REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

WPP MARKETING COMMUNICATIONS, INC., Petitioner,	**CTA CASE NO. 9704**
	Members:
-versus-	**Castañeda, Jr.**, *Chairperson*, **Mindaro-Grulla,** and **Bacorro-Villena,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, and NATIONAL EVALUATION BOARD, Respondents.	**Promulgated:** JAN 29 2020 2:45 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

The instant *Petition for Review* filed on October 25, 2017 prays that the Denial Letter dated September 4, 2017 issued by respondent against petitioner in the amount of ₱158,801,664.00 be declared annulled, reversed and set aside.[1]

THE FACTS

Petitioner WPP Marketing Communications, Inc. is a domestic corporation registered with the Securities and Exchange Commission with Company Registration No. 4219.[2]

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[1] Summary of the Case, Pre-Trial Order dated April 18, 2018, Docket – Vol. I, p. 364.
[2] Exhibit "P-1", Docket, Volume – I, pp. 384 to 395.

Respondent is the duly appointed Commissioner of Internal Revenue (Commissioner), vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said Office, including *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations.[3]

Respondent National Evaluation Board (NEB), composed of respondent Commissioner and four (4) Deputy Commissioners, is the body charged with approving compromises where the basic tax involved exceeds ₱1,000,000.00.[4]

On August 8, 2006, petitioner received the *Letter Notice* (LN) No. 116-AS-04-00-00056 dated June 30, 2006, with attached *Details of Taxpayer's Supplier's Records*,[5] informing petitioner of the discrepancy in the information/data provided by third-party sources against its declarations per VAT returns.

Thereafter, on October 23, 2007, petitioner received the *Preliminary Assessment Notice* dated August 28, 2007 from the Bureau of Internal Revenue (BIR).[6]

On January 3, 2008, petitioner received the *Formal Letter of Demand* (FLD) dated November 20, 2007, together with the *Audit Result/Assessment Notice* No. LN-116-AS-04-00-00056-000523 from the BIR,[7] demanding payment of alleged deficiency VAT, with interest, in the aggregate amount of ₱161,801,664.00, for taxable year 2004, broken down as follows:

Gross Receipts (per summary list of sales from customers	₱1,027,312,152.74
VAT Due (10%)	102,731,215.27
Add: 20% interest from 1/26/05 to 12/11/07	59,070,488.73
TOTAL AMOUNT DUE	₱161,801,664.00

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[3] Par. 1.1, Stipulation of Facts, *Joint Stipulation of Facts and Issue* (JSFI), Docket – Vol. I, p. 351.
[4] Section 204(A), NIRC of 1997.
[5] Exhibit "P-7", Docket – Vol. I, pp. 253 to 266; Exhibit "R-3", BIR Records, p. 14.
[6] Exhibit "P-9", Docket – Vol. I, p. 268; Exhibit "R-5", BIR Records, p. 53.
[7] Exhibit "P-10", Docket – Vol. I, pp. 269 to 270; Exhibits "R-6" and "R-7", BIR Records, pp. 68 to 69.

Thus, on January 14, 2008, petitioner filed with the BIR the letter dated January 11, 2018,[8] protesting the FLD and seeking the reversal of the imposed deficiency VAT together with its corresponding interest/penalties.

On April 3, 2008, respondent Commissioner issued a letter,[9] stating that petitioner has been delisted from the list of taxpayers under the jurisdiction of Large Taxpayers Service of the BIR, and is now under the jurisdiction of Revenue District Office (RDO) No. 47 – East Makati, Revenue Region (RR) No. 8 – Makati.

On August 20, 2008, petitioner received the *Preliminary Collection Letter* (PCL) dated August 18, 2008 from RDO No. 50 – South Makati, RR No. – 8,[10] seeking to collect the total amount of ₱161,801,664.00, as alleged deficiency VAT, inclusive of interest.

On September 4, 2008, petitioner received the *Final Notice Before Seizure* (FNBS) dated September 2, 2008 from RDO No. 50 – South Makati, RR No. – 8,[11] for the collection of the said deficiency tax.

On September 12, 2008, petitioner filed a letter dated September 15, 2008 with RDO No. 50,[12] requesting that any action to collect the alleged deficiency tax be suspended, and that the subject assessment be reinvestigated.

Thereafter, on March 9, 2009, petitioner received the *Collection Letter* dated February 24, 2009 from the BIR Large Taxpayers-Collection & Enforcement Division, Quezon City.[13]

Petitioner filed with the BIR, on March 20, 2009, a letter requesting for the settlement of the subject tax through a negotiated compromise.[14]

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[8] Exhibit "P-11", Docket – Vol. I, p. 271; Exhibit "R-8", BIR Records, p. 95.
[9] Exhibit "P-12", Docket – Vol. I, p. 272.
[10] Exhibit "P-13", Docket – Vol. I, p. 273; Exhibit "R-9", BIR Records, p. 89.
[11] Exhibit "P-14", Docket – Vol. I, p. 274; Exhibit "R-10", BIR Records, p. 90.
[12] Exhibit "P-15", Docket – Vol. I, pp. 275 to 276.
[13] Exhibit "P-16", Docket – Vol. I, p. 277; Exhibit "R-12", BIR Records, pp. 122 to 123.
[14] Exhibit "P-17", Docket, Vol. I, pp. 278 to 287.

On April 17, 2009, petitioner filed its *Application for Compromise Settlement of Internal Revenue Tax Liabilities* (BIR Form No. 2107) with the BIR,[15] offering to pay the amount of ₱3,000,000.00 as a compromise settlement of its deficiency VAT liability for the year 2004 due to doubtful validity of the assessment.

Subsequently, on April 23, 2013, petitioner received the *Notice of Denial* dated March 19, 2013 signed by Assistant Commissioner, Collection Service, and Head, Technical Working Group on Compromise Elvira R. Vera,[16] denying petitioner's application for compromise settlement of its deficiency VAT liability for taxable year 2004 in the total amount of ₱161,801,664.00.

On May 8, 2013, petitioner filed with the BIR a letter requesting for reconsideration of the denial of petitioner's offer of compromise settlement for its alleged VAT liability under LN No. 116-AS-04-00-000556-000523 for taxable year 2004.[17]

However, on June 4, 2013, OIC Assistant Commissioner, Large Taxpayers Service Alfredo V. Misajon issued the *Warrant of Distraint and/or Levy* (WDL),[18] directing the Chief, LT-Collection & Enforcement Division or his duly authorized representative to levy upon the real property and interest in/or rights to real property of petitioner and to sell and/or forfeit in favor of the Republic of the Philippines so much of petitioner's personal/real property, as may be necessary to satisfy in full the sum of ₱158,801,664.00, plus all increments incident to delinquency.

On June 14, 2013, petitioner filed with the BIR a letter requesting the reconsideration of the denial of petitioner's offer of compromise settlement for its alleged VAT liability under LN No. 116-AS-04-00-000556-000523 for taxable year 2004, and requesting the cancellation of the WDL.[19]

[15] Exhibit "P-18", Docket – Vol. I, p. 288; Exhibit "R-13", BIR Records, p. 139.
[16] Exhibit "P-19", Docket – Vol. I, p. 289; Exhibit "R-15", BIR Records, p. 158.
[17] Exhibit "P-20", Docket – Vol. I, pp. 290 to 298.
[18] Exhibit "P-21", Docket – Vol. I, p. 299; Exhibit "R-16", BIR Records, pp. 159 to 160.
[19] Exhibit "P-22", Docket – Vol. I, pp. 301 to 310.

Thereafter, on March 14, 2014, petitioner filed with the BIR a letter following up on its request for reconsideration and cancellation of the WDL.[20]

On April 12, 2017, petitioner filed with respondent the letter dated April 11, 2017,[21] requesting for reconsideration of the denial of its request for compromise settlement.

On September 26, 2017, petitioner received the letter dated September 4, 2017 signed by OIC – Assistant Commissioner, Large Taxpayers Service Teresita M. Angeles,[22] stating, among others, that per *Memorandum* dated January 27, 2017 of Deputy Commissioner-Legal Group Jesus Clint O. Aranas, petitioner's request for reconsideration was denied due to the following reasons:

1. The issue on prescription was belatedly raised when petitioner requested for reconsideration of the denial of petitioner's offer of compromise settlement through letter dated May 8, 2013, or years after the assessment has become final, executory and demandable. Further, the subject assessment was not appealed to the Court of Tax Appeals (CTA) within the period required by law. Accordingly, it became final, executory, and demandable, and petitioner could no longer challenge the validity of the assessment.

2. The denial of the offer for compromise settlement is made on the ground that the offer is below the required minimum payment of at least 40% of the basic tax assessed for cases of "doubtful validity" pursuant to Section 4.2 of Revenue Regulations (RR) No. 30-2002. The basic assessed tax is ₱102,731,215.27 while the offer for compromise settlement is only ₱3,000,000.00, which is only 2.92% of the basic assessed tax. While petitioner may request for compromise lower than 40% of the basic assessed tax, the same is subject to the approval of the National Evaluation Board. In the instant case, the offer

[20] Exhibit "P-23", Docket – Vol. I, pp. 311 to 318.
[21] Exhibit "P-24", Docket – Vol. I, pp. 319 to 330.
[22] Exhibit "P-2", Docket – Vol. I, p. 27.

was already disapproved by the NEB per Memorandum dated November 27, 2012.

Petitioner filed the instant *Petition for Review* on October 25, 2017.[23]

On January 22, 2018, respondent Commissioner filed his *Answer,*[24] alleging, inter alia, the following:

"3. xxx petitioner is liable for deficiency Value-Added Tax (VAT) as will be discussed hereunder:

3.1 The Honorable Court has no jurisdiction over the instant petition. The nature of the jurisdiction of the Court of Tax Appeals (CTA) is exclusively appellate. It is a court of special jurisdiction and as such it can only take cognizance of such matters as are clearly within its jurisdiction.

3.2 The jurisdiction of the CTA is cited in Republic Act (RA) No. 1125, as amended by RA 9282. Section 7 thereof provides:

'Sec. 7. Jurisdiction. -- The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

   1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

[23] Docket – Vol. I, pp. 10 to 26.
[24] Docket – Vol. I, pp. 133 to 141.

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed 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 provides a specific period of action, in which case the inaction shall be deemed a denial;
xxx xxx'

3.3 While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the assessment has already become final, executory, unappealable, and incontestable.

3.4 The assessment against petitioner has already become final, executory and demandable because it failed to appeal before this Honorable Court the Preliminary Collection Letter (PCL) or the Final Notice Before Seizure within the reglementary period to appeal. Thus, effectively depriving the Honorable Court of jurisdiction over the petition.

3.5 It is a well-settled rule in tax assessment that the assessment shall become final, executory and demandable if the taxpayer fails to file a valid protest against the Formal Letter of Demand and Final Assessment Notice (FLD/FAN) or Preliminary Collection Notice (PCN), Final Notice Before Seizure (FNBS), Warrant of Distraint and/or Levy (WDL) as the case may be, within 30 days from the date of receipt of the said FLD, FAN, PCN, FNBS or WDL.

3.6 By failing to timely file an appeal to the Preliminary Collection Letter (PCL) or the Final Notice Before Seizure within 30 days from receipt thereof, petitioner can no longer dispute the assessment and its appeal to the Court of Tax Appeals (CTA) shall be dismissed for lack of jurisdiction.

3.7 It must be noted that Preliminary Collection Notice dated 18 August 2008 was received by petitioner on 20 August 2008, while the Final Notice Before Seizure dated 2 September 2008 was received by petitioner on 4 September 2008. Hence, when petitioner filed the instant Petition for Review on 25 October 2017, this Honorable Court did not acquire jurisdiction over the petition as the assessment has already become final, executory, unappealable and incontestable.

3.8 Assuming, without however admitting that the Honorable Court has jurisdiction over the instant petition, the deficiency VAT assessment against petitioner is validly issued. Upon evaluation of the taxable receipts of petitioner for taxable year 2004, it was disclosed that the amount of P1,027,312,152.74 was not declared as part of its taxable receipts. These receipts were being issued VAT Official Receipts. Thus, the said amount is subject to Value-Added Tax pursuant to Section 108 of the NIRC of 1997, as amended, in relation to Section 113 of the same code, which provide:

> **SEC. 106. Value-Added Tax on Sale of Goods or Properties. –**
>
> **(A) Rate and Base of Tax.** – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to ten percent (10%) [now 12%] of the gross selling price or gross value in money of the goods or

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> properties sold, bartered or exchanged, such tax to be paid by the seller or transferor xxx xxx
>
> **SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. –**
>
> (A) Invoicing Requirements. – A VAT-registered person shall issue:
>
> 1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> 2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services. xxx xxx

3.9 The details of the computation of deficiency VAT of petitioner are shown hereunder:

Gross Receipts (per summary list of sales from customers)

P1,027,312,152.74	
VAT due (10%)	P102,731,215.27
Add: 20% interest from 1/26/05 to 12/11/07	P59,070,448.73
Total Amount Due:	P161,801,664.00

The 20% interest per annum has been imposed pursuant to Section 249(B) of the NIRC of 1997, as amended.

3.10 As regards to the Letter dated 4 September 2014, denying petitioner's request for reconsideration of its denied Application for compromise settlement, the denial of petitioner's application for compromise was due to the following: Jr

a) The issue on prescription was belatedly raised when petitioner requested for reconsideration of the denial of its offer for compromise settlement through a letter dated 8 May 2013 or years after the assessment has already become final, executory and demandable.

b) The said assessment, not having been appealed to the Court of Tax Appeals within the period required by law, become final, executory and demandable. Accordingly, petitioner can no longer challenge the validity of VAT assessment.

c) The denial of the offer for compromise settlement is made on the ground that the offer is below the required minimum payment of at least forty percent (40%) of the basic tax assessed for cases of doubtful validity pursuant to Section 4.2 of Revenue Regulations (RR) No. 30-2002. The basis assessed tax is P102,731,215.27 while the offer for compromise settlement is only P3,000,000.00 which is just 2.92% of the basic assessed tax.

d) While taxpayers may request for compromise lower than 40% of the basis, the same is subject to approval of the National Evaluation Board (NEB). In the case at hand, petitioner's offer was already disapproved by the NEB per Memorandum dated 27 November 2012.

3.11 All the allegations in the Petition for Review and the relief sought, undoubtedly show that the supposed petition is actually an action to annul the duly issued Notice of Denial dated 4 September 2017 and grant petitioner's request for compromise settlement of its deficiency tax assessment, which is within the exclusive power and authority of the Commissioner of Internal Revenue as provided under Section 4 of Revenue Regulations No. 13-2001, to wit:

SEC. 4. THE COMMISSIONER HAS SOLE AUTHORITY TO ABATE OR CANCEL TAX Jc

> **PENALTIES AND/OR INTEREST.** – the Commissioner of Internal Revenue has the sole authority to abate taxes, penalties and/or interest pursuant to Section 204(B), in relation to Section 7(c), both of the Code. This authority is generally applicable to surcharge and compromise penalties only, however, in meritorious instances, the Commissioner may likewise abate the interest as well as basic tax assessed, provided, however, that cases for abatement or cancellation of tax, penalties and/or interest by the Commissioner shall be coursed through the following officials:
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> x x x x x x

3.12 Clearly, this matter is beyond the jurisdiction of this Honorable Court as the grant or denial of application for compromise settlement is not a quasi-judicial proceeding since there are no adverse parties involved; but rather it is a plea for leniency on the part of the taxpayer. It bears stressing that the Commissioner of Internal Revenue has the sole discretion to grant or deny an application for compromise pursuant to Section 204 of the NIRC, as amended, which reads as follows:

> **SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. -** The Commissioner may –
>
> xxx xxx
>
> (B) Abate or cancel a tax liability, when:
>
> (1) The tax or any portion thereof appears to be unjustly or excessively assessed; or
>
> (2) The administration and collection costs involved do not justify the collection of the amount due. *Jz*

> All criminal violations may be compromised except: (a) those already filed in court, or (b) those involving fraud.
>
> xxx xxx

3.13 Hence, this Honorable Court lacks jurisdiction to rule upon the petition, more so, to grant petitioner's prayer. It cannot encroach on the prerogatives of the executive department without violating the principle of separation of powers. As such, this Honorable Court lacks the power and authority to grant petitioner's request for abatement without violating said principle.

3.14 Absence any showing that this statutorily granted power has been gravely abused by the Commissioner of Internal Revenue, courts cannot issue an Order to compel him to grant or deny application for compromise- since such discretion belongs to the Commissioner of Internal Revenue.

3.15 Generally, purely administrative and discretionary functions may not be interfered with by the court except when the exercise of such functions is tainted by whimsical exercise of jurisdiction.

3.17 In this case, the Commissioner of Internal Revenue did not gravely abuse his discretion when it denied petitioner's request for compromise because the offer for compromise is only 2.92% of the basic assessed tax. It did not exercise his discretion outside the parameters set by law which would warrant judicial review by the Honorable Court.

3.18 Section 7(a)(1) of Republic Act No. 9282 provides for the jurisdiction of this Honorable Court, which states:

> Sec. 7 Jurisdiction. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue [Code] or other laws administered by the Bureau of Internal Revenue;
>
> x x x x x x

3.19 The instant petition cannot be considered as `other matters arising under the NIRC as it involves application for compromise which is within the exclusive power and authority of the Commissioner of Internal Revenue to grant or deny.

3.20 Assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. *(Marcos II vs. Court of Appeals, G.R. No. 120880, June 5, 1997.)*

3.21 The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands. *(Commissioner of Internal Revenue vs. Hantex*

Trading Co. Inc., G.R. No. 136975, March 31, 2005.)'

The pre-trial conference was initially set on February 15, 2018.[25] However, upon the filing of petitioner of an *Urgent Motion To Defer Pre-Trial Conference Scheduled On 15 February 2018* on February 8, 2018,[26] the pre-trial conference was reset to, and was held, on March 15, 2018.[27]

On February 9, 2018, petitioner filed its *Reply*.[28]

The *Respondent's Pre-Trial Brief* was filed on February 9, 2019;[29] while petitioner's *Pre-Trial Brief* was submitted on March 12, 2018.[30]

Thereafter, the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI) on April 4, 2018.[31] On April 18, 2018, the Court issued the Pre-Trial Order,[32] approving the said JSFI and deeming the termination of the Pre-Trial.

Trial ensued.

During trial, petitioner presented documentary and testimonial evidence. Petitioner offered the testimony of its accountant, Ms. Jocelyn B. Solis.[33]

On May 21, 2018 petitioner filed its *Formal Offer of Evidence*.[34]

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[25] *Notice of Pre-Trial Conference* dated January 25, 2018, Docket – Vol. I, pp. 145 to 146.
[26] Docket – Vol. I, pp. 147 to 150.
[27] Order dated February 9, 2018, Docket – Vol. I, p. 181; Minutes of the hearing held on, and Order dated, March 15, 2018, Docket – Vol. I, pp. 349 and 350, respectively.
[28] Docket – Vol. I, pp. 155 to 168.
[29] Docket – Vol. I, pp. 176 to 179.
[30] Docket – Vol. I, pp. 331 to 344.
[31] Docket – Vol. I, pp. 351 to 356.
[32] Docket – Vol. I, pp. 364 to 368.
[33] Exhibit "P-25", Docket – Vol. I, pp. 206 to 226; Minutes of the hearing held on, and Order dated, May 16, 2018, Docket – Vol. I, pp. 369 and 370, respectively.
[34] Docket – Vol. I, pp. 372 to 382.

Subsequently, on May 25, 2018, respondent Commissioner transmitted the *BIR Records* for the instant case.[35]

In the Resolution dated July 11, 2018,[36] this Court admitted petitioner's Exhibits.

Respondent Commissioner likewise presented documentary and testimonial evidence. His lone witness is Ms. Desiree T. Tolledo,[37] a Revenue Officer I of the BIR.

On August 20, 2018, the parties filed a *Joint Motion to Set Commissioner's Hearing*[38] for the setting of one Commissioner's Hearing for the marking of petitioner's additional evidence, as contained in the *BIR Records*, and the marking and inspection of respondent's evidence. In the Order dated August 23, 2018,[39] the Court granted said *Joint Motion to Set Commissioner's Hearing*, gave petitioner a period of five (5) days from September 10, 2018 or until September 15, 2018, within which to file its *Supplemental Formal Offer of Evidence* and respondent Commissioner the same period from receipt thereof to file his comment thereto; and gave respondent Commissioner a period of five (5) days from September 10, 2018 or until September 15, 2018, within which to file his *Formal Offer of Evidence*, and petitioner the same period from receipt thereof to file its comment thereto.

Respondent Commissioner filed his *Formal Offer of Evidence* on September 24, 2018.[40] Thereafter, on October 1, 2018, petitioner filed its *Supplemental Formal Offer of Evidence*.[41] Subsequently, on October 12, 2018 petitioner filed its *Comment/Opposition (To Respondent's Formal Offer of Evidence)*.[42] In the Resolution dated December 5, 2018,[43] the Court admitted respondent Commissioner's Exhibits, and petitioner's Exhibits "P-26", "P-27", "P-28" and "P-29".

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[35] Respondent's *Compliance*, Docket – Vol. II, pp. 421 to 423.
[36] Docket – Vol. II, pp. 428 to 429.
[37] Exhibit "R-20", Docket – Vol. II, pp. 436 to 443; Minutes of the hearing held on, and Order dated, August 1, 2018, Docket – Vol. II, pp. 444 and 445, respectively; Minutes of the hearing held on, and Order dated, August 6, 2018, Docket – Vol. II, pp. 447 and 448.
[38] Docket – Vol. II, pp. 450 to 452.
[39] Docket – Vol. II, p. 453.
[40] Docket – Vol. II, pp. 477 to 483.
[41] Docket – Vol. II, pp. 485 to 489.
[42] Docket – Vol. II, pp. 493 to 496.
[43] Docket – Vol. II, pp. 500 to 501.

The Court likewise gave the parties a period of thirty (30) days from notice to file their respective memorandum.

Petitioner filed its *Memorandum* on January 10, 2019,[44] while respondent Commissioner filed his *Memorandum* on February 7, 2019.[45]

The present case was submitted for decision on February 18, 2019.[46]

THE ISSUES

The parties submitted the following issues for this Court's resolution,[47] to wit:

> "2.1 Whether or not the Honorable Court has jurisdiction;
>
> 2.2 Assuming the court has jurisdiction, whether or not the purported assessment was of doubtful validity which entitles [petitioner] to the approval of its application for compromise; and
>
> 2.3 Whether or not Respondent can still collect the balance of the purported assessment."

Petitioner's arguments:

Petitioner argues that the Court has jurisdiction over the action. In support of this argument, petitioner avers that this Court is empowered to review the petition under its "other matters" jurisdiction; that the assessment did not become final, demandable, and executory; that respondent never issued a Final Decision on Disputed Assessment; and that the PCL and FNBS do not provide that these constituted the final decisions appealable to this Court, as required by Revenue Regulations No. 12-99.

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[44] Docket – Vol. II, p. 504 to 531.
[45] Docket – Vol. II, pp. 541 to 553.
[46] Resolution dated February 18, 2019, Docket – Vol. II, p. 555.
[47] Stipulation of the Issues, JSFI, Docket – Vol. I, p. 352.

Moreover, petitioner posits that the VAT assessment is void, and not just of doubtful validity. Relative thereto, petitioner points out that there was no Letter of Authority (LOA) issued; that due process demands that after an LN has served its purpose, a revenue officer should properly secure an LOA before proceeding with further examination and assessment; that the FLD was issued and served beyond the prescriptive period; and that the VAT assessment has no factual basis; and that the ₱1,027,312,152.74 identified by respondent does not form part of petitioner's receipts.

Finally, petitioner is of the view that respondent Commissioner cannot collect the amounts alleged to be due; that his right to collect was already barred by prescription; and that no right to collect may ripen from a void assessment.

Respondent Commissioner's counter-arguments:

Respondent Commissioner argues that the Court has no jurisdiction over the instant *Petition*; that the assessment has become final, executory, and demandable; that this Court has no jurisdiction over the subject matter of the case; that respondent correctly denied petitioner's application for compromise settlement; and that petitioner is liable for deficiency VAT.

THE COURT'S RULING

The instant *Petition for Review* is meritorious.

This Court has jurisdiction to entertain the present appeal.

Respondent Commissioner argues that this Court has no jurisdiction over the case.

We disagree. *[initials]*

Section 7(a)(1) of Republic Act (RA) No. 1125,[48] as amended by RA No. 9282,[49] provides as follows, to wit:

> "SECTION 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **<u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" *(Emphases and underscoring ours)*

Based on the foregoing provisions, the appellate jurisdiction of this Court is *not* limited to cases which involve decisions of respondent Commissioner on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR.[50] The wording of the provision is clear and simple.[51]

In this case, what is being appealed to this Court is the denial by respondent Commissioner of petitioner's *Request for Reconsideration of the Denied Application for compromise settlement*, as embodied in the letter dated September 4, 2017 issued by the BIR.[52] ȷz

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

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

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

[51] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

[52] Exhibit "P-2", Docket – Vol. I, p. 27.

Such being the case, the instant case arises out of the NIRC, specifically, Section 204(A) thereof. Thus, this Court is vested with jurisdiction to entertain the same.

Section 204(A) of the NIRC of 1997 empowers respondent Commissioner to compromise the payment of internal revenue taxes, subject to certain limitations. It provides as follows:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.* –
>
> The Commissioner may –
>
> (A) Compromise the payment of any internal revenue tax, when:
>
> (1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or
>
> (2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.
>
> The compromise settlement of any tax liability shall be subject to the following minimum amounts:
>
> For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and
>
> For other cases, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.
>
> Where the basic tax involved exceeds One million pesos (P1,000,000) or where the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the approval of the Evaluation Board which shall be composed of the Commissioner and the four (4) Deputy Commissioners." gr

Based on the foregoing provisions, the payment of any internal revenue tax may be compromised by respondent Commissioner on either of the two (2) instances, namely: (1) a reasonable doubt as to the validity of the claim against the taxpayer exists; or (2) the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

In *Philippine National Oil Company vs. Court of Appeals, et al., etseq.*,[53] the Supreme Court held as follows:

> "It is generally true that purely administrative and discretionary functions may not be interfered with by the courts; **but when the exercise of such authority of such functions by the administrative officer is tainted by a failure to abide by the command of the law, then it is incumbent on the courts to set matters right,** with this Court having the last say on the matter.
>
> The manner by which BIR Commissioner Tan exercised his discretionary power to enter into a compromise was brought under the scrutiny of the CTA amidst allegations of grave abuse of discretion and/or whimsical exercise of jurisdiction. **The discretionary power of the BIR Commissioner to enter into compromises cannot be superior over the power of judicial review by the courts.**
>
> **<u>The discretionary authority to compromise granted to the BIR Commissioner is never meant to be absolute, uncontrolled and unrestrained</u>. No such unlimited power may be validly granted to any officer of the government, except perhaps in cases of national emergency. In this case, the BIR Commissioner's authority to compromise, whether under E.O. No. 44 or Section 246[54] of the NIRC of 1977, as amended, <u>can only be exercised under certain circumstances specifically identified in said statutes</u>. The BIR Commissioner would have to**

[53] G.R. Nos. 109976 and 112800, April 26, 2005.
[54] Now Section 204(A) of the NIRC of 1997.

> **exercise his discretion <u>within the parameters set by the law</u>, and in case he abuses his discretion, <u>the CTA may correct such abuse if the matter is appealed to them</u>.**" *(Emphases and underscoring supplied)*

Based on the foregoing, while respondent Commissioner's power to compromise is sanctioned under the NIRC of 1997, the exercise thereof, whether in granting or denying the application for compromise, is subject to the determination of this Court, in the first instance, whether the same is *"within the parameters set by the law"*.

The subject VAT assessment is void, not only of doubtful validity.

According to petitioner, the assessment did not become final, demandable, and executory; and the VAT assessment is void, not just of doubtful validity. On the other hand, respondent Commissioner is of the view that the same assessment has become final, executory and demandable, and hence, there is no reason for petitioner not to pay the said assessment.

We agree with petitioner.

The subject VAT assessment is void, since there was no LOA issued which authorizes the examination of petitioner by the BIR for taxable year 2004.

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.[55] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[56]

[55] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[56] *Commissioner of Internal Revenue vs. De La Salle University, Inc., etseq.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.

An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to respondent Commissioner himself or his duly authorized representatives.[57] This is explicitly provided under Sections 6(A) and 13 of the NIRC of 1997, which provide as follows:

> "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." *(Emphasis supplied)*
>
> "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."

Based on the foregoing provisions, it is clear that unless authorized by respondent Commissioner himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.[58] Clearly, there must be a grant of authority before any revenue officer can conduct an

[57] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue, supra.*
[58] *Ibid.*

examination or assessment.[59] It must be ensured that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.[60]

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[61] the Supreme Court held as follows:

> "In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[62] the Court said that:
>
> > Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**. (Emphasis and underlining ours)
>
> **The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself.** Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation

[59] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178797, November 17, 2010.
[60] Refer to *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue, supra.*
[61] *G.R. No. 222743, April 5, 2017.*
[62] G.R. No. 178797, November 17, 2010 [649 Phil. 519 (2010)].

only for the purpose of disqualifying the taxpayer from amending his returns.

The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. **Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case.**

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

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.**" *(Emphases and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, an LN, which was issued in the instant case, is **not** equivalent to an LOA; and in the absence of the latter, the assessment issued by respondent Commissioner is inescapably void.

Correspondingly, since the subject VAT tax assessment was issued without a prior LOA, the same is void. As such, the said assessment bears no valid fruit,[63] and could not have attained finality. Relative thereto, it is a hornbook doctrine that a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act. A right cannot spring in favor of a person from his own void or illegal act.[64] Consequently, respondent Commissioner may no longer collect the balance of the same VAT assessment.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED.**

Accordingly, the Denial Letter dated September 4, 2017 issued by respondent Commissioner against petitioner involving the amount of ₱158,801,664.00 is hereby **ANNULLED, REVERSED**, and **SET ASIDE**. Furthermore, the FLD dated November 20, 2007, assessing petitioner of the deficiency VAT, with interest, in the aggregate amount of ₱161,801,664.00, for taxable year 2004, and the WDL dated June 4, 2013 issued against petitioner, are **CANCELLED** and **SET ASIDE**. *gr*

[63] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, etseq.*, G.R. Nos. 215534 and 215557, April 18, 2016.

[64] *Team Sual Corporation (formerly Mirant Sual Corporation) vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201225-26 and 201132, April 18, 2018, citing *Commissioner of Internal Revenue vs. San Roque Power Corporation*, 703 Phil. 311 (2013)

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
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