REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DIZON COUNTRY FRESH INC., *Petitioner,*	**CTA CASE NO. 10643**
	Members:
-versus-	**RINGPIS-LIBAN, UY,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 0 7 2024

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DECISION

RINGPIS-LIBAN, *J.*:

THE CASE

The *Petition for Review* prays that the alleged income tax and value-added tax (VAT) deficiencies for taxable year 2007, in the aggregate amount of ₱4,300,857.95 be cancelled and withdrawn.[1]

THE PARTIES

Petitioner Dizon Country Fresh, Inc. is a corporation duly registered with the Securities and Exchange Commission,[2] with office address located at 65A DBP Avenue, corner Apahap Road, FTI, Complex Taguig City.[3] It is registered with the Bureau of Internal Revenue (BIR), with Taxpayer Identification Number (TIN) 229-516-643-000.[4] It is engaged in the business of "processing and preserving fruits and vegetables and other imported products whether raw, cooked, processed, natural, synthetic or otherwise"; "engaging in and carrying

[1] Statement of the Case, Pre-Trial Order dated February 2, 2023, Docket, p. 155.
[2] Exhibit "P-2", Docket, pp. 176 to 186.
[3] Par. 1, *Petition for Review*, vis-à-vis par. 2, *Answer*, Docket, pp. 5 and 85, respectively.
[4] Exhibit "P-1", Docket, p. 175.

out business of producing fruit juices and concentrates, salad dressings/sauces/condiments and ready to cook foodstuffs"; acting "as agents or representative of persons, partnerships and corporations" and engaging "in business of commission agents or representative in connection with the import, export and sale of food products as wholesale and retail; engaging in the manufacture, preparation, stocking, packing, buying, selling, importing and exporting, dealing in, and delivering any fruit and vegetable related products and foodstuff, and whatsoever materials maybe necessary or incidental to their manufacture and preparation.[5]

Respondent is the duly appointed Commissioner of Internal Revenue, vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code of 1997 (NIRC) and other tax laws, rules and regulations. He may be served with summons, pleadings and other Court processes through the Legal Division, BIR Revenue Region No. 8B South NCR, 2nd Floor, BIR Regional Office Building, No. 313 Sen. Gil. Puyat Avenue, Makati City.[6]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

Respondent issued the *Preliminary Assessment Notice* dated December 1, 2010,[7] finding petitioner liable for deficiency income tax and VAT for taxable year 2007.

On December 22, 2010, respondent issued the *Formal Assessment Notice* (FAN), with *Details of Discrepancies* and *Assessment Notices* (Nos. IT-TVN47509-07-10-0730 and VT-TVN47509-07-10-0730), representing alleged deficiency income tax amounting to ₱1,932,504.75, and VAT amounting to ₱2,368,353.20, inclusive of surcharge and interests, for taxable year 2007, which was received by petitioner on December 28, 2010,[8] as follows:

Tax Type	Basic Tax Due	50% Surcharge	20% Interest	Total
Income tax	₱ 1,240,964.52	₱ -	₱ 691,540.23	₱ 1,932,504.75
VAT	1,126,905.12	563,452.56	677,995.52	2,368,353.20
Total	₱ 2,367,869.64	₱ 563,452.56	₱ 1,369,535.75	**₱ 4,300,857.95**

On January 5, 2011, petitioner filed its protest letter against the FAN.[9]

[5] *Articles of Incorporation*, Exhibit 2, Docket, p. 181.
[6] Par. 2, *Petition for Review*, vis-à-vis par. 3, *Answer*, Docket, pp. 5 and 85, respectively.
[7] Exhibit "P-7", Docket, pp. 223 to 226.
[8] Par. 3, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket, pp. 5 to 6, and 85, respectively; Exhibits "P-9", "P-10" and "P-10-1", Docket, pp. 232 to 235, 231 and 241, respectively.
[9] Par. 4, *Petition for Review*, vis-à-vis par. 4, *Answer*, Docket, pp. 6 and 86, respectively; Exhibit "P-11", Docket, pp. 243 to 252.

On October 8, 2021, petitioner received the *Final Demand Before Suit* (FDBS) dated September 30, 2021 issued by the Legal Division of Revenue Region No 8B – South NCR,[10] stating, among others, that "the BIR found that your letter protest against to [*sic*] AN/FAN is bereft of factual and legal basis" and that "**prior to the institution of appropriate criminal action** under the **RUN AFTER TAX EVADERS (RATE)** Program of the BIR, this Office hereby gives you a **LAST[]FINAL OPPORTUNITY** to settle/pay the aforesaid deficiency tax liabilities, ***on or before October 20, 2021***. Otherwise, much to our regret, we will **immediately file a criminal complaint** against you as responsible officers of the subject corporation, for violation of **Sections 254 and 255 of the NIRC**, in relation to **Section 253(d)** of the same Code, as amended, **without further notice**."[11]

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the present *Petition for Review* on October 27, 2021.[12] The case was initially raffled to this Court's Third Division.

On May 2, 2022, respondent posted his *Answer (With Special and Affirmative Defenses) (With Attached Motion for Additional Time to File Judicial Affidavit)*,[13] interposing the following special and affirmative defenses, to wit: (1) the BIR's right to collect on the subject assessment has not yet prescribed since the collection of tax is suspended, pursuant to Section 3.1.5 of Revenue Regulations (RR) No. 12-99; (2) there is no violation of due process as petitioner was properly informed of the assessment and was given the opportunity to be heard; in fact, petitioner filed numerous protest letters which it labels as *"Legal Notice"*, *"Legal Petition Notice"*, and *"Legal Manifestation Notice"* against the FAN; (3) the FAN dated December 22, 2010 clearly stated and fixed the deficiency tax liability; however, the amount of interest changes as it should be computed from the date prescribed for payment until the amount is fully paid pursuant to Section 249 of the NIRC, as amended; and (4) contrary to the claim of petitioner, the Tax Verification Notice (TVN) issued against petitioner, for taxable year 2007, is clearly in accordance with Revenue Memorandum Order (RMO) No. 20-2008.

Respondent transmitted the *BIR Records* of the present case on May 11, 2022, consisting of 348 pages in one (1) folder.[14]

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[10] Par. 5, *Petition for Review*, vis-à-vis par. 5, *Answer*, Docket, pp. 6 and 86, respectively.
[11] Exhibit "P-13", Docket, pp. 266 to 267.
[12] Docket, pp. 5 to 18.
[13] Docket, pp. 85 to 96.
[14] *Compliance (BIR Records)*, Docket, pp. 79 to 80.

In the Resolution dated May 20, 2022,[15] the parties were ordered to immediately proceed and to personally appear, or through their authorized representative, before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) on June 28, 2022. However, the PMC-CTA issued the *No Agreement To Mediate* dated June 28, 2022,[16] stating that the parties decided not to have their case mediated. Thus, the Pre-Trial Conference was set and held on September 29, 2022,[17] wherein respondent's counsel manifested that respondent will no longer present any witness.

Prior thereto, *Petitioner's Pre-Trial Brief* was filed on September 13, 2022,[18] while *Respondent's Pre-Trial Brief* was submitted on September 27, 2022.[19]

Having failed to file their *Joint Stipulation of Facts and Issues*,[20] the Court deemed the parties to have waived the filing thereof, in the Resolution dated January 6, 2023.[21] The Pre-Trial Order dated February 2, 2023 was subsequently issued.[22]

As trial ensued, petitioner presented its documentary and testimonial evidence. It offered the testimony of Ms. Rosalie Tanguanco,[23] petitioner's authorized representative for tax and financial matters.

Petitioner filed its *Formal Offer of Evidence* on February 27, 2023,[24] to which respondent posted his *Comment/ Opposition (To Petitioner's Formal Offer of Evidence dated February 21, 2023)* on March 20, 2023.[25] In the Resolution dated May 11, 2023,[26] the Court admitted all of petitioner's offered exhibits.

The *Memorandum (For the Petitioner)* was filed on June 5, 2023,[27] while the *Memorandum (For Respondent CIR)* was posted on June 19, 2023.[28]

In the meantime, in the Resolution dated June 7, 2023,[29] the present case was transferred to the Second Division of this Court.

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[15] Docket, pp. 102 to 103.
[16] Docket, p. 104.
[17] Resolution dated July 7, 2022, Docket, pp. 106 to 107; Minutes of hearing held on, and Order dated, September 29, 2022, Docket, pp. 125, and to 135 to 136, respectively.
[18] Docket, pp. 108 to 112.
[19] Docket, pp. 114 to 120.
[20] Records Verification dated December 7, 2022 issued by the Judicial Records Division of this Court, Docket, p. 149.
[21] Docket, pp. 152 to 153.
[22] Docket, pp. 155 to 161.
[23] Exhibit "P-15", Docket, pp. 140 to 146; Minutes of hearing held on, and Order dated February 7, 2023, Docket, pp. 163, and 166 to 167, respectively.
[24] Docket, pp. 170 to 174.
[25] Docket, pp. 270 to 273.
[26] Docket, pp. 276 to 277.
[27] Docket, pp. 278 to 292.
[28] Docket, pp. 293 to 302.
[29] Notice, Docket [in between pp. 292 and 293].

The present case was submitted for decision on July 10, 2023.[30]

THE STIPULATED ISSUE

As agreed upon during the Pre-Trial Conference, the sole issue for the Court's resolution is as follows:

> "Whether or not petitioner is liable to pay its deficiency income tax and value-added tax for taxable year 2007 in the total amount of PhP4,300,857.95, inclusive of surcharge and interest."[31]

Petitioner's arguments:

Petitioner argues that this Court has jurisdiction over the present case; that the BIR's right to collect on the subject assessment has prescribed; that the FAN dated December 22, 2010 did not set and fix the tax liability, which is still subject to modification or adjustment; that the present assessment for VAT is already barred by prescription; and that the absence of a validly issued *Letter of Authority* (LOA) to conduct the audit renders the present assessment void.

Respondent's arguments:

Respondent contends that the BIR's right to collect on the subject assessment has not yet prescribed since the collection of tax is suspended, pursuant to Section 3.1.5 of RR No. 12-99; that there is no violation of due process as petitioner was properly informed of the assessment and was given the opportunity to be heard; and in fact, petitioner filed numerous protest letters which it labels as *"Legal Notice"*, *"Legal Petition Notice"*, and *"Legal Manifestation Notice"* against the FAN; that the FAN dated December 22, 2010 clearly stated and fixed the deficiency tax liability; however, the amount of interest changes as it should be computed from the date prescribed for payment until the amount is fully paid pursuant to Section 249 of the NIRC, as amended; and that contrary to the claim of petitioner, the TVN issued against petitioner, for taxable year 2007, is clearly in accordance with RMO No. 20-2008.

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[30] Resolution dated July 10, 2023, Docket, p. 305.

[31] Stipulated Issue, *Pre-Trial Order* dated February 2, 2023, Docket, p. 157. Refer also to the Minutes of hearing held on, and Order dated, September 29, 2022, Docket, pp. 125, and to 135 to 136, respectively.

THE COURT'S RULING

The present *Petition for Review* is meritorious.

The Court has jurisdiction over the case and the Petition for Review was timely filed.

Section 7(a)(1) of Republic Act (RA) No. 1125,[32] as amended by RA No. 9282,[33] provides as follows:

> "SECTION 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 **<u>other matters</u> arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**;" *(Emphases and underscoring added)*

Indeed, the exclusive appellate jurisdiction of this Court is *not* limited to cases involving decisions of respondent on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR. The wording of the provision is clear and simple,[34] this Court has exclusive appellate jurisdiction over decisions of respondent involving other matters arising out of the NIRC.

Be that as it may, the party adversely affected by a decision of respondent must still observe the thirty (30)-day period to file the appeal before this Court, pursuant to Section 11 (first paragraph) of RA No. 1125, as amended by RA No. 9282, which provides as follows:

> "SECTION 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling** or inaction **of the Commissioner of Internal Revenue** xxx **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after

[32] AN ACT CREATING THE COURT OF TAX APPEALS.
[33] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.
[34] *Philippine Journalist, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 162852, December 16, 2004.

> the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein." (*Emphases added*)

In this case, what is being appealed to this Court is the FDBS dated September 30, 2021, informing petitioner of its last/final opportunity to settle/pay its supposed deficiency tax liabilities.[35] Petitioner is assailing the power and duty of the BIR, to which respondent is the chief,[36] to collect national internal revenue taxes, granted in Sections 2[37] and 205[38] of the NIRC. Thus, the FDBS is a matter which arose under said law. As such, this Court has jurisdiction to entertain the present *Petition for Review*. Correspondingly, this Court may look into the validity of the same FDBS issued by the BIR against petitioner, and in case it finds the same as unfounded or invalid, it may cancel the same.

Considering that the *Petition for Review* was filed before this Court on October 27, 2021,[39] or within thirty (30) days from receipt of the said FDBS on October 8, 2021, the same was timely made, pursuant to Section 11 of RA No. 1125, as amended by RA No. 9282.

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[35] Exhibit "P-13", Docket, pp. 266 to 267.

[36] Section 3 of the NIRC of 1997 reads:
"SEC. 3. *Chief Officials of the Bureau of Internal Revenue.* – **The Bureau of Internal Revenue shall have a chief to be known as Commissioner of Internal Revenue**, hereinafter referred to as the Commissioner, and four (4) assistant chiefs to be known as Deputy Commissioners." *(Emphasis added)*

[37] Section 2 of the NIRC of 1997 states:
"SEC. 2. *Powers and Duties of the Bureau of Internal Revenue.* – **The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and <u>its powers and duties shall comprehend the</u>** assessment and **<u>collection of all national internal revenue taxes</u>**, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws." *(Emphasis and underscoring added)*

[38] Section 205 of the NIRC of 1997 reads:
"SEC. 205. *Remedies for the Collection of Delinquent Taxes.* – The civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be:

(a) By distrain of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and

(b) By civil or criminal action.

Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes: *Provided, however,* That the remedies of distrain and levy shall not be availed of where the amount of tax involved is not more than One hundred pesos (P100).

xxx xxx xxx."

[39] Docket, pp. 5 to 18.

Even if We were to consider the FDBS as the final decision of respondent on petitioner's protest appealable to this Court, since it stated that "the BIR found that your letter protest against to [*sic*] AN/FAN is bereft of factual and legal basis",[40] still the present *Petition for Review* was timely filed pursuant to Section 228 of the NIRC of 1997, Section 3(a)(2), Rule 4 and Section 3(a), Rule 8 of the Revised Rules of Court of Tax Appeals, to wit:

> "Section 228. *Protesting of Assessment.* – xxx
>
> xxx xxx xxx
>
> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of 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.**" *(Emphasis and underscoring added)*
>
> **"RULE 4**
> **JURISDICTION OF THE COURT**
>
> xxx xxx xxx
>
> SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> xxx xxx xxx
>
> (2) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that **should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules**; xxx." *(Emphasis and underscoring added)*
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> **"RULE 8**
> **PROCEDURE IN CIVL CASES**

[40] Exhibit "P-13", Docket, pp. 266 to 267.

xxx xxx xxx

SEC. 3. *Who may appeal; period to file petition.* –

(a) **A party adversely affected by a decision, ruling** or the inaction **of the Commissioner of Internal Revenue on disputed assessments** or claims for refund of internal revenue taxes, xxx **may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. xxx." *(Emphases and underscoring added)*

Moreover, it must be pointed out that this Court is not unaware of the case where the Supreme Court considered a collection letter having the character of finality, such as the subject FDBS dated September 30, 2021,[41] which may already be considered as respondent's final decision that is appealable to this Court. Particularly, the case referred to is *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., et seq.* (*Avon* case),[42] wherein the High Court ruled as follows:

"In this case, Avon opted to wait for the final decision of the Commissioner on its protest filed on May 9, 2003.

This Court holds that the **Collection Letter** dated July 9, 2004 constitutes the final decision of the Commissioner that is appealable to the Court of Tax Appeals. The **Collection Letter** dated July 9, 2004 demanded from Avon the payment of the deficiency tax assessments with a warning that should it fail to do so within the required period, summary administrative remedies would be instituted without further notice. The **Collection Letter** was purportedly based on the May 27, 2004 Memorandum of the Revenue Officers stating that Avon 'failed to submit supporting documents within 60-day period.' This **Collection Letter** demonstrated a character of finality such that there can be no doubt that the Commissioner had already made a conclusion to deny Avon's request and she had the clear resolve to collect the subject taxes.

Avon received the **Collection Letter** dated July 14, 2004. Hence, Avon's appeal to the Court of Tax Appeals filed on August 13, 2004 was not time-barred.

In any case, even if this Court were to disregard the Collection Letter as a final decision of the Commissioner on Avon's protest, the Collection Letter constitutes an act of the Commissioner on 'other matters' arising under the National Internal Revenue Code, which, pursuant to *Philippine Journalists, Inc. vs. CIR*,[43] may be the subject of an appropriate appeal before the Court of Tax Appeals." *(Emphasis added)*

Based on the foregoing jurisprudential pronouncements, it is clear that a collection letter, having the character of finality, may be treated as respondent's final decision, which, in turn, may already be appealed to this Court. However,

[41] Exhibit "P-13", Docket, pp. 266 to 267.
[42] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[43] 488 Phil. 218 (2004) [Per J. Ynares-Santiago, First Division]; G.R. 162852, December 16, 2004.

it is likewise clear that such collection letter may fall under the category of "other matters" pursuant to the case of *Philippine Journalists, Inc. vs. CIR.* Hence, in any case, there is no doubt that the Court has jurisdiction over the case and that the *petition* was timely filed.

In the absence of an LOA, the assessment is void.

Petitioner states that the absence of a validly issued LOA, which authorizes the revenue examiners to conduct the audit renders the present assessment void. However, respondent counters that the TVN issued against petitioner is clearly in accordance with RMO No. 20-2008.[44]

We agree with petitioner.

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 records of a taxpayer for the purpose of collecting the correct amount of tax.[45] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[46]

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 respondent himself or his duly authorized representatives.[47] This is provided in Sections 6(A) and 13 of the NIRC of 1997:

> "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." *(Emphasis added)*

[44] SUBJECT: Prescribing the Guidelines for the Preliminary Analysis and Audit/Verification of 2007 Internal Revenue Tax Returns and the Corresponding Tax Payments for Taxpayers under the Large Taxpayers Service and Revenue Regions/Revenue District Offices

[45] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[46] *Commissioner of Internal Revenue vs. De La Salle University, Inc., et seq.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.
[47] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

"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, <u>pursuant to a Letter of Authority</u> 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 and underscoring added)*

Based on the foregoing provisions, it is clear that unless authorized by respondent himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.[48] There must be a grant of authority before any revenue officer can conduct an examination or assessment.[49] It must be ensured 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.[50]

In *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*,[51] 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 <u>evidenced by the LOA</u>, 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 <u>without a valid LOA</u>, or in excess of the authority duly provided therefor, <u>the resulting assessment shall be void and ineffectual</u>. xxx.

xxx xxx xxx

The LOA commences the audit process and informs the taxpayer that he shall be investigated for possible deficiency tax assessment. xxx.

xxx xxx xxx

In the exercise of the power to assess and collect taxes, the BIR has the commensurate duly to uphold a taxpayer's fundamental right to

[48] *Id.*
[49] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.
[50] Refer to *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.
[51] G.R. No. 222133, November 4, 2020.

> **due process. Thus, <u>its authority must be understood to take effect only after the CIR or his duly authorized representative *issues an LOA* and the designated revenue officer *serves it* upon the intended taxpayer</u>.** That a LOA remains unserved signifies that the tax authorities have to formally apprise the taxpayer and, consequently, have not commenced actual audit." *(Emphasis and underscoring added)*

In *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*,[52] the Supreme Court further ruled that:

> **"Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. 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. There must be a grant of authority, <u>in the form of a LOA</u>, before any revenue officer can conduct any of these kinds of examination or assessment.** The revenue officer so authorized must not go beyond the authority given. **<u>In the absence of such an authority, the assessment or examination is a nullity.</u>"** *(Emphases and underscoring added)*

Lastly, in *Republic of the Philippines vs. Robiegie Corporation*,[53] wherein it was clarified that **the LOA is the statutorily designated means by which respondent delegates its investigative powers to the BIR revenue officers.** The pertinent portions of the case reads:

> "xxx. The Republic's construction of Section 13 of the NIRC to mean that an LOA is not an authorization but a mere notice of investigation to the taxpayer is blatantly contrary to the text of the law. First, the concept of authorization is inherent in the very language of Sections 6(A) and 13 of the NIRC, which speak of a 'duly authorized representative' and a 'Letter of Authority.' Second, the phrase 'pursuant to' in Section 13 means 'in the course of carrying out, in conformance to or agreement with, [or] according to.' **Thus, an RO may only examine taxpayers, in the course of carrying out, in conformance to or agreement with, or according to, a <u>validly issued LOA</u>. Stated differently, under the NIRC, the investigatory powers of the ROs flow from the <u>LOA</u>, which is the <u>statutorily designated means</u> by which the CIR delegates its investigative powers to the BIR revenue officers.** *(Emphases and underscoring added)*

In this case, no LOA was offered in evidence to prove the authority of the revenue officer to conduct an audit of the petitioner. Respondent even admitted that only a TVN was issued against petitioner for taxable year 2007.

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[52] G.R. No. 242670, May 10, 2021.
[53] G.R. No. 260261, October 3, 2022.

A TVN is not equivalent to an LOA. A TVN which is nowhere mentioned in the 1997 NIRC, as amended, is not an LOA that vests an authority to revenue officer to conduct tax examination of a taxpayer.[54]

Consequently, since the above-stated assessments were issued without a prior LOA, the same are void. As such, the said assessment bears no valid fruit.[55] Relative thereto, it is a hornbook doctrine that a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act. A right cannot spring in favor of a person from his own void or illegal act.[56]

Even if granted that the assessment is valid, the right of respondent to collect the alleged deficiency taxes had already prescribed.

Sections 203 and 222 of the NIRC of 1997 provide that the respondent's right to collect taxes expires in five (5) years:

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

> **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 ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a 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.

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[54] *Commissioner of Internal Revenue vs. Jinzai Experts, Inc.*, CTA EB No. 2259, February 9, 2022.
[55] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, etseq.*, G.R. Nos. 215534 and 215557, April 18, 2016.
[56] *Team Sual Corporation (formerly Mirant Sual Corporation) vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201225-26, 201132 and 201133, April 18, 2018, citing *Commissioner of Internal Revenue vs. San Roque Power Corporation*, 703 Phil. 311 (2013).

(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. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5) -year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) Provided, however, That nothing in the immediately preceding and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree." (*Underscoring added*)

Moreover, in *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*,[57] the Supreme Court ruled that:

"The Tax Code provides **two types of remedies to enforce the collection of unpaid taxes**, to wit: (a) **summary administrative remedies, such as the distraint and/or levy of taxpayer's property**; and/or (b) **judicial remedies, such as the filing of a criminal or civil action against the erring taxpayer**.

Verily, pursuant to the lifeblood doctrine, the Court has allowed tax authorities ample discretion to avail themselves of the most expeditious way to collect the taxes, **including summary processes**, with as little interference as possible. However, the Court, at the same time, has not hesitated to strike down these processes in cases wherein tax authorities disregarded due process. The BIR's power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of law. **The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure.**

In the normal course of tax administration and enforcement, the BIR must first make an **assessment** then enforce the **collection** of the amounts so assessed. 'An assessment is not an action or proceeding for the collection of taxes. x x x **It is a step preliminary, but essential** to warrant distraint, if still feasible, and, also, to establish a cause for judicial action.' The BIR may summarily enforce collection only when it has accorded the taxpayer **administrative due process**, which vitally includes the issuance of a valid assessment. A valid assessment sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing the taxpayer

[57] G.R. Nos. 197945 and 204119-20, July 9, 2018.

to effectively protest the assessment and adduce supporting evidence in its behalf.

xxx xxx xxx

Unlike summary administrative remedies, **the government's power to enforce the collection through judicial action is not conditioned upon a previous valid assessment.** Sections 318[58] and 319(a)[59] of the 1977 NIRC expressly allowed the institution of court proceedings for collection of taxes without assessment within five years from the filing of the tax return and 10 years from the discovery of falsity, fraud, or omission, respectively.

A judicial action for the collection of a tax is begun: (a) by the filing of a complaint with the court of competent jurisdiction, or (b) where the assessment is appealed to the Court of Tax Appeals, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for." *(Emphases and underscoring added)*

Based on the foregoing, respondent had five (5) years to enforce collection of deficiency taxes thru summary administrative remedies, such as the distraint and/or levy of taxpayer's property; and/or thru judicial remedies, such as the filing of a criminal or civil action against the erring taxpayer.

In this case, the assessments for taxable year 2007 was received by petitioner on December 28, 2010,[60] or within the three (3)-year ordinary prescriptive period to assess. Hence, respondent has another five (5) years to initiate the collection of taxes. Counting another five (5) years reckoned from the said date of receipt of the said assessment, then respondent had until December 28, 2015 to enforce collection of the assessed deficiency taxes. Verily, prescription had already set in when respondent initiated its collection efforts only on September 30, 2021 when respondent issued the FDBS and received by petitioner on October 8, 2021,[61] or more than ten (10) years from the issuance of the FAN.

Moreover, there is no showing that respondent undertook any summary administrative remedies, such as issuing warrants of distraint and/or levy and/or garnishment against petitioner. Neither did respondent institute any judicial action for collection of tax before the lapse of the prescriptive period to collect.

Further, the Court does not agree with respondent's argument that the BIR's right to collect on the subject assessment has not yet prescribed since the

[58] Now Section 203 of the NIRC of 1997, as amended.
[59] Now Section 222(a) of the NIRC of 1997, as amended.
[60] Par. 3, *Petition for Review*, vis-à-vis par. 1, *Answer*, Docket, pp. 5 to 6, and 85, respectively; Exhibits "P-9", "P-10" and "P-10-1", Docket, pp. 232 to 235, 231 and 241, respectively.
[61] Exhibit "P-13", Docket, pp. 266 to 267.

collection of tax is suspended. Respondent cited Section 3.1.5 of RR No. 12-99[62] to support said argument, to wit:

> "3.1.5 *Disputed Assessment.* – The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. **If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. <u>The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.</u>**
>
> xxx xxx xxx" *(Emphasis and underscoring added)*

A careful reading of the above provision reveals that it applies only to instances when there are several issues involved in the formal letter of demand and assessment notice, but the taxpayer only disputes or protests against the validity of some of the issues raised, which is not the case here.

Moreover, Section 223 of the NIRC of 1997 provides for the suspension of the running of the statute of limitations, to wit:

> "SEC. 223. *Suspension of Running of Statute of Limitations.* – **The running of the Statute of Limitations** provided in Sections 203 and 222 **on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency**, shall be **<u>suspended</u> for the period during which the <u>Commissioner is prohibited from making the assessment or beginning the distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected</u>**: *Provided,* That, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; **<u>when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines</u>**." *(Emphases and underscoring added)*

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[62] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

To summarize, the running of the statute of limitations for the collection of deficiency taxes shall be suspended on the following grounds:

a. When the Commissioner is prohibited from making the assessment, or beginning the distraint or levy or proceeding in court and for sixty (60) days thereafter;

b. When the taxpayer requests for a reinvestigation which is granted by the Commissioner;

c. When the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected;

d. When the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and

e. When the taxpayer is out of the Philippines.

However, none of the foregoing grounds for suspension are present in this case. Respondent failed to establish that the period to collect was suspended or interrupted by any of the instances mentioned under Section 223 of the NIRC of 1997.

The law provides for a statute of limitations on the assessment and collection of internal revenue taxes in order to safeguard the interest of the taxpayer against unreasonable investigation. While taxes are the lifeblood of the nation, the Court *cannot* allow tax authorities indefinite periods to assess and/or collect alleged unpaid taxes. Certainly, it is an injustice to leave any taxpayer in perpetual uncertainty whether he will be made liable for deficiency or delinquent taxes.[63]

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the subject deficiency income tax and VAT assessments including the interests and surcharge for taxable year 2007 in the aggregate amount of ₱4,300,857.95 are declared as **INVALID**, and therefore, are **CANCELLED** and **SET ASIDE**.

Moreover, the *Final Demand Before Suit* dated September 30, 2021 issued against petitioner is likewise **CANCELLED** and **SET ASIDE**.

[63] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. Nos. 197945 and 204119-20, July 9, 2018.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Corazon G. Ferrer-Flores

CORAZON G. FERRER-FLORES
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.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
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