REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AC CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA CASE NO. 8485
For: Assessment

Members:
CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, and
BACORRO-VILLENA, *JJ.*

Promulgated:

JAN 06 2020

4:30 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on February 26, 2019, is a *Petition for Review* with a *Supplement to the Petition for Review* filed by petitioner AC Corporation against the respondent Commissioner of Internal Revenue on May 8, 2012 and November 6, 2014, respectively, questioning the *Final Decision on Disputed Assessment* (FDDA) dated March 27, 2012 of the respondent, through Mr. Nestor S. Valeroso, Regional Director, Revenue Region No. 8, for alleged deficiency income tax, value-added tax (VAT), and expanded withholding tax (EWT) in the amounts of ₱76,137,587.45, ₱7,342,384.72, and ₱2,793,387.86, respectively, covering calendar year ending December 31, 2007.[1]

Petitioner AC Corporation is a corporation duly organized and existing under Philippine laws, with principal office address at 12th

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[1] Statement of the Case, Amended Pre-Trial Order dated November 4, 2015, Docket – Vol. I, p. 609.

Floor, South Center Tower, 2206 Market Street, Madrigal Business Park, Alabang, Muntinlupa City.[2]

Respondent Commissioner of Internal Revenue is vested by law with the power, *inter alia*, to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue (BIR).[3]

Respondent issued on July 29, 2008 the *Letter of Authority* (LOA) No. LOA 2007 00048613,[4] authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2007 to December 31, 2007. The said LOA was received by a certain Alfor Efren on the same date.[5]

Petitioner received on October 29, 2010 respondent's *Notice of Informal Conference* dated October 27, 2010 with *Computation of Deficiency Taxes*.[6]

On November 12, 2010, petitioner executed a *Waiver of the Defense of Prescription under the Statute of Limitation of The National Internal Revenue*, which respondent accepted through Revenue District Officer Gerry O. Dumayas on November 15, 2010.[7]

On May 11, 2011, petitioner received from respondent the *Preliminary Assessment Notice* (PAN) dated May 10, 2011[8] for deficiency income tax, VAT, and EWT allegedly due for taxable year 2007.[9]

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[2] Par. 1, Relevant Stipulated Facts, *Amended Joint Stipulation of Facts and Issues* (AJSFI), Docket – Vol. I, p. 557.
[3] Section 4 (second paragraph) of the National Internal Revenue Code of 1997 vis-à-vis Par. 2, Relevant Stipulated Facts, AJSFI, Docket – Vol. I, pp. 557 to 558.
[4] Exhibit "K", Docket – Vol. I, p. 238; Exhibit "2", BIR Records, p. 3.
[5] Supra.
[6] Exhibit "5", BIR Records, pp. 465 to 469.
[7] Exhibit "L", Docket – Vol. I, p. 239; Exhibit "6", BIR Records, p. 477.
[8] Exhibit "A", Docket – Vol. I, pp. 47 to 52; Exhibit "8", BIR Records, pp. 492 to 497.
[9] Pars. 3 and 8(a), Relevant Stipulated Facts, AJSFI, Docket – Vol. I, p. 558.

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Thus, on May 25, 2011, petitioner replied to the PAN, through the letter dated May 24, 2011,[10] disputing the same.[11]

Respondent then issued the *Formal Assessment Notice* (FAN) dated May 30, 2011,[12] which petitioner received on the same date,[13] assessing the latter for deficiency income tax, VAT, and EWT in the respective amount of ₱68,954,361.78, ₱6,666,226.50 and ₱2,536,902.58, inclusive of interests, for TY 2007.

On June 29, 2011, petitioner filed the protest letter dated June 28, 2011[14] to the FAN.[15] Petitioner submitted additional reconstructed documents to respondent on August 26, 2011.[16]

Respondent issued the FDDA dated March 27, 2012,[17] which was received by petitioner on April 11, 2012,[18] denying the protest on the FAN.

Petitioner filed its *Petition for Review* on May 8, 2012.[19] This case was initially raffled to this Court's Second Division.

On June 29, 2012, respondent filed his *Answer*,[20] interposing the following special and affirmative defenses:

> "6. Respondent reproduces and repleads all the foregoing allegations insofar as they are relevant to her defenses which are discussed hereunder and incorporates them herein by way of reference and, in addition thereto, most respectfully avers THAT:
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> 7. Section 228 of the 1997 Tax Code partly reads as follows:

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[10] Exhibit "B", Docket – Vol. I, pp. 99 to 101.
[11] Pars. 4 and 8(b), Relevant Stipulated Facts, AJSFI, Docket – Vol. I, p. 558.
[12] Exhibit "C", Docket – Vol. I, pp. 31 to 39; Exhibit "9", BIR Records, pp. 512 to 519(b).
[13] Pars. 5 and 8(c), Relevant Stipulated Facts, AJSFI, Docket – Vol. I, p. 558.
[14] Exhibit "D", BIR Records, pp. 535 to 541.
[15] Pars. 6 and 8(d), Relevant Stipulated Facts, AJSFI, Docket – Vol. I, p. 558.
[16] Exhibits "E" and "E-1", Docket – Vol. I, pp. 79 to 80.
[17] Exhibit "F", Docket – Vol. I, pp. 26 to 30; Exhibit "13", BIR Records, pp. 608 to 612; Par. 8(e), Relevant Stipulated Facts, AJSFI, Docket – Vol. I, p. 558
[18] Pars. 7 and 8(f), Relevant Stipulated Facts, AJSFI, Docket – Vol. I, p. 558.
[19] Docket – Vol. I, pp. 6 to 25.
[20] Docket – Vol. I, pp. 61 to 67.

> 'Sec. 228. Protesting Assessment
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> Such assessment may be protested administratively by filing a request for reconsideration or investigation 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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.'

8. 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, executor[y], 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 against the BIR's Formal Assessment. Consequently, the same became final, executor[y] and demandable. As such, this Honorable Court has no jurisdiction to act on the instant petition.

9. On the other hand, assuming without admitting that [t]his Court has jurisdiction to act on the instant petition, Petitioner was assessed for deficiency Income Tax, Value Added Tax and Expanded Withholding Tax respectively for taxable year 2007, for the reason that during the administrative investigation of its case by the BIR, petitioner failed to substantiate or submit supporting

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evidence against the BIR findings, more specifically shown under the Details of Discrepancies attached to the PAN issued on May 10, 2011, FAN issued on May 30, 2011 and the FDDA issued on March 27, 2012, which are briefly discussed hereunder, viz:

ON INCOME TAX

- Verification disclosed that you have failed to withhold and remit in full the corresponding withholding tax due arising from income payments pursuant to Section 57 and 58 [of] the Tax Code in the amount of 111,876,624.58. The disallowance was pursuant to Section 2.58.5 of Revenue Regulation No. 2-98, in relation to Section 34(K) of the Tax Code.
- Verification per audit disclosed that some of your claimed expenses were not appropriately supported with official receipts or other adequate records of the expense being deducted and the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer, hence disallowed as deduction from gross income pursuant to Section 34(A) (1) (b) of the Tax code. In addition, some official receipts presented were out of period/not in the name of the company, hence, the same were still disallowed as deduction to gross income pursuant to Section 34(A) (1) (a) of the Tax Code.
- Verification disclosed that the Salaries and Wages reported per Alphalist is overstated as compared with the Salaries and Wages per FS and ITR, hence, treated as Undeclared Income subject to Income tax rate of 35% pursuant to Section 27 of the Tax Code in relation with Section 32 of the same Code.
- Verification disclosed that claimed creditable income tax withheld were not supported by BIR Form No. 2307. The disallowance is pursuant to Section 2.58.3 of Revenue Regulations 2-98 as amended.

ON VALUE ADDED TAX

- Verification disclosed that sales/receipts were not subjected to VAT as imposed under Section 105 in relation to Section 106 of the Tax Code;
- In relation to the undeclared income as presented under the Income Tax, the taxpayer was assessed with VAT pursuant to Sections 106 and 108 of the Tax Code.
- The claimed Creditable VAT Withheld per VAT returns were not fully corroborated by BIR Form 2306. The disallowance was pursuant [t]o Section 2.58.3 of Revenue Regulation No. 2-98 as amended in relation to Section 114 (c) of the Tax Code.

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- Input taxes were disallowed pursuant to Section 110 (A) (1) of the Tax Code for failure to comply with the evidencing requirement.
- Verification disclosed that you have mixed sales comprising of vatable sales, zero-rated sales and sale to government. The claimed input sale cannot be attributed to any particular sale. Hence, input taxes claimed was prorated based on sales to allocate the input tax for sale to government to determine the input taxes to be closed to expense account pursuant to Section 4.110-6 of Revenue Regulation No. 16-2005
- Excess input tax carried over to succeeding year was deducted from total creditable input tax considering that the same was credited against estimated quarterly liabilities for the taxable quarter of the succeeding taxable years pursuant to Section 110 (B) of the Tax Code.

ON EXPANDED WITHHOLDING TAX

- Verification disclosed that petitioner failed to withhold and remit the required expanded withholding tax on some income payments, hence, assessed pursuant to Section 57 of the Tax Code.

8. Verily, Respondent fully complied with the due process requirement mandated under Section 228 of the 1997 Tax Code as implemented by Revenue Regulations No. 12-99, when the disputed PAN and FAN were issued to herein petitioner. Records clearly show that petitioner was afforded opportunity to controvert the initial findings of the respondent involving its deficiency taxes for taxable year 2007 through the issuance of these notices. Likewise, petitioner was duly appraised by the respondent of the factual and legal basis on how and why respondent arrived at such findings through the receipt of the Details of Discrepancies attached to the FAN and PAN, as well as other Correspondence/Notices received by petitioner.

9. The assessment issued against petitioner for deficiency for taxable year made in accordance with law and regulations.

10. All presumptions are in favor of the correctness of tax assessments issued by the respondent. And mere allegations of destruction by fire cannot overturn that presumption.

> 11. 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 without 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 restitutere**."

On July 16, 2012, petitioner filed its *Reply*.[21] For his part, respondent filed his *Opposition and Comment (To the Reply Filed on July 20, 2012)*.[22]

The pre-trial conference was initially set on August 2, 2012.[23] However, upon filing of respondent's *Urgent Motion to Reset Pre-Trial* together with the *Pre-Trial Brief (for the Respondent)* on July 30, 2012,[24] the pre-trial conference was reset to and held on September 13, 2012.[25]

Petitioner's Pre-Trial Brief was filed on July 30, 2012.[26]

The parties submitted their *Joint Stipulation of Facts and Issues* on September 28, 2012,[27] which the Court approved in its Resolution dated October 3, 2012,[28] thereby terminating the Pre-Trial.

After the Court ordered respondent to transmit the BIR Records of this case,[29] respondent filed his *Ex-Parte Manifestation* on January 18, 2013,[30] praying for an extension to transmit the same. The Court granted respondent's motion for extension in the Order dated

[21] Docket – Vol. I, pp. 69 to 78.
[22] Docket – Vol. I, pp. 104 to 106.
[23] *Notice of Pre-Trial Conference* dated July 10, 2012, Docket – Vol. I, p. 103.
[24] Docket – Vol. I, pp. 107 to 108, and 109 to 111, respectively.
[25] Minutes of the hearing held on August 2, 2012, Docket – Vol. I, p. 131; *Notice of Hearing (Pre-Trial)* dated August 3, 2012, Docket – Vol. I, p. 132; Minutes of the hearing held on September 13, 2012, Docket – Vol. I, p. 133.
[26] Docket – Vol. I, pp. 113 to 127.
[27] Docket – Vol. I, pp. 137 to 140.
[28] Docket – Vol. I, p. 141.
[29] Minutes of the hearing held on January 16, 2013, Docket – Vol. I, p. 196.
[30] Docket – Vol. I, pp. 197 to 199.

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January 31, 2013.[31] Thereafter, respondent filed his *Compliance* on February 7, 2013,[32] transmitting the said BIR Records, which the Court noted in the Resolution dated February 13, 2014.[33]

Trial ensued.

During trial, petitioner presented documentary and testimonial evidence. As for its testimonial evidence, petitioner offered the testimonies of the following individuals, namely: (1) Ms. Elisa V. Sarmiento,[34] petitioner's Accountant; (2) Mr. Romeo B. Toribio,[35] petitioner's President and COO; (3) Ms. Gloria B. Orciga,[36] Barangay Secretary of Barangay Western Bicutan; (4) Atty. Jhufel M. Brañanola,[37] Chief of the Internal Affairs Service, Bureau of Fire Protection; and (5) Mr. Edwardson A. Punzalan,[38] Documentation Head of the Universal LMS Finance and Leasing Corporation.

Pursuant to the Order dated April 2, 2013,[39] the instant case was transferred to this Court's First Division.

On May 27, 2013, petitioner filed a *Motion to Resolve First the Invalidity of the Letter of Authority and Waiver of Statute of Limitations.*[40] The Court then received respondent's *Opposition and Comment (to the Motion to Resolve First the Invalidity of the Letter of Authority and Waiver of the Statute of Limitations) With Motion to Declare the Petitioner to be Deemed to Waived the Right to Present*

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[31] Docket – Vol. I – p. 202.
[32] Docket – Vol. I, pp. 203 to 207.
[33] Docket – Vol. I, p. 218.
[34] Exhibits "I" and "T", Docket – Vol. I, pp. 153 to 157, and 226 to 237, respectively; Minutes of the hearing held on March 11, 2013, Docket – Vol. I, p. 284; *Judicial Affidavit*, Docket – Vol. I, pp. 401 to 406; Minutes of the hearing held on, and Resolution dated, April 22, 2014, Docket – Vol. I, pp. 420 to 422, and 424, respectively; Exhibit "Z", Docket – Vol. II, pp. 673 to 682; Minutes of the hearing held on, and Resolution dated, October 6, 2016, Docket – Vol. II, pp. 786 to 789.
[35] Exhibit "X", Docket – Vol. I, pp. 429 to 435; Minutes of the hearing held on, and Resolution dated, July 1, 2014, Docket – Vol. I, pp. 451 to 452, and 454, respectively; Minutes of the hearing held on, and Resolution dated, January 27, 2016, Docket – Vol. I, pp. 628 to 630, and 633 to 634, respectively;
[36] Exhibit "GG", Docket – Vol. II, pp. 859 to 864; Order dated May 2, 2017, Docket – Vol. II, pp. 906 to 907.
[37] Exhibit "J", Docket – Vol. II, pp. 851-A to 857; Order dated May 2, 2017, Docket – Vol. II, pp. 906 to 907.
[38] Exhibit "HH", Docket – Vol. II, pp. 869 to 879; Order dated May 2, 2017, Docket – Vol. II, pp. 906 to 907.
[39] Docket – Vol. I, p. 285.
[40] Docket – Vol. I, pp. 290 to 305.

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Additional Evidence on July 8, 2013,[41] and petitioner's *Reply to Respondent's Opposition and Comment* on August 8, 2013.[42]

In the Resolution dated December 17, 2013,[43] the Court denied, for lack of merit, petitioner's *Motion to Resolve First the Invalidity of the Letter of Authority and Waiver of Statute of Limitations*, and respondent's *Motion to Declare the Petitioner to be Deemed to Waived the Right to Present Additional Evidence*.

On January 28, 2014, petitioner filed a *Motion for Partial Reconsideration of the Court Resolution Dated 17 December 2013 (To Reconsider only the Denial of the Motion to Resolve First the Invalidity of the Letter of Authority and Waiver of the Statute of Limitations ["MFR"])*.[44] Thereafter, the Court received respondent's *Comment/Opposition to the Motion for Partial Reconsideration* on February 7, 2014,[45] and petitioner's *Reply to Respondent's Comment/Opposition (to the Motion for Partial Reconsideration)* on February 26, 2014.[46]

In the Resolution dated April 22, 2014,[47] the Court still denied petitioner's *Motion for Partial Reconsideration of the Court Resolution Dated 17 December 2013* for lack of merit.

Thereafter, on July 23, 2014, petitioner filed an *Omnibus Motion (1) To Present Evidence Regarding Invalidity of both the Letter of Authority and Waiver of the Statute of Limitations; (2) To File Supplement to Petition for Review; (3) To File Amended Pre-Trial Brief and to file Amended Joint Stipulation of Facts and Issues*,[48] to which respondent filed an *Opposition and Comment (To the Omnibus Motion)* on August 6, 2014.[49] In any event, petitioner filed a *Reply (to Respondent's Opposition and Comment)* on September 1, 2014,[50] and respondent, a *Rejoinder*, on September 11, 2014.[51]

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[41] Docket – Vol. I, pp. 318 to 324.
[42] Docket – Vol. I, pp. 339 to 351.
[43] Docket – Vol. I, pp. 362 to 367.
[44] Docket – Vol. I, pp. 368 to 374.
[45] Docket – Vol. I, pp. 378 to 382.
[46] Docket – Vol. I, pp. 388 to 393.
[47] Docket – Vol. I, pp. 397 to 400.
[48] Docket – Vol. I, pp. 462 to 472.
[49] Docket – Vol. I, pp. 473 to 475.
[50] Docket – Vol. I, pp. 477 to 481.
[51] Docket – Vol. I, pp. 482 to 484.

In the Resolution dated September 25, 2014,[52] the Court granted petitioner's *Omnibus Motion*, and directed the parties to do the following:

1. For petitioner, to file a *Supplemental Petition for Review* and an *Amended Pre-Trial Brief*;
2. For respondent, to file his *Answer* and *Amended Pre-Trial Brief*; and
3. For both parties, to file an *Amended* JSFI.

As directed by the Court, *Petitioner's Amended Pre-Trial Brief*,[53] and *Supplement to the Petition for Review*,[54] were both filed on November 6, 2014; while the *Answer to the Supplement to the Petition for Review*,[55] and the *Manifestation* stating that respondent will adopt the Pre-Trial Brief he previously submitted,[56] were both filed on January 22, 2015.

In the Order dated February 4, 2015,[57] the Court noted respondent's *Manifestation*; however, respondent's *Answer to the Supplement to the Petition for Review* was considered as a mere scrap of paper for being filed out of time.

After the filing of respondent's *Motion for Reconsideration (To the Order Issued on February 4, 2015)* on February 6, 2015,[58] and petitioner's *Comment to Respondent's Motion for Reconsideration (To the Order Issued on February 4, 2015)* on March 27, 2015,[59] the Court directed respondent to submit the original Registry Receipt No. 3267 issued by the Makati City Post Office that pertained to the *Answer to the Supplement to the Petition for Review*.[60] Respondent failed to submit the said original copy of Registry Receipt No. 3267.[61] The Court then denied respondent's *Motion for Reconsideration (To the Order Issued on February 4, 2015)*.[62]

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[52] Docket – Vol. I, pp. 487 to 489.
[53] Docket – Vol. I, pp. 497 to 505.
[54] Docket – Vol. I, pp. 506 to 521.
[55] Docket – Vol. I, pp. 535 to 537.
[56] Docket – Vol. I, pp. 533 to 534.
[57] Docket – Vol. I, p. 539.
[58] Docket – Vol. I, pp. 549 to 550.
[59] Docket – Vol. I, pp. 561 to 563.
[60] Resolution dated June 9, 2015, Docket – Vol. I, pp. 597 to 599.
[61] Records Verification dated July 8, 2015 issued by the Judicial Records Division of this Court, Docket – Vol. I, p. 600.
[62] Resolution dated September 15, 2015, Docket – Vol. I, pp. 604 to 606.

The parties submitted their *Amended Joint Stipulation of Facts and Issues* on March 18, 2015,[63] and the same was approved on April 6, 2015.[64] Thereafter, the Court issued the Pre-Trial Order dated April 21, 2015.[65]

Petitioner then filed a *Motion to Correct and/or Amend Pre-Trial Order Dated 21 April 2015*,[66] which the Court granted in the Resolution dated September 15, 2015.[67] Consequently, the Amended Pre-Trial Order dated November 4, 2015 was issued by the Court.[68]

On October 17, 2016, petitioner submitted a *Motion for Presentation of Additional Witness*,[69] which the Court partially granted in the Resolution dated January 16, 2017.[70] Accordingly, the Court allowed petitioner to present Mr. Romeo L. Loro, Atty. Jhufel M. Brananola, and the Finance Officer of UMC Finance and Leasing Corporation.[71]

In the *Manifestation* filed on April 24, 2017,[72] petitioner stated that it was constrained to present Ms. Gloria B. Orziga, the current Barangay Secretary of Barangay Western Bicutan, after it was informed of the untimely death of the former Barangay Secretary, Mr. Romeo L. Loro.

The Court then respectively issued a *Subpoena Duces Tecum & Ad Testificandum* dated April 25, 2017 directed to the said concerned individuals.[73]

On May 22, 2017, petitioner filed its *Formal Offer of Documentary Evidence with Motion for Additional Markings*.[74] Respondent failed to file his comment thereto.[75]

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[63] Docket – Vol. I, pp. 557 to 560.
[64] Resolution dated April 6, 2015, Docket – Vol. I, p. 565.
[65] Docket – Vol. I, pp. 567 to 580.
[66] Docket – Vol. I, pp. 587 to 594.
[67] Docket – Vol. I, pp. 604 to 606.
[68] Docket – Vol. I, pp. 609 to 622.
[69] Docket – Vol. II, pp. 794 to 799.
[70] Docket – Vol. II, pp. 817 to 820.
[71] *Id.*
[72] Docket – Vol. II, pp. 841 to 844.
[73] Docket – Vol. II, pp. 846 to 848.
[74] Docket – Vol. II, pp. 910 to 927.
[75] Records Verification dated July 25, 2017 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 936.

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The Court granted petitioner's *Motion for Additional Markings* and set this case for a Commissioner's Hearing.[76] Thereafter, a Commissioner's Hearing was held on January 23, 2018.[77]

In the Resolution dated July 25, 2018,[78] the Court admitted petitioner's exhibits, *except* for the following:

1. Exhibits "EE" and "FF"", for failure to identify the same; and
2. Exhibit "HH-1", for failure to present the original for comparison.

Petitioner's admitted documentary exhibits are as follows:

Exhibit:	Description:
A	Preliminary Assessment Notice (PAN) dated 10 May 2011
B	AC Corporation's letter dated 24 May 2011
C	Formal Assessment Notice (FAN) dated 30 May 2011
D	Petitioner AC Corporation's Protest dated 28 June 2011 (Protest)
E	Petitioner AC Corporation's letter dated 26 August 2011 (Submission Letter)
E-1	Date or receipt by the BIR of the Submission Letter
F	Final Decision on Disputed Assessment dated 27 March 2012 (FDDA)
G	Certification dated 30 March 2011 issued by the Office of the Punong Barangay of Western Bicutan
H	Fire Clearance Certificate dated 30 June 2011 issued by the Bureau of Fire Protection
H-1	Signature of Atty. Jhufel M. Brañanola in the Fire Clearance Certificate dated 30 June 2011
I	Judicial Affidavit of Ms. Elisa V. Sarmiento dated January 15, 2013
J	Judicial Affidavit of Atty. Jhufel M. Brañanola dated 26 April 2017
J-1	Signature of Atty. Jhufel M. Brañanola in his Judicial Affidavit dated 26 April 2017
K	Letter of Authority (LOA) 2007 00048613 dated 29 July 2008

[76] Resolution dated September 8, 2017, Docket – Vol. II, pp. 941 to 943.
[77] Commissioner's Report (On Exhibits Marked) at the hearing held on January 23, 2018, Docket – Vol. II, pp. 952 to 955.
[78] Docket – Vol. II, pp. 958 to 959.

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L	Waiver of the Defense of Prescription Under the Statute of Limitation of the National Internal Revenue (Waiver)
M	AC Corporation's 2007 Annual Income Tax Return (ITR)
N	First Quarter 2007, amended VAT Return of AC Corporation
O	Second Quarter 2007, VAT Return of AC Corporation
P	Third Quarter 2007, VAT Return of AC Corporation
Q	Fourth Quarter 2007, amended VAT Return of AC Corporation
R	Monthly Remittance Returns (January to December 2007) of Creditable Income Taxes Withheld (Expanded)
T	Judicial Affidavit of Elisa V. Sarmiento dated 05 March 2013
U	Alfor Efren's Home Development Mutual Fund (HDMF) Employee Statement of Accumulated Value
V	Rachel Abalos' HDMF Employee Statement of Accumulated Value
W	Racher Abalos' Social Security System (SSS) Inquiry System
X	Judicial Affidavit of Romeo B. Toribio dated 23 June 2014
X-1	Signature of Romeo B. Toribio in his Judicial Affidavit odated 23 June 2014
Y	Audited Financial Statements of AC Corporation for CY 2007
Z	Judicial Affidavit of Elisa V. Sarmiento dated 28 September 2016
Z-1	Signature of Elisa V. Sarmiento in her Judicial Affidavit dated 28 September 2016
AA	Summary of Payments for the years 2007-2010 from Medialdea Ata Bello Guevarra & Suarez Law Office
BB	Summary of Payments for the years 2007-2010 from Carag Zaballero San Pablo Calica & Abiera Law Office
CC	Summary of Payments for the years 2007-2010 from Verano Law Firm
DD	Statement of Account from UMC Finance & Leasing Corporation
GG	Judicial Affidavit of Gloria B. Orciga dated 26 April 2017
GG-1	Gloria B. Orciga's DILG ID No. 137607018-10
GG-2	Bgy. Western Bicutan, Resolution No. 14 – Series of 2012
GG-3	Signature of Romeo L. Loro on page 1 of Bgy. Western Bicutan, Resolution No. 14 – Series of 2012
GG-4	Signature of Romeo L. Loro on page 2 of Bgy. Western Bicutan, Resolution No. 14 – Series of 2012

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GG-5	Signature of Gloria B. Orciga in her Judicial Affidavit dated 26 April 2017
HH	Judicial Affidavit of Edwardson A. Punzalan dated 26 April 2017
HH-2	Lease Agreement dated 11 December 2006 between UMC Finance & Leasing Corporation and AC Corporation
HH-3	Lease Schedule No. 20061207766
HH-4	Disclosure Statement of Loan Credit Transaction for the 2006 Mazda 3 1.6L unit
HH-5	Deed of Sale dated 04 October 2012
HH-6	Lease Agreement dated 23 October 2006 between UMC Finance & Leasing Corporation and AC Corporation
HH-7	Lease Schedule No. 20061007701
HH-8	Disclosure Statement of Loan Credit Transaction for the 2006 Hyundai Sta. Fe unit
HH-9	Deed of Sale dated 12 October 2011
HH-10	Lease Agreement dated 05 October 2006 between UMC Finance & Leasing Corporation and AC Corporation
HH-11	Lease Schedule No. 20061007665
HH-12	Disclosure Statement of Loan Credit Transaction for the two (2) units of 2006 Hyundai Getz 1.1MT
HH-13	Deed of Sale dated 20 October 2011
HH-14	Statement of Account No. 20061207766 (2006 Mazda 1 1.6L)
HH-15	Statement of Account No. 20061007701 (2006 Hyundai Sta. Fe)
HH-16	Statement of Account No. 20061007665 (2006 Hyundai Getz 1.1MT-2 Units)
HH-17	Signature of Edwardson A. Punzalan in his Judicial Affidavit dated 26 April 2017

For his part, respondent likewise presented his documentary and testimonial evidence. Respondent offered the testimonies of the following individuals, to wit: (1) Ms. Luzviminda G. Sabile,[79] Revenue Officer IV of the BIR; and (2) Mr. Rio Virgo T. Cruz,[80] Revenue Officer II of the BIR.

In the Order dated September 27, 2018,[81] the instant case was transferred to this Court's Second Division.

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[79] Exhibit "10", Docket – Vol. I, pp. 209 to 217; Minutes of the hearing held on, and Order dated, September 13, 2018, Docket – Vol. II, pp. 960 to 964.
[80] Exhibit "14", Docket – Vol. I, pp. 279 to 283; Minutes of the hearing held on, and Order dated, September 13, 2018, Docket – Vol. II, pp. 960 to 964.
[81] Docket – Vol. II, p. 965.

The Court received respondent's *Formal Offer of Evidence* on November 14, 2018.[82] Petitioner filed its *Comment/Opposition (Re: Formal Offer of Evidence dated 05 November 2018) with Manifestation* on November 28, 2018.[83]

The Court admitted all of respondent's exhibits in the Resolution dated January 3, 2019.[84]

Respondent's admitted documentary exhibits are the following:

Exhibit:	Description:
1	Memorandum of Assignment dated October 21, 2010
1-a	Signature of Gerry O. Dumayas, Revenue District Officer (RDO) of Revenue District Office No. 44 in Taguig & Pateros (RDO No. 44)
2	Letter of Authority (LOA) No. 00048613 dated July 29, 2008
2-a	Signature of Ma. Nierva A. Guerrero, Regional Director of BIR Revenue Region No. 8, Makati City
3	Second Request for the Presentation of Additional Records dated July 31, 2008
3-a	Signature of Group Supervisor Enrique C. Pinos
4	Final Request for Presentation of Records dated November 3, 2008
4-a	Signature of RDO Leida G. Buscaino
5	Notice of Informal Conference dated October 27, 2010 together with a Computation of Deficiency Taxes
5-a	Signature of Gerry O. Dumayas, Revenue District Officer of Revenue District Office No. 44 in Taguig & Pateros
6	Waiver of the Defense of Prescription under the Statue of Limitations of the NIRC executed by Reuben M. Valerio
6-a	Signature of Gerry O. Dumayas, Revenue District Officer
6-b	Specimen signature of Reuben M. Valerio, Chairman and CEO of AC Corporation
7	Memorandum dated May 5, 2011
7-a	Signature of Revenue Officer Luzviminda G. Sabile
8	Preliminary Assessment Notice issued on May 10,

[82] Docket – Vol. II, pp. 971 to 976.
[83] Docket – Vol. II, pp. 978 to 987.
[84] Docket – Vol. II, pp. 992 to 993.

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	2011 together with its Details of Discrepancies
8-a	Proof of receipt of the Preliminary Assessment Notice issued on May 20, 2011 together with its Details of Discrepancies
9	Assessment Notices dated May 30, 2011 together with the Formal Assessment Notice also dated May 30, 2011 with its corresponding Details of Discrepancies
9-a	Proof of receipt of the Assessment Notices dated May 30, 2011 together with the Formal Assessment Notice also dated May 30, 2011 with its corresponding Details of Discrepancies
10	Judicial Affidavit of Revenue Officer Luzviminda G. Sabile
10-a	Signature of RO Luzviminda G. Sabile
11	Memorandum of Assignment No. RR8-044-PRO-0711-000173
11-a	Signature of Maridur V. Rosario, Revenue District Officer of Rvenue District Office No. 44 in Taguig & Pateros (RDO No. 44)
12	Memorandum dated February 21, 2011
12-a	Signature of Revenue Officer Rio Virgo T. Cruz
12-b	Signature of Group Supervisor Frederico Q. Pilarca
12-c	Signature of Revenue District Officer Maridur V. Rosario
13	Final Decision on Disputed Assessment issued on March 27, 2012 together with the Details of Discrepancies
13-a	Proof of receipt of the Final Decision on Disputed Assessment issued on March 27, 2012 together with the Details of Discrepancies by the petitioner
14	Judicial Affidavit of Revenue Officer Rio Virgo T.Cruz
14-a	Signature of RO Rio Virgo T. Cruz

Subsequently, the *Memorandum for Petitioner* was filed on February 8, 2019.[85] Respondent, however, did not file his memorandum.[86]

On February 26, 2019, this case was considered submitted for decision.[87]

[85] Docket – Vol. II, pp. 994 to 1035.
[86] Records Verification dated February 15, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 1043.
[87] Resolution dated February 26, 2019, Docket – Vol. II, p. 1044.

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THE ISSUES RAISED

The parties stipulated on the following issues[88] for this Court's determination, viz:

> "1. Whether LOA No. 2007-00048613 is void.
>
> 2. Whether a void LOA No. 2007-00048613 necessarily invalidates a subsequently issued tax assessment.
>
> 3. Whether the Waiver of Statute of Limitations is void.
>
> 4. Whether the FAN was issued within 3-year prescriptive period prescribed by the National Internal Revenue Code.
>
> 5. Whether the deficiency tax assessments in the FAN have factual and legal bases.
>
> 6. Whether this Honorable Court has jurisdiction over the present Petition for Review.
>
> 7. Whether [petitioner] AC Corp. is liable for the deficiency Income Tax, VAT and EWT in the amount of Php76,137,587.45, Php7,342,384.72 and Php2,793,387.86 respectively, for taxable year 2007."

Petitioner's arguments:

Petitioner contends that as LOA No. 2007-00048613 was not properly served to petitioner and evidently, does not contain the required dry seal, the said LOA is definitely void, and necessarily invalidates a subsequently issued tax assessment.

The *Waiver of the Statute of Limitations* allegedly issued by Mr. Reuben M. Valerio on behalf of petitioner is void. Thus, the said *Waiver* did not extend respondent's period to assess deficiency taxes for CY 2007 and to the subject assessments. Petitioner further avers that the right of the government to assess or collect the alleged deficiency taxes is already barred by prescription.

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[88] Par. II, Stipulated Issues, Amended Pre-Trial Order, Docket – Vol. I, p. 611.

Furthermore, according to petitioner, this Court has jurisdiction over the present *Petition for Review.*

Lastly, petitioner contends that the FAN for deficiency income tax, VAT, and EWT has no factual and legal basis.

Respondent's counter-arguments:

In his *Answer*, respondent avers that petitioner failed to submit the required documents in support of its protest against the FAN; thus, the same became, final, executory and demandable. Being so, respondent contends that this Court has no jurisdiction to act in the instant *Petition for Review.* According to respondent, even assuming that this Court has jurisdiction, he asserts that petitioner failed to substantiate or submit supporting evidence during the administrative investigation of its tax case.

Respondent likewise posits that he complied with the due process requirement mandated under Section 228 of the 1997 Tax Code as implemented by Revenue Regulations (RR) No. 12-99 when the PAN and FAN were issued to petitioner. Moreover, respondent argues that petitioner has been allegedly appraised by respondent of the factual and legal basis of the PAN and FAN by attaching therein the Details of Discrepancies as well as the other correspondence/notices sent to petitioner.

The instant *Petition for Review* has merit.

For an orderly disposition of the instant case, We shall first address the issue of jurisdiction.

Petitioner did not fail to submit supporting documents within the sixty (60)-day period. Thus, the subject assessments did not become final, executory and demandable.

Respondent argues that despite the length of time given to petitioner, it failed to submit the required documents in support of its protest against the BIR's FAN; and thus, the same became final, executory, and demandable. Such being the case, according to respondent, this Court has no jurisdiction to act on the instant *Petition for Review.*

We disagree with respondent.

Section 228 of the NIRC of 1997 lays down the guidelines in the protest of tax assessments, to wit:

> "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 pre-assessment 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. <u>Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final</u>.**

> 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." *(Emphasis and underscoring ours)*

Based on the foregoing provision, the taxpayer has thirty (30) days from receipt of the assessment within which to file its administrative protest; and all relevant supporting documents shall have been submitted, within sixty (60) days from filing of the protest. Otherwise, the assessment shall become final.

Moreover, in *Commissioner of Internal Revenue v. First Express Pawnshop Co., Inc.*,[89] the Supreme Court held as follows:

> "Since respondent has not allegedly submitted any relevant supporting documents, petitioner now claims that the assessment has become final, executory and demandable, hence, unappealable.
>
> **We reject petitioner's view that the assessment has become final and unappealable. It cannot be said that respondent failed to submit relevant supporting documents that would render the assessment final because when respondent submitted its protest, respondent attached the GIS and Balance Sheet**. Further, petitioner cannot insist on the submission of proof of DST payment because such document does not exist as respondent claims that it is not liable to pay, and has not paid, the DST on the deposit on subscription.
>
> **The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment <u>as determined by the taxpayer</u>. The BIR can only inform the taxpayer to submit**

[89] G.R. No. 172045-46, June 16, 2009.

> **additional documents. <u>The BIR cannot demand what type of supporting documents should be submitted</u>.** Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit." *(Emphases and underscoring supplied)*

Based on the foregoing doctrinal pronouncements, the determination of the type of documents needed to support the protest rest solely on the taxpayer; and the BIR cannot demand what type of supporting documents should be submitted.

In the instant case, the 60-day period from the filing of petitioner's protest on June 29, 2011[90] ends on August 28, 2011. Considering that the letter dated August 26, 2011,[91] wherein petitioner attached *"additional reconstructed documents in support of"* its protest, was filed by petitioner with the BIR on the same date, petitioner has timely submitted the said supporting documents.

Thus, it cannot be said that petitioner failed to submit relevant supporting documents that would render the subject tax assessments final. Consequently, this Court has jurisdiction to take cognizance of the instant case.

In addition, the subject tax assessments could not have attained finality because the same is void, because of the nullity of the subject LOA.

The subject LOA is a nullity, because it was not served to petitioner within thirty (30) days from the issuance thereof. Moreover, the revenue officer who examined petitioner was not authorized through an LOA, and thus, the subject tax assessments are void.

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[90] Exhibit "D", BIR Records, pp. 535 to 541; Pars. 6 and 8(d), Relevant Stipulated Facts, AJSFI, Docket – Vol. I, p. 558.
[91] Exhibits "E" and "E-1", Docket – Vol. I, pp. 79 to 80.

As already stated, petitioner contends that as LOA No. 2007-00048613 was not properly served to petitioner and evidently, does not contain the required dry seal, the said LOA is definitely void, and necessarily invalidates a subsequently issued tax assessment.

There is merit in petitioner's contention.

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.[92] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[93]

As a corollary, 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. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to respondent himself or his duly authorized representatives.[94] This is explicitly provided under Sections 6(A) and 13 of the NIRC of 1997, which provide as follows:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –*
>
> (A) *Examination of Returns and Determination of Tax Due. –* After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: *Provided,*

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

> *however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." *(Emphasis supplied)*
>
> "SEC. 13. *Authority of a Revenue Officer.* – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself."

Based on the foregoing provisions, it is clear that unless authorized by respondent himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.[95] Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment.[96] In the absence of such an authority, the assessment or examination is a nullity.[97]

It must be ensured that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.[98]

Relative thereto, RMO No. 43-90[99] directs that audits conducted by BIR revenue officers should be conducted under an LOA, to wit:

> "C. Other policies for issuance of L/As.

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[95] *Ibid.*
[96] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178797, supra.
[97] *Ibid.*
[98] Refer to *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.
[99] SUBJECT: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

1. All audits/investigations, whether field audit or office audit, **should** **be conducted under a Letter of Authority.**

xxx xxx xxx." *(Emphasis and underscoring ours)*

Moreover, Revenue Audit Memorandum Order (RAMO) No. 1-00[100] mandates that an LOA must be served within thirty (30) days from the time it is issued, viz:

"VIII. *Preliminary Approach to Examination*

xxx xxx xxx

C. *Contact With Taxpayer*

xxx xxx xxx

2. *Serving of Letter of Authority*

xxx xxx xxx

2.2 A Letter of Authority authorizes or empowers a designated Revenue Officer to examine, verify and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.

2.3 **A Letter of Authority must be served** or presented to the taxpayer **within 30 days from its date of issue; otherwise it becomes null and void**, unless revalidated. The taxpayer has the right to refuse its service if presented beyond the 30-day period depending on the policy set up by management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words 'Revalidated on __________' on the face of the copy of the Letter of Authority issued." *(Emphasis and underscoring ours)*

[100] SUBJECT: Updated Handbook on Audit Procedures and Techniques Volume I (Revision – Year 2000)

Based on the foregoing provisions, an LOA must be served or presented to the concerned taxpayer within thirty (30) days from its date of issuance; otherwise, it becomes null and void, unless revalidated. In other words, an LOA is valid only for thirty (30) days from date of issue,[101] unless revalidated.

It is well-settled that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation. The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws and provisions of a taxing act are not to be extended by implication.[102] A plain reading of the above-stated BIR issuances shows that the service of the LOA to the concerned taxpayer within the said 30-day period is mandatory.

In this case, while the subject LOA No. LOA 2007 00048613 was issued on July 29, 2008,[103] it was shown to have been received by a certain Alfor Efren on the same date.[104] However, it is apparent that the said person is not the concerned taxpayer. Furthermore, while it was established that the same person is a security guard,[105] there is no showing that he is a duly authorized representative of petitioner, so as to legally bind the latter. Especially so that it is being denied that petitioner received the said LOA.[106]

Correspondingly, for failure of the BIR to observe the 30-day mandatory period to serve or present the issued LOA to petitioner, it has already become void.

To reiterate, it is clear from the earlier quoted provision of RAMO No. 1-00 that failure to serve the LOA to petitioner within the 30-day mandatory period renders the same void. In turn, a void LOA makes the authority of the revenue officers named therein as non-existent and not legally binding. Such being the case, the said revenue officers are deemed to have no authority at all to carry out the examination of the books of accounts and other accounting

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[101] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.
[102] *Commissioner of Internal Revenue vs. Julieta Ariete*, G.R. No. 164152, January 21, 2010.
[103] Exhibit "K", Docket – Vol. I, p. 238; Exhibit "2", BIR Records, p. 3.
[104] Supra.
[105] Exhibit "T" (Q1A to Q4A), Docket – Vol. I, pp. 227 to 228.
[106] Exhibit "T" (Q5A), Docket – Vol. I, p. 228.

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records of petitioner for all internal revenue taxes for the period covering the CY 2007.

Nevertheless, even granting that the subject LOA did not become void because of the lapse of the 30-day period, the revenue officer who conducted the examination of petitioner's books of accounts and other accounting records for taxable year 2007, and who recommended the issuance of the said tax assessments, was not authorized through the said LOA, or any LOA for that matter.

Records show that Ms. Luzviminda G. Sabile, the Revenue Officer (RO) who recommended the issuance of the subject PAN dated May 10, 2011,[107] was directed to continue the audit/investigation of petitioner merely by virtue of *Memorandum of Assignment* (RR8-044-REA-REF—1010-00012) dated October 21, 2010 signed by Mr. Gerry O. Dumayas, the Revenue District Officer.[108] Specifically, there is no showing that the authority of RO Luzviminda G. Sabile to examine petitioner was derived from an LOA.

Considering that the revenue officer who conducted the examination of petitioner's books of accounts and other accounting records for taxable year 2007 and who recommended the issuance of the said PAN against petitioner for the same taxable year, did not have the authority to do so in the first place, the subject tax assessments issued by the respondent against petitioner are inescapably void.

It must be emphasized that a void assessment bears no valid fruit.[109] Such being the case, the subject tax assessments cannot be enforced against petitioner. Correspondingly, it is no longer necessary to address the other or issues arguments raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* and *Supplement to the Petition for Review* are **GRANTED**. Accordingly, the FDDA dated March 27, 2012 of respondent, requesting petitioner to pay the assessed deficiency

[107] Exhibits "7" and "7-a", BIR Records, p. 489.
[108] Exhibits "1" and "1-a", BIR Records, p. 457.
[109] *Commissioner of Internal Revenue vs. Azucena T. Reyes, et seq.*, G.R. Nos. 159694 and 163581, January 27, 2006.

income tax, VAT, and EWT, in the amounts of ₱76,137,587.45, ₱7,342,384.72, and ₱2,793,387.86, respectively, covering calendar year ending December 31, 2007, is **WITHDRAWN** and **SET ASIDE**.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(with Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AC CORPORATION, Petitioner,	**CTA CASE NO. 8485**
	Members:
-versus-	**Castañeda, Jr.**, *Chairperson,* **Mindaro-Grulla,** and **Bacorro-Villena,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 06 2020 4:30 p.m.

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SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.*:

I agree with the result that the petition for review be granted.

In this case, the authority of the Revenue Officer who continued the audit/investigation of petitioner was based on the Memorandum of Assignment (RR8-044-REA-REF—1010-00012) dated October 21, 2010 signed by the Revenue District Officer (RDO). The RDO is bereft of any power to authorize the examination of taxpayers or to effect any modification or amendment to a previously issued LOA because only the Commissioner of Internal Revenue or his duly authorized representatives are granted such power.[1] Accordingly, the assessment in this case is void because the investigating examiner was only authorized by the RDO.

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

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[1] *See* Sections 6(A) and 13 of the NIRC of 1997.