REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MARKETING CONVERGENCE, INC.,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9379

Members:

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

Promulgated:

NOV 16 2020

1:20 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

The present *Petition for Review* filed on July 1, 2016 by petitioner Marketing Convergence, Inc. against respondent Commissioner of Internal Revenue, prays for the cancellation and setting aside of respondent's assessment against petitioner for alleged deficiency income tax, value-added tax (VAT), withholding tax on compensation (WTC), and expanded withholding tax (EWT), for taxable year 2009, in the aggregate amount of ₱179,668,470.65, inclusive of penalties and interest.[1]

THE FACTS

Petitioner Marketing Convergence, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines under Securities and Exchange Commission Company Registration No. CS200258645.[2] It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification No. 220-916-861-00000, with business address at Unit D, 4th Floor, One E-Com Center, Harbor Drive, Mall of Asia Complex CBP-IA, NCR, Fourth District, Philippines.[3]

Respondent Commissioner of Internal Revenue is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office with address at the BIR National Office Building, Diliman.[4]

Respondent issued the *Letter of Authority* (LOA) No. 125-2010-00000066 dated May 4, 2010,[5] authorizing Revenue Officer (RO) Oscar Sable and Group Supervisor (GS) Fe Caling of the BIR's LT Regular Audit Division 2, to examine petitioner's books of accounts and other accounting records for all internal revenue for the period covering January 1, 2009 to December 31, 2009, pursuant to Revenue Memorandum Order (RMO) No. 62-2010.

On March 4, 2013, the BIR issued *Memorandum of Assignment* No. LOA-125-2013-116,[6] referring petitioner's case to RO Manuel T. Tasarra and GS Fe Caling for the continuation of the audit / investigation to replace the previously assigned RO(s) who resigned/retired/transferred to another district.

Subsequently, on April 22, 2013, petitioner received an undated *Notice for Continuance of Audit/Investigation*,[7] informing it that RO Tasarra and GS Caling have been authorized to continue the audit and

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[1] Summary of the Case, Pre-Trial Order dated June 14, 2017, Docket – Vol. I, pp. 403 to 408.
[2] Exhibits "P-1" and "P-2", Docket – Vol. II, pp. 588 to 595.
[3] Exhibit "P-3", Docket – Vol. II, pp. 596 to 597.
[4] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 393.
[5] Exhibit "R-1", BIR Records, p. 4.
[6] Exhibit "R-2", BIR Records, p. 219.
[7] Exhibit "R-3", BIR Records, p. 220.

investigation of petitioner's internal revenue taxes for taxable year 2009, in view of the transfer of RO Oscar Sable to the Large Taxpayers District Office-Makati.

Thereafter, petitioner, through Ms. Cecilia R. Patricio, executed, or caused the notarization of, certain *Waivers of the Defense of Prescription of the Statute of Limitations under the National Internal Revenue Code* on April 25, 2012,[8] August 22, 2012,[9] January 19, 2013,[10] August 29, 2013,[11] January 27, 2014,[12] August 8, 2014,[13] November 17, 2014,[14] March 3, 2015,[15] and August 10, 2015.[16]

On July 14, 2014, petitioner received the *Preliminary Assessment Notice* (PAN) dated July 10, 2014,[17] finding due from petitioner deficiency income tax, VAT, EWT, and WTC, including interests and compromise penalties, for taxable year 2009, in the total amount of ₱108,657,580.46, broken down as follows:

Income tax	₱89,481,678.57
VAT	14,391,500.63
WTC	1,602,912.74
EWT	3,181,488.52
Grant Total	**₱108,657,580.46**

On July 30, 2014, petitioner filed its letter dated July 29, 2014, protesting the foregoing findings stated in the PAN.[18]

Thereafter, on August 25, 2015, petitioner received the undated *Revised Preliminary Assessment Notice*,[19] finding due from petitioner deficiency income tax, VAT, EWT, and WTC, including interests and compromise penalties, for taxable year 2009, in the total amount of ₱166,283,387.57, computed as follows:

[8] Exhibit "R-5", BIR Records, p. 208.
[9] Exhibit "R-6", BIR Records, p. 209.
[10] Exhibit "R-7", BIR Records, p. 211.
[11] Exhibit "R-8", BIR Records, p. 213.
[12] Exhibit "R-9", BIR Records, p. 214.
[13] Exhibit "R-10", BIR Records, p. 271.
[14] Exhibit "R-11", BIR Records, p. 272.
[15] Exhibit "R-13", BIR Records, p. 273.
[16] Exhibit "R-12", BIR Records, p. 491.
[17] Exhibits "P-4" and "P-4-1", Docket – Vol. II, pp. 598 to 605.
[18] Exhibits "P-5" and "P-5-1", Docket – Vol. II, pp. 606 to 622.
[19] Exhibits "P-6" and "P-6-1", Docket – Vol. II, pp. 623 to 630.

Income tax	₱ 119,867,050.02
VAT	44,068,539.25
WTC	1,806,905.88
EWT	540,892.42
Grant Total	**₱166,283,387.57**

On September 9, 2015, petitioner filed a protest-letter to the *Revised* PAN.[20]

Subsequently, on November 24, 2015, petitioner received respondent's *Formal Letter of Demand* (FLD) and *Final Assessment Notices* (FANs), all dated November 16, 2015,[21] assessing petitioner deficiency income tax, VAT, EWT, and WTC, including interests and compromise penalties, for taxable year 2009, in the total amount of ₱170,341,806.07, computed as follows:

Income tax	₱ 122,788,642.55
VAT	45,150,308.16
WTC	1,849,462.27
EWT	553,393.09
Grant Total	**₱170,341,806.07**

On December 28, 2015, petitioner filed the letter dated December 23, 2015,[22] praying for the cancellation of the deficiency assessments in the said FLD and FANs, for want of factual and/or legal bases.

On June 3, 2016, petitioner received the *Final Decision on Disputed Assessment* (FDDA) dated May 31, 2016 issued by the respondent,[23] finding petitioner liable for deficiency taxes, penalties and interests for taxable year 2009 in the total amount of ₱179,668,470.65, broken down as follows:

Income tax	₱129,552,764.38
VAT	47,585,381.83

[20] Exhibits "P-7" and "P-7-1", Docket – Vol. II, pp. 631 to 640.
[21] Exhibits "P-8", "P-8-1", "P-8-2", "P-8-3", "P-8-4" and "P-8-5", BIR Records, pp. 531 to 542.
[22] Exhibits "P-9" and "P-9-1", Docket – Vol. II, pp. 641 to 651.
[23] Exhibit "P-10", Docket – Vol. II, p. 652 to 662.

WTC	1,947,989.57
EWT	582,334.87
Grant Total	**₱179,668,470.65**

Petitioner filed the present *Petition for Review* on July 1, 2016.[24]

Respondent filed his *Answer* on November 2, 2016,[25] interposing the following special and affirmative defenses, to wit:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

The Revenue Officers who conducted the tax audit was authorized to do so

4. Petitioner laments that although a Letter of Authority was issued by respondent on May 2010 authorizing RO Oscar Sable and GS Fe Caling to conduct the tax audit, it was actually RO Manuel T. Tasarra under the supervision of GS Fe F. Caling who conducted the tax audit.

5. The change of the revenue officers was made due to the transfer of RO Oscar Sable from the Large Taxpayers Division Regular Audit Division of the BIR National Office to the Large Taxpayers District Office-Makati.

6. To continue respondent's audit, a Memorandum of Assignment was issued to RO Manuel T. Tasarra on March 4, 2013 to continue the audit of petitioner for taxable year 2009.

7. Petitioner was informed of this change of the revenue officer thru a letter sent by respondent to petitioner on April 22, 2013.

[24] Docket – Vol. I, pp. 10 to 49.
[25] Docket – Vol. I, pp. 144 to 153.

8. This memorandum of assignment subsequently issued derives its authority from the original Letter of Authority initially issued. The source of the revenue officer's authority to investigate is not the referral memoranda or any other document indicated above, but the validly issued Letter of Authority itself.

9. To rule otherwise would lead to a bizarre case wherein the Revenue Officers indicated in the Letter of Authority must necessary complete their audit investigation regardless of any unforeseen circumstances.

10. As is commonly known, it is not always the case that the revenue officers indicated in the original Letter of Authority would be able to complete their audit investigation. There will be instances, as is present in this case, where the revenue officers would either retire, be reassigned, be taken ill, or die, prior to the completion of the audit investigation. In instances like these, the government should not be made to suffer for the natural occurrence of things.

11. That is the reason why referral memoranda and memorandum of assignments are given to other revenue officers **to continue** the audit investigation made by the original revenue officers. Their authority to audit is not derived from the referral memoranda or memorandum of assignment, but from the original Letter of Authority. The memorandum is merely for the **continuation** of the audit.

12. If this Honorable Court maintains the position that only those revenue officers indicated in the Letter of Authority would be authorized to continue the audit, undoubtedly the government would be made to suffer for the natural occurrence of the resignation, reassignment, and death of the Bureau of Internal Revenue's employees.

13. RMO No. 43-90 cited by petitioner requiring the reissuance of a new LOA does not invalidate the audit examination done by respondent's revenue officers. Je

14. A revenue memorandum order or RMO is an issuance **directed to BIR personnel containing directives or instructions** outlining procedures, techniques, methods, processes, operations, activities, work flow and the like which are necessary to carry out programs or to achieve policy goals and objectives.

15. Thus based on the definition above, RMOs are only directives or instructions given to revenue officers, and it does not give a mandatory right over taxpayers.

16. In the similar case entitled *Medicard Philippines Inc. (Medicard) vs. CIR, CTA Case No. 7948*, which was affirmed by the CTA en banc in *Medicard Philippines Inc. (Medicard) vs. CIR, CTA EB No. 1224* on 2 September 2015, the Honorable Court of Tax Appeals Third Division said that:

> RMC Order No. 32-2007 afore-quoted, and relied upon [by] petitioner here as basis for saying that an LOA should have been issued in this case, is one such issuance that is a natural and necessary incident to the power of the Commissioner to lay down delineations of functions among BIR officials. **It does not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR and may change from time to time as the exigencies of service may require, or as maybe allowed given particular factual contexts, provided only that due process or statutory rights are not subverted**.

17. Therefore, the said RMO relied upon by petitioner does not grant it a vested right over the internal work procedure of the BIR. Any violation in the said RMO would only result in the administrative liability of the revenue officer, but it would most certainly not affect the assessment against petitioner.

18. Regarding petitioner's argument that the assessment is void since there was no demand for payment. Respondent would like to point out that in the Formal Letter of Demand and the Final Demand on Disputed Assessment which was attached as Annex 'H' and Annex 'I' of the petition, it indicates therein the demand to pay otherwise the assessment shall become final. *ge*

19. RR 12-99 which prescribes the rules and procedure in assessment notices and protests provides that:

> 3.1.4 Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void** (see illustration in ANNEX B hereof). The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.
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> xxx
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> If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice **within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.** (emphasis and underscoring ours)

20. As can be seen from above, the date of demand to pay is not necessary for the validity of the Formal Letter of Demand. This is because after thirty (30) days from the receipt of the Formal Letter of Demand, the assessment shall be final, executory and demandable if taxpayer has not paid a valid protest thereon.

The right to assess has not prescribed

21. Petitioner allege that it is not liable for deficiency taxes because the period to assess has already prescribed.

22. Petitioner, however admits that there were at least nine waivers executed in this case which extended the prescriptive period for respondent to make the assessment. Je

23. It argues that the said waiver was defective as it did not indicate the specific type of tax and the amount due thereon.

24. This argument deserves scant consideration. Waivers of the period to assess by respondent are made because the tax audit are still ongoing investigation. Obviously, the type of tax and the amount, at the time of the execution of the waiver, cannot yet be determined. If it was already determinable, then there would not have been any waivers executed and assessment notices would have been issued instead.

25. In the case decided by the Supreme *Court in Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)* G.R. No. 212825 promulgated on 7 December 2015, it was decided that the alleged faulty waivers executed in that case was considered valid as both the CIR and the taxpayer was deemed to have been *in pare delicto*.

> *First*, the parties in this case are *in pari delicto* or 'in equal fault.' *In pari delicto* connotes that the two parties to a controversy are equally culpable or guilty and they shall have no action against each other. However, although the parties are *in pari delicto*, the Court may interfere and grant relief at the suit of one of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by one party who is in equal guilt with the other.
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> **Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need.** Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents. **As between the parties, it would be more equitable if petitioner's lapses were allowed to pass and consequently uphold the Waivers in order to support this principle and public policy.**
>
> *Second*, the Court has repeatedly pronounced that parties must come to court with clean hands. Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing. Following the foregoing principle, **respondent should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.**

> *Third*, **respondent is estopped from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case.** Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. **Respondent executed five Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.**
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> *Finally*, the Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.
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> It is true that petitioner was also at fault here because it was careless in complying with the requirements of RMO No. 20-90 and RDAO 01-05. Nevertheless, **petitioner's negligence may be addressed by enforcing the provisions imposing administrative liabilities upon the officers responsible for these errors. The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is obviously in bad faith.**

26. The case at bar is similar to the above quoted case, wherein the waivers were executed with alleged defects, such as the failure to specify the date of expiry of the waiver, and the failure to specify the date of acceptance on the said waivers.

27. Applying the foregoing case, the petitioner-taxpayer should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes. *fr*

28. Petitioner is estopped from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the instant case should fall under the exception.

29. This is because petitioner executed a series of Waivers and delivered them to respondent, one after the other. It allowed respondent to rely on them and did not raise any objection against their validity until respondent assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of respondent's assessment of petitioner's tax liabilities.

30. More so, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. As between the parties, it would be more equitable if respondent's lapses were allowed to pass and consequently uphold the Waivers in order to support this principle and public policy.

The assessment has factual and legal basis

31. As can be seen from the detail of discrepancies in the assessment notices, all of the assessment notices has factual and legal basis.

32. The assessment was arrived at after careful review and verification made by the Revenue Officers of petitioner's books of accounts and other relevant documents such as the summary list of purchases and sales by petitioner and related parties. A copy of the findings of the Revenue Officers can be found in each of the details of discrepancies found in the assessment notices.

Final discussions

33. Well-settled is the rule that tax assessments are entitled to the presumption of correctness and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.

34. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands. The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting. Hence, the assessment issued against petitioner is imbued with factual and legal bases.

35. All presumptions are in favor of the correctness of tax assessments. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notice."

On December 5, 2016, petitioner filed its *Reply (To Answer dated 02 November 2016)*,[26] raising the following arguments:

1. The assessment is void for lack of authority of the Revenue Officer to conduct the examination.

2. The assessment is void since there was no valid demand for payment.

3. The period to assess petitioner's internal revenue taxes for taxable year 2009 has already prescribed.

[26] Docket – Vol. I, pp. 163 to 182.

4. Tax assessments are presumed correct and made in good faith but such presumption is not absolute, and this instant case falls within the exception.

5. Defenses and objections not pleaded by the respondent in his *Answer* are deemed waived.

6. Factual allegations in the *Petition for Review* not specifically denied by the respondent in his *Answer* are deemed admitted.

7. Respondent's assertion that the *Memorandum of Assignment* issued to the new examiner validly extended the authority of the LOA constitute judicial admission that no second LOA was issued.

8. Petitioner is not liable for the alleged deficiencies in income tax, VAT, WTC, and EWT for taxable year 2009 in the aggregate amount of ₱179,668,470.65.

The Pre-Trial Conference was initially set on February 2, 2017.[27] Upon motion of petitioner,[28] however, this was cancelled and reset to February 16, 2017, pursuant to the Order dated January 19, 2017.[29] Nevertheless, upon joint motion of the parties,[30]the re-scheduled date of Pre-Trial Conference was again reset to, and held on, April 27, 2017.[31]

In the meantime, the *Respondent's Pre-Trial Brief* was filed on April 20, 2017;[32] while the petitioner's *Pre-Trial Brief* was filed on April 24, 2017.[33]

On June 1, 2017, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI).[34] In the Pre-Trial Order dated on June 14, 2017,[35]

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[27] Notice of Pre-Trial Conference dated December 7, 2016, Docket – Vol. I, pp. 184 to 185.
[28] *Motion to Defer Pre-Trial Conference*, Docket – Vol. I, pp. 186 to 189.
[29] Docket – Vol. I, p. 192.
[30] *Joint Motion to Defer Pre-Trial Conference*, Docket – Vol. I, pp. 193 to 196.
[31] Order dated February 9, 2017, Docket – Vol. I, p. 198; Minutes of the hearing held on, and Order dated, April 27, 2017, Docket – Vol. I, pp. 361 to 363.
[32] Docket – Vol. I, pp. 205 to 209.
[33] Docket – Vol. I, pp. 212 to 223.
[34] Docket – Vol. I, pp. 393 to 400.
[35] Docket – Vol. I, pp. 403 to 408.

the Court approved and adopted the said JSFI, and deemed the Pre-Trial terminated.

Trial of the case ensued.

During trial, petitioner presented the following witnesses: (1) Ms. Darren Evan S. Santos-Ramos,[36] its Controller; and (2) Ms. Ma. Milagros F. Padernal,[37] the Court-commissioned Independent Certified Public Accountant.[38]

Petitioner filed its *Formal Offer of Evidence* on December 13, 2017.[39] In the Resolution dated June 7, 2018,[40] the Court admitted all of petitioners offered exhibits.

On August 29, 2018, respondent presented his sole witness, Mr. Manuel Tasarra, Revenue Officer II, Assessment, of the BIR's Regular Large Taxpayers Audit Division I.[41]

On September 28, 2018, respondent filed a *Motion for Leave of Court to Admit Attached Formal Offer of Evidence*.[42] In the Resolution dated November 22, 2018,[43] the Court granted the said *Motion for Leave*, admitted respondent's *Formal Offer of Evidence*,[44] and resolved to admit respondent exhibits.

Petitioner filed its *Memorandum* on February 11, 2019.[45] On the other hand, respondent failed to file his memorandum.[46]

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[36] Exhibit "P-15", Docket – Vol. I, pp. 244 to 273; Minutes of the hearing held on, and Order dated, June 21, 2017, Docket – Vol. I, pp. 409 to 410.
[37] Exhibit "P-21", Docket – Vol. II, pp. 502 to 522; Minutes of the hearing held on, and Order dated, October 23, 2017, Docket – Vol. II, pp 524 to 526.
[38] Minutes of the hearing held on, and Order dated, July 12, 2017; *Oath of Commission* dated July 12, 2017, Docket – Vol. II, pp. 449 to 452.
[39] Docket – Vol. II, pp. 539 to 586.
[40] Docket – Vol. II, pp. 674 to 676.
[41] Exhibit "R-14", Docket – Vol. II, pp. 686 to 690; Minutes of the hearing held on, and Order dated, August 29, 2018, Docket – Vol. II, pp. 704 to 706.
[42] Docket – Vol. II, pp. 710 to 713.
[43] Docket – Vol. II, pp. 726 to 727.
[44] Docket – Vol. II, pp. 715 to 718.
[45] Docket – Vol. II, pp. 742 to 768.
[46] Records Verification dated February 28, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 770.

In the Resolution dated March 6, 2019,[47] the case was considered submitted for decision.

THE ISSUES

The parties enumerated the following issues to be resolved in this case, to wit:

"For Petitioner:

A. Whether the assessment is void for lack of authority of the Revenue Officer to conduct the examination.

B. Whether the assessment is void since there was no demand for payment.

C. Whether the period to assess Petitioner's internal revenue taxes for the taxable year 2009 has already prescribed.

D. Whether the waivers validly extend the original three-year prescriptive period to assess Petitioner's internal revenue taxes for the taxable year 2009.

E. Whether the deficiency tax assessments lack factual and legal bases.

F. Whether Petitioner is liable for the alleged income tax, value-added tax, withholding tax on compensation, and expanded withholding tax for taxable year 2009 in the aggregate amount of One Hundred Seventy Nine Million Six Hundred Sixty Eight Thousand Four Hundred Seventy and 65/100 Pesos (₱179,668,470.65).

[47] Docket – Vol. II, p. 771.

For Respondent:

Whether or not Petitioner is estopped from questioning the validity of the waivers it voluntarily executed."[48]

Petitioner's arguments:

Petitioner argues that the assessment is void for lack of authority of the revenue officer to conduct the examination; and that the deficiency tax assessment is void because the FLD/FAN does not contain a demand to pay within a specified period in violation of the mandatory requirements of Section 3 of RR. No. 12-99, as amended by RR No. 18-2013.

Moreover, petitioner avers that assuming that the assessment is valid, the 20% deficiency interest imposed on the assessed VAT, WTC, and EWT, should be cancelled and set aside since Section 249(B) shall only be imposed whenever there is deficiency income tax, a deficiency estate tax or deficiency donor's tax.

Furthermore, petitioner disputes the assessments for the alleged deficiency income tax, VAT, and EWT, on the ground that the said assessments lack factual and legal bases.

Finally, petitioner concludes that it is not liable for the alleged deficiency taxes for taxable year 2009 in the amount of ₱179,668,470.65.

Respondent's counter-arguments:

On the other hand, respondent contends that the revenue officers who conducted the tax audit was authorized to do so; that the right to assess has not prescribed; that the assessment has factual and legal basis; that it is well-settled is the rule that tax assessments are entitled to the presumption of correctness and made in good faith; and that the taxpayer has the duty to prove otherwise.

[48] Summary Statement of Issues, JSFI, Docket – Vol. I, p. 394.

THE COURT'S RULING

Petitioner argues that the assessment is void for lack of authority of the revenue officer to conduct the examination.

Respondent, on the other hand, contends that the revenue officers who conducted the tax audit was authorized to do so. He claims that the *Memorandum of Assignment* issued to RO Tasarra on March 4, 2013 to continue the audit of petitioner for taxable year 2009 derives its authority from the original LOA issued.

After judicious evaluation of the case records, this Court finds that the present Petition for Review should be granted on the ground that the deficiency assessments upon which the present case is anchored on are intrinsically void. The invalidity of the deficiency assessments is due to the absence of authority on the part of the revenue officers who conducted the examination of petitioner's books of accounts and other accounting records.

One of the powers granted to the Commissioner of Internal Revenue (CIR) under the National Internal Revenue Code of 1997, as amended (1997 NIRC) is the power to make assessment of any deficiency tax. Section 6(A) of the 1997 NIRC is explicit on the matter, to wit:

> "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.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from

his duly authorized representative. x x x" *(Emphasis supplied)*

In the exercise of his assessment powers, the CIR is also empowered to conduct by himself the examination of any taxpayer, or he may authorize other tax officers to conduct such examination. Section 6(A) of the 1997 NIRC likewise vested the CIR's duly authorized representatives the power to authorize the examination of any taxpayer for the purpose of collecting the correct amount of tax. The term "duly authorized representative" under Section 6(A) of the 1997 NIRC which may authorize examination of taxpayers refers to a Revenue Regional Director, in accordance with Sections 10 and 13 of the 1997 NIRC. The term likewise refers to other tax officials with the rank equivalent to a division chief or higher, pursuant to the CIR's authority to delegate powers vested in him under Section 7 of the 1997 NIRC. Notably, the issuance of LOAs for the examination of taxpayers is not one of those enumerated powers which the CIR cannot delegate. Section 7 of the 1997 NIRC reads as follows:

> "SEC. 7. *Authority of the Commissioner to Delegate Power.* — **The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* That the following powers of the Commissioner shall not be delegated:
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> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
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> (c) The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand

pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept." *(Emphasis supplied)*

Section 10 of the 1997 NIRC, in enumerating the powers of a Revenue Regional Director include, among others, the power to issue letters of authority for the examination of taxpayers within the region under his/her jurisdiction. The said provision, in part, reads:

"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**:

x x x x x x x x x

(c) Issue Letters of Authority for the examination of taxpayers within the region;

x x x x x x x x x

(h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner." *(Emphasis supplied)*

On the other hand, Section 13 of the 1997 NIRC, in defining the authority of a revenue officer to conduct the examination of taxpayers for purposes of an assessment, provides as follows: gr

> "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." *(Emphasis supplied)*

In relation to the foregoing provisions, Revenue Memorandum Order (RMO) No. 43-90 issued by the CIR identifies those officials who are authorized to issue and sign LOA. It may be noted that an OIC-Chief of the Regular Large Taxpayers Audit Division II is not included therein. The relevant portion of the said issuance reads:

> "D. Preparation and issuance of L/As.
>
> x x x x x x x x x
>
> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner**. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority <u>but only upon prior authorization by the Commissioner himself</u>**." *(Emphasis and underscoring supplied)*

To reiterate, it is only the CIR or his duly authorized representatives who can authorize the audit examination of taxpayers for purposes of assessment of any deficiency taxes. Stated differently, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.[49] ge

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

Considering that only the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, it is only them who can effect any modification or amendment to a previously-issued LOA, should the need therefor arises.

Parenthetically, RMO No. 43-90 provides that any reassignment or transfer of cases to another revenue officers shall require the issuance of a new LOA. In any event, the same does not and cannot negate the authority of the CIR and its duly authorized representatives to effect amendment or modification of a previously-issued LOA instead of issuing a new one in order for the assessment of a taxpayer to validly proceed. Note that RMO No. 43-90 itself does not state the legal effect in the event that the named revenue officers under the previously-issued LOA are transferred or reassigned and a new or replacement LOA is not issued. A duly issued LOA, valid in all other respects, does not become invalid just because the revenue officers named therein happened to be reassigned or transferred. Indeed, to construe it otherwise would be tantamount to the curtailment of the statutorily granted authority of the CIR and its duly authorized representatives to authorize the audit examination of taxpayers by a mere RMO provision. It must be emphasized that an RMO is just an internal issuance containing directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow and the like which are necessary to carry out programs or to achieve policy goals and objectives.[50] As such, they do not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR and may change from time to time as the exigencies of service may require, or as may be allowed given particular factual contexts, provided only that due process or statutory rights are not subverted.[51]

In the present case, there is no question as to the due issuance of LOA No. 125-2010-00000066 dated May 14, 2010. However, the revenue officers named therein were different from those who actually examined petitioner's books of accounts and other accounting records for taxable year 2009. As it appears, Revenue Officer (RO) Manuel Tasarra and Group Supervisor (GS) Fe Caling conducted the audit examination petitioner's books of accounts and other accounting

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[50] Revenue Administrative Order No. 001-12 dated April 2, 2012.

[51] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 7948, June 5, 2014, penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino.

records for taxable year 2009 on the basis of Memorandum of Assignment No. LOA-125-2013-116 issued by Mr. Edwin T. Guzman, OIC-Chief of Regular Large Taxpayers Audit Division (RLTAD) II.

Guided by the foregoing disquisition, the Memorandum of Assignment issued by Mr. Guzman cannot validly grant RO Tasarra and GS Caling the authority to conduct the audit examination pursuant to LOA No. 125-2010-00000066 dated May 14, 2010. As OIC-Chief of RLTAD II, Mr. Guzman does not have any power to authorize audit examination of taxpayers or to effect any modification or amendment to a previously-issued LOA because, as mentioned earlier, only the CIR or his duly authorized representatives are granted such power.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.,*[52] the Supreme Court held that absent any prior authority on the part of the revenue officers who conducted the audit examination of taxpayer's books of accounts and other accounting records, the deficiency tax assessment arising therefrom is a nullity.

In view of the invalidity of the subject deficiency assessments, there is no need to discuss the other issues raised by the parties.

WHEREFORE, the present *Petition for Review* is **GRANTED**. Accordingly, the tax assessments issued against petitioner for deficiency income tax, VAT, WTC, and EWT, for taxable year 2009, in the total amount of ₱179,668,470.65 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

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

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[52] G.R. No. 178697, November 17, 2010, 649 Phil. 519.

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice