REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

ITHIEL CORPORATION, Petitioner,	CTA Case No. 8689
	Members:
- versus -	BAUTISTA, *Chairperson* FABON-VICTORINO, and RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 04 2016 4:15 p.m.

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DECISION

***Fabon-Victorino, J.*:**

Being assailed in this Petition for Review[1] is the Final Decision on Disputed Assessment[2] (FDDA) dated May 31, 2013, holding petitioner liable for deficiency income tax (IT), value-added tax (VAT), and expanded withholding tax (EWT) for taxable year 2006 in the total amount of THIRTY EIGHT MILLION FORTY THOUSAND FORTY NINE and 98/100 (₱38,040,049.98), inclusive of interests and surcharges.

First, the facts.

Petitioner Ithiel Corporation is a domestic corporation, with principal office at No. 770 E. Rodriguez Extension, Malibay, Pasay City. Its primary purpose is to build, erect, lease, or otherwise, acquire, manage, occupy, maintain, operate and deal in market, stalls and slaughterhouses, office buildings and lands, building for market stalls and slaughterhouse and business structures of all kinds for the accommodation of marketers, producers, service providers

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[1] Docket, pp. 6-18.
[2] Exhibit "P-10", docket, p. 1657.

and the public client, consumers or buyers. It is registered with the Bureau of Internal Revenue (BIR) - Revenue District Office No. 51 of Pasay City under Revenue Region No. 8, Makati City, Philippines.[3]

Respondent Commissioner of Internal Revenue (CIR), on the other hand, is authorized to enforce revenue laws and collection of taxes and duties. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On August 10, 2007, petitioner received from respondent an undated Letter of Authority (LOA) No. 00062393, for the examination of its books of accounts and other accounting records pertaining to its internal revenue taxes for taxable year 2006.

Subsequently, respondent issued a Preliminary Assessment Notice[4] (PAN) dated September 23, 2010, with attached Details of Discrepancies for its alleged deficiency IT, VAT and EWT for taxable year 2006 in the aggregate amount of ₱30,445,536.52, broken down as follows[5]:

TAX TYPE	BASIC	SURCHARGE	INTEREST	TOTAL
Income Tax	₱10,821,314.85	₱5,410,657.42	₱7,554,167.19	₱23,786,139.45
VAT	2,631,022.55	1,315,511.28	1,952,002.48	5,898,536.31
EWT	435,425.18		325,435.58	760,860.76
TOTAL				**₱30,445,536.52**

On October 12, 2010, petitioner protested the PAN.[6]

On November 23, 2011, petitioner received a Final Assessment Notice (FAN)[7] dated November 18, 2011, reiterating the alleged tax deficiencies indicated in the PAN.

On December 9, 2011, petitioner protested the FAN.[8]

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[3] II. A. Admitted Facts, Pre-Trial Order, docket, pp. 378-379.
[4] Exhibit "P-3", docket, p. 1617.
[5] II. A. Admitted Facts, Pre-Trial Order, docket, p. 379.
[6] *Id.*
[7] Exhibit "P-6", docket, pp. 1629-1630.
[8] *Id.*

On December 27, 2011, petitioner received from respondent a letter dated December 22, 2011, stating that as a consequence of its protest to the FAN, the docket of the case was forwarded to Revenue District No. 51, Pasay City for further evaluation and necessary action.[9]

On May 31, 2013, respondent issued the assailed FDDA[10] denying petitioner's protest prompting the latter to file the instant Petition for Review before this Court on August 8, 2013.

In her Answer[11], respondent counters that the assessment issued against petitioner for deficiency IT, VAT and EWT for taxable year 2006 is in accordance with law and regulations and issued within the prescriptive period under Section 222(b) of the 1997 Tax Code, as amended, in view of the Waiver of the Defense of Prescription under the Statute of Limitations of the NIRC duly executed by petitioner. Even assuming that the assessment was issued beyond the three (3) year prescriptive period, the assessed deficiency IT and VAT for taxable year 2006 were made within the ten (10) year prescriptive period under Section 222(a) of the same Tax Code since petitioner failed to file the required return for taxable year 2006.

On April 30, 2014, a Pre-Trial Order[12] was issued based on the parties Joint Stipulation of Facts and Issues[13] (JSFI) filed after the pre-trial conference.

During the trial, petitioner presented as witnesses (1) its Accounting Supervisor, Normina Simafranca; and (2) the Court-commissioned Independent Certified Public Accountant (ICPA), Michael L. Aguirre.

By way of a Judicial Affidavit[14], witness **Normina Simafranca** testified that as petitioner's Accounting

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[9] *Id.*
[10] Exhibit "P-10".
[11] Docket, pp. 59-63.
[12] Docket, pp. 378-383.
[13] Docket, pp. 292-295.
[14] Exhibits "P-12" and "p-14".

Supervisor, she assists in the preparation and recording of all transactions of petitioner subject to tax, both national and local; ensures that all the taxes withheld are remitted to the proper agency; and reviews tax returns including but not limited to Withholding Tax Returns.

She further testified that upon receipt of the undated LOA, petitioner coordinated with the assigned Revenue Officers and submitted books of accounts, accounting records, tax returns and other pertinent documents required by the BIR. Thereafter, the BIR issued a Report of Investigation finding petitioner liable for deficiency IT and VAT. In the series of Informal Conferences conducted, petitioner maintained that it was not liable for any deficiency tax for taxable year 2006. Subsequently, the BIR issued the PAN dated September 23, 2010, to which petitioner protested on October 12, 2010.

Petitioner received the FAN dated November 18, 2011 covering the taxable year 2006 only on November 23, 2011, to which petitioner protested on December 9, 2011.

On July 10, 2013, petitioner received the FDDA dated May 31, 2013, denying its protest and reiterating the assessment for internal revenue taxes contained in the FAN. She believes that the subject assessment lacks factual and legal bases and respondent's right to assess petitioner for taxable year 2006 has already prescribed.

ICPA **Michael L. Aguirre** testified[15] that based on his audit, the deficiency tax assessment issued against petitioner for taxable year 2006 should be reduced to: (1) IT - ₱418,319.77; (2) VAT - ₱229,485.48; and (3) EWT - ₱9,022.19.

After formal offer of its exhibits[16], petitioner rested its case.

[15] Exhibits "P-16" and "P-17".
[16] Docket, pp. 422-1178.

For her part, respondent presented BIR group supervisor, Liza C. Dimaya[17] and Revenue Officer I of the Revenue District Office No. 51, Pasay City, Florentino A. Guarino III[18].

Witness **Liza C. Dimaya** testified[19] that petitioner's case was assigned to her and Revenue Officer (RO) Victoria M. Cubillo for reinvestigation as a consequence of petitioner's filing of a protest letter on October 13, 2010.

In view of the said assignment, they collated and examined all the documents/requirements submitted by petitioner. Thereafter, they prepared a Memorandum Report dated October 13, 2011, reiterating the original findings with recommendation for issuance of a FAN. On November 18, 2011, Assessment Notices and FAN with Details of Discrepancies were issued to which petitioner filed a protest on December 9, 2011.

In view of the protest, the case was referred back to her with instruction to have it forwarded to RO Florentino A. Guarino III for the reinvestigation of petitioner's internal revenue tax liabilities for calendar year 2006 under her supervision. Despite notice, petitioner failed to present within the prescribed period the required documents and records for verification and evaluation. Hence, the findings in the FAN were reiterated and per their recommendation, the assailed FDDA with attached Details of Discrepancies dated May 31, 2013 was issued to petitioner.

Contrary to petitioner's claim, respondent's right to assess petitioner for taxable year 2006 has not prescribed as petitioner executed several Waivers of the Defense of Prescription.

Revenue Officer Florentino A. Guarino III merely corroborated the testimony of his supervisor Liza C. Dimaya.

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[17] Minutes of the Hearing dated November 13, 2014, docket, p. 2267.
[18] Minutes of the Hearing dated February 5, 2015, docket, p. 2268.
[19] Exhibit "R-16", docket, pp. 243-254.

In the Resolution[20] dated April 7, 2015, respondent was declared to have rested its case.

THE ISSUES

The following issues were submitted by the parties for the resolution of the Court:[21]

1. Whether or not the BIR's right to assess petitioner for taxable year 2006 has prescribed;

2. Whether or not petitioner filed the instant petition on time pursuant to Section 228 of the NIRC of 1997, as amended; and

3. Whether or not petitioner is liable for the alleged deficiency internal revenue taxes for Income Tax, Value Added Tax and Expanded Withholding Tax, all for taxable year 2006.

The foregoing may however be summed up into one issue, to wit:

> WHETHER PETITIONER IS LIABLE FOR DEFICIENCY IT, VAT, AND EWT FOR TAXABLE YEAR 2006 IN THE AGGREGATE AMOUNT OF ₱38,040,049.98.

Petitioner's arguments:

Petitioner claims that the assessment issued by respondent has no force and effect having been issued beyond the three year period to assess. For the alleged deficiency IT, petitioner had a period of three (3) years from April 15, 2007 (the last day of filing of income tax return for calendar year 2006), or until April 15, 2011 to assess petitioner for any deficiency IT. But the FAN itself shows

[20] Docket, p. 2289.
[21] Pre-Trial Order, docket, p.380.

that it was issued on November 18, 2011, hence, it was issued beyond the period allowed by law. The same is true with EWT and VAT as respondent had until January 15, 2010 and January 25, 2010, respectively, to issue the said deficiency tax assessments.

Apart from prescription, the assessment for taxable year 2006 is also null and void since the ROs who conducted the audit were not empowered or armed with the requisite LOA, which is the official document authorizing the specific ROs to conduct examination of the taxpayer's books of accounts and accounting records to determine the taxpayer's internal revenue tax liabilities, if any, for a particular taxable period. In the present case, Group Supervisor Liza C. Dimaya and RO Florentino A. Guarino III, acted without authority as their names were not indicated in LOA for the examination of petitioner's internal revenue taxes for taxable year 2006.

Assuming for the sake of argument that the FAN had been validly issued and prescription had not set in, petitioner strongly claims that it incurred no deficiency IT, VAT, and EWT.

Respondent's arguments:

Contrary to petitioner's claim, the assessment against petitioner for taxable year 2006 was issued within the prescriptive period in view of the several "Waivers" of the defense of prescription duly executed by petitioner, says respondent. Further, the ten (10) year prescriptive period under Section 222 (a) of the Tax Code should apply as petitioner failed to file the required return for taxable year 2006.

Moreover, petitioner was assessed for deficiency IT, VAT and EWT for taxable year 2006 due to its failure to submit supporting documents to overcome her findings shown in the Details of Discrepancies attached to the PAN, FAN and the assailed FDDA. Her assessment is prima facie presumed correct and made in good faith; and that the taxpayer has the duty to prove otherwise, which petitioner failed to do.

THE COURT'S RULING

Settled is the rule that a void assessment bears no valid fruit.[22]

In the instant case, petitioner claims that the assessment issued against it for alleged tax deficiencies for taxable year 2006 is null and void since the ROs who conducted the audit and examination of its books of accounts and other accounting records are not empowered or armed with the requisite LOA. On this regard Section 6(A) in relation to Section 13 of the National Internal Revenue Code (NIRC) of 1997, as amended, is instructive:

> SECTION 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
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> (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/her] 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
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> xxx xxx xxx
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> SECTION 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,

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[22] *Commissioner of Internal Revenue v. Reyes*, 516 Phil. 176, 189-190 (2006).

> **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. (*Emphases supplied*)

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc. (Sony Case),*[23] the Supreme Court discussed the significance of the said LOA in the conduct of audit by the appropriate RO, thus:

> Based on Section 13 of the Tax Code, a Letter of Authority or 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. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
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> xxx xxx xxx
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> 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**. (*Boldfacing supplied*)

In the instant case, the examination of petitioner's books of accounts and other accounting records for internal

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[23] G.R. No. 178697, November 17, 2010.

revenue taxes for taxable year 2006 was authorized under LOA No. 62393, dated August 6, 2007, which specifically named RO **Iluminada Portento** under GS **Conchita Ladrera** of RDO No. 51, Pasay City, as the ROs to conduct the examination.

Evidence however show that it was RO Victoria M. Cubillo, then RO Florentino A. Guarino III and GS Benedicto O Santiago, Jr., then GS Liza C. Dimaya, who conducted the investigation and examination of petitioner's books of accounts and other accounting records for internal revenue taxes for taxable year 2006. This finding is evident in the (1) **Third and Final Notice**[24] dated June 4, 2009, signed by RDO Josephine S. Virtucio, stating that "*Revenue Officer Victoria M. Cubillo is assigned to conduct the investigation of your tax liabilities has reported to me that up to this writing, you have not presented the needed records to her/him for examination despite his/her repeated requests*"; (2) Undated **Audit Report**[25] signed by RO Victoria M. Cubillo and noted by GS Benedicto O. Santiago, Jr., addressed to RDO Josephine S. Virtucio, recommending that petitioner's case docket be forwarded to the Assessment Division for further review and issuance of another post reporting notice; (3) **Revenue Officer's Activity Report** signed by RO Victoria M. Cubillo and noted by GS Benedicto O. Santiago, Jr., showing the total number of hours incurred in the audit of petitioner's internal revenue taxes for taxable year 2006; (4) **Letter**[26] dated March 29, 2010, signed by RDO Josephine S. Virtucio and addressed to petitioner, informing the latter that the report of investigation under LOA No. 62393 has been submitted to her by RO Victoria M. Cubillo under GS Benedicto O. Santiago, Jr.; (5) **Letter** dated October 13, 2011, signed by RO Victoria M. Cubillo and noted by GS Liza C. Dimaya, recommending the reiteration of the original findings and the issuance of Assessment Notice (Formal Assessment Notice); (6) **Memorandum of Assignment No. RR8-051-PRO-01-012-000802**[27], signed by OIC-RDO Corazon M. Montes, referring petitioner's case docket to RO Florentino A. Guarino III under GS Liza C. Dimaya, for reinvestigation in relation to the protest filed by

[24] BIR Record, p. 5.
[25] BIR Record, pp. 264-265.
[26] BIR Record, p. 247.
[27] Exhibit "R-6", BIR Record, p. 609.

petitioner; and the (7) **Letter**[28] dated April 5, 2013, signed by RO Florentino A. Guarino III and noted by GS Liza C. Dimaya, recommending the reiteration of the findings indicated the FAN dated November 18, 2011 and for the immediate enforcement of collection remedies provided by law.

On the other hand, there is nothing in the record that shows that ROs Victoria M. Cubillo and Florentino A. Guarino and GSs Benedicto O. Santiago, Jr. and Liza C. Dimaya, were authorized, by way of an LOA to audit petitioner for internal revenue taxes for taxable year 2006.

Significantly, respondent's own witnesses RO Florentino A. Guarino and GS Liza C. Dimaya admitted that they were not armed or issued with an LOA, in the following manner:

Testimony[29] *of RO Florentino A. Guarino III*

Justice Bautista
Yes. I have a question to the witness. You were issued a letter of authority to investigate the account of Ithiel Corporation?

Mr. Guarino
Yes, your Honors.

Justice Liban
You were issued a ... Interrupted

Justice Liban
You were issued an LOA?

Mr. Guarino
A memorandum report.

Justice Bautista
Memorandum report.

Mr. Guarino
An assignment, memorandum.

[28] Exhibit "R-8", BIR Record, p. 619.
[29] TSN, February 5, 2015, pp. 10-14.

Justice Liban
Memorandum of Assignment

Justice Bautista
What is the basis of your assignment, the memorandum of assignment?

Mr. Guarino
Ithiel Corporation, your Honors, requested for reinvestigation.

Justice Bautista
Memorandum of assignment signed by the RDO. Now the question is, is the RDO authorized to sign to assign you to investigate this case?

Mr. Guarino
Yes, your Honors.

Justice Bautista
On what ground? On what provision of the Tax Code? I thought LOAs are only signed by the Director, not the RDO?

Justice Liban
The memorandum of assignment was signed by Corazon ... Interrupted

Justice Bautista
The RDO, not the Director.

Justice Liban
The RDO, OIC-RDO.

Mr. Guarino
OIC-RDO.

Justice Liban
The assignment, memorandum of assignment.

Justice Bautista
So what was the basis of the memorandum of assignment signed

by the RDO? What was her basis? What provision of the law?

Mr. Guarino
The basis is the letter of authority issued by our OIC-Regional Director ... Interrupted

Justice Bautista
You're issued an LOA, letter of authority by the Director?

Mr. Guarino
Yes ... Interrupted

Justice Bautista
Or this was assigned to you by virtue of a memorandum of assignment?

Justice Liban
The question is, were you issued an LOA or was the case was (sic) assigned to you by virtue of a memorandum of assignment?

Mr. Guarino
Yes, your Honors. It was reassigned to me.

Justice LIban
It was reassigned to you.

Justice Bautista
It was reassigned to you. What was the basis?

Mr. Guarino
Memorandum of assignment.

Justice Bautista
What was the basis of the assignment? What provision of the tax law? Because LOAs must be signed by the Director, not the RDO.

Justice Liban
If you do not know, just say so.

Mr. Guarino
I think, your Honors ... Interrupted

Justice Bautista
You referred this case to what?

Justice Liban
If you do not know, just say so you don't know.

Mr. Guarino
Yes, your Honors. I do not know.

Testimony[30] *of GS Liza C. Dimaya*

Justice Bautista
Q. Your name was also put in that LA?

Ms. Dimaya
A. In the re-grouping, your Honors.

Justice Bautista
Q. In the reviewed?

Ms. Dimaya
A. Yes, your Honors.

Justice Bautista
Q. But not in the LA?

Ms. Dimaya
A. Yes, your Honors.

Justice Bautista
Q. So you were not authorized to conduct the investigation, because the LA was not issued to you?

Ms. Dimaya
A. It's not issued to me.

[30] TSN, November 13, 2014, p. 21.

It must be stressed that an ordinary letter, such as a letter-request for presentation of documents incorporating therein an assignment to audit as the one issued to RO Victoria M. Cubillo, or a Memorandum of Assignment similar to that issued to RO Florentino A. Guarino III; is not a valid substitute for a Letter of Authority or LOA to authorize the RO to examine a taxpayer's books of accounts and other accounting records in relation to his/her tax liabilities.

In fact, issuance of a referral memorandum for the purpose of audit examination is strictly prohibited under Revenue Memorandum Order (RMO) No. 12-2007 dated July 3, 2007, which states:

> II. Coverage
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> Unless entitled to the benefits provided under Revenue Regulations No. 6-2005, as amended, this Order shall cover the audit/investigation of 2006 internal revenue tax returns, including those of fiscal period taxpayers whose taxable year ended on any month after June 30, 2006 but before Dec. 31, 2006. No audit of 2005 tax returns shall be initiated, except for cases involving claims for tax credit/refund, estate tax returns and requests for tax clearance of taxpayers due to retirement of business which have to be acted upon immediately, unless prior written approval is secured from the Commissioner, through the Deputy Commissioner, Operations Group.
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> xxx xxx xxx
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> IV. Policies and Procedures
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> xxx xxx xxx
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> 17. **The practice of issuing mission orders, correspondence letters, referral memoranda or any other similar orders for the purpose of audit examination and assessment of internal revenue**

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> **taxes is hereby strictly prohibited**. For purposes of surveillance, stocktaking, TCVD or any similar purpose, the issuance of mission orders shall be governed by the pertinent revenue issuances issued for that purpose. (*Emphases supplied*)

Thus, considering the doctrine laid down in the *Sony case*, since RO Victoria M. Cubilla and later on RO Florentino A. Guarino III were not authorized to examine petitioner's internal revenue taxes for taxable year 2006, the resultant deficiency IT, VAT, and EWT are a nullity.

Since the subject deficiency tax assessments are clearly void for lack of authority of the examining ROs, discussion on the other issues raised becomes unnecessary.

WHEREFORE, the Petition for Review filed by Ithiel Corporation is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment (FDDA) dated May 31, 2013, assessing Ithiel Corporation with deficiency Income Tax, Value-Added Tax, and Expanded Withholding Tax in the aggregate amount of **THIRTY EIGHT MILLION FORTY THOUSAND FORTY NINE and 98/100 (₱38,040,049.98)**, inclusive of interests and surcharges, is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice