REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

SUMITOMO CORPORATION-PHILIPPINE BRANCH,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9422

Members:

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

Promulgated:
JUN 30 2020
4:08 p.m.

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DECISION

RINGPIS-LIBAN, J.:

THE CASE

The instant *Petition for Review* prays that the assessment against petitioner for deficiency value-added tax (VAT) be cancelled and be declared void for having been issued without legal basis.[1]

THE PARTIES

Petitioner Sumitomo Corporation – Philippine Branch is a corporation duly organized and existing under and by virtue of the laws of Japan, which is licensed to operate a branch office in the Philippines. Its Philippine office is located at the 35th Floor, Philamlife Tower, Paseo de Roxas, Makati City.[2]

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[1] Summary of the Case, Pre-Trial Order dated May 2, 2017, Docket – Vol. 1, p. 429.
[2] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 410.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue with office address at the Bureau of Internal Revenue (BIR), National Office Building, BIR Road, Diliman, Quezon City where he may be served with summons and other legal processes.[3]

THE ANTECEDENTS

On October 11, 2011, respondent issued the Letter of Authority (LOA) No. LOA-116-2011 00000155 (eLA201100003057), authorizing the examination of the books of accounts of petitioner for taxable year ended March 31, 2011.[4]

Subsequently, on July 22, 2014, petitioner received from respondent a copy of the *Preliminary Assessment Notice* (PAN) dated July 21, 2014 for deficiency income tax, VAT, expanded withholding tax (EWT), capital gains tax, and documentary stamp tax, in the aggregate amount of ₱179,589,704.95, inclusive of increments, for the taxable year ended March 31, 2011.[5] Petitioner filed its protest letter against the PAN on August 4, 2014.[6]

On August 27, 2014, petitioner received a copy of the *Formal Letter of Demand* (FLD) dated August 27, 2014 which reduced the assessments for deficiency income tax, VAT and EWT to ₱172,210,569.12, inclusive of increments, for taxable year ended March 31, 2011.[7] Petitioner filed its protest letter against the findings of respondent in the FLD on September 26, 2014.[8] Thereafter, petitioner submitted additional supporting documents in support of its protest on November 25, 2014.[9]

On March 14, 2016, petitioner received a copy of the *Final Decision on Disputed Assessment* (FDDA) signed by Mr. Nestor S. Valeroso, Assistant Commissioner of the BIR Large Taxpayers (LT) Service, who partially granted petitioner's protest and further reduced the assessment for deficiency income tax, VAT and EWT to an aggregate amount of ₱89,898,066.97, inclusive of increments.[10] On April 12, 2016, petitioner filed a request for reconsideration of the FDDA with respondent.[11]

Petitioner subsequently received, on July 12, 2016,[12] a copy of the *Amended Final Decision on Disputed Assessment* (Amended FDDA) dated June 30,

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[3] Par. 1, Summary of Admitted Facts, JSFI, Docket – Vol. 1, p. 409.
[4] Par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. 1, p. 409.
[5] Par. 3, Summary of Admitted Facts, JSFI, Docket – Vol. 1, p. 409.
[6] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 410.
[7] Par. 4, Summary of Admitted Facts, JSFI, Docket – Vol. 1, pp. 409 to 410.
[8] Par. 3, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 410.
[9] Par. 4, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 410.
[10] Par. 5, Summary of Admitted Facts, JSFI, Docket – Vol. 1, p. 410.
[11] Par. 5, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 410.
[12] Par. 6, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 410.

2016, signed by then Commissioner Kim S. Jacinto-Henares, who found all petitioner's arguments in its request for reconsideration meritorious, *except* for the issue on whether the disallowance of petitioner's excess input VAT credits is proper. The Amended FDDA maintained the assessment for deficiency VAT in the amount of ₱9,619,984.31, inclusive of increments, based solely on the following reasoning:

> "In reference to your protest letter dated 12 April 2016, contesting the disallowance of excess input VAT carried over to the next period as improper, **this Office maintains its position that excess input carry over must be excluded in the computation of available input tax for the period under audit, as subject taxpayer had already benefitted from these input tax in the succeeding periods, which oftentimes results to a lesser or sometimes no VAT due at all**. In short, taxpayer had already obtained the tax benefits from these excess inputs. Allowing your position on the subject matter will deprive the government of a rightful claim against your company, thus assessment is herein reiterated."[13]

Petitioner filed the instant *Petition for Review* with this Court on August 10, 2016.[14]

On November 16, 2016 respondent filed his *Answer*,[15] interposing the following special and affirmative defenses, to wit:

> "**SPECIAL AND AFFIRMATIVE DEFENSES**
>
> **Petitioner's deficiency Value-Added Tax Liability**
>
> 4. After audit, respondent found basic deficiency VAT in the amount of P5,215,826.31. This was indicated and stated to petitioner in the FDDA dated March 14, 2016.
>
> 5. The collections of commission income and other revenues resulted to a VAT base of P533,421,631.51 pursuant to Section 108(A) of the NIRC, as amended.
>
> 6. In reference to petitioner's protest letter dated September 26, 2014, respondent required petitioner to submit documents that will convince respondent that the amount was collected on fiscal year 2008 and VAT was remitted and paid on this period.

[13] Par. 6, Summary of Admitted Facts, JSFI, Docket – Vol. 1, p. 410.
[14] Docket – Vol. 1, pp. 10 to 17.
[15] Docket – Vol. 1, pp. 132 to 137.

Petitioner failed to document or justify that this was a late recording of collections, thus the assessment was reiterated.

7. During deliberations on protest presented by petitioner and after proper substantiation of convincing documents, the petitioner's tax assessment was reduced to the following amount:

a. Commission Receivable, beginning in the amount of P56,992,320.00
b. Commission income of P2,518,426.00
c. Collection and remittance of VAT for the amount of P202,496,539.31
d. Service fee from SCOP of P1,232,000.00.

8. Petitioner filed another protest on the March 14, 2016 FDDA appealing that its deficiency VAT be reduced. However, after thorough and careful study of the facts as well as the law and jurisprudence pertinent thereto, respondent denied petitioner's protest of its deficiency VAT, for the same reason as stated above.

9. Petitioner is still liable for basic VAT in the amount of P5,215,826.31, while interest and penalty, as of June 30, 2016, amounted to P4,404,158.00, the latter amount computed since the deficiency VAT became due on April 26, 2012 up to present.

10. Petitioner's liability for interest and penalty is proper pursuant to Sections 248 and 249 of the NIRC of 1997, as amended.

11. Well-settled is the rule that assessments are entitled to the presumption of correctness and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.

12. 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. The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting. Hence, the assessment issued against petitioner is imbued with factual and legal bases.

13. All presumptions are in favor of the correctness of tax assessments. Dereliction on the part of petitioner to satisfactorily

> overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notice."

The pre-trial conference was set and held on March 14, 2017.[16]

After being directed by the Court to transmit the *BIR Records* of this case,[17] respondent submitted the same on January 16, 2017.[18]

Petitioner's *Pre-Trial Brief* was filed on March 8, 2017,[19] while *Respondent's Pre-Trial Brief* was submitted on March 9, 2017.[20]

The parties submitted their *Joint Stipulations of Facts and Issues* on April 3, 2017.[21] Thereafter, the Pre-Trial Order dated May 2, 2017 was issued,[22] deeming the Pre-Trial Conference terminated.

The trial of the case then proceeded.

During trial, petitioner presented documentary and testimonial evidence. As for its testimonial evidence, petitioner offered the testimony of its sole witness, Mr. Sosuke Ishida,[23] General Manager of petitioner.

On June 20, 2017, the *Formal Offer of Evidence for Petitioner* was filed.[24] Respondent filed his *Opposition (Re: Petitioner's Formal Offer of Evidence)* on June 27, 2017.[25] Petitioner's exhibits were all admitted by the Court in the Resolution dated September 6, 2017.[26]

Respondent likewise presented his documentary and testimonial evidence. With respect to testimonial evidence, respondent offered the testimonies of the following individuals, namely: (1) Ms. Ma. Gracielle Cecilia S. Anaban,[27] Revenue Officer (RO) II of the Regular Large Taxpayers Audit Division I; and (2) Ms. Susan L. Salcedo,[28] RO 2 – Assessment of Revenue District Office No. 27 – Caloocan City.

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[16] *Notice of Pre-Trial Conference* dated November 21, 2016, Docket – Vol. 1, pp. 138 to 139; Minutes of the hearing held on, and Order dated March 14, 2017, Docket – Vol. 1, pp. 390 and 392, respectively.
[17] Resolutions dated September 22, 2016 and December 21, 2016, Docket – Vol. 1, pp. 124 and 142 to 143, respectively.
[18] *Compliance*, Docket – Vol. 1, pp. 144 to 145.
[19] Docket – Vol. 1, pp. 368 to 374.
[20] Docket – Vol. 1, pp. 400 to 403.
[21] Docket – Vol. 1, pp. 409 to 416.
[22] Docket – Vol. 1, pp. 429 to 439.
[23] Exhibit "P-41", Docket – Vol. 2, pp. 653 to 669; Minutes of the hearing held on, and Order dated, June 5, 2017, Docket – Vol. 1, p. 442, and Docket – Vol. 2, p. 673, respectively.
[24] Docket – Vol. 1, pp. 444 to 455.
[25] Docket – Vol. 2, pp. 679 to 680.
[26] Docket – Vol. 2, pp. 689 to 690.
[27] Exhibit "R-22", Docket – Vol. 2, pp. 697 to 701; Minutes of the hearing held on, and Order dated, January 15, 2018, Docket – Vol. 2, pp. 702 to 703.
[28] Exhibit "R-23", Docket – Vol. 2, pp. 712 to 721; Minutes of the hearing held on, and Order dated, April 23, 2018, Docket – Vol. 2, pp. 722 to 724.

On May 8, 2018, respondent filed his *Formal Offer of Evidence.*[29] Petitioner filed its *Comment to Respondent's Formal Offer of Evidence* on May 25, 2018.[30] Thereafter, in the Resolution dated July 5, 2018,[31] the Court admitted respondent's exhibits, *except* for the following:

1) Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-9-a", "R-10", "R-13", "R-14", "R-14-a", "R-15", "R-15-a", and "R-21", for failure to identify the exhibits, considering that these exhibits were identified in the Judicial Affidavit of Revenue Officer Susan L. Salcedo, which failed to comply with Section 4(a) of A.M. No. 12-8-8-SC or the Judicial Affidavit Rule; and

2) Exhibits "R-11", "R-11-a", "R-12", "R-12-a", and "R-12-b", for failure to present the originals for comparison and failure to identify the exhibits.

Thus, respondent filed an *Omnibus Motion [(a) Motion for Partial Reconsideration, (b) Motion to Set Commissioner's Hearing, (c) Motion for Leave of Court to Submit & Admit Compliant Judicial Affidavit of Revenue Officer Susan L. Salcedo, (d) Motion to Submit Supplemental Formal Offer of Evidence, and (e) Motion to Defer Filing of Memorandum]* on July 26, 2018.[32] Petitioner filed its *Comment to Respondent's Omnibus Motion* on August 20, 2018.[33]

In the Resolution dated November 13, 2018,[34] the Court:

1) granted respondent's *Omnibus Motion [(b) Motion to Set Commissioner's Hearing, (c) Motion for Leave of Court to Submit & Admit Compliant Judicial Affidavit of Revenue Officer Susan L. Salcedo, (d) Motion to Submit Supplemental Formal Offer of Evidence, and (e) Motion to Defer Filing of Memorandum]*;

2) ordered respondent's counsel to pay the fee of ₱1,000.00 within ten (10) days from receipt of the notice for the compliant replacement affidavit and to submit proof of payment thereof within the same given period;

3) deferred the submission of the parties' memoranda; set the Commissioner's Hearing for the marking of Exhibits "R-11", "R-11-a", "R-12", "R-12-a", and "R-12-b", on December 6, 2018; and

4) held in abeyance the resolution of respondent's *Motion for Partial Reconsideration.*

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[29] Docket – Vol. 2, pp. 727 to 734.
[30] Docket – Vol. 2, pp. 736 to 738.
[31] Docket – Vol. 2, pp. 740 to 741.
[32] Docket – Vol. 2, pp. 742 to 746.
[33] Docket – Vol. 2, pp. 772 to 775.
[34] Docket – Vol. 2, pp. 779 to 782.

On November 29, 2018, respondent filed a *Motion for Partial Reconsideration*,[35] praying that the Resolution dated November 13, 2018 be reconsidered and an order be issued reducing or cancelling the amount of the fine imposed. Petitioner filed its *Comment to Respondent's Omnibus Motion* on December 20, 2018.[36]

Respondent filed his *Supplemental Formal Offer of Evidence* on December 14, 2018.[37]

In the Resolution dated March 27, 2019,[38] the Court:

1) granted respondent's *Motion for Partial Reconsideration* filed on July 26, 2018;

2) admitted respondent's Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-9-a", "R-10", "R-11", "R-11-a", "R-12", "R-12-a", "R-12-b", "R-13", "R-14", "R-14-a", "R-15", "R-15-a", and "R-21";

3) denied respondent's *Motion for Partial Reconsideration* filed on November 29, 2018 on the imposition of fine, for lack of merit;

4) ordered respondent's counsel to pay the fine of ₱1,000.00 within five (5) days from receipt of the said Resolution, and to submit proof of payment thereof within the same given period; and

5) gave parties a period of thirty (30) days within which to file their respective memoranda.

On April 10, 2019, respondent's counsel filed his *Compliance*,[39] stating therein that he already paid the imposed fine as evidenced by Official Receipt No. 9555982C.

The *Memorandum for the Petitioner* was filed on May 8, 2019;[40] while the respondent's *Memorandum* was filed on May 31, 2019.[41]

In the Order dated June 4, 2019,[42] the instant case was deemed submitted for decision.

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[35] Docket – Vol. 2, pp. 784 to 788.
[36] Docket – Vol. 2, pp. 811 to 813.
[37] Docket – Vol. 2, pp. 794 to 797.
[38] Docket – Vol. 2, pp. 821 to 824.
[39] Docket – Vol. 2, pp. 825 to 827.
[40] Docket – Vol. 2, pp. 837 to 849.
[41] Docket – Vol. 2, pp. 853 to 859.
[42] Docket – Vol. 2, p. 861.

On January 29, 2020, petitioner filed a *Manifestation*, stating that this Court had rendered a decision in the case entitled *Universal Robina Corporation vs. Commissioner of Internal Revenue*, docketed as CTA Case No. 9530, on January 14, 2020, declaring null and void the disputed tax assessment for failure of the *Formal Letter of Demand/Assessment Notices* therein to state a definite amount payable and due date for payment, pursuant to the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. Fitness By Design, Inc.*[43] Petitioner further manifests that the Amended FDDA and its accompanying *Audit Result/Assessment Notice* No. VT-116-LOA 00000155-11-16-258, do not contain any due date for the payment of the assessed taxes. Said *Manifestation* was noted by the Court in the Resolution dated March 2, 2020.

THE ISSUES

The parties submitted the following issues for the Court's resolution,[44] to wit:

> "1. Whether or not Petitioner is liable for deficiency VAT in the amount of ₱9,619,984.31, inclusive of increments; and
>
> 2. Whether or not it is proper for Respondent to disallow Petitioner's excess input VAT amounting to ₱202,853,092.46 for the fiscal year ended March 31, 2011 on the sole ground that the same was carried forward to the succeeding period."

THE ARGUMENTS OF THE PARTIES

Petitioner's arguments:

Petitioner argues that the assessment was made without authority; that the excess input VAT should be carried over to subsequent quarters / periods; and that there is no need to substantiate the input VAT carried over.

Respondent's counter-arguments:

Respondent, on the other hand, mainly argues that petitioner is liable for the assessed deficiency VAT, as petitioner failed to defend its stand and disprove the correctness of the assessment; that tax assessments are entitled to the presumption of correctness and made in good faith; and that the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that respondent is wrong but the taxpayer is right.

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[43] G.R. No. 215957, November 9, 2016.

[44] Stipulated Issues, Pre-Trial Order dated May 2, 2017, Docket – Vol. 1, p. 432.

THE RULING OF THE COURT

The instant *Petition for Review* is meritorious.

The RO, who conducted the investigation was not authorized, through an LOA, to examine petitioner's books of accounts and other accounting records. Thus, the subject tax assessment is void.

Petitioner contends, in effect, that RO Susan L. Salcedo, the only RO who actually conducted the audit investigation of petitioner for fiscal year ended March 31, 2011, was not authorized pursuant to an LOA, and thus the subject VAT assessment is void.

The audit process in the BIR normally commences with the issuance by respondent or his duly authorized representative of an LOA. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time, it authorizes or empowers a designated RO to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[45]

The power to issue an LOA by respondent or his/her duly authorized representative is derived from Section 6(A) of the National Internal Revenue Code (NIRC) of 1997, which provides 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 and underscoring supplied.)*

Based on the foregoing provision, an authority emanating from respondent or his/her duly authorized representative is required **before an examination and an assessment may be made against a taxpayer.**

[45] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,* G.R. No. 183408, July 12, 2017.

Relative thereto, Section 13 of the NIRC of 1997 provides that the authority of an RO to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to an LOA, to wit:

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

Thus, a grant of authority, through an LOA, must be made assigning an RO, to perform tax assessment functions, in order that such officer may examine taxpayers and collect the correct amount of tax, or to recommend the assessment of any deficiency tax due.

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,*[46] the Supreme Court held as follows:

> "**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.** Section 6 of the NIRC clearly provides as follows:
>
> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) Examination of Return and Determination of Tax Due. – After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer</u>** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent

[46] G.R. No. 222743, April 5, 2017.

> the Commissioner from authorizing the examination of any taxpayer.
>
> x x x x (Emphasis and underlining Ours)
>
> Based on the afore-quoted provision, it 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.**
>
> xxx xxx xxx

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[47] 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)
>
> xxx xxx xxx
>
> 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.**
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> xxx xxx xxx

[47] 649 Phil. 519 (2010).

> 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 <u>had the prior approval and authorization from the CIR or her duly authorized representatives</u>. <u>Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void</u>.**" *(Emphases and underscoring supplied)*

In the instant case, Mr. Alfredo V. Misajon, OIC Assistant Commissioner for Large Taxpayer (LT) Service, issued the Letter of Authority No. LOA-116-2011-00000155/SN:eLA201100003057 dated October 11, 2011,[48] authorizing ROs Myrna Ramirez, Ma Salud Maddela, Zenaida Paz, Cletofel Parungao, Allan Maniego, Joel Aguila and Group Supervisor (GS) Glorializa Samoy of LT Regular Audit Division 1, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes, for the period from April 1, 2010 to March 31, 2011.

Subsequently, however, Mr. Cesar A. Escalada, Chief of Regular LT Audit Division 1 of the BIR, issued the *Memorandum of Assignment* (MOA) dated February 25, 2013,[49] wherein he referred to RO Susan L. Salcedo and GS Marivic P. Bautista petitioner's case/docket for "[c]*ontinuation of the audit/investigation to replace the previously assigned Revenue Officer(s) who resigned/retired/transferred to another district office.*" Mr. Escalada also issued the letter dated February 28, 2013,[50] informing petitioner that RO Salcedo and GS Bautista is authorized to continue the examination of its books of accounts and other accounting records pursuant to the LOA No. 116-2011-0000155 dated October 11, 2011, for all internal revenue tax liabilities for the period from April 1, 2010 to March 31, 2011.

The investigation conducted by RO Salcedo eventually led to the issuance of the following notices issued against petitioner, to wit: (i) the PAN dated July 21, 2014;[51] (ii) the FLD dated August 27, 2014;[52] and (iii) the FDDA (Part I and II) dated March 14, 2016.[53]

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[48] Par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. 1, p. 409; Exhibit "P-3", Docket – Vol. 1, p. 461; Exhibit "R-1", BIR Records, p. 503.
[49] Exhibit "R-2", BIR Records, p. 509.
[50] Exhibit "R-21", BIR Records, p. 524.
[51] Exhibit "R-8", BIR Records, pp. 868 to 877; Exhibit "P-4", Docket – Vol. 1, pp. 462 to 470; Exhibit "R-9", BIR Records, pp. 895 to 898.
[52] Exhibit "R-10", BIR Records, pp. 915 to 923; Exhibit "P-6", Docket – Vol. 2, pp. 504 to 515; Exhibits "R-11", "R-11-a", "R-12", "R-12-a", "R-12-b", Docket – Vol. 2, pp. 799 to 810.
[53] Exhibit "R-13", BIR Records, pp. 1002 to 1007; Exhibit "P-9", Docket – Vol. 2, pp. 557 to 567; Exhibits "R-14", "R-14-a", "R-15", "R-15-a", BIR Records, pp. 1009 to1018.

Thereafter, another MOA was issued by Mr. Escalada on May 16, 2016 addressed to RO Gracielle Cecilia S. Anaban,[54] for the continuation of petitioner's audit investigation due to the transfer of RO Salcedo. RO Anaban's investigation led to the issuance of the Amended FDDA dated June 30, 2016.[55]

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

In the case of *Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.*[56], the Supreme Court had the occasion to expound on the elements of agency, to wit:

> "The elements of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for him/herself; and (4) the agent acts within the scope of his/her authority. **As the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it.** Absent such mutual intent, there is generally no agency. It is likewise a settled rule that persons dealing with an assumed agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it."[57]

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

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

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[54] Exhibit "R-16", BIR Records, p. 1050.
[55] Exhibit "R-17", BIR Records, pp. 1055 to 1056; Exhibit "P-11", Docket – Vol. 2, pp. 594 to 597; Exhibits "R-18", "R-18-a", "R-19", BIR Records, pp. 1085 to 1088; Pars. 11 and 12, Exhibit "R-22", Docket – Vol. 2, p. 698.
[56] G.R. No. 188288, January 16, 2012.
[57] *Emphasis supplied.*

"Art. 1892. **The agent may appoint a substitute if the principal has not prohibited him from doing so**; but he shall be responsible for the acts of the substitute:

(1) When he was not given the power to appoint one;
(2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.

All acts of the substitute appointed against the prohibition of the principal shall be void. (1721)"[58]

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to ROs Myrna Ramirez, Ma Salud Maddela, Zenaida Paz, Cletofel Parungao, Allan Maniego, Joel Aguila and Group Supervisor (GS) Glorializa Samoy, who were originally named in the LOA may be revoked, transferred and reassigned to RO Susan L. Salcedo , GS Marivic P. Bautista and RO Gracielle Cecilia S. Anaban for continuance of audit.

Said document where such authority is transferred may be equivalent to an LOA. Several reasons support this. *First*, the only directive under Section 13 of the NIRC of 1997, as amended,[59] which requires that assessment be done by ROs pursuant to an LOA, is that the grant of authority be done ***in writing***. In fact, an "[a]gency may be oral, unless the law requires a specific form."[60]

Second, although the document may not be entitled "Letter of Authority" but otherwise, it can contain all the elements necessary to establish a contract of agency between the CIR and the new Revenue Officer. The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[61] The title of the contract does not necessarily determine its true nature.[62] In fact, this Court has, time and again, declared

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58 *Emphasis supplied.*

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

60 Civil Code of the Philippines, Article 1869.

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

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

certain documents emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.

In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the NIRC of 1997, as amended, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.[63] Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code.[64]

RO Susan L. Salcedo , GS Marivic P. Bautista and RO Gracielle Cecilia S. Anaban who conducted the examination of petitioner's records may be deemed authorized to do so without need for a new LOA, **only if said letter or notice or memorandum was signed by the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service.**

Under RMO No. 29-07[65], the equivalent of a Regional Director in the Large Taxpayers Service is the Assistant Commissioner/Head Revenue Executive Assistants, for they are the ones authorized to issue an LOA, to wit:

> "II. AUDIT POLICIES AND GUIDELINES
>
> 1. The Chief, Large Taxpayers Audit & Investigation Divisions/LTDOs shall draw a list of taxpayers selected for audit under its current selection criteria. The list shall state the name of taxpayer selected for audit, the nature of business, the amount of gross sales/receipts, the selection code, the PSIC code, and the corresponding amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.

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

[64] Philippine International Trading Corporation v. Commission on Audit, G.R. No. 183517, June 22, 2010.

[65] Issued September 26, 2007.

> 2. **All Letters of Authority (LOAs) shall be issued and approved by the <u>Assistant</u> <u>Commissioner/Head</u> <u>Revenue</u> <u>Executive</u> <u>Assistants</u>.**"[66]

In the instant case however, the MOA No. LOA-125-2013-183 was only signed by Mr. Cesar A. Escalada, Chief of Regular LT Audit Division 1 of the BIR. Therefore, RO Susan L. Salcedo, GS Marivic P. Bautista and RO Gracielle Cecilia S. Anaban were without authority to continue the audit.

Considering that the said ROs, who conducted the examination of petitioner's books of accounts and other accounting records for the period from April 1, 2010 to March 31, 2011, and who recommended the issuance of the subject PAN, FLD, FDDA, and Amended FDDA against petitioner for the same fiscal year, did not have the valid authority to do so in the first place, the subject tax assessment issued by respondent against petitioner is inescapably void.

Nonetheless, We find another reason to declare the subject VAT assessment a nullity.

The subject VAT assessment is void since petitioner's tax liability remains indefinite.

In *Commissioner of Internal Revenue vs. Fitness By Design, Inc.* (hereinafter referred to as the "*Fitness By Design* case"),[67] the Supreme Court said:

> "...**the Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer.**
>
> xxx xxx xxx
>
> **The issuance of a <u>valid</u> formal assessment is a substantive prerequisite for collection of taxes.** Neither the National Internal Revenue Code nor the revenue regulations provided for a 'specific definition or form of an assessment.' However, the National Internal Revenue Code defines its explicit functions and effects. **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.**

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[66] *Emphasis and underscoring supplied.*
[67] G.R. No. 215957, November 9, 2016.

xxx xxx xxx

A final assessment is a notice 'to the effect that the amount therein stated is due as tax and a demand for payment thereof.' This demand for payment signals the time 'when the penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies[.]' Thus, it must be 'sent to and received by the taxpayer, and **must demand payment of the taxes described therein within a specific period.**'

The disputed Final Assessment Notice is not a valid assessment.

<u>First</u>, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a 'written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a tax liability that is there definitely set and fixed.' Although the disputed notice provides for the computation of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. Thus:

> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. **Please note, *however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004.*** (Emphasis Supplied)

<u>Second</u>, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment. Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:

> In view thereof, you are *requested to pay* your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled *within the time shown in the enclosed assessment notice.* (Emphasis in the original)

> However, based on the findings of the Court of Tax Appeals First Division, **the enclosed assessment pertained to remained unaccomplished**.

> Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. **The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.**

> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. **Tax collection should be premised on a valid assessment**, which would allow the taxpayer to present his or her case and produce evidence for substantiation." *(Emphases and underscoring supplied)*

Based on the foregoing, to be valid, a tax assessment must not only contain a computation of tax liabilities, it must also include a demand upon the taxpayer for the settlement of a tax liability that is there definitely set and fixed. It is further required that the due date in the final assessment notice be stated.

A careful scrutiny of the subject FLD dated August 27, 2014,[68] reveals that just as in the *Fitness by Design* case, although the same FLD provides for the computation of petitioner's tax liabilities, the amount thereof remains indefinite, since the tax due is still subject to modification. Specifically, the said FLD states:

> "***Please take note that <u>the interest will have to be adjusted if paid beyond the date specified therein</u>.***" *(Emphasis and underscoring ours)*

[68] Exhibit "P-6", Docket – Vol. 2, pp. 504 to 515; Exhibits "R-11", "R-11-a", "R-12", "R-12-a", "R-12-b", Docket – Vol. 2, pp. 799 to 810.

Furthermore, it is noteworthy that the same statements are found in the FDDA dated March 14, 2016,[69] and in the Amended FDDA dated June 30, 2016.[70] In addition, it is not clear as to which does the phrase *"the date specified therein"* actually refer. In view of this vagueness, the indefiniteness in the amount being assessed becomes even more apparent.

Furthermore, it is likewise noteworthy that the accompanying *Audit Result/Assessment Notice* No. VT-116-LOA-00000155-11-16-258[71] in the said Amended FDDA does not contain any due date for the payment of the assessed deficiency VAT. Particularly, the space in the said *Audit Result/Assessment Notice* where the due date is to be stated *"remained unaccomplished"*, just as in the *Fitness By Design* case.

Thus, the subject VAT assessment hardly fall under the jurisprudential definition of a tax assessment under the NIRC, considering that it lacked *"a due tax liability that is there definitely set and fixed."* It likewise do not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be.

Correspondingly, the subject VAT assessment is void.

It must be emphasized that a void assessment bears no valid fruit.[72] Such being the case, the subject tax assessment cannot be enforced against petitioner. It then becomes unnecessary to address the issue or arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the subject deficiency VAT assessment for taxable year ended March 31, 2011 is **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[69] Exhibit "P-9", Docket – Vol. 2, at p. 557 to 567; Exhibit "R-14", BIR Records, at p. 1016.
[70] Exhibit "P-11", Docket – Vol. 2, at p. 594; Exhibit "R-18", BIR Records, at p. 1087.
[71] Exhibit "P-12", Docket – Vol. 2, at p. 597; Exhibit "R-19", BIR Records, at p. 1085.
[72] *Commissioner of Internal Revenue vs. Azucena T. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006.

WE CONCUR:

ERLINDA P. UY
Associate Justice

(With Concurring and Dissenting Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

SUMITOMO CORPORATION-PHILIPPINE BRANCH,	**CTA CASE NO. 9422**
Petitioner,	Members:
	UY, *Chairperson,*
-versus-	**RINGPIS-LIBAN,** *and*
	MODESTO-SAN PEDRO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	JUN 30 2020 4:08 p.m.

x -- x

CONCURRING AND DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

I concur with the *ponencia* granting the Petition for Review, and cancelling and withdrawing the deficiency Value-Added Tax assessment issued against the petitioner, due to the following grounds: (1) the lack of authority of the revenue officers who conducted the audit examination of petitioner; and (2) the lack of due date in the assessment rendering the tax liability indefinite.

However, I disagree with the conclusion reached in the *ponencia* that the statement found in the Final Letter of Demand affected the validity of the assessment, specifically:

> **"Please take note that the interest will have to be adjusted if paid beyond the date specified therein."**[1]

In the *ponencia*, the Court ruled that the aforementioned statement rendered the tax liability indefinite since the said amount is still subject to modification. It cited the case of ***Commissioner of Internal Revenue v. Fitness By Design, Inc.***[2] as basis for its conclusion where the Supreme Court ruled, to wit:

[1] Emphasis supplied.
[2] G.R. No. 215957, 9 November 2016.

> The disputed Final Assessment Notice is not a valid assessment.
>
> First, it lacks the definite amount of tax liability for which respondent is accountable. It does not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. An assessment, in the context of the National Internal Revenue Code, is a "written notice and demand made by the [Bureau of Internal Revenue] on the taxpayer for the settlement of a due tax liability that is there: definitely set and fixed." Although the disputed notice provides for the computations of respondent's tax liability, the amount remains indefinite. It only provides that the tax due is still subject to modification, depending on the date of payment. Thus:
>
>> The complete details covering the aforementioned discrepancies established during the investigation of this case are shown in the accompanying Annex 1 of this Notice. The 50% surcharge and 20% interest have been imposed pursuant to Sections 248 and 249 (B) of the [National Internal Revenue Code], as amended. **Please note, however, that the interest and the total amount due will have to be adjusted if prior or beyond April 15, 2004**."

However, a close reading of the statement written on the assessment in ***Fitness,*** above, proves that its import or meaning is not the same with the statement found in this case.

In the said case, there was no fixed amount due since the final tax liability was dependent on when the taxpayer would settle the assessment, regardless if paid before or after the due date.

In the instant case, the statement in the assessment merely serves as a reminder to the taxpayer that the interest will increase if the assessment will not be paid within the due date provided in the assessment.

Given the foregoing reasons, it is my opinion that the statement found in the assessment issued against the petitioner did not affect the validity of the assessment.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice