REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

JINZAI EXPERTS, INC., Petitioner,	**CTA CASE NO. 9473**
	Members:
-versus-	Castañeda, Jr., *Chairperson,* Mindaro-Grulla, and, Bacorro-Villena, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 06 2019 11:30 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

This is a *Petition for Review* filed on September 21, 2016 by petitioner Jinzai Experts, Inc. against respondent Commissioner of Internal Revenue, praying for the: (1) reversal of the *Final Decision* dated June 30, 2016 of the latter, the *Final Decision on Disputed Assessments* (FDDA) dated September 11, 2012; and (2) invalidation of the Final Assessment Notices (FAN) under Formal Letter of Demand (FLD) No. IT-TVN150132-08-12-0369 dated April 18, 2012, finding petitioner liable for the total amount of ₱11,776,948.84, representing alleged deficiency income tax and improperly accumulated tax, inclusive of surcharges, interests and penalties, for taxable year 2008.

THE FACTS

Petitioner Jinzai Experts, Inc. is a domestic corporation duly organized under Philippine laws, engaged in labor services and lending productive and provident purposes, with principal office at Unit 6 MG Center Building Langkaan Dasmarinas, Cavite.[1]

Respondent is the Commissioner of Internal Revenue, the government agency charged with, among other powers and duties, the responsibility of collecting national internal revenue taxes.[2]

On February 3, 2010, respondent issued *Tax Verification Notice* (TVN) No. 00150132 to petitioner, signed by Bureau Internal Revenue (BIR) Revenue District Officer Raul Vicente Recto,[3] authorizing Revenue Officer (RO) Jamael B. Hamid [with Group Supervisor Roberto H. Dureza] to verify the supporting documents and/or pertinent records relative to petitioner's internal revenue tax liabilities for taxable year/period 2008.[4]

On March 29, 2012, petitioner received the *Preliminary Assessment Notice* dated March 28, 2012.[5]

On April 18, 2012, respondent issued the FAN under FLD No. IT-TVN150132-08-12-0369.[6]

On May 9, 2012, petitioner filed a protest contesting its tax liability.[7]

On September 13, 2012, petitioner received the FDDA dated September 11, 2012 denying its protest. Under the FDDA, the aggregate amount of the alleged deficiency taxes for taxable year 2008, inclusive of statutory increments, is ₱11,776,948.84, broken down as follows:[8] gr

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[1] Par. 4, *Petition for Review*, Docket – Vol. I, p. 12.
[2] Par. 1, Joint Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 504.
[3] Par. 2, Joint Stipulation of Facts, JSFI, Docket – Vol. II, p. 504.
[4] Exhibit "P-1", Docket – Vol. II, p. 755.
[5] Par. 3, Joint Stipulation of Facts, JSFI, Docket – Vol. II, p. 504.
[6] Par. 4, Joint Stipulation of Facts, JSFI, Docket – Vol. II, p. 504.
[7] Par. 5, Joint Stipulation of Facts, JSFI, Docket – Vol. II, p. 504.
[8] Par. 6, Joint Stipulation of Facts, JSFI, Docket – Vol. II, p. 505.

Type	Amount Due
Deficiency Income Tax	₱ 9,559,742.73
Deficiency Improperly Accumulated Earnings Tax	2,167,206.11
Compromise Penalty	50,000.00
Total (with ITR)	**₱ 11,776,948.84**

On October 3, 2012, petitioner filed with the Office of respondent, a request for reconsideration of the FDDA for deficiency taxes. However, in its *Final Decision* dated June 30, 2016, respondent denied such request and ordered petitioner to pay the aggregate amount of the alleged deficiency taxes stated in the FDDA, within thirty (30) days from receipt thereof.[9]

Petitioner then filed the instant *Petition for Review* with the Court on September 21, 2016.[10]

On October 21, 2016, respondent filed a *Motion for Extension of Time to File Answer*,[11] which the Court granted in an Order dated October 24, 2016.[12] Respondent filed his *Answer* on November 16, 2016,[13] interposing the following special and affirmative defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

> Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to his defenses which are discussed hereunder and incorporate them herein by way of reference and, in addition thereto, most respectfully avers THAT:
>
> 7. A revenue regulation, the issuance of which is authorized by statute, has the force and effect of law (*Vitug & Acosta, Tax Law and Jurisprudence, 3rd Edition, p. 55);*
>
> 8. Assessment [*sic*] are *prima facie* 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. (*Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 109);*

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[9] Par. 7, Joint Stipulation of Facts, JSFI, Docket – Vol. II, p. 505.
[10] Docket – Vol. I, pp. 10 to 312 (including Annexes).
[11] Docket – Vol. I, pp. 315 to 316.
[12] Docket – Vol. I, p. 318.
[13] Docket – Vol. I, pp. 319 to 330.

9. The power of the Commissioner of Internal Revenue to interpret the provisions of the National Internal Revenue Code of 1997 is provided under Section 4 of the said code, thus:

> 'Section 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. – The power to interpret the provisions of this code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>
> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties impose in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.'

Clearly from the above cited provision, the power to interpret the provisions of the Tax Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner of Internal Revenue, subject to review by the Secretary of Finance.

Pursuant to this power the BIR issued RMC No. 40-2003 clarifying that a 'letter notice' issued by the respondent to taxpayers pursuant to the Third Party Information Program is considered as a 'notice of audit or investigation', contemplated under paragraph 3, Section 6(A) of the NIRC of 1997.

In fact, the High Court has recently upheld the validity of Tax Verification Notice in the case of Big AA Corporation, it stated that 'under the provisions of Section 6(A) of the NIRC of 1997, a taxpayer can no longer amend its tax returns once a notice of audit or investigation is issued against it within the three-year period allowed by law for such amendment. A notice of audit or investigation, as the name implies, is a letter informing the taxpayer that there exists certain discrepancies or inconsistencies in its annual returns, thus, there is a need to inspect or examine its book of account. In practice, the respondent issues Letters of Authority (LOA) in cases where there are inconsistencies between petitioner's returns filed and respondent's records of documents, a Tax Verification Notice (TVN) for refund cases filed by taxpayers. Nonetheless, their designations may be different, but an LOA or a TVN also constitutes an audit or investigation. (*Big AA Corporation vs. Bureau of Internal Revenue, CTA Case No. 7093, February 22, 2006) (Emphasis supplied)*

Clearly from the discussion above, a Tax Verification Notice (TVN) validly issued for the purpose of audit and examination of the books of accounts and other accounting records of a taxpayer has the same force and effect as the Letter of Authority (LOA) issued for the same purpose. **Therefore, the Tax Verification Notice**

No. 0015-132 that was issued authorizing the Revenue Officer to examine the books of accounts and other accounting records of Jinzai for all internal revenue tax liabilities for taxable year 2008 is a valid substitute of Letter of Authority (LOA) as required in Section 6 and 10 of the NIRC, as amended.

It is also noteworthy to mention that the aforesaid TVN was issued in accordance with Revenue Memorandum Order No. (RMO) 19-2009 Audit Program for the Revenue District Offices, which prescribed uniform policies, guidelines and procedures in the audit of 2008 tax returns by Revenue District Officers. Undoubtedly, RMO No. 19-2009 sanctions the issuance of TVN to examine the books of accounts and accounting records of taxpayers.

10. Section 113 as amended by Republic Act (R.A.) 9337 provides:

> **'Section 113. Invoicing and Accounting Requirements for VAT-Registered Persons. –**
>
> (A) Invoicing Requirements. – A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:
>
> > (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and
> >
> > (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.
>
> (B) Information contained in the VAT Invoice or VAT Official Receipt. – the following shall be indicated in the VAT invoice or VAT official receipt:
>
> xxx
>
> > **(c) If the sale is subject to zero percent (0%) value-added tax, the term 'zero rated sale' shall be written or printed prominently on the invoice or receipt;**
>
> xxx
>
> *(Emphasis supplied)*

Jinzai argues that the aforecited provision allows the VAT-registered taxpayers the option where to put the requirement of writing prominently the term 'ZERO RATED SALE'.

We do not agree. *9r*

Section 113 of the NIRC did not provide a distinction between an invoice and an official receipt as evidence of a zero-rated transaction but, under Revenue Regulation (RR) 16-2005 the BIR specifically provided the mechanics on how and when to use an invoice or an official receipt for every transaction of a VAT-registered person. Revenue Regulation (RR) 16-2005 provides:

'Section 4.113-1 Invoicing Requirements. –

(A) 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.**

Only VAT-registered persons are required to print their TIN followed by the word 'VAT' in their invoice or official receipts. Said documents shall be considered as a 'VAT Invoice' or 'VAT Official Receipt'. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT Invoice/official receipt shall be prepared at least in duplicate, the original be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) Information contained in VAT invoice or VAT official receipt. – the following information shall be indicated in VAT invoice or VAT official receipt:
(1)A statement that the seller is a VAT-registered person, followed by his TIN;
(2)The total amount which the purchaser pays or his [*sic*] obligated to pay to the seller with the indication that such amount includes VAT; Provided, that:
xxx

(c) **If the sale is subjected to zero percent (0%) VAT, the term zero-rated sale shall be written or printed prominently on the invoice or receipt;**

xxx

Based on the above cited revenue regulations, it is clear that the requirement of writing or printing prominently the term 'zero rated' sale as required Sec. 4.113-(B)(20(c) of RR 16-2005 should be read together with 4.113-1(A) of the same RR 16-2005. A VAT-registered person is required to issue a VAT invoice for every sale, barter or exchange of goods or properties while VAT official receipt is required for every lease of goods or properties, and for every sale, barter or exchange of services.

The Supreme Court had the occasion to discuss the issue on the requirement of Invoicing and Issuance of Official Receipts of a VAT-Registered taxpayer, thus, the Court held that **'The requirement is reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services. As aptly explained by the CTA's First Division, the appearance of the word 'zero-rated' on the face of invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT was actually paid. If, absent such word, a successful claim for input VAT is made, the government would be refunding money it did not collect. Further, the printing of the word 'zero-rated' on the invoices helps segregate sales that are subject to 10% (now 12%) VAT from those sales that are zero-rated.** *(Eastern Telecommunication Philippines, Inc. vs. The Commissioner of Internal Revenue, G.R. 168856, August 29, 2012)*

Therefore, since Jinzai is engaged in the business of providing services, it is therefore required to issue Official Receipts on every sale transaction. If the sale is subjected to zero percent (0%) VAT, the term 'zero-rated' sale shall be written or printed prominently on the official receipt. Thus, the imprinting of the term 'zero-rated sale' on the invoice but not on the official receipt cannot be considered as a substantial compliance of Section 11, paragraph (C) of the NIRC.

11. Jinzai assails the validity of the assessment of deficiency Income Tax, Improperly Accumulated Earnings Tax and Compromise Penalty contending that these amounts are contrary to the evidence presented. Clearly, the issues being raised by Jinzai are questions of facts which have been previously raised and passed upon by the Regional Director in its Final Decision on Disputed Assessment dated September 11, 2012. Unfortunately, the petitioner failed to submit the relevant documents to support its protest in the administrative proceedings of the case. This is fatal.

Section 228 of the 1997 Tax Code partly reads as follows:

'Sec. 228. Protesting Assessment

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

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

Implementing the aforesaid provision, Section 3, 3.1.5 of Revenue Regulations No. 12-99 dated September 6, 1999, provides that the taxpayer shall submit the required documents in support of its protest within sixty (60) days from the date of filing of the protest, otherwise, the assessment shall become final and executory, and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit and the said Revenue Officer shall state this fact in his report of investigation. In the instant case, despite the length of time given to herein petitioner, it failed to submit the required documents in support of its protest

In the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands (521 SCRA 373, 386),* the Supreme Court upheld the correctness of the tax assessment against the defendant ruling:

'In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a BIR examiner & approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.'

Therefore, there being no allegation nor proof of any irregularity in the performance of the examiner's duty and that fact that Jinzai was given ample opportunity to raise the issues of facts and adduce evidence in support thereof, the presumption as to the correctness of the tax assessment must be upheld.

12. Section 248(B) of the NIRC provides that:

'SEC. 248. Civil Penalties. – xxx

(B) xxx That a **substantial underdeclaration of taxable sales, receipts or income,** or substantial overstatement of deductions as determined by the Commissioner pursuant to the rules and regulations, xxx **shall constitute prima facie evidence of a false or fraudulent return:** *Provided further,* **That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of actual deductions shall render the taxpayer liable for substantial underdeclaration of sales, receipts or**

> **income for overstatement of deductions, as mentioned herein**" *(Emphasis supplied)*

Clearly from above, the law has already made a presumption that substantial underdeclaration of the taxpayer shall constitute prima facie evidence of a false or fraudulent return. The onerous task of overcoming this presumption weighs heavily on the taxpayer challenging the validity of such presumption.

In this case, Jinzai has the burden of overcoming the presumption of its fraudulent intent when it did not declare income equivalent to more than thirty percent (30%) from the amount indicated in its returns. Whether Jinzai was able to overcome the presumption based on the pieces of evidence it presented at the regional level is already a question of fact which have been threshed out at the regional level and the arguments of Jinzai herein have been considered by the Regional Director when it rendered its Final Decision of Disputed Assessment on September 11, 2012.

Moreover, the Regional Director in its letter, dated April 17, 2012, in reply to the protest to the PAN, cited three (3) circumstanced [*sic*] indicating the fraudulent intent to evade payment of correct taxes, as stated below:

1.) Cash collections and gross income from official receipts and sales invoices totaled P83,758,746.97 and P82,887,902.54, respectively. However, the reported gross income in the income tax return is only P4,361,298.34;

2.) Year-end debit adjustments of sales to further decrease the annual sales; and

3.) Creditable withholding tax amounting to P543,378.17 were claimed but no corresponding revenues were declared on its income tax return.

It should be noted that Jinzai failed to make a satisfactory explanation on the above irregularities. Instead, it resorted to malicious accusations against revenue officials without any evidence and filing complaints against these officials before various government offices. This action of the taxpayer only proves of its desperate attempt to divert the attention from the real issue of this case. Jinzai committed substantial underdeclaration of its income through various schemes with the intention to evade payment of correct taxes.

Therefore, the findings that Jinzai committed fraud in filing its income and value added tax returns when it did not declare more than thirty percent (30%) of its income for taxable year 2008 is hereby sustained. Hence, the imposition of 50% surcharge and compromise penalty against Jinzai has legal and factual bases.

Moreover, a closer examination of the relevant provisions of the Tax Code would reveal that Jinzai's contention that the FDDA is void as the FAN was issued beyond the prescriptive period is not correct. Sections 203 and 222 of the National Internal Revenue Code (NIRC) of 1997, as amended provides:

> '**SEC. 203. Period of Limitation Upon Assessment and Collection.** – Except as provided in Section 222, **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.'
>
> '**SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –**
>
> (a) **In the case of a false or fraudulent return with intent to evade tax or failure to file a return, the tax may be assessed**, or proceeding in court for the collection of such tax may be filed without assessment **at any time within ten (10) years after the discovery of the falsity, fraud or omission:** Provided, That in a fraud assessment which has become final and executor, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof."
>
> *(Emphasis supplied)*

From the foregoing, it can be gleaned that there are three exceptions to the period of limitation of assessment, namely; (1) filing of false return, (2) filing of fraudulent return with intent to evade tax, and (3) failure to file a return. The tax may be assessed or a proceeding in court for the collection of such tax may be begun without assessment at any time within ten years after the discovery of the falsity, fraud or omission.

In this case, Jinzai has not declared substantial portion of its income on its income tax return. In other words, there is deviation from the truth, which is too substantial to be ignored to the prejudice of the government and which renders the income tax return false within the purview of Section 222(a) of the NIRC of 1997, as amended.

In the case of Aznar vs. Court of Tax Appeals and Collector of Internal Revenue, a false return has been defined as a deviation from the truth or fact, whether intentional or not, to wit: *[initials]*

> 'We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely, `falsity', `fraud'. and `omission'. That there is a difference between **`false return'** and `fraudulent return' cannot be denied. While the first merely implies **deviation from the truth, whether intentional or not,** the second implies intentional or deceitful entry with intent to evade the taxes due.'
>
> *(Emphasis supplied)*

Furthermore, in the case of *Commissioner of Internal Revenue vs. The Estate of Benigno P. Toda, Jr., et al.,* the higher Court ruled that even assuming that the return merely failed to reflect the true or actual amount without fraud on the part of the taxpayer, in other words, there is merely falsity in the return, the prescriptive period to assess the correct taxes is ten (10) years from the discovery of the falsity. The pertinent portion of the said Decision reads:

> 'It is true that in a query dated 24 August 1989, Altonaga, through his counsel, asked the Opinion of the BIR on the Tax consequence of the two sale transaction. Thus, the BIR was amply informed of the transactions even prior to the execution of the necessary documents to effect the transfer. Subsequently, the two sales were openly made with the execution of public documents and the declaration of taxes for 1989. However, these circumstances do not negate the existence of fraud. As earlier discussed these two transactions were tainted with fraud. And even assuming *arguendo* that there was no fraud, **we find that the income tax return filed by CIC for the year 1989 was false. It did not reflect the true or actual amount gained from the sale of the Cibeles property xxx.**
>
> As stated above, **the prescriptive period to assess the correct taxes in case of false returns is ten years from the discovery of the falsity.** Xxx"
>
> *(Emphasis supplied)* gr

> In the present case, the substantial underdeclaration of its taxable income make Jinzai's Income Tax returns for the taxable year 2008 false. Accordingly, the ten (10)-year prescriptive period applies and not the three (3)-year prescriptive period. Hence, when the Final Assessment Notice with Details of Discrepancy was sent on April 18, 2012, it was well within the ten (10)-year period prescribed for the assessment of its income tax for the taxable year 2008.
>
> 13. Over and above all, petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated wihotu [*sic*] unnecessary hindrance (Commissioner vs. Algue, Inc. L-28896, 17 February 1988). Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another. **Non videtur quisquam id capere quod ei necesse est alii retitutere**."

On November 18, 2016, this Court set the pre-trial conference of the instant case on January 19, 2017, and ordered both parties to submit their respective pre-trial brief.[14] Petitioner filed its *Pre-Trial Brief* on January 16, 2017,[15] while respondent filed his *Pre-Trial Brief* through registered mail on January 17, 2017 which was received by the Court on February 1, 2017.[16]

On January 19, 2017, this Court ordered the parties to file a *Joint Stipulation of Facts and Issues*,[17] which they submitted on February 3, 2017.[18] Hence, the Pre-trial Order was issued by the Court on February 13, 2017,[19] thereby terminating the pre-trial stage.

The trial of the case then ensued.

To prove its case, petitioner presented the following witnesses: (1) Lesley C. Romero,[20] petitioner's Accounting Manager; and (2) Grace Laurice R. Declaro,[21] petitioner's President. *jc*

[14] Notice of Pre-Trial Conference, Docket – Vol. I, pp. 332 to 333.
[15] Docket – Vol. I, pp. 334 to 346.
[16] Docket – Vol. II, pp. 497 to 499.
[17] Order dated January 19, 2017, Docket – Vol. II, p. 495.
[18] Docket – Vol. II, pp. 504 to 510.
[19] Docket – Vol. II, pp. 513 to 518.
[20] Minutes of the hearing held on, and Order dated, March 20, 2017, Docket – Vol. II, pp. 630 to 631.
[21] Minutes of the hearing held on, and Order dated, May 8, 2017, Docket – Vol. II, pp. 647 to 648.

On May 19, 2017, petitioner filed its *Formal Offer of Evidence.*[22]

Thereafter, on July 25, 2017, petitioner filed a *Manifestation with Motion [For the Issuance of an Order Finding that Respondent is Deemed to Have Waived the Presentation of Evidence].*[23]

In the Resolution dated August 8, 2017,[24] the Court admitted Exhibit "P-6" of petitioner, and denied its remaining Exhibits, to wit: Exhibits "P-1", "P-1-A", "P-2-A", "P-2-B", "P-2-D", "P-2-E", "P-3", "P-5", "P-8", "P-9", "P-9-A", "P-10", "P-11", "P-12", and "P-13", for failure to submit the duly marked exhibits; "P-2-C", "P-2-F", "P-4", "P-7", "P-7-A", and "P-8-A", for failure to submit the duly marked exhibits and failure to present their originals for comparison; "P-14-A", "P-14-B", "P-14-C", and "P-14-D", for failure to present their originals for comparison; and "P-10-A", "P-10-B", "P-14-E", "P-14-F", "P-15-A", "P-15-B", "P-15-C", "P-15-D", "P-15-E", "P-15-F", "P-15-G", "P-15-H", "P-15-I", "P-15-J", "P-15-K", "P-15-L", "P-15-M", "P-15-N", "P-15-O", "P-15-P", "P-15-Q", "P-15-R", "P-15-S", "P-15-T", "P-15-U", "P-15-V", "P-15-W", "P-15-X", "P-15-Y", "P-15-Z", "P-15-AA", "P-15-BB", "P-16", "P-16-A", "P-16-B", "P-18", "P-18-A", and "P-18-B", for not being found in the records of the case.

On August 8, 2017, respondent submitted the Judicial Affidavit of one of its named witnesses, Revenue Officer Jamael B. Hamid.[25] However, in its *Manifestation* filed on August 22, 2017,[26] petitioner manifested its continuing objection to the belated submission of the said Judicial Affidavit.

Also, on August 22, 2017, petitioner filed an *Omnibus Motion: (1) For Partial Reconsideration; and (2) To Admit Exhibits (Re: Resolution dated 8 August 2017) With Proffer of Evidence.*[27]

In the Resolution dated September 5, 2017,[28] the Court partially granted petitioner's *Manifestation with Motion [For the Issuance of an Order Finding that Respondent to Have Waived the*

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[22] Docket – Vol. II, pp. 653 to 713.
[23] Docket – Vol. II, pp. 716 to 726.
[24] Docket – Vol. II, pp. 729 to 731.
[25] Docket – Vol. II, pp. 732 to 741.
[26] Docket – Vol. II, pp. 745 to 748.
[27] Docket – Vol. II, pp. 750 to 754.
[28] Docket – Vol. II, pp. 1100 to 1103.

Presentation of Evidence], deeming respondent to have waived the right to present his witness, Roberto H. Durea, but allowing and noting the submission of the Judicial Affidavit of Jamael B. Hamid, subject to the payment of a fine in the amount of ₱5,000.00.

On September 13, 2017, respondent filed, through registered mail, a *Motion for Reconsideration (On the Resolution Issued on August 2, 2017)*[29], which was received by the Court on September 25, 2017.[30] In this *Motion,* respondent prays for the reduction of the fine imposed by the Court from ₱5,000.00 to ₱1,000.00.

For its part, petitioner filed a *Motion for Partial Consideration (Re: Resolution dated September 5, 2017)* on November 27, 2017.[31] In this *Motion,* petitioner prays for the partial reconsideration of this Court's Resolution dated September 5, 2017, and that respondent be deemed to have waived the presentation of evidence.

In the Resolution dated February 1, 2018,[32] the Court **admitted** petitioner's Exhibits "P-1", "P-1-A", "P-2-A", "P-2-B", "P-2-D", "P-2-F", "P-3", "P-3-A", "P-5", "P-6", "P-8", "P-8-A", "P-9", "P-9-A", "P-10-A", "P-11", "P-12", "P-13", "P-14-A", "P-14-B", "P-14-C", "P-14-D", "P-14-E", "P-14-F", "P-15-A", "P-15-B", "P-15-C", "P-15-D", "P-15-E", "P-15-G", "P-15-H", "P-15-I", "P-15-J", "P-15-K", "P-15-L", "P-15-M", "P-15-N", "P-15-O", "P-15-P", "P-15-Q", "P-15-R", "P-15-S", "P-15-T", "P-15-U", "P-15-V", "P-15-W", "P-15-X", "P-15-Y", "P-15-Z", "P-15-AA", "P-15-BB", "P-16", "P-16-A", "P-16-B", "P-18", "P-18-A", and "P-18-B"; **but still denied** Exhibits "P-2-C", "P-2-E", "P-4", "P-7", "P-7-A", and "P-15-F", for failure to present originals for comparison, and Exhibits "P-10" and "P-10-B", for not being found in the records of this case. In the same Resolution, the Court denied respondent's *Motion for Reconsideration (On the Resolution Issued August 2, 2017)* and petitioner's *Motion for Partial Reconsideration (Re: Resolution dated September 5, 2017),* for lack of merit.

In his *Manifestation* filed on February 5, 2018,[33] respondent prays for the reduction of the ₱5,000.00 fine, alleging that

[29] The Resolution being assailed in this *Motion* is dated "September 5, 2017", not "August 8, 2017".
[30] Docket – Vol. II, pp. 1111 to 1113.
[31] Docket – Vol. II, pp. 1121 to 1132.
[32] Docket – Vol. III, pp. 1137 to 1141.
[33] Docket – Vol. III, pp. 1142 to 1144.

respondent's counsel actually sent copies of the documets/exhibits mentioned in the subject Judicial Affidavit of RO Hamid to petitioner's counsel, albeit to the old address.

In the Resolution dated March 20, 2018,[34] the Court noted respondent's *Manifestation*, and ordered him to pay the fine in the amount of ₱5,000.00, within five (5) days from notice and to submit the proof of payment thereof within the same period.

At the hearing held on April 23, 2018,[35] respondent presented its lone witness, RO Jamael B. Hamid, while petitioner's counsel manifested that petitioner filed a *Petition for Review* with the Supreme Court under Rule 65.

On April 24, 2018, the Court received, through private courier, petitioner's *Petition for Certiorari* that was filed before the Supreme Court,[36] arguing that this Court gravely abused its discretion, and overstepped its jurisdiction, in allowing the late submission of the assailed Judicial Affidavit of respondent.

However, on June 6, 2018, the Supreme Court dismissed petitioner's *Petition for Certiorari*,[37] apparently for want of merit.

In the Resolution dated September 7, 2018,[38] the Court denied the admission of the following exhibits of respondent, *viz*:

1) Exhibits "R-11" and "R-11-a", offered as the Judicial Affidavit of Revenue Officer Jamael B. Hamid, for the failure of respondent's counsel to pay the fine of ₱5,000.00 as a condition for the admission of the said belatedly filed Judicial Affidavit, pursuant to the Resolutions dated September 5, 2017, February 1, 2018 and March 20, 2018, and the Judicial Affidavit Rule; and

2) Exhibits "R-1", "R-1-a", "R-2", "R-2-a", "R-3", "R-3-a", "R-4", "R-4-a", "R-5", "R-5-a", "R-6", "R-7", "R-8", "R-9", and "R-

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[34] Docket – Vol. III, pp. 1201 to 1203.
[35] Minutes of the hearing held on, and Order dated, April 23, 2018, Docket – Vol. III, pp. 1206 to 1207.
[36] Docket – Vol. III, pp. 1267 to 1315.
[37] Notice issued by the Division Clerk of Court, Atty. Wilfredo V. Lapitan, quoting the Resolution dated June 6, 2018 rendered by the Third Division of the Supreme Court, Docket – Vol. III, pp. 1356 to 1358.
[38] Docket – Vol. III, pp.1361 to 1362.

10", for failure to identify the same, considering that these exhibits were mentioned in the denied Judicial Affidavit.

In the same Resolution, the Court gave the parties a period of thirty (30) days from receipt thereof, within which to file their respective memorandum.

On October 30, 2018, the Records Division of the Court reported that the counsel for both parties failed to file their respective memorandum.[39]

Thus, on November 23, 2018, the Court deemed the case submitted for decision as of such date.[40]

THE ISSUES

The issues submitted by the parties for resolution of this Court are as follows:[41]

"1. Whether or not the FAN/FLD and FDDA are void considering that:

a) The TVN is not a valid Letter of Authority since it was merely signed by the Revenue District Officer.
b) The FAN/FLD was issued beyond the 3-year prescriptive period for the Respondent to make an assessment.

2. Whether or not Petitioner is liable for alleged deficiency Income Tax in the amount of Nine Million Five Hundred Fifty Nine Thousand Seven Hundred Twenty Four Pesos and 73/100 (P9,559,724.73).

3. Whether or not Petitioner is liable for alleged Improperly Accumulated Earnings Tax in the amount of Two Million One Hundred Sixty Seven Thousand Two Hundred Six Pesos and 11/100 (P2,167,206.11).

4. Whether or not Petitioner is liable for alleged Compromise Penalty in the amount of Fifty Thousand Pesos (P50,000)." *ge*

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[39] Records Verification dated October 30, 2018, Docket – Vol. III, p. 1363.
[40] Resolution dated November 23, 2018, Docket – Vol. III, p. 1364.
[41] Joint Statement of Issues to be Tried or Resolved, JSFI, Docket – Vol. II, p. 505.

Petitioner's arguments:

Petitioner argues that the assessment is void and cannot be used as a means to justify any tax liability alleged against petitioner; and that considering that no valid Letter of Authority (LOA) was issued by the BIR to authorize the conduct of examination of the taxpayer, the assessment itself if void and should not produce any legal effect.

Moreover, petitioner avers that the FAN was released beyond the three-year prescriptive period for the respondent to make an assessment pursuant to Sec. 203 of the NIRC of 1997, as amended; and that the 10-year prescriptive period for making an assessment in case of fraudulent return with intent to evade taxes does not apply as no such intent can be gleaned, much less presumed, from the present case.

Furthermore, petitioner contends that respondent grossly erred in hastily concluding that petitioner is liable for deficiency income taxes; and in imposing Improperly Accumulated Earnings Tax, considering that petitioner's taxable income for 2008 is significantly lower than what it has made up based on faulty assumptions.

Finally, petitioner maintains that respondent erred in imposing compromise penalty.

Respondent's counter-arguments:

Respondent, on the other hand, argues that a TVN validly issued for the purpose of audit and examination of the books of accounts and other accounting records of a taxpayer has the same force and effect as the LOA issued for the same purpose.

In addition, respondent avers that considering that petitioner is engaged in the business of providing services, it is therefore required to issue official receipts of every sale transaction. Respondent likewise contends that the issues raised by petitioner are questions of facts which have been previously raised and passed upon by the Regional Director in its FDDA dated September 11, 2012. Respondent is of the view that petitioner failed to submit the relevant documents to support its protest in the administrative proceedings of the case.

Lastly, according to respondent, the substantial underdeclaration of petitioner's taxable income makes petitioner's income tax returns for taxable year 2008 false. Thus, respondent argues that the 10-year prescriptive applies and not the three-year prescriptive period.

THE COURT'S RULING

The instant *Petition for Review* must be granted.

Petitioner mainly argues that the assessment is void, considering that no valid LOA was issued by the BIR to authorize the examination of petitioner. On the other hand, respondent contends that a TVN validly issued for the purpose of audit and examination of the books of accounts and accounting records of petitioner has the same force and effect as the LOA issued for the same purpose.

We rule in favor of petitioner.

Section 6(A) of the NIRC of 1997 reads:

> "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, an authority emanating from respondent or his duly authorized representative is required before an examination and an assessment may be made against a taxpayer.

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 issued by the Revenue Regional Director</u>, 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.)*

Evidently, a grant of authority, through an LOA issued by the Revenue Regional Director, 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,*[42] the Supreme Court emphasized the importance and significance of an LOA in examining the books of accounts and other accounting records of taxpayers and in assessing internal revenue taxes, to wit:

> "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:

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

> 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, **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.
>
> 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.*,[43] 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** gr

[43] 649 Phil. 519 (2010).

> **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. <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)*

Based on the foregoing, ROs must be authorized, through an LOA, in order that said officers may validly examine the books of accounts and other accounting records of a taxpayer. In the absence of an LOA, the tax assessments issued by the BIR against such taxpayer shall be void.

In the instant case, it is undisputed that RO Jamael B. Hamid's authority was only derived from a TVN,[44] and not an LOA. Moreover, the said TVN is merely signed by a Revenue District Officer, and not a Revenue Regional Director. Correspondingly, RO Jamael B. Hamid is **not** clothed with valid authority to examine the books of accounts and other accounting records of petitioner. Not having a valid authority to examine the latter in the first place, the subject deficiency tax assessments for taxable year 2008 issued by respondent against petitioner is inescapably void. As such, the said deficiency tax assessments bear no valid fruit.[45]

Finding the subject tax assessments void, it becomes unnecessary to resolve the remaining issues raised by the parties.

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

[44] Par. 2, Joint Stipulation of Facts, JSFI, Docket – Vol. II, p. 504; and Exhibit "P-1", Docket – Vol. II, p. 755

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

Decision of respondent dated June 30, 2016 and the FDDA dated September 11, 2012 are hereby **SET ASIDE**. In addition, the FAN under FLD No. IT-TVN150132-08-12-0369 dated April 18, 2012 finding petitioner liable for the total amount of ₱11,776,948.84, representing alleged deficiency income tax and improperly accumulated tax, inclusive of surcharges, interests and penalties for taxable year 2008, is **CANCELLED.**

SO ORDERED.

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

WE CONCUR:

(On leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and 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