REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

***Third Division***

**FIRST PHILIPPINE INDUSTRIAL PARK, INC.,**
*Petitioner,*

**-versus-**

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA CASE NO. 9018**

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

**Promulgated:**
MAR 18 2022
4:12 p.m.

x-----------------------------------------------------------------------x

# DECISION

**RINGPIS-LIBAN, J.**

## STATEMENT OF THE CASE

The *Petition for Review* prays that the tax assessments against petitioner for various deficiency internal revenue taxes under the *Formal Letter of Demand* (FLD) covering taxable year 2009 be declared void on the ground of prescription and lack of factual and legal bases.[1]

## THE PARTIES

Petitioner First Philippine Industrial is a domestic corporation primarily engaged in the business of acquiring, developing, and managing industrial estates. It is likewise registered with the Philippine Economic Zone Authority as the Developer/Owner of First Philippine Industrial Park, a special economic zone.[2]

[1] Summary of the Case, Pre-Trial Order dated November 16, 2015, Docket – Vol. 2, p. 528.
[2] Par. 2, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 2, pp. 499 to 500; Exhibits "P-1" and "P-2", Docket – Vol. 3, pp. 1277 to 1290, and 1291 to 1300, respectively.

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency tasked to, among others, collect all national internal revenue taxes. As Commissioner, respondent has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the Tax Code or other laws or portions thereof administered by the BIR. He may be served with summons and other court processes at the 5th Floor, BIR Building, Agham Road, Diliman, Quezon City.[3]

## THE FACTS OF THE CASE

On May 28, 2010, petitioner received a copy of the *Letter of Authority* (LOA) No. LOA-116-2010-00000055 dated May 14, 2010 issued by the BIR, authorizing Revenue Officers (RO) Walter Batoon, Reynoso Bravo, Daniella Gabaon, Julieta Tubilla, Maribel Serafica, Olivia Sison, Aileen Grace Parra, Laurel Eleda, and GSs Erlinda Ulgado and Ana Marie Perez to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2009 to December 31, 2009 pursuant to Revenue memorandum Order No. 36-2010 (Conglomerate Audit Program).[4]

On September 5, 2012, petitioner, through Mr. Victor Z. Montinola, executed a *Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* (*Waiver*) for the period until December 31, 2012 (*First Waiver*). The *First Waiver* was accepted by then Officer-in-Charge Assistant Commissioner for Large Taxpayer Services, Mr. Alfredo V. Misajon (OIC-ACIR Misajon), on September 25, 2012.[5]

Thereafter, on December 11, 2012, petitioner received a copy of a *Notice of Informal Conference* with attached *Details of Discrepancies* issued by the BIR dated November 26, 2012.[6]

Petitioner, again through Mr. Montinola, executed another *Waiver* (*Second Waiver*), on December 19, 2012, for the period until June 30, 2013, which was accepted by OIC-ACIR Misajon on December 21, 2012.[7]

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[3] Par. 4, *Petition for Review* vis-à-vis Par. 1, *Answer*, Docket – Vol. 1, pp. 11 and 310, respectively; Refer also to Par. 1, Summary of Admitted Facts, JSFI, Docket – Vol. 2, p. 499.

[4] Par. 3, Summary of Admitted Facts, JSFI, Docket – Vol. 2, p. 500; Exhibits "P-42" and "R-1", and "R-2", BIR Records – Folder 1, pp. 300 and 299, respectively.

[5] Par. 4, Summary of Admitted Facts, JSFI, Docket – Vol. 2, p. 500; Exhibit "P-57", Docket – Vol. 3, p. 1444 to 1445; and Exhibit "R-4", BIR Records – Folder 1, pp. 391 to 392.

[6] Par. 5, Summary of Admitted Facts, JSFI, Docket – Vol. 2, p. 500; Exhibit "P-54", Docket – Vol. 3, p. 1434 to 1437; and Exhibit "R-5", BIR Records – Folder 1, pp. 385 to 389.

[7] Exhibit "P-58", Docket – Vol. 3, pp. 1446 to 1447 and Exhibit "R-6", BIR Records – Folder 1, pp. 393 to 394, respectively.

On January 15, 2013, petitioner, through Mr. Montinola, executed a *Waiver* for the period until December 31, 2013 (*Third Waiver*). OIC-ACIR Misajon accepted the *Third Waiver* on January 25, 2013.[8]

Subsequently, on September 19, 2013, petitioner, through the same representative, executed again a *Waiver* for the period until June 30, 2014 (*Fourth Waiver*). OIC-ACIR Misajon accepted the *Fourth Waiver* on October 2, 2013.[9]

On September 24, 2013, petitioner received a copy of the *Preliminary Assessment Notice* with attached *Details of Discrepancies* (PAN) signed by the respondent.[10]

Petitioner, again through Mr. Montinola, executed on January 23, 2014, a *Waiver* for the period until December 31, 2014 (*Fifth Waiver*). OIC-ACIR Misajon accepted the *Fifth Waiver* on January 28, 2014.[11]

On October 9, 2013, petitioner submitted a *Reply* to the PAN (*First Reply*).[12]

Petitioner then received, on June 11, 2014, a copy of a *Preliminary Assessment Notice* (Revised PAN) signed by the respondent.[13]

On June 25, 2015, petitioner submitted a *Reply* to the *Revised PAN* (*Second Reply*).[14]

Petitioner received, on July 31, 2014, a copy of the FLD with attached *Details of Discrepancies* with *Final Assessment Notice* (FLD-FAN) dated July 30, 2014 and signed by the respondent.[15]

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[8] Par. 6, Summary of Admitted Facts, JSFI, Docket – Vol. 2, p. 500; Exhibit "P-59", Docket – Vol. 3, p. 1448; and Exhibit "R-7", BIR Records – Folder 1, p. 400.
[9] Par. 7, Summary of Admitted Facts, JSFI, Docket – Vol. 2, p. 500; Exhibit "P-60", Docket – Vol. 3, p. 1449; and Exhibit "R-9", BIR Records – Folder 1, p. 404.
[10] Par. 8, Summary of Admitted Facts, JSFI, Docket – Vol. 2, p. 500; Exhibits "P-43" and "R-10", BIR Records – Folder 1, pp. 448 to 456.
[11] Par. 9, Summary of Admitted Facts, JSFI, Docket – Vol. 2, p. 500; Exhibits "P-61", Docket – Vol. 3, p. 1450; and Exhibit "R-11", BIR Records – Folder 1, p. 406.
[12] Par. 10, Summary of Admitted Facts, JSFI, Docket – Vol. 2, p. 500; Exhibit "P-44", BIR Records – Folder 2, pp. 267 to 270.
[13] Par. 11, Summary of Admitted Facts, JSFI, Docket – Vol. 2, p. 501; Exhibits "P-45" and "R-12", BIR Records – Folder 2, pp. 310 to 318.
[14] Par. 12, Summary of Admitted Facts, JSFI, Docket – Vol. 2, p. 501; Exhibit "P-46", Docket – Vol. III, pp. 1364 to 1367.
[15] Par. 13, Summary of Admitted Facts, JSFI, Docket – Vol. 2, p. 501; Exhibits "P-3" and "R-13", and "R-14" to "R-14-D", BIR Records – Folder 2, pp. 373 to 380, and 368 to 372, respectively.

On August 29, 2014, petitioner filed a *Protest to Assessments* (*Protest*), with supporting documents attached. The *Protest* was a request for reconsideration, assailing the deficiency assessments in the FLD-FAN, and requesting that the same be declared void or, in the alternative, that the same be reconsidered in light of the arguments raised in the *Protest.*[16]

On March 27, 2015, petitioner filed the present *Petition for Review.*[17]

Respondent filed his *Answer* on June 1, 2015,[18] interposing, *inter alia*, the following special and affirmative defenses, to wit: (1) the *Waivers*, duly executed by petitioner's Assistant Vice President for Finance, Mr. Victor Z. Montinola, extended the period to assess petitioner; (2) petitioner was not and was never deprived of its constitutionally protected right to due process and speedy disposition of cases; and (3) petitioner is liable for deficiency income tax, value-added tax (VAT), withholding tax on compensation (WC), expanded withholding tax (EWT), and final withholding tax (FT).

On May 7, 2015, petitioner received a copy of the *Final Decision on Disputed Assessment* of even date (FDDA),[19] with the accompanying *Audit Result/Assessment Notices,*[20] indicating petitioner's supposed deficiency tax liabilities in the aggregate amount of ₱13,658,919.62, including surcharge, interests, and compromise penalties. This then prompted petitioner to file a *Motion for Leave to File and to Admit Attached Supplemental Petition for Review* on June 5, 2015,[21] attaching therewith the said *Supplemental Petition for Review* to assail the said FDDA.[22] For his part, respondent then filed a *Motion for Leave to File and Admit Supplemental Answer* on June 9, 2015,[23] attaching therewith the said *Supplement Answer.*[24] On the same date, respondent filed a *Manifestation,*[25] deeming it no longer necessary and prejudicial to his interest to file a comment on petitioner's *Motion for Leave.* In the Resolution dated July 8, 2015,[26] the Court granted both *Motions for Leave*, and admitted the said *Supplemental Petition for Review* and said *Supplement Answer.*

The Pre-Trial Conference was scheduled on July 28, 2015.[27] However, the same was reset to, and held on, September 15, 2015.[28] Prior to the said

[16] Par. 14, Summary of Admitted Facts, JSFI, Docket – Vol. 2, p. 501; Exhibit "P-47", Docket – Vol. III, pp. 1377 to 1406.
[17] Docket – Vol. 1, pp. 10 to 63.
[18] Docket – Vol. 1, pp. 310 to 325.
[19] Par. 15, Summary of Admitted Facts, JSFI, Docket – Vol. 2, p. 501; Exhibits "R-16" to "R-16-A", BIR Records – Folder 2, pp. 483 to 492.
[20] Exhibits "R-17" to "R-17-D", BIR Records – Folder 2, pp. 478 to 482.
[21] Docket – Vol. 1, pp. 329 to 332.
[22] Docket – Vol. 1, pp. 333 to 340.
[23] Docket – Vol. 1, pp. 355 to 358.
[24] Docket – Vol. 1, pp. 360 to 362.
[25] Docket – Vol. 1, pp. 363 to 364.
[26] Docket – Vol. 1, pp. 424 to 426.
[27] *Notice of Pre-trial Conference* dated June 2, 2015, Docket – Vol. 1, pp. 327 to 328.

Conference, *Respondent's Pre-Trial Brief* was submitted on September 7, 2015,[29] while the *Pre-Trial Brief for the Petitioner* was filed on September 10, 2015.[30]

In the meantime, on September 8, 2015, respondent transmitted to the Court the *BIR Records* of this case.[31]

On September 10, 2015, petitioner filed an *Omnibus Motion*,[32] praying, *inter alia*, that it be allowed to first present evidence on the issue of prescription and thereafter, the Court render a decision/resolution on said issue. In turn, respondent filed his *Comment/Opposition (Re: Petitioner's Omnibus Motion)* on October 19, 2015.[33] In the Resolution dated January 11, 2016,[34] the Court denied petitioner's *Omnibus Motion*.

On October 13, 2015, the parties submitted their *Joint Stipulation of Facts and Issues*.[35] Subsequently, the Pre-Trial Order dated November 16, 2015 was issued,[36] deeming the termination of the Pre-Trial Conference.

As trial ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following individuals, namely: (1) Mr. Victor Z. Montinola,[37] petitioner's Vice President for Land Acquisition; (2) Ms. Lydia Potestades,[38] petitioner's Treasury Manager; (3) Ms. Precila B. Belgira,[39] petitioner's Senior Land Acquisition Manager; and (4) Ms. Ma. Fedna B. Parallag,[40] the Court-commissioned Independent Certified Public Accountant (ICPA).[41]

The ICPA's *Report* was posted on February 26, 2016.[42]

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[28] Order dated July 22, 2015, Docket – Vol. 1, p. 432; Minutes of the hearing held on September 15, 2015, Docket – Vol. 1, p. 483; Resolution dated September 23, 2015, Docket – Vol. 1, pp. 488 to 489.
[29] Docket – Vol. 1, pp. 435 to 440.
[30] Docket – Vol. 1, pp. 467 to 476.
[31] The BIR's letter dated September 3, 2015, Docket – Vol. 1, p. 466.
[32] Docket – Vol. 1, pp. 477 to 482.
[33] Docket – Vol. 2, pp. 508 to 510.
[34] Docket – Vol. 2, pp. 543 to 544.
[35] Docket – Vol. 2, pp. 499 to 507.
[36] Docket – Vol. 2, pp. 528 to 535.
[37] Exhibit "P-64", Docket – Vol. 2, pp. 662 to 671; Minutes of the hearing held on March 8, 2016, Docket – Vol. 2, pp. 914; Resolution dated March 29, 2016, Docket – Vol. 2, pp. 922 to 923.
[38] Exhibit "P-65"/"P-57", Docket – Vol. 2, pp. 722 to 737; Minutes of the hearing held on, and Order dated, July 25, 2016, Docket – Vol. 2, pp. 990 to 991.
[39] Exhibit "P-66", Docket – Vol. 2, pp. 626 to 636; Minutes of the hearing held on, and Order dated, November 7, 2016, Docket – Vol. 3, pp. 1018 to 1020; Minutes of the hearing held on, and Order dated, February 7, 2017, Docket – Vol. 3, pp. 1031 to 1033; Exhibit "P-113", Docket – Vol. 3, pp. 1121 to 1126; and Minutes of the hearing held on, and Order dated, March 5, 2018, Docket – Vol. 3, pp. 1156 to 1156-b.
[40] Exhibit "P-68", Docket – Vol. 3, pp. 999 to 1017; Minutes of the hearing held on, and Order dated, November 7, 2016, Docket – Vol. 3, pp. 1018 to 1020; Exhibit "P-114", Docket – Vol. 3, pp. 1145 to 1151; Minutes of the hearing held on, and Order dated, March 5, 2018, Docket – Vol. 3, pp. 1156 to 1156-b.
[41] *Oath of Commission* dated January 26, 2016, Docket – Vol. 2, p. 560; Minutes of the hearing held on January 26, 2016, and Resolution dated February 1, 2016, Docket – Vol. 2, pp. 559 and 563, respectively.
[42] Docket – Vol. 2, pp. 565 to 620.

On March 15, 2018, petitioner filed its *Formal Offer of Evidence.*[43] Respondent submitted his *Comment (on Petitioner's Formal Offer of Evidence)* on March 26, 2018.[44] However, in the Resolution dated August 6, 2018,[45] the Court held in abeyance the resolution of petitioner's *Formal Offer of Evidence*, as it ordered the ICPA to submit: (1) the ICPA Exhibits in soft copies or scanned copies; (2) an amended ICPA *Report*, reflecting the corrected exhibit number reference of the documentary exhibit; and (3) a soft copy of the ICPA *Report* and the corresponding schedules.

Thus, on September 27, 2018, the ICPA submitted the said requirements.[46]

In the Resolution dated April 11, 2019,[47] the Court admitted petitioner's exhibits, *except* for:

1. Exhibit "P-87", for failure to present its original for comparison;

2. Exhibits "P-104-PPPP", "P-104-WWWW", "P-107-HHHH", "P-109-EE", "P-109-FF", "P-109-GG", "P-109-HH", "P-109-II", "P-109-JJ", "P-109-KK", "P-109-UU", "P-109-VV", "P-109-WW", "P-109-XX", "P-109-YY", "P-109-ZZ", "P-109-AAA", "P-109-CCC", "P-109-DDD", "P-109-EEE", "P-109-FFF", "P-109-GGG", "P-109-HHH", "P-109-III", "P-109-KKK", "P-109-LLL", "P-109-MMM", "P-109-NNN", "P-109-OOO", "P-109-PPP", "P-109-QQQ", "P-109-SSS", "P-109-TTT", "P-109-UUU", "P-109-VVV", "P-109-WWW", "P-109-XXX", and "P-109-YYY", for not being found in the records of the case; and

3. Exhibits "P-104-SSSS", "P-104-TTTT", "P-104-UUUU", "P-104-VVVV", "P-109-B", "P-109-C", "P-109-D", "P-109-E", "P-109-F", "P-109-H", "P-109-1", "P-109-J", "P-109-K", "P-109-L", "P-109-M", "P-109-N", "P-109-O", "P-109-P", "P-109-Q", "P-109-R", "P-109-U", "P-109-V", "P-109-Y", "P-109-Z", "P-109-AA", "P-109-DD", "P-109-TT", "P-109-BBB", "P-109-JJJ", and "P-109-RRR", for failure of the offered exhibits to correspond with the document scanned.

Petitioner then filed a *Motion for Partial Reconsideration [Re: Resolution dated April 11, 2019]* on May 17, 2019.[48] Respondent failed to file his comment thereon.[49] In the Resolution dated June 26, 2020,[50] the Court partially granted

[43] Docket – Vol. 3, pp. 1230 to 1276.
[44] Docket – Vol. 3, pp. 1465 to 1466.
[45] Docket – Vol. 3, pp. 1470 to 1472.
[46] Docket – Vol. 4, pp. 1480 to 1537.
[47] Docket – Vol. 4, pp. 1550 to 1559.
[48] Docket – Vol. 4, pp. 1560 to 1568.
[49] Records Verification Report dated August 7, 2018 issued by the Judicial Records Division of this Court, Docket – Vol. 4, p. 1571.

the said *Motion*, and admitted the certain previously denied exhibits, *except* for Exhibits "P-109-UU", "P-109-VV", "P-109-WW", "P-109-XX", "P-109-YY", "P-109-ZZ", "P-109-AAA", "P-109-CCC", "P-109-DDD", "P-109-EEE", "P-109-FFF", "P-109-GGG", "P-109-HHH", "P-109-III", "P-109-KKK", "P-109-LLL", "P-109-MMM", "P-109-NNN", "P-109-OOO", "P-109-PPP", "P-109-QQQ", "P-109-SSS", "P-109-TTT", "P-109-UUU", "P-109-VVV", "P-109-WWW", "P-109-XXX", and "P-109-YYY", for failure of the offered exhibits to correspond with the documents scanned.

For his part, respondent likewise presented his testimonial and documentary evidence. Respondent offered the testimony of his sole witness, Group Supervisor (GS) Olivia Aviles,[51] who holds the position of Chief Revenue Officer I.

Thereafter, respondent filed his *Formal Offer of Evidence* on October 30, 2020;[52] while petitioner submitted his *Comments and/or Opposition (To Respondent's Formal Offer of Evidence)* on December 4, 2020.[53] In the Resolution dated January 20, 2021,[54] the Court admitted respondent's exhibits, and ordered the parties to file their respective memorandum.

Respondent's *Memorandum* was filed on March 1, 2021;[55] and the *Memorandum (For Petitioner First Philippine Industrial Park, Inc.)* was filed on March 22, 2021.[56]

This case was deemed submitted for decision on May 25, 2021.[57]

## THE ISSUE RAISED BY THE PARTIES

Considering that the parties were unable to agree on the issues to be resolved by this Court, the following issues were respectively raised by them, to wit:

<u>For petitioner</u>:

"1. Whether or not the period to assess Petitioner has already prescribed.

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[50] Docket – Vol. 4, pp. 1585 to 1591.
[51] Exhibit "R-19", Docket – Vol. 4, pp. 1695 to 1705; Minutes of the hearing held on, and Order dated, October 20, 2020, Docket – Vol. 4, pp. 1683 to 1685.
[52] Docket – Vol. 4, pp. 1688 to 1693.
[53] Docket – Vol. 4, pp. 1707 to 1715.
[54] Docket – Vol. 4, pp. 1717 to 1719.
[55] Docket – Vol. 4, pp. 1720 to 1745.
[56] Docket – Vol. 4, pp. 1478 to 1535.
[57] Resolution dated May 25, 2021, Docket – Vol. 4, p. 1537.

2. Whether or not Petitioner was afforded due process in the issuance of the final decision on disputed assessment.

3. Whether or not Petitioner's right to a speedy disposition of cases was violated.

4. Whether or not Petitioner is liable for deficiency income tax for taxable year 2009.

5. Whether or not Petitioner is liable for deficiency VAT for taxable year 2009.

6. Whether or not petitioner is liable for deficiency WC for taxable year 2009.

7. Whether or not petitioner is liable for deficiency EWT for taxable year 2009.

8. Whether or not petitioner is liable for deficiency FT for taxable year 2009."[58]

For respondent:

"1. Whether Petitioner is liable for deficiency income tax, VAT, WC, EWT and FT for taxable year 2009 in the aggregate amount of Thirteen Million Six Hundred Fifty-Eight Thousand Nine Hundred Nineteen Pesos and Sixty-Two Centavos (₱13,658,919.62)."[59]

***Petitioner's arguments:***

Petitioner argues that the tax assessment for taxable year 2009 issued by respondent is void for lack of a valid LOA, and since its alleged tax liability remains indefinite; that respondent's right to assess petitioner for the same taxable year had already prescribed, because the subject *Waivers* are not valid, and thus, could not have extended the period to assess petitioner; and that it is not liable for the assessed deficiency taxes.

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

Respondent counters that his assessment was issued within the period prescribed by law; that petitioner was not and was never deprived of its constitutionally protected right to due process and speedy disposition of cases;

[58] Issues to be Resolved, JSFI, Docket – Vol. 2, pp. 501 to 502.
[59] Issues to be Resolved, JSFI, Docket – Vol. 2, p. 502.

and that petitioner is liable for deficiency income tax, VAT, WC, EWT, and FT.

## THE COURT'S RULING

Petitioner primarily argues that the tax assessments for taxable year 2009 are void for lack of a valid LOA; that the ROs who conducted the tax audit of petitioner were not named in the LOA, nor had any LOA in their names; and that the *Memorandum of Assignment* (MOA) dated February 25, 2013 cannot be treated as an equivalent of an LOA because it failed to comply with the essential elements of an LOA.

The power of the CIR to conduct assessments is granted to him by virtue of Section 6 of the NIRC of 1997, as amended:

> "SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –**
>
> (A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative may authorize the examination</u> of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."[60]

Section 7 of the NIRC of 1997, as amended, likewise sets limits on which powers of the CIR may be delegated by him and which powers are to be exercised exclusively by him. The issuance of an LOA is not one of the non-delegable powers of the CIR, *viz.:*

> "SEC. 7. **Authority of the Commissioner to Delegate Power.** – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:

[60] *Emphasis and underscoring supplied.*

> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
>
> (c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a Regional Evaluation Board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
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> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept."

On the contrary, issuing LOAs is a delegable power which the CIR may devolve to Revenue Regional Directors, as expounded on in Section 10 of the NIRC of 1997, as amended:

> "SEC. 10. **Revenue Regional Director.** – Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:
>
> xxx
>
> (c) **<u>Issue Letters of Authority for the examination of taxpayers</u> within the region;**
>
> xxx
>
> (h) **Perform such other functions as may be provided by law and as may be delegated by the Commissioner.**"[61]

[61] *Emphasis and underscoring supplied.*

In *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*,[62] the Supreme Court held:

> "The power to assess necessarily includes the authority to examine any taxpayer for purposes of determining the correct amount of tax due from him. Verily, the law vests the BIR with general powers in relation to the 'assessment and collection of all internal revenue taxes.' However, certainly, not all BIR personnel may *motu proprio* proceed to audit a taxpayer. Only 'the CIR or his duly authorized representative may *authorize the examination of any taxpayer'* and issue an assessment against him.
>
> That a representative has in fact been authorized to audit a taxpayer is evidenced by the LOA, which 'empowers a designated [r]evenue [o]fficer to examine, verify, and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.'
>
> **In cases where the BIR conducts an audit without a valid LOA,** or in excess of the authority duly provided therefor, **<u>the resulting assessment shall be void and ineffectual</u>.** xxx." *(Emphasis and underscoring added)*

In this case, in the LOA No. LOA-116-2010-00000055 dated May 14, 2010 issued by then Commissioner of Internal Revenue Joel L. Tan-Torres,[63] the latter had authorized Revenue Officers Walter Batoon, Reynoso Bravo, Daniella Gabaon, Julieta Tubilla, Maribel Serafica, Olivia Sison, Aileen Grace Parra, Laurel Eleda, and GS Erlinda Ulgado and Ana Marie Perez, all of the LT Regular Audit Division 1 of the BIR, to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2009 to December 31, 2009.

However, in the MOA No. LOA 116-2013-0422 dated February 25, 2013 issued by Mr. Cesar D. Escalada, Chief of the Regular LT Audit Division 1 of the BIR,[64] the case/docket of petitioner for taxable year 2009 was referred to RO Josa C. Gomez and GS Olivia F. Aviles, for continuation of the audit/investigation to replace the previously assigned ROs who resigned/retired/transferred to another district office. By virtue of the said MOA, RO Josa C. Gomez, as noted by GS Olivia F. Aviles, recommended the issuance of the subject PAN, Revised PAN, FLD-FAN, and FDDA, which were all approved.[65]

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[62] G.R. No. 222133, November 4, 2020.
[63] Exhibits "P-42" and "R-1", and "R-2", BIR Records – Folder 1, pp. 300 and 299, respectively.
[64] Exhibit "R-8", BIR Records – Folder 1, p. 403.
[65] Exhibit "R-19" (7.Q/A, 30.Q/A, 31.Q/A, 36.Q/A, 39.Q/A, 43.Q/A, and 46.Q/A), Docket – Vol. 4, pp. 1696, 1699, 1700, 1701, and 1702. Refer also to Exhibit "R-15", BIR Records – Folder 2, pp. 465 to 471.

RO Josa C. Gomez and GS Olivia F. Aviles who conducted the examination of petitioner's records may be deemed authorized to do so without need for a new LOA, if the Memorandum was signed by persons duly authorized.

Under RMO No. 29-07[66], the equivalent of a Regional Director in the Large Taxpayers Service is the Assistant Commissioner/Head Revenue Executive Assistants, for they are the ones authorized to issue an LOA, to wit:

> "II. AUDIT POLICIES AND GUIDELINES
>
> 1. The Chief, Large Taxpayers Audit & Investigation Divisions/LTDOs shall draw a list of taxpayers selected for audit under its current selection criteria. The list shall state the name of taxpayer selected for audit, the nature of business, the amount of gross sales/receipts, the selection code, the PSIC code, and the corresponding amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.
>
> 2. **All Letters of Authority (LOAs) shall be issued and approved by the <u>Assistant Commissioner/Head Revenue Executive Assistants</u>**."[67]

In the instant case, the MOA[68] was signed by Mr. Cesar D. Escalada, Chief of the Regular LT Audit Division 1 of the BIR. Mr. Escalada has no power to authorize the examination of taxpayer's accounts. Accordingly, RO Josa C. Gomez and GS Olivia F. Aviles were without authority to continue the audit.

There must be a grant of authority before any RO can conduct an examination or assessment. Equally important is that the RO so authorized must not go beyond the authority given. In the absence of such authority, the assessment or examination is a nullity.[69]

Such being the case, the subject tax assessments issued against petitioner for taxable year 2009 are void, for lack of authority of RO Josa C. Gomez and GS Olivia F. Aviles to examine petitioner's books. Being a void assessment, the same bears no fruit.[70] Hence, the subject tax assessments cannot be legally

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[66] Issued September 26, 2007.
[67] *Emphasis and underscoring supplied.*
[68] Exhibit "R-8."
[69] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.
[70] *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*, supra.

enforced against petitioner. As such, it becomes already unnecessary to address the remaining issues and arguments raised by the parties.

**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **GRANTED**.

Accordingly, the deficiency tax assessments embodied in the FLD-FAN dated July 30, 2014 issued against petitioner for taxable year 2009, and the FDDA dated May 7, 2015, with the accompanying *Audit Result/Assessment Notices*, indicating petitioner's supposed deficiency tax liabilities in the aggregate amount of ₱13,658,919.62, including surcharge, interests, and compromise penalties, for the same taxable year, are all **CANCELLED** and **SET ASIDE**.

Respondent is hereby **ENJOINED** and **PROHIBITED** from collecting the said amount from petitioner.

**SO ORDERED**.

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**WE CONCUR:**

**ERLINDA P. UY**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

## ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ERLINDA P. UY**
Associate Justice
Chairperson

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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.

**ROMAN G. DEL ROSARIO**
Presiding Justice