Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

MS. MARY SUSAN R. FORTICH, Petitioner,	**CTA Case No. 9036**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson*, **CASANOVA,** *and* **MANAHAN,** *JJ.*
MYRNA S. LEONIDA, OIC REGIONAL DIRECTOR, BIR REVENUE REGION NO. 12, Respondent.	Promulgated: MAY 10 2018 11:55 a.m.

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DECISION

CASANOVA, *J.*:

This is a Petition for Review seeking the cancellation of the deficiency income tax and value-added tax (VAT) assessments of respondent in the amounts of ₱4,337,539.43 and ₱13,541,976.90, respectively, for the calendar year (CY) 2010.

Petitioner Mary Susan R. Fortich is the proprietress of F-5 Gas Station with address at Cor. Magsaysay and S. Villegas Sts., Poblacion Guihulngan, Negros Oriental.[1]

Respondent, on the other hand, is sued in her official capacity as the OIC, Regional Director of Revenue Region No. 12 of the Bureau of Internal Revenue (BIR), the government agency in charge of, among others, the assessment and collection of all national internal revenue taxes, fees, and charges.

[1] Respondent's Memorandum, Docket, (Vol.) II, p. 547.

On June 14, 2012, the BIR issued Letter Notice (LN) No. 079-RLF-10-00-00025[2], which was received by petitioner on July 9, 2012[3]. Attached to the LN are the (1) Details of Taxpayer's Suppliers' Records[4]; and (2) unsigned Computation Sheet[5].

Subsequently, a Follow-Up Letter[6] dated July 25, 2012 was issued to petitioner by Revenue District Officer (RDO) Cresencio A. Agad,[7] with an attached signed Computation Sheet[8].

On August 2, 2012, petitioner wrote a letter[9] addressed to RDO Agad stating, among others, that a 6.9 magnitude earthquake hit her province on February 6, 2012 which had caused severe damage and loss to many properties, including her gas station. Thus, many of their documents, records and files that were stored in their stock room were defaced beyond readability as they were soaked/buried in spilled lubes, battery solution, rainwater and debris. Nonetheless, she submitted her comment/clarification on the subject assessments.

Subsequently, petitioner received[10] a Notice of Informal Conference[11] dated November 21, 2012.

On February 26, 2013, petitioner received a Preliminary Assessment Notice (PAN)[12], with attached Details of Discrepancy[13], issued by Regional Director Aranas.

Petitioner responded to the PAN through a letter dated March 7, 2013, where she averred, among others, that: (1) despite exerting utmost diligence, she was unable to recover the records, and, hence, cannot dispute respondent's findings; (2) the industry standard profit margin was only about 1-2.5% across the country, contrary to the cost ratio of 86.87% and the profit factor of 13.03% used by respondent;

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[2] Exhibit "P-3".
[3] Par. 4, A. Summary of Admitted Facts, Joint Stipulation of Facts (JSF), Docket (Vol. I), p. 299; Exhibit "R-1".
[4] Exhibit "P-3-a".
[5] Exhibit "P-3-b".
[6] Exhibit "P-4"; Exhibit "R-3".
[7] Par. 5, A. Summary of Admitted Facts, JSF, Docket (Vol. I), p. 299.
[8] Exhibit "P-4-a"; Exhibit "R-3-a.
[9] Exhibit "P-5".
[10] Par. 6, A. Summary of Admitted Facts, JSF, Docket (Vol. I), p. 299.
[11] Exhibit "P-6"; Exhibit "R-4".
[12] Exhibits "P-7" and "P-7-a".
[13] Exhibit "P-7-b".

and (3) the cost ratio of 86.87% stated on her Income Tax Return (ITR) was erroneous because it was prepared by her dishonest bookkeeper. Hence, petitioner requested that the profit factor of 1-2.5% be validated by the BIR, and the same be used in computing its deficiency taxes.

Thereafter, petitioner received a letter[14] dated March 25, 2013 signed by Director Aranas, granting petitioner's request for reinvestigation and reconsideration of the deficiency income tax and VAT assessments. The same letter, likewise, advised petitioner to accomplish and sign the enclosed Waiver of the Defense of Prescription of the Statute of Limitations in three (3) copies.

On April 1, 2013, Regional Director Aranas indorsed the docket back to Revenue District Office No. 79 for reinvestigation, and advised that a notarized waiver of the defense of prescription of the statute of limitations should be submitted by petitioner as a requirement for the reinvestigation of the case.[15] The reinvestigation was assigned to RO Rafael S. Amores and Group Supervisor Tomas S. Rambuyon.[16]

Hence, petitioner executed the waiver[17] on April 19, 2013, which extended the assessment of taxes up to December 31, 2013. Subsequently, on May 28, 2013, another waiver[18] was executed by petitioner which will expire on October 31, 2014.

On June 4, 2013, Regional Director Aranas informed[19] petitioner that her letter was referred to Revenue District Office No. 79, Dumaguete City, for appropriate action.

Thereafter, RO Rafael S. Amores issued a Memorandum[20] for the Regional Director recommending the issuance of a Final Assessment Notice (FAN)/Formal Letter of Demand (FLD) against petitioner.

Subsequently, RDO Carolina A. Carcallas informed petitioner through a letter[21] dated July 25, 2014, that her request for reinvestigation was granted, and directed petitioner to submit

[14] Exhibit "P-9"; Exhibit "R-15".
[15] Exhibit "R-16".
[16] Exhibit "R-7".
[17] Exhibit "R-8".
[18] Exhibit "R-9".
[19] Exhibit "P-13".
[20] Exhibit "R-11".
[21] Exhibit "P-15".

documentary evidence within five days from receipt of the same. However, on July 29, 2014, RDO Carcallas forwarded petitioner's docket to the Regional Director since the latter failed to submit documentary evidence.

On September 10, 2014, petitioner received[22] the FAN/FLD[23] dated August 28, 2014, with attached Details of Discrepancy[24] and Transcripts of Assessment[25], which assessed petitioner with deficiency income tax and VAT for CY 2010 as follows:

I. INCOME TAX (Secs. 5, 32, 248 & 249 of NIRC as amended; RMO 13-2012)

Taxable Income per Annual ITR filed		₱ 60,986.16
Add: Additional gross income		
Purchases per LN	₱ 55,864,172.68	
Less: Purchases per taxpayer's declaration/ITR filed	11,768,927.65	
Under-declared Purchases	44,095,245.03	
Divided by Cost ratio per ITR filed	86.97%	
Additional Taxable Sales/Under-declared sales/revenue	50,701,673.03	
Multiply by Gross profit rate per ITR	13.03%	6,606,428.00
Total Adjusted Taxable Income		6,667,414.16
Adjusted Income Tax Due		2,098,572.53
Less: Income Tax Due per ITR filed		7,147.92
Deficiency Income Tax (Basic)		2,091,424.61
Less: IT Payment made relative to LN		119,815.78
Deficiency Income Tax Still Due (Basic)		1,971,608.83
Add: Surcharge (50%)	985,804.42	
Interest: 4.15.11 - 10.15.14 (.70)	1,380,126.18	2,365,930.60
Amount Payable		**₱ 4,337,539.43**

II. VALUE-ADDED TAX (Secs. 5, 106, 248 & 249 of NIRC, as amended; RMO 13-2012)

Total Vatable Purchases per LN	55,864,172.68
Less: Vatable Purchases per taxpayer's declaration/ITR filed	11,768,927.65
Under-declared purchases for VAT purposes	44,095,245.03
Divided by Cost ratio per ITR filed	86.97%
Under-declared sales/revenue	50,701,673.03
Multiply by VAT rate	12%

[22] Par. 1, A. Summary of Admitted Facts, JSF, Docket (Vol. I), p. 298.
[23] Exhibits "P-2" and "P-2-a"; Exhibit "R-18".
[24] Exhibit "P-2-b".
[25] Exhibits "P-2-c" and "P-2-d".

VAT deficiency (Basic)		6,084,200.76
Less: VAT Payment made relative to LN		50,527.22
Deficiency VAT Still Due (Basic)		6,033,673.54
Add: Surcharge (50%)	3,016,836.77	
Interest 1.25.11 to 10.15.14 (.7444)	4,491,466.59	7,508,303.36
Amount Payable		**13,541,976.90**
TOTAL DEFICIENCY TAXES DUE AND COLLECTIBLE		**₱ 17,879,516.33**

Respondent filed its Request for Reconsideration of the FAN/FLD on October 9, 2014.[26] Considering respondent's inaction, petitioner filed the instant Petition for Review on May 4, 2015.

On July 24, 2015, respondent filed her Answer[27] and interposed the following special and affirmative defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

4. Respondent adopts the abovementioned admissions and denials as part of her special and affirmative defenses.

THE HONORABLE COURT OF TAX APPEALS DID NOT ACQUIRE JURISDICTION OVER THE INSTANT CASE

5. Under Section 228 of The National Internal Revenue Code of 1997 ('NIRC' for brevity), assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment, Section 228 provides that:

'xxx xxx xxx

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

[26] Exhibit "P-21".
[27] Docket (Vol. I), pp. 129-147.

> of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the **protest is denied in whole or in part, or is not acted upon within one hundred *(sic)* (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 supplied)

6. Petitioner claimed that she received the Final Assessment Notice/Formal Letter of Demand dated August 28, 2014 (FAN/FLD 00166-2014, 00167-2014) on September 10, 2014. Thus, she has thirty (30) days or until October 10, 2014 to file her Request for Reconsideration by way of a protest on the Final Assessment Notice/Formal Letter of Demand dated August 28, 2014.

7. However, a close scrutiny on Petitioner's Request for Reconsideration revealed that it was filed on October 23, 2014 which is beyond the thirty (30) day period within which to protest the assessment, as evidenced by the stamp receipt from the Bureau of Internal Revenue, Revenue Region No. 12, Bacolod City.

8. Petitioner alleged that the request for reconsideration was filed via registered mail with the thirty (30) day period. However, she failed to present any registry receipt to prove that said Motion was sent thru registered mail.

9. In *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, Court of Tax Appeals and Court of Appeals*, the Supreme Court held that the rule is that for the Court of Tax Appeals to acquire jurisdiction, **an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which**

a petition for review may be taken to the Court of Tax Appeals.

10. In view of the petitioner's belated filing of her Request for Reconsideration on the Final Assessment Notice/Formal Letter of Demand dated August 28, 2014, the assessment is deemed final. Thus, the Court of Tax Appeals did not acquired jurisdiction over the case.

IN THE ALTERNATIVE THAT THE HONORABLE COURT HAS JURISDICTION, RESPONDENT'S RIGHT TO ASSESS PETITIONER FOR TAXABLE YEAR 2010 HAS NOT YET PRESCRIBED

11. The three (3)-year prescriptive period of the government's right to assess is not without exemptions. Section 222(a) of the NIRC of 1997, as amended, specifically provides:

> 'Sec. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes –
>
> xxx xxx xxx
>
> (a) In the case of a false or fraudulent return with intent to evade tax or 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 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 and italics ours)

12. In the instant case, preliminary review disclosed that petitioner failed to declare her correct sales in an amount exceeding 30% of that declared in her Income and VAT Returns resulting in the total discrepancy of

P17,879,516.33 as provided by petitioner's supplier, Petron Corporation.

13. False or fraudulent return has been defined by the High Court in the case of Aznar vs. CTA in this wise:

> That there is a difference between 'false return' and 'fraudulent return' cannot be denied. While the first merely implies <u>deviation from the truth, whether intentional or not</u>, the second implies intentional or deceitful entry with intent to evade the taxes due. (underscoring supplied)

The discrepancy or more specifically, non-declaration found in petitioner's tax returns arose from the Reconciliation of Listing for Enforcement System (RELIEF), Tax Reconciliation System (TRS) and Third Party Matching – Bureau of Customs (TPM-BOC) Data Program which resulted in the following:

> 'I. <u>INCOME TAX DEFICIENCY</u>
>
> Under-declaration of Purchases Resulting to Under-Declaration of Revenue –
>
> Under-declaration of Purchases Resulting to Under-declaration of Revenue – Reconciliation of your Total Purchases per LN in the amount of ₱55,864,172.68 and Purchases in the amount of ₱11,768,927.65 per your declaration and ITR filed revealed a purchase discrepancy in the amount of ₱44,095,245.03. LN data were provided by your supplier Petron Corporation. Cost ratio of 86.97% per ITR was used to arrive at Under-declared Sales of ₱50,701,673.03. Additional gross Income is computed at ₱6,606,428.00 after applying the gross profit rate of 13.03% per ITR. This amount is added to taxable income of ₱60,986.16 per ITR filed to arrive at the Total Adjusted Taxable Income of P6,667,414.16 which resulted to an Adjusted Income Tax due of ₱2,098,572.53. You paid partial deficiency Income tax of ₱119,815.78

> relative to LN. The findings and Deficiency Income Tax of the previous investigation was upheld. This resulted to a Deficiency Income Tax amounting to ₱4,337,539.43 inclusive of 50% surcharge and 20% interest per annum pursuant to Sections 5 and 32 of NIRC, as amended and RMO 13-2013, as amended. The 50% Surcharge is computed on the basis of Section 248 (B) of NIRC, as amended, for failure to report sales, receipts or income in an amount exceeding 30% of that declared per return while the 20% interest per annum is imposed in accordance with Section 249 (B) of NIRC, as amended.
>
> II. VALUE-ADDED TAX DEFICIENCY
>
> Under-declared Sales/Revenue Subjected to VAT – Under-declared Sales/Revenue of ₱50,701,673.03 should be subjected to 12% VAT. Basic Deficiency VAT amounting to ₱6,084,200.76 is computed. You paid partial deficiency VAT of ₱50,527.22 relative to LN. The findings and Deficiency VAT of the previous investigation was upheld. This resulted to a Deficiency VAT still due amounting to ₱13,541,976.90 inclusive of 50% surcharge and 20% interest per annum pursuant to Sections 5 and 106 of NIRC, as amended and RMO 13-2012, as amended. The 50% Surcharge is computed on the basis of Section 248 (B) of NIRC, as amended.
>
> xxx xxx xxx'

14. Since the correct sales of petitioner did not appear in her income and VAT returns, there can only be one inevitable conclusion – that there was a substantial under-declaration of sales in her income tax and VAT returns. It should be stressed that this is a necessary conclusion and not anymore a presumption. Petitioner did not submit accounting records, invoices/official receipts to rebut the findings of the revenue examiners. Settled is the rule that dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and

correctness of the assessment will justify the judicial upholding of said assessment notice.

15. To reiterate, a false return implies deviation from the truth, whether intentional or not. Although the Aznar case distinguishes what constitute 'false returns' referring to mistake, carelessness or ignorance, from that of 'fraudulent returns' referring to intent to evade taxes, the same case does not make a distinction as regards the prescriptive period of 10 years. Indeed, in the same case of Aznar, the Supreme Court ruled in favor of the CIR for an extension of 10 years to assess the taxpayer, thus:

> The ordinary period of prescription of 5 years (now 3 years) within which to assess tax liabilities under Sec. 331 of the National Internal Revenue Code should be applicable to normal circumstances, **but whenever the government is placed at a disadvantage so as to prevent it lawful agents from proper assessment of tax liabilities due to false returns, fraudulent return intended to evade payment of tax or failure to file returns, the period of 10 years** provided for in Section 332 (a) NIRC, from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and **should be the one enforced**.
>
> There being undoubtedly false tax returns in this case, We affirm the conclusion of the respondent CTA that Section 332 (a) (now Sec. 222) of the NIRC should apply and that the period of 10 years within which to assess petitioner's tax liability **had not expired** at the time said assessment was made. (emphasis supplied)

16. It is, therefore clear from the statutory provision in Section 222 of the NIRC of 1997 in the three different case of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may begin without assessment, at any time within 10 years after the discovery of the (1) falsity, (2) fraud, (3)

omission. The discrepancy in petitioner's returns manifests an evident substantial underdeclaration which eloquently demonstrate the falsity or fraudulence of the income and VAT returns with an intent to evade the payment of tax. Respondent, could therefore, rightfully invoke Section 222 because her right to assess has not yet prescribed.

17. In the instant case, petitioner did not submit any documentary evidence to rebut the findings of the revenue examiners. It must be stressed that assessments are presumed correct and made in good faith, disputable presumption is satisfactory if uncontradicted and not overcome by other evidence. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously *(Marcos II vs. Court of Appeals, G.R. No. 120880, 5 June 1997)*.

18. It is the duty of a party to present evidence on the facts in issue necessary to establish his claim by the amount of evidence required by law *(Section 1, Rule 131 of the Rules of Court)*. 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 called *(CIR vs. Construction Resources of Asia, Inc., 145 SCRA 671)*. 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 the taxpayer is right. Otherwise, the presumption of correctness of tax assessment stands *(Commissioner of Internal Revenue vs. Hantex Trading Co., Inc., G.R. No. 136975, 31 March 2005)*. Hence, the assessment issued against petitioner is imbued with factual and legal bases.

The failure of the petitioner/taxpayer to discharge the burden to prove her case automatically justifies judicial affirmation of the assessment. The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting *(Sy Po vs. Court of Tax Appeals, 164 SCRA 524)*. Such being the case, respondent is not even obligated to present evidence as the burden never shifted.

THE WAIVERS EXECUTED BY THE PARTIES ARE VALID

19. Petitioner alleged that the first and second waivers were defective. Even assuming that respondent's right to assess is within the 3-year period, the same has not yet prescribed considering that petitioner validly executed the 2 waivers to tool the running of the prescriptive period.

20. Section 222(b) of the NIRC explicitly provides:

'Sec. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –

xxx xxx xxx

*(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.*

xxx xxx xxx' (Emphasis and italics ours)

21. A perusal of both waivers reveals that petitioner agreed to waive the imposition of the statute of limitation as shown by her signature appearing on the first and second waivers.

22. Accordingly, the presence of the signatures of the Commissioner of Internal Revenue's (CIR) duly authorized representatives, Cresencio A. Agad and Alfredo A. Tolentino in the waivers proves *(sic)* that both were accepted by the CIR.

23. By claiming that the waivers are defective, petitioner is violating the underlying principles of quasi-contract which holds true when petitioner clearly benefited

by the execution of said waivers. Quasi contract as defined under Article 2124 of the Civil Code provides:

> Art. 2142. Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another.

24. It may be said that a quasi-contract is based on the presumed will or intent of the obligor dictated by equity and by the principles of absolute justice. Examples of these principles are: (1) it is presumed that a person agrees to that which will benefit him; (2) nobody wants to enrich himself unjustly at the expense of another; or (3) one must do unto others what he would want others to do unto him under the same circumstances.

25. Furthermore, it is important to mention that petitioner is estopped from assailing the validity of the first and second waivers especially when said waivers arose on the part of petitioner. In the case of Bank of the Philippine Islands vs. Commissioner of Internal Revenue, the Supreme Court adopted a principle found in an America jurisprudence which says that: *He who prevents a thing from being done may not avail himself of the nonperformance which he has himself occasioned, for the law says to him in effect 'this is your own act, and therefore you ae not damnified'.*

26. It is settled that a taxpayer may be estopped from raising the defense of prescription because by his repeated requests or positive acts, he has induced the government authorities to delay collection of the assessed tax.

27. In the case of Theresita Dimaguila, et al. vs. Jose and Sonia Monteiro, the Supreme Court, citing Article 1431 of the Civil Code states:

> 'xxx through estoppel, an admission is rendered conclusive upon the person making it and cannot be denied or disproved as against the person relying thereon. xxx.'

28. In this case, the waivers arose from petitioner's request for reinvestigation the findings in the PAN which was granted by Regional Director Perfecto L. Aranas. It is evident from the correspondence between petitioner and respondent's representatives that the former is actively participating during the conduct of the audit investigation. She even entertained the possibility of settling her tax obligations arising from her 2010 operations and submitted invoices from her 2013 sales.

29. In addition, petitioner never questioned the validity of the waivers during the conduct of the audit investigation. In fact, the second waiver was executed during the existence of the first waiver. It was only when the audit investigation yielded unfavorable results that petitioner started to question the validity of the waivers.

THE COMPUTATION SHEET OF PETITIONER'S TAX DUE IS SIGNED

30. Petitioner alleged that the Computation Sheet which contains her tax liability in the amount of Three Million Six Hundred Fifty Nine Thousand Forty Seven and 42/100 (P3,659,047.42) of the respondent is unsigned.

31. Respondent begs to disagree, a perusal on the Computation Sheet revealed that the same was signed by Angelee D. Andaya, Revenue Officer I and Cresencia A. Agad, Head of LN Task Force as shown by their signatures affixed on their respective names.

THE ASSESSMENT WAS BASED ON FACT AND LAW

32. The petitioner alleged that the assessment conducted by the respondent lack basis both in fact and law considering that it was based on presumptions.

33. Respondent again begs to disagree, the assessment is **NOT** based on presumptions but on the information obtained from third party sources. Sections 5 and 6 of the NIRC allows the respondent to obtain such information from sources other than the petitioner, to wit:

'**Section 5**. Power of the Commissioner to Obtain Information, and to Summon, Examine and Take Testimony of Persons. – In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner if authorized:

(A) **To examine any book, paper, record, or other data which may be relevant or material to such inquiry**;

(B) To Obtain *(sic)* on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or -controlled corporations, **any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers**, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members;

xxx xxx xxx

Section 6. Power of the Commissioner to Make assessments and Prescribe additional Requirements for Tax Administration and Enforcement. –

xxx xxx xxx

> (B) Failure to Submit Required Returns, Statements, Reports and other Documents. – When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or **when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable**.
>
> In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be prima facie correct and sufficient for all legal purposes.
>
> xxx xxx xxx'
>
> (Emphasis and italics ours)

34. Respondent respectfully submits that the assessment was based on the sales of Petron Corporation as evidenced by the Details of Taxpayer's Supplier's Records which contained the Summary List of Sales (SLS) of Petron wherein the sales of the seller (Petron) which equivalent to purchases of the petitioner was reconciled with the purchases as declared by the petitioner in her income tax return and thus arriving to a purchase discrepancy in the amount of Forty Four Million Ninety Five Thousand Two Hundred Forty Five and 03/100 (P44,095,245.03).

35. Petitioner would like this Honorable Court to believe that respondent failed to perform the necessary assessment despite having the means to gather information such as benchmarking and allowing the respondent to examine her records and books.

36. Benchmarking is not applicable in this case, under Revenue Memorandum Order 4-2006 benchmarking is used to determine a taxpayer's tax compliance by measuring up with other taxpayers within the same industry. Here, respondent has made the necessary assessment by using the third party information wherein it was discovered that petitioner had under-declared income due to the substantial differences between her purchases as indicated in her tax return and from what her supplier (Petron) declared in their sales.

37. The petitioner is required to prove that she did not incurred *(sic)* the purchases as reflected in the 2010 sales record of her supplier (Petron), this can be done by means of presenting documentary evidence to support the purchases as provided in her tax return. This is explicitly provided in Paragraph 5 of Section 228 which states that:

> 'Within sixty (60) days from filing of the protest, all relevant **supporting documents shall have been submitted**; otherwise, the assessment shall become final.' (Emphasis and italics ours)

38. However, despite given the chance to present her evidence, **she failed to produce any document to substantiate her claim**. Petitioner alleged that she presented several receipts for the year 2013 to support her purchases, nonetheless these alleged receipt does not explain how she incurred the purchases as reflected in the 2010 sales of Petron.

39. Petitioner also alleged third party sourced documents sourced from Petron cannot be considered as best evidence obtainable to determine the tax deficiency of the petitioner based on the case of CIR vs. Hantex.

40. Respondent begs to differ, contrary to the allegations of the petitioner the information gathered thru the third party sourced documents are considered as the best evidence obtainable as provided under Section 6 (B) of NIRC. Respondent respectfully like to point out that the date used in the assessment was derived from the system generated data of the Bureau of Internal Revenue's

centralized Data Warehouse pursuant to Revenue Memorandum Order (RMO) No. 13-2012 in relation to RMO 30-2003, not from photocopied documents of Petron as the petitioner alleged.

41. Petitioner alleged that the assessment is erroneous on the notion that respondent failed to consider the corresponding Input VAT in computing the under-declared purchases, in addition to the alleged gross profit and cost ratio.

42. Contrary to petitioner's allegation, the computation of petitioner's deficiency VAT is based on **her under-declared sales/revenue** as stated in the Details of Discrepancies of Taxable Year 2010, to wit:

'xxx xxx xxx

2. **VALUE-ADDED TAX DEFICIENCY**

Under-declared Sales/Revenue Subjected to VAT – Under-declared Sales/Revenue of ₱50,701,673.03 should be subjected to 12% VAT. Basic Deficiency VAT amounting to ₱6,084,200.76 is computed. You Paid partial deficiency VAT of ₱50,527.22 relative to LN. The findings and Deficiency VAT of the previous investigation was upheld. This resulted to a Deficiency VAT still due amounting to ₱13,541,976.90 inclusive of 50% surcharge and 20% interest per annum pursuant to Sections 5 and 106 of NIRC, as amended and RMO 13-2012, as amended. The 50% Surcharge is computed on the bases of Section 248 (B) of NIRC, as amended.

xxx xxx xxx' (Italics ours)

43. A detailed computation of the petitioner's Value Added Tax deficiency is provided in the Formal Letter of Demand as indicated below:

'xxx xxx xxx

II. VALUE-ADDED TAX (Sec. 5, 106, 248 & 249 of NIRC, as amended; RMO 13-2012)

Total Vatable Purchases per LN		55,864,172.68
Less: Vatable Purchases per taxpayer's Declaration/ITR filed		11,768,927.65
Under-declared purchases for VAT purposes		44,095,245.03
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		6,033,673.54
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TOTAL DEFICIENCY TAXES DUE AND COLLECTIBLE		**₱ 17,879,515.33**

xxx xxx xxx'

44. The abovementioned findings clearly show that the deficiency VAT of the petitioner was derived from the purchases for the taxable year 2010. It is again noteworthy to stress that petitioner failed to produce any evidence to substantiate her claim that: a) the entries in her tax return for the year 2010 is correct; and b) that the industry standard in computing the gross profit rate is 1-2.5%. Instead she places the blame on the earthquake and her account was handled by an unqualified and unscrupulous bookkeeper.

45. To conclude, it is clear that the instant petition is based on presumptions and conjecture of the petitioner, what she presented in this case are mere allegations without any evidence to substantiate her claims. Thence, respondent respectfully submits that this Honorable Court upheld the computation contained in the Final Assessment Notice and order the petitioner to pay her deficiency tax due. It is further submitted that the instant case be dismissed and herein Petition for Review be Denied."

Thereafter, a Notice of Pre-Trial Conference[28] was issued by the Court on July 30, 2015, setting the case for pre-trial conference on September 3, 2015. Respondent's Pre-Trial Brief[29] was filed on August 12, 2015 while the Pre-Trial Brief for Petitioner[30] was filed on August 28, 2015.

Pre-Trial ensued. The parties filed their Joint Stipulation of Facts[31] on October 9, 2015. Thereafter, a Pre-Trial Order[32] was issued on October 20, 2015 and the pre-trial was deemed terminated.

During trial[33], petitioner testified for herself and subsequently filed her Formal Offer of Exhibits[34] on November 27, 2015. In the Resolutions[35] dated January 25, 2016 and October 20, 2016, the Court admitted all of petitioner's evidence, except for Exhibits "P-11-h", "P-11-i", "P-11-j", "P-10", "P-11-c", "P-12", "P-12-a", "P-14", "P-14-a", "P-14-b", "P-17", "P-16", "P-19-a", "P-19-b", "P-19-c", "P-19-d", and "P-19-e". Thereafter, petitioner filed a Motion for Tender of Excluded Evidence[36], which the Court noted in a Resolution[37] dated December 14, 2016.

On the other hand, respondent presented (1) Angelee D. Andaya[38] and (2) Tomas S. Rambuyon[39] as her witnesses. Respondent filed her Formal Offer of Evidence[40] on November 17, 2016. In the Resolution[41] dated April 3, 2017, the Court admitted all of respondent's evidence.

The case was deemed submitted for decision on June 14, 2017, considering respondent's Memorandum[42] filed on May 3, 2017 and petitioner's Memorandum[43] filed by registered mail on May 18, 2017 and received by this Court on June 6, 2017.

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[28] *Id.* at pp. 149-150.
[29] *Id.* at pp. 153-161.
[30] *Id.* at pp. 184-195.
[31] *Id.* at pp. 298-312.
[32] *Id.* at pp. 314-320.
[33] Minutes of the Hearing dated November 4, 2015, Id, p. 321.
[34] *Id.*, pp. 331-341.
[35] Docket (Vol. II), pp. 435-436 and pp. 500-506, respectively.
[36] *Id.* at pp. 521-524.
[37] Docket (Vol. II), p. 527.
[38] Minutes of the Hearing dated January 25, 2016, Docket (Vol. II), p. 437.
[39] *Id.*
[40] Docket (Vol. II), pp. 509-518.
[41] *Id.* at pp. 544-545.
[42] *Id.* at pp. 547-562.
[43] *Id.* at pp. 564-585.

The following are the issues[44] raised by petitioner:

"1. Whether the Waivers executed by the taxpayer (Annexes 'K', 'K-1', & 'K-2' [First Waiver], and Annexes 'L' and 'L-1' [Second Waiver]) complies with the requirements for a valid waiver under RMC No. 6-2005 I *(sic)* relation to RMC No. 20-90 and the extant jurisprudence of Philippine Journalist Inc. v. Commissioner of Internal Revenue G.R. No. 162852, December 16, 2004;

2. Whether Assessment should be canceled on the ground of prescription;

3. Whether the third party sourced documents e.g. Annex 'C-1' Details of Suppliers' –Records (Source: SLS) attached to LN No. 079-RLF-00-0025, which is a mere photocopy NOT ORIGINAL or CERTIFIED TRUE COPY with nary *(sic)* a signature or certification coming from Data Warehouse Team or Officer In charge thereof, to prove or establish its authenticity is considered as 'best evidence' obtainable under Section 6, of the NIRC as amended or whether the same has factual or legal basis;

4. Whether the Computation Sheet and the Assessment based thereon where the VAT Output was assessed on the basis of under declared sales/income but did not consider or compute the corresponding or consequential VAT Input on the so-called under declared purchases to arrive at the VAT Payable;

5. Whether Petitioner, wrote a reply letter dated **August 2, 2012**. In the said letter, the same acknowledged the receipt of LN on **July 9, 2012**. The letter further explained that taxpayer together with her accountant Mr. Julito Pelayo went to BIR Dumaguete office, conferred, and met with Richard Oquindo and Ms. Angee Andaya on separate occasions.

[44] E. Issues To Be Tried for Petitioner, JSF, Id., pp. 300-301.

6. Whether petitioner requested in her March 7, 2013 letter was not a 'reinvestigation and reconsideration' as the aforementioned March 25, 2013 letter of Perfecto L. Aranas, asserted. What the Taxpayer -movant requested were as follows: (1) to be provided with all the source documents to support the PURCHASE figures supplied by Petron to the office of the BIR; (2) Consider using the industry standard and average of gas station's gross profit ratio; and (3) Provide with source documents.

7. Whether the absence of documents, books, and records brought about by the damages on her properties especially the bodega/warehouse where the records and books were stored, the Taxpayer-movant, REQUESTED for the BIR to instead exercise its power and discretion as provided under Sections 5 to 6 of the NIRC to settle the aforementioned contentious issues.

8. Whether petitioner has until 10 October 2014 within which to file the administrative protest or request for reconsideration."

In sum, the issues to be resolved are the following:

1. Whether petitioner is liable for deficiency Income Tax in the amount of ₱4,337,539.43 and ₱13,541,976.90 deficiency Value-Added Tax for the calendar year 2010.

2. Whether assessments were made in accordance with law.

The Petition for Review is timely filed

The Court will first determine the timeliness of the filing of the Petition for Review.

Section 228 of the National Internal Revenue Code of 1997 (Tax Code), provides for the periods in filing an administrative protest, *viz:*

"SEC. 228. *Protesting of Assessment.* When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a pre-assessment notice shall not be required in the following cases:

xxx xxx xxx

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

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

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of 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 said decision, or from the lapse of the one hundred eighty (180) –day period; otherwise, the decision shall become final, executory and demandable."

The provision above is implemented by Revenue Regulation (RR) No. 12-99 as amended by RR No. 18-13, to wit:

"3.1.4. *Disputed Assessment.* – <u>The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof.</u> The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) Request for reconsideration – refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

(ii) Request for reinvestigation – refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.

xxx xxx xxx

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

<u>If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request for reconsideration</u>; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, <u>the taxpayer may</u>

> either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180) –day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment." *(Underscoring ours)*

In this case, petitioner allegedly received the FAN/FLD on September 10, 2014. Hence, she had until October 10, 2014 to file her protest thereon. Consequently, her Request for Reconsideration was timely filed on October 9, 2014.

Respondent avers, however, that petitioner's Request for Reconsideration was filed on October 23, 2014; and that petitioner failed to present the registry receipt to prove that the protest was sent by registered mail.

Contrary to respondent's contention, a perusal of the records shows that petitioner presented the registry receipt proving that her Request for Reconsideration was sent by registered mail on October 9, 2014. In fact, the same was marked as Exhibit "P-21"[45].

Following the above-quoted provisions, respondent had until April 7, 2015 to decide on petitioner's protest. Considering respondent's inaction thereon, petitioner opted to appeal to this Court on May 4, 2015 which is within the thirty-day period mandated by law. Hence, the Petition for Review was timely filed as well.

Respondent's right to assess has already prescribed

Section 203 of the Tax Code provides for the prescriptive period for the assessment and collection of internal revenue taxes, to wit:

> "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

[45] *Supra.*, note 29.

of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three-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." *(Underscoring supplied)*

On the other hand, Sections 51(C) and 114(A) of the Tax Code provides for the filing and payment of income tax and VAT, respectively, portions of which are quoted below:

"SEC. 51. *Individual Return.*

xxx xxx xxx

(C) *When to File.* –

(1) The return of any individual specified above shall be filed on or before the fifteenth (15th) day of April of each year covering income for the preceding taxable year."

"SEC. 114. *Return and Payment of Value-Added Tax.* –

(A) *In General.* – Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis. xxx"

In the instant case, petitioner failed to present evidence on when the ITR and VAT returns were filed. Presuming that these were filed on or before their respective deadlines as required by law[46], the period to assess is set forth below:

[46] Sec. 3(ff), Rule 131, Rules of Court.

CY 2010 Tax Return	Presumed date of payment	Last day of Assessment
Income Tax	April 15, 2011	April 15, 2014
1st quarter VAT	April 25, 2010	April 25, 2013
2nd quarter VAT	July 25, 2010	July 25, 2013
3rd quarter VAT	October 25, 2010	October 25, 2013
4th quarter VAT	January 25, 2011	January 25, 2014

The FAN/FLD was issued on August 28, 2014. Hence, based on the foregoing, the assessments had already prescribed.

The parties, however, executed two waivers extending the period to assess until October 31, 2014.

Petitioner argues that the two waivers are defective and in violation of Revenue Memorandum Circular (RMC) No. 6-2005 in relation to RMC No. 20-90, and contrary to the ruling in the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[47], on the following grounds: (i) the date of acceptance was not indicated; and (ii) petitioner was not furnished with copies of said waivers. Petitioner also contends that estoppel does not apply because it was respondent who requested for the execution of the waivers.

On the other hand, respondent contends that her right to assess petitioner for taxable year 2010 has not yet prescribed since petitioner has a substantial under-declaration of sales in her income tax and VAT returns. Accordingly, this demonstrates falsity or fraudulence in the filing of the returns with an intent to evade taxes.

Petitioner counters that the Letter of Notice, which indicated that there was under-declaration of sales/purchases, based on Details of Taxpayer's Suppliers Records (SLS), would not, on its own merit, be the basis to conclude that the 2010 Returns filed by petitioner were false and/or fraudulent since the SLS has not been examined by the BIR.

Section 222 provides for the exceptions to the three-year prescriptive period elucidated above. The provision reads:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –

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[47] G.R. No. 162852, December 16, 2004.

(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.

(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." *(Underscoring supplied)*

Based on the afore-quoted provision, the three-year prescriptive period may not apply in cases when, among others, (1) the taxpayer filed a false or fraudulent return with intent to evade tax, in which case the period is extended to ten years, and (2) both the Commissioner of Internal Revenue (CIR) and the taxpayer have agreed in writing, before the expiration of the time prescribed in Section 203, to extend the period of assessment.

The case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*[48] is instructive as to the proper execution of a waiver, to wit:

"Section 222 (b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:

[48] G.R. No. 178087, May 5, 2010.

1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after ______ 19 ___', which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.

2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement."

In the above-quoted case, the Supreme Court found that: (1) the waivers were executed without the notarized written authority of the signatory to sign the waiver in behalf of Kudos Metal, (2) the waivers failed to indicate the date of acceptance, and (3) the fact of receipt by Kudos Metal of its file copy was not indicated in the original copies of the waivers. Due to these defects, the Supreme Court ruled that the waivers did not extend the period to assess.

Similarly, the Court finds in the present case that the waivers do not indicate the date of acceptance and the fact of receipt by petitioner of the accepted waiver. Moreover, the Court notes that three copies of the waiver executed on April 19, 2013 are still attached to the BIR Records of the case, leading to the conclusion that petitioner was not furnished a copy of the accepted waiver.

Estoppel cannot apply in this case since it was solely the BIR who caused the defects in the waivers, and hence, it must bear the consequences thereof. It cannot shift the blame to the taxpayer. A waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.[49]

Moreover, respondent's argument that petitioner filed false or fraudulent returns with intent to evade taxes is a mere allegation which respondent failed to prove. Generally, fraud has been defined as the deliberate intention to cause damage or prejudice. It must be alleged and proven as a fact where the following requisites must concur: (a) the fraud must be established by evidence; and (b) the evidence of fraud must be clear and convincing, and not merely preponderant. Upon failure to establish these two (2) requisites, just like in the instant case, the presumption of good faith must prevail.[50]

The absence of a LOA violated petitioner's right to due process

In the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[51], the Supreme Court ruled that an examination of a taxpayer cannot be undertaken without prior approval and authorization from the CIR or his duly authorized representatives. It ruled:

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[49] *Id.*

[50] *Pilipinas Shell Petroleum Corp. vs. Commissioner of Customs*, G.R. No. 195876, December 5, 2016.

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

"An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:

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

Based on the afore-quoted provision, it is clear that <u>unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.</u> The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. <u>Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct</u>

> any of these kinds of examinations without prior authority." *(Underscoring supplied)*

The Supreme Court explained that the BIR's centralized Data Warehouse in conjunction with its Reconciliation of Listing for Enforcement System (RELIEF System) can detect tax leaks by matching the data available under the BIR's Integrated Tax System (ITS) with data gathered from third-party sources. The Supreme Court further explained that the "no-contact-audit approach" laid down under RMO No. 42-2003 includes the process of computerized matching of sales and purchases data contained in the Schedules of Sales and Domestic Purchases, and Schedule of Importation submitted by VAT taxpayers under the RELIEF System. It discussed, *viz:*

> "Under this policy, even without conducting a detailed examination of taxpayer's books and records, if the computerized/manual matching of sales and purchases/expenses appears to reveal discrepancies, the same shall be communicated to the concerned taxpayer through the issuance of LN. The LN shall serve as a discrepancy notice to taxpayer similar to a Notice for Informal Conference to the concerned taxpayer. Thus, under the RELIEF System, a revenue officer may begin an examination of the taxpayer even prior to the issuance of an LN or even in the absence of an LOA with the aid of a computerized/manual matching of taxpayers': documents/records. Accordingly, under the RELIEF System, the presumption that the tax returns are in accordance with law and are presumed correct since these are filed under the penalty of perjury are easily rebutted and the taxpayer becomes instantly burdened to explain a purported discrepancy.
>
> Noticeably, both RMO No. 30-2003 and RMO No. 42-2003 are silent on the statutory requirement of an LOA before any investigation or examination of the taxpayer may be conducted. As provided in the RMO No. 42-2003, the LN is merely similar to a Notice for Informal Conference. However, for a Notice of Informal Conference, which generally precedes the issuance of an assessment notice to be valid, the same presupposes that the revenue officer who issued the same is properly authorized in the first place.

> With this apparent lacuna in the RMOs, in November 2005, RMO No. 30-2003, as supplemented by RMO No. 42-2003, was amended by RMO No. 32-2005 to fine tune existing procedures in handing assessments against taxpayers' issued LNs by reconciling various revenue issuances which conflict with the NIRC. <u>Among the objectives in the issuance of RMO No. 32-2005 is to prescribe procedure in the resolution of LN discrepancies, conversion of LNs to LOAs and assessment and collection of deficiency taxes.</u>" *(Underscoring supplied)*

The Supreme Court found that no LOA was issued to MEDICARD prior to the issuance of a PAN and FAN, and hence, absent an authority to examine the same, the assessment is void. It ruled as follows:

> "In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore, no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid. Hence, the CTA's disregard of MEDICARD's right to due process warrant the reversal of the assailed decision and resolution.
>
> In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[52], the Court said that:
>
>> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.

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[52] 649 Phil. 519 (2010).

xxx xxx xxx

> The BIR's RELIEF System has admittedly made the BIR's assessment and collection efforts much easier and faster. The ease by which the BIR's revenue generating objectives is achieved is no excuse however for its non-compliance with the statutory requirement under Section 6 and with its own administrative issuance. In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.
>
> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void." *(Underscoring supplied)*

In the case at bench, the records are, likewise, bereft of any indication that a LOA was issued to petitioner. Therefore, following the ruling in the above-quoted case, the income tax and VAT assessments issued by respondent is void.

In view of the foregoing, it is unnecessary for the Court to discuss the rest of the parties' arguments and counter-arguments.

WHEREFORE, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency income tax and VAT assessments issued against petitioner for taxable year 2010 are **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

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

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice