REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

COSTNER TRADING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9428

Members:

DEL ROSARIO, *P.J.,Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

JAN 03 2020 ; 4:00pm

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DECISION

MANAHAN, J.:

This is a *Petition for Review* filed by petitioner Costner Trading Corporation praying for the cancellation of the deficiency value-added tax (VAT) assessment issued by respondent for the period January to June of calendar year (CY) 2013 in the total amount of ₱59,916,699.34.[1]

THE PARTIES

Petitioner is a domestic corporation, duly organized under the laws of the Philippines, and registered with the Securities and Exchange Commission on August 2, 1991 with SEC Company Registration No. AS091-194038; and with the Bureau of Internal Revenue (BIR) on June 5, 1996, with Tax Identification No. 000-064-175-000.[2]

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[1] Statement of the Case, Pre-Trial Order dated March 20, 2017, Docket – Vol. II, p. 690.
[2] Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 634.

Respondent is being sued in his official capacity as Commissioner of Internal Revenue, having been duly appointed to exercise the powers and perform the duties of his Office in the Bureau of Internal Revenue (BIR), including *inter alia,* the power to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC). He holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[3]

THE FACTS

On September 3, 2013, petitioner received a Letter of Authority (LOA) No. LOA-V08-2013-00000371/SN: eLA201100053172 dated August 29, 2013, authorizing Revenue Officer Jenny Ferrera and Group Supervisor Renan Plata of Revenue Region (RR) No. 8 – VAT Audit Team, to conduct an examination of petitioner's books of accounts and other accounting records for value-added tax (VAT) for the period January 1, 2013 to June 30, 2013, pursuant to BIR Revenue Memorandum Order (RMO) No. 20-2012 (Value-Added Tax Audit Program).[4]

On October 28, 2015, petitioner received a Preliminary Assessment Notice (PAN) dated October 27, 2015, together with the Details of Discrepancies from the BIR.[5]

Subsequently, on December 22, 2015, petitioner received respondent's Formal Assessment Notice (FAN) dated December 16, 2015, together with Details of Discrepancies and Audit Result/Assessment Notice Nos. VT-ELA53172-13-15-1164, assessing petitioner for alleged deficiency VAT, with interest in the aggregate amount of ₱59,916,669.34 for the first half of calendar year 2013, *i.e.*, January to June 2013, broken down as follows:[6]

Taxable Sales per VAT Returns		₱ 273,742,780.08
Add: Undeclared Sales (Schedule 1)		70,700,752.23
Adjusted Vatable Sales		₱ 344,443,532.31
Output tax due (12%)		₱ 41,333,223.88
Less Input tax claimed per return	₱ 32,412,137.38	

[3] Par. 2, Admitted Facts, JSFI, Docket – Vol. II, pp. 634 to 635.
[4] Par. 3, Admitted Facts, JSFI, Docket – Vol. II, p. 635.
[5] Par. 4, Admitted Facts, JSFI, Docket – Vol. II, p. 635.
[6] Par. 5, Admitted Facts, JSFI, Docket – Vol. II, p. 635.

Less: Unsupported Input Tax (Schedule 2)	₱ 31,540,405.00		
Input Tax Carried Over to Succeeding Qtr.	104,596.83	31,645,001.83	767,135.55
VAT payable			₱ 40,566,088.33
Less VAT Payments			541,593.11
			₱ 40,024,495.22
Add: Interest (07.26.13 - 01.18.16)			19,892,174.12
Total Amount Due			₱ 59,916,669.34

The FAN was issued and signed by BIR Regional Director of Revenue Region (RR) No. 8 – Makati, Jonas DP Amora, on behalf of respondent's predecessor, then Commissioner Kim S. Jacinto-Henares.[7]

On January 19, 2016, petitioner filed its administrative protest (by way of Request for Reconsideration) to the assessment contained in the FAN.[8]

Alleging inaction on the part of respondent on its administrative protest, petitioner filed before this Court the instant *Petition for Review* on August 16, 2016.[9]

On September 29, 2016, respondent filed his *Answer*[10] to the Petition for Review.

The pre-trial conference was set, and held, on February 9, 2017.[11]

The *Pre-Trial Brief for the Petitioner* was submitted on January 30, 2016;[12] while the *Respondent's Pre-Trial Brief* was filed on January 23, 2017.[13]

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[7] Par. 6, Admitted Facts, JSFI, Docket – Vol. II, p. 635.
[8] Par. 7, Admitted Facts, JSFI, Docket – Vol. II, p. 635.
[9] Docket – Vol. I, pp. 10 to 24.
[10] Docket – Vol. I, pp. 288 to 292.
[11] Notice of Pre-Trial Conference dated November 11, 2016, Docket – Vol. I, pp. 298 to 299; Minutes of the hearing held on, and Order dated, February 9, 2017, Docket – Vol. II, pp. 621 to 624, and 628 to 630, respectively.
[12] Docket – Vol. I, pp. 308 to 315.
[13] Docket – Vol. II, pp. 600 to 604.

Respondent transmitted the *BIR Records* for the instant case on February 1, 2017.[14]

Thereafter, the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI) on February 22, 2017.[15]

In the Resolution dated March 6, 2017,[16] the Court approved the said JSFI, signaling the termination of the Pre-Trial. Thereafter, the Court issued the Pre-Trial Order dated March 20, 2017.[17]

During trial, petitioner presented documentary and testimonial evidence. As for its testimonial evidence, petitioner offered the testimonies of Ms. Logie M. Gonzaga,[18] petitioner's Accountant, and Mr. Neil U. Sison,[19] the Court-commissioned Independent Certified Public Accountant (ICPA).[20]

The ICPA Report was submitted on April 21, 2017.[21]

On July 4, 2017, the *Formal Offer of Evidence for the Petitioner* was filed.[22] Respondent filed his *Comment (To Petitioner's Formal Offer of Evidence)* on July 7, 2017.[23] In the Resolution dated September 11, 2017,[24] the Court admitted petitioner's Exhibits, but denied the following:

1. Exhibit "P-6-a", for petitioner's failure to identify the documents; and

2. Exhibits "P-23-A", "P-23-"B, "P-23-C", "P-23-D", "P-23-E", "P-23-F (P-23-F-1 to P-23-F-2)", "P-23-G (P-23-G-1 to P-23-G-2)", "P-23-H (P-23-H-1 to P-23-H-2)", "P-23-I", "P-23-J (P-23-J-1 to P-23-J-1881)", "P-23-K (P-23-K-1 to P-23-K-29)", "P-23-L", "P-23-M (P-23-M-1 to P-23-

[14] Respondent's *Compliance*, Docket – Vol. II, pp. 575 to 577.
[15] Docket – Vol. II, pp. 634 to 640.
[16] Docket – Vol. II, pp. 679 to 680
[17] Docket – Vol. II, pp. 690 to 697.
[18] Exhibit "P-18", Docket – Vol. I, pp. 319 to 336; Minutes of the hearing held on, and Order dated, May 16, 2017, Docket – Vol. II, pp. 771 to 778.
[19] Exhibit "P-22", Docket – Vol. II, pp. 754 to 769; Minutes of the hearing held on, and Order dated, May 16, 2017, Docket – Vol. II, pp. 771 to 778.
[20] Exhibit "P-20", Docket – Vol. II, pp. 646 to 652; Minutes of the hearing held on, and Order dated, March 9, 2017, Docket – Vol. II, pp. 681 to 687.
[21] Docket – Vol. II, pp. 712 to 725.
[22] Docket – Vol. II, pp. 787 to 800.
[23] Docket – Vol. II, pp. 898 to 899.
[24] Docket – Vol. II, pp. 944 to 945.

M-495)", "P-23-N", "P-23-O (P-23-O-1 to P-23-O-566)", "P-23-P (P-23-P-1 to P-23-P-270)", "P-23-Q (P-23-Q-1 to P-23-Q-45)" and "P-23-R (P-23-R-1 to P-23-R-49)", for petitioner's failure to submit the duly marked exhibits.

Consequently, petitioner filed a *Motion for Partial Reconsideration (of the Resolution promulgated on September 11, 2017)*,[25] wherein petitioner prayed that the Court reconsider its Resolution dated September 11, 2017, particularly the part denying certain documentary exhibits offered by petitioner; and in the process, admit the same evidence for petitioner.

Thus, in the Resolution dated December 6, 2017,[26] the Court admitted Exhibits "P-23-A", "P-23-B', "P-23-C", "P-23-D", "P-23-E", "P-23-F-1 to P-23-F-2", "P-23-G-1 to P-23-G-2", "P-23-H-1 to P-23-H-2", "P-23-I", "P-23-J (P-23-J-1 to P-23-J-1881)", "P-23-K (P-23-K-1 to P-23-K-29)", "P-23-L", "P-23-M (P-23-M-1 to P-23-M-495)", "P-23-N", "P-23-O (P-23-O-1 to P-23-O-566)", "P-23-P (P-23-P-1 to P-23-P-270)", "P-23-Q (P-23-Q-1 to P-23-Q-11, P-23-Q-13 to P-23-Q-20, P-23-Q-22 to P-23-Q-45)" and "P-23-R (P-23-R-15, P-23-R-19, P-23-R-21, P-23-R-22, P-23-R-26 to P-23-R-29, P-23-R-39)". However, the Court still denied the admission of the following:

1. Exhibits "P-23-Q-12", and "P-23-Q-21", for petitioner's failure to submit the duly marked exhibits;

2. Exhibits "P-23-R-1" to "P-23-R-14", "P-23-R-16" to "P-23-R-18", "P-23-R-20", "P-23-R-23" to "P-23-R-25", "P-23-R-30" to "P-23-R-38", and "P-23-R-40" to "P-23-R-49", for being illegible; and

3. Exhibits "P-23-F", "P-23-G", and "P-23-H", for there are no such markings found on the record.

Respondent likewise presented documentary and testimonial evidence. His lone witness is revenue officer, Ms. Jenny A. Ferrera.[27]

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[25] Docket – Vol. II, pp. 948 to 950.
[26] Docket – Vol. II, pp. 966 to 968.
[27] Exhibit "R-12", Docket – Vol. II, pp. 930 to 941; Minutes of the hearing held on, and Order dated, February 15, 2018, Docket – Vol. II, pp. 969 to 976.

On February 27, 2018, *Respondent's Formal Offer of Exhibits* was filed.[28] Petitioner filed its *Comment [To the Respondent's Formal Offer of Exhibits]* on June 6, 2018.[29] In the Resolution dated April 16, 2018,[30] the Court admitted respondent's Exhibits, but *denied* the following:

1. Exhibits "R-3", "R-3-a", "R-3-b", "R-3-c", "R-4", "R-4-a", "R-4-b", "R-5", "R-5-a", "R-5-b", "R-5-c", and "R-5-d", for being mere photocopies; and

2. Exhibit "R-10-A", for failure to mark the document.

As a consequence, respondent filed on May 9, 2018 an *Omnibus Motion 1. For Partial Reconsideration of the Resolution dated April 16, 2018; and 2. For setting of Commissioner's Hearing for comparison and marking of exhibits.*[31] On June 14, 2018, petitioner filed its *Comment [on Respondent's Omnibus Motion Filed on May 17, 2018] with Manifestation.*[32]

In the Resolution dated July 30, 2018,[33] the Court partially granted respondent's *Omnibus Motion,* ordering the setting of a Commissioner's Hearing for the comparison and marking of respondent's Exhibits "R-3", "R-3-a", "R-3-b", "R-3-c", "R-4", "R-4-a", "R-4-b", "R-5", "R-5-a", "R-5-b", "R-5-c", "R-5-d", and "R-10-a"; and held in abeyance the resolution of respondent's *Motion for Partial Reconsideration of the Resolution dated April 16, 2018.*

On September 13, 2018, respondent filed his *Supplemental Formal Offer of Exhibits,* praying that Exhibits "R-3", "R-3-a", "R-3-b", "R-3-c", "R-4", "R-4-a", "R-4-b", "R-5", "R-5-a", "R-5-b", "R-5-c", "R-5-d", and "R-10-a", be admitted by the Court.[34]

In the Resolution dated October 25, 2018,[35] the Court granted respondent's *Motion for Partial Reconsideration of the Resolution dated April 16, 2018* and admitted respondent's

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[28] Docket – Vol. II, pp. 978 to 982.
[29] Docket – Vol. II, pp. 985 to 989.
[30] Docket – Vol. II, pp. 994 to 995.
[31] Docket – Vol. II, pp. 998 to 1000.
[32] Docket – Vol. II, pp. 1004 to 1005.
[33] Docket – Vol. II, pp. 1009 to 1010.
[34] Docket – Vol. II, pp. 1014 to 1016.
[35] Docket – Vol. II, pp. 1022 to 1024.

Exhibits "R-3", "R-3-a", "R-3-b", "R-3-c", "R-4", "R-4-a", "R-4-b", "R-5", "R-5-a", "R-5-b", "R-5-c", "R-5-d", and "R-10-a".

Subsequently, the *Memorandum for the Petitioner* was submitted on December 14, 2018;[36] while respondent failed to file his memorandum.[37]

The instant case was submitted for decision on January 11, 2019.[38]

THE ISSUE

The parties submitted the following issue for this Court's resolution,[39] to wit:

> "Whether Petitioner is liable to pay the Deficiency Value-Added Tax assessment for the period January to June 2013 in the total amount of ₱59,916,669.34."

Petitioner's arguments:

Petitioner argues that the issuance of the FAN was invalid; that the deficiency VAT assessment has no basis in fact and/or law; that the basis of the deficiency VAT computation, as assessed was incorrect; and that respondent may not impose interest on the alleged deficiency basic VAT due.

Respondent's counter-arguments:

In his *Answer*, respondent interposed the following Special and Affirmative Defenses:

"**<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>**

1) Respondent reiterates and repleads the preceding paragraphs of the Answer as part of his Special and Affirmative Defenses;

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[36] Docket – Vol. II, pp. 1025 to 1050.
[37] Records Verification dated December 27, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 1051.
[38] Resolution dated January 11, 2019, Docket – Vol. II, p. 1053.
[39] Par. 9, Issue, JSFI, Docket – Vol. II, p. 636. *av*

2) The contention of the Petitioner that the FAN was invalidly issued is misplaced. Under the NIRC, the Regional Director has the authority to administer and enforce internal revenue laws, and rules and regulations, including the assessment and collection of all internal revenue taxes, charges and fees and to issue Letters of Authority for the examination of taxpayers within the region;
3) In this case, the LOA (SN: Ela201100053172 LOA-V08-2012-00000371) was issued by the Regional Director of BIR-Revenue Region 8 on August 29, 2013 and the same was received by the Petitioner on September 3, 2013. The LOA was issued when the Petitioner was still within the jurisdiction of BIR Revenue Region 8;
4) Granting, without necessarily admitting, that the Petitioner transferred registration in 2015, the Regional Director of BIR-RR8 never lost the authority to investigate and issue assessment because he was not notified or informed by the Petitioner that it will transfer or has transferred registration to BIR-Revenue Region 6. The petitioner should have notified RR8 that is *(sic)* has a pending application for transfer to another revenue region while its tax liabilities are being investigated;
5) Petitioner claims that it has transferred registration within the calendar year 2015, however, within that year, several notices from RR8 such as PAN and Subpoena Duces Tecum were sent and validly received by the Petitioner in its address at 6754 Ayala Avenue, Makati City, still within the jurisdiction of RR8. In fact, when Petitioner filed its administrative protest requesting for re-investigation on January 19, 2016, it never raised the issue of lack of authority of the Regional Director of BIR-RR 8 to issue the FAN;
6) The contention of Petitioner that the Deficiency VAT assessment has no basis in fact and/or law is likewise misplaced. It argues that the assessment based on best evidence is without merit;
7) In the absence of accounting records or other documents necessary for the proper determination of the taxpayers Internal Revenue Tax Liability, Section 6 (B) of the NIRC requires that the assessment of the tax be determined based on the 'Best Evidence Obtainable'. It states:

> '(B) *Failure to Submit Required Returns, Statements, Reports and other Documents.* When a report required by law as a basis for the assessmen [*sic*] of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the

> Commissioner shall assess the proper tax on the best evidence obtainable.
>
> xxx xxx xxx

8) The assessment was based on best evidence obtainable because of failure and refusal of the Petitioner to make certain records available. A Subpoena Duces Tecum dated October 16, 2014 was issued to the Petitioner but despite such issuance, Petitioner still failed to submit the Sales Invoices and Official Receipts issued during the period under investigation;
9) As to the claim that benchmarking is based only on estimates, the same is likewise without merit. The Supreme Court in the case of Commissioner of Internal Revenue vs. Algue reiterated the lifeblood theory which states that taxes are the lifeblood of the government, hence, the assessment of correct taxes due from a taxpayer cannot be hindered by its failure to file documents within the time fixed by laws or by filing any report which is false, incomplete, or erroneous by required records not forthcoming. Thus, the BIR should exhaust all possible means to get the taxpayers records and the tax assessments made by revenue officials based on these records are presumed correct and made in good faith. In relation thereto, the SC ruled in the case of Commissioner of Internal Revenue vs. Hantex Trading Co. that BIR, as an administrative agency, is not bound by the technical rules of evidence in judicial proceedings where the Rules of Court are strictly observed and, therefore, the best evidence obtainable may consist of hearsay evidence. Thus, the assessment based on best evidence obtainable using benchmark is presumed correct and made in good faith;
10) Assessments are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. (Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 109);
11) Finally, Petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance (Commissioner vs. Algue, Inc. L-28896, 17 February 1988). Taxes are enforced proportional contribution from persons and property levied by the state, thus, no one is considered entitled to recover that which he must give up to another- Non videtur quisquam id capere quod ei necesse est alii restitutere."

THE RULING OF THE COURT

We find for the petitioner.

Petitioner argues that it is not liable for the subject deficiency VAT assessment because the FAN is void for having been issued beyond the authority vested by the 1997 National Internal Revenue Code (NIRC), as amended, upon the Regional Director of RR No. 8 – Makati City.

Petitioner avers that the LOA was issued on September 4, 2013 when it was still registered with Revenue District Office (RDO) No. 50, which is within the jurisdiction of RR No. 8 – Makati. At that time, the revenue officers named therein may rightfully be considered as "authorized examiners" as petitioner was still under the jurisdiction of RDO No. 47. However, petitioner observes that the revenue examiners named in the LOA ceased to have the requisite authority to conduct the examination of their books and other accounting records starting January of 2015 when it transferred to RDO 29 which is under the jurisdiction of RR No. 6- Manila. Further, petitioner submits that the Regional Director of RR No. 8 issued the subject FAN on December 16, 2015 when its office address had already transferred to Manila which is under the jurisdiction of RDO No. 29, RR No. 6- Manila. All of these circumstances, according to petitioner, render the assessment void and without any effect.

Respondent counters that granting, without necessarily admitting, that petitioner transferred registration in 2015, the Regional Director of RR No. 8 never lost the authority to investigate and issue a tax assessment because he was not notified or informed by petitioner that it will transfer or has transferred registration to RR No. 6; and that petitioner should have notified RR No. 8 that it has a pending application for transfer to another region while its tax liabilities are being investigated.

We analyze the arguments of both parties in the light of the relevant laws, rules and regulations and applicable jurisprudence.

Section 10 of the 1997 NIRC provides as follows:

> "SEC. 10. *Revenue Regional Director.* – Under the rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, **the Revenue Regional Director shall, within the region and district offices under his jurisdiction,** among others:
>
> xxx xxx xxx
>
> (b) Administer and enforce internal revenue laws, and rules and regulations, **including the assessment and collection of all internal revenue taxes, charges and fees**;
>
> (c) **Issue Letters of Authority for the examination of taxpayers within the region**;" (emphasis supplied)
>
> xxx xxx xxx

Based on the foregoing, it is clear that the Revenue Regional Director shall exercise the function of, *inter alia*, the issuance of LOAs for the examination of taxpayers, and of the assessment and collection of internal revenue taxes, within the region and district offices under his or her jurisdiction. As a logical outgrowth thereof, the LOA issued by a Revenue Regional Director, and the assessment and collection of internal revenue taxes decreed by the latter, cannot be given effect outside of the region and district offices over which he or she has no jurisdiction.

Relative thereto, Section 13 of the 1997 NIRC reads:

> "SEC. 13. *Authority of a Revenue Officer.* – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers <u>within the jurisdiction of the district</u> in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.**" (emphasis supplied)

On the basis of the foregoing provision, insofar as Revenue Officers assigned to perform assessment functions in any district are concerned, their authority, pursuant to an LOA, to examine taxpayers in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due, shall be confined merely within the jurisdiction of the said district.

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.[40] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[41] As a corollary, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.[42]

Revenue Memorandum Order (RMO) No. 11-2005 [43] governs the transfer of registration from one RDO to another *vis-à-vis* pending cases. Pertinent portions thereof read as follows:

"III. ADDITIONAL POLICIES

1. **All open/pending cases, whether Audit (AUD)**, Accounts Receivable (AR), Returns Compliance System (RCS) or Tax Credit/Refund (TCR) including suspended returns generated by Returns Processing System (RPS)/Collection and Bank Reconciliation System (CBR), **shall be the responsibility of <u>the new RDO</u> which shall be handled and pursued manually**.

xxx xxx xxx

3. **On all open/pending cases, whether or not a Preliminary Assessment Notice (PAN) or Final Assessment Notice (FAN) has already been issued and in the possession of any of the concerned offices**: Assessment Division, Legal Division, Special Investigation Division or with the Office of the Regional Director as of the date of request for transfer, **the concerned office shall cause the**

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[40] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[41] *Commissioner of Internal Revenue vs. De La Salle University, Inc., etseq.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.
[42] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.
[43] SUBJECT: Amending Pertinent Provisions of RMO 40-2004 (Modified Procedures in Handling Taxpayer's Request for Transfer of Registration) and Inclusion of Additional Policies.

transmittal of the docket of the case to the corresponding office in the Region having jurisdiction over the new RDO within the fifteen (15) day period required in the handling of taxpayer's request for transfer of registration.

However, for cases prescribing within six (6) months as of the date of request for transfer, the concerned office of the Regional Office having jurisdiction over the old/previous RDO shall ensure that the docket of the case contains the duly signed Waiver of the Defense of Prescription (WAIVER) under the Statute of Limitations of the NIRC prior to transmittal of the case to the concerned office of the Regional Office having jurisdiction over the new RDO.

4. **For prescribing cases where no WAIVER has been executed by the transferring taxpayer in relation to second paragraph of No. 3 above, the head of the concerned office shall ensure that the case has reached the final assessment stage. A tax docket should not be transmitted to the new RDO/office covering the new place of business of the taxpayer unless a Final Assessment Notice (FAN) has been issued.** Under no instance in such cases should the taxpayer's request for transfer be acted upon beyond sixty (60) days from receipt thereof.

   Prescribing collection cases shall be processed by the old RDO." *(Emphases supplied)*

The foregoing provisions may be summarized as follows:

1) All open/pending cases shall be the responsibility of the new RDO.
2) On all open/pending cases, regardless of whether a PAN or FAN has already been issued and in the possession of any of the pertinent offices, the concerned office shall cause the transmittal of the docket of the case to the corresponding office in the Region having jurisdiction over the new RDO, within the fifteen (15)-day period required in the handling of the request for transfer of registration.
3) For cases prescribing within six (6) months as of the date of request for transfer of registration, the concerned office of the Regional Office having jurisdiction of the old/previous RDO shall ensure that the case docket contains the duly signed *Waiver of the Defense of Prescription under the Statute of Limitations*

under the NIRC, prior to the transmittal of the case to the concerned office of the Regional Office having jurisdiction over the new RDO.

4) If there is no duly signed *Waiver* for the prescribing cases, the head of the concerned office is mandated to ensure that the case has reached the final assessment stage. In that situation, the tax docket should not be transmitted to the new RDO/office covering the new place of business of the concerned taxpayer, unless a FAN has been issued.

In this case, it is undisputed that LOA No. LOA-V08-2013-00000371/SN: eLA201100053172 dated August 29, 2013 was issued by RR No. 8 – Makati;[44] that the examination of petitioner pursuant to the said LOA resulted in the issuance of the PAN dated October 27, 2015,[45] and of the FAN dated December 16, 2015[46] by RR No. 8 – Makati, through Regional Director Jonas DP Amora; and that the transfer of registration of petitioner to RR No. 6 – Manila took effect on January 29, 2015.[47]

In view of these factual milieu, it is not hard to discern that while petitioner was being audited by the revenue officers under the jurisdiction of RR No. 8 – Makati, and before the issuance of the said PAN and FAN, petitioner was able to transfer its registration to RDO No. 29 of RR No. 6 – Manila. Thus, pursuant to the afore-quoted provisions of RMO No. 11-2005, the concerned office of RR No. 8 – Makati should have transmitted the tax case docket to the concerned office in RR No. 6 – Manila, since it is the latter office which has jurisdiction over the said new RDO, *i.e.*, RDO No. 29. As mandated by RMO No. 11-2005, the open/pending case of petitioner, at the point of the transfer of registration, is already the responsibility of RDO No. 29, being the new RDO having jurisdiction over the new address of petitioner.

As to the contention of respondent that petitioner did not notify the BIR of its transfer of registration from RR No. 8-

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[44] Par. 3, Admitted Facts, JSFI, Docket – Vol. II, p. 635.
[45] Par. 4, Admitted Facts, JSFI, Docket – Vol. II, p. 635; Exhibit "P-7", BIR Records, p. 521.
[46] Par. 5, Admitted Facts, JSFI, Docket – Vol. II, p. 635; Exhibit "P-8", BIR Records, p. 524.
[47] Exhibit "P-23-D" (This is the Certification of Registration signed on January 29, 2015 by Ms. Teresita Y. Lumayag, Chief, Assessment Section of RDO No. 29, RR No. 6 – Manila).

Makati to RR No. 6- Manila, this is belied by the records of the case.

The BIR Certificate of Registration presented as Exhibit "P-23-D" and identified by the ICPA in its ICPA report[48] shows that the petitioner was under the tax jurisdiction of RDO No. 29 of RR No. 6- Manila as of January 2015. Further, petitioner's accountant, Logie M. Gonzaga, testified on re-direct examination, that she filed a document which was denominated as BIR Form 1905 referring to the application for the transfer of address from Makati to Manila[49], and we quote, thus:

> Q. Ms. Witness, you have mentioned a while ago that you have filed a document which was denominated as BIR Form No. 1905. Can you tell this Honorable Court, which is this BIR Form No. 1905?
>
> A. This form is an application for the transfer of address from Makati to Manila.
>
> Q. So, in what calendar year was Costner Trading Corporation transferred from Makati to Manila? When did RDO Manila had tax jurisdiction over Costner Trading Corporation?
>
> A. It started in 2015, the new address.

As intimated earlier, LOA No. LOA-V08-2013-00000371/SN: eLA201100053172 dated August 29, 2013 issued by RR No. 8 – Makati, could not be given effect to petitioner as of date of the latter's transfer of registration to RDO No. 29, since this RDO is beyond the jurisdiction of RR No. 8 – Makati. Consequently, no valid authority to examine petitioner exists when the subject FAN was issued against, and received by, petitioner. Not having authority to examine petitioner in the first place, the assessment issued by RR No. 8 – Makati is inescapably void.

Moreover, even granting that the said FAN is valid, it cannot likewise be given effect by RR No. 8 – Makati, since petitioner is already beyond the jurisdiction thereof, when the same FAN was received by petitioner on December 22, 2015.[50] In other words, RR No. 8 – Makati is no longer empowered to issue the said FAN as of such date.

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[48] Exhibit "P-21".
[49] Transcript of Stenographic Notes (TSN) dated May 16, 2017.
[50] Par. 5, Admitted Facts, JSFI, Docket – Vol. II, p. 635.

Nevertheless, it must be pointed out that this Court cannot consider petitioner's open/pending case before RR No. 8 – Makati as prescribing within six (6) months as of the date of request for transfer, so as to call for the operation of the rules under RMO No. 11-2005 in case of prescribing cases. This is simply because there is no indication that it was indeed *prescribing within the said period.*

Section 203 of the 1997 NIRC, as amended, provides for the period of limitation or prescriptive period upon the assessment of taxes, to wit:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, **That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day**." (*Emphasis supplied*)

The foregoing provision mandates the government to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later.[51]

The instant case involves the assessment of deficiency VAT for the period from January 1, 2013 to June 30, 2013.

Pursuant to Section 114(A) of the NIRC of 1997, as amended by RA No. 9337,[52] the Quarterly VAT Return of a person liable to VAT is due to be filed within twenty-five (25) days following the close of each taxable quarter. Records show that petitioner filed its Quarterly VAT Return for the 1st quarter

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

[52] Section 114(A) of the NIRC of 1997, as amended by RA No. 9337, provides as follows:

"SEC. 114. *Return and Payment of Value-added Tax.* –

(A) *In General.* – **Every person liable to pay the value-added tax imposed under this Title <u>shall file a quarterly return</u> of the amount of his gross sales or receipts <u>within twenty-five (25) days following the close of each taxable quarter</u> prescribed for each taxpayer**: *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis." *(Emphasis and underscoring ours)* of 2013 on April 25, 2013;[53] while for the 2nd quarter on July 25, 2013.[54] Pursuant to Section 203 of the NIRC of 1997, respondent had until April 25, 2016 and July 25, 2016, respectively, within which to assess petitioner for deficiency VAT for the said quarters. Thus, as between the date of petitioner's transfer of registration on January 29, 2015 and the respective end date of the prescriptive periods to assess petitioner for VAT for the period from January 1, 2013 to June 30, 2013, there are more than six (6) months before the end of the said three-year period to assess petitioner.

Apropos, while we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate, as it has here, that the law has not been observed.[55]

Finding that the subject VAT assessment is void for being issued beyond the authority of RR No. 8 - Makati, the Court finds it no longer necessary to discuss the other matters or issues raised in this case.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the deficiency VAT assessment issued by respondent against petitioner for the period from January to June of calendar year 2013, in the total amount of ₱59,916,699.34, is **CANCELLED and SET ASIDE.**

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

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[53] Exhibit "P-12", Docket – Vol. II, p. 840.
[54] Exhibit "P-15", Docket – Vol. II, p. 854.
[55] *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014 citing *Commissioner of Internal Revenue vs. Algue, Inc., et al.*, G.R. No. L-28896, February 17, 1988.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice