Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

CATERING PROFESSIONALS INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8852

Members:
CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

NOV 2 8 2017
1:10 p.m.

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DECISION

CASANOVA, *J.*:

This resolves the Petition for Review filed on July 30, 2014 by petitioner, Catering Professionals, Inc., praying that judgment be rendered finding petitioner not liable for deficiency taxes for taxable year 2010, and ordering respondent to cancel and terminate the corresponding deficiency tax assessments, Preliminary Collection Letter and Final Notice Before Seizure issued against petitioner for taxable year 2010.

The facts, as stated in the parties' Stipulation of Facts[1] and as found in the records of this case ,are as follows:

Petitioner, Catering Professionals, Inc., is a corporation duly organized and existing under the laws of the Philippines, with

[1] Docket, (Vol. I), pp. 255-257.

principal office address at Unit 2 Phase 2 Busunuaga, Tierra Nueva, Cupang, Muntinlupa City.[2]

On the other hand, respondent Commissioner of Internal Revenue is duly appointed and empowered to perform the duties of his office, including, among others, the power to decide, cancel and abate tax liabilities as provided by law.[3]

Petitioner is registered with the Bureau of Internal Revenue (BIR) as evidenced by its Certificate of Registration bearing Tax Identification No. 227-315-088-000 and OCN 9RC0000107997,[4] and is primarily engaged in the conduct of restaurant and catering services[5].

Sometime in 2012, petitioner received Letter Notice No. 53BRLF 10-00021 dated February 27, 2012, informing it that a computerized matching conducted by the BIR disclosed discrepancies on the information/data provided by third party sources against petitioner's declarations per VAT returns for the calendar year ended 2010.[6]

On December 27, 2013, petitioner received a Preliminary Assessment Notice (PAN) dated December 26, 2013, finding that petitioner has deficiency income tax and VAT due for taxable year 2010.[7]

Thereafter, petitioner sent a letter dated January 7, 2014 addressed to the respondent thru Mr. Nestor Valeroso[8], requesting for a re-audit and reinvestigation of respondent's findings in the PAN.

Respondent later issued a Formal Assessment Notice (FAN) dated January 20, 2014, a Preliminary Collection Letter (PCL) dated

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[2] Par. 2, The Parties, Petition for Review, Docket (Vol. I), p. 6; and Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts (JSF), Docket (Vol. I), p. 255.
[3] Par. 2, Summary of Admitted Facts, JSF, Docket (Vol. I), p. 255.
[4] Par. 4, Summary of Admitted Facts, JSF, Docket (Vol. I), p. 255.
[5] Par. 3, Summary of Admitted Facts, JSF, Docket (Vol. I), p. 255.
[6] Par. 5, Summary of Admitted Facts, JSF, Docket (Vol. I), p. 256; Exhibit "P-9".
[7] Par. 6, Summary of Admitted Facts, JSF, Docket (Vol. I), p. 256; Exhibit "P-11".
[8] Par. 7, Summary of Admitted Facts, JSF, Docket (Vol. I), p. 256; Exhibit "P-12".

May 29, 2014, and a Final Notice Before Seizure (FNBS) dated June 16, 2014, which were all allegedly received on June 30, 2014.[9]

Due to the FNBS issued by respondent, petitioner filed the instant Petition for Review[10] on July 30, 2014.

On November 12, 2014, respondent filed his Answer[11] interposing the following special and affirmative defenses:

> "5. In the Petition filed by Catering Professionals, Inc., as admitted under paragraphs 12 and 30 of the Petition for Review, the FAN with attached Details of Discrepancies was received by petitioner on June 30, 2014, elevating this case unto this Honorable Court without filing an administrative protest as required by Section 228 of the National Internal Revenue Code (NIRC).
>
> 6. Section 228 of the NIRC provides for the procedure for protesting an assessment. It states:
>
> > **SECTION 228**. Protesting of Assessment. – When the Commissioner or his duly authorized representative finds that proper taxes should be assess, he shall first notify the taxpayer of his findings: Provided, however, that a preassessment notice shall not be required in the following cases:
> >
> > (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
> >
> > (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

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[9] Exhibits "P-13 to P-15".
[10] Docket (Vol. I), p. 6-24.
[11] Docket (Vol. I), pp. 109 to 117.

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue as assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall

> have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of the documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

7. In the instant case, petitioner timely filed a protest after receiving the PAN. In response thereto, respondent issued the FAN with attached Details of Discrepancies. Pursuant to Section 228 of the NIRC, the proper recourse of petitioner was to dispute the assessments by filing an administrative protest within 30 days from receipt thereof. Petitioner, however, did not protest the final assessment notice. Instead, it filed a Petition for Review with this Honorable Court;

8. Considering the circumstances in the case at bar, it is clear that respondent failed to file a valid protest within the thirty (30) day period, as required by Section 228 of the 1997 Tax Code. Consequently, the assessment became final, executory and unappealable;

9. The Court of Tax Appeals, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction (**Allied Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 175097, February 5, 2010**). Its jurisdiction may only [be] invoked in the particular instances enumerated in Section 7 of Republic Act (RA) No. 1125, as amended by Section 7 of RA No. 9282 (**Moog Controls Corporation Philippine Branch vs. Commissioner of Internal Revenue, CTA EB No. 44, May 10, 2005**).

10. In the case of **Protector's Services, Inc. vs. Court of Appeals 330 SCRA 404, promulgated on April 12, 2000**, the Supreme Court upheld this Honorable Court's ruling that the assessment became final after thirty days from receipt of demand letters by the petitioner, without the latter interposing a reconsideration, thus:

> We note that indeed on December 10, 1987, petitioner received the BIR's assessment notices. On January 12, 1988, petitioner protested the 1983 and 1984 assessments and requested for a re-investigation. From December 10, 1987 to January 12, 1988, thirty-three days had lapsed. Thereafter petitioner may no longer dispute the correctness of the assessment. Hence, in our view, the Court of Tax Appeals correctly dismissed the appeal for lack of jurisdiction.

11. In this regard, **Section 7(a)(1) of Republic Act 9282** (An Act Expanding the Jurisdiction of the Court of Tax Appeals) provides that:

> Section 7. Jurisdiction. - The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decision of the Commissioner of the Internal Revenue in cases involving <u>disputed assessments</u>, refunds of the internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the CIR.

Thus, the Honorable Court of Tax Appeals exercises appellate jurisdiction to review by appeal decisions of the Commissioner of Internal Revenue in cases, among others, <u>involving disputed assessments</u>.

It is neither the assessment nor the formal demand letter itself that is appealable to this Honorable Court. It is the decision of the Commissioner of Internal Revenue on the disputed assessment that can be appealed to this Honorable Court (***Commissioner of Internal Revenue vs. Villa 22 SCRA 3****)*. A disputed assessment is one wherein the taxpayer or his duly authorized representative filed an administrative protest against the FAN within thirty (30) days from receipt thereof;

12. In the case of **Signer Finance Corporation vs. Commissioner of Internal Revenue, CTA EB Case No. 10 (CTA Case No. 6743), March 4, 2005**, the Honorable Court sitting En Banc held as follows:

> 'For purposes of this petition for review, We reiterate Our ruling that an assessment whether valid or void, shall become final and executory, when no administrative protest is filed within (30) days from receipt thereof, for the very reason that:
>
> '[An] administrative protest is an integral part of the remedies given to the taxpayer in challenging the legality or validity of an assessment. It is absolutely necessary for the taxpayer to file an administrative protest in order for this court to acquire jurisdiction.'
>
> It must be stressed that Section 228 of the Tax Code of 1997 does not quality that only valid assessments should be protested in order that the same shall not become final.
>
> xxx xxx xxx
>
> Significantly, petitioner should have invoked the issue of prescription as a defense at the administrative level, by filing a protest before respondent Commissioner of Internal Revenue, to prevent the assailed assessments from becoming final and executory. Failing in this regard is procedurally detrimental to petitioner.

> Petitioner's argument that it is not duty-bound to file an administrative protest against a void assessment is misplaced. Precisely, one of the grounds that a taxpayer can raise in protesting an assessment is the defense of prescription, which is found meritorious, provides legal justification for the Commissioner of Internal to revoke an assailed assessment.
>
> As held by the Supreme Court in the case of Republic of the Philippines vs. Manila Port Service, prescription is only a defense which must be raised in the proper forum and at the proper time. Thus, an assessment which is contrary to the law, can attain finality, if the same is not protested. It is a mere defense that must be invoked at the proper time, otherwise, it shall be considered waived. It is not jurisdictional.
>
> All the foregoing considered, the Court finds no reversible error committed by the then Court of Tax Appeals, in rendering the assailed Resolutions dated January 29, 2004 and May 7, 2004 when it effectively denied petitioner's Motion to Cancel Assessment filed on October 28, 2003 and dismissed CTA Case No. 6743 for lack of jurisdiction.'

13. In ***Subic Bay Motors, Corp., Inc. vs. Commissioner of Internal Revenue,*** **CTA EB No. 98 (CTA Case No. 7042) October 11, 2005**, likewise the honorable Court siting En Banc, had the occasion to explain the consequences of failure to validly protest a formal assessment notice, in this fashion:

> 'Unfortunately, based on the records and documents submitted, there is no indication that petitioner ever protested the said Formal Assessment Notices. In fact, the allegations and evidence presented by petitioner merely

showed that preliminary assessment notices were received and protested but the Formal Assessment Notices, although received were not protested. Based on its allegations, petitioner even considered the subject Formal Assessment Notices have become final and could not be the subject of appeal to this Court. As provided for by Section 228 of the 1997 Tax Code, if the taxpayer fails to file an administrative protest within the 30-dayreglementary period, the assessment becomes final and unappealable. This means that after the lapse of the said thirty-day period, the assessment may no longer be disputed either administratively or judicially through an appeal to this Court. The effect is thus to make the assessed taxes collectible. Incidentally, inasmuch as there is no disputed assessment to speak of, appeal to this Court is no longer available.'

14. Well-settled is the rule that if the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits (***De Guzman, et al., vs. Escalona, et al., G.R. No. L-51773, May 16, 1980***).

15. Clearly from the foregoing, the Court's jurisdiction covers only those assessments which are disputed. In this case, failure of herein petitioner to file its protest on time makes the said assessment undisputed, thus, cannot be the subject of appeal to this Court. Also, it must be stressed that the Court of Tax Appeals is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction (Commissioner of Internal Revenue vs. Villa, 22 SCRA 3), the filing of a protest within the period prescribed under Section 228 of the 1997 Tax Code being a jurisdictional matter. In fine, failure of the petitioner to comply with the thirty (30)-day statutory period would bar appeal and deprive this Court of its jurisdiction to entertain and determine the correctness of the assessment (Commissioner vs. Western Pacific Corp.,

L-18804, May 27, 1965). The assessments having become final, such may no longer be amended, modified, much less, set aside by this Court (**Subic Bay Motors Corp., Inc. vs. CIR, CTA Case No. 98, October 11, 2005**).

16. Evidently, based on the above mentioned rules and jurisprudence, filing of an administrative protest against the FAN is of paramount importance since it must be done in the proper form and within the time prescribed by law, for failure to do so as committed by petitioner in this case, the assessment shall become final, executory and unappealable to this Honorable Court;

17. On the other hand, assuming without admitting that this Honorable Court has jurisdiction to act on the instant petition, petitioner was assessed for deficiency income tax and value-added tax for taxable year 2010, for the reason that during the administrative investigation of its tax case by the BIR, petitioner failed to substantiate or submit supporting evidence against the BIR findings, more specifically shown under the Details of Discrepancies attached to the PAN dated December 26, 2013 and FAN dated January 20, 2014, which are briefly discussed hereunder, viz:

A) On undeclared Income amounting to P179,844.14:

-In the partial tally of the computerized matching conducted by the Bureau on information/dated provided by this party sources against petitioner's declaration per Income and VAT returns disclosed a discrepancy of P10,463,961.53. However, this was adjusted after ascertaining that the gross sales declared on petitioner's Income Tax returns amounted to P34,925,265.95. The resulting undeclared income amounted to P179,844.14 after multiplying the adjusted discrepancy by petitioner's Gross Profit Rate. The same is subject to income

> tax pursuant to Section 32 of the NIRC, as amended.
>
> **B) On Undeclared Sales amounting to P8,272,507.88:**
>
> -As discussed on income tax, the discrepancy noted per Letter Notice was also compared with the petitioner's gross sales per VAT Returns and resulted to adjusted discrepancy of P8,272,507.88. The same is also subject to VAT pursuant to provision of Section 105 of the NIRC which states that, 'Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to value-added tax (VAT) imposed in Section 106 and 108 of this Code.'

18. Petitioner further argued under paragraph B of the Petition that, 'A Letter Notice, by itself, is not a valid basis of tax assessments.' However, this issue was resolved already by this Honorable Court wherein it ruled that an assessment arising from a Letter Notice is valid even if not covered by a Letter of Authority.

> To declare that the CIR, in the determination of deficiency VAT, should at all times necessarily issue an LOA is to deprive her of the vast powers given her by the National Internal Revenue Code (Tax Code) to make assessments and collect the right amount of taxes. Thus, while the examination of taxpayers by a Revenue Officer working under an LOA is one way by which the CIR collects deficiency taxes under Section 13 of the Tax Code, Section 6 does not in any way limit the power of the CIR to determine tax deficiencies only through the issuance of LOAs. (**Medicard Philippines, Inc., vs.**

> **Commissioner of Internal Revenue, CTA Case No. 7948, June 5, 2014**)'

19. Petitioner interposes prescription so as to exculpate it form its tax liabilities. To that, suffice it to state that allegations of prescription must be clearly shown. Since prescription is one of the affirmative defenses of the taxpayer, 'it is incumbent upon [it] to positively establish when the prescriptive period started to run and when the same ended.' (**Taligaman Lumber Co. v. Collector, G.R. No. L-15716, March 31, 1962**)

Under Section 222 (a) of the 1997 Tax Code, it is clearly provided that:

> 'In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission.'

In relation thereto, this Court sitting En Banc in the case of **CDL Hotels (Phils.) Corporation vs. CIR, CTA EB Case No. 339, August 10, 2009**, held that:

> 'While the prescriptive period for assessment is three years as prescribed under section 203 of the 1997 NIRC, as amended; however, Section 222 of the 1997 NIRC provided for exceptions to the period of limitation of assessment and collection of taxes. We quote:
>
> 'SEC. 222. Exceptions as to Period of Limitations of Assessment and Collection of Taxes. –
>
> (a) In case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed or a proceeding in court for the collection of such

tax may be filed without assessment, at any time within (10) *(sic)* years after the discovery of the falsity, fraud or omission:...;

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.

xxx xxx xxx

A reasonable understanding of the foregoing law is that false return is different from fraudulent return with intent to evade tax or from failure to file a return. The above provision should be interpreted to mean a separation of the three different situations of false return with intent to evade tax, and failure to file a return. The difference between 'false return' and 'fraudulent return' cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due. The ordinary period of prescription of 3 years within which to assess tax liabilities under Sec. 203 of the 1997 NIRC, as amended, should be applicable to normal circumstances; but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent returns intended to evade payment of tax or failure to file returns, the period of ten years as provided for in Section 222 of the 1997 NIRC, as amended, from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and should be the one enforced.

> In the case at bar, although petitioner filed its monthly return as mandated by law, it failed to declare thereto the income subject to the tax under the belief that the income supposedly subject to the withholding tax is not an income but a deductible expense. The returns filed by petitioner can be considered as false return because it deviated from the truth when no income was declared, when in truth there was an income subject to tax. Being considered as false return, it is immaterial if petitioner intentionally omitted to declare its income subject to final withholding tax or not.
>
> Considering that petitioner's return is false, the applicable prescriptive period would be ten years from the discovery of falsity. In the case at bar, the latest return filed was on January 11, 1999, while the FAN was issued on January 29, 2002, such period being within the ten-year period it follows that the assessment had not yet prescribed.
>
> Moreover, the Supreme Court had ruled that the filing of deficient returns which prevent the Commissioner of Internal Revenue from computing the proper taxes is tantamount to the non-filing. The Commissioner had to determine and assess the taxes on data obtained, not from the return, but from other sources. Hence, the assessment for deficiency final withholding tax, therefore, has not prescribed.'

Applying the foregoing rule and jurisprudence in the case at bar, a close scrutiny of the income tax and VAT returns filed by petitioner clearly revealed that respondent's declaration made therein were substantially deficient in amount and did not disclose the truth regarding the correct amount of income subject to tax compared to the amount remitted to the BIR.

Hence, the FAN dated January 20, 2014 issued by the respondent for deficiency income and value-added tax for taxable year 2010 was validly made within the ten (10) years prescriptive period from the discovery of the said falsity under Section 222 (a) of the 1997 Tax Code.

20. The assessments issued against petitioner for deficiency income tax and value-added tax for taxable year 2010 were made in accordance with law and regulations.

21. Assessment 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***)."

Petitioner filed its Reply[12] on November 24, 2014.

The case was subsequently set for Pre-Trial Conference on February 5, 2015.[13] Petitioner's Pre-Trial Brief[14] was filed on January 30, 2015, while respondent's Pre-Trial Brief[15] was filed via registered mail on February 2, 2015.

On February 25, 2015, the parties filed their Joint Stipulation of Facts[16] and a Pre-Trial Order was issued by the Court on March 9, 2015.[17]

During the hearing held on March 15, 2015, the Court approved the commissioning of Ms. Myra Celeste O. Dabalos as Independent Certified Public Accountant (CPA) for this case.[18]

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[12] Docket (Vol. I), pp. 121-127.
[13] Docket (Vol. I), p. 120.
[14] Docket (Vol. I), pp. 187-193.
[15] Docket (Vol. I), pp. 195-199.
[16] Docket (Vol. I), pp. 255-257.
[17] Docket (Vol. I), pp. 264-268.
[18] Minutes of the Hearing, Docket (Vol. I), p. 283.

Trial ensued, giving both parties the opportunity to present their respective documentary and testimonial evidence.

Petitioner presented as its witness Mr. Julius Caesar L. Raymundo II[19], petitioner's President, and the Independent CPA Ms. Myra Celeste O. Dabalos[20].

After presentation, marking, identification and formal offer, the Court admitted as part of petitioner's documentary evidence Exhibits "P-1" to "P-48-A".[21]

As to respondent, he presented as witnesses Ms. Fe H. Lucas[22], BIR Revenue District Officer II at Revenue District Office No. 53B, Muntinlupa City, and Ms. Fritz Jihann P. Manabilang[23], BIR Revenue Officer I of BIR's Collection Division.

Except for Exhibits "R-2" and "R-2-a", the Court admitted as part of respondent's evidence Exhibits "R-1" to "R-15-a".[24]

Taking into consideration petitioner's Memorandum[25] filed on December 5, 2016, and Memorandum for respondent[26] filed on November 23, 2016, on December 21, 2016 the case was submitted for decision.[27]

The parties submitted the following issues[28] for this Court's disposition:

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[19] Minutes of the Hearing Held on April 20, 2015, Docket (Vol. I), p. 288, Exhibit "P-16" - Judicial Affidavit of Mr. Julius Caesar L. Reymundo II.

[20] Minutes of the Hearing Held on April 29, 2015 and April 25, 2016, Docket (Vol. I), p. 318 and (Vol. II), p. 584, respectively; Exhibit "P-39" – Judicial Affidavit of Miss Myra Celeste O. Dabalos.

[21] Resolution dated July 14, 2016, Docket (Vol. II), pp. 720-722; Minutes of the Hearing Held on July 18, 2016, Docket (Vol. II), p. 723.

[22] Minutes of the Hearing Held on July 18, 2016, supra; Exhibit "R-14" – Judicial Affidavit of Ma. Fe H. Lucas.

[23] Minutes of the Hearing Held on August 10, 2016, Docket (Vol. II), p. 729; Exhibit "R-15" – Judicial Affidavit of Fritz Jihann P. Manabilang.

[24] Resolution dated October 21, 2016, Docket (Vol. II), pp. 740-741.

[25] Docket (Vol. II), pp. 748-772.

[26] Docket (Vol. II), pp. 773-779.

[27] Resolution dated December 21, 2016, Docket (Vol. II), p. 781.

[28] Issues, JSF, Docket (Vol. I), p. 256.

1. Whether or not petitioner is liable for deficiency income tax and deficiency value added tax for the taxable year ending 31 December 2010;

2. Whether or not the assessment made by respondent is valid; and

3. Whether or not the Court has jurisdiction to entertain the case at bar.

Petitioner alleges that the assessment violated its right to due process. Thus, BIR has no basis other than the computerized matching on information/data provided by third party sources in computing petitioner's tax deficiencies. It further avers that no Letter of Authority (LOA) was ever served upon petitioner; nor was there any actual audit conducted by the BIR to determine the veracity of the information provided in the computerized matching with third party sources.

Petitioner further claims that the FAN, PCLs, and FNBS were simultaneously served to petitioner on the same date. Thus, petitioner has no opportunity to file a protest against the FAN.

Petitioner also claims that the Letter Notice, by itself, is not a valid basis of tax assessment and that the right of respondent to assess had already prescribed.

On the other hand, respondent claims that after the receipt of the PAN by petitioner on December 27, 2013, the FAN dated January 30, 2014 was issued and sent to petitioner through registered mail on the same day as evidenced by a return card. However, the same was returned to sender for the reason that petitioner has already moved out from its registered business address.

Respondent further maintains that the PCL dated May 29, 2014 was subsequently sent through registered mail as evidenced by a receipt and return card but the same was returned to sender for the same reason.

Respondent, likewise, avers that the FNBS was received by Mr. Brian A. Magallanes on July 1, 2014 for and in behalf of Ms. Rose Marie C. Morada – accountant of petitioner.

Respondent also points out that the July 11, 2014 protest of petitioner was filed beyond the prescriptive period for the filing thereof. Hence, it is now precluded from disputing the correctness of the assessment.

Respondent insists that petitioner was given an adequate opportunity to contest the assessment, but it failed to take advantage of the same when it discreetly transferred its business without informing the BIR of its new address.

Also, while respondent agrees that an assessment notice issued after the three-year period under Section 203 of the National Internal Revenue Code (NIRC) is no longer valid and effective, he insists that the exceptions are provided for under Section 223 of the same code, specifically "when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed and collected is applicable to petitioner's case."

Lastly, respondent claims that the Court already ruled in the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 7948, June 5, 2014, that an assessment arising from a Letter Notice is valid even if not covered by a Letter of Authority.

The Court has jurisdiction over the instant Petition for Review

Records show that the instant petition is an appeal from the FNBS issued by respondent which was received by petitioner on July 1, 2014.[29]

This Court, therefore, has jurisdiction over the instant case as the same falls on "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal

[29] Exhibit "R-11" and "R-11-b", BIR Records.

Revenue". The pertinent portion of Section 7 of RA No. 1125, as amended by RA No. 9282, reads:

> "SEC. 7. Jurisdiction. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" (*Emphasis supplied*)

The subject assessment is void because it is not covered by any LOA

At the outset, it must be noted that the respondent has the power to grant authority to examine and assess a taxpayer as provided under Section 6 of the NIRC of 1997, to wit:

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

To exercise such power, the Commissioner or his duly authorized representative shall issue a Letter of Authority as required under Section 13 of the NIRC of 1997, as amended, which provides:

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

From the foregoing, the LOA will empower or enable a Revenue Officer to examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due.

In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*,[30] the Supreme Court held that 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**.

Significantly, the importance of the issuance of an LOA was further elucidated by the High Court in the recent case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[31], which also reversed the ruling of this Court in CTA Case No. 7948 invoked by respondent. The pertinent portion of the Supreme Court's ruling in the *Medicard* case read:

> **"The absence of an LOA violated MEDICARD's right to due process**

[30] G.R. No. 178697, November 17, 2010.
[31] G.R. No. 222743, April 5, 2017.

> An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:
>
> xxx xxx xxx
>
> Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority**." (*Emphasis supplied*)

In other words, there must first be a grant of authority before a revenue officer can conduct an examination and issue a tax assessment. However, in this case, no LOA was issued to authorize the examination and the assessment of petitioner's deficiency income tax and VAT liability for the taxable year 2010.

Furthermore, while there was a Letter Notice issued by the respondent, the same cannot be considered as the LOA required by law.

In fact, in the same case of *Medicard*[32], the Supreme Court made a distinction between a Letter Notice and LOA, in this wise:

> "**The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself.** xxx
>
> The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 10 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. Simply put, **LN is entirely different and serves a different purpose than an LOA.** xxx
>
> Contrary to the ruling of the CTA en banc, **an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined**. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.
>
> The BIR's RELIEF System has admittedly made the BIR's assessment and collection efforts much easier and faster. **The ease by which the BIR's revenue generating objectives is achieved is no excuse however for its non-compliance with the statutory requirement under Section 6** and with its own administrative issuance. In fact, apart from being a

[32] G.R. No. 222743, April 5, 2017.

> statutory requirement, **an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR's exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR' s revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.**
>
> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.**"

Considering that no LOA was issued in this case, the deficiency taxes resulting from the unauthorized examination and assessment of petitioner's tax liability for taxable year 2010 is a nullity.

At this juncture, it must be emphasized that an invalid assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[33]

Therefore, regardless of whether petitioner timely filed its protest or whether there was proper service of the FAN, respondent cannot collect the assessed tax deficiency in the FAN for being null and void.

With the foregoing findings, there is no need for the Court to address the remaining issues raised in the instant case.

WHEREFORE, premises considered, the instant **Petition for Review** is hereby **GRANTED**. Accordingly, the assessment of petitioner's deficiency income tax and value added tax for the taxable year 2010, as well as the Preliminary Collection Letter and Final Notice Before Seizure issued by the respondent to enforce the collection of the said deficiency tax liabilities are **CANCELLED** and **DEEMED WITHDRAWN** for being **NULL AND VOID**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[33] *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils. Inc.,* G.R. No. 198677, November 26, 2014.

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice