REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

MCDONALD'S PHILIPPINES REALTY CORPORATION, Petitioner,	**CTA Case No. 8655**
	Members:
- versus -	**DEL ROSARIO,** P.J., **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** JUN 01 2016, 11:21 a.m.

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DECISION

UY, J.:

This is a Petition for Review filed on May 20, 2013 by McDonald's Philippines Realty Corporation, petitioner, against the Commissioner of Internal Revenue, respondent, seeking the cancellation and withdrawal of the assessment issued against it for alleged deficiency value-added tax (VAT) for calendar year (CY) 2006 in the aggregate amount of ₱16,229,506.83, inclusive of interest.

THE FACTS

Petitioner McDonald's Philippines Realty Corporation is a corporation organized and existing under the laws of Delaware, U.S.A., and is licensed to do business in the Philippines through its Philippine branch, with office address at 17th Floor Citibank Center Building, Paseo de Roxas, Salcedo Village, Makati City.[1]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested under the appropriate laws with the authority to carry out the functions,

[1] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 395.

duties and responsibilities of said office, including *inter alia,* the power to decide disputed assessments and cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner established its branch office in the Philippines for the purpose of purchasing and leasing back two (2) existing McDonald's Restaurants to Golden Arches Development Corporation (GADC) and to engage in the development of new McDonald's restaurant sites which will then be leased to McGeorge Foods, Inc.[2]

On August 31, 2007, the BIR Large Taxpayers Service (LTS) issued Letter of Authority (LOA) No. 00006717 authorizing Eulema Demadura, Lover Loveres, Josa Gomez, and Ernalyn dela Cruz, BIR Revenue Officers of LTDO No. 122, Makati, to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes covering the period from January 1, 2006 until December 31, 2006.[3]

On January 25, 2011, petitioner received a copy of respondent's Formal Letter of Demand (FLD) dated January 11, 2011 with attached Audit Result/Assessment Notice No. LTDO-122-VT-2006-00013 dated January 11, 2011 and Audit Result/Assessment Notice No. LTDO-122-IT-2006-00014 dated January 31, 2011 with Details of Discrepancies wherein respondent demanded payment of petitioner's alleged deficiency income tax and VAT liabilities for CY 2006 in the aggregate amount of ₱17,486,224.38, inclusive of interest.[4]

On February 23, 2011, petitioner filed a Protest Letter against the FLD, requesting the cancellation and withdrawal of the deficiency income tax and VAT assessments for CY 2006.[5]

Thereafter, on April 18, 2013, petitioner received a copy of respondent's Final Decision on Disputed Assessment (FDDA) with attached Audit Result/Assessment Notice No. LTDO-122-VT-2006-00013 dated January 11, 2011 with Details of Discrepancies. In the FDDA, respondent (1) granted petitioner's request for cancellation of

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[2] Par. 2, Admitted Facts, JSFI, Docket, pp. 395 to 396.
[3] Par. 5, Admitted Facts, JSFI, Docket, p. 396.
[4] Par. 8, Admitted Facts, JSFI, Docket, p. 396.
[5] Par. 9, Admitted Facts, JSFI, Docket, p. 397.

respondent's deficiency income tax assessments for calendar year 2006, and (2) reiterated its demand for payment of petitioner's alleged deficiency VAT for calendar year 2006 in the total amount of ₱16,229,506.83.[6]

Aggrieved by respondent's decision, petitioner filed the instant Petition for Review on May 20, 2013.[7]

Respondent filed her Answer[8] on August 22, 2013, interposing the following Special and Affirmative Defenses, to wit:

> "5. Respondent hereby reiterates and re-pleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.
>
> 6. The right of respondent to assess petitioner for deficiency taxes has not prescribed.
>
>> 6.1 Petitioner primarily anchors its claim on Sections 203, 222 and 114 of the National Internal Revenue Code (NIRC) of 1997, as amended, all quoted hereafter for easy reference:
>>
>> xxx xxx xxx
>>
>> Petitioner further alleges that respondent had until the following dates within which to assess petitioner's deficiency VAT liabilities for four (4) quarters of Calendar Year (CY) 2006:

CY 2006	Date Filed	Last Day to File Return	Last Day to Assess
1ST Quarter	04/18/2006	04/25/2006	04/25/2009
2nd Quarter	07/19/2006	07/25/2006	07/25/2009
3rd Quarter	10/19/2006	10/25/2006	10/25/2009
4th Quarter	01/29/2007	01/25/2007	01/29/2010

>> 6.2 Contrary to petitioner's claim, the right of respondent to assess petitioner's deficiency VAT liabilities for calendar year

[6] Par. 10, Admitted Facts, JSFI, Docket, p. 397.
[7] Docket, pp. 6 to 26.
[8] Docket, pp. 132 to 145.

2006 did not prescribe in view of petitioner's execution of five (5) Waiver of the Statute of Limitations under the NIRC of 1997, as amended, ('waiver' for brevity), which extended the period of assessment, to wit:

Waiver	Date Executed	Extended Assessment Period Until
1st Waiver	July 28, 2009	March 31, 2010
2nd Waiver	February 2, 2010	June 30, 2010
3rd Waiver	May 28, 2010	September 30, 2010
4th Waiver	September 7, 2010	December 31, 2010
5th Waiver	November 17, 2010	March 31, 2011

Assuming without conceding that the above-mentioned table in paragraph 6.2 is correct, the 1st waiver executed on July 28, 2009 timely extended the period to assess petitioner's VAT liabilities for the 3rd and 4th Quarter of CY 2006 until March 31, 2010. Apparently, the waiver dated February 2, 2010 that petitioner referred to in its petition for review was to further extend the previously agreed period since the first waiver was about to expire on March 31, 2010. Having executed a waiver **before** the expiration of the ordinary prescriptive period for assessment, petitioner can no longer bank on its defense of prescription. As to petitioner's VAT liabilities for the 1st and 2nd quarter of CY 2006, petitioner is estopped from assailing respondent's right to assess such. A perusal of the BIR records will show that petitioner raised the issue of prescription only after the issuance of the Formal Letter of Demand, dated 11 January 2011, after more or less two years of actively participating in the assessment process.

7. The waivers executed are valid and binding to both parties.

7.1 The tenor of all the waivers does not only speak of a request for extension of time within which to submit the required documents as alleged by the petitioner in its petition for review. All of which are compliant to the waiver required by Revenue Memorandum Circular (RMC) 29-2012. RMC 29-2012 is further instructive:

xxx xxx xxx

7.2 All waivers were signed by the duly designated revenue official authorized to sign and/or accept waivers for tax cases pending investigation. Pursuant to Paragraph B, No. 15 of Revenue Delegated Authority (RDAO) No. 04-07 dated August 31, 2007, the Commissioner of Internal Revenue delegated the Assistant Commissioner (ACIR), LTS or in his/her absence, the concerned Head Revenue Executive Assistant (HREA) to approve and sign among others, the Waiver of the Statue of Limitations duly signed by the taxpayer or authorized representative.

7.3 All the waivers showed the date of acceptance thereof by the Commissioner's duly authorized representative, to wit:

Waiver	Date of Acceptance
1st Waiver	August 7, 2009
2nd Waiver	February 5, 2010
3rd Waiver	June 9, 2010
4th Waiver	September 15, 2010
5th Waiver	November 22, 2010

7.4 The waiver form mandated under RDAO No. 05-01 does not require the parties to specify the amount of tax assessed from petitioner.

7.5 All waivers indicated the fact of receipt by petitioner of the duly-accepted waiver, to wit:

Waiver	**Date of Acceptance**
1st Waiver	August 12, 2009
2nd Waiver	February 10, 2010

3rd Waiver	July 5, 2010
4th Waiver	September 21, 2010
5th Waiver	November 25, 2010

7.6 It is interesting to note that petitioner emphasized that there should be no deviation from the form required while in fact, the waiver originated from them. Hence, assuming without conceding that there was indeed a deviation, it was the first party who did so.

In fact, all the waivers that they presented for respondent's acceptance were with an added sentence that was not in accordance with what RDAO No. 05-01 provides, adding: *'However, any prescription that has already accrued in our favor shall not be deemed waived by the execution of this waiver.'*

7.7 What is more, petitioner is estopped from assailing the validity of the waiver/s. A perusal of the BIR records will show that petitioner only raised the issue of validity of the waiver/s in its alleged Protest Letter dated February 23, 2011. More improper is the fact that the signatory of the said Protest Letter and petitioner's signatory on all of the five waivers is one and the same, Mr. Romeo B. Bachoco. It is ironic for them to question such documents that they themselves signed and used for this assessment process. It will be utterly unfair to put weight on petitioner's afterthought since it will be able to defeat the validity of the very same thing that it utilized for its own advantage as, through which, it was able to submit additional documents that enabled them to reverse some discrepancies found out after audit.

8. The Revenue Officers who conducted the audit investigation had the authority to examine petitioner's books of accounts for calendar year 2006.

8.1 Memorandum dated December 2, 2008 provides that in view of the transfer of assignment of Revenue Officer Eulema

Demadura, named in Letter of Authority (LOA) No. 00006717, Revenue Officer Rona Marcellano is directed to continue with the audit and/or act on the subject case.

8.2 Two of the taxpayer's accounting officials namely, Nelia Naguit and Alegria Buenaventura, were informed of the reassignment of the case. The acknowledgement can be proven by the following events:

(a) The Revenue Officers were allowed to examine the company's books of accounts at its principal place of business;
(b) Conferences between the Revenue Officers and Ms. Nelia Naguit were held and assessment issues were tackled and protested;
(c) Supporting documents were sent to the Revenue Officers;
(d) Mr. Romeo Bachoco, the company's Chief Finance Officer, acknowledges the Revenue Officers, as well as its assessment, in a meeting with the previous Chief of LTDO-Makati, Ms. Amparo Duque.

The active participation in all stages of issuing an assessment as cited above only proves that the company is now estopped from raising the issue of lack of authority.

8.3 Petitioner further alleges that the Revenue Officer acted beyond the authority granted to her under the LOA arguing that petitioner's accounting records for calendar years 1998 to 2005 were also examined despite being only authorized to investigate records for the period of January 1, 2006 to December 31, 2006.

However, such actions were only done to ascertain petitioner's claim that the VAT liability on the amount being

> questioned was already paid long before petitioner changes its VAT payment system. To ascertain its validity, the total collections for the year 1998 until the conversion of the accounts receivable i.e., 2005, were gathered and the result was compared with the income (accrued income – 1998 to 2001 and gross receipts – 2002 to 2005) already subject to VAT.
>
> By asserting that their VAT liability on the amount being questioned was already paid, petitioner should necessarily expect that the Revenue Officers will verify past documents to ascertain the validity of their claim.

9. Deriving benefit from the waivers executed at its instance constitutes estoppel. In *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,* the Supreme Court had the occasion to say:

'Petitioner is estopped from questioning the validity of the waivers

> **RCBC assails the validity of the waivers of the statute of limitations on the ground that the said waivers were merely attested to by Sixto Esquivias, then Coordinator for the CIR,** and that he failed to indicate acceptance or agreement of the CIR, as required under Section 223 (b) of the 1977 Tax Code. RCBC further argues that the principle of estoppel cannot be applied against it because its payment of the other tax assessments does not signify a clear intention on its part to give up its right to question the validity of the waivers.
>
> The Court disagrees.
>
> Under **Article 1431 of the Civil Code, the doctrine of estoppel is anchored on the rule that 'an admission or representation is**

> **rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.'** A party is precluded from denying his own acts, admissions or representations to the prejudice of the other party in order to prevent fraud and falsehood.
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> Estoppel is clearly applicable to the case at bench. RCBC, through its partial payment of the revised assessments issued within the extended period as provided for in the questioned waivers, impliedly admitted the validity of those waivers. Had petitioner truly believed that the waivers were invalid and that the assessments were issued beyond the prescriptive period, then it should not have paid the reduced amount of taxes in the revised assessment. RCBC's subsequent action effectively belies its insistence that the waivers are invalid. The records show that on December 6, 2000, upon receipt of the revised assessment, RCBC immediately made payment on the uncontested taxes. Thus, RCBC is estopped from questioning the validity of the waivers. **To hold otherwise and allow a party to gainsay its own act or deny rights which it had previously recognized would run counter to the principle of equity which this institution holds dear.'** (Emphasis and underscoring supplied)

Article 1431 of the New Civil Code is quite instructive in providing that an admission or representation is rendered conclusive upon the person making it and cannot be denied against the person relying upon it. As the Supreme Court opined in one case: 'Petitioner, having performed affirmative acts upon which the respondents based their subsequent actions, cannot thereafter refute his acts or renege on the effects of the same, to the prejudice of the latter. To allow him to do so would be tantamount to conferring upon him the liberty to limit his liability at his whim and caprice, which is against the very principles of equity and natural justice as abovestated.

In the case of *Philippine Journalists, Inc. (PJI) vs. Commissioner of Internal Revenue* the Supreme Court held:

> 'A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver of the statute of limitations is not a waiver of the right to invoke the defense of prescription as erroneously held by the Court of Appeals. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal. For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes.'

The very soul of the doctrine enunciated in the PJI case is that the waiver of the Statute of Limitations can never be used as an instrument of malice. However, respondent would like to point out that this doctrine was never meant to favor one party over another where both were at fault.

'A party cannot, in the course of litigation or in dealings in pais, be permitted to repudiate his representations, or occupy inconsistent positions, or in the letter of Scotch law, to approbate or reprobate.'

Therefore, the Revenue Officers who conducted the audit are duly authorized and the waiver(s) executed by petitioner are valid, thus extending respondent's period to assess petitioner until March 31, 2011.

Consequently, respondent's assessment for petitioner's VAT liabilities for calendar year 2006 was issued within the prescriptive period provided under Section 203 of the National Internal Revenue Code, as amended (Tax Code).

10. Petitioner is liable to pay its deficiency VAT Assessment arising from 'collections from accounts receivable converted to notes receivable' in the amount of Php24,192,724.89.

10.1 As discussed in the Details of Discrepancies attached to the Final Decision on Disputed Assessment which states:

xxx xxx xxx

11. Petitioner is liable to pay its deficiency VAT Assessment arising from 'interest income on loan and rent' in the amount of Php63,047,746.90.

11.1 Petitioner's arguments based on Section 108 of the Tax Code, Revenue Regulations (RR) No. 16-2005, Revenue Memorandum Circular (RMC) 42-2003 and BIR Ruling No. DA-320-07 are utterly misplaced since petitioner is not being assessed as a lending investor.

11.2 Petitioner alleged that since its primary business is to lease properties, the interest income it derived from the grant of long term advances to its client does not have a direct relevance to its primary business. The argument is without merit.

Interest income is subject to VAT pursuant to Section 105 of the Tax Code, as this is an incidental transaction in the pursuit of a commercial or economic activity, to wit:

xxx xxx xxx

Furthermore, this Honorable Court asserts the same in its decision in CTA Case No. 7097:

The phrase 'in the ordinary course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person

> regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.
>
> Based on the foregoing, the VAT is imposed on a sale or transaction entered into by a person in the course of any trade or business. A transaction will be characterized as having been entered into by a person in the course of trade or business if it is: (1) regularly conducted; and (2) undertaken in pursuit of a commercial or economic activity. Likewise, transactions that are made incidental to the pursuit of a commercial or economic activity are considered as entered into in the course of trade or business. 'Incidental' means something else as primary; something necessary, appertaining to, or depending upon another, which is termed the principal. Hence, an isolated transaction is not necessarily disqualified from being made incidentally in the course of trade or business.

12. Based on all the foregoing, the finding of deficiency tax liabilities against petitioner is proper in all respects. It is a well-settled principle that:

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

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 case was set for Pre-Trial Conference on October 25, 2013.[9] However, to give the parties ample time to file the Judicial Affidavits of their witnesses, the same was reset to November 22, 2013.[10] The parties filed their Joint Stipulation of Facts and Issues on December 12 2013,[11] which was approved in the Resolution dated December 18, 2013.[12]

The Court issued a Pre-Trial Order[13] on January 22, 2014 and a Supplemental Pre-Trial Order[14] on February 5, 2014, enjoining the parties to proceed with the trial in accordance with the terms and conditions contained therein.

Thereafter, both parties presented testimonial and documentary evidence. Petitioner presented three (3) witnesses, namely: Cornelia M. Naguit; Atty. Kristina S. Alvarez-Mouliac; and court-commissioned Independent Certified Public Accountant (or ICPA) Katherine O. Constantino. Respondent presented one witness, Revenue Officer Rona B. Marcellano.

Upon termination of the parties' presentation of their respective evidence, and as directed by the Court, petitioner filed, through registered, mail its Memorandum on April 14, 2015 (which was received by the Court on April 22, 2015);[15] while respondent filed her Memorandum on May 27, 2015.[16] In the Resolution dated June 8, 2015,[17] this case was submitted for decision.

Hence, this Decision.

THE ISSUES

The parties submitted the following issues[18] for this Court's resolution, to wit:

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[9] Notice of Pre-Trial Conference issued on August 29, 2013, Docket, p. 152.
[10] Order dated October 7, 2013, Docket, p. 166.
[11] Docket, pp. 395 to 406.
[12] Docket, p. 408.
[13] Docket, pp. 429 to 442.
[14] Docket, p. 455.
[15] Docket, pp. 735 to 791.
[16] Docket, pp. 803 to 819.
[17] Docket, p. 824.
[18] Issues, JSFI, Docket, pp. 399 to 400.

1. Whether or not petitioner is liable to pay the alleged deficiency VAT for CY 2006 in the total amount of ₱16,229,506.83;

2. Whether or not respondent's right to assess petitioner's alleged deficiency VAT for CY 2006 had already prescribed;

3. Whether or not the February 2, 2010 Waiver and the May 28, 2010 Waiver executed by the parties for petitioner's deficiency tax liabilities for CY 2006 are valid;

4. Whether or not the Revenue Officer who conducted the examination of petitioner's books of accounts and accounting records in relation to the investigation of petitioner's internal revenue tax liabilities for CY 2006 had the authority to do so under LOA No. 00006717 dated August 31, 2007;

5. Whether or not the Revenue Officer who conducted the examination of petitioner's books of accounts in relation to the investigation of petitioner's internal revenue tax liabilities for CY 2006 had the authority to examine petitioner's accounting records for CYs 1998 to 2005;

6. Whether or not the deficiency VAT assessment arising from "collections from accounts receivable converted to notes receivable" in the amount of ₱24,192,724.89 is valid; and

7. Whether or not the deficiency VAT assessment arising from "interest income on loan and rent" in the amount of ₱63,047,746.90 is valid.

The fourth issue shall be dealt with primarily as it is critical in determining the validity of the subject deficiency VAT assessment.

Petitioner's arguments:

Petitioner argues that its administrative and judicial protests against the deficiency VAT assessment for CY 2006 were filed within the reglementary periods prescribed under Section 228 of the NIRC of 1997.

According to petitioner, respondent's right to assess petitioner's alleged deficiency VAT liability for CY 2006 had already prescribed. In this connection, petitioner points out that even assuming for the sake of argument that the waivers were executed within the three (3)-year prescriptive period under Section 203 of the NIRC of 1997, the February 2, 2010 Waiver and the May 28, 2010 Waiver are null and void for failing to comply with the requirements under Section 222(b) of the NIRC of 1997 and Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01. Petitioner highlights the reason why the subject waivers are invalid as follows:

1. The tenor of the Waivers vary significantly from what is required by RMO No. 20-90;
2. The Waivers are null and void because the OIC-Assistant Commissioner, LTS, did not have authority under RDAO No. 05-01 to sign Waivers for cases pending investigation before the LTDO-Makati;
3. The Waivers are invalid in view of the absence of any written authority from the Board of Directors, authorizing Mr. Romeo Bachoco to sign the Waivers on behalf of petitioner;
4. The February 2, 2010 Waiver is defective because it does not show the date of acceptance thereof by the Commissioner of Internal Revenue; and
5. The Waivers are void for failing to specify the amount of tax assessed from petitioner.

Moreover, petitioner contends that even assuming for the sake of argument that the assessment has not yet prescribed, respondent's deficiency VAT assessment for CY 2006 is invalid because the Revenue Officers who conducted the audit investigation had no authority to examine petitioner's books of accounts for CY 2006.

Allegedly, there is no legal basis for the deficiency VAT assessment arising from "collections from accounts receivable converted to notes receivable" in the amount of ₱24,192,724.89.

Finally, petitioner asserts that there is no legal or factual basis for the deficiency VAT assessment arising from "interest income on loan and rent" in the amount of ₱63,047,746.90.

Respondent's counter-arguments:

Respondent contends that her right to assess petitioner for deficiency taxes for taxable year 2006 has not prescribed. She avers that the waivers executed are valid and binding to both parties.

In addition, respondent maintains that the Revenue Officers who conducted the audit investigation had the authority to examine petitioner's books of accounts for CY 2006.

Lastly, respondent stresses that petitioner is liable to pay its deficiency VAT assessment arising from "collections from accounts receivable converted to notes receivable" in the amount of ₱24,192,724.89, and from "interest income on loan and rent" in the amount of ₱63,047,746.90.

THE COURT'S RULING

We find merit in the instant Petition for Review.

Petitioner contends, among others, that respondent's deficiency VAT assessment for CY 2006 is invalid because the Revenue Officers who conducted the audit investigation had no authority to examine petitioner's books of accounts for CY 2006.

We agree.

Sections 6(A) and 13 of the NIRC of 1997 provide as follows, to wit:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative **may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: *Provided, however*, That failure to file a return shall not prevent the Commissioner from **authorizing the examination of any taxpayer**.

xxx xxx xxx." *(Emphases supplied)*

"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." *(Emphases supplied)*

In *Commissioner of Internal Revenue vs. Sony Philippines, Inc.* (hereinafter referred to as the "*Sony* case"),[19] the Supreme Court said:

"Based on Section 13 of the Tax Code, a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.

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.**" *(Emphases supplied)*

In this case, the examination of petitioner's records for CY 2006 was authorized under Letter of Authority (LOA) No. 2007-00006717 dated August 31, 2007, which named the following Revenue Officers to conduct the said examination, to wit: Eulema Demadura, Lover

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

Loveres, Josa Gomez, and Emalyn Dela Cruz, "(t)*o be supervised by G/S Marilyn P. San Diego*".[20]

However, records show that it was Revenue Officer (RO) Rona B. Marcellano and Group Supervisor (GS) Frances E. Leonida (later, GS Juvy S. Dela Pena), who conducted the investigation of petitioner's books of accounts and other accounting records. This is manifested by the following documents: (1) Letter Request dated July 8, 2009 signed by RO Rona B. Marcellano and GS Frances E. Leonida addressed to petitioner for presentation of its documents;[21] (2) Letter dated September 16, 2009 addressed to petitioner, informing the latter, *among others*, that the result of investigation under LOA No. 00006717 *"has been submitted by Revenue Officer Rona B. Marcellano and Group Supervisor Frances E. Leonida"*;[22] (3) Audit Report dated April 19, 2010 signed by RO Rona B. Marcellano and noted by GS Frances E. Leonida;[23] (4) Memorandum dated April 19, 2010 submitted by RO Rona B. Marcellano and noted by GS Frances E. Leonida, recommending to Ms. Zenaida G. Garcia, Assistant Commissioner, the issuance of Preliminary Assessment Notice against petitioner;[24] and (5) Memorandum dated January 11, 2011 submitted by RO Rona B. Marcellano and noted by GS Juvy S. Dela Pena, recommending to Ms. Zenaida G. Garcia, Assistant Commissioner, the reiteration of the findings and approval of Formal Letter of Demand against petitioner.[25] In fact, RO Rona B. Marcellano claims, as respondent's witness, that she was the revenue officer authorized to conduct the audit of all internal revenue taxes of petitioner.[26]

Notably however, there is no showing that RO Rona B. Marcellano, GS Frances E. Leonida, and GS Juvy S. Dela Pena, were authorized, by way of a **Letter Of Authority** to investigate petitioner's books of accounts and other accounting records.

Correspondingly, pursuant to the *Sony* case, since RO Rona B. Marcellano had not been properly authorized to examine petitioner's books of accounts and other accounting records, the resultant deficiency VAT assessment is a nullity. Thus, the same must be cancelled and set aside.

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[20] Exhibit "P-2", Docket, p. 527; Exhibit "R-2", BIR Records, p. 1.
[21] Exhibit "R-3", BIR Records, p. 149.
[22] Exhibit "R-5", BIR Records, p. 227.
[23] BIR Records, pp. 297 to 298.
[24] Exhibit "R-7", BIR Records, pp. 319 to 324.
[25] BIR Records, p. 379.
[26] Exhibit "R-16" (8Q-*A), Docket, p. 198.

This Court cannot accept **Referral Memo No. 122-LOA-1208-00039 dated December 2, 2008**[27] as a valid substitute for LOA No. 2007-00006717 dated August 31, 2007[28] with respect to the appropriate authorization of the revenue examiners/officers to examine petitioner's books of accounts and other accounting records. This must be so because it is the LOA which is the jurisprudentially recognized document which gives the revenue officer/s named therein, the power to examine the books of account and other accounting records of a taxpayer.

Moreover, as correctly pointed out by petitioner, the issuance of referral memoranda are prohibited, pursuant to Revenue Memorandum Order No. 12-2007[29] dated July 3, 2007, to wit:

> "II. Coverage
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> Unless entitled to the benefits provided under Revenue Regulations No. 6-2005, as amended, **this Order shall cover the audit/investigation of 2006 internal revenue tax returns**, including those of fiscal period taxpayers whose taxable year ended on any month after June 30, 2006 but before Dec. 31, 2006. xxx.
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> xxx xxx xxx
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> IV. Policies and Procedures
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> xxx xxx xxx
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> 17. **The practice of issuing** mission orders, correspondence letters, **referral memoranda** or any other similar orders **for the purpose of audit examination and assessment of internal revenue taxes is hereby strictly prohibited**. xxx." *(Emphases supplied)*
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> xxx xxx xxx

Finding that the subject deficiency VAT assessment is void, We need not address the remaining issues raised in the instant case, specifically those relating to the question of the prescriptive period in issuing the said assessment vis-à-vis the validity of the subject

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[27] Exhibit "R-1", BIR Records, p. 2.
[28] Exhibit "P-2", Docket, p. 527; Exhibit "R-2", BIR Records, p. 1.
[29] SUBJECT: 2007 Audit Program for Revenue District Offices.

Waivers, and those relating to the merits of the case. This must so because a void assessment bears no valid fruit.[30] Being invalid for lack of authority of the revenue officials who examined petitioner's books of accounts and other accounting records, the subject deficiency VAT assessment cannot be used as a basis for the resolution of whether it was timely issued and whether the same has merit.

WHEREFORE, in light of the foregoing consideration, the instant Petition for Review is **GRANTED**. The deficiency VAT assessment issued by respondent against petitioner for CY 2006 is **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII 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
Chairperson
Presiding Justice

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[30] *Commissioner of Internal Revenue vs. Azucena T. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006.