REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

VMC FARMERS MULTI-PURPOSE COOPERATIVE,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE AND REGIONAL DIRECTOR, REVENUE REGION 12, BACOLOD CITY,
Respondents.

CTA CASE NO. 9859

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:

OCT 04 2023 4:10 p.m.

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DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review*[1] filed by petitioner VMC Farmers Multi-Purpose Cooperative assailing the Decision of respondent Commissioner of Internal Revenue (CIR) dated May 9, 2018 (assailed Decision),[2] which demanded payment of deficiency value-added tax (VAT), expanded withholding tax (EWT) and compromise penalties in the amounts of ₱164,268,558.59, ₱182,790.00 and ₱25,000.00, respectively, for taxable year (TY) 2006.

THE PARTIES

Petitioner is a duly organized multi-purpose cooperative registered with the Cooperative Development Authority (CDA) with business address at Hilado Street, Bacolod City, Negros Occidental.[3]

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[1] Docket – Vol. I, pp. 12-28.
[2] Annex "A", Petition for Review, Docket – Vol. I, pp. 29-45.
[3] Joint Stipulation of Facts and Issues (JSFI), Docket – Vol. II, p. 482.

Respondent is the duly appointed CIR who is tasked to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties and fines connected therewith. Respondent holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City, where he may be served with summons, legal processes, orders and resolutions of this Court.[4]

THE FACTS AND THE PROCEEDINGS

A Letter of Authority (LOA) No. 2007-00029059[5] dated June 13, 2008 was issued authorizing Revenue Officer (RO) Cecil Rey F. Panelo (RO Panelo) and Group Supervisor (GS) Ma. Theresa P. Eltanal (GS Eltanal) of Revenue District Office No. 77-Bacolod City (RDO No. 77) to examine petitioner's books of accounts and other accounting records for income and all other internal revenue taxes for the period from January 1, 2006 to December 31, 2006. The LOA was received by petitioner's General Manager Emilio B. Monfort on June 17, 2008.[6]

A Notice of Informal Conference[7] dated March 2, 2009 was issued and served to petitioner. Thereafter, an Amended Notice of Informal Conference[8] dated January 15, 2010 was issued.

On August 25, 2009, a Memorandum of Assignment (MOA)[9] was issued to RO Rowela B. Alacapa (RO Alacapa) by Revenue District Officer of RDO No. 77, Lilivic Minguez-Gatdula (RDO Minguez-Gatdula) for the investigation of internal tax liabilities of petitioner for TY 2006 under LOA No. 2007-00029059[10] in view of RO Panelo's transfer to RDO No. 74-Iloilo City.

In an undated Memorandum[11] addressed to the Regional Director of Revenue Region (RR) No. 12, RO Alacapa forwarded her findings to the Assessment Division for appropriate action.

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[4] *Id.*
[5] Exhibit "R-1", BIR Records, p. 176.
[6] *Id.*
[7] Exhibit "R-5", BIR Records, pp. 256-259.
[8] Exhibit "R-6", BIR Records, pp. 260-263.
[9] Exhibit "R-12", BIR Records, p. 296.
[10] *Supra*, note 4.
[11] BIR Records, p. 298.

On December 15, 2010, a Preliminary Assessment Notice (PAN)[12] with Details of Discrepancies[13] prepared by RO Guia Marie J. Desuyo (RO Desuyo) was issued against petitioner for TY 2006.

The Formal Letter of Demand (FLD)[14] with attached Details of Discrepancies[15] prepared by RO Desuyo, and Audit Results/Assessment Notices (FAN),[16] all dated January 14, 2011, were issued against petitioner for deficiency VAT, EWT and compromise penalties. Petitioner received the FLD/FAN on February 11, 2011.[17]

On March 4, 2011, petitioner filed with the Office of the Regional Director of RR No. 12 a letter of protest dated March 2, 2011[18] assailing the FLD/FAN on the grounds that it is exempt from payment of all internal revenue taxes, including VAT, on the sale of its refined sugar; that there is no provision in the National Internal Revenue Code (NIRC) of 1997, as amended, imposing tax before the sale of refined sugar; and, that the Director's fee has not been approved nor released by the Board of Directors during TY 2006.

On October 3, 2013,[19] petitioner received the letter dated September 24, 2013[20] issued by the Regional Director of RR No. 12, Perfecto L. Aranas denying petitioner's protest and stating that petitioner was liable to pay advance VAT for the following reasons:

a. BIR Ruling No. ECCP-012-2001, granting petitioner tax exempt status, is null and void due to misinterpretation committed by petitioner that it was transacting business with members only.

b. Petitioner is not the owner/producer of the sugar as shown by the sugar quedans which are not in the name of the cooperative in violation of RR No. 29-2002, as amended.

[12] Exhibit "R-7", BIR Records, pp. 391-393.
[13] *Id.*, pp. 389-390.
[14] Exhibit "R-8", BIR Records, pp. 396-398.
[15] *Id.*, pp. 394-395.
[16] Exhibit "R-9", BIR Records, pp. 399-403.
[17] Par. 4, Administrative Appeal, BIR Records, p. 527.
[18] BIR Records, pp. 442-444.
[19] Administrative Appeal, BIR Records, p. 527.
[20] Exhibit "R-10", BIR Records, pp. 487-490.

c. On withholding taxes, petitioner failed to submit supporting documents within 60 days, as provided under Section 3.15 of Revenue Regulation No. 12-99, dated September 6, 1999.[21]

On October 24, 2013, petitioner filed an *Administrative Appeal*[22] before respondent on the grounds that petitioner is a duly registered cooperative exempt from paying VAT, and that the assessment made was null and void for having been issued beyond the three-year prescriptive period as provided in Section 203 of the NIRC of 1997, as amended.

On May 9, 2018,[23] respondent issued the assailed Decision,[24] which petitioner received on May 22, 2018,[25] the dispositive portion of which reads:

> IN VIEW THEREOF, the assailed Final Decision on the Disputed Assessment with respect to the amounts of ₱164,268,558.59, ₱18,440,663.40, ₱484,385.23 and ₱80,000.00 representing advance VAT on Sale of Refined Sugar, VAT on Sale of General Merchandise and Diesel Fuel, EWT and Compromise Penalty, respectively, including its corresponding compromise penalties for the taxable year 2006, is hereby CANCELLED and MODIFIED.
>
> The assessment in the amount of ₱18,440,663.40 representing VAT on Sale of General Merchandise and Diesel Fuel including the corresponding compromise penalty in the amount of ₱25,000.00 is CANCELLED and WITHDRAWN. The assessment for expanded withholding tax, except those pertaining to Director's Fee, including the corresponding compromise penalties in the total amount of ₱30,000.00 is likewise CANCELLED as VMCFMPC already paid the same. Consequently, the Assistant Commissioner, Collection Service, is hereby ordered to issue the corresponding Authority to Cancel Assessment (ATCA) covering the above deficiency assessment against VMCFMPC.
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> However, the assessment in the amount of ₱164,268,558.59, ₱182,790.00, ₱25,000.00 representing advance VAT on Sale of Refined Sugar, EWT on Director's Fee, and Compromise Penalty for failure to pay VAT due on the sale of refined sugar is hereby AFFIRMED. Consequently, VMC FARMERS MULTI-PURPOSE COOPERATIVE is hereby ordered to pay the aforestated amounts, plus increments that have been accrued thereon until the actual date of payment,

[21] Par. 3, JSFI, Docket – Vol. II, pp. 482-483.
[22] BIR Records, pp. 523-527.
[23] Par. 4, JSFI, Docket – Vol. II, p. 483.
[24] *Supra*, note 2.
[25] Par. 3, Petition for Review, Docket – Vol. I, p. 12, vis-a-vis Annex "A", Docket – Vol. I, p. 29.

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> to the Collection Service, BIR National Office, Diliman, Quezon City; otherwise, collection thereof will be effected through the summary remedies provided by law.
>
> This constitutes the **Final Decision** of this Office on the matter. (*Emphasis on the original*)

Aggrieved, petitioner elevated its case before the Court *via* this *Petition for Review* on June 20, 2018.

In his *Answer*[26] filed within the extension period given, respondent raised special and affirmative defenses that petitioner is not exempt from paying national internal revenue taxes as it does not own nor produce refined sugar and it has been dealing with both members and non-members; and, the VAT assessment has not yet prescribed invoking the 10-year period under Section 222 of the NIRC of 1997, as amended, due to petitioner's non-filing of its VAT return.

On August 22, 2018, petitioner filed a *Motion (For Suspension of Collection of Tax).*[27]

On September 28, 2018, petitioner filed a *Manifestation*[28] submitting the Judicial Affidavit[29] of its witness, Jose V. Ramos (Mr. Ramos), petitioner's Tax Consultant, to testify on its *Motion (For Suspension of Collection of Tax).*

On October 12, 2018, the Court issued a Resolution[30] informing the parties of the pre-trial conference set on November 22, 2018.

Ahead of the scheduled pre-trial conference, petitioner filed its *Pre-Trial Brief*[31] on November 10, 2018, and the Judicial Affidavit[32] of its witness, Mr. Ramos on November 22, 2018.

Upon respondent's *Motion to Reset Hearing*[33] filed on November 14, 2018, the pre-trial conference was cancelled, with a warning to respondent, and reset to January 17, 2019.[34]

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[26] Docket – Vol. I, pp. 143-160.
[27] Docket – Vol. I, pp. 112-117.
[28] *Id.*, pp. 180-181.
[29] *Id.*, pp. 182-189.
[30] *Id.*, p. 272.
[31] *Id.*, pp. 283-287.
[32] *Id.*, pp. 289-316.
[33] *Id.*, pp. 273-282.
[34] Minutes of the Hearing, Docket – Vol. I, p. 371; Order dated November 22, 2018, Docket – Vol. I, p. 372.

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On December 19, 2018, respondent filed a *Respondent's Pre-Trial Brief*.[35]

On January 14, 2019, petitioner filed a *Submission*[36] attaching the *Supplement to the Judicial Affidavit*[37] of Mr. Ramos.

During the scheduled hearing on petitioner's *Motion (For Suspension of Collection of Tax)* and pre-trial conference on February 6, 2019,[38] petitioner presented Mr. Ramos' testimony in support of the said motion and orally made a formal offer of its exhibits, without respondent's objection. Upon the manifestation of respondent's counsels that they have no witness to present in opposition to petitioner's motion, the Court ordered the parties to file their respective memoranda in relation to petitioner's motion, within ten days therefrom. Subsequently, during the pre-trial conference, the Court granted the parties 15 days therefrom to file their joint stipulation of facts and issues. It also set the initial presentation of petitioner's evidence on March 11, 2019.

On February 15, 2019, respondent filed his *Omnibus Motion (1. To defer submission of Memorandum and 2. Request to be furnished a copy of petitioner's Motion to Suspend Collection of Taxes)* (Omnibus Motion).[39]

On February 18, 2019, petitioner filed its *Motion for Correction of Markings with Supplemental Former* [*sic*] *Offer of Exhibit*[40] (Motion for Correction) and *Motion for Extension of Time to File Joint Stipulation of Facts and Issued* [*sic*] *and Memorandum* (Motion for Extension).[41]

On March 13, 2019, the Court issued a Resolution[42] granting respondent's Omnibus Motion and petitioner's Motion for Extension. Anent petitioner's Motion for Correction, the Court directed petitioner to submit an amended Judicial Affidavit of Mr. Ramos and an amended Formal Offer of Evidence, incorporating therein the correct markings of petitioner's exhibits within ten days from notice, while

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[35] Docket – Vol. I, pp. 374-379.
[36] *Id.*, pp. 382-383.
[37] *Id.*, pp. 384-386.
[38] Minutes of the Hearing, Docket – Vol. I, pp. 391-392; Order, Docket – Vol. I, pp. 396-397.
[39] Docket – Vol. I, pp. 412-416.
[40] *Id.*, pp. 417-427.
[41] *Id.*, pp. 436-438.
[42] Docket – Vol. II, pp. 458-463.

respondent was given a period of ten days from notice to file his comment on the proposed additional exhibits ("P-22" and "P-21") for petitioner. The Court also cancelled and reset the previously set hearing on March 11, 2019 until further orders from the Court.

On March 19, 2019, the Court received petitioner's *Memorandum*[43] in support of its *Motion (For Suspension of Collection of Tax.*

On March 20, 2019, the parties filed their *Joint Stipulation of Facts and Issues.*[44]

On March 26, 2019, respondent filed his *Opposition [Re: Motion (For Suspension of Collection of Tax) dated 17 August 2018].*[45]

On April 5, 2019, the Court issued the Pre-Trial Order.[46]

On April 29, 2019, the Court received petitioner's *Compliance*[47] submitting the Judicial Affidavit[48] of Mr. Ramos reflecting the new exhibit markings.

On May 10, 2019, the Court received petitioner's *Submission*[49] with the attached Supplement to the Judicial Affidavits[50] of Mr. Ramos during the hearing on its *Motion (For Suspension of Collection of Tax).*

Trial proceeded.

During the hearing on May 15, 2019,[51] petitioner recalled its lone witness, Mr. Ramos, who testified by way of his Supplement to the Judicial Affidavits. The Court noted the parties' separate manifestations that they are adopting the testimony of Mr. Ramos during the hearing on petitioner's *Motion (For Suspension of Collection of Tax)* as part of his testimony in the main case. The Court granted petitioner five days to file a Formal Offer of Evidence (FOE) and respondent

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[43] *Id.*, pp. 464-480.
[44] *Id.*, pp. 482-496.
[45] *Id.*, pp. 497-507.
[46] *Id.*, pp. 509-517.
[47] *Id.*, pp. 523-524.
[48] *Id.*, pp. 525-553.
[49] *Id.*, pp. 555-556.
[50] *Id.*, pp. 557-562.
[51] Minutes of the Hearing, Docket – Vol. II, p. 592; Order, Docket – Vol. II, pp. 593-594.

had the same period to file his comment. The Court also set the initial presentation of respondent's evidence on July 8, 2019.

On May 28, 2019, petitioner filed its *Formal Offer of Evidence*,[52] with respondent's *Comment (Re: Formal Offer of Evidence)*.[53]

On June 24, 2019, respondent filed his *Offer of Testimony*[54] with attached *Judicial Affidavit of Revenue Attorney Mark Neil Collado for the case entitled VMC Farmers Multi-Purpose Cooperative, vs. Commissioner of Internal Revenue, C.T.A. Case No. 9859*.[55]

On July 2, 2019, respondent transmitted the BIR Records of this case.[56]

On July 10, 2019, the Court resolved petitioner's *Formal Offer of Evidence* and granted petitioner's *Motion (For Suspension of Collection of Tax)*.[57] Petitioner was ordered to post a cash or surety bond in the amount of ₱72,601,709.19 within ten days from receipt of the Resolution.

On his turn to present evidence, respondent's counsel called to the witness stand the lone witness, Revenue Attorney Mark Neil Collado (Atty. Collado) of the BIR's Appellate Division.[58] Atty. Collado testified, by way of his judicial affidavit, that he reviewed the BIR records and based on the documents contained therein, he drafted the assailed Decision dated May 9, 2018, which was approved by respondent.[59]

On August 23, 2019, respondent filed his *Formal Offer of Documentary Evidence*,[60] within the extension period given, without petitioner's comment as per Records Verification dated October 7, 2019.[61]

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[52] Docket – Vol. II, pp. 595-613.
[53] *Id.*, pp. 638-640.
[54] *Id.*, pp. 641-644.
[55] *Id.*, pp. 645-649.
[56] Compliance, *id.*, pp. 650-653.
[57] Resolution, *id.*, pp. 658-667.
[58] Minutes of the Hearing, Docket – Vol. II, p. 668; Order, Docket – Vol. II, p. 669.
[59] A7, Exhibit "R-14", Judicial Affidavit of Revenue Attorney Mark Neil Collado, Docket – Vol. II, p. 647.
[60] Docket – Vol. II, pp. 677-682.
[61] *Id.*, p. 721.

On September 3, 2019, the Court received petitioner's *Motion for Partial Reconsideration With alternative prayer for Reduction of Bond*[62] filed through registered mail on August 19, 2019, without respondent's comment as per Records Verification dated October 4, 2019.[63]

On October 11, 2019, petitioner filed a *Motion to Transfer Date of Hearing*.[64]

On November 15, 2019, the Court, in its Resolution,[65] admitted all evidence formally offered by respondent; denied petitioner's *Motion for Partial Reconsideration With alternative prayer for Reduction of Bond*; and granted petitioner's *Motion to Transfer Date of Hearing*. Accordingly, the Court reset the hearing for the presentation of petitioner's rebuttal evidence to November 25, 2019.

During the presentation of petitioner's rebuttal evidence, only counsels for respondent appeared.[66] In the interest of justice, the Court reset the presentation of petitioner's rebuttal evidence to January 27, 2020.[67]

On January 22, 2020, petitioner filed a *Compliance*[68] submitting the Judicial Affidavit[69] of Mr. Ramos.

On January 27, 2020, petitioner's recalled witness, Mr. Ramos, completed his testimony.[70] Upon oral motion, the Court set a commissioner's hearing on February 17, 2020.[71]

Petitioner was given a period of five days from March 18, 2020, or until March 23, 2020, to file its FOE, and respondent was given the same period from receipt thereof to file his comment.

[62] *Id.*, pp. 700-713, with annexes.
[63] *Id.*, p. 720.
[64] *Id.*, pp. 722-725.
[65] *Id.*, pp. 731-740.
[66] Minutes of the Hearing, Docket – Vol. II, p. 741; Order, Docket – Vol. II, p. 742.
[67] *Id.*
[68] *Id.*, pp. 743-744.
[69] *Id.*, pp. 745-777.
[70] Minutes of the Hearing, Docket – Vol. II, p. 832; Order, Docket – Vol. II, p. 833.
[71] *Id.*

On July 6, 2020, petitioner filed a *Motion to Set Commissioner's Hearing for the Marking of Exhibits*,[72] which the Court granted on July 8, 2020, setting the case for commissioner's hearing on August 12, 2020.[73] Petitioner was given a non-extendible period of ten days from the commissioner's hearing to file its FOE, and respondent is given the same period from receipt thereof to file his comment.

On December 15, 2020, the Court received petitioner's *Motion for Reconsideration with Motion to Admit Formal Offer of Exhibits*[74] filed through registered mail on October 15, 2020, without respondent's comment as per Records Verification dated February 3, 2021.[75]

On March 3, 2021, the Court issued a Resolution[76] granting petitioner's *Motion for Reconsideration with Motion to Admit Formal Offer of Exhibits* and admitting petitioner's *Formal Offer of Exhibits*. The Court also set the case for commissioner's hearing on April 12, 2021 for the comparison of petitioner's pre-marked exhibits. Petitioner was given a period of five days from the date set for commissioner's hearing to submit its Supplemental FOE, while respondents were given the same period from receipt thereof to file a comment. Also, considering the admission of petitioner's FOE, respondents were further given by the Court a period of five days from receipt of the Resolution to file a comment on petitioner's FOE.

On May 26, 2021, petitioner filed a *Motion for Commissioner's Hearing*,[77] which the Court granted on July 14, 2021.[78] The case was set for commissioner's hearing on September 13, 2021 for the comparison of petitioner's documentary exhibits. Petitioner was given a period of five days from the commissioner's hearing to file its Supplemental FOE, and respondens were given the same period from receipt thereof to file comment.

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[72] *Id.*, pp. 857-859.
[73] Order, *id.*, p. 861.
[74] *Id.*, pp. 863-920.
[75] Docket – Vol. III, p. 977.
[76] *Id.*, pp. 979-981.
[77] *Id.*, pp. 983-985.
[78] Order, *id.*, p. 1001.

On October 14, 2021, petitioner filed a *Motion for Commissioner's Hearing*,[79] which the Court granted on November 22, 2021.[80] A commissioner's hearing was set on January 19, 2022 and petitioner was given a period of five days from said date to file its Supplemental FOE, while respondents were given the same period from receipt thereof to file a comment or opposition.

On February 16, 2022, petitioner filed a *Motion for Commissioner's Hearing*,[81] which the Court granted on February 24, 2022.[82] Accordingly, the case was set for commissioner's hearing on March 28, 2022. Petitioner was given a period of ten days from March 28, 2022, or until April 7, 2022 to file its Supplemental FOE. Respondents were given the same period from receipt thereof to file a comment.

On April 4, 2022, petitioner filed its *Compliance*[83] adopting its *Formal Offer of Exhibits* attached in its Motion for Reconsideration filed on October 15, 2020. The Court noted the same in its Resolution dated April 20, 2022[84] and gave respondents ten days from receipt of the said Resolution to file a comment on petitioner's FOE. Respondents failed to file a comment as per Records Verification dated May 17, 2022.[85]

On June 8, 2022, the Court, in its Resolution,[86] admitted all evidence in petitioner's *Formal Offer of Exhibits* in relation to the presentation of rebuttal evidence on January 27, 2020. The Court gave respondent a period of five days from receipt of the Resolution to file a manifestation on the presentation of sur-rebuttal evidence. The parties were ordered to submit their respective memoranda within 30 days after the lapse of the five-day period.

On July 11, 2022, the Court received petitioner's *Manifestation with Motion to Correct the Entries in the Formal Offer of Exhibits*[87] filed *via* courier, which the Court noted and granted in its Resolution dated July 26, 2022.[88] Considering that respondents did not file any manifestation on the

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[79] *Id.*, pp. 1002-1004.
[80] Resolution, *id.*, pp. 1007-1008.
[81] *Id.*, pp. 1009-1013.
[82] Order, *id.*, p. 1015.
[83] *Id.*, pp. 1036-1040.
[84] *Id.*, p. 1043.
[85] *Id.*, p. 1044.
[86] Resolution, *id.*, pp. 1046-1049.
[87] *Id.*, pp. 1050-1055.
[88] *Id.*, pp. 1058-1060.

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presentation of sur-rebuttal evidence, the parties were given 30 days from receipt of the Resolution to submit their respective Memoranda.

On September 8, 2022, respondent filed a *Manifestation*[89] stating that he would adopt the arguments in his Answer filed on September 21, 2018 as his memorandum, while the Court received on October 14, 2022, petitioner's *Memorandum for the Petitioner*[90] filed *via* courier.

On October 27, 2022, the Court considered the case submitted for decision.[91]

On November 14, 2022, the Court received petitioner's *Motion (to Correct Clerical Error)*[92] filed *via* courier, which the Court granted and noted the error in paragraph 12 of the Petition for Review.[93]

THE ISSUES

The parties submit the following issues for the Court's resolution:[94]

> Whether or not [p]etitioner is liable for advance VAT in the amount of ₱164,268,558.59, EWT on Director's Fee in the amount of ₱182,790.00 and [c]ompromise [p]enalty of ₱25,000.00.
>
> Whether or not the right of the CIR and/or his duly authorized representative to make an assessment had already prescribed.

Petitioner's arguments:

Petitioner argues that it is exempt from paying national internal revenue taxes under Articles 61 and 62 of Republic Act (RA) No. 6938 otherwise known as the Cooperative Code of the Philippines and Section 109 (l) of the NIRC of 1997, as amended.[95] Petitioner claims that it was issued a Tax Exemption Certification on June 22, 2011 pursuant to the BIR

[89] *Id.*, pp. 1061-1064.
[90] *Id.*, pp. 1067-1094.
[91] Resolution, *id.*, p. 1097.
[92] *Id.*, unpaged.
[93] Resolution dated December 12, 2022, *id.*, unpaged.
[94] JSFI, Docket – Vol. II, p. 483.
[95] Formerly Section 109 (r) prior to the amendment put into effect by RA 9337 in 2005.

Ruling No. ECCP-012-2001 and was issued Certificates of Tax Exemption on November 16, 2011 and December 6, 2016, which is valid until December 5, 2021. Petitioner's tax-exempt status was also earlier confirmed by respondent in the Decision dated January 26, 2016.

Petitioner avers that the several withdrawals of refined sugar in TY 2006 were all covered by Authorization Allowing the Release of Refined Sugar (AARRS), among the requirements for its issuance is the presentation to the BIR of sugar quedan, which must be in the name of the owner of the sugar to be withdrawn. Hence, there was regularity in the issuance of the AARRS in 2006.

Petitioner denies that it has paid Director's fees for TY 2006 and submits that it is incumbent upon respondent to prove that petitioner paid the Director's fees for said year.

Lastly, petitioner argues that the assessment was issued beyond the 3-year prescriptive period since the FAN for TY 2006 was issued only in 2011.

Respondent's arguments:

Respondent contends that petitioner is not exempt from paying national internal revenue taxes by echoing his assailed Decision dated May 9, 2018, *i.e.*, petitioner does not own nor produce the refined sugar and has been dealing with both members and non-members.

Respondent insists that the assessment issued is valid as it was issued within ten years from March 9, 2009, which is the time of discovery of petitioner's non-filing of VAT return, pursuant to Section 222 (a) of the NIRC of 1997, as amended.

THE COURT'S RULING

The Court has jurisdiction over the present case.

Before proceeding to the merits of the case, We shall first determine whether the Court has jurisdiction to take cognizance of this case.

Section 7(a)(1) of RA No. 1125,[96] as amended by RA No. 9282, provides:

> SEC. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> ... ...
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving <u>disputed assessments</u>**, 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. (*Emphasis supplied*)

The above provision is implemented by Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA),[97] to wit:

> SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> ... ...
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving <u>disputed assessments</u>**, 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. (*Emphasis supplied*)

Under Section 228 of the NIRC of 1997, as amended, if the protest or *administrative appeal* is denied, in whole or in part, by the Commissioner, the taxpayer adversely affected by the decision may appeal to the CTA within 30 days from receipt of the adverse decision; otherwise, the decision shall become final, executory and demandable. Section 228 partly reads:

[96] AN ACT CREATING THE COURT OF TAX APPEALS.
[97] A.M. No. 05-11-07-CTA, November 22, 2005.

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:**

... ...

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.

... ...

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

Corollary, Section 3 of Revenue Regulations (RR) No. 12-99,[98] as amended by RR No. 18-2013,[99] implements Section 228 of the NIRC of 1997, as amended, as it lays down a more detailed procedure relative to the issuance and protest of a deficiency tax assessment.

Specifically, Section 3.1.4 of RR No. 12-99, as amended, provides the taxpayer's options on disputed assessment, to wit:

SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

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[98] 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.

[99] Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

... ...

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.** ...

... ...

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 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**.

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**

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> **after the receipt of a copy of such decision.** (*Emphasis supplied*)

Indeed, if the taxpayer opted to await the CIR's final decision on the disputed assessment and he denies the taxpayer's protest or administrative appeal, the taxpayer has 30 days from receipt of the CIR's adverse decision to appeal to the CTA.

The pertinent dates and events in determining the timeliness of the present *Petition for Review* are as follows:

Letter/Notice	Receipt date	Remedy availed	Deadline of filing	Filing date
FLD/FAN	February 11, 2011	Protest filed with the Regional Director	March 13, 2011	March 4, 2011
Final Decision issued by the Regional Director	October 3, 2013	Administrative appeal filed with the CIR	November 2, 2013	October 24, 2013
Decision by the CIR	May 22, 2018	**Petition for Review filed with the CTA**	June 21, 2018	**June 20, 2018**

Petitioner filed a *Petition for Review* with this Court on June 20, 2018, which is within 30 days from its receipt of the CIR's decision on its administrative appeal. Pursuant to Section 228 of the NIRC of 1997, as amended, in relation to Section 11[100] of RA No. 1125, as amended, and Section 3(a)[101] of Rule 8 of the RRCTA, petitioner timely filed the instant *Petition*. Thus, the Court has the requisite jurisdiction to take cognizance of this case.

[100] SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* — **Any party adversely affected by a decision, ruling** or inaction **of the Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. (*Emphasis supplied*)

[101] SEC. 3. *Who may appeal; period to file petition.* —
(a) **A party adversely affected by a decision, ruling** or the inaction **of the Commissioner of Internal Revenue on disputed assessments** or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review with in the two-year period prescribed by law from payment or collection of the taxes. (*Emphasis supplied*)

The RO who continued the audit was not authorized by a valid LOA to perform the assessment function; hence, the resulting tax assessment is void ab initio.

Based on the records, LOA No. 2007-00029059 was issued by Rodita B. Galanto, OIC-Regional Director of RR No. 12, authorizing RO Panelo and GS Eltanal of RDO No. 77 to examine petitioner's books of account and other accounting records for all internal revenue taxes for the period January 1, 2006 to December 31, 2006. However, it was RO Alacapa who continued the investigation of petitioner's tax liabilities for TY 2006 and recommended the issuance of assessment against petitioner[102] pursuant to a MOA issued by RDO Minguez-Gatdula. Moreover, it was another BIR officer, RO Desuyo, who prepared the respective Details of Discrepancies attached in the PAN[103] and FLD.[104]

To emphasize, the requirement to issue a separate LOA to the ROs tasked to continue the investigation is not novel and has been the subject of numerous decisions of the Supreme Court,[105] foremost among which is the case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.* (*McDonald's*),[106] where the Supreme Court declared that:

> The practice of **reassigning** or **transferring revenue officers originally named in the Letter of Authority (LOA)** and substituting or replacing them with new revenue officers to continue the audit or investigation **without a separate or amended LOA** (i) **violates the taxpayer's right to due process in tax audit or investigation**; (ii) usurps the statutory power of the Commissioner of Internal Revenue (CIR) or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing Bureau of Internal Revenue (BIR) rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his duly authorized representative to examine the taxpayer's books of accounts. (*Emphasis supplied*)

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[102] BIR Records, p. 298.
[103] Exhibit "R-7", BIR Records, pp. 389-390.
[104] Exhibit "R-8", BIR Records, pp. 394-395.
[105] *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue (CIR)*, G.R. No. 241848, May 14, 2021; *CIR v. Opulent Landowners, Inc.*, G.R. Nos. 249883-84, January 27, 2020; *CIR v. Composite Materials, Inc.*, G.R. No. 238352, September 12, 2018.
[106] G.R. No. 242670, May 10, 2021.

In the case of *Republic v. Robiegie Corporation*,[107] the Supreme Court reiterated that the power of an RO to investigate flows from a validly issued LOA; thus, the reassignment of a taxpayer investigation to a different RO must also be made pursuant to a LOA, *viz.*:

> In conclusion, we reiterate that **the power of a BIR revenue officer to conduct taxpayer investigations flows from a validly issued LOA**, which is the statutorily defined modality for the delegation of the investigatory powers vested in the CIR by law. Thus, **the reassignment** of a taxpayer investigation to a different revenue officer **must also be made pursuant to a LOA**, the one-LOA-per-taxpayer rule notwithstanding. When a taxpayer investigation is transferred from one revenue officer to another, the responsible BIR official with authority to issue LOAs shall issue a new LOA to the new revenue officer assigned to the investigation. The old LOA in favor of the reassigned revenue officer shall be deemed cancelled, and the new LOA issued to the subsequently designated revenue officer shall prevail, in accordance with the provisions of RMO No. 8-2006, issued on February 1, 2006. (*Emphasis supplied*)

In the more recent case of *Commissioner of Internal Revenue v. Manila Medical Services, Inc.*,[108] the Supreme Court emphasized that if the ROs indicated in the LOA were reassigned or transferred to another case, the new handling RO must also be issued with a new LOA, *viz.*:

> Evidently, contrary to the CIR's argument, if the revenue officers that were previously indicated in a LOA were reassigned or transferred to another case and as such, a new revenue officer will handle the case that was previously assigned to them, **the issuance of a new LOA in favor of the new handling revenue officer is required**. (*Emphasis supplied*)

In fine, there must be a grant of authority in the form of a LOA, before any RO can conduct an examination or assessment.[109] Only the ROs actually named under the LOA are authorized to examine the taxpayer[110] and only the CIR and his/her duly authorized representatives, *i.e.*, Deputy Commissioners, the Revenue Regional Directors, and such

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[107] G.R. No. 260261, October 3, 2022.
[108] *CIR v. Manila Medical Services, Inc.*, G.R. No. 255473, February 13, 2023.
[109] *CIR v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021, citing *CIR v. Sony Philippines, Inc.*, G.R. 178697, November 17, 2010.
[110] *CIR v. Opulent Landowners, Inc.*, G.R. Nos. 249883-84, January 27, 2020.

other officials as may be authorized by the CIR,[111] may issue the LOA.

Moreover, the reassignment or transfer of an RO requires the issuance of a new or amended LOA that will enable the substitute or replacement RO to continue the audit or investigation.[112] A MOA, referral memorandum, or any equivalent document is not proof of the existence of authority of the substitute or replacement revenue officer.[113] Neither is a Referral Memorandum issued by the RDO directing another RO to continue with the examination equivalent to a LOA nor does it cure the RO's lack of authority.[114] In the absence of a new LOA issued in favor of the ROs who recommended the issuance of the deficiency tax assessment against the respondent, the resulting assessment is void.[115]

In this case, it is undisputed that a LOA was initially issued authorizing RO Panelo and GS Eltanal to audit and assess petitioner for TY 2006.[116] However, the audit investigation of petitioner's books and other accounting records was reassigned to, and continued by, RO Alacapa by virtue of a MOA signed by RDO Minguez-Gatdula, without the issuance of a new LOA.

As stated earlier, RDO Minguez-Gatdula did not have the requisite authority to issue LOAs. The MOA she issued in favor of RO Alacapa is not equivalent to a LOA and did not vest RO Alacapa with the authority to continue the audit investigation of petitioner. Without the new LOA, RO Alacapa had no authority to continue the examination of petitioner's account for TY 2006.

The lack of the RO's authority to conduct an audit goes into the validity of the assessment and is tantamount to the absence of a LOA itself which results in a void assessment.[117] Hence, as a result of RO Alacapa's lack of authority, the resulting assessment against petitioner is void for having violated the latter's right to due process.

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[111] *CIR v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021, citing Sections 6, 10 and 13 of the NIRC of 1997 and Sec. D (4) of RMO No. 43-90.
[112] *Id.*
[113] *Id.*
[114] *CIR v. Composite Materials, Inc.*, G.R. 238352, September 12, 2018.
[115] *CIR v. Opulent Landowners, Inc.*, G.R. Nos. 249883-84, January 27, 2020.
[116] Exhibit "P-6", Docket – Vol. I, p. 265; Exhibit "R-2", BIR Records, p. 1.
[117] *Id.*

Nonetheless, even if RO Alacapa had the authority to continue the audit of petitioner, the PAN and FLD/FAN issued in this case are still void on account of lack of factual and legal basis, as discussed below.

The assessment lacks factual and legal basis.

The VAT exemption of petitioner as a duly registered cooperative with CDA was denied by respondent[118] despite petitioner's presentation of its Certificate of Registration[119] and Certificate of Good Standing,[120] both issued by the CDA, and its tax exemption granted under BIR Ruling No. ECCP-012-2001[121] dated June 22, 2001.

At the outset, the Court finds it proper to cite the Supreme Court ruling in *Commissioner of Internal Revenue v. VMC Farmers Multi-Purpose Cooperatives*, (*VMC Farmers*)[122] citing *Commissioner of Internal Revenue v. Negros Consolidated Farmers Multi-Purpose Cooperative*,[123] which declared that petitioner is exempted from payment of VAT including the payment of "advance VAT" upon the withdrawal of the refined sugar from the sugar mill, *viz.*:

> ***VMC is exempted from payment of VAT***
>
> The issue here is not novel. In the recent case of *Commissioner of Internal Revenue v. Negros Consolidated Farmers Multi-Purpose Cooperative*, the Court had already settled that exemption from **the payment of VAT on sales made by the agricultural cooperatives to members or to non-members necessarily includes exemption from the payment of "advance VAT" upon the withdrawal of the refined sugar from the sugar mill.**
>
> By express provisions of law, the sale by agricultural cooperatives duly registered with the CDA to their members are exempt from VAT. Article 109 (L) of the NIRC of 1997, as amended, and Article 60 of RA 9520 provide:

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[118] Par. 4, Answer, Docket – Vol. I, p. 144.
[119] Exhibit "P-3", Docket – Vol. I, p. 429.
[120] Exhibit "P-4", Docket – Vol. I, p. 318.
[121] Exhibit "P-5", Docket – Vol. I, pp. 319-321.
[122] G.R. No. 225239 (Notice), February 12, 2020.
[123] G.R. No. 212735, December 5, 2018.

> SEC. 109. Exempt Transactions. — x x x **the following transactions shall be exempt from the value-added tax**:
>
> xxx xxx xxx
>
> (L) **Sales by agricultural cooperatives duly registered with the Cooperative Development Authority to their members** as well as sale of their produce, whether in the original state or processed form to non-members, their importation of direct farm inputs, machineries and equipment including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce; x x x
>
> ART. 60. Tax Treatment of Cooperatives. — **Duly registered cooperatives under this Code which do not transact any business with non-members or the general public shall not be subject to any taxes and fees imposed under the internal revenue laws and other tax laws.**

Cooperatives not falling under this article shall be governed by the succeeding section. (*Emphasis on the original*)

In *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative,* the Court laid down the following conditions for an agricultural cooperative to be exempt from VAT, *viz.*:

> *First,* **the seller** must be an agricultural cooperative duly registered with the CDA. An agricultural cooperative is "duly registered" when it **has been issued a certificate of registration by the CDA**. This certificate is conclusive evidence of its registration.
>
> *Second,* **the cooperative must sell either**:
>
> 1) exclusively to its members; or
>
> 2) **to both members and non-members, its produce**, whether in its original state or processed form.
>
> The second requisite differentiates cooperatives according to its customers. If the cooperative transacts only with members, all its sales are VAT-exempt, regardless of what it sells. On the other hand, <u>if it transacts with both</u>

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> members and non-members, the product sold must be the cooperative's own produce in order to be VAT-exempt. Stated differently, if the cooperative only sells its produce or goods that it manufactures on its own, its entire sales is VAT-exempt. (*Boldfacing on the original; underlining supplied*)

VMC satisfies these requisites.

First, **VMC presented its Certificate of Registration and Certificate of Good Standing both issued by the CDA**. The CIR never objected to its authenticity or validity. Thus, these certificates are conclusive proof that VMC is duly registered with the CDA.

Second, **the BIR itself issued a Certificate of Tax Exemption to VMC** certifying it is a cooperative transacting with members only and entitled to exemptions and incentives provided under Article 60 of RA 9520, including exemption from VAT on CDA-registered sales or transactions[.] ...

We agree with the CTA's findings that **pursuant to the principle of presumption of regularity in the performance of official functions, the BIR issued the Certificate of Tax Exemption in the discharge of its official duties and functions.** Surely, **the BIR would not have issued the certification if it has not determined that VMC met the requirements to be granted a tax exempt status**. Being disputable presumptions, these could have been controverted by evidence to the contrary. But instead of offering documents to negate the same, the CIR chose to waive its right to present evidence.

Thus, it is undisputed here that VMC belongs to the category of duly registered cooperatives which transact business with members only. Its transactions, therefore, are vat-exempt. (*Emphasis supplied*)

VMC is entitled to a refund of the advance VAT paid

As regards the CIR's contention that VMC failed to submit complete documentary requirements to support its claim for tax refund, suffice it to say that, VMC was a previous recipient and holder of certificates of tax exemption issued by the BIR, and following the Court's pronouncements in *Commissioner of Internal Revenue v. Negros Consolidated Farmers Multi-Purpose Cooperative* and *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative,* **the issuance of the certificate of tax exemption presupposes that the cooperative**

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> **submitted to the BIR the complete documentary requirements to be accorded a tax-exempt status.**
>
> ... ...
>
> Verily, having established that VMC satisfied the requirements under Section 109 (L) of RA 8424, as amended, to enjoy the exemption from VAT on its sale or withdrawal of refined sugar; its exemption from the payment of advance VAT for withdrawals made from May 31, 2011 to April 16, 2012 follows, as a matter of course.
>
> If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness. (*Emphasis supplied*)

In assessing petitioner of advance VAT, respondent claims that petitioner is not the owner/producer of the sugar as shown in the sugar quedans which were not under petitioner's name.[124]

Respondent, however, failed to offer said sugar quedans as evidence. Even the BIR records do not contain any sugar quedans at all as confirmed by respondent's witness Atty. Collado, during his cross-examination:[125]

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ATTY. OCAMPO:
Q. And subject goods of this advance VAT
assessment, these are refined sugar, correct?

ATTY. COLLADO:
A. Yes.

ATTY. OCAMPO:
Q. And you said in the findings, that it was stated
that the Quedans are not in the name of the
petitioner, is that correct?

ATTY. COLLADO:
A. That is the findings of the regional office.

ATTY. OCAMPO:
Q. Can you show me the Quedan, a few samples only
Mr. Witness, that Quedan is not in the name of the
petitioner?
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[124] Par. 2, Exhibit "P-2", assailed Decision, Docket – Vol. II, p. 618.
[125] TSN dated August 7, 2019.

> ATTY. COLLADO:
> A. Well we have to note that the audit undertaken was based on the best evidence obtainable rule because some of the documents were not submitted by the taxpayer.
>
> ... ...
>
> JUSTICE CASTAÑEDA:
> Clarificatory question. Were there Quedans under the name of the taxpayers?
>
> ATTY. COLLADO:
> A. Your Honors, **I don't see any Quedans but as found by the regional office, the Quedans were not in the name of VMC** and some of the Quedans were under the names of independent planters. Some other Quedans were in the name of VMC but bearing different plantation audit numbers and TINs so that they infer that the VMC is not the producer of the sugar because of the variation of the names indicated in the Quedans as found in the audit. **I don't see the Quedans in the BIR records when I evaluated the same.**[126]
>
> ... ...
>
> ATTY. OCAMPO:
> Q. You said that the sugar, Quedan, was not in the name of the petitioner, is that correct?
>
> ATTY. COLLADO:
> A. Yes.
>
> ATTY. OCAMPO:
> Q. But you did not bring here import, a single Quedan that would prove your statement, is that correct?
>
> ATTY. COLLADO:
> A. Yes, because **I only based the same on the BIR records forwarded to our office for resolution.**[127] (*Emphasis supplied*)

More, respondent's witness merely relied upon the report of the Regional Office, whose concerned officer was not presented by respondent as a witness to testify as to the existence of the alleged quedans that were not in the name of petitioner. While there is a *prima facie* presumption in favor of

[126] *Id.*, pp. 8-10.
[127] *Id.*, pp. 13-14.

the correctness of the assessment, this does not apply where there is proof that the assessment was arbitrarily made.[128]

A reading of the Details of Discrepancies attached to the PAN[129] and FLD[130] shows that respondent based his finding that petitioner is not the producer of refined sugar upon the "listings of official warehouse receipt quedans", as well as the "BIR data" disclosing that petitioner withdrew certain quantity of refined sugar without payment of advance VAT, to wit:

> DETAILS OF DISCREPANCIES
> Taxable Year 2006
>
> The assessment was based on the Authorization Allowing the Release of Refined Sugar (AARS) [*sic*] issued to you on the withdrawal of refined sugar without payment of Advance VAT. The assessment are [*sic*] made on best evidence obtainable pursuant to Section 6 (B) of the National Internal Revenue Code, as amended, for failure to submit the following:
>
> 1. Books of Accounts and its supporting documents;
> 2. List of Buyers;
> 3. Documents to prove that your Cooperative is a **producer**
> (Listings of Official Warehouse Receipt Quedan showed the Names of Planters, they being the holders of Planters Code or Plantation Audit No., therefore, you are not the planter-producer and your role was only to market the produce of the planters.);
>
> Moreover, your financial statements failed to prove that indeed you incurred production expenses that would make you a co-producer as per your allegation.
>
> Based on the foregoing, hereunder are the assessed deficiency taxes and penalties:
>
> DEFICIENCY VALUE ADDED TAX
>
> Per BIR data, you had withdrawn 840,461 LKG of refined sugar for the taxable year 2006 without payment of Advance VAT, thus deficiency VAT was assessed in the total amount of ₱164,268,558.59, inclusive of penalties, after allowing input tax on tolling fees amounting to ₱12,117,449.73. The assessment was based on Revenue Regulations (RR) No. 29-2002 dated December 9, 2002, as amended by Revenue Regulations No. 2-2004 dated January

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[128] *CIR v. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005; *CIR v. Spouses Magaan*, G.R. No. 232663, May 3, 2021.
[129] BIR Records, p. 390.
[130] *Id.*, p. 395.

> 2, 2004. Surcharge and interest were imposed pursuant to Sections 248 (A) and 249 (A) of the National Internal Revenue Code (NIRC), as amended. Section 4.115(b) of RR 16-2005 further enunciated the imposition of surcharge, interest and other penalties to VAT liabilities determined per audit.[131] (*Emphasis on the original*)

Unfortunately, as pointed out earlier, there is nothing in the records that could point to the existence of the quedans showing names besides petitioner and the "BIR data" from which respondent based its deficiency assessment. Respondent also has no other evidence to prove that petitioner is not the producer of the refined sugar aside from the allegations in the assessment.

On the other hand, petitioner was able to present the original copies of the AARRS[132] issued by respondent for TY 2006, where it could be construed that petitioner complied with the procedure provided under RR No. 29-2002, which was invoked by respondent in his assessment against petitioner:

> SEC. 6. *Proof of exemption from the advance payment.* - **If a duly-registered agricultural cooperative claims ownership of refined sugar** stocked in the sugar mill/refinery, **the latter shall not release the said refined sugar unless an *Authorization Allowing the Release of Refined Sugar* (Annex B) is first secured from** the Revenue District Office or any duly constituted unit in its place such as **the Regional Task Force on Sugar** created by the Regional Director as the latter may decide, **of the BIR office having jurisdiction over the physical location of the sugar mill/refinery. In securing such authorization, the cooperative shall, in addition to that of satisfying the VAT-exemption requirements under RR No. 20-2001, submit to the** RDO or **Regional Task Force** concerned ***a Sworn Statement*** (Annex C) **to the effect that-**
>
> a.) The sugar has not been bidded, sold or otherwise transferred in ownership, at anytime prior to the removal from the refinery, to a trader or another entity; and
>
> b.) **The refined sugar is the property of the cooperative at the time of removal** and it will not charge advance VAT or any other tax to the future buyer.

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[131] *Id.*, p. 395.
[132] Exhibits "P-28-25", "P-29-25", "P-30-25", "P-31-25", "P-32-25", "P-33-25", "P-34-25", "P-34-25", "P-35-25", and "P-36-25", Docket – Vol. II, pp. 926, 932, 938, 944, 950, 956, 961, 967, and 973, respectively.

> **If the cooperative invokes ownership over the sugar cane and the milled/refined sugar, <u>the sugar quedans must be in the name of the cooperative</u>.** (*Emphasis supplied*)

Hence, in compliance with Section 6 of RR No. 29-2002, petitioner submitted request letters to withdraw the refined sugar, attaching thereto the quedans in its name[133] and Sworn Statements to the Regional Special Task Force – Sugar of RR No. 12,[134] which led to the issuance of the AARRS by the latter. This convinces the Court that the quedans are in the name of petitioner as owner since the quedans are prerequisites for the issuance of AARRS under Section 6 of RR No. 29-2002. Applying *VMC Farmers*, the issuance of the AARRS presupposes that petitioner submitted to respondent the complete documentary requirements to be accorded exemption from the advance VAT payment.

Also, petitioner was able to offer as evidence its tax exemption through the BIR Ruling No. ECCP-012-2001,[135] which was not revoked by respondent as he did not adduce any documentary evidence to prove otherwise. The fact of non-revocation of said BIR Ruling was also confirmed by respondent's witness Mr. Collado:[136]

> ATTY. OCAMPO:
> Q. That ECCP ruling 12-2001, will you agree with me that this was never revoked by the BIR?
>
> ATTY. COLLADO:
> A. Yes.

Based on the foregoing, the assessment has no factual basis nor sufficient supporting evidence and must therefore be cancelled.

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[133] See Exhibits "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", and "P-36", Docket – Vol. II, pp. 921, 927, 933, 939, 945, 951, 957, 962, and 968, respectively.
[134] Exhibits "P-28-3", "P-29-3", "P-30-3", "P-31-3", "P-32-3", "P-33-3", "P-34-3", "P-35-3", and "P-36-3", Docket – Vol. II, pp. 922, 928, 934, 940, 946, 952, 958, 963, and 969, respectively.
[135] Exhibit "P-5", Docket – Vol. I, pp. 319-321.
[136] TSN dated August 7, 2019, p. 7:

The CIR's right to assess taxes had prescribed.

Even if the assessment against petitioner has factual and legal basis, the same must be cancelled for having been issued beyond the prescriptive period.

Sections 203 and 222 of the NIRC of 1997, as amended, provides for the prescriptive period in the assessment and collection of internal revenue taxes:

> SEC. 203. *Period of Limitation upon Assessment and Collection.* — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.
>
> SEC. 223. *Exceptions as to a period of limitation of assessment and collection of taxes.* — (a) **In the case** of a false or fraudulent return with intent to evade tax or **of a failure to file a return, the tax may be assessed**, or a proceeding in court for the collection of such tax may be begun without assessment, **at any time within ten years after the discovery of the** falsity, fraud, or **omission**: ...
>
> ... ...
>
> (c) **Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a)** hereof **may be collected** by distraint or levy or by a proceeding in court **within five (5) years following the assessment of the tax**. (*Emphasis supplied*)

The BIR has an ordinary period of three years, in cases of assessments issued under Section 203, to assess taxes and another three years to collect taxes.[137] However, in case of failure to file a return, the BIR has an extraordinary period of ten years from its discovery of the omission to assess and another five years following assessment to collect taxes.[138]

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[137] *CIR v. Court of Tax Appeals Second Division*, G.R. No. 258947, March 29, 2022, citing *CIR v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.
[138] *CIR v. Court of Tax Appeals Second Division*, G.R. No. 258947, March 29, 2022.

Respondent asserts that the assessment has not yet prescribed because of petitioner's non-filing of VAT returns, which was only discovered on March 9, 2009. Hence the 10-year extraordinary period to assess applies.

Respondent is mistaken.

As discussed above, petitioner is exempt from payment of advance VAT. It would be incorrect to say that petitioner failed to file its VAT returns for TY 2006 because it was the BIR that issued the various AARRS in 2006 exempting petitioner from paying the subject advance VAT in the first place. Absent any evidence that petitioner obtained the AARRS by committing falsity or fraud, respondent only had three years from the last day prescribed by law for filing of the VAT return or even from the issuance of the AARRS in 2006 to assess petitioner. Consequently, respondent's right to assess had already prescribed when he issued the FLD/FAN on January 11, 2011.

We find it necessary to stress that the assessment not only violated petitioner's right to due process but also appears to have been arbitrarily arrived at. As such, respondent cannot collect taxes from a void assessment as it bears no valid fruit.[139]

WHEREFORE, premises considered, the instant *Petition for Review* is **GRANTED**. The Decision dated May 9, 2018 issued by the Commissioner of Internal Revenue is **SET ASIDE**. Accordingly, the (a) Assessment Notices with Nos. FDDA-00014-2018, FDDA-00015-2018, and FDDA-00016-2018, all dated June 28, 2018; and the (b) Assessment Notices with Nos. 00035-2011, 00036-2011, 00037-2011, and 00038-2011, all dated January 14, 2011, both for taxable year 2006, are **CANCELLED** and **WITHDRAWN** for being null and void.

Further, respondent Commissioner of Internal Revenue, his representatives, agents, or any person acting on his behalf are **ENJOINED** from proceeding with the collection of the said deficiency taxes against petitioner during the pendency of the instant case.

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[139] *Commissioner of Internal Revenue v. Reyes, et seq.*, G.R. Nos. 159694 & 163581, January 27, 2006.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice