18-000401-0073

**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**SPECIAL FIRST DIVISION**

**CTA OC NO. 025**

**REPUBLIC OF THE PHILIPPINES,**
Plaintiff,

- versus -

**MR. RANSON DIODELL N. TENERIFE doing business under the name "MOTORINA TRADING,"**
Defendant.

# NOTICE OF DECISION

**To:**

**OFFICE OF THE SOLICITOR GENERAL**
134 Amorsolo St., Legazpi Village, Makati City

**ATTY. SYLVIA R. ALMA JOSE**
**ATTY. CLARISSA J. VIRTUDES-BABARAN**
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Bldg.,
BIR Road, Diliman, Quezon City

**CANAMA LAW OFFICE**
*(Counsel for the Defendant)*
Highway Dakit, Bogo City, 6010 Cebu

**ATTY. DON ANTHONY T. YBALLE**
**QCVR LAW**
*(Collaborating Counsel for the Defendant)*
Suite 307, Centro Maximo Building
Jakosalem Street, F. Ramos 6000 Cebu City

***GREETINGS:***

You are hereby notified by these presents that on **June 14, 2023**, a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 20, 2023.**

**Atty. Margarette Y. Guzman**
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

**SPECIAL FIRST DIVISION**

| | |
|---|---|
| **REPUBLIC OF THE PHILIPPINES,** *Plaintiff,* | **CTA OC No. 025** |
| | Members: |
| - versus - | **DEL ROSARIO**, *PJ, Chairperson,* **MANAHAN**, and **REYES-FAJARDO**, *JJ.* |
| **MR. RANSON DIODELL N. TENERIFE doing business under the name "MOTORINA TRADING,"** *Defendant.* | Promulgated: JUN 14 2023, 8:30AM |

x-----------------------------------------------------------x

**DECISION**

**REYES-FAJARDO, *J*.**:

We resolve the Complaint dated August 31, 2018, filed by the Republic of the Philippines, seeking to collect from Ranson Diodell N. Tenerife, the alleged deficiency Income Tax (IT), Valued-Added Tax (VAT), and compromise penalty for taxable year (TY) 2010, in the total amount of Fourteen Million Three Hundred Twenty-Nine Thousand Four Hundred Forty-Seven and 71/100 Pesos (₱14,329,447.71).

**FACTS**

Plaintiff Republic of the Philippines, is represented by the Commissioner of Internal Revenue, Chief of the Bureau of Internal Revenue (BIR), the government agency vested with the authority to administer and enforce national internal revenue taxes, including, among others, the assessment and collection of all internal revenue taxes, fees, and charges. He holds office at the BIR National Office

Building, Agham Road, Diliman, Quezon City, where he may be served with summons, notices and other court processes.[1]

Defendant Ranson Diodell N. Tenerife, doing business under the name "Motorina Trading," is the taxpayer. He may be served with summons, notices, and other court processes through his counsel QCV Law at Centro Maximo Building, corner Ranudo and Jakosalem Streets, Cebu City, Philippines.[2]

On July 10, 2012, defendant received the BIR's undated Letter Notice (LN) No. 082-RLF-10-00-00166, informing him that he has undeclared local purchases for TY 2010, amounting to ₱16,423,077.44. Said figure emanated from the summary list of sales submitted by defendant's alleged suppliers to the BIR.[3]

On February 14, 2013, defendant received the BIR's Notice of Informal Conference.[4]

On May 9, 2013, the BIR issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies, containing the proposed assessment for deficiency IT, and VAT, for TY 2010, in the total amount of ₱13,966,898.40.[5]

On July 29, 2013, the BIR issued a Formal Letter of Demand and Final Assessment Notices, with Details of Discrepancies (FLD/FAN), assessing defendant for deficiency IT, VAT, and compromise penalty for TY 2010, in the total amount of ₱14,329,447.71.[6]

On September 1, 2014, the BIR issued a Preliminary Collection Letter (PCL), demanding from defendant, the payment of deficiency IT, VAT, and compromise penalty for TY 2010, in the total amount of ₱14,329,447.71.[7]

---

1 See Par. 1, Joint Stipulation of Facts and Issue (JSFI). Docket, p. 309.
2 Par. 2, JSFI. *Ibid.*
3 Exhibit "P-1." BIR Records, p. 4.
4 Exhibit "P-4." *Id.* at p. 9.
5 Exhibit "P-6." *Id.* at pp. 17-18.
6 Exhibit "P-7." *Id.* at pp. 19-24.
7 Exhibit "P-8." *Id.* at p. 29.

On September 17, 2014, the BIR issued a Final Notice Before Issuance of Warrant, reiterating its demand for payment against defendant, of the deficiency IT, VAT, and compromise penalty for TY 2010, in the total amount of ₱14,329,447.71.[8]

On November 14, 2014, defendant received the Warrant of Distraint and/or Levy (WDL) dated October 15, 2014, issued by the BIR.[9]

On September 5, 2018, plaintiff filed a Complaint,[10] docketed as CTA OC No. 025.

On October 29, 2018, defendant filed an Answer[11] with Special Affirmative Defense.

During the pre-trial conference held on June 24, 2021, we required the parties to formulate a Joint Stipulation of Facts and Issues (JSFI), set the dates for the marking of the parties' respective evidence, as well as the presentation of their respective witnesses.[12]

On July 19, 2021, the parties submitted their JSFI.[13]

On October 13, 2021, we issued a Pre-Trial Order.[14]

During trial, plaintiff presented revenue officers (ROs): *one*, Judy S. Sayson;[15] *two*, Josyl Ann Z. Aranas;[16] *three*, Juliet Balbona;[17] and *four*, Maria Delia Ortega,[18] as its witnesses.[19]

---

8 Exhibit "P-11." *Id.* at p. 30.
9 Exhibit "P-12." *Id.* at p. 31.
10 Docket, pp. 8-22.
11 *Id.* at pp. 61-66.
12 Order dated June 24, 2021. *Id.* at pp. 299-301.
13 *Id.* at pp. 309-313.
14 *Id.* at pp. 341-351.
15 Judicial Affidavit of Judy Sayson dated March 1, 2019. Exhibits "P-15" and "P-15-A." *Id.* at pp. 159-165. Identified during hearing held on October 12, 2021, see minutes and order thereof, *id.* at pp. 326-332.
16 Judicial Affidavit of Josyl Ann Z. Aranas dated March 1, 2019. Exhibits "P-16" and "P-16-A." *Id.* at pp. 130-133. Identified during hearing held on October 12, 2021, see minutes and order thereof, *id.* at pp. 326-332.
17 Judicial Affidavit of Juliet Balbona dated March 1, 2019. Exhibits "P-17" and "P-17-A." *Id.* at pp. 116-119. Identified during hearing held on October 12, 2021, see minutes and order thereof, *id.* at pp. 326-332.

On November 2, 2021, plaintiff filed its Formal Offer of Evidence,[20] to which defendant filed a comment[21] on November 16, 2021.

Under Resolution dated March 11, 2022, Exhibits **"P-1," "P-2," "P-3," "P-4," "P-5," "P-6," "P-7," "P-8," "P-9," "P-10," "P-11," "P-12,"** and **"P-14,"** were admitted as evidence for plaintiff,[22] and it was deemed to have rested its case.

Defendant presented himself as witness.[23] Thereafter, he offered, and we admitted his testimony as evidence.[24]

By Resolution dated June 15, 2022,[25] this case was submitted for decision, taking into account the respective filing of plaintiff[26] and defendant's[27] memorandum on June 3 and 6, 2022.

## ISSUE

Is defendant liable for the deficiency IT and VAT in the total amount of ₱14,329,447.71 plus compromise penalties, 50% surcharge under Section 248 of the NIRC of 1997, as amended, 20% delinquency interest until 31 December 2017 and 12% delinquency interest starting 1 January 2017 until full payment pursuant to Section 249(C) of the NIRC of 1997, in relation to Section 249(A) of the same Code, as amended by TRAIN Law?[28]

---

18 Judicial Affidavit of Delia Ortega dated March 1, 2019. Exhibits "P-18" and "P-18-A." *Id.* at pp. 102-106. Identified during hearing held on October 12, 2021, see minutes and order thereof, *id.* at pp. 326-332.

19 The respective direct testimonies of the plaintiff's witnesses were not formally offered as evidence. *Infra* note 20.

20 *Id.* at pp. 375-381.

21 *Id.* at pp. 383-385.

22 *Id.* at pp. 406-407.

23 Judicial Affidavit of Ranson Diodell N. Tenerife. Exhibits "D-1" and "D-1-A." *Id.* at pp. 147-150.

24 Minutes of hearing held on May 5, 2022. *Id.* pp. 408-410.

25 *Id.* at p. 442.

26 *Id.* at pp. 412-426.

27 *Id.* at pp. 429-437.

28 See Issues to be Tried or Resolved, Pre-Trial Order. *Id.* at p. 344.

## ARGUMENTS

Plaintiff maintains that the instant case is *not* barred by prescription. Under Section 222(a) of the NIRC, as amended, if there was omission to file tax returns, the period to collect internal revenue taxes, fees, and charges through court action is ten (10) years from discovery thereof. The Certification dated December 10, 2012 stated that defendant failed to file his Annual Income Tax Return (AITR), and VAT Returns, for TY 2010, among others. Counting ten (10) years from December 10, 2012, it had until December 10, 2022 to institute court action for collection. Precisely, its complaint was timely filed on September 5, 2018.

Plaintiff also claims that defendant failed to file an administrative protest on the FLD/FAN he received from the BIR, thereby attaining immutability. Being so, it is entitled to collect from defendant, the assessed deficiency IT, VAT, and compromise penalty, for TY 2010, in the total amount of ₱14,329,447.71.

Defendant counters that the FLD/FAN issued by the BIR against it for TY 2010 is void since the same was based only on a Letter Notice, and not an LOA. Being a void assessment, plaintiff may not collect from him, the assessed deficiency IT, VAT, and compromise penalty, for TY 2010, in the total amount of ₱14,329,447.71.

## RULING

We find for defendant.

Foremost, our exclusive original jurisdiction over tax collection cases is found on Section 7(c)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, providing as follows:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> ...
>
> c. Jurisdiction over tax collection cases as herein provided:

> 1. Exclusive original jurisdiction in tax collection cases involving final and executory assessments for taxes, fees, charges and penalties: Provided, however, That collection cases where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) shall be tried by the proper Municipal Trial Court, Metropolitan Trial Court and Regional Trial Court.

Section 3(c)(1), Rule 4[29] of the Revised Rules of the Court of Tax Appeals (RRCTA)[30] clarified that the CTA in Division has exclusive original jurisdiction over tax collection cases, when the principal amount of taxes and fees, exclusive of charges and penalties is at least ₱1,000,000.00. In this regard, jurisdiction of courts over the subject matter of the litigation is conferred by law and determined by the allegations in the complaint.[31]

Plaintiff seeks to collect from defendant, the deficiency IT and VAT covering TY 2010, based on a final and executory assessment, among others.[32] The basic IT amounts to ₱5,220,384.65, whereas the basic VAT is in the sum of ₱1,970,769.24.[33] Therefore, the total basic taxes amounting to ₱7,191,153.89, claimed by plaintiff, falls under our exclusive original jurisdiction, pursuant to Section 7(c)(1) of RA No. 1125, as amended by RA No. 9282, as implemented by Section 3(c)(1), Rule 4 of the RRCTA.

Next, the merits.

*Proton Pilipinas Corporation v. Republic of the Philippines*[34] decreed that "... the tax and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute. The payment of taxes is a duty which the law requires to be paid."

---

29 SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

...

(c) Exclusive jurisdiction over tax collections cases, to wit:

(1) Original jurisdiction in tax collection cases involving final and executory assessments for taxes, fees, charges and penalties, where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is one million pesos or more; ...

30 A.M. No. 05-11-07-CTA.

31 *Malabanan v. Republic of the Philippines,* G.R. No. 201821, September 19, 2018.

32 Pars. 2 and 14, Complaint dated August 31, 2018. Docket, pp. 8, and 12-13, respectively.

33 Par. 14, Complaint dated August 31, 2018. *Id.* at pp. 12-13.

34 G.R. No. 165027, October 12, 2006.

Towards this end, Section 205(b) of the NIRC, as amended, spells out the requirements for the government to validly collect taxes against the taxpayer, through court proceeding, as follows:

> **SEC. 205.** ***Remedies for the Collection of Delinquent Taxes.*** **-** The **civil remedies** for the **collection** of internal revenue taxes, fees or charges, and any increment thereto resulting from **delinquency** shall be:
>
> ...
>
> (b) By **civil** or criminal **action.**[35]

For collection of internal revenue taxes through court proceeding to prosper, said taxes must be delinquent. *Philippine Refining Company v. Court of Appeals (PRC)*[36] exhibited how taxes become delinquent when a final assessment was made by the BIR:

> ... **the deficiency tax assessment in this case, which was the subject of the demand letter of respondent Commissioner dated April 11, 1989, should have been paid within thirty (30) days from receipt thereof. By reason of petitioner's default thereon, the delinquency** penalties of 25% surcharge and interest of 20% accrued from April 11, 1989. The fact that petitioner appealed the assessment to the CTA and that the same was modified does not relieve petitioner of the penalties incident to delinquency. The reduced amount of P237,381.25 is but a part of the original assessment of P1,892,584.00.[37]

*PRC* deemed taxes as delinquent when the taxpayer failed to pay the assessed taxes, as they fall due per FLD/FAN. This presupposes that the FLD/FAN is valid; otherwise, it does not produce valid fruit.[38]

Here, the FLD/FAN issued by the BIR against defendant for TY 2010 is void because the audit or examination conducted by the BIR personnel against him has no prior permission from the CIR or his duly authorized representatives; hence, it may not be used as valid basis of the collection suit against him.

---

35 Boldfacing supplied.
36 G.R. No. 118794, May 8, 1996.
37 Boldfacing supplied.
38 See *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 197945, July 9, 2018.

We explain.

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue (Medicard),*[39] the BIR anchored its tax assessment against Medicard Philippines, Inc. (MPI) based on the findings in an LN. It was also found that the BIR failed to issue an LOA in favor of MPI. The Supreme Court explained: *one*, an LN is different from an LOA; and *two*, a previously issued LN must be converted to an LOA before the RO may further proceed with the audit and examination of the taxpayer:

> 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.[40]

---

39 G.R. No. 222743, April 5, 2017.

40 Boldfacing supplied.

There being no conversion of the LN to an LOA, or issuance of an LOA by the CIR, or his duly authorized representatives in favor of the examining ROs, the Supreme Court in *Medicard,* struck down the tax assessment issued against *MPI*:

> 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.**[41]

Like *Medicard,* the BIR's FLD/FAN[42] issued against defendant for TY 2010, were explicitly anchored on LN No. 082-RLF-10-00-00166.[43] No authority to examine the latter for TY 2010, was issued by the CIR, or his duly authorized representatives in favor of the examining revenue officer. RO Judy Sayson validated this in open court:

> ATTY. YBALLE
>
> Q Thank you Madame Witness. So, you are confirming that in the Assessment Notice of Mr. Tenerife, there was really no basis coming from a Letter of Authority?
>
> MS. SAYSON
>
> A The Letter Notice served itself the notice to the taxpayer, I am *(interrupted)*
>
> ATTY. YBALLE
>
> Q Ah Madame Witness *(interrupted)*
>
> JUSTICE MANAHAN
>
> Ms. Witness, please answer yes or no. You repeat your question please Atty. Yballe.
>
> ATTY. YBALLE
>
> Q Okay, let me just rephrase my question again Madame Witness. So Madame Witness, do you confirm that in this investigation, there was no presence of any Letter of Authority?

---

41 Boldfacing supplied.
42 *Supra* note 6.
43 *Supra* note 3.

MS. SAYSON

A **Yes.**[44]

*Sans* an LOA, the FLD/FAN issued against defendant for TY 2010 is a patent nullity. Indeed, the absence of the RO's authority to examine a taxpayer may not be ignored, as such matter goes into the intrinsic validity of the assessment itself.[45] Said deficiency, too, offends the taxpayer's right to due process on examination and assessment. *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[46] confirmed:

> To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. ... **Due process requires that the taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.**
>
> ...[47]

Since the BIR failed to accord defendant due process, the FLD/FAN for TY 2010, issued against him never attained finality. *Commissioner of Internal Revenue v. T-Shuttle Services, Inc.*[48] pronounced:

> Additionally, the argument of the CIR that the deficiency tax assessments have already become final, executory, and demandable should be premised on the validity of the assessments themselves.

[44] Transcript of Stenographic Notes of Hearing held on October 12, 2021, p. 20. Boldfacing supplied.
[45] See *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue,* G.R. No. 241848, May 14, 2021.
[46] G.R. No. 242670, May 10, 2021.
[47] Boldfacing supplied.
[48] G.R. No. 240729, August 24, 2020.

> As it was established that the deficiency IT and VAT assessments for CY 2007 are void for failure to accord [the taxpayer] due process in their issuance, the CIR's argument necessarily fails.

By these premises, we reject plaintiff's collection suit against defendant, for the assessed taxes covering TY 2010, embodied in the BIR's FLD/FAN.

**WHEREFORE**, the Complaint dated August 31, 2018, filed by the Republic of the Philippines, is **DENIED**, for lack of merit.

The Republic of the Philippines, through the Commissioner of Internal Revenue, his representatives, agents, or other persons acting in his behalf, are **ENJOINED** from collecting on Ranson Diodell N. Tenerife, the deficiency income tax, value-added tax, and compromise penalty covering TY 2010, amounting to ₱14,329,447.71.

**SO ORDERED.**

Marian Ivy F. Reyes-Fajardo
**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

We Concur:

**ROMAN G. DEL ROSARIO**
Presiding Justice

Catherine T. Manahan
**CATHERINE T. MANAHAN**
Associate Justice

## CERTIFICATION

Pursuant to Section 13 of Article VIII 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