REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CHEM INSURANCE BROKERS & SERVICES CORPORATION,
Petitioner,

CTA CASE NO. 9656

- versus -

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, *and,*
BACORRO-VILLENA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: SEP 09 2019 9:46 a.m.

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DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review filed by Chem Insurance Brokers & Services Corporation (**CIBSC / "petitioner"**), pursuant to Rule 8[1]

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[1] RULE 8.

...

SEC. 4. *Where to appeal; mode of appeal.* – (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

of the Revised Rules of the Court of **Tax** Appeals (**RRCTA**), seeking the reversal of the Decision dated 12 July 2017[2] of respondent Commissioner of Internal Revenue (**CIR, "respondent"**). The dispositive portion of the assailed Decision reads:

> . . .
>
> **WHEREFORE**, premises considered, the [Decision] dated August 18, 2014 issued against CHEM INSURANCE BROKERS & SERVICES CORPORATION, demanding payment of the amount of P2,850,427.93 representing deficiency Income Tax and Value-Added Tax for the taxable year 2008 is hereby **MODIFIED** to the aggregate amount of P2,199,915.96, computed as follows:

I. DEFICIENCY INCOME TAX

Taxable Income per Income Tax Return (ITR)		P 2,437,099.00
Add: Adjustments per investigation		
Undeclared income (*deducted 483,801.22 from FLD*)	P 2,800,134.97	
Salaries and wages not subjected to withholding tax	61,421.45	
Less: Remittances to Insurance Company	483,801.22	2,377,755.20
Taxable Income per investigation		**P 4,814,854.20**
Income Tax due thereon (35%)		P 1,685,198.97
Less: Allowable tax credits/payments:		
Tax payments	P 517,030.16	
Creditable Withholding Tax	335,954.00	852,984.16
Less: Unsupported Creditable Withholding Tax	977.51	
Incorrectly applied Creditable Withholding Tax	9,676.02	10,653.53
Deficiency Income Tax		P 842,868.34
Add: 20% Tax Interest p. a. (04.16.09 to 08.31.14)		906,603.04
TOTAL AMOUNT DUE		**P 1,749,471.38**

II. DEFICIENCY VALUE-ADDED TAX

Revenues/Receipts per VAT returns (3rd and 4th quarters)		P 1,853,737.88
Add: Adjustments per investigation		
Receipts not subjected to VAT (*deducted 1,134,522.45 from FLD*)	P 1,799,532.01	
Less: Remittances to Insurance Company	28,000.77	
Taxable Sales/Revenues/Receipts per Investigation		**P 3,625,269.12**
Output Tax due thereon (12%)		P 435,032.30
Less: Allowed tax credits/payments:		
Payments (3rd and 4th quarters)	P 221,772.57	
Input Tax claimed during the year	675.98	222,448.55
Deficiency VAT		P 212,583.75
Add: 20% Interest p. a. (01.27.09 to 08.31.14)		237,860.83
TOTAL AMOUNT DUE		**P 450,444.58**

> Consequently, CHEM INSURANCE BROKERS & SERVICES CORPORATION is hereby ordered to pay P2,199,915.96 representing deficiency Income Tax and VAT,

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) An appeal from a decision or ruling of the Central Board of Assessment Appeals or the Regional Trial Court in the exercise of their appellate jurisdiction shall be taken to the Court by filing before it a petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
. . .

2 Exhibit "P-56-a", *Rollo*, Volume III, pp. 1166-1186.

> including interest that may have accrued thereon until actual payment thereof, to the Collection Service, BIR National Office Building, Agham Road, Diliman, Quezon City, otherwise, the collection shall be effected through summary remedies provided by law.
>
> This constitutes the **FINAL DECISION** of this Office on the matter.
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> ...

The Parties

Petitioner CIBSC is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at Resins Inc. Compound, E. Rodriguez Jr. Avenue, Bagong Ilog, Pasig City. As shown in its Articles of Incorporation[3], it is an "insurance broker in such lines as fire, marine, accident, engineering, life, health, aviation, liability, casualty, plate, glass, steam boiler, elevator, burglary, rent, credit, indemnity, earthquake, typhoon, automobile, fidelity and all other kinds and classes of insurance". The Insurance Commission accordingly issued an Insurance Broker's License in its favor that was to expire on 31 December 2018.[4] It is also registered with the Bureau of Internal Revenue (**BIR**) as a non-life insurance company and as a value-added tax (VAT) person.[5]

Respondent CIR, on the other hand, is the duly appointed Commissioner of Internal Revenue vested with authority to administer and enforce internal revenue laws, including, among others, the power to issue tax assessments. He holds office at the BIR National Office Building, BIR, Diliman, Quezon City.

Factual Antecedents

In 2009, petitioner filed with the BIR its Annual Income Tax Return (**ITR**), Monthly Value-Added Tax (**VAT**) Declarations and Quarterly VAT Returns for taxable year 2008, and thereafter paid the corresponding taxes due thereon.

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[3] Exhibits "P-2-a", "P-3", "P-3-a", "P-4" and "P-4-a", all referring to petitioner's Articles of Incorporation and the Amendments thereto as filed with the SEC.

[4] Exhibit "P-6".

[5] TIN/VAT No. 000-285-162-000, see BIR Certificate of Registration OCN 3RC0000486277, dated 01 January 2017.

On 09 September 2009, BIR Revenue District Officer Rey Asterio L. Tambis (**RDO Tambis**), of the Revenue District No. 43A East, Pasig City, Revenue Region No. 07, Quezon City, issued to petitioner a Tax Verification Notice (**TVN**), particularly TVN 2003 No. 00122634[6]; which petitioner received on 09 September 2009. There, Revenue Officer Clea Marie Pimentel (**RO Pimentel**) was also assigned to *verify* petitioner's records covering internal revenue taxes from 01 January 2008 to 31 December 2008.

Despite the alleged absence of a Letter of Authority (**LOA**) from the CIR for RO Pimentel to examine petitioner's accounting books and records, petitioner surrendered the relevant records and documents to her.[7]

Almost two years after petitioner had turned over its records and documents to the BIR (through RO Pimentel), BIR sent an undated Post Reporting Notice (**PRN**)[8] to petitioner stating its findings that it had undeclared income, costs, and vatable receipts. Replying thereto[9], petitioner countered that it is an insurance broker and the only revenue it generated were the commissions from insurance companies. Moreover, the funds received from clients were not to be considered as income since they are premiums and were remitted to the insurance companies (from which they received commissions).

On 11 August 2011, petitioner executed a Waiver of the Defense of Prescription Under the Statute of Limitations[10] of the National Internal Revenue Code (**NIRC**), covering all possible internal revenue tax liabilities for the 2008 up to 30 June 2012.

The BIR, through its agents, continued the audit of petitioner as shown by a series of letters and notices[11] until it received a Preliminary Assessment Notice (**PAN**)[12] on 11 June 2012, alleging tax deficiencies for 2008. In a Reply, petitioner contested the PAN

6 Exhibit "P-36".
7 ITR/Audited Financial Statements (including attachments), Monthly and Quarterly VAT Returns, Quarterly ITRs, Monthly and annual returns on withholding taxes (EWT Compensation and Final including Alpha List), Articles of Incorporation and By-Laws, Photocopy of BIR Registration Certification/VAT Certificate and Form 1701 B (Information Return) were turned over to RO Pimentel on 22 October 2009.
8 Exhibit "P-40".
9 Reply dated 28 June 2011, Exhibit "P-41-b", *Rollo*, Volume III, pp. 1107-1108.
10 Exhibit "P-42", *Rollo*, Volume III, p. 1109.
11 Exhibits "P-43" and "P-45", *Rollo*, Volume I, pp. 404 and 408.
12 Dated 04 June 2012, Exhibit "P-46".

and submitted documents to support its disagreement with the assessment.[13]

On 29 June 2012, OIC-Regional Director Jonas DP. Amora (**RD Amora**) issued against petitioner a Final Assessment Notice (**FAN**), along with a Formal Letter of Demand (**FLD**).[14] Petitioner received the same on 11 July 2012.

Thereafter or on 02 August 2012, petitioner filed its Protest against the FAN and FLD which (protest) the BIR denied on 18 August 2014 through a Final Decision on Disputed Assessment (**FDDA**).[15] The BIR found petitioner liable for an income tax deficiency amounting to ₱2,098,287.87 and a VAT deficiency of ₱752,140.06 or a total of **₱2,850,427.93**, both inclusive of interests and penalties.

Unfazed, petitioner, on 17 September 2014, filed its administrative appeal[16] dated 18 August 2014, with respondent assailing the tax deficiencies attributed to it in the FDDA. However, it was only on 21 July 2017 that petitioner received respondent's **Final Decision dated 12 July 2017** (on its 18 August 2014 administrative appeal). In respondent's 12 July 2017 Final Decision, it modified the previous FDDA and reduced its tax liabilities to **₱2,199,915.96**.

Proceedings before the CTA First Division

Disagreeing with respondent's 12 July 2017 Decision, petitioner henceforth filed the present Petition for Review before this Court and the same was raffled to the Court's First Division.

In its petition, petitioner assailed respondent's findings of its tax deficiency for the taxable year 2008, essentially on the following grounds, to wit: **(1)** the FAN and the FLD are invalid due to the absence of a LOA as required under Section 6[17] of the NIRC; **(2)** assuming that the absence of an LOA is not fatal, respondent's assessment lacked factual and legal bases in the FAN and the FLD;

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13 Exhibit "P-47".
14 Exhibits "P-49" and "P-50", FLD No. 043A-B030-08.
15 Exhibit "P-54".
16 Administrative Appeal, dated 17 September 2014, Exhibit "P-55".
17 Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.

hence, a violation of the due process requirement in Section 228[18] of the NIRC; **(3)** assuming again that the lack of LOA is not fatal, respondent's FAN, FLD, FDDA and the 12 July 2017 Final Decision should be cancelled for being devoid of factual and legal moorings; and, **(4)** the requirement to furnish a taxpayer with a PAN is not merely formal but substantive as the taxpayer must be informed of the basis of the assessment. According to petitioner, in its case, respondent concluded immediately that it has undeclared income of ₱2,800,134.97 for 2008. This respondent did by just comparing the gross amount of payment reflected in the BIR Form 2307 (which it applied against its income tax due for taxable year 2008) with the gross and revenue receipts reflected in its annual Income Tax Return (**ITR**) for taxable year 2008 and quarterly VAT returns the same year.

In respondent's Answer, he countered that there was no breach of the due process requirement with the issuance of the "Notice of Informal Conference, [PAN], and [FLD] and Assessment Notice"[19], all indicating the facts and law on which the assessment was based. In petitioner's case, the RO sent [PRN], Amended [Post]-Reporting Notice, PAN, and FAN/FLD"[20] which petitioner received and the same also contained computations and bases of the assessment.

In the same Answer, respondent also contended that there was no violation of the due process requirement since petitioner had even filed its replies to the PRN and PAN, and also filed a protest against the FAN/FLD.

On petitioner's contention that he based his assessment on assumptions, respondent pointed out that the computation was based on petitioner's own declarations. The RO did not have to presume the amounts on its financial statement or ITR because petitioner itself supplied the information. ✗

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18 **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:

...

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.

19 Answer, *Rollo*, Volume I, pp. 193-198.

20 Id., p. 194.

Later as part of the pre-trial[21], both parties submitted their Joint Stipulation of Facts and Issues wherein the following circumstances as abridged were admitted:

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1.) The identity and office held by respondent;
2.) Petitioner's execution of a Waiver of the Defense of Prescription Under the Statute of Limitation of the NIRC on 11 August 2011;
3.) Petitioner's receipt of the CIR's Final Decision regarding the former's administrative appeal on 21 July 2017;
4.) Petitioner's receipt of TVN 2003 No. 00122634 from RDO Rey Asterion Tambis of BIR Revenue District No. 43A East, Pasig City, Revenue Region No. 07, Quezon City on 29 September 2009;
5.) Petitioner's receipt of an undated PRN on 21 June 2011;
6.) Petitioner's receipt of a Letter signed by RDO Florante R. Aninag **(RDO Aninag)** stating that RO Angel Rabago **(Rabago)** will continue the former's audit examination under Group Supervisor Rodel Buenaobra **(GS Buenaobra)**, and an Amended PRN instructing the petitioner to reply to Rabago and GS Buenaobra on 08 November 2011; and that thereafter, the petitioner received another undated letter from RDO Aninag informing the former that RO Elma Delluta under GS Buenaobra shall continue CIBSC's audit examination;
7.) Petitioner's receipt of the PAN dated 04 June 2012 on 11 June 2012;
8.) Petitioner's receipt of the FAN and FLD No. 043A-B030-08 both dated 29 June 2012 on 11 July 2012;
9.) Petitioner's receipt of the FDDA by Regional Director Alfredo V. Misajon dated and received on 18 August 2014;
10.) Petitioner's receipt of the FFDA dated 12 July 2017 which MODIFIED the previous FDDA on 21 July 2017; and
11.) That the documents specified under par. 6 hereof was received by the petitioner subsequent to the issuance of TVN 2003 No. 00122634.[22]

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Prior to the trial proper, several Commissioner's Hearings[23] were held wherein petitioner's exhibits were compared with the originals and marked to be faithful reproductions of the original documents.[24] X

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21 Despite successive motions for the postponement of the pre-trial conference filed by both parties, it was eventually held on 12 July 2018.

22 *Rollo*, Volume II, pp. 807-810.

23 2 August 2018, Id. pp. 820-821; 7 August 2018 pp. 827-828; 9 August 2018; pp. 835-836 and 844-845; 4 September 2018, pp. 848-849; 11 September 2018, pp. 856-857; and 18 September 2018, pp. 862-863;

24 Id.

In the *interim*, CTA Administrative Circular No. 02-2018 was issued reorganizing the three (3) Divisions in the Court. As a result, this case was transferred to the Second Division.[25]

Proceedings before the CTA Second Division

Before the Second Division, the Pre-Trial was concluded and the trial proper ensued thereafter.[26]

Paterno P. Tiñana (**Tiñana**) was first to assume the witness stand for petitioner. On the witness stand, he declared that he is petitioner's Insurance Claims and Processing Clerk since 2003 (but had been under petitioner's employ for 37 years). In his present position, Tiñana is responsible for coordinating the application, processing, handling, and monitoring of insurance policies, compiling data and updating the policy records, billing etc. According to him, petitioner is registered with the SEC as an insurance broker, and also registered with the BIR as a non-life insurance company and a VAT person. The Insurance Commissioner also issued an Insurance Broker's License in its favor.[27]

Later in his testimony, Tiñana declared that, as a VAT-registered entity, petitioner filed with the BIR its annual ITR[28] (with its Comparative Statements for 31 December 2008 and 31 December 2007[29]), Monthly VAT Declarations and Quarterly VAT Returns[30], Monthly Remittance Returns of Income Tax Withheld on Compensation and Creditable Income Taxes Withheld-Expanded, Annual Information Return of Creditable Income Taxes[31] and other tax returns. It also paid the corresponding and due taxes thereon to the BIR through its authorized agents.[32] Thereafter, petitioner received a TVN, with a "First Request for Presentation of Records" from the BIR-RDO. The latter informed petitioner, through the TVN, that RO Pimentel will verify supporting documents and records for its

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25 See 19 September 2018 Order, Id. p. 819.
26 *Rollo*, Volume I, pp. 869-896.
27 See note at 4.
28 Exhibit "P-10".
29 Exhibit "P-9".
30 Exhibit "P-12" for Monthly VAT Declaration for January 2008; Exhibit "P-22" for the second quarter of calendar year 2008; Exhibit "P-24" for Monthly VAT Declaration for July 2008; Exhibit "P-26" for Monthly VAT Declaration for August 2008; Exhibit "P-28" for the third quarter of 2008; Exhibit P-30" for Monthly VAT Declaration for October 2008; Exhibit "P-32" for Monthly VAT Declaration for November 2008; Exhibit "P-34" for the fourth quarter of 2008.
31 Exhibit "P-71".
32 Exhibits "P-11", "P-13"; See also Exhibits "P-72" to "P-113-e-1".

internal revenue taxes for 1 January 2008 to 31 December 2008. Despite the absence of an LOA, BIR's Revenue Officers proceeded to examine its records. Notwithstanding, another TVN came requiring the presentation of additional documents. Despite compliance to the second TVN, petitioner still received an undated PRN to which it had filed a Reply.[33]

Tiñana continued in his testimony that, in 2011, petitioner executed a Waiver of the Defense of Prescription under the Statute of Limitation, covering all internal revenue taxes for taxable year 2008 to 30 June 2012.[34] Late into the year or in November 2011, petitioner again received a letter from the BIR that it will continue to audit and investigate all its internal revenue taxes for 2008.[35] The PAN dated 4 June 2012[36] followed subsequently where petitioner was assessed with tax deficiency taxes. In disagreement with BIR's action, it filed its Replies to the PAN, with supporting documents.[37] Finally, petitioner received the FANs and FLD for an alleged deficiency income tax and VAT amounting to ₱1,670,099.77 and ₱601,789.85, respectively, for taxable year 2008.

Tiñana maintained that BIR did not act immediately on petitioner's previous protest and/or request for reinvestigation[38]; what it received was an order to submit documents and records "to attest to the validity of the issues" raised in its protest.[39] Later or on 18 August 2014, petitioner received respondent's FDDA denying its other protest/request for reinvestigation against the FANs and FLD. Petitioner then filed an administrative appeal on the 18 August 2014 FDDA. On 12 July 2017, respondent promulgated its now assailed Final Decision which maintained petitioner's tax liabilities for taxable year 2008, albeit with modification lowering its Income Tax deficiency to ₱1,749,471.38 and its VAT deficiency to ₱450,444.58, or a total of **₱2,199,915.96.**

Helen D. Trinidad (**Trinidad**), petitioner's Treasurer and the Comptroller of Resins Incorporated (**RI**) also assumed the witness stand; the former being the subsidiary of the latter. As such, she declared that she oversees RI's and its subsidiaries' financial and

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33 See Exhibits "P-40" and "P-41", PRN and Reply, respectively.
34 Exhibit "P-42".
35 Exhibits "P-43 and "P-45".
36 Exhibit "P-46".
37 Reply Letters, Exhibits "P-47" and "P-48".
38 Filed on 02 August 2012.
39 Exhibit "P-66", Letter dated 19 September 2012.

reporting systems, and ensures their compliance to tax and statutory reportorial requirements. Relative to her functions, she handles tax assessments, reviews tax returns, prepares tax reports and ensures that taxes are paid on time.

With respect to the present case, Trinidad testified that she particularly reviewed BIR's issuances against petitioner and the latter's protests as well. When she went through respondent's Final Decision of 12 July 2017, she found it to be without factual and legal bases on the following grounds: **(1)** respondent's assessment of deficiency Income Tax and VAT are invalid absent the issuance of an LOA; **(2)** the FAN and the FLD are likewise void without factual and legal bases; **(3)** the FANs, FLD, FDDA and the 12 July 2017 Decision should be cancelled for the same reasons; and, **(4)** respondent's right to collect had prescribed. Expounding on the last ground, Trinidad explained that, under Section 222[40] of the NIRC, respondent should have issued a warrant of distraint and garnishment of personal property or levy on real property. He also did not file any judicial proceeding to collect the supposed deficiency Income Tax and VAT. Moreover, the BIR or respondent prematurely issued FANs without awaiting its reply to the PAN (when clearly the period to reply had yet to lapse). The FLD did not also contain any date within which to pay the alleged deficiency taxes.

Trinidad added that respondent erred in assuming that the gross amounts of payments amounting to ₱2,316,333.75, reflected in

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[40] **Sec. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*
(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.
(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5) -year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.
(e) Provided, however, That nothing in the immediately preceding and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree.

the BIR Form 2307 for 2008, were petitioner's revenue or gross receipts for taxable year 2008. According to her, petitioner is an insurance broker and the only revenue generated for 2008 were the commissions that the insurance companies paid to it. Likewise, while petitioner erroneously used and claimed the tax credit (as shown in its clients' BIR Form 2307), respondent was also wrong in concluding that it had undeclared income. Some of petitioner's clients issued BIR Form 2307 by mistake to petitioner because the income there were not petitioner's income for 2008. There, petitioner was described as income payee instead of the insurance companies (although the tax withheld were withheld from the income tax payments to the said insurance companies).

No cross examination was conducted.

Subsequently, respondent transmitted the case records to the court and the petitioner offered its evidence[41] which the Court admitted, with the exception of (1) **Exhibits "P-69" and "P-134,"** for failure to present their originals; and, (2) Exhibits **"P-153-a" and "P-161-a,"** as they could not be found in the records of the case.[42]

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[41] 28 February 2019, *Rollo*, Volume III, pp. 923-1009.

[42] Resolution dated 16 May 2019, Id. pp. 1323-1326; See exhibits: **"P-1", inclusive of all sub-markings, "P-2", inclusive of all sub-markings, "P-2-a", "P-3", inclusive of all sub-markings, "P-3-a", inclusive of all sub-markings, "P-4", inclusive of all sub-markings, "P-4-a", inclusive of all sub-markings, "P-5", inclusive of all sub-markings, "P-6", inclusive of all sub-markings, "P-9", inclusive of all sub-markings, "P-10", inclusive of all sub-markings, "P-11", inclusive of all sub-markings, "P-11-a", "P-12", inclusive of all sub-markings, "P-12-a", "P-13", inclusive of all sub-markings, "P-13-a", "P-14", inclusive of all sub-markings, "P-14-a", "P-15", inclusive of all sub-markings, "P-15-a", "P-16", inclusive of all sub-markings, "P-16-a", "P-17", inclusive of all sub-markings, "P-17-a", "P-18", inclusive of all sub-markings, "P-18-a", "P-19", inclusive of all sub-markings, "P-19-a", "P-20", inclusive of all sub-markings, "P-20-a", "P-21", inclusive of all sub-markings, "P-21-a", "P-22", inclusive of all sub-markings, "P-22-a", "P-23", inclusive of all sub-markings, "P-23-a", "P-24", inclusive of all sub-markings, "P-24-a", "P-25", inclusive of all sub-markings, "P-25-a", "P-26", inclusive of all sub-markings, "P-26-a", "P-27", inclusive of all sub-markings, "P-27-a", "P-28", inclusive of all sub-markings, "P-28-a", "P-29", inclusive of all sub-markings, "P-29-a", "P-30", inclusive of all sub-markings, "P-30-a", "P-31", inclusive of all sub-markings, "P-31-a", "P-32", inclusive of all sub-markings, "P-32-a", "P-33", inclusive of all sub-markings, "P-33-a", "P-34", inclusive of all sub-markings, "P-34-a", "P-35", inclusive of all sub-markings, "P-35-a", "P-36", inclusive of all sub-markings, "P-36-a", "P-37", inclusive of all sub-markings, "P-37-a", "P-37-b", "P-38", inclusive of all sub-markings, "P-38-a", "P-38-b", "P-39", inclusive of all sub-markings, "P-39-a", "P-39-b", "P-40", inclusive of all sub-markings, "P-41", inclusive of all sub-markings, "P-41-a", "P-41-b", "P42", inclusive of all sub-markings, "P-42-a", "P-42-b", "P-43", inclusive of all sub-markings, "P-43-a", "P-43-b", "P-44", inclusive of all sub-markings, "P-44-a", "P-44-b", "P-45", inclusive of all sub-markings, "P-46", inclusive of all sub-markings, "P-46-a", "P-46-b", "P-47", inclusive of all sub-markings, "P-47-a", "P-47-b", "P-48", inclusive of all sub-markings, "P-48-a", "P-48-b", "P-49", inclusive of all sub-markings, "P-49-a", "P-49-b", "P-50", inclusive of all sub-markings, "P-51", inclusive of all sub-markings, "P-52", inclusive of all sub-markings, "P-52-a", "P-52-b", "P-52-c", "P-53", inclusive of all sub-markings, "P-53-a", "P-54", inclusive of all sub-markings, "P-54-b", "P-55", inclusive of all sub-markings, "P-55-a", "P-55-b", "P-55-c", "P-56", inclusive of all sub-markings, "P-56-a", "P-56-b", "P-58", inclusive of all sub-markings, "P-**

With respondent manifesting that he will not present evidence, the Court directed the parties to submit their respective memoranda but only petitioner complied.[43]

ISSUES

As the parties so agreed during the Pre-Trial, the issues for resolution of the Court are, as follows:

I.

WHETHER THE COURT OF TAX APPEALS HAS JURISDICTION OVER THE INSTANT CASE; AND,

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59", inclusive of all sub-markings, "P-61", inclusive of all sub-markings, "P-62", inclusive of all sub-markings, "P-63", inclusive of all sub-markings, "P-66", inclusive of all sub-markings, "P-66-a", "P66-b", "P-67", "P-67-a", "P-67-b", "P-68", "P-70", "P-71", inclusive of all sub-markings, "P-71-a", "P-71-b", "P-71-b-1", "P-72", inclusive of all sub-markings, "P-72-a", "P-73", inclusive of all sub-markings, "P-73-a", "P-74", inclusive of all sub-markings, "P-74-a", "P-75", inclusive of all sub-markings, "P-75-a", "P-76", inclusive of all sub-markings, "P76-a", "P-77", inclusive of all sub-markings, "P-77-a", "P78", inclusive of all sub-markings, "P-78-a", "P-79", inclusive of all sub-markings, "P-79-a", "P-80", inclusive of all sub-markings, "P-80-a", "P-81", inclusive of all sub-markings, "P-81-a", "P-82", inclusive of all sub-markings, "P-82-a", "P-83", inclusive of all sub-markings, "P-83-a", "P-84", inclusive of all sub-markings, "P-84-a", "P-85", inclusive of all sub-markings, "P-85-a", "P-86", inclusive of all sub-markings, "P-86-a", "P-87", inclusive of all sub-markings, "P-87-a", "P-88", inclusive of all sub-markings, "P-88-a", "P-89", inclusive of all sub-markings, "P-89-a", "P-90", inclusive of all sub-markings, "P-90-a", "P-91", inclusive of all sub-markings, "P-91-a", "P-92", inclusive of all sub-markings, "P-92-a", "P-93", inclusive of all sub-markings, "P-93-a", "P-94", inclusive of all sub-markings, "P-94-a", "P-95", inclusive of all sub-markings, "P-95-a", "P-96", inclusive of all sub-markings, "P-96-a", "P-97", inclusive of all sub-markings, "P-97-a", "P-98", inclusive of all sub-markings and "P-98-a", "P-99", inclusive of all sub-markings, "P-99-a", "P-100", inclusive of all sub-markings, "P-100-a", "P-101", inclusive of all sub-markings, "P-101-a", "P-102", inclusive of all sub-markings, "P-102-a", "P-103", inclusive of all sub-markings, "P-103-a", "P-104", inclusive of all sub-markings, "P-104-a", "P-105", inclusive of all sub-markings, "P-105-a", "P-106", inclusive of all sub-markings, "P-106-a", "P-107", inclusive of all sub-markings, "P-107-a", "P-108", inclusive of all sub-markings, "P-108-a", "P-109", inclusive of all sub-markings, "P-109-a", "P-110", inclusive of all sub-markings, "P-110-a", "P-111", inclusive of all sub-markings, "P-111-a", "P-112", inclusive of all sub-markings, "P-112-a", "P-113", inclusive of all sub-markings, "P-113-a", "P-113-b", "P-113-b-1", "P-113-c", "P-113-c-1", "P-113-d", "P-113-d-1", "P-113-e", "P-113-e-1", "P-120", inclusive of all sub-markings, "P-125", "P-126", "P-127", "P-128", "P-129", "P-130", "P-131", "P-132", "P-133", "P-135", "P-136", "P-137", "P-138", "P-139", "P-140", "P141", "P-142", "P-143", "P-144", "P-145", "P-146", "P-147", "P-148", "P-149", inclusive of all sub-markings, "P-150", "P-150-a", "P-151", "P-151-a", "P-152", "P-152-a", "P-153", "P154", "P-154-a", "P-155", "P-155-a", "P-156", "P-156-a", "P157", "P-157-a", "P-158", "P-158-a", "P-159", "P-159-a", "P160", "P-160-a", "P-161", "P-162", "P-163", "P-164", "P165", "P-166", "P-167", "P-168", "P-169", "P-170", "P-180", "P-181", "P-182", "P-183", "P-184", "P-185", "P-186", "P-187", "P-188", "P-189", "P-190", "P-191", "P-192", "P-193", "P-194", "P-195", "P-200", inclusive of all sub-markings, "P-200-a", "P-201", inclusive of all sub-markings and "P-201-a."

Exhibit **"P-69"** refers to the Certification of 19 June 2012 issued by Prudential Guarantee and Assurance; Exhibit **"P-134"** is SSS Contribution Payment Return for August 2008; and, Exhibits **"P-153" and "P-161"** refer to PhilHealth Official Receipts.

[43] Memorandum for the Petitioner, dated 03 June 2019, Id. pp. 1327-1407.

II

WHETHER PETITIONER IS LIABLE FOR THE ALLEGED DEFICIENCY INCOME TAX AND VAT FOR TAXABLE YEAR 2008, AS CONTAINED IN RESPONDENT'S FINAL ASSESSMENT NOTICE, FINAL DECISION ON DISPUTED ASSESSMENT, AND HIS ASSAILED FINAL DECISION OF 12 JULY 2017.

RULING OF THE COURT

On the first issue, this Court rules in the affirmative. The jurisdiction of the Court of Appeals is clear in Republic Act **(RA)** 1125[44], as amended. It is stated:

> ...
> Section 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.
>
> (1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or **other matters** arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue.[45]
> ...

The foregoing provision is adopted *in toto* in Section 3(1), Rule 4 of the RRCTA which states:

> ...
> **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters** arising under the National Internal Revenue

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[44] An Act Creating the Court of Tax Appeals.
[45] Emphasis supplied.

> Code or other laws administered by the Bureau of Internal Revenue;
>
> ...

Under the afore-cited provisions, the jurisdiction of the CTA is thus not limited only to cases which involve decisions or inactions of the CIR on matters relating to assessments or refunds but also includes other cases arising from the NIRC or related laws administered by the BIR.[46] In one case, the Supreme Court held that the question of whether or not to impose a deficiency tax assessment comes within the purview of the words "other matters arising under the National Internal Revenue Code."[47]

The Supreme Court had long settled the correct interpretation of the phrase "other matters" in Section 7(1) of RA 1125 in *Ollada v. Court of Tax Appeals*[48] when it held:

> ...
>
> Note also that in defining the cases that may be reviewed[,] the law begins by enumerating them and then adds a general clause pertaining to other matters that may arise under the National Internal Revenue Code ... This shows that the "other matters" that may come under the general clause should be of the same nature as those that have preceded them applying the rule of construction known as *ejusdem generis*.
>
> ...

Moreover, respondent's contention that this Court has no jurisdiction over the case (since there is no justiciable controversy over which the Court make exercise its power of judicial review) is flawed. The BIR or respondent had already passed upon and in fact, rejected petitioner's position in resisting the assessment and maintained his authority to proceed against it was with factual and legal bases. With the contest of rights between petitioner and respondent, it could then not be said that there is no actual or judicial controversy to be resolved. The Supreme Court explained the concept of a judicial or actual controversy, to wit:

> ...
>
> An actual case or controversy is one that involves **a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution**; the case must not be moot or academic or

---

46 *CIR* v. *Hambrecht & Quist Philippines, Inc.*, 649 Phil. 446 (2010).

47 See *Meralco Securities Corp. v. Savellano*, 203 Phil. 173 (1982).

48 G.R. No. L-8878, 24 July 1956.

> based on extra-legal or other similar considerations not cognizable by a court of justice. Stated otherwise, it is not the mere existence of a conflict or controversy that will authorize the exercise by the courts of its power of review; more importantly, the issue involved must be susceptible of judicial determination.[49]
>
> ...

As for the second issue, the records also yield that there was no LOA from respondent hence, the subsequent assessment on petitioner was void and produced no legal effect.

It is noted that even respondent did not deny that there was no LOA issued. In his Answer, particularly in paragraph 4 thereof, he admitted issuing the: **(1)** Notice of Informal Conference; **(2)** PAN, and; **(3)** FLD and Assessment Notice.[50] Glaringly, there was no mention of an LOA in his enumeration of the documents he issued to petitioner.

The Court also disagrees with respondent when he insisted that there could not have been any breach of the due process requirement since petitioner was nevertheless issued with the "Notice of Informal Conference, PAN, FLD and Assessment Notice, PRN, Amended [Post]-Reporting Notice, and FAN/FLD".[51] Section 6 of the NIRC clearly provides:

> ...
>
> **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.[52]
>
> ...

Based on the afore-quoted provision, it is clear that, unless the CIR or his duly authorized representative so authorizes (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**

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49 *Garcia v. The Executive Secretary, et al.*, G.R. No. 157584, 2 April 2009; underscoring and emphasis supplied.

50 See note at 18.

51 Id., p. 194.

52 Emphasis and underscoring supplied.

obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA.[53] These pieces of documents or evidence obtained 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 a Revenue Regional Director (**RRD**) or their duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.[54] In this light, even if petitioner was issued with the documents mentioned in the previous paragraphs, the prior authority for the examination could not be dispensed with.

In yet another case, the Supreme Court declared that "an LOA is *the* authority given to the appropriate revenue officer assigned to perform assessment functions... [i]t 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... [a]n 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".[55] Thus, absent the LOA or the authority, any subsequent assessment is a nullity.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[56], the Supreme Court, in no uncertain terms, ruled:

> ...
> 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**.
> ...

Moreover, Section 10(c), in relation to Section 13 of the NIRC[57], clearly states:

[53] See *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, 05 April 2017.
[54] Id.
[55] See also *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, 05 April 2018; italics supplied.
[56] 649 Phil. 519 (2010).
[57] National Internal Revenue Code of 1997, Sec. 10(c) in relation to Sec. 13.

> . . .
> **Sec. 10.** *Revenue Regional Director.* - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:
> . . .
>
> (c) Issue Letters of [A]uthority for the examination of taxpayers within the region;
>
> . . .
> **Sec. 13.** *Authority of a Revenue Office[r].* - [S]ubject 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, **pursuant to a Letter of Authority 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.
> . . .

The records show that what petitioner initially received was a TVN that authorized RO Pimentel to verify the supporting documents and/or pertinent records of petitioner. It was issued by the RDO, not by the CIR or RRD. While authority was indeed given to RO Pimentel, this is not the authority contemplated in the NIRC where the RO is tasked to make an examination of the taxpayer's records for the purpose of collecting the right amount of tax. A mere notice will not suffice and this is not the equivalent of the requisite LOA.

In BIR's Revenue Memorandum Order **(RMO)** No. 019-09, the issuance of TVN is allowed only in the following instances:

> . . .
> 1. Cases below the threshold as defined under item numbers III.A.1.1 to A.1.4[58] hereof;

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[58] III. Selection Criteria
A. Letters of Authority (LAs) shall be issued to cover the audit/investigation of taxpayers falling under the following selection criteria:
1. Mandatory Cases
1.1 Taxpayers with claims for income tax refund or issuance of tax credit certificate or income tax returns showing carry-over of excess withholding tax/income tax payments, where the amount of claim or carry-over exceeds One Hundred Thousand Pesos (₱100,000.00) and/or where the gross sales/receipts exceed Ten Million Pesos (₱10,000,000.00) for taxpayers in Revenue Region Nos. 5, 6, 7 and 8 (Valenzuela, Manila, Quezon City and Makati), except RDO Nos. 35-Romblon, 36-Puerto Princesa and 37-San Jose, Occidental Mindoro, and amount of claim/carry-over exceeding One Hundred Thousand Pesos (₱100,000.00) and/or where the

2. Claims for tax credit/refund of excise tax under Title VI of the NIRC of 1997, as amended, regardless of amount;

3. Claims for tax credit/refund on erroneous/double payment of taxes, regardless of amount;

4. Taxpayers who are retiring from business, undergoing merger/consolidation/split-up/spin-off and other types of corporate reorganizations with gross assets of One Million Pesos (₱1,000,000.00) up to Ten Million Pesos (₱10,000,000.00); and,

5. Protested cases/cases for reinvestigation.

...

In RMO No. 020-08, the TVN is likewise to be issued on income and business tax returns based on gross sales/revenues/receipts, depending on the amounts and tax region or area concerned. Interestingly, from the aforementioned RMOs, it would appear that a TVN is furnished to a taxpayer only after a pre-audit or after the establishment of benchmarks or determination of a taxpayer's profile on tax payments in relation to their gross sales/revenues/receipts.[59] None has been shown of petitioner. Neither does its situation fall in the instances mentioned.[60] In any case, it is indubitable that the TVN, which is a mere notice, could not substitute the LOA.[61] As a result of the lack of this essential grant of authority, petitioner's assessment by the respondent is thus, as stated, null and void.

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gross sales/receipts exceed Five Million Pesos (₱5,000,000.00) for all other Regions, including the RDOs herein mentioned as exceptions, which will require the audit/investigation of all internal revenue tax liabilities for the covered period (Selection Code: ITR for tax refund, ITC for tax credit certificate and ITE for income tax returns showing carry-over of excess withholding tax/income tax payments);

1.2 Taxpayers with claims for value-added tax (VAT) refund or issuance of tax credit certificate or VAT returns showing excess input tax at the end of the taxable period where the amount exceeds One Hundred Thousand Pesos (₱100,000.00), which will require the specific audit/investigation of the VAT liabilities only for the covered period (Selection Code: VTR for VAT refund, VTC for VAT credit certificate and VTE for returns showing excess input tax);

1.3 Estate tax returns with other tax liabilities where the gross sales/receipts from business and/or gross estate exceed Ten Million Pesos (₱10,000,000.00) for Revenue Region Nos. 5, 6, 7 and 8 (Valenzuela, Manila, Quezon City and Makati), except RDO Nos. 35-Romblon, 36-Puerto Princesa and 37-San Jose, Occidental Mindoro, and gross sales/receipts and/or gross estate exceeding Five Million Pesos (₱5,000,000.00) for all other Regions, including the RDOs herein mentioned as exceptions (Selection Code: EOT);

1.4 Estate tax returns with no other tax liabilities where the gross estate exceeds Ten Million Pesos (₱10,000,000.00) for Revenue Region Nos. 5, 6, 7 and 8 (Valenzuela, Manila, Quezon City and Makati), except RDO Nos. 35-Romblon, 36-Puerto Princesa and 37-San Jose, Occidental Mindoro, and gross estate exceeding Five Million Pesos (₱5,000,000.00) for all other Regions, including the RDOs herein mentioned as exceptions (Selection Code: EST).

59 *CIR v. Falcon Marketing Corporation*, C.T.A. EB CASE NO. 1306. 5 June 2017.

60 Petitioner's protest and/or request for reinvestigation came after the TVN was issued to it.

61 *Penta Technology Inc. v. Commissioner of Internal Revenue*, C.T.A. CASE NO. 9258, 14 November 2018.

Granted the foregoing, the Court cannot also rule on petitioner's protests, as all assessments made by the BIR after petitioner disclosed its books and records to the latter (due to a mistaken reliance on the TVN) are equally without effect.

WHEREFORE, premises considered, the assailed Final Decision dated 12 July 2017 of respondent Commissioner of Internal Revenue is hereby **ANNULLED** and **SET ASIDE.** Accordingly, the Final Decision on Disputed Assessment (FDDA) dated 18 August 2014, Final Assessment Notice (FAN) and the Formal Letter Demand (FLD) are **CANCELLED**. Consequently, the respondent's finding of deficiency income tax in the amount of ₱842,868.34 and interest thereon in the amount of ₱906,603.04, as well as, as deficiency VAT amounting to ₱212,583.75 and interest thereon amounting to ₱237,860.83 against petitioner Chem Insurance Brokers & Services Corporation is likewise **CANCELLED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

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

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
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
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice