REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

JIMMY KHO,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10308

Members:
RINGPIS-LIBAN, *Chairperson, and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
SEP 14 2023
11:00 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This Petition for Partial Review ("Petition"), filed by petitioner, **JIMMY KHO** on 28 July 2020, against respondent, **COMMISSIONER OF INTERNAL REVENUE** ("CIR"), pursuant to ***Section 7 (1) of Republic Act No. 1125, as amended by Section (7) (a) (1) of Republic Act No. 9282 ("RA 1125")***, seeks the review of the denial of petitioner's request for reconsideration of the Final Decision on Disputed Assessment ("FDDA") ("Denial Letter"),[1] relative to the value added tax ("VAT") assessment issued against petitioner for the taxable period starting 1 January 2012 to 30 June 2012,[2] and prays that judgment be rendered declaring the VAT assessment as null and void.[3]

The Parties

Petitioner is the sole proprietor of Hayashi Racing Sales Center, with address at 148 Bayani St., Araneta Subdivision, Brgy. Dona Imelda, Quezon City and is registered with the Bureau of Internal Revenue ("BIR") under Tax Identification Number ("TIN") 104-014-074.[4]

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1 See Nature of the Petition, Petition, Records, Vol. 1, p. 6.
2 See Statement of Facts, Petition, *id.,* p. 7.
3 See Prayer, Petition, *id.,* p. 25.
4 See Parties, Petition, *id.*, p. 6.

Respondent is the duly appointed Commissioner of the BIR, the government agency tasked to, among others, issue tax assessments, collect national internal revenue taxes, and enforce the provisions of the ***National Internal Revenue Code of 1997, as amended ("NIRC")***, other tax laws, and rules and regulations.[5]

The Facts

On 28 November 2012, a Letter of Authority ("LOA") No. 201100035216/LOA-V07-2012-00000115 was issued against petitioner for a tax investigation covering the taxable period from 1 January 2012 to 30 June 2012.[6] In the said LOA, revenue officer ("RO") Mary Jun Pagulayan and group supervisor ("GS") Roan Bautista were authorized to audit and examine petitioner's books of accounts and other accounting records for the said taxable period to determine deficiency VAT. This was received by petitioner on 13 December 2012.[7]

On 21 October 2014, a Preliminary Assessment Notice ("PAN") was issued against petitioner. A copy of the PAN was served upon petitioner on the same date that it was issued.[8]

On 6 November 2014, a Formal Letter of Demand ("FLD") and Final Assessment Notice ("FAN") was issued against petitioner for deficiency VAT in the total amount of twenty five million eight hundred ninety four thousand six hundred fifty one and 20/100 pesos (Php25,894,651.20) inclusive of interest. The FLD/FAN was served upon petitioner on 14 November 2014.[9]

On 12 December 2014, petitioner filed his Protest on the FLD/FAN requesting for a reconsideration of the same.[10]

Thereafter, a Memorandum of Assignment ("MOA") was issued re-assigning the case from the previous ROs to RO Mathew Michael Torio and GS Enrico D. Cruz.[11]

On 4 September 2015, petitioner received the FDDA of even date denying his Protest.[12]

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5 *Ibid.*
6 See Statement of Facts, Petition, *Id.*, p. 7.
7 BIR Records, p. 1.
8 *Id.*, pp. 130-143.
9 *Id.*, pp. 152-175.
10 *Id.*, pp. 186-191.
11 *Id.*, p. 196.
12 *Id.*, pp. 205-209.

Thus, on 1 October 2015, petitioner filed a Request for Reconsideration of the FDDA before respondent.[13]

On 21 May 2020, respondent issued the subject Denial Letter which found petitioner liable for deficiency VAT in the total amount of twenty eight million four hundred forty thousand seven hundred ninety five and 24/100 pesos (Php28,440,795.24) inclusive of interest and compromise penalty.[14] This was received by petitioner on 4 July 2020.[15]

Accordingly, petitioner filed the instant Petition on 28 July 2020.[16]

On 9 November 2020, a Collection Letter was sent to petitioner.[17] Then, on 4 December 2020, a Warrant of Distraint and/or Levy ("WDL") was sent to petitioner to collect the deficiency VAT assessment.[18]

On 14 December 2020, respondent filed his Answer.[19]

On 15 October 2021, petitioner filed his Pre-Trial Brief.[20] Meanwhile, respondent filed his Pre-Trial Brief on 27 October 2021.[21]

Pre-Trial ensued on 27 October 2021.[22]

On 21 February 2022, the parties submitted their Joint Stipulation of Facts and Issues.[23]

On 16 March 2022, petitioner filed his Motion for Summary Judgment.[24] This was granted by the Court in a Resolution, dated 14 September 2022.[25]

Hence, this Decision.

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[13] *Id.*, pp. 231-235.
[14] *Id.*, pp. 281-290.
[15] *Id.*, p. 7.
[16] Records, Vol. 1, p. 6.
[17] *Id.*, pp. 291-292.
[18] *Id.*, pp. 306-310.
[19] *Id.*, pp. 127-132.
[20] *Id.*, pp. 143-148.
[21] *Id.*, pp. 154-161.
[22] *Id.*, pp. 162-165.
[23] *Id.*, pp. 185-187.
[24] *Id.*, pp. 204-224.
[25] *Id.*, pp. 260-266.

<u>The Issue</u>

Based on the Resolution, dated 14 September 2022, this Court found that only the following legal issues are left for its resolution to determine the ultimate outcome of the instant case:

> WHETHER RESPONDENT'S RIGHT TO COLLECT THE SUBJECT ASSESSED TAXES HAVE ALREADY PRESCRIBED;
>
> WHETHER THE CONTINUATION OF THE AUDIT INVESTIGATION BY A PERSON NOT NAMED IN THE LOA WOULD RENDER AN ASSESSMENT VOID; AND
>
> WHETHER AN ASSESSMENT IS RENDERED INVALID BY THE ACT OF EXAMINING THE BOOKS OF ACCOUNTS OF A TAXPAYER NOT IDENTIFIED IN THE LOA

<u>Arguments of the Parties</u>

<u>Petitioner's Arguments</u>[26]

Petitioner avers the following in his Motion for Summary Judgment:

a) The collection of the tax has prescribed. Collection efforts were only instituted after more than five (5) years since the FLD/FAN was served to petitioner on 14 November 2014.

b) The VAT assessment is void since RO Mathew Michael Torio had no valid LOA authorizing him to perform an audit of petitioner's books of accounts and other accounting records.

c) The VAT assessment issued against Winplus Sales Center, Inc. is void considering that it is a separate juridical entity from petitioner. Hence, a separate LOA should have been issued authorizing the audit of such entity before a resulting deficiency tax assessment can be enforced against such entity.

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[26] *Id.*, pp. 228-234.

<u>Respondent's Counter-Arguments</u>[27]

Respondent failed to provide counter-arguments to petitioner's allegations.

<u>The Ruling of the Court</u>

The Petition is impressed with merit.

<u>The Court has jurisdiction over the present Petition.</u>

Jurisdiction by this Court over the instant case is conferred by ***Section 7 (1) of RA 1125***, to wit:

> ***"SEC. 7. Jurisdiction.*** - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
>
> (1) **<u>Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,</u>** refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue;"
> (Emphasis and underscoring, Ours.)

As clearly provided above, this Court has exclusive appellate jurisdiction over decisions by the CIR involving disputed assessments. In the present case, petitioner is appealing the Denial Letter which denied petitioner's request for reconsideration of the FDDA filed before respondent CIR. As such, it is a decision by the CIR over a deficiency tax assessment. Thus, this Court has undoubted jurisdiction over the instant case.

Now, the question that should be determined is whether petitioner timely filed its judicial appeal. Under ***Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals,*** "[a] party adversely affected by a decision… of the Commissioner of Internal Revenue… may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision."

In the case at bar, petitioner received the Denial Letter on 4 July 2020.[28] Following this, petitioner had thirty (30) days upon learning of the receipt of the Denial Letter, or until 3 August 2020 within which to file a judicial appeal before this Court. As petitioner filed the instant Petition on 28 July 2020, this Court properly assumed jurisdiction over the present case.

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[27] See Resolution, dated 5 May 2022, *Id.*, pp. 256-258.
[28] *Id.*, p. 7.

Only ROs who will audit and examine a taxpayer for purposes of issuing a tax assessment are required to be armed with an LOA authorizing them to perform such investigation.

It is undisputed that an LOA is a due process requirement which must be complied with for purposes of issuing a valid deficiency tax assessment. This matter has been given paramount consideration by the High Court in the ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue***,[29] to wit:

> "**An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions.** It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:
>
> > SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
> >
> > (A) Examination of Return and Determination of Tax Due.- After a return has been filed as required under the 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.
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> > x x x x
>
> Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.
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> xxx xxx xxx
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> In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:

[29] G.R. No. 222743, 5 April 2017, citing Commissioner of Internal Revenue v. Sony Philippines, Inc., G.R. No. 178697, 17 November 2010.

> **Clearly, there must be a grant of authority before any revenue officer can conduct** an examination or **assessment.** Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**.

Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.

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That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void."**
(Emphasis and underscoring, Ours.)

The importance of an LOA authorizing ROs who will examine a taxpayer **for the purpose of issuing a tax assessment** was further emphasized in ***Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.***,[30] to wit:

"An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.

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The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. In Medicard Philippines, Inc. v. Commissioner of Internal Revenue, We have ruled that the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued. In that case, We have stated that **'[d]ue process demands xx x that** after [a Letter Notice] has serve its purpose, **the revenue officer should have properly secured an LOA before proceeding with the** further examination and **assessment of the petitioner.** Unfortunately, this was not done in this case.' The result of the absence of [an] LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process

[30] G.R. No. 242670, 10 May 2021.

> To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. **Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment,** and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment."
> (Emphasis and underscoring, Ours.)

Indeed, the necessity of an LOA as a prerequisite of the assessment function cannot be denied. However, the LOA requirement is only necessary before a deficiency tax assessment has been issued against a taxpayer. It should be noted that the actual audit and examination by an RO of a taxpayer's books of accounts and other accounting records occur prior to the issuance of a deficiency tax assessment. Thus, it is at this period that a taxpayer is most vulnerable to unnecessary encroachment by the State over his or her person and property. To protect the taxpayer against potential violation of his or her right to due process during this period, the ***NIRC*** imposes the LOA requirement as a prerequisite to the issuance of a valid tax assessment. This guarantees the taxpayer the right to know the specific ROs who will actually examine his or her books of accounts and other accounting records and the scope of audit to be undertaken by such ROs prior to the issuance of a deficiency tax assessment.

Thus, when the BIR docket is referred to a new set of ROs after a deficiency tax assessment has already been issued such as but not limited to: a) when there is a need to resolve a Protest filed by a taxpayer against an FLD/FAN; or b) when there is a need to decide on a request for reconsideration filed by a taxpayer against an FDDA, a new LOA is not required for the new set of ROs. Primarily, this is because the new set of ROs will no longer be conducting an audit and examination of the taxpayer's books of accounts and other accounting records but will simply be reviewing the findings of the previous ROs which resulted in the already issued tax assessment. As such, at this stage, there is no longer a potential encroachment on the taxpayer's person and property which the LOA requirement was imposed to avoid.

Consequently, only ROs who will actually audit and examine a taxpayer for purposes of issuing a tax assessment are required to be armed with an LOA authorizing them to perform such investigation.

In the case at bar, LOA No. 201100035216/LOA-V07-2012-00000115 was issued by Officer-In-Charge Regional Director Jonas D.P. Amora authorizing RO Mary Jun Pagulayan and GS Roan Bautista to audit and examine petitioner's books of accounts and other accounting records for deficiency VAT covering the taxable period of 1 January 2012 to 30 June 2012.[31] Through the efforts of RO Pagulayan and GS Bautista, a PAN[32] and an FLD/FAN[33] were issued against petitioner. The FLD/FAN constituted the actual assessment of deficiency taxes (*i.e.*, deficiency VAT) against petitioner. Petitioner then filed his Protest on the FLD/FAN requesting for a reconsideration of the same.[34] To resolve such Protest, an MOA was subsequently issued by the BIR re-assigning the case from the previous ROs to RO Mathew Michael Torio and GS Enrico D. Cruz.[35] Through the efforts of RO Torio and GS Cruz, the FDDA was issued against petitioner denying his Protest.[36]

Clearly, the actual audit and examination which resulted in the issuance of the present VAT assessment against petitioner was conducted by RO Pagulayan and GS Bautista since it was through their efforts that the FLD/FAN was issued by the BIR. Both RO Pagulayan and GS Bautista were duly authorized to perform such investigation of petitioner's books of accounts and other accounting records under LOA No. 201100035216/LOA-V07-2012-00000115.

With respect to RO Torio and GS Cruz, they did not perform an actual audit and examination of petitioner's books of accounts and other accounting records when the present case was re-assigned to them through an MOA. There was no need for them to conduct such investigation since a deficiency tax assessment had already been issued. Rather, when they were asked to resolve petitioner's Protest, they simply reviewed the findings of RO Pagulayan and GS Bautista. Although an FDDA was issued through RO Torio and GS Cruz's efforts, the same was done without them having to actually audit and examine once more petitioner's books of accounts and other accounting records. As such, there was no potential or actual encroachment on petitioner's person and property that needed to be protected through the LOA requirement.

Given the foregoing, the lack of a valid LOA issued in favor of RO Torio and GS Cruz does not invalidate the present VAT assessment considering that the current tax assessment was issued through the efforts of ROs (*i.e.*, RO Pagulayan and GS Bautista) who were properly authorized under an LOA.

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[31] BIR Records, p. 1.
[32] *Id.*, pp. 130-143.
[33] *Id.*, pp. 152-175.
[34] *Id.*, pp. 186-191.
[35] *Id.*, p. 196.
[36] *Id.*, pp. 205-209.

<u>Respondent's right to collect has prescribed.</u>

In ***Commissioner of Internal Revenue v. Court of Tax Appeals Second Division and QL Development, Inc.***,[37] the Supreme Court categorically declared that in cases of assessments issued within the three (3)-year ordinary period in accordance with ***Section 203 of the NIRC***,[38] the CIR has another three (3)-year period within which to collect the taxes due. This case has effectively laid to rest the previous interpretation that there is a five (5)-year period to collect taxes which have been lawfully assessed. The case provides:

> "The CIR's right to collect taxes had prescribed. The three-year, and not the five-year, period applies to this case.
>
> Regarding the period to collect taxes, the CTA Division held that when an assessment is timely issued, the CIR has five years within which to collect the assessed tax. Considering that the collection letters were issued beyond five years, the CIR's right to collect from QLDI the assessed deficiency taxes had already prescribed.
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> Section 203 of the NIRC, as amended, which provides for the prescriptive period in the assessment and collection of internal revenue taxes, reads:
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>> 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.
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> In CIR v. United Salvage and Towage (Phils.), Inc., the Court held that **<u>in cases of assessments issued within the three-year ordinary period, the CIR has another three years within which to collect taxes,</u>** thus:
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>> The statute of limitations on assessment and collection of national internal revenue taxes was shortened from five (5) years to three (3) years by virtue of Batas Pambansa Blg. 700. Thus, petitioner has three (3) years from the date of actual filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment. **<u>However, when it</u>**

[37] G.R. No. 258947, 29 March 2022.

[38] 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.

> **validly issues an assessment within the three (3)-year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding.** The assessment of the tax is deemed made and the three (3)-year period for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent to the taxpayer.

Applying the foregoing ruling, the Court holds that the CTA Division erred when it applied the five-year period to collect taxes. The five-year period for collection of taxes only applies to assessments issued within the extraordinary period of 10 years in cases of false or fraudulent return or failure to file a return. Indeed, Section 222 of the NIRC, as amended, provides:

> SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. -
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
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> x x x x
>
> (c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax. (Emphasis supplied)

Here, given that the subject assessment was issued within the three-year ordinary prescriptive period to assess, the CIR had another three years to initiate the collection of taxes by distraint or levy or court proceeding. Accordingly, since the FAN/FLD was mailed on December 12, 2014, the CIR had another three years reckoned from said date, or until December 12, 2017, to enforce collection of the assessed deficiency taxes. Verily, prescription had already set in when the CIR initiated its collection efforts only in 2020. The Court also notes that regardless of which period to apply, i.e., five years as determined by the CTA Division or three years, the CIR's collection efforts were, as they are, barred by prescription.

In an attempt to convince this Court that its right to collect the deficiency taxes had not yet prescribed, the CIR avers that the FDDA received by QLDI effectively operated as a collection letter for the satisfaction of deficiency tax liabilities.

The Court finds no merit in the CIR's assertion.

To reiterate, the CIR's collection efforts are initiated by distraint, levy, or court proceeding. The distraint and levy proceedings are validly begun or commenced by the issuance of a warrant of distraint and levy and service thereof on the taxpayer. And a judicial action for the collection of a tax is initiated: (a) by the filing of a complaint with the court of competent jurisdiction; or (b) where the assessment is appealed to the CTA, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for. However, in this case no warrant of distraint and/or levy was served on QLDI, and no judicial proceedings were initiated by the CIR within the prescriptive period to collect.

At this juncture, the Court ought to reiterate that while taxes are the lifeblood of the nation, the Court cannot allow tax authorities indefinite and infinite periods to assess and collect alleged unpaid taxes. Certainly, it is an injustice to leave taxpayers in perpetual uncertainty whether they will be made liable for deficiency or delinquent taxes. The Court has elaborated on the significance of adopting a statute of limitations on tax assessment and collection in this wise:

> The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficient purpose of affording protection to the taxpayer within the contemplation of the Commission which recommends the approval of the law."
> (Emphasis and underscoring, Ours)

The three (3)-year period to collect starts to run from the date the FLD/FAN is released, mailed, or sent by the BIR to the taxpayer.[39]

Such period to collect is tolled whenever a request for reinvestigation has been filed by a taxpayer which was subsequently approved by the CIR. ***Section 223 of the NIRC*** provides, to wit:

> "SEC. 223. Suspension of Running of Statute of Limitations. - **The running of the Statute of Limitations provided in Sections** 203 and **222** on the making of assessment and the beginning of distraint or levy a proceeding in court for collection, in respect of any deficiency, **shall be suspended for the period during** which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; **when the taxpayer requests for a reinvestigation which is granted by the Commissioner;** when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, that, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines."
> (Emphasis and underscoring, Ours.)

[39] Bank of the Philippine Islands vs. Commissioner of Internal Revenue, G.R. No. 139736, 17 October 2005.

The suspension of the period to collect whenever a taxpayer requests for a reinvestigation was confirmed in ***Commissioner of Internal Revenue v. Philippine Power MC Distribution, Inc.***,[40] as follows:

> "The plain and unambiguous wording of the said provision dictates that two requisites must concur before the period to enforce collection may be suspended: (a) that the taxpayer requests for reinvestigation, and (b) that petitioner grants such request."

In the case at bar, the FLD/FAN was issued on 6 November 2014.[41] Applying the above discussions, this date was the starting point for the three (3)-year period to collect.

Petitioner then filed a Protest on the FLD/FAN on 12 December 2014. The Protest filed by petitioner merely requested for a reconsideration of the VAT assessment issued against him. Consequently, the running of the three (3)-year period to collect assessed taxes was not suspended by the filing of such Protest, which is not the reinvestigation envisioned to suspend the prescribed period to collect.

Following this, respondent should have instituted collection efforts to collect the deficiency VAT assessment within three (3) years from 6 November 2014 or until 6 November 2017. However, the earliest date on which respondent enforced collection of the deficiency VAT assessment was 4 December 2020, over three (3) years from the aforementioned deadline and over six (6) years from the service of the FLD/FAN, when a WDL was sent to petitioner to collect the deficiency VAT assessment.[42]

Accordingly, respondent's right to collect the deficiency VAT assessment issued against petitioner has definitely prescribed.

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[40] CTA *EB* No. 1940, CTA Case No. 9263, 16 October 2019.
[41] BIR Records, pp. 152-175.
[42] *Id.*, pp. 306-310.

The LOA clearly limited the scope of audit and investigation to be undertaken by the named ROs to that of petitioner's books of accounts and other accounting records. Hence, a separate LOA is needed for the examination of other taxpayers such as Winplus Sales Center, Inc.

Again, an LOA defines and limits the scope of audit and examination that revenue officers can undertake with respect to a particular taxpayer's books of accounts and other accounting records for purposes of determining the tax liability. One of these limitation is naming the taxpayer to be subjected to a tax audit.

Under LOA No. 201100035216/LOA-V07-2012-00000115, the ROs named therein are authorized to undertake an audit and examination of petitioner, Jimmy Kho, only. It does not authorize the extension of such investigation to other parties who have separate juridical personalities from petitioner. This is true even if such parties are related to petitioner.

In the case at bar, it was duly proven that Winplus Sales Center, Inc. has a separate juridical personality and, in fact, is registered with the BIR with its own TIN different from petitioner's TIN.[43] Thus, when the investigation for potential VAT liability was extended to Winplus Sales Center, Inc., the BIR violated the latter's right to due process in tax assessment proceedings. Accordingly, the resulting VAT assessment is null and void with respect to Winplus Sales Center, Inc. Thus, any collection effort against Winplus Sales Center, Inc. on the same VAT assessment is illegal.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Partial Review is **GRANTED**. Accordingly, the deficiency VAT assessment issued against petitioner for the taxable period from 1 January 2012 to 30 June 2012, in the aggregate amount of twenty eight million four hundred forty thousand seven hundred ninety five and 24/100 pesos (Php28,440,795.24) inclusive of interest and compromise penalty contained in the Denial Letter and WDL is hereby **CANCELLED** and **SET ASIDE**. Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner and Winplus Sales Center, Inc.

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[43] Annex "J", Records, Vol. I, p. 77.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of 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