REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

SM SYNERGY PROPERTIES HOLDINGS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9397

Members:

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

Promulgated:
MAY 28 2021
10:04 a.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

This is a *Petition for Review* filed by Petitioner SM Synergy Properties Holdings Corporation against Respondent Commissioner of Internal Revenue ("CIR") on July 27, 2016, praying that judgment be rendered declaring the assessment for deficiency income tax, value-added tax ("VAT"), expanded withholding tax ("EWT"), and documentary stamp tax ("DST"), for taxable year 2009, amounting to Php512,759,896.05, null and void, for being issued beyond the prescriptive period and/or without legal and factual bases.[1]

The Facts

Petitioner SM Synergy Properties Holdings Corporation is a corporation duly organized and existing under the laws of the Philippines, and registered

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1 Docket, Pre-Trial Order dated August 18, 2017, Statement of the Case, p. 728.

with the Bureau of Internal Revenue ("BIR"), with principal business address at Chateau Elysee, Dona Soledad Avenue, Bicutan Extension, Paranaque City.[2]

Respondent, the CIR, is the head of the BIR, the government agency tasked to, among others, collect all national internal revenue taxes. As the CIR, Respondent has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the Tax Code or other laws or portions thereof administered by the BIR.[34]

Pursuant to the *Letter of Authority* ("LOA") No. LOA-125-2010-00000121 dated May 14, 2010, which was served to Petitioner on May 20, 2010, revenue examiners from LT Regular Audit Division 2 of the Large Taxpayers Service Regular of the BIR conducted a tax examination/audit of Petitioner's books of accounts and other accounting records for all internal revenue taxes for the taxable year 2009, pursuant to Revenue Memorandum Order ("RMO") No. 36-2010.[5]

Subsequently, Petitioner executed several *Waivers of the Statute of Limitation under the National Internal Revenue Code*, supposedly extending the BIR's period right to assess,[6] as summarized below:

	Date of execution	***Extended period to assess***
1st Waiver[7]	April 25, 2012	December 31, 2012
2nd Waiver[8]	August 22, 2012	March 31, 2013
3rd Waiver[9]	January 19, 2013	December 31, 2013
4th Waiver[10]	August 29, 2013	April 30, 2014
5th Waiver[11]	January 27, 2014	September 30, 2014

Petitioner then received from the BIR a copy of the *Preliminary Assessment Notice* ("PAN") issued against the former on July 07, 2014, covering various

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2 *Id.,* Exhibits "P-1" to "P-3", pp. 1005 to 1028.
3 *Id.,* Joint Stipulation of Facts and Issues ("JSFI"), Par. 1, p. 699.
4 *Id.,* JSFI, Facts Admitted, Par. 2, p. 198.
5 Docket, JSFI, Par. 2, pp. 699 to 700; Exhibit "P-33", p. 1075; BIR Records, Exhibit "R-2", p. 3.
6 Docket, JSFI, Pars. 3 to 7, p. 700.
7 Docket, Exhibit "P-34", p. 1078; BIR Records, Exhibit "R-3", p. 491.
8 Docket, Exhibit "P-35", p. 1079; BIR Records, Exhibit "R-4", p. 493.
9 Docket, Exhibit "P-36", p. 1080; BIR Records, Exhibit "R-5", p. 494.
10 Docket, Exhibit "P-37", p. 1081; BIR Records, Exhibit "R-6", p. 495.
11 Docket, Exhibit "P-38", p. 1082; BIR Records, Exhibit "R-7", p. 496.

assessments for deficiency income tax, VAT, EWT and DST for taxable year 2009.[12]

On July 22, 2014, Petitioner filed with the BIR its protest letter against the PAN.[13]

Thereafter, Petitioner again executed two (2) *Waivers of the Statute of Limitation under the National Internal Revenue Code*, again supposedly extending the BIR's period right to assess,[14] as summarized below:

	Date of execution	***Extended period to assess***
6th Waiver [15]	August 6, 2014	December 31, 2014
7th Waiver [16]	November 14, 2014	April 30, 2015

On February 16, 2015, Petitioner received from the BIR a *Formal Letter of Demand/Formal Assessment Notice* ("FLD/FAN") dated February 11, 2015, together with *Details of Discrepancies*, assessing Petitioner of deficiency income tax, VAT, EWT and DST, for taxable year 2009.[17]

Petitioner filed its protest letter against the said FLD/FAN on March 18, 2015, requesting for a reinvestigation thereof.[18] On May 15, 2015, Petitioner filed the letter dated May 14, 2015, submitting the reconciliation on the alleged undeclared revenue amounting to Php198.2M, in support of its protest.[19]

In the *Final Decision on Disputed Assessment* ("FDDA") dated June 23, 2016, which was received by Petitioner on June 27, 2016,[20] Respondent found Petitioner still liable to pay deficiency income tax, VAT, EWT and DST, for taxable year 2009, in the aggregate amount of Php512,759,896.05.

Petitioner filed the instant *Petition for Review* on July 27, 2016.[21] The case was initially raffled to the First Division of this Court.

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12 Docket, JSFI, Par. 8, p. 700; Exhibit "P-41", pp. 1085 to 1089; BIR Records, Exhibit "R-12", pp. 566 to 570.
13 Docket, Exhibit "P-42", pp. 1100 to 1104.
14 *Id.,* JSFI, Pars. 9 to 10, p. 700.
15 Docket, Exhibit "P-39", p. 1083; BIR Records, Exhibit "R-8", p. 644.
16 Docket, Exhibit "P-40", p. 1084; BIR Records, Exhibit "R-9", p. 645.
17 Docket, JSFI, Par. 11, p. 701; Exhibit "P-43, pp. 1137 to 1147; BIR Records, Exhibits "R-14" and "R-15", pp. 656 to 666.
18 Docket, Exhibit "P-44", pp. 1148 to 1156.
19 *Id.,* Exhibit "P-45", pp. 1164 to 1188.
20 Docket, Exhibit "P-46", pp. 1189 to 1196; BIR Records, Exhibit "R-17", pp. 743 to 750.
21 Docket, pp. 10 to 48.

Respondent posted his *Answer* on October 25, 2016,[22] interposing the following special and affirmative defenses, to wit:

"SPECIAL AND AFFIRMATIVE DEFENSES

4. Respondent re-pleads and adopts the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.

THE ASSESSMENT WAS ISSUED WITHIN THE PERIOD PRESCRIBED BY LAW.

5. Section 203 of the Tax Code provides the period within which the assessment should be made, to wit:

> '**SEC. 203. Period of Limitation Upon Assessment and Collection.** – Except as provided in Section 222, internal revenue taxes shall be assessed <u>within three (3) years</u> 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.' (Underscoring supplied)

6. Since internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, applying the foregoing provision, the last day for filing of return for taxable year 2009 is 15 April 2010, hence, Petitioner's internal revenue taxes can be assessed three (3) years therefrom, or until 15 April 2013.

7. As an exception, Section 222 of the Tax Code allows extension of the period to assess provided there is valid waiver of the statute of limitations.

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[22] *Id.*, pp. 263 to 277.

8. A perusal of the BIR records revealed that Petitioner, before the expiration of the three (3) year period to assess, executed waivers which validly extended the period to assess, to wit:

a. On **25 April 2010**, before the expiration of the three (3) year period to assess, the **first waiver** [Waiver of the Statute of Limitation under the National Internal Revenue Code] was executed by Ms. Cecilia R. Patricio, Petitioner's SPV – Corporate Tax Division, extending the period to assess until 31 December 2012.

b. Before the expiration of the first waiver, on **22 August 2012**, the **second waiver** executed by Ms. Cecilia R. Patricio was notarized, extending the period to assess until 31 March 2013.

c. Before the expiration of second waiver, on **19 January 2013**, the **third waiver** was executed, again by Ms. Cecilia R. Patricio, extending the period to assess until 31 December 2013.

d. Before the expiration of the third waiver, on **29 August 2013**, the **fourth waiver** was executed by Ms. Cecilia R. Patricio, extending the period to assess until 30 April 2014.

e. Before the expiration of the fourth waiver, on **27 January 2014**, the **fifth waiver** was executed by Ms. Cecilia R. Patricio, extending the period to assess until 30 September 2014.

f. Before the expiration of the fifth waiver, on **6 August 2014**, the **sixth waiver** was executed by Ms. Cecilia R. Patricio, extending the period to assess until 31 December 2014.

g. Lastly, before the expiration of the sixth waiver, on **14 November 2014**, the **seventh waiver** was executed again by Ms. Cecilia R. Patricio, extending the period to assess until 30 April 2015.

9. From the foregoing, considering that Petitioner executed valid waivers extending the period to assess until 30 April 2015, Respondent's issuance of Formal Letter of Demand (FLD) dated 11 February 2015 and Final Assessment Notices (FAN) which were received by Petitioner on 16 February 2015 has not prescribed.

10. As regards the withholding tax, Petitioner, being a withholding agent, has the obligation to withhold the tax as agent of the government and to remit the same to the government. The taxes are held in trust for the government.

11. While Section 203 of the Tax Code states that '[e]xcept 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 xxx', a cursory reading of the said provision would reveal that the period of limintation to conduct an assessment extends only to assessment of '**<u>all internal revenue taxes</u>**' as distinguished from assessment of '**<u>penalties</u>**' on the withholding agent for its failure to remit to the government the proper amount of tax withheld.

12. To point out, a **withholding tax is not an internal revenue tax** but is only a **system** used to collect **income tax** in advance. <u>Withholding is a system, the actual tax is income tax</u>. This ensures that taxes will be paid first, and will be paid on time as the government needs the funding to meet its obligations. The system is used to equal or at least approximate or collect in full the tax due from the payor on certain income payments.

13. In *Commissioner of Internal Revenue vs. The Court of Appeals, Court of Tax Appeals and A. Soriano Corp., G.R. No. 108576, January 20, 1999*, it was provided:

> 'In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax 48 in order to ensure its payments; the payer is the taxpayer — he is the person subject to tax impose by law; and the payee is the taxing authority. **In other words, the withholding agent is merely a tax collector, not a taxpayer**. Under the withholding system, however, the agent-payor becomes a payee by fiction of law. His (agent) liability is direct and independent from

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> the taxpayer, 52 because the income tax is still impose on and due from the latter. **The agent is not liable for the tax as no wealth flowed into him — he earned no income**. Xxx' (Emphasis Supplied)

14. Clearly, in case of breach by the agent of his legal duty, he is assessed **not for the collection of income tax**. He is merely penalized for failure to comply with the withholding tax provision. Therefore, in case of such breach, and no income taxes were withheld or remitted by the agent, the agent is penalized. The tax cannot be collected from the agent because as stated in the above case, '(t)he agent is not liable for the tax as no wealth flowed into him – he earned no income.' The cause of action against the withholding agent is not for the collection of tax but for the enforcement of the withholding tax provision of the Tax Code.

15. The fact that the amount sought to be collected from the withholding agent is **not a tax**, despite the nomenclature 'deficiency tax', **but rather a penalty** has long been emphasized by the Honorable Supreme Court in *NATIONAL DEVELOPMENT COMPANY vs COMMISSIONER OF INTERNAL REVENUE, G.R. No. L-53961, June 30, 1987*, stating:

> '**The Petitioner also forgets that it is not the NDC that is being taxed**. The tax was due on the interests earned by the Japanese shipbuilders. It was the income of these companies and not the Republic of the Philippines that was subject to the tax the NDC did not withhold.
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> **In effect, therefore, the imposition of the deficiency taxes on the NDC is a penalty for its failure to withhold the same from the Japanese shipbuilders**. Such liability is imposed by Section 53(c) of the Tax Code, thus:
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>> Section 53(c). Return and Payment. – Every person required to deduct and withhold any tax under this section shall make return thereof, in duplicate, on or before the fifteenth day of April of each year, and, on or before the time

> fixed by law for the payment of the tax, shall pay the amount withheld to the officer of the Government of the Philippines authorized to receive it. Every such person is made personally liable for such tax, and is indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this section.' (Emphasis and underscoring supplied)

16. Prescinding from the foregoing circumstances, Respondent humbly posits that the period of limitation upon assessment provided in Section 203 of the Tax Code finds no application. The said provision prescribes a limitation only as to the assessment and collection **of taxes, but not of penalties**. Simply put, the provision protects the statutory taxpayers, but not agents who are remiss on their obligations.

17. Considering the foregoing discussion, it is cleae that Respondent's right to assess Petitioner for deficiency tax has not prescribed, thus, the assessment is valid and lawful.

THE WAIVERS EXECUTED BY PETITIONER ARE VALID.

18. The waivers executed by Petitioner validly extended the period to assess until 30 April 2015.

19. Petitioner challenged its own waivers stating that the same are invalid and defective.

20. However, Respondent maintains that the waivers are in the form prescribed by law, duly notarized, and executed by Petitioner's duly authorized representative, therefore, valid and binding upon Petitioner.

21. Petitioner erroneously alleged that the signature of Ms. Cecilia R. Patricio in the waivers should not be given credence since she was not required by the BIR to present Board Resolution to the effect that she is empowered to sign the Waivers of Statute of Limitations in behalf of Petitioner.

However, such allegation is misleading and contradicting to the actual facts.

22. Respondent notes that a Secretary's Certificate certifying a resolution of the Board of Directors of Petitioner was issued which appoints Ms. Cecilia R. Patricio as its authorized signatory and representative in handling tax cases, including the execution of waivers, in connection with the tax audit examination by the BIR covering taxable year 2009.

23. Clearly, there was substantial compliance with the requirement of presentation of board resolution. Petitioner cannot just execute seven (7) different waivers, and thereafter contend that all the waivers it executed are mere scrap of paper.

24. The Honorable Supreme Court held in *RIZAL COMMERCIAL BANKING CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 170257, September 7, 2011*:

> '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.'

25. Moreover, even assuming but without conceding that Respondent was not able to strictly comply with Revenue Memorandum Order No. 20-1990 (RMO 20-1991) and Revenue Delegation Authority Order No 05-2001 (RDAO 05-2001), the **waivers remain valid** as upheld by the Honorable Supreme Court in the recent case of *COMMISSIONER OF INTERNAL REVENUE VS. NEXT MOBILE, INC. (formerly Nextel Communications Phils., Inc.), G.R. No. 212825, December 7, 2015*, to wit:

> 'First, the parties in this case are *in pari delicto* or 'in equal fault.' *In pari delicto* connotes that the two parties to a controversy are equally culpable or guilty and they shall have no action against each other. However, although the parties are *in pari delicto*, the Court may interfere and grant relief at the suit of one

of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by one party who is in equal guilt with the other.

Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents. As between the parties, it would be more equitable if Petitioner's lapses were allowed to pass and consequently uphold the Waivers in order to support this principle and public policy.

Second, the Court has repeatedly pronounced that parties must come to court with clean hands. Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing. Following the foregoing principle, Respondent should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.

Third, Respondent is estopped from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. Respondent executed five Waivers and delivered them to Petitioner, one after the other. It allowed Petitioner to rely on them and did not raise any objection against their validity until Petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer

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> because of the cancellation of Petitioner's assessment of Respondent's tax liabilities.
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> Finally, the Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from Respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.
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> It is true that Petitioner was also at fault here because it was careless in complying with the requirements of RMO No. 20-90 and RDAO 01-05. Nevertheless, Petitioner's negligence may be addressed by enforcing the provisions imposing administrative liabilities upon the officers responsible for these errors. The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is obviously in bad faith.'

26. From the foregoing, Petitioner cannot insist on the validity of the waivers. Such waivers are clearly valid and effectively extend the period to assess.

27. Therefore, the assessment was issued and served to Petitioner within the period prescribed by law.

THE ASSESSMENT ISSUED AGAINST PETITIONER HAS BASES IN FACTS AND LAW.

A. ASSESSMENT OF DEFICIENCY INCOME TAX.

a. Undeclared Revenue – P198,232,109.13

28. Respondent determined Petitioner's undeclared revenue by comparing the revenue reported per VAT Returns against per Income Tax Returns. Such comparison disclosed a discrepancy of which Petitioner was assessed of income tax pursuant to Section 32 of the Tax Code.

29. Petitioner alleged that the amount was exempt sale treated as deferred sale, regardless of down payment, be it more than or less than twenty five percent (25%) of the total contract price. However, no supporting documents were submitted to prove such allegation to warrant the cancellation of reduction of the assessment.

b. Disallowed Expenses for Non-Withholding – P439,114,106.27

30. Verification conducted by Respondent shows that Petitioner has not subject to expanded withholding tax some of its income payments in violation of Revenue Regulations No. 2-98.

31. Section 2.58.5 of Revenue Regulations (RR) NO. 2-98 provides the condition for an income payment to be allowed as a deduction, viz:

> SECTION 2.58.5. Requirement for Deductibility. – Any income payment which is otherwise deductible under the Code shall be allowed as a deduction from the payor's gross income only if it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Secs. 57 and 58 of the Code.

32. Petitioner merely alleged the discrepancies were either not subject to EWT or subject to lower rate as in the case of commission, hence, no merits were given.

33. Thus, since there were no documents submitted which would warrant the reduction of the assessment, the EWT is reiterated pursuant to Sec. 2.58.5 of RR 2-98.

B. ASSESSMENT OF DEFICIENCY VALUE-ADDED TAX.

a. Over-declaration of revenue exempt from VAT – P190,591,436.70

34. Verification disclosed that the amount reported as exempt sales per VAT Returns was overstated.

35. Petitioner alleged that the amount was exempt sale treated as deferred sales, regardless of the down payment. However, no merits have been given to said allegation as no supporting documents was produced to warrant the cancellation or reduction of the assessment.

36. Since Petitioner failed to prove that there was no overdeclaration of exempt sales, Petitioner is assessed pursuant to Section 106 in relation to Section 108 of the Tax Code.

b. Understatement of Input Tax Allocated to Exempt Sales – P6,275,994.39

37. A computation of input taxes allocated to exempt sales disclosed that there was overstatement. This was considered in the computation of allowable input tax. Thus, VAT assessment was made pursuant to Sec. 110 of the Tax Code.

38. Petitioner's contention that it allocated in the input tax to exempt sales based on a predetermined formula should not be given credence considering that it does not conform with RR 16-2005 on allocation of input taxes.

39. Also, only sample computation was made and not the actual computation of allocated input tax. Thus, Petitioner was validly assessed pursuant to Sec. 110 of the Tax Code.

C. ASSESSMENT OF DEFICIENCY EXPANDED WITHHOLDING TAX.

40. Verification disclosed that Petitioner failed to withhold expanded withholding tax in some of its income payments in violation of RR 2-98.

41. No merits were given to Petitioner's claim with respect to the reduction of the expenses subject to EWT. Petitioner merely made allegations but no supporting documents were submitted to rebut Respondent's findings.

42. Hence, Petitioner was validly assessed of deficiency EWT.

D. ASSESSMENT OF DEFICIENCY DOCUMENTARY STAMP TAX.

43. Verification disclosed that Petitioner failed to pay DST due on various taxable transactions in accordance with the Tax Code.

44. Petitioner's allegations without corroborating evidence were not given merit.

45. Also, the case of *CIR vs. Sony Philippines, Inc.* is not applicable in this case as the assessment in Sony was based on records not covered by the Letter of Authority. The basis of VAT is based on sales, nominal account, which is not being carried forward to the following year. In the instant case, the basis is Petitioner's book of account during the year under audit which is within the jurisdiction of the Letter of Authority.

46. Petitioner is currently assessed of DST pursuant to Sec. 179 and 194 of the Tax Code.

THE ASSESSMENT ISSUED AGAINST PETITIONER IS VALID AND LAWFUL

47. Assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where

it does not appear to have been arrived at arbitrarily or capriciously. *(Marcos II vs. Court of Appeals G.R. No. 120880 June 5, 1997)*

48. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands. *(Commissioner of Internal Revenue vs. Hantex Trading Co. Inc., G.R. No. 136975, March 31, 2005)*

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

50. Following the premises above, Petitioner has the burden of proving that the assessment has no factual and legal basis, failure to do so entitles Respondent's assessment with presumption of regularity, thus legal and valid."

The Pre-Trial Conference was initially set on February 16, 2017,[23] but was eventually reset on April 27, 2017,[24] upon motions by both parties.[25] At the hearing held on April 27, 2017, the said Pre-Trial Conference was further reset to, and was thus held on, June 22, 2017.[26]

In the meantime, *Respondent's Pre Trial Brief* was submitted on April 20, 2017,[27] while *Pre-Trial Brief for the Petitioner* was posted on April 21, 2017.[28]

Respondent transmitted the *BIR Records* of this case on April 21, 2017.[29]

The parties submitted their *Joint Stipulation of Facts and Issues* ("JSFI") on July 07, 2017.[30] In the Resolution dated July 18, 2017,[31] the Court approved the

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23 *Id.*, Notice of Pre-Trial Conference dated November 02, 2016, pp. 279 to 280.

24 *Id.*, Order dated February 8, 2017, p. 295.

25 *Id.*, Petitioner's Motion to Reset Pre-Trial Conference, and respondent's Motion to Reset Pre-Trial Conference, both filed on February 7, 2017, pp. 283 to 286, and 288 to 292, respectively.

26 *Id.*, Minutes of the hearing held on, and Order dated, April 27, 2017, pp. 625 to 628; Minutes of the hearing held on, and Order dated, June 22, 2017, pp. 692 to 697.

27 *Id.*, pp. 299 to 303.

28 *Id.*, pp. 632 to 655.

29 *Id.*, Compliance dated April 20, 2017, pp. 387 to 389.

30 *Id.*, pp. 699 to 716.

said JSFI and deemed the termination of the Pre-Trial. Thereafter, the Court issued the Pre-Trial Order on August 18, 2017.[32]

As trial ensued, Petitioner presented its documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Gemma L. Mangaliman,[33] Petitioner's Assistant Vice President for Accounting and Controllership; (2) Ms. Cecilia R. Patricio,[34] Senior Vice President for Corporate Tax Division of SM Investment Corporation; and (3) Mr. Neil U. Sison,[35] the Court-commissioned Independent Certified Public Accountant (ICPA).[36]

The *Report* of the ICPA was received by the Court on October 06, 2017.[37]

Petitioner filed its *Formal Offer of Evidence* on February 12, 2018.[38] Respondent filed his *Comment (Re: Petitioner's Formal Offer of Evidence)* on February 22, 2018.[39]

The Court then, in its Resolution dated April 11, 2018,[40] admitted Petitioner's Exhibits, *except* for Exhibits "P-51-S-57", "P-51-Y-11", "P-51-AL-1" to "P-51-AL-6", "P-51-AR-35" to "P-51-AR-78", "P-51-AS-17" to "P-51-AS-28", "P-51-AU-70" to "P-51-AU-80", "P-51-AY-4" to "P-51-AY-12", "P-51-AZ-59", "P-51-BM", and "P-51-BO-12", for not being found in the records of the case.

Consequently, on May 02, 2018, Petitioner filed its *Motion for Reconsideration to the Resolution dated April 11, 2018*,[41] providing an explanation/clarification with regard to the denied exhibits, and praying for the admission of the same. Respondent did not file any comment thereto.[42] The

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[31] *Id.*, pp. 719 to 720.
[32] *Id.*, pp. 728 to 741.
[33] *Id.*, Exhibit "P-50", pp. 397 to 423; Minutes of the hearing held on, and Order dated, November 28, 2017, pp. 874 to 880.
[34] *Id.*, Exhibit "P-52", pp. 664 to 670; Minutes of the hearing held on, and Order dated, January 30, 2018, pp. 963 to 970.
[35] *Id.*, Exhibit "P-53", pp. 885 to 939; Minutes of the hearing held on, and Order dated, January 30, 2018, pp. 963 to 970.
[36] *Id.*, Exhibit "P-49", pp. 745 to 749; Minutes of the hearing held on, and Order dated, August 31, 2017, pp. 756 and 761.
[37] *Id.*, pp. 791 to 806.
[38] *Id.*, pp. 972 to 1003.
[39] *Id.*, pp. 1326 to 1327.
[40] *Id.*, pp. 1332 to 1335.
[41] *Id.*, pp. 1336 to 1342.
[42] *Id.*, Records Verification dated June 07, 2018 issued by the Judicial Records Division of this Court, p. 1413.

Court then, in the Resolution dated August 9, 2018,[43] directed the ICPA to submit the corrected markings as explained in the said *Motion* and to submit a soft copy of the schedules.

On August 31, 2018, Petitioner submitted a Compact Disc (CD) containing the corrected markings.[44]

Pursuant to this Court's Administrative Circular No. 02-2018, the case was transferred to the Third Division of this Court.[45]

In the Resolution dated February 26, 2019,[46] the Court admitted Exhibits "P-51-S-57", "P-51-U-173" to "P-51-U-472", "P-51-Y-11", "P-51-AF-62" to "P-51-AF-79", "P-51-AF-81" to "P-51-AF-107", "P-51-AM-1" to "P-51-AM-8", "P-51-AR-35" to "P-51-AR-78", "P-51-AY-4" to "P-51-AY-11", "P-51-BA-1", and "P-51-BE-1" to "P-51-BE-2", thereby partially granting Petitioner's *Motion for Reconsideration to the Resolution dated April 11, 2018.*

Subsequently, the parties filed a *Joint Manifestation and Motion* on April 22, 2019,[47] informing the Court that they are exploring the possibility of entering into a judicial compromise related to the case, and hence, requesting for the suspension of proceedings for thirty (30) days. The Court noted this manifestation and reset the initial presentation of Respondent to August 08, 2019.[48]

A *Second Joint Manifestation and Motion* was filed by the parties on July 26, 2019,[49] informing the Court that the parties are still waiting for the approval of Respondent, and thus requesting for the suspension of proceedings for another thirty (30) days. The request was granted by the Court in the Resolution dated July 31, 2019, and reset the initial presentation of Respondent to October 01, 2019.[50]

During the scheduled hearing for the initial presentation of evidence for Respondent,[51] his counsel manifested that the witness he intends to present has already retired and requested that he may present another witness. Thus, the hearing was cancelled and reset to November 27, 2019; and Respondent was

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43 *Id.*, pp. 1419 to 1422.
44 *Id.*, p. 1424.
45 *Id.*, Order dated September 27, 2018, p. 1428.
46 *Id.*, pp. 1433 to 1436.
47 *Id.*, pp. 1437 to 1439.
48 *Id.*, p. 1441.
49 *Id.*, pp. 1442 to 1444.
50 *Id.*, p. 1446.
51 *Id.*, Minutes of the hearing held on, and Order dated, October 01, 2019, pp. 1450 to 1452.

ordered by the Court to file the Judicial Affidavit ("JA") of his intended witness until November 18, 2019.

On November 22, 2019, Respondent filed the JA of his new witness, Chief Revenue Officer ("CRO") Fe Caling.[52]

However, during the hearing held on November 27, 2019,[53] Petitioner manifested that he only received the copy of the JA of Respondent's witness and therefore, moved for the resetting of the hearing. The case was then reset to January 22, 2020.

On January 22, 2020, CRO Fe Caling was presented as witness for Respondent.[54] During the said hearing, the Court ordered Respondent to file his *Formal Offer of Evidence* not later than February 11, 2020.

Respondent's Formal Offer of Evidence was then filed on February 11, 2020.[55] Petitioner submitted is *Comment (To Respondent's Formal Offer of Evidence)* on February 21, 2020.[56]

In the Resolution dated June 08, 2020,[57] Respondent's Exhibits were all admitted in evidence.

Respondent filed his *Memorandum* on July 01, 2020,[58] while *Memorandum for the Petitioner* was filed on July 16, 2020.[59]

On July 23, 2020, this case was deemed submitted for decision.[60]

The Issue

The issue raised by the parties to be resolved by this Court is as follows, to wit:

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52 *Id.*, pp. 1454 to 1474.
53 *Id.*, Minutes of the hearing held on, and Order dated, November 27, 2019, pp. 1475 to 1477.
54 *Id.*, Exhibit "R-22", pp. 1463 to 1474; Minutes of the hearing held on, and Order dated, January 22, 2020, pp. 1478 to 1480.
55 *Id.*, pp. 1487 to 1492.
56 *Id.*, pp. 1499 to 1500.
57 *Id.*, pp. 1505 to 1506.
58 *Id.*, pp. 1507 to 1519.
59 *Id.*, pp. 1523 to 1595.
60 *Id.*, Resolution dated July 23, 2020, p. 1598.

> "WHETHER PETITIONER IS LIABLE TO PAY DEFICIENCY INCOME TAX, VALUE-ADDED TAX, EXPANDED WITHHOLDING TAX, AND DOCUMENTARY STAMP TAX[,] IN THE TOTAL AMOUNT OF [Php]512,759,896.05 INCLUDING INTEREST AND PENALTIES FOR TAXABLE YEAR 2009".[61]

Petitioner's Arguments

Petitioner argues that the absence of a valid LOA violated its right to due process; that the *Waivers* did not validly extend BIR's period to assess Petitioner; that the assessment for deficiency income tax is void due to lack of factual and legal bases; that the deficiency VAT assessment has neither legal nor factual basis; that the deficiency EWT assessment is null and void for failure to state the facts and the law on which it is based; that Respondent went beyond its authority in assessing DST on the beginning balance of "Due from Affiliate"; and that Petitioner has already properly paid and remitted the DST due from the lease agreements.

Respondent's Counter-arguments

Respondent, on the other hand, counter-argues that the assessment was issued within the period prescribed by law; that the *Waivers* executed by Petitioner are valid; that the assessment issued against Petitioner has bases in fact and law; and that the assessment issued against Petitioner is valid and lawful.

<u>Discussion/Ruling</u>

The Court has jurisdiction over the present case.

The Court shall first determine the timeliness of the filing of the present Petition for Review in accordance with Section 228 of the National Internal Revenue Code ("NIRC") of 1997, as amended, which provides as follows:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer

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[61] *Id.*, JSFI, Par. C., p. 701.

> of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> **If the protest** is denied in whole or in part, or **is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30)** days from receipt of the said decision, or **from the lapse of the one hundred eighty (180)-day period**; otherwise, the decision shall become final, executory and demandable."[62]

Pursuant to the said provision, Petitioner has thirty (30) days from receipt of the FAN within which to file its administrative protest and another thirty (30) days from receipt of Respondent's decision or from the lapse of the 180-day period within which to file its Petition for Review with the Court.

Petitioner received the FLD/FAN dated February 11, 2015 on February 16, 2015.[63] Petitioner had thirty (30) days from February 16, 2015 or until

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[62] *Emphasis supplied.*

[63] Docket, JSFI, Par. 11, p. 701; Exhibit "P-43, pp. 1137 to 1147; BIR Records, Exhibits "R-14" and "R-15", pp. 656 to 666.

March 18, 2015 within which to file its administrative protest. Petitioner timely filed its protest letter against the said FLD/FAN on March 18, 2015.[64]

On June 23, 2016, the BIR issued the FDDA, which was received by Petitioner on June 27, 2016.[65] Counting thirty (30) days therefrom, Petitioner had until June 27, 2016 within which to file an appeal. On July 27, 2016, a *Petition for Review* was filed in this court.[66]

The Court shall now proceed to discuss the merits of the case. As We see it, the instant *Petition for Review* is meritorious.

The Revenue Officer who examined Petitioner's books of accounts for taxable year 2009 was not authorized, and thus, all of the subject tax assessments are void.

An LOA is the authority given to the appropriate Revenue Officer ("RO") assigned to perform assessment functions. It empowers or enables said RO to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[67] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[68]

Therefore, there must be a grant of authority before any RO can conduct an examination or assessment. Equally important is that the RO so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity. Moreover, 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 Respondent himself or his duly authorized representatives.[69] This is explicitly provided under Section 6(A) of the NIRC of 1997, as amended, which provide as follows:

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64 Docket, Exhibit "P-44", pp. 1148 to 1156.

65 Docket, Exhibit "P-46", pp. 1189 to 1196; BIR Records, Exhibit "R-17", pp. 743 to 750.

66 Docket, pp. 10 to 48.

67 Medicard Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 222743, April 05, 2017.

68 Commissioner of Internal Revenue v. De La Salle University, Inc., Et. Al., G.R. Nos. 196596, 198841, and 198941, November 09, 2016.

69 Medicard Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 222743, April 05, 2017.

"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."[70]

Relative thereto, Section 13 of the NIRC of 1997, as amended, reads:

"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, <u>pursuant to a Letter of Authority</u> 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."[71]

Based on the aforequoted provisions, it is clear that unless authorized by Respondent himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. In the absence of such an authority, the assessment or examination is a nullity.[72]

The LOA No. LOA-125-2010-00000121 dated May 14, 2010 was issued authorizing RO Abdul Jalal Hilal and Group Supervisor ("GS") Sohailey Pandapatan to examine Petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2009 to December 31, 2009.[73]

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70 *Emphasis supplied.*

71 *Emphasis and underscoring supplied.*

72 Commissioner of Internal Revenue v. Sony Philippines, Inc., G.R. No. 178797, November 17, 2010.

73 Docket, JSFI, Par. 2, pp. 699 to 700; Exhibit "P-33", p. 1075; BIR Records, Exhibit "R-2", p. 3.

However, records reveal that RO Aniceto B. Luna and GS Fe F. Caling were the ones who recommended the issuance of the PAN,[74] and FLD/FAN,[75] and FDDA.[76]

The question now is whether or not RO Luna and GS Caling were authorized to examine Petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2009 to December 31, 2009.

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

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

[74] BIR Records, Exhibit "R-11", pp. 547 to 550.
[75] *Id.,* Exhibit "R-13", pp. 650 to 652.
[76] *Id.,* Exhibit "R-16", pp. 730 to 731.

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

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

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

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

xxx

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

xxx

(h) **Perform such other functions as may be provided by law and as may be delegated by the Commissioner.**"[77]

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

In the case of *Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.*[78], the Supreme Court had the occasion to expound on the elements of agency, to wit:

[77] *Emphasis and underscoring supplied.*
[78] G.R. No. 188288, January 16, 2012.

> "The elements of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for him/herself; and (4) the agent acts within the scope of his/her authority. **As the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it.** Absent such mutual intent, there is generally no agency. It is likewise a settled rule that persons dealing with an assumed agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it."[79]

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

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

> "Art. 1892. **The agent may appoint a substitute if the principal has not prohibited him from doing so**; but he shall be responsible for the acts of the substitute:
>
> (1) When he was not given the power to appoint one;
> (2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.
>
> All acts of the substitute appointed against the prohibition of the principal shall be void. (1721)"[80]

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to RO Hilal and GS Pandapatan who were originally named in the LOA may be revoked, transferred and reassigned to RO Luna and GS Caling, for continuance of audit.

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79 *Emphasis supplied.*
80 *Emphasis supplied.*

Said document where such authority is transferred may be equivalent to an LOA. Several reasons support this. *First*, the only directive under Section 13 of the NIRC of 1997, as amended,[81] which requires that assessment be done by ROs pursuant to an LOA, is that the grant of authority be done ***in writing***. In fact, an "[a]gency may be oral, unless the law requires a specific form."[82]

Second, although the document may not be entitled "Letter of Authority" but otherwise, it can contain all the elements necessary to establish a contract of agency between the CIR and the new Revenue Officer. The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[83] The title of the contract does not necessarily determine its true nature.[84] In fact, this Court has, time and again, declared certain documents emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.

In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the NIRC of 1997, as amended, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.[85] Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any

81 SEC. 13. Authority of a Revenue Officers. - subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (Emphasis supplied).

82 Civil Code of the Philippines, Article 1869.

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

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

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

fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code.[86]

Thus, RO Luna and GS Caling who conducted the examination of Petitioner's books of accounts may be deemed authorized to do so without need for a new LOA, **only if said letter or notice or memorandum was signed by the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service**.

Under RMO No. 29-07[87], the equivalent of a Regional Director in the Large Taxpayers Service is the Assistant Commissioner/Head Revenue Executive Assistants, for they are the ones authorized to issue an LOA, to wit:

> "II. AUDIT POLICIES AND GUIDELINES
>
> 1. The Chief, Large Taxpayers Audit & Investigation Divisions/LTDOs shall draw a list of taxpayers selected for audit under its current selection criteria. The list shall state the name of taxpayer selected for audit, the nature of business, the amount of gross sales/receipts, the selection code, the PSIC code, and the corresponding amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.
>
> 2. **All Letters of Authority (LOAs) shall be issued and approved by the <u>Assistant</u> <u>Commissioner/Head</u> <u>Revenue</u> <u>Executive</u> <u>Assistants</u>**."[88]

In the instant case however, said Memorandum of Assignment[89] dated February 18, 2011 was only signed by OIC-Chief, LTRAD 2 Edwin T. Guzman. Therefore, RO Luna and GS Caling were not authorized to conduct any tax audit/investigation against Petitioner. The PAN, FLD, FANs, and FDDA, which were issued as a result of RO Luna and GS Caling's tax audit/investigation, are inescapably void.

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[86] Philippine International Trading Corporation v. Commission on Audit, G.R. No. 183517, June 22, 2010.
[87] Issued September 26, 2007.
[88] *Emphasis and underscoring supplied.*
[89] BIR Records, Exhibit "R-20", p. 18.

Indeed, Petitioner and Respondent has executed between them a total of seven (7) waivers. However, the necessity of executing such waivers hardly exists without the valid authority of the ROs to investigate the books of accounts of Petitioner.

Lastly, a void assessment bears no valid fruit.[90] Such being the case, all of the subject tax assessments cannot be enforced against Petitioner.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the subject FLD/FAN dated February 11, 2015, and the FDDA dated June 23, 2016, assessing Petitioner for deficiency income tax, VAT, EWT, and DST, for taxable year 2009, in the total amount of Php512,759,896.05, are hereby **CANCELLED and SET ASIDE**. Consequently, Respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against Petitioner.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[90] Commissioner of Internal Revenue v. Azucena T. Reyes, Et. Al., G.R. Nos. 159694 and 163581, January 27, 2006.

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice