Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

SAN MIGUEL FOODS, INC. (as surviving corporation in a merger involving MONTEREY FOODS CORPORATION), Petitioner,	**CTA Case No. 9046** For*:* Assessment
	Members:
	DEL ROSARIO, *P.J., Chairperson* **UY, and** **MINDARO-GRULLA, *JJ.***
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 12 2018 3:40 pm

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review[1] filed on May 15, 2015 by San Miguel Foods, Inc. (as surviving corporation in a merger involving Monterey Foods Corporation) [San Miguel Foods, Inc., for brevity], as petitioner, against the Commissioner of Internal Revenue, as respondent, pursuant to Section 7(a)(1)[2] of Republic Act (RA) No. 1125[3], as amended, as well

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[1] Docket, Vol. I, pp. 10-45.
[2] Sec. 7. *Jurisdiction*. - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx.
[3] Act Creating the Court of Tax Appeals.

as Section 3(a)(1)[4] of Rule 4 and Section 4(a)[5] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

Petitioner assails respondent's Final Decision on Disputed Assessment (FDDA) dated January 12, 2015 that found it liable for alleged deficiency income tax, value-added tax (VAT), and documentary stamp tax (DST) in the aggregate amount of ₱1,570,938,751.79, inclusive of interest, surcharge and compromise penalties for the period covering January 1, 2010 to August 31, 2010.

Petitioner San Miguel Foods, Inc. is a corporation organized and existing under Philippine laws, with office address at 23rd Floor, The JMT Corporate Condominium, ADB Avenue, Ortigas Center, Pasig City.[6] It is registered with the Bureau of Internal Revenue (BIR) with Taxpayer Identification Number (TIN) 000-275-554-000, as evidenced by its Certificate of Registration issued on January 1, 1996.[7]

On the other hand, respondent is the duly appointed Commissioner of the BIR who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

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[4] Sec. 3. *Cases within the jurisdiction of the Court in Division*. – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

[5] Sec. 4. *Where to appeal; mode of appeal*. –
(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[6] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket, Vol. II, p. 1181; Exhibit "P-1", Docket, Vol. III, pp. 1282-1300.

[7] Exhibit "P-2", Docket, Vol. III, p. 1302.

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On May 31, 2011, petitioner received Letter of Authority[8] (LOA) dated May 12, 2011 from the BIR, authorizing concerned revenue officers to examine its books of accounts and other accounting records for all internal revenue taxes for the period covering January 1 to August 31, 2010.[9]

On August 12, 2014, petitioner received the Preliminary Assessment Notice[10] (PAN) from Officer-In-Charge (OIC) Assistant Commissioner Nestor S. Valeroso of the Large Taxpayers Service assessing petitioner for alleged deficiency income tax, withholding tax on compensation (WTC), VAT, and DST in the aggregate amount of ₱1,842,959,766.53, inclusive of interest, surcharge, and compromise penalties for the period January 1 to August 31, 2010.[11]

On August 27, 2014, petitioner sent a Letter[12] to the BIR contesting the proposed imposition of deficiency income tax, WTC, VAT, and DST on the transfer of properties by Monterey Foods Corporation (MFC) to petitioner as a result of the merger between the parties.[13]

On October 10, 2014, petitioner received a Formal Letter of Demand with attached Final Assessment Notices and Details of Discrepancy[14] ("FLD-FAN" for brevity) dated October 9, 2014, reiterating the alleged deficiency income tax, VAT, and DST assessments in connection with the transfer of properties by MFC to petitioner pursuant to the merger in the aggregate amount of ₱1,840,424,492.03.[15] Petitioner then protested[16] the FLD-FAN on November 10, 2014.[17]

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[8] Exhibit "P-25", Docket, Vol. III, p. 1699.
[9] Par. 6, JSFI, Docket, Vol. II, p. 1182.
[10] Exhibits "P-29" and "R-12", Docket, Vol. III, pp. 1703-1708.
[11] Par. 7, JSFI, Docket, Vol. II, p. 1182.
[12] Exhibit "P-30", Docket, Vol. III, pp. 1709-1715.
[13] Par. 8, JSFI, Docket, Vol. II, p. 1182.
[14] Exhibit "P-31", Docket, Vol. III, pp. 1716-1722.
[15] Par. 9, JSFI, Docket, Vol. II, p. 1182.
[16] Exhibit "P-32", Docket, Vol. III, pp. 1723-1736.
[17] Par. 10, JSFI, Docket, Vol. II, p. 1182.

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On January 14, 2015, the FDDA[18] dated January 12, 2015 was issued by OIC-Assistant Commissioner Nestor S. Valeroso, upholding the deficiency assessments on income tax, VAT, and DST for the period covering January 1, 2010 to August 31, 2010 in the aggregate amount of ₱1,570,938,751.79, inclusive of interest, surcharge, and compromise penalties.[19]

On February 6, 2015, petitioner filed a Request for Reconsideration[20] of the FDDA with the respondent.[21]

On April 21, 2015, petitioner received a Letter[22] dated March 12, 2015 from respondent informing it of the denial of its Request for Reconsideration.[23]

As a result, petitioner filed the instant Petition for Review before this Court on May 15, 2015.

Respondent then filed his Answer[24] on August 25, 2015 through registered mail and received by the Court on September 3, 2015, interposing the following Special and Affirmative Defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

5. *On the basis of the foregoing allegations and in further support of the Specific Denials herein set forth, respondent respectfully alleges as her defense that:*

6. *Basic as a hornbook principle is that, taxes are the lifeblood of the government and should be collected without unnecessary hindrance. It is upon taxation that the Government chiefly relies to obtain the means to carry on its operations and it is of the utmost importance that the means adopted to enforce the collection of taxes levied should be summary and interfered with as little as possible.*

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[18] Exhibits "P-34" and "R-15, Docket, Vol. III, pp. 1739-1745.
[19] Par. 11, JSFI, Docket, Vol. II, p. 1182.
[20] Exhibit "P-35", Docket, Vol. III, pp. 1746-1764.
[21] Par. 13, JSFI, Docket, Vol. II, p. 1183.
[22] Exhibit "P-3", Docket, Vol. III, p. 1303.
[23] Par. 14, JSFI, Docket, Vol. II, p. 1183.
[24] Docket, Vol. I, pp. 191-213.

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The Waivers of the Defense of Prescription under the Statute of Limitations of the Tax Code which was duly accepted and approved by respondent and thereafter received by petitioner are valid and binding between them. Hence, the waivers validly extended the period to assess petitioner.

7. *Section 222(b) of the National Internal Revenue Code of 1997, as amended states that the three-year prescriptive period may be extended through execution of a waiver of defense of prescription between the taxpayer and the Commissioner of Internal Revenue (CIR). In order to be valid, the same must comply with the form and procedures laid down in Revenue Memorandum Order (RMO) No. 20-90.*

8. *Petitioner executed three Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code covering all internal revenue taxes for **the period January 1, 2010 to August 31, 2010,** on the following dates:*

    1. *The first waiver (attached herein as Annex A) was executed on May 20, 2013 and was notarized on the same date, duly signed and accepted by respondent on June 4, 2013. It extended the period to assess until December 31, 2013.*

    2. *The second waiver (attached herein as Annex B) was executed on September 11, 2013 and was notarized on the same date, duly signed and accepted by respondent on September 18, 2013. It extended the period to assess until June 30, 2014. The second waiver was executed within the period to assess as stated in the first waiver.*

    3. *The third waiver (attached herein as Annex C) was executed on January 29, 2014 and was notarized on the same date. The same was duly signed and accepted by respondent on February 13, 2014. It extended the period to assess until December 23, 2014. The second waiver was*

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executed within the period to assess as stated in the second waiver.

9. *Petitioner alleged that the waivers were defective on the following grounds:*

    1. *That the waivers failed to state the kind and amount of tax;*
    2. *That waivers failed to state the date of acceptance by respondent and*
    3. *That waivers were not duly notarized.*

10. *The allegations of petitioner do not hold water. For the first allegation, respondent humbly submits that the waivers were executed prior to the issuance of Preliminary Assessment Notice (PAN). It would be absurd for respondent to determine the kind of tax and amount of tax at this early stage of audit and examination otherwise it would run counter to the principle of due process. Respondent humbly submits that to require the waivers to specify the kind of tax and the corresponding amount would be impossible since these waivers were executed in the course of the conduct of the audit investigation before the issuance of PAN*

11. *Further, the Letter of Authority (LOA) was issued and duly received by petitioner on March 31, 2011. The said LOA authorized the bearer thereof to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period January 1, 2010 to August 31, 2010. By accepting the LOA, petitioner consented to the audit and examination for all internal revenue taxes for the period January 1, 2010 to August 31, 2010. Since the LOA was for all internal revenue taxes, definitely, the waivers must also be for all internal revenue taxes.*

12. *For its second allegation, that the waivers did not state the date of acceptance, again this is a mere allegation of petitioner not supported by any evidence. As appearing on the face of the waivers, all three waivers were accepted by OIC-ACIR, Large Taxpayers Service, Alfredo V. Misajon on the following dates: June 4, 2013, September 18, 2013 and February 13, 2014.*

13. *For its third allegation that the waivers were not duly notarized, again the same bears no weight. Any defect in the notarization was caused by petitioner itself. This*

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practice should not be permitted and tolerated. The duty to have the waivers notarized is a duty that evidently belongs to its representative. Petitioner cannot thereafter question its action through its representative and alleged invalidity for its own advantage.

14. *Viewed in the light of the foregoing considerations the three waivers were valid and binding between petitioner and respondent.*

Assuming for the sake of argument that the waivers were not properly executed, petitioner is already estopped from assailing the validity of the waivers.

15. *The essence of estoppel and laches is the failure or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence could or should have been done earlier; it is the negligence or omission to assert a right within a reasonable time warranting a presumption that the party entitled to assert it either has abandoned or declined to assert it although there is no absolute rule as to what constitutes staleness of demand as each case is to be determined according to its particular circumstances.*

16. *Article 1431 of the Civil Code provides that in order that estoppel may apply to the person, to whom representations have been made and who claims the estoppel in his favor **must have relied or acted on such representations**. Article 1431 states that:*

> *'Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.'*

17. *The case of Kalalo v. Luz discussed estoppel in this wise:*

> *'The essential elements of estoppel in pais may be considered in relation to the party sought to be estopped, and in relation to the party invoking the estoppel in his*

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> *favor. As related to the party to be estopped, the essential elements are: (1) conduct amounting to false representation or concealment of material facts; or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intent, or at least expectation that this conduct shall be acted upon by, or at least influence, the other party; and (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, the essential elements are (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance, in good faith, upon the conduct or statements of the party to be estopped; (3) action or inaction based thereon of such character as to change the position or status of the party claiming the estoppel, to his injury, detriment or prejudice.'*

18. *Corollary, Section 2(a) of Rule 131 of the Rules of Court, on the burden of proof and presumptions, states as follows:*

> *'SEC. 2 Conclusive presumptions. – The following are instances of conclusive presumptions:*
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> *'(a) Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it;'*

19. *Petitioner, by its own voluntary act, is estopped from assailing the validity of the waivers. Undisputed is the fact that the execution of the waivers by both parties proved to be favorable to petitioner considering that aforesaid waivers constitute as tools for petitioner by providing enough time to gather voluminous documents/records to substitute its position.*

20. *Through the execution of the waivers, respondent was misled to believe that petitioner waived its right under*

the Statute of Limitations. Petitioner then actively participated in the audit and examination. A corporation like petitioner, is of knowledge of the effects and consequences of the execution of waivers. It is only when petitioner received an adverse decision that it questioned the validity of its own actions and took stance contrary to its previous act.

21. *Further, a party having performed affirmative acts upon which another person based his subsequent action, cannot thereafter refute his acts or renege on the effects of the same, to the prejudice of the latter. In Lopez vs. Ochoa, the Honorable Supreme Court discussed the relation between waiver and estoppel, to wit:*

> *'The doctrine of waiver belongs to the family of, or is based upon, estoppel. This is especially true where the waiver relied upon is constructive or implied from the conduct of a party, when it is said that the elements of estoppel are attendant.*
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> *(2) B. Nature of Doctrine.-The doctrine of waiver has been characterized as technical, as of some arbitrariness. It is one of the most familiar in the law, prevalent in ancient as well as in modern times throughout every branch of law as well as of practice. It is a doctrine resting upon an equitable principle which courts of law will recognize, that a person, with full knowledge of the facts shall not be permitted to act in a manner inconsistent with his former position or conduct to the prejudice of another, a rule of judicial policy, the legal outgrowth of judicial of abhorrence so to speak, of a person's taking inconsistent positions and gaining advantages thereby through the aid of courts. The doctrine, it has been said, belongs to the family of, is of the nature of, is based upon, estoppel. The essence of waiver, it has been stated, is estoppel, and where there is no estoppel, there is no waiver. 'Waiver' and 'estoppel' are frequently used as convertible. On the other hand, it has been said that the terms are not convertible, that an estoppel in pais has connections in no wise akin to waiver,*

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> *and that the doctrine of waiver does not necessarily depend on estoppel or misrepresentation; thus, a waiver does not necessarily imply that one has been misled to his prejudice or into an altered position; a waiver may be created by acts, conduct, or declaration to create a technical estoppel. However, the distinction, it has been said, is more easily preserved in dealing with express waiver, but where the waiver relied upon is constructive or merely implied from the conduct of a party, irrespective of what his actual intention may have been, it is at least questionable if there are not present some of the elements of estoppel.'*

22. *In the Heirs of Cipriano Reyes vs. Calumpang the Honorable Supreme Court held that a valid waiver need only consist of the following requisites: (a) existence of a right; (b) the knowledge of the existence thereof; and (c) an intention to relinquish such right. In the case at bar, petitioner knew it could waive its right under the Statute of Limitations and manifested its intention in writing*

23. *Second, petitioner executed not only one waiver, but three Waivers of Statute of Limitations. This fact alone will prove that if upon the execution of the first waiver, petitioner believed that the same was invalid, it should not have executed the remaining three waivers. It is quite absurd and unfair that when the assessment proved to be adverse to petitioner, the very same waivers utilized by petitioner for its own advantage will now be used by the very same petitioner to defeat the validity of the waivers it voluntarily executed.*

24. *Respondent humbly posits that petitioner's voluntary act of signing the waivers is tantamount to an assent or consent to extend the period of assessment. The act of signing the rest of the waivers already cured the alleged defect found in the prior waivers. Therefore, petitioner is now estopped from claiming otherwise.*

25. *Viewed in the light of the foregoing considerations the three waivers were valid and binding between petitioner and respondent.*

Assuming for the sake of argument that the waivers

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were not validly executed, respondent humbly posits that RMO 20-90 is an internal memorandum of the Bureau of Internal Revenue; therefore, as such, it is not a source of right of a taxpayer.

26. ***Revenue Memorandum Orders (RMOs)*** *are issuances that provide directives or instructions; prescribe guidelines; and outline processes, operations, activities, workflows, methods and procedures necessary in the implementation of stated policies, goals, objectives, plans and programs of the Bureau in all areas of operations, except auditing.*

27. *Based on the above definition, it is clear that Revenue Memorandum Orders are internal in nature that merely provide guidelines for the operations of the Bureau of Internal Revenue.*

28. *Thus, being a mere internal guidelines, it is not a source of right or obligation of a taxpayer.*

29. *Such internal guidelines can be likened to the by-laws of a corporation. The Honorable Supreme Court in the case of Gokongwei v. SEC explained:*

> *It is recognized by an authorities that every corporation has the inherent power to adopt by-laws for its internal government, and to regulate the conduct and prescribe the rights and duties of its members towards itself and among themselves in reference to the management of the affairs.*

30. *By-laws merely prescribe the rights and duties of its members towards itself and among themselves; and not third parties.*

31. *Corollary thereto, like by-laws of a corporation, third parties to Revenue Memorandum Orders cannot invoke any of its provisions, since these are mere guidelines and regulations directed to employees of the Bureau of internal Revenue. It cannot and should not be a source of right of a taxpayer.*

32. *At most any non-compliance with Revenue Memorandum Orders should only be a cause for*

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disciplinary action on the erring employee of the Bureau of Internal Revenue. It should not affect the validity of any official duty performed by such employee.

33. *Therefore, for laws or regulations to be a source of right or obligation of the general public, official publication is indispensable.*

34. *Again, at the risk of being repetitive, RMO 20-90 was never published in an official publication for it to be a source of right of a taxpayer. Said RMO merely governs the internal operations of the Bureau of Internal Revenue as regards the Waiver of the Statute of Limitations.*

35. *Thus, clearly, RMO 20-90 cannot be invoked by a taxpayer to invalidate official acts performed and any non-compliance thereto, at most, said RMO can only subject the erring employee of the Bureau of Internal Revenue to disciplinary action.*

36. *Therefore, the waivers voluntarily executed by petitioner, are binding; thereby validly extending the period to assess deficiency taxes from petitioner.*

Petitioner is liable to pay VAT.

37. *Petitioner alleged that the assessment for its VAT violated the rule on non-retroactivity of rulings under Section 246 of the 1997 NIRC to which respondent begs to disagree.*

38. *Petitioner should be reminded that it was Monterey Food Corporation (MFC) who requested for a confirmatory ruling. BIR Ruling No 424-2014 was issued in response to the facts as presented by MFC when they requested for the clarification in 2010. Thus, the effect rightfully reflected in the 2010 deficiency tax assessment.*

39. *Section 105 of the 1997 NIRC, as amended, identifies the persons liable for the VAT, to wit:*

> *SEC. 105. Persons Liable. – Any person who, in the course of trade or business, sells barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject*

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to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

40. *Moreover, Section 109 of the NIRC enumerates those transactions that are exempt from VAT. Nowhere in Section 109 of the NIRC does it state that the transfer of assets to a corporation in exchange for shares of the latter is exempt from VAT. Thus, there was no legal basis to exempt from VAT the transfer of assets of Monterey Foods Corporation to San Miguel Foods, Inc.*

41. *The basis for the VAT assessment as consequence of the transfer of properties from you to SMFI is the higher of the Book Value per FS compared with the Fair Market Value (FMV) per BIR Form 1927, the table below shows the said comparison:*

	Book Value per FS	'FMV per BIR Form 1927'	W/C-EVER IS HIGER
Real Properties	5,251,000.00	1,928,601,244.00	1,928,601,244.00
Land & Improvements	922,806,000.00	146,436,694.88	922,806,000.00
Building & Building Improvements	637,857,000.00	479,146,500.29	637,857,000.00
Machineries & Equipment	118,386,000.00	113,431,421.86	118,386,000.00
Capital Projects in Progress	224,263,000.00	290,780,468.03	290,780.468.03
Intangible assets-net	3,000.00	7,427.00	7,427.00
Total Assets, net of Cash & Biological Assets	3,198,031,000.00	4,268,240,303.42	3,898,438,139.03

A corporation contemplating merger/ dissolution or reorganization must comply with Section 52 (c) of the NIRC of 1997, as amended, as well as its implementing revenue regulations.

42. *A corporation contemplating merger or dissolution must comply with the provisions of the NIRC of 1997, as amended. Compliance with the provisions of the NIRC is necessary to ensure that any tax liability should be paid. Related provisions of the NIRC of 1997 as amended are quoted hereunder for easy reference.*

SEC. 52. Corporation Returns. -

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> ***(C) Return of Corporation Contemplating Dissolution or Reorganization.- Every corporation shall, within thirty (30) days after the adoption by the corporation of a resolution or plan for its dissolution, or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and Exchange Commission, or for its reorganization, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance,*** *upon recommendation of the commissioner, shall, by rules and regulations, prescribe.*
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> ***The dissolving or reorganizing corporation shall, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, as may be defined by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, <u>secure a certificate of tax clearance</u> from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission.***
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> ***SEC. 235. Preservation of Books and Accounts and Other Accounting Records. -***
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> *xxx xxx xxx*
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> *(e) In the exercise of the Commissioner's power under Section 5(B) to obtain information from other persons in which case, another or separate examination and inspection may be made. Examination and inspection of books of accounts and other accounting records shall be done in the taxpayer's office or place of business or in the office of the Bureau of Internal Revenue. All corporations, partnerships or*

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persons that retire from business shall, within ten (10) days from the date of retirement or within such period of time as may be allowed by the Commissioner in special cases, submit their books of accounts, including the subsidiary books and other accounting records to the Commissioner or any of his deputies for examination, after which they shall be returned. ***Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability.***

41. *Further, Revenue Regulations 11-2008 was issued to address relevant issues relating to registration, its update, and cancellation, to wit:*

REVENUE REGULATIONS NO. 11-2008

SUBJECT: CONSOLIDATED REVENUE REGULATIONS ON PRIMARY REGISTRATION, ITS UPDATE, AND CANCELLATION

TO: ALL INTERNAL REVENUE OFFICERS AND OTHER CONCERNED

Section 1. Scope. - Pursuant to Section 244 of the 1997 National Internal Revenue Code (Code), as amended, in relation to Chapter II of Title IX specifically Section 236 of the same Code, these regulations are hereby promulgated in order to consolidate and update all existing revenue regulations relative to primary registration particularly on the following:

(a) Registration, updates and cancellation procedures;
(b) Documentary requirements;
(c) Registration forms;
(d) Annual Registration fee;
(e) Certification fee; and
(f) Penalties for registration-related violations

SEC. 14 CANCELLATION OF REGISTRATION. *- The cancellation of registration may either pertain to cancellation of business registration and/or TIN. The cancellation of the Business registration shall not automatically cancel the TIN of the person. TIN is cancelled upon:*

a) Death of an individual;
b) Dissolution, merger or consolidation of juridical person;
c) Discovery of a taxpayer having multiple TIN's; and
d) Payment of estate tax by the heirs, administrator or executor (TIN of the Estate). However, in case of additional properties uncovered after payment of estate tax, the TIN previously issued for such estate shall be re-activated in order to facilitate the filing of the amended estate tax return and shall be cancelled upon full settlement of the tax liabilities of the estate.

Whereas, the cancellation of business registration may be granted on the following instance:

a) Closure/Cessation of business operation;
b) Dissolution of corporation/partnership;
c) Merger/Consolidation;
d) Death of an individual.

Cancellation of business registration due to any of the above instances requires the filing of a notice of closure or cessation of business in the RDO where registered, by accomplishing the prescribed registration updates form. Upon filing of the duly-accomplished form, the taxpayer is required to submit a list of ending inventory of goods, supplies, including capital goods; and an inventory/list of unused sales invoices/official receipts (SI/OR) and all other unutilized accounting form

(e.g., vouchers, debit/credit memos, delivery receipts, purchase orders, etc.). *The unused sales invoices/official and all other unutilized accounting forms shall be physically submitted to the RDO where the head office (HO) is registered or where the Authority to Print (ATP) was secured. The taxpayer shall also surrender all business notices and permits as well as the COR for cancellation. In case of cancellation of a branch, the submission of the unused SI/OR for destruction shall be done with the BIR office where the ATP was issued.*

The RDO, upon receipt of the notice, registration update, inventory list of goods, inventory list of unused sales invoices/official receipts/other accounting forms shall:

A. 'End date' the tax types of the taxpayer;
B. Destruct, in the presence of the taxpayer or his authorized representative, the unutilized SI/ORs and other accounting forms by cutting them crosswise and lengthwise at the middle thereof so that the same shall be divided into four(4),ensuring that the same will no longer be used as originally intended; and

C. Return to taxpayer the destructed SI/ORs and accounting forms for burning and/or proper disposition.

In case of merger or consolidation, the above rules shall also apply to the dissolve entity (HO and branches). However, where the registered branches of the dissolved entity now become branches of the surviving, it shall be the responsibility of the surviving entity's head office to provide them with SI/ORs for their use while the new set of So/ORs (with the new name and TIN of the branch) is in process. In this case the HO shall ask the BIR Office, where HO is registered, for a permit for this purpose.

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The RDO of the HO of the dissolved entity inform all the other RDOs, where the branches are registered, of the closure/cessation of the business. Likewise, the RDO of the head office shall submit a monthly report on cessation or closure of business to the taxpayer Assistances Service, Attn: Chief, Taxpayer Service Programs Monitoring Division (TSPMD), for the issuance of Revenue Memorandum Circular (RMC) circularizing the names of taxpayers who have ceased business operations for the month.

Generally, the cancellation of HO registration shall result to the cancellation of the business registration of the branch. This is true if branches are using same trade name being used by the HO, otherwise, the taxpayer shall file an application for update, making one of its/his existing branches to be the HO. If the location of the branch selected to be the HO is under a different RDO, the rule on transfer of registration shall apply.

All taxpayers who filed for cancellation of registration due to closure/cessation or termination of business shall be subject to immediate investigation by the BIR office concerned to determine the taxpayer's liabilities. The immediate investigation of the BIR shall not be done if it involves cancellation of business of a person's registered branch.

42. *In accordance with the above stated provisions, every corporation shall, within thirty (30) days after the adoption by the corporation of a resolution or plan for its merger/dissolution, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan.*

43. *Petitioner in its petition merely mentioned that it entered into a plan of merger with Monterey Foods Corporation but failed to indicate the date of the Board Resolution approving the same. Further, it even failed*

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to obtain the necessary clearance and certification from the Bureau of Internal Revenue.

44. *Failure to comply with the foregoing will create a doubt as to the validity of the merger and the alleged tax exempt transaction entered into between San Miguel Foods, Inc. and Monterey Foods Corporation.*

45. *And as discussed above, petitioner failed to comply with the mandatory requirements provided bylaw and rules and regulations, thus petitioner cannot be considered as legally dissolved.*

46. *The Honorable Court in the case of Stablewood Philippines, Inc. vs. CIR, discussed the importance of obtaining tax clearance, to wit:*

> *Based on the foregoing, it is evident that if the corporation permanently ceases its operations before full utilization of the tax credits it opted to carry over, it may be allowed to claim the refund of the remaining tax credits as an exception to the irrevocability rule under Section 76 of the NIRC of 1997, as amended. However, the dissolving corporation must prove that the termination of its operations is permanent in nature and that it is cleared from any tax or other government liabilities before a tax refund may be granted.* ***Therefore, a corporation contemplating dissolution must first secure a tax clearance certificate from the Commissioner of Internal Revenue (CIR), which certificate shall then be submitted to the Securities and Exchange Commission (SEC) for the issuance of the Certificate of Dissolution.*** *Hence, compliance with Sections 52(C) and 235 of the NIRC of 1997, as amended, is necessary before a taxpayer may be issued a tax refund of its excess CWT. It must be underscored that this is a safeguard devised by Congress in order to ensure that no corporation may escape payment of taxes and other government liabilities by simply opting to cease its operations and dissolve the corporation.*

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> *In the instant case, **petitioner failed to present the tax clearance certificate and certificate of dissolution issued by the BIR** and SEC, respectively, **in order to prove that it was cleared of any tax liability as mandated under Sections 52(C) and 235 of the NIRC of 1997, as amended.** Petitioner's submission of notice to the BIR informing the latter of the approval of the dissolution of its corporate existence by its shareholders and directors is not determinative of whether petitioner is cleared from any taxes and other government liabilities.*

47. *As discussed above, an uncertainty exist as to the true nature of the merger. With this uncertainty, the merger cannot be considered as the merger contemplated under Section 40 of the NIRC of 1997. Section 40 states that:*

> ***SEC. 40. Determination of Amount and Recognition of Gain or Loss. –***
>
> ***xxx***
>
> ***(C) Exchange of Property. –***
>
> ***xxx***
>
> ***(2) Exception**. - No gain or loss shall be recognized if in pursuance of a plan of merger or consolidation –*
>
> *(a) A corporation, which is a party to a merger or consolidation, exchanges property solely for stock in a corporation, which is a party to the merger or consolidation; or*
>
> *(b) A shareholder exchanges stock in a corporation, which is a party to the merger or consolidation, solely for the stock of another corporation also a party to the merger or consolidation; or*
>
> *(c) A security holder of a corporation, which is a party to the merger or consolidation, exchanges his securities in such corporation, solely for stock or securities in such corporation, a party to the merger or consolidation.*
>
> *No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for stock or unit of participation in such a corporation of which as a result of such exchange said person, alone or together with others, not exceeding four (4)*

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persons, gains control of said corporation: Provided, That stocks issued for services shall not be considered as issued in return for property.

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(6) Definitions. –

(a) The term 'securities' means bonds and debentures but not 'notes' of whatever class or duration.

(b) The term 'merger' or 'consolidation', when used in this Section, shall be understood to mean: (i) the ordinary merger or consolidation, or (ii) the acquisition by one corporation of all or substantially all the properties of another corporation solely for stock: ***Provided, That for a transaction to be regarded as a merger or consolidation within the purview of this Section, it must be undertaken for a bona fide business purpose and not solely for the purpose of escaping the burden of taxation: Provided, further, That in determining whether a bona fide business purpose exists, each and every step of the transaction shall be considered and the whole transaction or series of transaction shall be treated as a single unit:*** *Provided, finally, That in determining whether the property transferred constitutes a substantial portion of the property of the transferor, the term 'property' shall be taken to include the cash assets of the transferor.*

(c) The term 'control', when used in this Section, shall mean ownership of stocks in a corporation possessing at least fifty-one percent (51%) of the total voting power of all classes of stocks entitled to vote.

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48. *A mere claim of merger does not ipso facto make such transaction exempt from income tax, documentary stamp tax and value added tax. For a transaction to be regarded as a merger or consolidation within the purview of the section above stated, petitioner must prove every detail of the transaction and that it was undertaken for a bona fide business purpose and not solely for the purpose of escaping the burden of taxation. In determining whether a bona fide business purpose exists, each and every step of the transaction*

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shall be considered and the whole transaction or series of transaction shall be treated as a single unit.

Petitioner is liable to pay income tax.

49. *Failure on the part of petitioner to prove every step of the transaction was undertaken for a bona fide business purpose, petitioner is liable to pay the amount of P1,163,059,820.35*

FMV of MFC's Net Assets	P1,253,550.820.35	
SMFI share issued to MFC at BV based on SMFI's Equity	P 54,962,901.41	
Which-ever is higher of the above figures		P1,253,550,820.35
Cost: (Book Value of MFC's Net Assets per FS)		9,049,100.00
Taxable gain		P1,163,059,820.35

Petitioner is liable to pay documentary stamp tax.

Basic deficiency DST on transfer of real properties due to merger-P44,375,944.94

Basic deficiency DST on assumption of notes payable due to merger-P15,520,000.00

50. *In relation to the merger entered into by SMFI and MFC, the former as the surviving corporation, the DST liability on the transfer of real properties, was based on Sec. 196 of the NIRC, and on the assumption of notes payable by SMFI, pursuant to Sec. 179 of the NIRC of 1997, as amended.*

51. *All told, the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong, but also that the taxpayer is right. The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting.*

52. *Well-settled is the rule that tax assessments are entitled to the presumption of correctness 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.*

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> *All presumptions are in favor of the correctness of tax assessments (Sy Po vs. Court of tax Appeals, 164 SCRA 524). Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices."*

The Pre-Trial Conference was set on October 8, 2015.[25] The Pre-Trial Brief for Petitioner[26] was filed on October 2, 2015; while respondent's Pre-Trial Brief[27] was filed on October 5, 2015.

The parties then filed their Joint Stipulation of Facts and Issues[28] on October 28, 2015, which was approved by the Court in its Resolution[29] dated November 11, 2015. The Court issued its Pre-Trial Order on February 2, 2016, which, among others, terminated the pre-trial.[30]

Petitioner presented Atty. Ma. Celeste L. Ramos[31] and Mauvir C. Buzon[32] as its witnesses.

On May 27, 2016, petitioner filed its Formal Offer of Evidence[33], offering Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-10.1", "P-10.2", "P-10.3", "P-10.4", "P-10.5", "P-10.6", "P-10.7", "P-10.8", "P-10.9", "P-11", "P-12", "P-13", "P-14", "P-14.1", "P-15", "P-15.1", "P-16", "P-16.1", "P-17", "P-17.1", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26, "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", "P-48-1", "P-49", and "P-49-1" as its documentary evidence. Respondent failed to file his comment thereto.[34]

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[25] Resolution dated September 7, 2015, Docket, Vol. I, p. 220.
[26] Docket, Vol. II, pp. 1126-1145.
[27] Docket, Vol. II, pp. 1157-1163.
[28] Docket, Vol. II, pp. 1181-1193.
[29] Docket, Vol. II, p. 1198.
[30] Docket, Vol. II, pp. 1222-1236.
[31] Minutes of the hearing dated February 2, 2016, Docket, Vol. II, pp. 1237-1239.
[32] Minutes of the hearing dated March 1, 2016, Docket, Vol. II, pp. 1245-1246
[33] Docket, Vol. III, pp. 1261-1281.
[34] Records Verification dated June 23, 2016, Docket, Vol. III, p. 1921.

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In the Resolution[35] dated July 28, 2016, the Court admitted all the formally offered exhibits as petitioner's evidence.

The documentary exhibits formally offered by the petitioner and admitted by the Court are as follows:

EXHIBIT	**DESCRIPTION**
P-1	Securities and Exchange Commission ("SEC") Certificate of Registration with attached Articles of Incorporation of San Miguel Foods, Inc.
P-2	Bureau of Internal Revenue ("BIR") Certificate of Registration of San Miguel Foods, Inc.
P-3	Letter-Denial of Petitioner's Request for Reconsideration dated March 12, 2015 received on April 21, 2015
P-4	Certificate of Merger
P-5	Articles of Merger and Plan of Merger
P-6	Audited Financial Statement for taxable year December 31, 2010 of San Miguel Foods, Inc.
P-7	Audited Financial Statements for taxable year period ending August 31, 2010 of Monterey Foods Corporation
P-8	SEC Certificate of Filing of Amended Articles of Incorporation with Articles of Incorporation of Monterey Foods Corporation
P-9	BIR Certificate of Registration of Monterey Foods Corporation
P-10	Letter dated August 16, 2010 with attached supporting documents
P-10.1	BIR Form No. 1927 (Application and Joint Certification)
P-10.2	BIR Form No. 0605 for filing fee of the tax-free merger ruling application
P-10.3	BIR Form No. 2000 for the tax due amounting to P98,402
P-10.4	Certification executed by the Corporate Secretary of petitioner, Alexandra Bengson Trillana with attached 2010 General Information Sheet of SMFI and MFC and 2010 Audited Financial Statements of SMFI
P-10.5	Certification executed by MFC's Finance Manager, Evangeline Zarate on the valuation of Property and Equipment and Investment Properties of MFC at original or historical cost

[35] Docket, Vol. III, pp. 1927-1928.

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P-10.6	Certification executed by Evangeline Zarate on the transfer of assets and liabilities by MFC to SMFI at book value with attached Annex showing the original/historical cost, fair market value and book value for each asset and liability transferred
P-10.7	Certificate of Filing of the Articles and Plan of Merger
P-10.8	Certificate of Filing of Amended Articles of Incorporation of SMFI
P-10.9	Certificate of Filing of Amended Articles of Incorporation of MFC
P-11	DST Return with Reference No. 141000004054774
P-12	Short Period Income Tax Return filed through Electronic Filing and Payment System for the period ended August 31, 2010 on September 30, 2010, with attached manually filed tentative BIR Form 1702 on October 14, 2010
P-13	Amended Short Period Income Tax Return filed through Electronic Filing and Payment System for the period ended August 31, 2010 on May 17, 2011 and manually filed the same on May 23, 2011
P-14	Original Monthly VAT Declaration for January 2010 with Reference No. 091000003586294 filed on February 19, 2010
P-14.1	Amended Monthly VAT Declaration for January 2010 with Reference No. 091000003875506 filed on June 17, 2010
P-15	Original Monthly VAT Declaration for February 2010 with Reference No. 091000003653823 filed on March 19, 2010
P-15.1	Amended Monthly VAT Declaration for February 2010 with Reference No. 091000003875680 filed on June 17, 2010
P-16	Original Quarterly VAT Return for the 1st Quarter of 2010 with Reference No. 101000003731071 filed on April 20, 2010
P-16.1	Amended Quarterly VAT Return for the 1st Quarter of 2010 with Reference No. 101000003875802 filed on June 17, 2010
P-17	Original Monthly VAT Declaration for April 2010 with Reference No. 091000003806945 filed on May 20, 2010
P-17.1	Amended Monthly VAT Declaration for April 2010 with Reference No. 091000003876117 filed on June 17, 2010
P-18	Original Monthly VAT Declaration for May 2010 with Reference No. 091000003878920 filed on June 18, 2010
P-19	Original Quarterly VAT Return for the 2nd Quarter of 2010 with Reference No. 101000003948320 filed on July 20, 2010

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P-20	Original Monthly VAT Declaration for July 2010 with Reference No. 091000004025973 filed on August 20, 2010
P-21	Original Monthly VAT Declaration for August 2010 with Reference No. 091000004105489 filed on September 20, 2010
P-22	Original Quarterly VAT Return for the 3rd Quarter of 2010 with Reference No. 101000004171547 filed on October 20, 2010
P-23	Letter dated August 21, 1998 notifying and classifying SMFI as a large taxpayer
P-24	Letter dated January 12, 2007 notifying and classifying MFC as large taxpayer
P-25	Letter of Authority No. 116-2011-00000002 dated May 12, 2011
P-26	First Waiver dated May 20, 2013
P-27	Second Waiver dated September 11, 2013
P-28	Third Waiver dated January 29, 2014
P-29	Preliminary Assessment Notice dated August 12, 2014 ("PAN")
P-30	Letter dated August 27, 2014
P-31	Formal Letter of Demand with attached Final Assessment Notices and Details of Discrepancy dated October 9, 2014 received on October 10, 2014 ("FAN")
P-32	Letter-Protest dated November 9, 2014
P-33	BIR Ruling 424-2014 dated October 24, 2014
P-34	Final Decision on Disputed Assessment dated January 12, 2015 ("FDDA")
P-35	Letter-Request for Reconsideration dated February 5, 2015
P-36	BIR Form 1905 or the Application for Registration Information Update filed by MFC with attached list of unused sales invoice, official receipts and other accountable forms
P-37	General Information Sheet of SMFI for 2010
P-38	General Information Sheet of SMFI for 2011
P-39	Amended General Information Sheet of SMFI for 2012
P-40	Amended General Information Sheet of SMIF for 2013
P-41	Amended General Information Sheet of SMFI for 2014
P-42	General Information Sheet of SMFI for 2015
P-43	Secretary's Certificate re: List of Stockholders of Monterey Foods Corporation
P-44	Secretary's Certificate re: List of Stockholders of San Miguel Foods, Inc.
P-45	Secretary's Certificate issued by Assistant Corporate Secretary of petitioner on the adoption of the Board and Stockholder' resolutions authorizing the merger between petitioner and MFC

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P-46	BIR Ruling No. 214-12 dated March 28, 2012
P-47	Certification with attached Decision [Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation, 736 SCRA 623 (2014)] by the Deputy Clerk of Court of the Supreme Court
P-48	Judicial Affidavit of Ma. Celeste Legaspi-Ramos
P-48-1	Signature of Ma. Celeste Legaspi-Ramos
P-49	Judicial Affidavit of Mauvir C. Buzon
P-49-1	Signature of Mauvir C. Buzon

On October 11, 2016, respondent presented Revenue Officer Maria Gracielle Cecilia San Pedro Anaban as witness.[36]

Thereafter, the Respondent's Formal Offer of Evidence[37] was filed on October 28, 2016, offering Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", "R-13", "R-14", "R-15", "R-16", "R-17", and "R-17-1" as his documentary exhibits. Petitioner filed its Comment [on Respondent's Formal Offer of Evidence dated October 27, 2016][38] on November 18, 2016.

In the Resolution[39] dated December 21, 2016, the Court admitted Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", "R-12", "R-13", "R-14", "R-15", "R-17" and "R-17-1", but denied the admission of Exhibit "R-16".

The admitted documentary exhibits formally offered by the respondent are the following:

EXHIBIT	DESCRIPTION
R-1	Letter of Authority (LOA) No. 116-2011-00000002 dated May 12, 2011
R-2	Letter dated May 12, 2011
R-3	Letter received by Monterey on July 14, 2011
R-4	Letter dated April 24, 2012 and served to petitioner on April 27, 2012

[36] Minutes of the hearing dated October 11, 2016, Docket, Vol. III, pp. 1937-1940.
[37] Docket, Vol. III, pp. 1951-1960.
[38] Docket, Vol. III, pp. 1963-1967.
[39] Docket, Vol. III, pp. 1972-1973.

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R-5	Letter dated November 12, 2012 and served to petitioner on November 14, 2012
R-6	Memorandum of Assignment issued on February 25, 2013
R-7	Undated Letter
R-8	Waiver of the Defense of Prescription Under the Statute of Limitations executed on May 20, 2013
R-9	Waiver of the Defense of Prescription Under the Statute of Limitations executed on September 11, 2013
R-10	Waiver of the Defense of Prescription Under the Statute of Limitations executed on January 29, 2014
R-11	Memorandum dated July 28, 2014 recommending the issuance of the Preliminary Assessment Notice (PAN)
R-12	Preliminary Assessment Notice (PAN) dated August 12, 2014 with Details of Discrepancies
R-13	Memorandum dated September 26, 2014
R-14	Formal Letter of Demand dated October 9, 2014 with attached Final Assessment Notice and Details of Discrepancies
R-15	Final Decision on Disputed Assessment FDDA dated January 12, 2015
R-17	Judicial Affidavit of Revenue Officer Maria Gracielle Cecilia F. San Pedro
R-17-1	Signature above the name Maria Gracielle Cecilia F. San Pedro

The case was declared submitted for decision on February 28, 2017,[40] considering the filing of the Memorandum for Petitioner[41] on January 31, 2017 and the Records Verification[42] dated February 17, 2017 issued by the Court's Judicial Records Division stating that respondent failed to file a memorandum.

The parties submitted the following issues for the Court's resolution:[43]

1. Whether or not petitioner is liable to pay deficiency income tax, VAT and DST in the aggregate amount of ₱1,570,938,751.79, inclusive of interest, surcharge and compromise

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[40] Resolution dated February 28, 2017, Docket, III, p. 2022.
[41] Docket, Vol. III, pp. 1974-2018.
[42] Docket, Vol. III, p. 2019.
[43] JSFI, Docket, Vol. II, pp. 1183-1184.

penalties, for the period January 1, 2010 to August 31, 2010.

a. Whether or not the right of the government to assess petitioner for deficiency income tax, VAT and DST for the period January 1, 2010 to August 31, 2010 has prescribed.

b. Whether or not the assessments for deficiency income tax, VAT and DST have factual and legal basis.

c. Whether or not the assessments for alleged deficiency income tax, VAT and DST are violative of the rule on non-retroactivity of rulings under Section 246 of the 1997 NIRC.

d. Whether or not the assessment of deficiency VAT on the transfer of real properties pursuant to a merger is proper.

e. Whether or not the assessment of deficiency DST on the transfer of real properties pursuant to a merger is proper.

Before going into the merits of the case, the Court shall first determine the timeliness of the filing of the present Petition for Review in accordance with Section 228 of the NIRC of 1997, as amended, which is quoted hereunder for ready reference:

"SEC. 228. Protesting of Assessment. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

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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.

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

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

In this case, petitioner received the FLD-FAN dated October 9, 2014 for alleged deficiency income tax, VAT, and DST in the aggregate amount of ₱1,840,424,492.03 on October 10, 2014. Within thirty (30) days from receipt of the FLD on October 10, 2014, petitioner filed its administrative protest on November 10, 2014[44].

On January 14, 2015, the FDDA dated January 12, 2015 was issued by OIC-Assistant Commissioner Nestor S. Valeroso upholding the deficiency income tax, VAT, and DST assessments for the period covering January 1, 2010 to August 31, 2010 in the aggregate amount of ₱1,570,938,751.79, inclusive of interest, surcharge and

[44] November 9, 2014 being a Sunday.

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compromise penalties. On February 6, 2015, petitioner filed a Request for Reconsideration with respondent. On April 21, 2015, petitioner received the Letter dated March 12, 2015 from respondent, denying its Request for Reconsideration.

Applying Section 228 of the NIRC of 1997, as amended, the taxpayer adversely affected by the decision of respondent may appeal to this Court within thirty (30) days from receipt of said decision. Thus, petitioner had a period of 30 days from April 21, 2015 or until May 21, 2015, within which to file its Petition for Review before this Court. Petitioner filed the present Petition for Review on May 15, 2015. Clearly, the Court has acquired jurisdiction over the instant case.

Having discussed the timeliness of the filing of the present Petition for Review, the next question is "Whether petitioner is liable to pay deficiency income tax, VAT and DST in the aggregate amount of ₱1,570,938,751.79, inclusive of interest, surcharge and compromise penalties, for the period January 1, 2010 to August 31, 2010". The answer is no.

Petitioner is not liable to pay the assessed deficiency income tax, VAT and DST on the ground that that the FLD and FANs are intrinsically void for failure of the FLD and FANs to demand payment of the taxes due within a specific period; and for having been issued without a valid Letter of Authority (LOA).

Lack of demand to pay the taxes due within a specific period

A review of the FLD and FANs issued against petitioner discloses that both failed to demand payment of the taxes due within a specific period. While the FLD[45] specifically states that:

[45] Exhibit 13; Exhibit H.

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> *"xxx, you are hereby requested to pay your deficiency tax liabilities xxx* ***within the time shown in the enclosed assessment notice.****"*[46] *(Boldfacing supplied)*

the <u>spaces for the due dates</u> in the enclosed FANs were conspicuously left blank.

In case of *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation,*[47] the Supreme Court emphasized the requirement for an assessment to contain a specific demand for payment within a prescribed period in this wise:

> *"An assessment contains not only a computation of tax liabilities,* ***but also a demand for payment within a prescribed period.*** *It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer. xxx xxx xxx.*
>
> *xxx xxx*
>
> *To start with, an assessment must be sent to and received by a taxpayer,* ***and must demand payment of the taxes described therein within a specific period.*** *Thus, the NIRC imposes a 25 percent penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20 percent per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for its payment until the full payment.*
>
> *xxx xxx xxx.* ***Necessarily, the taxpayer must be certain that a specific document constitutes an assessment. Otherwise, confusion would arise regarding the <u>period</u> within which to make an assessment or to protest the same, or whether interest and penalty may accrue thereon.***
>
> *In the present case, the revenue officers' Affidavit merely contained a computation of respondents' tax liability.* ***It did not state a demand or a period for***

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[46] Exhibit "P-31", CTA Docket, Vol. III, pp-1716-1722; Exhibit "R-14", BIR Records, pp. 647-657.
[47] G.R. No. 128315, June 29, 1999.

> ***payment.*** *Xxx xxx." (Boldfacing and underscoring supplied)*

Moreover, a FAN is not valid if it does not contain a definite due date for payment by the taxpayer.[48] In the case of *Commissioner of Internal Revenue vs. Fitness by Design, Inc.,*[49] the importance of a definite and actual demand to pay the tax assessment was reiterated by the Supreme Court:

> *"Second,* ***there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:***
>
> > *In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice. (Emphasis in the original)*
>
> *However, based on the findings of the Court of Tax Appeals First Division,* ***the enclosed assessment pertained to remained unaccomplished****.*
>
> *Contrary to petitioner's view,* ***April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay****.*
>
> *Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation." (Boldfacing supplied)*

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[48] Commissioner of Internal Revenue vs. Fitness by Design, Inc., G.R. No. 215957, November 9, 2016.

[49] G.R. No. 215957, November 9, 2016.

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To be considered as valid, the FANs must not only indicate the legal and factual bases of the assessments **but must also state a clear and categorical demand for payment of the computed tax liabilities within a specific period**. The requirement to indicate a fixed and definite period or a date certain within which a taxpayer must pay the assessed deficiency tax liabilities is indispensable to the validity of a FAN. In other words, a FAN cannot be deemed valid absent a specific date or period within which the alleged tax liabilities must be settled or paid by the taxpayer.

The fatally infirmed FANs and consequently, the FLD and FDDA, which demand from petitioner the payment of the deficiency income tax, VAT and DST for the period January 1, 2010 to August 31, 2010, must perforce be cancelled and set aside.

Lack of a valid LOA

A careful perusal of the records of the case reveals that the Revenue Officer (RO) who conducted the audit of petitioner was not duly authorized pursuant to a valid LOA. The following are the events that transpired relative to the issuance of the FLD and FANs:

- May 31, 2011 - petitioner received LOA No. 116-2011-00000002 dated May 12, 2011[50] signed by Zenaida G. Garcia, Assistant Commissioner, Large Taxpayers Service, authorizing Revenue Officers (RO) - **Cletofel Parungao, Myrna Ramirez, Ma. Salud Maddela, Zenaida Paz, Allan Maniego, Joel Aguila, and Group Supervisor (GS) Glorializa Samoy** of LT Regular Audit Division 1 to examine its books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2010 to August 31, 2010.

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[50] Exhibit "P-25", CTA Docket, Vol. III, 1699; Exhibit "R-1", BIR Records, p. 103.

- February 25, 2013 - Cesar D. Escalada, Chief, Regular LT Audit Division 1, issued a Memorandum of Assignment (MOA) No. LOA-116-2013-0452[51] to **RO Maria Gracielle Cecilia F. San Pedro and GS Juvy S. De la Peña** for the continuation of the audit/investigation to replace the previously assigned RO(s) who resigned / retired / transferred to another district office.

- July 28, 2014 - **RO San Pedro** submitted a Memorandum,[52] which was noted by **GS Allan M. Maniego** and with recommending approval of Mr. Escalada, to Officer-in-Charge, Assistant Commissioner (OIC-ACIR) Nestor S. Valeroso, Large Taxpayer Service, recommending that a Preliminary Assessment Notice (PAN) be approved and issued to Monterey Foods Corporation covering the taxable period from January 1 to August 31, 2010. The Memorandum was approved by OIC-ACIR Valeroso.

- August 12, 2014, petitioner received the PAN[53] dated August 12, 2014 from OIC-ACIR Valeroso assessing petitioner for alleged deficiency income tax, withholding tax on compensation, VAT, and DST, inclusive of interest, surcharge, and compromise penalty covering the taxable period from January 1 to August 31, 2010.

- August 27, 2014 - petitioner sent a Letter dated August 27, 2014[54] to the Commissioner of Internal Revenue (CIR), thru Mr. Escalada, contesting the PAN.

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[51] Exhibit "R-6", BIR Records, p. 282.
[52] Exhibit "R-11", BIR Records, pp. 543-554.
[53] Exhibit "P-29" and "R-12", CTA Docket, Vol. III, pp. 1703-1708 and BIR Records, pp. 589-594.
[54] Exhibit "P-30", CTA Docket, Vol. III, pp. 1709-1715.

- September 26, 2014 - RO San Pedro submitted a Memorandum,[55] which was noted by GS Maniego and with recommending approval of Mr. Escalada, to OIC-ACIR Valeroso, recommending that FLD be approved and issued to Monterey Foods Corporation covering the taxable period from January 1 to August 31, 2010. The Memorandum was approved by OIC-ACIR Valeroso.

- October 10, 2014 - petitioner received the FLD dated October 9, 2014 with attached FANs dated October 9, 2014 and Details of Discrepancy[56] issued by then CIR Kim S. Jacinto-Henares against Monterey Foods Corporation.

While GS Maniego was named in LOA No. 116-2011-00000002 as one of the ROs authorized to conduct the audit of petitioner, records reveal that his actual participation in the audit of petitioner was limited to merely noting the audit results conducted by RO San Pedro. In her Judicial Affidavit dated October 5, 2015,[57] RO San Pedro admitted that she was one of the ROs who continued the audit of petitioner for the period January 1, 2010 to August 31, 2010 and that the basis of her authority to do so was the Memorandum of Assignment issued on February 25, 2013.[58] A plain reading of said Memorandum of Assignment indicates that the GS assigned to continue the audit was **GS Dela Peña, and not GS Maniego.** At any rate, **there is nothing in the records which would show that a new LOA was issued granting RO San Pedro and GS Maniego to continue the audit of petitioner for the period January 1, 2010 to August 31, 2010**.

While petitioner failed to raise the issue of lack of authority of RO San Pedro and GS Maniego to continue the

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[55] Exhibit "R-13", BIR Records, pp. 639-642.
[56] Exhibit "P-31", CTA Docket, Vol. III, pp-1716-1722; Exhibit "R-14", BIR Records, pp. 647-657.
[57] Exhibit "R-17", CTA Docket, Vol. II, pp. 1150-1156.
[58] Exhibit "R-6", BIR Records, p. 282.

conduct of petitioner's audit, this Court is not precluded from considering this issue as the absence of a valid LOA renders an assessment intrinsically void. A void assessment bears no fruit,[59] and it is settled that estoppel cannot operate to give an effect to an assessment which is *void ab initio*.

Pursuant to Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, 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, to wit:

> *"SECTION 1. Rendition of judgment. - x xx*
>
> *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.*

Furthermore, in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*[60], the Supreme Court reiterated that the CTA can resolve the issue on the authority of the ROs to conduct the audit, albeit the same was not raised by the parties in their pleadings or memoranda, *viz.*:

> *"On whether the CTA can resolve an issue which was not raised by the parties, we rule in the **affirmative**.*
>
> *xxx xxx xxx*
>
> *Xxx xxx xxx, **the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda.** The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." (Boldfacing supplied)*

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[59] Metro Star Superama, Inc. vs. Commissioner of Internal Revenue, G.R. No. 185371, December 8, 2010.
[60] G.R. No. 183408, July 12, 2017.

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In the absence of a valid LOA, the Supreme Court in the *Lancaster Case*[61] ultimately resolved to declare the assessment void.

As the crux of the controversy revolves around whether petitioner may be held liable for deficiency taxes subject of the assessment issued by respondent, the issue about the RO's authority to conduct the audit necessarily relates thereto for its absence makes the assessment a nullity. The importance of the RO's authority to conduct the audit cannot be over-emphasized as it goes into the issue of the validity of the assessment.

The Supreme Court's pronouncement in *Medicard Philippines Inc. vs. Commissioner of Internal Revenue*[62] on the matter of the authority of ROs who conducted the audit and examination of the taxpayer is instructive, viz.:

> ***"The absence of an LOA violated MEDICARD's right to due process***
>
> ***An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions.*** *Xxx xxx xxx.* ***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:*
>
> *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, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.*** *Xxx xxx xxx.* ***Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.***

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[61] Ibid.
[62] G.R. No. 222743, April 5, 2017.

xxx xxx xxx

That the BIR officials herein were not shown to have acted unreasonably is beside the point <u>because the issue of their lack of authority was only brought up during the trial of the case.</u> 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. <u>Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.</u>" *(Citations omitted; boldfacing and underscoring supplied)*

A BIR officer cannot simply subject a taxpayer to audit without valid authority issued for that purpose. Section 13 of the NIRC of 1997, as amended, provides:

"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." (Boldfacing supplied)*

Furthermore, Revenue Memorandum Order (RMO) No. 43-90 is explicit that the continuation of audit by a revenue officer other than the officer named in a previous LOA requires the issuance of a new LOA:

"C. Other policies for issuance of L/As.

xxx xxx xxx

5. ***Any re-assignment/transfer of cases to another ROs, 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." (Boldfacing and underscoring supplied)*

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Simply put, **the issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer is indispensable to the validity of an assessment.** In the language of ***Commissioner of Internal Revenue vs. Sony Philippines, Inc.,***[63] its absence makes the assessment or examination a nullity, *viz.*:

> *"Based on Section 13 of the Tax Code,* ***a Letter of Authority or LOA is the authority given to the appropriate revenue officer*** *assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.*
>
> *xxx xxx xxx*
>
> *Clearly,* ***there must be a grant of authority before any revenue officer can conduct an examination or assessment.*** *Equally important is that the revenue officer so authorized must not go beyond the authority given.* ***In the absence of such an authority, the assessment or examination is a nullity."*** *(Boldfacing supplied)*

In fine, the necessity of a valid LOA in audit investigations is not merely an administrative requirement but a statutory requirement which is vital to the validity of an audit of a taxpayer, and consequently, to the validity of the FAN that may be issued after said audit. **Here, the absence of a <u>new</u> LOA authorizing RO San Pedro and GS Maniego to continue the audit of petitioner for the period January 1, 2010 to August 31, 2010 rendered the assessment issued against petitioner void.**

Having discussed that the examinations and the assessments are void, the Court will not belabor on the other issues raised for it is well-settled that a void assessment bears no fruit[64].

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[63] G.R. No. 178697, November 17, 2010.
[64] Commissioner of Internal Revenue vs. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.

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WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent's Formal Letter of Demand with attached Final Assessment Notices and Details of Discrepancy, dated October 9, 2014, issued against petitioner for deficiency income tax, VAT and DST for the period January 1, 2010 to August 31, 2010 and the Final Decision on Disputed Assessment (FDDA) dated January 12, 2015, for being intrinsically void, are hereby **CANCELLED.**

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

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
Chairperson, 1st Division