REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

BONIFACIO LAND CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9068

Members:
BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:
APR 19 2018
10:40 a.m.

x -- x

DECISION

BAUTISTA, J.:

The Case

Before the Court is an Amended Petition for Review[1] filed on August 14, 2015, praying for the Court to set aside and cancel the deficiency income tax ("IT") assessment for taxable year ("TY") 2008 in the aggregate amount of Php25,025,070.41, inclusive of interest, covered by Assessment Notice No. IT-LA27497-08-12-0164 and Formal Assessment Notice ("FAN"), both dated February 28, 2012; and the Final Decision on Disputed Assessment ("FDDA") dated May 18, 2015.[2]

The Parties

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission ("SEC"), and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 2nd Floor, Bonifacio Technology Centre, 31st

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[1] *Records, CTA Case No. 9068, Amended Petition for Review ("PFR"),* pp. 43-68, with annexes.
[2] *Id., Prayer,* p. 52.

St., corner 2nd Ave., Bonifacio Global City, Taguig City, Metro Manila.[3]

Petitioner serves as the holding company for the Consortium's[4] fifty-five percent (55%) equity interest in Fort Bonifacio Development Corporation ("FBDC"), a company established by the Bases Conversion Development Authority ("BCDA") and the Consortium to develop two hundred and fourteen (214) hectares[5] of land within Fort Bonifacio into a prime commercial, residential, and recreational area.[6]

Respondent is the duly appointed head of the Bureau of Internal Revenue ("BIR") empowered, among others, to decide on disputed deficiency internal revenue tax assessments.[7]

The Facts

On February 10, 1995, BCDA and the Consortium entered into a Joint Venture Contract[8], whereby the latter shall be entitled to and shall purchase BCDA's 195,875,634 outstanding shares of stock in FBDC, representing fifty-five percent (55%) of the total issued and outstanding capital of FBDC, at the price of Php200.00 *per* share, or a total purchase price of Php39,175,126,800.00.[9]

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[3] *Records, Joint Stipulation of Facts and Issues ("JSFI"), Admitted and Stipulated Facts, par. 1,* p. 144.

[4] Composed of Metro Pacific Corporation, Metro Pacific Land Holdings, Inc., Landco Asset Management, Inc., Urban Bank, Inc., Urbancorp Investments, Inc., Urbancorp Realty Developers, Inc., Philippine Realty and Holdings Corporation, Kuok Philippine Properties, Inc., Filinvest Development Corporation, Filinvest Land, Inc., Puerto Azul Land Inc., Boulevard Properties, Inc., Manuela Corporation, Land and Houses Public Company Ltd., Government Service Insurance System, Allied Banking Corporation, China Banking Corporation, RFM Corporation, and Palawan Oil and Gas Exploration, Inc. *See Petitioner's Original Marked Exhibits ("POME") Folder, Exhibit "P-2," Joint Venture Contract ("JV Contract"),* pp. 1-3.

[5] Reduced to 150 hectares.

[6] *POME Folder, Exhibit "P-3," December 31, 1996 Consolidated Financial Statements ("CFS"), Note 1,* p. 6; *POME Folder, Exhibit "P-4" December 31, 1997 CFS, Note 1,* p. 6; *POME Folder, Exhibit "P-5," December 31, 1998 CFS, Note 1,* p. 6; *POME Folder, Exhibit "P-6," December 31, 1999 CFS, Note 1,* p. 6; *POME Folder, Exhibit "P-7," December 31, 2000 CFS, Note 1,* p. 9; *POME Folder, Exhibit "P-8," December 31, 2001 CFS, Note 1,* p. 9; *POME Folder, Exhibit "P-9," December 31, 2002 CFS, Note 1,* p. 8; *POME Folder, Exhibit "P-10," December 31, 2003 CFS, Note 1,* p. 8; *POME Folder, Exhibit "P-11," December 31, 2004 CFS, Note 1,* p. 9; *POME Folder, Exhibit "P-12," December 31, 2005 CFS, Note 1,* p. 10; *POME Folder, Exhibit "P-13," December 31, 2006 CFS, Note 1,* p. 1; *POME Folder, Exhibit "P-14," December 31, 2007 CFS, Note 1,* p. 11; *POME Folder, Exhibit "P-15," December 31, 2008 CFS, Note 1,* p. 12.

[7] *Records, JSFI, Admitted and Stipulated Facts, par. 2,* p. 144.

[8] *POME Folder, Exhibit "P-2," JV Contract.*

[9] *Id., Section 4.1,* p. 6.

On September 10, 1996, the SEC approved FBDC's Amended Articles of Incorporation ("AOI"), dividing FBDC's authorized capital stock ("ACS") between 25,800,000,000 common shares ("CS") with *par* value of Php1.00 *per* share, and 14,200,000,000 preferred shares ("PS") with *par* value of Php1.00 *per* share.[10]

As of December 21, 1997, petitioner has paid BCDA the total amount of Php30,359,605,588.72 relative to the acquisition of the 55% share in FBDC.[11]

On September 17, 1999, BCDA and petitioner, and FBDC entered into an Agreement[12], whereby the total outstanding fully paid CS of petitioner is 11,433,770,939, representing 55% of FBDC's total capital structure. In the Amendatory Agreement[13] dated November 26, 1999, it was stipulated that the capital structure of FBDC after closing is as follows:

STOCKHOLDER	OUTSTANDING FULLY PAID CS	% OF TOTAL	PS
Petitioner and nominees	11,447,520,334	55%	0
BCDA and nominees	9,359,335,919	45%	0
TOTAL	**20,806,856,253**	**100%**	**0**

On December 20, 1999, the SEC approved FBDC's Amended AOI, decreasing FBDC's ACS to Php25,183,104,653.00, divided into 25,183,104,653 CS with *par* value of Php1.00 *per* share.[14]

On October 19, 2005, the SEC approved FBDC's Amended AOI arising from the conversion of some CS to PS, whereby the ACS of FBDC is Php25,183,104,653.00 divided into 22,227,822,622 CS with *par* value of Php1.00 *per* share, and two (2) classes of PS: *(1)* 1,625,405,117

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[10] *POME Folder, Exhibit "P-44," Amended Articles of Incorporation ("AOI"),* p. 12.

[11] *POME Folder, Exhibit "P-46," Letter dated January 27, 2016; POME Folder, Exhibit "P-47," Managers Check dated February 13, 1995; POME Folder, Exhibit "P-48," Official Receipt ("OR") No. 3060266; POME Folder, Exhibit "P-49," OR No. 3060267; POME Folder, Exhibit "P-50," OR No. 3060268; POME Folder, Exhibit "P-51," OR No. 3060269; POME Folder, Exhibit "P-52," OR No. 3060270; POME Folder, Exhibit "P-53," OR No. 3060271; POME Folder, Exhibit "P-54," OR No. 3060272; POME Folder, Exhibit "P-55," OR No. 3060273; POME Folder, Exhibit "P-56," OR No. 3060350; POME Folder, Exhibit "P-57," OR No. 3060351; POME Folder, Exhibit "P-58," OR No. 3060607; POME Folder, Exhibit "P-59," OR No. 3060608; POME Folder, Exhibit "P-60," OR No. 3060829; POME Folder, Exhibit "P-61," OR No. 3060830; POME Folder, Exhibit "P-62," OR No. 3060831; POME Folder, Exhibit "P-63," OR No. 3060832; POME Folder, Exhibit "P-64," OR No. 3060833; POME Folder, Exhibit "P-65," OR No. 3060834; POME Folder, Exhibit "P-66," OR No. 3061767.*

[12] *POME Folder, Exhibit "P-16," Agreement.*

[13] *Id., Exhibit "P-17," Amendatory Agreement.*

[14] *Id., Exhibit "P-33," Amended AOI,* p. 6.

Preferred "A" Shares; and *(2)* 1,329,876,914 Preferred "B" Shares, each with a *par* value of Php1.00 *per* share.[15]

On September 16, 2008, the SEC approved the further amendment of FBDC's AOI, creating Preferred "C" Shares.[16] Accordingly, the ACS of FBDC is Php25,183,104,653.00 divided into 22,217,198,882 CS with *par* value of Php1.00 *per* share, and three (3) classes of PS: *(1)* 1,625,405,117 Preferred "A" Shares; *(2)* 1,329,876,914 Preferred "B" Shares; and *(3)* 10,623,740 Preferred "C" Shares, each with a *par* value of Php1.00 *per* share.[17]

On September 24, 2008, the SEC approved the addition of another class of FBDC's PS, in which case, FBDC's ACS is Php25,183,104,653.00 divided into 21,217,198,882 CS with *par* value of Php1.00 *per* share, and four (4) classes of PS: *(1)* 1,625,405,117 Preferred "A" Shares; *(2)* 1,329,876,914 Preferred "B" Shares; *(3)* 10,623,740 Preferred "C" Shares; and *(4)* 1,000,000,000 Preferred "D" Shares, each with a *par* value of Php1.00 *per* share.[18]

On July 20, 2009, petitioner received Letter of Authority ("LOA") No. 00027497[19] dated July 15, 2009 issued by Regional Director ("RD") Alfredo V. Misajon[20] ("RD Misajon") authorizing Revenue Officer ("RO") Ma. Victoria S. Trazona ("RO Trazona") and Group Supervisor ("GS") Ruben Fuerte to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for TY 2008.

On March 11, 2010, petitioner received Revalidation Notice[21] dated October 28, 2009 issued by RD Misajon, informing petitioner that LOA No. 00027497 was revalidated on October 28, 2009 due to the "complexity of the case [which] needs deeper study and/or examination[;]" and that "[i]n view thereof, [RO Trazona] is now authorized to continue the examination of [petitioner's] books of accounts and other accounting records." LOA No. 00027497 was stamped "Revalidated on October 28, 2009" and signed by RD Misajon.[22]

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[15] *POME Folder, Exhibit "P-34," Amended AOI,* p. 7.
[16] *Id., Exhibit "P-35," Amended AOI,* p. 8.
[17] *Id., Exhibit "P-35," Amended AOI,* p. 8.
[18] *Id., Exhibit "P-36," Amended AOI,* p. 8.
[19] *BIR Records, Exhibit "R-1", Letter of Authority ("LOA") No. 00027497,* p. 4.
[20] *Id., Exhibit "R-1-a," Signature of Mr. Alfredo V. Misajon,* p. 4.
[21] *Id., Revalidation Notice,* p. 5.
[22] *Id., Exhibit "R-1", LOA No. 00027497,* p. 4.

Thereafter, a tax audit on petitioner for all internal revenue taxes covering TY 2008 was conducted by ROs assigned to Revenue District Office ("RDO") No. 44 -Taguig/Pateros ("RDO 44").[23]

On October 28, 2011, RO Trazona[24] and GS Ma. Teresa S. Reyes[25] ("GS Reyes") issued a Memorandum Report[26] addressed to RD Nestor S. Valeroso ("RD Valeroso"), recommending the issuance of a Preliminary Assessment Notice ("PAN") against petitioner.

On December 20, 2011, petitioner received PAN[27] with attached Details of Discrepancies, both dated December 20, 2011, signed by RD Valeroso, informing petitioner that it has deficiency IT of Php17,315,140.63, inclusive of interest.

Thereafter, on March 1, 2012, petitioner received Assessment Notice No. IT-LA27497-08-12-0164 and FAN[28], both dated February 28, 2012, assessing petitioner for alleged deficiency IT in the amount of Php17,830,362.67, inclusive of interest, for TY 2008.[29]

The assessment pertained to the disallowance of the cost of investment in the redeemable preferred shares ("RPS") of FBDC which was allegedly unsubstantiated and supposedly in violation of *Section 34(A)(1)(C) of the 1997 National Internal Revenue Code*[30]*, as amended ("1997 NIRC")*, quoted by respondent in the Details of Discrepancies attached to the FAN as "xxx [n]o deductions from gross income shall be allowed under this *Subsection (A)* hereof, unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or adequate records: (i) the amount of expense being deducted... xxx."[31]

The details of the computation for the alleged deficiency IT assessment are as follows:[32]

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[23] *Records, JSFI, par. 3,* p. 144.
[24] *BIR Records, Exhibit "R-2-a," Signature of Revenue Officer Ma. Victoria S. Trazona,* p. 434.
[25] *Id., Exhibit "R-2-b," Signature of Group Supervisor Ma. Teresa S. Reyes,* p. 434.
[26] *Id., Exhibit "R-2," Memorandum Report,* pp. 434-435.
[27] *Id., Preliminary Assessment Notice ("PAN"),* pp. 450-451.
[28] *Id., Formal Assessment Notice ("FAN"),* pp. 460-462.
[29] *Records, JSFI, par. 4,* pp. 144-145; *BIR Records, FAN,* pp. 460-462.
[30] *Republic Act No. 8424,* January 1, 1998.
[31] *BIR Records, JSFI, par. 5,* p. 145; *BIR Records, Details of Discrepancies,* p. 460.
[32] *Records, JSFI, par. 6,* p. 145; *BIR Records, FAN,* p. 461.

INCOME TAX		
Total Gross Income *per* Income Tax Return ("ITR")	Php	755,868,485.00
Add: Unsupported Cost of Investment		559,690,621.60
Total Gross Income *per* Audit	Php	1,315,559,106.60
Basic IT - Minimum Corporate Income Tax ("MCIT") (2%)	Php	26,311,182.13
Less: MCIT Paid *per* return		15,117,370.00
Basic Deficiency IT	Php	11,193,812.13
Add: Interest (04/16/09 to 04/02/12)		6,636,550.54
TOTAL AMOUNT DUE	**PHP**	**17,830,362.67**

The alleged "unsupported cost of investment" was computed by the ROs as follows:[33]

PS	NO. OF SHARES	REDEMPTION PRICE		REDEMPTION VALUE		COST PER SHARE		COST OF INVESTMENT		GAIN (LOSS) ON REDEMPTION	
C	4,845,311	Php	158.00	Php	765,559,106.40	Php	2.00	Php	9,690,622.00	Php	755,868,484.40
D	550,000,000		1.00		550,000,000.00		1.00		550,000,000.00		-
				Php	1,315,559,106.40			**Php**	**559,690,622.00**	Php	755,868,484.40

On March 29, 2012, or within the reglementary period, petitioner administratively protested the assessment by filing a Protest Letter[34] dated March 29, 2012 with Revenue Region No. 8 - Assessment Division ("RR 8") and the Office of the Regional Director.[35] In its letter, petitioner prayed for the cancellation and withdrawal of the subject assessment on the bases of the legal and factual arguments stated therein.[36]

On April 17, 2012[37], FBDC received a letter[38] dated April 11, 2012 issued by RD Valeroso, informing petitioner that "[in] reference to [petitioner's] letter dated March 29, 2012 xxx[,] the entire docket of [petitioner's case] xxx will be forwarded to [RDO 44] xxx for further evaluation and appropriate action."[39]

On May 8, 2012, Memorandum of Assignment ("MOA") No. RR8-044-PRO-0512-000320[40] was issued by RDO Maridur V. Rosario[41] ("RDO Rosario") to RO Winston E. Sabado ("RO Sabado") and GS

[33] *Records, JSFI, par. 7,* p. 145; *BIR Records, FAN Details of Discrepancies,* p. 460.
[34] *POME Folder, Exhibit "P-1," Protest; BIR Records, Protest,* pp. 464-493.
[35] *Records, JSFI, par. 8,* p. 145.
[36] *Id.*
[37] *BIR Records, Exhibit "R-4-a," Proof of receipt,* p. 515.
[38] *Id., Exhibit "R-4," Letter dated April 11, 2012,* p. 515.
[39] *Id.*
[40] *Id., Exhibit "R-3," Memorandum of Assignment ("MOA"),* p. 517.
[41] *Id., Exhibit "R-3-a," Signature of Maridur V. Rosario,* p. 517.

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Angelo R. Palomer ("GS Palomer"), referring petitioner's case for "[r]einvestigation *per* protest letter/request for reinvestigation xxx."

A Transmittal Letter[42] dated July 7, 2012, addressed to RO Sabado, was then filed by petitioner, submitting therewith additional documents.

Thereafter, a Memorandum[43] dated June 5, 2014, signed by RO Sabado[44] and GS Palomer, with the recommending approval of OIC-RDO Rodolfo G. Mendoza ("OIC-RDO Mendoza"), was submitted to RD Jonas DP Amora ("RD Amora"), recommending the issuance of an FDDA against petitioner.

On May 18, 2015, petitioner received a copy of the FDDA[45] dated May 18, 2015, whereby the BIR reiterated its deficiency IT assessment against petitioner covering TY 2008 in the total amount of Php25,035,070.41, inclusive of interest computed from April 16, 2009 to June 19, 2015.[46]

Consequently, on June 16, 2015, petitioner filed a Petition for Review.[47] The Motion for Extension of Time to File Answer[48] posted by respondent on July 16, 2015 was granted by the Court in a Resolution[49] dated July 28, 2015.

On August 14, 2015, petitioner filed a Motion for Leave to Amend Petition for Review[50] ("Motion for Leave").

On August 28, 2015, the Court received the Answer[51] filed *via* registered mail by respondent on August 14, 2015, which the Court merely noted[52] pending resolution of petitioner's Motion for Leave.

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[42] *BIR Records, Exhibit "R-5," Transmittal Letter,* pp. 518-737, with annexes.
[43] *Id., Exhibit "R-6," Memorandum,* pp. 750-752.
[44] *Id., Exhibit "R-6-a," Signature,* p. 751.
[45] *Id., Final Decision on Disputed Assessment ("FDDA"),* pp. 762-767.
[46] *Id., JSFI, par. 9,* p. 146.
[47] *Records, PFR,* pp. 8-33, with annexes.
[48] *Id., Motion for Extension of Time to File Answer,* pp. 35-37.
[49] *Id., Resolution,* p. 39.
[50] *Id., Motion for Leave to Amend Petition for Review,* pp. 41-42
[51] *Id., Answer,* pp. 71-74.
[52] *Id., Order,* p. 75.

On October 2, 2015, there being no objection on the part of respondent despite notice, the Court granted petitioner's Motion for Leave,[53] thereby admitting the attached Amended Petition for Review[54].

Respondent filed his Amended Answer[55] *via* registered mail on October 8, 2015. In his Amended Answer, respondent interposed the following Special and Affirmative Defenses, in sum: *(1)* that petitioner has not provided any supporting document or evidence to support its claimed cost of investment in the RPS of FBDC amounting to Php559,690,622.00, in violation of *Section 34(A)(1)(b) of the 1997 NIRC; (2)* that respondent's right to collect has not yet prescribed; *(3)* that assessments are *prima facie* correct and made in good faith, and that taxpayers have the duty to prove otherwise; and *(4)* that taxes are the lifeblood of the government and should be collected without unnecessary hindrance.

Respondent's Pre-Trial Brief[56] was filed on January 18, 2016; while Petitioner's Pre-Trial Brief[57] was submitted with the Court on January 29, 2016.

Thereafter, on February 17, 2016, the parties filed their Joint Stipulation of Facts and Issues[58]; thus, a Pre-Trial Order[59] was issued on March 15, 2016.

As part of petitioner's testimonial evidence, it presented as its sole witness Ms. Jennifer P. Salvador[60], the Tax Manager of FBDC.

On September 27, 2016, Formal Offer of Evidence for Petitioner[61] was filed, offering *Exhibits* "P-1" to "P-44," "P-46" to "P-66," "P-69," "P-70," "P-70-a," "P71," and "P-71-a." This was resolved

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[53] *Records, Resolution,* p. 78.
[54] *Id., Amended PFR,* pp. 43-68, with annexes.
[55] *Id., Amended Answer,* pp. 79-82.
[56] *Id., Respondent's Pre-trial Brief,* pp. 89-92
[57] *Id., Petitioner's Pre-trial Brief,* pp. 96-104.
[58] *Id., JSFI,* pp. 144-152.
[59] *Records, Pre-Trial Order ("PTO"),* pp. 154-164.
[60] *Records, Exhibits "P-70," Judicial Affidavit of Ms. Jennifer P. Salvador in Lieu of Direct Examination,* pp. 105-133; *Records, August 16, 2016 Minutes of Hearing,* p. 193; *Records, Exhibits "P-71," Supplemental Judicial Affidavit of Ms. Jennifer P. Salvador in Lieu of Direct Examination,* pp. 197-210; *Records, September 5, 2016 Minutes of Hearing,* p. 242;
[61] *Records, Formal Offer of Evidence for Petitioner,* pp. 248-262.

by the Court in a Resolution[62] dated October 14, 2016, admitting all of the foregoing exhibits.

Respondent presented the testimonies of *(1)* RO Sabado[63]; and *(2)* RO Trazona[64].

On April 5, 2017, respondent posted his Formal Offer of Evidence[65], which was received by the Court on April 21, 2017, offering *Exhibits* "R-1," "R-1-a," "R-2," "R-2-a," "R-2-b," "R-3," "R-3-a," "R-4," "R-4-a," "R-5," "R-6," "R-6-a," "R-7," "R-7-a," "R-8," and "R-8-a" as evidence. The Court admitted all the offered evidence in a Resolution[66] dated May 3, 2017.

After being granted an extension,[67] on July 12, 2016, Petitioner's Memorandum[68] was filed; while respondent failed to submit his memorandum *per* Records Verification Report[69] issued by the Judicial Records Division on June 16, 2017.

On July 6, 2017, the Court promulgated a Resolution[70] submitting the case for decision; hence, this Decision.

The Issues[71]

WHETHER PETITIONER IS LIABLE FOR DEFICIENCY IT COVERING TY 2008 IN THE AMOUNT OF PHP25,025,070.41, INCLUSIVE OF INTEREST COMPUTED FROM APRIL 16, 2009 TO JUNE 19, 2015; AND

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[62] *Records, Resolution,* pp. 265-266.
[63] *Records, Exhibit "R-8," Judicial Affidavit of Winston E. Sabado,* pp. 223-234, with annexes; *Records, March 21, 2017 Minutes of Hearing,* p. 270.
[64] *Records, Exhibit "R-7," Judicial Affidavit of Ma. Victoria S. Trazona,* pp. 213-220, with annexes; *Records, March 21, 2017 Minutes of Hearing,* p. 270.
[65] *Records, respondent's Formal Offer of Evidence,* pp. 274-277.
[66] *Id., Resolution,* pp. 306-307.
[67] *Records, Urgent Motion for Extension of Time to File Petitioner's Memorandum,* pp. 311-313; *Records, Resolution,* p. 316.
[68] *Records, Petitioner's Memorandum,* pp. 317-326.
[69] *Id., Records Verification Report,* p. 314.
[70] *Id., Resolution,* p. 328.
[71] *Id., PTO, Issues,* p. 156.

WHETHER RESPONDENT'S RIGHT TO COLLECT THE ASSESSED TAX IS BARRED BY PRESCRIPTION UNDER *SECTION 203 OF THE 1997 NIRC.*

Petitioner's Arguments[72]

Petitioner avers that the redeemed PS arose merely from the re-classification of the same number of convertible CS in FBDC with the same *par* value of Php1.00 *per* share; thus, the allocable cost of the converted CS necessarily becomes the substituted cost of the PS thus converted. Petitioner stresses that, citing *BIR Ruling No. DA-030-05* dated January 24, 2005, the conversion of the same number of CS into the same number of PS with the same *par* value *per* share pursuant to their conversion features merely represent a change in form, and thus, no gain or loss is recognized therefrom. Since the redeemed Preferred "C" and "D" Shares came from its CS that were converted to Preferred "C" and "D" Shares at the ratio of 1 CS: 1 PS, with the same *par* value of Php1.00 *per* share, and that petitioner's total stockholdings in FBDC remained at 11,447,520,334 total shares, petitioner submits that the disallowance made by respondent and the consequent deficiency tax assessment is clearly without basis and should be cancelled.

Petitioner asserts that the FAN is null and void for failure to state the law and the facts on which the assessment was made, as required under *Section 228(e), 2nd paragraph of the 1997 NIRC.* Petitioner adds that the cited basis for the assessment, that is, *Section 34(A)(1)(c) of the 1997 NIRC,* is misleading because said *Section* refers to disallowance of deductions constituting payments of bribes, kickbacks and other similar payments, a matter that is not the subject of the present assessment, *i.e.*, alleged unsupported expenses.

Lastly, petitioner avers that respondent's right to collect has already prescribed because more than three (3) years has lapsed from the time respondent issued the FAN on February 28, 2012 up to the time when the FDDA was issued on May 18, 2005. Petitioner continues that respondent has no legal or physical constraint to prevent him from proceeding with the collection, since its protest merely requested for the withdrawal and cancellation of the assessment on the basis of the legal and factual arguments contained therein, and did not request for reinvestigation. Neither did

[72] *Records, Petitioner's Memorandum, Discussions,* pp. 323-326.

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respondent, according to petitioner, granted any such request for reinvestigation nor communicated such fact to the knowledge of petitioner.

Respondent's Counter-Arguments[73]

Respondent counters that petitioner has not provided any supporting document or evidence to support its claimed cost of investment in the RPS of FBDC amounting to Php559,690,622.00, in violation of *Section 34(A)(1)(b) of the 1997 NIRC*; that his right to collect has not yet prescribed; and that assessments are *prima facie* presumed correct and made in good faith, and the duty to prove otherwise is upon the taxpayer.

Respondent emphasizes that taxes are the lifeblood of the government and must be collected without unnecessary hindrance.

The Ruling of the Court

The Court has jurisdiction over the present case.

Section 228 of the 1997 NIRC lays out the procedure to be followed in protesting tax assessments with the BIR, and thereafter, with the Court of Tax Appeals ("CTA"); the pertinent portion of which states as follows:

> SEC. 228. *Protesting of Assessment.* –
>
> xxx xxx xxx
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

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[73] *Records, Amended Answer, Special and Affirmative Defenses*, pp. 79-80.

> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.[74]

In this relation, *Section 3.1.5 of Revenue Regulations No. 12-1999*[75], implementing the above *Section 228 of the 1997 NIRC*, reads:

> 3.1.5 *Disputed Assessment.* - The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof.
>
> xxx xxx xxx
>
> If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.
>
> xxx xxx xxx
>
> If the Commissioner or his[/her] duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable.[76]

Based on the foregoing, the taxpayer has thirty (30) days from receipt of the FAN to protest the assessment. Thereafter, within thirty (30) days from receipt of the decision denying the protest, or from the lapse of the one hundred and eighty (180)-day period for the

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[74] Underscoring ours.

[75] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.

[76] Underscoring ours.

Commissioner of Internal Revenue ("CIR") to act on the protest, the taxpayer may appeal to the CTA.

In the instant case, petitioner received Assessment Notice No. IT-LA27497-08-12-0164 and the FAN on March 1, 2012.[77] On March 29, 2012, or within thirty (30) days therefrom, petitioner filed its administrative protest[78] with RR 8 and the Office of the Regional Director.[79] Accordingly, the administrative protest was timely filed.

Respondent however, failed to act on the protest within one hundred eighty (180) days from the filing thereof on March 29, 2012, or until September 25, 2012. It was only on May 18, 2015 that petitioner received the FDDA[80], with assessment for deficiency IT of Php25,035,070.41, inclusive of interest computed from April 16, 2009 to June 19, 2015. Thereafter, petitioner filed the Petition for Review[81] on June 16, 2015 with the Court.

In *Lascona Land Co., Inc. v. Commissioner of Internal Revenue*[82], citing *RCBC v. Commissioner of Internal Revenue*[83], the Supreme Court ruled that in case of inaction by the CIR on the protest within the one hundred eighty (180)-day period, taxpayers may either: *(1)* appeal to the CTA within thirty (30) days from the lapse of the one hundred and eighty (180)-day period from filing of the protest; or *(2)* wait for the decision of the CIR on the protest, and appeal such decision to the CTA within the said thirty (30)-day period. These options are mutually exclusive and resort to one bars application of the other.[84]

> ... in case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: (1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the180-day period; or (2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision.

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[77] *Records, JSFI, par. 4,* pp. 144-145; *BIR Records, FAN,* pp. 460-462.
[78] *POME Folder, Exhibit "P-1," Protest; BIR Records, Protest,* pp. 464-493.
[79] *Records, JSFI, par. 8,* p. 145.
[80] *BIR Records, FDDA,* pp. 762-767.
[81] *Records, PFR,* pp. 8-33, with annexes.
[82] G.R. No. 171251, March 5, 2012, 667 SCRA 455.
[83] G.R. No. 168498, April 24, 2007, 522 SCRA 144.
[84] *RCBC v. Commissioner of Internal Revenue,* G.R. No. 168498, April 24, 2007, 522 SCRA 144.

r/

Relative thereto, *Section 3(A)(2), Rule 4 of the Revised Rules of the CTA*[85] *("RRCTA")* provides the following:

> SECTION 3. *Cases Within the Jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> > (2) Inaction by the Commissioner of Internal Revenue in cases involving disputes assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;
>
> xxx xxx xxx.[86]

As borne out by the records, instead of filing an appeal to the CTA within thirty (30) days after the lapse of the one hundred and eighty (180)-day period within which respondent will decide on the

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[85] A.M. No. 05-11-07-CTA, November 22, 2005.
[86] Underscoring ours.

protest, petitioner opted to wait for respondent's decision in the form of an FDDA received on May 18, 2015. Within thirty (30) days from receipt thereof, or on June 16, 2015, petitioner filed the instant Petition for Review. Clearly, the Court has jurisdiction to settle the present controversy.

The assessment is void for lack of authority to conduct the same.

It must be noted that the issue on want of authority of ROs to conduct the audit investigation was not raised in the present Petition, or in the proceedings before the Court. Nevertheless, the Court is not precluded of its jurisdiction to rule on the same, following the pronouncement of the Supreme Court in the recent case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[87], *viz.*:

> On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under *Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals*, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
> > SECTION 1. *Rendition of judgment.* — xxx
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter.[88]

[87] G.R. No. 183408, July 12, 2017.
[88] Underscoring ours.

It cannot be emphasized that the authority of ROs to conduct audit investigation goes into the validity of an assessment; thus, any assessment arising from the conduct of audit examination of a taxpayer's books of accounts by an RO who is not duly authorized to do so is a complete nullity. A void assessment bears no valid fruit.[89]

In the case at bar, LOA No. 00027497[90] issued on July 20, 2009 states the following:

> 003-979-159-000
> BONIFACIO LAND CORPORATION
> 2/F Bonifacio Technology Center
> Bonifacio Global City, Taguig City
>
> SIR / MADAM/ GENTLEMEN:
>
> The bearer(s) hereof, <u>R.O. Ma. Victoria S. Trazona/GS Ruben Fuerte</u> of the <u>Revenue District Office No. 44, Taguig/Pateros</u> is/are authorized to examine your books of accounts and other accounting records for <u>All Internal Revenue Taxes</u> for the period from <u>January 01</u>, <u>2008</u> to <u>December 31</u>, <u>2008</u>. He is/They are provided with the necessary identification card(s) which shall be presented to you upon request.
>
> xxx xxx xxx[91]

A Memorandum Report[92] was then issued by RO Trazona and GS Reyes on October 28, 2011, recommending the issuance of a PAN against petitioner.

Meanwhile, MOA No. RR8-044-PRO-0512-000320[93] dated May 8, 2012 was issued, which serves as a memorandum to RO Sabado and GS Palomer referring the tax docket of petitioner to them by virtue of the Protest Letter[94] filed by the latter on March 29, 2012. The MOA reads as follows:

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[89] *Commissioner of Internal Revenue v. BASF Coating + Inks Phils. Inc.*, G.R. No. 198677, November 26, 2014, 743 SCRA 124; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633; *Commissioner of Internal Revenue v. Azucena T. Reyes, Azucena T. Reyes v. Commissioner of Internal Revenue*, G.R. Nos. 159694 and 163581, respectively, January 27, 2006, 480 SCRA 382.
[90] *BIR Records, Exhibit "R-1", LOA No. 00027497*, p. 4.
[91] Emphases retained.
[92] *BIR Records, Exhibit "R-2," Memorandum Report*, pp. 432-435.
[93] *Id., Exhibit "R-3," MOA*, p. 517.
[94] *POME Folder, Exhibit "P-1," Protest; BIR Records, Protest*, pp. 464-493.

MEMORANDUM TO:

[RO]/s : **WINSTON E. SABADO**
[GS] : **ANGELO R. PALOMER**

Subject: Audit/Verification of All Internal Revenue Tax Liabilities for the year 2008 of **BONIFACIO LAND COPRORATION** with TIN: 003-979-159-000. Pursuant to [LOA] No. 00027497 dated July 15, 2009.

Referred to you is the subject case/docket for:

xxx xxx xxx

PRO **[X]** **Reinvestigation per protest letter/request for reinvestigation filed by the subject taxpayer. (FAN)**

The docket with the report of the case shall be submitted to the undersigned within the time frame prescribed under existing revenue issuances. xxx[95]

On July 7, 2012, petitioner submitted additional documents in relation to the ongoing assessment to RO Sabado. The Transmittal Letter[96] reads:

Transmittal Letter

To: Mr. Winston Sabado
Revenue Officer - In Charge

From: Jenny Salvador

Date: July 7, 2012

Re: Submission of Additional Documents for BLC 2008 Tax Assessment per IT-LA27497-08-12-0164

As discussed on our meeting last June 24, 2012, we hereby submit the following additional documents:

1. Copy of FBDC GIS from1995 to 2007

[95] Emphases retained.
[96] *BIR Records, Exhibit "R-5," Transmittal Letter,* pp. 518-737.

2. Copy of BLC Audited FS from 1995 to 2007

xxx xxx xxx[97]

In his Judicial Affidavit[98], RO Sabado testified that he conducted a reinvestigation of petitioner's books of accounts:

Q9: What was the basis of the reinvestigation?
9: The protest letter dated March 29, 2012 filed by petitioner against the [FAN] was the basis of the reinvestigation of the case by the BIR.

Q10: After petitioner filed its protest letter, how did you communicate to the petitioner about the reinvestigation of the case?
11: After petitioner filed its protest letter, the BIR communicated to petition[er] about the fact of the reinvestigation, through a letter dated April 11, 2012 informing petitioner that the entire docket together with their letter of protest will be forwarded to [RDO 44] for further evaluation and appropriate action. Petitioner was also informed to submit their documents to the said RDO within 60 days from filing their protest. This letter was received by petitioner on April 17, 2012.

xxx xxx xxx

Q14: How did petitioner reacted on the letter dated April 11, 2012?
A: A meeting between petitioner and BIR was held on June 24, 2012. In the said meeting, petitioner undertook to submit additional documents in support of their protest. In the course of the discussion, petitioner was then fully aware of the fact that a reinvestigation on the case is being conducted by the BIR.

Q15: What happened after your meeting on June 24, 2012, if any?
A: Because of their undertaking to submit additional documents in support of their protest, petitioner through a transmittal letter dated July 7, 2012, submitted the following documents: a) Copy of FBDC GIS from 1995 to 2007; and b) Copy of BLC Audited FS from 1995 to 2007. The BIR and petitioner were still in

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[97] Emphases retained.
[98] *Records, Exhibit "R-8," Judicial Affidavit of Winston E. Sabado,* pp. 223-234.

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> constant communication even after they filed their letter of protest and during the reinvestigation of the case. Petitioner did not, in any occasion, refute the reinvestigation being conducted by the BIR. Instead[,] petitioner still continue[d] to submit documents with the BIR.
>
> xxx xxx xxx
>
> Q17: What happened next, if any?
>
> A: After evaluation and analysis of all the records and documents of this case, I prepared a **Memorandum Report dated June 5, 2014** for the reinvestigation conducted on all internal revenue tax liabilities of petitioner for the [TY] 2008. After evaluation on the merits of the contention and the document, I reiterated the findings of the examiner who conducted the original investigation of this case by stating that the cost of investment be allowed pursuant to *Section 34(A)(1)(b) of the Tax Code*. I also recommended the issuance of [FDDA] against petitioner.[99]

Thereafter, a Memorandum[100] dated June 5, 2014, was submitted by RO Sabado and GS Palomer, with the recommending approval of OIC-RDO Mendoza, to RD Amora, proposing the issuance of an FDDA against petitioner.

Clearly, RO Trazona was not the only RO who conducted an audit and examination of petitioner's books for TY 2008. By virtue of the request for reinvestigation *per* Protest Letter[101] dated March 29, 2012, petitioner's case was re-assigned to RO Sabado who conducted a reinvestigation of petitioner's books of accounts. However, no new LOA was issued as a result of said reassignment.

The authority of an RO to conduct audit investigation for the purpose of collecting the correct amount of tax finds its basis under *Section 13 of the 1997 NIRC,* which provides as follows:

> 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

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[99] Emphases retained.
[100] *BIR Records, Exhibit "R-6," Memorandum,* pp. 750-752.
[101] *POME Folder, Exhibit "P-1," Protest; BIR Records, Protest,* pp. 464-493.

> 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.[102]

In case of re-assignment, *Revenue Memorandum Order ("RMO") No. 43-1990*[103] requires the issuance of a new LOA, *viz.*:

> 5. Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/A.[104]

It is a cardinal rule in statutory construction that, where the law speaks in clear and categorical language, or the terms of the statute are clear and unambiguous and free from doubt, there is no room for interpretation or construction and no interpretation or construction is called for; there is only room for application.[105] The use of the word "shall" connotes a mandatory order or an imperative obligation.[106] Thus, the use of the word "shall" in *RMC No. 43-1990* can only mean that the issuance of a new LOA, with a corresponding notation thereto in cases of reassignment, is mandatory.

In *CIR v. Sony Philippines, Inc.*[107], the High Court emphasized that the LOA is the authority given to an RO assigned to perform assessment functions, *viz.*:

> Based on Section 13 of the Tax Code, a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It

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[102] Underscoring ours.
[103] 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.
[104] Underscoring ours.
[105] *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 175707, 180035, 181092, November 19, 2014, 740 SCRA 640.
[106] *Abakada Guro Party List v. Hon. Exec. Sec. Ermita*, G.R. No. 168056, September 1, 2005, 235 SCRA. 630; *Enriquez v. Enriquez*, G.R. No. 139303, August 25, 2005, 468 SCRA 77; *Province of Batangas v. Hon. Romulo*, G.R. No. 152774, May 27, 2004, 429 SCRA 736.
[107] G.R. No. 178697, November 17, 2010, 635 SCRA 234.

> empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer. xxx
>
> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.[108]

The Supreme Court affirmed the foregoing in the very recent case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[109], where the High Court emphasized that the absence of an LOA violated a taxpayer's right to due process; accordingly, the assessment thereon was declared void, *viz.*:

> An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. xxx.
>
> xxx xxx xxx
>
> ... [I]t is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.

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[108] Underscoring ours.
[109] G.R. No. 222743, April 5, 2017.

xxx xxx xxx.

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.[110]

Thus, absent a new LOA authorizing RO Sabado to conduct the reinvestigation of petitioner's books of accounts and accounting records for TY 2008, he acted without authority, making the assessment null and void. Consequently, the assessment arising therefrom is a nullity.

The Court ought to reiterate the Supreme Court's teachings that "in balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution."[111] Thus, while taxes are the lifeblood of the government, the power to tax has its limits, in spite of all its plenitude.[112] And even if the Court will concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[113]

Having said the foregoing, the Court finds no cogent reason to rule on the remaining issue. The question on whether respondent's right to collect the alleged deficiency IT has prescribed is of no moment, considering that the assessment is void. The Supreme Court has consistently ruled that tax collection should be premised on a

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[110] Underscoring ours.

[111] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633; *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014, 729 SCRA 113.

[112] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014, 729 SCRA 113, citing *Commissioner of Internal Revenue v. Metro Star Superama*, G.R. No. 185371, December 8, 2010, 637 SCRA 633.

[113] *Commissioner of Internal Revenue v. Algue, Inc.*, G.R. No. L-28896, February 17, 1988, 158 SCRA 9.

valid assessment;[114] and the issuance of a valid formal assessment is a substantive pre-requisite for collection of taxes.[115]

WHEREFORE, premises considered, the Amended Petition for Review filed on August 14, 2015 is hereby **GRANTED**. Accordingly, Assessment Notice No. IT-LA27497-08-12-0164 and Formal Assessment Notice, both dated February 28, 2012, and the Final Decision on Disputed Assessment dated May 18, 2015, covering deficiency income tax for taxable year 2008 in the aggregate amount of Php25,025,070.41, inclusive of interest, is **CANCELLED AND WITHDRAWN**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S
(With Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[114] *Commissioner of Internal Revenue v. Fitness by Design, Inc.* G.R. No. 215957, November 9, 2016; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 28, 2010, 637 SCRA 633; *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014, 743 SCRA 113.
[115] *Commissioner of Internal Revenue v. Fitness by Design, Inc.* G.R. No. 215957, November 9, 2016.

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

BONIFACIO LAND CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA CASE NO. 9068

Members:
BAUTISTA, Chairperson;
FABON-VICTORINO,
RINGPIS-LIBAN, ***JJ.***

Promulgated:
APR 19 2018
10:40 a.m.

x---x

DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With due respect, I dissent from the majority decision which cancelled and set aside Respondent's assessment for deficiency income tax for taxable year (TY) 2008, in the total amount of Php25,025,070.41 inclusive of interest.

I am of the firm belief that Respondent's assessment is valid.

The Revenue Officer ("RO") who conducted the investigation of Petitioner's books of account and other accounting records for internal revenue taxes for TY 2008 had the authority to do so. RO Ma. Victoria S. Trazona ("RO Trazona") was the RO specifically named in the Letter of Authority ("LOA") dated July 15, 2009. LOA No. 0027497[1] signed by Revenue Regional Director Alfredo V. Misajon, which reads as follows:

"LOA 2008-00027497

JUL 15 2009

[1] Letter of Authority, BIR Records, p. 04.

LETTER OF AUTHORITY

BONIFACIO LAND CORPORATION
2/F Bonifacio Technology Center
Bonifacio Global City, Taguig City

SIR/ MADAM/ GENTLEMEN:

The bearer(s) hereof, **R.O Ma. Victoria S. Trazona**/ GS Ruben Fuerte of the Revenue District Office No. 44, Taguig/Pateros is/are authorized to examine your books of accounts and other accounting records for All Internal Revenue Taxes for the period from January 1, 2008 to December 31, 2008. He is/They are provided with the necessary identification card(s) which shall be presented to you upon request.

xxx xxx xxx

Very truly yours,
(Original Sgd.)
ALFREDO V. MISAJON
SIGNATURE OF AUTHORIZED OFFICER
Regional Director
TITLE/POSITION"[2]

As a result of the examination of Petitioner's books, with the recommendation by RO Trazona through a Memorandum Report[3] dated October 28, 2011, a Preliminary Assessment Notice ("PAN")[4] was issued by Respondent on December 20, 2011 signed by Revenue Regional Director Nestor S. Valeroso. Thereafter, on February 28, 2012, a Formal Assessment Notice ("FAN")[5] was issued, signed by Revenue Regional Director Nestor S. Valeroso, assessing Petitioner alleged deficiency income tax in the amount of Php17,830,362.67 inclusive of interest for TY 2008.

Thus, from the start of the tax audit (*i.e.*, issuance of the LOA) up until the assessment against Petitioner was issued, the RO who conducted the investigation had the authority to do so. In fact, RO Trazona was presented by Respondent as a witness where it was established that she was authorized to conduct the investigation on Petitioner's internal revenue taxes covering TY 2008.[6]

[2] *Emphasis supplied.*
[3] Memorandum Report, BIR Records, pp. 434-435.
[4] Preliminary Assessment Notice, BIR Records, pp. 450-451.
[5] Formal Assessment Notice, BIR Records, pp. 453-454.
[6] Docket, Judicial Affidavit of Revenue Officer Ma. Victoria S. Trazona, p. 213-217; March 21, 2017 Minutes of Hearing, pp. 270.

I also cannot give my assent to the ruling laid down by the majority opinion that the assessment is void for lack of authority of the RO who conducted a reinvestigation when Petitioner filed a protest to the FAN (*i.e.,* request for reinvestigation), RO Winston E. Sabado. Contrary to the majority's view, **a new LOA is not necessary in case of a reinvestigation pursuant to a protest filed by the taxpayer in reply to a FAN**.

Section 6 of the 1997 National Internal Revenue Code ("NIRC") grants the Commissioner of Internal Revenue the power to conduct assessments:

> "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."[7]

An LOA, as described above, is a document empowering a designated RO to examine a taxpayer and assess his or her correct internal revenue tax liability. The audit process begins when a letter of authority is issued by the Commissioner of Internal Revenue or by the Revenue Regional Director[8] and it ends upon issuance of an assessment.[9] In other words, the LOA accomplishes its purpose once an assessment is issued.

In the instant case, A FAN was already issued by Respondent on February 28, 2012. For all intents and purposes, LOA No. 0027497 where RO Trazona was designated as the official RO to examine Petitioner, had already achieved its purpose.

Sound rules dictate that protested cases/cases for reinvestigation be entrusted to a new RO for review. That is why a new RO, RO Sabado, was appointed *via* a Memorandum of Assignment ("MOA")[10] dated May 08, 2012 to conduct a reinvestigation, which came about pursuant to the protest to the FAN (*i.e.,* request for reinvestigation) filed by Petitioner. It must be emphasized however that the reinvestigation conducted is but a part of the original tax audit

[7] *Emphasis and underscoring supplied.*
[8] Commissioner of Internal Revenue v. De La Salle University, Inc., G.R. Nos. 196596, 198841 and 198941, November 09, 2016.
[9] Section 6 of the 1997 National Internal Revenue Code.
[10] Memorandum of Assignment, BIR Records, p. 517.

made against Petitioner and is a reinvestigation of an assessment already made. To issue a new LOA is superfluous and unnecessary.

The MOA issued on May 08, 2012 suffices for it referred to LOA No. 0027497 issued against Petitioner:

"Memorandum of Assignment

No. RR8-044-PRO-0512-000320
Date: May 8, 2012

MEMORANDUM TO:

Revenue Officer/s	:	**WINSTON E. SABADO**
Group Supervisor	:	ANGELO R. PALOMER

Subject: Audit/Verification of All Internal Revenue Tax Liabilities for the year 2008 of **BONIFACIO LAND CORPORATION** with TIN: 003-979-159-000. **Pursuant to Letter of Authority No. 00027497 dated July 15, 2009**.

Referred to you is the subject case/docket for:

xxx xxx xxx

PRO [X] Reinvestigation per protest letter/request for reinvestigation filed by the subject taxpayer. (FAN)

xxx xxx xxx

The docket with the report of the case shall be submitted to the undersigned within the time frame prescribed under existing revenue issuances.

For your information and strict compliance.

(Original Sgd.)
MARIDUR V. ROSARIO
Revenue District Officer"[11]

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[11] *Emphasis and underscoring supplied.*

Moreover, Petitioner was already informed of the change in RO. This is evidenced by Petitioner's Letter dated July 07, 2012[12] submitting additional documents in support of its protest, which was addressed to RO Sabado.

I am not unaware of Revenue Memorandum Order No. 43-90[13] which states that "[a]ny re-assignment/transfer of cases to another RO(s)...shall require the issuance of a new L/A" However, I humbly stress and emphasize that an administrative issuance must conform, not contradict, the provisions of the enabling law. Any rule that is not consistent with the law is null and void.[14]

It is for the reasons above that, in my opinion, the assessment issued by Respondent against Petitioner is valid.

From all the foregoing, I vote to **DETERMINE** the correctness of Respondent's assessment, and **COMPUTE** Petitioner's deficiency income tax liability, if any.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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12 Transmittal Letter dated July 07, 2012, BIR Records, p. 737.
13 Issued September 20, 1990.
14 Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, G.R. Nos. 175707, 180035 & 181092, November 19, 2014.