Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

LAPANDAY HOLDINGS CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8932

Members:

CASTAÑEDA, JR., *Chairperson*,
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

JAN 2 4 2018
3:10 p.m.

x--x

DECISION

CASANOVA, *J.*:

This is a Petition for Review[1] with Urgent Motion for the Suspension of Tax Collection, filed on November 24, 2014 by petitioner Lapanday Holdings Corporation against respondent Commissioner of Internal Revenue (CIR) to cancel and nullify the Final Decision on Disputed Assessment (FDDA) dated October 24, 2014 for deficiency Value Added Tax (VAT) in the total amount of ₱9,028,751.01, inclusive of surcharges and interests for taxable year 2008.

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office address at 3rd Floor 8101 Lapanday Centre, 2263 Pasong Tamo Extension, Makati City.[2] It is an investment holding company whose primary purpose is to handle, manage and own agricultural enterprises, except management of fund, securities, portfolios and other similar assets of the managed corporation similar entities.[3]

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[1] Docket, pp. 6-31.
[2] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 257 and Exhibit "P-8-Q", Docket.
[3] Par. 3, Summary of Admitted Facts, JSFI, Docket, p. 257 and Exhibit "P-8-Q".

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR Building, Diliman, Quezon City.

Petitioner electronically filed its quarterly VAT returns on the following dates:[4]

Quarter	**Date Filed**
1st Quarter of 2008	April 25, 2008[5]
2nd Quarter of 2008	July 24, 2008[6]
3rd Quarter of 2008	October 27, 2008[7]
4th Quarter of 2008	January 26, 2009[8]

On May 17, 2010, petitioner received an undated Letter Notice LN No. 048-TRS-08-00-00027[9] for discrepancy on gross sales/revenue/receipts issued by Commissioner Joel L. Tan-Torres.

On November 22, 2010[10], petitioner received the Notice for Informal Conference[11], inviting it to appear for an informal conference to enable it to present its side of the case.

On August 3, 2012, petitioner received the Preliminary Assessment Notice[12] (PAN) dated May 31, 2012 with Details of Discrepancies, assessing it of deficiency VAT in the amount of ₱7,394,067.98 for taxable year 2008.

On November 20, 2012, petitioner received from respondent a Formal Letter of Demand (FLD) together with Assessment Notice No. F-048-LNTF-08-VT-0006 and Details of Discrepancies[13], all dated

[4] Par. 11, Stipulated Facts, JSFI, Docket, p. 260.
[5] Exhibits "P-8-E" and "R-10".
[6] Exhibits "P-8-F" and "R-11".
[7] Exhibits "P-8-G" and "R-12".
[8] Exhibits "P-8-H" and "R-13".
[9] Exhibit "P-11".
[10] As culled from Exhibit "P-15".
[11] Exhibit "P-12".
[12] Exhibit "P-13".
[13] Exhibits "P-2", "P-2-A" and "P-2-B".

October 10, 2012 for the deficiency VAT on interest income in the amount of ₱7,479,323.97 for taxable year 2008.[14]

On December 19, 2012, petitioner filed its Protest Memorandum[15] dated December 18, 2012.[16]

On January 8, 2013, petitioner received a Letter[17] dated January 3, 2013 informing it that the entire docket together with the letter of protest will be forwarded to the Revenue District Office (RDO) No. 48 - West Makati for appropriate action.[18]

On January 18, 2013, petitioner received a Letter[19] dated January 8, 2013 which states the continuation of the audit investigation and the reassignment of the docket to Revenue Officer Magdalena Susana A. Ventura.[20]

On February 14, 2013, petitioner submitted to respondent a Letter[21] dated February 12, 2013 stressing the positions taken by petitioner and showing the chronology of events to strengthen its position on the period of prescription.[22]

On October 28, 2014, petitioner received from respondent the Final Decision on Disputed Assessment (FDDA) together with the Details of Discrepancies[23], all dated October 24, 2014 denying the protests of petitioner.

On November 24, 2014, petitioner filed its Petition for Review with Urgent Motion for the Suspension of Tax Collection. Respondent filed his Answer[24] through registered mail on January 31, 2015, interposing the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

[14] Par. 4, Summary of Admitted Facts, JSFI, Docket, pp. 257-258.
[15] Exhibits "P-3" and "P-3-A".
[16] Par. 6, Summary of Admitted Facts, JSFI, Docket, p. 258.
[17] Exhibit "P-17".
[18] Par. 7, Summary of Admitted Facts, JSFI, Docket, p. 258.
[19] Exhibit "P-4".
[20] Par. 8, Summary of Admitted Facts, JSFI, Docket, p. 258.
[21] Exhibits "P-5", "P-5-A", "P-5-B" and "P-5-C".
[22] Par. 9, Summary of Admitted Facts, JSFI, Docket, p. 258.
[23] Exhibits "P-6" and "P-6-A".
[24] Docket, pp. 153-160.

7. She reiterates and repleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses;

8. Petitioner was assessed for deficiency value-added tax (VAT) for taxable year 2008, for the reason that during the administrative investigation of its tax case by the respondent CIR, petitioner failed to substantiate or controvert by substantial evidence the BIR factual findings, as shown under the Details of Discrepancies attached to the Preliminary Assessment Notice (PAN) dated May 31, 2012, Formal Assessment Notice (FAN) and Letter of Demand dated 10 October 2012, as well as, the Final Decision on Disputed Assessment (FDDA) dated 24 October 2014, which are briefly discussed hereunder, viz:

a.) A comparison of the reported income payment per Alphalist of Withholding Agents/Payors *(i.e. Lapanday Agricultral and Development Corporation with TIN 000076573 and Lead Export & Agro Development Corporation with TIN 000076068)* in the amount of Php28,186,853.11 to the VAT returns filed by the same Payee/Income Recipient (i.e. petitioner) disclosed that petitioner failed to declare and report in its VAT returns filed for taxable year 2008 the said income payment amounting to Php28,186,853.11;

b.) Such income per verification made by the respondent CIR on petitioner's Financial Statement and Income Tax Return for taxable year 2008 disclosed that it is in the nature of **INTEREST INCOME**. Thus, being in the nature of interest income, the whole amount is subject to VAT, pursuant to Section 105 of the 1997 Tax Code in relation to this Honorable Court's (CTA) ruling in the cases of **Lapanday Foods Corporation vs. Commissioner of Internal Revenue, CTA Case No. 7097 dated October 18, 2007 and CS Garments, Inc. vs. Commissioner of Internal Revenue, CTA EB Case No. 287 dated January 14, 2008**, which ruled that:

> 'The phrase 'in the course of trade or business' means the regular conduct or pursuit of commercial or an economic

activity, including transaction incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

In the present case, petitioner was incorporated primarily 'to engage in the managing, promoting, administering, or assisting in any business or activity of corporations, partnership, associations, individuals or firms...' Thus, in extending loans to its affiliates, petitioner is engaged in transactions incidental to its business of providing assistance to its affiliates.'

9. The Supreme Court aptly interpreted **Sections 105 and 108 of the 1997 Tax Code** in the case of ***CIR vs. CA, G.R. No. 125355 dated March 30, 2000***, stating that:

'Contrary to COMASERCO's contention the above provision clarifies that even a non-stock, non-stock, organization or government entity, is liable to pay VAT on the sale of goods or services. VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto. ***The term 'in the course of trade or business' requires the regular conduct or pursuit of a commercial or economic activity, regardless of whether or not the entity is profit-oriented.*** ' [Emphasis supplied]

10. Respondent fully complied with the due process requirements mandated under Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations No. 12-99, when the Preliminary Assessment Notice (PAN) dated May 31, 2012, Formal Assessment Notice (FAN) and Letter of Demand dated 10 October 2012, as well as, the Final Decision on Disputed Assessment (FDDA) dated 24

October 2014 were issued to herein petitioner. Records clearly show that petitioner was duly afforded an opportunity to controvert the factual findings of the respondent CIR involving its deficiency VAT for taxable year 2008, and was duly appraised by the respondent of the factual and legal basis on how and why she (respondent) arrived such a deficiency value-added tax for taxable year ending December 31, 2008 through the issuance of the Details of Discrepancies attached to the Formal Assessment Notice (FAN) and Letter of Demand, Preliminary Assessment Notice (PAN), Notice for Informal Conference, as well as the Final Decision on Disputed Assessment (FDDA). In fact, records clearly show that petitioner was able to file a letter protest against the said PAN and FAN.

11. This Honorable Court in the case of ***IDS LOGISTICS (PHILS.), INC., vs. CIR, C.T.A. CASE NO. 7540. May 20, 2010,*** citing the ruling in **Bank of the Philippine Islands vs. Commissioner of Internal Revenue, *C.T.A. CASE NO. 7397, April 9, 2008,*** thoroughly discussed the ***due process rule in taxation***, as follows:

> 'Revenue Regulations No. 12-85 provides for the procedure covering the Administrative Protests on Assessments of the BIR. Under the said Revenue Regulation, a post-reporting notice is sent to the taxpayer for an informal conference when there are findings of deficiency taxes. Subsequent to this notice is the issuance of the pre-assessment notice upon findings of the Commissioner that an assessment for deficiency taxes should be issued. However, such pre-assessment notice may or may not be protested by the taxpayer. In fact, Section 5 of the same Revenue Regulation provides that 'In the event that the taxpayer fails to respond to the pre-assessment notice within the prescribed period ... he should be informed of such fact and the report of investigation shall be given due course.'
>
> The essential elements of due process are notice and opportunity to present one's side. To begin with, petitioner had knowledge of the

investigation being conducted by the BIR on its tax liabilities for the taxable years 1982-1986, as evidenced by the letter of respondent addressed to petitioner dated September 25, 1986 and received by petitioner on September 26, 1986. The said letter, in fact, requested for an informal conference on the matter and requested further that petitioner submits documentary evidence to support its stand.

As the facts would demonstrate, ***petitioner was never deprived of due process as it was fully appraised of the legal and factual bases of the assessment issued against it; which enabled petitioner to substantially protest the arguments and issues raised. It is sufficient that there is notice to the taxpayer of the legal and factual bases of the assessment; and to the Court, this is substantial compliance of what is mandated by Section 228 of the NIRC. Thus, so long as the parties are given the opportunity to explain their side, the requirements of due process are satisfactorily complied with***.' (Emphasis supplied)

12. Pursuant to Section 248 (B) of the 1997 Tax Code in relation to Section 222 of the same Code, since petitioner was found by the respondent CIR to have omitted and failed to declare/report in its VAT returns for taxable year 2008, the reported income payment per Alphalist of Withholding Agents/Payors (i.e. Lapanday Agricultral and Development Corporation with TIN 000076573 and Lead Export & Agro Development Corporation with TIN 000076068) in the amount of Php28,186,853.11, thus, it rendered the subject VAT returns of petitioner for taxable year 2008 as 'false return' within the contemplation of Section 222 of the 1997 Tax Code. As such, the subject Formal Assessment Notice (FAN) for deficiency VAT issued by the respondent CIR to petitioner for taxable year 2008 was made within ten (10) year prescriptive period from the discovery of the said falsity or omission, under Section 222 of the 1997 Tax Code.

13. In the case of ***Holiday Inns (Phils) Inc. vs. Commissioner of Internal Revenue, C.A.-G.R. SP No. 78828, September 9, 2004,*** the Court of Appeals held as follows:

> 'This Court agrees with the CTA that the ten-year period of limitation should apply. **The falsity of the VAT return filed by HIPI is established by the fact that in its 1995 Annual Income Tax Return, HIPI's declared gross income from sale of services representing management fees was higher than the taxable sales reported in its VAT returns by P269,967.02. This was not denied by HIPI albeit it claimed good faith in not declaring the said amount**. That notwithstanding, this Court is not inclined to sustain HIPI's defense of good faith, otherwise, any taxpayer filing a false return can easily escape liability. **While there may be truth to HIPI's claim that it had no malicious intent to evade payment of the tax, this does not preclude a finding of a false return**. This is because while a fraudulent return implies a malicious and deliberate intent to evade the payment of the tax, **a false return merely implies a deviation from the correct amount of the tax. That the 50% surcharge was not imposed does not mean that the return filed by HIPI was correct. In fact, the 30% threshold on substantial underdeclaration under Section 248(B) of the Tax Code is but a mere prima facie presumption of the filing of a false or fraudulent return**. Thus, the fact that HIPI underdeclared 5% only of its total sales does not mean that it did not file a false return. To sustain HIPI's interpretation would certainly be absurd. (Emphasis Supplied)

The above case reiterates that a false return merely implies a deviation from the correct tax. This case even held that the 30% threshold under Section 248 (B) of the Tax Code is but a mere presumption of the filing of a false or fraudulent return. Thus, if in fact there is

> deviation from the truth and the ratio is below the 30% threshold, the return is still false and the ten-year period applies.' [Emphasis supplied]

14. Further, in the case of ***CDL HOTELS (PHILS.) CORPORATION, vs. COMMISSIONER OF INTERNAL REVENUE, C.T.A. EB CASE NO. 339. August 10, 2009 [(C.T.A. CASE No. 6585)],*** the Hon. CTA setting En Banc clearly held that:

> 'A reasonable understanding of the foregoing law is that **false return** is **different from fraudulent return** with intent to evade tax or from failure to file a return. The above provision should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return. The **difference between 'false return' and 'fraudulent return' cannot be denied**. While **the first merely implies deviation from the truth, whether intentional or not**, the **second implies intentional or deceitful entry with intent to evade the taxes due**. The ordinary period of prescription of 3 years within which to assess tax liabilities under Sec. 203 of the 1997 NIRC, as amended, should be applicable to normal circumstances; **but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns**, fraudulent returns intended to evade payment of tax or failure to file returns, **the period of ten years as provided for in Section 222 of the 1997 NIRC, as amended, from the time of the discovery of the falsity**, fraud or omission even seems to be inadequate and **should be the one enforced**.
>
> In the case at bar, **although petitioner filed its monthly return as mandated by law, it failed to declare thereto the income subject to the tax** under the belief that the income supposedly subject to the withholding tax is not an income but a deductible expense.

The returns filed by petitioner can be considered as false return because it deviated from the truth when no income was declared, when in truth there was an income subject to tax. Being considered as false return, it is immaterial if petitioner intentionally omitted to declare its income subject to final withholding tax or not.

Considering that petitioner's return is false, the **applicable prescriptive period would be ten years from the discovery of falsity**. In the case at bar, the latest return filed was on January 11, 1999, while the FAN was issued on January 29, 2002, such period being within the ten year period it follows that the assessment had not yet prescribed.

Moreover, the Supreme Court had ruled that **the filing of deficient returns which prevent the Commissioner of Internal Revenue from computing the proper taxes is tantamount to non-filing. The Commissioner had to determine and assess the taxes on data obtained, not from the return, but from other sources. Hence, the assessment for deficiency final withholding tax, therefore, has not prescribed**.' [Emphasis supplied)

15. In the case of ***Aznar vs. Court of Tax Appeals,*** **56 SCRA 519**, the Supreme Court ruled that 'a return is considered **'false'**, where the falsity or 'deviation' from the truth would place the government at a disadvantage so as to prevent the assessment and collection of the correct amount of taxes by its lawful agents.' The CTA applied the ten (10) year prescriptive period because there were absence of entries in the returns where the tax liabilities should be declared. The Court treated such failure as omission to file returns within the purview of the ten (10) year prescriptive period under Section 222 (a) of the Tax Code.

16. Likewise, in the case of ***UCPB vs. CIR, CTA Case No. 7259 dated August 6, 2009,*** this Honorable Court (CTA) ruled that the failure of the taxpayer to

subject certain income to tax is an omission on the part of the taxpayer that is tantamount to non-filing, and thus, the applicable period to assess is ten (10) years under Section 222 of the NIRC.

17. The assessment issued against petitioner for deficiency value-added tax for taxable year ending December 31, 2008 was made in accordance with law and regulations.

18. Assessments are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Hence, all presumptions are in favor of the correctness of the subject tax assessment issued by the respondent. *(Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue, 98 Phil. 290; Sy Po, vs. CTA, G.R. 81446, August 18, 1988; Dayrit, vs. Cruz, L-39910, September 26, 1988; Cagayan Robina Sugar Milling Co., vs. CA, G.R. 122451, October 12, 2000). Failure to present proof of error in the assessment will justify judicial affirmation of said assessment (Delta Motors Co., vs. CIR, CAT (sic) Case No. 3782, May 21, 1986; CIR vs. CA, G.R. Nos. 104151 and 105563, March 10, 1995).*"

In the hearing held on January 22, 2015, the Court denied petitioner's Urgent Motion for the Suspension of Tax Collection on the ground that the instant case involves an ordinary appeal on the FDDA of the BIR and that the latter has not yet issued any preliminary collection letter nor warrant of distraint/levy.[25]

Respondent's Pre-Trial Brief[26] was filed on April 10, 2015; while Pre-Trial Brief for the Petitioner[27] was filed on May 11, 2015.

The parties filed their Joint Stipulation of Facts and Issues[28] on October 2, 2015, which was approved by the Court in its Pre-Trial Order[29] dated October 13, 2015.

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[25] Minutes of Hearing, Docket, p. 150.
[26] Docket, pp. 174-177.
[27] Docket, pp. 199-205.
[28] Docket, pp. 257-267.
[29] Docket, pp. 269-275.

Petitioner presented as its witnesses, Mr. Manolito B. Dagatan and Ms. Luzviminda T. Aguilar on January 18, 2016.[30]

On March 17, 2016, petitioner filed its Formal Offer of Documentary Evidence[31], offering Exhibits "P-22", "P-21", "P-23", "P-1", "P-2" "P-2-A", "P-2-B", "P-3", "P-4", "P-5", "P-5-A", "P-5-B", "P-6", "P-6-A", "P-7", "P-7-A", "P-8", "P-8-A", "P-8-B", "P-8-C", "P-8-D", "P-8-E", "P-8-F", "P-8-G", "P-8-H", "P-8-I", "P-8-J", "P-8-K", "P-8-L", "P-8-M", "P-8-N", "P-8-O", "P-8-P", "P-8-Q", "P-9", "P-10", "P-10-A", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-18", "P-18-A", "P-18-B", "P-18-C", "P-18-D", "P-19", "P-19-A", "P-19-B", "P-19-C" and "P-20", as its documentary evidence, *sans* respondent's comment.[32]

The Court admitted the foregoing exhibits in a Resolution[33] dated May 6, 2016: Exhibits "P-22", "P-23", "P-1", "P-2" "P-2-A", "P-2-B", "P-3", "P-4", "P-5", "P-5-A", "P-5-B", "P-6", "P-6-A", "P-7", "P-7-A", "P-8", "P-8-A", "P-8-B", "P-8-C", "P-8-D", "P-8-E", "P-8-F", "P-8-G", "P-8-H", "P-8-I", "P-8-J", "P-8-K", "P-8-L", "P-8-M", "P-8-N", "P-8-O", "P-8-P", "P-8-Q", "P-11", "P-12", "P-13", "P-16" and "P-17", except for Exhibits "P-21", "P-9", "P-14", "P-15", "P-10", "P-10-A", "P-20", "P-18", "P-18-A", "P-18-B", "P-18-C", "P-18-D", "P-19", "P-19-A", "P-19-B" and "P-19-C".

On June 29, 2016 and July 27, 2016[34], respondent presented his sole witness, Revenue Officer, Ms. Magdalena Susana A. Ventura. Thereafter, he filed his Formal Offer of Evidence[35] through registered mail, on September 5, 2016, offering Exhibits "R-1", "R-2", "R-3", "R-4", "R-4-a", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", "R-13", "R-14", "R-15", "R-16", "R-17", "R-18", "R-19", "R-20", "R-21", "R-22" and "R-22-a", as his documentary evidence, *sans* petitioner 's comment.[36]

In the Resolution[37] dated November 28, 2016, the Court admitted all exhibits presented by respondent.

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[30] Minutes of the hearing on January 18, 2016, Docket, p. 288.
[31] Docket, pp. 296-303.
[32] Records Verification dated April 6, 2016, Docket, p. 469.
[33] Docket, pp. 473-474.
[34] Minutes of the hearing on June 29, 2016 and July 27, 2016, Docket, pp. 481-482.
[35] Docket, pp. 489-494.
[36] Records Verification dated October 20, 2016, Docket, p. 497.
[37] Docket, pp. 499-500.

Memorandum for the Petitioner[38] was filed through registered mail on January 17, 2017, and received by the Court on January 25, 2017. Respondent filed his Manifestation and Motion,[39] through registered mail, on January 16, 2017 and received by the Court on February 2, 2017, stating that he is adopting all his arguments in his Answer dated January 23, 2015.

In a Resolution[40] promulgated on February 6, 2017, the case was submitted for decision.

The parties stipulated the following issues[41]:

> "1. Whether or not petitioner's VAT return for taxable year 2008 is considered 'false return' within the contemplation of Section 222 of the 1997 Tax Code for its willful failure and omission to declare/report in its VAT return for taxable year 2008, the reported income payment per Alphalist of Withholding Agents/Payors (*i.e. Lapanday Agricultural and Development Corporation with TIN 000076573 and Lead Export & Agro Development Corporation with TIN 000076068*) in the amount of ₱28,186,853.11.
>
> 2.Whether or not petitioner is liable to pay deficiency VAT on the interest income arising from loans it granted to its affiliates.
>
> 3. Whether or not the interest income on loan to affiliates is subject to 12% VAT.
>
> 4. Whether or not petitioner's failure to pay VAT on interest on loans rendered the VAT returns false or fraudulent warranting the imposition of 50% surcharge.
>
> 5. Whether or not the deficiency VAT assessment is barred by prescription."

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[38] Docket, pp. 505-517.
[39] Docket, pp. 519-521.
[40] Resolution dated February 6, 2017, Docket, p. 523.
[41] III. Stated Issues, JSFI, Docket, p. 265.

The Court shall determine the timeliness of the filing of the present Petition for Review.

Section 228 of the NIRC of 1997, as amended, governs the periods in filing an administrative protest, as follows:

> "SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings xxx
>
> xxx xxx xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Pursuant to Section 228 of the NIRC of 1997, petitioner has thirty (30) days from receipt of the FAN within which to file its administrative protest and another thirty (30) days from receipt of the respondent's decision, or from the lapse of one hundred eighty (180)-day period within which to file its Petition for Review with the Court.

In this case, petitioner received the FLD together with Assessment Notice No. F-048-LNTF-08-VT-0006 and Details of Discrepancies, all dated October 10, 2012, for the deficiency VAT on interest income in the amount of ₱7,479,323.97 for taxable year 2008 on November 20, 2012. Petitioner has thirty (30) days from November

20, 2012 or until December 20, 2012 within which to file its administrative protest with the respondent. Thus, its December 18, 2012 Protest Memorandum was timely filed on December 19, 2012.

On October 28, 2014, petitioner received the subject FDDA, denying its protests. Counting thirty (30) days from October 28, 2014, petitioner had until November 27, 2014 within which to file its Petition for Review with the Court. Hence, the Petition for Review filed by petitioner on November 24, 2014 was clearly within the thirty (30)-day prescriptive period.

A careful scrutiny of the records of the case reveals that no Letter of Authority (LOA) was issued against petitioner for taxable year 2008. Hence, it is necessary to first rule on whether the revenue officers have authority to conduct the examination of petitioner's books of accounts and accounting records even if the same was not raised as an issue at any stage of the proceedings before the CTA.

The case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*[42], is instructive, to wit:

> "The law vesting unto the CTA its jurisdiction is Section 7 of Republic Act No. 1125 (R.A. No. 1125) which in part provides:
>
> > Section 7. Jurisdiction. -The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided:
> >
> > > (1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other penalties imposed in relation thereto, or ***other matters*** arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue; x x x. (emphasis supplied)
>
> Under the aforecited provision, the jurisdiction of the CTA is not limited only to cases which involve decisions or

[42] G.R. No. 183408, July 12, 2017.

inactions of the CIR on matters relating to assessments or refunds but also includes other cases arising from the NIRC or related laws administered by the BIR. Thus, for instance, we had once held that the question of whether or not to impose a deficiency tax assessment comes within the purview of the words '*other matters arising under the National Internal Revenue Code*.'

The jurisdiction of the CTA on such ***other matters arising under the NIRC*** was retained under the amendments introduced by R.A No. 9282. Under R.A. No. 9282, Section 7 now reads:

> Sec. 7. *Jurisdiction*. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> > I. 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 or other laws administered by the Bureau of Internal Revenue;
> >
> > 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 administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; x x x.' (emphasis supplied)

Is the question on the authority of revenue officers to examine the books and records of any person cognizable by the CTA?

It must be stressed that the assessment of internal revenue taxes is one of the duties of the BIR. Section 2 of the NIRC states:

> Sec. 2. *Powers and Duties of the Bureau of Internal Revenue*. -The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the ***assessment*** and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts.
>
> The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws. (emphasis supplied)

In connection therewith, the CIR may authorize the examination of any taxpayer and correspondingly make an assessment whenever necessary. Thus, to give more teeth to such power of the CIR, to make an assessment, the NIRC authorizes the CIR to examine any book, paper, record, or data of any person. The powers granted by law to the CIR are intended, among other things, to determine the liability of any person for any national internal revenue tax.

It is pursuant to such pertinent provisions of the NIRC conferring the powers to the CIR that the petitioner (CIR) had, in this case, authorized its revenue officers to conduct an examination of the books of account and accounting records of Lancaster, and eventually issue a deficiency assessment against it.

From the foregoing, it is clear that the issue on whether the revenue officers who had conducted the examination on Lancaster exceeded their authority pursuant to LOA No. 00012289 may be considered as covered by the terms 'other matters' under Section 7 of R.A. No. 1125 or its amendment, R.A. No. 9282. The authority to make an examination or assessment, being a matter provided for by the NIRC, is well within the exclusive and appellate jurisdiction of the CTA.

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

Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:

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

The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of 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 Bane was likewise correct in sustaining the CTA Division's view concerning such matter."

As previously stated, records show that no LOA was issued against respondent for taxable year 2008. The question now is whether the undated Letter Notice LN No. 048-TRS-08-00-00027 for discrepancy on gross sales/revenue/receipts, issued by Commissioner Joel L. Tan-Torres, would suffice.

The answer is in the negative.

Section 6 (A) of the NIRC of 1997, as amended, vests the CIR the power to authorize the examination of any taxpayer and the assessment of the correct amount of tax due, to wit:

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

xxx xxx xxx

In relation thereto, Section 13 of the NIRC of 1997, as amended, provides that a Letter of Authority is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax, 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."

Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.[43]

On this note, the Supreme Court's pronouncement in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[44], on the matter of the authority of revenue officers who conducted the audit and examination of the taxpayer is instructive:

[43] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.
[44] G.R. No. 222743, April 5, 2017.

"The absence of an LOA violated MEDICARD's right to due process

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:

> **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –*
>
> (A) **Examination of Return 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 x (Emphasis and underlining ours)

Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.

xxx xxx xxx

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.,* the Court said that:

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

The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal .remedies, particularly closure, criminal action, or audit and investigation. Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.

The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 10 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under RMO No. 32-2005, that after an LN 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.

Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.

The BIR's RELIEF System has admittedly made the BIR's assessment and collection efforts much easier and faster. The ease by which the BIR's revenue generating objectives is achieved is no excuse however for its non-compliance with the statutory requirement under Section 6 and with its own administrative issuance. In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR' s revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void."

To emphasize, the audit process normally commences with the issuance by the CIR of a LOA. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[45]

Thus, before an examination of the taxpayer may be validly done, there must first be a LOA issued to the concerned revenue examiners authorizing the conduct of an examination. Thus, a LN does not suffice, since a LN is entirely different and serves a different purpose from that of a LOA. Without such a LOA, the resulting assessment or examination is a nullity.

In this case, there is no indication that a LOA was issued against petitioner but only an undated LN No. 048-TRS-08-00-00027. In the absence of competent proof that the revenue examiners who conducted the audit and investigation of respondents' books of accounts and other accounting records for the taxable year 2008 were duly authorized pursuant to a valid LOA, the deficiency tax assessment issued against petitioner, arising from the audit they conducted, is void ab initio.

Finding that the assessment for taxable year 2008 is void for being issued without a valid authority, the Court finds it no longer necessary to discuss the other issues raised.

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated October 24, 2014 for deficiency Value Added Tax in the total amount of ₱9,028,751.01 inclusive of surcharges and interests for taxable year 2008 is **CANCELLED.**

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[45] *Supra* Note 42.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
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.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice