REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MARKET STRATEGIC FIRM, INC., *Petitioner,*	**CTA CASE No. 9280**
-versus-	**Members:** **CASTAÑEDA, JR., Chairperson, MINDARO-GRULLA, and BACORRO-VILLENA, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**Promulgated:** FEB 10 2020 10:30 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for Decision on May 10, 2019 is a Petition for Review[1] filed by petitioner Market Strategic Firm, Inc. (MSFI) on March 3, 2016, pursuant to Section 7(a)(1)[2] of Republic Act (RA) No. 1125,[3] as amended, as well as Section 3(a)(1)[4] of Rule 4 and Section 4(a)[5] of Rule 8 of the Revised

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[1] Vol. I, pp. 10-162.

[2] 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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[3] Act Creating the Court of Tax Appeals.

[4] Sec. 3. Cases within the jurisdiction of the Court in Division.- The Court in Division shall exercise:

Rules of the Court of Tax Appeals, as amended, to review and set aside the Denial rendered by Commissioner Kim S. Jacinto-Henares on the Motion for Reconsideration on the Final Decision on Disputed Assessments (FDDA).

Respondent is being sued in her official capacity as the CIR, having been duly appointed to exercise the powers and perform the duties of her office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the Tax Code.

Respondent holds office and may be served with summons, notices and other processes of this Court at the 5th Floor, Bureau of Internal Revenue National Office Bldg, BIR Road, Diliman, Quezon City.

On September 20, 2011, Respondent, through Mr. Alfredo V. Misajon, then Officer in Charge-Assistant Commissioner for Large Taxpayers Service, issued Letter of Authority No. 116-2011-00000050[6] against Petitioner to examine its books of accounts and other accounting records for all internal revenue taxes for the period from January 1 to December 31, 2010.

After undergoing audit procedure, on September 15, 2014, Respondent, through Nestor S. Valeroso, Officer in

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(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(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.

[5] Sec. 4. Where to appeal; mode of appeal.-

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[6] BIR Records, p. 1.

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Charge-Assistant Commissioner for Large Taxpayers Service, issued a Formal Letter of Demand/Assessment Notice[7] against Petitioner for alleged deficiency taxes, penalties and interests in relation to taxable year 2010 as follows:

(a) Income Tax (IT) in the amount of Php3,303,769,658.39;

(b) Value Added Tax (VAT) in the amount of Php1,457,842,274.38;

(c) Expanded Withholding Tax (EWT) in the amount of Php10,043,621.96;

(d) Withholding Tax on Compensation (WTC) in the amount of Php3,764,838. 00

(e) Unremitted Withholding Tax on Compensation in the amount of P113, 983.52; and

(f) Improperly Accumulated Earnings Tax in the amount of P4,707,219.63.

However, on September 14, 2015, Petitioner received the FDDA[8] signed by Assistant Commissioner Nestor S. Valeroso, denying Petitioner's protest in part and found the Petitioner liable for alleged deficiency taxes, penalties and interests in relation to taxable year 2010 as follows:

	Income tax	**VAT**	**EWT**	**WTC**	**Total**
Basic Tax	611,584,501.21	315,655,720.92	4,697,746.00	58,436.52	**931,996,404.65**
Add: Surcharge		157,827,860.46			**157,827,860.46**
Interest & Penalties	536,183,672.00	290,647,641.00	4,347,667.00	54,081.00	**831,233,061.00**
Total	1,147,768,173.21	764,131,222.38	9,045,413.00	112,517.52	**1,921,057,326.11**

Thereafter, petitioner filed its Motion for Reconsideration[9] on October 14, 2015. However, on February 2, 2016, Respondent Commissioner Kim S. Jacinto-Henares rendered a denial[10] of the Motion and reiterated its assessment in the FDDA.

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[7] Exhibit "R-11", BIR Records, pp. 565-597.
[8] Exhibit "R-14", *Ibid.*, pp. 1633-1662.
[9] Exhibit "P-31", *Ibid.*, pp. 1663-1758.
[10] Exhibit "R-17", *Ibid.*, p. 1764.

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Hence, this Petition for Review was filed.

On May 24, 2016, an Answer[11] was filed by the CIR. The CIR's Pre-Trial Brief[12] was filed on July 14, 2016, while MSFI's Pre-Trial Brief[13] was filed on July 18, 2016.

The parties filed their Joint Stipulation of Facts and Issues (JSFI)[14] on August 5, 2016.

On August 31, 2016,[15] the Court granted the commissioning of Mr. Prudencio F. Tatunay, Jr. as the Independent Certified Public Accountant (ICPA) in this case.

MSFI presented witnesses Ms. Consuela O. Cadeliña and Ms. Mary Rose V. Nuñez on August 31, 2016,[16] Ms. Russel M. Elemia on September 26, 2016,[17] Ms. Kathleen L. Cheng on October 17, 2016,[18] Ms. Annalyn E. Cayetano on November 14, 2016,[19] Mr. Prudencio Tatunay on December 14, 2016[20] and Ms. Hazel Ann. F. Hapin on February 13, 2017.[21]

On March 6, 2017, MSFI filed its Formal Offer of Evidence.[22] MSFI's documentary exhibits are as follows:

Exhibit	Description
P-1	Letter of Denial issued and signed by Commissioner of Internal Revenue Kim S. Jacinto-Henares, and received by the Petitioner on February 2, 2016

[11] *Dockets*, Vol. II, pp. 758-774.
[12] *Ibid.*, pp. 790-797.
[13] *Ibid.*, pp. 815-822.
[14] *Dockets*, Vol. III, pp. 1202-1211.
[15] Order, *Ibid.*, p. 1258.
[16] Minutes of the hearing, *Ibid.*, p. 1257.
[17] Minutes of the hearing, *Ibid.*, p. 1406.
[18] Minutes of the hearing, *Dockets*, Vol. V, p. 2053.
[19] Minutes of the hearing, *Ibid.*, p. 2338.
[20] Minutes of the hearing, *Ibid.*, p. 2408.
[21] Minutes of the hearing, *Dockets*, Vol. VI, p. 2546.
[22] *Dockets*, Vol. VI, pp. 2563-2604, excluding the attachments.

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P-2 **P-2-a** **P-2-b to P-2-e** **P-2-f to P-2-k** **P-2-1**	Final Decision on Disputed Assessment Details and Discrepancies Assessment Notice Schedules Final Decision on Disputed Assessment (Part II) all issued by Mr. Nestor S. Valeroso, OIC-Assistant Commissioner for Large Taxpayers Service on September 10, 2015
P-3	Letter of Authority No. 116-2011-00000050, issued on September 20, 2011, for the examination of Petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1 to December 31, 2010
P-4 **P-4-a** **P-4-b to P-4-g** **P-4-h to P-4-m**	Formal Letter of Demand with Details of Discrepancies Assessment Notices, Schedules all issued by Mr. Nestor S. Valeroso, OIC-Assistant Commissioner for Large Taxpayers Service on September 15, 2014
P-5	Protest Letter to the Formal Letter of Demand, filed by Petitioner on October 13, 2014
	Petitioner's Monthly Terminal Accountability Report for Sucat Branch:
P-6-A-1	January 2010
P-6-A-2	February 2010
P-6-A-3	March 2010
P-6-A-4	April 2010
P-6-A-5	May 2010
P-6-A-6	June 2010
P-6-A-7	July 2010
P-6-A-8	August 2010
P-6-A-9	September 2010
P-6-A-10	October 2010
P-6-A-11	November 2010
P-6-A-12	December 2010

	Petitioner's Monthly Terminal Accountability Report for Fairview Branch:
P-6-B-1	January 2010
P-6-B-2	February 2010
P-6-B-3	March 2010
P-6-B-4	April 2010
P-6-B-5	May 2010
P-6-B-6	June 2010
P-6-B-7	July 2010
P-6-B-8	August 2010
P-6-B-9	September 2010
P-6-B-10	October 2010
P-6-B-11	November 2010
P-6-B-12	December 2010
	Petitioner's Monthly Terminal Accountability Report for Lucena Branch:
P-6-C-1	January 2010
P-6-C-2	February 2010
P-6-C-3	March 2010
P-6-C-4	April 2010
P-6-C-5	May 2010
P-6-C-6	June 2010
P-6-C-7	July 2010
P-6-C-8	August 2010
P-6-C-9	September 2010
P-6-C-10	October 2010
P-6-C-11	November 2010
P-6-C-12	December 2010
	Petitioner's Monthly Terminal Accountability Report for Calamba Branch:
P-6-D-1	October 2010
P-6-D-2	November 2010
P-6-D-3	December 2010
P-7	Petitioner's Supplementary Information Required Under Revenue Regulation 15-2010 for year ended December 31, 2010 or Supplemental Information to Terminal Accountability Report
P-8-1	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the Month of January 2010
P-8-1-1	Monthly Alphalist of Payees for the Month of January 2010
P-8-2	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the Month of February 2010
P-8-2-1	Monthly Alphalist of Payees for the Month of February 2010

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P-8-3	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the Month of March 2010
P-8-3-1	Monthly Alphalist of Payees for the Month of March 2010
P-8-4	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the Month of April 2010
P-8-4-1	Monthly Alphalist of Payees for the Month of April 2010
P-8-5	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the Month of May 2010
P-8-5-1	Monthly Alphalist of Payees for the Month of May 2010
P-8-6	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the Month of June 2010
P-8-6-1	Monthly Alphalist of Payees for the Month of June 2010
P-8-7	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the Month of July 2010
P-8-7-1	Monthly Alphalist of Payees for the Month of July 2010
P-8-8	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the Month of August 2010
P-8-8-1	Monthly Alphalist of Payees for the Month of August 2010
P-8-9	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the Month of September 2010
P-8-9-1	Monthly Alphalist of Payees for the Month of September 2010
P-8-10	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the Month of October 2010
P-8-10-1	Monthly Alphalist of Payees for the Month of October 2010
P-8-11	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) for the Month of November 2010
P-8-11-1	Monthly Alphalist of Payees for the Month of November 2010
P-8-12	Monthly Remittance Return of Creditable Income

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	Taxes Withheld (Expanded) for the Month of December 2010
P-8-12-1	Monthly Alphalist of Payees for the Month of December 2010
P-9	Petitioner's Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Taxes for CY 2010 (BIR Form 1604-E)
P-9-1/P-28	Petitioner's Schedule of Expanded Taxes Payable for the Year 2010, with "Rundate: 02/24/2011 and Runtime:09:30:54 to 09:30:57" (Schedule 4 of BIR Form 1604-E: Alphalist of Payees subject to Expanded Withholding Tax)
P-9-2	Filing Reference No. 004-563-344-000 for CY 2010 (BIR Form 1604-E)
P-10-a	Monthly Remittance Return of Income Taxes Withheld on Compensation for December 2009 (BIR Form 1601-C)
P-10-b	Monthly Remittance Return of Income Taxes Withheld on Compensation for January 2010 (BIR Form 1601-C) with the following attachments:
P-10-b-1	Filing Reference No.
P-10-b-2	E-payment Payment Confirmation Receipt
P-10-b-3	BIR eFPS Payment Confirmation
P-10-c	Monthly Remittance Return of Income Taxes Withheld on Compensation for February 2010 (BIR Form 1601-C) with the following attachments:
P-10-c-1	Filing Reference No.
P-10-c-2	E-payment Payment Confirmation Receipt
P-10-c-3	BIR eFPS Payment Confirmation
P-10-d	Monthly Remittance Return of Income Taxes Withheld on Compensation for March 2010 (BIR Form 1601-C) with the following attachments:
P-10-d-1	Filing Reference No.
P-10-d-2	E-payment Payment Confirmation Receipt
P-10-d-3	BIR eFPS Payment Confirmation
P-10-e	Monthly Remittance Return of Income Taxes Withheld on Compensation for April 2010 (BIR Form 1601-C) with the following attachments:
P-10-e-1	Filing Reference No.
P-10-e-2	E-payment Payment Confirmation Receipt
P-10-e-3	E-payment Acknowledgment Receipt

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P-10-f	Monthly Remittance Return of Income Taxes Withheld on Compensation for May 2010 (BIR Form 1601-C) with the following attachments:
P-10-f-1	Filing Reference No.
P-10-f-2	E-payment Transaction Acknowledgment
P-10-f-3	BIR eFPS Payment Confirmation
P-10-g	Monthly Remittance Return of Income Taxes Withheld on Compensation for June 2010 (BIR Form 1601-C) with the following attachments:
P-10-g-1	Filing Reference No.
P-10-g-2	E-payment Payment Confirmation Receipt
P-10-g-3	BIR eFPS Payment Confirmation
P-10-h	Monthly Remittance Return of Income Taxes Withheld on Compensation for July 2010 (BIR Form 1601-C) with the following attachments:
P-10-h-1	Filing Reference No.
P-10-h-2	E-payment Payment Confirmation Receipt
P-10-h-3	BIR eFPS Payment Confirmation
P-10-i	Monthly Remittance Return of Income Taxes Withheld on Compensation for August 2010 (BIR Form 1601-C) with the following attachments:
P-10-i-1	Filing Reference No.
P-10-i-2	E-payment Payment Confirmation Receipt for the Monthly Remittance Return of Income Taxes Withheld on Compensation for August 2010 (BIR Form 1601-C); and
P-10-i-3	BIR eFPS Payment Confirmation
P-10-j	Monthly Remittance Return of Income Taxes Withheld on Compensation for September 2010 (BIR Form 1601-C) with the following attachments:
P-10-j-1	Filing Reference No.
P-10-j-2	E-payment Payment Confirmation Receipt
P-10-j-3	BIR eFPS Payment Confirmation
P-10-k	Monthly Remittance Return of Income Taxes Withheld on Compensation for October 2010 (BIR Form 1601-C) with the following attachments:
P-10-k-1	Filing Reference No.
P-10-k-2	E-payment Payment Confirmation Receipt
P-10-k-3	BIR eFPS Payment Confirmation
P-10-l	Monthly Remittance Return of Income Taxes Withheld on Compensation for November 2010 (BIR Form 1601-C) with the following attachments:
P-10-l-1	Filing Reference No.
P-10-l-2	E-payment Payment Confirmation Receipt
P-10-l-3	BIR eFPS Payment Confirmation

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P-10-m **P-10-m-1**	Monthly Remittance Return of Income Taxes Withheld on Compensation for Deccember 2010 (BIR Form 1601-C) with the following attachments: Filing Reference No.
P-11 **P-11-a**	Annual Information Return of Income Tax Withheld on Compensation and Final Withholding Taxes for CY 2010 (BIR Form 1604-CF) Filing Reference No.
P-12-a **P-12-a-1** **P-12-a-2** **P-12-a-3**	Monthly Value-Added Tax Declaration for the Month of January 2010 (BIR Form 2550M) with the following attachments: Filing Reference No. E-payment Payment Confirmation Receipt BIR eFPS Payment Confirmation
P-12-b **P-12-b-1** **P-12-b-2**	Monthly Value-Added Tax Declaration for the Month of February 2010 (BIR Form 2550M) with the following attachments: Filing Reference No. eFPS Payment Details
P-12-c **P-12-c-1**	Quarterly Value-Added Tax Return for the First Quarter of CY 2010 (BIR Form 2550Q) with the attached Filing Reference No.
P-12-d **P-12-d-1**	Monthly Value-Added Tax Declaration for the Month of April 2010 (BIR Form 2550M) with the attached Filing Reference No.
P-12-e **P-12-e-1** **P-12-e-2** **P-12-e-3**	Monthly Value-Added Tax Declaration for the Month of May 2010 (BIR Form 2550M) with the following attachments: Filing Reference No. E-payment Transaction Acknowledgement E-payment Acknowledgement Receipt
P-12-f **P-12-f-1** **P-12-f-2** **P-12-f-3**	Quarterly Value-Added Tax Return for the Second Quarter of CY 2010 (BIR Form 2550Q) with the following attachments: Filing Reference No. E-payment Payment Confirmation Receipt BIR eFPS Payment Confirmation
P-12-g **P-12-g**	Monthly Value-Added Tax Declaration for the Month of July 2010 (BIR Form 2550M) with the attached Filing Reference No.
P-12-h **P-12-h-1**	Monthly Value-Added Tax Declaration for the Month of August 2010 (BIR Form 2550M) with the attached

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	Filing Reference No.
P-12-i **P-12-i-1**	Quarterly Value-Added Tax Return for the Third Quarter of CY 2010 (BIR Form 2550Q) with the attached Filing Reference No.
P-12-j **P-12-j-1**	Monthly Value-Added Tax Declaration for the Month of October 2010 (BIR Form 2550M) with the attached Filing Reference No.
P-12-k **P-12-k-1**	Monthly Value-Added Tax Declaration for the Month of November 2010 (BIR Form 2550M) with the attached Filing Reference No.
P-12-l **P-12-l-1** **P-12-l-2** **P-12-l-3**	Quarterly Value-Added Tax Return for the Fourth Quarter of CY 2010 (BIR Form 2550Q) with the following attachments: Filing Reference No. E-payment Payment Confirmation Receipt BIR eFPS Payment Confirmation
P-13-a **P-13-a-1**	Quarterly Income Tax Return for the First Quarter of CY 2010 (BIR Form 1702Q) with the attached: Summary of Alphalist of Withholding Taxes for the period ended March 2010
P-13-b **P-13-b-1**	Quarterly Income Tax Return for the Second Quarter of CY 2010 (BIR Form 1702Q) with the attached: Summary of Alphalist of Withholding Taxes for the period ended June 2010
P-13-c **P-13-c-1**	Quarterly Income Tax Return for the Third Quarter of CY 2010 (BIR Form 1702Q) with the attached: Summary of Alphalist of Withholding Taxes for the period ended September 2010
P-14 **P-14-a** **P-14-b; P-14-b-1** **P-14-c**	Annual Income Tax Return for CY2010 (BIR Form 1702) stamped as "received" by the Bureau of Internal Revenue on April 14, 2011 with the following attachments: Payment Confirmation Receipt for the amount of P8,393,094.00, stamped as 'received' by the Bureau of Internal Revenue on April 14, 2011 Statement of Management's Responsibility with the Audited Financial Statements (for the years ended December 31, 2010 and 2009); Filing Reference (No. 121100004664065), stamped as 'received' by the Bureau of Internal Revenue on April 14, 2011;

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P-14-d **P-14-e** **P-14-g** **P-14-f**	Acknowledgement Receipt of eSubmission, stamped as 'received' by the Bureau of Internal Revenue on April 14, 2011; and List of Attachments to Annual Income Tax Return for the year ended December 31, 2010, stamped as 'received' by the Bureau of Internal Revenue on April 14, 2011 Summary Alphalist of Withholding Taxes for the period ended December 2010 Janitorial and Messengerial Services line item in the Annual Income Tax Return reflecting the amount of P8,918,674
P-16 **P-16-1** **P-16-2** **P-16-3** **P-16-4** **P-16-5** **P-16-6** **P-16-7** **P-16-8** **P-16-9** **P-16-10** **P-16-11**	Petitioner's Summary List of Purchases for January 2010 Petitioner's Summary List of Purchases for February 2010 Petitioner's Summary List of Purchases for March 2010 Petitioner's Summary List of Purchases for April 2010 Petitioner's Summary List of Purchases for May 2010 Petitioner's Summary List of Purchases for June 2010 Petitioner's Summary List of Purchases for July 2010 Petitioner's Summary List of Purchases for August 2010 Petitioner's Summary List of Purchases for September 2010 Petitioner's Summary List of Purchases for October 2010 Petitioner's Summary List of Purchases for November 2010 Petitioner's Summary List of Purchases for December 2010
P-18	Service Agreement between petitioner and LTBG_ MGMT. CORP., which commenced on July 16, 2008 and valid for a period of five (5) years
P-19-1 to P-19-50	Screenshots of Entries of the Mass Allocations
P-27 **P-27-a**	Judicial Affidavit of Consuelo O. Cadeliña Signature of Consuelo A. Cadeliña

P-31	Motion for Reconsideration filed on October 14, 2015
P-32 **P-32-A**	Judicial Affidavit of Mary Rose V. Nuñez Signature of Mary Rose V. Nuñez
P-33 **P-33-A**	Judicial Affidavit of Russel M. Elemia Signature of Russel M. Elemia
P-35 **P-35-A**	Judicial Affidavit of Kathleen L. Cheng Signature of Kathleen L. Cheng
P-36	Judicial Affidavit of Hazel Ann F. Hapin Signature of Hazel Ann F. Hapin
P-37 **P-37-1**	Payment Form (Year Ended December 31, 2010) for the total amount of P5,319,688.24 with Filing Reference
P-38 **P-38-A**	Judicial Affidavit of Prudencio F. Tatunay Signature of Prudencio F. Tatunay
P-39 **P-39-A** **P-39-B** **P-39-B-1**	Independent Certified Public Accountant (ICPA) Report Signature of Prudencio F. Tatunay Transmittal Letter of the ICPA Report and Annexes Signature of Prudencio F. Tatunay on the Transmittal Letter
P-50-0-0000	Executive Summary (ICPA Report)
P-50-0-0001	Long Form Report (ICPA Report)
P-50-1-0001	1. Comparative Reconciliation of Sales not Subjected to Income Tax
P-50-1A-0002 to P-50-1A-0003	1.A. Summary – Understatement of Sales
P-50-1A-0004 to P-50-1A-0052	1.A. Monthly TAR Summary per Branch
P-50-1A-0004 to P-50-1A-0052	1.A TAR submitted to BIR
P-50-1B-0155 to P-50-1B-0206	1.B. Comparative Analysis – Discount
P-50-1C-0207 to P-50-1C-	1.C. Non-sale Transactions – Prepaid Cards, etc.

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P-50-1C-0446 to P-50-1C-0469	1.C. Telecommunication Contract
P-50-1D-0483 to P-50-1D-0509	1.D. Exempt Sales – Periodicals & Magazines
P-50-1E-0510 to P-50-1E-0738	1.E. Other Income – Non POS Transactions, Rent, etc.
P-50-1E-0739 to P-50-1E-0746	1.E. BSP Certificate of Registration
P-50-1F-0747 to P-50-1F-0904	1.F. Credit Card Discount Fees
P-50-1G-0905 to P-50-1G-0914	1.G. Merchandise Transfers and Supplies Sold
P-50-1H-0915 to P-50-1H-0959	1.H. Audited Financial Statements & 2010 Income Tax Return
P-50-11-0960 to P-50-11-0968	1.I. Permit to Use Enhanced Computerized Books of Accounts
P-50-1J-0969 to P-50-1J-0971	1.J. Transmittal of TAR and Books of Accounts to the BIR
P-50-2-0001	2. Analysis of Other Income not Subjected to Income Tax
P-50-2A-0002	2.A. Reconciliation of Purchase Rebates (GL vs. TB)
P-50-2A-0003 to P-50-2A-0156	2.A. Purchase Rebates – Ads 1
P-50-2A-	2.A. Purchase Rebates – Ads 2

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0156 to P-50-2A-0284	
P-50-2A-0284 to P-50-2A-0319	2.A. Purchase Rebates - Old
P-50-2B-0320	2.B. Reconciliation of Clearing Accounts (GL vs TB)
P-50-2B-0321 to P-50-2B-0352	2.B.A\P Trade – Clearing
P-50-2B-0352 to P-50-2B-0354	2.B.A.\P Trade – Conversion Clearing
P-50-2B-0354 to P-50-2B-0373	2.B.A\P Trade – RTV Clearing
P-50-2B-0373 to P-50-2B-0382	2.B.A\P Trade – E2E Clearing
P-50-2B-0382 to P-50-2B-0421	2.B.A\P Non-Trade – Clearing
P-50-2B-0421 to P-50-2B-0422	2.B. A\P\Nontrade Conversion Clearing
P-50-2C-0423	2.C. Reconciliation of Reimbursables (GL vs TB)
P-50-2C-0424 to P-50-2C-0445	2.C. Reimbursable – Electricity
P-50-2C-0445	2.C. Reimbursable – Water
P-50-2C-0445 to P-50-2C-05150	2.C. Reimbursable – Common Area
P-50-2C-	2.C. Reimbursable – Others

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0510 to P-50-2C-0528	
P-50-2D-0529 to P-50-2D-0649	2.D. Reconciliation of Utilities (GL vs TB)
P-5-2E-S-001 to P-2E-S-225	2.E. Summary of Payment Details – Purchase Rebates
P-50-2E-S-001 to P-50-2E-5866	2.E. Payment Details – Purchase Rebates
P-50-2F-0001 to P-50-2F-7076	2. F. Payment Details – AP Clearing Accounts
P-50-2G-S-001 to P-50-2G-S-056	2.G. Summary of Payment Details – Reimbursables
P-50-2G-0001 to P-50-2G-1110	2.G. Payment Details – Reimbursables
P-50-2H-0001	2.H. Summary of Credit Memos – Purchase Rebates Old
P-50-2H-0002 to P-50-2H-0019	2.H. Credit Memos – Purchase Rebates Old
P-50-3-0001	3. Summary of Reconciliation – Unsupported Purchases
P-50-3A	3.A. LTBG Mgmt Corp.
P-50-3A-0002 to P-3A-0004	3.A. Details form Suppliers' Ledger
P-50-3A-0005	3.A. Summary of Supporting Documents
P-50-3A-0006 to P-50-3A-0085	3.A. Supporting Documents
P-50-3A-0086 to P-	3.A. Summary List of Purchases – LTBG (2010)

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50-3A-0097	
P-50-3A-0099 to P-50-3A-0101	3.A. Agreement – LTBG and MSFI
P-50-3B	3.B Powerline Electrical Supply & Services, Inc.
P-50-3B-0102	3.B Details form Suppliers' ledger
P-50-3B-0103	3.B Sworn Certification (Powerline Electrical Supply & Services, Inc.)
P-50-3B-0104 to P-50-3B-0152	3.B Supporting Documents
P-50-3B-0153 to P-50-3B-0157	3.B Summary List of Purchases – Powerline (2010)
P-50-3B-0158	3.B Summary List of Purchases – Powerline (March 2011)
P-50-3B-0159	3.B Expanded Withholding Tax – Powerline (2010)
P-50-4-0001 to P-50-4-0002	4. Comparative Analysis – Allocation
P-50-4AB	4.AB- Manual and Mass Allocation
P-50-4AB-0003	4.AB. Summary of General Ledger
P-50-4AB-0004 to P-50-4AB-0568	4.AB. Details of General Ledger
P-50-4A	4.A Mass Allocation
P-50-4A-0569 to P-50-4A-0584	4.A Mass Allocation per Department
P-50-4A-1393 to P-50-4A-1396	4.A . Method of Mass Allocation
P-50-4B	4.B Manual Allocation
P-50-4B-1397 to P-50-4B-	4.B Manual Allocation per Department

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P-50-4B-1400 to P-50-4B-1415	4.B. Documents for Manual Allocation
P-50-5-0001 to P-50-5-0026	5. Comparative Analysis – Additional Gross Income
P-50-5A-0027 to P-50-5A-0165	5.A Summary List of Purchases Submitted to BIR
P-50-5B-0166	5.B. Jollibee Food Corporation – Confirmation Certificate
P-50-5B-0167	5.B. Republic Biscuit Corporation - Confirmation Certificate
P-50-5C-0168	5.C. Summary List of Purchases – March 2011 (Toyota Commonwealth)
P-50-5C-0169 to P-50-5C-0170	5.C. Vehicle Sales Invoice
P-50-5C-0171 to P-50-5C-0173	5.C. DTI's Approval of Promotional Activity
P-50-5C-0174	5.C. Winner of Toyota Grandia
P-50-5C-0175 to P-50-5C-0180	5.C. Monthly Remittance Return of Final Taxes Withheld
P-50-5D-0181	5.D. Suppliers' Ledger (Micro-D International & Microphase Corporation)
P-50-6-001	6. Summary of Reconciliation
P-50-6A-0002 to P-50-6A-0031	6.A. Reconciliation of MSF SLP and Income Payments vs FDDA SLP and Income Payments
P-50-6B-0032 to P-50-6B-0067	6.B. BIR Form 1604-E and Alpha List of Payees duly received by BIR
P-50-6C-0068 to P-	6.C. BIR FDDA Schedule 5

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50-6C-0071	
P-50-5A-0027 to P-50-5A-0165	5.A Summary of List of Purchases Submitted to BIR
P-50-7-0001	7. Summary of Over-claimed Purchases/Expenses
P-50-7A-0002 to P-50-7A-0002	7.A. Reconciliation of Purchases (GL vs TB)
P-50-7A-0003 to P-50-7A-0005	7.A. Beginning Inventory
P-50-7A-0005 to P-50-7A-0006	7.A. Handling and Delivery – Trucking
P-50-7A-0590 to P-50-7A-0662	7.A. F and H Charges
P-50-7A-0662 to P-50-7A-0778	7.A. COS – Outright VAT
P-50-7B-0779	7.B. Reconciliation of Other Outside Services (GL vs TB)
P-50-7B-0780	7.B. Manpower Cost – Courier Services
P-50-7B-0780	7.B. Manpower Cost – Messengerial
P-50-7B-0780 to P-50-7B-0782	7.B. Manpower Cost – On Loan
P-50-7B-0782 to P-50-7B-0788	7.B. Manpower Cost – Other Services
P-50-7B-0788 to P-50-7B-0789	7.B. Manpower Cost - ITS

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P-50-7B-0789 to P-50-7B-0818	7.B. Manpower Cost - MBU
P-50-7B-0818 to P-50-7B-0832	7.B. Service Fee- SMAC
P-50-7B-0832 to P-50-7B-0839	7.B. Service Fee – Gold GC
P-50-7B-0839 to P-50-7B-0845	7.B. Service Fee - Others
P-50-7B-0845 to P-50-7B-0846	7.B. IT Exp – ITS Service
P-50-7B-0846 to P-50-7B-0847	7.B. IT Exp – Others
P-50-7C-0848	7.C. Reconciliation of Communication (GL vs TB)
P-50-7C-0849 to P-50-7C-0867	7.C. Communication
P-50-1H-0915 to P-50-1H-0959	1.H. Audited Financial Statements & 2010 Income Tax Return
P-50-II-1-0001	II.1. Comparative Reconciliation of Sales not Subjected to VAT
P-50-II-1-0002 to P-50-II-1-0049	II.1. VAT Returns (2550M & 2550Q)
P-50-1A-0002 to P-50-1A-0003	1.A. Summary – Understatement of Sales
P-50-1A-0004 to P-	1.A. Monthly TAR Summary per Branch

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50-1A-0052	
P-50-1A-0053 to P-50-1A-0154	1.A. TAR submitted to BIR
P-50-1B-0155 to P-50-1B-0206	1.B. Comparative Analysis – Discount
P-50-1C-0207 to P-50-1C-0445	1.C. Non-sale Transactions – Prepaid Cards, etc.
P-50-1C-0446 to P-50-1C-0469	1.C. Telecommunication Contract
P-50-1C-0470 to P-50-1C-0482	1.C. Memorandum of Understanding – Sodexho Pass, Inc.
P-50-1E-0510 to P-50-1E-0738	1.E. Other Income – Non POS Transactions, Rent, etc.
P-50-1E-0739 to P-50-1E-0746	1.E. BSP Certificate of Registration
P-50-1F-0747 to P-50-1F-0904	1.F. Credit Card Discount Fees
P-50-1G-0905 to P-50-1G-0914	1.G. Merchandise Transfers and Supplies Sold
P-50-2-0001	2. Analysis of Other Income not Subjected to Income Tax
P-50-2A-0002	2.A. Reconciliation of Purchase Rebates (GL vs TB)
P-50-2A-0003 to P-50-2A-0156	2.A. Purchase Rebates – Ads 1

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P-50-2A-0156 to P-50-2A-0284	2.A. Purchase Rebates – Ads 2
P-50-2A-0284 to P-50-2A-0319	2.A. Purchase Rebates – Old
P-50-2B-0320	2.B. Reconciliation of Clearing Accounts (GL vs TB)
P-50-2B-0321 to P-50-2B-0352	2.B. A\P Trade – Clearing
P-50-2B-0352 to P-50-2B-0354	2.B. A\P Trade – Conversion Clearing
P-50-2B-0354 to P-50-2B-0373	2.B AP Trade – RTV Clearing
P-50-2B-0373 to P-50-2B-0382	2.B. A/P Trade – E2E Clearing
P-50-2B-0382 to P-50-2B-0421	2.B. A\P Non-Trade – Clearing
P-50-2C-0421 to P-50-2-0422	2.B. A\P\ Nontrade Conversion Clearing
P-50-2C-0423	2.C. Reconciliation of Reimbursables (GL vs TB)
P-50-2C-0424 to P-50-2C-0445	2.C. Reimbursable - Electricity
P-50-2C-0445 to P-50-2C-0445	2.C. Reimbursable – Water
P-50-2C-0445 to P-50-2C-	2.C Reimbursable – Common Area

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P-50-2C-0510 to P-50-2C-0528	2.C. Reimbursable – Others
P-50-2D-0529 to P-50-2D-0649	2.D. Reconciliation of Utilities (GL vs TB)
P-50-2E-S-001 to P-50-2E-S-225	2.E Summary of Payment Details – Purchase Rebates
P-50-2E-0001 to P-50-2E-5866	2.E Payment Details – Purchase Rebates
P-50-2F-S-001 to P-50-2F-S-222	2.F Summary of Payment Details – AP Clearing Accounts
P-50-2F-0001 to P-50-2F-7076	2.F. Payment Details – AP Clearing Accounts
P-50-2G-S-001 to P-50-2G-S-056	2.G. Summary of Payment Details – Reimbursables
P-50-2G-0001 to P-50-2G-1110	2.G. Payment Details – Reimbursables
P-50-2H-001	2.H. Summary of Credit Memos – Purchase Rebates Old
P-50-2H-0002 to P-50-2H-0019	2.H. Credit Memos – Purchase Rebates Old
P-50-1C-0207 to P-50-1C-0339	1.C Prepaid Cards
P-50-1C-0446 to P-50-1C-	1.C. Telecommunication Contract

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0469	
P-50-5-0001 to P-50-5-0026	5. Comparative Analysis – Additional Gross Income
P-50-5A-0027 to P-50-5A-0165	5.A. Summary List of Purchases Submitted to BIR
P-50-5B-0166	5.B. Jollibee Food Corporation – Confirmation Certificate
P-50-5B-0167	5.B. Republic Biscuit Corporation – Confirmation Certificate
P-50-5C-0168	5.C Summary List of Purchases – march 2011 (Toyota Commonwealth)
P-50-5C-0169 to P-50-5C-0170	5.C Vehicle Sales Invoice
P-50-5C-0171 to P-50-5C-0173	5.C. DTI's Approval of Promotional Activity
P-50-5C-0174	5.C Winner of Toyota Grandia
P-50-5C-0175 to P-50-5C-0180	5.C. Monthly Remittance Return of Final Taxes Withheld
P-50-5D-0181	5.D Suppliers' Ledger (Micro-D International & Microphase Corporation)
P-50-3-0001	3. Summary of Reconciliation – Unsupported Purchases
P-50-3A	3.A. LTBG Mgmt Corp.
P-50-3A-0002 to P-50-3A-0004	3.A. Details form Suppliers' ledger
P-50-3A-0005	3.A Summary of Supporting Documents
P-50-3A-0006 to P-50-3A-0085	3.A Supporting Documents
P-50-3A-0086 to P-50-3A-	3.A Summary List of Purchases – LTBG (2010)

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0097	
P-50-3A-0098	3.A. Expanded Withholding Tax – LTBG (2010)
P-50-3A-0099 to P-50-3A-0101	3.A Agreement – LTBGA and MSFI
P-50-3B	3.B Powerline Electrical Supply & Services, Inc.
P-50-3B-0102	3.B Details form Suppliers' ledger
P-50-3B-0103	3.B Sworn Certification (Powerline Electrical Supply & Services, Inc.)
P-50-3B-0104 to P-50-3B-0152	3.B Supporting Documents
P-50-3B-0153 to P-50-3B-0157	3.B Summary List of Purchases – Powerline (2010)
P-50-3B-0158	3.B Summary List of Purchases – Powerline (March 2011)
P-50-3B-0159	3.B Expanded Withholding Tax – Powerline (2010)
P-50-II-6-0001 to P-50-II-6-0329	II. 6. Summary of No TIN of MSF
P-50-II-6-0330 to P-50-II-6-0331	II.6 Summary of Not Billed Separately
P-50-II-6-0332 to P-50-II-6-0343	II. 6 Summary of No TIN of Suppliers
P-50-II-6-0344 to P-50-II-6-0351	II.6 Summary of Others
P-50-II-6-0352 to P-50-II-6-0356	II.6 Summary of Related Parties
P-50-II-6A-00001	A.1 No TIN of MSF

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to P-50-II-6A-20945	
P-50-II-6A-20946 to P-50-II-6A-20953	A.2 Not Billed Separately
P-50-II-6A-20954 to P-50-II-6-A-21454	A.3 No TIN of MSF
P-50-II-6A-24030 to P-50-II-6A-24031	A.2. Not Billed Separately
P-50-II-6A-24032 to P-50-II-6A-24053	A.3 No TIN of Suppliers
P-50-II-6B-00001 to P-50-II-6B-00359	B. Others – No Official Receipts
P-50-II-6C-00001 to P-50-II-6C-00165	C. Related Parties
P-50-II-6D-0001 to P-50-II-6D-0004	D. MSF Certificate of Registration
P-50-II-6E	E. Sample Invoices from BIR Records
P-50-II-6E-0001 to P-50-II-6E-0143	E.1. No TIN of MSF
P-50-II-6E-0144 to P-50-II-6E-0151	E.2 No TIN of Suppliers
P-50-II-6E-0152 to P-50-II-6E-0155	E.3 Others
P-50-II-6E-0156 to P-50-II-	E.4. Related Parties

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6E-0157	
P-50-III-0001 to P-50-III-0009	II. Self Assessment – BIR Form 0605
P-50-IV-0001	IV. Reconciliation of the Alphalist and Monthly Remittances
P-50-IV-0002 to P-50-IV-0083	IV. BIR Monthly Remittances – 1601C
P-50-IV-0084 to P-50-IV-0091	IV. BIR Annual Information Return – 1604CF
P-50-IV-0092 to P-50-IV-0096	IV. Self- Assessment Payment Form - 0605

The CIR filed his Comment (Re: Petitioner's Formal Offer of Evidence)[23] on March 10, 2017.

In a Resolution[24] dated October 13, 2017, the Court admitted MSFI's Formal Offer of Evidence except for the following:

1. Exhibits "P-6-C-1" to "P-6-C-12", "P-12-c", "P-12-g", "P-12-g-1", "P-12-h", "P-12-h-1", "P-12-i", "P-12-i-1", "P-12-j", "P-12-j-1", "P-12-k", "P-12-k-1", "P-12-l", "P-12-l-1", "P-12-l-2", "P-12-l-3", "P-13-a", "P-13-a-1", "P-13-b", "P-13-b-1", "P-13-c", "P13-c-1 , and "P-14-g", for failure to submit the duly marked exhibits;
2. Exhibits "P-37", "P-37-1", "P-50-1I-0960 to P50-1I-0968", and "P-50-1J-0969 to P-50-1J0971", for failure to identify;
3. Exhibits "P-50-0-0000" and "P-50-0-0001", for failure to submit the duly marked exhibits and for failure to identify;

[23] *Dockets*, Vol. VIII, pp. 3539-3542.
[24] *Ibid.*, pp. 3546-3550.

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4. Exhibits "P-50-1C-0340 to P-50-1C-0445", "P50-5-0002 to P-50-5-0026", for failure to properly identify;
5. Exhibits "P-50-3A", "P-5O-3B", "P-50-4AB", P50-4A", "P-50-4B", "P-50-6A-0008 to P-506A-0031", "P-50-6B-0032 to P-50-6B-0067", and "P-50-II-6E", for not being found in the records and for failure to identify; and
6. Exhibits "P-50-6C-0068 to P-50-6C-0071", for not being found in the records.

On November 26, 2017, MSFI filed its Motion for Partial Reconsideration (of the Resolution promulgated on 13 October 2017),[25] wherein the Court, through a Resolution[26] dated October 3, 2018, admitted Exhibits "P-6-C-1" to "P-6-C-12", "P-12-c", "P-12-g", "P-12-g-1", "P-12-h", "P-12-h-1", "P-12-i", "P-12-i-1", "P-12-j", "P-12-j-1", "P-12-k", "P-12-k-1", "P-12-l", "P-12-l-1", "P-12-l-2", "P-12-l-3", "P-13-a", "P-13-a-1", "P-13-b", "P-13-b-1", "P-13-c", "P13-c-1 , "P-14-g", "P-37", "P-37-1", "P-50-1I-0960 to P50-1I-0968", "P-50-1J-0969 to P-50-1J0971", "P-50-1C-0340 to P-50-1C-0445", "P50-5-0002 to P-50-5-0026", "P-5-III-A0010 to P-5-III-A0045" and "P-50-6B-0008 to P-50-6B-0011".

The ICPA Report was filed by MSFI on November 21, 2016. The CIR presented his witnesses, Revenue Officer (RO) Joel M. Aguila and RO Maria Gracielle Cecilia S. Anaban on January 21, 2019.[27]

On February 11, 2019, the CIR filed his Formal Offer of Evidence[28] offering Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-5-a", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12 to R-12-e", "R-13", "R-14", "R-15 to R-15-d", "R-16" and "R-17" as his documentary exhibits. MSFI filed its Comment[29] on February 18, 2019.

In the Resolution[30] dated March 8, 2019, the Court admitted the CIR's Formal Offer of Evidence except for

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[25] *Ibid.*, pp. 3553-3561.
[26] *Ibid.*, pp. 3572-3576.
[27] Minutes of the hearing, *Dockets*, Vol. VIII, p. 3615.
[28] *Ibid.*, pp. 3622-3634.
[29] *Ibid.*, pp. 3635-3646.
[30] *Ibid.*, pp. 3648-3649.

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Exhibit "R-15-d" for not being found in the records of the case.

The CIR's documentary exhibits are as follows:

Exhibit	Description
R-1	Letter of Authority (LOA) No. LOA-116-2011-00000050/ SN:eLA201100002943 dated 20 September 2011
R-2	Checklist of Requirements / Presentation of Records/Documents
R-3	Memorandum of Assignment dated 18 February 2013
R-4	Letter dated 26 February 2013
R-5	Notarized Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code, dated 01 April 2013
R-5-a	Secretary's Certificate
R-6	Notarized Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code, dated 23 September 2013
R-7	Notarized Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code, dated 03 March 2014
R-8	Memorandum recommending the issuance of the Preliminary Assessment Notice (PAN) with attached Revenue Officer's Report dated 07 July 2014
R-9	Preliminary Assessment Notice (PAN) with Details of Discrepancies dated 20 August 2014
R-10	Memorandum dated 08 September 2014 recommending the issuance of the Formal Letter of Demand (FLD) with Revenue Officer's Report
R-11	Formal Letter of Demand (FLD) with attached Details of Discrepancies
R-12 to R-12-e	Final Assessment Notice (FAN)/BIR Forms 0401
R-13	Memorandum recommending the issuance of the Final Decision on Disputed Assessment (FDDA) with attached Revenue Officer's Report and Matrices of Computations, dated 20 August 2015
R-14	Final Decision on Disputed Assessment (FDDA) with Details of Discrepancies and Matrices of Computations dated 10 September 2015
R-15 to R-15-d	Audit Result / Assessment Notice (BIR Forms 0401)
R-16	Memorandum dated 26 January 2016 recommending

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	the denial of petitioner's Motion for Reconsideration
R-17	Letter dated 27 January 2016

The Memorandum[31] for the CIR filed on April 2, 2019 was admitted on April 11, 2019, while the Memorandum[32] for the MSFI filed on April 22, 2019 was admitted. Hence, the case was considered submitted for decision on May 10, 2019.[33]

The parties submitted the following issues[34] for the Court's decision:

> Whether this Court has jurisdiction over the instant petition; and
>
> Whether Petitioner is liable for the alleged deficiency taxes assessed per FDDA in the aggregate amount of ₱1,921,057,326.11 for deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax and Withholding Tax on Compensation for taxable year 2010 as well as Compromise Penalties, 50% Surcharge, 20% Deficiency and Delinquency interest pursuant to Sections 248 and 249 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Although MSFI did not raise the issue of lack of authority of the RO to conduct the audit, in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,*[35] the Supreme Court affirmed that this Court can resolve an issue not raised by the parties in their pleadings or memoranda, to wit:

> "<u>On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative</u>.

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[31] *Ibid.*, pp. 3655-3671.
[32] *Ibid.*, pp. 3678-3836.
[33] *Dockets*, Vol. II, p. 973.
[34] *Supra,* note 14.
[35] G.R. No. 183408, July 12, 2017.

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> Under Section 1, Rule 4 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by 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 scope of authority of 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." (Italics in the original; Underlining supplied.)

A review of the RO's authority to conduct the audit which resulted in the assessments is intrinsically related to the issue of the validity of the assessments.

The BIR Records show that LOA No. 116-2011-00000050[36] was issued, authorizing ROs Ma Salud Madela, Myrna Ramirez, Zenaida Paz, Cletofel Parungao, Allan Maniego and Joel Aguila under GS Glorializa Samoy to examine MSFI's books of accounts and other accounting records for the period from January 1 to December 31, 2010. However, records show that Mr. Cesar D. Escalada, Chief of RLTAD I issued Memorandum of Assignment (MOA) No. LOA-116-2013-0306[37] referring the continuation of the audit/investigation to RO Allan Maniego under GS Wilfredo S. Reyes. The said MOA explicitly states that it was issued

[36] *Supra,* note 6.
[37] Exhibit "R-3", *BIR Records,* p. 455.

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for the "continuation of the audit/investigation to replace the previously assigned Revenue Officer(s) who resigned/retired/transferred to another district office."

Section 6 of the National Internal Revenue Code (NIRC) of 1997 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: xxx" (Underlining supplied.)

In relation, Section 13 of the NIRC also states:

> "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." (Underlining supplied.)

Pursuant to this, RMO No. 43-90 identifies and limits the BIR Officials who are authorized to issue LOAs, *viz.*:

> "D. Preparation and issuance of L/As.
>
> xxx xxx xxx
>
> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR

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officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself." (Underlining supplied.)

RMO No. 43-90 is explicit that the continuation of audit to replace the officer(s) named in a previous LOA requires the issuance of a new LOA in cases of reassignment or transfer to another RO. Thus:

> "Any reassignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As." (Underscoring supplied.)

Clearly, in all tax assessments, the audit investigation must be conducted by a duly designated RO tasked to perform audit and examination of taxpayers' books, pursuant to an LOA issued by the Regional Director. In case of re-assignment or transfer of cases to another RO, a new LOA with a corresponding notation thereto, signed by an authorized officer to issue an LOA, must be certain.

In *Commissioner of Internal Revenue vs. Composite Materials, Inc.,*[38] the Supreme Court, citing *Medicard Philippines Inc. vs. Commissioner of Internal Revenue,*[39] categorically held that an RO may only examine the taxpayer's books pursuant to an LOA issued by the Regional Director and emphasized that the Referral Memorandum issued by the RDO directing another RO to continue with the examination of the taxpayer records is not equivalent to an LOA nor does it cure the RO's lack of authority. Thus, the MOA herein cannot be treated as an LOA as precisely, any re-assignment of cases requires the issuance of a new LOA and its void character is further emphasized by the fact that it was not signed by the Regional Director pursuant to Section 13 of the NIRC.

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[38] G.R. No. 238352, September 12, 2018.
[39] G.R. No. 222743, April 5, 2017.

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Clearly in this case, the CIR failed to comply with the issuance of a new LOA, instead a new MOA was issued for the continuation of the investigation. Thus, the investigation conducted was without the requisite authority.

In *Medicard,* the Supreme Court emphasized the importance of an LOA and the authority of ROs who conducted the audit and examination of the taxpayer. It went on further to declare as void the subject disputed assessment for lack of an LOA authorizing the ROs to examine the taxpayer's books of account and other accounting records.

Absent the necessary issuance of a new LOA signed by the Regional Director, there is no authority to conduct the continuation of the investigation or audit.[40]

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Formal Letter of Demand/Assessment Notice against Market Strategic Firm, Inc. for alleged deficiency taxes, penalties and interests in relation to taxable year 2010 issued on September 15, 2014 and the Final Decision on Disputed Assessment issued on September 14, 2015 are hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
(with Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[40] *Nikken Philippines, Inc. vs. CIR*, CTA EB No. 1569, June 7, 2018.

(Joins Justice Juanito C. Castañeda's Separate Concurring Opinion)
JEAN MARIE A. BACORRO-VILLENA
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MARKET STRATEGIC FIRM, INC.,
Petitioner,

CTA CASE NO. 9280

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, and
BACORRO-VILLENA, *JJ.*

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 10 2020
10:30 a.m.

x--x

SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.:*

I concur with the *ponencia* of my esteemed colleague, Associate Justice Cielito N. Mindaro-Grulla in granting the present Petition for Review and in cancelling and withdrawing respondent Commissioner of Internal Revenue's assessment for deficiency taxes for taxable year 2010. I agree with the *ponencia* in ruling that the revenue officers who actually conducted the audit investigation of petitioner's books of accounts and other accounting records for taxable year 2010 are bereft of the requisite authority but not because of failure to issue a new LOA in their favor.

One of the powers granted to the Commissioner of Internal Revenue (CIR) under the National Internal Revenue Code of 1997, as amended (1997 NIRC) is the power to make assessment of any deficiency tax. Section 6(A) of the 1997 NIRC is explicit on the matter, to wit:

> "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.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. x x x" *(Emphasis supplied)*

In the exercise of his assessment powers, the CIR is also empowered to conduct by himself the examination of any taxpayer, or he may authorize other tax officers to conduct such examination. Section 6(A) of the 1997 NIRC likewise vested the CIR's duly authorized representatives the power to authorize the examination of any taxpayer for the purpose of collecting the correct amount of tax. The term "duly authorized representative" under Section 6(A) of the 1997 NIRC which may authorize examination of taxpayers refers to a Revenue Regional Director, in accordance with Sections 10 and 13 of the 1997 NIRC. The term likewise refers to other tax officials with the rank equivalent to a division chief or higher, pursuant to the CIR's authority to delegate powers vested in him under Section 7 of the 1997 NIRC. Notably, the issuance of LOAs for the examination of taxpayers is not one of those enumerated powers which the CIR cannot delegate. Section 7 of the 1997 NIRC reads as follows:

> "SEC. 7. *Authority of the Commissioner to Delegate Power.* — **The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate** gc

officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* That the following powers of the Commissioner shall not be delegated:

(a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

(c) The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept." *(Emphasis supplied)*

Section 10 of the 1997 NIRC, in enumerating the powers of a Revenue Regional Director include, among others, the power to issue letters of authority for the examination of taxpayers within the region under his/her jurisdiction. The said provision, in part, reads:

"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**:
>
> x x x x x x x x x
>
> **(c) Issue Letters of Authority for the examination of taxpayers within the region;**
>
> x x x x x x x x x
>
> (h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner." *(Emphasis supplied)*

On the other hand, Section 13 of the 1997 NIRC, in defining the authority of a revenue officer to conduct the examination of taxpayers for purposes of an assessment, provides as follows:

> "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)*

In relation to the foregoing provisions, Revenue Memorandum Order (RMO) No. 43-90 issued by the CIR identifies those officials who are authorized to issue and sign LOA. It may be noted that a Chief of the Regular Large Taxpayers Audit Division I is not included therein. The relevant portion of the said issuance reads:

> "D. Preparation and issuance of L/As.
>
> x x x x x x x x x

> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner**. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority <u>but only upon prior authorization by the Commissioner himself</u>**." *(Emphasis and underscoring supplied)*

To reiterate, it is only the CIR or his duly authorized representatives who can authorize the audit examination of taxpayers for purposes of assessment of any deficiency taxes. Stated differently, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.[1]

Considering that only the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, it is only them who can effect any modification or amendment to a previously-issued LOA, should the need therefor arises.

Parenthetically, RMO No. 43-90 provides that any reassignment or transfer of cases to another revenue officers shall require the issuance of a new LOA. Be that as it may, I believe that the same does not and cannot negate the authority of the CIR and its duly authorized representatives to effect amendment or modification of a previously-issued LOA instead of issuing a new one in order for the assessment of a taxpayer to validly proceed. Note that RMO No. 43-90 itself does not state the legal effect in the event that the named revenue officers under the previously-issued LOA are transferred or reassigned and a new or replacement LOA is not issued. A duly issued LOA, valid in all other respects, does not become invalid just because the revenue officers named therein happened to be reassigned or transferred. Indeed, to construe it otherwise would be tantamount to the curtailment of the statutorily granted authority of the CIR and its duly authorized representatives to authorize the audit examination of taxpayers by a mere RMO provision. It must be

[1] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

emphasized that an RMO is just an internal issuance containing directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow and the like which are necessary to carry out programs or to achieve policy goals and objectives.[2] As such, they do not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR and may change from time to time as the exigencies of service may require, or as may be allowed given particular factual contexts, provided only that due process or statutory rights are not subverted.[3]

In the present case, there is no question that LOA No. 116-2011-00000050 was duly issued by the OIC-Assistant Commissioner for Large Taxpayers Service. However, the revenue officers named therein were different from those who actually examined petitioner's books of accounts and other accounting records for taxable year 2010. As it appears, Revenue Officer (RO) Allan Maniego and Group Supervisor (GS) Wilfredo S. Reyes conducted the audit examination petitioner's books of accounts and other accounting records for taxable year 2010 on the basis of Memorandum of Assignment No. LOA-116-2013-0306 issued by Mr. Cesar D. Escalada, OIC-Chief of RLTAD I.

Guided by the foregoing disquisition, I submit that the Memorandum of Assignment issued by Mr. Escalada cannot validly grant RO Maniego and GS Reyes the authority to conduct the audit examination pursuant to LOA No. 116-2011-00000050. As OIC-Chief of RLTAD I, Mr. Escalada does not have any power to authorize audit examination of taxpayers or to effect any modification or amendment to a previously-issued LOA because, as mentioned earlier, only the CIR or his duly authorized representatives are granted such power.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[4] the Supreme Court held that absent any prior authority on the part of the revenue officers who conducted the audit examination of taxpayer's books of accounts and other accounting records, the deficiency tax assessment arising therefrom is a nullity.

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[2] Revenue Administrative Order No. 001-12 dated April 2, 2012.

[3] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 7948, June 5, 2014, penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino.

[4] G.R. No. 178697, November 17, 2010, 649 Phil. 519.

In view of the foregoing, I vote to **GRANT** the present Petition for Review.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice