REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SCICINDUSTRIAL CORP.,
Petitioner,

CTA CASE NO. 9616

Members:

CASTAÑEDA, JR., *Chairperson,*
and
BACORRO-VILLENA, *JJ.*

-versus-

BUREAU OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 27 2020
12:10 p.m.

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DECISION

CASTAÑEDA, JR., ***J.:***

THE CASE

This case is a *Petition for Review* posted by petitioner Scicindustrial Corp. against respondent Bureau of Internal Revenue on June 7, 2017, praying for the Court to declare as void the *Formal Assessment Notice* (FAN) dated January 23, 2017.[1]

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[1] Statement of the Case, Pre-Trial Order dated May 17, 2018, Docket, p. 22.

THE PARTIES

Petitioner Scicindustrial Corp. is a corporation duly organized and existing under the laws of the Republic of the Philippines.[2]

On the other hand, respondent Bureau of Internal Revenue (BIR), through the Commissioner of Internal Revenue (CIR), is the agency of the government tasked with the enforcement of revenue laws and the collection of taxes and duties. It is being represented in this case by the Legal Officers of the Legal Division, Revenue Region 8, Makati City, with office address at the 2/F, BIR Bldg., No. 313 Sen. Gil Puyat Ave., Makati City.[3]

THE FACTS

On July 10, 2014, the *Letter of Authority* (LOA) No. LOA-052-2014-00000230 was issued by Regional Director Jonas DP Amora of Revenue Region 8 –Makati City,[4] authorizing Revenue Officer (RO) Filipina Ocampo and Group Supervisor (GS) Manuel Baltazar of Revenue District Office (RDO) No. 052 – Parañaque, to examine petitioner's books of accounts for all internal revenue taxes covering the period from January 1, 2013 to December 31, 2013.

On April 13, 2016, petitioner filed with the respondent all relevant documents, books of accounts, receipts, and the like, as evidenced by the *Listing of 2013 Documents for Submission* dated April 12, 2016.[5]

Thereafter, on December 21, 2016, petitioner received a copy of the *Preliminary Assessment Notice* (PAN) dated December 19, 2016 for taxable year 2013,[6] informing petitioner that it was found liable for deficiency income tax and value-added tax (VAT).

On January 25, 2017, petitioner received a copy of the Formal Assessment Notice (FAN) dated January 23, 2017 under *Assessment*

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[2] Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket, p. 201.
[3] Par. 2, Stipulation of Facts, JSFI, Docket, p. 201.
[4] Exhibit "R-16", BIR Records, p. 1.
[5] Par. 3, Stipulation of Facts, JSFI, Docket, pp. 201 to 202.
[6] Par. 4, Stipulation of Facts, JSFI, Docket, p. 202; Exhibit "P-9", Docket, pp. 306 to 308; Exhibit "R-4", BIR Records, pp. 254 to 256.

Notice Nos. IT-ELA78214-13-17-396 and *VT-ELA78214-13-17-396.*[7] The FAN contains deficiency tax assessments for income tax and VAT for taxable year 2013, in the total amount of ₱11,024,947.24,[8] broken down as follows:

Tax Type	Amount
Income tax	₱8,398,821.71
VAT	2,626,125.53
Total	**₱11,024,947.24**

Thus, on February 23, 2017, petitioner filed via registered mail a *Protest* to the respondent.[9]

On May 15, 2017, petitioner received a copy of the *Letter* dated April 25, 2017 from Regional Director Glen A. Geraldino of Revenue Region No. 8 –Makati City, denying the *Protest* dated February 23, 2017.[10]

Petitioner filed the present *Petition for Review* via registered mail on June 7, 2017 and was received by this Court on June 16, 2017.[11] The case was initially raffled to this Court's First Division.

However, in the Resolution dated July 17, 2017,[12] this Court dismissed the said *Petition* due to petitioner's failure to timely pay the docket fees; and that the signatory in the *Petition* does not show that he was duly authorized by the board of directors to file, sign, and execute for and in behalf of petitioner, including the verification and certification of non-forum shopping.

On August 7, 2017, petitioner filed via registered mail a *Motion for Reconsideration (of the Resolution dated 17 July 2017)*,[13] praying that the said Resolution be reversed and set aside, explaining that it was only mere inadvertence on its part in filing the present *Petition*. Thus, in the Resolution dated September 11, 2017,[14] this Court

[7] Par. 5, Stipulation of Facts, JSFI, Docket, p. 202.
[8] Exhibits "P-10" to "P-11" and "P-11-a", Docket, pp. 309 to 313; Exhibits "R-6", "R-6-a" and Exhibits "R-7" and "R-7-a", BIR Records, pp. 257 to 259.
[9] Par. 6, Stipulation of Facts, JSFI, Docket, p. 202; Exhibits "P-12", "P-12-1" to "P-12-3", Docket, pp. 314 to 318.
[10] Par. 7, Stipulation of Facts, JSFI, Docket, p. 202; Exhibit "P-13", Docket, p. 319.
[11] Docket, pp. 10 to 22.
[12] Docket, pp. 44 to 48.
[13] Docket, pp. 49 to 53.
[14] Docket, pp. 61 to 62.

granted petitioner's *Motion for Reconsideration* and reversed and set aside the Resolution dated July 17, 2017.

Respondent then filed its *Answer* via registered mail on November 6, 2017,[15] interposing the following special and affirmative defenses, to wit:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

5) Respondent reiterates and repleads the preceding paragraphs of the Answer as part of the Special and Affirmative Defenses.

6) Respondent, the Bureau of Internal Revenue is an agency of the Department of Finance. BIR collects more than half of the total revenues of the government. BIR Commissioner Caesar Dulay is the current Commissioner of the BIR, having been duly appointed to exercise the powers and perform the duties of his office 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 Tax Code.

7) Respondent may be served with summons, notices and other court processes of this Honorable Court at the Legal Division, Bureau of Internal Revenue, Revenue Region No. 8, 2nd Floor BIR Bldg., 313 Sen. Gil Puyat Ave., Makati City.

The instant Petition for Review must be dismissed for lack of cause of action and/or lack of legal capacity to sue

8) Respondent prays for the dismissal of the instant Petition for Review on the ground of lack of cause of action and/or lack of legal capacity to sue pursuant to Section 1(d) and (g), Rule 16 in relation to Section 4, Rule 8 of the Rules of Court. *gr*

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[15] Docket, pp. 75 to 89.

9) Perusal of Petitioner's Petition for Review shows that petitioner failed to allege their legal standing as a corporation to sue and be sued. To state otherwise, the petitioner did not allege in their petitioner their capacity to bring suit as required by Section 4, Rule 8 of the Rules of Court.

10) Facts showing the capacity of a party to sue or be sued, or the authority of a party to sue or be sued in a representative capacity, or the legal existence of an organized association of persons that is made a party, must be averred (Sec. 4, Rule 8, Rules of Court; Board of Optometry vs. Colet, 260 SCRA 88, G.R. No. 122241. July 30, 1996).

11) In the case of Board of Optometry vs. Colet, supra, the Honorable Supreme Court dismissed the case and declared that:

> 'For having failed to show that they are juridical entities, private respondents OPAP, COA, ACMO, and SMOAP must then be deemed to be devoid of legal personality to bring action, such as Civil Case No. 95-74770.
>
> A real party in interest under Section 2, Rule 3 of the Rules of Court is a party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.
>
> In the case at bench, since OPAP, COA, ACMO, and SMOAP were not shown to be juridical entities, they cannot, for obvious reasons, be deemed real parties in interest.'

12) Moreover, there was no board resolution or secretary's certificate showing proof of Atty. Benzon Judd C. Cong's authority in acting in behalf of the corporation at the time the instant Petitioner for Review was filed. It is therefore, correct that the instant Petition for Review must be dismissed.

13) Among the grounds for a motion to dismiss under the Rules of Court are lack of legal capacity to sue and that the complaint states no cause of action. Lack of legal capacity to sue means that the plaintiff is not in the exercise of his civil rights, or does not have the necessary qualification to appear in the case, or does not have the character or representation he claims. On the other hand, a case is dismissible for lack of personality to sue upon proof that the plaintiff is not the real party-in-interest, hence grounded on failure to state a cause of action. The term 'lack of capacity to sue' should not be confused with the term 'lack of personality to sue'. While the former refers to a plaintiff's general disability to sue, such as on account of minority, insanity, incompetence, lack of juridical personality or any other general disqualifications of a party, the latter refers to the fact that the plaintiff is not the real party-in-interest (Columbia Pictures, Inc. vs Court of Appeals, G.R. No. 110318. August 28, 1996).

Court of Tax Appeals (CTA) lacks jurisdiction to review this instant petition for failure to pay docket fees within the applicable prescriptive or reglementary period

14) The respondent prays for the dismissal of the instant Petition for Review on the ground of lack of jurisdiction for failure to pay docket fees within the applicable prescriptive or reglementary period.

15) It must be noted that Sec. 3 of A.M. No. 05-11-07-CTA provides:

> 'Sec. 3. Payment of docket fees. – the Clerk of Court shall not receive a petition for review for filing unless the petitioner submits proof of payment of docket fees. X X X'

16) It is a rule that the non-payment of the prescribed filing fees at the time of the filing of complaint or other initiatory pleading fails to vest court's jurisdiction over the case. ge

17) In Metropolitan Bank and Trust Co. vs. Perez, GR No. 181842, 07 February 2010, the Supreme Court, citing past jurisprudence, clearly settled that –

> In Manchester Development Corporation v. Court of Appeals, GR No. L-75919, 07 May 1987, the Court held that a pleading which does not specify in the prayer the amount sought shall not be admitted or shall be expunged, and <u>that a court acquires jurisdiction only upon payment of the prescribed docket fee</u>. This rule was relaxed in Sun Insurance Office, Ltd. v. Asuncion G.R. Nos. 79937-39, 13 February 1989 which was echoed in the 2005 case of Heirs of Bertuldo Hinog v. Melico, GR No. 140954, 12 April 2005, the pertinent portion of the decision in the latter case reads:
>
>> Plainly, while the payment of the prescribed docket fee is a jurisdictional requirement, even its non-payment at the time of filing does not automatically cause the dismissal of the case, **as long as the fee is paid within the applicable prescriptive or reglementary period**, more so when the party involved demonstrates a willingness to abide by the rules prescribing such payment. Thus, when insufficient filing fees were initially paid by the plaintiffs and there was no intention to defraud the government, the Manchester rule does not apply. (Emphasis and underscoring supplied)

18) In this case there is no proof of payment of docket fees made by the petitioner within the applicable prescriptive or reglementary period.

19) In the case of Bases Conversion and Development Authority vs. Commissioner of Internal revenue, CTA En Banc No. 900 (CTA Case No. 8263), the Petition for Review was dismissed for non-payment of docket fees, the CTA En Banc ruled that:

> 'From the bare facts of the instant case, the prescribed fee was paid beyond the reglementary period for perfecting an appeal and, moreover, as found by the Court in Division, a willingness on the part of petitioner to abide by the rules was clearly lacking. This En Banc Court notes that it took petitioner over a month to pay the prescribed fee from the time it was informed that its petition cannot be properly filed due to non-payment of docket fees. Hence, even a lenient application of the technical rules of procedure will not prevent this Court's outright dismissal of petitioner's case.'

20) In this instant case, the petitioner manifested only their willingness to pay the docket fees, however, there is no proof of payment or consignation of docket fees. In the case of Pasricha vs. Don Luis Dison Realty, Inc., G.R. No. 136409, March 14, 2008, the Supreme Court ruled that:

> 'Petitioner claim that they made a written tender of payment and actually prepared vouchers for their monthly rentals. But that was insufficient to constitute a valid tender of payment. Even assuming that it was a valid tender, still, it would not constitute consignation in order that the effects of payment may be produced.'

Petitioner failed to comply with Sec. 34 (A)(1)(b) of the National Internal Revenue Code (NIRC) of 1997 ℊ

21) Disallowance of petitioner's expenses amounting to Php 17,839,675.84 is consequence of petitioner's failure to substantiate its business expenses. Under the Tax Code, no deduction shall be allowed unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer.

Petitioner was duly apprised of the factual and legal basis of the assessment

22) The petitioner is presumed to have constructive knowledge of the NIRC. Contrary to the allegations of the petitioner, the respondent does not have the obligation to explain and itemized the disallowance of petitioner's expenses because pursuant to Sec. 34(A)(1)(b) of the National Internal Revenue Code of 1997 it is the petitioner's duty to explain and substantiate its business expenses by sufficient evidence.

23) If the taxpayer is able to intelligently argue its case and elucidate the reasons for the assessment, then it cannot contradict itself by asserting that it was not informed of the law and facts on which the assessment was made.

24) In the case Sevilla vs. Commissioner of Internal Revenue, CTA Case No. 6211, October 4, 2004, this Honorable Court ruled that:

> 'The respondent though may not have provided the specific provisions of the National Internal Revenue Code or other internal revenue laws as bases for the assessments but by indicating the kind of tax petitioners were liable was a substantial compliance with the requirements of Section 228 of the NIRC of 1997. In a fair play point of view the petitioners were after all, not left

in confusion and grasping in the dark for explanations of the assessment. This is easily discernible from petitioner's protest letter (BIR Records, page 180) dated May 31, 2000. This court in the case of Subic Power Corporation v. Commissioner of Internal Revenue (CTA Case No. 6059, May 8, 2003) held that:

> 'While we concede that the mere filing of a protest letter does not automatically mean that the requirement of Section 228 has not been violated, **if the taxpayer is able to intelligently argue its case and elucidate the reasons for the assessment**, as in this case, then it cannot contradict itself by asserting that it was not informed of the law and facts on which the assessment was made.
>
> x x x
>
> Further, it is our considered opinion that the phrase 'in writing' under Section 228 does not exclusively mean written words. 'Writings' consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, Photostatting, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation. (Blacks Law Dictionary, Sixth Edition, page 1609). Indubitably, figures are also 'writings' and if the numerical presentation is understandable enough, then there is no reason why we should automatically reject the same as adequate compliance with the law. **It must**

> **be stressed that the underlying reason for the law is the basic constitutional requirement that 'no person shall be deprived of his property without due process of law'. Parenthetically, in whatever form and manner, as long as the taxpayer is informed of how the assessment was arrived at, then Section 228 has not been violated**. And if petitioner had already been informed during the preliminary stage of the bases for the assessment, then it could not insist that it was not informed of the law and the facts on which the assessment was based (Subic Power Corporation v. Commissioner of Internal Revenue, supra). Indeed, the due process requirement in the instant petition has been satisfactorily met.' (Emphasis Provided)

Assessment is still partially valid

25) The petitioner alleged that the assessment against it is void, however, the petitioner assails only a part of the assessment for violation of due process, particularly, the income tax part of the assessment. Thus, for the sake of argument without admitting that the petitioner is correct, the other part of the assessment not assailed must still subsist, considered valid, and presumed correct.

26) In the case of Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, G.R. No. 215534, April 18, 2016, the Honorable Supreme Court ruled that **the invalidity of one does not necessarily result to the invalidity of the other unless the law or regulations otherwise provides. The**

nullification of the FDDA does not extend to the nullification of the entire assessment. An FDDA that does not inform the taxpayers in writing of the facts and law on which it is based renders the decision void. It is as if there was no decision rendered. It is tantamount to a denial by inaction, which may still be appealed before the CTA and the assessment evaluated on the bases of the available evidence and documents. The merits of the EWT and FBT assessment should have been discussed and not merely brushed aside on account of the void FDDA. To recapitulate, a 'decision' differs from an 'assessment' and failure of the FDDA to state the facts and the law on which it is based renders the decision void – but not necessarily the assessment. The case was remanded to the CTA for the assessment on EWT and FBT.

3 Year Period Prescription Not Applicable

27) The running of the three-year statute of limitation as provided under Section 203 of the 1997 NIRC is not applicable in this case but rather the 10 year prescriptive period pursuant to Section 222(a) of the NIRC which states that:

> 'SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.
>
> (a) In the case of a **false or fraudulent return** with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within **(10) years after the discovery of the falsity, fraud or omission**: Provided, That in fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.' (Emphasis supplied) ge

28) Under 1997 Tax Code provides that under declaration of sales, receipts or income in an amount exceeding 30 percent of that declared per return, and overstatement of the deductions claimed by an amount exceeding 30 percent shall be construed as substantial, thus, creating a prima facie case of a false or fraudulent return.

29) The petitioner's payments per VAT returns shows PHP 1,625,073.58. On the other hand, petitioner is being assessed for VAT deficiency amounting to PHP 1,627,073.52. In this case, there is an under declaration tantamount to prima facie case of a false or fraudulent return. Thus, the petitioner can still be assessed within 10 years from the time of filing of the petitioner's VAT returns.

Assessments are presumed correct and valid

30) The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right (Tan Guan vs. Court of Tax Appeals, et al., 19 SCRA 903 [1967] Collector of Internal Revenue vs. Bohol Land Transportation Co., 107 Phil 967 [1960])

31) Assessments are presumed correct and official functions are regularly done. The burden of proving that the assessments are not correct rests on the petitioner. All presumptions are in favour of the correctness of tax assessments (Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290)."

On November 21, 2017, respondent forwarded the *BIR Records* for the instant case.[16]

The Pre-Trial Conference was set and held on March 1, 2018.[17]

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[16] Docket, p. 91.

[17] *Notice of Pre-Trial Conference* dated November 23, 2017, Docket, pp. 93 to 94; Order dated March 1, 2018, Docket, pp. 118 to 121.

The *Respondent's Pre-Trial Brief* was filed via licensed private courier on February 27, 2018,[18] while *Pre-Trial Brief for the Petitioner SCICINDUSTRIAL CORP.* was filed via registered mail on February 26, 2018.[19]

On March 16, 2018, the parties filed their *Joint Stipulation of Facts & Issues*,[20] which was approved by this Court in the Resolution dated April 30, 2018,[21] thereby terminating the Pre-Trial stage. Thereafter, the Pre-Trial Order dated May 17, 2018 was issued.[22]

Trial ensued.

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimony of Mr. Christian Dale C. Cong, its Corporate Treasurer and General Manager, as its sole witness.[23]

On July 13, 2018, petitioner filed a *Formal Offer of Evidence for Petitioner SCICINDUSTRIAL CORP.*;[24] while respondent's *Comment (To Petitioner's Formal Offer of Evidence)* was filed on July 13, 2018.[25] Subsequently, petitioner filed on September 17, 2018 a *Motion to Render Judgment on the Basis of Petitioner's Evidence*.[26]

In the Resolution dated October 8, 2018,[27] this Court admitted all of petitioner's Exhibits; and denied petitioner's *Motion to Render Judgment on the Basis of Petitioner's Evidence* for lack of merit.

In the meantime, the present case was transferred to the Second Division of this Court.[28]

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[18] Docket, pp. 100 to 105.
[19] Docket, pp. 124 to 132.
[20] Docket, pp. 201 to 206.
[21] Docket, pp. 224.
[22] Docket, pp. 227 to 234.
[23] Exhibit "P-14", Docket, pp. 244 to 254; Order dated June 28, 2018, Docket, pp. 255 to 256.
[24] Docket, pp. 257 to 261.
[25] Docket, pp. 320 to 321.
[26] Captioned as *Comment/Opposition to the Motion to Set Another Commissioner's Hearing for the Respondent (dated August 29, 2018) with Motion to Render Judgment on the Basis of Petitioner's Evidence*, Docket, pp. 333 to 339.
[27] Docket, pp. 342 to 347.
[28] Order dated September 24, 2018, Docket, p. 340.

Respondent likewise presented its documentary and testimonial evidence. It offered as its sole witness, RO Danilo Y. Elardo, of RDO No. 052 – Parañaque.[29]

Respondent's Formal Offer of Evidence was filed via registered mail on May 6, 2019.[30] Petitioner failed to file its comment thereon.[31] Thus, in the Resolution dated June 28, 2019,[32] this Court admitted respondent's exhibits, except for Exhibit "R-15", for failure to present the original for comparison. Upon motion for reconsideration of respondent's counsel, however, Exhibit "R-15" was admitted, at the hearing held on July 3, 2019.[33]

The *Memorandum for Respondent* was filed via registered mail on August 2, 2019.[34] Petitioner, however, failed to file its memorandum.[35]

In the Resolution dated September 3, 2019,[36] the present case was considered submitted for decision.

THE ISSUE

The sole issue submitted by the parties for this Court's resolution is as follows:

> "Whether or not the *Formal Assessment Notice* dated 23 January 2017 under *Assessment Nos. IT-ELA78214-13-170396* and *VT-ELA78214-13-17-396* is void".[37] *gr*

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[29] Exhibit "R-8", Docket, pp. 163 to 179; Minutes of the hearing held on, and Order dated, November 19, 2018, Docket, pp. 351 to 352; Minutes of the hearing held on, and Order dated, January 21, 2019, Docket, pp. 357 to 358; Exhibit "R-14", Docket, pp. 378 to 384; Minutes of the hearing held on, and Order dated, March 18, 2019, Docket, pp. 391 to 392; Exhibit "R-16 and "R-16-a", Docket, pp. 397 to 400; Minutes of the hearing held on, and Order dated, April 29, 2019, Docket, pp. 403 to 404.
[30] Docket, pp. 406 to 414.
[31] Records Verification dated May 22, 2019 issued by the Judicial Records Division of this Court, Docket, p. 416.
[32] Docket, pp. 425 to 426 and pp. 421 to 422, respectively.
[33] Order dated July 3, 2019, Docket, pp. 425 to 426.
[34] Docket, pp. 427 to 436.
[35] Records Verification dated August 22, 2019 issued by the Judicial Records Division of this Court, Docket, p. 438.
[36] Docket, p. 439.
[37] Stipulation of the Issues, JSFI, Docket – Vol. 1, p. 203.

Petitioner's arguments:

Petitioner argues that the *Protest* dated February 23, 2017 was timely filed; and that the FAN dated January 27, 2017 is void.

Respondent's counter-arguments:

Respondent counter-argues that petitioner's *Protest* dated February 23, 2017 does not comply with the requirements of Revenue Regulations (RR) No. 18-2013, hence, the said *Protest* is void and without force and effect; that contrary to petitioner's allegation, petitioner was duly apprised of the factual and legal basis of the assessment; that the assessment is still partially valid; that petitioner failed to comply with Section 34(A)(1)(B) of the National Internal Revenue Code NIRC of 1997, as amended (1997 NIRC); that the three-year period of prescription is not applicable; and that the assessments are presumed correct and valid.

THE COURT'S RULING

After thorough evaluation of the case records, this Court finds that the present Petition for Review should be denied on the ground that the deficiency assessments upon which the present case is anchored on are intrinsically void. The invalidity of the deficiency assessments is due to the absence of authority on the part of the revenue officer who conducted the examination of defendant's books of accounts and other accounting records.

While the lack of authority of the revenue officer to conduct the audit was not specifically raised as an issue, this Court is not precluded from considering the same given that a void assessment bears no fruit.[38]

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[39] the Supreme Court also emphatically ruled that the Court of

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[38] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006, 516 Phil. 176, 189-190; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633; *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014, 743 SCRA 113; *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014, 744 SCRA 459; *Commissioner of Internal Revenue v. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016, 808 SCRA 422.
[39] G.R. No. 183408, July 12, 2017.

Tax Appeals can resolve an issue which was not raised by the parties. The Supreme Court said:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> **Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:
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> > SECTION 1. *Rendition of judgment.* — x x x
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. **On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda.** The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." *(Emphasis supplied and citation omitted)*

One of the powers granted to the Commissioner of Internal Revenue (CIR) under the 1997 NIRC is the power to make assessment of any deficiency tax. Section 6(A) of the 1997 NIRC is explicit on the matter, to wit:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* — ɣc

> (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, notwithstanding any law requiring the prior authorization of any government agency or instrumentality**: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. x x x" *(Emphasis supplied)*

In the exercise of his assessment powers, the CIR is also empowered to conduct by himself the examination of any taxpayer, or he may authorize other tax officers to conduct such examination. Section 6(A) of the 1997 NIRC likewise vested the CIR's duly authorized representatives the power to authorize the examination of any taxpayer for the purpose of collecting the correct amount of tax. The term "duly authorized representative" under Section 6(A) of the 1997 NIRC which may authorize examination of taxpayers refers to a Revenue Regional Director, in accordance with Sections 10 and 13 of the 1997 NIRC. The term likewise refers to other tax officials with the rank equivalent to a division chief or higher, pursuant to the CIR's authority to delegate powers vested in him under Section 7 of the 1997 NIRC. Notably, the issuance of LOAs for the examination of taxpayers is not one of those enumerated powers which the CIR cannot delegate. Section 7 of the 1997 NIRC reads as follows:

> "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:
>
> (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
>
> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept." *(Emphasis supplied)*

Section 10 of the 1997 NIRC, in enumerating the powers of a Revenue Regional Director include, among others, the power to issue letters of authority for the examination of taxpayers within the region under his/her jurisdiction. The said provision, in part, reads:

> "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**:
>
> x x x x x x x x x

gc

> **(c) Issue Letters of Authority for the examination of taxpayers within the region;**
>
> x x x x x x x x x
>
> (h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner." *(Emphasis supplied)*

On the other hand, Section 13 of the 1997 NIRC, in defining the authority of a revenue officer to conduct the examination of taxpayers for purposes of an assessment, provides as follows:

> "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." *(Emphasis supplied)*

In relation to the foregoing provisions, Revenue Memorandum Order (RMO) No. 43-90 issued by the CIR identifies those officials who are authorized to issue and sign LOA. It may be noted that a Revenue District Officer is not included as one of the authorized officials therein. The relevant portion of the said issuance reads:

> "D. Preparation and issuance of L/As.
>
> x x x x x x x x x
>
> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner**. For the

> exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority <u>but only upon prior authorization by the Commissioner himself</u>**." *(Emphasis and underscoring supplied)*

To reiterate, it is only the CIR or his duly authorized representatives who can authorize the audit examination of taxpayers for purposes of assessment of any deficiency taxes. Stated differently, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.[40]

Considering that only the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, it is only them who can effect any modification or amendment to a previously-issued LOA, should the need therefor arises.

In the present case, the authority to conduct an examination and assessment of petitioner's books of accounts emanated from LOA No. LOA-052-2014-00000230 dated July 10, 2014 issued by Regional Director Jonas DP Amora of Revenue Region 8 –Makati City. The said LOA authorized RO Filipina Ocampo and GS Manuel Baltazar, to examine petitioner's books of accounts for all internal revenue taxes covering the period from January 1, 2013 to December 31, 2013.[41]

However, a cursory perusal of the *Revenue Officer's Audit Report on Value-Added Tax* (BIR Form No. 0507)[42] and *Revenue Officer's Audit Report on Income Tax* (BIR Form No. 0500)[43], which indicate petitioner's alleged tax deficiencies, reveals that they were submitted by respondent's lone witness, RO Danilo Y. Elardo (RO Elardo, [44] and reviewed by GS Ma. Christina S. Carsolin (GS Carsolin).[45] The said audit investigation then led to an undated *Memorandum Report* addressed to the Regional Director of Revenue Region 8 –Makati City from the same BIR personnel,[46] recommending the issuance of a PAN. *ge*

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[40] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[41] Exhibit "R-16", BIR Records, p. 1.
[42] Exhibit "R-2", BIR Records, p. 232.
[43] Exhibit "R-3", BIR Records, p. 233.
[44] Exhibits "R-2-a" and "R-3-a", BIR Records, p. 232, 233.
[45] Exhibits "R-2-c" and "R-3-c", BIR Records, p. 232, 233
[46] Exhibit "R-1" to "R-1-b", BIR Records, p. 234.

This fact was confirmed by RO Elardo himself, when he was presented to this Court to testify on direct examination by way of judicial affidavit,[47] as to how he came to know of petitioner, thus:

> "6. Q: How did you come to know the petitioner in this case?
>
> A: I came to know the petitioner in this case when Revenue District Officer Christina Barroga issued Memorandum of Assignment No. 052-1891-2016-REASSIGNMENT dated May 2, 2016, authorizing me to determine the tax liability of the subject taxpayer, if any, for a particular period involved. Likewise, I am required to submit a written report on my findings, with corresponding recommendations thereon.
>
> 7. Q: What did you do when the case was assigned to you?
>
> A: I immediately collated and examined all the documents and accounting records of the petitioner and I prepared a report based on the documents and accounting records of the petitioner.
>
> 8. Q: What happened next after Revenue District Officer Christina Barroga issued the Memorandum of Assignment No. 052-1891-2016-REASSIGNMENT dated May 2, 2016?
>
> A: A Memorandum Report and Supporting Report were submitted to the Regional Director, showing the legal and factual basis on how and why the assessed deficiency taxes of petitioner for taxable year 2013 were arrived at by the BIR and recommending the issuance of Preliminary Assessment Notice to petitioner containing the deficiency tax assessment as well as the details of discrepancies.

[47] Exhibits "R-8" and "R-8-a" (*Judicial Affidavit of Danilo Y. Elardo*, dated March 8, 2018), Docket, pp. 163 to 179.

xxx xxx xxx

16. Q: You mentioned Supporting Report, what are these Supporting Report?

A: Among others, these are BIR Form No. 0500 Revenue Officer's Audit Report on Income Tax and BIR Form No. 0507 Revenue Officer's Audit Report on Value-Added Tax showing the computation of tax deficiency of the petitioner based on the financial statements and accounting records submitted by the petitioner."[48]

Furthermore, during his cross-examination, RO Elardo was questioned by petitioner's counsel, Atty. Benzon Judd C. Cong, about his authority to conduct petitioner's audit assessment, to wit:

"ATTY. CONG:
The review of the petitioner's audit was transferred to you from Filipina Ocampo, is this accurate?

WITNESS:
Usually, it was a reassignment as I've said a while ago. It was reassignment due to a reshuffling or reassignment of revenue officer to another district officer. Then I never meet this Filipina Ocampo, but it is the administrative officer who turned over to me the documents.

ATTY. CONG:
So you never meet Filipina Ocampo. If there is reassignment of audit, wouldn't it be accurate that there must be a separate Letter of Authority (LOA)?

xxx xxx xxx

ATTY. CONG:
xxx

[48] *Id.*, Docket, pp. 167 to 168.

Were you issued a Letter of Authority (LOA) in so far to review the documents when this matter was reassigned to you?

WITNESS:
Yes, sir.

xxx xxx xxx

JUSTICE CASTAÑEDA:
Where is the Letter of Authority (LOA)?

WITNESS:
Reassignment only, Your Honors. Memorandum of agreement, but the whole documents were transmitted to the legal division. Maybe we could have another schedule and we will check the documents in the docket. But it is a normal procedure that we, the examiner, cannot examine without that authority.

xxx xxx xxx

ATTY. ALFELOR:
In that case, Your Honors, we will submit a proof whether or not there is Letter of Authority (LOA) in this case, Your Honors."[49]

The case was reset on April 29, 2019 for the continuation of RO Elardo's cross-examination, thus:

"ATTY. CONG:
Mr. Witness, during the last proceedings/settings for cross examination, you were asked about the Letter of Authority (LOA) issued to you by the Regional Director of which you stated that you were issued one, and that you sought time to look for a copy of the Letter of Authority (LOA). Is that accurate?

WITNESS:
I was reassigned to this case... (interrupted)

[49] *Transcript of Stenographic Notes* (TSN) at the hearing held on March 18, 2019, pp. 24 to 27.

xxx xxx xxx

JUSTICE CASTAÑEDA:
Let us go directly. Is the authority that you are mentioning is the one attached to your Judicial Affidavit which is a Memorandum of Assignment?

WITNESS:
Yes, Your Honors.

xxx xxx xxx

ATTY. CONG:
This memorandum of assignment dated May 2, 2016. This was issued by who?

WITNESS:
By the Revenue District Officer.

ATTY. CONG:
The memorandum of assignment was issued by the Revenue District Officer. I am holding a copy of memorandum of assignment, there appears to be a signature above the name of the revenue district officer named Ms. Christina C. Barroga. Do you recognize this signature?

WITNESS:
Yes, sir.

ATTY. CONG:
Is this the signature of Ms. Christina C. Barroga?

WITNESS:
Yes."[50]

In other words, the revenue officers named in the LOA were different from those who actually examined petitioner's books of accounts and other accounting records for taxable year 2013. From the testimony of RO Elardo, his authority to continue petitioner's audit was based only on the *Memorandum of Assignment* No. 052- ge

[50] TSN at the hearing held on April 29, 2019, pp. 6 to 8.

1891-2016-REASSIGNMENT dated May 2, 2016 issued and signed by Revenue District Officer (RDO) Christina C. Barroga.[51]

In light of the foregoing discussion, this Court holds that the *Memorandum of Assignment* issued by RDO Barroga cannot validly grant RO Elardo and GS Carsolin the authority to conduct the audit examination pursuant to LOA-052-2014-00000230 dated July 10, 2014. As a Revenue District Officer, Ms. Barroga does not have any power to authorize audit examination of taxpayers or to effect any modification or amendment to a previously-issued LOA because, as mentioned earlier, only the CIR or his duly authorized representatives are granted such power. While it is true that under Section 11 of the 1997 NIRC,[52] a Revenue District Officer has the duty "to ensure that all laws, and rules and regulations affecting national internal revenue are faithfully executed and complied with", it does not follow that it may exercise functions which the law has expressly granted to other tax officials such as the CIR and the Revenue Regional Director.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[53] the Supreme Court held that absent any prior authority on the part of the revenue officers who conducted the audit examination of taxpayer's books of accounts and other accounting records, the deficiency tax assessment arising therefrom is a nullity.

In view of the invalidity of the subject deficiency assessments, there is no need to discuss the other issues raised by the parties.

WHEREFORE, the *Petition for Review* is **GRANTED**. Accordingly, the Formal Assessment Notice (FAN) dated January 23, 2017 under *Assessment Notice Nos. IT-ELA78214-13-17-396* and *VT-* ℊ

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[51] Exhibit "R-15", Docket, p. 401 (photocopy in the Docket marked as Exhibit "R-14").

[52] Section 11 of the 1997 NIRC states:

> "SEC. 11. *Duties of Revenue District Officers and Other Internal Revenue Officers.* — It shall be the duty of every Revenue District Officer or other internal revenue officers and employees to ensure that all laws, and rules and regulations affecting national internal revenue are faithfully executed and complied with, and to aid in the prevention, detection and punishment of frauds or delinquencies in connection therewith.
>
> It shall be the duty of every Revenue District Officer to examine the efficiency of all officers and employees of the Bureau of Internal Revenue under his supervision, and to report in writing to the Commissioner, through the Regional Director, any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal revenue officer of which he may obtain knowledge, with a statement of all the facts and any evidence sustaining each case."

[53] G.R. No. 178697, November 17, 2010, 649 Phil. 519.

ELA78214-13-17-396 issued against petitioner for taxable year 2013 is **CANCELLED** and **SET ASIDE**, for being void.

SO ORDERED.

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

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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.

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

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