

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HEMISPHERE – LEO BURNETT,
INC.,

Petitioner,

CTA EB No. 2371
(CTA Case No. 9749)

Present:

- versus -

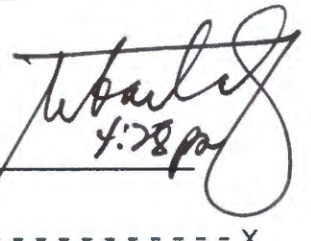
COMMISSIONER OF INTERNAL
REVENUE, CAESAR R. DULAY,
OIC-ASSISTANT
COMMISSIONER OF LARGE
TAXPAYERS SERVICE,
TERESITA M. ANGELES, AND
THE BUREAU OF INTERNAL
REVENUE,

Respondents.

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

Promulgated:

APR 11 2022


4:28 pm

X ----- X

DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review*¹ filed on November 5, 2020 by petitioner Hemisphere-Leo Burnett, Inc. against respondents Commissioner of Internal Revenue (CIR), Caesar R. Dulay, OIC-Assistant Commissioner of Large Taxpayers Service, Teresita M. Angeles (Angeles), and the Bureau of Internal Revenue (BIR), praying for the reversal and setting aside of the *Decision*² dated June 3, 2020, and the *Resolution*³ dated October 6, 2020, both rendered by the Second Division of this Court in CTA Case No. 9749,

¹ EB Docket, pp. 1 to 122.

² EB Docket, pp. 130 to 155; Division Docket – Vol. IV (CTA Case No. 9749), pp. 1204 to 1229.

³ EB Docket, pp. 156 to 162; Division Docket – Vol. IV (CTA Case No. 9749), pp. 1291 to 1297.

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entitled "*Hemisphere-Leo Burnett, Inc., Petitioner, versus Commissioner of Internal Revenue, Caesar R. Dulay, OIC-Assistant Commissioner of Large Taxpayers Service, Teresita M. Angeles, and the Bureau of Internal Revenue, Respondent*". The dispositive portions thereof respectively read as follows:

Decision dated June 3, 2020:

"**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Prohibition and Injunction under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI)* is **DENIED** for lack of merit. The assailed LOA No. SN: eLA201500089752 dated November 21, 2017 issued by the BIR is **VALID**.

The Resolution dated August 20, 2019 issued by this Court, insofar as it enjoined respondents from collecting tax by whatever means pursuant to said LOA, is **LIFTED**, without prejudice to the availment by petitioner of the remedies provided by law against tax assessments and collection.

SO ORDERED."

Resolution dated October 6, 2020:

"**WHEREFORE**, premises considered, both petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner is a corporation duly organized and registered with the Philippine Securities and Exchange Commission on August 3, 1983, with Company Registration No. 44383 and business address at 24th Floor, Tower 2, The Enterprise Center, 6766 Ayala Ave. corner Paseo de Roxas, Makati City. Its primary purpose is "to engage in the general advertising agency and sales promotion business".



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Petitioner is a value-added tax (VAT)-registered entity with the BIR under Certificate of Registration No. RC0000015738 dated June 30, 1994 and Tax Identification Number (TIN) 000-123-509-000. It is currently classified as large taxpayer under the jurisdiction of BIR Revenue District Office (RDO) No. 126 – Regular LT Division III.

The CIR is the duly appointed Commissioner of the BIR, who is vested with 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 National Internal Revenue Code (NIRC) of 1997, as amended, or other laws or portions thereof administered by the BIR.

Respondent Angeles is the OIC-Assistant Commissioner of the Large Taxpayers Service of the BIR RDO No. 126 – Regular LT Division III, who is under administration and supervision of respondent CIR, and vested with authority provided by law and as may be delegated by the latter.

BIR is an agency administered by the CIR, with powers and duties to assess and collect all national internal revenue taxes, fees, and charges, and to enforce all forfeitures, penalties and fines connected with assessment and collection of taxes.

The CIR and respondent Angeles hold office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On December 13, 2017, petitioner received the assailed Letter of Authority (LOA) No. SN: eLA201500089752 dated November 21, 2017 which was signed by respondent Angeles. The said LOA authorized BIR Revenue Officer Arthur Ramos and Group Supervisor Theodore Maroket of BIR RDO No. 126 – Regular LT Division to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period January 1, 2012 to December 31, 2012.

On January 11, 2018, petitioner filed a *Petition for Prohibition and Injunction under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI)* before the Court of Tax Appeals. The case was initially raffled to the First Division and docketed as CTA Case No. 9749 entitled "*Hemisphere-Leo Burnett, Inc. v. Commissioner of Internal Revenue, Caesar R. Dulay, OIC-Assistant*"



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Commissioner of Large Taxpayers Service, Teresita M. Angeles, and the Bureau of Internal Revenue”.

On March 21, 2018, the CIR filed his *Answer with Opposition (to the Petition for Prohibition and Injunction under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction)* in CTA Case No. 9749 interposing the following, to wit: (a) that the Court has no jurisdiction over the instant *Petition*; thus, without jurisdiction over the main action, the Court cannot grant provisional or ancillary remedies in relation thereto; (b) that the Court's power to suspend collection of taxes does not include the exercise of respondent's power to assess or conduct audit or investigation to determine whether proper taxes have been paid; and (c) that petitioner is not entitled to injunctive relief because it failed to present any sufficient evidence to support its entitlement to said relief, *i.e.*, petitioner failed to show the existence of its clear and unmistakable right to an exemption, and consequently, to an injunctive relief upon the conduct of any investigation to determine tax liabilities.

In the *Order* dated September 19, 2018, CTA Case No. 9749 was transferred to the Second Division of this Court (Court in Division) pursuant to CTA Administrative Circular No. 02-2018.⁴

Thereafter, on December 6, 2018, CTA Case No. 9749 was set for pre-trial conference together with the hearing of the *Petition for Prohibition and Injunction under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI)* in the *Order* dated October 24, 2018.

However, in view of the filing of petitioner's *Omnibus Motion for Setting of Commissioner's Hearings, Postponement of Pre-Trial Hearing, and Hearing for the Petition for Prohibition and Injunction under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction* on November 7, 2018, the Court in Division cancelled the previous settings until further orders in the *Resolution* dated December 5, 2018.

Meanwhile, on December 4, 2018, the CIR filed a *Motion to Dismiss (to the Petition for Prohibition and Injunction under Rule 65 of*

⁴ “*Reorganizing the Three Divisions of the Court*” issued on September 18, 2018.



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the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction, alleging that the Court has no jurisdiction over the case, and that preventing respondent from exercising his official mandate is not among those under the jurisdiction of the Court.⁵

Meanwhile, on January 3, 2019, petitioner filed its *Comment on and Opposition to Respondents' Motion to Dismiss (to the Petition for Prohibition and Injunction under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction)*, stating that: (1) respondent's *Motion to Dismiss* should be denied for being filed out of time; (2) the Court has jurisdiction over the case under "other matters" pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, and Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA); (3) the subject LOA is null and void *ab initio* for having been issued beyond the three (3)-year prescriptive period; (4) respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction when they issued the subject LOA; and that (5) the Court should stop and restrain respondents from implementing the subject LOA.⁶

In the *Resolution* dated April 2, 2019, the Court in Division (1) denied respondent's *Motion to Dismiss*; (2) granted petitioner's *Omnibus Motion*; and (3) noted the *Manifestation that Petitioner's Witness is Out of the Country*. In the said *Resolution*, the Court in Division ruled that since petitioner assails the validity of the subject LOA, the same may be considered as covered by the terms "other matters" under Section 7 of RA No. 1125, as amended by RA No. 9292, and therefore, is well within the Court's jurisdiction.⁷

During the hearing held on May 23, 2019 in CTA Case No. 9749, the parties were required by the Court in Division to submit their respective position papers. In the same hearing, the presentation of evidence was held in abeyance.

On June 13, 2019, the CIR filed his *Position Paper (to the Petition for Prohibition and Injunction under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction)*. 

⁵ Division Docket – Vol. I (CTA Case No. 9749), pp. 289 to 295.

⁶ Division Docket – Vol. I (CTA Case No. 9749), pp. 300 to 314.

⁷ Division Docket – Vol. I (CTA Case No. 9749), pp. 318 to 325.

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On July 1, 2019, petitioner filed its *Memorandum/Position Paper with Motion for the Continuation of the Pre-Trial Conference and the Trial Proper for the Hearing for the Initial Presentation of the Evidence of the Petitioner on the Petition for Prohibition (Main Case) Pursuant to Rule 65, Section 2 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction (Ancillary Remedy of the Main Case), Pursuant to Rule 58 and Rule 65, Section 7 of the Revised Rules of Court.*

In the *Resolution* dated August 20, 2019, the Court in Division partially granted petitioner's *Motion for the Continuation of the Pre-Trial Conference and the Trial Proper*. In the same *Resolution*, the Court in Division granted petitioner's *Motion to Suspend Collection*, thereby enjoining respondents from collecting the tax by whatever means, pursuant to the subject LOA during the pendency of the instant case. Moreover, the instant case was set for Pre-Trial Conference on September 12, 2019.

On September 10, 2019, petitioner submitted a *Manifestation and Motion for Partial Reconsideration and Clarification*, seeking the reconsideration and clarification of the *Resolution* dated August 20, 2019.⁸

During the hearing held on September 12, 2019, the Court in Division resolved that considering the manifestation of petitioner's counsels that the issue in this case is the validity of the issuance of the LOA, which is a purely legal issue, the parties were granted until November 20, 2019 within which to file their respective *Position Papers and/or Memoranda*.

On October 7, 2019, petitioner filed a *Manifestation and Motion*, manifesting that its counsels did not state that the case involves "a purely legal issue"; and that there are attendant factual matters that need to be considered in resolving the said issue, which includes the issue of validity of the subject LOA. Further, petitioner prays, that since the instant case involves both factual and legal issues, that it be allowed to present its witness and supporting documents to prove the reckoning dates for the three (3)-year prescriptive period counted from the filing of all its tax returns.⁹

On October 22, 2019, the CIR filed his *Memorandum (to the Petition for Prohibition and Injunction under Rule 65 of the Revised*

⁸ Division Docket – Vol. III (CTA Case No. 9749), pp. 1029 to 1051.

⁹ Division Docket – Vol. III (CTA Case No. 9749), pp. 1055 to 1064.

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Rules of Court with Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction).

On October 25, 2019, the CIR filed his *Opposition (Re: Manifestation and Motion)*, stating that since he is questioning the jurisdiction of the Court, it is proper that the same must first be settled before setting the case for Pre-Trial Conference. Respondent likewise prayed that petitioner's *Manifestation and Motion* be denied for lack of merit.¹⁰

In the *Resolution* dated November 26, 2019, the Court in Division noted and denied both petitioner's (1) *Manifestation and Motion for Partial Reconsideration* filed on September 10, 2019; and (2) *Manifestation and Motion* filed on October 7, 2019.

On November 28, 2019, petitioner filed its *Memorandum (In Compliance with the Honorable Court's Order dated September 12, 2019)*.

Thereafter, in the *Resolution* dated January 7, 2020, CTA Case No. 9749 was submitted for decision.

On June 3, 2020, the Court in Division rendered the assailed *Decision*¹¹ denying petitioner's *Petition for Prohibition and Injunction under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI)* for lack of merit.

On June 15, 2020, petitioner filed a *Motion for Reconsideration*,¹² seeking the reversal of the *Decision* dated June 3, 2020, while respondent CIR filed his *Opposition (Re: Motion for Reconsideration of the Decision dated 3 June 2020)*¹³ on July 16, 2020.

In the assailed *Resolution*¹⁴ dated October 6, 2020, the Court in Division denied petitioner's *Motion for Reconsideration* for lack of merit.

¹⁰ Division Docket – Vol. III (CTA Case No. 9749), pp. 1091 to 1093.

¹¹ EB Docket, pp. 130 to 155; Division Docket – Vol. IV (CTA Case No. 9749), pp. 1204 to 1229.

¹² Division Docket – Vol. IV (CTA Case No. 9749), pp. 1230 to 1273.

¹³ Division Docket – Vol. IV (CTA Case No. 9749), pp. 1284 to 1287.

¹⁴ EB Docket, pp. 156 to 162; Division Docket – Vol. IV (CTA Case No. 9749), pp. 1291 to 1297.

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Thus, on November 5, 2020, petitioner filed the instant *Petition for Review*¹⁵ docketed as CTA EB No. 2371.

On November 6, 2020, petitioner filed a *Manifestation and Motion*¹⁶ praying that it be allowed to correct and amend the prayer section of its *Petition for Review*.

On November 24, 2020, the Court *En Banc* issued a *Resolution*¹⁷ ordering respondents to file their comment to the *Petition for Review*. On December 9, 2020, respondents filed their *Comment (Re: Petition for Review)*.¹⁸

In the *Resolution*¹⁹ dated January 5, 2021, the Court *En Banc* ordered respondents to file a comment on petitioner's *Manifestation and Motion*. Of even date, the Court *En Banc* issued a *Resolution*²⁰ noting respondents' *Comment (Re: Petition for Review)* and referring the instant case for mediation in the Philippine Mediation Center Unit– Court of Tax Appeals (PMC-CTA) pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the CTA* approved by the Supreme Court on January 18, 2011.

On February 15, 2021, the PMC-CTA issued a *No Agreement to Mediate*,²¹ which was received by the Court *En Banc* on February 19, 2021.

On February 17, 2021, a *Records Verification*²² was issued by the Judicial Records Division stating that respondents failed to file their comment on petitioner's *Manifestation and Motion*.

On May 28, 2021, the Court *En Banc* issued a *Resolution*,²³ granting petitioner's *Manifestation and Motion* to amend the prayer portion of its *Petition for Review*, and submitting the case for decision.

Hence, this *Decision*.



¹⁵ EB Docket, pp. 1 to 122.

¹⁶ EB Docket, pp. 163 to 170.

¹⁷ EB Docket, pp. 172 to 173.

¹⁸ EB Docket, pp. 174 to 177.

¹⁹ EB Docket, pp. 180 to 181.

²⁰ EB Docket, pp. 183 to 184.

²¹ EB Docket, p. 185.

²² *Records Verification* dated February 17, 2021, EB Docket, p. 186.

²³ EB Docket, pp. 188 to 191.

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ISSUES

Petitioner raises the following issues for resolution of the Court *En Banc*, to wit:²⁴

- A. Whether the Honorable Court erred when it held that what is involved in the instant case is a purely legal issue;
- B. Whether the Honorable Court erred when it ruled that the issuance of an LOA is not governed by the prescriptive periods under Sections 203 and 222 of the NIRC of 1997, as amended; and
- C. Whether the Honorable Court erred when it ruled that petitioner is not entitled to the issuance of a *Writ of Prohibition* permanently enjoining respondents from implementing the subject LOA pursuant to Rule 65, Sections 2 and 7 and Rule 58 of the Revised Rules of Court and Section 3 (a) of Rule 4 of the RRCTA.

Petitioner's arguments:

Petitioner asserts that the instant case involves both factual and legal issues. According to petitioner, the Court in Division failed to consider the fact that it has marked as exhibits, various tax returns which it filed with the BIR, and other supporting documents, to prove, among others, the reckoning dates for the three (3)-year prescriptive period under Sections 203 and 222 of the NIRC of 1997, as amended. Petitioner avers that the filing of all its tax returns for the period January 1, 2012 to December 31, 2012 are factual matters from which the reckoning dates for the three (3)-year prescriptive period are counted.

Moreover, petitioner maintains that the issuance of an LOA is governed by the prescriptive periods under Sections 203 and 222 of the NIRC of 1997, as amended. Allegedly, prescriptive periods under the said provisions cover the BIR's action or process or procedure of assessing and auditing, which includes the issuance of a valid LOA.

In addition, petitioner claims that it is entitled to the issuance of a *Writ of Prohibition*. It insists that respondents' right to assess and

²⁴ EB Docket, pp. 43 to 44.

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collect any internal revenue tax for taxable year 2012 had already prescribed since the instant case does not fall under any of the exceptions to the three (3)-year prescriptive period provided under Section 222 of the NIRC of 1997, as amended; and that exceptions to the law should be strictly construed and fraud is never imputed. Hence, respondents are only allowed to issue an LOA and make an assessment within three (3) years from the last day prescribed by law for the filing of the tax returns or the actual date of filing, whichever come later, for taxable year 2012.

Petitioner likewise argues that the subject LOA was issued with grave abuse of discretion amounting to lack or excess of jurisdiction and should be cancelled and withdrawn for being null and void *ab initio*.

Further, it is petitioner's position that it has a clear constitutional right to due process under Sections 203 and 222 of the NIRC of 1997, as amended. Specifically, it claims that it has a right to be assured that it will no longer be subjected to further investigation for taxes after the expiration of the three (3)-year prescriptive period. Petitioner avers that it will suffer undue hardship, stress and harassment if subjected to a tax audit examination pursuant to an invalid LOA, an irreparable injury not quantifiable by any existing standards.

Petitioner also contends that it is entitled to the grant of the preliminary injunction and permanent injunction because it has clearly demonstrated the right sought to be protected, and there is grave and irreparable injury on the part of petitioner. If respondents will not be restrained from implementing the subject LOA, respondents will proceed with the tax audit examination and assess petitioner for alleged deficiency taxes.

Finally, petitioner argues that there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law except through the *Petition for Prohibition*. Thus, petitioner insists that respondents should be permanently enjoined from implementing the subject LOA and from conducting any tax examination related thereto for taxable year 2012.

Respondents' counter-arguments:

Respondents counter-argue that, as ruled by the Court in Division, the issuance of an LOA is not governed by the prescriptive



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periods under Sections 203 and 222 of the NIRC of 1997, as amended; but rather, it is the issuance of the tax assessment or the filing of an action in court without an assessment for the collection of taxes, which are governed by the aforementioned provisions.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

The instant case involves a purely legal issue.

Petitioner argues that the instant case involves both factual and legal issues. Allegedly, the filing of all of its tax returns for taxable year 2012 is a factual matter from which the reckoning dates for the three (3)-year prescriptive period under Sections 203 and 222 of the NIRC of 1997, as amended, are counted.

We are not persuaded.

It is well settled that a question of law exists when there is a doubt or controversy as to what the law is on a certain state of facts.²⁵ In a case involving a question of law, the resolution of the issue rests solely on what the law provides on the given set of circumstances.²⁶

In the instant case, the crux of the controversy hinges on whether the rules on prescription under Sections 203 and 222 of the NIRC of 1997, as amended, apply to the issuance of an LOA. Clearly, the resolution of the said issue rests solely on the interpretation and application of the pertinent tax laws. Thus, We sustain the Court in Division's ruling that the issue raised in the instant case is purely legal in nature.

Further, as will be shown momentarily, the prescriptive periods under Sections 203 and 222 of the NIRC of 1997, as amended, only pertain to the issuance of a tax assessment or the filing of an action in court without an assessment, and not to the issuance of an LOA.

²⁵ *Virginia Jabalde Y Jamandron v. People of the Philippines*, G.R. No. 195224, June 15, 2016.

²⁶ *Central Realty and Development Corporation v. Solar Resources, Inc. and the Register of Deeds of the City of Manila*, G.R. No. 229408, November 9, 2020.

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Correspondingly, contrary to petitioner's assertion, the filing of petitioner's tax returns for taxable year 2012 for purposes of determining the reckoning dates of the three (3)-year prescriptive period under Sections 203 and 222 of the NIRC of 1997, as amended, is immaterial to the case at bar.

The prescriptive periods under Sections 203 and 222 of the NIRC of 1997, as amended, do not apply to the issuance of an LOA.

Petitioner contends that the issuance of an LOA is governed by the prescriptive periods under Sections 203 and 222 of the NIRC of 1997, as amended.

Petitioner is mistaken.

For easy reference, We reproduce herein the pertinent portions of Sections 203 and 222 of the NIRC of 1997, as amended, *to wit*:

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

SECTION 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,



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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.

(b) If before the expiration of the time prescribed in Section 203 for the **assessment** of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

xxx xxx xxx" (*Emphasis supplied*)

A cursory reading of the foregoing provisions reveals that what is being contemplated therein is the issuance of a tax assessment or the filing of an action in court without an assessment for the collection of taxes, and not the issuance of an LOA.

As correctly and extensively discussed by the Court in Division, a tax assessment is different from an LOA. We quote with approval the ruling of the Court in Division in the assailed *Decision* dated June 3, 2020, as follows:²⁷

"After all, a tax assessment is totally different from an LOA. In other words, an LOA is not akin to a tax assessment.

In the context in which it is used in the NIRC, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.²⁸ It also signals the time when penalties and interests begin to accrue against the taxpayer.²⁹

In stark contrast with a tax assessment, the LOA gives notice to the taxpayer that it is under investigation for

²⁷ EB Docket, pp. 149 to 150.

²⁸ *Adamson, et al. v. Court of Appeals, et al.*, G.R. Nos. 120935 and 124557, May 21, 2009.

²⁹ *Commissioner of Internal Revenue v. Pascor Realty and Development Corp.*, G.R. Nos. 115253-74, January 30, 1998.



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possible deficiency tax assessment; at the same time, it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.³⁰ The LOA commences the audit process and informs the taxpayer that it is under audit for **possible** deficiency tax assessment.³¹

In view of the foregoing distinction, a tax assessment is always preceded by an LOA, which entails the examination of a taxpayer's books of accounts and other accounting records; and the issuance of an LOA does not necessarily mean the subsequent issuance of a tax assessment. Parenthetically, the BIR is not mandated to make an assessment relative to every return filed with it.³²

Clearly, an LOA, which merely gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment, is distinct and separate from an **assessment**, where the tax liability of the taxpayer is definitely determined.

Further, it bears noting that in *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*,³³ the Supreme Court clarified that what is required to be issued within the three (3)-year or extended period under Sections 203 and 222 of the NIRC of 1997, as amended, is the Final Assessment Notice (FAN), *to wit*:

"Finally, petitioner's contention that the assessment required to be issued within the three (3)-year or extended period provided in Sections 203 and 222 of the National Internal Revenue Code refers to the PAN is untenable.

Considering the functions and effects of a PAN *vis a vis* a FAN, **it is clear that the assessment contemplated in Sections 203 and 222 of the National Internal Revenue Code refers to the service of the FAN upon the taxpayer.**



³⁰ *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

³¹ *Commissioner of Internal Revenue v. De La Salle University, Inc., et al.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.

³² *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014.

³³ G.R. No. 227544, November 22, 2017.

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A PAN merely informs the taxpayer of the initial findings of the Bureau of Internal Revenue. It contains the proposed assessment, and the facts, law, rules, and regulations or jurisprudence on which the proposed assessment is based. It does not contain a demand for payment but usually requires the taxpayer to reply within 15 days from receipt. Otherwise, the Commissioner of Internal Revenue will finalize an assessment and issue a FAN.

The PAN is a part of due process. It gives both the taxpayer and the Commissioner of Internal Revenue the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN.

On the other hand, **a FAN contains not only a computation of tax liabilities but also a demand for payment within a prescribed period. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded.** It also signals the time when penalties and interests begin to accrue against the taxpayer. xxx xxx”
(*Emphasis supplied*)

From the foregoing, the Supreme Court categorically ruled that the “assessment” referred to under Sections 203 and 222 of the NIRC of 1997, as amended, is the service of the FAN. The Supreme Court further emphasized that a FAN, as distinguished from a PAN, contains not only a computation of tax liabilities but also a demand for payment within a prescribed period; and that as soon as the FAN is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. It also signals the time when penalties and interests begin to accrue against the taxpayer.

Thus, as may be gleaned from the foregoing judicial pronouncements, it is clear that what is required to be issued within the three (3)-year or the extended period provided in Sections 203 and 222 of the NIRC of 1997, as amended, is the FAN. Considering that the Supreme Court emphatically rejected the argument that the PAN is the assessment referred to under Sections 203 and 222 of the NIRC of 1997, as amended, there is therefore greater reason to dismiss petitioner’s argument that the prescriptive periods therein stated apply to an LOA, which is a mere notice for possible assessment and not an actual assessment.

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Accordingly, there is no merit in petitioner's contention that the prescriptive periods under Sections 203 and 222 of the NIRC of 1997, as amended, refer to the issuance of an LOA.

In view thereof, We affirm the Court in Division's ruling that the issuance of the LOA is not subject to the periods of limitation or prescriptive periods under Sections 203 and 222 of the NIRC of 1997, as amended. Hence, the subject LOA was validly issued.

Petitioner is not entitled to a Writ of Prohibition.

Section 2, Rule 65 of the Revised Rules of Court defines a *Petition for Prohibition* as follows:

"SECTION 2. *Petition for Prohibition*. — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

xxx xxx xxx" (*Emphasis supplied*)

Based on the foregoing, in order for a petition for prohibition to prosper, there should be, among other things, grave abuse of discretion amounting to lack or excess of jurisdiction.

In *David Delfin v. Court of Appeals, et al.*,³⁴ the Supreme Court explained that for grave abuse of discretion to prosper as a ground for prohibition, it must first be demonstrated that there was such a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or that the lower court has exercised its power in an arbitrary or despotic manner by reason of passion or personal

³⁴ G.R. No. L-21022, February 27, 1965.

DECISION

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hostility. It must be so patent and gross as to amount to an evasion or virtual refusal to perform the duty enjoined or to act in contemplation of law.

In the instant case, however, We find that respondents did not act capriciously nor whimsically in issuing the subject LOA. As already discussed earlier, the LOA is not governed by the rules on prescription under Sections 203 and 222 of the NIRC of 1997, as amended; and thus, the same was validly issued by respondents. In view thereof, grave abuse of discretion cannot be imputed upon respondents.

As regards petitioner's contention that the three (3)-year prescriptive period should apply to the instant case since fraud is never imputed, the same is of no moment.

Contrary to petitioner's stance, it is premature at this point to conclude that petitioner is entitled to the benefits granted under Section 203 of the NIRC of 1997, as amended, considering that no actual assessment has yet been issued by respondents. Further, as held in the assailed *Decision*, the BIR should not be restrained, in the first instance, to determine whether there is fraud or falsity in the tax returns filed by taxpayers, including petitioner.

In sum, this Court finds no reason to deviate from the conclusion reached by the Court in Division.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. Accordingly, the *Decision* promulgated on June 3, 2020, and the *Resolution* promulgated on October 6, 2020 by the Second Division of this Court in CTA Case No. 9749 are hereby **AFFIRMED**.

SO ORDERED.


ERLINDA P. UY
Associate Justice

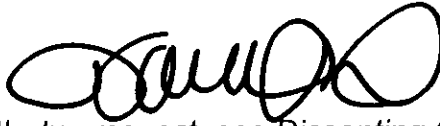
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WE CONCUR:



(With due respect, see Dissenting Opinion)

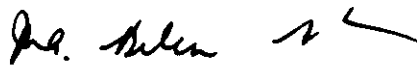
ROMAN G. DEL ROSARIO

Presiding Justice



JUANITO C. CASTAÑEDA, JR.

Associate Justice



*(With due respect, I join Presiding Justice
Roman G. Del Rosario's Dissenting Opinion)*

MA. BELEN M. RINGPIS-LIBAN

Associate Justice



CATHERINE T. MANAHAN

Associate Justice



JEAN MARIE A. BACORRO-VILLENA

Associate Justice



*(With due respect, I join Presiding Justice
Roman G. Del Rosario's Dissenting Opinion)*

MARIA ROWENA MODESTO-SAN PEDRO

Associate Justice



MARIAN IVY F. REYES-FAJARDO

Associate Justice



LANEE S. CUI-DAVID

Associate Justice

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CERTIFICATION

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

A handwritten signature in black ink, appearing to read 'Roman G. Del Rosario', with a stylized flourish at the end.

ROMAN G. DEL ROSARIO

Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

HEMISPHERE-LEO BURNETT,
INC.,

Petitioner,

CTA EB NO. 2371
(CTA Case No. 9749)

PRESENT:

-versus-

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

COMMISSIONER OF
INTERNAL REVENUE,
CAESAR R. DULAY, OIC-
ASSISTANT COMMISSIONER
OF LARGE TAXPAYERS
SERVICE, TERESITA M.
ANGELES, AND THE BUREAU
OF INTERNAL REVENUE,

Respondents.

PROMULGATED:

APR 11 2022

X-----X

DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I am constrained to withhold my assent on the ponencia which denied the present Petition for Review.

I submit that Letter of Authority (LOA) No. SN: eLA201500089752 dated November 21, 2017, covering the audit of petitioner for all internal revenue taxes for the year 2012, is void for having been issued beyond the ordinary three (3)-year prescriptive period to assess and in violation of petitioner's right to due process.

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Sections 6, 13 and 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, provide:

"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.*

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: Provided, further, That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer.*" (Boldfacing and underscoring supplied)

XXX XXX XXX

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

XXX XXX XXX

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

DISSENTING OPINION

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While there is nothing in Section 6 of NIRC of 1997, as amended, which categorically states the period within which an LOA for the examination of a taxpayer must be issued, I am of the view that the LOA must be issued within the ordinary three (3)-year period to assess as provided under Section 203 of the NIRC of 1997, as amended. In granting a Revenue Officer the authority to examine a taxpayer, Sections 6 and 13 of the NIRC of 1997, as amended, specified the twin purpose for its issuance, that is – for the examination and assessment/collection of the correct amount of tax. **Examination of a taxpayer may not reasonably be dissociated from the entire process of assessment in determining the prescriptive period provided in Section 203 of the NIRC of 1997, as amended, as to do so would subtly constitute an unlawful, albeit mischievous subterfuge to avoid the expired period within which an assessment may be done.**

In the language of *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*:¹

“The power to assess necessarily includes the authority to examine any taxpayer for purposes of determining the correct amount of tax due from a taxpayer.” (Boldfacing and underscoring supplied)

The declaration in *Republic of the Philippines vs. Luis G. Ablaza*,² anent the rationale behind the law on prescription for collection of taxes, is likewise enlightening, viz.:

“The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter’s real liability, but to take advantage of every opportunity to molest, peaceful, law-abiding citizens. Without such legal defense[,] taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommended the approval of the law.” (Boldfacing and underscoring supplied)

¹ G.R. No. 222133, November 4, 2020.

² G.R. No. L-14519, July 26, 1960.



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Certainly, the law never intended the period for issuance of an LOA, for the purpose of examination and assessment of a taxpayer, to be indefinite. To construe said period as imprescriptible renders nugatory the proscription on the period to assess specified in Section 203 of the NIRC of 1997, as amended, and worse: (i) it would deprive taxpayers of the assurance that they would not be subjected to audit after a certain period; (ii) taxpayers would be under obligation to always keep their books and keep them open for inspection; and, (iii) the LOA will be used as a tool to remedy government's failure to make a timely assessment within three (3) years. **In a sense, the three (3)-year period to assess may be ignored simply by issuing an LOA, and thereafter, subject a taxpayer to an assessment justified by a not too difficult conclusion that fraud is present.**

It is interesting to note that when an LOA is issued beyond the three (3)-year period, **the only assessment that may be made thereafter is necessarily predetermined as an assessment issued pursuant to the extraordinary ten (10)-year period to assess under Section 222 of the NIRC of 1997, as amended.** While such "predetermined" nature of assessment is anathema to a taxpayer's right to due process, **it exposes taxpayers to harassment by unscrupulous tax agents who will always find an excuse to inspect taxpayers' books not to determine the latter's liability but "to take advantage of every opportunity to molest peaceful, law-abiding citizens."**³

Revenue Audit Memorandum Order (RAMO) No. 1-00 provides for the procedure in issuing an LOA for the conduct of a formal fraud investigation:

"C. PROCEDURE

A Preliminary Investigation must first be conducted to establish the prima facie existence of fraud. This shall include the verification of the allegations on the confidential information and/or complaints filed, and the determination of the schemes and extent of fraud perpetrated by the denounced taxpayers.

The Formal Fraud Investigation, which includes the examination of the taxpayer[']s books of accounts through the issuance of Letters of Authority, shall be conducted only after the prima facie existence of fraud has been established.

³ *Supra* Note 2.

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DISSENTING OPINION

CTA EB No. 2371 (CTA Case No. 9749)

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1. TAX FRAUD DIVISION

1.1. **Where indications of fraud have been established in a preliminary investigation**, the TFD thru the Assistant Commissioner, Intelligence and Investigation Service (IIS), shall **request/recommend the issuances of the corresponding Letter of Authority** by the Commissioner which will automatically supersede all previously issued Letter of Authority with respect thereto." (*Boldfacing supplied*)

In a fraud investigation, it is necessary that a preliminary investigation is first conducted before an LOA for the examination of taxpayer's books of accounts may be issued. It is only after a prima facie existence of fraud is established that a formal fraud investigation through the issuance of an LOA may be conducted.

The preliminary investigation to determine the existence of fraud prior to issuing an LOA for the conduct of a formal fraud investigation is indispensable. *Sans* compliance therewith, petitioner's right to due process is violated and any resulting assessment is intrinsically void.⁴

In fine, the present LOA issued beyond the three (3)-year prescriptive period to assess is intrinsically void and must perforce be cancelled as: (i) it is a subterfuge to defeat the effect of the ordinary three (3)-year prescriptive period to assess; (ii) it violates the right of the taxpayer for an impartial examination as any subsequent assessment is pre-determined as a fraud assessment; and, (iii) no preliminary investigation was ever conducted to justify an LOA for the purpose of fraud assessment.

In view of the foregoing disquisition, I submit that remand of the case to the Court in Division for further proceedings is no longer necessary.

All told, I VOTE to: (i) GRANT the present Petition for Review filed by Hemisphere-Leo Burnett, Inc.; (ii) REVERSE and SET ASIDE the assailed Decision and Resolution of the Court in Division; (iii) GRANT petitioner's Petition for Prohibition and Injunction filed on January 11, 2018; (iv) DECLARE AS NULL AND VOID Letter of Authority No. SN: eLA201500089752 dated November 21, 2017; and, (v) ENJOIN respondents from conducting an examination of

⁴ *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99, October 3, 2018 and *Avon Products Manufacturing, Inc. vs. The Commissioner of Internal Revenue*, G.R. Nos. 201418-19, October 3, 2018.



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petitioner's books of accounts and other accounting records for taxable year 2012 and from issuing any deficiency tax assessment, pursuant to said Letter of Authority No. SN: eLA201500089752 dated November 21, 2017.

A handwritten signature in black ink, appearing to read 'Roman G. Del Rosario', with a large, stylized initial 'R'.

ROMAN G. DEL ROSARIO

Presiding Justice