REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FIRST LIFE FINANCIAL CO., INC., Petitioner,	**CTA CASE NO. 9029**
	Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, **MINDARO-GRULLA,** and **BACORRO-VILLENA, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 04 2019 1:00 p.m.

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Commission with principal business address at First Life Center, 174 Salcedo Street, Legaspi Village, Makati City, whose primary purpose is the business of life insurance.[3]

It is duly registered with the Bureau of Internal Revenue (BIR) as shown by its BIR Certificate of Registration OCN No. 8RC0000019271 dated June 8, 1996, with Tax Identification No. 000-456-600-000.[4]

On the other hand, respondent Commissioner of Internal Revenue is the head of the BIR, the government agency tasked to, among others, collect all national internal revenue taxes. He has the power to decide disputed assessments, refund 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. He may be served with summons and other court processes at the 5th Floor, BIR Building, Agham Road, Diliman, Quezon City.[5]

In a Letter of Authority No. 2007-0035446[6] dated July 1, 2008, Romulo L. Aguila, Jr., Head Revenue Executive Assistant of LTS-Regular Large Taxpayers authorized Revenue Officer Wilfredo S. Reyes to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2007 to December 31, 2007.

On October 20, 2010, petitioner, through Mr. Jaime M. Santiago, executed a Waiver of the Statute of Limitations under the National Internal Revenue Code of even date (the 1st Waiver), which extended the BIR's period to assess until June 30, 2011.[7]

On May 17, 2011, petitioner, through Mr. Santiago, executed another Waiver of the Statute of Limitations of even date (the 2nd Waiver), which extended the BIR's period to assess until December 31, 2011.[8]

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[3] Par. 9, A. Facts, Pre-Trial Order, Docket (Vol. III), p. 1377.
[4] Par. 10, A. Facts, Pre-Trial Order, Docket (Vol. III), p. 1377.
[5] Par. 1, A. Facts, Pre-Trial Order, Docket (Vol. III), p. 1377.
[6] Exhibit "P-61", Docket (Vol. IV), p. 2070; Exhibit "R-1", BIR Records, p. 534.
[7] Par. 2, A. Facts, Pre-Trial Order, Docket (Vol. III), p. 1376.
[8] Par. 3, A. Facts, Pre-Trial Order, Docket (Vol. III), p. 1376.

On September 23, 2011, petitioner, through Mr. Santiago, again executed a Waiver of the Statute of Limitations of even date (the 3rd Waiver), which extended the BIR's period to assess until June 30, 2012.[9]

On April 13, 2012, petitioner, through Mr. Santiago, again executed a Waiver of the Statute of Limitations of even date (the 4th Waiver), which extended the BIR's period to assess until December 31, 2012.[10]

On October 25, 2012, petitioner, through Mr. Santiago, executed a Waiver of the Stature of Limitations of even date (the 5th Waiver), which extended the BIR's period to assess until September 30, 2013.[11]

In a Memorandum of Assignment[12] dated February 25, 2013, issued by Mr. Cesar D. Escalada, Chief of Regular LT Audit Division Revenue Officer Susan L. Salcedo and Group Supervisor Marivic P. Bautista was authorized to continue the audit/investigation of petitioner's possible tax liabilities for taxable year 2007.[13]

Revenue Officer Salcedo subsequently issued a Preliminary Assessment Notice dated May 20, 2013, with attached Details of Discrepancies.[14]

On May 23, 2013, petitioner, through Mr. Santiago, executed the last Waiver of the Statute of Limitations of even date (the 6th Waiver), which extended the BIR's period to assess until December 31, 2013.[15]

On September 24, 2013, petitioner received the Formal Letter of Demand[16] (FLD) dated September 16, 2013, together with the Assessment Notices, issued by Alfredo V. Misajon, OIC-Assistant CIR, Large Taxpayer's Service, assessing petitioner for alleged deficiency

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[9] Par. 4, A. Facts, Pre-Trial Order, Docket (Vol. III), p. 1376.
[10] Par. 5, A. Facts, Pre-Trial Order, Docket (Vol. III), p. 1376.
[11] Par. 6, A. Facts, Pre-Trial Order, Docket (Vol. III), p. 1376.
[12] Exhibit "R-11", BIR Records, p. 711.
[13] Answer to Question No. 6, Exhibit "R-27", Docket (Vol. II), p.1194.
[14] Answer to Question No. 16, Exhibit "R-27", Docket (Vol. II), p. 1195; Exhibit "R-15", BIR Records, pp. 799-808.
[15] Par. 7, A. Facts, Pre-Trial Order, Docket (Vol. III), p. 1377; Exhibit "P-90", Docket (Vol. IV), p. 2245.
[16] Exhibit "R-19", BIR Records, pp. 918-935; Exhibit P-64", Docket (Vol. IV), pp. 2087-2104; Exhibit "R-23", BIR Records, pp. 991-1006.

Income Tax, Value-Added Tax, Premium Tax, Withholding Tax on Compensation, Fringe Benefits Tax, Expanded Withholding Tax and Documentary Stamp Tax for taxable year 2007.[17]

On August 27, 2014, petitioner received a Final Decision on Disputed Assessment (FDDA) dated August 27, 2014, issued by Nestor S. Valeroso, OIC-Assistant Commissioner of Large Taxpayer's Service.[18]

On March 16, 2015, petitioner received the Final Decision[19] dated March 2, 2015, issued by former Commissioner Kim S. Jacinto-Henares.

As such, petitioner filed the instant Petition for Review before this Court on April 14, 2015.

After filing three (3) Motions for Extension of Time to File Answer[20], respondent finally filed her Answer[21] on August 7, 2015, and interposed the following special and affirmative defenses[22], *viz:*

> "8. Basic as a hornbook principle is that, taxes are the lifeblood of the government and should be collected without unnecessary hindrance. It is upon taxation that the Government chiefly relies to obtain the means to carry on its operations and it is of the utmost importance that the means adopted to enforce the collection of taxes levied should be summary and interfered with as little as possible.
>
> **RESPONDENT HAS TEN (10) YEARS FROM THE DISCOVERY OF THE FALSITY, FRAUD OR OMISSION WITHIN WHICH TO ASSESS PETITIONER, THUS SECTION 203 OF THE NIRC OF 1997, AS AMENDED FINDS NO APPLICATION IN THE PRESENT CASE.**

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[17] Par. 11, A. Facts, Pre-Trial Order, Docket (Vol. III), p. 1377.
[18] Par. 8, A. Facts, Pre-Trial Order, Docket (Vol. III), p. 1377.
[19] Exhibit "R-26", BIR Records, p. 1110.
[20] Motion for Extension of Time to File Answer, Docket (Vol. I), pp. 464-468; Second Motion for Extension of Time to File Answer, Docket (Vol. I), pp. 471-475; Urgent Motion for Extension of Time to File Answer, Docket (Vol. I), pp. 478-481.
[21] Docket (Vol. I), pp. 493-516.
[22] Docket (Vol. II), pp. 494-514.

9. Petitioner argued that the waivers of the statute of limitations executed by it were formally flawed, therefore the running of the period for assessing petitioner was never stalled to which respondent vehemently opposes.

10. The instant case is one of the exceptions established under Section 222 of the NIRC of 1997, as amended, which states:

> **SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.- (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.**

x x x

11. Respondent through the Formal Letter of Demand Part II (herein attached as Annex A) informed petitioner that after investigation of all internal revenue taxes for taxable year 2007, it was revealed the petitioner failed to file the Summary list of sales (SLS) Summary List of Purchases (SLP) and Alphalist of Fringe Benefit Tax pursuant to Section 255 of the same code, to wit:

> ***SEC. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.-*** Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who wilfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information,

or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement or actually files a return or and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed, shall upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (₱10,000) but not more than twenty thousand pesos (₱20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

12. The said Formal Letter of Demand further stated therein that instead of instituting criminal action, it was amendable to settle the same extra judicially subject to the condition that petitioner will pay the compromise penalty.

13. From the foregoing it is crystal clear that Section 203 of the NIRC of 1997, as amended finds no application in the present case and respondent has ten years from the discovery of the omission within which to assess petitioner.

WITHHOLDING TAX IS NOT AN INTERNAL REVENUE TAX BUT IS ONLY A SYSTEM USED TO COLLECT INCOME TAX IN ADVANCE THUS, THE PRIOD WITHIN WHICH TO ASSESS FINDS NO APPLICATION IN THE PRESENT CASE.

14. Withholding tax is a system by which taxes are collected at source. Tax is collected in advance even

before it reaches the hands of the income recipient. It is a means by which the government can collect the appropriate amount of taxes through payors who are constituted as withholding tax agents. 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 payee on certain income payments.

15. Withholding tax assessments are NOT internal revenue tax as a statutory taxpayer but rather such assessments were issued for failure of petitioner to withhold the correct taxes it is duty bound to collect as agent. Thus, the assessment issued for deficiency withholding tax on income and expanded withholding tax are imprescriptible. This obligation of petitioner to withhold and remit the correct tax is its duty as an agent of the government in the collection of taxes and not as a statutory taxpayer.

16 By operation of law, the relationship between the Government and the withholding agent is one of agency for which reason the withholding agent holds the funds withheld by him in trust for the Government.

17. Clearly, the liability of petitioner as taxpayer is different from its liability as withholding agent. This is the reason why liabilities arising from withholding taxes were never covered by tax amnesty programs. Basically, these liabilities arose from a different source of obligation.

18. The liability of a withholding agent is further established under Section 251, Title X of the Tax Code, which provides:

> *Section 251. Failure of a Withholding Agent to Collect and Remit Tax.-* ***Any person required to withhold, account for, and remit any tax imposed by this code or who wilfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon conviction to a penalty equal to the total***

amount of the tax not withheld, or not accounted for and remitted.

19. In Filipinas Synthetic Fiber Corporation vs. Court of Appeals and the Commissioner of Internal Revenue, the Honorable Supreme Court ratiocinated:

> 'The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, the withholding agent is constituted the agent of both the government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53 (c) he is held personally liable for the tax he is duty bound to withhold; whereas, the Commissioner of Internal Revenue and his deputies are not made liable to law.'

20. The Tax Code only makes petitioner, as withholding agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax, since the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 57 of the Tax Code, compliance with which is imposed on the withholding agent and not upon the taxpayer.

21. Accordingly, the tax deducted and withheld by withholding agents under the said provision shall be held as a special fund in trust for the government until paid to the collecting officer. It bears emphasis that petitioner as a withholding agent merely holds in trust the amount of tax it withheld and as trustee, it is duty bound to remit to the government the proper amount of tax withheld and this duty is imprescriptible.

22. Further, in Section 58(A) of the Tax Code it is specifically provided that:

x x x x x x x x x

> The taxes deducted and withheld by the withholding agent shall be held as special fund in trust for the government until paid to the collecting officers.

x x x x x x x x x

23. The concept of a withholding tax on income obviously and necessarily implies that the amount of the tax withheld comes from the income earned by the taxpayer. And for failure to withhold and remit the withholding tax due, petitioner was assessed by respondent for deficiency expanded withholding taxes under the Tax Code, as amended. As such, it is being held liable in its capacity as a withholding agent and <u>not</u> in its personality as a taxpayer.

24. Further in cases of tax refund and credit certificate issued under Section 204 of the Tax Code, it highlighted the difference between taxes which are the personal liability of a taxpayer and those which are under its duty as withholding agent. A tax credit certificate validly issued may be applied against any internal revenue taxes excluding withholding taxes, for which the taxpayer is directly liable.

25. In the same vein, the Tax Amnesty Program (TAP) pursuant to RA 9480, as implemented by Revenue Memorandum Circular (RMC) No. 55-2007, removed from the coverage of the tax amnesty program 'Withholding Agents' with respect to their withholding tax.

26. It is clear that the assessed deficiency withholding tax as a penalty to petitioner does not fall within the ambit of the period of limitation in Section 203 of the Tax Code, as amended.

27. From the foregoing circumstance, respondent humbly posits that the period of limitation upon assessment

provided in Section 203 the Tax Code, as amended, again finds no application. The said provision of law prescribes a limitation only as to the assessment and collection of taxes. Simply stated, the provision protects statutory taxpayers, but not agents who are remiss on their obligations. More so, petitioner's legal duty to remit taxes withheld cannot be barred by prescription because the taxes it withheld are only held in trust for the government. Petitioner cannot cloak itself under the limitation of Section 203 of the Tax Code, as amended, to allow it to pocket funds held in trust, at the expense of the government, thereby permitting petitioner to unjustly enrich itself. Therefore, the assessment for unremitted withheld taxes should be upheld regardless of neither the issue on the validity of the waivers executed nor the issue on prescription being interposed.

IN ADDITION, THE TAXES WERE ASSESSED WITHIN THE PERIOD ALLOWED BY LAW.

28. Petitioner executed SIX Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code covering all internal revenue taxes for taxable year 2007 on the following dates:

    The 1st waiver was executed on October 20, 2010 and extended the period to assess until June 30, 2011;

    The 2nd waiver was executed on May 17, 2011 and extended the period to assess until December 31, 2011;

    The 3rd waiver was executed on September 23, 2011 and extended the period until June 30, 2012;

    The 4th waiver was executed on April 13, 2012 and extended the period to assess until December 31, 2012;

The 5th waiver was executed on October 25, 2012 and extended the period to assess until September 30, 2013;

Finally, the 6th waiver was executed on May 23, 2013 and extended the period to assess until December 31, 2013.

29. These waivers were accepted and approved by respondent and thereafter duly received by petitioner. Nonetheless, petitioner alleges that the waivers were defective for failure to indicate the date of acceptance.

30. What is important is that the waivers were signed and accepted by the authorized official of the Bureau before the expiration of the period of prescription or before the lapse of the period agreed in the case of subsequent waivers executed, and such fact is proven by the date of receipt of petitioner's representative as indicated in the official copy of the waivers.

31. As appearing on the face of the waivers, petitioner's and respondent's authorized representative duly executed the waivers and the copies of the said waivers were duly received by petitioner's representatives. To reiterate, all dates indicated therein shows that they received it a few days after notarization and way before the expiration of the three-year prescriptive period or the end of the period previously agreed upon in case of subsequent waivers.

PETITIONER IS ESTOPPED FROM ASSAILING THE VALIDITY OF THE WAIVERS.

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

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

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

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

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

35. On the other hand, Section 2(a) of Rule 131 of the Rules of Court, on the burden of proof and presumptions, states as follows:

> 'SEC. 2 *Conclusive presumptions.*- The following are instances of conclusive presumptions:

> '(a) Whenever a party has by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.'

36. Petitioner, through a letter dated July 12, 2013 (attached herein as Annex B) requested for an extension of time within which to submit documentary evidence to support its position. Pertinent portion of which states:

> 'Last June 24, 2013, we wrote a letter requesting for an extension of up to July 15, 2013 to enable us to submit our position and documentary evidence to support the alleged findings. The letter was received by your office last June 25, 2013. The BIR Revenue Officer, Ms. Susan Salcedo verbally relayed to us that the request has been approved.
>
> May we again request for another extension of up to July 22, 2013 as we need to still further verify some information and ruling relative to your alleged findings. x x x'

37. Petitioner, by its own voluntary act, is estopped from assailing the validity of the waivers. Undisputed is the fact that the execution of the waivers by both parties proved to be favorable to petitioner considering the aforesaid waivers constitute as tools for petitioner by providing enough time to gather voluminous documents/records to substitute its position which petitioner vehemently requested from respondent. The above quoted letter is a testament to such fact.

38. Through the execution of the waivers, respondent was misled to believe that petitioner waived its right under the Statute of Limitations. Petitioner then actively participated in the audit and examination. A corporation like petitioner, is of knowledge of the effects and consequences of the execution of waivers. It is only when petitioner received an adverse decision that it

questioned the validity of its own actions and took stance contrary to its previous act.

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

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

distinction, it has been said, is more easily preserved in dealing with express waiver, but where the waiver relied upon is constructive or merely implied from the conduct of a party, irrespective of what his actual intention may have been, it is at least questionable if there are not present some of the elements of estoppel.'

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

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

42. Viewed in the light of the foregoing considerations the six waivers were valid and binding between petitioner and respondent.

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

RMO (RMO) 20-90 IS AN INTERNAL MEMORANDUM OF THE BUREAU OF INTERNAL REVENUE, AS SUCH, IT IS NOT A SOURCE OF RIGHT OF TAXPAYER.

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

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

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

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

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

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

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

50. At most any non-compliance with revenue Memorandum Orders should only be a cause for disciplinary action on the erring employee of the Bureau of Internal Revenue. It should not affect the validity of any official duty performed by such employee.

PETITIONER IS LIABLE TO PAY

ITSDEFICIENCY INCOME TAX, VALUE ADDED TAX, PERCENTAGE TAX, WITHHOLDING TAX ON COMPENSATION, FRINGE BENEFIT TAX, EXPANDED WITHHOLDING TAX AND DOCUMENTARY STAMP TAX AS WELL AS SURCHARGE AND INTEREST.

INCOME TAX (IT)

Understated Interest Income ₱41,033,419.29

51. A comparison of interest income Income Tax Return against Note 21 of AFS resulted to a discrepancy. This is considered understated income which is taxable pursuant to Section 32 (A) (2) of the NIRC as amended.

Schedule 1-Interest income subject to income tax				
Interest income already subjected to final tax per ITR recon			105,494,222.00	
			11,956,428.00	
			117,450,650.00	
*Gross amount of interest income (final tax) reflected in Prov for IT			(64,460,805.00)	
*Gross amount of interest income (exempt) reflected in Provision IT			(11,956,425.71)	
			(76,417,230.71)	
Interest income subject to income tax/over deduction of income			41,033,419.29	
* Provision for income tax per Note to FS Note 21				
Interest income exempt from tax	4,184,749.00	35%	(11,956,425.71)	
Interest income net of final tax	12,892,161.00	20%	(64,460,805.00)	

52. The difference arose from the reconciliation of net income to taxable income which is found to be overstated in the amount of ₱41,033,419.29.This is in effect understated the total taxable income since the amount deducted as adjustment to net income per audited financial statement is ₱105,494,222.00 instead of ₱64,460,805.00.

53. Petitioner argued that source of interest income was merely from investments business may stand correct, but the additional taxable income brought about by the discrepancy above has nothing to do on its nature but on the amount deducted from net income to arrive at taxable income, which was found to be excessive.

Unreported income (AITEID data vs SLS/SAWT) ₱39,617,397.89

54. A certification of purchases from named companies is required and that the same shall be reconciled with taxpayer's Summary Alphalist of Withholding Tax (SAWT). In the absence of such certification the amount of ₱39,617,397.89 is considered unreported income.

55. Matching of data AITEID SLP, SAWT and CWT resulted to discrepancy of the said amount. This discrepancy was considered unaccounted income/Revenue pursuant to the doctrine that was held in the case of CTA vs Perez and CIR L-10507 dated May 30, 1958 which states that unreflected sources of funds not accounted for in the taxpayer's returns led to the inference that part of his income has not been reported. Hence, the corresponding income tax due thereon was assessed pursuant to Section 32 in relation to Section 27 of the NIRC, as amended.

Unreported rental income ₱4,799,709.78

Account receivable, beginning		₱2,265,931.00
Less: VAT Component	12/112	242,778.32
		2,023,152.68
Add: Rental income		11,233,075.00
		13,256,227.68

Account Receivable ending	₱4,122,807.00	
Less: VAT Component	441,792.32	3,681,077.68
Actual Collection per Protest (supported by OR's)	₱16,099,842.95	
Less: VAT Component	1,724,983.17	14,374,859.78
Difference		₱(4,799,709.78)

56. The amount of ₱4,799,709.78 resulted from the computation of collection from rent in the amount of ₱9,575,150.00 against the actual collection per protest of ₱14,374,857.78, net of VAT or ₱16,099,842.95 divided by 112%. While petitioner submitted the Official Receipts proving its collection from rent, it failed to reconcile the discrepancy between collections per computation versus collection based on official receipts which brought the difference of ₱4,799,709.78.

Unrecognized decrease in retirement expense of ₱237,530.00

57. The increase in retirement payable of 2006 against 2007 is an unrecognized retirement expense of ₱237,530.00. This is considered understated income pursuant to Section 32 (A) (2) of the NIRC, as amended.

Income payments not subjected to withholding tax on compensation, ₱129,381.26

58. Comparison of petitioner's income payments subject to withholding tax claimed per financial statement/income tax return as against the Alpha list disclosed that petitioner failed to withhold the expenses enumerated therein hence, disallowed pursuant to Section 34 (K) of the NIRC, as amended.

Not subjected to withholding taxes were various expenses, ₱25,929,761,76.

Insurance/agent adjusters	₱1,963,718.95

Commission	7,577,027.64
Professional Fees	473,301.17
Rental	79,934.02
Goods	1,582,665,81
Services	14,253,114.17
Total	25,929,716.76

59. The same was properly disallowed pursuant to Section 34 (K) of the NIRC, as amended. Petitioner failed to submit evidence to support its claim that the same was subjected to different rates or that it was not subject to withholding tax.

VALUE ADDED TAX (VT)
Computation of VAT based on collection is ₱11,869,718.87.

60. Computation of VAT based on collection is pursuant to Section 108 (A) of the NIRC, as amended. This is inclusive of other income.

Unreported rent income amounting to ₱4,799,709.78.

61. The unreported rent income is part of receipt issued by petitioner and had not been subjected to VAT, thus included in the computation of VAT pursuant to Section 108 of the NIRC.

Input taxes overstated of ₱567,321.10

62. Petitioner failed to support the claimed input taxes. Investigation revealed that the sources as stated in the general ledger and trial balance in the total amount of ₱567,321.10 of petitioner's claimed input taxes per filed VAT returns was without sources. This was disallowed and in effect resulted to allowable input taxes of ₱39,522.60 only.

63. Compromise penalty is composed of penalties on basic deficiency tax and ₱25,000.00 for non-filing of SLS and SLP, penalized under RMO 19-2007.

PERCENTAGE TAX

64. The total amount of collection on premium per Insurance Commission of ₱482,530,323.00 remains and any refund premiums including the percentage tax charged to the insured in usual practice requires substantiation. The difference on premium per IC against FS, ₱6,249,925.00 and other income of ₱2,006,671.50 were subjected to premium tax.

Collection of Premium (P7 of IC)	₱482,530,323.00
Difference on premium per IC of FS	6,249,925.00
Experience refund income on direct business	26,722,608.07
Unreported Income (AITIED SLP vs SAWT)	39,617,397.89
Other Income subject to PT	2,006,671.50
	₱557,126,925.46
	0.05
PT Due	₱27,856,346.27
Less: Payments	24,236,562.87
Basic Deficiency tax	₱3,619,783.40

65. Total premium collection and other income were recomputed for premium tax and the discrepancy is taxable pursuant to Section 123 of the NIRC.

WITHHOLDING TAX ON COMPENSATION

66. Salaries accounts are taxable pursuant to Section 80 of NIRC which requires substantiation pursuant to Section 34(A)(1)(B) of NIRC, as amended.

Total taxable compensation per ITR/FS/TB/GL	₱678	₱30,676,276.12
Less: Total compensation per annual alphalist		30,546,894.86
Compensation not subjected to WT		129,381.26
Rate Per individual		0.32
		41,402.00
Add: Under remittance of WC	Page 678 of the main docket	522,337.00
Basic Deficiency Tax		5633,739.00

FRINGE BENEFIT TAX

67. The total of fringe benefit per audit and pursuant to Section 33 of NIRC is ₱513,435.06.

68. On the issue of medical and healthcare benefits petitioner's allegation that the same is di minimis in

nature does not suffice. Petitioner presented no evidence to support such claim.

Amount of transaction of 'Intellicare' per AP Analysis	416,330.94	
Amount of transaction to 'Manila Golf Club' per AP Analysis	97,104.12	
		513,435.06
GUMV		0.68
		755,051.56
FB rate		0.32
		241,616.50
		160,458.97
		81,157.53
Add: Under remittance of withholding tax on FBT		
FBT payable per T/B and G/L	163,753.09	
Less: FBT remittance	160,458.97	3,294.12
Basic Deficiency tax		84,451.65

EXPANDED WITHHOLDING TAX

69. Expenses and other costs are subjected to expanded withholding tax pursuant to 2.57.2 of Revenue Regulation 2-98 and Section 34(A)(1)(b) of NIRC, as amended, required that the same should be substantiated.

70. No adjustments were considered after the protest letter dated October 22, 2013 since the reconciliation submitted by petitioner does not tally with the details per 1601E. Insurance agents/adjusters at 10% rate were deducted from the total commission net debt credit amount.

	Tax Base	Withholding
Insurance agents/Adjusters	1,963,718.95	294,557.84
Commission per GL	7,577,027.64	1,136,654.15
		3,279,404.86
Professional fees	473,301.17	47,330.12
Rental	79,934.02	3,996.70
Local Supp of Goods	1,582,665.80	15,826.66

Local Supp of Services	25, 929,761.75	5,062,732.61

DOCUMENTARY STAMP TAX

71. Reiterating taxability of transaction to Section 195, Section 179, Section 183 and Section 194 of NIRC, as amended.

	Tax Base	DST
On Mortgage	1,207,891.80	2,415.00
On Loans/Indebtedness	137,562,007.90	687,819.00
On life insurance	526,465,770.75	1,316,166.50
On lease contracts	11,701,265.27	11,708.00
Basic Deficiency		2,018,108.50

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

73. Well-settled is the rule that tax assessments are entitled to the presumption of correctness and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner, and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments *(Sy Po vs. Court of Tax Appeals, 164 SCRA 524)*. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices."

On August 24, 2015, petitioner filed its Comment/Opposition (To the Motion to Admit Attached Answer).[23]

On October 7, 2015, the Court issued a Notice of Pre-Trial Conference[24] setting the pre-trial conference on February 4, 2016.

[23] Docket (Vol. I), pp. 524-530.
[24] Docket (Vol. I), pp. 534-536.

Thereafter, Respondent's Pre-Trial Brief[25] was filed on January 28, 2016, while the Pre-Trial Brief for the Petitioner[26] was filed on January 29, 2016.

The Pre-Trial Conference ensued.[27] Both parties submitted their Joint Stipulation of Facts and Issues[28] on April 29, 2016, which was approved and adopted in a Pre-Trial Order[29] dated June 8, 2016.

In the hearing[30] held on July 28, 2016, the Court appointed Mr. Neil U. Sison as an Independent Certified Public Accountant (ICPA) in this case.

During trial, petitioner presented (1) Mr. Jaime M. Santiago,[31] petitioner's Executive Vice President and Actuary; (2) Ms. Bella J. Ochoa,[32] petitioner's Finance Manager; (3) Mr. Neil U. Sison,[33] ICPA, as its witnesses.

On February 20, 2017, petitioner filed its Formal Offer of Evidence,[34] which was resolved by the Court in a Resolution[35] promulgated on November 6, 2017.

On November 23, 2017, petitioner filed a Motion for Reconsideration[36] of the Resolution dated November 6, 2017, which was resolved by the Court in a Resolution[37] promulgated on March 27, 2018.

On the other hand, respondent presented Revenue Officers Wilfredo Reyes[38] and Susan L. Salcedo[39] on May 29, 2018 and July 17, 2018, as his witnesses.

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[25] Docket (Vol. I), pp. 553-560.
[26] Docket (Vol. II), pp. 561-617.
[27] Minutes of the Hearing dated April 21, 2016, Docket (Vol. II), pp. 1218-1221.
[28] Docket (Vol. II), pp. 1229-1282.
[29] Docket (Vol. III), pp. 1375-139.
[30] Minutes of the Hearing dated July 28, 2016, Docket (Vol. III), pp. 1425-1427.
[31] Minutes of the Hearing dated August 2, 2016, Docket (Vol. III), p. 1431-1432.
[32] Minutes of the Hearing dated September 6, 2016, Docket (Vol. III), pp. 1461-1462; Minutes of the Hearing dated September 20, 2016, Docket (Vol. III), p. 1521-1522
[33] Minutes of the Hearing dated January 24, 2017, Docket (Vol. III), pp. 1686-1689.
[34] Docket (Vol. IV, pp. 1701-1760.
[35] Docket (Vol. V), pp. 2462-2464.
[36] Docket (Vol. V), pp. 2465-2471.
[37] Docket (Vol. V), pp. 2482-2484.
[38] As per Order, Docket (Vol. V), pp. 2486-2487.
[39] Minutes of the Hearing, Docket (Vol. V), pp. 2492-2493.

Thereafter, Respondent's Formal Offer of Evidence[40] was filed on August 6, 2018, which was resolved in a Resolution[41] dated September 17, 2018.

On December 5, 2018, the case was submitted[42] for decision taking into consideration the respondent's Manifestation[43] filed on October 22, 2018, adopting his Answer filed August 5, 2015 as his Memorandum, and the Memorandum for the Petitioner[44] filed on November 23, 2018.

THE ISSUES

The parties submitted the following issues[45] for the Court's resolution:

1. Whether or not the period to assess petitioner with deficiency internal revenue taxes for the taxable year 2007 have already prescribed; and

2. Whether or not petitioner is liable for deficiency income tax, expanded withholding tax, value-added tax, premium tax, withholding tax on compensation, fringe benefit tax and documentary stamp tax, including interests and penalties for the taxable year 2007.

Petitioner's arguments

Petitioner insists that that the first, second, fourth, fifth and sixth Waivers of the Statute of Limitations were formally flawed. Accordingly, the 1st Waiver failed to indicate therein the date when ACIR Valeroso of the BIR Large Taxpayer's Service signed and accepted the said waiver. The second waiver, on the other hand, likewise failed to state the date of acceptance of ACIR Zenaida G. Garcia and the date of receipt by petitioner of the duly signed and accepted Waiver by ACIR Garcia. As for the 4th, 5th and 6th Waivers, petitioner claims that the dates of receipt by the petitioner of the duly signed and accepted waivers were also not indicated therein. As

[40] Docket (Vol. V), pp. 2501-2508.
[41] Docket (Vol. V), 2516-2517.
[42] Docket (Vol. V), p. 2617.
[43] Docket (Vol. V), pp. 2519-2521.
[44] Docket (Vol. V), pp. 2527-2616.
[45] B. Issues, Pre-Trial Order, Docket (Vol. III), p. 1377.

such, the running of the prescriptive period for assessing petitioner was never tolled, citing the case of *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue*[46].

Petitioner also illustrates how the subject deficiency taxes have already been barred by prescription.

Lastly, petitioner claims that the revenue officer who continued the examination of petitioner's books of accounts and other accounting records and who recommended the issuance of the subject deficiency tax assessments does not have the authority to do so under the LOA. Thus, it is petitioner's position that the subject tax assessments issued against it should be declared null and void.

THE RULING

The Court finds the deficiency tax assessments issued by respondent to be intrinsically void on account of lack of authority on the part of the revenue officers to continue the audit/investigation of petitioner's possible tax liabilities for taxable year 2007.

A Letter of Authority (LOA) is the authority given to the appropriate revenue officer to examine the books of account and other accounting records of the taxpayer in order to determine the taxpayer's correct internal revenue liabilities. The issuance thereof normally commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[47] The power to issue a LOA statutorily belongs to the Commissioner of Internal Revenue or to his duly authorized representatives pursuant to Section 6 of the 1997 NIRC, as amended, which reads:

> *"SECTION 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

[46] G.R. No. 162852, December 16, 2004.
[47] Commissioner of Internal Revenue vs. De La Salle University, Inc., GR Nos. 196596, 198841, and 198941, November 9, 2016.

of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer x x x."

In relation thereto, Section 10 of the 1997 NIRC, as amended, specifically identifies Revenue Regional Director as CIR's duly authorized representative that has the power to issue a LOA within the region and district offices under his jurisdiction, *viz:*

"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 xxx xxx

(c) Issue Letters of Authority for the examination of taxpayers within the region;

xxx xxx xxx."

The term "duly authorized representative" under Section 6 (A) of the 1997 NIRC, as amended, may, likewise, refer to other tax officials with the rank equivalent to a division chief or higher, pursuant to the CIR's authority to delegate powers vested in him under Section 7 of the 1997 NIRC, as amended, to wit:

"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 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." (Emphasis supplied)

It is clear from the foregoing that the issuance of the LOA for the examination of the taxpayer's books of account and other accounting records is not one of those enumerated powers which the CIR cannot delegate.

Corollary to the foregoing provisions, Revenue Memorandum Order (RMO) No. 43-90[48] specifically identifies the BIR officials who are authorized to issue and sign LOA, *thus*:

"D. Preparation and issuance of L/As.

1. xxx xxx xxx

xxx xxx xxx

4. For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials

[48] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit , September 20, 1990.

authorized to issue and sign Letters of Authority are the **Regional Directors, the Deputy Commissioners and the Commissioner. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.**" (Emphasis and underscoring supplied)

Moreover, RMO No. 43-90 provides that all audits/investigations should be conducted under a LOA and that any reassignment/transfer of cases to another revenue officer shall require the issuance of a new LOA, to wit:

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

1. All audits/investigations, whether field audits or office audits, should be conducted under a Letter of Authority.

x x x

5. Any reassignment/transfer of cases to another RO(s), and revalidation of L/A's which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As."

The use of the word "shall" underscores its mandatory character. Thus, it is imperative to issue a new LOA in cases of reassignment or transfer of cases, without which, any assessment issued resulting from such audit is void.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.,*[49] the Supreme Court categorically ruled that, absent any prior authority on the part of the revenue officers who conducted the audit/examination of taxpayer's books of accounts and other accounting records will make the deficiency tax assessment arising therefrom null and void.

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

The foregoing ruling was reiterated by the Supreme Court in the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[50], where it held that:

> "x x x 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**.
>
> x x x
>
> 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 supplied)

In the instant case, the revenue officer named under the LOA No. 2007-000354446[51] dated July 1, 2008 was Revenue Officer (RO) Wilfredo S. Reyes. However, the audit and investigation of petitioner's books of accounts and other accounting records was later on transferred to Revenue Officer Susan Salcedo, pursuant to a Memorandum of Assignment No. LOA-116-2013-0406 dated February 25, 2013,[52] issued by Mr. Cesar D. Escalada, Chief of Regular LT Audit Division 1, and not through a LOA as required under RMO No. 43-90.

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[50] G.R. No. 222743, April 5, 2017.
[51] Exhibit "R-1", BIR Records, p. 534.
[52] Answers to Questions No. 5 and 6, Judicial Affidavit of Susan Salcedo, Exhibit "R-27", Docket (Vol. II), pp. 1193-1194.

Pertinent portions of Revenue Officer Salcedo testimony are hereunder quoted for ready reference:

"5. Q: **Are you aware of the subject matter of this case?**

A: I a, aware of the subject matter of the present case because I am one of the Revenue Officers who continued the audit and examination of the present case.

6. Q: **What then is your authority to continue the audit?**

A: A Memorandum of Assignment dated February 25, 2013 was issued authorizing me to continue the audit/verification of all internal revenue tax liabilities of petitioner for taxable year 2007."[53]

During cross-examination, Revenue Officer Salcedo further testified as follows:

"ATTY. TUGADE

Q Are you familiar with a Letter of Authority?

MS. SALCEDO

A It was not issued under my name *(interrupted)*

ATTY. TUGADE

Q But are you familiar?

MS. SALCEDO

A Yes, of course.

ATTY. TUGADE

Q How would you define a Letter of Authority Ms. Witness?

[53] Judicial Affidavit of Susan Salcedo, Exhibit "R-27", Docket (Vol. II), pp. 1193-1194.

MS. SALCEDO

A This is the authority granted to us, to the Revenue Officer to conduct the investigation of a certain taxpayer.

ATTY. TUGADE

Q For what purpose Ms. Witness?

MS. SALCEDO

A Audit and *(interrupted)*

ATTY. TUGADE

Q Is it not to determine the tax liability of a taxpayer?

MS. SALCEDO

A Yes, of course.

ATTY. TUGADE

Q Based from that statement Ms. Witness, was there a Letter of Authority issued in your favor?

MS. SALCEDO

A Under my name, none."[54]

The Court, however, notes that the position of Chief of Regular LT Audit Division is not among the above-mentioned duly authorized representatives of the CIR who have been granted with the power to authorize the audit/examination of taxpayer's books of accounts and other accounting records or to effect any modification or amendment to a previously issued LOA.

Thus, the subject Memorandum of Assignment cannot validly grant Revenue Officer Salcedo and Group Supervisor Marivic P. Bautista with the requisite authority to continue the audit commenced by Revenue Officer Reyes.

[54] As per Stenographic Notes Taken During the Hearing Held on July 17, 2018, pp. 13-14.

As such, following the doctrine laid down in the above-cited cases, the assessment that resulted from the examination of petitioner's books of accounts and other accounting records should be rendered void due to lack of authority on the part of the revenue officers to continue the audit/investigation of petitioner's possible tax liabilities for taxable year 2007.

In view of the invalidity of the subject deficiency assessments, there is no need to discuss the other issues raised by the parties for it is well-settled that a void assessment bears no fruit.[55]

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, the deficiency Income Tax, Value-Added Tax, Premium Tax, Withholding Tax on Compensation, Fringe Benefits Tax, Expanded Withholding Tax and Documentary Stamp Tax for taxable year 2007 in the total amount of ₱123,199,421.56, inclusive of interests and penalties, are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

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[55] *Commissioner of Internal Revenue v. Metro Star Superama*, Inc., G.R. No. 185371, December 8, 2010.

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