REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

TEKTITE INSURANCE BROKERS, INC., *Petitioner,*	**CTA Case No. 9184**
-versus-	Members: **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 25 2020 3:38 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

This is a Petition for Review filed by petitioner Tektite Insurance Brokers, Inc. on November 6, 2015, praying for the cancellation of the assessment on deficiency income tax, deficiency value-added tax (VAT) and deficiency expanded withholding tax (EWT) in the amounts of ₱6,878,094.24, ₱2,707,172.55, and ₱30,972.49, respectively issued by respondent Commissioner of Internal Revenue for taxable year (TY) ended December 31, 2011.[1]

THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Philippines.[2] It is primarily engaged to carry on the business of insurance brokers in all their branches; to act as brokers or managers for any insurance company, club or association, or for any individual underwriter, in connection with its or his insurance or underwriting business (wherever the same may be carried on) or any branch of the same, and to enter into any agreement for such

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[1] Par. I, Pre-Trial Order dated July 28, 2016, Docket – Vol. 1, p. 435.

[2] Exhibit "P-1", Docket – Vol. 3, p. 1669.

purpose with any such insurance company, club, association or underwriter.[3] It was authorized by the Insurance Commission as a non-life insurance broker from July 1, 2010 to June 30, 2011 and January 1, 2016 to December 31, 2018.[4]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR), vested by law in general to implement and enforce the provisions of the National Internal Revenue Code and other tax laws.[5]

THE FACTS

For TY 2011, Petitioner filed its Monthly VAT Declaration (BIR Form No. 2550M) and Quarterly VAT Returns (BIR Form No. 2550Q) as follows:

Period	VAT Return	Date of Filing
January 2011	Monthly VAT Declaration[6]	February 18, 2011
February 2011	Monthly VAT Declaration[7]	March 18, 2011
1st Quarter – CY 2011 (January 1, 2011 to March 31, 2011)	Quarterly VAT Return[8]	April 25, 2011
April 2011	Monthly VAT Declaration[9]	May 20, 2011
May 2011	Monthly VAT Declaration[10]	June 21, 2011
2nd Quarter – CY 2011 (April 1, 2011 to June 30, 2011)	Quarterly VAT Return[11]	July 25, 2011
July 2011	Monthly VAT Declaration[12]	August 22, 2011
August 2011	Monthly VAT Declaration[13]	September 20, 2011
3rd Quarter – CY 2011 (July 1, 2011 to September 30, 2011)	Quarterly VAT Return[14]	October 25, 2011
October 2011	Monthly VAT Declaration[15]	November 21, 2011
November 2011	Monthly VAT Declaration[16]	December 20, 2011
4th Quarter – CY 2011 (October 1, 2011 to December 31, 2011)	Quarterly VAT Return[17]	January 25, 2012

Likewise, Petitioner submitted its Quarterly Income Tax Returns and Annual Income Tax Return for TY 2011, to wit:

[3] Exhibit "P-2", Docket – Vol. 3, p. 1672.
[4] Exhibits "P-3" and "P-4", Docket – Vol. 6, pp. 3841 to 3842.
[5] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. 1, p. 374.
[6] Exhibits "P-19" and "P-19-a", Docket – Vol. 3, pp. 1719 to 1720.
[7] Exhibits "P-20" and "P-20-a", Docket – Vol. 3, pp. 1721 to 1722.
[8] Exhibit "P-21", Docket – Vol. 3, p. 1723.
[9] Exhibits "P-22" and "P-22-a", Docket – Vol. 3, pp. 1724 to 1725.
[10] Exhibit "P-23", Docket – Vol. 3, p. 1726.
[11] Exhibit "P-24", Docket – Vol. 3, p. 1727.
[12] Exhibits "P-25" and "P-25-a", Docket – Vol. 3, pp. 1728 to 1729.
[13] Exhibits "P-26" and "P-269-a", Docket – Vol. 3, pp. 1730 to 1731.
[14] Exhibits "P-27" and "P-27-a", Docket – Vol. 3, pp. 1732 to 1733.
[15] Exhibits "P-28" and "P-289-a", Docket – Vol. 3, pp. 1734 to 1735.
[16] Exhibits "P-29" and "P-29-a", Docket – Vol. 3, pp. 1736 to 1737.
[17] Exhibit "P-30", Docket – Vol. 3, p. 1738.

Period and Return	Date of Filing
1st Quarterly Income Tax Return[18] (January 1, 2011 to March 31, 2011)	May 30, 2011
2nd Quarterly Income Tax Return[19] (April 1, 2011 to June 30, 2011)	August 31, 2011
3rd Quarterly Income Tax Return[20] (July 1, 2011 to September 30, 2011)	November 28, 2011
Annual Income Tax Return[21] (TY 2011)	April 14, 2012

As regards the Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) (BIR Form No. 1601-E), petitioner filed them on the following dates:

Period	Date of Filing (BIR Form No. 1601-E)[22]
January 2011	February 10, 2011
February 2011	March 10, 2011
March 2011	April 8, 2011
April 2011	May 10, 2011
May 2011	June 9, 2011
June 2011	July 11, 2011
July 2011	August 9, 2011
August 2011	September 12, 2011
September 2011	October 7, 2011
October 2011	November 4, 2011
November 2011	December 9, 2011
December 2011	January 16, 2012

Petitioner filed its Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (BIR Form No. 1604-E) on March 1, 2012.[23]

On November 14, 2012, Respondent issued a Letter Notice (LN) No. 43A-RLF-11-0000343 with Details of Taxpayer's Suppliers' Records and Details of Taxpayers Customers' Records, which Petitioner received on November 15, 2012.[24] Due to alleged inaction of Petitioner on the said LN,

[18] Exhibits "P-31" and "P-31-a", Docket – Vol. 3, pp. 1739 to 1740.
[19] Exhibits "P-32" and "P-32-a", Docket – Vol. 3, pp. 1741 to 1742.
[20] Exhibits "P-33" and "P-33-a", Docket – Vol. 3, pp. 1743 to 1744.
[21] Exhibit "P-34", Docket – Vol. 3, pp. 1745 to 1750; Exhibit "R-5", BIR Records, pp. 76 to 82.
[22] Exhibits "P-7" to "P-7-b", "P-8" to "P-8-b", "P-9" to "P-9-b", "P-10" to "P-10-b", "P-11" to "P-11-b", "P-12" to "P-12-b", "P-13" to "P-13-b", "P-14" to "P-14-b", "P-15" to "P-15-b", "P-16" to "P-16-b", "P-17" to "P-17-b", and "P-18" to "P-18-a", Docket – Vol. 3, pp. 1684 to 1718.
[23] Exhibit "P-52", Docket – Vol. 3, pp. 1832 to 1833.
[24] Exhibits "R-2", "R-2-a", and "R-2-b", BIR Records, pp. 227 to 233.

Respondent issued a Follow-up Letter on February 10, 2014 and Petitioner received on February 11, 2014.[25]

On January 15, 2013, Respondent issued a Letter of Authority (LOA) No. LOA-43A-2013-0000005 with SN:eLA201100027767, authorizing revenue officers to examine Petitioner's books of accounts and other accounting records for all internal revenue taxes covering the period of January 1, 2011 to December 31, 2011, which Petitioner received on January 16, 2013.[26] Respondent also released a First Request for Presentation of Records on even date.[27]

On February 8, 2013, a Second and Final Notice was issued.[28] Consequently, Petitioner transmitted its books of accounts for TY 2011 on several dates.[29]

On December 18, 2014, Respondent issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies, assessing Petitioner for deficiency income tax, VAT, and EWT, inclusive of increments, in the respective amounts of ₱6,799,457.38, ₱2,669,177.15, and ₱30,404.38; and Petitioner received them on January 13, 2015.[30]

On January 9, 2015, Petitioner received a Formal Letter of Demand (FLD) No. 043A-B179-11 with attached Details of Discrepancies and Assessment Notices (FAN), assessing it for alleged deficiency income tax, VAT, and EWT in the amount of ₱6,878,094.24, ₱2,707,172.55, and ₱30,972.49, respectively, or in the aggregate amount of ₱9,616,239.28.[31]

As a result, Petitioner protested the FLD/FAN on February 9, 2015 by requesting for a reinvestigation.[32]

On March 18, 2015, Petitioner was informed that its protest/request for reinvestigation was granted, thus, its tax case was forwarded to Revenue District Office (RDO) No. 43-A-Pasig City.[33] Subsequently, Petitioner submitted its supporting documents for the protest/request for reinvestigation on April 10, 2015.[34]

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[25] Exhibit "R-3", BIR Records, p. 237.
[26] Exhibit "P-36", Docket – Vol. 3, p. 1785; Exhibit "R-1", BIR Records, p. 19.
[27] Exhibit "P-37", Docket – Vol. 3, p. 1786; Exhibit "R-1-a", BIR Records, p. 18.
[28] Exhibit "P-38", Docket – Vol. 3, p. 1787.
[29] Exhibits "P-39", "P-40", "P-41", and "P-41-a", Docket – Vol. 3, pp. 1788 to 1793.
[30] Exhibits "P-43" and "P-43-a", Docket – Vol. 3, pp. 1800 to 1802; Exhibit "R-7", BIR Records, pp. 318 to 320.
[31] Exhibits "P-42", "P-42-a", "P-42-b", "P-42-c", and "P-42-d", Docket – Vol. 3, pp. 1794 to 1799; Exhibit "R-9", BIR Records, pp. 353 to 358.
[32] Exhibit "P-44", Docket – Vol. 3, pp. 1803 to 1812.
[33] Exhibit "P-45", Docket – Vol. 3, p. 1816.
[34] Exhibit "P-46", Docket – Vol. 3, pp. 1817 to 1820.

On May 6, 2015, Respondent requested Petitioner to submit relevant supporting documents.[35] Petitioner then complied with Respondent's request by submitting supporting documents on May 11, 2015.[36]

As Respondent did not act allegedly on the protest, Petitioner filed a Petition for Review with the Court on November 6, 2015, seeking the cancellation of the deficiency income, VAT, and EWT assessments.[37] The instant case was initially raffled to this Court's First Division.

After several Motions for Extension of Time to File Answer were granted by the Court,[38] Respondent filed his Answer on March 21, 2016, interposing the following special and affirmative defenses:[39]

> "She reiterates and repleads the foregoing paragraphs of this Answer as part her Special and Affirmative Defenses.
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> 8. The Preliminary Assessment Notice (PAN) dated 18 December 2014 was received by petitioner through their employee, Mr. Aldrin Soledad on 18 December 2014. Furthermore, it was also sent through registered mail on the same date with Registry Receipt No. R14128311507697.
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> 9. In the instant case, prescription under Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, cannot be used as a defense because there was a finding of fraud. The under declaration of sales of 36.81% constitute a prima facie evidence of fraud.
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> 10. Section 248 (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that:
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>> 'A substantial under declaration of taxable sales, receipts or income, or a substantial overstatement of deductions shall constitute ***prima facie evidence of false or fraudulent return.*** Failure to report sales, receipts or income in amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial under declaration of sales, receipts or income or for overstatement of deductions.'

[35] Exhibit "P-47", BIR Records, p. 377.
[36] Exhibit "P-48", BIR Records, p. 511.
[37] Docket – Vol. 1, pp. 10 to 37.
[38] Docket – Vol. 1, pp. 233 to 236; Order dated January 4, 2016, Docket – Vol. 1, p. 237; Docket – Vol. 1, pp. 238 to 240; Resolution dated January 27, 2016, Docket – Vol. 1, p. 243; Docket – Vol. 1, pp. 244 to 246; Resolution dated February 24, 2016, Docket – Vol. 1, p. 250.
[39] Docket – Vol. 1, pp. 251 to 255.

11. Since there is prima facie evidence of fraud, Section 222 (A) of the NIRC of 1997, as amended, is applicable. It provides:

> 'In case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: provided, that in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.'

12. The Details of Discrepancies both attached to the PAN and FAN are also clear as to why the petitioner have *(sic)* been assessed of deficiency withholding tax-expanded and related deficiency income tax on disallowed expense professional fees paid amounting to ₱192,000.00 for taxable year ended 31 December 2011. The Professional Fees indicated in the Financial Statement and the Return filed by the petitioner were compared and resulted to a discrepancy of ₱192,000.00. Furthermore, it is also not clear if the petitioner complied with what is required by Section 3 of RR No. 30-2003 to determine the applicable tax rate to be applied/withheld by the withholding agent and in this case, the petitioner.

13. The petitioner have *(sic)* not provided evidence to support the alleged discrepancy on issued Letter Notice conducted by BIR on the computerized matching of local purchases submitted by petitioner's customers against declared sales and summary list of sales submitted by petitioner's suppliers as against declared purchases declared in petitioner's tax returns, hence, the assessment thereof remains pursuant to Section 106 and 108 of the NIRC of 1997, as amended."

The pre-trial conference was set and held on May 26, 2016.[40]

On April 4, 2016, the Court directed Respondent to forward the BIR Records.[41] However, Respondent failed to forward the BIR Records, thus, his counsels were ordered by the Court to show cause why they should not be cited for contempt of Court.[42] As such, Respondent prayed, among others, in

[40] Notice of Pre-Trial Conference dated March 28, 2016, Docket – Vol. 1, pp. 256 to 257; Order dated April 4, 2016, Docket – Vol. 1, p. 260; Minutes of the hearing held on, and Order dated, May 26, 2016, Docket – Vol. 1, pp. 366 to 371.
[41] Order dated April 4, 2016, Docket – Vol. 1, p. 260.
[42] Resolution dated May 6, 2016, Docket – Vol. 1, p. 265.

his Compliance filed on May 23, 2016 that an additional fifteen days be given for the submission of the BIR Records.[43]

Respondent's Pre-Trial Brief was submitted on May 20, 2016.[44] Petitioner filed its Pre-Trial Brief on May 23, 2016.[45]

On May 24, 2016, the Court noted the submission of Respondent's Pre-Trial Brief and Compliance, as well as petitioner's Pre-Trial Brief.[46]

The parties subsequently filed their Joint Stipulation of Facts and Issues on June 10, 2016.[47]

On June 13, 2016, Respondent filed a Motion for Extension of Time to Submit BIR Docket.[48]

In the Resolution dated June 21, 2016, the Court approved the Joint Stipulation of Facts and Issues and granted Respondent's motion for extension to submit BIR Records.[49] Consequently, the Pre-Trial was terminated.[50]

On July 13, 2016, Respondent transmitted the BIR Records to this Court.[51] Notwithstanding, the Court directed Respondent to withdraw the BIR Records for proper pagination and to re-submit the same.[52]

On July 28, 2016, the Court issued the Pre-Trial Order.[53]

Thereafter, trial proceeded.

Petitioner then filed a Motion for Commissioning of Independent CPA on July 27, 2016.[54] Subsequently, Respondent resubmitted the BIR Records to this Court on August 1, 2016.[55]

To prove its case, Petitioner offered its documentary and testimonial evidence. As to the testimonial evidence, Petitioner set forth the testimony of

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[43] Docket – Vol. 1, pp. 346 to 348.
[44] Docket – Vol. 1, pp. 342 to 345.
[45] Docket – Vol. 1, pp. 349 to 358.
[46] Minute Resolution dated May 24, 2016, Docket – Vol. 1, p. 359.
[47] Docket – Vol. 1, pp. 374 to 383.
[48] Docket – Vol. 1, pp. 384 to 387.
[49] Docket – Vol. 1, pp. 390 to 391.
[50] *Id.*
[51] Compliance, Docket – Vol. 1, pp. 392 to 393.
[52] Order dated July 15, 2016, Docket – Vol. 1, p. 395.
[53] Pre-Trial Order dated July 28, 2016, Docket – Vol. 1, pp. 435 to 442.
[54] Docket – Vol. 1, pp. 430 to 432.
[55] Compliance, Docket – Vol. 1, pp. 656 to 657.

Mr. Antonio Reyes-Cuerva,[56] Petitioner's President; Mr. Michael L. Aguirre,[57] the Court-commissioned Independent Certified Public Accountant (ICPA); and Ms. Josefa Maria Bernadette Dizon,[58] Petitioner's former Accountant and Bookkeeper.

On August 2, 2016, the Court commissioned Mr. Michael L. Aguirre as the ICPA.[59] Also, the Court ordered Mr. Aguirre to submit the necessary accreditations from specified government agencies. Further, as Petitioner's first witness, Mr. Reyes-Cuerva, failed to appear on the said date, the Court directed Petitioner's counsel to submit a written explanation thereon.[60]

Afterwards, Petitioner filed its Submission/Compliance[61] on August 3, 2016 and attaching therewith Mr. Aguirre's accreditation papers, which the Court noted.[62] With respect to Mr. Reyes-Cuerva's explanation, Petitioner filed a Compliance with Motion[63] on August 12, 2016 and Motion for Extension[64] on August 22, 2016.

On August 8, 2016, Petitioner sent to this Court through registered mail a Request for Subpoena Duces Tecum and Ad Testificandum (SDTAT),[65] to be issued to Ms. Josefa Maria Bernadette Dizon, Petitioner's former Accountant and Bookkeeper.

In the Resolution dated September 2, 2016,[66] the Court deemed Petitioner's Motion for Extension moot and as to the Compliance with Motion, Petitioner's counsel was directed to submit a duly notarized Medical Certificate of Mr. Reyes Cuerva. Likewise, the Court denied the Request for SDTAT.[67]

During the hearing on September 13, 2016, Petitioner submitted the aforesaid notarized medical certificate.[68]

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[56] Exhibit "P-58", Docket – Vol. 1, pp. 443 to 457; Minutes of the hearing held on, and Order dated, September 13, 1016, Docket, pp. 706 to 707 and 709 to 710.
[57] Minutes of the hearing held on, and Order dated August 2, 2016, Docket – Vol. 1, pp. 659 to 660 and 662 to 663; Exhibit "P-60", Docket – Vol. 1, pp. 907 to 923; Minutes of the hearing held on, and Order dated, November 8, 2016, Docket – Vol. 2, pp. 1022 to 1025; Minutes of the hearing held on, and Order dated, May 25, 2017, Docket – Vol. 2, pp. 1301 to 1304.
[58] Exhibit "P-70", Docket – Vol. 2, pp. 1029 to 1047; Minutes of the hearing held on, and Order dated August 1, 2017, Docket – Vol. 2, pp. 1308 to 1311.
[59] Minutes of the hearing held on, and Order dated August 2, 2016, Docket – Vol. 1, pp. 659 to 660 and 662 to 663; Oath of Commission dated August 2, 2016, Docket – Vol. 1, p. 661.
[60] Minutes of the hearing held on, and Order dated August 2, 2016, Docket – Vol. 1, pp. 659 to 660 and 662 to 663
[61] Docket – Vol. 1, pp. 665 to 669.
[62] Order dated August 15, 2016, Docket – Vol. 1, p. 686.
[63] Docket – Vol. 1, pp. 682 to 684.
[64] Docket – Vol. 1, pp. 690 to 692.
[65] Docket – Vol. 1, pp. 694 to 696.
[66] Docket – Vol. 1, pp. 704 to 705.
[67] Resolution dated September 2, 2016, *Id.*
[68] Docket, p. 708.

On September 16, 2016, Petitioner sent to this Court through registered mail a Motion for Reconsideration due to the denial of its request to issue a SDTAT,[69] which the Court granted on October 26, 2016.[70] Consequently, a SDTAT was issued addressed to Ms. Josefa Maria Bernadette Dizon.[71]

On September 19, 2016, the Court received the ICPA Report.[72]

Petitioner then filed its Formal Offer of Evidence on November 27, 2017.[73] Respondent failed to comment thereon.[74] Thus, the Court admitted Petitioner's exhibits; however, some of the following exhibits were denied, to wit:[75]

> 1. Exhibit "P-3", for failure to identify the exhibit and for failure to present its original for comparison;
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> 2. Exhibits "P-4" and "P-5", for failure to identify;
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> 3. Exhibits "P-6", "P-46", "P-47", "P-48", "P-49", "P-50", "P-53", "P-54", "P-64-c", "P-64-j", and "P-64-m", for failure to present their original for comparison;
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> 4. Exhibits "P-35-a", "P-11-ACI-ICPA", "P-11-AME-ICPA", "P-16-B.2.5-ICPA", AND "P-16-B.2.6-ICPA", for not being found in the records of the case; and
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> 5. Exhibits "P-9-O.2-ICPA", "P-11-HY-ICPA", "P-11-HZ-ICPA", "P-11-US-ICPA", "P-11-ANV-ICPA", "P-11-ANW-ICPA", "P-12-R.1.1-ICPA", "P-12-AF.2.13-ICPA", "P-12-AF.2.14-ICPA", "P-12-AG.2.6-ICPA", "P-16-B.3.2-ICPA", and "P-16-B.3.3-ICPA", for failure of the exhibits formally offered to correspond with the documents actually marked.

Consequently, Petitioner filed a Motion for Partial Reconsideration on May 29, 2018.[76] In the said motion, Petitioner included a prayer to set this case for a Commissioner's Hearing and the Court allowed the same.[77] Respondent did not submit any comment on the aforesaid motion.[78]

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[69] Docket – Vol. 1, pp. 886 to 891.
[70] Resolution dated October 26, 2016, Docket – Vol. 2, pp. 896 to 897.
[71] Docket – Vol. 2, p. 898.
[72] Docket – Vol. 1, pp. 712 to 876.
[73] Docket – Vol. 3, pp. 1330 to 1668.
[74] Records Verification dated December 27, 2017, Docket – Vol. 5, p. 3758.
[75] Resolution dated May 9, 2018, Docket – Vol. 6, pp. 3769 to 3799.
[76] Docket – Vol. 6, pp. 3815 to 3832.
[77] Order dated May 29, 2018, Docket – Vol. 6, pp. 3811 to 3812.
[78] Records Verification dated July 30, 2018, Docket – Vol. 6, p. 3852.

On June 14, 2018, a Commissioner's Hearing was held.[79]

In support to the said motion, Petitioner filed a Manifestation with Submission on June 28, 2018.[80]

Respondent presented his documentary and testimonial evidence. As part of the testimonial evidence, Respondent proffered the testimonies of Elma V. Delluta,[81] Revenue Officer; and Ms. Ma. Lourdes Morales,[82] Revenue Officer.

On June 28, 2018, Respondent filed a Motion for Extension of Time to File Formal Offer of Evidence,[83] which the Court granted on July 5, 2018.[84] Respondent submitted anew a Motion for Extension of Time to File Formal Offer of Evidence on July 27, 2018,[85] and the Court likewise granted the same.[86]

Respondent filed his Formal Offer of Evidence on August 14, 2018.[87] As such, Petitioner submitted its Comment/Opposition (To Respondent's Formal Offer of Evidence dated August 10, 2018) through registered mail on August 20, 2018 and received by the Court on September 4, 2018.[88]

On September 24, 2018, this case was transferred to this Court's Third Division.[89]

Subsequently, Atty. Joana Q. Bilongilot withdrew her appearance as Respondent's counsel on January 21, 2019,[90] which the Court noted.[91] Likewise, the Court noted the Entry of Appearance[92] filed by Atty. Victor Rico P. Lopez as Respondent's counsel.[93]

In the Resolution dated February 21, 2019,[94] the Court noted Petitioner's Manifestation with Submission and granted its Motion for Partial

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[79] Commissioner's Report dated June 14, 2018, Docket – Vol. 6, p. 3833.
[80] Docket – Vol. 6, pp. 3836 to 3840.
[81] Exhibit "R-13", Docket – Vol. 1, pp. 269 to 278; Order dated May 29, 2018, Docket – Vol. 6, pp. 3811 to 3812.
[82] Exhibit "R-14", Docket – Vol. 6, pp. 3803 to 3807; Order dated May 29, 2018, *id.*
[83] Docket – Vol. 6, pp. 3843 to 3845.
[84] Docket – Vol. 6, p. 3848.
[85] Docket – Vol. 6, pp. 3849 to 3851.
[86] Resolution dated August 14, 2018, Docket – Vol. 6, pp. 3855 to 3856.
[87] Docket – Vol. 6, pp. 3857 to 3864.
[88] Docket – Vol. 6, pp. 3866 to 3869.
[89] Order dated September 24, 2018, Docket – Vol. 6, p. 3872.
[90] Withdrawal of Appearance, Docket – Vol. 6, pp. 3873 to 3874.
[91] Minute Resolution dated January 30, 2019, Docket – Vol. 6, p. 3875.
[92] Docket – Vol. 6, pp. 3876 to 3877.
[93] Minute Resolution dated February 13, 2019, Docket – Vol. 6, p. 3878.
[94] Docket – Vol. 6, pp. 3880 to 3885.

Reconsideration. Thus, Petitioner's Exhibits "P-3", "P-4", "P-46", "P-47", "P-48", "P-9-O.2-ICPA", "P-11-HY-ICPA", "P-11-HZ-ICPA", "P-11-US-ICPA", "P-11-ANV-ICPA", "P-11-ANW-ICPA", "P-12-R.1.1-ICPA", "P-12-AF.2.13-ICPA", "P-12-AF.2.14-ICPA", "P-12-AG.2.6-ICPA", "P-16-B.3.2-ICPA", and "P-16-B.3.3-ICPA", were admitted. The Court likewise resolved Respondent's Formal Offer of Evidence in the aforesaid Resolution, admitting all of Respondent's exhibits.[95]

On April 1, 2019, Petitioner filed through registered mail its Memorandum which the Court received on April 10, 2019.[96] On the other hand, Respondent failed to file his memorandum.[97]

As such, the Court deemed this case submitted for decision on April 15, 2019.[98]

THE ISSUES

The issues submitted by the parties for the Court's consideration are the following:[99]

I. Whether or not the Petitioner is liable for deficiency income tax, deficiency value-added tax, and deficiency withholding tax – expanded in the respective amounts of ₱6,878,094.24, ₱2,707,172.55, and ₱30,972 for taxable year ended December 31, 2011; and

II. Whether or not the assessment for deficiency income tax, deficiency value-added tax, and deficiency withholding tax – expanded in the respective amounts of ₱6,878,094.24, ₱2,707,172.55, and ₱30,972 against petitioner is void for having been issued (I) without the issuance of a Preliminary Assessment Notice and (II) beyond the prescriptive period allowed by law.

THE ARGUMENTS OF THE PARTIES

Petitioner argues that the 2011 PAN and FAN/FLD were void for having been issued pursuant to a prescribed LOA. Petitioner also avers that Respondent failed to issue a PAN before the issuance of the FAN/FLD. Likewise, the FAN/FLD is allegedly void because the right of Respondent to

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[95] *Id.*
[96] Docket – Vol. 6, pp. 3890 to 3927.
[97] Records Verification Report dated April 11, 2019, Docket – Vol. 6, p. 3929.
[98] Resolution dated April 15, 2019, Docket – Vol. 6, p. 3931.
[99] Issues to be Resolved, JSFI, Docket – Vol. 1, pp. 374 to 375.

assess Petitioner for deficiency VAT and EWT for TY 2011 had already prescribed.

According to Petitioner, it is not liable for deficiency EWT and related deficiency income tax on disallowed expense professional fees paid amounting to ₱192,000.00, deficiency income tax on disallowed creditable tax withheld claimed; and deficiency income tax and VAT on alleged "Additional Taxable Income/Additional Vatable Sales of ₱10,700,866.17, all for TY 2011.

On the other hand, Respondent counter-argues that the PAN dated December 18, 2014 was received by Petitioner through their employee, Mr. Aldrin Soledad, on the same date. Respondent contends that it was also sent through registered mail on the same date with Registry Receipt No. R14128311507697.

Allegedly, the prescription provided under Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, cannot apply to the instant case because of the finding of fraud. Respondent alleges that under declaration of sales of 36.81% constituted *prima facie* evidence of fraud.

According to Respondent, the details of discrepancies both attached to the PAN and FAN are also clear as to why Petitioner was assessed of deficiency EWT and related deficiency income on disallowed expense professional fees paid amounting to ₱192,000.00 for taxable year ended December 31, 2011. Respondent likewise claims that it was not clear if petitioner complied with the requirements mandated under Section 3 of Revenue Regulations (RR) No. 30-2003 to determine the applicable tax rate to be applied or withheld by the withholding agent. Respondent asserts that Petitioner did not provide evidence to support the alleged discrepancy as stated in the Letter Notice. Allegedly, Respondent had conducted computerized matching of local purchases submitted by Petitioner's customers against declared sales, and summary list of sales submitted by Petitioner's suppliers as against declared purchases declared in Petitioner's tax returns. Hence, the alleged assessment thereof remains pursuant to Section 106 and 108 of the NIRC of 1997, as amended.

THE RULING OF THE COURT

The Court has jurisdiction over the present case.

The Court shall determine first whether or not the Petition for Review was timely filed. Section 228 of the NIRC of 1997, as amended, provides:

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: *Provided, however,* That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

Apropos thereto, Revenue Regulations (RR) No. 12-99, as amended[100], specifically Section 3.1.4, clearly defines what is a disputed assessment, to wit:

3.1.4 Disputed Assessment. - The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. xxx

xxx xxx xxx

[100] RR No. 18-2013 dated November 28, 2013 (*Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment).*

> If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.
>
> xxx xxx xxx
>
> It must be emphasized, however, that in case of inaction on protested assessment within the 180-day period, the option of the taxpayer to either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner or his duly authorized representative on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, are mutually exclusive and the resort to one bars the application of the other.

Clearly, in case of inaction on protested assessment within the 180-day period, the taxpayer can file a petition for review with the CTA within 30 days after the expiration of the 180-day period.

Petitioner received the FLD issued by Regional Director Alfredo V. Misajon with attached Details of Discrepancies and Assessment Notices on January 9, 2015. Petitioner had 30 days from January 9, 2015 or February 8, 2015 to file its administrative protest. Considering that February 8, 2015 is a Sunday Petitioner filed on February 9, 2015, the next working day, its protest by way of a request for reinvestigation with Respondent through Revenue Region No. 7 Regional Director Misajon.

In the instant case, pursuant to Section 228 of the NIRC, as amended, and Section 3.1.4 of RR No. 12-99, as amended, Petitioner is given the option to either appeal to the CTA within 30 days after the expiration of the 180-day period counted from the date of submission by Petitioner of the relevant supporting documents on April 10, 2015 within sixty (60) days from filing of the protest on February 9, 2015; or await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

The 180-day period given by law for Respondent's duly authorized representative to act on the protest ended on October 7, 2015. Accordingly, Petitioner had 30 days from October 7, 2015 or until November 6, 2015 to file its appeal either with the Court or Respondent.

Hence, Petitioner timely filed its Petition for Review with the Court on November 6, 2015.

The assessment is void for lack of authority to conduct the same.

The authority of a revenue officer (RO) to conduct an audit/examination goes into the validity of an assessment; thus, any assessment arising from the audit/examination of a taxpayer's books of accounts by an RO who is not duly authorized to do so is a complete nullity. A void assessment bears no valid fruit.[101]

In this regard, Section 13 of the 1997 NIRC, as amended, 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.

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[102], the Supreme Court emphasized that the absence of a Letter of Authority ("LOA") violated a taxpayer's right to due process; accordingly, the assessment thereon was declared void:

> 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

[101] *Commissioner of Internal Revenue v. BASF Coating+ Inks Phils. Inc.*, G.R. No. 198677, November 26, 2014.
[102] G.R. No. 222743, April 5, 2017.

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, **<u>the Commissioner or his duly authorized representative</u> 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 (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.

In case of revalidation of a LOA, DOF Department Order No. 006-99[103], which applies to all LOAs and taxpayer's investigation by the BIR[104], requires the issuance of a new LOA:

> SECTION 3. *Taxpayer's Investigation.* — All investigations of taxpayers shall be covered by a Letter of Authority issued by either the Commissioner of Internal Revenue or Regional Directors only. **A revenue officer shall within one hundred twenty (120) days from the date of the issuance of Letter of Authority conduct his audit and submit his investigation.** While the case is pending completion a progress report shall be

[103] Defining the Authority of the Commissioner of Internal Revenue and Regional Directors Re: Issuance of Letter of Authority and Taxpayer's Investigation.
[104] Sec. 1, DOF Department Order No. 006-99.

> submitted every end of the month to the head of the audit office, copy furnished the issuing authority. If the final report is not completed within the 120-day period, the revenue officer shall then return the Letter of Authority for revalidation. **The revalidation shall be limited to one issuance only and is done by issuing a new Letter of Authority.** *(Emphases supplied)*

Revenue Memorandum Order (RMO) No. 43-1990 also echoes the same requirement of a new LOA relative to the revalidation of expired LOAs:

> 5. Any re-assignment/transfer of cases to another RO(s), and **revalidation of L/As which have already expired, shall require the issuance of new L/A**, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As. *(Emphases supplied.)*

It is a cardinal rule in statutory construction that, where the law speaks in clear and categorical language, or the terms of the statute are clear and unambiguous and free from doubt, there is no room for interpretation or construction and no interpretation or construction is called for; there is only room for application.[105] Jurisprudence and statutory construction teach us that the word "shall" connotes mandatory character; it indicates a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory in nature.[106] Thus, the use of the word "shall" in DOF Department Order No. 006-99 and RMO No. 43-1990 can only mean that the issuance of a new LOA, with a corresponding notation thereto in case of revalidation, is mandatory.

In the case at bar, LOA No. 43A-2013-00000005 was issued on January 15, 2013, authorizing RO Elma Delluta to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2011 to December 31, 2011. In this regard, RO Elma Delluta had 120 days from January 15, 2013 or until May 15, 2013 to conduct the audit and submit the report. However, RO Elma Delluta submitted the Memorandum Report[107] only on April 21, 2014. Therefore, instead of continuing with the audit beyond the prescribed 120-day period, RO Elma Delluta should have just submitted a Progress Report and surrendered the LOA for revalidation, that is, for the issuance of a new LOA, which is lacking in this case.

Considering that there is no evidence that the LOA was revalidated on or before the expiration of the 120-day period, the LOA had ceased to be valid

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[105] *Cynthia S. Bolos vs. Danilo T. Bolos*, G.R. No. 186400, October 20, 2010.
[106] *UCPB General Insurance Company, Inc. vs. Hughes Electronic Corporation*, G.R. No. 190385, November 16, 5016.
[107] Exhibit "R-6", BIR Records, pp. 271 to 276.

and the resulting assessment or examination is a nullity. In the absence of competent proof that RO Elma Delluta was duly authorized pursuant to a valid LOA, the deficiency tax assessments issued against petitioner, arising from the audit she conducted, are void *ab initio.*

The rationale for requiring a valid LOA as a prerequisite to a valid assessment is not that difficult to perceive: 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.[108]

Finding that the assessments for taxable year 2011 are void for having been issued without a valid authority, the Court finds it no longer necessary to discuss the other issues raised.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED.** Accordingly, Formal Letter of Demand No. 043A-B179-11 dated January 9, 2015 with attached Assessment Notices and Details of Discrepancies issued against petitioner for alleged deficiency Income Tax, Value-Added Tax, and Expanded Withholding Tax in the aggregate amount of ₱9,616,239.28, inclusive of surcharges and interest, for taxable year ended December 31, 2011 is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO- SAN PEDRO
Associate Justice

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

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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice