REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

**FIRST DIVISION**

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| GLOBAL PACKAGING SYSTEMS & MATERIALS CORP., Petitioner, | CTA CASE NO. 9744 |
| | Members: |
| -versus- | DEL ROSARIO, *P.J., Chairperson,* FABON-VICTORINO, *and* MANAHAN, *JJ.* |
| COMMISSIONER OF INTERNAL REVENUE, Respondent. | Promulgated: MAR 11 2020 9:53 am |

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**DECISION**

***Fabon-Victorino, J.*:**

In this Petition for Review[1] filed on January 4, 2018, petitioner Global Packaging Systems & Materials Corp. seeks to reverse and set aside the Amended Assessment Notices and Final Decision on Disputed Assessment (FDDA) issued by respondent Commissioner of Internal Revenue for alleged deficiency Income Tax (IT), Expanded Withholding Tax (EWT), Withholding Tax on Compensation (WTC), Documentary Stamp Tax (DST), and Value-Added Tax (VAT) for taxable year (TY) 2010, in the aggregate amount of ₱432,600.24, inclusive of interests and surcharges, for being *void ab initio*.

First, the facts.

[1] Docket, pp. 10-25.

Petitioner is a domestic corporation with office address at No. 8932 Dr. A. Santos Barangay BF Homes, Sucat Road, Parañaque.[2]

Respondent, on the other hand, is the commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of his office, including, among others, the duty to act on disputed assessments, refunds of internal revenue taxes, fees or other charges as provided by law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

On July 14, 2011, the Regional Director of BIR Revenue Region of Makati issued an electronic Letter of Authority (LOA) No. 052-2011-00000189[4], authorizing Revenue Officer (RO) Ma. Rhodora Cantilang and Group Supervisor (GS) Leo Paceno to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for TY 2010. Attached to the said LOA was the *First Request for Presentation of Books of Accounts and Other Accounting Records*[5] which petitioner complied with on August 1, 2011.

On June 25, 2012, the Regional Director of Revenue Region of Makati issued another LOA with No. eLA201000078324[6] dated May 29, 2012, authorizing RO Eugene Garcia and GS Lorna Villanueva to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period commencing January 1, 2010 to December 31, 2010.

On June 27, 2012, petitioner again submitted documents pursuant to the second LOA dated May 29, 2012 which the BIR received on July 2, 2012.[7]

On August 9, 2012, petitioner received an undated second notice[8] for examination of books of accounts and other documents signed by RO Eugene R. Garcia. In

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[2] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 110.
[3] Par. 2, Summary of Admitted Facts, JSFI, Docket, p. 110.
[4] Exhibit P-1, docket, p. 129.
[5] Exhibit P-2, docket, pp. 130-131.
[6] Exhibit P-3, docket, p. 132.
[7] Exhibit P-4, docket, p. 133.
[8] Exhibit P-5, docket, p. 134.

compliance thereof, petitioner submitted the requested documents on August 13, 2012.

On December 6, 2013, petitioner received the Final Assessment Notice[9] (FAN) for deficiency IT, VAT, EWT, WTC and DST, in the aggregate amount of ₱1,329,647.53, against which petitioner filed a protest[10] on December 9, 2013.

On February 19, 2014, petitioner received a BIR Letter from Revenue District Officer Attorney Christina Barroga, indicating that RO Jabber D. Macawadib and GS Nora Y. Tadiwan would conduct a re-investigation pursuant to *Memorandum of Assignment* No. RR8-53B-RET/REIN-0214-007 dated February 4, 2014.[11]

Subsequently, petitioner received a letter dated March 4, 2014 on the results of the re-investigation conducted.[12]

On October 22, 2014, petitioner received the assailed Final Decision on Disputed Assessment (FDDA) and Amended Assessment Notices, all dated October 15, 2014, to wit:

1) Assessment No. IT-ELA78324-10-14-968 that cancels Assessment No. IT-ELA78324-10-13-0525 dated December 6, 2013 for income tax;

2) Assessment No. VT-ELA78324-10-14-968 that cancels Assessment No. VT-ELA78324-10-13-0525 dated December 6, 2013 for VAT;

3) Assessment No. WC-ELA78324-10-14-968 that cancels Assessment No. WC-ELA78324-10-13-0525 dated December 6, 2013 for WTC.[13]

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[9] Par. 9, Summary of Admitted Facts, JSFI, Docket, p. 111.
[10] Par. 10, Summary of Admitted Facts, JSFI, Docket, p. 111.
[11] Par. 11, Summary of Admitted Facts, JSFI, Docket, p. 111.
[12] Par. 12, Summary of Admitted Facts, JSFI, Docket, p. 112.
[13] Par. 13, Summary of Admitted Facts, JSFI, Docket, p. 112.

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On November 21, 2014, petitioner filed a protest dated October 15, 2014 against the FDDA on ground of prescription.[14]

Shortly thereafter, petitioner was informed, through a letter dated December 5, 2014, that its case was submitted to the BIR's Appellate Division, for its evaluation and recommendation to respondent, who in turn, shall render his decision in accordance with Section 3.1.5 of Revenue Regulations (RR) No. 12-99, as amended by Section 3.1.4 of RR No. 18-2013.[15]

On December 24, 2017, petitioner received respondent's *Decision* dated October 24, 2017, denying its protest against the assessment for the TY 2010.[16] This prompted petitioner to file the instant Petition for Review on January 4, 2018 questioning the validity of the audit, the assessment notices and Decision.

In his Answer,[17] respondent claims that the assailed assessment has not yet prescribed as petitioner requested for a reinvestigation of its case which suspended the running of the prescriptive period. Besides, an assessment shall not be disturbed in the absence of proof of any irregularities in the performance of official duties as obtaining in the present case.

After the pre-trial conference, the parties filed their *Joint Stipulation of Facts and Issues*[18] on the basis of which a *Pre-Trial Order*[19] was issued on July 6, 2018.

To prove its case, petitioner presented its lone witness, **Florinda C. Dava**, who by way of a Judicial Affidavit[20] testified that she is petitioner's Accounting Officer since March 16, 2009. On July 22, 2011, she personally received the LOA dated July 14, 2011 with a First Request for Presentation of Books of Accounts and Other Accounting

[14] Par. 14, Summary of Admitted Facts, JSFI, Docket, p. 112.
[15] Par. 15, Summary of Admitted Facts, JSFI, Docket, p. 112.
[16] Par. 16, Summary of Admitted Facts, JSFI, Docket, p. 112.
[17] Docket, pp. 62 to 63
[18] Docket, pp. 110 to 114.
[19] Docket, pp. 119 to 122.
[20] Docket, pp. 87-92.

Records. On August 1, 2011, she submitted the requested documents.

Subsequently, she received another LOA dated May 29, 2012, authorizing RO Eugene Garcia and GS Lorna Villanueva to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2010 to December 31, 2010. She was surprised to receive a second LOA as the law prohibits the issuance of two (2) LOAs covering the same TY except when the case is re-assigned to another RO under a Memorandum of Assignment. Nevertheless, she submitted the requested documents cited in the second LOA as shown in the receiving copy of petitioner's transmittal letter dated June 27, 2012.

On August 9, 2012, petitioner received a Second Notice for examination of books of accounts and other documents. Again, petitioner complied by submitting the requested documents on August 13, 2012. This notwithstanding, respondent issued a FAN dated December 6, 2013, against which petitioner filed a protest on December 9, 2013.

Subsequently, petitioner received a letter from Revenue District Officer Atty. Christina Barroga, stating that RO Jabber D. Macawadib and GS Nora Y. Tadiwan would conduct a re-investigation of its case pursuant to Memorandum of Assignment No. RR8-53B-RET/REIN-0214-007 dated February 4, 2014. The witness was surprised by this development as petitioner merely reiterated its position and that no newly discovered evidence or additional evidence was submitted to support its protest. In a month's time, respondent issued a letter dated March 4, 2014, containing the result of the re-investigation.

On October 22, 2014, petitioner received the Amended Assessment Notices all dated October 15, 2014. Upon receipt thereof, she prepared and filed with respondent a letter protest on November 21, 2014.

In a letter dated December 5, 2014, petitioner was informed that its case was referred to the Appellate Division for its evaluation and recommendation to respondent who shall decide the case in accordance with Section 3.1.5 of RR No. 12-99, as amended by Section 3.1.4 of RR No. 18-2013.

On December 8, 2017, petitioner received the assailed Final Decision dated October 24, 2017, denying its protest against the assessment for TY 2010.

Petitioner rested when it filed its *Formal Offer of Documentary Evidence*[21] on July 12, 2018, which the Court resolved in the Resolution[22] dated August 7, 2018.

On the ground that the issue in the case at bar is purely legal, respondent opted not to present any evidence in support of his defense. On that account, the parties were granted thirty (30) days to simultaneously file their respective memoranda.

This case was submitted for decision on March 12, 2019.[23]

## THE ISSUE

Initially, the parties raised the following issue for the determination of the Court, to wit:

> Whether petitioner is liable for deficiency income tax, expanded withholding tax, [withholding tax] on compensation, documentary stamp tax and value-added tax for taxable year 2010 or not."[24]

However, during the hearing on September 10, 2018 they changed it to:

> WHETHER OR NOT THERE WAS A VIOLATION OF DUE PROCESS OF LAW

[21] Docket, pp. 125 to 128.
[22] Docket, pp. 148 to 149.
[23] Resolution dated March 12, 2019, Docket, p. 189.
[24] Statement of Issues, JSFI, Docket, p. 113.

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WHEN TWO LETTERS OF AUTHORITY WERE ISSUED IN THIS CASE.[25]

***Petitioner's arguments:***

According to petitioner, respondent's right to issue assessment against it for TY 2010 has already prescribed given that the *Amended Assessment Notices,* all dated October 15, 2014, were sent and received by petitioner only on October 22, 2014, or after the lapse of the 3-year prescriptive period to assess. Moreover, it did not receive the FAN or the *Amended Assessment Notice* for deficiency EWT and DST.

On the suspension of the running of the Statute of Limitations, petitioner submits that Section 271 of the NIRC explicitly limits the suspension of the running of the statute of limitations to instances where reinvestigation is requested by and granted to the taxpayer by respondent. Allegedly, Revenue Regulations (RR) No. 12-85 defines the two types of protest: (1) the request for reconsideration for re-evaluation of the assessment issued on the basis of existing records without need to submit additional evidence; and (2) the request for reinvestigation of assessment issued on the basis of newly discovered or additional evidence that a taxpayer would present during the reinvestigation.

Amazingly, petitioner claims that its own protest letter dated December 9, 2013 was *pro forma* since it requested for the cancellation and termination of the assessment for TY 2010 without stating with specificity whether it was for reconsideration or reinvestigation, and that no further evidence was submitted. Thus, the issuance of the assailed FDDA as a result of the reinvestigation was without any basis.

Lastly, there was no new LOA issued for the purpose of re-investigation which is required to authorize the replacement ROs who would conduct the re-investigation.

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[25] Minutes of the hearing held on, and Order dated, September 10, 2018, Docket, pp. 150 to 151; Minutes of the hearing held on, and Order dated, January 22, 2019, Docket, pp. 157 to 159; Transcript of Stenographic Notes (TSN) dated September 10, 2018 and January 22, 2019.

***Respondent's counter-arguments:***

Respondent submit that petitioner's contention that its right to due process of law was violated when two (2) LOAs were issued has no leg to stand on.

The record indicates that the registered address of petitioner at the time the LOA dated July 14, 2011 was issued was at Unit N MB Aguirre Bldg., 15 Pres Avenue, BF Homes, Parañaque City, which was under the jurisdiction of Revenue District Office (RDO) No. 52 in Parañaque City. On January 30, 2012, the docket of petitioner's case was indorsed to RDO No. 53B in Muntinlupa City, as a consequence of petitioner's transfer to its new business address at Unit 1006 Alpap II Building, Trade St. cor. Investment Dr. Madrigal Bus. Park Alabang, Muntinlupa City.

Such transfer to another jurisdiction warranted the issuance of another LOA, which was dated May 29, 2012 authorizing ROs from RDO No. 53B to continue with the investigation of petitioner's internal revenue taxes for TY 2010. The assessment based on the LOA issued by RDO No. 52 in Parañaque City, despite the said transfer and without a new LOA issued by RDO No. 53B, would have been void and invalid. Further, petitioner was only assessed once for TY 2010 pursuant to the LOA issued by the proper RDO.

Lastly, respondent posits that except for the assessment for deficiency VAT for the first quarter of TY 2010, the questioned assessment was issued well within the prescribed period on December 6, 2013.

## THE COURT'S RULING

As in other assessment cases, the timeliness of the filing of the instant Petition for Review must first be determined.

Section 228[26] of the NIRC of 1997, as amended, provides that a taxpayer adversely affected by the decision of the Commissioner of Internal Revenue may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the same shall become final, executory and demandable.

The record indicates that petitioner received respondent's Decision denying its request for reconsideration on December 24, 2017.[27] Thus, petitioner had thirty (30) days from December 24, 2017, or until January 23, 2018, within which to appeal respondent's adverse decision. Evidently, the instant Petition for Review was seasonably filed on January 4, 2018. In fine, the Court has the required competence to hear and determine the present case pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282.[28]

On the merits of the case.

While the parties agreed that the only issue for the resolution of the Court is whether its right to due process

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[26] 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. 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. (*Emphasis supplied*)

[27] Paragraph 16, JSFI, docket, p. 112.

[28] Sec. 7. *Jurisdiction.* - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Reven··e; xxx.

was violated when the two (2) LOAs were issued by respondent, their respective Memoranda however also raised the issue of prescription. Hence, the Court shall discuss the two (2) issues raised by the parties.

*The issuance of two (2) LOAs in this case are consistent with the requirements of the law and jurisprudence*:

Settled is the rule that before any revenue officer may conduct a tax audit or examination, there must first be a valid grant of authority for that purpose. This is unequivocally provided in Section 6 (A) of the NIRC of 1997, as amended, to wit:

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

The pronouncement by the Supreme Court in the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[29], on the authority of revenue officers to conduct a tax audit/examination a tax payer based on a validly issued LOA is instructive, thus:

> **An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions**. It empowers or enables said

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

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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: xxx

xxx xxx xxx

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

> 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**." (*Boldfacing supplied*)

Evidently, a grant of authority, through an LOA, is indispensable in order that a RO may validly conduct a tax audit/examination or issue a tax assessment, and that the absence thereof will render either the tax audit/examination, or the issuance of tax assessment, a nullity.

Corollarily, the Regional Director, within the region and district offices under his or her jurisdiction, is vested with the power to issue LOAs, pursuant Section 10 of the NIRC of 1997, which reads as follows:

> SEC. 10. *Revenue Regional Director.* – Under the 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:
>
> xxx xxx xxx
>
> *(a)* **Issue Letters of Authority for the examination of taxpayers within the region**; xxx *(Boldfacing supplied)*

Further, Section 13 of the NIRC of 1997 states that a RO assigned to perform assessment functions may examine taxpayers in order to collect taxes from, or to recommend the issuance of a deficiency tax assessment against the said taxpayers, pursuant to an LOA issued by the Regional Director, 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, 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. *(Emphases supplied)*

Clearly, a RO assigned to a particular district may not examine any taxpayer within such district or recommend issuance of an assessment for any deficiency tax due against it, without a valid LOA issued by the Revenue Regional Director having jurisdiction over the said taxpayer.

There is no denying that there were two (2) LOAs issued against petitioner by Revenue Region No. 008 - Makati City, to wit: (1) LOA No. LOA-052-2011-00000189 (SN: eLA201000053267) dated July 14, 2011, **in favor of the ROs of Revenue District Office No. 52 – Paranaque**, for the period January 1, 2010 to December 31, 2010;[30] and (2) LOA No. LOA-053B-2012-00000068 (SN: eLA201000078324) dated May 29, 2012, **in favor of the ROs of Revenue District Office No. 53B – Muntinlupa City**, for the same period.[31] Note that the

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[30] Exhibit "P-1", Docket, p. 129.
[31] Exhibit "P-3", Docket, p. 132.

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major difference between the two LOAs is the implementing Revenue District Office.

During the hearing on July 11, 2018, petitioner's lone witness, Florinda C. Dava, testified on cross-examination as follows:

> CROSS EXAMINATION BY ATTY. CARL FITRI A. HUSSIN.
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> ---------------------------------------------------
>
> ATTY. HUSSIN:
> Q. Ms. Witness, in your Judicial Affidavit, in Paragraph 1 thereof, **you mentioned of one address in Paranaque City, is this the current address of the petitioner corporation?**
>
> MS. DAVA:
> A. **Yes, sir.**
>
> ATTY. HUSSIN:
> Q. Now you said here that you have been employed by petitioner since 2009, so you are pretty much aware of the tax compliance of the petitioner?
>
> MS. DAVA:
> A. Yes, sir.
>
> ATTY. HUSSIN:
> Q. In you[r] Judicial Affidavit Ms. Witness, you stated that you were the one who personally received the electronic letter of authority dated July 14, 2011, am I right?
>
> MS. DAVA:
> A. Yes, sir.
>
> ATTY. HUSSIN:
> Q. So do you know the basis, if you know, why this letter of authority dated July 14, 2011 was issued to the petitioner corporation?
>
> MS. DAVA:
> A. For the examination of our books of accounts and other accounting records.

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ATTY. HUSSIN:
Q. So prior to the issuance of this letter of authority, did petitioner corporation file any claim for refund with the BIR?

MS. DAVA:
A. No, sir.

ATTY. HUSSIN:
Q. Now I would like to look at your Judicial Affidavit and the attachments therein specifically Exhibit P-1. **It is mentioned in the letter of authority dated July 14, 2011 that the same was issued pursuant to mandatory audit claim for TCC or refund, am I right Mr. Witness?**

MS. DAVA:
A. **Yes, sir.**

ATTY. HUSSIN:
Q. **And the address of petitioner corporation at the time of the issuance of this letter of authority dated July 14, 2011 was at Unit MB Euron Building 15th President Avenue, BF Homes, Paranaque City?**

MS. DAVA:
A. **Yes, sir.**

ATTY. HUSSIN:
Q. Is this the same address that you were referring in Paragraph 1 of your Judicial Affidavit?

MS. DAVA:
A. No, it is different sir. But our current address now is stated in my Affidavit, in Paranaque.

ATTY. HUSSIN:
Q. All right. **Can you please tell this Court if petitioner corporation changed its address sometime in 2012?**

MS. DAVA:
A. **Yes, sir.**

ATTY. HUSSIN:
Q. **When was this, Ms. Witness?**

MS. DAVA:
A. I don't remember sir, **but this was in 2012**.

ATTY. HUSSIN:
Q. **Did the petitioner file any update of its business application?**

MS. DAVA:
A. **Yes.**

ATTY. HUSSIN:
Q. **So from RDO 52 in Paranaque City, you transferred to the jurisdiction of RDO 53B Muntinlupa City?**

MS. DAVA:
A. **Yes.**

JUSTICE CASTANEDA:
Q. Was there a transfer form?

MS. DAVA:
A. Yes, Your Honor.

JUSTICE CASTANEDA:
Q. When was it filed?

MS. DAVA:
A. I think it was in 2012.

ATTY. HUSSIN:
Q. **Now after you transferred your business address to Muntinlupa City, the BIR in Muntinlupa City issued a letter of authority, this time around dated May 29, 2012, am I right Ms. Witness? It is mentioned in your Judicial Affidavit as Exhibit P-3.**

MS. DAVA:
A. **Yes, sir.**

ATTY. HUSSIN:

> Q. **So the BIR in Muntinlupa issued a letter of authority dated May 29, 2012, this is for the investigation of petitioner's all internal revenue taxes for 2010?**
>
> MS. DAVA:
> A. **Yes, sir.**
>
> ATTY. HUSSIN:
> Q. And the basis for the issuance of this letter of authority dated May 29, 2012 was pursuant to audit criteria for taxable years 2009 and 2010?
>
> MS. DAVA:
> A. Yes, sir.[32] (*Emphasis supplied*)

As admitted by its own witness, petitioner transferred its business address in 2012 from **Parañaque City**, which was within the jurisdiction of RDO No. 052 - Paranaque, to **Muntinlupa City**, which was within the jurisdiction of RDO No. 053B - Muntinlupa City.

Consequently, RDO No. 052 – Parañaque City lost jurisdiction over petitioner for the purpose of continuing the tax audit/examination of petitioner's internal revenue taxes for TY 2010. Thus, it was necessary for the Revenue Regional Director of Revenue Region No. 008 – Makati City to issue the second LOA authorizing the ROs from RDO No. 053B – Muntinlupa City to continue the tax audit/ examination of petitioner's internal revenue taxes for TY 2010. To rule otherwise, is to disregard the requirements of the law and established jurisprudence.

In fine, the issuance of two (2) LOAs was consistent with the law and established jurisprudence on the matter. In other words, there was no violation of petitioner's right to due process of law in the issuance of the second LOA.

*The period to assess petitioner for TY 2010 is*

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[32] TSN dated July 11, 2018, pp. 6 to 10.

*not barred by prescription:*

Section 203 of the NIRC of 1997, as amended, specifically provides for the period within which respondent must make an assessment, to wit:

> 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.

Per the foregoing provision, internal revenue taxes must be assessed by the government within three (3) years from the last day prescribed by law for the filing of the tax return or from the date of actual filing of such return, whichever comes later. Accordingly, an assessment notice issued after the said three-year prescriptive period is no longer valid and effective.[33]

Since the instant case involves deficiency IT, VAT, EWT, WTC, and DST, the prescribed due dates for filing of the returns to be used as basis for the three (3) year prescriptive period vary.

In the instant case, petitioner claims that respondent had until the following dates to issue the subject deficiency tax assessments:

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[33] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

| Tax Type | Last Day Prescribed by Law to File Return | Actual Date the Return was Filed | Prescriptive Period to Assess until |
|---|---|---|---|
| Income Tax | April 15, 2011 | April 14, 2011 | April 15, 2014[34] |
| VAT | | | |
| a) 1st Qtr | April 25, 2010 | April 26, 2010 | April 25, 2013[35] |
| b) 2nd Qtr | July 25, 2010 | May 20, 2011 | May 20, 2014 |
| c) 3rd Qtr | October 25, 2010 | May 20, 2011 | May 20, 2014 |
| d) 4th Qtr | January 25, 2010 | May 20, 2011 | May 20, 2014 |
| EWT | March 1, 2011 | February 28, 2011 | March 1, 2014[36] |
| WTC | January 31, 2011 | May 13, 2011 | May 13, 2014 |
| DST | 2010 | none | 2020[37] |

For petitioner, since the *Amended Assessment Notices,* all dated October 15, 2014, were sent and received by it only on October 22, 2014, or after the lapse of the 3-year prescriptive period to assess, said assessment are already barred by prescription.

Petitioner's stance is erroneous.

A close scrutiny of the record of the case shows that on December 6, 2013, respondent issued the FAN which petitioner admittedly received on the same date. Having issued the FAN prior to the above-stated prescriptive periods, save for the assessment for deficiency VAT for the first quarter of TY 2010, respondent's right to issue the assessment on deficiency IT, EWT, WTC, DST and VAT for the remaining three (3) quarters of TY 2010, have not yet prescribed.

To be sure, petitioner's invocation of prescription of respondent right to assess by reason of its receipt of the FDDA and Amended Assessment Notices, all dated October 15, 2014, on October 22, 2014 has no legal basis. What the law contemplates as an assessment is the written notice that the amount of tax therein stated is due from the taxpayer with demand for payment of the same within a stated period of time.[38] Evidently, the FAN is the one generally referred to in the 1997 NIRC to serve such purpose.

[34] Pursuant to Section 77(B) of the NIRC of 1997, as amended.
[35] Pursuant to Section 114(A) of the NIRC of 1997, as amended.
[36] Pursuant to Section 58 of the NIRC of 1997, as amended.
[37] Pursuant to Section 200(B) of the NIRC of 1997, as amended.
[38] Commissioner of Internal Revenue vs. CTA, 27 SCRA 1159.

As correctly ruled by respondent in his assailed Decision[39] dated October 24, 2017, to wit:

> The records reveal that Global received the FAN through its authorized representative on December 6, 2013. Thus, save for the assessment for deficiency VAT for the first quarter of the taxable year 2010, the questioned assessments were issued well-within the required prescribed period…"

**WHEREFORE**, premises considered, the *Petition for Review* filed by Global Packaging Systems & Materials Corp. is **DENIED,** for lack of merit.

**SO ORDERED.**

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

[39] BIR Record, pp. 530-540.

## CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, 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