REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HARD ROCK CAFÉ (MAKATI CITY) INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9945

Members:

CASTAÑEDA, JR., *Chairperson,*
BACORRO-VILLENA, *and,*
CUI-DAVID, *JJ.*

Promulgated:
DEC 10 2021 4:10 p.m.

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed on 09 October 2018 by petitioner Hard Rock Café (Makati City) Inc. (**petitioner/HRCMCI**) pursuant to Rule 8, Section 3(a)[2] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks to appeal the inaction of the Commissioner of Internal Revenue (**respondent/CIR**) on petitioner's Request for Reconsideration of respondent's assessment in the aggregate amount of ₱53,148,347.05, allegedly representing deficiency taxes for calendar year (**CY**) 2014.

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[1] Division Docket, Volume I, pp. 10-344, with annexes.

[2] **SEC. 3.** *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal [R]evenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at Level III, Glorietta 3, Ayala Center, Makati City.[3] It is registered with the Bureau of Internal Revenue (**BIR**) with Tax Identification Number (**TIN**) 004-730-226-000 and Certificate of Registration No. OCN9RC0000218609 issued on 31 January 1996.[4]

As stated in its Articles of Incorporation (**AOI**), petitioner's primary purpose is to "establish and maintain restaurants, coffee shops, refreshment parlors, cocktail lounges, make, cook, arrange, serve and cater goods, drinks, refreshments and other foods or commodities commonly served in such establishments, to offer such other services to the public in connection with the operation of restaurant and catering enterprises, including the provision of music, disco dancing and other forms of entertainment, to buy, sell and generally deal in souvenir goods, wares, and merchandise of any and every description related to its restaurant and catering business, and to do and perform such other acts and things necessary or incidental to the accomplishment of the foregoing corporate business and objects in so far as may be allowed by applicable laws and rules and regulations.[5]

Respondent, on the other hand, is the duly appointed CIR vested with authority to carry out the functions, duties, and responsibilities of the said office including, *inter alia*, to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by the BIR.

FACTS OF THE CASE

On 11 November 2017, petitioner received a copy of the Preliminary Assessment Notice[6] (**PAN**) dated 11 October 2017, with attached Details of Discrepancies[7], assessing it for deficiency income

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3 Exhibit "P-1", Division Docket, Volume II, p. 843.
4 Exhibit "P-2", id., p. 850.
5 Supra at note 3, pp. 841-842.
6 Exhibit "P-3", id., pp. 852-853.
7 Id., pp. 854-855.

tax (IT), percentage tax (PT) and expanded withholding tax (EWT) in the aggregate amount of ₱52,559,461.93, broken down as follows:

Tax Type	Basic	Interest	Surcharge	Total
IT	₱9,419,654.33	₱4,846,605.71	₱–	₱14,266,260.04
PT	20,467,061.12	11,427,909.74	5,116,765.28	37,011,736.14
EWT	819,437.63	462,028.12	–	1,281,465.75
Total	**₱30,706,153.08**	**₱16,736,543.57**	**₱5,116,765.28**	**₱52,559,461.93**

On 24 November 2017, or within fifteen (15) days from receipt of the PAN, petitioner filed its Reply to the PAN.[8]

On 15 December 2017, petitioner received a copy of the Formal Assessment Notice[9] (FAN) dated 28 November 2017, with attached Details of Discrepancies[10], finding it liable for deficiency IT, PT and EWT in the total amount of ₱53,148,347.05, broken down as follows:

Tax Type	Basic	Interest	Surcharge	Total
IT	₱9,419,654.33	₱5,027,256.61	₱–	₱14,446,910.94
PT	20,467,061.12	11,820,428.72	5,116,765.28	37,404,255.12
EWT	819,437.63	477,743.36	–	1,297,180.99
Total	**₱30,706,153.08**	**₱17,325,428.69**	**₱5,116,765.28**	**₱53,148,347.05**

On 12 January 2018, or within thirty (30) days from receipt of the FAN, petitioner filed its Protest[11] of even date, requesting the reinvestigation of the FAN.

On 13 March 2018, petitioner submitted, through Transmittal Letters[12] addressed to BIR Revenue Region No. 8 – Makati, additional documents in support of its Protest against the FAN. However, respondent did not act on petitioner's Protest against the FAN within the 180-day period under Section 228[13] of the NIRC of 1997, as

8 Exhibit "P-4", id., pp. 856-868.
9 Exhibit "P-5", id., pp. 870-871.
10 Id., pp. 872-873.
11 Exhibit "P-6", id., pp. 874-903.
12 Exhibits "P-7" and "P-8", id., pp. 904-909.
13 **SEC. 228.** *Protesting of Assessment.* — …

amended, and Section 3.1.4 of Revenue Regulations (**RR**) No. 12-99[14], as amended by RR No. 18-2013[15], reckoned from the submission of its additional supporting documents, or until 09 September 2018.

On 09 October 2018, or within 30 days from the lapse of the aforesaid 180-day period, petitioner filed a Petition for Review[16] before the Second Division, docketed as CTA Case No. 9945. It prayed for the cancellation and setting aside of respondent's assessment for deficiency taxes for CY 2014.

On 28 November 2018, after the Second Division granted respondent an extension[17], respondent filed his Answer[18]. There, respondent cited the following special and affirmative defenses: (1) in CTA Case No. 9135, the First Division found that petitioner's business provides entertainment similar to a "cabaret and night club" and its sales of food, refreshments, services, or merchandise served or provided in the bar, restaurant or other public place where there is music and dancing privileges or any other entertainment is an amusement establishment that should be subject to amusement tax; (2) petitioner is considered an amusement place within the definition of "night and day club" and "cabaret" under Revenue Memorandum Circular (**RMC**) No. 18-2010[19], and thus, it is subject to the 18% amusement tax imposed under Section 125(b)[20] of the NIRC of 1997, as amended, on its gross sales of food, refreshment, services, or merchandise served or provided to its customers, instead of the 12% Value-Added Tax (**VAT**); and, (3) the presumption of validity in favor of the subject deficiency tax assessments.

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

15 *Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*

16 Supra at note 1.

17 See Order dated 16 November 2018, Division Docket, Volume I, p. 350.

18 Id., pp. 351-359.

19 *Clarification on the Coverage and Taxability of Amusement Places under Section 125 (b) of the National Internal Revenue Code (Tax Code) of 1997, as Amended.*

20 **SEC. 125.** *Amusement Taxes.* - There shall be collected from the proprietor, lessee or operator of cockpits, cabarets, night or day clubs, boxing exhibitions, professional basketball games, Jai-Alai and racetracks, a tax equivalent to:

...

(b) Eighteen percent (18%) in the case of cabarets, night or day clubs;

...

On 17 December 2018, petitioner filed a "Motion for Extension of Time to File a Reply"[21], which the Second Division granted.[22] Petitioner then filed its Reply[23] on 27 December 2018.

In its Reply, petitioner countered that there is no basis for respondent's allegation that it is a "cabaret and nightclub" liable for amusement tax. According to it, the First Division in CTA Case No. 9135 found that, although it provides some form of entertainment similar to that listed under Section 125(b)[24] of the NIRC of 1997, as amended, the same is but incidental to its main line of business of serving food and drinks. Further, the First Division held in both the Decision and the Resolution that there is no legal and factual basis to hold petitioner liable for amusement tax.

On 18 December 2018, the Second Division issued a Notice of Pre-Trial Conference[25] and set the case for pre-trial conference on 31 January 2019. Subsequently, on 25 January 2019, petitioner filed a "Motion to Reset Pre-Trial Conference".[26] However, the Court instead directed the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**) for mediation proceedings.[27]

On 04 April 2019, the PMC-CTA submitted a "Request for Extension"[28] asking the Second Division to grant a final extension of 30 days from 10 April 2019 (the last day of the 30-day period allowed for the settlement of the case under A.M. No. 01-10-5-PHILJA-SC) reckoned from the Preliminary Mediation Conference conducted on 11 March 2019, within which to reach an amicable settlement.

In the Resolution dated 10 April 2019[29], the Second Division granted the parties a final extension of 30 days (or until 10 May 2019) to reach an amicable settlement.

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21 Division Docket, Volume I, pp. 363-365.
22 See Order dated 07 January 2019, id., p. 372.
23 Id., pp. 366-371.
24 Supra at note 20.
25 Division Docket, Volume I, pp. 361-362.
26 Id., pp. 373-376.
27 See Resolution dated 31 January 2019, id., p. 384.
28 Id., p. 394.
29 Id., p. 396.

On 21 May 2019, the Second Division received the Mediator's Report dated 20 May 2019 from the PMC-CTA, stating the unsuccessful mediation between the parties.[30] The Court noted the same and set the case anew for pre-trial conference on 04 July 2019.[31]

On 14 June 2019, petitioner filed another "Motion to Reset Pre-Trial Conference"[32], asking that the pre-trial conference be cancelled and reset to any date after 25 August 2019 considering that respondent has yet to transmit to the Second Division the pertinent BIR Records. The Court granted the same but reset the pre-trial conference to 15 August 2019.[33]

Ahead of the scheduled pre-trial conference, respondent filed his Pre-Trial Brief[34] on 23 January 2019, while petitioner filed its Pre-Trial Brief[35] on 08 August 2019.

On 08 August 2019, petitioner filed an "Urgent Motion to Reset Pre-Trial Conference"[36] (**Urgent Motion**), asking the Second Division to again cancel the scheduled pre-trial conference and reset the same to 18 November 2019. In its Urgent Motion, petitioner explained that its intended witness, who will execute a judicial affidavit, is suffering from a critical illness and is scheduled to go through chemotherapy the next month. Petitioner thus prayed for additional time to identify and thereafter secure the judicial affidavit of an alternative witness.

In the Order dated 15 August 2019[37], without objection from respondent's counsel, the Second Division granted petitioner's Urgent Motion and reset the pre-trial to 10 October 2019. However, in case the parties are able to submit a Joint Stipulation of Facts and Issues (**JSFI**), the scheduled pre-trial will be cancelled. In the same Order, the Court granted petitioner 30 days, or until 14 September 2019, to file its Motion to Commission an Independent Certified Public Accountant

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30 Id., p. 397.
31 See Resolution dated 24 May 2019, id., p. 407.
32 Id., pp. 408-411.
33 See Order dated 18 June 2019, id., p. 415.
34 Id., pp. 378-380.
35 Id., pp. 416-437.
36 Id., Volume II, pp. 438-444, with annexes.
37 Id., p. 447.

(**ICPA**) and set the initial presentation of petitioner's evidence on 11 November 2019.

On 16 September 2019, petitioner filed a "Motion to Commission Independent Certified Public Accountant"[38] (**Motion to Commission ICPA**) for the commissioning of Atty. Adan T. Delamide (**Delamide**) as the ICPA. Subsequently, in the Order dated 10 October 2019[39], the Second Division appointed Delamide as the ICPA and directed him to submit his report within 30 days therefrom. Accordingly, on 11 November 2019, ICPA Delamide filed his Report dated 10 November 2019, with supporting documents.[40]

On 04 November 2019, the parties submitted their JSFI.[41] The Second Division then issued the Pre-Trial Order[42] on 18 November 2019, approving the parties' JSFI and terminating the pre-trial.

In the trial that ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of its witnesses, namely: (1) Proceso P. Calison (**Calison**), petitioner's General Manager from 1997 until 2017 (when it ceased operations); and, (2) Delamide, the Court-commissioned ICPA.

On the witness stand, Calison identified his Judicial Affidavit dated 20 November 2019[43], where he declared essentially that: (1) as petitioner's General Manager, he is responsible for petitioner's day-to-day operations, including the supervision of the preparations for and service to clients and the monitoring of the coordination with revenue officers (**ROs**) of the BIR in the latter's examination of petitioner's books of accounts; (2) petitioner is engaged in the business of restaurants, cafes and fastfood centers; (3) the instant case involves petitioner's judicial protest against the BIR's deficiency tax assessments for CY 2014, in the aggregate amount of ₱53,148,347.05; (4) petitioner received the PAN dated 11 October 2017 and the FAN dated 07 December 2017 on 11 November 2017 and 15 December 2017, respectively; (5) on 12 January 2018, petitioner filed with BIR Revenue

38 Id., pp. 448-458, with annexes.
39 Id., p. 477.
40 Exhibit "P-11", id., pp. 500-586.
41 Id., pp. 492-499.
42 Id., pp. 589-594.
43 Exhibit "P-22", id., pp. 598-792, with exhibits.

Region No. 8 – Makati its Protest[44] (or Request for Reinvestigation) of even date, with attached supporting documents, praying for the cancellation and withdrawal of the deficiency tax assessments for CY 2014; (6) on 13 March 2018, petitioner submitted two (2) sets of supporting documents in relation to its Protest against the FAN; (7) on 14 March 2018, petitioner filed a Letter[45] manifesting the submission of additional supporting documents; (8) petitioner did not receive any response from the BIR with respect to its Protest within the 180-day period counted from 13 March 2018; and, (9) in view of the BIR's inaction, petitioner filed a Petition for Review[46] with the Second Division on 09 October 2018.

Respondent did not conduct any cross-examination.[47]

ICPA Delamide took the witness stand next and identified the following: (1) his ICPA Report dated 10 November 2019[48]; (2) the Compact Disk (CD)[49] containing the scanned copies of the documents he examined and marked in relation to his audit of petitioner's books of accounts; and, (3) his Sworn Statement dated 20 November 2019.[50]

No cross-examination was conducted.[51]

Upon conclusion of its presentation of evidence and after being granted two (2) extensions of time by the Second Division[52], petitioner filed its Formal Offer of Evidence (**FOE**) on 02 January 2020, consisting of Exhibits "P-1" to "P-1400", inclusive of sub-markings.[53]

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44 Supra at note 11.
45 Exhibit "P-9", Division Docket, Volume II, pp. 910-911.
46 Supra at note 1.
47 See Order dated 25 November 2019, Division Docket, Volume II, pp. 805-806 and TSN dated 25 November 2019, p. 6.
48 Exhibit "P-11", supra at note 40.
49 Exhibit "P-11-b"; Petitioner was directed to submit a USB in addition to the CD *per* Court Order dated 25 November 2019, supra at note 47.
50 Exhibit "P-11-c", Division Docket, Volume II, pp. 795-803.
51 See Order dated 25 November 2019, supra at note 47 and TSN dated 25 November 2019, pp. 6-12.
52 See Order dated 05 December 2019 and Order dated 27 December 2019, Division Docket, Volume II, pp. 811 and 817, respectively.
53 Id., pp. 818-837; Since the deadline for submission of petitioner's Formal Offer of Evidence (FOE), *i.e.*, 30 December 2019, fell on a holiday, the filing of petitioner's FOE on 02 January 2020 was timely made.

On 14 January 2020, respondent filed *via* registered mail a Manifestation[54] with a prayer that the Court admits his Comment[55] to petitioner's FOE as part of the records of the case. Thereafter, respondent filed his "Omnibus Motion A. For Postponement of Hearing; and B. To Set Commissioner's Hearing"[56] (**Omnibus Motion**), praying that the scheduled initial presentation of respondent's witnesses be reset and for the setting of two (2) commissioner's hearings for the marking of respondent's documentary evidence.

In the Resolution dated 27 January 2020[57], the Second Division (1) noted respondent's Manifestation[58], (2) admitted respondent's Comment[59], and (3) granted respondent's Omnibus Motion[60] by cancelling the previously scheduled initial presentation of respondent's witnesses until further orders and setting commissioner's hearings on the 10th and 12th of February 2020 for the comparison of respondent's documentary exhibits.

On 10 February 2020, respondent submitted to the Second Division the entire BIR Records on the case, consisting of 1,265 pages in two (2) folders.[61] The Court noted the same in the Minute Resolution dated 14 February 2020.[62]

In the Resolution dated 19 February 2020[63], the Second Division admitted all of petitioner's exhibits *except* for: (1) Exhibits "P-169" to "P-179"[64], for not being found in the records of the case; and, (2) Exhibit "P-938"[65], for being unreadable. At the hearing held on 15

54 Id., pp. 1017-1018.
55 Id., pp. 1019-1027.
56 Id., pp. 1031-1033.
57 Id., p. 1030.
58 Supra at note 54.
59 Supra at note 55.
60 Supra at note 56.
61 Division Docket, Volume III, p. 1037.
62 Id., p. 1041.
63 Id., pp. 1043-1045.
64

Exhibit No.	Description
"P-169" to "P-179"	Vouchers covering rental payments.

65

Exhibit No.	Description
"P-938"	Official receipt (offered as a voucher) covering a music and entertainment transaction/payment.

June 2020[66], respondent presented his witness, RO Junaid Domaub (**Domaub**), who testified by way of his Judicial Affidavit dated 12 March 2020[67] that: (1) he was assigned at RDO No. 47 – East Makati from year 2016 to 2018; (2) he came to know of petitioner pursuant to Letter of Authority (**LOA**) AUDR03/003456/2015 (SN: eLA201200033989) dated 12 August 2015[68] issued to petitioner for CY 2014 with Checklist of Requirements[69] of even date and through Memorandum of Assignment (**MOA**) No. RR8-047-0317-220 dated 06 March 2017[70]; (3) he personally served a Letter dated 09 March 2017[71] to petitioner, informing it of the reassignment of the audit and investigation to him; (4) the First Request for Presentation of Records[72] was issued to and received by petitioner on 08 September 2015; (5) petitioner did not fully comply with the request as shown in the Progress Report dated 19 February 2016[73]; (6) he personally served a Letter dated 15 May 2017[74] to petitioner, informing it of the records and documents required to conduct the tax investigation; (7) the Second and Final Notice dated 31 May 2017[75] was issued to petitioner, giving it a final opportunity to present and/or submit the needed records before resorting to the issuance of a *subpoena duces tecum*; (8) he prepared a Memorandum dated 16 June 2017[76], detailing his findings during the audit and investigation of petitioner's books of accounts and other related accounting records; (9) revenue amounting to ₱23,523,351.91 was not subjected to IT and income payment amounting to ₱6,789,499.20 should be disallowed as deduction from gross income as it was not subjected to EWT; (10) since petitioner's business operates similar to a cabaret and nightclub, its gross receipts are subject to amusement tax (percentage tax) in the rate of 18% pursuant to Section 125(b)[77] of the NIRC of 1997, as amended, in relation to RMC No. 18-2010[78]; and, (11) petitioner is liable for deficiency EWT for failure to withhold and remit taxes due on various payments.

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66 Minutes of the Hearing and Order both dated 15 June 2020, Division Docket, Volume III, pp. 1085 and 1086, respectively.
67 Exhibit "R-30", id., pp. 1051-1083, with supporting documents.
68 Exhibit "R-1", BIR Records, Folder I, p. 3.
69 Exhibit "R-2", id., pp. 1-2.
70 Exhibit "R-8", id., p. 711.
71 Exhibit "R-9", id., p. 712.
72 Exhibit "R-3", id., p. 4.
73 Exhibit "R-5", id., p. 706.
74 Exhibit "R-10", id., p. 713.
75 Exhibit "R-11", id., p. 714.
76 Exhibit "R-12", id., pp. 898-900.
77 Supra at note 20.
78 Supra at note 19.

Upon oral manifestation of respondent's counsel that she will no longer present an additional witness, the Second Division granted respondent 15 days within which to file his FOE.[79] Accordingly, respondent posted his FOE[80] on 16 July 2020, consisting of Exhibits "R-1" to "R-30", inclusive of sub-markings. Petitioner then filed its Comment[81] thereto on 04 August 2020.

In the Resolution dated 02 October 2020[82], the Second Division admitted all of respondent's exhibits *except* for: (1) Exhibits "R-4", "R-5", "R-6", "R-6-A", "R-7", "R-7-A", "R-7-B", "R-16", "R-16-A", "R-17", "R-18", "R-18-A", "R-19", "R-20", "R-20-A", "R-20-B", "R-25", "R-26", "R-27", "R-27-A", "R-28" and "R-28-A"[83], for failure to identify; (2) Exhibits "R-21", "R-21-A", "R-22" and "R-22-A"[84], for failure to present their originals

79 Minutes of the Hearing and Order both dated 20 July 2020, Division Docket, Volume III, pp. 1087 and 1088, respectively.

80 Id., pp. 1089-1102.

81 Id., pp. 1111-1116; Received by the Court on 25 August 2020.

82 Id., pp. 1119-1120.

83

Exhibit No.	Description
"R-4"	Letter dated 18 September 2015.
"R-5"	Progress Report as of 19 February 2016.
"R-6"	Memorandum of Assignment RR8-047-REA-0516-427 dated 19 May 2016.
"R-6-A"	Signature of Revenue District Officer, Atty. Shirley A. Calapatia (RDO Calapatia).
"R-7"	Letter to taxpayer dated 23 May 2016.
"R-7-A"	Signature of RDO Calapatia.
"R-7-B"	Taxpayer's receipt of Letter dated 23 May 2016 on 25 May 2016.
"R-16"	Letter to Mary Elizabeth Belmonte dated 06 November 2017.
"R-16-A"	Signature of RDO Florante R. Aninag (RDO Aninag).
"R-17"	Proof of mailing to Mary Elizabeth Belmonte with LBC Tracking No. 1266 1018 7349.
"R-18"	Letter to Joseph Ang dated 06 November 2017.
"R-18-A"	Signature of RDO Aninag.
"R-19"	Proof of mailing to Joseph Ang with LBC Tracking No. 1266 1018 7359.
"R-20"	Written Report on Personal Service or Substituted Service (WRPSSS) dated 20 November 2017.
"R-20-A"	Signature of Revenue Officer Junaid Domaub (RO Domaub).
"R-20-B"	Signature of RDO Aninag.
"R-25"	Letter of Hard Rock Café dated 01 March 2018.
"R-26"	Letter of Hard Rock Café dated 14 March 2018.
"R-27"	Letter to Salvador, Llanillo & Bernardo dated 10 May 2018.
"R-27-A"	Signature of Regional Director Glen A. Geraldino (RD Geraldino).
"R-28"	Memorandum of Assignment No. RR8-047-0218-170 dated 14 February 2018.
"R-28-A"	Signature of RDO Aninag.

84

Exhibit No.	Description
"R-21"	Final Assessment Notice (FAN) dated 28 November 2017.

for comparison; and, (3) Exhibits "R-23" and "R-23-A"[85], for failure to identify and present their originals for comparison. In the same Resolution, the Second Division granted both parties a period of 30 days from notice within which to file their respective memoranda.

In compliance with the Court's directive, petitioner filed its Memorandum[86] on 06 November 2020.

However, *per* Records Verification dated 24 November 2020[87], respondent failed to file his memorandum. Thereafter, on 01 December 2020, respondent filed a "Motion to Admit (Attached Memorandum)" dated 27 November 2020[88] (**Motion to Admit**), asking the Court to admit his Memorandum[89] in the interest of substantial justice and equity.

In the Resolution dated 11 December 2020[90], the Second Division granted respondent's Motion to Admit and considered the case submitted for decision.

ISSUES

As the parties so stipulated[91], the issues for this Court's resolution are —

I.
WHETHER RESPONDENT COMMISSIONER OF INTERNAL REVENUE'S ASSESSMENTS AGAINST PETITIONER HARD ROCK

"R-21-A"	Signature of RD Geraldino.
"R-22"	Details of Discrepancies dated 11 October 2017 attached as Annex A to the FAN.
"R-22-A"	Signature of RD Geraldino.

85

Exhibit No.	Description
"R-23"	Letter to Mary Elizabeth Belmonte dated 07 December 2017.
"R-23-A"	Signature of RDO Aninag.

86 Division Docket, Volume III, pp. 1121-1183.
87 Id., p. 1184.
88 Id., pp. 1185-1187.
89 Id., pp. 1188-1199, with annex.
90 Id., p. 1201.
91 JSFI, id., p. 396.

CAFÉ (MAKATI CITY) INC. FOR DEFICIENCY INCOME TAX (IT), PERCENTAGE TAX (PT), AND EXPANDED WITHHOLDING TAX (EWT) FOR THE CALENDAY YEAR (CY) 2014, IN THE TOTAL AMOUNT OF ₱53,148,347.05 HAVE LEGAL AND FACTUAL BASES.

II.

WHETHER REVENUE MEMORANDUM CIRCULAR (RMC) NO. 18-2010 WAS VALIDLY ISSUED BY RESPONDENT COMMISSIONER OF INTERNAL REVENUE IN THE EXERCISE OF HER RULE-MAKING POWER.

Petitioner submits that the deficiency tax assessments issued by respondent against it for CY 2014 are null and void for having been issued in violation of its right to due process, particularly because:

1. The ROs who conducted the examination of its books of accounts for CY 2014 did not have the requisite authority to do so since they were not named in the LOA dated 12 August 2015[92];

2. The MOA dated 06 March 2017[93], on which RO Domaub and Group Supervisor Kadami Manarondong (**GS Manarondong**) anchored their authority to examine petitioner's books of accounts for CY 2014, did not validly grant them such authority because it was not signed by the Regional Director (**RD**) of BIR Revenue Region No. 8 – Makati, but only by Revenue District Officer Florante R. Aninag (**RDO Aninag**).

3. The deficiency tax assessments for CY 2014 are null and void because the FAN does not constitute an imperative and unequivocal demand for the payment of deficiency taxes.

Petitioner also claims that respondent's right to assess petitioner for deficiency EWT had already prescribed. Since respondent issued the FAN only on 28 November 2017 and the same was received by petitioner only on 15 December 2017, the deficiency EWT assessments for January to October of CY 2014 are null and void for having been

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92 Supra at note 68.
93 Supra at note 70.

issued beyond the three-year prescriptive period under Section 203[94] of the NIRC of 1997, as amended.

Even assuming that the deficiency tax assessments against it for CY 2014 were not issued in violation of its right to due process and the deficiency EWT assessments have not prescribed, petitioner argues that the assessments should nonetheless be invalidated for lack of legal or factual bases.

On the other hand, respondent maintains that the RO assigned to continue the audit investigation of petitioner's books for all internal revenue taxes for CY 2014 is duly authorized. He went on to state that the law only mandates that the audit be undertaken "pursuant to" an issued LOA and not extended to mean that each assigned or reassigned RO shall be issued their own LOA. While he submits that, in practice, the initially assigned ROs are named in the LOA, he adds that this is just a matter of administrative feasibility as there really is no statutory requirement that the ROs be named in the LOA itself. Moreover, he claims that the absence of a new LOA (in case the previously assigned RO is reassigned or transferred) does not affect any substantial right of the taxpayer nor its right to due process.

Respondent also argues that the MOA issued only assigned a new RO to continue the audit investigation of respondent's books for CY 2014 pursuant to an already issued LOA. The strength of the original LOA still persists, that is, to authorize the audit investigation of respondent's books of accounts and other accounting records for CY 2014. He then pointed out that petitioner failed to raise as an issue before the BIR the lack of authority of the RO who continued the audit investigation. Instead, petitioner actively participated in the proceedings at the administrative level without questioning the authority of the RO conducting the examination.

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94 **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.

Respondent likewise contends that petitioner is considered as an "amusement place" within the definition of "night or day club" under RR No. 14-67[95] in relation to RMC No. 18-2010[96]. It is a business establishment frequented by its customers where food, wine and drinks are served and music privileges are provided where the customers are allowed to dance. Thus, petitioner is subject to 18% amusement tax imposed under Section 125(b)[97] of the NIRC of 1997, as amended.

RULING OF THE COURT

Before the Court proceeds to address the above issues, it deems propitious to first determine the timeliness of petitioner's administrative and judicial appeals as this is determinative of this Court's jurisdiction.

I. THE PETITION FOR REVIEW WAS TIMELY FILED.

The law is clear on the period to appeal before this Court if there is inaction on the protest filed by a taxpayer. Section 228 of the NIRC of 1997, as amended, provides:

> ...
>
> **Sec. 228.** *Protesting of Assessment.* — **When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:** *Provided, however,* That a preassessment notice shall not be required in the following cases:
>
> ...
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly

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95 *Revised Amusement Tax Regulations.*
96 Supra at note 19.
97 Supra at note 20.

authorized representative shall issue an assessment based on his findings.

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 the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.**[98]

...

The aforequoted Section 228 of the NIRC of 1997, as amended, is implemented by RR No. 12-99[99], as amended by RR No. 18-2013[100], issued on 28 November 2013. Relevant portions of Section 3.1.4 of RR No. 18-2013 are quoted below, as follows:

...

Sec. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

...

Sec 3.1.4 *Disputed Assessment.* —

...

For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within **sixty (60) days from date of filing of his letter of protest,** otherwise, the assessment shall become final. The term "relevant supporting documents" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly

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98 Italics in the original text and emphasis supplied.
99 Supra at note 14.
100 Supra at note 15.

> discovered or additional evidence, and the FDDA shall consequently be denied.
>
> ...
>
> If the **protest is denied, in whole or in part, by the Commissioner's duly authorized representative**, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.
>
> **If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted** from the date of filing of the protest in case of a request reconsideration; or **from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation**, the taxpayer may either: **(i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period**; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.[101]
>
> ...

Based on the foregoing provisions, when a taxpayer's protest requesting for reinvestigation is not acted upon by respondent's duly authorized representative, the remedy for the taxpayer is either: (1) to appeal to this Court within 30 days after the expiration of the 180-day period reckoned from the date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest; or (2) to await the final decision of respondent's duly authorized representative on the disputed assessment and within 30 days from receipt of a copy thereof: (**a**) elevate its protest through a request for reconsideration to respondent; or (**b**) appeal such decision to this Court.

In this case, the following are the pertinent dates and events in determining the timeliness of the Petition for Review:

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101 Italics in the original text and emphasis supplied.

Date	Event
15 December 2017	Petitioner received the FAN dated 28 November 2017.[102]
12 January 2018	Petitioner filed its Protest/Request for Reinvestigation[103] addressed to the RD of Revenue Region No. 8 - Makati within the 30-day reglementary period.
13 March 2018	Petitioner submitted additional documents[104] within the 60-day period.
09 September 2018	End of the 180-day period from the date of submission of the required documents.
09 October 2018	Petitioner filed its Petition for Review[105] within 30 days from the expiration of the 180-day period.

Considering that the instant Petition for Review was timely filed on <u>09 October 2018</u> or within 30 days from 09 September 2018 or the expiration of the 180-day period, this Court has jurisdiction over the case.

II. THE SUBJECT DEFICIENCY TAX ASSESSMENTS ARE VOID.

Petitioner asserts that the subject deficiency tax assessments are void as it was done in violation of petitioner's right to due process of law. In this regard, petitioner claims that respondent failed to observe the mandatory procedures during the audit of petitioner's books of accounts, such as: (1) indicating in the FAN the LOA used for the examination; (2) the audit examination was not completed within 120 days from the issuance of the LOA; and, (3) respondent failed to conduct quality audit.

A. FAILURE TO INDICATE THE LETTER OF AUTHORITY (LOA) IN THE FINAL ASSESSMENT NOTICE (FAN) WILL NOT INVALIDATE THE ASSESSMENT.

Petitioner alleges that respondent's failure to indicate the LOA in the FAN constitutes a fatal defect as the BIR ROs are deemed not authorized and empowered to examine petitioner's books and records.

102 Supra at note 9.
103 Supra at note 11.
104 Supra at note 12.
105 Supra at note 1.

We disagree.

The Court has been consistent in ruling that an RO tasked to examine the books of taxpayers must be authorized by an LOA. Otherwise, the assessment for deficiency taxes resulting therefrom is void. Section 6(A) of the NIRC of 1997, as amended, reads:

> ...
>
> **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.[106]
>
> ...

Section 10(c) of the NIRC of 1997, as amended, provides:

> ...
>
> **SEC. 10.** *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the **Revenue Regional Director** shall, within the region and district offices under his jurisdiction, among others:
>
> ...
>
> (c) **Issue Letters of Authority** for the examination of taxpayers within the region[.][107]
>
> ...

In relation to the above, Section 13 of the NIRC of 1997, as amended, likewise requires that the RO assigned to examine the taxpayer's books must be armed with an LOA, *viz*:

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[106] Emphasis supplied.
[107] Emphasis supplied.

> ...
>
> **SEC. 13.** *Authority of a Revenue Officer.* — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a **Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.[108]
>
> ...

Under the said provision, an RO must be clothed with authority, through an LOA, to conduct the audit or investigation of the taxpayer. Absent such grant of authority through an LOA, the RO cannot conduct the audit of taxpayer's books of accounts and other accounting records because such right is statutorily conferred only upon respondent.

Section D(4) of Revenue Memorandum Order (**RMO**) No. 43-90[109] dated 20 September 1990, provides:

> ...
>
> For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the **Regional Directors**, the **Deputy Commissioners** and the **Commissioner**. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.[110]
>
> ...

In the instance case, respondent issued LOA No. eLA201200033989 on 12 August 2015[111], authorizing the examination of the books of accounts of petitioner for CY 2014.

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108 Emphasis supplied.
109 *Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit dated 20 September 1990.*
110 Emphasis supplied.
111 Supra at note 68.

There is no requirement under the aforementioned provisions that the details of the LOA must be reiterated in the PAN or the FAN. What is required under the law and jurisprudence[112] is that the ROs who are assigned to perform assessment functions must be clothed with authority to examine the taxpayer's books in the form of an LOA.

Even assuming *arguendo* that such is fatal to the validity of the assessment, a closer look of the FAN would reveal that the LOA was clearly indicated in the FAN[113] as "eLA201200033989 dated 08.12.2015".

B. THE REVENUE OFFICER (RO) AND GROUP SUPERVISOR (GS) WHO CONTINUED THE AUDIT OF PETITIONER WERE NOT AUTHORIZED BY A VALID LETTER OF AUTHORITY (LOA).

The audit process normally commences with the issuance by the CIR of a LOA. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment and, 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.[114]

It is well-settled that the authority given to ROs to conduct audit and examine taxpayer's books is a continuing requirement and any gap in authorization will violate the taxpayer's right to due process.

In the instant case, LOA No. eLA201200033989 dated 12 August 2015[115] issued by respondent authorizes RO Dianah Lynn Karim (**Karim**) and GS Ferdinand Apalisoc (**Apalisoc**) to examine petitioner's books of accounts and other accounting records. However, due to the reassignment of the aforementioned ROs, RO Manarondong and GS Josephine Elarmo (**Elarmo**) took over the assessment by virtue

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112 *Commissioner of Internal Revenue v. Mcdonald's Philippines Realty Corp.*, G.R. No. 242670, 10 May 2021; Commissioner of Internal Revenue v. Lancaster Philippines, 813 Phil. 622 (2017); *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, 808 Phil. 528 (2017); *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, 649 Phil. 519 (2010).

113 Supra at note 9.

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

115 Supra at note 68.

of a MOA[116] issued by RDO Atty. Shirley A. Calapatia (**Calapatia**) on 19 May 2016. Subsequently, another MOA was issued by RDO Aninag on 06 March 2017 authorizing RO Domaub and GS Manarondong to continue the conduct of the audit. Thereafter, RO Domaub issued a Letter dated 15 May 2017[117] addressed to petitioner, requesting for additional documents. On 16 June 2017, RO Domaub issued a Memorandum[118], which was noted by GS Manarondong and approved by RDO Aninag.

Moreover, RO Domaub testified, through his Judicial Affidavit dated 12 March 2020[119], that he continued the investigation on petitioner only by virtue of the MOA issued by RDO Aninag, to wit:

> ...
>
> 7. Q: How did you come to know the Petitioner in this case?
>
> A: I came to know the petitioner in this case pursuant to Letter of Authority (LOA) AUDR03/003459/2015 (SN: eLA201200033989) dated August 12, 2015 issued to HARD ROCK CAFÉ (MAKATI CITY), INC. for taxable year 2014 with Checklist of Requirements of even date and through **Memorandum of Assignment No. RR8-047-0317-220 dated March 6, 2017.**
>
> ...
>
> 24. Q: What happened thereafter, if any?
>
> A: **I personally served a Letter**, dated May 15, 2017, to the Petitioner informing them of the records and documents required to conduct the tax investigation.
>
> ...
>
> 32. Q: What happened after your audit and investigation?
>
> A: **I prepared a Memorandum**, dated June 16, 2017, detailing **my findings during the audit and investigation of petitioner's books of accounts and other related accounting records.**
>
> ...

116 Exhibit "R-6", BIR Records, Folder I, p. 709.
117 Supra at note 74.
118 Supra at note 76.
119 Supra at note 67.

> 39. Q: You mentioned that petitioner should be subject to 18% amusement tax, how did you arrive at such findings?
>
> A: I familiarized myself with the business of the taxpayer and its economic activity as well as **conducted interview with the responsible personnel of the petitioner** to obtain relevant information as enumerated in the Checklist of Audit Procedures Undertaken, dated August 15, 2015.
>
> ...
>
> 42. Q: What is your basis in saying that petitioner is a cabaret and nightclub?
>
> A: Based on **my ocular inspection on the business premises of petitioner**, its business establishment has a main dining room, second floor restaurant, administrative offices, and bar areas serving beverages. Also, the main dining room has entertainment stage where live bands perform.[120]
>
> ...

As can be gleaned from the foregoing, RO Domaub's authority merely sprung from an MOA. It is worthy to note that the MOA and the corresponding change in RO and GS happened prior to the issuance of the FAN[121], *i.e.*, on 28 November 2017.

In addition to the aforequoted Sections 6(A), 10(c) and 13 of the NIRC of 1997, as amended, which provide that only the CIR and his duly authorized representatives (*i.e.*, Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR) may issue the LOA, petitioner's own rules, specifically, RMO No. 43-90[122] mandates the issuance of a new LOA in cases of reassignment or transfer of examination to another RO. It reads —

> ...
> **Any reassignment/transfer of cases to another RO(s),** and revalidation of L/As which have already expired, **shall require the issuance of a new L/A**, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.[123]
> ...

[120] Emphasis supplied.
[121] Supra at note 9.
[122] Supra at note 109.
[123] Emphasis and underscoring supplied.

Moreover, in the recent case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[124] (**McDonald's**), the Supreme Court highlighted the difference between an MOA and an LOA in this wise:

> ...
>
> It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may **notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers.** However, **notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.**
>
> The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.
>
> **The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative.** The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized

[124] G.R. No. 242670, 10 May 2021; Emphasis supplied.

> representative under Sections 6, 10 (c) and 13 of the NIRC. **Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.**
>
> ...

Applying the above principles to the case at bar, a mere MOA signed by an RDO does not and cannot confer authority to RO Domaub and GS Manarondong to continue the audit or investigation of petitioner's books of accounts for CY 2014. As both are not authorized through an LOA, their investigation and subsequent assessment of petitioner's tax deficiency could not be sanctioned.

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[125], the Supreme Court emphasized the importance of an LOA, *viz*:

> ...
>
> **An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives ...**
>
> ...
>
> 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.**

[125] G.R. No. 222743, 05 April 2017; Citation omitted and emphasis supplied.

> ...
>
> ... 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...
>
> ...
>
> ... In fact, apart from being a statutory requirement, **an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers**. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.
>
> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.
>
> ...

The Supreme Court, citing the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[126], went on to state:

> ...
>
> 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. **<u>In the absence of such an authority, the assessment or examination is a nullity.</u>**
>
> ...

Further, the Supreme Court in *McDonald's*[127] concluded that:

[126] G.R. No. 178697, 17 November 2010; Emphasis and underscoring supplied.
[127] Supra at note 124.

> ...
>
> In summary, **We rule that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990.**[128]
>
> ...

Considering the absence of a new LOA authorizing RO Domaub to examine petitioner's books of accounts and other accounting records as a result of the reassignment/transfer of the case to him, the deficiency tax assessments issued against petitioner are inescapably void.

Due to the nullity of respondent's deficiency tax assessments, it becomes unnecessary for this Court to address the other issues raised as they are not yet ripe for judicial determination.

WHEREFORE, premises considered, the present Petition for Review filed on 09 October 2018 by petitioner Hard Rock Café (Makati City) Inc. is hereby **GRANTED**. Accordingly, the assailed Final Assessment Notice (FAN) dated 28 November 2017, holding petitioner liable for deficiency income tax (IT), percentage tax (PT) and expanded withholding tax (EWT) in the aggregate amount of ₱53,148,347.05, for calendar year (CY) 2014, is hereby **CANCELLED** and **SET ASIDE**. Consequently, respondent Commissioner of Internal Revenue or any person duly acting on his behalf is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

128 Emphasis and underscoring supplied.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice