REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MARILY DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9756

Members:

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

Promulgated:

SEP 10 2020

1:25 p.m.

x - x

DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

The instant *Petition for Review* filed on January 25, 2018, prays for the cancellation of the assessment issued by the Commissioner of Internal Revenue against Marily Development Corporation for its alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT) and withholding tax on compensation (WTC) for calendar year 2006 in the aggregate amount of ₱8,104,781.30.[1]

[1] Summary of the Case, Pre-Trial Order dated June 22, 2018, Docket, p. 71.

THE PARTIES

Petitioner Marily Development Corporation is a domestic corporation organized and existing under the laws of the Philippines with principal office at the 3/F Alegria Building, 2294 Chino Roces Avenue, Makati City.[2]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including among others, the power to authorize the examination of taxpayers' books of accounts, to issue and decide deficiency assessments of internal revenue taxes.[3]

THE FACTS

Respondent issued the Formal Assessment Notice (FAN) dated June 8, 2011 covering deficiency Income Tax, VAT, EWT, and WTC for calendar year 2006.[4] Pertinent portion of the FAN for easy reference are as follows:

> **"The President**
> **MARILY DEVELOPMENT CORPORATION**
> 3/F Karrivin Plaza Bldg.,
> 2316 Pasong Tamo Extension,
> Makati City
> TIN: 005-297-475-000
>
> Sir/Madam:
>
> This has reference to your letter dated August 16, 2010 concerning your protest against our Preliminary Assessment Notice (PAN) dated July 29, 2010 covering your deficiency Income Tax, Value Added Tax, Expanded Withholding Tax and Withholding Tax on Compensation xxx xxx xxx.
>
> In reply thereto, this Office has granted your request for re-investigation. However, as

[2] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 64.
[3] Par. 2, Stipulation of Facts, JSFI, Docket, p. 64.
[4] Annex C, Petition for Review, Docket, pp. 21-22; Par. 3, JSFI, Docket, p. 65.

> discussed in the Details of Discrepancies, you still failed to refute the validity of our findings.
>
> xxx xxx xxxx"

On July 11, 2011, petitioner submitted with the Bureau of Internal Revenue (BIR) Revenue Region No. 8 its protest letter.[5] Pertinent portion of the protest letter filed on June 11, 2011 for easy reference are as follows:

> "11 July 2011
>
> **BUREAU OF INTERNAL REVENUE**
> Revenue Region No. 08
> Makati City
>
> Attention: **Mr. JAIME B. SANTIAGO**
> Regional Director
>
> Gentlemen:
>
> Re: **MARILY Development Corporation**
> CY 2006 Formal Assessment Notices on Deficiency Income, VAT and Withholding Tax Assessments
>
> On behalf of MARILY Development Corporation (Marily) and in response to the Formal Assessment Notices on Income, VAT, EWT, and Withholding Tax on Compensation dated 08 June 2011 that was **received on 10 June 2011** issued against MARILY for calendar year 2006, we are protesting the issuance of the formal assessment notices based on the factual and legal grounds as discussed hereunder:
>
> xxx xxx xxxx"*(Emphasis supplied)*

Both the FAN and the petitioner's protest letter were not offered as exhibits, but they were instead attached as annexes to the

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[5] Annex D, Petition for Review, Docket, pp. 23-25.; Par. 3, JSFI, Docket, p. 65.

Petition for Review. At any rate, both parties stipulated that respondent issued a FAN and petitioner protested the same.[6]

On December 29, 2017, petitioner received the *Preliminary Collection Letter* dated December 12, 2017 on the alleged deficiency assessments for calendar year 2006.[7] Respondents seek to collect deficiency income tax, VAT, EWT, and WTC, as follows:[8]

Deficiency Tax	Amount
Income tax	₱2,474,878.35
VAT	4,690,771.55
EWT	108,879.88
WTC	830,251.52
Total	₱8,104,781.30

On January 25, 2018,[9] petitioner filed the instant *Petition for Review*

Respondent filed his *Answer* on March 19, 2018,[10] interposing the following special and affirmative defenses, to wit:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

xxx xxx xxx

INCOME TAX;

A.) Disallowed Cost of Sales for Minimum Corporate Income Tax (MCIT) purposes amounting to P42,054,497.30:

- This amount represents expenses included in the computation of cost of sales for the purpose of applying the MCIT which was disallowed pursuant to Section 27 (E)(4) of the NIRC as amended, which states that, `the term `gross income' shall mean gross sales less sales returns, discounts and allowances and cost of goods sold. Cost of goods sold

[6] Par. 3, JSFI, p. 65.
[7] Par. 4, Stipulation of Facts, JSFI, Docket, p. 65.
[8] Par. 5, Stipulation of Facts, JSFI, Docket, p. 65.
[9] Docket, pp. 10 to 13.
[10] Docket, pp. 33 to 36.

shall include all business expenses directly incurred to produce the merchandise to bring them to their present location and use.'

It was disclosed during investigation that petitioner still failed to refute and submit necessary documents to support the other claimed cost of sales in the amount of P42,054,497.30. Since petitioner failed to prove the other expenses to be directly incurred to produce the merchandise, the assessment on disallowed cost of sales for MCIT purposes has been reiterated.

VALUE ADDED TAX (VAT):

B.) Sales not subject to VAT amounting to P133,089,691.25:

- This amount includes export sales amounting to P7,775,160.47 which were subjected to VAT for failure to present any evidence to support that these were export sales subject to 0% rate and was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. This amount also includes local sales of shell (marine non-food products) in the amount of P5,314,530.78 which was also not subjected to VAT. The said sales were subjected to VAT under Section 105 and 106 of the NIRC.

C.) Excess Input Tax Carried Forward to Succeeding Period amounting to P4,550,758.96:

- The excess input tax carried over to succeeding period amounting to P4,550,758.96 was deducted from total creditable input tax considering that the said amount has been credited against the estimated quarterly tax liabilities for the taxable quarter of the succeeding taxable years pursuant to Section 110(B) of the Tax

Code as implemented by Revenue Regulations No. 16-2005.

EXPANDED WITHHOLDING TAX

D.) Basic Tax Due amounting to P51,881.00:

- This refers to several income payments which petitioner failed to withhold and remit in full the corresponding withholding tax due in violation of Section 2.57.2 of Revenue Regulations No. 2-98 as amended.

WITHHOLDING TAX ON COMPENSATION

E.) Basic Withholding Tax on Compensation amounting to P277,510.81:

- Verification disclosed that petitioner failed to withhold/remit the correct withholding tax due on compensation paid to employees previously disallowed as deductions from gross income hence, assessed pursuant to Section 79 (A) of the Tax Code as implemented by Section 2.78 of Revenue Regulations No. 2-98.

xxx xxx xxx"

The pre-trial conference was set and held on May 24, 2018.[11]

The *Respondent's Pre-Trial Brief* was filed on May 21, 2018;[12] whereas the *Pre-Trial Brief* for petitioner was submitted on May 22, 2018.[13]

The parties filed their *Joint Stipulation of Facts and Issues* (JSFI) on June 6, 2018.[14] The Court issued the Pre-Trial Order on June 22, 2018, approving and adopting the parties' JSFI, and deeming the pre-trial terminated.[15]

[11] *Notice of Pre-Trial Conference* dated April 5, 2018, Docket, pp. 38 to 39; Minutes of the hearing held on, and Order dated, May 24, 2018, Docket, pp. 62 and 63, respectively.
[12] Docket, pp. 40 to 42.
[13] Docket, pp. 51 to 60.
[14] Docket, pp. 64 to 68.
[15] Docket, pp. 71 to 74.

As trial ensued, petitioner presented documentary and testimonial evidence. As part of its testimonial evidence, petitioner offered the testimonies of the following individuals: (1) Mr. Gilbert V. Gavino,[16] petitioner's General Manager; and (2) Ms. Josephine P. Yopo,[17] the Court-commissioned Independent Certified Public Accountant (ICPA).[18]

On November 20, 2018, the ICPA Report was submitted to the Court.[19]

Petitioner filed a *Motion to Admit Formal Offer of Evidence for the Petitioner*, requesting that the Court admit the *Formal Offer of Evidence* attached to the *Motion*.[20] Respondent filed his *Comment to Petitioner's Formal Offer of Evidence* on December 14, 2018.[21] In the Resolution dated January 8, 2019,[22] the Court granted petitioner's *Motion to Admit* and admitted petitioner's *Formal Offer of Evidence*.[23]

In the Resolution dated February 15, 2019,[24] the Court directed Ms. Yopo to submit the clear and readable PDF scanned copies of the duly pre-marked exhibits that she examined within fifteen (15) days from notice, deferred the resolution of the *Formal Offer of Evidence for the Petitioner*, and cancelled and reset the initial presentation of respondent's evidence.

On March 7, 2019, petitioner filed a *Supplemental Formal Offer of Evidence [In Compliance with the Resolution Promulgated on February 15, 2019] for the Petitioner,* praying that the Court admit the Universal Serial Bus device attached to the *Supplemental Formal Offer* for petitioner.[25]

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[16] Exhibit "P-1-A", Docket, pp. 47 to 49; Minutes of the hearing held on, and Order dated, July 4, 2018, Docket, pp. 79 and 80, respectively.

[17] *Compliance* with attached *Judicial Affidavit of Ms. Josephine P. Yopo,* Docket, pp. 123 to 130; Minutes of the hearing held on, and Order dated, December 5, 2018, Docket, pp. 132 and 133, respectively.

[18] *Oath of Commission* dated August 16, 2018, Docket, p. 89; *Judicial Affidavit of Ms. Josephine M. Parangipang-Yopo,* Docket, pp. 95 to 97; Minutes of the hearing held on, and Order dated, August 16, 2018, Docket, pp. 90 and 91 to 92, respectively.

[19] Docket, p. 113.

[20] Docket, pp. 134 to 135.

[21] Docket, pp. 139 to 140.

[22] Docket, p. 142.

[23] Docket, pp. 136 to 137.

[24] Docket, pp. 145 to 148.

[25] Docket, pp. 149 to 150.

Acting on petitioner's *Formal Offer of Evidence* and *Supplemental Formal Offer of Evidence*, the Court, in the Resolution dated May 10, 2019,[26] admitted petitioner's Exhibits, except for Exhibits "P-618" and "P-619" mentioned in the ICPA Report, for not being found in the records.

On July 25, 2019, respondent filed a *Manifestation*, stating that he will no longer be presenting any evidence/witness in this case, and praying that the same be noted by the Court.[27] In the Resolution dated July 30, 2019,[28] the Court noted respondent's *Manifestation*, and cancelled the initial presentation of respondent's evidence.

On August 30, 2019, respondent filed his *Memorandum*,[29] while petitioner failed to file its *Memorandum*.[30]

The instant case was considered submitted for decision on September 18, 2019.[31]

THE ISSUE

The parties submitted the lone issue below,[32] for this Court's resolution, as follows:

> "8. Whether or not petitioner is liable for the deficiency Income Tax, Value Added Tax, Expanded Withholding Tax and Withholding Tax on Compensation for CY 2006 in the total amount of Php8, 104,781.30"

THE RULING

The instant *Petition for Review* has merit. *ge*

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[26] Docket, pp. 153 to 157.
[27] Docket, pp. 164 to 165.
[28] Docket, p. 168.
[29] Docket, pp. 169 to 172.
[30] Records Verification dated September 11, 2019 issued by the Judicial Records Division of this Court, Docket, p. 174.
[31] Resolution dated September 18, 2019, Docket, p. 175.
[32] Issue, JSFI, Docket, p. 66.

The instant Petition for Review is timely filed

As earlier stated, both the FAN and the petitioner's protest letter were not offered as exhibits, but they were instead attached as annexes to the Petition for Review. At any rate, both parties stipulated that respondent issued a FAN and petitioner protested the same.[33] As per the protest letter, petitioner states that it received the FAN on June 10, 2011.

Meanwhile, on December 29, 2017, petitioner received the Preliminary Collection Letter dated December 12, 2017 on the alleged deficiency assessments for CY 2006.[34]

The Preliminary Collection Letter was not offered as exhibit but was attached as annex to the Petition for review. However, both parties stipulated in open court during the hearing held on May 24, 2018[35] that the Preliminary Collection Letter was received by petitioner on December 29, 2017. Pertinent portions of the transcript of stenographic notes taken during the hearing are as follows:

> "ATTY. DIDULO:
> Your Honors, I would like to manifest for the record that I was conferring with Atty. Santos before this hearing an inquiry requesting him to confirm that he has missed the paragraph 4 of the Petition for Review.
>
> ATTY. SANTOS:
> Yes, your Honor. I admit the paragraph 4 of the Petition for Review with regards to the date of receipt of preliminary collection letter in addition to the admissions made by the respondent to the Answer, your Honors."

Section 228 of the 1997 NIRC, as implemented by Sections 3.1.3 and 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended, prescribes the rules to be observed for the issuance of deficiency tax assessment and of protesting the same, thus: *gr*

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[33] Please see Note 6.
[34] Please see Note 7; Annex E, Petition for Review, Docket, p. 26.; Par. 4, JSFI, Docket, p. 65; Q and A Nos. 7 and 8, Sworn Statement of Mr. Gilbert V. Gavino, Docket, p. 48.
[35] Page 3, Transcript of stenographic notes taken during the hearing on May 24, 2018.

"Section 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:

xxx xxx xxx

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 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."

"Revenue Regulations No. 12-99

3.1.3 Formal Letter of Demand and Final Assessment Notice (FLD/FAN). – The Formal Letter of Demand and Final Assessment Notice (FLD/FAN) shall be issued by the Commissioner or his duly authorized representative. The FLD/FAN calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the

> law, rules and regulations, or jurisprudence on which the assessment is based; otherwise, the assessment shall be void (see illustration in ANNEX 'B' hereof).
>
> 3.1.4 Disputed Assessment. – The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.
>
> xxx xxx xxx
>
> The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of the assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.
>
> xxx xxx xxx

In *Oceanic Wireless Network, Inc.* [36], the Supreme Court held that a demand letter for payment of delinquent taxes may be considered a final decision on a disputed or protested assessment. The determination on whether or not a demand letter is final is conditioned upon the language used or the tenor of the letter being sent to the taxpayer.

In this case, both parties stipulated that petitioner received a Preliminary Collection Letter on December 12, 2017.[37] It constitutes a final decision on the disputed assessment and thus may be proper subject of an appeal to this Court.

Counting thirty (30) days from petitioner's receipt of Preliminary Collection Letter on December 29, 2017, petitioner had until January 28, 2018 within which to file an appeal before this Court. Petitioner filed its Petition for Review before this Court on January 25, 2018.[38] Thus, the Petition was filed on time.

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[36] G.R. No. 148380, December 9, 2005.

[37] Annex E, Petition for Review, Docket, p. 26.; Par. 4, JSFI, Docket, p. 65; Q and A Nos. 7 and 8, Sworn Statement of Mr. Gilbert V. Gavino, Docket, p. 48.

[38] Petition for Review, Docket, pp. 10-13.

There is no showing that the examination of petitioner's books of accounts for calendar year 2006 was authorized through an LOA. In the absence of a valid authority, the subject tax assessment is inescapably void

In the BIR, the audit process normally commences with the issuance by respondent or his duly authorized representative of a Letter of Authority (LOA). The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment. At the same time, it authorizes or empowers a designated RO to examine, verify, and scrutinize taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[39]

The said power of respondent is derived from Section 6(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, which provides as follows:

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

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

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

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

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

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue,*[40] the Supreme Court held:

> "**An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** Section 6 of the NIRC clearly provides as follows:
>
>> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>>
>> (A) Examination of Return and Determination of Tax Due. – After a return has been filed as required under the

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

> 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

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.*, 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.**

xxx xxx xxx

Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. **To begin with, Section 6**

> **of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.**
>
> xxx xxx xxx
>
> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.**" *(Emphasis and underscoring supplied)*

Based on the foregoing, an assessment must spring from a valid LOA to examine a taxpayer. In the absence of an LOA, the tax assessments issued by the BIR against such taxpayer shall be void.

In the present case, no evidence was presented to prove that an LOA was issued by respondent. Neither were the revenue officers who actually examined petitioner's books and records presented in Court. In other words, there is no indication that the examination and assessment of petitioner sprung from an LOA.

Accordingly, in the absence of proof that an LOA was issued in this case to authorize the examination and audit of petitioner, the subject tax assessment issued by the BIR is inescapably void.

Even assuming that there is an LOA issued in this case, the subject assessments had already prescribed

Section 203 of the 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."*(Emphasis supplied)*

In the case of *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.,*[41] the Supreme Court explained that:

> "Under Section 203 of the NIRC, the prescriptive period to assess is set at three years. This rule is subject to the exceptions provided under Section 222 of the NIRC. The CIR invokes Section 222(a) which provides:
>
> > 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 of failure to file a return, the tax may be assessed, or a 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 executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> In *Commissioner of Internal Revenue v. Javier,* this Court ruled that fraud is never imputed. The Court stated that it will not sustain findings of fraud upon circumstances which, at most, create only suspicion. The Court added that the mere understatement of a tax is not

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[41] G.R. No. 213943, March 22, 2017.

itself proof of fraud for the purpose of tax evasion. The Court explained:

> x x x. The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. Negligence, whether slight or gross, is not equivalent to fraud with intent to evade the tax contemplated by law. It must amount to intentional wrongdoing with the sole object of avoiding the tax. x x x"

In the instant case, the FAN dated June 8, 2011 was received by petitioner on June 10, 2011, covering the subject taxes for the taxable year 2006. In other words, more than three (3) years from taxable year 2006 had already lapsed before the FAN was issued. Applying Section 203 of the NIRC of 1997, as amended, the period to assess had already prescribed.

Meanwhile, respondent failed to present evidence of fraud on the part of petitioner. In connection to the *Philippine Daily Inquirer* case, Section 222 of the NIRC of 1997, as amended, is inapplicable to this case.

Considering the foregoing, the subject assessments had already prescribed.

To end, the Court finds that there is no valid LOA issued in this case and that the subject assessments had already prescribed. While "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude.[42] Even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[43]

In view of the foregoing, this Court finds it unnecessary to belabor on the remaining issue raised by the parties, for it is well-settled that a void assessment bears no valid fruit.[44]

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[42] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[43] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.
[44] *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*, G.R. Nos. 215534 and 215557, April 18, 2016.

WHEREFORE, the instant *Petition for Review* is **GRANTED**. Accordingly, the assessment issued by respondent against petitioner for its alleged deficiency income tax, VAT, EWT and WTC for calendar year 2006 in the aggregate amount of ₱8,104,781.30 is **CANCELLED and SET ASIDE**.

SO ORDERED.

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

I CONCUR:

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

ROMAN G. DEL ROSARIO
Presiding Justice