REPUBLIC OF THE PHILIPPINES
# *Court of Tax Appeals*
QUEZON CITY

## *Third Division*

**SUGAR CRAFTS, INC.,**
*Petitioner,*

-*versus*-

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA CASE NO. 8738**

Members:
***Bautista,*** *Chairperson*
***Fabon-Victorino,*** *and*
***Ringpis-Liban,*** *JJ.*

Promulgated:
AUG 16 2017
4:05 p.m.

x ---------------------------------------------------------------------------------------- x

# *DECISION*

***BAUTISTA, J:***

This Petition for Review[1] filed on December 2, 2013, pursuant to *Section 7(a)(1)*[2] *of Republic Act ("RA") No. 1125*[3], as amended, in relation to *Section 228*[4] *of the 1997 National Internal Revenue Code*[5], *as amended ("1997 NIRC")*, seeks for the Court to cancel and set aside the Final Decision issued to petitioner demanding payment for deficiency tax liabilities in the amount of Php19,763,178.85 for taxable year 2009 ("TY 2009").[6]

---

[1] *Records, CTA Case No. 8738, Vol. 1, Petition for Review ("PFR")*, pp. 6-53, with annexes.

[2] SEC. 7. *Jurisdiction*. - The CTA shall exercise:

> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 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 Code or other laws administered by the Bureau of Internal Revenue;

[3] An Act Creating the Court of Tax Appeals, as amended.

[4] SEC. 228. *Protesting of Assessment*. –

> xxx xxx xxx
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of said decision, or from lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[5] *Republic Act No. 8424*, January 1, 1998.

[6] *Records, Vol. 1, PFR, Prayer*, p. 21.

## *The Parties*[7]

Petitioner Sugar Crafts, Inc. is a corporation organized and existing under the laws of the Philippines, with registered address at J.A. Development Corporation Compound, E. Rodriguez Jr. Avenue, Pasig City.[8] Its primary purpose is "[t]o manufacture, buy, sell, export, import, deal in, and to engage in, conduct and carry on the business of manufacturing, buying and selling, and dealing in goods, wares and merchandise, of every class, and description as may be permitted by the laws of the Philippines, such as but not limited to sugar flowers and other cake decoration materials, except drugs and cosmetics, and to act as agent, except insurance, representative of attorney-in-fact of any individual, association, partnership, corporation or any other entity, local or foreign, in any manner and for any purpose consonant with and consistent with the purposes of this Corporation."

Respondent is the duly appointed Commissioner[9] of the Bureau of Internal Revenue ("BIR"), the government agency charged with the assessment and collection of all internal revenue taxes, fees, charges, and the enforcement of all forfeitures, penalties and fines connected therewith.

## *The Facts*

On August 3, 2010, petitioner received Letter of Authority ("LOA") No. 2009-00032527[10] ("LOA No. 32527") dated June 24, 2010, signed by then Assistant Regional Director Jonas DP. Amora ("Mr. Amora") of Revenue Region No. 7 ("RR No. 7") for Regional Director Antonio Montemayor, authorizing Revenue Officer ("RO") Ricardo Cruz, Jr. ("RO Cruz") and Group Supervisor ("GS") Lino Amatorio, of Revenue District Office ("RDO") No. 41 - Mandaluyong City ("RDO No. 41"), to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for TY 2009.

/

---

[7] *Records, Vol. 1, Joint Stipulation of Facts and Issues ("JSFI"), pars. 1-3,* p. 388.

[8] *Id., Vol. 2, Exhibit "P-2," Amended Articles of Incorporation,* p. 838.

[9] Formerly her Honorable Commissioner of Internal Revenue ("CIR") Kim S. Jacinto-Henares, now his Honorable CIR Ceasar R. Dulay.

[10] *Records, Vol. 2, Exhibit "P-35," Letter of Authority ("LOA") No. 00032527 dated June 24, 2010,* p. 1038; *BIR Records, Folder 1, Exhibit "R-2," LOA No. 32527 dated June 24, 2010,* p. 248.

On November 11, 2010, petitioner received LOA-041-2010-00000037 SN: eLA201000026203[11] dated October 27, 2010, signed by Mr. Amora as Officer-in-Charge ("OIC")-Regional Director of RR No. 7, authorizing the same ROs identified in LOA No. 32527 to conduct audit investigation of petitioner's tax liabilities for TY 2009. The LOA has a marking which indicates that it "is a converted [electronic LOA ("eLA")] from a previously issued eLA/LA/TVN No. [LOA No. 32527] dated June 24, 2010 pursuant to *[Revenue Memorandum Order ("RMO")] No. 69-2010.*"[12]

On December 5, 2011, Ms. Norma P. Ceroma, ("Ms. Ceroma"), Assistant Chief of the Assessment Division of RR No. 7, issued an indorsement[13] forwarding to RDO No. 43-A Pasig City ("RDO No. 43A") the entire docket bearing the TY 2009 tax case of petitioner, by virtue of the indorsement[14] issued by Revenue District Officer Isabel A. Paulino ("RDO Paulino") of RDO No. 41. The indorsement of RDO Paulino was pursuant to a memorandum[15] dated October 18, 2011 signed by RO Maria Dalisay S. Co, stating that petitioner is already under the jurisdiction of RDO No. 43A.

Thereafter, a Memorandum of Assignment ("MOA") No. 043A-0000559[16] dated December 7, 2011 was issued by RDO Florante R. Aninag ("RDO Aninag") of RDO No. 43A to RO Delfin C. Sunga ("RO Sunga") and GS Chito T. Cabel ("GS Cabel"), authorizing them to continue the audit and investigation of petitioner's tax liabilities pursuant to LOA No. 32527, to replace the previously assigned audit officers. Petitioner was then informed of said replacement in a letter[17] received on January 11, 2012.

On July 26, 2012, petitioner received Notice of Informal Conference[18] ("NIC") dated July 24, 2012 issued by RDO Aninag, pursuant to LOA-041-2010-00000037[19]/LOA No. 00032527, informing

---

[11] *Records, Vol. 2, Exhibit "P-13," LOA-041-2010-00000037/SN: eLA201000026203 dated October 27, 2010,* p. 870; *BIR Records, Folder 1, Exhibit "R-2-a," LOA-041-2010-00000037/SN: eLA201000026203 dated October 27, 2010,* p. 249.

[12] Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memorandum of Assignment, August 11, 2010.

[13] *BIR Records, Folder 1, 2nd Indorsement,* pp. 256, 257.

[14] *Id., 1st Indorsement,* p. 253.

[15] *Id., Memorandum,* pp. 250-252.

[16] *Id., Exhibit "R-1," Memorandum of Assignment dated December 7, 2011,* p. 258.

[17] *Id., Letter Re: Replacement of Audit Officers,* p. 259.

[18] *Records, Vol. 2, Exhibit "P-4," Notice of Informal Conference ("NIC"),* pp. 843-846, with attachments; *BIR Records, Folder 1, Exhibit "R-3," NIC,* pp. 260-263, with attachments.

[19] LOA 431-2010-00000037 *per* NIC; *See Transcript of Stenographic Notes ("TSN"), April 18, 2016,* pp. 24-25.

petitioner that the report submitted by RO Sunga contains a recommendation for possible assessment of deficiency taxes for TY 2009.

On September 14, 2012, petitioner received undated Notice of Informal Conference (Amended)[20] ("Amended NIC") issued by RDO Aninag, informing petitioner that the report of investigation conducted by RO Sunga pursuant to LOA 43A-2012-00000037 and LOA 43A-2012-00000591 showed that due from petitioner are deficiency income tax ("IT"), value-added tax ("VAT"), expanded withholding tax ("EWT"), and improperly accumulated earnings tax ("IAET"). Petitioner was requested to appear for an informal conference before RDO No. 43A on September 21, 2012.[21]

On September 20, 2012, petitioner filed its reply to the Amended NIC through a letter[22] dated September 19, 2012.

On December 4, 2012[23], petitioner received Preliminary Assessment Notice[24] ("PAN") dated November 27, 2012, with attached Details of Discrepancies, from Mr. Amora[25] of RR No. 7, informing petitioner that it has deficiency IT, VAT, EWT, and IAET, inclusive of interest, surcharge, and compromise penalty, in the amounts of Php7,231,193.19, Php10,561,734.83, Php386,367.42, and Php1,158,894.68, respectively. The PAN was issued pursuant to LOA No. 32527 dated June 24, 2010 and SN: eLA201000026203 dated October 27, 2010.[26] Another copy of the PAN[27] was received by petitioner on December 12, 2012.

Referring to the PAN received on December 4, 2012, petitioner filed its reply[28] ("Reply to PAN") *via* registered mail on December 19, 2012, and received by RR No. 7 on January 11, 2013[29], disputing the

[20] *Records, Vol. 3, Exhibit "P-5," Amended NIC,* pp. 847-849, with attachments; *BIR Records, Folder 1, Exhibit "R-8," Amended NIC,* pp. 306-308, with attachments.
[21] *Records, Vol. 3, Exhibit "P-5," Amended NIC,* p. 847; *BIR Records, Folder 1, Exhibit "R-8," Amended NIC,* p. 308.
[22] *Records, Vol. 2, Exhibit "P-9," Reply to Amended NIC,* p. 861; *BIR Records, Folder 1,* p. 297.
[23] *BIR Records, Folder 1, PAN,* p. 333.
[24] *Records, Vol. 2, Exhibit "P-6," Preliminary Assessment Notice ("PAN"),* pp. 850-853; *BIR Records, Folder 1, Exhibit "R-9," PAN,* pp. 317-320.
[25] OIC-Regional Director in the PAN.
[26] *Records, Vol. 2, Exhibit "P-6," PAN,* p. 851; *BIR Records, Folder 1, Exhibit "R-9," PAN,* p. 318.
[27] *BIR Records, Folder 1, PAN,* pp. 335-338.
[28] *Records, Vol. 2, Exhibit "P-10," Reply to PAN,* pp. 862-863; *BIR Records, Folder 1, Reply to PAN,* p. 334.
[29] *BIR Records, Folder 1, Reply to PAN,* p. 334.

proposed assessments contained therein. It also filed a reply to the PAN received on December 12, 2012, through a letter[30] dated December 26, 2012, and received by RR No. 7 on December 27, 2012.

Thereafter, petitioner received Formal Letter of Demand, with attached Details of Discrepancies, and Final Assessment Notices[31] ("FLD/FAN") dated December 21, 2012, with Demand Letter No. 43A-B100-09 dated December 10, 2012, issued by Mr. Amora[32], assessing petitioner for deficiency taxes, as follows:

| TAX TYPE | | BASIC TAX | | 25% SURCHARGE | | INTEREST | | TOTAL |
|---|---|---|---|---|---|---|---|---|
| IT | Php | 4,776,303.86 | Php | - | Php | 2,617,152.80 | Php | 7,393,456.66 |
| VAT | | 6,779,868.47 | | - | | 4,012,196.13 | | 10,792,064.60 |
| EWT | | 247,150.56 | | - | | 147,613.21 | | 394,763.77 |
| IAET | | 706,426.30 | | 176,606.58 | | 279,860.94 | | 1,162,893.82 |
| **TOTAL** | **PHP** | **12,509,749.19** | **PHP** | **176,606.58** | **PHP** | **7,056,823.08** | **PHP** | **19,743,178.85** |

A compromise penalty for non/late filing/payment of IAET in the amount of Php20,000.00 was also imposed.[33] The FLD/FAN was issued pursuant to LOA No. 32527 dated June 24, 2010 and SN: eLA201000026203 dated October 27, 2010.[34]

On February 8, 2013, petitioner filed its protest[35] to the FLD/FAN ("Protest to FLD/FAN") addressed to Ms. Ceroma of the Assessment Division of RR No. 7.

Thereafter, MOA No. 043A-0000766[36] dated April 1, 2013 was issued by RDO Aninag to RO Cruz and GS Cabel, referring the audit investigation of petitioner's tax liabilities for TY 2009 pursuant to SN: eLA201000026203 dated October 27, 2010, for reinvestigation.

In an undated letter[37] issued by RDO Aninag, and received by petitioner on July 4, 2013, it was informed that RO Cruz and GS

/

[30] *Records, Vol. 2, Exhibit "P-10-1," 2nd Reply to PAN*, p. 864; *BIR Records, Folder 1, 2nd Reply to PAN*, p. 341.
[31] *Records, Vol. 2, Exhibit "P-7," Formal Letter of Demand/Final Assessment Notice ("FLD/FAN")*, pp. 854-858; *BIR Records, Folder 1, Exhibit "R-10," FLD/FAN*, pp. 321-330.
[32] OIC-Regional Director in the FLD/FAN.
[33] *Records, Vol. 2, Exhibit "P-7," FLD/FAN*, p. 858; *BIR Records, Folder 1, Exhibit "R-10," FLD/FAN*, p. 325.
[34] *Records, Vol. 2, Exhibit "P-7," FLD/FAN*, p. 855; *BIR Records, Folder 1, Exhibit "R-10," FLD/FAN*, p. 323.
[35] *Records, Vol. 2, Exhibit "P-11," Protest to FLD/FAN*, pp. 865-866; *BIR Records, Folder 1, Protest to FLD/FAN*, pp. 352-353.
[36] *BIR Records, Folder 1, Exhibit "R-11," Memorandum of Assignment dated April 1, 2013*, p. 362.
[37] *Id., Exhibit "R-12," Letter Re: Reinvestigation*, p. 363.

Cabel have been authorized to continue the audit investigation of its tax liabilities for TY 2009.

On even date, petitioner received a letter[38] dated July 3, 2013 signed by RO Cruz, stating that petitioner failed to submit documents to support its protest, thus, reiterating the assessment contained in the FLD/FAN and Demand Letter No. 43A-B100-09.

Thereafter, on October 31, 2013[39], petitioner received a Final Decision[40] dated October 22, 2013, issued by Mr. Amora, now as Regional Director of RR No. 7, demanding payment for deficiency taxes *per* Demand Letter No. 43A-B100-09.

On November 14, 2013, petitioner filed a letter[41] addressed to Mr. Amora, requesting for the immediate recall of the Final Decision on the ground of lack of due process, avoidance of needless litigation, and erroneous assessment.

On December 2, 2013, petitioner filed the instant Petition for Review.[42]

Upon notice[43] and after being granted extension,[44] respondent filed his Answer[45] on February 28, 2014, where he interposed the following defenses: *(1)* that the PAN and FLD/FAN contained the facts and the law on which the assessment was based; *(2)* that LOA No. 32527 dated June 24, 2010 authorizing the investigation of petitioner's books of accounts and accounting records for TY 2009 was validly issued, and the same was converted to LOA-041-2010-00000037 SN: eLA201000026203 pursuant to *RMO No. 62-2010*[46] and *RMO No. 69-2010*[47]; *(3)* that the FLD/FAN was issued within the three (3)-year prescriptive period prescribed under *Section 203 of the*

[38] *BIR Records, Folder 1, Exhibit "R-13," Follow-Up Letter,* p. 364.
[39] *Records, Vol. 2, Exhibit "P-8-1," BIR Envelope of Final Decision,* p. 860.
[40] *Records, Vol. 2, Exhibit "P-8," Final Decision,* p. 859; *BIR Records, Folder 1, Exhibit "R-14," Final Decision,* p. 368.
[41] *BIR Records, Folder 1, Request for Immediate Recall of Final Decision,* pp. 369-376.
[42] *Records, Vol. 1, PFR,* pp. 6-53, with annexes.
[43] *Id., Summons,* p. 54.
[44] *Records, Vol. 1, Motion for Extension of Time to File Answer,* pp. 55-56; *Records, Vol. 1, Resolution,* p. 58.
[45] *Records, Vol. 1, Answer,* pp. 59-62.
[46] Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures, July 1, 2010.
[47] Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment, August 11, 2010.

*1997 NIRC;* and *(4)* that the assessment had become final and demandable for failure of petitioner to submit all relevant supporting documents within the sixty (60)-day period.

Petitioner and respondent filed their Pre-Trial Briefs on April 7, 2014[48] and July 4, 2014[49], respectively.

After granting petitioner's Motion for Extension to File Joint Stipulation of Facts and Issues,[50] on August 26, 2014, the parties filed a Joint Motion to Admit Attached Joint Stipulation of Facts and Issues[51] ("Joint Motion") with the attached Joint Stipulation of Facts and Issues[52] ("JSFI"). The Joint Motion was granted by the Court in an Order[53] dated August 28, 2014, and consequently admitted the attached JSFI.

Consequently, on September 3, 2014, a Pre-Trial Order[54] was issued.

Trial ensued. Petitioner presented two (2) witnesses: *(1)* Ms. Deborah N. Rodrigo ("Ms. Rodrigo"), Sugar Craft Inc.'s Managing Director-Vice President ("VP")-Treasurer; and *(2)* Atty. Clifford E. Chua ("Atty. Chua"), the Independent Certified Public Accountant ("ICPA").

Ms. Rodrigo's testimony is contained in her Amended Judicial Affidavit[55]. She was presented as witness on September 29, 2014[56], October 2, 2014[57], and October 30, 2014[58].

Upon motion[59] and there being no objection from respondent,[60] Atty. Chua was commissioned as the ICPA,[61] and was ordered to

---

[48] *Records, Vol. 1, Petitioner's Pre-Trial Brief,* pp. 78-87.
[49] *Id., Respondent's Pre-Trial Brief,* pp. 264-267.
[50] *Records, Vol. 1, Motion for Extension of Time to File Joint Stipulation of Facts and Issues,* pp. 378-382; *Records, Vol. 1, Resolution,* p. 384.
[51] *Records, Vol. 1, Joint Motion to Admit Attached Joint Stipulation of Facts and Issues,* pp. 385-387.
[52] *Id., JSFI,* pp. 388-393.
[53] *Id., Order,* p. 394.
[54] *Id., Pre-Trial Order ("PTO"),* pp. 571-577.
[55] *Records, Vol. 2, Exhibit "P-40," Amended Judicial Affidavit ("JA") of Deborah N. Rodrigo,* pp. 809-834.
[56] *Id., Minutes of Hearing dated September 29, 2014,* p. 615.
[57] *Id., Minutes of Hearing dated October 2, 2014,* p. 616.
[58] *Id., Minutes of Hearing dated October 30, 2014,* p. 621.
[59] *Id., Motion to Avail the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals,* pp. 579-585, with attachment.

submit the ICPA Report within thirty (30) days from October 30, 2014 or until November 29, 2014.[62] The ICPA Report[63] and the Supplemental ICPA Report[64] were filed on January 14, 2015, and February 27, 2015, respectively. Atty. Chua's Judicial Affidavit[65] and Supplemental Judicial Affidavit[66] were filed on January 30, 2015, and March 2, 2015, respectively. After two (2) resettings,[67] he was presented as witness on April 21, 2015[68].

Considering petitioner's manifestation[69] that it will no longer present further evidence, the Court set a commissioner's hearing for the permanent marking of petitioner's exhibits on June 23, 2015, and granted petitioner ten (10) days from June 23, 2015, or until July 3, 2015 to file its Formal Offer of Evidence ("FOE").[70]

After being granted a postponement,[71] petitioner filed its Formal Offer of Evidence[72], offering *Exhibits* "P-40," "P-40-A," "P-1," "P-2," "P-4," "P-5," "P-6," "P-7," "P-8," "P-8-1," "P-9," "P-10," "P10-1," "P-11," "P-12," "P-13," "P-14," "P-15," "P-16," "P-17," "P-18," "P-19," "P-20," "P-21," "P-22," "P-23," "P-24," "P-25," "P-26," "P-27," "P-28," "P-29," "P-30," "P-31," "P-35," "P-156," "P-156-A," "P-157," "P-157-A," "P-158," "P-159," "P-160," "P-161," "P-161-A," "P-162," "P-162-A," "P-3," "P-41" to "P-54," "P-56" to "P-72," "P-73" to "P-105," "P-106" to "P-127," "P-128" to "P-144," "P-145" to "P-149," "P-150," "P-151," "P-152" to "P-152-10," "P-153," "P-154," and "P-155" inclusive of sub-markings, as evidence. This was resolved by the

[60] *Records, Vol. 2, Minutes of Hearing dated October 30, 2014,* p. 621; *Records, Vol. 2, Resolution,* pp. 625-626.
[61] *Records, Vol. 2, Minutes of Hearing dated October 30, 2014,* p. 621; *Records, Vol. 2, Oath of Commission,* p. 622; *Records, Vol. 2, Resolution,* pp. 625-626.
[62] *Records, Vol. 2, Minutes of Hearing dated October 30, 2014,* p. 621; *Records, Vol. 2, Resolution,* pp. 625-626.
[63] *Records, Vol. 2, Exhibit "P-156," Independent Certified Public Accountant ("ICPA") Report,* pp. 659-678.
[64] *Id., Exhibit "P-157," Supplemental ICPA Report,* pp. 718-750.
[65] *Id., Exhibit "P-161," JA of Atty. Clifford E. Chua,* pp. 680-707.
[66] *Id., Exhibit "P-162," Supplemental JA of Atty. Clifford E. Chua,* pp. 756-768.
[67] *Records, Vol. 2, Minutes of Hearing dated February 2, 2015,* p. 708; *Records, Vol. 2, Minutes of Hearing dated March 3, 2015,* p. 770.
[68] *Records, Vol. 2, Minutes of Hearing dated April 21, 2015,* p. 773.
[69] *Id., Minutes of Hearing dated June 8, 2015,* p. 780.
[70] *Records, Vol. 2, Minutes of Hearing dated June 8, 2015,* p. 780; *Records, Vol. 2, Resolution,* pp. 782-783.
[71] *Records, Vol. 2, Motion to Defer Filing of Formal Offer of Evidence (with Motion to Set Commissioner's Hearing),* pp. 787-790; *Records, Vol. 2, Resolution,* p. 792.
[72] *Records, Vol. 2, Formal Offer of Evidence ("FOE"),* pp. 796-808.

Court in a Resolution[73] dated September 23, 2015, admitting all of the foregoing exhibits with some notations[74].

On April 18, 2016,[75] and after two (2) resettings,[76] respondent presented its first witness, RO Sunga, who testified through his Judicial Affidavit[77]. During the May 30, 2016 hearing[78], respondent presented its second witness, RO Cruz, who also testified through his Judicial Affidavit[79].

Thereafter, respondent was granted until June 14, 2016[80], and later extended up to June 24, 2016[81], to file his FOE. Thereafter, on June 14, 2016, Respondent's Formal Offer of Evidence[82] was filed, offering as evidence *Exhibits* "R-1," "R-2," "R-2-a," "R-3," "R-4," "R-5," "R-6," "R-7," "R-8," "R-9," "R-10," "R-11," "R-12," "R-13," "R-14," "R-15," and "R-15-a." The Court resolved to admit all the offered exhibits, with the exception of *Exhibit* "R-2" for failure of the exhibit formally offered and identified to correspond with the document marked, in a Resolution[83] dated April 15, 2016.

After being granted an extension,[84] on October 24, 2016, petitioner filed its Memorandum[85]. However, respondent failed to file his memorandum *per* Records Verification Report[86] issued by the Judicial Records Division on October 26, 2016.

---

[73] *Records, Vol. 3, Resolution,* p. 1139-1140.

[74] The Court notes that *Exhibit "P-17"* described as BIR Form No. 2550-Q Quarterly VAT Return of Sugar Crafts, Inc. for the 3rd Quarter of 2009, filed with the BIR on October 25, 2009, was actually filed on October 23, 2009; and that *Exhibit "P-157"* described as Supplemental ICPA Report dated February 16, 2015 filed with the Court on February 27, 2015 with the following caption: "Sugar Crafts, Inc. vs. Commissioner of Internal Revenue" CTA Case No. 8738 is actually dated February 26, 2015.

[75] *Records, Vol. 3, Minutes of Hearing dated April 18, 2016,* p. 1156.

[76] *Records, Vol. 3, Minutes of Hearing dated November 16, 2015,* p. 1141; *Records, Vol. 3, Minutes of Hearing dated February 29, 2016,* p. 1143; *Records, Vol. 3, Resolution,* p. 1146.

[77] *Records, Vol. 1, Exhibit "R-15," JA of Delfin C. Sunga,* pp. 336-345.

[78] *Id., Vol. 3, Minutes of Hearing dated May 30, 2016,* p. 1160.

[79] *Id., Vol. 1, Exhibit "R-16," JA of Ricardo T. Cruz, Jr.,* pp. 348-352.

[80] *Records, Vol. 3, Minutes of Hearing dated May 30, 2016,* p. 1160; *Records, Vol. 3, Resolution,* pp. 1166-1167.

[81] *Records, Vol. 3, Resolution,* p. 1169.

[82] *Id., Respondent's Formal Offer of Evidence,* pp. 1170-1177.

[83] *Id., Resolution,* pp. 1189-1190.

[84] *Records, Vol. 3, Motion for Extension of Time to File Memorandum,* pp. 1191-1194; *Records, Vol. 3, Resolution,* p. 1196.

[85] *Records, Vol. 3, petitioner's Memorandum,* pp. 1198-1270.

[86] *Id., Records of Verification,* p. 1271.

On November 2, 2016, the Court promulgated a Resolution[87] submitting the case for decision; hence, this Decision.

## *The Issues*[88]

WHETHER OR NOT AN LOA WAS VALIDLY ISSUED;

WHETHER OR NOT THE ASSESSMENT LACKS FACTUAL AND LEGAL BASES, PURSUANT TO *SECTION 228 OF THE 1997 NIRC;*

WHETHER OR NOT RESPONDENT'S RIGHT TO ASSESS PETITIONER FOR ALLEGED DEFICIENCY TAX LIABILITIES IS BARRED BY PRESCRIPTION; AND

WHETHER OR NOT PETITIONER IS LIABLE FOR THE ALLEGED DEFICIENCY IT, VAT, EWT, IAET, AND COMPROMISE PENALTY FOR TY 2009.

### *Petitioner's Arguments*[89]

Petitioner avers that the assessment is void, considering that no valid LOA was issued. According to petitioner, the failure to furnish LOA No. 32527 dated June 24, 2010 within the thirty (30)-day period prescribed under *Revenue Audit Memorandum Order ("RAMO") No. 1-2000*[90], and as held in *Dakay Construction and Development Corp. v. Commissioner of Internal Revenue*[91] *("Dakay Construction case")*, coupled with the fact that the same was not signed by the Regional Director, as required under *Section 13*[92] *of the 1997 NIRC*, invalidated the same.

---

[87] *Records, Vol. 3, Resolution,* p. 1273.
[88] *Id., Vol. 1, PTO, Issues,* p. 572.
[89] *Id., Vol. 3, petitioner's Memorandum,* pp. 1198-1270.
[90] Updated Handbook on Audit Procedures and Techniques Volume I (Revision —Year 2000), March 17, 2000.
[91] CTA *EB* Case No. 1294, September 20, 2016.
[92] 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, 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.

Consequently, the ROs named therein have no authority to conduct the audit investigation of petitioner's books for TY 2009.

In addition, petitioner asserts that the RO who actually conducted the audit investigation, *i.e.*, RO Sunga, has no authority to do so since he was not the RO named in the LOA, *i.e.*, RO Cruz; that petitioner was not informed of the change or replacement of ROs; that the two (2) memoranda authorizing RO Sunga to conduct the audit investigation was not signed by the Regional Director, in contravention with *Section 13 of the 1997 NIRC*, and as held in the case of *Strawberry Foods Corporation v. Commissioner of Internal Revenue*[93]. Petitioner then concludes that an assessment which arose from the conduct of audit by an officer unauthorized to do so is null and void.

Petitioner further claims that the assessment for alleged deficiency IT, VAT, EWT, and IAET, is null and void for failure of the PAN and the FLD/FAN to state the factual and legal bases upon which the assessments are based; and that this is contrary to the mandate of *Section 228 of the 1997 NIRC*, and as held by the Supreme Court in the case of *Commissioner of Internal Revenue v. Enron Subic Power Corp.*[94] and *Yamane v. Lepanto Condominium*[95]. In any case, petitioner maintains that it is not liable for the alleged deficiency IT, VAT, and IAET.

Finally, petitioner asserts that the right to assess its tax liabilities for IT, the first to third quarters of VAT, and the months of January to October of EWT, have already prescribed since the FLD/FAN was dated December 21, 2012, and that no agreement for the extension of the assessment was entered into.

***Respondent's Counter-Arguments***[96]

Respondent asserts that the PAN and the FAN, together with the Details of Discrepancies attached therein, and the FLD, contained the facts and the law on which the assessment was based, thus, petitioner was sufficiently informed of the factual and legal bases of the assessment; that LOA No. 32527 dated June 24, 2010 authorizing the investigation of petitioner's books of accounts and accounting

---

[93] CTA Case No. 8569, January 7, 2016.
[94] G.R. No. 166387, January 19, 2009, 576 SCRA 212.
[95] G.R. No. L-154993, October 25, 2005, 474 SCRA 258.
[96] *Records, Vol. 1, Answer*, pp. 59-62.

N

records for TY 2009 was validly issued, and the same was converted to LOA-041-2010-00000037 SN: eLA201000026203 pursuant to *RMO Nos. 62-2010* and *69-2010*; that Demand Letter No. 43A-B100-09 was issued within the three (3)-year prescriptive period prescribed under *Section 203 of the 1997 NIRC* when the same was issued as early as December 10, 2012; and that the assessment has already become final and demandable for failure of petitioner to submit all relevant supporting documents within the sixty (60)-day period.

## *The Ruling of the Court*

**The Court has jurisdiction over the present case.**

*Section 228 of the 1997 NIRC* is instructional as to the period within which taxpayers may file their protest against disputed assessments with the BIR, and thereafter, with the Court of Tax Appeals ("CTA"), the pertinent portion of which states as follows:

> SEC. 228. *Protesting of Assessment.* -
>
> xxx xxx xxx
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

In this relation, *Revenue Regulations ("RR") No. 12-1999*[97], which implemented the above *Section 228 of the 1997 NIRC*, provides:

> 3.1.5 *Disputed Assessment.* -
>
> xxx xxx xxx

[97] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.

> In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.
>
> xxx xxx xxx

Based on the foregoing, for assessments originating from Regional Directors[98], taxpayers have the following options in case the protest filed with the Regional Director is denied: *(1)* appeal to the CTA within thirty (30) days from receipt of the whole or partial denial of the protest; or *(2)* appeal to the Commissioner of Internal Revenue ("CIR") within thirty (30) days from receipt of the whole or partial denial of the protest.

Simply stated, a denial by CIR's authorized representative may be appealed either to the CIR, or to the CTA. If the taxpayer opts to elevate the adverse decision with the CIR, the decision of the CIR shall be considered as the final decision which may be elevated to the CTA. There is no mention of an appeal to the CIR's authorized representative.

In the present case, petitioner received on October 31, 2013 the Final Decision[99] reiterating the demand for payment of deficiency taxes *per* Demand Letter No. 43A-B100-09. Thus, under the options

---

[98] 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:

> xxx xxx xxx
>
> (b) Administer and enforce internal revenue laws, and rules and regulations, including the assessment and collection of all internal revenue taxes, charges and fees;
>
> (c) Issue Letters of Authority for the examination of taxpayers within the region;
>
> xxx xxx xxx.
>
> (h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner.

[99] *Records, Vol. 3, Exhibit "P-8," Final Decision,* p. 859; *BIR Records, Folder 1, Final Decision,* p. 368.

stated above, it had until December 2, 2013[100] to appeal the adverse decision either to the CIR, or to the CTA. However, instead of availing any of these options, the Court noted that petitioner filed a letter[101] to Mr. Amora, requesting for the immediate recall of the Final Decision, on November 14, 2013, a remedy that is not contemplated under the rules.

Is the appeal to the CIR's authorized representative detrimental to the case of petitioner? The Court finds in the negative. While taxpayers are given only two (2) options, either to appeal to the CIR, or in the alternative, to the CTA, within thirty (30) days from receipt of the adverse decision, nowhere is it stated that appeal to the same authorized representative of his/her own decision is proscribed. What is essential is that the adverse decision was correctly elevated to either body within the thirty (30)-day prescriptive period. Stated differently, a request for reconsideration of the CIR's authorized representative's adverse decision to the same authorized representative does not prevent the taxpayer from subsequently elevating the matter to the CIR, or the CTA. It must be remembered, however, that such act, being an incorrect mode of appeal, will not toll the thirty (30)-day period to appeal.

Considering that petitioner filed the instant Petition for Review[102] on December 2, 2013, or still within the thirty (30)-day period[103] from receipt of the Final Decision on October 31, 2013, it is evident that the Court acquires jurisdiction over the case.

Respondent argues that the assessment had become final and demandable for failure of petitioner to submit all relevant supporting documents within sixty (60) days from the filing of the protest; in which case, the Court has no jurisdiction to try the case. The Court disagrees.

The protest[104] to the FLD/FAN filed by petitioner on February 8, 2013 states the following:

---

[100] November 30, 2013 fell on a Saturday.
[101] *BIR Records, Folder 1, Request for Immediate Recall of Final Decision,* pp. 369-376.
[102] *Records, Vol. 1, PFR,* pp. 6-49, with annexes.
[103] November 30, 2013 fell on a Saturday.
[104] *Records, Vol. 2, Exhibit "P-11," Protest to FLD/FAN,* pp. 865-866; *BIR Records, Folder 1, Protest to FLD/FAN,* pp. 352-353.

(letterhead)

7 February 2013

**HON. NORMA C. CEROMA**
OIC-Chief
Assessment Division
**REVENUE REGION NO. 7**
**BUREAU OF INTERNAL REVENUE**
5th Floor, BIR Building
Quezon Avenue cor. Scout Santiago

Re: **SUGAR CRAFTS, INC. (TIN 215-564-758)**
**Demand No. 43A-B100-09; Taxable Year 2009**
**Date Issued: 10 December 2012; Formal Letter of Demand**

Dear Madam:

This has reference to the above-described Formal Letter of Demand that our company received by mail last 9 January 2013. True copies of said Letter and the pertinent Assessment Notices are attached hereto for your ready reference.

xxx xxx xxx

Therefore, we respectfully request for a reconsideration and/or reinvestigation of all the said findings.

The alleged discrepancies in the findings can be adequately explained. We undertake to present the pertinent supporting documents at the opportune time to the Bureau during the reinvestigation for a proper appreciation of the matter.

xxx xxx xxx

In closing, we reserve the right to submit additional documents to rebut the subject findings. We thank you for your favorable consideration and action.

Very truly yours,
(signature)
**DEBORAH N. RODRIGO**
Managing Director-VP-Treasurer[105]

By using the words "reinvestigation," "undertake to present the pertinent supporting documents at the opportune time," "reserve the right to submit additional documents to rebut the subject findings," petitioner is considered to have requested for a reinvestigation of the

---

[105] Emphases retained; underscoring ours.

assessment. In which case, it shall submit relevant supporting documents within sixty (60) days from the filing of protest, or until April 9, 2013, which it failed to do. Nevertheless, such failure did not render the assessment final, executory, and demandable.

In *Commissioner of Internal Revenue v. First Express Pawnshop Co. Inc.,*[106] the Supreme Court explained, thus:

> Since respondent has not allegedly submitted any relevant supporting documents, petitioner now claims that the assessment has become final, executory and demandable, hence, unappealable.
>
> We reject petitioner's view that the assessment has become final and unappealable. It cannot be said that respondent failed to submit relevant supporting documents that would render the assessment final because when respondent submitted its protest, respondent attached the GIS and Balance Sheet. Further, petitioner cannot insist on the submission of proof of DST payment because such document does not exist as respondent claims that it is not liable to pay, and has not paid, the DST on the deposit on subscription.
>
> The term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.

The effect of non-submission of additional documents within sixty (60) days after filing of protest was further clarified in *Section 3.1.4 of RR No. 18-2013*[107], which amends certain sections of *RR No. 12-1999,* the pertinent provision of which states, *viz.*:

> 3.1.4 *Disputed Assessment.*
>
> xxx xxx xxx

[106] G.R. No. 172045-46, June 16, 2009, 589 SCRA 253.
[107] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

> For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing his letter of protest, otherwise, the assessment shall become final. The term "relevant supporting documents" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. Furthermore, the term "the assessment shall become final" shall mean the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence, and the FDDA shall consequently be issued.[108]

Thus, notwithstanding failure to submit additional documents in support of the protest, it is evident that the assessment has not yet attained finality. The taxpayer is merely barred from disputing the assessment through introducing new or additional evidence to support its request for reinvestigation. Therefore, the Court has jurisdiction to settle the present controversy.

**The assessment is void for lack of authority to conduct the same.**

Petitioner assails the validity of the assessment on the ground that there was no valid LOA considering that LOA No. 32527 dated June 24, 2010 was served only on August 3, 2010, and that the same was not signed by the Regional Director. In addition, petitioner asserts that since RO Sunga was not the one designated in the LOA to conduct the audit investigation, the assessment was done without the necessary authority, hence, should be cancelled. Furthermore, even if RO Sunga's apparent authority emanates from a memorandum, the same was not received by petitioner, and that it was only signed by the RDO, in violation of *Section 13 of the 1997 NIRC.*

The Court finds for petitioner.

*Section 6(A) of the 1997 NIRC* is unequivocal with regard to the power of the CIR to grant the authority to examine and assess a taxpayer, *viz.:*

---

[108] Emphases omitted; underscoring ours.

> 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[/her] 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 xxx xxx

Corollary thereto, *Section 13 of the 1997 NIRC* provides:

> 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, <u>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</u> 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.[109]

Clearly, in all tax assessments, the audit investigation must be conducted by a duly designated RO tasked to perform audit and examination of taxpayers' books, pursuant to an LOA issued by the Regional Director. Otherwise, the assessment for deficiency taxes resulting therefrom is null and void.

As to the procedural aspect, *RMO No. 43-1990*[110], on the policy guidelines for the audit investigation and issuance of LOAs to audit, mandates as follows:

---

[109] Underscoring ours.

[110] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, September 20, 1990.

N

C. Other policies for issuance of L/As.

1. All audit/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.

xxx xxx 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 new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/A.

xxx xxx xxx[111]

In this relation, *RAMO No. 1-2000* provides for the following:

2. *Serving of Letter of Authority.*

xxx xxx xxx

2.3 A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue; otherwise, it becomes null and void unless revalidated. The taxpayer has all the right to refuse its service if presented beyond the 30-day period depending on the policy set by top management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words "Revalidated on _____" on the face of the copy of the Letter of Authority issued.[112]

Applying the foregoing, in order for the audit and examination of petitioner's books to be lawful, the following must be complied with:

1. The audit investigation is pursuant to an LOA issued by the Regional Director;

2. The LOA must be served or presented to the taxpayer within (30) days from date of issue, unless revalidated;

---

[111] Underscoring ours.
[112] Underscoring ours.

3. The audit investigation must be conducted by the RO named or designated in the LOA; and

4. In case of re-assignment or transfer of cases to another RO, or revalidation of LOAs which have already expired, a new LOA must be issued.

Anent the first requisite, petitioner argues that the LOAs are not valid since these were not signed by the Regional Director. The Court is not persuaded.

LOA No. 32527 dated June 24, 2010 was issued by Mr. Amora who was then acting as the Regional Director of RR No. 7, as testified by RO Sunga:

ATTY. MAYO

Q. During cross[-]examination, you were confronted with the fact that the [LOA No. 32527] was signed by Asst. Regional Director?

[RO] SUNGA

A. Yes, sir.

ATTY. MAYO

Q. Who is that Asst. Regional Director?

[RO] SUNGA

A. Jonas DP. Amora, sir.

xxx xxx xxx

ATTY. MAYO

Q. ... <u>Do you know whether or not Mr. Jonas Amora was signing in his capacity as Asst. Regional Director or was there any director during that time?</u>

[RO] SUNGA

A. <u>I think, sir Jonas Amora was acting as the Regional Director at that time</u>.[113]

As regards LOA-041-2010-00000037 SN: eLA201000026203 October 27, 2010, RO Cruz testified as follows:

ATTY. WEIGAND

Q. I have here a copy of the [LOA-041-2010-00000037 SN: eLA201000026203], is this the same [LOA] that you referred to?

[RO] CRUZ

A. Yes, Ma'am.

ATTY. WEIGAND

Q. Can you also state or who signed or who issued this [LOA]?

[RO] CRUZ

A. It is Jonas DP. Amora.

ATTY. WEIGAND

Q. And what was his position at that time?

[RO] CRUZ

A. [OIC-]Regional Director.

ATTY. WEIGAND

Q. The OIC[-]Regional Director?

[RO] CRUZ

A. Yes, Ma'am.

ATTY. WEIGAND

Q. <u>Would you happen to have any evidence showing that he was the OIC at that time?</u>

---

[113] *TSN, April 18, 2016*, pp. 30-31; underscoring ours.

[RO] CRUZ

A. If I remember it correctly, Director Montemayor at that time was sick and he was not able to perform his duty and therefore, the directorship was vacant[.] [I]n lieu thereof, Jonas DP Amora being the [Asst.] Regional Director was therefore elevated to OIC Regional Director for purposes of maintaining the position and the functions of the office of the Regional Director for continuance.[114]

A person holding an OIC-Regional Director position has the same authority as a Regional Director in issuing LOAs. *RMO No. 009-2016*[115] is explicit:

> .. all internal revenue personnel holding positions in an OIC capacity shall exercise authority and discharge duties and assume responsibilities as if they are holding the employment item for the particular office, subject to the limitations under the law and pertinent internal revenue issuances.
>
> Accordingly, the person holding an OIC-Regional Director position is equally authorized to and responsible as that of a regular Regional Director for issuing electronic Letters of Authority (eLA) and assessment/demand notices, among others. Also, an OIC-Revenue District Officer is equally authorized and responsible for the issuance of an electronic Certificate Authorizing Registration (eCAR) as the regular RDO.[116]

Moreover, the temporary takeover of Mr. Amora is to ensure the continuous execution of the responsibilities of the Regional Director, to wit:

JUSTICE VICTORINO

The procedure that you just described[,] is that the standard procedure every time the higher officer is not in office?

---

[114] *TSN, May 30, 2016,* pp. 11-12; Underscoring ours.
[115] Duties and Responsibilities of Personnel Holding Position in an Officer-in-Charge (OIC) Capacity, March 10, 2016.
[116] Underscoring ours.

/

[RO] CRUZ

It is the prerogative of the [CIR] who assign[s] whom it deems qualified.

JUSTICE VICTORINO

So, it is not automatic that the second in rank would take over and be the OIC?

[RO] CRUZ

On a temporary basis it will be but until ...

JUSTICE VICTORINO

Even without the authority or written authority coming from the [CIR] itself?

[RO] CRUZ

It will be a written authority by the [CIR].

JUSTICE VICTORINO

On a temporary basis is that also?

[RO] CRUZ

<u>On a temporary basis, the [Asst. Regional Director] must dispense the continuing of the office of the Regional Director.</u>

JUSTICE VICTORINO

<u>So as not to hamper the operation?</u>

[RO] CRUZ

<u>Yes, that is the sole purpose.</u>[117]

The Court cannot discount the testimonies of RO Sunga and RO Cruz who unequivocally stated that Mr. Amora was the acting Regional Director during that time. Moreover, the presumption of regularity of official acts prevails until it is overcome by no less than

---

[117] *TSN, May 30, 2016,* pp. 11-14; underscoring ours.

*r*

clear and convincing evidence to the contrary.[118] Otherwise, it becomes conclusive.[119] Every reasonable intendment will be made in support of the presumption, and in case of doubt as to an officers act being lawful or unlawful, construction should be in favor of its lawfulness.[120]

Considering that Mr. Amora was holding the position of OIC-Regional Director when he issued the LOAs, it is only logical to conclude that he issued the same with full authority in the same way that the same could have been signed by the Regional Director if he were then present and in the actual discharge of his functions. Thus, the Court concludes that the first requisite is complied with.

With regard to the second requisite, petitioner argues that since LOA No. 32527 has already expired, it cannot be revived or made valid by its subsequent revalidation through the issuance of LOA-041-2010-00000037 SN: eLA201000026203, citing *Dakay Construction case*[121].

The Court does not agree. The reliance of petitioner in *Dakay Construction case*[122] is erroneous. In that case, the Court ruled against the validity of the LOA for being served beyond the thirty (30)-day prescriptive period, and thus, the LOA is a mere scrap of paper from which the ROs cannot derive nor acquire any right to conduct the audit and examination of the taxpayer's books. Consequently, the assessment was declared void.

In the instant case, LOA No. 32527 was converted to LOA-041-2010-00000037 SN: eLA201000026203[123] by virtue of *RMO Nos. 62-2010* and *69-2010*. It was issued on October 27, 2010. Hence, respondent had until November 26, 2010 to present the same to petitioner. Records reveal that LOA-041-2010-00000037 SN: eLA201000026203 was served to petitioner on November 11, 2010[124], as evidenced by the receipt of a certain Luis Francis Rodrigo. Clearly,

---

[118] *Bustillo v. People of the Philippines,* G.R. No. 160718, May 12, 2010, 620 SCRA 483.
[119] *Id.*
[120] *Id.*, citing *People of the Philippines v. De Guzman,* G.R. No. 106025, February 9, 1994, 299 SCRA 795.
[121] CTA *EB* Case No. 1294, September 20, 2016.
[122] *Id.*
[123] *Records, Vol. 2, Exhibit "P-13," LOA-041-2010-00000037/SN: eLA201000026203 dated October 27, 2010,* p. 870; *BIR Records, Folder 1, Exhibit "R-2-a," LOA-041-2010-00000037/SN: eLA201000026203 dated October 27, 2010,* p. 249.
[124] *Id.*

the same was served within the thirty (30)-day period prescribed under *RAMO No. 1-2000.* It is also worthy to note that the assessments contained in the PAN[125] and FLD/FAN[126] were based on the audit investigation pursuant to the converted LOA. Hence, the Court concludes that the wrongful service of LOA No. 32527 beyond the thirty (30)-day period was cured by the subsequent issuance of a new LOA and the service of the same to petitioner within the prescriptive period.

The Court is not unaware of the pronouncement in *Dakay Construction case* that since the LOA therein has already expired, there is nothing to be revalidated, and that a void act cannot be validated or ratified.

The controversy is rooted from the apparent confusion as to when the LOA must be revalidated for it to remain a valid source of authority. *RAMO No. 1-2000* in relation with *RMO No. 43-1990* are quoted again below for easy reference:

> 2. *Serving of Letter of Authority.*
>
> xxx xxx xxx
>
> 2.3 <u>A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue; otherwise, it becomes null and void unless revalidated</u>. The taxpayer has all the right to refuse its service if presented beyond the 30-day period depending on the policy set by top management. <u>Revalidation is done by issuing a new Letter of Authority</u> or by just simply stamping the words "Revalidated on _____" on the face of the copy of the Letter of Authority issued.
>
> xxx xxx xxx
>
> C. Other policies for issuance of L/As.
>
> xxx xxx xxx
>
> 5. Any re-assignment/transfer of cases to another RO(s), and <u>revalidation of L/As which have already expired, shall require the issuance of new L/A, with the corresponding</u>

---

[125] *Records, Vol. 2, Exhibit "P-6," PAN,* p. 851; *BIR Records, Folder 1, Exhibit "R-9," PAN,* p. 318.
[126] *Records, Vol. 2, Exhibit "P-7," FLD/FAN,* p. 855; *BIR Records, Folder 1, Exhibit "R-10," FLD/FAN,* p. 323.

> <u>notation thereto, including the previous L/A number and date of issue of said L/A.</u>
>
> xxx xxx xxx[127]

A cursory reading of the above will show that an expired LOA, that is, an LOA that was not served within the thirty (30)-day period, may be revalidated by "issuing a new [LOA]," "with the corresponding notation thereto, including the previous [LOA] number and the date of issue of said [LOA]."

The lower right hand portion of said LOA-041-2010-00000037 SN: eLA201000026203 bears a stamp which reads as follows:

> This is a converted *e*LA from a previously issued *e*LA/LA/TVN No. LOA <u>00032527</u> dated <u>June 24, 2010</u> pursuant to RMO No. 69-2010.[128]

Clearly, when LOA-041-2010-00000037 SN: eLA201000026203 was issued and served within thirty (30) days from date of issue, with the corresponding notation thereto, including the previous LOA number and date of issue of said LOA, LOA No. 32527 was correctly revalidated. If the Court will subscribe to the view that an expired LOA can no longer be revalidated, it will result in depriving respondent of his right to assess taxpayers by mere failure to revalidate the LOA prior to the lapse of the thirty (30)-day period. Besides, it is incredible to require the revalidation only prior to expiration of the thirty (30)-day period when the LOA remains to be valid until the thirtieth (30$^{th}$) day, and thus, could still be served on the taxpayer until the last day. This is only logical if the Court will construe *RAMO No. 1-2000* in relation with *RMO No. 43-1990.*

Accordingly, the Court concludes that LOA-041-2010-00000037 SN: eLA201000026203 is valid, and may be the source of authority to conduct an assessment against petitioner.

As to the third and fourth requisites, it is petitioner's stance that the examination of its books of accounts was not authorized under the law considering that RO Sunga, who conducted the audit investigation of its books of accounts, was not duly armed with an

---

[127] Underscoring ours.
[128] Underscoring retained.

LOA designating him as authorized to conduct the audit. Petitioner concludes that, accordingly, the assessment is void.

The Court finds in favor of petitioner. A reading of the two (2) LOAs will show that a different RO was originally assigned to the case, *viz.:*

LOA No. 32527[129]:

> SIR/MADAM/GENTLEMEN:
>
> The bearer(s) hereof, [RO] RICARDO CRUZ JR [GS] LINO AMATORIO of the [RDO No. 41] is/are authorized to examine your books of accounts and other accounting records for ALL INTERNAL REVENUE TAXES for the period from JANUARY 1, 2009 to DECEMBER 31, 2009. He is/They are provided with the necessary identification card(s) which shall be presented to you upon request.
>
> xxx xxx xxx
>
> Very truly yours,
> (signature)
> **JONAS DP. AMORA**
> Asst. Regional Director
> TIN: 134-769-834[130]

LOA-041-2010-00000037 SN: eLA201000026203[131]:

> SIR/MADAM/GENTLEMEN:
>
> The bearer(s) hereof, [RO]-RICARDO CRUZ JR / [GS]-LINO AMATORIO of the [RDO No. 41] is/are authorized to examine your books of accounts and other accounting records for ALL INTERNAL REVENUE TAXES for the period from JANUARY 1, 2009 to DECEMBER 31, 2009 pursuant to REGULAR AUDIT PROGRAM FOR 2010. The Revenue Officer(s) identified herein are provided with the necessary

---

[129] *Records, Vol. 2, Exhibit "P-35," LOA No. 00032527 dated June 24, 2010,* p. 1038; *BIR Records, Exhibit "R-2," LOA No. 32527 dated June 24, 2010,* p. 248.
[130] Emphases retained.
[131] *Records, Vol. 2, Exhibit "P-13," LOA-041-2010-00000037/SN: eLA201000026203 dated October 27, 2010,* p. 870; *BIR Records, Folder 1, Exhibit "R-2-a," LOA-041-2010-00000037/SN: eLA201000026203 dated October 27, 2010,* p. 249.

> identification card(s) which shall be presented to you upon request.
>
> xxx xxx xxx
>
> Very truly yours,
> (signature)
> **JONAS DP. AMORA**
> OIC-Regional Director
> QUEZON CITY[132]

RO Sunga attempted to justify his authority to conduct the audit investigation of petitioner's books by presenting MOA No. 043A-0000559[133] issued by RDO Aninag, authorizing him to continue the audit investigation to replace RO Cruz who was transferred to another RDO.

There are two (2) things which the Court finds irregular, and at the same time relevant in determining RO Sunga's authority to conduct the audit investigation. First, the MOA was signed by the RDO, and not by the Regional Director. This is in contravention with the provision of *Section 13 of the 1997 NIRC,* which specifically provides that the authority of ROs must be signed by the Regional Director, or in the present case, as discussed earlier, by the OIC-Regional Director.

Another point that deserves consideration is that no new LOA was issued specifically designating RO Sunga as the person to whom the case has been re-assigned. To reiterate, the LOA serves as proof that the person/s named therein is/are authorized to conduct the necessary audit investigation. In *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[134], the Supreme Court expounded on the authority of an RO to conduct the audit investigation, to wit:

> Based on Section 13 of the Tax Code, a Letter of Authority or 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. The

---

[132] Emphases retained.
[133] *BIR Records, Folder 1, Exhibit "R-1," Memorandum of Assignment dated December 7, 2011,* p. 258; *BIR Records, Folder 1, Exhibit "R-11," Memorandum of Assignment dated April 1, 2013,* p. 362.
[134] G.R. No. 178697, November 17, 2010, 635 SCRA 234.

very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.

> 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 ...

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.

Absent the necessary issuance of a new LOA specifically designating RO Sunga to conduct the audit and examination of petitioner's books of accounts and accounting records for TY 2009, RO Sunga acted without authority when he conducted the audit investigation of petitioner's books. Accordingly, the assessment arising therefrom is a nullity. A void assessment bears no valid fruit.[135]

In view of the foregoing, the Court will no longer discuss the other issues raised in the present petition.

**WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the assessments for deficiency income tax in the amount of Php7,393,456.66, for value-added tax in the amount of Php10,792,064.60, for expanded withholding tax in the amount of Php394,763.77, for improperly accumulated earnings tax in the amount of Php1,162,893.82, all inclusive of interest and surcharges for taxable year 2009; and the compromise penalty in the amount of Php20,000.00; are **CANCELLED** and **SET ASIDE**.

---

[135] *Commissioner of Internal Revenue v. Azucena T. Reyes, Azucena T. Reyes v. Commissioner of Internal Revenue,* G.R. Nos. 159694 and 163581, respectively, January 27, 2006, 480 SCRA 382.

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

**WE CONCUR:**

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

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

## A T T E S T A T I O N

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.

**LOVELL R. BAUTISTA**
Associate Justice
Chairperson

## C E R T I F I C A T I O N

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