REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

WATSONS PERSONAL CARE STORE (PHILIPPINES), INC. *Petitioner,*	**CTA Case No. 9303**
	Members:
-versus-	**DEL ROSARIO**, *P.J., Chairperson,* **FABON-VICTORINO**, *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:
	JUN 11 2020 : 1:08 pm

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D E C I S I O N

MANAHAN, J.:

This involves a *Petition for Review* filed by Watson's Personal Care Store (Philippines), Inc. (Watsons) on March 18, 2016, praying for the cancellation and setting aside of respondent Commissioner of Internal Revenue's (CIR) decision, upholding the assessments for alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), final withholding tax (FWT), final withholding value-added tax (FWVAT), and documentary stamp tax (DST) for taxable year (TY) 2010 in the aggregate amount of ₱430,178,268.13, inclusive of penalties and interest.[1]

THE PARTIES

[1] Summary of the Case, Pre-Trial Order dated October 10, 2016, Docket – Vol. III, p. 856.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of Republic of the Philippines.[2]

It is primarily engaged in the business of trading goods, on wholesale and retail basis, such as, but not limited to, all kinds of drugs, medicines, chemicals, hospital equipment, physician's supplies, cosmetics, beauty and health products, perfumes, toilet articles, and other related products, and for this purpose, to operate drugstores and health and beauty stores; to import, acquire, hold, own, sell, assign, transfer, invest, trade, deal in or deal with any and all kinds of products or merchandise.[3] It is a registered taxpayer with the Bureau of Internal Revenue (BIR) under Certificate of Registration No. OCN RC0000018109 dated November 28, 2001.[4]

Respondent is being sued in his official capacity as the Commissioner of Internal Revenue, having been duly appointed to exercise the powers and perform the duties of his office, including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the Tax Code, with office address at Room 703, 7th Floor, Bureau of Internal Revenue (BIR) National Office Bldg., BIR Road, Diliman, Quezon City.[5]

THE FACTS

A Letter of Authority (LOA) (No. LOA-116-2011-00000089) (SN: eLA201100002910) dated September 19, 2011 was issued by Mr. Alfredo Misajon, OIC-Assistant Commissioner for the Large Taxpayers (LT) Service of the BIR,[6] authorizing revenue officers, namely, Ms. Meliza Wepee, Mr. Reynoso Bravo, Mr. William Sundiam, Mr. Miguel Sulit, Ms. Maribel Serafica, and Group Supervisor (GS) Wilfredo Reyes, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2010 to December 31, 2010. Petitioner received the said LOA on September 23, 2011.[7]

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[2] Exhibit "P-1", Docket – Vol. III, p. 924.
[3] Exhibit "P-2", Docket – Vol. III, p. 927.
[4] Exhibit "P-3", Docket – Vol. III, p. 941.
[5] Pars. 2 and 3, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. III, pp. 847 to 848.
[6] Exhibit "P-4", Docket – Vol. III, p. 942; Exhibit "R-1", BIR Records – Folder 2, pp. 425.
[7] *Id.*

On February 25, 2013, Mr. Cesar D. Escalada, Chief of the Regular LT Audit Division 1 of the BIR, issued a Memorandum of Assignment (MOA) No. LOA-116-2013-0404,[8] referring petitioner's case/docket to Revenue Officer (RO) Jennifer L. Almedilla and Group Supervisor Marivic P. Bautista for the continuation of the audit/investigation to replace the previously assigned revenue officer(s) who resigned/retired/transferred to another district office.

Petitioner executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (waiver) on April 1, 2013 which was accepted by the BIR on August 13, 2013.[9]

Thereafter, several subsequent waivers were executed by petitioner and the same were accepted by the BIR.[10]

On October 1, 2014, a Preliminary Assessment Notice (PAN) with Details of Discrepancies was issued by the BIR,[11] finding petitioner liable for deficiency IT, VAT, EWT, WTC, FBT, FWT, FWVAT, and DST in the total amount of ₱1,853,098,467.87. The said PAN was received by petitioner on October 3, 2014.[12]

Upon the recommendation of RO Almedilla, together with ROs Ferly Ann B. Paez and Vivien C. Guillermo,[13] the BIR subsequently issued the Formal Letter of Demand with Details of Discrepancies and Audit Result/Assessment Notices (FLD-FAN), all dated December 17, 2014,[14] assessing petitioner for deficiency IT, VAT, EWT, WTC, FBT, FWT, FWVAT, and DST for TY 2010 in the aggregate amount of ₱1,458,397,439.46.

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[8] Exhibit "R-3", BIR Records – Folder 2, p. 426.
[9] Exhibit "P-29", Docket – Vol. II, p. 674; Exhibit "R-6", BIR Records – Folder 2, p. 508.
[10] Exhibits "R-7", "R-8", and "R-9", BIR Records – Folder 2, pp. 509 to 511; Exhibit "R-8-A", Docket – Vol. IV, p. 1528.
[11] Exhibit "P-6", Docket – Vol. III, pp. 951 to 961; Exhibit "R-10", BIR Records – Folder 2, pp. 609 to 619.
[12] *Id.*
[13] Exhibit "R-11", BIR Records – Folder 2, pp. 649 to 653.
[14] Exhibit "P-7", Docket – Vol. I, pp. 104 to 122, and Docket – Vol. III, pp. 962 to 980; Exhibit "R-12", BIR Records - Folder 2, pp. 655 to 673.

Petitioner received the FLD-FAN on December 22, 2014[15] and filed a protest against said FLD-FAN on January 21, 2015.[16]

On November 3, 2015, petitioner received the Final Decision on Disputed Assessment (FDDA) with Details of Discrepancies and Audit Result/Assessment Notice, all dated November 2, 2015,[17] issued by the BIR, reducing the aggregate amount of the assessments to ₱430,178,268.13.

Petitioner then filed a request for reconsideration on the said FDDA dated December 3, 2015 which was denied by the respondent in a letter dated February 16, 2016.[18]

From said denial, petitioner filed the instant Petition for Review on March 18, 2016.[19] The instant case was initially raffled to this Court's Second Division.

Respondent filed his Answer to the Petition for Review on June 15, 2016,[20]

The Court initially set this case for pre-trial conference on July 21, 2016.[21] However, upon motion of petitioner,[22] the pre-trial conference was rescheduled to, and was held on, September 15, 2016.[23]

Respondent's Pre-Trial Brief was submitted on September 5, 2016,[24] and the Pre-Trial Brief for the Petitioner was filed on September 13, 2016.[25]

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[15] *Id.*

[16] Exhibit "P-8", Docket – Vol. III, pp. 981 to 1018.

[17] Exhibits "P-9" to "P-9-h", Docket – Vol. III, pp. 1019 to 1034; Exhibit "R-13", BIR Records – Folder 2, pp. 821 to 836.

[18] Exhibit "P-10", Docket – Vol. III, p. 1035; Exhibit "R-14", BIR Records – Folder 1, p. 247.

[19] Docket – Vol. I, pp. 10 to 38.

[20] Docket – Vol. I, pp. 403 to 411.

[21] Notice of Pre-Trial Conference dated June 26, 2016, Docket – Vol. I, pp. 413 to 414.

[22] *Motion for Cancellation of the July 21, 2016 Pre-Trial Conference*, Docket – Vol. 1, pp. 415 to 417; Order dated June 28, 2016, Docket – Vol. I, p. 419; *Motion for Cancellation of the August 18, 2016 Pre-Trial Conference*, Docket – Vol. I, pp. 420 to 422.

[23] Order dated August 11, 2016, Docket – Vol. I, p. 424; Minutes of the hearing held on, and Order dated, September 15, 2016, Docket – Vol. III, pp. 841 to 843.

[24] Docket – Vol. II, pp. 425 to 429.

[25] Docket – Vol. II, pp. 822 to 830.

The parties submitted their Joint Stipulation of Facts and Issues (JSFI) on September 30, 2016.[26] Consequently, the Court issued a Pre-Trial Order on October 10, 2016,[27] approving the said JSFI and considered the pre-trial terminated.

Trial of the case then ensued.

During trial, petitioner set forth its documentary and testimonial evidence. For its testimonial evidence, petitioner offered the testimony of the following individuals, namely: (1) Ms. Marryann A. Roxas,[28] petitioner's Senior Accounting Manager; (2) Mr. Christian Aldrin F. Bibat,[29] petitioner's Audit Supervisor; (3) Ms. Shirley U. Rubia,[30] petitioner's Senior Operations Manager; (4) Mr. Elrey T. Ramos,[31] the Court-commissioned Independent Certified Public Accountant (ICPA);[32] (5) Ms. Analou M. Romero,[33] petitioner's Senior Accounting Manager; (6) Ms. Rosemarie A. Alcaraz,[34] petitioner's Accounting Manager; and (7) Ms. Marites R. Detera,[35] petitioner's Senior Accounting Managers.

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[26] Docket – Vol. III, pp. 847 to 854.

[27] Docket – Vol. III, pp. 856 to 862.

[28] Exhibit "P-33", Docket – Vol. II, pp. 812 to 821; Minutes of the hearing held on, and Order dated, October 26, 2016, Docket – Vol. III, pp. 902, and 1044 to 1045.

[29] *Judicial Affidavit of Christian Aldrin F. Bibat*, Docket – Vol. II, pp. 451 to 459; Minutes of the hearing held on, and Order dated, November 16, 2016, Docket – Vol. III, pp. 1055 to 1056.

[30] Exhibit "P-13", Docket – Vol. II, pp. 834 to 840; Minutes of the hearing held on, and Order dated, December 14, 2016, Docket – Vol. III, pp. 1067 to 1068.

[31] *Judicial Affidavit of Elrey T. Ramos*, Docket – Vol. III, pp. 866 to 873; Minutes of the hearing held on, and Order dated, October 26, 2016, Docket – Vol. III, pp. 902, and 1044 to 1045; Exhibit "P-75", Docket – Vol. III, pp. 1147 to 1184; Minutes of the hearing held on, and Order dated, February 22, 2017, Docket – Vol. IV, pp. 1185 to 1185.

[32] *Oath of Commission* dated October 16, 2016, Docket – Vol. III, p. 903; Docket – Vol. II, pp. 473 to 475; Minutes of the hearing held on, and Order dated, October 26, 2016, Docket – Vol. III, pp. 902 and 1044 to 1045.

[33] *Amended Judicial Affidavit of Analou M. Romero*, Docket – Vol. III, pp. 907 to 923; Minutes of the hearing held on, and Order dated, November 16, 2016, Docket – Vol. III, pp. 1055 to 1056.

[34] *Judicial Affidavit of Rosemarie A. Alcaraz*, Docket – Vol. II, pp. 440 to 447; Minutes of the hearing held on, and Order dated, November 16, 2016, Docket – Vol. III, pp. 1055 to 1056.

[35] *Judicial Affidavit of Marites R. Detera*, Docket – Vol. II, pp. 479 to 500; Minutes of the hearing held on, and Order dated December 14, 2016, Docket – Vol. III, pp. 1067 to 1068.

After the ICPA's requests for extension of time were granted,[36] the same submitted the ICPA Report on January 24, 2017.[37]

The Formal Offer of Evidence for the Petitioner was filed on March 8, 2017 [38] with respondent's Comment (Re: Petitioner's Formal Offer of Exhibits) filed on March 13, 2017.[39]

In the Resolution dated May 9, 2017, [40] the Court admitted petitioner's exhibits, *except* for the following:

1) Exhibits "P-36", "P-38", "P-38-1" to "P-38-3", "P-39", and "P-53-1.1", for failure to identify the exhibits; and

2) Exhibits "P-54-3.145", "P-54-5.12", "P-54-5.14", "P-54-5.15", "P-54-5.21", "P-54-5.22", "P-54-5.23", "P-55-4", "P-55-9", "P-55-11", "P-55-18", "P-55-23", "P-55-31", "P-55-45", "P-55-48", "P-55-51", "P-55-55", "P-55-57", "P-55-66", "P-55-72", "P-55-77", "P-55-81", "P-55-85", "P-55-91", "P-55-95", "P-55-102", "P-55-110", "P-55-113", "P-55-115" to "P-55-148", "P-55-150", "P-55-155", "P-55-160", "P-55-165", "P-55-174", "P-55-176", "P-55-182", "P-55-187", "P-55-192", "P-55-198", "P-55-204", "P-55-208", "P-55-213", "P-55-220", "P-55-227", "P-55-230", "P-55-235", and "P-55-239" to "P-55-243", for not being found in the records of the case.

Consequently, petitioner filed an Omnibus Motion (a) For Partial Reconsideration of the Honorable Court's Resolution dated May 9, 2017; (b) To Allow the Re-submission of documents which were denied admission, and (c) To Recall the ICPA as Witness on May 25, 2017.[41] Respondent did not comment on the same.[42]

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[36] *Motion for Extension of Time to Submit the ICPA Report*, Docket – Vol. III, pp. 1061 to 1063; Order dated November 24, 2016, Docket – Vol. III, p. 1066; *Motion for Extension of Time to Submit the Report of the ICPA*, Docket – Vol. III, pp. 1071 to 1073; Order dated January 9, 2017, Docket – Vol. III, p. 1077.
[37] Exhibit "P-73", Docket – Vol. III, pp. 1084 to 1143.
[38] Docket – Vol. IV, pp. 1192 to 1219.
[39] Docket – Vol. IV, pp. 1374 to 1376.
[40] Docket – Vol. IV, pp. 1406 to 1408.
[41] Docket – Vol. IV, pp. 1419 to 1425.
[42] Records Verification dated June 23, 2017 issued by this Court's Judicial Records Division, Docket – Vol. IV, p. 1431.

The BIR Records for this case was forwarded to this Court on May 12, 2017,[43] which the Court noted.[44]

Thereafter, the Court allowed petitioner to resubmit its denied exhibits.[45] Petitioner then submitted anew a compact disc (CD) containing the denied exhibits.[46]

In the Resolution dated September 25, 2017,[47] the Court subsequently admitted petitioner's Exhibits "P-54-3.145", "P-54-5.12", "P-54-5.14", "P-54-5.15", "P-54-5.21", "P-54-5.22", "P-54-5.23", "P-55-4", "P-55-9", "P-55-11", "P-55-18", "P-55-23", "P-55-31", "P-55-45", "P-55-48", "P-55-51", "P-55-55", "P-55-57", "P-55-66", "P-55-72", "P-55-77", "P-55-81", "P-55-85", "P-55-91", "P-55-95", "P-55-102", "P-55-110", "P-55-113", "P-55-115" to "P-55-148", "P-55-150", "P-55-155", "P-55-160", "P-55-165", "P-55-174", "P-55-176", "P-55-182", "P-55-187", "P-55-192", "P-55-198", "P-55-204", "P-55-208", "P-55-213", "P-55-220", "P-55-227", "P-55-230", "P-55-235", and "P-55-239" to "P-55-243"; however, the admission of Exhibits "P-36", "P-38", "P-38-1" to "P-38-3", "P-39", and "P-53-1.1" was still denied.

Respondent then presented his documentary and testimonial evidence. For his testimonial evidence, respondent proffered the sole testimony of Ms. Jennifer A. Potot,[48] Revenue Officer III.

On November 9, 2017, respondent filed a Motion to Admit Attached Formal Offer of Evidence.[49] Petitioner then submitted its Comment [To the Respondent's Motion to Admit Attached Formal of Evidence] on December 1, 2017.[50]

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[43] *Manifestation (Re: Submission of BIR Records)*, Docket – Vol. IV, pp. 1411 to 1412.
[44] Minute Resolution dated May 15, 2017, Docket – Vol. IV, p. 1416.
[45] Resolution dated July 15, 2017, Docket – Vol. IV, pp. 1435 to 1437.
[46] Commissioner's Report dated August 7, 2017, Docket – Vol. IV, p. 1438.
[47] Resolution dated September 25, 2017, Docket – Vol. IV, pp. 1442 to 1444.
[48] Exhibit "R-15", Docket – Vol. IV, pp. 1387 to 1399; Minutes of the hearing held on, and Order dated, October 23, 2017, Docket – Vol. IV, pp. 1445 to 1446; Exhibit "R-15-b", Docket – Vol. IV, pp. 1523 to 1527; Minutes of the hearing held on, and Order dated, February 26, 2019, Docket – Vol. IV, pp. 1528-A to 1528-C and 1529 to 1531.
[49] Docket – Vol. IV, pp. 1448 to 1453.
[50] Docket – Vol. IV, pp. 1468 to 1470.

As the Court granted the Motion to Admit Attached Formal Offer of Evidence of respondent,[51] the latter's *Formal Offer of Evidence* was admitted,[52] and subsequently, petitioner filed its Comment [To the Respondent's Formal Offer of Evidence] on February 2, 2018.[53]

In the Resolution dated May 30, 2018,[54] respondent's exhibits were admitted, *except* Exhibit "R-8", which was denied for failure to present the original for comparison. Consequently, respondent filed an Omnibus Motion for 1. Partial Reconsideration Re: Resolution dated 30 May 2018; and to 2. Defer Submission of Memoranda on June 20, 2018.[55] The Court then held in abeyance the submission of the parties' memoranda.[56] Petitioner filed its Comment [on Respondent's Omnibus Motion dated June 20, 2018] on July 13, 2018.[57]

Subsequently, the Court allowed respondent to recall his witness, Ms. Jennifer A. Potot.[58]

Pursuant to the Court's Order dated September 24, 2018,[59] the instant case was transferred to this Court's Second Division.

On March 1, 2019, respondent's Supplemental Formal Offer of Evidence was submitted.[60] Petitioner filed its Comment [On the Respondent's Supplemental Formal Offer of Evidence] on March 6, 2019.[61] The Court resolved to grant respondent's Motion for Partial Reconsideration, thus, admitting Exhibit "R-8-A" in evidence.[62]

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[51] Resolution dated December 12, 2017, Docket – Vol. IV, pp. 1472 to 1473; *Compliance*, Docket – Vol. IV, pp. 1474 to 1475; Resolution dated January 24, 2018, Docket – Vol. IV, pp. 1480 to 1481.
[52] Docket – Vol. IV, pp. 1455 to 1465.
[53] Docket – Vol. IV, pp. 1482 to 1489.
[54] Docket – Vol. IV, pp. 1491 to 1492.
[55] Docket – Vol. IV, pp. 1493 to 1497.
[56] Resolution dated June 29, 2018, Docket – Vol. IV, p. 1502; Resolution dated August 7, 2018, Docket – Vol. IV, pp. 1507 to 1509.
[57] Docket – Vol. IV, pp. 1503 to 1505.
[58] Resolution dated August 7, 2018, Docket – Vol. IV, pp. 1507 to 1509.
[59] Docket – Vol. IV, p. 1515.
[60] Docket – Vol. IV, pp. 1533 to 1535.
[61] Docket – Vol. IV, pp. 1537 to 1539.
[62] Resolution dated April 22, 2019, Docket – Vol. IV, pp. 1543 to 1545.

On May 31, 2019, respondent filed a Manifestation,[63] manifesting that that he is adopting the arguments he raised in his Answer as his Memorandum. On the other hand, the Memorandum for the Petitioner was received by the Court on June 6, 2019.[64]

The instant case was submitted for decision on June 13, 2019.[65]

THE ISSUES

The parties stipulated the following issue for this Court's resolution, to wit:

> "Whether or not petitioner is liable for the assessed deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, Compensation Withholding Tax, Final Withholding Tax, Final Withholding VAT, and Documentary Stamp Tax for taxable year 2010 in the amount of Php430,178,268.13, inclusive of interest and penalties."[66]

Petitioner's arguments:

Petitioner contends that it was assessed for deficiency income tax due to the following findings of respondent: (1) disallowed bad debts in the total amount of ₱19,045,368.31; (2) disallowed shrinkages and losses of inventories in the aggregate total of ₱58,731,086.99; (3) disallowed expenses claimed as deductions per income tax return (ITR) totaling ₱131,896,338.31; (4) disallowed expenses for non-withholding of tax in the total amount of ₱355,523,729.85; (5) disallowed vendor support income allocated to Marionnaud Philippines, Inc. (MPI) in the aggregate amount of ₱87,386,991.00; (6) excess tax credits carried over to the succeeding year in the amount of ₱18,443,929.08; and (7) excess of minimum corporate income tax (MCIT) over ITR in the amount of ₱45,559,684.92.

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[63] Docket – Vol. IV, pp. 1546 to 1547.
[64] Docket – Vol. IV, pp. 1549 to 1594.
[65] Resolution dated June 13, 2019, Docket – Vol. IV, p. 1596.
[66] Issues, JSFI, Docket – Vol. III, p. 848.

According to petitioner, respondent disallowed petitioner's bad debts to be deducted in its Annual ITR for failure to prove the deductibility of the same. Petitioner further posits that the receivables written-off are allegedly not traditional receivables coming from sales or trade, but are vendor's support/rebates from suppliers which petitioner anticipated to be subsequently collected, and which have been recorded in its books as income with the corresponding reduction of the payables to the suppliers. Petitioner explains that the transaction is not an actual write-off but a reversal of the income that was previously recognized by the petitioner; hence, rather than reversing the vendor support income, it recognized an expense to reflect the actual income of petitioner. Allegedly, out of the total disallowed bad debt of ₱19,045,368.31, the ICPA was able to extract from the records and confirmed from the reviewed schedule and aging report the total amount of ₱18,280,420, which included the bulk of past due accounts in 2006, 2007 and 2008.

With respect to the disallowance of shrinkages & losses of inventories, petitioner claims that it sufficiently proved that its inventory losses are actual losses not compensated by insurance, and therefore, valid business deductions and properly supported by documents. The ICPA allegedly validated in his report that the ₱50,806,418.85 amount of losses was not compensated by insurance or other forms of indemnity. Petitioner asserts that the disallowance of miscellaneous expenses claimed as deductions per ITR totaling to ₱131,896,338.31 were allowable deductions. The alleged miscellaneous expense amounting to ₱129,519,147.00 pertains to vendor support allocated to Family Health and Beauty Corp., which petitioner claims complied with the deductibility requirement of the same; while the remaining ₱2,377,191.31 was confirmed by the ICPA as payment of interest on the amended VAT return for TY 2009 and corresponding interest charges paid in 2010.

As regards the disallowed expenses for non-withholding of tax in the total amount of ₱355,523,729.85, petitioner alleges that it represented the amounts reported in different periods (₱123,947,445.63) and amounts not subjected to EWT (₱173,027,934.59). Petitioner submits that since the corresponding EWT were allegedly paid, the amount of

₱123,947,445.63 should not be disallowed as petitioner's purchases. Although the amount of ₱173,027,934.59 representing various purchases and expenses were inadvertently not subjected to withholding tax, petitioner expresses that the same was allegedly paid on March 17, 2016.

Further, petitioner alleges that the disallowance of vendor support income allocated to MPI in the aggregate amount of ₱87,386,991.00 lacks factual and legal basis; that as to the excess tax credits carried over to the succeeding year in the amount of ₱18,443,929.08, the same has already been paid to the government considering that such was an overpayment from the alleged viewpoint of petitioner when it paid its income tax liability per its filed ITR for year 2010; and that to deduct such credits in 2010 on the assumption that the same was claimed as tax credits in the succeeding year instead of applying the same to the taxable year under present audit, will allegedly lead to an absurd situation wherein interest started to accrue at the close of CY 2010 and imposed on a portion of the alleged deficiency tax liability which was in fact already paid. Petitioner believes that the adjustment made by respondent in the computation of the total deficiency income tax assessed due to excess of MCIT over income tax per return in the amount of ₱45,559,684.92, is improper and should be reversed.

Petitioner insists that for failure to properly compute its alleged deficiency VAT liability on a per quarter basis, as required by law, it necessarily follows that the entire deficiency VAT assessment has no legal basis and must be declared void. As to the deficiency EWT and WTC, petitioner points out that the assessment lacks a solid mathematical computation and since the said computation was not made on a monthly basis, it was not apprised of which portions of the assessed EWT pertain to which month. In conclusion, petitioner assails the assessment for deficiency FWT as being bereft of factual and/or legal bases, as well as the assessment for deficiency FWVAT and DST.

Respondent's counter-arguments:

In his Answer filed on June 15, 2016, respondent interposed the following Special and Affirmative Defenses, to wit:

"SPECIAL AND AFFIRMATIVE DEFENSES

4. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defense.

Petitioner is liable for deficiency Income Tax.

A. Disallowed Bad Debts - ₱19,045,368.

5. Petitioner claimed that the bad debts it deducted to its income were from (a) inactive suppliers, (b) disputed by its suppliers and (c) written off in 2010 but was reversed in 2011.

6. However, petitioner failed to prove the essential requisites for deducting bad debts. Section 3 of Revenue Regulations No. 25-2002 states:

   a. There must be an existing indebtedness due to the taxpayer which must be valid and legally demandable;
   b. The same must be connected with the taxpayer's trade, business, practice or profession;
   c. The same must not be sustained in a transaction entered into between related parties enumerated in Section 36 (B) of the National Internal Revenue Code (Tax Code).
   d. The same must be actually charged off the books of accounts of the taxpayer as of the end of the taxable year; and
   e. The must be actually ascertained to be worthless and uncollectible at the end of the year.

7. It has not presented an iota of evidence that the alleged 'bad debts' were ascertained to be worthless and uncollectible.

8. Moreover, it has not presented proof that it had initiated diligent efforts for the collection of the same.

9. Finally, one of petitioner's reasons – that the write off in 2010 was reversed in 2011 – is an implied admission that these alleged 'bad debts' were not in fact worthless as it maintains.

10. Thus, the alleged 'bad debts' were properly disallowed.

B. Disallowed Shrinkage and Losses of Inventories - ₱25,731,086.99.

11. Petitioner contended that the inventory losses due to breakages and spoilages it sustained were valid

business deductions pursuant to Section 34 (D) of the Tax code.

12. Respondent disagrees.

13. As basis for petitioner's contention, it made reference to a physical count sheet which it compared to its inventory records – all of which are self-serving.

14. Said goods could not have just vanished into thin air.

15. Thus, respondent should have been afforded the chance to witness or inspect as to whether said goods are really damaged or expired.

16. It must be noted that there was neither a notice nor application for inventory destruction for the damaged goods.

17. The rule that tax deductions, being in the nature of tax exemptions, are to be construed in *strictissimi juris* against the taxpayer is well settled. Corollary to this rule is the principle that when a taxpayer claims a deduction, he must point to some specific provision of the statute in which that deduction is authorized and must be able to prove that he is entitled to the deduction which the law allows.

18. Thus, for petitioner's failure to prove with competent evidence that the losses it sustained were indeed within the ambit of Section 34 (D) of the Tax Code, the disallowance for shrinkages and losses of inventories must be sustained.

C. Disallowed Expenses claimed as Deductions per Income Tax Return (ITR) - ₱131,896,338.

19. Petitioner claimed that the disallowed expenses were its share in the consolidated purchase related vendor support income.

20. However, during the audit process, petitioner has not presented an iota of proof to substantiate its claim.

21. Again, at the risk of being repetitive, deductions are construed strictly against a taxpayer.

22. The requisites for the deductibility of ordinary and necessary trade, business, or professional expenses, like expenses paid for legal and auditing services, are: (a) the expense must be ordinary and necessary; (b) it must have been paid or incurred during the taxable year; (c) it must have been paid or incurred in carrying on the trade or business of the taxpayer; and (d) it must be

supported by receipts, records or other pertinent papers.

23. Thus, for petitioner's failure to prove the requisites of deductibility, the expenses were properly disallowed.

D. Disallowed Expenses for Non-Withholding of Tax - ₱355,523,729.85

24. Petitioner further argued that the disallowed expenses which resulted to deficiency Income Tax were in fact subjected to Expanded Withholding Tax (EWT), however, (a) paid in a different taxable year, (b) inadvertently not paid but was paid on 17 March 2016 and (c) payments to a wholly owned subsidiary, Marionnaud Philippines, Inc. (MPI).

25. Petitioner's bare arguments without proof are bereft of merit.

26. Section 34 K of the Tax Code states:

> **SEC. 34. Deductions from Gross Income.** – Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under subsection (M) hereof, in computing taxable income subject to income tax under Sections 24 (A); 25 (A); 26; 27 (A), (B) and (C); and 28 (A) (1), there shall be allowed the following deductions from gross income;
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> -xxx-
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> **(K) Additional Requirements for Deductibility of Certain Payments. – Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this Section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this Section 58 and 81 of this Code.**
>
> -xxx-
>
> **(Emphasis supplied).**

27. Again, petitioner has not offered an iota of proof during the audit and investigation that show that the EWT was (a) paid in a different taxable year and (b) inadvertently not paid but was paid on 17 March 2016

28. Moreover, its payments *(sic)* MPI, despite that latter being a wholly owned subsidiary, is still subject to EWT since the vendor support allocated to MPI in the amount of ₱87,386,991.00 was improper. There were no inventories sold to MPI per SAWT and petitioner's financial statements.

29. For emphasis, tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.

30. Thus, in conclusion, petitioner is clearly liable for deficiency Income Tax in the aggregate amount of ₱377,010,844.35.

Petitioner is liable for deficiency Value Added Tax.

31. As discussed, the vendor support income allocated to FBC, allocated to MPI in the amount of P87,386,991.00 was improper since there were no inventories sold to MPI per SAWT and per petitioner's financial statements.

32. In the case at hand, the vendor support income allocated to MPI was deducted in petitioner's financial statements and ITR.

33. Thus, it should be added back to compute the proper amount of vendor support income subject to VAT pursuant to Section 106 and 108 of the Tax Code.

34. Thus, the assessment for deficiency VAT must stand.

Petitioner is liable for deficiency Expanded Withholding Tax.

35. Petitioner further argued that the deficiency EWT merely arose from a timing difference in recognition of expense and in the remittance of the EWT.

36. Respondent differs.

37. The alleged 'timing difference' was never proven by petitioner. It was given ample time to dispute the

findings and prove the 'timing difference', yet it was not able to do so.

38. Contrary to petitioner's argument, audit and investigation of petitioner's financial statements and EWT Alphalist disclosed that it has not paid the corresponding EWT for its income payments resulting to a deficiency EWT in the amount of P7,066,792.09.

39. Thus, for the reason alone that petitioner has failed to offer competent proof during the administrative level of assessment – which effectively deprived respondent to consider the same – the assessment for deficiency EWT must be held as correct.

Petitioner is liable for deficiency Withholding Tax on Compensation.

40. As explained above, petitioner miserably failed to explain as to why its Income Tax Return with attached Financial Statement and its Alphalist submitted the Bureau of Internal Revenue has not matched.

41. Thus, since assessments are presumed correct and made in good faith, the assessment for deficiency Withholding Tax on Compensation remains valid.

Petitioner is liable for deficiency Final Withholding Tax and Final Withholding Value-Added Tax.

42. Petitioner maintained that it is not liable for FWT and FWVAT since the services provided by Watsons – HK to Watsons Philippines were rendered outside the Philippines.

43. These contentions of petitioner are mere allegations without proof.

44. First, during the conduct of the audit and investigation, petitioner has not submitted any service or management contract to show proof that the income payments were indeed made to a non-resident foreign corporation.

45. Second, petitioner failed to substantiate its claim that the services were rendered outside the Philippines.

46. It must be remembered that taxation is the rule and exemption is the exception. Thus, it is for the taxpayer to prove that petitioner's income payments is within the ambit of the exemption provided under the Tax Code.

47. Moreover, tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.

48. Therefore, for petitioner's failures, the assessment should be upheld.

Petitioner is liable for deficiency Documentary Stamp Tax.

49. It was argued that the lessor and not petitioner who was responsible to pay the DST.

50. Again, petitioner's bare assertions without proof are bereft of merit.

51. First, audit and investigation revealed that there were non-payment of DST on petitioner's rentals.

52. Second, petitioner has not submitted the Lease Contracts to prove, at the very least, its assertion that it was agreed between the lessor and the lessee that it was the lessor who shall shoulder the DST.

53. Accordingly, petitioner's argument must fail."

In direct response to petitioner's assertions, respondent counter-argues that petitioner is liable for deficiency IT. According to respondent, petitioner failed to prove the essential requisites for deducting bad debts pursuant to Section 3 of Revenue Regulations (RR) No. 25-2002, as well as the inventory losses provided under Section 34(D) of the 1997 National Internal Revenue Code (NIRC), as amended. Respondent claims that due to petitioner's failure to prove the requisites of deductibility, the expenses amounting to ₱131,896,338.31 were properly disallowed. Respondent likewise holds the position that petitioner did not offer an iota of proof during the investigation to prove that EWT was paid in a different taxable year, and those inadvertently not paid was actually paid on March 17, 2016. According to respondent, petitioner's payments to MPI, despite the latter being a wholly owned subsidiary, is allegedly subject to EWT since the vendor support allocated to MPI in the amount of ₱87,386,991.00 was improper. Respondent alleges that there were no inventories sold to MPI per Summary of Alphalist of Withholding Taxes (SAWT) and petitioner's financial statements.

Respondent further posits that since the vendor support income allocated to MPI was deducted as reflected in petitioner's financial statements and ITR, the same should be added back to compute the proper amount of vendor support income subject to VAT pursuant to Sections 106 and 108 of the 1997 NIRC, as amended. Thus, the assessment for deficiency VAT must stand. Respondent also asserts that petitioner failed to offer any competent proof showing that the corresponding EWT on the income payments were paid, hence the deficiency EWT assessment must be upheld. Likewise, the deficiency WTC should be upheld since petitioner failed to explain why its ITR with attached Financial Statements and Alphalist submitted to the BIR did not match.

As to the assessment for deficiency FWT and FWVAT, respondent states that petitioner did not submit any service or management contract proving that the income payments were indeed made to a non-resident foreign corporation, and that the services were rendered outside the Philippines.

With regard to the deficiency DST, respondent found that no payment for DST was made on petitioner's rentals and there was no proof submitted to establish that the lessor shall shoulder the payment of DST.

RULING OF THE COURT

Notwithstanding the above-quoted issue raised by the parties, this Court resolves to raise, and rule on the primordial issue of the validity of the subject assessments issued by the respondent and which is necessary before we can proceed to delve on the substantive matters raised, for an orderly disposition of the instant case.

Legal bases to resolve the issue raised by this Court.

This Court has ample legal bases to rule on matters, although not raised by the parties, to ensure the orderly disposition of the case. Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA) reads as follows:

> "RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION 1. – *Rendition of judgment* – xxx
>
> **In deciding a 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."** (Emphasis supplied)

Based on the foregoing provision, this Court 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.[67] Such authority of the Court is confirmed and recognized by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,*[68] *viz*:

> **"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.* – xxx
> >
> > 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. xxx." (Emphasis supplied)

Furthermore, in the case of *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.,*[69] the Supreme Court held:

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[67] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.
[68] G.R. No. 183408, July 12, 2017.
[69] G.R. No. 163835, July 7, 2010.

> "The general rule is that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.
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> xxx xxx xxx
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> **The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts**. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:
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> > **The appellate court may, in the interest of justice, properly take into consideration in deciding the case *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignore, although they have not been specifically raised as issues by the pleadings.** This is in consonance with the liberal spirits that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them. [Emphasis supplied.]
>
> xxx xxx xxx
>
> **Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance**." (emphasis supplied)

On the basis of the foregoing jurisprudential pronouncements, it is clear that while it is a general rule that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein, the same admits of certain exceptions, namely, (i) in the interest of justice, matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignore, and (ii) questions involving matters of public importance.

In this case, whether or not the assailed Decision of respondent and the subject tax assessments are valid is a matter of record, and *of* public importance. The said issues are a matter of record since the parties submitted their respective evidence to establish what transpired in the proceedings *a quo*, and thus, could be resolved by simply referring to the same evidence. Moreover, the issues raised by this Court have some bearing on the issue submitted by the parties.

Furthermore, but of no less importance, is the principle that a void assessment bears no valid fruit.[70] Taxpayers, including petitioner, must not be held liable under an invalid tax assessment. Substantive matters such as the correctness of the details of the assessment, e.g., computations, disallowance of deductions, non-payment, etc., must take a backseat to the primary issue of validity of the assessment itself. Specifically, tax collection cannot proceed without a valid assessment. The BIR may summarily enforce collection only when it has accorded the taxpayer administrative due process, which vitally includes the issuance of a valid assessment.[71]

We now proceed to discuss the due process requirements in the issuance of the instant assessments and how these may affect their validity.

Records reveal that the RO who conducted the investigation was not authorized, through an LOA, to examine petitioner's books of accounts and other accounting records. Thus, the subject assessments are deemed void.

The audit process in the BIR normally commences with the issuance by respondent or his duly authorized representative of an 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

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[70] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

[71] CIR vs. Pilipinas Shell Petroleum Corporation, G.R. No. 197945, July 9, 2018.

designated RO to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[72]

The power to issue an LOA by respondent or his/her duly authorized representative is derived from Section 6(A) of the 1997 NIRC, as amended, which provides as follows:

> "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." (emphasis supplied)

Based on the foregoing provision, an authority emanating from respondent or his/her duly authorized representative is required before an examination and an assessment may be made against a taxpayer.

Relative thereto, Section 13 of the 1997 NIRC, as amended, provides that the authority of an RO to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to an LOA, to wit:

> "SEC. 13. *Authority of a Revenue Officer.* – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (emphasis supplied)

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[72] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

Thus, a grant of authority, through an LOA, must be made to authorize an RO to perform tax assessment functions, such as the examination of the accounting records of taxpayers and to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due.

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[73] the Supreme Court held as follows:

> "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.
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>> xx x xxx xxx
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> 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

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[73] G.R. No. 222743, April 5, 2017.

> validly conduct any of these kinds of examinations without prior authority.
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> xxx xxx xxx
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> In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[74] the Court said that:
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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. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**. (Emphasis and underlining ours)
>
> xxx xxx xxx
>
> 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 <u>be made</u>. 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.**
>
> xxx xxx xxx
>
> 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.**" (emphasis supplied)

Based on the afore-quoted rulings of the Supreme Court, it is crucial that the proceedings that led to the issuance of a deficiency tax assessment against a taxpayer had the prior approval and authorization of respondent or his duly authorized representatives, **through an LOA**. As a corollary, an LOA must be issued before an examination, and eventual

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[74] 649 Phil. 519 (2010).

deficiency tax assessment, of a taxpayer may be made. If the RO who conducted the examination of a taxpayer is not so authorized, through an LOA, in the first place, the assessment is inescapably void.

In this case, a perusal of the records reveals that after the LOA No. LOA-116-2011-00000089 (SN: eLA201100002910) dated September 19, 2011 was issued by Mr. Alfredo Misajon, OIC-Assistant Commissioner for the Large Taxpayer Service of the BIR, authorizing ROs Meliza Wepee, Reynoso Bravo, William Sundiam, Miguel Sulit, and Maribel Serafica and GS Wilfredo Reyes, to examine petitioner's books of accounts and other accounting records for the period from January 1, 2010 to December 31, 2010,[75] Mr. Cesar D. Escalada, Chief of the Regular LT Audit Division 1 of the BIR, issued Memorandum of Assignment (MOA) No. LOA-116-2013-0404,[76] referring petitioner's case/docket to RO Jennifer L. Almedilla and GS Marivic P. Bautista for the "[c]ontinuation of the audit/investigation to replace the previously assigned Revenue Officer(s) who resigned/retired/transferred to another district office".

Furthermore, evidence reveals that upon the recommendation of RO Almedilla, together with ROs Ferly Ann B. Paez and Vivien C. Guillermo,[77] the BIR subsequently issued the subject FLD-FAN dated December 17, 2014,[78] assessing petitioner for deficiency IT, VAT, EWT, WTC, FBT, FWT, FWVAT, and DST for TY 2010 in the aggregate amount of ₱1,458,397,439.46.

Clearly, the issuance of the subject tax assessments was a result of the investigation conducted by ROs Almedilla, Ferly Ann B. Paez and Vivien C. Guillermo, not by the originally named ROs in the No. LOA-116-2011-00000089 (SN: eLA201100002910) dated September 19, 2011. Since only a MOA **(not an LOA)** was issued in favor of RO Almedilla, the latter has no valid authority to conduct tax audit/investigation against petitioner. Not having the authority to examine

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[75] Exhibit "P-4", Docket – Vol. III, p. 942; Exhibit "R-1", BIR Records – Folder 2, p. 425.
[76] Exhibit "R-3", BIR Records – Folder 2, p. 426.
[77] Exhibit "R-11", BIR Records – Folder 2, pp. 649 to 653.
[78] Exhibit "P-7", Docket – Vol. I, pp. 104 to 122, and Docket – Vol. III, pp. 962 to 980; Exhibit "R-12", BIR Records - Folder 2, pp. 655 to 673.

petitioner in the first place, the subject tax assessments are void.

In the CTA *En Banc* case of *Composite Materials, Inc. vs. CIR* (CTA EB No. 1314) (Composite case) dated August 15, 2017 which was affirmed by the Supreme Court in the case of *CIR vs. Composite Materials, Inc.*,[79] it was held that a Referral Memorandum does not give authority to the new set of revenue examiners to conduct an examination of a taxpayer's records and it is an LOA validly issued by the Revenue Regional Director that does. We quote the relevant portions of the *En Banc* decision in the Composite case, thus:

> "In the case at bar, it is undisputed that the person who conducted the examination of petitioner CMI's records Revenue Officer Mary Anne P. Cruz, is not among the revenue officers authorized in LOA No. 0008746 dated September 9, 2008. Evidently, Revenue Officer Mary Anne P. Cruz is not authorized under LOA No. 0008746 to examine petitioner CMI.
>
> xxx xxx xxx
>
> The Referral Memorandum signed by the Revenue District Officer does not give authority to Revenue Officer Mary Anne P. Cruz to conduct examination of petitioner CMI's records. On the contrary, pursuant to Section 10 and 13 of the NIRC of 1997, as amended, it is the Revenue Regional Director who may issue an LOA."

In view of the finding that the subject tax assessments are invalid for lack of the requisite LOA to conduct an investigation or examination of the petitioner's books of accounts and accounting records, it becomes unnecessary to address the other issues and respective arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the FLD and the tax assessments dated December 17, 2014 assessing petitioner of deficiency income tax, VAT, EWT, WTC, FWT, FWVAT, and DST, for TY 2010, inclusive of penalties and interest, are **WITHDRAWN and SET ASIDE.**

SO ORDERED.

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[79] G.R. No. 238352, September 12, 2018.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(on leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice