**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***SPECIAL THIRD DIVISION***

**RACAL MOTORSALES CORPORATION,**
Petitioner,

-versus-

**BUREAU OF INTERNAL REVENUE through MYRNA S. LEONIDA in her capacity as the OIC-Regional Director, Revenue Region No. 5, Caloocan City,**
Respondent.

**CTA CASE NO. 9737**

Members:

**RINGPIS-LIBAN**, **UY**, *Chairperson*, *and*
**MODESTO-SAN PEDRO**, *JJ*.

Promulgated:

SEP 14 2023
8:02 a.m.

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# DECISION

**RINGPIS-LIBAN, *J*.:**

## THE CASE

The *Petition for Review* filed on December 20, 2017 and the *Amended Petition for Review* filed on April 10, 2018[1] both pray that the *Final Decision* issued by respondent against petitioner for its alleged deficiency value-added tax (VAT), for the period January 1, 2017 to June 30, 2017, in the amount of ₱54,462,094.49, inclusive of surcharges, interest and penalties, be recalled and that the disputed assessment be declared without legal and factual bases.[2]

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[1] Docket – Vol. I, pp. 157 to 174.

[2] Refer to the Summary of the Case, *Pre-Trial Order* dated August 20, 2018 (Docket – Vol. I, p. 335). The amount stated in the Summary of the Case is only ₱25,287,704.47, which represents only the basic deficiency VAT. Thus, the amount of "₱54,462,094.49", which is inclusive of the surcharge and interest, was stated in the description of this case. Refer also to par. 4, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 311.

## THE PARTIES

Petitioner Racal Motorsales Corporation is a domestic corporation duly registered with the Securities and Exchange Commission (SEC), with principal place of business at Km. 39 Aguinaldo Highway, Barangay Biga II, Silang Cavite.[3] It is established primarily to conduct and carry on the business of selling, distributing, marketing at a wholesale or retail in so far as may be permitted by law all kinds of goods, commodities, wares and merchandise of every kind and description such as but not limited to motorcycles, parts and accessories; to enter into all kinds of contracts for the export, import purchase, acquisition, sale at wholesale or retail and other dispositions for its own account as principal or representative capacity as manufacturing, representatives, merchandise broker, inventor, commission merchant, factors or agents upon consignment of all kinds of good[s], wares, merchandise or product whether natural or artificial.[4]

Petitioner is also registered with the Bureau of Internal Revenue (BIR), under Tax Identification Number 007-571-214.[5]

As a duly registered business entity in the Philippines, petitioner generates VATable sales arising from its cash and installment sales of motorcycles, parts and accessories within its area of operation, which is within the National Capital Region and within North Luzon.[6]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR), who holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[7] He is vested with the power to decide tax cases, including disputed assessments, pursuant to Section 4 of the 1997 National Internal Revenue Code (NIRC), as amended.[8]

## ANTECEDENTS (ADMINISTRATIVE LEVEL)

On April 25, 2014, the taxpayer Racal Motorsales Corporation filed its VAT Quarterly Return for the months of January, February and March 2014.[9] Thereafter, on July 25, 2014, it also filed its VAT Quarterly Return for the months of April, May and June 2014.[10]

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[3] Par. 1, Stipulation of Facts, JSFI, Docket – Vol. I, p. 310.
[4] Par. 6, Stipulation of Facts, JSFI, Docket – Vol. I, p. 311.
[5] Par. 5, Stipulation of Facts, JSFI, Docket – Vol. I, p. 311.
[6] Par. 7, Stipulation of Facts, JSFI, Docket – Vol. I, p. 311.
[7] Par. 2, Stipulation of Facts, JSFI, Docket – Vol. I, p. 310.
[8] Par. 3, Stipulation of Facts, JSFI, Docket – Vol. I, p. 310.
[9] BIR Form 2550Q, Exhibit P-4, Docket – Vol. II, p. 624.
[10] BIR Form 2550Q, Exhibit P-5, Docket – Vol. II, p. 625.

The following year, the BIR issued a *Letter of Authority* (LOA) dated May 4, 2015, with No. LOA-V05-2015-00000, authorizing Revenue Officer (RO) Jeffrey Butial (Butial) / Group Supervisor (GS) Bryan Dela Cruz (Cruz), to examine the books of accounts and other accounting records of petitioner for VAT, for the period from January 1, 2014 to June 30, 2014.[11]

Based on the LOA, the audit of the taxpayer commenced.[12] Specifically, RO Butial sent several requests for presentation of records to the taxpayer such as:

- Request for Presentation of Records/Books of Accounts;
- First Notice dated May 18, 2015; and,
- Final Notice for Presentation of Records Before Issuance of *Subpoena Duces Tecum* dated June 1, 2015.[13]

For failure of the taxpayer to comply with the *Subpoena Duces Tecum*, the Legal Division instructed that the taxpayer be assessed based on the Best Evidence Obtainable Rule.[14] For this purpose, RO Butial requested the Assessment Division for an Access Letter to be sent to the Land Transportation Office (LTO) IT provider, Stradcom Corporation, to allow the BIR to access its records and gather the information necessary pertaining to all motor vehicles sold through the taxpayer as a dealer.[15]

After acquiring data gathered from the LTO / Stradcom Corporation and other third-party information, RO Butial discovered that there was deficiency in the declared VAT sales for the taxable period in question.[16]

Accordingly, in the *Preliminary Assessment Notice* (PAN) dated November 7, 2016, with attached *Details of Discrepancy*, the BIR ascertained that petitioner had deficiency VAT for the 1st and 2nd quarters of 2014, amounting to ₱79,411,132.65 inclusive of surcharge, interest and compromise penalty.[17] The taxpayer filed a protest to the PAN.[18]

Subsequently, in a Memorandum of Assignment (MOA) No. MOA2015LOA24188 dated March 9, 2017, a new RO Paul Simon A. Francisco (Francisco) but still under the same GS Cruz were tasked to conduct

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[11] Par. 8.1, Stipulation of Facts, JSFI, vis-à-vis copies of the LOA No. LOA-V05-2015-00000130 dated May 4, 2015, Docket – Vol. I, pp. 311, 26, and 91, respectively. Refer also to par. 7 (a), Statement of Facts, *Amended Petition for Review,* vis-à-vis par. 7, *Answer with Special and Affirmative Defenses,* Docket – Vol. I, pp. 159 and 65, respectively.
[12] Judicial Affidavit of Revenue Examiner Jeffrey M. Butial, Docket – Vol. I, p. 117.
[13] *Id.*, Docket – Vol. I, p. 118.
[14] *Id.*, Docket – Vol. I, p. 120.
[15] *Id.*
[16] *Id.*, Docket – Vol. I, p. 121.
[17] Par. 8.2, Stipulation of Facts, JSFI, vis-à-vis copies of the PAN dated November 7, 2016, Docket – Vol. I, pp. 311, 27 to 32, and 92 to 96, respectively. Refer also to par. 7 (b), Statement of Facts, *Amended Petition for Review,* vis-à-vis par. 8, *Answer with Special and Affirmative Defenses,* Docket – Vol. I, pp. 159 and 66, respectively.
[18] Judicial Affidavit of Revenue Examiner Jeffrey M. Butial, Docket – Vol. I, p. 122.

the reinvestigation in relation to the previous grant of request in favor of the taxpayer.[19]

Pursuant to the MOA, RO Franciso from VAT Audit Section, Assessment Division of BIR Revenue Region No. 5 conducted the reinvestigation. During the reinvestigation, RO Franciso required the taxpayer to present all the necessary documents / records. He cross-checked their validity and completeness upon submission, which resulted in the reduction of the deficiency VAT assessment.[20]

On January 10, 2017, the BIR issued a Final Assessment Notice (FAN) / Formal Letter of Demand (FLD) Nos. 35947 and 21565 covering the taxpayer's deficiency VAT assessment for the for the 1st and 2nd quarters of 2014.[21] The FAN and FLD were served by RO Butial to the taxpayer on January 12, 2017.[22]

The taxpayer through its President, Mr. Jose Earl B. Racal, filed a formal letter of protest dated January 25, 2017, which requested for a reconsideration and/or reinvestigation and which was then granted by the Regional Director Myrna S. Leonida.[23] Since the request for reconsideration and / or reinvestigation was granted, the docket was again forwarded to the VAT Audit Section, Assessment Division of BIR Revenue Region No. 5 for the reception of all documents in support of the letter of protest within sixty (60) days from the filing of the same.[24]

Finally, on November 22, 2017, petitioner received from BIR Revenue Region No. 5 – Caloocan City, the *Final Decision on Disputed Assessment* (FDDA) dated October 13, 2017, and *Revised Formal Letter Demand* (RFLD), with *Assessment Notice* No. 22117 dated November 21, 2017,[25] wherein the BIR demanded from petitioner the payment of deficiency VAT, in the aggregate amount of ₱54,462,094.49, inclusive of surcharge and interest.[26] The FDDA and FFLD were served by RO Franscisco.[27]

[19] Exhibit R-14, Docket – Vol. I, p. 226; *Formal Offer of Evidence*, Docket – Vol. II, p. 831; BIR Records, p. 528.
[20] Judicial Affidavit of Revenue Examiner Paul Simon Francisco, Docket – Vol. I, pp. 131-132.
[21] Judicial Affidavit of Revenue Examiner Jeffrey M. Butial, Docket – Vol. I, p. 122.
[22] *Id.*, Docket – Vol. I, pp. 123-124.
[23] *Id.*, Docket – Vol. I, p. 124.
[24] *Id.*
[25] Pars. 8.3 and 9, Stipulation of Facts, JSFI, Docket – Vol. I, p. 311; Exhibits "P-21", Docket – Vol. II, p. 653.
[26] Exhibits "P-16" to "P-20", Docket – Vol. II, pp. 646 to 652; Par. 8, *Answer with Special and Affirmative Defenses*, Docket – Vol. I, p. 66.
[27] Judicial Affidavit of Revenue Examiner Paul Simon Francisco, Docket – Vol. I, p. 133.

## PROCEEDINGS BEFORE THIS COURT

Petitioner and taxpayer filed the present *Petition for Review* on December 20, 2017.[28] This case was originally raffled to this Court's Second Division.[29]

On February 22, 2018, respondent filed his *Answer With Special and Affirmative Defenses*[30] where he admitted the following allegations of the petitioner:

- Personal circumstances of the petitioner;

- Personal circumstances of the respondent, but clarified that Regional Director Myrna S. Leonida had already retired from service and that then current Regional Director was Manuel V. Mapoy;

- Jurisdiction of the Court;

- Issuance of the LOA dated May 4, 2015;

- Issuance of the FDDA, revised FAN and the revised FLD for deficiency VAT and Compromise Penalty.[31]

Respondent also interposed the following special and affirmative defenses:

- "The filing of this instant Petition for Review by the Petitioner was filed out of time, as such, this Honorable Court has no jurisdiction over the subject matter of this case; pursuant to Section 7 of R.A. No. 1125 as amended by R.A. No. 9282, in relation to Section 228 of the NIRC as implemented by RR18-2013 pertaining to the due process requirement in tax assessments."[32]

- "The disputed assessment issued by the Bureau of Internal Revenue has factual and legal bases, which are duly explained in detail in the Final Assessment Notice and Formal Letter of Demand."[33]

- "The declarations under oath of Racal Vis-Min Motorsales Corporation and Racal South Motorsales Corporation are self-serving."[34]

[28] Docket – Vol. I, pp. 10 to 23.
[29] Par. 10, Stipulation of Facts, JSFI, Docket – Vol. I, p. 312.
[30] Docket – Vol. I, pp. 64 to 74.
[31] *Answer With Special and Affirmative Defenses*, Docket – Vol. I, p. 65.
[32] *Id.*, Docket – Vol. I, pp. 66 to 68.
[33] *Id.*, Docket – Vol. I, pp. 68 to 69.
[34] *Id.*, Docket – Vol. I, pp. 69 to 70.

- "The list of sales returns for repossessed motor vehicles were not presented during audit."[35]

- "The undeclared sales of Racal Motorsales Corporation based on data gathered from LTO are entirely different from the undeclared local purchases of Racal Motorsales Corporation, and the simultaneous imposition of both is NOT tantamount to double taxation."[36]

- "Pursuant to RMO 16-2007, any input tax evidenced by a vat invoice and a cleared check issued in accordance with Sec. 113 of the same Code shall be creditable against the output tax."[37]

On February 28, 2018, respondent transmitted the entire *BIR Records* of this case, consisting of 787 pages filed in one (1) folder.[38]

*Respondent's Pre-Trial Brief* was filed on April 6, 2018.[39]

On April 10, 2018, petitioner filed *Motions: [1] Motion for Leave to File Amended Petition for Review; and [2] Motion to Admit Attached Amended Petition for Review [3] Urgent Motion to Reset of Pre-Trial Conference*,[40] attaching therewith its *Amended Petition for Review*.[41] Respondent filed his *Comment/Opposition (Re: Motion for Leave to File Amended Petition for Review)* on April 19, 2018.[42]

The Pre-Trial Conference was initially scheduled on April 12, 2018.[43]

In its Resolution dated May 7, 2018,[44] the Court granted the petitioner's *Motions*, and reset the Pre-Trial Conference on June 7, 2018.[45]

Respondent then filed his *Supplemental Answer (Re: Amended Petition for Review)* on May 21, 2018,[46] stating that he denies petitioner's allegation with respect to the ground of prescription and the lack of the requisite factual and legal basis of the assessment.[47] The *Supplemental Answer (Re: Amended Petition for Review)* also discussed the following arguments:

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35 *Id.*, Docket – Vol. I, pp. 70 to 71.
36 *Id.*, Docket – Vol. I, p. 71.
37 *Id.*, Docket – Vol. I, pp. 72 to 73.
38 *Compliance* dated February 28, 2018, Docket – Vol. I, pp. 104 to 105.
39 Docket – Vol. I, pp. 145 to 151.
40 Docket – Vol. I, pp. 152 to 156.
41 Docket – Vol. I, pp. 157 to 174.
42 Docket – Vol. I, pp. 238 to 241.
43 *Notice of Pre-Trial Conference* dated March 1, 2018, Docket – Vol. I, pp. 106 to 107.
44 Docket – Vol. I, pp. 244 to 247.
45 Refer also to the *Notice of Pre-Trial Conference* dated May 8, 2018, Docket – Vol. I, pp. 248 to 249.
46 Docket – Vol. I, pp. 250 to 255.
47 *Supplemental Answer (Re: Amended Petition for Review)*, Docket – Vol. I, pp. 250 to 251.

- "The assessments issued against the Petitioner in the amount of P54,462,094.49 and P4,000 as deficiency Value-Added Tax, and Compromise Penalty respectively, CLEARLY state the factual and legal bases thereof."[48]

- "The right of the BIR to assess Racal Motor Sales Corp., has not prescribed pursuant to Section 203 of the Tax Code."[49]

On June 4, 2018, petitioner filed an *Urgent Motion to Reset Pre-Trial Conference*,[50] which the Court granted at the hearing held on June 7, 2018,[51] thereby resetting of the Pre-Trial Conference to July 19, 2018. Petitioner's *Pre-Trial Brief* was filed on July 13, 2018[52] while respondent, on June 4, 2018, filed a *Manifestation*, stating that he intends to adopt the *Pre-Trial Brief* previously filed, notwithstanding petitioner's *Amended Petition for Review*.

Thereafter, on August 3, 2018, the parties filed their *Joint Stipulation of Facts and Issues*,[53] which was approved and adopted by the Court in the Pre-Trial Order dated August 20, 2018,[54] thereby deeming the termination of the pre-trial.

Trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Jingle A. Francia,[55] petitioner's Credit and Collections Manager; (2) Mr. Marlon Riego,[56] Operations Manager of petitioner (North Area); and (3) Ms. Fe A. Suyat-Bullecer,[57] the Court-commissioned Independent Certified Public Accountant (ICPA).[58]

The *Report* of the ICPA was submitted on March 16, 2020.[59]

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[48] *Id.,* Docket – Vol. I, pp. 250 to 251.
[49] *Id.,* Docket – Vol. I, pp. 252 to 254.
[50] Docket – Vol. I, pp. 259 to 261.
[51] Minutes of the hearing held on, and Order dated, June 7, 2018, Docket – Vol. I, pp. 266 to 267.
[52] Docket – Vol. I, pp. 268 to 276.
[53] Docket – Vol. I, pp. 310 to 313.
[54] Docket – Vol. I, pp. 335 to 348.
[55] Exhibit "P-24", Docket – Vol. I, pp. 403 to 418; Minutes of the hearing held on, and Order dated, February 6, 2019, Docket – Vol. I, pp. 419 to 420.
[56] Exhibit "P-6260", Docket – Vol. II, pp. 542 to 554; Minutes of the hearing held on, and Order dated, March 2 2020, Docket – Vol. II, pp. 555 to 557.
[57] Exhibit "P-6259", Docket – Vol. II, pp. 522 to 529; Minutes of the hearing held on, and Order dated, November 27, 2019, Docket – Vol. II, pp. 533 to 535.
[58] *Oath of Commission* dated September 26, 2019, Docket – Vol. II, p. 504; Minutes of the hearing held on, and Order dated, September 26, 2019, Docket – Vol. II, pp. 505 to 507.
[59] Exhibits "P-6257", "P-6257-a", "P-6257-b", "P-6257-c", "P-6257-d".

On March 16, 2020, petitioner filed a *Motion to Admit Formal Offer of Evidence,*[60] attaching therewith its *Formal Offer of Evidence With Manifestation.*[61] Respondent then filed his *Comment/Opposition on Formal Offer of Evidence (With Motion to Admit)* on June 23, 2020.[62]

In the Resolution dated December 11, 2020,[63] the Court granted the *Motion to Admit* and admitted petitioner's offered Exhibits, *except* for certain and numerous Exhibits which were denied for not being found in the records, for failure to pre-mark the exhibits, for being unreadable / illegible / blurred / improperly scanned, for failure to present originals for comparison, for failure to submit duly marked exhibits and for failure of the exhibits formally offered and identified to correspond with the document actually marked.

Petitioner filed, via email, a *Manifestation with Motion for Extension to File Motion for Partial Reconsideration (On Resolution dated December 11, 2020)* on January 13, 2021,[64] and a *Second Motion for Extension to File Motion for Partial Reconsideration (On the Resolution dated December 11, 2020)* on January 29, 2021.[65] In the Resolution dated February 17, 2021,[66] the Court, *inter alia*, granted the *Motions*, and directed petitioner to file its *Motion for Partial Reconsideration.*

In compliance thereto, petitioner posted its *Motion to Admit "Motion for Partial Reconsideration" (with attached Motion for Partial Reconsideration Dated February 12, 2021)* on February 18, 2021.[67]

In the Resolution dated September 30, 2021,[68] the Court granted petitioner's *Motion to Admit*, and partially granted its *Motion for Partial Reconsideration*, thereby admitting Exhibit "P-23-NNNNN", but still denied the admission of Exhibits "P-6" to "P-11".

For his part, respondent offered the testimony of RO Paul Simon A. Francisco.[69]

On April 5, 2022, respondent's *Formal Offer of Evidence* was filed,[70] to which petitioner filed its *Comment (To Respondent's Formal Offer of Evidence)* on

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[60] Docket – Vol. II, pp. 571 to 574.
[61] Docket – Vol. II, pp. 575 to 604.
[62] Docket – Vol. II, pp. 663 to 665.
[63] Docket – Vol. II, pp. 669 to 746.
[64] Docket – Vol. II, pp. 750 to 753.
[65] Docket – Vol. II, pp. 765 to 768.
[66] Docket – Vol. II, pp. 787 to 790.
[67] Docket – Vol. II, pp. 791 to 800.
[68] Docket – Vol. II, pp. 809 to 814.
[69] Exhibit "R-17", Docket – Vol. I, pp. 130 to 135; Minutes of the hearing held on, and Order dated, February 1, 2021, Docket – Vol. II, pp. 769 to 770; Minutes of the hearing held on, and Order dated, February 1, 2021 and March 23, 2022, Docket – Vol. II, pp. pp. 825 to 827.
[70] Docket – Vol. II, pp. 829 to 832.

April 22, 2022.[71] In the Resolution dated June 22, 2022,[72] the Court admitted respondent's offered exhibits, *except* for Exhibits "R-1", "R-1-A", "R-2", "R-2-A", "R-3", "R-3-A", "R-4", "R-4-A", "R-5", "R-5-A", "R-6", "R-7", "R-9", "R-9-A", "R-10", "R-10-A", "R-11", "R-11-A", "R-12", "R-12-A", "R-13", and "R-13-A", for failure to identify the same.

In the Order dated June 30, 2022,[73] the case was transferred from the Second Division to the Third Division pursuant to CTA Administrative Circular No. 01-2022 dated June 21, 2022, which reorganized the Second and Third Divisions of the Court.

On July 12, 20122, respondent filed his *Memorandum*;[74] while petitioner filed its *Memorandum (For the Petitioner)* on September 27, 2022.[75]

The case was submitted for decision on October 3, 2022.[76]

## THE ISSUES STIPULATED BY THE PARTIES

The parties stipulated that the issues to be resolved in this instant Petition are as follows:

> "11.1 ***Whether or not the Final Letter Demand and Assessment Notice for Deficiency VAT for the first and second quarters of taxable year 2014 amounting to P54,462,094.49 is deemed void for failure to state the factual and legal basis of the assessment as required by Section 228 of the Tax Code;*** and
>
> 11.2 ***Whether or not there is no basis to presume that Petitioner's sales were not properly supported;***
>
> 11.3 ***Whether or not petitioner is liable for the deficiency VAT for first and second quarters of the taxable year 2014 in the amount of ₱54,462,094.49 plus surcharge, deficiency interest and delinquency interest as provided in the NIRC of 1997.***"[77]

[71] Docket – Vol. II, pp. 833 to 837.
[72] Docket – Vol. II, pp. 840 to 842.
[73] Docket – Vol. II, p. 843.
[74] Docket – Vol. II, pp. 845 to 848.
[75] Docket – Vol. II, pp. 855 to 867.
[76] Resolution dated October 3, 2022, Docket – Vol. II, p. 871.
[77] Stipulation of Issues, JSFI, Docket – Vol. I, p. 312.

***Petitioner's arguments:***

Petitioner argues that it is not liable for deficiency VAT for the 1st and 2nd quarters of taxable year 2014, in the amount of ₱54,462,094.49 plus surcharge, deficiency interest and delinquency interest; that respondent was not able to prove that the person who conducted the investigation/audit of correctness of petitioner's declaration in its VAT returns for the taxable period from January 1 to June 30, 2014 has the authority to do so; that the right of respondent to investigate and assess deficiency tax has prescribed; and that the disputed assessment lacks factual and legal basis.

***Respondent's counter-arguments:***

Respondent contends that the disputed assessment cannot be considered void, since petitioner was given opportunity to refute the VAT assessment by filing a protest and request for reinvestigation/reconsideration with supporting documents which was considered and granted by the BIR; that RFA/FLD issued against petitioner was the result of actual audit, wherein RO Francisco considered all documents submitted by petitioner resulting into a reduced assessment; and that while the Court denied the admission of respondent's Exhibits "R-1" to "R-13", which were identified by RO Francisco during the continuance of the direct examination, the admission by petitioner of the existence and proper receipt of the LOA, PAN, RFA/FLD and FDDA by its duly authorized representative rendered the offer of said documentary exhibits unnecessary.

## THE COURT'S RULING

The *petition* has merit.

***The VAT assessment is not barred by prescription.***

At the outset, the period for the respondent CIR to assess and collect an internal revenue tax is limited only to three years by Section 203 of the National Internal Revenue Code of 1997 (1997 NIRC), as amended, quoted thus:

> SEC. 203. *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, <u>internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return</u>, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That <u>in a case where a return is filed beyond the period</u>

> prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. (*Emphasis supplied*)

This mandate governs the question of prescription of the respondent's right to assess internal revenue taxes primarily to safeguard the interests of taxpayers from unreasonable investigation by not indefinitely extending the period of assessment and depriving the taxpayer of the assurance that it will no longer be subjected to further investigation for taxes after the expiration of reasonable period of time.[78]

Thus, in the present case, respondent only had three years, counted from the date of actual filing of the return or from the last date prescribed by law for the filing of such return, whichever comes later, to assess a national internal revenue tax or to begin a court proceeding for the collection thereof without an assessment.

The taxpayer filed its VAT Quarterly Return for the months of January, February and March 2014 on *April 25, 2014*.[79] Thereafter, on *July 25, 2014*, it also filed its VAT Quarterly Return for the months of April, May and June 2014.[80] Counting three years from both April 25, 2014 and July 25, 2014, *the respondent had until April 25, 2017 and July 25, 2017 to issue an assessment against the taxpayer.* Since the respondent issued a FAN / FLD on January 10, 2017 covering the taxpayer's deficiency VAT assessment for the for the 1st and 2nd quarters of 2014,[81] the same is *not* barred by prescription.

***The reassignment of a taxpayer's examination to a new RO must be made pursuant to a LOA. In the absence of an LOA giving the new RO an authority to conduct the examination, the resulting assessment is void.***

An LOA is the authority given to the appropriate RO assigned to perform assessment functions. It empowers or enables said RO to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[82]

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[78] *Commissioner of Internal Revenue v. Standard Chartered Bank*, G.R. No. 192173, July 29, 2015.
[79] BIR Form 2550Q, Exhibit P-4, Docket – Vol. II, p. 624.
[80] BIR Form 2550Q, Exhibit P-5, Docket – Vol. II, p. 625.
[81] Judicial Affidavit of Revenue Examiner Jeffrey M. Butial, Docket – Vol. I, p. 122.
[82] *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241828, May 21, 2021.

Since the LOA commences the audit process and formally informs the taxpayer that it is under audit for possible deficiency tax assessment,[83] the grant of authority is indispensable before any RO can start conducting an examination or assessment. Equally important is that the RO so authorized must *not* go beyond the authority given. In the absence of such authority, the assessment or examination is a nullity.[84]

In *AFP General Insurance Corporation v. Commissioner of Internal Revenue*,[85] the Supreme Court held:

> "The power to assess necessarily includes the authority to examine any taxpayer for purposes of determining the correct amount of tax due from him. Verily, the law vests the BIR with general powers in relation to the 'assessment and collection of all internal revenue taxes.' However, **certainly, not all BIR personnel may *motu proprio* proceed to audit a taxpayer. Only 'the CIR or his duly authorized representative may *authorize the examination of any taxpayer'* and issue an assessment against him.**
>
> That a representative has in fact been authorized to audit a taxpayer is evidenced by the LOA, which 'empowers a designated [r]evenue [o]fficer to examine, verify, and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.'
>
> **In cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessment shall be void and ineffectual.** xxx." *(Emphases and underscoring added)*

*Therefore, the importance RO's authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment.* The lack of authority of the ROs is tantamount to the absence of a LOA itself, which results to a void assessment. Being a void assessment, the same bears no fruit.[86]

In this case, it was RO Francisco under the same GS Cruz, who took over the conduct of reinvestigation pursuant to MOA dated March 9, 2017, and *not* RO Butial who was originally assigned to the BIR audit. Respondent claims, therefore, that the taxpayer was afforded administrative and procedural due process.[87] It appears that respondent is of the opinion that a MOA sufficiently vests RO Francisco with the authority to *continue the audit* and *conduct*

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[83] *Commissioner of Internal Revenue v. De La Salle University, Inc., et seq.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.

[84] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

[85] G.R. No. 222133, November 4, 2020.

[86] *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, G.R. No. 241828, May 21, 2021.

[87] Par 1, *Discussion/Arguments*, respondent's *Memorandum* filed on July 12, 2022, Docket – Vol. II, pp. 846 to 847; Exhibit "R-14", Docket – Vol. I, p. 226.

*a reinvestigation* and that, furthermore, an LOA is no longer necessary before the issuance of the FAN.

We disagree with respondent.

Based on the testimony of RO Francisco himself during his cross-examination in the February 1, 2021 hearing, *no new LOA* was issued allowing him to investigate. *Neither was the LOA amended or modified to include the name of RO Franciso.* What was issued, to clothe the new RO with authority, was only a MOA. The pertinent portions of his testimony are quoted below:

> "ATTY. SAMPAGA:
> For purposes of reinvestigation, no new Letter of Authority (LOA) was issued by the Revenue Region?
>
> WITNESS:
> For that case, there is a Memorandum of Assignment.
>
> ATTY. SAMPAGA:
> Are you saying, there is no Letter of Authority (LOA) issued allowing you to investigate?
>
> WITNESS:
> Yes, attorney." [88]

A reinvestigation, once granted by respondent, involves the re-evaluation of an assessment on the basis of newly discovered or additional evidence of the concerned taxpayer.[89] In effect, it is a continuation of the examination and audit which necessitates the issuance of a new LOA, in case the RO who would conduct such reinvestigation is different from the one(s) named in the previously-issued LOA. In other words, the new RO assigned would merely be acting as a substitute or replacement of those named in the said LOA.

The facts of this case mirror those in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.* (McDonald's).[90] In *McDonald's*, a referral memorandum designated a new RO to continue the examination of the taxpayer *before the issuance of the FLD*. However, the LOA, which covered the original RO, was not amended or modified to include the name of the new RO. The Supreme Court, thus, *voided the assessment* and ruled as follows:

[88] Transcript of Stenographic Notes taken during the hearing held on February 1, 2021, p. 11.
[89] Refer to Section 3.1.4(ii) of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013.
[90] G.R. No. 242670, May 10, 2021.

"*The Facts*

The CIR (petitioner), is the duly appointed Commissioner of the BIR, with the authority to carry out the functions, duties and responsibilities of the said office under the National Internal Revenue Code of 1997 (NIRC), as amended, including the power to decide disputed assessments. The petitioner holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

McDonald's Philippines Realty Corporation (respondent), is a corporation organized and existing under the laws of Delaware, USA, and is licensed to do business in the Philippines through its branch office, with office address at 17th Floor, Citibank Center Building, Paseo de Roxas, Salcedo Village, Makati City.

Respondent established its branch office in the Philippines for the purpose of purchasing and leasing back two existing McDonald's Restaurants to Golden Arches Development Corporation, and to engage in the development of new McDonald's restaurant sites, which would then be leased to McGeorge Foods, Inc.

On August 31, 2007, the BIR Large Taxpayers Service issued LOA No. 00006717 (August 31, 2007 LOA) to the following revenue officers: Eulema Demadura (Demadura), Lover Loveres, Josa Gomez, and Emalyn dela Cruz. The LOA authorized the said revenue officers to examine the books of accounts and other accounting records of the respondent for all internal revenue taxes for January 1, 2006 to December 31, 2006.

On December 2, 2008, the BIR transferred the assignment of Demadura and, pursuant to Referral Memorandum No. 122-LOA-1208-00039, directed and designated Rona Marcellano (Marcellano) to continue the audit of the respondent's books of accounts.

No new LOA was issued in the name of Marcellano to continue the conduct of audit of the respondent's books of accounts. Moreover, the August 31, 2007 LOA was not amended or modified to include the name of Marcellano. The referral memorandum states that Marcellano will continue the pending audit of Demadura pursuant to the August 31, 2007 LOA.

On January 25, 2011, the petitioner issued a Formal Letter of Demand (FLD) dated January 11, 2011 to the respondent. The FLD demands payment of deficiency income tax and VAT liabilities for C.Y. 2006 in the aggregate amount of P17,486,224.38, inclusive of interest.

On February 23, 2011, the respondent filed a protest letter with the petitioner, requesting the cancellation and withdrawal of the deficiency income tax and VAT assessments for C.Y. 2006.

On April 18, 2013, the petitioner issued the Final Decision on Disputed Assessment (FDDA). The FDDA (i) granted the respondent's request for cancellation of deficiency income tax assessments for C.Y. 2006, and (ii) reiterated the petitioner's demand for payment of the respondent's deficiency VAT for C.Y. 2006 in the total amount of P16,229,506.83.

On May 20, 2013, the respondent filed a petition for review with the CTA Division. The CTA Division declared the C.Y. 2006 assessment void on the ground that Marcellano was not authorized by way of an LOA to investigate the books of accounts of the respondent. The petitioner filed a motion for reconsideration with the CTA Division. The CTA Division denied the motion.

On November 7, 2016, the petitioner filed a petition for review with the CTA *En Banc*. The CTA *En Banc* denied the petition for lack of merit.

xxx xxx xxx

***B. The Use of Memorandum of Assignment, Referral Memorandum, or Such Equivalent Document, Directing the Continuation of Audit or Investigation by an Unauthorized Revenue Officer Usurps the Functions of the LOA***

It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and transfer of cases. **However, notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.**

The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. **But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.**

**The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative.** The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10(c) and 13 of the NIRC. Hence, **the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.**" *(Emphases and underscoring added)*

Based on the foregoing pronouncements, it is clear that an LOA is *not* a general authority to any RO, but a *special authority* granted to a *particular* RO. In short, the LOA that was issued is limited only to those BIR examiners specifically named therein and does *not* cover those subsequently assigned to take over the audit. The practice of reassigning or transferring ROs, who were originally authorized in the LOA, and then substituting them with new ROs, who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative. Stated otherwise, issuing a MOA and subsequently using it as a proof of authority to continue the audit or investigation is, in effect, an attempt to supplant the functions of the LOA, which is not permitted. It is not permitted since the MOA seeks to extend an authority the exercise of which belongs exclusively to respondent CIR or his duly authorized representatives.

Significantly, in the recent case of *Republic of the Philippines v. Robiegie Corporation* (Robiegie) [91] the Supreme Court further clarified that the investigatory powers of the ROs flow from the LOA, which is the statutorily designated means by which respondent delegates his investigative powers to the BIR examiners, *and not from a mere MOA*. Pertinent portions of the *Robiegie* case reads:

> "xxx. <u>The Republic's construction of Section 13 of the NIRC to mean that an LOA is not an authorization but a mere notice of investigation to the taxpayer is blatantly contrary to the text of the law</u>. First, the concept of authorization is inherent in the very language of Sections 6(A) and 13 of the NIRC, which speak of a 'duly authorized representative' and a 'Letter of Authority.' Second, the phrase 'pursuant to' in Section 13 means 'in the course of carrying out, in conformance to or agreement with, [or] according to.' <u>Thus, an RO may only examine taxpayers, in the course of carrying out, in conformance to or agreement with, or according to, a validly issued LOA</u>. **Stated differently, under the NIRC, the investigatory powers of the ROs flow from the LOA, which is the statutorily designated means by which the CIR delegates its investigative powers to the BIR revenue officers.**
>
> xxx xxx xxx
>
> In conclusion, we reiterate that the power of a BIR revenue officer to conduct taxpayer investigations flows from a validly issued LOA, which is the statutorily defined modality for the delegation of the investigatory powers vested in the CIR by law. **<u>Thus, the reassignment of a taxpayer investigation to a different revenue officer must also be made pursuant to a LOA, the one LOA-per-taxpayer rule notwithstanding. When a taxpayer investigation is transferred from one revenue officer to another, the responsible BIR official with authority to issue LOAs shall issue a new LOA to the new revenue officer assigned to the</u>**

[91] G.R. No. 260261, October 3, 2022.

> **investigation.** The old LOA in favor of the reassigned revenue officer shall be deemed cancelled, and the new LOA issued to the subsequently designated revenue officer shall prevail, in accordance with the provisions of RMO No. 8-2006, issued on February 1, 2006." *(Emphases and underscoring added)*

Based on the foregoing discussion, the reassignment of a taxpayer's investigation to a different RO must also be made pursuant to a LOA. Since the MOA was not issued for the purpose of vesting upon the new RO authority to examine a taxpayer's books of accounts, it is *not* sufficient. A MOA cannot supplant the LOA as it cannot be given effect to authorize the new RO. Since an LOA is a special authority granted to a particular RO, a new LOA must subsequently be issued, in the event the original ROs is being replaced by a new RO to continue the examination and investigation, and even reinvestigation, of a taxpayer.

Considering that RO Francisco was merely armed with a MOA, the reinvestigation conducted by him suffers from a *fatal defect* since no new LOA was subsequently issued to clothe him with authority. In the absence of an LOA giving him an authority to continue the audit, the resulting VAT assessment is void.

To reiterate, tax assessments issued in violation of the due process rights of a taxpayer are *null and void*.[92] Furthermore, a void assessment bears no valid fruit.[93] Such being the case, the subject tax assessments cannot be enforced against petitioner, and the BIR has no right to collect the same.

With the foregoing findings that subject tax assessments are *void*, there being no valid LOA issued in favor of RO Francisco, the Court finds no compelling reason to delve on the other matters raised by the parties.

**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the subject VAT assessment issued against petitioner for deficiency VAT for the period January 1, 2014 to June 30, 2014 in the total amount of ₱54,462,094.49 is **CANCELLED** and **SET ASIDE**.

Furthermore, the FDDA dated October 13, 2017, and RFLD, with *Assessment Notice* No. 22117 dated November 21, 2017, both issued against petitioner are hereby **WITHDRAWN**.

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[92] *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*, supra.
[93] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014.

**SO ORDERED.**

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

I CONCUR:

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

## ATTESTATION

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

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice
Chairperson

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
Presiding Justice