REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

LBP SERVICE CORPORATION, *Petitioner,*	**CTA Case No. 9977**
	Members:
-versus-	**DEL ROSARIO, *P.J.***, *Chairperson* *and* **MANAHAN**, *J.*
THE COMMISSIONER OF INTERNAL REVENUE in the person of Caesar R. Dulay, *Respondent.*	Promulgated: JUL 01 2021 1:30 pm

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DECISION

MANAHAN, *J.*:

This case involves a *Petition for Review*[1] filed by LBP Service Corporation (now, LSERV Corporation) on November 22, 2018 against respondent Commissioner of Internal Revenue (CIR) seeking for the nullity and voiding of the latter's Warrant of Distraint and/or Levy (WDL) dated October 23, 2018, which seeks to collect from the former a deficiency Value-Added Tax (VAT) amounting to Php131,278,597.95.

THE PARTIES

Petitioner is a corporation organized and existing under the laws of the Philippines with principal address at Unit C & D, 21st Floor, Petron Mega Plaza, 358 Gil Puyat Avenue, Makati City.[2]

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) and that his duties include the assessment and collection of all

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[1] Docket, CTA Case No. 9977, pp. 12-45.
[2] *Id.*, The Parties, *Petition for Review*, p. 13.

internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith.[3]

THE FACTS

On March 8, 2012, petitioner received a Letter Notice (LN) No. 049-RLF-10-00-00083[4] from respondent pertaining to the alleged discrepancy of the former's VAT Returns for the year 2010 and Summary List of Purchases.[5]

On June 15, 2017, respondent issued[6] a Preliminary Assessment Notice (PAN)[7] which was received[8] by petitioner on June 21, 2017 and responded[9] on July 5, 2017.

On July 12, 2017, respondent issued a Formal Assessment Notice (FAN) with attached Details of Discrepancy but apparently was not served to and received by petitioner.[10]

On July 23, 2018, respondent issued[11] a Collection Letter (CL) for the said assessment which was received[12] by petitioner on August 22, 2018.

On August 23, 2018, respondent issued[13] a Final Notice Before Seizure (FNBS)[14] which was received[15] by petitioner on September 13, 2018.

On October 23, 2018, respondent issued[16] the subject WDL[17] which was received[18] by petitioner on the same day.

Hence, the filing of the instant petition on November 22, 2018.

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[3] Docket, *Joint Stipulation of Facts* (JSF) dated September 9, 2019, p. 761.
[4] *Id.*, Exhibit "P-1", p. 132; BIR Records, Exhibit "R-1", p. 8.
[5] *Id.*, Petition for Review, p. 19; BIR Records, Exhibit "R-1", p. 8.
[6] *Id.*, JSF, p. 762.
[7] *Id.*, Exhibit "P-3", pp. 165-166.
[8] *Id.*, *Petition for Review*, p. 16.
[9] *Ibid.*
[10] BIR Records, pp. 41-44.
[11] *Id.*, JSF, p. 761.
[12] *Id.*, *Petition for Review*, p. 16
[13] *Id.*, JSF, p. 761; Exhibit "P-12", p. 211.
[14] BIR Records, p. 125.
[15] *Id.*, *Petition for Review*, p. 17.
[16] *Id.*, JSF, p. 761.
[17] BIR Records, p. 126.
[18] *Id.*, *Petition for Review*, p. 17.

On April 8, 2019, respondent filed his Answer[19] with the following main arguments:

1. The Honorable Court has no jurisdiction over the petition. The Assessment against petitioner has already become final, executory and demandable;

2. The Honorable Court's Power of Judicial Review over the decisions of the respondent on the disputed assessment is by nature exclusive and appellate. Petitioner should not be allowed to raise issues for the first time on appeal.

3. While maintaining that the Honorable Court has no jurisdiction over the petition and further assuming without conceding that the Honorable Court may pass upon the issue on the alleged absence of Letter of Authority (LOA), the PAN, FAN, Collection Letter, FNBS, and the WDL issued against petitioner for taxable year 2010 were issued in accordance with law and the pertinent rules;

4. While maintaining that the Honorable Court has no jurisdiction over the petition, the WDL is valid pursuant to a duly issued and served FAN;

5. While maintaining that the Honorable Court has no jurisdiction over the petition, the assessment issued against petitioner for deficiency income tax and value-added tax (VAT) has bases both in fact and in law;

6. While maintaining that the Honorable Court has no jurisdiction over the petition, the PAN and FAN for taxable year 2010 were issued within the period allowed by law;

7. The Honorable Court has no jurisdiction over the instant case, hence, it cannot grant the ancillary remedies prayed for by petitioner; and

8. The collection of petitioner's tax liability will not jeopardize its interest.

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[19] Docket, pp. 394-426.

On June 19, 2019[20], the Pre-Trial Conference was set on August 8, 2019. However, it was reset[21] on September 5, 2019.

Petitioner filed its Pre-Trial Brief[22] on August 5, 2019 while respondent filed his Pre-Trial Brief[23] on August 30, 2019. The Pre-Trial Conference was held[24] on September 5, 2019.

The parties submitted their Joint Stipulation of Facts on September 9, 2019 which was approved under the Resolution[25] dated October 7, 2019. The Pre-Trial Order[26] was issued on October 28, 2019. Hence, the presentation of the parties' respective evidence ensued.

After petitioner's presentation of its evidence, it filed its Formal Offer of Exhibits[27] on November 12, 2019 which was resolved under Resolution[28] dated February 4, 2020.

On the other hand, respondent, after the presentation of his evidence, filed his Formal Offer of Evidence[29] on February 7, 2020 which was resolved under the Resolution[30] dated June 15, 2020. Thus, the parties were ordered to file their respective memoranda.

Respondent filed its Memorandum[31] on August 17, 2020 while petitioner filed his Memorandum[32] on August 18, 2020. Thus, the instant case was submitted[33] for decision on September 17, 2020.

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[20] Docket, Notice of Pre-Trial Conference, pp. 491-494.
[21] *Id.*, Order dated August 1, 2019, p. 574.
[22] *Id.*, pp. 576-593.
[23] *Id.*, pp. 746-749.
[24] *Id.*, Minutes of Pre-Trial Conference, pp. 751-753.
[25] *Id.*, pp. 810-812.
[26] *Id.*, pp. 836-844.
[27] *Id.*, pp. 879-891.
[28] *Id.*, pp. 916-917.
[29] *Id.*, pp. 918-922.
[30] *Id.*, pp. 953-954.
[31] *Id.*, pp. 999-1021.
[32] *Id.*, pp. 956-996.
[33] *Id.*, Resolution dated September 17, 2020, p. 1025.

ISSUE

The parties stipulated the following issue for this Court's resolution, to wit:[34]

> "Whether or not the deficiency VAT assessment for taxable year 2010 in the amount of Php131,278,597.95 is valid."

Petitioner's Arguments[35]

Petitioner argues that the failure of respondent to issue an LOA renders the assailed assessment against it inescapably void and that the absence of receipt of the FAN from the latter by the former runs afoul to the very essence of due process, hence, it justifies the absence of any administrative protest on the same.

Petitioner also argues that the issuance of the PAN was made beyond the three (3)-year period under the 1997 National Internal Revenue Code (NIRC), as amended, and that the discrepancies between the PAN and its attached Details of Discrepancies compared to its actual 2010 VAT Returns debunks the very basis of the assessment.

Respondent's Arguments[36]

Respondent argues that this Court has no jurisdiction over the petition because the assessment against petitioner has already become final, executory and demandable, and that: (1) although it may pass upon the issue of absence of LOA, the issuance of the PAN, FAN, CL, FNBS, and the WDL against petitioner for taxable year 2010 was in accordance with law and the pertinent implementing rules; (2) the WDL is valid pursuant to a duly issued and served FAN; (3) the assessment issued against petitioner for deficiency income tax and value-added tax (VAT) has bases both in fact and in law; (4) the PAN and FAN for taxable year 2010 were issued within the period allowed by law; and (5) this Court cannot grant the ancillary remedies prayed for by petitioner because it has no jurisdiction on the main case.

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[34] Docket, JSFI, p.; Docket, Pre-Trial Order dated October 28, 2019, p. 837.
[35] *Supra*, Note 32.
[36] *Supra*, Note 31.

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RULING OF THE COURT

The Court has jurisdiction on the instant petition

Although respondent mentioned in his arguments about deficiency income tax assessment, the PAN and the alleged FAN referred only to a deficiency VAT assessment.

Section 7(a)(1) of Republic Act (RA) No. 1125,[37] as amended by RA No. 9282,[38] provides as follows, to wit:

> "SECTION 7. *Jurisdiction.* – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (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 **<u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" *(Emphases and underscoring ours)*

Based on the foregoing provision, the appellate jurisdiction of this Court is *not* limited to cases which involve decisions of respondent on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR.[39] Considering that the imposition and collection of the subject deficiency taxes arise from the 1997 NIRC, as amended, this Court certainly has jurisdiction.

Moreover, in *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,*[40] the Supreme Court held:

> "The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of

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[37] AN ACT CREATING THE COURT OF TAX APPEALS.

[38] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

[39] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.

[40] G.R. No. 162852, December 16, 2004.

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> Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. **It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid** and to rule if the Waiver of Statute of Limitations was validly effected.
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> This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for refund. In *Pantoja v. David,* **we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue**. Also, in *Commissioner of Internal Revenue v. Court of Appeals,* the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court." (*Emphases added*)

Thus, this Court has the authority or jurisdiction to act on a petition to invalidate or annul the distraint orders of the respondent. Correspondingly, this Court may look into the validity of the subject WDL issued by respondent, and in case it finds the same as invalid, it may reverse and cancel the same.

Prescription had already set in prior to the issuance of PAN

Respondent argues that the 3-year prescription period is not applicable in the instant case but the ten (10)-year prescription period under Section 222 of the 1997 NIRC, as amended, because the audit investigation resulted in a discrepancy between petitioner's declaration of Php1,389,784,790.37 receipts subject to VAT as compared to its supposed actual receipts amounting to Php1,788,161,422.24, which constitute more than 30 percent (%) of underdeclared income.

A closer look at the Details of Discrepancies attached to respondent's PAN and the alleged FAN received by petitioner reveals that the alleged discrepancy was the result of the computer matching between petitioner's declaration of receipts in its VAT Returns for 2010 as compared to sales/receipts in the Summary List of Purchases submitted by petitioner's alleged customers.

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However, respondent failed to show before this Court that his representatives verified or validated that the alleged discrepancy was actually petitioner's income and was received by the latter. Without such verification or validation, the alleged discrepancy becomes an arbitrary presumption or without factual basis, which is invalid as held in *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*[41], to wit:

> "The rule is that in the absence of the accounting records of a taxpayer, his tax liability may be determined by estimation. The petitioner is not required to compute such tax liabilities with mathematical exactness. Approximation in the calculation of the taxes due is justified. To hold otherwise would be tantamount to holding that skillful concealment is an invincible barrier to proof. However, the rule does not apply where the estimation is arrived at arbitrarily and capriciously.
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> xxx xxx xxx
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> However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," i.e., without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. *Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.*"

In the instant case, respondent merely relied on comparing petitioner's VAT Return and the Summary List of Purchases (SLP) submitted allegedly by the latter's customers without going through their book of accounts or financial records of said alleged customers. Although respondent tried to confirm[42] from petitioner's customers the amount in the SLP, the records of the case show no evidence that the latter replied to such inquiries. Hence, verification of such alleged income receipts from petitioner's books of account becomes more necessary and yet respondent failed to do so.

Thus, there was no basis for petitioner's alleged underdeclared VAT receipts. Hence, Section 203 of the 1997 NIRC, as amended, should prevail, which provides that:

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[41] G.R. No. 136975, March 31, 2005.
[42] BIR Records, Exhibit "R-2", p. 34; Exhibit "R-3", p. 35.

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

In this case, the VAT for the last quarter of 2010 should be filed on or before January 25, 2011 which petitioner did.[43] Respondent therefore had 3 years or until January 25, 2014 to assess petitioner of said alleged deficiency VAT. However, respondent issued the PAN only on June 15, 2017 and the FAN on July 12, 2017 which were beyond the 3-year prescription period to assess. Thus, respondent's assessment was already prescribed.

The absence of LOA is fatal to respondent's subsequent notices

The factual antecedents of the instant case show that the subject assessment was the result of an audit investigation through the issuance of an LN and not of an LOA.

Sections 6(A) and 13 of the 1997 NIRC, as amended, provides:

> **SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.*** -
>
> (A) *Examination of Returns and Determination of Tax Due.* - After a return has been filed as required under the provisions of this Code, <u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer</u> and the assessment of the correct amount of tax: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
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> **SEC. 13. *Authority of a Revenue Officer.***- Subject to the rules and regulations to be prescribed by the Secretary of

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[43] Docket, Exhibit "P-26", p. 728.

> 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. (*Underscore ours*)

As gleaned from the abovementioned provisions, the execution of an LOA is mandatory in every conduct of an investigation or examination by the revenue officers on taxpayer's books of accounts and other accounting records, otherwise, the deficiency tax assessment arising therefrom is a nullity as held in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[44], to wit:

> 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 supplied*)

In fact, the Supreme Court in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[45] emphasized the vital significance of issuing an LOA for the validity of an assessment:

> "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 representative may authorize the**

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[44] G.R. No. 178697, November 17, 2010.
[45] G.R. No. 222743, April 5, 2017.

> **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.'
>
> 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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> Contrary to the ruling of the CTA *en banc,* an LOA cannot be dispensed with just because none of the financial books or records being physicially kept by MEDICARD was examined. **To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.**
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> x x x
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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.**" *(Emphases and underlining supplied)*

Thus, finding that the audit investigation of petitioner's books of accounts was made without proper authority, the resulting deficiency tax assessments and other notices relative thereto are considered void. In view of the foregoing, this Court no longer needs to further belabor on the merits of the subject assessments.

Considering that the issuance of the subject assessment was already prescribed and the lack of an LOA resulted to the

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nullity of all subsequent tax assessment and collection notices, the ancillary issue on whether there was a proper service of FAN to petitioner is rendered moot and academic, hence, no further discussion is needed.

WHEREFORE, premises considered, petitioner's *Petition for Review* is **GRANTED**. Accordingly, respondent's PAN, FAN, CL, FNBS, and WDL are hereby **CANCELLED** and **SET ASIDE**.

Respondent, his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from taking any further action against petitioner arising from the PAN, FAN, CL, FNBS, and WDL.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice