Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL FIRST DIVISION

LANCASTER COLORS INTERNATIONAL, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8933
For: Assessment

Members:

DEL ROSARIO, P.J., *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:
OCT 01 2018 : 1120 pm

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DECISION

MINDARO-GRULLA, J.:

This case involves the Petition for Review filed by Lancaster Colors International, Inc. against the Commissioner of Internal Revenue, pursuant to Section 7(a)(1)[1] of Republic Act (RA) No. 1125[2], as amended, as well as Section 3(a)(1)[3] of Rule 4 and Section 4(a)[4] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

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[1] 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; xxx.

[2] Act Creating the Court of Tax Appeals.

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

[4] Sec. 4. *Where to appeal; mode of appeal.* –
(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the

Petitioner seeks the cancellation of the Final Decision on Disputed Assessment (FDDA) dated March 14, 2014, confirming the issued assessment for alleged deficiency income tax, value-added tax (VAT), and compromise penalties for taxable year 2009 in the aggregate amount of ₱5,001,080.23, inclusive of interest, broken down as follows:

Tax Type	Basic	Interest	Total
Income Tax	₱ 1,212,075.91	₱ 959,698.46	₱ 2,171,774.37
VAT	1,526,629.31	1,275,676.55	2,802,305.86
Compromise Penalties			27,000.00
Total	**₱2,738,705.22**	**₱2,235,375.01**	**₱5,001,080.23**

Petitioner Lancaster Colors International, Inc. is a corporation duly organized and existing under Philippine laws, with principal office address at No. 732, Biak-na-Bato Street, Tabuco, Naga City. Petitioner's primary purpose is to engage in the manufacture, buying, selling and exporting of garments and other articles of general merchandise.[5]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

A Memorandum of Assignment No. 065-2011-00001921 dated November 24, 2011 was issued to Revenue Officer (RO) Jane M. Garfin and Group Supervisor (GS) Domingo L. Aguinaldo for the continuation of the audit/investigation of petitioner for taxable year 2009 to replace the previously assigned revenue officer who transferred to another district office.[6]

exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[5] Exhibit "P-1", Docket, vol. II, pp. 624-631.

[6] Exhibit "R-2", BIR Records, p. 73.

On December 5, 2011, a Second Request for Presentation of Records was issued by RO Garfin requesting petitioner to present the accounting records listed in the First Request.[7]

Subsequently, Revenue District Officer Socorro O. Ramos-Lafuente issued a Final Notice dated January 10, 2012, reiterating the request to access petitioner's accounting records.[8]

On September 26, 2012, Revenue District Officer Ramos-Lafuente issued a Notice of Informal Conference enumerating petitioner's alleged deficiency taxes and inviting it to an informal conference.[9]

In a Memorandum dated October 17, 2012, RO Garfin recommended the issuance of a Preliminary Assessment Notice (PAN) against petitioner,[10] and in the 4th Indorsement dated February 4, 2013, she recommended that corresponding penalties be added to the assessment for non-attachment of Summary List of Sales and BIR Form Nos. 1604E and 1604CF.[11]

Petitioner received the PAN dated March 6, 2013 assessing it for deficiency income tax, VAT, expanded withholding tax (EWT), documentary stamp tax (DST), improperly accumulated earnings tax (IAET), and compromise penalties in the aggregate amount of ₱14,058,539.11.[12]

In response to the PAN, petitioner wrote a letter dated March 14, 2013 to RO D'Joanna M. Diamante outlining its justifications/explanations against the issued assessment and re-computing its alleged tax deficiency.[13]

On March 27, 2013, respondent issued the Formal Letter of Demand (FLD), reiterating the assessment against petitioner for

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[7] Exhibit "R-3", BIR Records, p. 74.
[8] Exhibit "R-4", BIR Records, p. 75.
[9] Exhibit "R-5", BIR Records, p. 156.
[10] Exhibit "R-6", BIR Records, p. 183.
[11] Exhibit "R-9", BIR Records, p. 210.
[12] Par. 1.4, Joint Stipulation of Facts and Issues (JSFI), Docket, vol. I, p. 491; Exhibit "R-10", BIR Records, pp. 223-227.
[13] Exhibit "R-11", BIR Records, pp. 385-386.

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deficiency income tax, VAT, EWT, IAET, DST, and compromise penalties in the total amount of ₱14,058,539.11.[14]

A transmittal letter was prepared by petitioner submitting various documents to RO Diamante.[15]

In a letter dated July 3, 2013, Regional Director Esmeralda M. Tabule informed petitioner that in order for them to act on the protest, petitioner should submit a duly accomplished and notarized waiver of the defense of prescription.[16]

Hence, on July 15, 2013, petitioner executed a waiver extending the period to assess until December 31, 2014.[17]

A Memorandum dated September 4, 2013 was issued by RO Diamante addressed to Regional Director Tabule, recommending that petitioner's request for reinvestigation of the FLD under Assessment Notice No. 065-09-005-770-039 be granted and remanded to Revenue District Office (RDO) No. 65, Naga City.[18] Thus, in the 1st Indorsement dated September 4, 2013, Regional Director Tabule returned the docket to RDO No. 65.[19]

Subsequently, a Revised PAN was issued by the BIR dated January 20, 2014, stating that deficiency income tax, deficiency VAT, and compromise penalties were found due from petitioner in the aggregate amount of ₱8,515,048.03.[20] This was received by Maricar Saballegue on February 6, 2014.[21]

In response to the Revised PAN, petitioner sent a letter dated February 21, 2014 explaining its position against the issued assessment.[22]

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[14] Par. 1.5, JSFI, Docket, vol. I, p. 491; Exhibit "R-12", BIR Records, pp. 405-406
[15] Exhibit "R-14", BIR Records, p. 587.
[16] Exhibit "R-15", BIR Records, p. 591.
[17] Exhibit "R-16", BIR Records, p. 638.
[18] Exhibit "R-17", BIR Records, p. 644.
[19] Exhibit "R-18", BIR Records, p. 646.
[20] Exhibit "P-2", Docket, vol. II, p. 635; Exhibit "R-7", BIR Records, pp. 647-650.
[21] Exhibits "R-7-1" and "R-7-2", BIR Records, p. 649.
[22] Exhibit "P-3", Docket, vol. II, pp. 636-640.

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In the 7th Indorsement dated February 24, 2014, RO Garfin recommended the issuance of a Final Assessment Notice (FAN).[23]

In the Final Decision on Disputed Assessment (FDDA), respondent found petitioner liable for payment of deficiency income tax, deficiency VAT, and compromise penalties for taxable year 2009 in the aggregate amount of ₱5,001,080.23, inclusive of interest.[24]

On March 21, 2014, Regional Director Tabule approved RO Diamante's recommendation for the inclusion of the deficiency income tax, VAT, and compromise penalty in the BIR Form No. 40 for collection, considering that petitioner's letter of protest dated February 21, 2014 is void and that a FDDA has already been issued.[25]

In the letter dated March 28, 2014, signed by petitioner's Corporate Treasurer Elaine T. Hao Chin, petitioner requested for time to review and respond to the FDDA.[26]

On April 8, 2014, Regional Director Tabule responded to the said letter and advised that any protest against such assessment should be addressed as an administrative appeal to the Commissioner of Internal Revenue (CIR) or elevated to this Court.[27]

Petitioner again sent a letter dated April 8, 2014 to Regional Director Tabule detailing its response to the FDDA.[28]

On April 28, 2014, petitioner filed its request for reconsideration of the FDDA with respondent.[29]

In a letter dated April 29, 2014, respondent replied to petitioner, citing Section II(1) of Revenue Memorandum Circular (RMC) No. 39-2013 as reiterated in item 1 of RMC No. 11-2014.[30]

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[23] Exhibit "R-8", BIR Records, p. 652.
[24] Par. 1.6, JSFI, Docket, vol. I, p. 491; Exhibits "P-4" and "R-20", BIR Records, pp. 656-657.
[25] Exhibit "R-19", BIR Records, p. 671.
[26] Exhibit "P-5", Docket, vol. II, p. 643.
[27] Exhibit "P-7", Docket, vol. II, p. 648.
[28] Exhibit "P-6", Docket, vol. II, pp. 644-647.
[29] Par. 1.7, JSFI, Docket, vol. I, p. 492; Exhibit "P-8", Docket, vol. II, pp. 649-674.
[30] Exhibit "P-9", Docket, vol. II, p. 675.

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On May 12, 2014, petitioner replied to respondent's letter, arguing that it has properly filed its request for reconsideration with respondent.[31]

On November 24, 2014, petitioner filed the instant Petition for Review before this Court.

In his Answer[32] filed on February 23, 2015 and received by this Court on March 2, 2015, respondent interposed the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

The Honorable Court has no jurisdiction over the instant petition for petitioner's failure to comply with the reglementary period

4. At the outset, respondent respectfully submits that this Honorable Court has no jurisdiction to entertain this instant case in view of petitioner's failure to comply with the reglementary period required by law in filing an administrative protest pursuant to Revenue Regulations No. 12-99, implementing Section 228 of the 1997 Tax Code.

5. A mere perusal of the allegations in the *Petition for Review* quickly show that the petition was filed out of time.

6. On 28 March 2014, petitioner received the Final Demand on Disputed Assessment ('FDDA') dated 14 March 2014. Thus, petitioner has until 27 April 2014 to file its motion for reconsideration to the Commissioner of Internal Revenue or to file an appeal before the Court of Tax Appeals.

7. Considering that 27 April 2014 was a Sunday, petitioner filed its letter-reconsideration to herein respondent on 28 April 2014.

8. On 29 April 2014, respondent through a letter denied petitioner's request for reconsideration. At this point, petitioner has thirty (30) days to appeal the case to the Court of Appeals following Sec. 228 of the NIRC and RR 12-99, thus:

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[31] Exhibit "P-10", Docket, vol. II, pp. 676-683.
[32] Docket, vol. I, pp. 230-238.

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Sec. 228 of the NIRC

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

Revenue Regulation No. 12-99, Sec. 3.1.5

'If the protest is denied, in whole or in part, by the Commissioner, **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**.'

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 the 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.

9. It was an error for petitioner to await for 180 days before filing the instant petition for the reason that there was no inaction on the part of the respondent or any of her authorized representative. When petitioner filed its reconsideration to herein respondent on 28 April 2014, there was an action, more specifically a denial, on the part of the respondent. Thus, petitioner should have elevated the instant petition to the Court of Tax Appeals on or before 29 May 2014.

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10. Thus, the instant petition must be dismissed for being filed out of time.

11. Even arguing, although vehemently not conceding, that this Honorable Court has jurisdiction, petitioner is still liable to pay the deficiency Income Tax and Value Added Tax (VAT) for taxable year 2009.

Petitioner is liable to pay deficiency income tax, value added tax, and compromise penalty

12. Reinvestigation disclosed that there were additional undeclared income based on gross profit, computed as follows:

Expenses Subject to 2% Withholding Tax (Prime Contractors/ Sub-Contractors) per BIR Form No. 1601-E after reinvestigation		P7,757,722.82
Expenses Subject to 2% Withholding Tax (Prime Contractors/ Sub-Contractors) per Financial Statements		
Advertising Expenses	P2,742,129.00	
Security Services	2,009.00	
Repairs and Maintenance – Labor	166,483.00	2,910,621.00
Undeclared Income (Prime Contractors)		**P4,847,101.82**
Add: Undeclared Income on Rental Expenses:		
Rent Expense per 1601E Basic Rent Only	P8,472,791.60	
Less: Rent Expense per FS Basic Rent Only	8,413,135.78	59,655.82
Total Undeclared Income		P4,906,757.64
Multiply by Gross Profit Rate (P49,922,613.00/P69,053,548.00)		72.30%
Undeclared Income per Reinvestigation		P3,547,585.77
Less: Undeclared Income per FLD		1,056,411.47
Additional Undeclared Income		**P2,491,174.31**

Taxable Income Per Formal Letter of Demand	P19,259,219.97
Add/(Less): Adjustments:	
Undeclared Income based on Gross Profit	

Ratio	P2,419,174.31	
Allowed Donations Expenses	(9,041,957.50)	(6,550,783.19)
Total Taxable Income per Reinvestigation		P12,708,436.78
Income Tax Due – 30%		P3,812,531.03
Less: Income Tax Paid/Withheld		
Tax Payments	P2,556,389.05	
Tax Withheld	44,066.07	2,600,455.12
Income Tax Payable		P1,212,075.91
Add Increments:		
20% Interest per Annum from 4-16-2010 to 03-31-2014		9,599,698.46
Total Income Tax Deficiency Due		**P2,171,774.37**

13. Petitioner's contentions that the discrepancy was due to the payment of salaries and wages were already raised and discussed during its request for reinvestigation which resulted in a reduction of tax due from P14,058,539.11 to the present amount of P5,080.23.

14. After reinvestigation, there were additional undeclared income which is subject to value added tax pursuant to Section 106 of the NIRC.

15. Reinvestigation revealed that there were purchases of goods in the amount of P27,663,916.83 which were misclassified as purchases of Capital Goods in Excess of P1 Million, hence there was an increase in creditable input tax from P2,576,659.96 to P5,595,694.32 resulting to a lower value-added tax deficiency in the amount of P2,802,305.86, inclusive of legal increments, computed as follows:

Gross Sales Per Formal Letter of Demand		P70,515,345.82
Add/(Less): Adjustments:		
Additional Undeclared Income:		
Undeclared Income per Reinvestigation	P4,847,101.82	
Less: Undeclared income per FLD	1,461,240.82	3,385,861.00
Total Taxable Income per Reinvestigation		73,901,206.82
Multiply: Output Tax Rate		12%
Output Tax		8,868,144.32
Less: Creditable Input Tax per reinvestigation		5,595,694.32
Value Added Tax Due		3,272,450.50
Less: Income Tax Paid/Withheld		
Tax Payments		1,745,821.19
VAT Deficiency		1,526,629.31
Add: Increments		

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20% Interest per annum from 01-26-2010 to 3-31-2014	1,275,676.55
Total Value Added Tax Deficiency Due	**P2,802,305.86**

16. Petitioner's contention that the deficiency VAT is attributable to the misclassification of purchases which was erroneously entered as purchase of capital goods instead of purchase of merchandise inventory were already considered during its request for reinvestigation, but failed to satisfactorily show that it was indeed a purchase of a merchandise inventory.

17. Compromise penalties were also imposed for failure of petitioner to file BIR Form No. 1604-CF and 1604-E, and Alphalist of Employees, pursuant to Section 255 of the NIRC Code, as amended by Revenue Memorandum Order No. 19-2007; and for failure to submit Summary List of Sales for four (4) quarters during the taxable year 2009 pursuant to Section 4.114-3 (i)(2) of Revenue Regulation No. 16-2005, as amended.

18. 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.

19. 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." *(Citations omitted)*

On March 9, 2015, petitioner filed a Motion to Admit Attached Reply[33], which the Court granted on March 16, 2015.[34] Hence, petitioner's Reply attached to its motion was admitted by the Court.

On March 9, 2015, the Court set the case for pre-trial conference on May 7, 2015.[35] Accordingly, petitioner filed its Pre-Trial Brief[36] on

[33] Docket, vol. I, pp. 241-244.
[34] Resolution dated March 16, 2015, Docket, vol. I, p. 262.
[35] Resolution dated March 9, 2015, Docket, vol. I, p. 260.
[36] Docket, vol. I, pp. 268-281.

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April 30, 2015. On the other hand, respondent filed an Urgent Motion to Defer Pre-Trial Conference[37] on the same date, contending that his witness has not yet conferred with his counsel, and has not yet prepared and executed her judicial affidavit. The Court granted respondent's motion on May 6, 2015, and the pre-trial conference was reset to July 9, 2015.[38] Respondent's Pre-Trial Brief[39] was filed on June 23, 2015.

The pre-trial conference ensued. The parties submitted their Joint Stipulation of Facts and Issues[40] on July 23, 2015.

On September 2, 2015, the Court issued the Pre-Trial Order[41]. However, petitioner subsequently filed a Motion to Amend Pre-Trial Order[42] and a Supplemental Motion to Amend Pre-Trial Order[43], manifesting that the Pre-Trial Order reflects erroneous dates of the receipts to be marked as Exhibits "P-17", "P-18", and "P-24", and an erroneous description of Exhibit "P-41". Petitioner prayed that the Pre-Trial Order be amended to reflect the correct details. The Court granted both motions on December 7, 2015.[44] Accordingly, an Amended Pre-Trial Order[45] was issued by the Court on January 25, 2016.

During trial, petitioner presented (1) Ma. Suzeth B. Cuarto[46] and (2) Elaine T. Hao Chin[47] as its witnesses, and filed its Formal Offer of Documentary Exhibits[48] on June 22, 2016. In the Resolution[49] dated August 11, 2016, the Court admitted all of petitioner's evidence.

Petitioner's documentary exhibits are as follows:

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[37] Docket, vol. I, pp. 442-445.
[38] Order dated May 6, 2015, Docket, vol. I, p. 447.
[39] Docket, vol. I, pp. 468-473.
[40] Docket, vol. I, pp. 490-502.
[41] Docket, vol. I, pp. 529-539.
[42] Docket, vol. I, pp. 540-545.
[43] Docket, vol. I, pp. 564-568.
[44] Resolution dated December 7, 2015, Docket, vol. I, pp. 585-586.
[45] Docket, vol. I, pp. 590-600.
[46] Exhibit "P-37", Docket, vol. I, pp. 282-295; Minutes of the Hearing dated February 18, 2016, Docket, vol. I, pp. 601-602.
[47] Exhibit "P-39", Docket, vol. I, pp. 506-518; Minutes of the Hearing dated June 7, 2016, Docket, vol. II, pp 606-607.
[48] Docket, vol. II, pp. 613-621.
[49] Docket, vol. II, pp. 795-796.

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EXHIBIT:	DOCUMENT:
P-1	Articles of Incorporation of petitioner
P-2	Revised Preliminary Assessment Notice dated 20 January 2014
P-3	Letter to the BIR dated 21 February 2014 refuting the Revised Preliminary Assessment Notice
P-4	Final Decision on Disputed Assessment dated 14 March 2014 received by Petitioner on 28 March 2014
P-5	Letter to the BIR Revenue Region No. 10 dated 28 March 2014 requesting for time to review and respond to the FDDA
P-6	Letter to the BIR Revenue Region No. 10 dated 8 April 2014 disputing the FDDA issued by Revenue Region No. 10
P-7	Letter from Regional Director Esmeralda M. Tabule dated 8 April 2014 denying the protest filed by petitioner
P-8	Request for Reconsideration dated 28 April 2014 filed by petitioner with the Commissioner of Internal Revenue
P-9	Letter from respondent dated 29 April 2014
P-10	Letter from petitioner to respondent dated 12 May 2014
P-11	Official Receipt No. 0595 issued by WCL Steel Builder Construction Dev't. Corp. dated 18 December 2009
P-12	Official Receipt No. 0577 issued by WCL Steel Builder Construction Devt. Corp. dated 10 September 2009
P-13	Official Receipt No. 245 issued by JOD Construction & Development dated 25 May 2009
P-14	Official Receipt No. 0574 issued by WCL Steel Builder Construction Dev't. Corp. dated 4 September 2009
P-15	Official Receipt No. 1473 issued by WCL Steel Builder Construction Dev't. Corp. dated 15 August 2009
P-16	Official Receipt No. 0578 issued by WCL Steel Builder Construction Dev't. Corp. dated 17 September 2009
P-17	Official Receipt No. 1471 issued by WCL Steel Builder Construction Dev't. Corp. dated 18 July 2009
P-18	Official Receipt No. 232 issued by JOD Construction & Development dated 9 March 2009
P-19	Official Receipt No. 1464 issued by WCL Steel Builder Construction Dev't. Corp.
P-20	Summary Alphalist of Withholding Agents of Income Payments Subject to Withholding Tax at Source
P-21	Schedule of corrected value added tax returns
P-22	Summary of purchases and applicable input value-added tax
P-23	Monthly VAT Return (BIR Form No. 2550M) for the month of January 2009
P-24	Monthly VAT Return (BIR Form No. 2550M) for the Month of February 2009
P-25	Quarterly VAT Return (BIR Form No. 2550Q) for the first quarter of taxable year 2009

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P-26	Monthly Vat Return (BIR Form No. 2550M) for the month of April 2009
P-27	Monthly Vat Return (BIR Form No. 2550M) for the month of May 2009
P-28	Quarterly VAT Return (BIR Form No. 2550Q) for the second quarter of taxable year 2009
P-29	Monthly Vat Return (BIR Form No. 2550M) for the month of July 2009
P-30	Monthly Vat Return (BIR Form No. 2550M) for the month of August 2009
P-31	Quarterly VAT Return (BIR Form No. 2550Q) for the third quarter of taxable year 2009
P-32	Monthly Vat Return (BIR Form No. 2550M) for the month of October 2009
P-33	Monthly Vat Return (BIR Form No. 2550M) for the month of November 2009
P-34	Quarterly VAT Return (BIR Form No. 2550Q) for the fourth quarter of taxable year 2009
P-35	Petitioner's Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604-CF) for taxable year 2009
P-36	Petitioner's Annual Information Return on Creditable Income Taxes Withheld (Expanded)/ Income Payments Exempt from Withholding Tax (BIR Form No. 1604-E) for taxable year 2009
P-37	Judicial Affidavit of Ma. Suzeth B.Cuarto
P-37-a	Name and Signature of Ma. Suzeth B.Cuarto
P-38	Secretary's Certificate dated 11 November 2014
P-39	Judicial Affidavit of Elaine T. Hao Chin
P-39-a	Name and Signature of Elaine T. Hao Chin

On the other hand, respondent presented (1) RO Jane M. Garfin[50] and (2) RO D'Joanna M. Diamante[51] as his witnesses, and filed his Formal Offer of Evidence[52] on February 15, 2017. In the Resolution[53] dated April 10, 2017, the Court admitted all of respondent's evidence, except for Exhibit "R-1", for failure of the exhibit formally offered and identified to correspond with the document actually marked, and Exhibit "R-13", for failure to properly identify the exhibit.

Respondent's admitted documentary exhibits are the following:

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[50] Exhibit "R-21, Docket, vol. I, pp. 462-467"; Minutes of the Hearing dated October 11, 2016, Docket, vol. II, pp. 797-799.
[51] Exhibit "R-22", Docket, vol. I, pp. 452-457; Minutes of the Hearing dated January 31, 2017, Docket, vol. II, pp. 803-804.
[52] Docket, vol. II, pp. 808-815.
[53] Docket, vol. II, pp. 829-830.

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EXHIBIT:	DOCUMENT:
R-2	Memorandum of assignment numbered 065-2011-00001921 dated 24 November 2011
R-3	Second Notice for Presentation of Records and Documents dated December 5, 2011
R-4	Final Notice dated 10 January 2012
R-5	Notice of Informal Conference dated 26 September 2012
R-6	Memorandum for the issuance of a preliminary assessment notice dated 17 October 2012
R-7	Revised PAN dated 20 January 2014
R-7-1	Registry receipt found in the PAN
R-7-2	Name of employee who received the PAN
R-8	Indorsement letter (found on page 652 of the BIR records)
R-9	Indorsement letter (found on page 210 of the BIR records)
R-10	Preliminary Assessment Notice dated 06 March 2013
R-11	Letter dated 14 March 2013
R-12	Formal Letter of Demand
R-14	Transmittal letter dated 13 April 2013
R-15	Letter dated 3 July 2013
R-16	Waiver of the Period to Assess executed by one Vicente Robredo Hao Chin Jr. as president of Lancaster, dated 15 July 2013, extending the period to assess up until 31 December 2014
R-17	Memorandum recommending the approval of the request for reinvestigation dated 4 September 2013
R-18	Indorsement letter dated 4 September 2013
R-19	Letter dated 21 March 2014
R-20	FDDA dated 14 March 2014
R-21	Judicial Affidavit of RO Jane M. Garfin
R-21-1	Signature of RO Jane M. Garfin
R-22	Judicial Affidavit of RO D'Joanna M. Diamante
R-22-1	Signature of RO D'Joanna M. Diamante

On August 1, 2017, respondent filed a Tender of Excluded Evidence.[54]

The case was initially submitted for decision on August 2, 2017,[55] considering petitioner's Memorandum[56] filed on May 24, 2017 sans respondent's memorandum per Records Verification[57] dated July 10, 2017.

[54] Docket, vol. II, pp. 870-872.
[55] Resolution dated August 2, 2017, Docket, vol. II, p. 875.
[56] Docket, vol. II, pp. 831-864.
[57] Docket, vol. II, p. 868.

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Respondent filed a Motion to Admit Attached Memorandum[58] on August 22, 2017, which the Court granted in the Resolution[59] dated November 3, 2017. Thus, respondent's Memorandum[60] was admitted. In the same Resolution, the Court noted respondent's Tender of Excluded Evidence, and submitted the instant case anew for decision.

The parties submitted the following issue for the Court's resolution:[61]

> "Whether petitioner is liable to pay the amount of Five Million One Thousand Eighty and 23/100 Pesos (₱5,001,080.23) representing deficiency Income Tax, Value-Added Tax and Compromise Penalties for taxable year 2009 plus fifty percent (50%) surcharge and twenty percent (20%) deficiency and delinquency interest for late payment until fully paid."

DISCUSSION/RULING

The Court has jurisdiction over the instant case

The Court shall first determine the timeliness of the filing of the Petition for Review.

Respondent avers that since petitioner received the denial of its request for reconsideration on May 7, 2014, it only had until June 6, 2014 within which to file a Petition for Review before this Court. However, it was only on November 24, 2014 when it filed the instant Petition for Review. Hence, respondent posits that the same was filed out of time, and consequently, this Court has no jurisdiction to act on the petition.

On the other hand, petitioner argues that its request for reconsideration dated April 28, 2014 was not denied by respondent, as

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[58] Docket, vol. II, pp. 876-878.
[59] Docket, vol. II, pp. 888-890.
[60] Docket, vol. II, pp. 880-886.
[61] Statement of Issue, JSFI, Docket, vol. I, p. 492.

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there is nothing in the Letter dated April 29, 2014 which deny the said request and/or state that it is the final decision of respondent on the same. Hence, petitioner treated the absence of a definitive denial by respondent as an inaction on its request for reconsideration.

The Court finds merit in petitioner's argument.

Section 228 of the National Internal Revenue Code of 1997, as amended, provides for the manner to protest an assessment, to wit:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of

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the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

To implement the foregoing provision, Section 3.1.4 of Revenue Regulations (RR) No. 12-99[62], as amended by RR No. 18-13[63], provides as follows:

"3.1.4 *Disputed Assessment.* – The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

xxx xxx xxx

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request for reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment.

[62] Subject: 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, dated September 6, 1999.

[63] Subject: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, dated November 28, 2013.

If the protest or administrative appeal, as the case may be, is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the CTA within thirty (30) days from date of receipt of the said decision. Otherwise, the assessment shall become final, executory and demandable. A motion for reconsideration of the Commissioner's denial of the protest or administrative appeal, as the case may be, shall not toll the thirty (30)-day period to appeal to the CTA.

If the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing of the protest, the taxpayer may either: (i) appeal to the CTA within thirty (30) days from after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.

xxx xxx xxx"

On April 28, 2014, petitioner filed its request for reconsideration of the FDDA with respondent, and on May 7, 2014, petitioner received respondent's reply.[64] The letter reads as follows:

29 April 2014

Atty. Othello C. Carag
Carag De Mesa Zaballero San Pablo & Abiera Law Offices
Suite 2602, 26th Floor, The Atlanta Centre
No. 31 Annapolis Street
Greenhills, San Juan City

Dear Atty. Carag:

We refer to your letter dated 28 April 2014, addressed to this Office and received on the same date, requesting for reconsideration of the Final Decision on Disputed Assessment dated 14 March 2014 issued by the Regional Director of Revenue Region No. 10, Legazpi City, assessing your client, Lancaster Colors International, Inc., of deficiency taxes in the total amount of P5,001,080.23, inclusive of interest. Relative hereto, we wish to remind you of Section II (1) of Revenue

[64] Exhibits "P-8" and "P-9", Docket, vol. II, pp. 649-674 and 675, respectively.

Memorandum Circular (RMC) No. 39-2013 (dated April 4, 2013), as reiterated in item 1 of RMC No. 11-2014 (dated 18 February 2014), *viz:*

> "All letters of protest, requests for reinvestigation/reconsideration and similar correspondences **shall only be filed** by the taxpayers or their duly authorized representatives, in person or through registered mail with return card, **with the Office of the concerned Regional Director (RD),** Assistant Commissioner-Large Taxpayers Service (ACIR-LTS) and Assistant Commissioner-Enforcement Service (ACIR-ES), **who signed the Preliminary Assessment Notices (PANs), FANs and Formal Letters of Demand**, for proper recording of the Protests, and **evaluation if the same is in accordance with Section 228 of the NIRC, as implemented by Revenue Regulations No. 12-99. If the aforesaid procedures are not followed, then the letters of protest, requests for reinvestigation/reconsideration and similar correspondences shall be considered void and without force and effect**." (emphasis supplied)
>
> Please be guided accordingly.
>
> Very truly yours,
>
> (signed)
> **KIM S. JACINTO-HENARES**

A cursory reading would show that the same cannot be considered as a demand for payment nor a final decision of respondent on petitioner's protest to the FDDA. Respondent should be reminded that he should always indicate in clear and unequivocal language whenever his action on an assessment constitutes his final determination on the disputed assessment.

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In the case of *Surigao Electric Co., Inc. vs. The Honorable Court of Tax Appeals and Commissioner of Internal Revenue*[65], the Supreme Court held as follows:

> "Prescinding from all the foregoing, we deem it appropriate to state that **the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment**, as contemplated by sections 7 and 11 of Republic Act 1125, as amended. **On the basis of this indicium indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues.** This rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment — and, consequently, the collection of the amount demanded as taxes — by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the Commissioner from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action." *(Emphasis supplied)*

Prior to the decision on a disputed assessment, there may still be exchanges between the CIR and the taxpayer. The former may ask clarificatory questions or require the latter to submit additional evidence. However, the CIR's position regarding the disputed assessment must be indicated in the final decision. It is this decision that is properly appealable to the CTA for review.[66]

From the foregoing, petitioner correctly considered that respondent has yet to render a final decision on the matter. Hence,

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[65] G.R. No. L-25289, June 28, 1974.

[66] *Commissioner of Internal Revenue vs. Isabela Cultural Corporation*, G.R. No. 135210, July 11, 2001.

upon the expiration of the one hundred eighty (180) days given to respondent to act on the protest, petitioner may either (a) appeal to the CTA within thirty (30) days from after the expiration of the 180-day period; or (b) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision.

In the present case, petitioner filed its request for reconsideration on April 28, 2014, and hence, respondent had until October 25, 2014 to act on the protest. Considering that petitioner chose not to wait for respondent's final decision, the Court finds that petitioner timely filed the instant Petition for Review on November 24, 2014, which is within thirty (30) days from October 25, 2014.

Petitioner properly filed its Request for Reconsideration with respondent

In the above-quoted letter of respondent, he implies that petitioner's request for reconsideration should have been filed with the concerned Regional Director and not with the Office of the Commissioner, citing RMC Nos. 39-2013[67] and 11-2014[68].

Petitioner contends that although the subject matter of RMC No. 39-2013 states that it covers the "Receipt of Protest Letter on Final Assessment Notices and Final Decisions on Disputed Assessments," the said RMC covers only protests and requests for reinvestigation/reconsideration for PANs, FANs and FLDs, and not FDDAs.

Moreover, RR No. 18-2013 explicitly states that a taxpayer may elevate his protest through a request for reconsideration to the CIR within thirty (30) days from the date of receipt of the decision of the CIR's duly authorized representative. Also, RMC No. 11-2014, which covers FDDAs, provides that taxpayers may elevate their protests to the Office of the Commissioner. Petitioner argues that pursuant to

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[67] Subject: Receipt of Protest Letter on Final Assessment Notices and Final Decision on Disputed Assessments, dated April 4, 2013.

[68] Subject: Clarifying Certain Issues Relative to Due Process Requirement in the Issuance of a Deficiency Tax Assessment Pursuant to Revenue Regulations (RR) 12-99, as amended by RR 18-2013, dated February 18, 2014.

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these two BIR issuances, it has timely filed a request for reconsideration on April 28, 2014, or within thirty (30) days from receipt by petitioner of the FDDA on March 28, 2014.

In addition, petitioner contends that assuming that RMC No. 39-2013 covers FDDAs, a perusal of the records would show that upon receipt of the FDDA on March 28, 2014, petitioner filed a request for reconsideration dated April 8, 2014 addressed to Regional Director Tabule, requesting for reinvestigation/re-computation of its tax assessment. Hence, petitioner claims that the alleged requirement in RMC No. 39-2013 of filing a protest with the concerned Regional Director has been satisfied.

Petitioner's arguments are impressed with merit.

A reading of RMC No. 39-2013 reveals that it was issued by the BIR because FANs and FLDs were still being referred to the concerned investigating office for reinvestigation notwithstanding that the assessments were already final and executory. The RMC states that it clarifies and provides guidelines for the receipt of protest letters and other similar correspondences in order to avoid the conduct of unwarranted reinvestigation cases, to prevent undue accumulation of delinquent accounts, and to obviate the pre-mature enforcement of summary remedies against the concerned taxpayers. The content of RMC No. 39-2013 does not in any way mention that it includes requests for reconsideration of the FDDA.

This Court's Third Division ruled in the case of *Philippine Electric Corporation vs. Commissioner of Internal Revenue*[69] that in cases of appeal of the FDDA, petitioner should have followed the procedure laid down in Section 228 of the Tax Code, as implemented by RR No. 12-99, and not RMC No. 39-2013. The pertinent portions are quoted hereunder:

> "The story behind the issuance of RMC No. 39-2013 suggests that it was meant to clarify the officer to whom the protest letters to the FAN and FLD should be addressed, thus:
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>> It has been observed that substantial number of tax cases covered by Final Assessment

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[69] CTA Case No. 8793, October 10, 2017.

> Notices (FANS) and Formal Letters of Demand which had been reported by the Regional Assessment Divisions under the prescribed Monthly Summary of Taxes Assessed-Unprotested (BIR Form 40.00) were still allowed to be referred to the concerned investigating office for reinvestigation, notwithstanding that the assessment were already final and executory. Further, since they have become delinquent accounts, they are already subject to enforcement collection through summary remedies under Sections 205, 206 and 207 of the National Internal Revenue Code (NIRC) of 1997, as amended. However, taxpayers alleged that their protest letters had been filed with other offices of the Bureau before the prescribed deadline under existing regulations and that the same failed to reach the concerned Regional Assessment Divisions before the submission of the BIR Form 40.00 report to other concerned offices.

In view of the foregoing concerns of Regional Assessment Divisions, RMC No. 39-2013 was issued with the following clarifications:

> 1. **All letters of protest, requests for reinvestigation/reconsideration and similar correspondences shall only be filed** by the taxpayers or their duly authorized representatives, in person or through registered mail with return card, **with the Office of the concerned Regional Director (RD), Assistant Commissioner-Large Taxpayers Service (ACIR-LTS) and Assistant Commissioner-Enforcement Service (ACIR-ES), who signed the Preliminary Assessment Notices (PANs), FANs and Formal Letters of Demand, <u>for proper recording of the protests</u>**, and evaluation **if the same is in accordance with Section 228 of the NIRC, as implemented by Revenue Regulations No. 12-99.** If the aforesaid procedures are not followed, then the letters of protest, requests for reinvestigation/reconsideration and similar correspondences shall be

> considered void and without force and effect. (*Emphasis supplied*)
>
> Thus, the protest letter to the PAN, FAN, and FLD should be filed with the enumerated named BIR officers and the protest must be 'in accordance with Section 228 of the NIRC, as implemented by Revenue Regulations No. 12-99'. **There is also nothing in the RMC that states that an appeal of the FDDA should be made to the CIR's duly authorized representative. Hence, in cases of appeal of the FDDA, petitioner should have followed the procedure laid down in Section 228 of the NIRC of 1997, as amended, as implemented by RR No. 12-99.**" (*Emphasis supplied*)

Moreover, as correctly pointed out by petitioner, RMC No. 11-2014 explicitly states that requests for reconsideration elevated to the Commissioner arising from inactions or adverse decisions of his duly authorized representatives shall be filed with the Office of the Commissioner, *viz:*

> "This Circular is issued to clarify certain issues relative to the amendments introduced to Revenue Regulations (RR) 12-99 by RR 18-2013.
>
> (1) RR 12-99, as amended by RR 18-2013, provides that the Commissioner or his duly authorized representative shall issue the Preliminary Assessment Notice (PAN), Formal Letter of Demand/Final Assessment Notice (FLD/FAN) and Final Decision on Disputed Assessment (FDDA). The term 'duly authorized representative' therein refers to Revenue Regional Directors, Assistant Commissioner-Large Taxpayers Service, and Assistant Commissioner-Enforcement and Advocacy Service.
>
> Accordingly, pursuant to Revenue Memorandum Circular No. 39-2013, taxpayers shall submit/file their responses to the PAN and protests (requests for reconsideration/reinvestigation) to the FLD/FAN with the duly authorized representative of the Commissioner who signed the PAN and FLD/FAN. **Protests in the nature of requests for reconsideration of taxpayers elevated to the Commissioner arising from inactions or adverse decisions of the 'duly authorized representatives' shall be filed with the Office of the Commissioner.**" (*Emphasis supplied*)

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Thus, as clarified by RMC No. 11-2014, requests for reconsideration, elevated to respondent, of FDDA issued by his duly authorized representative should be filed with the Office of the Commissioner.

The Examining Officer has authority to examine the books of the taxpayer

Petitioner, in its Memorandum, posits that the assessments issued by respondent against it for taxable year 2009 are null and void for lack of authority granted to the examining officer.

Petitioner avers that pursuant to Section 13 of the NIRC of 1997, as amended, the Letter of Authority authorizing a revenue officer to examine a taxpayer and to recommend the assessment of any deficiency tax shall be issued by the Revenue Regional Director having jurisdiction over the taxpayer. Section 13 of the NIRC of 1997, as amended, 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, 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."

Petitioner claims that the LOA No. 00037517 issued by Regional Director Diosdado Mendoza authorized RO Jayser I. Avila of RDO No. 65 to examine the books of accounts and accounting records of petitioner for the period January 1, 2009 to December 31, 2009. However, it was RO Jane M. Garfin who actually conducted the audit investigation on petitioner for the said year.

Petitioner alleges that the lack of authority of RO Garfin was highlighted during the clarificatory questions posed by CTA Presiding Justice Roman G. Del Rosario during RO Garfin's direct examination, when she admitted that she does not recall being issued a LOA by the Regional Director contrary to the express provisions of Section 13 of the Tax Code.

Citing the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[70], wherein the Supreme Court ruled that there must be a grant of authority before any revenue officer can conduct an examination or assessment, petitioner asserts that since there was no valid Letter of Authority issued by the Regional Director in favor of RO Garfin to conduct an investigation on the books of accounts and other accounting records of petitioner for taxable year 2009, the assessments should be declared null and void.

Moreover, petitioner points out that the LOA marked by respondent as Exhibit "R-1" was denied admission by this Court in the Resolution dated April 10, 2017 for failure of the exhibit formally offered and identified to correspond with the document actually marked. Since respondent did not appeal the denial of his Exhibit "R-1", petitioner maintains that no valid Letter of Authority was introduced into evidence.

The Court is not convinced.

A perusal of the BIR Records in the instant case reveals that two Letters of Authority were issued by Regional Director Mendoza, as follows: (1) LOA 2009 00037517 dated June 25, 2010, and (2) LOA-065-2010-00000010 SN: eLA201000021714 dated January 17, 2011. A stamp on the latter document indicates that it is a converted eLA from the previously issued LA No. 00037517 dated June 25, 2010, pursuant to RMO 69-2010.

The LOA dated June 25, 2010 is the document marked by respondent as Exhibit "R-1", and is found on page 71 of the BIR Records. In the formal offer, the said exhibit was described as "Letter of Authority dated 17 August 2011 (found on page 71 of the BIR Records)". On the other hand, respondent's witness, RO Garfin, identified[71] the exhibit as follows:

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[70] G.R. No. 178697 dated November 17, 2010.
[71] Exhibit "R-21", Docket, vol. I, pp. 462-467.

"Q9: What was the basis of your authority to conduct the investigation/examination of petitioner's internal revenue tax liabilities for taxable year 2009?

A9: A Letter of Authority No. 065-2010-00000010 dated 17 January 2011 was issued to RO Jayser Avila and GS Domingo Aguinaldo authorizing the conduct of investigation/examination of all internal revenue tax liabilities of Lancaster for taxable year 2009.

Q10: How do you know of this Letter of Authority?

A10: It is part of the case records when this was assigned to me.

Q11: I have here a copy of the Letter of Authority dated 17 August 2011 marked as Exhibit 'R-1' for the respondent (found on page 71 of the BIR Records), what relation does this document have to the instant case?

A11: This is the Letter of Authority that I mentioned earlier."

Due to the apparent discrepancy, the Court denied admission to Exhibit "R-1" for failure of the exhibit formally offered and identified to correspond with the document actually marked. Meanwhile, respondent failed to offer in evidence the LOA dated January 17, 2011 found in page 72 of the BIR Records.

Pursuant to Section 34 of Rule 132 of the Rules of Court, no evidence which has not been formally offered shall be considered by this Court, *viz:*

> "SEC. 34. *Offer of evidence.* – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

However, this is not without exception. In the case of *Laborte vs. Pagsanjan Tourism Consumers Cooperative, et al.*[72], the Supreme

[72] G.R. No. 183860, January 15, 2014.

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Court considered evidence which were not formally offered, ruling as follows:

> "From the above provision, it is clear that the court considers the evidence only when it is formally offered. The offer of evidence is necessary because it is the duty of the trial court to base its findings of fact and its judgment only and strictly on the evidence offered by the parties. A piece of document will remain a scrap of paper without probative value unless and until admitted by the court in evidence for the purpose or purposes for which it is offered. The formal offer of evidence allows the parties the chance to object to the presentation of an evidence which may not be admissible for the purpose it is being offered.
>
> However, there are instances when the Court relaxed the foregoing rule and allowed evidence not formally offered to be admitted. Citing *People v. Napat-a* and *People v. Mate*, the Court in *Heirs of Romana Saves, et al., v. Heirs of Escolastico Saves, et al.,* enumerated the requirements for the evidence to be considered despite failure to formally offer it, namely: **"*first*, the same must have been duly identified by testimony duly recorded and, *second*, the same must have been incorporated in the records of the case."** In *People v. Vivencio De Roxas et al.,* the Court also considered exhibits which were not formally offered by the prosecution but were repeatedly referred to in the course of the trial by the counsel of the accused.
>
> In the instant case, the Court finds that the above requisites are attendant to warrant the relaxation of the rule and admit the evidence of the petitioners not formally offered. As can be seen in the records of the case, the petitioners were able to present evidence that have been duly identified by testimony duly recorded. To identify is to prove the identity of a person or a thing. *Identification* means proof of identity; the proving that a person, subject or article before the court is the very same that he or it is alleged, charged or reputed to be." *(Citations omitted and emphasis supplied)*

In the case at bar, RO Garfin was able to identify the LOA dated January 17, 2011. As can be read from her above-quoted testimony, she stated that LOA No. 065-2010-00000010 dated January 17, 2011 was issued to RO Avila and GS Aguinaldo authorizing the investigation/examination of petitioner's books for taxable year 2009.

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Although she later on answered that the LOA dated August 17, 2011 was the LOA that she mentioned, it can be surmised that this is due to respondent's error as neither LOA is dated August 17, 2011, and documents emanating from respondent, such as the Memorandum of Assignment[73], revised PAN[74], and FDDA[75], all refer to the said LOA.

It is also well to point out that petitioner does not dispute the existence or validity of the LOA, and even referred to the said LOA in its Letters dated March 28, 2014[76], April 8, 2014[77], and April 28, 2014.[78] In its Comment to Respondent's Formal Offer of Documentary Evidence[79], petitioner objected to the admission of Exhibit "R-1" only because it allegedly does not prove the purposes for which it is being offered, since the revenue officer indicated in the LOA as authorized to examine the books of petitioner is RO Avila and not RO Garfin.

It should be stressed that the rationale of the rules of procedure is to secure a just determination of every action. They are tools designed to facilitate the attainment of justice.[80] Considering the foregoing, the Court finds that the requirements laid down in the *Laborte* case were met by Exhibit "R-1", such that it can properly be considered by the Court in deciding the merits of the present case.

As to petitioner's argument that RO Garfin had no authority to conduct an audit/examination of petitioner since no LOA was issued to her, the Court likewise finds this unmeritorious.

In the Resolution dated June 21, 2018 in the consolidated cases of *Commissioner of Internal Revenue vs. Oriental Assurance Corporation, CTA EB No 1482 (CTA Case No. 8582)* and *Oriental Assurance Corporation vs. Commissioner of Internal Revenue, CTA EB No. 1487 (CTA Case No. 8582)*, the Court of Tax Appeals *En Banc* ruled that the reassignment of the case to another revenue officer and group supervisor through a Memorandum issued pursuant to Revenue Memorandum Order (RMO) No. 8-2006 is valid, to wit:

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[73] Exhibit "R-2", BIR Records, p. 73.
[74] Exhibit "P-2", Docket, vol. II, p. 635; Exhibit "R-7", BIR Records, pp. 647-650.
[75] Exhibits "P-4" and "R-20", BIR Records, pp. 656-657.
[76] Exhibit "P-5", Docket, vol. II, p. 643.
[77] Exhibit "P-6", Docket, vol. II, pp. 644-647.
[78] Exhibit "P-8", Docket, vol. II, pp. 649-664.
[79] Docket, vol. II, pp. 819-823.
[80] *BPI-Family Savings Bank, Inc. vs. Court of Appeals, et al.,* G.R. No. 122480, April 12, 2000.

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"Anent the allegation that no LOA was issued in favor of the Revenue Officer and Group Supervisor on authorizing them to conduct the audit and investigation of OAC for taxable year 2005, it is only now in this motion that OAC raised this issue.

Based on the records, Revenue Officer (RO) Marohombsar and Group Supervisor (GS) Perez who continued the audit of all internal revenue taxes for taxable year 2005 of OAC were duly named in the Memorandum/Referral No. D-61-05-08 dated May 27, 2008. Further, in the Judicial Affidavit of RO Marohombsar, it was stated that:

9Q **Under what authority you conducted the audit of all internal revenue taxes of the petitioner?**

9A I was authorized through a Memorandum of Assignment with Referral No. D-61-05-08 dated May 27, 2008. It was assigned to me following <u>the re-assignment per LTAID Industry Grouping as of April 16, 2008, whereby the revenue officers who were authorized under the Letter of Authority (LOA) to conduct the audit on all the revenue taxes of petitioner was transferred to another Industry Grouping</u>. *(Underline Ours)*

In Revenue Memorandum Order No. 8-2006, 'where both the RO and the GS have resigned/retired or transferred to another RR, the case shall be reassigned to another RO under the supervision of another GS within the same RDO. **In case of reassignment, a memorandum to that effect shall be issued by the head of the investigating office** to the concerned taxpayer and the concerned taxpayer and the concerned RO and/or GS.' *(Emphasis Supplied)*

In this case, there was a re-assignment of the case to another RO and GS thru a Memorandum, thus, the continuation of the audit investigation by RO Marohombsar and GS Perez were valid."

In the instant case, respondent presented the Memorandum of Assignment No. 065-2011-00001921 dated November 24, 2011 issued by RDO Ramos-Lafuente, which was marked as Exhibit "R-2"[81]. In the

[81] BIR Records, p. 73.

said Memorandum, RO Garfin and GS Aguinaldo were assigned to replace the previously assigned Revenue Officers who transferred to another district office and to continue the audit investigation of petitioner's all internal revenue taxes for taxable year 2009 pursuant to LOA-065-2010-000000010 dated January 17, 2011.

Given the foregoing circumstances, RO Garfin was properly authorized to conduct an audit/examination on petitioner's books of accounts for taxable year 2009.

Petitioner is not liable of any deficiency tax

I. Deficiency Income Tax - ₱2,171,774.37

Per the FDDA issued by respondent, petitioner was assessed of deficiency income tax for taxable year 2009 in the amount of ₱2,171,774.37, computed as follows:[82]

Taxable Income Per Formal Letter of Demand		₱ 19,259,219.97
Add/(Less): Adjustments:		
Undeclared Income based on Gross Profit Ratio	₱ 2,491,174.31	
Allowed Donations Expense	(9,041,957.50)	(6,550,783.19)
Total Taxable Income Per Reinvestigation		₱ 12,708,436.78
Income Tax Due - 30%		₱ 3,812,531.03
Less: Income Tax Paid/Withheld:		
Tax Payments	₱ 2,556,389.05	
Tax Withheld	44,066.07	2,600,455.12
Income Tax Payable		**₱1,212,075.91**
Add: Increments:		
20% Interest per annum from 04-16-2010 to 03-31-2014		959,698.46
Total Income Tax Deficiency Due		**₱2,171,774.37**

The assessment arose from petitioner's alleged undeclared income in the amount of ₱4,906,757.64 and respondent's disallowance of petitioner's creditable tax withheld in the amount of ₱147,799.93.

a. Undeclared Income

[82] Exhibit "P-4", Docket, vol. II, p. 641.

Based on the FLD[83] with attached Details of Discrepancy, respondent listed down the expenses per petitioner's Financial Statements (FS) which he deemed subject to two percent (2%) EWT and compared the same to those income payments to prime contractors/subcontractors subjected to 2% EWT per BIR Form No. 1601-E. Respondent found the discrepancy as undeclared expenses resulting in undeclared income of ₱1,461,240.82 and assessed petitioner of undeclared income based on gross profit ratio amounting to ₱1,056,411.47, as computed below:

Schedule 1. Undeclared Income		
Expenses subject to 2% withholding tax (Prime Contractors/ Sub-Contractors) per BIR Form No. 1601-E after reinvestigation		₱ 4,371,861.82
Expenses subject to 2% withholding tax (Prime Contractors/ Sub-Contractors) per Financial Statements:		
Advertising Expenses	₱2,742,129.00	
Security Service	2,009.00	
Repairs and Maintenance – Labor	166,483.00	2,910,621.00
Undeclared Income		**₱1,461,240.82**
Schedule 2. Gross Profit Ratio		
Gross Profit per Return		₱ 49,922,613.00
Divide by Sales per Return		69,053,548.00
Gross Profit Ratio		**72.30%**
Schedule 3. Undeclared Income Based on Gross Profit Ratio		
Undeclared Income		₱ 1,461,240.82
Multiplied by Gross Profit Ratio		72.30%
Undeclared Income Based on Gross Profit Ratio		**₱1,056,411.47**

Upon reinvestigation, respondent found a total undeclared income of ₱4,906,757.64 or an additional undeclared income based on gross profit ratio, in the amount of ₱2,491,174.31, computed as follows:[84]

Expenses subject to 2% withholding tax (Prime Contractors/Sub-Contractors) per BIR Form No. 1601-E after reinvestigation		₱ 7,757,722.82
Expenses subject to 2% withholding tax (Prime Contractors/Sub-Contractors) per Financial Statements:		
Advertising Expenses	₱2,742,129.00	
Security Service	2,009.00	
Repairs and Maintenance – Labor	166,483.00	2,910,621.00
Undeclared Income (Prime Contractors)		₱ 4,847,101.82
Add: Undeclared Income of Rental Expense		

[83] Exhibit "R-12", BIR Records, p. 406.
[84] Exhibit "P-4", Docket, vol. II, p. 641.

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Rent Expense per 1601E Basic Rent Only	₱8,472,791.60	
Less: Rent Expense per FS Basic Rent Only	8,413,135.78	59,655.82
Total Undeclared Income		**₱4,906,757.64**
Multiply by Gross Profit Rate (₱49,922,613.00/₱69,053,548.00)		72.30%
Undeclared Income per Reinvestigation		**₱3,547,585.77**
Less: Undeclared Income per FLD		1,056,411.47
Additional Undeclared Income		**₱2,491,174.31**

The Court finds the assessment unmeritorious.

Respondent's allegation that petitioner had undeclared income arising from alleged undeclared expenses is without factual basis. It is worthy to note that the imputation of alleged undeclared income was based on a mere presumption that since there were expenses not accounted for in petitioner's FS, it has earned income which it failed to declare.

As held in the case of *Commissioner of Internal Revenue vs. Agrinurture, Inc.*[85], a finding of under-declaration of purchase or expense does not by itself result in the imposition of income tax.

The three (3) elements in the imposition of income tax are: (1) there must be gain or profit; (2) that the gain or profit is realized or received, actually or constructively; and (3) it is not exempted by law or treaty from income tax. Income tax is assessed on income received from any property, activity or service.[86]

Such being the case, in the imposition or assessment of income tax, it must be clear that there was an income, and such income was received by the taxpayer, and not when there is an under-declared purchase or expense.

In the instant case, said elements are not present. Respondent merely presumed that the alleged discrepancy/undeclared expense constitute as undeclared income. Hence, respondent's assessment was not based on undeclared income actually received by petitioner.

[85] CTA EB No. 1054 (CTA Case No. 8345), January 13, 2015.
[86] *Commissioner of Internal Revenue vs. Court of Appeals, et al.,* G.R. No. 108576, January 20, 1999.

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Moreover, it must be emphasized that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.[87] Thus, even granting that there is an undeclared expense, the same is not prohibited by law.

While it is axiomatic that all presumptions are in favor of the correctness of tax assessments, the assessment itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.[88]

Accordingly, mere reliance on the undeclared expenses is not enough basis to uphold respondent's assessment of the subject deficiency. Therefore, the deficiency income tax on the alleged undeclared income of ₱4,906,757.64 should be cancelled.

b. Tax Withheld

Based on the computation of the deficiency tax assessment, respondent considered only the amount of ₱44,066.07 as creditable tax withheld, although the reported tax withheld per petitioner's Tentative Annual Income Tax Return for taxable year 2009 amounts to ₱191,866.00 (the sum of ₱52,606.00 and ₱139,260.00)[89].

Notably, respondent disallowed a portion of the reported creditable withholding tax, which amounts to ₱147,799.93 (₱191,866.00 less ₱44,066.07), without stating the basis therefor. Following Section 228[90] of the NIRC of 1997, as amended, the said disallowance is invalid as respondent failed to inform petitioner of the law and the facts on which the assessment was based.

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[87] *Commissioner of Internal Revenue vs. Phoenix Assurance Co. Ltd.,* G.R. No. L-19727, May 20, 1965.

[88] *Collector of Internal Revenue vs. Benipayo,* G.R. No. L-13656, January 31, 1962.

[89] BIR Records, p. 69, Lines 30C and 30D.

[90] Sec. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
xxx
The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

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Considering the foregoing, the deficiency income tax assessment in the amount of ₱2,171,774.37 should be cancelled and withdrawn.

II. Deficiency VAT – ₱2,802,305.86

Petitioner was assessed of deficiency VAT for taxable year 2009 in the amount of ₱2,802,305.86, computed as follows:[91]

Gross Sales per Formal Letter of Demand		₱ 70,515,345.82
Add/(Less): Adjustments:		
Additional Undeclared Income:		
Undeclared Income per Reinvestigation	₱4,847,101.82	
Less: Undeclared Income per Formal Letter of Demand	1,461,240.82	3,385,861.00
Total Taxable Income per Reinvestigation		₱ 73,901,206.82
Multiply: Output Tax Rate		12%
Output Tax		₱ 8,868,144.82
Less: Creditable Input Tax per Reinvestigation		5,595,694.32
Value-Added Tax Due		₱ 3,272,450.50
Less: Income Tax Paid/Withheld:		
Tax Payments		1,745,821.19
VAT Deficiency		**₱1,526,629.31**
Add: Increments:		
20% Interest per annum from 01-26-2010 to 03-31-2014		1,275,676.55
Total Value-Added Tax Deficiency Due		**₱2,802,305.86**

a. Undeclared Income per Reinvestigation

This assessment was based on the same finding under the deficiency income tax assessment that there were undeclared expenses which resulted in undeclared income.

The assessment is devoid of merit. Simply put, the assessment was based merely on respondent's inference that since there were undeclared expenses, the same should translate to taxable gross receipts for VAT purposes.

It must be pointed out that under Section 106(A) of the NIRC of 1997, as amended, VAT is assessed on the "gross selling price or gross value in money of the goods or properties sold, bartered or exchanged" and is "to be paid by the seller or transferor." Relative thereto, the law defines "gross selling price" as follows:

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[91] Exhibit "P-4", Docket, vol. II, p. 642.

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> " ... the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price."

Thus, what is critical to be shown in the imposition or assessment of VAT in the sale of goods or properties, is that the taxpayer is paid or ought to be paid in an amount of money or its equivalent, in consideration of such sale, and not when said taxpayer purchases or disburses an amount of money to purchase goods or properties. In other words, the VAT is imposed when one sells, not when one purchases.

Considering that petitioner had no undeclared sales, the imputed deficiency VAT thereon should be cancelled.

b. Creditable Input Tax per Reinvestigation

The creditable input VAT per reinvestigation in the amount of ₱5,595,694.32 was arrived at by respondent by adding the reconsidered input VAT on purchases of goods (misclassified as purchases of capital goods exceeding ₱1 Million) in the amount of ₱3,019,034.36[92] to the creditable input tax per FLD of ₱2,576,659.96[93].

A perusal of petitioner's Quarterly VAT Returns for taxable year 2009[94] reveals that the reported input VAT actually amounts to ₱6,399,528.39[95]. However, respondent considered in his computation

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[92] Input tax on Purchases of capital goods exceeding ₱1M (₱3,319,670.02) less Amortized input for the year (₱300,635.66); Exhibit "R-13", BIR Records, p. 408, Schedule 6.

[93] Exhibit "R-13", BIR Records, p. 408, Schedule 6.

[94] Exhibits "P-25", "P-28", "P-31", and "P-34", Docket, vol. II, pp. 744, 753, 763, and 771, respectively.

[95] Input VAT per Returns:

	1st Qtr (Exh. P-25)	2nd Qtr (Exh. P-28)	3rd Qtr (Exh. P-31)	4th Qtr (Exh. P-34)	Total
Input VAT on Purchases of Capital Goods exceeding 1M (misclassified)	₱ 40,754.11	₱ 819,629.15	₱ 837,453.56	₱ 1,572,409.05	₱ 3,970,245.87
Input VAT on Domestic Purchases of Goods other than Capital Goods	195,758.48	36,604.25	48,639.04	40,698.08	321,699.85
Input VAT on Domestic Purchases of Services	324,654.41	431,437.78	552,482.77	799,007.71	2,107,582.67
Total	**₱1,261,167.00**	**₱1,287,671.18**	**₱1,438,575.37**	**₱2,412,114.84**	**₱6,399,528.39**

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only the input VAT of ₱5,595,694.32, thus, disallowing the amount of ₱803,834.07 (₱6,399,528.39 less ₱5,595,694.32) as creditable input VAT, without stating the basis therefor.

For failure of respondent to inform petitioner of the law and the facts on which the disallowance of the ₱803,834.07 was based, the same is considered void, pursuant to Section 228 of the NIRC of 1997, as amended.

In fine, the deficiency VAT assessment of ₱2,802,305.86 shall be set aside. Hence, petitioner is not liable to pay deficiency VAT for the taxable year 2009.

III. Compromise penalty – ₱27,000.00

Respondent assessed petitioner of compromise penalty in the aggregate amount of ₱27,000.00, broken down as follows:

Failure to file BIR Form No. 1604-CF and Alphalist of Employees	₱ 1,000.00
Failure to file BIR Form No. 1604-E	1,000.00
Failure to file Summary List on Sales for four quarters	25,000.00
Total	**₱ 27,000.00**

It must be stressed that a compromise penalty is imposed to avoid prosecution for violation of the provisions of the Tax Code. Pursuant to RMO No. 01-90, as amended by RMO No. 19-07, compromise penalties are only suggested in settlement of criminal liability, and may not be imposed or exacted on a taxpayer in the event that a taxpayer refuses to pay the same. Clearly, the compromise penalty implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised.[96] The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[97]

There being no mutual agreement between the parties, the imposition of compromise penalty in the amount of ₱27,000.00 cannot be sustained.

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[96] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et al.,* G.R. Nos. L-12928 and L-12932, March 31, 1962.

[97] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.,* G.R. No. L-35266, January 21, 1991.

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WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the FDDA dated March 14, 2014, holding petitioner liable for deficiency income tax, VAT, and compromise penalty for taxable year 2009 in the total amount of ₱5,001,080.23, is **CANCELLED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(with Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

LANCASTER COLORS INTERNATIONAL, INC., Petitioner,	**CTA Case No. 8933**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **UY,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 01 2018 1:20pm

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SEPARATE CONCURRING OPINION

DEL ROSARIO, PJ.:

I concur with the *ponencia* in granting the Petition for Review filed by petitioner Lancaster Colors International, Inc. but **solely** on the ground that the Formal Letter of Demand (FLD) and Final Assessment Notices (FAN), both dated March 27, 2013, are void *ab initio* as Revenue Officer (RO) Jane M. Garfin, who conducted the audit and examination of petitioner's records for the year 2009, was not authorized by a valid Letter of Authority (LOA).

Records disclose that the disputed assessment emanated from two (2) LOAs issued by respondent through **Regional Director** Diosdado R. Mendoza, as follows: (1) LOA No. 2009 00037517 dated June 25, 2010, authorizing RO Jayser I. Avila to examine petitioner's books of accounts and other accounting records covering the taxable period 2009, relative to its "ALL INTERNAL REVENUE TAXES"; and (2) LOA No. 065-2010-00000010 SN: eLA20100002171 dated January 17, 2011, authorizing RO Avila and Group Supervisor (GS) Domingo Aguinaldo to examine petitioner's books of accounts and other accounting records covering the taxable period 2009, relative to its "ALL INTERNAL REVENUE TAXES", with a stamp indicating that it is a converted eLA from the previously issued LOA No. 2009 0037517 dated June 25, 2010, pursuant to RMO 69-2010.

On November 24, 2011, **Revenue District Officer (RDO)** Soccorro O. Ramos-Lafuente issued a Memorandum of Assignment, re-assigning the continuation of the audit or investigation of petitioner's records for all internal revenue taxes to RO Garfin and GS Aguinaldo.

It is apparent that the authority of the RO Garfin to audit petitioner's supporting documents and pertinent records for the taxable year 2009 emanated, **not from a Letter of Authority issued by respondent or the concerned Revenue Regional Director**, but from the Memorandum of Assignment issued by an RDO.

The issue about the RO's authority to conduct the audit necessarily relates to the validity of the FLD and FAN as its absence makes the assessment a nullity. The Supreme Court's pronouncement in *Medicard Philippines Inc. vs. Commissioner of Internal Revenue*[1] declaring that an LOA is indispensable to the validity of an assessment is instructive, *viz.*:

> *"The absence of an LOA violated MEDICARD's right to due process*
>
> xxx xxx xxx
>
> xxx xxx xxx. In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: **to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.**

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

> **That the BIR officials herein were not shown to have acted unreasonably is beside the point <u>because the issue of their lack of authority was only brought up during the trial of the case</u>. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. <u>Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.</u>"** *(Citations omitted; boldfacing and underscoring supplied)*

To be sure, the National Internal Revenue Code (NIRC) of 1997, as amended, is clear and categorical in requiring an authority from the **CIR or from his duly authorized representatives** before an examination of a taxpayer may be made.[2] Section 6 thereof provides:

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

An officer of the Bureau of Internal Revenue cannot simply subject a taxpayer to audit without a Letter of Authority validly issued by the officers vested by law with authority to do so. Section 13 of the NIRC of 1997, as amended, 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, **a Revenue Officer assigned to perform assessment functions** in any district may, **<u>pursuant to a Letter of Authority</u>** issued by the **<u>Revenue Regional Director</u>**, examine taxpayers within the jurisdiction of the district in order **to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Boldfacing and underscoring supplied)*

Even assuming that the Memorandum of Assignment may be treated as an LOA, the same is void for having been issued by a

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

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mere RDO and not by a Regional Director. As aforestated, Section 13 of the NIRC of 1997, as amended, is categorical in stating that an RO cannot subject a taxpayer to audit without a valid **LOA issued by the Regional Director** for that purpose.

Since Section 13 of the NIRC of 1997, as amended, is plain and simple in its language, there is no need for further interpretation. In the language of *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue,*[3] citing *Rizal Commercial Banking Corporation vs. Intermediate Appellate Court and BF Homes, Inc.*:[4]

> "**It bears stressing that the first and fundamental duty of the Court is to apply the law. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application** (Cebu Portland Cement Co. vs. Municipality of Naga, 24 SCRA-708 [1968])." *(Boldfacing supplied)*

The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws, and provisions of a taxing act are not to be extended by implication.[5]

The issuance of LOAs is not just a plain ministerial act but calls for the exercise of discretion by the Regional Director. The authority to issue LOAs cannot be further delegated to an RDO. Indeed, **there is nothing in the NIRC which gives the Regional Director the power to delegate his duty of issuing LOAs or substitute another in his place**. On this point, the pronouncement in *NPC Drivers and Mechanics Association, (NPC DAMA) vs. The National Power Corporation*[6] is instructive, *viz.*:

> "We agree with petitioners. In enumerating under Section 48 those who shall compose the National Power Board of Directors, the legislature has vested upon these persons the power to exercise their judgment and discretion in running the affairs of the NPC. Xxx xxx xxx. It is to be presumed that in naming the respective department heads as members of the board of directors, the legislature chose these secretaries of the various executive

[3] G.R. No. 196907, March 13, 2013.
[4] G.R. No. 74851, December 9, 1999.
[5] *Commissioner of Internal Revenue vs. Julieta Ariete,* G.R. No. 164152, January 21, 2010.
[6] G.R. No. 156208, September 26, 2006.

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> departments on the basis of their personal qualifications and acumen which made them eligible to occupy their present positions as department heads. **Thus, the department secretaries cannot delegate their duties as members of the NPB, much less their power to vote and approve board resolutions, because it is their personal judgment that must be exercised in the fulfillment of such responsibility**.
>
> Xxx, the rule enunciated in the case of *Binamira v. Garrucho* is relevant in the present controversy, to wit:
>
> > **An officer to whom a discretion is entrusted cannot delegate it to another, the presumption being that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and unless the power to substitute another in his place has been given to him, he cannot delegate his duties to another**.
>
> Xxx." *(Citations omitted; Boldfacing supplied)*

In fine, for want of a valid LOA issued by the Regional Director in favor of RO Garfin, the audit of petitioner's financial records and documents for the taxable year 2009 and the FLD and FANs issued as a consequence thereof are void.

All told, I **VOTE** to **GRANT** the Petition for Review filed by Lancaster Colors International, Inc.

ROMAN G. DEL ROSARIO
Presiding Justice