REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SET AND STAGE RESOURCE MANAGEMENT, INC., *Petitioner,*	**CTA CASE NO. 10703**
	Members:
-versus-	**RINGPIS-LIBAN**, PJ & *Chairperson*, **MODESTO-SAN PEDRO**, *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:

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DECISION

RINGPIS-LIBAN, *P.J.*:

THE CASE

The *Amended Petition for Review* seeks the cancellation and setting aside of the *Final Assessment Notice / Formal Letter of Demand* (FAN/FLD) dated March 2, 2021, assessing petitioner of alleged value-added tax (VAT) deficiency taxes, penalties, and interests, for the taxable period from January to June 2019, as follows:

a. VAT in the amount of ₱11,746,552.64;
b. Surcharge in the amount of ₱5,873,276.32;
c. Interest in the amount of ₱2,382,780.16; and,
d. Compromise Penalty in the amount of ₱25,000.0.[1]

THE PARTIES

[1] Statement of the Case, Pre-Trial Order dated February 28, 2023, Docket – Vol. 2, p. 913.

Petitioner Set and Stage is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines.[2] It is engaged in the business of designing and training, tolling, and certifying technical production personnel.[3] It is also duly registered with the Bureau of Internal Revenue (BIR), with office address 502 Bormaheco Compound, Cervantes Street, West Service Road, KM 17, Marcelo Green Village, City of Parañaque, and Taxpayer Identification No. (TIN) 009-518-397-00000.[4]

Respondent Commissioner of Internal Revenue is vested under the law with authority to carry out the functions, duties, and responsibilities of the BIR, including, *inter alia*, the power to decide disputed assessment, cancel and abate tax liabilities, pursuant to the provisions of the 1997 National Internal Revenue Code (NIRC), and other tax laws, rules and regulations.[5]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

The BIR issued the *Letter of Authority* (LOA) SN: eLA201700004376 / LOA-V8B-2019-00000491 dated January 3, 2020,[6] authorizing Revenue Officer (RO) Angeli Malana and Group Supervisor (GS) Dante Tan of Revenue District Office (RDO) No. 08B – South NCR, to examine petitioner's books of accounts and other accounting records for VAT for the period from January 1, 2019 to June 30, 2019.

Thereafter, the BIR issued the *second* LOA SN: eLA201700004684 / LOA-V8B-2020-00000275 dated July 30, 2020,[7] authorizing again RO Angeli Malana, but now with GS Pauline Lydia Reyes of the same RDO, to examine petitioner's books of accounts and other accounting records for VAT tax for the same.

On October 22, 2020, the BIR issued a *Notice of Discrepancy*,[8] to which petitioner submitted a *Reply to Notice of Discrepancy* dated November 23, 2022.[9] The BIR replied to petitioner on November 23, 2022 via its letter of even date.[10]

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[2] Exhibit "P-11", FOE Binder – Vol. 1.
[3] Par. 11, *Amended Petition for Review*, vis-à-vis par. 11, *Answer*, Docket – Vol., p. 342 and Docket – Vol. 2, p. 736.
[4] *Id.*
[5] Par. 12, The Parties, *Amended Petition for Review*, vis-à-vis par. 12, *Answer*, Docket – Vol., p. 342 and Docket – Vol. 2, p. 736.
[6] Exhibit "P-24", FOE Binder – Vol. 1; Exhibit "R-1", Docket -Vol. 2, p. 807.
[7] Exhibit "P-25", FOE Binder – Vol. 1.
[8] Exhibit "P-34", FOE Binder – Vol. 1; Exhibit "R-2", BIR Records, pp. 286 to 290.
[9] Exhibit "P-35", FOE Binder – Vol. 1.
[10] Exhibit "P-36", FOE Binder – Vol. 1.

Subsequently on November 15, 2020, the BIR issued the *Preliminary Assessment Notice* (PAN), which petitioner received on December 15, 2020.[11]

The BIR then issued the FAN/FLD dated March 2, 2021,[12] which petitioner received on March 11, 2021.[13]

Petitioner filed its *Request for Reinvestigation* on May 11, 2021.[14]

Thereafter, the BIR issued the letter dated July 12, 2021 *(Action on Protest Letter to FLD)*,[15] requiring petitioner to submit the necessary documents, within sixty (60) days from the date of filing of the *Protest/Request for Reinvestigation.*

The BIR then issued the *third* LOA SN: eLA201700062883 / LOA-V8B2021-00000196 dated July 28, 2021,[16] authorizing again RO Angeli Malana and GS Dante Tan of RDO No. 08B – South NCR, to examine petitioner's books of accounts and other accounting records for VAT for the period from January 1, 2019 to June 30, 2019.

PROCEEDINGS BEFORE THIS COURT

On December 6, 2021, petitioner posted the *Petition for Review.*[17]

In the Resolution dated February 10, 2022,[18] the Court ordered petitioner to submit a compliant/correct *Petition for Review*, within five (5) days from notice. Petitioner is also ordered to submit the original *Secretary's Certificate* or *Board Resolution* establishing the authority of Mr. Malcolm George M. Arevalo to execute the *Verification*, *Authentication of Annexes*, and *Certification Against Forum Shopping*, or a certified true copy thereof, within the same period.

Petitioner filed its *Compliance (With Motion To Admit Amended Petition and Judicial Affidavits of Witnesses)* on March 18, 2022,[19] attaching its *Amended Petition for Review.*[20]

On June 10, 2022, respondent posted his *Answer*,[21] interposing the following special and affirmative defenses, to wit: (1) there is no violation of

[11] BIR Records, pp. 337 to 342.
[12] Exhibits "P-4" to "P-6", FOE Binder – Vol. 1.
[13] Exhibits "P-2", FOE Binder – Vol. 1.
[14] *Id.*
[15] Exhibit "P-3", FOE Binder – Vol. 1.
[16] Exhibit "P-26", FOE Binder – Vol. 1.
[17] Docket – Vol. I, pp. 8 to 46.
[18] Docket – Vol. I, pp. 333 to 334.
[19] Docket – Vol. I, pp. 335 to 337.
[20] Docket – Vol. I, pp. 339 to 382.
[21] Docket – Vol. 2, pp. 736 to 741.

due process; (2) petitioner's rights were duly respected; and (3) there is no prohibition on the issuance of multiple LOAs.

On June 29, 2022, respondent transmitted the *BIR Records* for this case, consisting of one (1) folder with 432 pages.[22]

In the Resolution dated July 4, 2022,[23] the parties were ordered to immediately proceed and to appear personally or through their authorized representative, before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) on July 28, 2022. However, the PMC-CTA issued the *No Agreement To Mediate* dated August 18, 2022,[24] stating that the parties decided not to have their case mediated.

The Pre-Trial Conference was set and held on October 27, 2022.[25] Prior thereto, the *Pre-Trial Brief (For the Petitioner)* was filed on October 24, 2022,[26] while respondent's *Pre-Trial Brief (With Attached Special Power of Attorney)* was submitted via accredited courier service on October 26, 2022.[27]

Since the parties failed to submit their *Joint Stipulation of Facts and Issues* (JSFI) as of February 17, 2023,[28] the Court decreed, in the Resolution dated February 21, 2023,[29] that the parties are deemed to have waived the filing of their JSFI. The Pre-Trial Order dated February 28, 2023 was then issued.[30]

As trial ensued, the parties presented their respective testimonial and documentary evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Malcolm George M. Arevalo,[31] petitioner's President; (2) Atty. Jaime I. Cordez,[32] petitioner's Finance and Accounting Head; and (3) Ms. Precy B.

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[22] *Compliance* dated June 29, 2022, Docket, p. 743.
[23] Docket – Vol. 2, pp. 746 to 747.
[24] Docket – Vol. 2, p. 748.
[25] Resolution dated September 12, 2022, Docket – Vol. 2, pp. 750 to 751; Minutes of the hearing held on October 27, 2022, Docket – Vol. 2, p. 791.
[26] Docket – Vol. 2, pp. 763 to 775.
[27] Docket – Vol. 2, pp. 781 to 786.
[28] Records Verification Report dated February 17, 2023 issued by this Court's Judicial Records Division, Docket – Vol. 2, p. 908.
[29] Docket – Vol. I, pp. 910 to 911.
[30] Docket – Vol. I, pp. 913 to 921.
[31] Exhibit "P-43", Docket – Vol. 2, pp. 873 to 877; Minutes of the hearing held on, and Order dated, July 20, 2023, Docket – Vol. 4, pp. 1530 and to 1532 to 1532, respectively.
[32] Exhibit "P-42", Docket – Vol. 3, pp. 1260 to 1280; Minutes of the hearing held on, and Order dated, July 20, 2023, Docket – Vol. 4, pp. 1530 and 1532 to 1533, respectively.

Bacalangco,[33] the Court-commissioned Independent Certified Public Accountant (ICPA).[34]

The *Report* and *Supplemental Report* of the ICPA were submitted on August 22, 2023 and October 6, 2023, respectively.[35]

On February 29, 2024, the *Formal Offer of Evidence (For the Petitioner)* was submitted,[36] to which respondent filed his *Comment/Opposition (To Petitioner's Formal Offer of Exhibits)* via accredited courier service on March 20, 2024.[37] In the Resolution dated July 31, 2024,[38] the Court admitted petitioner's offered exhibits, *except* Exhibits "P-116", "P-120", "P-132", "P-143", "P-183", "P-211", "P-262", "P-289", "P-297 to P-298", "P-300", and "P-304 to P-306", for failure of the document marked to state clearly the date of issuance thereof or for being dated outside the period of petitioner's alleged substantiated/valid input tax from January 2019 to June 2019; and Exhibits "P-35" and "P-36, for failure to identify.

For his part, respondent presented the testimony of RO Angeli D. Malana.[39]

On August 20, 2024, respondent filed his *Formal Offer of Evidence*,[40] to which petitioner filed its *Comment/Objection (To the Formal Offer of Evidence for the Respondent)* on September 4, 2024.[41] In the Resolution dated October 29, 2024,[42] the Court admitted all of respondent's offered exhibits.

The *Memorandum (For the Petitioner)* was filed via accredited courier on January 13, 2025,[43] while respondent submitted a *Motion for Extension to File Memorandum* via private accredited courier on February 8, 2025.[44] Subsequently, respondent filed a *Motion to Admit [Amended] Respondent's Memorandum* via accredited courier on February 12, 2025,[45] with attached *Memorandum for Respondent.*

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[33] Exhibit "P-323", Docket – Vol. 4, pp. 1576 to 1586, respectively; Minutes of the hearing held on, and Order dated, July 20, 2023, Docket – Vol. 4, pp. 1530 and 1532 to 1533, respectively.
[34] *Oath of Commission* dated July 20, 2023, Docket – Vol. 4, p. 1531; Minutes of the hearing held on, and Order dated, July 20, 2023, Docket – Vol. 4, pp. 1530 and to 1532 to 1532, respectively.
[35] Exhibits "P-323-2" and "P-323-3", Docket – Vol. 4, pp. 1536 to 1555, and 1562 to 1568, respectively.
[36] Docket – Vol. 4, pp. 1688 to 1700.
[37] Docket – Vol. 4, pp. 1702 to 1711.
[38] Docket – Vol. 4, pp. 1724 to 1728.
[39] Exhibit "R-6", Docket – Vol. 2, pp. 797 to 806; Minutes of the hearing held on, and Order dated, August 15, 2024, Docket – Vol. 4, pp. 1729 to 1730.
[40] Docket – Vol. 4, pp. 1731 to 1735.
[41] Docket – Vol. 4, pp. 1736 to 1749.
[42] Docket – Vol. 4, pp. 1774 to 1775.
[43] Docket – Vol. 4, pp. 1824 to 1871.
[44] Docket – Vol. 4, pp. 1878 to 1879.
[45] Docket – Vol. 4, pp. 1883 to 1884.

This case was considered submitted for decision on February 18, 2025.[46]

THE STIPULATED ISSUE

The parties agreed during the Pre-Trial Conference to the following issue for this Court's resolution:

> "Whether or not petitioner is liable for deficiency value added tax for the period 1 January 2019 to 30 June 2019 in the aggregate amount of PhP20,002,609.12."[47]

Petitioner's arguments:

Petitioner argues that petitioner's right to due process is violated because of the multiple and overlapping LOA issued by respondent to the petitioner for the same taxable year (January 2, 2019 to June 30, 2019); and that Assessment No. VT-ELA04684-19-21-175/FLD dated March 2, 2021 is void, unjust, oppressive, and confiscatory, due to lack of legal basis and must perforce be cancelled.

Respondent's counter-arguments:

Respondent contends that petitioner's right to due process was not violated; that the *Details of Discrepancies* attached to the FAN/FLD provided the legal and factual bases to support the deficiency VAT assessment; that the deficiency VAT assessment based on undeclared receipts/collection from missing Official Receipts (ORs) issued has legal and factual bases; and that the Court is not bound by the findings of the ICPA.

THE COURT'S RULING

The present *Amended Petition for Review* is partly meritorious.

The audit of petitioner's deficiency tax liabilities for the taxable period

[46] Minute Resolution dated February 18, 2025, Docket.
[47] Par. B. STATEMENT OF FACTS AND ISSUE, Pre-Trial Order dated February 28, 2023, Docket – Vol. 2, p. 914; Refer to Minutes of the hearing held on October 27, 2022, Docket – Vol. I, p. 791.

January to June 2019 was made pursuant to valid LOAs.

Petitioner argues that its right to due process was violated because of the multiple and overlapping LOAs issued by the respondent for the same taxable period. Citing the case of *Commissioner of Internal Revenue vs. Mcdonald's Philippines Realty Corp.* (*Mcdonald's* case),[48] petitioner states that the necessity of a validly issued LOA for the valid conduct of a taxpayer investigation by an RO is a well-settled doctrine embodied in our statutory and case law. And citing further the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* (*Medicard* case),[49] petitioner states that the LOA has a dual function as the modality for the delegation of the respondent's investigatory power and as a manifestation of due process.

Petitioner avers that it received an LOA on January 3, 2020 which authorized RO Angeli Malana and GS Dante Tan to examine its books of accounts and other accounting records for VAT for the period January 1, 2019 to June 30, 2019. While the audit procedure was ongoing with respect to the said LOA, respondent issued another LOA authorizing RO Angeli Malana and GS Pauline Lydia Reyes to examine the petitioner's books of account and other accounting records for VAT for the same taxable period January 1, 2019 to June 30, 2019. Petitioner claims that this second LOA was issued without replacing or cancelling the first LOA. Petitioner further claims that the second LOA was furnished to and received, not by petitioner or any of its employees or representatives, but by Arnold San Diego who works in Creative and Technical Production Network, Inc.

Petitioner also states that on March 3, 2021 it received an *Assessment Notice*, *Formal Demand Letter* and *Details of Discrepancy*, to which it timely filed a protest letter specifically requesting for reinvestigation. On September 3, 2021, it then received an *Action on Protest to FLD*, dated July 12, 2021 giving due course to the request for reinvestigation.

In this regard, according to petitioner, despite the prior issuance of an *Assessment Notice* , *Formal Demand Letter*, and Action on Protest to FLD issued based on the second LOA, respondent issued another LOA dated July 28, 2021, authorizing RO Rodolfo III Cabalona and GS Abdulhalim Usman, to examine the petitioner's books of accounts and other accounting records for VAT covering the same taxable period January 1, 2019 to June 30, 2019. The aforesaid LOA declared that it replaces the *first* LOA with SN: eLA201700004376 dated January 3, 2020, for the continuation of audit of herein tax liabilities for the taxable period from January 1, 2019 to June 30, 2019 arising from the reassignment of case due to Revenue Travel Assignment Order No. 100-2021 dated March 1, 2021.

[48] G.R. No. 242670, May 10, 2021.
[49] G.R. No. 222743, April 5, 2017.

Petitioner further argues that the issuance of three (3) and overlapping LOAs to examine the petitioner's books of accounts and other accounting records for VAT for the same taxable period January 1, 2019 to June 30, 2019 is inconsistent with the constitutional principle that no person shall be deprived of property without due process of law. While the respondent is authorized to issue a LOA for the examination of taxpayers within the region, he has gravely abused his discretion by issuing multiple and overlapping LOAs resulting in lack or excess of jurisdiction. Consequently, the petitioner's right to due process was violated because it could not properly and fully present countervailing evidence in support of its position because of several ROs with overlapping authorities who examined the books and other accounting records of the petitioner for the same taxable year, January 2, 2019 to June 30, 2019.

Petitioner then insists that the issuance of the overlapping LOAs violated the "one LOA per taxable year" rule under Revenue Memorandum Order Nos. 8-2006 and 43-90. Petitioner quotes the following:

> "1. **Only one (1) [LOA] shall be issued to the same taxpayer, for the same tax type and period,** except where an [LOA] was issued for a specific tax type only and subsequently, another [LOA] was issued to the same taxpayer by the same or another office covering the investigation of all internal revenue taxes (AIRT) for the same taxable period. The [LOA] issued for AIRT purposes shall be allowed provided the coverage shall be limited to AIRT except for the specific tax type and said coverage shall be clearly stated on the face of the [LOA].
>
> 2. **In case two or more [LOA)s are issued to the same taxpayer for the same tax type and for the same period, the power to decide which [LOA) shall prevail shall be under the exclusive jurisdiction of the Commissioner (CIR). The LA prevailed upon shall be considered cancelled.** The concerned [Large Taxpayers Audit and Investigation Division] I and II/[Large Taxpayers District Office]/[Revenue District Office]/[National Investigation Division]/Special Investigation Division] [Task Force] shall indicate under Status Code "Cancelled" and select the appropriate Action Code "LA Cancelled by Order of the CIR". Under the Remarks column, indicate "Cancelled by LA No. __ issued by (name office).['] (Emphasis and underlining supplied)"

Petitioner claims that the requirement under the "One LOA per taxable year" rule was not complied by respondent making the assessment against the petitioner violative of its right to due process. Moreover, petitioner states that it complied with the required submission by the respondent, these submissions were supposed to be examined by RO Malana and reviewed by GS Tan. Petitioner further states that unbeknown to it, as no copy was furnished to it, respondent issued a second LOA authorizing GS Reyes and a different GS, to review the books and accounts of petitioner without replacing or cancelling the first LOA. Based on this second LOA, the assailed *Assessment Notice* and FLD with *Details of Discrepancy* dated March 2, 2021 were issued and signed by RO

Malana and GS Reyes. Hence, at the time that the assailed assessment was issued, two (2) LOAs were issued and subsisting covering the same taxable period violating the right of the petitioner to due process.

Petitioner posits that respondent realized his mistake and belatedly issued the third LOA, this time authorizing a totally *different set* of RO and GS to examine the books and accounts of petitioner several months after the assailed *Assessment Notice* was already issued and while the same was already under protest by the petitioner. Petitioner also states that the *third* LOA cancelled and replaced only the *first* LOA but is silent as to the cancellation of the second LOA. Regardless of the cancellation of the first LOA, there are still two (2) LOAs issued and subsisting covering the same taxable period which remains violative of the right of the petitioner to due process. This alone should warrant the nullification of the assailed *Assessment Notice*.

On the other hand, respondent maintains that petitioner's right to due process was *not* violated. According to respondent, contrary to petitioner's claim, the BIR's issuance of the successive Letters of Authority is precisely done to protect petitioner's right to due process.

Respondent likewise cites the *McDonald's* case to explain the importance of the issuance of the LOA. Respondent further cites the case of *Republic of the Philippines vs. Robiegie Corporation* (*Robiegie* case),[50] where the Supreme Court reiterated the ruling in the *Medicard* case and cited the BIR issuance requiring the issuance of a new LOA in case of assignment or transfer of cases to another RO.

Respondent thus states that any transfer or change of BIR officer should be embodied in a LOA. He further states that the essence of due process regarding an RO's authority to examine books of accounts and other accounting records of the taxpayer is that the person conducting examination/audit is named in such LOA. Respondent claims that in this case, petitioner was duly informed about the identities of the BIR officers authorized to conduct the audit and examination of their books of accounts and other accounting records. He also states that BIR's successive issuance of LOAs was to keep petitioner informed of the identifies of the ROs authorized to conduct audit of its books. It is also worth noting that the audit of petitioner's books was conducted under a valid LOA.

We agree with respondent.

In the *Mcdonald's* case, which is relied upon by both petitioner and respondent, the Supreme Court held that reassigning ROs and substituting

[50] G.R. No. 260261, October 3, 2022.

them without a separate or amended LOA violates the taxpayer's right to due process, to wit:

> "We rule that **the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation <u>without a separate or amended LOA</u> (i) violates the taxpayer's right to due process in tax audit or investigation**; (ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990." *(Emphasis and underscoring added)*

Related to *McDonald's*, in the *Robiegie* case, the Supreme Court ruled that the issuance of a *new* LOA for the same taxable period is <u>*not* prohibited</u> if such new LOA is <u>*necessitated*</u> by the reassignment, retirement, or other inability of the incumbent RO to continue an investigation, thus:

> "Contrary to the Republic's claims, the requirement of a new LOA for the valid reassignment of a tax investigation can be reconciled with the 'one LOA per taxable year' rule under RMO Nos. 8-2006 and 43-90. Items 1 and 2 of Part IV.D. RMO No. 8-2006 provide:
>
>> 1. Only one (1) [LOA] shall be issued to the same tax type and period, except where an [LOA] was issued for a specific tax type only and subsequently, another [LOA[was issued to the same taxpayer by the sane or another office covering the investigation of all internal revenue taxes (AIRT) for the same taxable period. The [LOA] issued for AIRT purposes shall be allowed provided the coverage shall be limited to AIRT except for the specific tax type and said coverage shall be clearly stated on the face of the [LOA].
>>
>> 2. In case two or more [LOA]s are issued to the same taxpayer for the same tax type and for the same period, the power to decide which [LOA] shall prevail shall be under the exclusive jurisdiction of the Commissioner (CIR). The LA prevailed upon shall be considered cancelled.
>
> Clearly, the 'one LOA per taxable year' rule is not as ironclad as the Republic portrays it to be. Part IV.D., Item 2 of RMO No. 8-2006 authorizes the issuance of duplicate LOAs, subject to the CIR's discretion to determine which of the two LOAs shall prevail. **Obviously, <u>when a tax investigation is reassigned to a different RO</u> pursuant to the mandatory 'rotation' of assessment officers under Section 17 of the NIRC, or for any other legally justified reason, <u>the CIR or his/her duly authorized representatives may issue a new LOA to the newly assigned RO, and such LOA can be made to prevail over the LOA issued to the previous investigating officer</u>.** Since the CIR's power to issue a LOA is delegable to the CIR's duly authorized representatives, as enumerated in RMO No. 43-90. **Stated differently, RMO No. 8-2006 does not prohibit the issuance of a new LOA within the same taxable period if such new LOA is *necessitated* by the reassignment, retirement, or other inability of the incumbent RO to continue an investigation.** The BIR official who will

> issue the new LOA also has the power to make it prevail over the old, previously issued LOA, subject of course to the control and regulation of the CIR as the statutorily designated tax investigator. It must be noted that Section 13 of the NIRC, in providing for the LOA as the mode of delegation of the CIR's investigatory powers to the ROs, likewise gave the CIR the power to regulate and define the parameters for the issuance of LOAs. The 'one LOA per taxable year' rule under RMO Nos. 8-2006 and 43-90 is an example of such a regulation; and such regulation is only valid insofar as it is consistent with the provisions of the NIRC." *(Emphases added)*

Based on the foregoing pronouncements, a separate or amended LOA should be issued when the assigned ROs are reassigned, retire, or otherwise unable to continue an investigation, and failure to do so violates the taxpayer's right to due process.

In the present case, respondent issued three (3) different LOAs for the taxable period January to June 2019. Notably, respondent's witness explained the same during trial, *viz*:[51]

"**RE-DIRECT EXAMINATION**
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xxx xxx xxx

ATTY. NAPUTO:
I am showing you the Letter of Authority dated July 30, 2020 with LA 20170004684, is this the replacement Letter of Authority you mentioned?

WITNESS:
Yes, Sir.

xxx xxx xxx

ATTY. NAPUTO:
Do you know who are the authorized revenue officers in the said Letter of Authority?

WITNESS:
Yes, Sir. Ms. Pauline Reyes, it is my supervisor and myself.

ATTY. NAPUTO:
Do you know why the original Letter of Authority was replaced?

WITNESS:
Yes, sir. It is because my group supervisor previously, Mr. Dante E. Tan was promoted to a higher position in the Bureau.

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[51] Transcript of Stenographic Notes for the hearing held on August 15, 2024, pp. 52 to 53, and 60 to 62.

RE-CROSS EXAMINATION
x---------------------------x

xxx xxx xxx

ATTY. ELGO:

Ok, Your Honors. Now, Madam Witness, I am referring to you the last paragraph of this Letter of Authority. If I may quote, 'This is a replacement of the Letter of Authority No. SNeLA20170004376 dated January 3, 2020 for the continuation of audit of herein tax liabilities for the taxable period from January 1, 2019 to June 30, 2019 arising from the re-assignment of case due to [R]evenue Travel Assignment Order No. 100-2021 dated March 1, 2021.' Now, you will confirm with me that by the issuance of this Letter of Authority, only then the BIR cancelled the first Letter of Authority. Correct?

xxx xxx xxx

ATTY. ELGO:

Will you confirm with this Honorable Court that by the issuance of this third Letter of Authority only then the BIR cancelled the first Letter of Authority?

WITNESS:

Yes, Your Honors.

ATTY. ELGO:

So, that's a yes.

JUSTICE SAN PEDRO:

That Letter of Authority didn't mention the second Letter of Authority?

WITNESS:

No, Your Honors, because in this Letter of Authority, it is the time when the new examiners being assigned. Whenever there is a new examiner being assigned, that is the only time the Letter of Authority is being stamped with the word replacement Letter of Authority.

JUSTICE SAN PEDRO:

Ok."

It is undisputed that in each case, respondent informed petitioner of the identity of the ROs who at the time were authorized to examine petitioner's books of accounts and other accounting records. Contrary to petitioner's assertion, the issuance of the LOAs subject of the present case are valid and were done in accordance with the rules to protect petitioner's right to due process.

The deficiency VAT assessment for taxable period January to June 2019 is upheld in part.

As stated in the FAN/FLD,[52] the petitioner was assessed deficiency VAT in the aggregate amount ₱20,002,609.12, inclusive of surcharge and interest, for the period January 1, 2019 to June 30, 2019, as detailed below:

Sales/Receipts per VAT Return			₱79,644,940.62
Less: Exempt sales/receipts			-
Taxable sales/receipts per VAT Returns			₱79,644,940.62
Add:			
Undeclared receipts from missing ORs (Schedule 1)		₱57,923,593.19	
Undeclared income from unaccounted purchase of services (Schedule 2)		1,886,409.08	
Undeclared Sales per TPI (Schedule 3)		5,031,003.99	
Undeclared income from unaccounted purchases per TPI (Schedule 4)		1,699,074.22	
Receipts not subjected to VAT (Schedule 5)		15,548,024.85	
Undeclared Extraneous Income (Schedule 6)		6,485,460.43	88,573,565.77
Adjusted VATable Sales			₱168,218,506.39
Output Tax Due			₱20,186,220.77
Less: Input Tax			
Input tax from previous quarter		₱558,854.24	
Input Tax deferred on capital goods exceeding 1million		389,331.64	
Input Tax on current purchases		623,285.87	
Total available input tax		₱1,571,471.75	
Less: Input tax on purchases of capital goods exceeding 1Million		345,175.06	
Net creditable input tax		₱1,226,296.69	
Less: Disallowed input tax	₱623,285.87		
Disallowed input tax carried over from previous quarter (Schedule 7)	494,438.88	1,117,724.75	108,571.94
Basic Tax Due			₱20,077,648.83
Less: VAT payments			8,331,096.18
Basic Deficiency VAT			₱11,746,552.62
Add: 50% Surcharge			5,873,276.32
12% Interest (7.25.19 to 4.2.2021)			2,382,780.16
TOTAL AMOUNT DUE			**₱20,002,609.12**

Moreover, a compromise penalty in the amount of ₱25,000.00 was also imposed upon the petitioner for failure to supply correct and accurate information in the Summary List of Sales and Purchases (SLSP), in violation of applicable tax regulations.

1. *Undeclared receipts from missing Official Receipts – ₱57,923,593.19.*

In the *Details of Discrepancies*[53] attached to the FLD,[54] respondent found petitioner liable for undeclared receipts from missing ORs in the amount of

[52] Exhibit "P-17", Docket – Vol. 1, pp. 152 to 153.
[53] Exhibit "P-6", FOE Binder - Vol. 1.

₱57,923,593.19. These undeclared receipts were assessed pursuant to Section 108 of the NIRC of 1997, as amended.

Total taxable sales	₱79,644,940.64
Divided by No. of ORs issued	11
Average Sales per OR	₱ 7,240,449.15
Multiplied by No. of missing ORs	8
Undeclared receipts from missing ORs	₱57,923,593.19

Petitioner argues that the submitted ORs are complete. Four (4) of the alleged missing ORs were cancelled receipts, while the remaining four (4) ORs were 2018 transactions which are dated, reported and remitted in 2018.[55]

Upon examination and evaluation of the submitted documents, including OR Listing[56] and ORs,[57] it was determined that the OR numbers 63,[58] 67,[59] 71[60] and 77[61] were cancelled, whereas OR numbers 65,[62] 68,[63] 69,[64] and 70,[65] with a total amount of ₱18,891.253.52 bear dates in the year 2018. The remaining ORs with a total amount of ₱79,644,940.65 are all dated 2019, as detailed below:

Exhibit No.	OR No.	Payor	Date	Issued in 2019	Issued in 2018
"P-27"	62	ABS-CBN	Jan. 20, 2019	₱11,876,316.01	
"P-27-1"	63	cancelled			
"P-27-2"	64	ABS-CBN	Feb. 25, 2019	11,876,316.01	
"P-27-3"	65	CTPNI	Dec. 28, 2018		₱3,101,934.43
"P-27-4"	66	ABS-CBN	Mar. 22, 2019	14,308,796.61	
"P-27-5"	67	cancelled			
"P-27-6"	68	CTPNI	Apr. 12, 2018		1,956,501.54
"P-27-7"	69	CTPNI	May 30, 2018		1,956,501.54
"P-27-8"	70	ABS-CBN	May 30, 2018		11,876,316.01
"P-27-9"	71	cancelled			
"P-27-10"	72	ABS-CBN	Apr. 25, 2019	11,876,316.01	
"P-27-11"	73	Bikerbox	Apr. 30, 2019	295,560.00	
"P-27-12"	74	Bikerbox	May 6, 2019	48,000.00	
"P-27-13"	75	CTPNI	May 9, 2019	3,354,002.66	
"P-27-14"	76	CTPNI	May 9, 2019	1,677,001.33	
"P-27-15"	77	cancelled			

54 Exhibit "P-5", FOE Binder - Vol. 1.
55 Exhibit "P-2", FOE Binder – Vol. 1.
56 Exhibit "P-2-C", FOE Binder – Vol. 1.
57 Exhibits "P-27" to "P-27-18", FOE Binder – Vol. 1.
58 Exhibit "P-27-1", FOE Binder - Vol. 1.
59 Exhibit "P-27-5", FOE Binder - Vol. 1.
60 Exhibit "P-27-9", FOE Binder - Vol. 1.
61 Exhibit "P-27-15", FOE Binder - Vol. 1.
62 Exhibit "P-27-3", FOE Binder - Vol. 1.
63 Exhibit "P-27-6", FOE Binder - Vol. 1.
64 Exhibit "P-27-7", FOE Binder - Vol. 1.
65 Exhibit "P-27-8", FOE Binder - Vol. 1.

Exhibit No.	OR No.	Payor	Date	Issued in 2019	Issued in 2018
"P-27-16"	78	ABS-CBN	May 29, 2019	11,876,316.01	
"P-27-17"	79	ABS-CBN	June 14, 2019	11,876,316.01	
"P-27-18"	80	Starbucks	May 20, 2019	580,000.00	
			TOTAL	**₱79,644,940.65**	**₱18,891,253.52**

However, the petitioner failed to present sufficient supporting documents to establish that the ORs bearing dates in 2018 were duly reported and remitted in the same year. It is further noted that these 2018 ORs were issued *not* in order of occurrence.

Considering that the issuance of the ORs was not made in a chronological manner and petitioner failed to present evidence that will substantiate its claim that ORs dated in 2018 are indeed for 2018 transactions, the assessment on undeclared receipts from the missing ORs is hereby upheld, but is limited to the amount **₱18,891,253.52.**

2. Undeclared income from unaccounted expenses – ₱1,886,409.08.

Pursuant to Section 108(A) of the NIRC of 1997, as amended, respondent assessed petitioner for undeclared income from unaccounted expenses amounting to ₱1,886,409.04, because several discrepancies on petitioner's income payments to suppliers were noted after comparing the amounts per VAT returns as against the amounts reported per quarterly expanded withholding taxes.

Services subjected to EWT	₱5,513,649.50
Services declared per VAT returns	3,627,240.42
Undeclared income from unaccounted purchases of services	₱1,886,409.08

Petitioner states that the services declared per VAT (*i.e.*, the amount of ₱3,627,240.42) is confirmed. According to petitioner, the company only claims input VAT that is compliant with BIR invoicing requirements; but not all transactions subject to expanded withholding tax are VATable.[66]

The ICPA stated that the withholding tax base exceeds the input VAT base because certain suppliers or service providers are non-VAT-registered entities, the transactions involve VAT-exempt sales, or the difference arises from timing differences.[67]

[66] Exhibit "P-2", FOE Binder – Vol. 1.
[67] USB (Exhibit "P-323-4"), ICPA Report, page 2 of 5.

To support its arguments, petitioner submitted payment vouchers,[68] quotation,[69] Certificate of Creditable Tax Withheld at Source,[70] Certificate of Registration (BIR Form No. 2303),[71] and OR No. GMKT00000104206,[72] to establish that its suppliers or service providers are non-VAT-registered entities, that the subject transactions constitute VAT-exempt sales, or that any discrepancies are attributable to timing differences.

Upon evaluation of the submitted documents, only OR No. GMKT00000104206,[73] amounting to ₱280,326.35, constitutes a *convincing corroboration* for a VAT-exempt transaction. The remaining transactions, totaling ₱1,606,082.73 (₱1,886,409.08 less ₱280,326.35), remained unsubstantiated and are therefore subject to assessment. Notably, petitioner failed to submit non-VAT or VAT-exempt ORs or invoices. Furthermore, with respect to the claimed *timing differences*, petitioner did *not* provide a reconciliation schedule and general ledger demonstrating that the transactions were recorded in a period other than the claimed period. Accordingly, petitioner has not satisfied the evidentiary requirements necessary to support its defense, and the assessment stands, but in the reduced amount of **₱1,606,082.73.**

3. Undeclared sales per third party information (TPI) – ₱5,031,003.99.

According to respondent, a partial tally of the computerized matching conducted by the BIR on the purchases submitted by the petitioner's customers against the sales declared in its tax returns shows an understatement of sales in the amount of ₱5,031,003.99. Furthermore, the confirmation letters that were sent to customers did not get any replies. Hence, the findings are considered true and correct pursuant to Revenue Memorandum Order (RMO) No. 13-2012 (IV)(D)(9). The undeclaration is assessed of VAT pursuant to Section 105 of the NIRC, in relation to Section 106 of the same Code as amended, *viz.*:

TIN	Customer's Registered Name	Sales per TPI	Sales per SLS	Undeclared
008288192	Creative and Technical Production Network Inc.	₱10,062,007.99	₱5,031,004.00	₱5,031,003.99
Undeclared Sales per TPI				**₱5,031,003.99**

[68] Exhibits "P-2-PP", "P-2-QQ", "P-2-RR", "P-2-SS", "P-2-TT", "P-2-UU", "P-2-VV", P-2-WW", USB (Exhibit "P-323-4"), Folder P-2-A to XX-2.
[69] Exhibit "P-2-QQ-1", USB (Exhibit "P-323-4"), Folder P-2-A to XX-2.
[70] Exhibits "P-2-RR-1", "P-2-SS-1", "P-2-UU-1", "P-2-VV-1", P-2-WW-1", USB (Exhibit "P-323-4"), Folder P-2-A to XX-2.
[71] Exhibit "P-2-TT-1", USB (Exhibit "P-323-4"), Folder P-2-A to XX-2.
[72] Exhibit "P-2-PP-1", USB (Exhibit "P-323-4"), Folder P-2-A to XX-2.
[73] *Id.*

Petitioner then contends that for the period January 1, 2019 to June 30, 2019, the company received and reported sales collection of ₱5,031,004.00, which is equivalent to three (3) months of charges. The other three (3) months were collected after June 30, 2019.

Indeed, when an assessment is based on TPI, the investigating RO is required to prepare and send a confirmation request to the taxpayer serving as the TPI's source, or coordinate with the RDO having jurisdiction over the TPI source for the preparation and issuance of a confirmation request. If the TPI source affirms the amounts (in its reply to the confirmation request) aligning with the TPI, the RO must then obtain its sworn statement attesting to the veracity of the data provided. This procedure is in accordance with RMO No. 46-2004 which reads, in part, as follows:[74]

> "III. PROCEDURES
>
> xxx
>
> **<u>Action on Protested LNs due to TPI discrepancy</u>**
>
> The Revenue Officer assigned to handle the Letter Notice shall:
>
> xxx xxx xxx
>
> 2. **Require the taxpayer to execute a Sworn Statement**. (Annex A) attesting to the veracity of the schedules and authenticity of the documents presented/submitted.
>
> 3· **Obtain Sworn Statements from TPI sources** (Annexes 'B' and 'C') attesting to the veracity of the data provided.
>
> 3.1 If the TPI source is registered in the RDO/LTDO/LTAID having jurisdiction over the subject taxpayer, the RO shall:
>
> 3.I.I Prepare 'Confirmation Requests' (using the format prescribed in Annex "C" of RMO No. 30- 2003 to be signed by the heads of the concerned RDO/LTDO/LTAID) for purposes of verifying the accuracy of the figures appearing in the DTCS.
>
> 3.1.2 If the TPI source agrees with the figures in the 'Confirmation Requests' (CR), secure a Sworn Statement from the TPI source to allow the RO to build a case against the taxpayer.

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[74] Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers. Italics in the original text and emphasis supplied.

3.2 If the TPI source is outside the jurisdiction of the RDO/LTDO/LTAID where the taxpayer is registered, the RO shall:

3.2.1 Coordinate with the RDO/LTDO/LTAID where the TPI source is registered, in order to:

a. Prepare a CR to be transmitted and signed by the RDO/LTDO/LTAID having jurisdiction over TPI source (CRs should be coursed thru the RDO/LTDO/LTAID where the taxpayer is registered);

b. **Secure a sworn statement from the TPI** source thru the RDO/LTDO/LTAID having jurisdiction over the same; and,

c. Assist the heads of the concerned RDO/LTDO/LTAID in the preparation of Monthly Status Report on Confirmation Requests Transmitted (Annex "D") outside the RDO/LTDO/LTAID of the TPI source and submit the same to the SCG, for monitoring purposes."

Respondent claimed that he sent confirmation letters to TPI sources in relation to undeclared sales amounting to ₱5,031,003.99, however, no replies were received.

In assessing petitioner for undeclared sales, respondent relied on confirmation letters sent to third-party sources to verify the alleged discrepancies found in petitioner's SLS and sales per TPI. However, the records do *not* show that respondent received the valid sworn statements from third-party sources confirming the same.

Respondent's finding of an undeclared sales amounting to ₱5,031,003.99 merely relied on the presumption that the amounts extracted from the database are correct since he or she did not receive any responses from the third parties. Hence, the Court *cannot* sustain this assessment item.

Correspondingly, the amounts extracted from respondent's own database are self-serving and unsubstantiated. For lack of factual bases, respondent's findings on undeclared sales of ₱5,031,003.99 due to TPI matching should then be cancelled.

4. Undeclared sales from unaccounted purchases per third party data – ₱1,699,074.22.

The investigation of the BIR disclosed that several purchases amounting to ₱1,699,074.22 for the period January 1, 2019 to June 30, 2019, as reflected in the computerized matching conducted by it on information/data provided by petitioner's supplier was declared in its VAT returns, to wit:

TIN	Supplier's Registered Name	PURCHASES		Unaccounted
		per TPI	per SLP	
000113791	CT Citimotors Inc.	₱1,580,857.17	₱66.99	₱1,580,790.18
005110768	Culinary Events inc.	6,294.33	1,154.50	5,139.83
006358064	Colent Marketing Phils. Inc.	9,901.79	732.07	9,169.72
008706159	Coolcreater Aircon Trading and Services, Inc.	49,030.23	5,357.17	43,673.06
008860607	Jovanisan Rik Marketing Inc.	1,532.14	385.75	1,146.39
010150326	FDR First Safety system Training Services Corp.	5,982.14	883.92	5,098.22
100810996	Sia Johnson Chua	4,375.00	892.83	3,482.17
224508324	Savemoney Trading Inc.	68,332.15	40,974.09	27,358.06
226568285	Global City Auto Sales Inc,	12,703.17	709.83	11,993.34
227707416	19 east Inc.	11,306.25	83.00	11,223.25
Unaccounted Purchase per TPI				**₱1,699,074.22**

Out of the ten (10) items in the list, petitioner found only two (2) transactions that tally with its records, detailed as follows:

TIN	Supplier's Registered Name	PURCHASES		Unaccounted
		per TPI	per SLP	
008706159	Coolcreater Aircon Trading and Services, Inc.	₱49,030.23	₱5,357.17	₱43,673.06
224508324	Savemoney Trading Inc.	68,332.15	40,974.09	27,358.06
Unaccounted				**₱71,031.12**

As already pointed out, the BIR is mandated to secure valid sworn statements from third-party sources to establish the accuracy and veracity of the data relied upon in the assessment. In the absence of such sworn statements, the assessment on alleged undeclared sales arising from unaccounted purchases based on third-party data is clearly devoid of factual and legal basis and must therefore be cancelled. Nonetheless, as expressly admitted by the petitioner in its protest letter,[75] that two (2) transactions included in the assessment are consistent with its records, amounting to **₱71,031.12**. Hence, said amount shall be maintained as part of the assessment.

[75] Exhibit "P-2", Request for Reinvestigation on LOA-V08-2020-2018-00000275/SN: eLA20170004684, FOE Binder – Vol. 1.

5. Receipts not subjected to VAT from Accounts Receivable (AR) analysis – ₱15,548,024.85.

Per the BIR, a comparison of petitioner's gross receipts computed per audit amounting to ₱95,192,965.47, as against the amount declared per VAT returns amounting to ₱74,644,940.62, disclosed that gross receipts *not* subjected to VAT in the amount of ₱15,548,024.85, as shown in the computation below. Hence, this amount was assessed against petitioner in accordance with the provision of Title IV, Section 105 and 108 of the NIRC of 1997, as amended.

Sales per ITR	₱ 89,443,285.48
Add: Receivable, beg. (₱6,461,347/1.12)	5,769,059.82
Sub-total	₱ 95,212,345.30
Less: Receivable, end (₱21,705.41/1.12)	19,379.83
Collection per Audit	₱ 95,192,965.47
Less: Sales per VAT Return	79,644,940.62
Receipts not Subjected to VAT	**₱15,548,024.85**

Petitioner argued that as per its reconciliation, its AR net of VAT balance as of June 30, 2019, should be ₱15,567,404.68, below is petitioner's reconciliation:

Sales per ITR	₱89,443,285.48
Add: AR beginning	5,769,059.82
Sub-total	₱95,212,345.30
Less: AR End	15,567,404.68
Collection per Audit	₱79,644,940.62
Less: Sales per VAT Return	79,644,940.62
Receipts not subjected to VAT	-

To refute respondent's assessment, petitioner presented billing invoices and ORs[76] purporting to support its allegation that its AR balance as of June 30, 2019 amounted to ₱15,567,404.68, itemized as follows:

				Payment Details	
Exhibit	**Date**	**Customer**	**Amount**	**OR Date**	**Exhibit**
"P-2-II"	Aug. 7, 2018	One Time Customer	₱26,796.70	-	-
"P-2-II-1"	Oct. 31, 2018	ABS-CBN	3,312,884.43	-	-
"P-2-II-2"	Dec. 12, 2018	ABS-CBN	891,852.27	-	-
"P-2-II-3"	Dec. 19, 2018	One Time Customer	40,943.00	-	-
"P-2-II-4"	Dec. 28, 2018	ABS-CBN	1,377,182.75	-	-
"P-2-II-5"	Dec. 28, 2018	ABS-CBN	999,804.55	-	-
"P-2-II-6"	Feb. 8. 2019	One Time Customer	446,428.57	-	-
"P-2-II-7"	Apr. 1. 2019	Creative & Technical Production	1,677,001.33	Jul. 5, 2019	"P-2-JJ"

[76] USB (Exhibit "P-323-4"), Folder P-2-A TO XX-2.

				Payment Details	
Exhibit	Date	Customer	Amount	OR Date	Exhibit
"P-2-II-8"	May 10, 2019	ABS-CBN	1,001,278.68	Aug. 27, 2019	"P-2-MM"
"P-2-II-9"	May 10, 2019	Creative & Technical Production	1,677,001.33	Jul. 5. 2019	"P-2-KK"
"P-2-II-10"	Jun. 1. 2019	Creative & Technical Production	1,677,001.33	Nov. 22. 2019	"P-2-OO"
"P-2-II-11"	May 10, 2019	ABS-CBN	889,166.64	Sep. 27. 2019	"P-2-NN"
"P-2-II-12"	Jun. 4, 2019	ABS-CBN	48,788.53	-	-
"P-2-II-13 "	Jun. 3, 2019	ABS-CBN	1,461,274.59	-	-
"P-2-II-14"	Jun. 28, 2019	One Time Customer	40,000.00	Aug. 23. 2019	"P-2-LL"
		Total	**₱15,567,404.70**[77]		

A thorough examination of the submitted documents reveals that an AR amounting to ₱6,961,449.31 remained outstanding as of June 30, 2019, having been paid by the customer only thereafter, as reflected in the ORs. With respect to the remaining amount of ₱8,605,955.39 (₱15,567,404.70 less ₱6,961,449.31), the Court is unable to ascertain whether this amount remained receivable as of June 30, 2019. In the absence of an Aging of Receivables or other supporting documentation, the documents submitted are *insufficient* to substantiate petitioner's claim. Accordingly, and upon verification of the payment records, the amount ₱6,961,449.31 is the valid AR balance as of June 30, 2019, to wit:

				Payment Details	
Exhibit	Date	Customer	Amount	OR Date	Exhibit
"P-2-II-7"	Apr. 1, 2019	Creative & Technical Production	₱ 1,677,001.33	Jul. 5, 2019	"P-2-JJ"
"P-2-II-8"	May 10, 2019	ABS-CBN	1,001,278.68	Aug. 27. 2019	"P-2-MM"
"P-2-II-9"	May 10, 2019	Creative & Technical Production	1,677,001.33	Jul. 5. 2019	"P-2-KK"
"P-2-II-10"	Jun. 1. 2019	Creative & Technical Production	1,677,001.33	Nov. 22, 2019	"P-2-OO"
"P-2-II-11"	May 10, 2019	ABS-CBN	889,166.64	Sep. 27, 2019	"P-2-NN"
"P-2-II-14"	Jun. 28, 2019	One Time Customer	40,000.00	Aug. 23. 2019	"P-2-LL"
		Total	**₱6,961,449.31**		

Based on the foregoing, the assessment on receipts *not* subjected to VAT from the AR analysis is upheld, but only in the reduced amount of **₱8,605,955.35**, computed as follows:

Sales per ITR	₱ 89,443,285.48
Add: Receivable, Beginning	5,769,059.82
Sub-total	95,212,345.30
Less: Receivable, End	6,961,449.31
Collections per Audit	88,250,895.99

[77] Rounding off difference of 0.02.

Less: Sales per VAT Returns	79,644,940.64
Receipts Not Subjected to Vat	**₱8,605,955.35**

6. Undeclared extraneous income – ₱6,485,460.43.

The verification of the BIR disclosed that there was an *understatement* of the petitioner's receipts in the amount of ₱6,485,460.43, as shown below, for the period from January 1, 2019 to June 30, 2019, as a result of comparing the total revenues per trial balance as June 30, 2019 against the gross receipts reported in the VAT returns. Hence, this extraneous income as reported in the trial balance was assessed pursuant to Section 105 and 108 of the NIRC of 1997, as amended, in relation to Revenue Regulations (RR) No. 16-2005.

Total Revenue per Trial Balance	₱ 86,130,401.05
Total Revenue per VAT Returns	79,644,940.62
Undeclared Extraneous Income	**₱6,485,460.43**

According to petitioner, the company reports revenue (₱86,130,401.05) on *accrual* basis and sales reported per VAT return amounting to ₱79,644,940.62 for the period from January 1, 2019 to June 30, 2019 comprises of collections from 2018 and 2019 charges.

The ICPA noted that the records would show the difference between the total revenue per trial balance and that of the VAT returns of ₱6,485,460.43 accounts for revenues booked in 2019 and remained uncollected as of June 30, 2019. According to the ICPA, revenues are recognized in the books upon rendition of service while that reported per VAT returns represents collections pursuant to Sections 108 & 113 of the NIRC of 1997, as amended.[78]

Petitioner submitted billing invoices[79] and reconciliation of accounts[80] to refute respondent's allegation. However, it was determined that these documents are insufficient to establish that the alleged revenue were already booked in 2019 or to show that the account remains uncollected as of June 30, 2019. Accordingly, the assessment on undeclared extraneous income in the amount of **₱6,485,460.43** shall remain.

7. Disallowed input tax on local purchases - ₱623,285.87.

[78] USB (Exhibit "P-323-4"), ICPA Report, Item V.
[79] Exhibit "P-2-EE-1" to "P-2-EE-21", USB (Exhibit "P-323-4"), Folder P-2-A TO XX-2.
[80] Exhibit "P-2-EE", USB (Exhibit "P-323-4"), Folder P-2-A TO XX-2.

Respondent assessed petitioner due to failure to support its claimed input tax in accordance with the invoicing requirements in Section 113. Hence, the input tax was disallowed pursuant to the provision imposed under Section 110(A)(1) of the NIRC of 1997, as amended, which provides that "[a]ny input tax claimed evidenced by VAT invoice or official receipt issued in accordance with Section 113 hereof xxx shall be credited against output tax".

Upon examination and evaluation of the ORs and invoices[81] presented as well as the summary of input tax for the period January 1, 2019 to June 30, 2019 submitted by petitioner,[82] input VAT amounting to **₱424,869.05** must be disallowed for violation of invoicing requirements under the law, broken down as follows:

Exhibit	Supplier	VAT Amount
-	*Unsupported(₱623,285.87 less ₱526,433.28)*	₱96,852.59
	Incorrect VAT Amount	
"P-48"	Eastwest Healthcare Ince	126,355.73
	Nature of Service not properly indicated	
"P-57" to "P-58"	SANGALANG AND GAERLAN BUSINESS	5,464.29
	VAT amount not indicated	
"P-83"	MIND ALLIANCE VENTURES INC	2,140.71
"P-85"	MR GEEK MOBILE SOLUTIONS INC	12,000.00
"P-97"	3R FOOD MANUFACTURING AND TRAD	160.71
"P-131"	KNIGHT TELECOM	10.71
"P-147"	PHILIPPINE SEVEN CORPORATION	122.14
"P-152"	SANGALANG AND GAERLAN BUSINESS	642.86
"P-156" to "P-156-B"	SSMC GROUP OF HOSPITALS AND CLIN	17,367.86
"P-230"	PHILIPPINE SEVEN CORPORATION	80.36
"2-246"	SSMC GROUP OF HOSPITALS AND CLIN	321.43
	Sub-total	**32,846.78**
	Without petitioner's address	
"P-87"	PRO FLIGHTS TRAVEL	729.14
	Without authorized signature	
"P-77"	HANS INFINITE TOOLS	12,953.57
"P-96"	WYLER ENTERPRISES INC	10,826.79
"P-240"	SAVE MONEY TRADING INC	1,593.21
"P-268"	EF COMPUTER CORPORATION	1,380.00
"P-271"	HANS INFINITE TOOLS	4,459.71
	Sub-total	**31,213.28**
	Without Nature of Service	
"P-51"	Guevarra Electronics	7,921.20
"P-82"	MB EVENT SERVICES	20,964.00
"P-249"	SYSTEM RENTAL PHILIPPINES INC	3,000.00
"P-291"	STAGE CRAFT INTERNATIONAL INC	5,904.00
	Sub-total	**37,789.20**
	Without Petitioner's Details	
"P-55"	Noble AS Energy Gasoline Station	288.21
	Without Petitioner's TIN	
"P-54"	Ipower Products and System Inc.	12,696.43
"P-64"	THE MERCANTILE INSURANCE CO INC	4,339.80

[81] USB (Exhibit "P-323-4"), Folders 012019-Purchases to 062019-Purhases.

[82] USB (Exhibit "P-323-4"), Annex B.

Exhibit	Supplier	VAT Amount
"P-67"	WYLER ENTERPRISES INC	34,138.93
"P-68"	3R FOOD MANUFACTURING AND TRAD	3,278.57
"P-81"	MANILA UNITED ELECTRICAL SUPPLY	1,440.00
"P-89"	SANGALANG AND GAERLAN BUSINESS	966.86
"P-94"	URQUAN INC	9,857.04
"P-95"	WILEX HARDWARE AND CONSTRUCTIO	75.00
"P-113"	EASTWEST HEALTHCARE INC	1,078.59
"P-127"	INSPIRA PRIME INTERNATIONAL CORP	42.32
"P-138"	M13 EVENT SERVICES	6,964.29
"P-164"	WILEX HARDWARE AND CONSTRUCTIO	1,432.50
"P-173"	APERTURE TRADING CORPORATION	492.86
"P-213"	J ALON RICE TRADING	91.07
"P-287"	SAPLANOS TRADING	27.86
"P-311"	PENTEGONIA ASIA CORPROATION	3,160.71
"P-322"	WYLER ENTERPRISES INC	1,151.79
	Sub-total	**81,234.62**
	Denied Exhibits per Resolution dated 7/31/2024	
"P-116"	EVELYN SAN PEDRO FOOD KIOSK	5.69
"P-120"	FUJI XEROX PHILIPPINES INC	10,714.29
"P-132"	KNOXPORT INC	33
"P-143"	PANCIT MALABON	38.04
"P-183"	CAFE VOILA INC	51.96
"P-262"	AEGIS CALTEX SERVICE CENTER AND C	107.14
"P-289"	SIGNATURE CALTEX SERVICE	107.14
"P-297"	ANSON EMPORIUM CORPORATION	285
"P-298"	BANAAG PEST CONTROL	360
"P-300"	CITRA METRO MANILA TOLLWAYS CO	17.57
"P-304"; "P-305"	FUJI XEROX PHILIPPINES INC	375.38
	Sub-total	**12,095.21**
	Grand Total	**₱424,869.05**

8. *Disallowed input tax carried over from previous quarter – ₱494,438.88.*

Verification by the BIR disclosed that an input tax carried over from 2018 amounting to ₱948.185.88 were erroneously carried over to the succeeding quarter without proper presentation of supporting documents to determine the legitimacy of the said amounts. Hence, the noted discrepancy was assessed as unexplained input tax carried over which was disallowed pursuant Section 110(A)(1) of the NIRC of 1997, as amended.

Deferred Input VAT per 2018 AFS		₱453,747.00
Less: Input tax claimed per VAT return		
Input tax carried over from previous quarter	₱558,854.24	
Input tax deferred on capital goods exceeding 1 million	389,331.61	948,185.88
Disallowed input tax carried over from previous quarter		**₱494,438.88**

An examination of the records of the case shows that petitioner failed to present the required supporting invoices or ORs to substantiate the assessed input tax and to refute the respondent's assessment. Accordingly, the assessed amount of **₱494,438.88** shall be retained.

9. Compromise Penalty – ₱25,000.00.

Respondent imposed a compromise penalty of ₱25,000.00 against petitioner for its failure to supply correct information per Summary List of Sales and Purchases (SLSP), pursuant to Sec. 4.114-3 of RR No. 16-2005 as amended by RR No. 1-2012.

However, it is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because, by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[83] Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be cancelled. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[84]

ACCORDINGLY, considering the foregoing, the present *Amended Petition for Review* is **PARTIALLY GRANTED**.

The assessments issued by respondent against petitioner covering deficiency VAT for the period from January 1, 2019 to June 30, 2019 is **UPHELD IN PART**. Accordingly, petitioner is **ORDERED TO PAY** respondent the aggregate amount of **₱7,550,901.81**, inclusive of 25% surcharge and 12% deficiency interest imposed under Section 248(A) (3) and Section 249(B) and (C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018, computed until April 1, 2021,[85] as follows:

Sales/Receipts per VAT Return			₱79,644,940.69
Less: Exempt sales/receipts			-
Taxable Sales/receipts per VAT Returns			79,644,940.69
Add:			
Undeclared receipts from missing ORs		**₱18,891,253.52**	
Undeclared income from unaccounted purchase of services		**1,606,082.73**	
Undeclared sales per TPI		**-**	
Undeclared income from unaccounted purchases per TPI		**71,031.12**	
Receipts not subjected to VAT		**8,605,955.35**	
Undeclared extraneous income		**6,485,460.43**	35,659,783.15
Adjusted VATable Sales			₱115,304,723.84

[83] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et al.,* G.R. Nos. L-12928 and L-12932, March 31, 1962.
[84] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc. et al.*, G.R. No. L-35266, January 21. 1999.
[85] Due Date Reflected in the Assessment No. VT-ELA04684-1—21-175/FLD, Exhibit "R-5", Docket – Vol. 2, pp. 828 to 835.

Output Tax Due			₱13,836,566.86
Less: Input Tax			
Input tax from previous quarter		₱558,854.24	
Input tax deferred on capital goods exceeding 1 million		389,331.64	
Input tax on current purchases		623,285.87	
Total available input tax		₱1,571,471.75	
Less: Input tax on purchase of capital goods exceeding 1 million		345,175.06	
Net creditable input tax		₱1,226,296.69	
Less:			
Disallowed input tax	**₱424,869.05**		
Disallowed input tax carried over from previous quarter	**494,438.88**	919,307.93	306,988.76
Basic Tax Due			₱13,529,578.10
Less: VAT payments			8,331,096.18
Basic Deficiency VAT			₱5,198,481.92
Add: 25% Surcharge			1,299,620.48
12% Interest (Jul. 25, 2019 to Apr. 01, 2021)			
(₱5,001,141.19 x 12% x 616 / 365)			1,052,799.41
TOTAL AMOUNT DUE, April 1, 2021			**₱7,550,901.81**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) per annum on the total unpaid deficiency taxes due as of April 1, 2021, in the amount of **₱7,550,901.81** or equivalent to ₱2,482.49[86] per day, computed from April 2, 2021 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by RA No. 10963, and as implemented by RR No. 21-2018.

Lastly, pursuant to Section 13 of RA No. 9282, considering that this decision is partly favorable to the national government, the BIR, through respondent, is hereby authorized to seize and distraint any goods, chattels, or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property and/or levy the real property of petitioner in sufficient quantity to satisfy the tax or charge with any increment thereto incident to delinquency.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

[86] ₱7,550,901.81 x 12% / 365.

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice