to prove the authority of the RO when he or she comes knocking at the taxpayer's door, to examine the latter's books of accounts in order to come up with an assessment, to wit:

> "The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, We have ruled that the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued. In that case, We have stated that '[d]ue process demands x x x that after [a Letter Notice] has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case.' The result of the absence of a LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process.
>
> To comply with due process in the audit or investigation by the BIR, **the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts**. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. **Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers**. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment."

It follows therefore that upon issuance of an assessment (thru a FAN), the objective of an LOA becomes *functus officio*. The LOA has already served its

[54] G.R. No. 242670, May 10, 2021.

purpose. The audit investigation process is already finished and the danger or abuse sought to be avoided in the assessment (by not issuing an LOA) is already absent.

To recall, the requirement for the issuance of an LOA by the Commissioner or his duly authorized representative, as stated in Sections 6 and 13 of the NIRC of 1997, as amended, pertains to the stage where the revenue officers will conduct an audit of the books of accounts and other accounting records of the taxpayer after the filing of the latter's tax returns, and recommend the issuance of a PAN and FAN. At the point where a PAN and FAN is issued, as far as the BIR is concerned, there is already an assessment.

Nonetheless, the Tax Code provides remedies for the taxpayer to dispute the assessment issued. He or she can file a request for reconsideration or reinvestigation, so that the BIR can issue a final decision on a disputed assessment.

In the review of the taxpayer's request for reconsideration or reinvestigation, the new RO will just re-examine the books of accounts that were already considered and evaluated by the former RO, and the additional documents, if any, that were submitted for reinvestigation. This is because it is not a continuation of audit investigation of petitioner's books of accounts, and as such is already excluded from the law's requirement that the RO assigned to re-examine a taxpayer's accounts for purposes of recommending a FDDA be armed with an LOA.

Thus, in several BIR issuances, it was specified that an LOA is not needed for protested cases for reinvestigation. Revenue Memorandum Order (RMO) No. 69-2010, "*Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment,*"[55] states as follows:

> "III. Policies and Guidelines
>
> xxx xxx xxx
>
> 8. Manual serially-numbered MOA shall be issued for the following cases:
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> 8.1 Reassignment for the continuation of the audit/investigation of a case to another RO due to resignation/retirement/transfer of the original RO;

[55] August 11, 2010.

8.2 Assignment to the original RO of returned cases by the reviewing office and reassignment to another RO of returned cases in case of resignation/retirement/transfer of the original RO;

8.3 Reassignment to another RO due to referral of the case to another investigating office (e.g. cases referred to SID by the RDO;

8.4 ONETT cases (Capital gains tax/creditable withholding tax and documentary stamp tax involving transfers of real property or shares of stock and donor's tax); and

8.5 **Protested cases/cases for reinvestigation.**" *(Emphasis supplied)*

Further, RMO No. 08-2006, *Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring Systems (LAMS)*[56] states as follows:

"IV. Guidelines

To ensure uniformity in the handling of LAs, the following guidelines are given:

xxx xxx xxx

F. On Disposition of Dockets

1. xxx xxx xxx

Protested cases under re-investigation shall not be assigned to the same RO who handled the original investigation." *(Emphasis supplied)*

All in all, RO Vallestero does not need a new LOA to evaluate petitioner's accounts.

Second, there was no violation of due process.

Petitioner argues that the FDDA merely reiterated the amounts of assessments for income tax and VAT without stating the factual and legal bases for the assessment. The FDDA did not address the arguments raised by petitioner in his protest. To support its claim, petitioner invoked the case of

[56] February 1, 2006.

Commissioner of Internal Revenue vs. Avon Products Manufacturing[57] where the Supreme Court ruled that there was violation of due process when the BIR failed to consider the explanations and pieces of evidence submitted by a taxpayer in its protest to the assessment notices.

Petitioner's reliance on the *Avon case* is misplaced. The doctrine in the *Avon case* applies to a situation where the BIR issued **identical amounts of assessments in the PAN and FAN, without considering the arguments and documents submitted by a taxpayer in its protest.** It does not apply to a situation where FLD and FDDA contains the same amounts of assessments and explanation. An assessment itself differs from a decision on a disputed assessment.

In the *Avon case,* the Supreme Court declared that the Commissioner's total disregard of due process rendered the **identical Preliminary Assessment Notice, Final Assessment Notices, and Collection Letter null and void, and of no force and effect.** The Supreme Court ruled as follows:

> "The facts demonstrate that Avon was deprived of due process. **It was not fully apprised of the legal and factual bases of the assessments issued against it. The Details of Discrepancy attached to the Preliminary Assessment Notice, as well as the Formal Letter of Demand with the Final Assessment Notices, did not even comment or address the defenses and documents submitted by Avon. Thus, Avon was left unaware on how the Commissioner or her authorized representatives appreciated the explanations or defenses raised in connection with the assessments. There was clear inaction of the Commissioner at every stage of the proceedings.**
>
> **First, despite Avon's submission of its Reply, together with supporting documents, to the revenue examiners' initial audit findings, and its explanation during the informal conference, the Preliminary Assessment Notice was issued.** The Preliminary Assessment Notice reiterated the same audit findings, except for the alleged under-declared sales which ballooned in amount from P15,700,000.00 to P62,900,000.00, without any discussion or explanation on the merits of Avon's explanations.
>
> **Upon receipt of the Preliminary Assessment Notice,** Avon submitted its protest letter and supporting documents, and

[57] G.R. Nos. 201398-99, October 03, 2018; *Avon Products Manufacturing Inc., vs. Commissioner of Internal Revenue*, G.R. Nos. 201418-19, October 3, 2018.

even met with revenue examiners to explain. Nonetheless, **the Bureau of Internal Revenue issued the Final Letter of Demand and Final Assessment Notices, merely reiterating the assessments in the Preliminary Assessment Notice. There was no comment whatsoever on the matters raised by Avon, or discussion of the Bureau of Internal Revenue's findings in a manner that Avon may know the various issues involved and the reasons for the assessments.**

Under the Bureau of Internal Revenue's own procedures, the taxpayer is required to respond to the Notice of Informal Conference and to the Preliminary Assessment Notice within 15 days from receipt. Despite Avon's timely submission of a Reply to the Notice of Informal Conference and protest to the Preliminary Assessment Notice, together with supporting documents, the Commissioner and her agents violated their own procedures by refusing to answer or even acknowledge the submitted Reply and protest.

The Notice of Informal Conference and the Preliminary Assessment Notice are a part of due process. They give both the taxpayer and the Commissioner the opportunity to settle the case at the earliest possible time without the need for the issuance of a Final Assessment Notice. However, this purpose is not served in this case because of the Bureau of Internal Revenue's inaction or failure to consider Avon's explanations.

Upon receipt of the Final Assessment Notices, Avon resubmitted its protest and submitted additional documents required by the revenue examiners, including the original General Ledger for 1999. xxx

It is true that the Commissioner is not obliged to accept the taxpayer's explanations, as explained by the Court of Tax Appeals. However, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.

Indeed, the Commissioner's inaction and omission to give due consideration to the arguments and evidence submitted before her by Avon are deplorable transgressions of Avon's right to due process. The right to be heard, which includes the right to present

> evidence, is meaningless if the Commissioner can simply ignore the evidence without reason."[58] *(Emphasis supplied)*

Considering that there was no violation of due process, the assessment notices are valid.

The Court shall now determine whether petitioner is liable for the alleged deficiency income tax and VAT.

The assessments issued by respondent covering deficiency income tax and VAT for TY 2011 are upheld in part.

According to the FLD,[59] petitioner was assessed of deficiency income tax, value-added tax (VAT) and expanded withholding tax (EWT), in the aggregate amount of ₱3,315,749.98, and compromise penalty in the total amount of ₱41,700.00 for taxable year (TY) 2011, as shown below:

Deficiency Taxes (Demand No. 33757)

	IT	VAT	EWT	Total
Basic	₱ 2,183,027.51	₱ 107,844.84	₱ 1,830.19	₱ 2,292,702.54
Interest	969,482.51	52,660.64	904.29	1,023,047.44
Total	**₱3,152,510.02**	**₱160,505.48**	**₱2,734.48**	**₱3,315,749.98**

Compromise Penalty (Demand No. 20447)

Failure to pay Income Tax on time	₱ 25,000.00
Failure to pay VAT on time	16,000.00
Failure to pay EWT on time	700.00
Total Amount Due	**₱ 41,700.00**

There is no need to dwell on the issue on EWT since it was already paid by petitioner as shown in Exhibit "P-5."[60] Thus, in the FDDA,[61] respondent already excluded the deficiency EWT[62] and reiterated its findings in the FLD only as to the deficiency income tax and VAT, in the respective amounts of ₱3,152,510.02 and ₱160,505.48, or a total of ₱3,313,015.50, and the penalties incident to delinquency.

Further, in its Final Decision dated August 17, 2020,[63] respondent affirmed the assessment per FDDA demanding payment of the aggregate

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[58] Ibid., Citations omitted.

[59] Exhibit "P-3", Docket, pp. 305, 306 and 308.

[60] Docket, pp. 328-330.

[61] Exhibit "P-8", BIR Records, pp. 1464 to 1465.

[62] Per Legal Petition Notice dated August 9, 2014 (Exhibit "P-4", Docket, p. 316), petitioner is amenable to deficiency EWT of ₱2,734.48.

[63] Exhibit "P-10", Docket, pp. 74 to 85.

amount of ₱3,313,015.50, increments included, representing deficiency income tax and VAT for TY 2011.

Hence, the succeeding discussion shall dwell on the merits of the assessments pertaining only to the deficiency income tax and VAT for TY 2011.

I. DEFICIENCY INCOME TAX - ₱3,152,510.02

Respondent assessed petitioner of deficiency income tax for TY 2011 in the amount of ₱3,152,510.02, computed as follows:[64]

Sales per Return			₱ 11,908,071.42
Add: Adjustments Undeclared Sales			
Sales per Cash/Charge Invoices submitted (Sched. B1 & B2)		₱12,534,184.52	
Sales per Return		11,908,071.42	626,113.10
Total Sales per Letter Notice			₱ 12,534,184.52
Sales per EEI Corp. w/TIN 103-758-694 (Sched A)		₱11,025,120.56	
Sales per EEI Corp. (using 3 TINS)		315,143.76	
Total Sales per Response of EEI Corp.		₱11,340,264.32	
Sales per Other Customers		324,496.73	
Total Sales		₱11,664,761.05	
Sales per VAT Return		11,908,071.42	
Discrepancy on Sales per LN			
Less: Optional Standard Deduction (40%)		(243,310.37)	5,013,673.81
Taxable Income			₱ 7,520,510.71
Less: Personal Exemption			50,000.00
Total Taxable Income per Audit			₱ 7,470,510.71
Income Tax due	500,000.00	₱ 125,000.00	
	6,970,510.71 x 32%	2,230,563.43	2,355,563.43
Less: Tax paid per Return			
for 3 quarters		₱ 8,156.80	
Creditable Tax withheld 2307 1st to 3rd qtr.		65,024.30	
Creditable Tax withheld 2301 for the 4th qtr- supported		67,897.00	
Per 1701 1st inst. Paid 4/15/12		15,457.82	
2nd Inst. Paid 6/13/012		16,000.00	172,535.92
Deficiency Income Tax			₱ 2,183,027.51
Interest			969,482.51
TOTAL AMOUNT DUE			**₱3,152,510.02**

The above deficiency income tax assessment arose from respondent's finding of undeclared sales, in the amount of ₱626,113.10, and the Optional Standard Deduction (OSD), in the amount of ₱5,013,673.81, used by the latter in determining the taxable income.

[64] Exhibit "P-3", Docket, p. 305.

Undeclared Sales

Per the FLD,[65] respondent's verification disclosed that petitioner's sales for TY 2011 as per sales book, supported by sales invoices and charge invoices was undeclared in the amount of ₱626,113.10, hence, assessed of income tax pursuant to Sec. 32 of the NIRC, as amended.

Per its Legal Petition Notice (LPN) dated August 9, 2014 and Motion for Reconsideration,[66] petitioner argued that the Schedules B1 and B2 used by respondent pertain to audit and summary of its sales invoice and charge invoice, respectively; that the sales invoice is issued for the sales that are paid in cash, the charge invoice is issued for sales on account and once delivery of goods took place, and the Official Receipts (ORs) are correspondingly issued to its Charge Invoice once the sales on account are collected; that it simply followed the legal provision that provides an option for it to include items in gross income for the TY in which it is received; that since it chose to declare its gross income upon receipt of payment, it declared its revenues pertaining to charge invoices that were actually collected; that the discrepancy ensued from the timing difference between the moment the charge invoice and the OR is issued; that the alleged discrepancy is actually reported and taxed for the next TY 2012; and that it is unlawful to subject the same amount with the 12% VAT and the equivalent income tax rates for TY 2011 if the same are already taxed and charged for TY 2012.

In its Final Decision,[67] respondent asserted that based on petitioner's argument and the definition and application of various accounting methods provided under Revenue Audit Memorandum (RAMO) 01-00, petitioner adopts the cash basis accounting method and that the issue now is whether petitioner has sufficiently supplied evidence to support its allegation that he has been consistently applying the cash basis of accounting method to properly reflect its income, otherwise, the computation of income shall be made in such a manner as in the opinion of the respondent clearly reflects such income. However, finding petitioner's contention without merit, as its Sales Book merely contains a list of sales invoices and charge invoices and the entries therein do not show that it records Sales (as credits) and Cash (as debits) upon receipt of payment from cash sales or sales on account, respondent maintained its assessment for deficiency tax based on undeclared sales.

In the instant case, petitioner contends that the alleged undeclared sales for TY 2011 were reported in TY 2012 and that despite the recognition of the accounting method it employed and the submission of all supporting documents, respondent failed to truly appreciate the submissions and did not closely examine

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[65] *Id.*, p. 306.
[66] Exhibit Nos. "P-4" and "P-9", Docket, pp. 313 to 314 and 357 to 359, respectively.
[67] Exhibit "P-10", Docket, pp. 78 to 81.

the reconciliation of the ORs which were realized only in 2012 with the sales made in 2011.

Petitioner failed to support its stance.

Pursuant to Section 43[68] of the NIRC of 1997, as amended, and RAMO 01-00,[69] the taxable income of a taxpayer shall be computed in accordance with the method of accounting regularly employed in keeping its books, but if it does not regularly employ a method of accounting which reasonably shows the correct income, the computation of income shall be made in such manner as in the opinion of the Commissioner clearly reflects such income.

While petitioner has the option to choose the method of accounting to use in keeping its books and reporting its income, and allegedly adopted the cash basis accounting method, the latter failed to show competent proof to the effect that it is regularly employing the cash basis method of accounting in its books. The sales book[70] submitted by petitioner to respondent merely contains the name and address of buyers with corresponding invoice numbers (for sales and charge invoice), amounts (taxable sales, VAT Output and total invoice), classification of sales (goods or service) and terms of sales (cash or account) but there is not any indication on how the cash sales and sales on account are being recorded or reported. Nothing from the records of the case shows that petitioner records its sales only upon receipt of payment and claims only expenses actually paid for during the taxable period and no other document was presented by petitioner to establish the employment of cash basis of accounting in its books. Petitioner did not even present the charge invoices and ORs for TY 2011 to corroborate the amount of sales reported in its annual income tax return (ITR) for the said period following the cash basis of accounting. Hence, respondent has basis to compute petitioner's income in such manner as in its opinion clearly reflects petitioner's income for TY 2011.

Meanwhile, in its Motion for Reconsideration dated July 5, 2016,[71] petitioner provided the following schedule of sales amounting to ₱623,113.10, which allegedly pertains to the assessed undeclared sales in TY 2011 that were collected, reported and taxed only in TY 2012:

[68] SEC. 43. *General Rule.*-The taxable income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner clearly reflects the income.

[69] II. *Accounting Methods*

The taxable income of a taxpayer shall be computed in accordance with the method of accounting he regularly employs in keeping his books. However, if the taxpayer does not regularly employ a method of accounting which reasonably shows his correct income, the computation of income shall be made in such manner as in the opinion of the Commissioner of Internal Revenue or his -duly authorized representative that clearly reflects such income.

[70] BIR Records, pp. 990 to 1084.

[71] Exhibit "P-9", Docket, p. 358.

Undeclared Sale per FLOD					**₱623,113.10**
Charge Invoice No.	OR Number	OR Date	Month Reported	Amount	
1345	9746	01-07-2012	January-2012	177,300.00	
1347	9918	02-06-2012	February-2012	10,717.00	
1348	9913	02-06-2012	February-2012	10,717.00	
1350	9934	03-23-2012	March-2012	36,337.50	
1351	9902	01-12-2012	January-2012	138,000.00	
1357	9903	01-13-2012	January-2012	760.00	
1356	9913	01-27-2012	January-2012	600.00	
1359	9903	01-13-2012	January-2012	900.00	
1365	9902	01-12-2012	January-2012	198,900.00	
1372	9904	01-13-2012	January-2012	2,225.85	
1416	9798	02-17-2012	February-2012	12,794.60	
1395	9908	01-20-2012	January-2012	10,181.15	
1408	9948	05-11-2012	May-2012	23,680.00	
					623,113.10
Total Discrepancy Per Protest					**0.00**

Upon perusal of Schedule B2 (the Schedule of Sales with charge invoices),[72] it appears that the above-listed sales were made to EEI Corp. for the months of November and December 2011 and that the amounts used by petitioner are inclusive of VAT. Hence, the taxable sales being pertained to and accounted for by petitioner in the above schedule only amounted to ₱556,350.98 (₱623,113.10 ÷ 112%), net of VAT, and no other explanation was given for the remaining discrepancy of ₱69,762.12[73].

Nonetheless, since petitioner did not submit the pertinent documents (Charge invoice/ORs) for these sales transactions, it cannot be verified whether the amounts included in the above schedule actually pertain to the indicated charge invoices for sales made in TY 2011 and that the same were collected in TY 2012. Further, petitioner also failed to establish that the said amount of ₱556,350.98 was indeed reported and subjected to income tax in TY 2012 absent any documentary evidence proving the same. Hence, the alleged reporting of the assessed discrepancy and subjecting of the same to income tax in TY 2012 are but mere unsupported allegations. Bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed.[74]

Thus, for petitioner's failure to present sufficient evidence to satisfactorily refute the assessment, the undeclared sales of ₱626,113.07[75] shall be upheld.

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[72] BIR Records, pp. 1123 to 1125.

[73] Assessed undeclared sales of ₱626,113.10 less sales as accounted by petitioner in its schedule in the amount of ₱556,350.98 (net of VAT).

[74] LNS International manpower Services v. Armando C. Padua, Jr. G.R. No. 179792, March 5, 2010.

[75] With minimal adjustment of 0.03 due to the difference of the actual amount of sales reported per ITR (₱11,908,071.45) [BIR Records, p. 1293, Line 56E] as against the amount of sales used by respondent in the assessment (₱11,908,071.42).

Optional Standard Deduction

Per the FLD,[76] respondent arrived at petitioner's taxable income for TY 2011 using the OSD pursuant to Section 34(L) of the NIRC of 1997, as amended, as expounded under Section 3 of Revenue Regulations (RR) No. 16-2008, in lieu of the deductions allowed under the preceding Subsections thereto.

On the other hand, petitioner contests that RR 16-2008, which is the basis of respondent in computing the taxable income, is inapplicable to petitioner; that RR 02-2010, essentially amending RR 16-2008, now provides that the selection between itemized deduction and OSD must be made first and foremost upon filing of the first quarterly ITR and such selection must be applied consistently all throughout the taxable year; that RR 02-2010 does not consider the selection made on the annual ITR, regardless if it differs with the selection made on the quarterly ITR filed; that it submitted additional supporting documents for its declared costs and expenses in line with its protest through various LPNs; and that the BIR letter dated September 24, 2015 signed by then Revenue Officer (RO) Rebe D. Detablan further confirms the submission of said documents, which were in fact verified, vouched and validated by the latter.[77]

In its Final Decision,[78] respondent already agreed with petitioner that pursuant to Section 7 of RR No. 02-2010, which amended Section 7 of RR No. 16-2008 in further implementing Section 34(L) of the NIRC of 1997, as amended, the latter is considered as having availed of the itemized deductions for TY 2011, since it failed to signify its option to claim either the OSD or itemized deduction in its first quarterly return, albeit electing the OSD on its annual ITR for the same period; that since the option is irrevocable for the TY, the itemized deduction method that should be applied from the first quarterly return should be consistently applied for the entire TY 2011. However, despite finding that itemized deduction is the applicable method of deduction for petitioner for TY 2011, respondent still retained its assessment due to petitioner's alleged failure to support its allegation that it is entitled to the claimed expenses under the itemized deduction.

At the outset, it is settled that itemized deduction is the correct method applicable to petitioner for TY 2011. As such, respondent's application of the OSD in computing the assessed taxable income of petitioner is misplaced. Nevertheless, for the petitioner's declared cost of sales and expense deductions to be allowed as deduction from gross sales under the itemized deduction, it is

[76] Exhibit "P-3", Docket, p. 306.
[77] Motion for Reconsideration dtd. July 5, 2016 (Exhibit "P-9"), Docket, pp. 359 to 363.
[78] Exhibit "P-10", Docket, pp. 81 to 84.

still imperative for petitioner to properly substantiate the same with sufficient evidence pursuant to Section 34(A)[79] of the NIRC of 1997, as amended.

Scrutiny of the records reveal that petitioner indeed submitted to respondent documents to support its claimed expenses for TY 2011, which were admittedly examined, verified and validated by the latter during its reinvestigation. In fact, respondent had the occasion to inform petitioner of the results of its verification of the source documents submitted by the latter and rule on the specific disallowances found thereafter per its letter to petitioner dated September 24, 2015,[80] which reads, in part, as follows:

> Sir:
>
> Relative to the ongoing reinvestigation of your 2011 all internal revenue taxes, the following observations and amounts were arrived at per verification from the source documents you submitted on February 13, as enumerated below:
>
> 1. Purchase invoices supporting local purchases submitted for verification was summarized and prepared showing the details amounted to ₱10,504,862.49.
>
> 2. Supporting documents for operating expenses claimed were verified, vouched and validated. It was noted that these expenses were recorded inclusive of the input taxes except for Meralco, salaries, depreciation and taxes/licenses. This can be allowed provided that no input tax was credited against the output tax.
>
> 3. Disallowed Expenses – under sec. 34(A) of the Tax Code of 1997

[79] "SEC. 34. *Deductions from Gross Income.*-Xxx, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B), (C); and 28(A)(1), there shall be allowed the following deductions from gross income:

(A) *Expenses.*-

(1) *Ordinary and Necessary Trade, Business or Professional Expenses.*-

(a) *In General.*-There shall be allowed as deduction from gross income all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession, including:

xxx xxx xxx

(b) *Substantiation Requirements.*-No deduction from gross income shall be allowed under Subsection (A) hereof unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer."

[80] Exhibit "P-7", Docket, p. 333.

a) Meralco/Light Expenses ₱48,968.85 – under the name of R. Dagdag and has different street number

b) Telephone expense – ₱36,682.31 under the name of Violeta Tango (wife) and daughter- personal expenses

c) Miscellaneous Expenses ₱71,175.65 – purchase of medicine and snack foods (personal expenses)

Summarized below are the results of the verification of invoices for your perusal:

	Per ITR	Per Source Documents
Purchases	₱	₱
Local		10,504,862.49
Imported		605,983.30
Cost of Sales	6,914,270.46	
Operating Expenses:		
Salaries		550,000.00
Depreciation		123,907.20
Water Expense		7,005.24
Janitorial		32,874.81
Gas		111,228.86
Light (Meralco)		48,968.85
Telephone		80,599.32
Import Expense		95,099.68
Transportation		19,812.50
Repair		975,733.53
Supplies		133,391.40
Representation		121,047.47
Miscellaneous		71,175.65
Seminar Fee		36,505.30
Tax/License		55,405.71
Office Equipment		623,990.00
Insurance		34,372.82
Permits/License		34,328.50
Other Outside Services		700.00
Total Operating Expenses		₱ **3,156,146.84**

As to the declared cost of sales of ₱6,914,270.46, since petitioner did not provide the computation of the said amount or any document from which the said amount may be derived, it cannot be determined whether the substantiated purchases verified by respondent actually pertain to the said cost of sales during TY 2011, hence, cannot be allowed.

On the other hand, considering the above results of respondent's verification, petitioner was able to substantiate its operating expenses only to the extent of ₱2,756,104.99, as detailed below:

	Per Source Documents (per BIR letter dtd. Sept. 24, 2015)	Expense Amount (exclusive of VAT)[81]
Water Expense	₱ 7,005.24	₱ 6,254.68
Janitorial	32,874.81	29,352.51
Gas	111,228.86	99,311.48
Telephone	43,917.01[82]	39,211.62
Import Expense	95,099.68	84,910.43
Transportation	19,812.50	17,689.73
Repair	975,733.53	871,190.65
Supplies	133,391.40	119,099.46
Representation	121,047.47	108,078.10
Seminar Fee	36,505.30	32,594.02
Office Equipment	623,990.00	557,133.93
Insurance	34,372.82	30,690.02
Permits/License	34,328.50	30,650.45
Other Outside Services	700.00	625.00
Salaries	550,000.00	550,000.00
Depreciation	123,907.20	123,907.20
Tax/License	55,405.71	55,405.71
Total	**₱2,999,320.03**	**₱2,756,104.99**

In sum, considering the undeclared sales of ₱626,113.07 and the substantiated expenses for itemized deduction of ₱2,756,104.99 in computing the taxable income of petitioner for TY 2011, the latter's net income tax payable yields to ₱2,905,449.53, as computed below, which is apparently higher than the ₱2,183,027.51 basic deficiency income tax assessed by respondent per the FLD:

Sales per Return[83]			₱ 11,908,071.45
Add: Adjustments-Undeclared Sales			626,113.07
Total Sales			₱ 12,534,184.52
Less: Cost of Sales			-
Net Sales			₱ 12,534,184.52
Less: Deduction (substantiated expenses)			2,756,104.99
Taxable Income			₱ 9,778,079.53
Less: Personal exemption			50,000.00
Net Taxable Income			₱ 9,728,079.53
Income Tax due	500,000.00	₱ 125,000.00	
	9,228,079.53 x 32%	2,952,985.45	₱ 3,077,985.45
Less: Tax paid per Return			172,535.92
Net Income Tax Payable			**₱2,905,449.53**

At this point, it is worthy to note that in as much as this Court's jurisdiction is appellate in nature, it is essential that matters taken up in the appeal should be included in the disputed assessment. Hence, the amount to be

[81] Amounts per source documents divided by 112% except for Salaries, Depreciation and Tax/License.
[82] Total telephone expense of ₱80,599.32 per source document less disallowed Telephone expense of ₱36,682.31 per respondent's verification.
[83] BIR Records, p. 1293, line 58E.

collected from petitioner should not go beyond what is stated in the assessment. Any excess amount not indicated therein should be considered as not assessed by respondent, and already beyond the prescriptive period for it to be included only during the judicial proceedings.

Verily, in relation to the basic deficiency income tax, petitioner appealed before this Court only with respect to the amount of ₱2,183,027.51, as indicated in the FLD, which was affirmed in the FDDA and Final Decision. Consequently, petitioner's basic deficiency income tax for TY 2011 shall be limited to the appealed assessment in the amount of ₱2,183,027.51.

II. DEFICIENCY VAT - ₱160,505.48

Respondent assessed petitioner of deficiency VAT for TY 2011 in the amount of ₱160,505.48, computed as follows:[84]

Taxable Sales per Return			₱11,908,071.42
Add: Adjustments			626,113.10
Vatable Sales per Audit			₱12,534,184.52
Output tax			₱ 1,504,102.14
Less: Creditable Input tax			1,334,340.87
Value-added Tax due			₱ 169,761.27
Add: Disallowed Input Tax- Unsupported invoices/OR			
Total Input tax Claimed per Return		₱1,334,340.87	
Less: Input Tax w/ supporting invoices/Input tax on Local Purchases w/OR	₱1,228,906.10		
Input Tax importation (per import entry document submitted)	72,718.00	1,301,624.10	32,716.77
Value-added Tax per Audit			₱ 202,478.04
Less: Tax paid			94,633.20
Deficiency Tax			₱ 107,844.84
Interest			52,660.64
TOTAL AMOUNT DUE			**₱ 160,505.48**

The above deficiency VAT assessment arose from adjustments to taxable sales, in the amount of ₱626,113.10, and the disallowed unsupported input tax, in the amount of ₱32,716.77.

Adjustments to taxable sales

Based on the same finding of undeclared sales under the deficiency income tax, petitioner was assessed of deficiency VAT due to the said undeclared

[84] Exhibit "P-3", Docket, p. 306.

sales of ₱626,113.10, which were subjected to output tax pursuant to Section 106 of the NIRC of 1997, as amended.

The assessment shall be sustained.

Section 106(A) of the NIRC of 1997, as amended, provides for the imposition of VAT on every sale of goods based on the gross selling price or gross value in money of the goods sold. In this regard, *gross selling price* is defined as "the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties".

Verily, the VAT on sale of goods is imposed upon the actual sale of goods, as evidenced by VAT invoices, irrespective of whether or not the consideration thereof has been paid. As such, the petitioner's sales made in TY 2011 are properly subject to VAT in the same period as incurred, even when the payment is yet to be received.

While petitioner does not dispute the incurrence of its sales for TY 2011 per sales invoice (Schedule B1) and charge invoices (Schedule B2), in the respective amounts of ₱613,196.09 and ₱11,920,988.43, aggregating to ₱12,534,184.52,[85] records show that it reported and subjected to VAT only the sales amounting to ₱11,908,071.45[86] for the same period, thereby resulting to the assessed undeclared sales discrepancy of ₱626,113.07.

Allegedly, a portion of the said sales discrepancy was reported and taxed by petitioner in the succeeding TY 2012 when the payments thereon were made. However, as already discussed earlier, petitioner did not adduce evidence to prove that the assessed undeclared sales of ₱626,113.07 were indeed subjected to VAT in TY 2012. Thus, the latter's deficiency VAT liability due on the said undeclared sales stands.

Disallowed unsupported input tax

Per the FLD, respondent disallowed the input tax amounting to ₱32,716.77 for petitioner's alleged failure to comply with the substantiation requirements set forth in Sections 110 & 113 and 237 of the NIRC of 1997, as

[85] BIR Records, pp. 1123 to 1143.

[86] Total Sales reported per Quarterly VAT Returns for TY 2011:

VAT Returns	Reference to BIR Records	Total Sales
1st Quarter	p. 952	₱ 3,025,306.18
2nd Quarter	p. 950	3,257,413.69
3rd Quarter	p. 948	2,055,058.08
4th Quarter	p. 946	3,570,293.50
Total		₱11,908,071.45

amended. This was reiterated in the FDDA without further discussion and was not specifically mentioned in the Final Decision, albeit included in the total amount of deficiency VAT assessment affirmed thereon.

However, as can be gleaned from the BIR letter dated September 24, 2015,[87] the summary of the results of respondent's verification of the source documents (purchase invoices) submitted by petitioner to the former for reinvestigation reveals that per source documents, the "Local" and "Imported" line items under "Purchases" amounted to ₱10,504,862.49 and ₱605,983.30, respectively, which corresponds to input taxes in the amounts of ₱1,260,583.50 (12% of ₱10,504,862.49) and ₱72,718.00 (12% of ₱605,983.30).

Apparently, records convey that during the reinvestigation, respondent was able to verify additional source documents submitted by petitioner to substantiate the latter's input taxes on local purchases of goods, hence, the unsupported input taxes shall be reduced to ₱1,039.37, as shown below:

	Per Source Documents (per BIR letter dtd. Sept. 24, 2015)	Corresponding Input Tax [a]	Input Tax per VAT Returns[88] [b]	Remaining Unsupported Input Tax [b-a]
Local Purchases	₱10,504,862.49	₱1,260,583.50	₱1,261,622.87	₱ 1,039.37
Importation	605,983.30	72,718.00	72,718.00	-
Total	**₱11,110,845.79**	**₱1,333,301.50**	**₱1,334,340.87**	**₱1,039.37**

And since petitioner did not anymore present to this Court documents to substantiate the assessed input tax disallowance, the input tax in the amount of ₱1,039.37 shall remain to be disallowed being unsupported.

In sum, petitioner is liable for basic deficiency VAT for TY 2011 in the amount of ₱76,167.44, computed as follows:

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[87] Exhibit "P-7", Docket, p. 333.

[88] Input taxes per Quarterly VAT Returns for TY 2011 (BIR Records, pp. 946 to 953):

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Input tax on purchase of capital goods not exceeding 1M		₱348,506.85			₱ 348,506.85
Input tax on domestic purchases of goods other than capital goods	₱337,026.83		₱209,171.43	₱366,917.76	913,116.02
Input tax on importation of goods other than capital goods	17,303.00	14,596.00	8,507.00	32,312.00	72,718.00
Total Input Taxes for the period	₱354,329.83	₱363,102.85	₱217,678.43	₱399,229.76	**₱1,334,340.87**

Taxable Sales per Return	₱11,908,071.45
Add: Adjustments: Undeclared Sales	626,113.07
Vatable Sales	₱12,534,184.52
Output tax (₱12,534,184.52 x 12%)	₱ 1,504,102.14
Less: Creditable Input tax	1,334,340.87
VAT due	₱ 169,761.27
Add: Disallowed Unsupported Input Tax	1,039.37
VAT due	₱ 170,800.64
Less: Tax paid	94,633.20
Basic Deficiency VAT	**₱ 76,167.44**

COMPROMISE PENALTY

The imposition of the ₱41,700.00 compromise penalty on deficiency income tax, VAT and EWT must be cancelled absent a showing that petitioner consented to the same.

It must be stressed that a compromise penalty is imposed to avoid prosecution for violation of the provisions of the Tax Code.[89] Pursuant to Revenue Memorandum Order ("RMO") No. 01-90, as amended by RMO No. 19-2007, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It is well-settled that this Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[90]

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments issued by respondent against petitioner covering deficiency income tax and VAT for TY 2011 are to be **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **EIGHT MILLION THIRTY-FOUR THOUSAND FIVE HUNDRED EIGHTY-SEVEN PESOS AND EIGHTY-SIX CENTAVOS (₱8,034,587.86)**, inclusive of 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C)(3) of the NIRC of 1997, as amended, computed until December 31, 2017, as follows:

	IT	**VAT**	**Total**
Basic Tax Due	₱2,183,027.51	₱76,167.44	₱2,259,194.95
Add: 25% Surcharge	545,756.88	19,041.86	564,798.74
20% Deficiency Interest:			

[89] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue et. al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.

[90] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc.* et al., G.R. No. L-35266, January 21, 1991.

IT: From April 16, 2012 to August 15, 2014 *[₱2,183,027.51 x 20% x 852/365 days]*	1,019,144.90		1,019,144.90
VAT: From January 26, 2012 to August 15, 2014 *[₱76,167.44 x 20% x 933/365 days]*		38,939.30	38,939.30
Total Amount Due, August 15, 2014	**₱3,747,929.29**	**₱134,148.60**	**₱3,882,077.89**
Add: 20% Deficiency Interest from August 16, 2014 to December 31, 2017			
[₱2,183,027.51 x 20% x 1,234/365 days]	1,476,085.45		1,476,085.45
[₱76,167.44 x 20% x 1,234/365 days]		51,501.71	51,501.71
20% Delinquency Interest from August 16, 2014 to December 31, 2017			
[₱3,747,929.28 x 20% x 1,234/365 days]	2,534,216.30		2,534,216.30
[₱134,148.60 x 20% x 1,234/365 days]		90,706.51	90,706.51
Total Amount Due as of December 31, 2017	**₱7,758,231.04**	**₱276,356.82**	**₱8,034,587.86**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the total unpaid deficiency taxes due as of August 15, 2014, in the amount of ₱3,882,077.89 or equivalent to ₱1,276.30[91] per day, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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[91] ₱₱3,882,077.89 x 12% / 365 days.

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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice