REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* –

LINDE PHILIPPINES, INC. (formerly, CONSOLIDATED INDUSTRIAL GASES, INC.),
Respondent.

CTA EB NO. 2194
(CTA Case No. 8783)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, *JJ.*

Promulgated:

JAN 0 5 2021 4:09 p.m.

x--x

DECISION

CASTAÑEDA, JR., *J.:*

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue on December 20, 2019. It seeks the reversal of the Decision dated March 28, 2019,[2] (Assailed Decision) as well as the Resolution dated November 15, 2019[3] (Assailed Resolution) of the Special Third Division (Court in Division)[4] of this Court in the case docketed as CTA Case No. 8783.

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[1] Court *En Banc's* Docket, pp. 7-25.
[2] *Id.*, pp. 32-64.
[3] *Id.*, pp. 65-69.
[4] Composed of Associate Justice Esperanza R. Fabon-Victorino *(ponente)* and Associate Justice Ma. Belen M. Ringpis-Liban.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

"**WHEREFORE**, the instant Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment issued by respondent against petitioner for deficiency final withholding tax and value-added tax in the aggregate amount of ₱62,363,178.19, inclusive of surcharge, interest and compromise penalties for fiscal year ended September 30, 2007 is **CANCELLED** and **SET ASIDE**.

In addition, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱62,363,178.19, representing erroneously or illegally collected deficiency final withholding tax and value-added tax.

SO ORDERED."

Assailed Resolution:

"**WHEREFORE**, respondent's *Motion for Reconsideration* dated April 18, 2019 is **DENIED,** for lack of merit. The impugned Decision of March 5, 2019[5] is **AFFIRMED**.

SO ORDERED."

THE FACTS

The facts of the present case were laid down by the Court in Division in the Assailed Decision as follows:[6]

"Petitioner is a domestic corporation, with principal office at 30th Floor, Wynsum Corporate Plaza, 22 Emerald Avenue, Ortigas Center, Pasig City. ℊ

[5] It should be **March 28, 2019**.
[6] Court *En Banc's* Docket, pp. 33-41 (Citations omitted).

Petitioner was primarily organized to engage in the manufacture, production, purchase, importation, sale and trade at wholesale of all kinds of liquids and gases and special gases and other chemicals, including but not limited to oxygen, hydrogen, acetylene, nitrogen, argon, carbon dioxide, carboxen, nitrous oxide, compressed air, helium and other allied or related products, including welding equipment, containers and other receptacles and to lease, operate and/or manage, construct and to install for the account of others, plants, equipment and machineries for the manufacture or production of the desired liquids and gases and other billed products including pipeline systems and related equipment.

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On December 17, 2008, respondent issued Letter of Authority (LOA) No. 200800010431, authorizing Revenue Officer (RO) Charlie C. De Leon and Group Supervisor (GS) Alfredo M. Santos of Revenue District Office (RDO) No. 43-Pasig City to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for FY ended September 30, 2007.

On July 9, 2009, respondent, through the OIC-Chief of Large Taxpayers Audit and Investigation I, Conrado C. Lee, issued Memorandum Referral No. D-LOA-61-07-09 assigning the case to RO Melinda Lim and GS Theodore Maroket for the continuance of audit previously handled by RDO No. 43-Pasig City for FY covering October 1, 2006 to September 30, 2007 pursuant to LOA No. 200800010431.

On October 27, 2011, respondent issued a Notice of Informal Conference inviting petitioner for a conference and to submit documentary evidence in support of its objections against the proposed assessment.

On December 7, 2011, petitioner received the Preliminary Assessment Notice (PAN) with Details of Discrepancy dated November 29, 2011 issued by respondent through OIC-Assistant Commissioner of Large Taxpayers Service (LTS), Alfredo V. Misajon, assessing it for deficiency

FWT in the amount of ₱41,725,001.58 and deficiency VAT in the amount of ₱18,016,798.50 or a total amount of ₱59,741,800.08, inclusive of penalties and interests for FY ended September 30, 2007.

In a Letter dated January 30, 2012, petitioner requested respondent that it be allowed to pay the assessed deficiency taxes in six (6) installments to avoid further interest should it be finally determined liable thereto. Petitioner also emphasized in the same letter that the payment of the alleged deficiency taxes was under protest with reservation to challenge the said assessment before the proper Court. In a Letter dated February 1, 2012, respondent granted petitioner's request to pay the deficiency taxes in installments but only for a period of four (4) months commencing February 15, 2012.

Petitioner however failed to make installment payment on February 15, 2012. Thus, on March 12, 2012, petitioner received a Final Assessment Notice (FAN) with Details of Discrepancies dated March 2, 2012 issued by OIC-Assistant Commissioner of Large Taxpayers Service, Alfredo V. Misajon, assessing petitioner for deficiency FWT in the amount of ₱42,651,294.36 and deficiency VAT of ₱18,471,586.43 or in the aggregate amount of ₱61,122,880.79 for FY ended September 30, 2007. On March 30, 2012, petitioner protested the FAN.

On April 2, 2012, June 28, 2012, June 29, 2012, and July 31, 2012, petitioner paid in installments its FWT and VAT in the total amount of ₱56,856,400.50. On July 31, 2013, it also paid the sum of ₱5,506,777.69, allegedly representing deficiency FWT and VAT surcharge, interest, and compromise penalties for FY ended September 30, 2007.

On November 4, 2013, petitioner filed an administrative claim for refund/TCC of erroneously and illegally collected FWT and VAT in the amount ₱56,856,400.40 for FY ended September 30, 2007. On March 12, 2014, petitioner filed a Supplemental Claim for Tax Refund/TCC increasing its claim from ₱56,856,400.40 to ₱62,363,180.09.

On February 11, 2014, petitioner received the challenged FDDA with Details of Discrepancies denying its protest, as well as its claim for refund/TCC of erroneously and illegally collected FWT and VAT for FY ended September 30, 2007.

On March 13, 2014, petitioner filed the present Petition for Review with this Court to which respondent filed his

Answer through registered mail on June 6, 2014 and received by the Court on June 11, 2014. Respondent argued that no error or illegality could be ascribed to the subject assessment for deficiency final withholding tax liability as it was issued in accordance with law, jurisprudence and existing administrative rules and regulations.

Further, petitioner failed to file a Tax Treaty Relief Application (TTRA) with the International Tax Affairs Division (ITAD) of the BIR and to secure a ruling thereon as required under RMO 01-2000 preventing it from availing the preferential tax rate of fifteen percent (15%) under the Philippines-Australia or Philippines-Singapore Tax Treaties, hence, the assessment based on the regular tax rate of thirty-five percent (35%) as provided under the NIRC, as amended.

Respondent further stated that the assessment for VAT on petitioner's sales of real properties was correct as the real properties it sold were deemed ordinary assets and not capital assets contrary to its claim, hence the imposition of VAT instead of capital gains tax.

The circumstances of the said sale of real properties indicate that these were ordinary assets. Respondent pointed out that Grandplains Properties, Inc., the vendee of the properties, sold by petitioner was its subsidiary in which it controlled forty percent (40%) of its equity. Respondent found it contrary to the nature of capital assets that they were kept by petitioner for a period of time, and later sold it to its subsidiary on condition that the same set of properties be immediately leased to it for twenty-five (25) years. The foregoing circumstances clearly indicate that the sales transactions entered into by petitioner with respect to these properties were not casual, and that the very properties themselves are not capital assets, but are being used by petitioner in the ordinary course of its business.

Respondent also noted that the subject properties were used by petitioner as previous owner, then as a lessee, in the ordinary course of its business making the said properties ordinary assets and rendering petitioner liable for VAT on the transactions covering the sale of the said properties.

Finally, the assessment issued in this case enjoys the presumption of correctness, thus petitioner must prove the contrary.

Petitioner filed its Reply (To Answer dated 6 June 2014) through registered mail on June 25, 2014 and received by the Court on July 2, 2014.

The parties filed their Joint Stipulation of Facts and Issues on October 14, 2014, thereafter, the Court issued the Pre-Trial Order on November 25, 2014.

Petitioner presented as its witnesses Aurora R. Silvestre, Elizabeth J. Ormilon, and Ruben V. Tagapan.

Petitioner's Corporate Secretary **Aurora R. Silvestre** testified that she was petitioner's Accounting and Reporting Manager in the years 2006 to 2008. As such, she managed all operational matters in the area of accounting, including compliance with tax laws and dealing with the BIR.

Petitioner is mainly in the manufacture and sale of all kinds of liquids and gases used for various industries.

The instant case stemmed from the Letter of Authority No. 00010431 dated December 7, 2008 issued by the BIR and received by petitioner on January 13, 2009, authorizing the audit of petitioner's books and accounting records for FY ended September 30, 2007. A PAN dated November 29, 2011 was subsequently issued assessing petitioner for deficiency FWT and VAT for the same FY.

The PAN pertained to petitioner's alleged deficiency FWT of 35% of the payments made to BOC Gases Australia as technical fees, and to BOC Gases Pte. Ltd. as management fees, for rendering technical and management services, respectively, to petitioner. For these payments, petitioner withheld 15% FWT pursuant to the Philippines-Australia and Philippines-Singapore Tax Treaties. Respondent however erroneously assessed FWT on the said payments at the regular rate of 35% as petitioner allegedly did not file a tax treaty relief application with the BIR prior to availing of the preferential rate of tax of 15%.

Petitioner was likewise assessed deficiency VAT on payments received in 2007 for the sale of its real properties to Grandplains Properties, Inc. Petitioner considered the said properties sold as capital assets, as they were not used by petitioner in its business, and paid Capital Gains Tax for the said sale, and for which petitioner issued Official Receipts but Grandplains Properties, Inc. did not recognize any input VAT from the said sale. This notwithstanding, the BIR still assessed deficiency VAT on said transaction since it deemed the real properties sold as ordinary assets rather than as capital assets.

To halt escalation of interest, petitioner requested respondent that it be allowed to pay the amount assessed in the PAN in installments, which request was granted. However, petitioner failed to comply with its undertaking prompting the BIR to issue the FAN dated March 2, 2012 assessing petitioner for deficiency FWT and VAT for the fiscal year ending September 30, 2007.

Petitioner protested the FAN through a Letter dated March 30, 2012. To stop the accumulation of interest, and in the mistaken belief that payment prior to protest was required, petitioner, on April 2, 2012, June 28, 2012, June 29, 2012, and on July 31, 2012, paid the total amount of ₱56,856,400.50 representing partial payments for the deficiency taxes assessed.

On July 31, 2013, petitioner paid the amount of ₱5,506,777.69 as further partial payment of the assessment for a total sum of ₱62,363,180.09.

Subsequently, on November 4, 2013, petitioner filed an administrative claim for refund of the amount it paid which was denied in the assailed FDDA received by petitioner on February 11, 2014. The FDDA upheld the assessment for deficiency FWT and VAT in the total amount of ₱62,363,178.19.

On March 12, 2014, petitioner filed a Supplemental Administrative Claim for Refund/TCC dated March 11, 2014.

Witness **Elizabeth J. Ormilon**, testified that she is currently petitioner's General Accounting and Compliance Manager. She is tasked to oversee the operations of the company pertaining to treasury, taxation, and general accounting, including preparation of financial statements and compliance with the reportorial requirements of the BIR and other government agencies.

The instant case was filed to dispute the assessment against petitioner for deficiency FWT and VAT for FY ended September 2007 in the amount of ₱62,363,178.19.

The witness mainly corroborated the testimony of the first witness with regard the issuance of the subject assessment as a result of the Letter of Authority No. 00010431 dated December 7, 2008 authorizing the tax audit against petitioner, PAN dated November 29, 2011, FAN dated March 2, 2012, and

FDDA against petitioner as well as petitioner's filing of its administrative claim for refund after receipt of the FDDA on February 11, 2014 and its Supplemental on March 12, 2014. Although petitioner filed a protest against the FAN, it nonetheless paid the BIR the total amount of ₱62,363,180.09 to avoid the accumulation of interest and in the belief that payment under protest is required.

She also mirrored the explanation of the first witness on respondent's erroneous assessment for deficiency FWT at the regular rate of 35% on payments of technical/management fees when petitioner already withheld and remitted to the BIR 15% FWT on the said payments. Respondent ruled that petitioner was not entitled to the 15% preferential rate for it did not file an application for tax treaty relief with the BIR prior to availing of the tax benefit.

She likewise expressed disagreement with the deficiency VAT assessment on payments received by petitioner from its sale of real properties to Grandplains Properties, Inc. in 2007. The lands sold were idle and without any improvement and should be deemed as capital assets given that petitioner is engaged in the manufacture and sale of liquids and gases, and not in the real estate business. For the said transaction, petitioner paid capital gains tax. Further, that petitioner issued official receipts for the payments received and the buyer did not recognize any input tax from said sale, negating the need to assess petitioner with deficiency VAT thereon.

Petitioner's third witness, **Ruben V. Tagapan** from the BIR, merely submitted to the Court the certified true copies of certain documents, as requested by petitioner.

After its formal offer of evidence, petitioner rested its case.

For his defense, respondent presented his sole witness, Revenue Officer IV **Melinda G. Lim** of the BIR Regular Large Taxpayers Audit Division III. She testified that she continued the audit of petitioner by virtue of the Memorandum No. D-LOA-61-07-09 dated July 9, 2009, in relation to LOA No. 2008-00010431 dated December 17, 2017. Thereafter, a Notice of Informal Conference dated October 27, 2011 was served on petitioner. After the audit, petitioner was found liable for deficiency FWT and VAT in the amount of ₱59,741,808.08, consequently, a PAN dated November 29, 2011 was issued. Petitioner requested that it be allowed to pay the assessment in the PAN on installments, which request was granted by the BIR, but only in four (4) monthly installments.

Despite agreement on the payment of the assessed amount, petitioner filed a protest against the PAN on December 20, 2011. The protest was found to be without merit, hence, a FAN was issued on March 2, 2012 to which petitioner also filed a protest on March 30, 2012. The FDDA was later issued and received by petitioner on February 11, 2014.

The witness further declared that petitioner was liable for deficiency FWT under the regular 35% rate since it was not able to file a tax treaty relief application with the BIR prior to availing of the 15% treaty preferential rate. Petitioner was likewise liable for VAT since it issued VAT invoices/official receipts for payments it received.

On July 14, 2017, respondent filed Formal Offer of Evidence and rested per Court Resolution dated February 5, 2018.

The case was submitted for decision on April 23, 2018."

On March 28, 2019, the Court in Division rendered the Assailed Decision granting respondent's Petition for Review. The Court in Division cancelled and set aside the FDDA issued by petitioner against respondent and ordered petitioner to refund or to issue tax credit certificate in favor of respondent in the amount of ₱62,363,178.19 representing erroneously or illegally collected deficiency FWT and VAT.

Aggrieved, petitioner filed a Motion for Reconsideration on April 18, 2019 which the Court in Division denied in the Assailed Resolution.

Within the extended period granted by this Court,[7] petitioner filed the present Petition for Review on December 20, 2019.

In a Resolution dated January 27, 2020, this Court required respondent to file its Comment to the Petition for Review.[8]

On February 10, 2020, respondent filed its Comment/Opposition (To Petition for Review dated 19 December 2019).[9] *gr*

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[7] *Id.*, p. 6.
[8] *Id.*, pp. 71-72.
[9] *Id.*, pp. 73-87.

In a Resolution dated March 11, 2020, this Court noted respondent's Comment/Opposition (To Petition for Review dated 19 December 2019) and referred the present case to mediation before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA).[10]

In a Resolution dated October 14, 2020, this Court noted the parties' *No Agreement to Mediate*.[11] In the same Resolution, this Court gave due course to the present case and submitted the same for decision.

THE ISSUES

Petitioner filed the present Petition for Review on the basis of the following assignment of errors: [12]

"ASSIGNMENT OF ERRORS

I.

WHETHER OR NOT THE HONORABLE COURT IN DIVISION ERRED IN RULING ON AN ISSUE NEVER RAISED BY RESPONDENT, NEVER JOINED BY THE PLEADINGS, NEVER RAISED DURING THE PRE-TRIAL AND NEVER DEFINED BY THE COURT IN THE PRE-TRIAL ORDER. THUS, PETITIONER'S BASIC RIGHT TO FAIR PLAY AND DUE PROCESS WAS VIOLATED.

II.

WHETHER OR NOT THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT THE REVENUE OFFICER WHO CONDUCTED THE AUDIT INVESTIGATION OF PETITIONER'S BOOKS OF ACCOUNTS WAS NOT AUTHORIZED AND FURTHER DECLARING THE SUBJECT ASSESSMENT VOID FOR WANT OF AUTHORITY OF THE REVENUE OFFICER WHO CONDUCTED AND COMPLETED THE AUDIT INVESTIGATION.

III.

WHETHER OR NOT THE HONORABLE COURT IN DIVISION ERRED IN INVALIDATING THE FORMAL ASSESSMENT NOTICE."

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[10] *Id.*, pp. 92-93.
[11] *Id.*, pp. 97-98.
[12] *Id.*, pp. 10-11.

THE COURT *EN BANC'S* RULING

In the present Petition for Review, petitioner claims that the Court in Division erred in ruling on an issue that was never raised by respondent, never joined by the pleadings, never raised during pre-trial and never defined by the Court in Division in the Pre-Trial Order.[13] Petitioner thus posits that its right to due process or fair play was violated.[14]

Petitioner also maintains that the conduct of the audit investigation and the subsequent issuance of the subject assessments were pursuant to a valid Letter of Authority (LOA) and the continuation of the audit by another revenue officer not named in the LOA does not invalidate the assessment.[15]

Petitioner also asserts that the Final Assessment Notice (FAN) is valid and that respondent is not entitled to the claim for refund.[16]

After careful evaluation of the facts, issues, and arguments presented by the parties, the Court *En Banc* finds that petitioner failed to raise any new or substantial matter let alone any compelling reason to warrant the modification much less reversal of the Assailed Division and Resolution. At any rate, if only to put petitioner's mind to rest as well as to reinforce the discussion in the Assailed Decision and Resolution, the Court *En Banc* will address the matters herein raised.

The Court *En Banc* stands by its ruling that while the issue on want of authority of revenue officer to conduct the audit investigation was not raised by the parties in the proceedings before the Court in Division, nor in the present Petition, the Court *En Banc* is not precluded from taking cognizance of the same, based on the Supreme Court's pronouncement on this matter in the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[17] The Supreme Court already definitively settled such issue. Needless to say, this Court has no other option but to faithfully uphold and apply the same. The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[18]

To be sure, the authority of a revenue officer to conduct the audit investigation goes into the validity of an assessment. Stated differently, an

[13] *Id.*, pp. 11-15.
[14] *Id.*
[15] *Id.*, pp. 15-21.
[16] *Id.*, pp. 21-24.
[17] G.R. No. 183408, July 12, 2017, 831 SCRA 18.
[18] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003, 406 SCRA 178.

assessment arising from the conduct of audit and examination of a taxpayer's books of accounts and other accounting records by a revenue officer who is not duly authorized to do so is a complete nullity. A void assessment bears no valid fruit.[19]

In the Assailed Decision, the Court in Division held the subject deficiency assessments void because the revenue officers who actually conducted the audit investigation of respondent's books of accounts and other accounting records for the taxable period from October 1, 2006 to September 30, 2007 were different from those who were named in the LOA. Citing Revenue Memorandum Order (RMO) No. 43-90, the Court in Division ruled that a new LOA is required in cases of re-assignment or transfer of cases to another revenue officer.

One of the powers granted to the Commissioner of Internal Revenue (CIR) under the National Internal Revenue Code of 1997, as amended (1997 NIRC) is the power to make assessment of any deficiency tax. Section 6(A) of the 1997 NIRC is explicit on the matter, 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, notwithstanding any law requiring the prior authorization of any government agency or instrumentality:** *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. x x x" *(Emphasis supplied)*

In the exercise of his assessment powers, the CIR is also empowered to conduct by himself the examination of any taxpayer, or he may authorize other tax officers to conduct such examination. Section 6(A) of the 1997

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[19] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. No. 159694 & G.R. No. 163581, January 27, 2006, 382 SCRA 480; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 647; *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014, 743 SCRA 126; *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014, 744 SCRA 474.

NIRC likewise vested the CIR's duly authorized representatives the power to authorize the examination of any taxpayer for the purpose of collecting the correct amount of tax. The term "duly authorized representative" under Section 6(A) of the 1997 NIRC which may authorize examination of taxpayers refers to a Revenue Regional Director, in accordance with Sections 10 and 13 of the 1997 NIRC. The term likewise refers to other tax officials with the rank equivalent to a division chief or higher, pursuant to the CIR's authority to delegate powers vested in him under Section 7 of the 1997 NIRC. Notably, the issuance of LOAs for the examination of taxpayers is not one of those enumerated powers which the CIR cannot delegate. Section 7 of the 1997 NIRC reads as follows:

> "SEC. 7. *Authority of the Commissioner to Delegate Power.* — **The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* That the following powers of the Commissioner shall not be delegated:
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> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
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> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
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> (c) The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability: *Provided, however*, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
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> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept." *(Emphasis supplied)*

Section 10 of the 1997 NIRC, in enumerating the powers of a Revenue Regional Director include, among others, the power to issue letters of authority for the examination of taxpayers within the region under his/her jurisdiction. The said provision, in part, reads:

> "SEC. 10. *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, **the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others**:
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> x x x x x x x x x
>
> **(c) Issue Letters of Authority for the examination of taxpayers within the region;**
>
> x x x x x x x x x
>
> (h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner." *(Emphasis supplied)*

On the other hand, Section 13 of the 1997 NIRC, in defining the authority of a revenue officer to conduct the examination of taxpayers for purposes of an assessment, provides as follows:

> "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." *(Emphasis supplied)*

In relation to the foregoing provisions, Revenue Memorandum Order (RMO) No. 43-90 issued by the CIR identifies those officials who are authorized to issue and sign LOA. It may be noted that an OIC-Chief of the Large Taxpayers Audit and Investigation Division I is not included therein. The relevant portion of the said issuance reads:

"D. Preparation and issuance of L/As. Je x x x x x x x x x

> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner**. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority <u>but only upon prior authorization by the Commissioner himself</u>**." *(Emphasis and underscoring supplied)*

To reiterate, it is only the CIR or his duly authorized representatives who can authorize the audit examination of taxpayers for purposes of assessment of any deficiency taxes. Stated differently, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.[20]

Considering that only the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, it is only them who can effect any modification or amendment to a previously-issued LOA, should the need therefor arises.

Parenthetically, RMO No. 43-90 provides that any reassignment or transfer of cases to another revenue officers shall require the issuance of a new LOA. In any event, the said revenue issuance does not and cannot negate the authority of the CIR and its duly authorized representatives to effect amendment or modification of a previously-issued LOA instead of issuing a new one in order for the assessment of a taxpayer to validly proceed. Note that RMO No. 43-90 itself does not state the legal effect in the event that the named revenue officers under the previously-issued LOA are transferred or reassigned and a new or replacement LOA is not issued. A duly issued LOA, valid in all other respects, does not become invalid just because the revenue officers named therein happened to be reassigned or transferred. Indeed, to construe it otherwise would be tantamount to the curtailment of the statutorily granted authority of the CIR and its duly authorized representatives to authorize the audit examination of taxpayers by a mere RMO provision. It must be emphasized that an RMO is just an internal issuance containing directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow and the like which are necessary to carry out programs or to achieve policy goals and objectives.[21] As such, they do not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR and

[20] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[21] Revenue Administrative Order No. 001-12 dated April 2, 2012.

may change from time to time as the exigencies of service may require, or as may be allowed given particular factual contexts, provided only that due process or statutory rights are not subverted.[22]

In the present case, there is no question as to the due issuance of LOA No. 200800010431 dated December 17, 2008. However, the revenue officers named therein were different from those who actually examined respondent's books of accounts and other accounting records for taxable period from October 1, 2006 to September 30, 2007. As it appears, Revenue Officer Melinda G. Lim and Group Supervisor Theodore Maroket conducted the audit examination petitioner's books of accounts and other accounting records for taxable period from October 1, 2006 to September 30, 2007 on the basis of Memorandum Referral No. D-LOA-61-07-09 dated July 9, 2009 issued by Mr. Conrado C. Lee, OIC-Chief of the Large Taxpayers Audit and Investigation Division I.

Guided by the foregoing disquisition, the Memorandum Referral issued by Mr. Lee cannot validly grant Revenue Officer Melinda G. Lim and Group Supervisor Theodore Maroket the authority to conduct the audit examination pursuant to LOA No. 200800010431 dated December 17, 2008. As OIC-Chief of the Large Taxpayers Audit and Investigation Division I, Mr. Lee does not have any power to authorize audit examination of taxpayers or to effect any modification or amendment to a previously-issued LOA because, as mentioned earlier, only the CIR or his duly authorized representatives are granted such power.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[23] the Supreme Court held that absent any prior authority on the part of the revenue officers who conducted the audit examination of taxpayer's books of accounts and other accounting records, the deficiency tax assessment arising therefrom is a nullity.

As regards respondent's claim for refund, the Court *En Banc* quotes with approval the disquisition on the matter by the Court in Division in the Assailed Decision, to wit:[24]

> "As to petitioner's claim for refund, Sections 204 (C) and 229 pertinently provides: *(initials)*

[22] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 7948, June 5, 2014, penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino.
[23] G.R. No. 178697, November 17, 2010, 649 Phil. 519.
[24] Court *En Banc*'s Docket, pp. 51-55 (Citations omitted).

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:** *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund. *(Emphasis supplied)*
>
> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:** *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. *(Emphasis supplied)*

To be entitled to a refund of erroneously or illegally collected tax, the following requisites must be satisfied: *fr*

1. That there must be an erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected;

2. That the claim for refund has been duly filed with the Commissioner, within two (2) years after the payment of tax or penalty; and

3. That the suit or proceeding is instituted with this Court within two (2) years from the date of payment of the tax or penalty.

Evidence show that on the following dates, petitioner paid under protest the BIR the aggregate amount of ₱62,363,178.19 representing its total installment payments for the deficiency FWT and VAT assessments issued against it for FY ended September 30, 2007, detailed as follows:

Date of Payment	**FWT**	**VAT**		**Total Amount Paid**
4/2/2012	₱ 14,029,279.03			₱ 14,029,279.03
6/28/2012		₱ 4,659,362.57		4,659,362.57
6/28/2012		4,700,828.52		4,700,828.52
6/29/2012	9,491,776.53			9,491,776.53
6/29/2012	9,576,232.63			9,576,232.63
7/31/2012	9,657,964.35			9,657,964.35
7/31/2012		4,740,956.87		4,740,956.87
Subtotal	*₱ 42,755,252.54*	*₱ 14,101,147.96*		*₱ 56,856,400.50*
Date of Payment	**Interest**	**Surcharge**	**Compromise Penalty**	**Total Amount Paid**
7/31/2013	₱ 326,926.66	₱ 4,972,012.87	₱ 50,000.00	₱ 5,348,939.53
7/31/2013	157,838.16			157,838.16
Subtotal	*₱ 484,764.82*	*₱ 4,972,012.87*	*₱ 50,000.00*	*₱ 5,506,777.69*
Total	**₱ 43,240,017.36**	**₱ 19,073,160.83**	**₱ 50,000.00**	**₱ 62,363,178.19**

Considering that the subject deficiency tax assessment is void, the entire amount of ₱62,363,178.19 paid by petitioner for the subject deficiency tax assessments constitutes erroneous or illegally collected tax, hence there is compliance with the first requisite.

As to the timeliness of the claim, both the administrative and the judicial claim must be filed within two (2) years from the date of payment of the tax or penalty.

In this case, petitioner paid in installments its FWT and VAT on April 2, 2012, on June 28, 2012, on June 29, 2012, and on July 31, 2012 in the total amount of ₱56,856,400.50. It also paid the aggregate amount ₱5,506,777.69 allegedly representing deficiency FWT and VAT surcharge, interest and compromise penalties for FY ended September 30, 2007, on July 31, 2013.

Basic is the rule that when the tax is paid in installments, the prescriptive period of two (2) years should be counted from the date of the final payment. This rule proceeds from the theory that, in contemplation of tax laws, there is no payment until the whole or entire tax liability is completely paid. Thus, a payment of a part or portion thereof, cannot operate to start the commencement of the statute of limitations. Inasmuch as the payment was done by installment, the computation of the two-year prescriptive period should be from the date of the last installment.

Applying the foregoing principle, petitioner's payment of its last installment for deficiency FWT and VAT and its payment of FWT and VAT surcharge, interest and compromise penalties were made on July 31, 2012 and on July 31, 2013, respectively. Counting two years from July 31, 2012 and July 31, 2013, petitioner had until July 31, 2014 and July 31, 2015 within which to file its administrative and judicial claims for refund.

Petitioner filed its administrative claim for refund or credit of erroneously and illegally collected FWT and VAT in the amount of ₱56,856,400.40 for FY ended September 2007 and Supplemental Claim for Tax Refund or Credit in the total amount of ₱62,363,180.09 on November 4, 2013 and March 12, 2014, respectively. Further, petitioner filed its Petition for Review on March 13, 2014. Indubitably, petitioner filed both its administrative and judicial claims within the two-year prescriptive period mandated under Sections 204 and 229 of the NIRC of 1997, as amended.

In fine, petitioner sufficiently established its entitlement to a refund of erroneous or illegally collected tax in the amount of ₱62,363,178.19."

In view of the foregoing, the Court *En Banc* finds no substantial matter much less compelling reason to disturb the findings of the Court in Division in the Assailed Decision and Resolution.

WHEREFORE, the present Petition for Review is **DENIED** for lack of merit, and the Decision dated March 28, 2019 and Resolution dated November 15, 2019 in CTA Case No. 8783 are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in 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