REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2450
(CTA Case No. 9756)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo, and
Cui-David, *JJ.*

- versus -

MARILY DEVELOPMENT CORPORATION,
Respondent.

Promulgated:

MAY 31 2022
9:15a.m.

x---x

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *En Banc* is a Petition for Review[1] filed by the Commissioner of Internal Revenue on March 18, 2021 via registered mail. It seeks the reversal of the Decision dated September 10, 2020,[2] (Assailed Decision) as well as the Resolution dated February 11, 2021[3] (Assailed

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[1] Court *En Banc's* Docket, pp. 8-20.
[2] *Id.*, pp. 22-39.
[3] *Id.*, pp. 40-45.

Resolution) of the Second Division (Court in Division)[4] of this Court in the case docketed as CTA Case No. 9756.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

> 'WHEREFORE, the instant *Petition for Review* is **GRANTED**. Accordingly, the assessment issued by respondent against petitioner for its alleged deficiency income tax, VAT, EWT and WTC for calendar year 2006 in the aggregate amount of ₱8,104,781.30 is **CANCELLED and SET ASIDE.**
>
> **SO ORDERED.**'

Assailed Resolution:

> '**WHEREFORE,** premises considered, respondent's Motion for Reconsideration and/or New Trial is **DENIED** for lack of merit.
>
> **SO ORDERED.**'

THE FACTS

The facts of the present case were laid down by the Court in Division in the Assailed Decision as follows:[5]

> "Respondent issued the Formal Assessment Notice (FAN) dated June 8, 2011 covering deficiency Income Tax, VAT, EWT, and WTC for calendar year 2006. Pertinent portion of the FAN for easy reference are as follows:
>
> **"The President**
> **MARILY DEVELOPMENT CORPORATION**
> 3/F Karrivin Plaza Bldg.,
> 2316 Pasong Tamo Extension,
> Makati City
> TIN: 005-297-475-000

[4] Composed of Associate Justice Juanito C. Castañeda, Jr. *(ponente)* and Associate Justice Jean Marie A. Bacorro-Villena.
[5] Court *En Banc's* Docket, pp. 23-29 (Citations omitted).

Sir/Madam:

This has reference to your letter dated August 16, 2010 concerning your protest against our Preliminary Assessment Notice (PAN) dated July 29, 2010 covering your deficiency Income Tax, Value Added Tax, Expanded Withholding Tax and Withholding Tax on Compensation xxx xxx xxx.

In reply thereto, this Office has granted your request for re-investigation. However, as discussed in the Details of Discrepancies, you still failed to refute the validity of our findings.

xxx xxx xxxx"

On July 11, 2011, petitioner submitted with the Bureau of Internal Revenue (BIR) Revenue Region No. 8 its protest letter. Pertinent portion of the protest letter filed on June 11, 2011 for easy reference are as follows:

"11 July 2011

BUREAU OF INTERNAL REVENUE
Revenue Region No. 08
Makati City

Attention: **Mr. JAIME B. SANTIAGO**
Regional Director

Gentlemen:

Re: **MARILY Development Corporation**
CY 2006 Formal Assessment Notices on Deficiency Income, VAT and Withholding Tax Assessments

On behalf of MARILY Development Corporation (Marily) and in response to the Formal Assessment Notices on Income, VAT, EWT, and Withholding Tax on Compensation dated 08 June 2011 that was **received on 10 June 2011** issued against MARILY for calendar year 2006, we are protesting the issuance of the formal assessment notices based on the factual and legal grounds as discussed hereunder:

xxx xxx xxxx" *(Emphasis supplied)*

Both the FAN and the petitioner's protest letter were not offered as exhibits, but they were instead attached as annexes to the Petition for Review. At any rate, both parties stipulated that respondent issued a FAN and petitioner protested the same.

On December 29, 2017, petitioner received the *Preliminary Collection Letter* dated December 12, 2017 on the alleged deficiency assessments for calendar year 2006. Respondents seek to collect deficiency income tax, VAT, EWT, and WTC, as follows:

Deficiency Tax	Amount
Income tax	₱2,474,878.35
VAT	4,690,771.55
EWT	108,879.88
WTC	830,251.52
Total	₱8,104,781.30

On January 25, 2018, petitioner filed the instant *Petition for Review*

Respondent filed his *Answer* on March 19, 2018, interposing the following special and affirmative defenses, to wit:

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

xxx xxx xxx

<u>INCOME TAX;</u>

A.) Disallowed Cost of Sales for Minimum Corporate Income Tax (MCIT) purposes amounting to P42,054,497.30:

- This amount represents expenses included in the computation of cost of sales for the purpose of applying the MCIT which was disallowed pursuant to Section 27 (E)(4) of the NIRC as amended, which states that, 'the term 'gross income' shall mean gross sales less sales returns, discounts and allowances and cost of goods sold. Cost of goods sold shall include all business expenses directly incurred to produce the merchandise to bring them to their present location and use.'

It was disclosed during investigation that petitioner still failed to refute and submit necessary documents to support the other claimed cost of sales in the amount of P42,054,497.30. Since petitioner failed to prove the other expenses to be directly incurred to produce the merchandise, the assessment on disallowed cost of sales for MCIT purposes has been reiterated.

VALUE ADDED TAX (VAT);

B.) Sales not subject to VAT amounting to P133,089,691.25:

- This amount includes export sales amounting to P7,775,160.47 which were subjected to VAT for failure to present any evidence to support that these were export sales subject to 0% rate and was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. This amount also includes local sales of shell (marine non-food products) in the amount of P5,314,530.78 which was also not subjected to VAT. The said sales were subjected to VAT under Section 105 and 106 of the NIRC.

C.) Excess Input Tax Carried Forward to Succeeding Period amounting to P4,550,758.96:

- The excess input tax carried over to succeeding period amounting to P4,550,758.96 was deducted from total creditable input tax considering that the said amount has been credited against the estimated quarterly tax liabilities for the taxable quarter of the succeeding taxable years pursuant to Section 110(B) of the Tax Code as implemented by Revenue Regulations No. 16-2005.

EXPANDED WITHHOLDING TAX

D.) Basic Tax Due amounting to P51,881.00:

- This refers to several income payments which petitioner failed to withhold and remit in full the corresponding withholding tax due in violation of Section 2.57.2 of Revenue Regulations No. 2-98 as amended.

WITHHOLDING TAX ON COMPENSATION

E.) Basic Withholding Tax on Compensation amounting to P277,510.81:

- Verification disclosed that petitioner failed to withhold/remit the correct withholding tax due on compensation paid to employees previously disallowed as deductions from gross income hence, assessed pursuant to

Section 79 (A) of the Tax Code as implemented by Section 2.78 of Revenue Regulations No. 2-98.

xxx xxx xxx"

The pre-trial conference was set and held on May 24, 2018.

The *Respondent's Pre-Trial Brief* was filed on May 21, 2018; whereas the *Pre-Trial Brief* for petitioner was submitted on May 22, 2018.

The parties filed their *Joint Stipulation of Facts and Issues* (JSFI) on June 6, 2018. The Court issued the Pre-Trial Order on June 22, 2018, approving and adopting the parties' JSFI, and deeming the pre-trial terminated.

As trial ensued, petitioner presented documentary and testimonial evidence. As part of its testimonial evidence, petitioner offered the testimonies of the following individuals: (1) Mr. Gilbert V. Gavino, petitioner's General Manager; and (2) Ms. Josephine P. Yopo, the Court-commissioned Independent Certified Public Accountant (ICPA).

On November 20, 2018, the ICPA Report was submitted to the Court.

Petitioner filed a *Motion to Admit Formal Offer of Evidence for the Petitioner*, requesting that the Court admit the *Formal Offer of Evidence* attached to the *Motion*. Respondent filed his *Comment to Petitioner's Formal Offer of Evidence* on December 14, 2018. In the Resolution dated January 8, 2019, the Court granted petitioner's *Motion to Admit* and admitted petitioner's *Formal Offer of Evidence*.

In the Resolution dated February 15, 2019, the Court directed Ms. Yopo to submit the clear and readable PDF scanned copies of the duly pre-marked exhibits that she examined within fifteen (15) days from notice, deferred the resolution of the *Formal Offer of Evidence for the Petitioner*, and cancelled and reset the initial presentation of respondent's evidence.

On March 7, 2019, petitioner filed a *Supplemental Formal Offer of Evidence [In Compliance with the Resolution Promulgated on February 15, 2019] for the Petitioner,* praying that the Court admit the Universal Serial Bus device attached to the *Supplemental Formal Offer* for petitioner.

Acting on petitioner's *Formal Offer of Evidence* and *Supplemental Formal Offer of Evidence*, the Court, in the Resolution dated May 10, 2019, admitted petitioner's Exhibits, except for Exhibits "P-618" and "P-619" mentioned in the ICPA Report, for not being found in the records.

On July 25, 2019, respondent filed a *Manifestation*, stating that he will no longer be presenting any evidence/witness in this case, and praying that the same be noted by the Court. In the Resolution dated July 30, 2019, the Court noted respondent's *Manifestation*, and cancelled the initial presentation of respondent's evidence.

On August 30, 2019, respondent filed his *Memorandum*, while petitioner failed to file its *Memorandum*.

The instant case was considered submitted for decision on September 18, 2019."

On September 10, 2020, the Court in Division rendered the Assailed Decision granting the Petition for Review. The Court in Division cancelled and set aside the assessment issued by petitioner against respondent for the latter's alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT) and withholding tax on compensation (WTC) for calendar year 2006.

Aggrieved, the CIR filed a Motion for Reconsideration and/or New Trial on October 1, 2020 which the Court in Division denied in the Assailed Resolution.

On March 18, 2021, petitioner filed the present Petition for Review.

In a Resolution dated June 10, 2021, this Court required respondent to file its Comment to the Petition for Review.[6]

On October 14, 2021, this Court's Judicial Records Division submitted a Records Verification Report stating that as of even date, respondent has yet to file its Comment to the Petition for Review.[7]

In a Resolution dated November 24, 2021, this Court submitted the present case for decision.[8]

[6] *Id.*, pp. 52-53.
[7] *Id.*, p. 54.
[8] *Id.*, pp. 56-57.

THE ISSUES

Petitioner CIR filed the present Petition for Review on the basis of the following issues as stated below:[9]

'ISSUES FOR RESOLUTION

I.

WHETHER THE HONORABLE COURT IN DIVISION COMMITTED REVERSIBLE ERROR IN CANCELLING THE ASSESSMENT ISSUED BY PETITIONER TO HEREIN RESPONDENT FOR ITS DEFICIENCY IT, VAT, EWT AND WTC FOR CALENDAR YEAR 2006 IN THE AGGREGATE AMOUNT OF ₱8,104,781.30 FOR BEING VOID DUE TO ALLEGED LACK OF A VALID LETTER OF AUTHORITY TO AUDIT THE RESPONDENT.

II.

WHETHER THE HONORABLE COURT IN DIVISION COMMITTED REVERSIBLE ERROR IN HOLDING THAT THE SUBJECT ASSESSMENTS ARE BARRED BY PRESCRIPTION.

THE COURT *EN BANC'S* RULING

The Petition for Review is denied.

Timeliness of the Petition

A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may file a petition for review with the Court *En Banc* within fifteen (15) days from receipt of the questioned decision or resolution.[10]

Records show that the Assailed Resolution dated February 11, 2021 denying petitioner's Motion for Reconsideration and/or New Trial was received by petitioner on February 16, 2021.[11]

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[9] *Id.*, pp. 11-12.
[10] Sec. 18, RA 1125, as amended; Sec. 3(b), Rule 8, Revised Rules of the Court of Tax Appeals.
[11] Court *En Banc's* Docket, p. 1.

On February 26, 2021, petitioner filed a Motion for Extension To File Petition for Review.[12] In a Minute Resolution dated March 12, 2021, the Court *En Banc* granted petitioner an additional period of fifteen (15) days from March 3, 2021 until March 18, 2021 within which to file his Petition for Review.[13]

Petitioner filed the present Petition for Review on March 18, 2021 *via* registered mail. Therefore, the same was timely filed.

Authority to Resolve Issues Not Specifically Raised by the Parties

In support of his Petition for Review, petitioner posits that the necessity of proving that the tax is invalid lies with the party assailing the validity of the assessment.[14] Petitioner invokes the presumption of regularity in the performance of official duties as well as the presumption of correctness of the assessment as basis for this position.[15] Petitioner also points out that respondent never raised any issue with respect to the Letter of Authority (LOA) or as regards the authority of the revenue examiner given that there are no statement to this effect can be found in the Petition for Review or in respondent's Pre-Trial Brief filed before the Court in Division.[16] These issues were likewise never raised at the administrative level.[17] Moreover, respondent's evidence before the Court in Division merely challenged the correctness of the tax assessments.[18]

Petitioner's position is untenable.

While it is true that respondent never specifically put into issue the existence of a valid LOA, this Court is not precluded from taking cognizance of the same. The existence of a valid LOA and the revenue officer's possession of the requisite authority (pursuant to a valid LOA) to conduct an audit of respondent's books of accounts and other accounting records are matters that go into the intrinsic validity of the tax assessments issued by petitioner against respondent.[19] They are essentially related to the main issue of whether or not respondent shall be held liable for the deficiency assessments especially considering that a void assessment bears no fruit.[20]

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[12] *Id.*, pp. 1-4.
[13] *Id.*, p. 7.
[14] *Id.*, pp. 13-15.
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.
[20] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010; *Commissioner of Internal Revenue v. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006.

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[21] the Supreme Court emphatically ruled that the Court of Tax Appeals can resolve an issue which was not specifically 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 <u>upon related issues</u> necessary to achieve an orderly disposition of the case.** The text of the provision reads:
>
> > 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 and underscoring supplied; Citation omitted)*

Validity of the Assessments

In the present case, petitioner ascribes error to the Court in Division's decision to invalidate the assessments due to petitioner's failure to prove the issuance of a valid LOA. Petitioner likewise faults the Court in Division for not considering that he has in his favor both the presumption of regularity in the performance of official duties and the presumption of correctness of tax assessments. He postulates that since respondent failed to adduce evidence to overcome these presumptions, the validity and correctness of the assessments shall stand.

The presumption of regularity in the performance of official duties and the presumption of correctness of tax assessments, like all other presumptions, are inferences as to the existence of facts not actually known, *arising from their usual connection with other facts that are known*, or conjectures based on past

[21] G.R. No. 183408, July 12, 2017.

experience as to what course human affairs ordinarily takes.[22] From this definition, it may be gathered that: (1) for a presumption to arise, the basic fact upon which the inference as to the existence of the ultimate fact presumed shall be established first; and (2) there must also be a rational connection between the basic fact and the ultimate fact presumed. Without the basic fact, or when there is failure to prove that the same actually exists, the presumption will not set in.

As a corollary, it must be emphasized that a presumption cannot be founded on another presumption.[23] With particular reference to the presumption of correctness of assessment, the Supreme Court in *Collector of Internal Revenue v. Benipayo*[24] held that "[i]n order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption..."

Contrary to petitioner's assertion, this Court finds that both presumptions cannot be invoked as they never materialized due to absence of proof as to the existence of the facts upon which they may be based. The existence of a valid LOA and the revenue officer's possession of the requisite authority (pursuant to a valid LOA) to conduct an audit of respondent's books of accounts and other accounting records are *precisely* the basic facts that could give rise to the inference that the assessments were *regularly* issued and that the same are *prima facie* correct. These basic facts could have easily been established by the presentation of the LOA itself and also by the testimonies of the revenue officers who actually conducted and completed the audit of respondent's books of accounts and other accounting records pursuant to such LOA. Petitioner, however, did not present any evidence at all.[25] To be sure, this Court cannot simply presume that: (1) a LOA was validly issued; and (2) that the revenue officers who actually conducted the audit of respondent's books and records up to its completion are clothed with the requisite authority to perform the same pursuant to a validly-issued LOA, to sustain petitioner's bare invocation of the presumption of regularity in the performance of duties and the presumption of correctness of the assessment. As a result, the respondent need not controvert the presumptions that never emerged in the first place.

The Court *En Banc* cannot give credence to petitioner's assertion that it issued a LOA authorizing the examination of respondent's books of accounts and other accounting records for calendar year 2006 and that the issuance thereof is reflected in the Preliminary Collection Letter (PCL) and the Final Assessment Notice (FAN).[26] It bears stressing that these documents were not offered and admitted as evidence. At any rate, there is nothing in these

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[22] *Martin v. Court of Appeals*, G.R. No. 82248, January 30, 1992.
[23] *Mabunga v. People*, G.R. No. 142039, May 27, 2004.
[24] G.R. No. L-13656, January 31, 1962.
[25] Petitioner's Manifestation filed on July 25, 2019, Division Docket, pp. 164-165.
[26] *Court En Banc's Docket*, pp. 15-16.

documents that convincingly show that a valid LOA was issued and that the examination of respondent's books and records was done pursuant to a valid LOA.

Prescription

Petitioner likewise contends that respondent's failure to present as evidence its returns for calendar year 2006 gives rise to the presumption that no returns have been filed which, in turn, triggers the application of the ten-year prescriptive period under Section 222 of the National Internal Revenue Code of 1997, as amended (1997 NIRC).[27]

Petitioner is plainly mistaken.

Section 203 of the 1997 NIRC mandates that "internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return." By way of exception, Section 222(a) of the 1997 NIRC provides that "[i]n 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 applying the foregoing provisions to the present case, this Court shall adhere to the rules of statutory construction as elucidated by the Supreme Court in *Commissioner of Internal Revenue v. The Court of Appeals, et. al.*,[28] to wit:

> "**Under the rules of statutory construction, exceptions, as a general rule, should be strictly but reasonably construed.** They extend only so far as their language fairly warrants, and **all doubts should be resolved in favor of the general provisions rather than the exception.** Where a general rule is established by statute with exceptions, the court will not curtail the former nor add to the latter by implication..." *(Emphasis supplied)*

Thus, as an exception to the general rule, the ten-year prescriptive period under Section 222(a) shall not apply until and unless there is clear and convincing factual basis therefor. Given that all doubts shall be resolved against the application of Section 222(a), the burden to prove the existence of sufficient factual basis for its application lies with the taxing authorities. This interpretation is consistent with the underlying rationale of statute of limitations for the assessment and collection of taxes, *i.e.*, to protect law-abiding

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[27] *Id.*, pp. 16-18.
[28] G.R. No. 107135, February 23, 1999 citing *Samson v. Court of Appeals*, 145 SCRA 659 (1986).

citizens from possible harassment by the tax authorities. In *Republic v. Ablaza*,[29] the Supreme Court explained as follows:

> "The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. **Without such legal defense taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficient purpose of affording protection to the taxpayer within the contemplation of the Commission which recommend the approval of the law."** *(Emphasis supplied)*

This Court is not persuaded by petitioner's specious theory of equating respondent's failure to present its tax returns for calendar 2006 as evidence before this Court to the concept of "failure to file returns" as contemplated by Section 222(a) of the 1997 NIRC. That no returns were presented before this Court does not necessarily mean that no returns were filed before the BIR.

The taxpayer's failure to present its tax returns before this Court cannot reasonably give rise to the presumption that no returns have been filed before the BIR within the period prescribed by law for filing the returns. The law itself already mandates the application of the 3-year prescriptive period as a general rule. It is the CIR's burden to prove otherwise.

Considering that this Court finds no basis on record to warrant the application of the 10-year prescriptive period in this case, the 3-year prescriptive period under Section 203 shall therefore apply.

In view of the foregoing, the Court *En Banc* finds no compelling reason to disturb the findings of the Court in Division in the Assailed Decision and Resolution.

WHEREFORE, the present Petition for Review is **DENIED** for lack of merit. The Decision dated September 10, 2020 and Resolution dated

[29] G.R. No. L-14519, July 26, 1960.

February 11, 2021 of the CTA's Second Division in CTA Case No. 9756 are both **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(With due respect, please see Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(With due respect, I join PJ Del Rosario's Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(With due respect, I join PJ Del Rosario's Dissenting Opinion)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

(With due respect, I join PJ Del Rosario's Dissenting Opinion)
LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in 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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MARILY DEVELOPMENT CORPORATION,
Respondent.

CTA EB NO. 2450
(CTA Case No. 9756)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, *JJ.*

Promulgated:
MAY 3 1 2022 9:15a.m.

x---x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I am constrained to withhold my assent on the *ponencia* which denies the present Petition for Review and affirms the assailed Decision and assailed Resolution of the Court in Division.

The *ponencia* in *esse* declares that since no Letter of Authority (LOA) was presented in evidence by either party, the Formal Assessment Notice (FAN) that was eventually issued is necessarily void. Moreover, despite the absence of evidence clearly showing the dates when tax returns were filed by respondent, the *ponencia* concluded that the FAN was issued beyond the three (3)-year prescriptive period to assess.

To begin with, it is settled that the burden of proof lies upon the one who asserts and necessarily, the party who sues.[1] It is thus incumbent upon respondent, as the party-petitioner before the Court in Division, to support its cause of action (as elucidated in its Petition for Review) with evidence. The Court cannot simply grant a relief without first ascertaining the evidence presented in support thereof. Due process considerations require that judgments must conform to and be supported by the pleadings and evidence presented in court.[2] To assail the validity of the FAN, the burden of proof lies upon respondent to show that the FAN was void, in order to justify its cancellation.

In the present case, respondent neither raised the issue on the lack of a valid LOA nor the issue on the prescription of petitioner's right to assess.

While this Court can resolve an issue which was not specifically raised by the parties when the resolution thereof is necessary to achieve an orderly disposition of the case,[3] **the same does not dispense with the requirement that the Court's ruling or decision must be duly supported by evidence.**

Issue on the lack of LOA

There is no denying that neither petitioner nor respondent presented any LOA which authorizes the audit of respondent's books of accounts and other accounting records for taxable year 2006. Expectedly, as respondent never raised the issue on the invalidity of the assessment on the basis of an invalid LOA or lack thereof, petitioner did not see the need to controvert the same by proving that a valid LOA was issued to respondent.

Aside from the fact that no copy of an LOA can be found in the records of the case, no testimonial evidence was presented by respondent to prove that there was no valid LOA issued against it or if there was one, the revenue officers who conducted the audit were not named therein.

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[1] MOF Company, Inc. v. Shin Yang Brokerage Corp., G.R. No. 172822, December 18, 2009, cited in Watercraft Ventures Corporation vs. Alfred Raymond Wolfe, G.R. No. 231485, September 21, 2020.
[2] Leticia Diona vs. Romeo A. Balangue, et al., G.R. No. 173559, January 7, 2013.
[3] Commissioner of Internal Revenue vs. Lancaster Philippines, Inc., G.R. No. 183408, July 12, 2017.

The above, notwithstanding, the *ponencia* sustains the finding of the Court in Division that the FAN issued against respondent was void simply because no LOA exists on record. To my mind, this conclusion sets a dangerous precedent; effectively, it thereby presumes that official action is void and it is incumbent upon the government to prove its validity. This scenario is no different from a driver's license that henceforth shall be presumed void unless the government itself shows proof that the license holder applied for a license, passed the compulsory examinations and complied with other requirements in the issuance of license. The mischief of such consequence is just too obvious to imagine.

Indeed, evidentiary rules and jurisprudential pronouncements are one in holding the presumption of regularity in the performance of official duties and the legal maxim that "all presumptions are in favor of the correctness of tax assessments."

In the absence of any evidence to the contrary, the disputable presumption of regularity in the performance of duty by petitioner or his duly authorized representatives, that is -- that the step by step process in the issuance of deficiency tax assessments, which includes the issuance of an LOA, was duly complied with. Notably, this disputable presumption exists for a valid reason, that is, to avoid outright nullification of an official action even in the absence of evidence presented by litigants in support of its invalidity.

Considering that the records bear no evidence pointing to the intrinsic invalidity of FAN, the same is presumed valid. This is consistent with the pronouncement in *Collector of Internal Revenue vs. Bohol Land Transportation Co. and Bohol Land Transportation Co. vs. Collector of Internal Revenue*:[4]

> "Since no evidence was presented to substantiate the errors that are claimed to have been committed by the Collector in making the assessments for the years 1948, 1949 and 1950, the trial court had no other alternative than to resort to the legal truism that "all presumptions are in favor of the correctness of tax assessments". The burden of proof is on the taxpayer to show the contrary. This the company failed to do. This action find support in the following authorities:
>
>> **All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed.** They will be presumed to have taken into consideration all the facts to which their attention was

[4] G.R. Nos. L-13099 and L-13462, April 29, 1960.

> called. **No presumption can be indulged that all of the public officials of the state in the various counties who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law.**
>
> As a logical outgrowth of the presumption in favor of the validity of assessments, when such assessments are assailed, **the burden of proof is upon the complaining party.** Xxx.
>
> Xxx xxx xxx.
>
> **That the determination of the tax deficiency by the Government has *prima facie* validity and the burden rests upon the taxpayer to overcome this presumption** and to show to the satisfaction of the Tax Court that the determination was not correct. (Perez *vs.* Court of Tax Appeals, et al., G.R. No. L-10507, May 30, 1958)" *(Boldfacing supplied)*

Issue on the prescription of petitioner's right to assess respondent for deficiency tax assessments

The Court in Division and the *ponencia* found that the three (3)-year prescriptive period to assess respondent for deficiency taxes for taxable year 2006 had prescribed as more than three (3) years from taxable year 2006 had lapsed before the FAN was issued, ***without* any reference on the dates when the relevant tax returns were filed.**

Section 203 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

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

Clearly, the BIR has a period of three (3) years to assess internal revenue taxes, reckoned from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later.

Relatedly, there are specific provisions in the NIRC of 1997, as amended, which prescribe the different periods within which to file the pertinent tax returns. To determine the commencement and end of the three (3)-year prescriptive period under Section 203 of the NIRC of 1997, as amended, **I submit that the dates of filing of respondent's tax returns are relevant and indispensable. *Sans* proof as to the dates of filing thereof, there is no basis for the Court to make a categorical ruling anent the prescription of petitioner's right to issue the FAN within the three (3)-year period.**

Unlike petitioner who enjoys the presumption of regularity in the performance of his official duties, **respondent does not have in his favor the presumption that it filed its tax returns within the deadlines set forth by law.** Respondent has to prove by preponderant evidence the date of filing of its tax returns.

In the absence of evidence anent the dates of filing of the tax returns, the Court cannot simply make a sweeping conclusion that the tax returns were filed within the deadline set forth by law and simply reckon from the said deadline the running of the three (3)-year prescriptive period to assess.

While the subject FAN involves income tax, value-added tax (VAT), expanded withholding tax (EWT) and withholding tax on compensation (WTC), **respondent failed to offer in evidence its 2006 Annual Income Tax Return and its VAT returns.** Thus, there is no basis for the Court to determine whether the three (3)-year prescriptive period to assess respondent for deficiency **income tax and VAT** for the taxable year 2006 has prescribed.

With regard to the **2006 EWT and WTC returns** of respondent, the filing dates of the following 2006 monthly EWT and WTC returns of respondent were unreadable, thus, there is also no basis to determine whether the three (3)-year prescriptive period to assess respondent for deficiency 2006 EWT and WTC for the months indicated hereunder has prescribed:

2006 EWT Returns	2006 WTC Returns
February	February
June	March
August	May
October	June

/

November	September
December	October
	November
	December

Anent the other months of the year 2006, for purposes of the subject EWT and WTC assessments, the end of the three (3)-year prescriptive period is respectively summarized hereunder, *viz.*:

Tax Type/Return Period	Actual date of filing of the tax return	Last day to file tax return	Reckoning date of the three-year prescriptive period	Last day of the three-year period to assess
EWT- January	February 9, 2006	February 10, 2006	February 10, 2006	February 10, 2009
EWT- March	April 10, 2006	April 10, 2006	April 10, 2006	April 10, 2009
EWT- April	May 10, 2006	May 10, 2006	May 10, 2006	May 10, 2009
EWT- May	June 5, 2006	June 10, 2006	June 10, 2006	June 10, 2009
EWT- July	August 9, 2006	August 10, 2006	August 10, 2006	August 10, 2009
EWT- September	October 10, 2006	October 10, 2006	October 10, 2006	October 10, 2009
WTC- January	February 9, 2006	February 10, 2006	February 10, 2006	February 10, 2009
WTC- April	May 10, 2006	May 10, 2006	May 10, 2006	May 10, 2009
WTC- July	August 9, 2006	August 10, 2006	August 10, 2006	August 10, 2009
WTC- August	September 7, 2006	September 10, 2006	September 10, 2006	September 10, 2009

Since respondent received the FAN dated June 8, 2011 on June 10, 2011 or beyond the three (3)-year prescriptive period to assess, the assessments for deficiency EWT for the months of January, March, April, May, July and September 2006 and deficiency WTC for the months of January, April, July and August 2006 are void.

All told, I VOTE to (i) GRANT the Petition for Review filed by the Commissioner of Internal Revenue; (ii) REVERSE and SET aside the assailed Decision and assailed Resolution of the Court in Division; and, (iii) REMAND the case to the Court in Division for the determination of the merits of respondent's tax liabilities, without prejudice to the findings that petitioner's right to assess respondent for deficiency EWT for the months of January, March, April, May, July and September 2006 and deficiency WTC for the months of January, April, July and August 2006 has prescribed.

ROMAN G. DEL ROSARIO
Presiding Justice