REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

ROLANDO J. ANG, BETTY A. ANG, and EMF ELECTRONICS CORPORATION,
Accused.

CTA CRIM. CASE NO. O-553
For: Violation of Section 255 in rel. to Secs. 253 (d) and 256 of the NIRC of 1997 as amended by Rep Act 8424

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
AUG 14 2018 : 2:10pm

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RESOLUTION

Before this Court is accused's **Demurrer to Evidence** filed on March 1, 2018, with leave of Court granted in the Resolution dated April 11, 2018[1], without the prosecution's comment, despite notice, as per Records Verification dated May 21, 2018.

In said Demurrer to Evidence[2], it is alleged as follows: (1) the prosecution failed to prove beyond reasonable doubt that accused Rolando Ang and Betty Ang are the respective president and treasurer of accused EMF; (2) there is no valid letter of authority (LOA) renders the assessment void; hence, due to the nullity of the assessment, the prosecution failed to prove beyond reasonable doubt that the accused corporation has an existing, valid, legal and due tax obligation; and (3) the prosecution failed to prove beyond reasonable

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[1] Docket, p. 744.
[2] Docket, p. 713.

doubt that accused EMF's failure to pay its supposed tax liability was willful.

Thus, accused pray for the dismissal of this case on account of the insufficiency of the prosecution's evidence to sustain conviction and for failure of the prosecution's evidence to sufficiently prove beyond reasonable doubt the guilt of the accused. Considering that the prosecution allegedly bears the burden of proving the guilt of the accused, said burden is discharged only if the prosecution proves all the elements of the offense and culpability of the accused beyond reasonable doubt.

Accused contend that the prosecution failed to establish that accused EMF willfully refused to pay its taxes; that accused Rolando and Betty are the president and treasurer, respectively, of accused EMF; and that the prosecution has no proof that the revenue officer was duly authorized to conduct an audit investigation against accused EMF.

Except for the alleged bare testimony of ROs Fetalvero and Castillo, accused insist that the prosecution did not present any evidence showing that accused Rolando and Betty are the respective president and treasurer of accused EMF. Allegedly, RO Fetalvero admitted during cross-examination that her only basis that accused Rolando is the president of accused EMF is the Statement of Management Responsibility marked as Exhibit A-16. Similarly, the prosecution also relied on the same document, to prove that accused Betty is the treasurer of accused EMF, which accused stress, was not among those exhibits that were formally offered.

If the prosecution's claim is allegedly true, it could have easily presented the General Information Sheet, Board Resolutions, and Secretary's Certificates submitted to the Securities and Exchange Commission (SEC), which are all obtainable public documents.

Also, accused aver that none of the testimonies of ROs Fetalvero, Pagayonan and Castillo were offered by the prosecution for the purpose of proving its claim that accused Rolando and Betty are the respective president and treasurer of accused EMF. And considering that no documentary exhibit was marked, identified or submitted, and not one of the testimonies was offered for the aforementioned purpose, the prosecution failed to establish beyond reasonable doubt the guilt and culpability of accused Rolando and Betty.

And even if the Statement of Management Responsibility was marked and identified as Exhibit A-16 for the defense, it will not allegedly cure the prosecution's evidentiary crisis because the prosecution must rest on the strength of its own evidence, and not on the weakness of the evidence for the defense. Actually, this exhibit is allegedly not a weakness as it is the evidence which would disprove the prosecution's claim that accused Betty Ang is the treasurer of accused EMF. Additionally, this document was allegedly not signed by accused Betty Ang which only proves that she was not the treasurer.

Also, the guilt of accused EMF has not allegedly been proven. The absence of the LOA authorizing revenue officers Fetalvero, Pagayonan and Castillo to conduct an audit investigation of accused EMF is fatal to the attempt of the prosecution to establish the liability of accused EMF.

According to accused, RO Fetalvero admitted that she was not armed with any LOA to investigate and examine the books of account and other accounting records of accused EMF; and that only RO Mark Rellon was named and authorized under the original LOA. It was also admitted that the tax investigation against accused EMF underwent several reassignments, and it was not clear whether the reassignment was covered by a new LOA. Accused contend that only one LOA was submitted by the prosecution in evidence, and that in the original LOA, it was only RO Rellon who had the authority to conduct the tax investigation.

On another point, accused submit that Revenue Memorandum Order (RMO) No. 43-90, which requires the issuance of a new LOA in case of reassignment and transfer of cases to another revenue officer, was not complied with in this case. Further, the Memorandum issued to RO Fetalvero, which she claims was the source of her authority to conduct tax audit, was merely signed by a Revenue District Officer and not by a Revenue Regional Director.

Lastly, granting that the Memorandum could result to a valid assessment, nevertheless, the prosecution still failed to prove that the accused EMF failed to pay its tax liabilities willfully.

Hence, accused pray that this Court render a decision acquitting the accused of the charges in the light of the failure of the prosecution to prove their guilt beyond reasonable doubt and to dismiss the civil aspect of the case in light of the nullity of the assessment from which is purported to be the basis of tax liability of the accused.

THE FACTS

Records show that an Information was filed on April 20, 2016 in CTA Crim. Case No. 0-553 charging accused Rolando J. Ang (or accused Rolando) and Betty A. Ang (or accused Betty) with violation of Section 255 in relation to Sections 253(d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 8424.[3] In compliance with the Resolution[4] dated May 26, 2016, the prosecution amended the Information[5] on June 15, 2016, taking into consideration the observation of the Court, among others, the necessity to include EMF Electronics Corporation (or EMF), the corporate taxpayer, as additional accused in this case.

In the Amended Information, accused Rolando, Betty and EMF are charged for the same violation mentioned above, allegedly committed as follows:

> "That on or about January 20, 2011, in the City of Manila, Philippines, the said accused, ROLANDO J. ANG and BETTY A. ANG, as President and Treasurer, respectively of EMF ELECTRONICS CORPORATION, a duly organized domestic corporation with principal address located at No. 3330 R. Magsaysay Blvd. Sta. Mesa, City of Manila, did then and there willfully and unlawfully fail, refuse and neglect, to pay the internal revenue tax liabilities of accused EMF ELECTRONICS CORPORATION for the year 2007, to wit:

Kind of Tax	Assessment No./ Demand Letter	Date	Amount
Def. Income Tax	32-07-IT-0619	12-17-2010	Php 714,764.25
Value Added Tax	32-07-VT-0620	12-17-2010	364,318.79
Expanded Withholding Tax	32-07-WE-0619	12-17-2010	667.66

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3 Information, docket, pp. 6 to 7.
4 Docket, pp. 28 to 34.
5 Amended Information, docket, pp. 38 to 39.

> or in the total amount of Php. 1,079,750.70, exclusive of charges and penalties, despite notice and service of said assessment and Warrant of Distraint and/or Levy dated February 16, 2013, without formally protesting against or appealing the same, and despite repeated demands made upon them to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid amount of Php. 1,079,750.70, Philippine Currency, exclusive of charges and penalties.
>
> Contrary to law."

In the Resolution[6] dated July 14, 2016, the Court admitted the Amended Information and after due evaluation of the Amended Information and supporting documents, found the existence of probable cause to issue warrants of arrest against accused Rolando and Betty. Accused Rolando and Betty voluntarily appeared before this Court and posted the required bail bond for their provisional liberty by way of cash bond in the amount of ₱20,000.00 each on August 17, 2016.[7]

On September 21, 2016, accused filed a Motion to Quash Information[8], which the Court denied in the Resolution[9] dated December 13, 2016 for lack of merit.

During arraignment on March 29, 2017, only accused Rolando appeared, while accused Betty failed to appear on the ground that she was suffering from diarrhea.[10] Upon reading of the Amended Information in English, a language known and understood by accused Rolando, he entered a plea of "NOT GUILTY" to the offense charged, with the assistance of defense counsel de parte, Atty. Djerovin T. Abuzo.[11] Thereafter on May 31, 2017, upon arraignment, accused Betty entered her plea of "NOT GUILTY" to the offense charged with the assistance of defense counsel de parte, Atty. Abuzo.[12]

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[6] Resolution, docket, pp. 89 to 90.
[7] Resolution dated August 25, 2016, docket, pp. 113 to 114.
[8] Docket, pp. 117 to 126.
[9] Docket, pp. 142 to 149.
[10] Order dated March 29, 2017, docket, pp. 173 to 174.
[11] Order dated March 29, 2017, docket, pp. 173 to 174; Certificate of Arraignment, docket, p. 176.
[12] Order dated May 31, 2017, docket, pp. 187 to 188.

After pre-trial proceedings held on September 6, 2017, the parties filed their Joint Stipulation of Facts[13] on October 6, 2017, and upon approval thereof, the Court issued a Pre-Trial Order[14] on November 6, 2017. The parties agreed to avail of the use of the judicial affidavit under the Judicial Affidavit Rule (JAR).

During the presentation of the prosecution's evidence, plaintiff presented its witnesses, namely: Revenue Officers (ROs) Thelma Concepcion P. Fetalvero, Prescila H. Pagayonan and Leo S. Castillo. Thereafter, the prosecution formally offered the following documentary exhibits, which were all admitted in evidence by the Court in the Resolution[15] February 13, 2018:

P-2	EMF's Annual Income Tax Return for taxable year 2007
P-2-1	EMF's Summary Alphalist of Withholding Agents of Income Payments Subjected to Withholding Tax at Source from January 01 to December 31, 2007
P-2-2	Audited Financial Statement of EMF for taxable year 2007
P-3	Tax Verification Notice No. 200300115532 dated February 23, 2009
P-4	Letter dated June 05, 2009
P-5	Memorandum Referral No. 32-RD-LA-0050 dated May 28, 2009
P-6	First Request for Presentation of Records dated February 26, 2009
P-7	Second Request for Presentation of Records dated June 05, 2009
P-8	Final Request for Presentation of Records dated June 29, 2009
P-9	Final Request for Presentation of Records Before the Issuance of Subpoena Duces Tecum dated April 21, 2010
P-10	Memorandum Referral No. RDO-032-0120-2010 dated February 08, 2010
P-11	Notice to Taxpayer dated February 10, 2010
P-12	Post Reporting Notice dated August 23, 2010
P-12-1	Computation of Deficiency Income Tax for the year ended December 31, 2007
P-12-2	Net Income per Income Tax Return (Annex "A")
P-12-3	Computation of Value-Added Tax for the year ended December 31, 2007
P-12-4	Summary of Creditable Withholding Tax for the year ended December 31, 2007
P-12-5	Summary of VAT Returns for the year ended December 31, 2007

[13] Docket, pp. 512 to 514.
[14] Docket, pp. 519 to 531.
[15] Docket, pp. 711 to 712.

P-12-6	Net Income per Tax Return (Annex "A")
P-12-7	Computation of Deficiency Expanded Withholding Tax for the year ended December 31, 2007
P-12-8	Summary of Alphalist & 1601-Remittances for the year ended December 31, 2007[16]
P-12-9	Summary of Alphalist & 1601-E Remittance for the year ended December 31, 2007
P-13	Letter dated September 20, 2010 of Rolando J. Ang addressed to the Revenue District Officer of RDO No. 32
P-14	Letter dated September 22, 2010 of the Revenue District Officer of RDO No. 32 addressed to Rolando J. Ang
P-15	Assignment Slip
P-16	Preliminary Assessment Notice dated November 22, 2017[17]
P-16-1	Details of Discrepancies dated November 22, 2017[18]
P-17	Assessment Notice No. 32-07-IT-0619 dated December 17, 2010
P-18	Assessment Notice No. 32-07-VT-0620 dated December 17, 2010
P-19	Assessment Notice No. 32-07-WE-0621 dated December 17, 2010
P-20	Formal Letter of Demand dated December 17, 2010
P-20-1	Details of Discrepancies dated December 17, 2010
P-21	Memorandum of Assignment dated April 12, 2011
P-22	1st Call-up dated May 06, 2011
P-23	Final Notice Before Seizure
P-24	Memorandum of Assignment dated June 07, 2013
P-25	Warrant of Distraint and/or Levy dated June 28, 2013
P-26	Quarterly Value-Added Tax Returns for the 1st quarter of taxable year 2007
P-26-1	Quarterly Valued-Added Tax Returns for the 2nd quarter of taxable year 2007
P-26-2	Quarterly Value-Added Tax Returns for the 3rd quarter of taxable year 2007
P-26-3	Quarterly Value-Added Tax Returns for the 4th quarter of taxable year 2007
P-27	Warrant of Garnishment addressed-Bank of the Philippine Islands
P-27-1	Warrant of Garnishment addressed-United Coconut Planters Bank
P-27-2	Warrant of Garnishment addressed-Metrobank
P-27-3	Warrant of Garnishment addressed-Banco De Oro
P-27-4	Warrant of Garnishment addressed-Land Bank of the Philippines
P-28	Audit Memorandum Report dated October 7, 2010

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[16] Heading of the document is actually "Summary of Alpha List & 1601-**C** Remittance For the year ended Dec. 31, 2007", docket, p. 244.
[17] The Preliminary Assessment Notice is actually dated November 22, 201**0**, docket, p. 250.
[18] The Details of Discrepancies is actually undated, docket, pp. 251 to 253.

P-30	Revenue Officer's Audit Report on Income for the period January 01 to December 31, 2007
P-30-1	Revenue Officer's Audit Report on VAT for the period January 01 to December 31, 2007
P-31	Judicial Affidavit of Thelma Concepcion P. Fetalvero
P-32	Judicial Affidavit of Prescila H. Pagayonan
P-32-A	Name and signature of Prescila H. Pagayonan on page 5 of her Judicial Affidavit
P-33	Judicial Affidavit of Leo S. Castillo
P-33-A	Name and signature of Leo S. Castillo on page 4 of his Judicial Affidavit

On March 1, 2018, accused filed a Motion for Leave of Court To File Demurrer to Evidence with said Demurrer to Evidence attached thereto. As mentioned earlier, said motion was granted by the Court in the Resolution dated April 11, 2018 and plaintiff was directed to file Comment thereto.

Notably, plaintiff failed to file any comment. Hence, this resolution.

THE ISSUE

Whether or not, on the basis of the prosecution's evidence, accused Rolando Ang, Betty Ang and EMF Electronics Corporation are guilty beyond reasonable doubt for the commission of the offense charged and should be held civilly liable to pay deficiency income tax, value added tax and expanded withholding tax.

THE COURT'S RULING

A demurrer to the evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is **competent or sufficient evidence** to sustain the indictment or to support a verdict of guilt.[19]

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[19] *Gutib vs. Court of Appeals, et al.,* G.R. No. 131209, August 13, 1999; *Gregorio Singian, Jr. vs. Sandiganbayan (3rd Division), et al.,* G.R. Nos. 195011-19, September 30, 2013.

Considering that an order granting a demurrer to evidence is a judgment on the merits[20], the granting of a demurrer to evidence should be exercised with caution taking into consideration not only the rights of the accused, but also the right of the private offended party to be vindicated of the wrongdoing done against him, for if it is granted, the accused is acquitted and the private complainant is generally left with no more remedy.[21]

In the instant criminal case, accused are charged with violation of Section 255 in relation to Sections 253(d) and 256 of the NIRC of 1997, as amended, for their willful failure to pay the tax due.

Section 255 of the NIRC of 1997, as amended, provides:

> "SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* – Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years."

In relation thereto, Sections 253 (d) and 256 of the NIRC of 1997, as amended, state:

> "SEC. 253. *General Provisions.* –
>
> xxx xxx xxx
>
> (d) In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer,

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[20] Republic of the Philippines vs. Gimenez, et al., G.R. No. 174673, January 11, 2016

[21] Bautista, et al. vs. Cuneta-Pangilinan, G.R. No. 189754, October 24, 2012.

officer-in-charge, and employees responsible for the violation."

"SEC. 256. *Penal Liability of Corporations.* – Any corporation, association or general co-partnership liable for any of the acts or omissions penalized under this Code, in addition to the penalties imposed herein upon the responsible corporate officers, partners, or employees, shall, upon conviction for each act or omission, be punished by a fine not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000)."

Based on the foregoing provisions, the prosecution must establish by competent evidence the following essential elements:

1. Accused is a person required by the NIRC or rules and regulations to pay the tax;
2. Accused failed to pay the tax at the time or times required by law or rules and regulations; and
3. The failure to pay such tax was willful.

The Amended Information alleges that accused failed to pay the amount of ₱1,079,750.70 representing deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT), pursuant to the Assessment Nos./Demand Letters 32-07-IT-0619, 32-07-VT-0620, and 32-07-WE-0619, and Warrant of Distraint and/or Levy dated February 16, 2013.[22]

It is a well-settled rule that a void assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[23]

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[22] Docket, p. 38.
[23] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014, citing *Commissioner of Internal Revenue vs. Reyes*, G.R. No. 159694, January 27, 2006.

Considering that this case involves willful failure to pay the assessments for deficiency income tax, VAT, and EWT, it must be proven that the said assessments are valid, and that the Bureau of Internal Revenue (BIR) has the right to collect such deficiency taxes.

After a careful scrutiny and evaluation of the evidence submitted by the prosecution, the Court however finds that the assessments are void for being issued without a LOA.

It is well-settled by the Supreme Court in the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[24] (*Medicard* case), that when there is no authority to examine the taxpayer's books of accounts and other accounting records, the assessment issued is void[25], *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. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:
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> > **SEC. 6**. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
> >
> > (A) **Examination of Return and Determination of Tax Due**.- After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized**

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

> **representative may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> x x x x (Emphasis and underlining ours)

Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.

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In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:

> 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**. (Emphasis and underlining ours)
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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."

Looking at the evidence presented by the prosecution, witness RO Fetalvero pertinently testified, by way of Judicial Affidavit, as follows :

"2. As a revenue officer of the BIR, what are your functions and duties?

A. I am tasked, among others, to examine of books of accounts and other accounting records of taxpayers for the investigation of all internal revenue taxes pursuant to an electronic Letter of Authority/Letter of Authority/Tax Verification Notice/Letter Notice/Mission Order/Memorandum of Assignment duly issued by the Commissioner of Internal Revenue or her duly authorized representatives.

3. Do you know Rolando J. Ang, Betty Ang and EMF Electronics Corporation?

A. Yes.

4. How did you come to know Rolando J. Ang, Betty Ang and EMF Electronics Corporation?

A. The 2007 All Internal Tax Docket of EMF Electronics Corporation was re-assigned to me for the continuation of the investigation. **Originally, it was Revenue Officer Mark T. Rellon who was authorized to verify the supporting documents and pertinent records relative to the 2007 All Internal Tax Docket of EMF Electronics Corporation through a Tax Verification Notice.** In view of several transfers of work assignments, the authority to investigate was re-assigned to Revenue Officer Andres B. Bisares through a Referral Memorandum and then the same was subsequently re-assigned to me pursuant to another Referral

Memorandum. Rolando J. Ang and Betty Ang are the President and Treasurer, respectively, of EMF Electronics Corporation.

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7. After the re-assignment of the investigation of the 2007 All Internal Tax Docket of EMF Electronics Corporation, what actions did you take, if there is any?

A. I checked the records of the case to ascertain if the required notices were sent to, and duly received by, EMF Electronics Corporation. As a result, I found out from the records that EMF Electronics Corporation has duly received the Tax Verification Notice and letters/notices of transfer/re-assignment of authority to investigate its books of accounts and other accounting records for taxable year 2007." (*Emphasis supplied.*)[26]

However, upon clarificatory questions propounded to RO Fetalvero, the latter stated that there was an LOA issued to RO Mark Rellon, and the re-assignment of the tax investigation against accused EMF from RO Rellon to RO Andres Bisares[27] was made through a Memorandum. RO Fetalvero also expressed that accused EMF's tax audit was re-assigned to her through another Memorandum, to wit:

"JUSTICE DEL ROSARIO:

So, any other matter? All right.

Ms. Fetalvero, your testimony is very crucial in the determination of the culpability of the accused, that is why the Court would have to seek clarificatory questions or proposed clarificatory questions to you.

Do you have the original copy of the Letter of Authority issued by the Bureau of Internal Revenue?

[26] Exhibit "P-31", docket, pp. 403 to 404.

[27] Although referred in the Transcript of Stenographic Notes (TSN) as "Versales".

REVENUE OFFICER FETALVERO:
A. **I have a copy in the docket, Your Honors, but it is not included in the** . . . (interrupted).

JUSTICE DEL ROSARIO:
Yes. Just in case you recall, **who were the Revenue Officers authorized under the original Letter of Authority to conduct an examination?** Would you know?

REVENUE OFFICER FETALVERO:
A. They were Andres Versales and Jessica Bernales.

JUSTICE DEL ROSARIO:
Andres?

REVENUE OFFICER FETALVERO:
A. Andres Versales, Your Honors . . . (interrupted).

JUSTICE DEL ROSARIO:
Versales?

REVENUE OFFICER FETALVERO:
A. The original was Revenue Officer Mark T. Rellon, Your Honors, and then, it was . . . (interrupted).

JUSTICE DEL ROSARIO:
Revenue Officer Mark?

REVENUE OFFICER FETALVERO:
A. **Mark P. Rellon, Your Honors.**

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JUSTICE DEL ROSARIO:
That is the original? What is the date of the Letter of Authority?

REVENUE OFFICER FETALVERO:
A. (No answer).

JUSTICE DEL ROSARIO:
Anyway, you just check on that. The original Revenue Officers authorized to conduct an audit was Mark Rellon and who else?

REVENUE OFFICER FETALVERO:
A. And then, Your Honors, it was referred to Andres Versales.

JUSTICE DEL ROSARIO:
I see. So, **the original Letter of Authority specifies only one name? It was only Revenue Officer Mark Rellon?**

REVENUE OFFICER FETALVERO:
A. **Yes, Your Honors.**

JUSTICE DEL ROSARIO:
And then, there was a re-assignment?

REVENUE OFFICER FETALVERO:
A. Yes, Your Honors.

JUSTICE DEL ROSARIO:
Q. Who was now the Revenue Officer in that re-assignment order?

REVENUE OFFICER FETALVERO:
A. Andres P. Versales.

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JUSTICE DEL ROSARIO:
Q. Now, was there another Letter of Authority that was issued authorizing Mr. Versales to conduct the examination? Would you know?

REVENUE OFFICER FETALVERO:
A. I do not have it in my . . . (interrupted).

JUSTICE DEL ROSARIO:
Q. So, you are not certain as to whether or not there was another Letter of Authority issued in favor of Mr. Versales?

REVENUE OFFICER FETALVERO:
A. Yes, Your Honors.

JUSTICE DEL ROSARIO:
Q. Were you the one who conducted ultimately the examination of the records of the accused?

REVENUE OFFICER FETALVERO:
A. Yes, Your Honors.

JUSTICE DEL ROSARIO:
Q. Under what authority did you do that?

REVENUE OFFICER FETALVERO:
A. Under Memorandum Reference No. RDO-32-0120-210 dated . . . (interrupted).

JUSTICE DEL ROSARIO:
Q. So, it was a memorandum?

REVENUE OFFICER FETALVERO:
A. Yes, Your Honors.

JUSTICE DEL ROSARIO:
Q. Memo dated?

REVENUE OFFICER FETALVERO:
A. Dated February 8, 2010.

JUSTICE DEL ROSARIO:
Q. You did not see any Letter of Authority issued in your favor?

REVENUE OFFICER FETALVERO:
A. In my favor, Your Honors?

JUSTICE DEL ROSARIO:
Q. Yes

REVENUE OFFICER FETALVERO:
A. No more, because it is only a referral, a memorandum." (*Emphasis supplied.*)[28]

However, notwithstanding RO Fetalvero's testimony that an LOA was issued in this case, a perusal of the prosecution's evidence shows that the alleged LOA issued for the examination of accused EMF's books of accounts and other accounting records was not among the evidence presented, and that the Preliminary Assessment Notice (PAN)[29] was made pursuant to Tax Verification Notice (TVN) No. 00115532 dated February 23, 2009, *viz*:

> "In connection with the investigation of your internal revenue tax liabilities for taxable period 2007, pursuant to Tax Verification Notice (TVN) No. 00115532 dated February 23, 2009, conducted by Revenue Officer Thelma Concepcion P. Fetalvero, please be informed that the said report is presently with this Office for final review."

It is also evident from the prosecution's evidence that what had been issued to RO Rellon was a TVN and not a LOA. TVN No. TVN 2003 00115532[30], Letter dated June 5, 2009[31], Memorandum Referral No. 32-RD-LA-0050 dated May 28, 2009[32], and Memorandum Referral No. RDO-032-0120-2010 dated February 8, 2010[33] contain the following statements, respectively:

> "This is to inform you that Revenue Officer Mark T. Rellon of this Office is authorized to verify the supporting documents and/or pertinent records relative to your:"

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[28] TSN dated November 22, 2017, pp. 60 to 65.
[29] Exhibit "P-16", docket, pp. 250 to 253.
[30] Exhibit "P-3", docket, p. 217.
[31] Exhibit "P-4", docket, p. 218.
[32] Exhibit "P-5", docket, p. 219.
[33] Exhibit "P-10", docket, p. 234.

> "This is to inform you that the audit/investigation of your 2007 All Internal Revenue Taxes pursuant to Tax Verification Notice No. 00115532, which was originally assigned to Revenue Officer Mark T. Rellon, was already referred to RO Andres B. Bisares to be supervised by GS Jessica Bernales due to their transfer to RDO 21, Calamba City per RTAO No. 21-2009 dated April 20, 2009."
>
> "Referred to you the enclosed papers/dockets bearing on the 2007 All Internal Revenue Taxes of EMF Electronics Corporation with Tax Verification No. 00115532 dated February 23, 2009 for the continuation of audit due to the transfer of Revenue Officer Mark T. Rellon to RDO-56, Calamba City, Laguna per RTAO No. 21-2009 dated March 10, 2009."
>
> "Referred to you herewith is the tax case/docket of EMF Electronics Corp. with business address at 3330 R. Magsaysay Blvd. Sta. Mesa, Manila, under TVN No. 00115532 dated February 23, 2009 covering TY 2007, which was previously assigned to RO A. Bisares under Group Supervisor J. Bernales, for continuation of investigation."

It is clear from the foregoing that there is no LOA that was issued to RO Rellon to examine accused EMF's books of accounts and accounting records. Instead, a TVN was issued which led to the issuance of the PAN, FLD, and Warrant of Distraint and/or Levy.

As held in the CTA *En Banc* case of *Commissioner of Internal Revenue vs. Farcon Marketing Corporation*[34], citing the *Medicard* case and *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[35], a revenue officer must be clothed with authority before proceeding with an examination or assessment. Moreover, that authority must be embodied in a Letter of Authority, and not in the form of a mere notice to the taxpayer. The Court *En Banc* held that the assessment is void in the said case, considering that the revenue officer who conducted the examination was not validly authorized to do so since the assessment was precipitated by a mere Tax Verification Notice, instead of a valid Letter of Authority.

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[34] CTA EB Case No. 1306, Resolution dated June 5, 2017.
[35] G.R. No. 178697, November 917, 2010.

Following the ruling of the Supreme Court in the *Medicard* case as discussed earlier, the PAN[36], Assessment Notice Nos. 32-07-IT-0619[37], 32-07-VT-0620[38], and 32-07-WE-0621[39], Formal Letter of Demand (FLD)[40], and Warrant of Distraint and/or Levy dated June 28, 2013[41] are void for being issued without a Letter Of Authority. Being so, the BIR has no right to collect the subject deficiency taxes, and accused EMF cannot require to pay the same. Correspondingly, the subject assessments are considered void.

Considering the foregoing, it becomes unnecessary to discuss the other issues raised in the Demurrer to Evidence.

WHEREFORE, premises considered, accused's **Demurrer to Evidence** is **GRANTED** and the instant case is **DISMISSED**. Accordingly, accused Rolando Ang, Betty Ang and EMF Electronics Corporation are **ACQUITTED**.

Further, the Assessment Nos. 32-07-IT-0619, 32-07-VT-0620, and 32-07-WE-0619, Formal Letter of Demand (FLD), and Warrant of Distraint and/or Levy dated June 28, 2013 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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

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[36] Exhibit "P-16", docket, pp. 250 to 253.
[37] Exhibit "P-17", docket, p. 254.
[38] Exhibit "P-18", docket, p. 255.
[39] Exhibit "P19", docket, p. 256.
[40] Exhibit "P-20", docket, p. 257 to 258.
[41] Exhibit "P-25", docket, p. 265.