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

## ***FIRST DIVISION***

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| **SUNNYPHIL INCORPORATED,** Petitioner, | **CTA CASE NO. 9710** |
| | *Members*: |
| - **versus** - | **DEL ROSARIO**, *P.J., Chairperson,* **FABON-VICTORINO**, *and* **MANAHAN**, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: NOV 08 2019 ; 1:25 pm |

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# DECISION

***DEL ROSARIO, P.J.:***

This is a Petition for Review filed on November 6, 2017 by petitioner Sunnyphil Incorporated praying that the Court cancels and withdraws the following Assessment Notices issued against it for the taxable year 2013: (i) Income Tax Assessment Notice No. IT-ELA35464-13-17-150; (ii) Withholding Tax on Compensation (WTC) Assessment Notice No. WC-ELA35464-13-17-150; (iii) Expanded Withholding Tax (EWT) Assessment Notice No. WE-ELA35464-13-17-150; (iv) Improperly Accumulated Earnings Tax (IAET) Assessment Notice No. IE-ELA35464-13-17-150; (v) Documentary Stamp Tax (DST) Assessment Notice No. DS-ELA35464-13-17-150; and, (vi) Compromise Penalty Assessment Notice No. MC-ELA35464-13-17-150, in the aggregate amount of Fifty Four Million Forty Seven Thousand Nine Hundred Seventy Pesos and Eighty Four Centavos (₱54,047,970.84).

## THE PARTIES

Petitioner is a corporation duly organized and existing under Philippine laws and registered with the Bureau of Internal Revenue

(BIR) under Certificate of Registration (COR) No. 9RC0000190247 with Tax Identification No. 226-852-389-000. Petitioner's principal office is located at Lot 91, A. Bagsakan Road, FTI Complex, Western Bicutan, Taguig City.[1]

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

## THE FACTS

On January 7, 2016, petitioner received a Letter of Authority (LOA) No. SN: eLA201200035464 dated December 4, 2015 authorizing Revenue Officer (RO) Mohaimin Abedin and Group Supervisor (GS) Ma. Teresa Reyes of Revenue District Office (RDO) No. 44 – Revenue Region No. 008 to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period of January 1, 2013 to December 31, 2013.[3]

Revenue District Officer Florante R. Aninag of RDO No. 44 issued a Memorandum of Assignment[4] (MOA 0442015LOA-00134) dated April 6, 2016 authorizing RO Olivia Palma and GS Eulogina E. Lacson to continue the audit/investigation of petitioner's books of accounts and other records for the taxable year 2013 and to replace the previously assigned RO and GS who were transferred to another RDO.

On April 13, 2016, petitioner received a Letter[5] dated April 8, 2016 from Revenue District Officer Aninag, informing petitioner that RO Palma and GS Lacson were assigned to continue the audit/investigation of all its internal revenue taxes for the period January 1, 2013 to December 31, 2013, pursuant to LOA No. 201200035464 dated December 4, 2015 and MOA 0442015LOA-00134 dated April 6, 2016.

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[1] Par. 1, Joint Stipulation of Facts and Issues, CTA Docket, p. 120.
[2] Par. 2, Joint Stipulation of Facts and Issues, CTA Docket, p. 120.
[3] BIR Records, p. 727.
[4] Exhibits "R-1" and "R-1-a", BIR Records, p. 737.
[5] BIR Records, p. 740.

On December 21, 2016, petitioner received a Preliminary Assessment Notice (PAN) dated December 19, 2016, assessing petitioner for alleged deficiency Income Tax, WTC, EWT, IAET, DST and Compromise Penalty, for taxable year 2013.[6]

On January 13, 2017, petitioner received Assessment Notices dated January 10, 2017 assessing petitioner for deficiency taxes for taxable year 2013 in the aggregate amount of ₱54,047,970.84, with details as follows:

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| Income Tax | Assessment Notice No. IT-ELA35464-13-17-150 | ₱24,178,118.17 |
| WTC | Assessment Notice No. WC-ELA35464-13-17-150 | ₱13,076,008.48 |
| EWT | Assessment Notice No. WE-ELA35464-13-17-150 | ₱790,704.53 |
| IAET | Assessment Notice No. IE-ELA35464-13-17-150 | ₱14,763,680.53 |
| DST | Assessment Notice No. DS-ELA35464-13-17-150 | ₱1,159,459.13 |
| Compromise Penalty | Assessment Notice No. MC-ELA35464-13-17-150 | ₱80,000.00 |
| TOTAL | | ₱54,047,970.84 |

On February 10, 2017, petitioner filed a Protest Letter dated February 8, 2017 against the Assessment Notices dated January 10, 2017.[7]

Petitioner sent a Letter[8] dated April 10, 2017 to respondent submitting documents in support of its Protest Letter which was received by RO Palma on April 11, 2017.

Alleging respondent's inaction on its protest, petitioner filed the present Petition for Review on November 6, 2017.

On January 19, 2018, respondent filed his Answer[9] with the following special and affirmative defenses: (i) reconciliation of salaries and wages and other benefits as per financial statements *vis-à-vis* the amount subjected to withholding tax per returns filed disclosed that there were salaries not subjected by petitioner to withholding tax amounting to ₱36,366,762.59, hence, the amount was disallowed as deduction from gross income; (ii) expenses amounting to

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[6] Par. 3, Joint Stipulation of Facts and Issues, CTA Docket, p. 121.
[7] Par. 5, Joint Stipulation of Facts and Issues, CTA Docket, p. 121.
[8] Exhibit P-6, CTA Docket, pp. 264 to 265.
[9] CTA Docket, pp. 88-90.

₱13,494,397.90 have been disallowed for petitioner's failure to withhold the appropriate withholding tax due on its income payments; (iii) petitioner's creditable tax withheld claimed per Income Tax Return (ITR) amounting to ₱448,448.72 was disallowed for it was not supported by copies of Creditable Tax Withheld at Source (BIR Form 2307); (iv) petitioner is liable to pay the assessment for WTC since it failed to withhold/remit the corresponding withholding tax on Salaries and Wages previously disallowed from gross income; (v) considering that petitioner failed to withhold/remit the correct withholding tax due on income payments previously disallowed from gross income, it is liable to pay the deficiency EWT thereon; (vi) petitioner's retained earnings exceeded 100% of the paid-up capital of the corporation and permitted the same to accumulate beyond the reasonable needs of its business to avoid tax upon its shareholders, hence, it is liable to pay 10% IAET on its improperly accumulated earnings; (vii) petitioner failed to pay the DST of P1.00 on each P200.00, or fractional part thereof, on the related party transactions which are purported to be loans; (viii) the ten-year prescriptive period to assess is applicable to IAET and DST liabilities of petitioner pursuant to Section 222(a) of the Tax Code; (ix) assessment are *prima facie* presumed correct and made in good faith and the taxpayer has the duty of proving otherwise, and in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed; and, (x) taxes are the lifeblood of the government and as such, they should be collected without unnecessary hindrance.

On February 2, 2018, respondent filed his Pre-Trial Brief;[10] while petitioner filed its Pre-Trial Brief[11] on February 9, 2018.

The Pre-Trial Conference was held on February 15, 2018.[12] The parties filed their Joint Stipulation of Facts and Issues[13] on February 27, 2018, and the same was approved in the Pre-Trial Order[14] dated March 7, 2018. The Court also terminated the Pre-Trial in the same Order.[15]

During trial, petitioner presented testimonial and documentary evidence. Petitioner's formally offered exhibits, as contained in its Formal Offer of Evidence,[16] were admitted in the Resolution dated

[10] CTA Docket, pp. 94-96.
[11] CTA Docket, pp. 98-104.
[12] Minutes of the Hearing dated February 15, 2018, CTA Docket, p. 118; Order dated February 15, 2018, CTA Docket, p. 119.
[13] CTA Docket, pp. 120-125.
[14] CTA Docket, pp. 127-131.
[15] Id.
[16] CTA Docket, pp. 196-213.

October 12, 2018, except for Exhibits "P-8", "P-10-K-1", and "P-14" failure to identify them; Exhibits "P-13-1", "P-13-A-1", and "P-13-B-1" for failure to identify and present their originals for comparison; and, Exhibit "P-21" for failure of the document formally offered to correspond with the document marked.[17]

Respondent also presented his testimonial and documentary evidence. Respondent's formally offered exhibits, as contained in Respondent's Formal Offer of Exhibits, [18] were admitted in the Resolution[19] dated April 3, 2019.

Considering the posting of Memorandum for Respondent[20] on May 10, 2019, and Memorandum (For the Petitioner)[21] on May 31, 2019, the case was submitted for decision on June 11, 2019.[22]

## ISSUES[23]

The issues for consideration of the Court, as stipulated by the parties, are the following:

> 1) Whether respondent disregarded petitioner's right to be heard with regard to its position or arguments against the PAN dated December 19, 2016, in violation of the due process requirements mandated under Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013; and,
>
> 2) Whether petitioner is liable to pay deficiency Income Tax, WTC, EWT, IAET, DST and Compromise Penalty in the aggregate amount of ₱54,047,970.84 for the taxable year 2013.

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[17] CTA Docket, pp. 505-506.
[18] CTA Docket, pp. 522-524.
[19] CTA Docket, pp. 532-533.
[20] CTA Docket, pp. 534-543.
[21] CTA Docket, pp. 545-583.
[22] CTA Docket, p. 585
[23] Joint Stipulation of Facts and Issues, CTA Docket, p. 121.

## THE COURT'S RULING

***The Petition for Review was timely filed***

Section 228 of the NIRC of 1997, as amended, provides for the procedure and manner on which tax deficiency assessments should be issued, *viz.*:

> "SECTION 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.
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> 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 (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 the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

In the present case, records reveal that petitioner received the Assessment Notices on January 13, 2017. On February 10, 2017, it filed its Protest Letter to the Assessment Notices and submitted all the necessary and relevant documents in support thereof on April 11, 2017.

Counting one hundred eighty (180) days from the date of submission of petitioner's relevant documents on April 11, 2017, respondent had until October 8, 2017 within which to issue a decision on petitioner's Protest Letter. From the end of the 180-day period on October 8, 2017, *sans* any decision on its protest, petitioner had thirty (30) days or until November 8, 2017 within which to file a Petition for Review before the Court.

Considering respondent's inaction, petitioner filed its Petition for Review on November 6, 2017, which was within the thirty-day reglementary period provided under Section 228 of the NIRC of 1997, as amended.

***RO and GS who conducted audit of petitioner were not authorized by a valid LOA; hence, the assessment issued pursuant to said audit is void ab initio***

Petitioner argues that the absence of a validly issued LOA to conduct the audit renders the present assessment void. Petitioner claims that the Court has the power to resolve the issue on the validity of the authority of revenue examiners to conduct the audit that lead to the issuance of the subject Assessment Notices.

As aforementioned, on January 7, 2016, petitioner received LOA No. SN: eLA201200035464 dated December 4, 2015 authorizing **RO Abedin and GS Reyes** of RDO No. 44 – Revenue Region No. 008 to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period of January 1, 2013 to December 31, 2013.[24] Subsequently, Revenue District Officer Aninag of RDO No. 44 issued a MOA 0442015LOA-00134[25] dated April 6, 2016 authorizing **RO Palma and GS Lacson** to continue the audit/investigation of petitioner's books of accounts and other records for the taxable year 2013. On April 13, 2016, petitioner received a Letter[26] dated April 8, 2016 from Revenue District Officer Aninag, informing petitioner that RO Palma and GS Lacson were assigned to continue the audit/investigation of all its internal revenue taxes for the period January 1, 2013 to December 31, 2013, pursuant to LOA No. 201200035464 dated December 4, 2015 and MOA 0442015LOA-00134 dated April 6, 2016.

[24] BIR Records, p. 727.
[25] Exhibits "R-1" and "R-1-a", BIR Records, p. 737.
[26] BIR Records, p. 740.

**Undeniably, there was no LOA signed by the Revenue Regional Director authorizing RO Palma and GS Lacson to continue the audit of petitioner's books of accounts and other accounting records for the taxable year 2013.**

To be sure, the NIRC of 1997, as amended, is clear and categorical in requiring an authority from the CIR or from his duly authorized representatives before an examination of a taxpayer may be made.[27] Section 6 of the NIRC provides:

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

In addition, Section 13 of the NIRC of 1997, as amended, mandates that an RO assigned to audit a taxpayer's books of accounts and other accounting records must be authorized by an LOA issued no less than by the Revenue Regional Director, *viz.*:

> "*Sec. 13. Authority of a Revenue Officer.* — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions** in any district may, **<u>pursuant to a Letter of Authority</u>** issued by the **Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order **to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Boldfacing and underscoring supplied)*

An officer of the BIR cannot simply subject a taxpayer to audit without a valid LOA issued for that purpose by the Revenue Regional Director.

Revenue Memorandum Order (RMO) No. 43-90 specifies the policy guidelines in the issuance of LOAs to audit. It is explicit that the

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[27] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

continuation of audit by a revenue officer other than the officer named in a previous LOA, **requires the issuance of a new LOA**:

> "C. Other policies for issuance of L/As.
>
> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.
>
> xxx
>
> 5. **Any re-assignment/transfer of cases to another RO(s)**, and revalidation of L/As which have already expired, **shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As**." *(Boldfacing supplied)*

Anent the MOA, the same cannot be accorded the same legal effect as an LOA. It is clear in the language used that *"revalidation of L/As ... shall require the issuance of a new L/A."* The phrase emphasizes the mandatory nature of the said requirement. Needless to say, the BIR has the duty of exacting compliance therewith as it has the burden of ensuring that the right of the government to assess and collect tax deficiencies would not be defeated by its failure to comply with its own rules.

The Supreme Court's pronouncement in *Medicard Philippines Inc. vs. Commissioner of Internal Revenue*[28] on the significance of a valid authority of ROs to conduct an audit and examination of the taxpayer is very instructive, *viz.*:

> "***The absence of an LOA violated MEDICARD's right to due process***
>
> **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:
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> xxx xxx
>
> **Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized**

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

> **representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.** 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. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**
>
> xxx xxx xxx
>
> In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, the Court said that:
>
> > "Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. xxx. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**." (Emphasis and underlining ours)
>
> xxx xxx xxx
>
> xxx xxx xxx 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. <u>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</u>.**
>
> **That the BIR officials herein were not shown to have acted unreasonably is beside the point <u>because the issue of their lack of authority was only brought up during the trial of the case</u>. 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. <u>Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void</u>."** (Emphases supplied)

In *Medicard*, the Supreme Court declared as void the disputed assessment for lack of an LOA authorizing the revenue officers to examine the taxpayer's books of account and other accounting records.

In *Commissioner of Internal Revenue vs. Composite Materials, Inc.,*[29] the Supreme Court was likewise categorical in saying that an RO may only examine the taxpayer's books pursuant to an LOA issued by the Revenue Regional Director and emphasized that the Referral Memorandum issued by the RDO directing another RO to continue with the examination of Composite Materials, Inc.'s records is not equivalent to an LOA nor does it cure the RO's lack of authority, *viz.*:

> "As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, **the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director**. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, ruling that in the absence of an LOA, the assessment or examination is a nullity.
>
> Here, the CTA *en banc* found that **the LOA issued in relation to the examination of CMI's book of accounts does not specifically mention the name of RO Cruz. Thus, the examination conducted by RO Cruz and the assessment issued against CMI was correctly declared null and void**.
>
> Moreover, the Court agrees with the CTA *en banc* that the **Referral Memorandum** issued by a Revenue District Officer **directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority**. To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that **any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA**." *(Boldfacing supplied)*

The issuance of an LOA is not just a plain ministerial act but calls for the exercise of discretion by the Revenue Regional Director. The authority to issue LOAs, which was delegated to the Revenue Regional Director under Section 13 of the NIRC of 1997, as amended, cannot be further delegated to the Revenue District Officer. On this point, the pronouncement in *NPC Drivers and Mechanics Association, (NPC DAMA) vs. The National Power Corporation*[30] is instructive, *viz.*:

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[29] G.R. No. 238352, September 12, 2018.
[30] G.R. No. 156208, September 26, 2006.

> "We agree with petitioners. In enumerating under Section 48 those who shall compose the National Power Board of Directors, the legislature has vested upon these persons the power to exercise their judgment and discretion in running the affairs of the NPC. Xxx xxx xxx. It is to be presumed that in naming the respective department heads as members of the board of directors, the legislature chose these secretaries of the various executive departments on the basis of their personal qualifications and acumen which made them eligible to occupy their present positions as department heads. **Thus, the department secretaries cannot delegate their duties as members of the NPB, much less their power to vote and approve board resolutions, because it is their personal judgment that must be exercised in the fulfillment of such responsibility**.
>
> Xxx, the rule enunciated in the case of *Binamira v. Garrucho* is relevant in the present controversy, to wit:
>
> > **An officer to whom a discretion is entrusted cannot delegate it to another, the presumption being that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and unless the power to substitute another in his place has been given to him, he cannot delegate his duties to another**.
>
> Xxx." *(Citations omitted; Boldfacing supplied)*

Indubitably, in the present case, there was no new LOA issued to RO Palma and GS Lacson in relation to the audit of petitioner's tax liability for taxable year 2013. While MOA 0442015LOA-00134 dated April 6, 2016 was issued by **Revenue District Officer Aninag**, the same cannot be regarded as a valid LOA within the context of the law. This procedural lapse, or the absence of a new LOA, rendered the Assessment Notices issued pursuant thereto void. Being void assessments, they bear no fruit[31] and must be slain at sight.

In view of the foregoing, the Court need not belabor to address the other issues raised by the parties.

**WHEREFORE**, in light of the foregoing, the Petition for Review filed on November 6, 2017 by petitioner Sunnyphil Incorporated is hereby **GRANTED**. Accordingly, the Formal Assessment Notice, with the following Assessment Notices, all dated January 10, 2017, covering taxable year 2013, assessing petitioner Sunnyphil Incorporated for deficiency taxes, *viz.*:

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[31] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

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|---|---|---|
| Income Tax | Assessment Notice No. IT-ELA35464-13-17-150 | ₱24,178,118.17 |
| Withholding Tax on Compensation | Assessment Notice No. WC-ELA35464-13-17-150 | ₱13,076,008.48 |
| Expanded Withholding Tax | Assessment Notice No. WE-ELA35464-13-17-150 | ₱790,704.53 |
| Improperly Accumulated Earnings Tax | Assessment Notice No. IE-ELA35464-13-17-150 | ₱14,763,680.53 |
| Documentary Stamp Tax | Assessment Notice No. DS-ELA35464-13-17-150 | ₱1,159,459.13 |
| Compromise Penalty | Assessment Notice No. MC-ELA35464-13-17-150 | ₱80,000.00 |

or in the aggregate amount of Fifty Four Million Forty Seven Thousand Nine Hundred Seventy Pesos and Eighty Four Centavos (₱54,047,970.84) are hereby **CANCELLED** and **SET ASIDE**.

**SO ORDERED.**

**ROMAN G. DEL ROSARIO**
Presiding Justice

**WE CONCUR:**

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice

***CERTIFICATION***

Pursuant to Article VIII, Section 13 of the Constitution, 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