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

**THIRD DIVISION**

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| **GLOBAL FRESH PRODUCTS, INC.,** Petitioner, | **CTA Case No. 9718** |
| | ***Members:*** |
| - **versus** - | **UY,** *Chairperson,* **RINGPIS-LIBAN**, *and* **MODESTO-SAN PEDRO,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | ***Promulgated:*** JUN 30 2020 4:00 p.m. |

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# DECISION

**UY, *J.*:**

Before this Court is a *Petition for Review*[1] filed by Global Fresh Products, Inc. against the Commissioner of Internal Revenue, praying that the assessments for deficiency Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT), Withholding Tax on Compensation (WTC) and Documentary Stamp Tax (DST) for the taxable year (TY) 2013 in the aggregate amount of ₱91,625,615.90 be cancelled and withdrawn.

**THE FACTS**

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at Lot 91-A Bagsakan Road, FTI Complex, Taguig City.[2]

[1] Docket, pp. 10 to 27.
[2] Exhibit "P-2", Amended Articles of Incorporation, Docket, pp. 159 to 172.

Petitioner is duly registered with the Bureau of Internal Revenue with Tax Identification Number (TIN) 200-413-397-00000.[3]

Respondent is the duly-appointed Commissioner of Internal Revenue, vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, grant tax refunds and issue tax credit certificates, pursuant to the provisions of the NIRC and other tax laws, rules and regulations. Respondent may be served with summons, notices and other processes of this Honorable Court at the Legal Division, Bureau of Internal Revenue, Revenue Region No. 8, 2nd Floor, BIR Bldg., 313 Sen, Gil Puyat Ave., Makati City.[4]

On January 17, 2017, petitioner received a Preliminary Assessment Notice (PAN)[5] with Details of Discrepancies dated December 28, 2016, representing alleged deficiency IT, VAT, EWT, WTC and DST.

On January 27, 2017, petitioner received Assessment Notices[6] and a Formal Assessment Notice,[7] all dated January 13, 2017, on the following alleged deficiency taxes for taxable year 2013, to wit:

| Period | Tax Type | Amount | Exhibit |
|---|---|---|---|
| | | | |
| 2013 | Income Tax | ₱57,451,544.37 | "P-33" |
| 2013 | Value Added Tax | 45,227.86 | "P-34" |
| 2013 | Expanded Withholding Tax | 5,662,715.33 | "P-35" |
| 2013 | Withholding Tax on Compensation | 28,405,017.37 | "P-36" |
| 2013 | Documentary Stamp Tax | 61,110.97 | "P-37" |
| | **TOTAL** | **₱91,625,615.90** | |

In the letter dated February 23, 2017[8], petitioner protested the subject assessment notices and FAN, for being devoid of any legal and factual bases. Subsequently, petitioner reiterated its protest in its letter dated April 24, 2017,[9] and submitted additional documents in support thereof.

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[3] Exhibit "P-1", Certificate of Registration, Docket, pp. 157 to 158.
[4] Facts Admitted, Joint Stipulation of Facts and Issues (JSFI), par. 1, Docket, p. 100.
[5] Exhibit "P-32", Docket pp. 234 to 240.
[6] Exhibit "P-33" to "P-37," Docket, pp. 241 to 245.
[7] Exhibit "P-38" to "P-38-A," Docket, pp. 246 to 250.
[8] Exhibit "P-39", Docket, pp. 251 to 257.
[9] Exhibit "P-40", Docket, pp. 258 to 260.

In view of respondent's inaction, petitioner filed the instant *Petition for Review*[10] on November 21, 2017.

Respondent filed his *Answer*[11] on February 6, 2018, interposing the following special and affirmative defenses: 1) assessments are *prima facie* presumed correct and made in good faith, and the taxpayer has the duty of proving otherwise; 2) upon reinvestigation, some of the assessments were cancelled upon the submission of supporting documents, and were considered by the examiner in the preparation of the Final Decision on Disputed Assessment; and 3) taxes are the lifeblood of the government and so should be calculated without unnecessary hindrance.

Thereafter, pre-trial was held on May 15, 2018. [12] The parties filed their *Joint Stipulation of Facts and Issues* on May 24, 2018.[13] Pursuant thereto, the Court issued a Pre-Trial Order[14] on June 19, 2018, and the Pre-Trial Conference was deemed terminated.

During trial, petitioner presented its sole witness, Rosalie Tanguanco,[15] Thereafter, petitioner filed its *Formal Offer of Evidence*[16] on August 20, 2018, which were all admitted in the Resolution dated November 5, 2018.[17]

For his part, respondent also presented a lone witness, Revenue Officer Villaflor A. Lagundi.[18] Respondent then filed his *Formal Offer of Evidence*[19] on March 19, 2019, to which petitioner filed its *Comment (To Respondent's Formal Offer of Evidence)*[20] on March 27, 2019. In the Resolution dated April 22, 2019[21], this Court admitted respondent's evidence except for Exhibits "R-6" to "R-8."

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[10] Docket, pp. 10 to 27.
[11] Docket, pp. 62 to 66.
[12] Docket, pp. 91 to 92.
[13] Docket, pp. 100 to 105.
[14] Docket, pp. 107 to 113.
[15] Judicial Affidavit, Exhibit "P-41," Docket, pp. 261 to 269; Amended Judicial Affidavit, Exhibit "P-42," Docket, pp. 270 to 277.
[16] Docket, pp. 145 to 156.
[17] Docket, pp. 291 to 292.
[18] Judicial Affidavit, Exhibit "R-9," Docket, pp. 293 to 299.
[19] Docket, pp. 304 to 307.
[20] Docket, pp. 310 to 312.
[21] Docket, pp. 314 to 315.

On May 24, 2019, petitioner filed its *Memorandum,*[22] while respondent failed to file his Memorandum per Records Verification Report dated June 20, 2019[23]. In the Resolution[24] dated June 25, 2019, this case was submitted for decision.

Hence, this Decision.

## THE ISSUES

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

> "1. Whether the present assessment is null and void for violating petitioner's right to be heard, in violation of the due process requirements mandated under Section 228 of the NIRC of 1997, as amended, and Revenue Regulations No. 12-99, as amended by RR No. 18-2013.
>
> 2. Whether petitioner is liable to pay the aggregate amount of P91,625,615.90 representing alleged income tax (IT) – IT-ELA36576/LN103-13-17-260; value added tax (VAT) – VT-ELA36576/LN103-13-17-260; expanded withholding tax (EWT) – WE-ELA36576/LN103-13-17-260; withholding tax on compensation (WTC) – WC-ELA36576/LN103-13-17-260; and documentary stamp tax (DST) – DS-ELA36576/LN103-13-17-260, for the taxable year 2013.
>
> 3. Whether the FAN dated January 13, 2017 issued against petitioner representing alleged tax deficiencies for taxable year 2013 has prescribed pursuant to Section 203 and 222 of the 1997 Tax Code, as amended."[25]

***Petitioner's arguments:***

Petitioner argues that the absence of a validly issued Letter of Authority (LOA) to conduct the audit renders the present assessment void.

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[22] Docket, pp. 316 to 345.
[23] Docket, p. 347.
[24] Docket, p. 349.
[25] Issues, JSFI, Docket, p.101; Issues, Pre-Trial Order, Docket, pp. 108 to 109.

Allegedly, this Court has the power to resolve the issue on the authority of revenue examiners to conduct the audit leading to the present assessment.

Moreover, petitioner maintains that the non-observance of the 15-day period to protest the PAN violates petitioner's right to due process which renders the present assessment void.

Finally, petitioner insists that the present assessment is barred by prescription.

***Respondent's counter-arguments:***

Respondent counters that the Assessment Notices issued on January 13, 2017, reflects the internal revenue liabilities of the petitioner for the taxable year 2013 representing deficiency IT, VAT, EWT, WTC, and DST, inclusive of statutory increments. These assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

Allegedly, after reinvestigation, some of the assessments were cancelled upon the submission of supporting documents by petitioner, and said assessments were already considered by the examiner in the preparation of the Final Decision on Disputed Assessment.

Finally, respondent argues that taxes are the lifeblood of the government and so should be calculated without unnecessary hindrance.

## THE COURT'S RULING

***Respondent has a period of three (3) years to assess petitioner for deficiency taxes, pursuant to Section 203 of the NIRC of 1997, as amended.***

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Petitioner contends that the FAN dated January 13, 2017, relative to the alleged VAT, EWT, and WTC, are already barred by prescription, pursuant to Section 203 of the NIRC of 1997, as amended.

We partially agree.

The period of limitation upon the assessment of deficiency taxes is provided for under Section 203 of the NIRC of 1997, to wit:

> "**SEC. 203.** ***Period of Limitation Upon Assessment and Collection.*** — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." *(Emphasis supplied)*

Based on the foregoing provision, except as provided under Section 222 of the NIRC of 1997, Sec. 203 of the same Code mandates the government to assess internal revenue taxes within three years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. Hence, an assessment notice issued after the three-year prescriptive period is no longer valid and effective.[26]

The instant case pertains to the assessment of the following deficiency taxes: 1) income tax; 2) VAT; 3) WTC; 4) EWT; and 5) DST. We shall now determine the validity of said assessments.

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[26] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

*Income Tax Assessment*

Section 77 (B) of the NIRC of 1997[27] states that the final adjusted income tax return of a corporate taxpayer is due to be filed on or before April 15 of the following calendar year, or on or before the 15th day of the 4th month following the close of the fiscal year, as the case may be.

Petitioner in this case filed its Annual Income Tax Return for TY 2013 on April 12, 2014.[28] Thus, respondent had until April 15, 2017, within which to validly issue the deficiency tax assessment.

Considering that the Formal Assessment Notice[29] and Assessment Notices[30] were issued by the respondent on January 13, 2017, it is clear that the same falls within the three-year prescriptive period provided for under Section 203 of the NIRC of 1997, as amended.

*VAT Assessment*

Pursuant to Section 114(a) of the NIRC of 1997,[31] as amended, every person liable to pay VAT, shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter.

In this case, the date of filing of petitioner's Quarterly VAT Returns (BIR Form No. 2550-Q) for the 1st to 4th quarters of TY 2013,

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[27] **SEC. 77.** ***Place and Time of Filing and Payment of Quarterly Corporate Income Tax.*** –

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*(B) Time of Filing the Income Tax Return.* – The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

[28] Exhibit "P-3," Docket, pp. 173 to 183.

[29] Exhibit "P-38" to "P-38-A," Docket, pp. 246 to 250.

[30] Exhibit "P-33" to "P-37," Docket, pp. 241 to 245.

[31] **SEC. 114.** ***Return and Payment of Value-Added Tax.*** –

(A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.

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and the end of the three (3) year prescriptive period as provided for in Section 203 of the NIRC of 1997, as amended, is summarized as follows:

| Exhibit | TY 2013 | Due Date for Filing | Date of Filing | Prescriptive Period |
|---|---|---|---|---|
| "P-4" | 1st Quarter | Apr 25, 2013 | Apr 25, 2013 | Apr 25, 2016 |
| "P-5" | 2nd Quarter | Jul 25, 2013 | Jul 24, 2013 | Jul 25, 2016 |
| "P-6" | 3rd Quarter | Oct 25, 2013 | Oct 24, 2013 | Oct 25, 2016 |
| "P-7" | 4th Quarter | Jan 25, 2014 | Jan 25, 2014 | Jan 25, 2017 |

Based on the foregoing, it is clear that the Formal Assessment Notice[32] and Assessment Notices[33] sent by the respondent on January 13, 2017, with respect to the assessment for deficiency VAT, is void with respect to the 1st to 3rd Quarters of TY 2013. In other words, only the deficiency VAT assessment for the 4th Quarter of TY 2013 was issued within the three-year prescriptive period under Section 203 of the NIRC of 1997, as amended.

*WTC and EWT Assessments*

Anent petitioner's deficiency tax assessments for WTC and EWT, reference is made to Section 7 of Revenue Regulations No. 9-2001,[34] as amended by RR No. 26-02,[35] withholding tax returns for Group C, shall be filed and the tax due thereon shall be paid, within thirteen (13) days after the end of each month.

In this case, the dates of filing of petitioner's WTC Month Remittance Tax Returns (BIR Form No. 1601-C) for TY 2013, and the end of the three (3) year prescriptive period as provided for in Section 203 of the NIRC of 1997, as amended, are hereby summarized as follows:

| WTC Monthly Remittance Tax Returns | | | | |
|---|---|---|---|---|
| Exhibit | Period | Due Date for Filing | Actual Date of Filing | Prescriptive Period |
| "P-20" | Jan-13 | Feb 13, 2013 | Feb 8, 2013 | Feb 13, 2016 |
| "P-21" | Feb-13 | Mar 13, 2013 | Mar 4, 2013 | Mar 13, 2016 |

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[32] Exhibit "P-38" to "P-38-A," Docket, pp. 246 to 250.
[33] Exhibit "P-33" to "P-37," Docket, pp. 241 to 245.
[34] SUBJECT: Electronic Filing of Tax Returns and Payment of Taxes.
[35] SUBJECT: Amending Further Revenue Regulations No. 9-2001, as Amended by Revenue Regulations No. 2-2002 and Revenue Regulations No. 9-2002, Providing for the Staggered Filing of Returns of Taxpayers Enrolled in the Electronic Filing and Payment System (EFPS) Based on Industry Classification.

| | | | | |
|---|---|---|---|---|
| "P-22" | Mar-13 | Apr 13, 2013 | Apr 4, 2013 | |
| " P-22-a" | Amended | | Jul 4, 2013 | Jul 4, 2016 |
| "P-23" | Apr-13 | May 13, 2013 | May 6, 2013 | |
| "P-23-a" | Amended | | Jul 4, 2013 | Jul 4, 2016 |
| "P-24" | May-13 | Jun 13, 2013 | Jun 4, 2013 | |
| "P-24-a" | Amended | | Jul 4, 2013 | Jul 4, 2016 |
| "P-25" | Jun-13 | Jul 13, 2013 | Jul 4, 2013 | Jul 13, 2016 |
| "P-26" | Jul-13 | Aug 13, 2013 | Aug 6, 2013 | Aug 13, 2016 |
| "P-27" | Aug-13 | Sept 13, 2013 | Sep 9, 2013 | Sept 13, 2016 |
| "P-28" | Sep-13 | Oct 13, 2013 | Oct 9, 2013 | Oct 13, 2016 |
| "P-29" | Oct-13 | Nov 13, 2013 | Nov 6, 2013 | Nov 13, 2016 |
| "P-30" | Nov-13 | Dec 13, 2013 | Dec 7, 2013 | Dec 13, 2016 |
| "P-31" | Dec-13 | Jan 13, 2014 | Jan 10, 2014 | Jan 13, 2017 |

On the other hand, the dates of filing of petitioner's EWT Monthly Remittance Tax Returns (BIR form No. 1601-E) for TY 2013 , and the end of the three (3) year prescriptive period as provided for in Section 203 of the NIRC of 1997, as amended, are as follows:

| **EWT Monthly Remittance Tax Returns** | | | | |
|---|---|---|---|---|
| **Exhibit** | **Period** | **Due Date for Filing** | **Actual Date of Filing** | **Prescriptive Period** |
| "P-8" | Jan-13 | Feb 13, 2013 | Feb 12, 2013 | Feb 13, 2016 |
| "P-9" | Feb-13 | Mar 13, 2013 | Mar 12, 2013 | Mar 13, 2016 |
| "P-10" | Mar-13 | Apr 13, 2013 | Apr 12, 2013 | Apr 13, 2016 |
| "P-11" | Apr-13 | May 13, 2013 | May 13, 2013 | May 13, 2016 |
| "P-12" | May-13 | Jun 13, 2013 | Jun 13, 2013 | Jun 13, 2016 |
| "P-13" | Jun-13 | Jul 13, 2013 | Jul 11, 2013 | Jul 13, 2016 |
| "P-14" | Jul-13 | Aug 13, 2013 | Aug 13, 2013 | Aug 13, 2016 |
| "P-15" | Aug-13 | Sept 13, 2013 | Sep 11, 2013 | Sept 13, 2016 |
| "P-16" | Sep-13 | Oct 13, 2013 | Oct 12, 2013 | Oct 13, 2016 |
| "P-17" | Oct-13 | Nov 13, 2013 | Nov 13, 2013 | Nov 13, 2016 |
| "P-18" | Nov-13 | Dec 13, 2013 | Dec 13, 2013 | Dec 13, 2016 |
| "P-19" | Dec-13 | Jan 13, 2014 | Jan 14, 2014 | Jan 13, 2017 |

From the foregoing, it is clear that the Formal Assessment Notice[36] and Assessment Notices[37] for WTC and EWT sent by the respondent on <u>January 13, 2017</u>, have already prescribed for the period from January 2013 to November 2013. In other words, only the deficiency WTC and EWT assessments for December 2013 were issued within the three-year prescriptive period under Section 203 of the NIRC of 1997, as amended.

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[36] Exhibit "P-38" to "P-38-A," Docket, pp. 246 to 250.
[37] Exhibit "P-33" to "P-37," Docket, pp. 241 to 245.

*DST Assessment*

As for the deficiency DST assessment, the same may be assessed within ten (10) years from the discovery of such omission, based on Section 222 (a) of the NIRC of 1997, as amended.[38] Thus, the Formal Assessment Notice[39] and Assessment Notices[40] sent by the respondent on January 13, 2017, falls within the prescriptive period under Section 222 (a) of the NIRC of 1997, as amended.

***The subject tax assessments are void as examining Revenue Officer Villaflor A. Lagundi was not duly authorized by an LOA to conduct the audit of the petitioner.***

Petitioner argues that RO Villaflor A. Lagundi is not authorized to examine the books of account and other accounting records of petitioner for internal revenue taxes for TY 2013.

We are convinced.

In the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,*[41] the Supreme Court emphasized the import and significance of an LOA, and the authority it confers upon a revenue officer, relative to the performance of assessment functions, to wit:

> "**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**

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[38] **SEC. 222.** ***Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —**
(a) In the 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.
[39] Exhibit "P-38" to "P-38-A," Docket, pp. 246 to 250.
[40] Exhibit "P-33" to "P-37," Docket, pp. 241 to 245.
[41] G.R. No. 222743, April 5, 2017.

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**<u>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</u>**. 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.
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> xxx xxx xxx

Based on the afore-quoted provision, it is clear that **unless authorized by the CIR himself or by his duly authorized representative, <u>through an LOA</u>**, 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 <u>without prior authority</u>**.

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In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, 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. **In the absence of such an authority, the assessment or examination is a nullity**.
>
> 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 be made**. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.
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> 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.)*

On the basis of the foregoing jurisprudential pronouncement, it is specifically necessary that a revenue officer be authorized by a valid LOA, in order to exercise assessment functions. In the absence of a valid LOA issued in favor of a specific revenue officer, the tax assessments issued by the BIR against such taxpayer shall be void.

Corollary thereto, Section 13 of the NIRC of 1997, 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."

Accordingly, in order that a Revenue Officer may validly examine taxpayers within the jurisdiction of his district, perform tax assessment and collection functions, the said Revenue Officer must first be clothed with authority pursuant to a Letter Of Authority issued by the Revenue Regional Director.

Relative thereto, RMO No. 43-90 prescribes the revised policy guidelines for the audit/investigation and issuance of letters of authority to audit. To be specific, it requires that **all** audits/ investigations should be conducted under a Letter of Authority, and requires the issuance of a **new LOA** in case of any reassignment or transfer of cases to another Revenue Officer, to wit:

> "C. Other policies for issuance of L/As.
>
> 1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.
>
> xxx xxx xxx
>
> 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 a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As."

In this case eLA201200036576[42] dated December 8, 2015, authorizes RO Ian Caymo/GS Ruben Fuerte of RDO No. 044 – Taguig – Pateros, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period

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[42] Exhibit "R-2," BIR Records.

from January 1, 2013 to December 31, 2013, pursuant to Sec. 6(A) & 10 (C) of the NIRC of 1997, as amended.

According to RO Villaflor A. Lagundi, however, she was directed to continue the audit and investigation of petitioner's internal revenue tax liabilities for TY 2013,[43] through a Memorandum of Assignment[44] dated April 6, 2016, issued by Revenue District Officer Florante R. Aninag. Thus, RO Lagundi was the one who audited and examined the documents of the petitioner, and came up with the report as a result of the examination.[45]

As testified to by RO Lagundi, and as borne by the records, RO Lagundi was not validly authorized by a new LOA, when she exercised assessment functions. Rather, she was admittedly authorized only by a mere Memorandum of Assignment.[46]

Considering that RO Lagundi, who examined and audited petitioner's tax case, was not properly clothed with authority through the requisite LOA, the subject tax assessments, resulting from the said investigation, audit, and report of RO Lagundi is void. As it is void, the same bears no valid fruit.[47]

***Violation of petitioner's right to due process***

Petitioner argues that the non-observance of the 15-day period to protest the PAN violated its right to due process, which renders the present assessment void.

We agree.

Section 228 of the NIRC of 1997 provides:

> **"SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be**

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[43] Judicial Affidavit, Exhibit "R-9," Docket, pp. 293 to 299, at 294 (Q&A 7).
[44] Exhibit "R-1," BIR Records.
[45] TSN dated March 7, 2019, p. 9.
[46] Exhibit "R-1," BIR Records.
[47] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

**<u>assessed, he shall first notify the taxpayer of his findings</u>**: x x x x

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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.

**<u>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</u>**." *(Emphasis supplied)*

xxx xxx xxx."

Based on the foregoing provision, a taxpayer is required to respond to the PAN, within a period to be prescribed by implementing rules and regulations.

Corollary thereto, Section 3.1.2 of Revenue Regulations (RR) No. 12-99 states:

"**SECTION 3.** ***Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —***

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3.1.2 *Preliminary Assessment Notice (PAN).* — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based xxx xxx xxx. **If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and**

> **assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.**" *(Emphasis supplied)*

According to Section 3.1.2 of RR No. 12-99, a taxpayer has fifteen (15) days within which to reply to the PAN. If the taxpayer fails to respond to the PAN within the said 15-day period, the taxpayer shall be considered in default and the BIR shall then issue the FLD and assessment notice.

In the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*,[48] it was held that the strict compliance with the requirements laid down by law and its own rules is considered a denial of a taxpayer's right to due process, to wit:

> "From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities. The use of the word 'shall' in subsection 3.1.2 describes the mandatory nature of the service of a PAN. **The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process.**" *(Emphasis supplied)*

In other words, the CIR is mandated to strictly comply with the requirements laid down by law and its own rules. The failure to do is equated with a denial of the taxpayer's right to due process. Pursuant to the above-quoted Section 3.1.2 of RR No. 12-99, respondent needs to wait for the lapse of the 15-day period, before issuing the pertinent FLD and Assessment Notices.

In this case, records show that petitioner received the PAN[49] on January 17, 2017 and it had until February 1, 2017, within which to file its protest thereto. On January 27, 2017, however, petitioner

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[48] *Supra.*
[49] Exhibit "P-32", Docket pp. 234 to 240.

received the subject Assessment Notices[50] and Formal Assessment Notice,[51] all dated January 13, 2017.

From the foregoing, it is clear that even prior to petitioner's receipt of the subject PAN on January 17, 2017, the CIR already issued the subject Assessment Notices and Formal Assessment Notice on January 13, 2017. This essentially deprived the taxpayer of the opportunity to file its protest to the PAN.

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution.[52]

Considering that petitioner was not given the requisite opportunity to respond to the PAN and to explain its side, its right to due process was violated by respondent. Consequently, the subject Formal Assessment Notice and the Assessment Notices are void, and bear no valid fruit.[53]

Thus, the subject assessments for deficiency income tax, VAT, EWT, WTC, and DST, all dated January 13, 2017, must be cancelled.

**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the subject assessment for deficiency income tax, VAT, EWT, WTC, and DST for taxable year 2013 issued against petitioner is hereby **CANCELLED** and **SET ASIDE**.

**SO ORDERED.**

**ERLINDA P. UY**
*Associate Justice*

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[50] Exhibit "P-33" to "P-37," Docket, pp. 241 to 245.
[51] Exhibit "P-38" to "P-38-A," Docket, pp. 246 to 250.
[52] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc., supra.*
[53] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue,* G.R. No. 193100, December 10, 2014.

WE CONCUR:

*( With Separate Concurring Opinion )*
**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*

**MARIA ROWENA MODESTO-SAN PEDRO**
*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.

**ERLINDA P. UY**
*Associate Justice*
Chairperson, 3rd Division

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
Presiding Justice

REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

*Third Division*

**GLOBAL FRESH PRODUCTS INC.,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 9718**

Members:

**UY,** *Chairperson*
**RINGPIS-LIBAN,** *and*
**MODESTO-SAN PEDRO,** *JJ.*

Promulgated:
JUN 30 2020
4:00 p.m.

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

# SEPARATE CONCURRING OPINION

**RINGPIS-LIBAN, *J.*:**

I concur in the *ponencia* in granting the Petition for Review filed by Global Fresh Products Inc. ("Petitioner"). For one, the examining Revenue Officer ("RO") was without any authority when she continued the examination or audit of Petitioner.

However, I am of the firm belief that notwithstanding the absence of a new Letter of Authority ("LOA") issued in her favor, RO Villaflor A. Lagundi may be given the authority to continue the audit and examination of Petitioner's books of accounts and other accounting records by way of a Revalidation Notice or Memorandum of Reassignment or any letter in this case, by the Regional Director, upon the replacement of RO Ian Caymo who was originally named in the LOA.

I submit that this could be validly done under the National Internal Revenue Code of 1997 ("NIRC of 1997"), as amended and the laws on agency under the Civil Code.

The power of the Commissioner of Internal Revenue ("CIR") to conduct assessments is granted to him by virtue of Section 6 of the NIRC of 1997, as amended:

> "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, **<u>the Commissioner or his duly authorized representative may authorize the examination</u> 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."[1]

Section 7 of the NIRC of 1997, as amended, likewise sets limits on which powers of the CIR may be delegated by him and which powers are to be exercised exclusively by him. The issuance of an LOA is not one of the non-delegable powers of the CIR, *viz*:

> "SEC. 7. **Authority of the Commissioner to Delegate Power.** – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:
>
> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
>
> (c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and

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[1] *Emphasis and underscoring supplied.*

district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept."

On the contrary, issuing LOAs is a delegable power which the CIR may devolve to Revenue Regional Directors, as expounded on in Section 10 of the NIRC of 1997, as amended:

"SEC. 10. **Revenue Regional Director.** – Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:

xxx

(c) **<u>Issue Letters of authority for the examination of taxpayers</u> within the region**;

xxx

(h) **Perform such other functions as may be provided by law and as may be delegated by the Commissioner**."[2]

To implement said provision, Revenue Memorandum Order ("RMO") No. 36-99[3] was issued, entitled as "Guidelines and Procedures in the Issuance of Letters of Authority, Approval of Audit Reports and Issuance of Assessment Notices and Amending Certain Provisions of Revenue Memorandum Order (RMO) Nos. 26-94, 37-94 and 23-97". The RMO clearly emphasized that it is the Revenue Regional Directors who have the authority to issue LOAs for all audit cases within their regional jurisdiction, *viz*:

"I. OBJECTIVES

[2] *Emphasis and underscoring supplied.*
[3] February 09, 1999.

1. **To delineate the power to issue Letters of Authority (LAs) to the Revenue Regional Directors pursuant to Sec. 10 (c) of the Tax Code.**

2. To prescribe the revised guidelines and procedures in the issuance of LAs, approval of audit reports and issuance of assessment notices.

II. GUIDELINES AND PROCEDURES

1. Section E of RMO No. 26-94 is hereby amended to read as follows:

**The <u>Revenue</u> <u>Regional</u> <u>Director</u> shall approve and sign LAs for all audit cases within his regional jurisdiction...**

xxx

2. Section C.2.2.1 of RMO No. 23-97 is hereby amended to read as follows:

**The Regional Director shall issue the corresponding Letter of Authority** if indications of fraud have been established, and the same has been confirmed by the Regional Tax Fraud Committee (RTFC), composed of the following:

a. Regional Director — Chairman
b. Assistant Regional Director — Vice-Chairman
c. Chief, SID — Member
d. Chief, Assessment Division — Member
e. Chief, Legal Division — Member

xxx

6. The following additional guidelines on the issuance of LAs shall be observed:

6.1 **All LA forms for use by the Revenue District Offices** and Special Investigation Divisions **shall be requisitioned by the Regional Director** from the Accountable Forms Divisions in the National Office.

xxx

6.6 **The Regional Director shall maintain an LA Register for all LAs issued by him.** All issuances, revalidations, cancellations, case closures, assessments and other matters in

> relation to LAs should be entered in the LA Register. Entries in the LA Register must be complete and updated."[4]

In fact, this is what happens in reality. The Regional Director is the one who issues and signs an LOA, and not the CIR. Case in point is eLA201200036576[5] dated December 08, 2015 issued by Regional Director Jonas DP Amora, authorizing RO Caymo to examine the books of accounts and other accounting records of Petitioner for all internal revenue taxes for the period from January 01, 2013 to December 31, 2013.

An LOA is, in essence, a contract of agency. Article 1868 of the Civil Code defines agency as a contract where "a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."

In the case of *Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.*[6], the Supreme Court had the occasion to expound on the elements of agency, to wit:

> "The elements of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for him/herself; and (4) the agent acts within the scope of his/her authority. **As the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it.** Absent such mutual intent, there is generally no agency. It is likewise a settled rule that persons dealing with an assumed agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it."[7]

In an LOA, the CIR is the principal - as he is the one mandated by the law to make assessments - and the Regional Director, his agent.

Now, may the Regional Director, the CIR's agent, appoint a sub-agent, in this case, the RO named in the LOA? Article 1892 of the Civil Code says that he can. The said provision states:

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4 *Emphasis and underscoring supplied.*
5 BIR Records, Exhibit "R-2", p. 112.
6 G.R. No. 188288, January 16, 2012.
7 *Emphasis supplied.*

"Art. 1892. **The agent may appoint a substitute if the principal has not prohibited him from doing so**; but he shall be responsible for the acts of the substitute:

(1) When he was not given the power to appoint one;
(2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.

All acts of the substitute appointed against the prohibition of the principal shall be void. (1721)"[8]

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to RO Caymo who was originally named in the LOA may be revoked, transferred and reassigned to RO Lagundi, for continuance of audit, when the former was re-assigned.

Said document where such authority is transferred may be equivalent to an LOA. Several reasons support this. *First*, the only directive under Section 13 of the NIRC of 1997, as amended,[9] which requires that assessment be done by ROs pursuant to an LOA, is that the grant of authority be done ***in writing***. In fact, an "[a]gency may be oral, unless the law requires a specific form."[10]

*Second*, although the document may not be entitled "Letter of Authority" but otherwise, it can contain all the elements necessary to establish a contract of agency between the CIR and the new RO. The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[11] The title of the contract does not necessarily determine its true nature.[12] In fact, this Court has, time and again, declared certain documents

8 *Emphasis supplied.*

9 SEC. 13. Authority of a Revenue Officers. - 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).*

10 Civil Code of the Philippines, Article 1869.

11 Heirs of Dr. Mario S. Intac and Angelina Mendoza Intac v. Court of Appeals and Spouses Marcelo Roy, Jr. and Josefina Mendoza-Roy and Spouses Dominador Lozada and Martina Mendoza-Lozada, G.R. No. 173211, October 11, 2012 *citing* Spouses Villaceran v. De Guzman, G.R. No. 169055, February 22, 2012; Ramos v. Heirs of Honorio Ramos, Sr., G.R. No. 140848, April 25, 2002, 381 SCRA 594, 601; Heirs of Policronio M. Ureta, Sr. vs. Heris of Liberato M. Ureta, G.R. Nos. 165748 & 165930, September 14, 2011 *citing* Lopez v. Lopez, G.R. No. 161925, November 25, 2009, 605 SCRA 358, 36.

12 Adelfa Properties, Inc. v. Court of Appeals, G.R. No. 111238, January 25, 1995.

emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.

In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the NIRC of 1997, as amended, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.[13] Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code.[14]

I am not unaware of RMO No. 43-90[15] which states that "[a]ny re-assignment/transfer of cases to another RO(s)...shall require the issuance of a new L/A" However, I humbly stress and emphasize that an administrative issuance must conform, not contradict, the provisions of the enabling law. Any rule that is not consistent with the law is null and void.[16]

It is for the reasons above that, in my opinion, RO Lagundi who conducted the examination of Petitioner's records may be deemed authorized to do so without need for a new LOA, only if said letter or notice or memorandum was signed by the Regional Director.

In the instant case however, the Memorandum of Assignment[17] was only signed by Revenue District Officer Florante R. Aninag. Therefore, RO Lagundi was without authority to continue the audit.

From all the foregoing, I vote for the **GRANT** of the Petition for Review filed by Petitioner.

Ma. Belen S—

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

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13 Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, represented by Jose Mario Bunag, in his capacity as Commissioner of the Bureau of Internal Revenue, and John Doe and Jane Doe, who are persons acting for, in behalf or under the authority of Respondent, G.R. No. 215427, December 10, 2014, *citing* Lopez v. The Civil Service Commission, 273 Phil. 147, 152 (1991).

14 Philippine International Trading Corporation v. Commission on Audit, G.R. No. 183517, June 22, 2010.

15 Issued September 20, 1990.

16 Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, G.R. Nos. 175707, 180035 & 181092, November 19, 2014.

17 BIR Records, Exhibit "R-1", pp. 11.