REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

ARTDEPOT, INC.,
Petitioner,

CTA CASE NO. 8548

Members:

-versus-

BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 06 2016
4:05 p.m.

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DECISION

Fabon-Victorino, J.:

The Petition for Review dated September 28, 2012 filed by Artdepot, Inc., seeks the cancellation and withdrawal of the Warrant of Distraint and/or Levy issued by the Commissioner of Internal Revenue (CIR) on August 29, 2012 for the collection of alleged deficiency income tax (IT), value-added tax (VAT), and expanded withholding tax (EWT) in the aggregate amount of P4,801,723.69.

Petitioner Artdepot, Inc. is a registered taxpayer with Tax Identification Number (TIN) 234-392-120-000. It is located at No. 80 Apo, Barangka Ilaya, Mandaluyong, Metro Manila.[1]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), with authority to decide disputed assessments and cancel tax liabilities, pursuant to the National Internal Revenue Code (NIRC), as amended, and other tax laws, rules and regulations. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

[1] Certificate of Registration, Exhibit "P-2", docket, p. 28.

On June 29, 2009, respondent, through Regional Director Antonio F. Montemayor, issued a Letter of Authority (LOA) No. 2008-00010862 dated June 23, 2009, authorizing Revenue Officer (RO) Danny P. Rodrigo and Group Supervisor Enrique G. Del Rosario, both of Revenue District Office (RDO) No. 41, Mandaluyong City, to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period covering January 1, 2008 to December 31, 2008.[2]

Pursuant to the said LOA, respondent issued and petitioner received a Second Request for Presentation of Books and Other Accounting Records[3] for taxable year 2007. A similar request in the Final Notice[4] dated August 10, 2009 followed but this time for taxable year 2008. The same request was indicated in the subpoena *duces tecum* dated October 20, 2009, also for taxable year 2008.[5]

For alleged failure to produce the requested records and books of account for taxable year 2008[6] in violation of Section 266, in relation to Sections 253 and 256 of the NIRC, as amended, respondent filed a criminal complaint dated November 18, 2009 against, petitioner's Vice-President for Finance, Ma. Cecilia P. Abes.

Subsequently, an undated Preliminary Assessment Notice (PAN) was issued to petitioner for alleged deficiency IT, VAT, and EWT plus compromise penalty.[7] Petitioner filed a protest letter to the PAN addressed to the Assessment Division of BIR Revenue Region No. 7.[8]

In a letter dated June 27, 2011, respondent informed petitioner that a Final Assessment Notice (FAN)/Formal Letter of Demand (FLD) has been issued against it for taxable year 2007.[9] This was followed by a Collection Letter[10] dated April 23, 2012, covering internal revenue tax

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[2] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 252; Exhibit "P-19", docket, p. 59.
[3] Exhibit "P-20", docket, p. 60.
[4] Par. 2, Stipulation of Facts, JSFI, docket, p. 252; Exhibit "P-21", docket, p. 61.
[5] Par. 3, Stipulation of Facts, JSFI, docket, p. 253.
[6] Par. 4, Stipulation of Facts, JSFI, docket, p. 253.
[7] Par. 5, Stipulation of Facts, JSFI, docket, p. 253.
[8] Par. 8, Stipulation of Facts, JSFI, docket, p. 253; Exhibit "P-23", docket, pp. 72-74
[9] Exhibit "P-24", docket, p. 75.
[10] Exhibit "P-25", docket, p. 76.

liabilities for taxable year 2007. In response thereto, petitioner sent a letter[11] to respondent dated May 3, 2012.

Later, a Final Notice Before Seizure[12] was served upon petitioner for its alleged deficiency taxes for the year 2008.

On August 29, 2012, petitioner received a Warrant of Distraint and/or Levy for the said deficiency taxes[13]

On September 28, 2012, petitioner filed the instant Petition for Review.[14]

On November 21, 2012, respondent filed her Answer[15], interposing the general defense that tax assessments by tax examiners are presumed correct unless proven otherwise, that through the final notice and demand letter with details of discrepancies sent to it, petitioner was fully apprised of the facts and the law upon which the assessment was based. More importantly, the subject assessment has become final and executory since petitioner failed to timely protest the same. Petitioner admitted having received the June 27, 2011 letter informing it of the issuance of the FAN but failed to verify such information until the issuance of the Collection Letter dated April 23, 2012.

On May 31, 2013, the parties, after the termination of the Pre-trial Conference[16], filed their Joint Stipulation of Facts and Issues (JSFI) [17].

Petitioner's lone witness **Grace Cristobal-Santillan**[18], testified that as the accountant of petitioner from March 23, 2010 until February 28, 2011, she conducted audits and prepared reports and other accounting records of petitioner, including those for submission to government agencies like the BIR.

She claimed that the Warrant of Distraint and/or Levy was issued by respondent in violation of petitioner's right to due process, therefore invalid, since petitioner did not

[11] Exhibit "P-26", docket, pp. 77-79.
[12] Par. 6, Stipulation of Facts, JSFI, docket, p. 253; Exhibit "P-27", docket, p. 80.
[13] Par. 7, Stipulation of Facts, JSFI, docket, p. 253; Exhibit "P-28", docket, p. 81.
[14] Docket, pp. 6-23.
[15] Docket, pp. 87-90.
[16] Pre-Trial Order, docket, p. 266.
[17] Docket, pp. 252-258.
[18] Judicial Affidavit dated February 26, 2013, docket pp. 170-177, Exhibit P-30.

receive the alleged FAN depriving it of the opportunity to timely file proper protest.

Further, while the LOA received by petitioner pertained to the year 2008, the PAN was for the year 2007. The documents from respondent made it more confusing since some were for 2007 assessment and the others for 2008. The witness theorized that this discrepancy in the period covered prevented petitioner from intelligently filing a protest.

Moreover, the assessment upon which the Warrant is based has prescribed. Even assuming that petitioner received the alleged FAN on the date of issuance on July 7, 2011, still it was beyond the three (3) year prescriptive period under Section 203 of the NIRC, as amended. Petitioner filed its annual income tax return for the year 2007 on April 15, 2008, respondent therefore had until <u>April 15, 2011</u> to assess petitioner for deficiency income tax. On VAT, petitioner filed its quarterly VAT returns on April 26, 2007, July 25, 2007, October 25, 2007, and January 25, 2008. Thus, respondent had until <u>January 25, 2011 to assess petitioner for VAT deficiency</u>. As to Expanded Withholding Tax, the last monthly EWT return filed was on January 14, 2008, hence, respondent had until <u>January 14, 2011</u> to assess. Clearly, the FAN was issued beyond the three (3)-year prescriptive period mandated by law on July 7, 2011.

Despite the discrepancies observed in respondent's documents pertaining to the period covered, the witness was certain that the assessment was for the year 2007. Allegedly, the computation of interest in the PAN was reckoned from the statutory filing date for income tax, VAT, and EWT returns for the year 2007.

Finally, the witness stressed that petitioner never admitted receipt of the FAN from respondent. Petitioner's admission of receipt in its Letter dated May 3, 2012 refers to the respondent's Letter dated June 27, 2011 informing petitioner that a FAN was sent to it.

All exhibits formally offered in evidence by petitioner[19] were admitted in the Resolutions dated March 26, 2014[20] and June 6, 2014[21].

For her part, respondent presented Revenue Officers (ROs) Leilani C. Daguno and Danny P. Rodrigo as witnesses.

RO **Leilani C. Daguno**[22] testified that as a reviewer assigned at the Assessment Division of the BIR, she reviewed the audit findings of District Office No. 41-Mandaluyong with the recommendation for issuance of a PAN and the FAN against petitioner whom it found liable for deficiency IT, VAT and EWT based on the Best Evidence Obtainable Rule since petitioner failed to submit the required books of account and other accounting records. She approved the findings after updating the increments imposed. Her recommendation was sustained with the issuance of the PAN dated September 21, 2010 and the Formal Letter of Demand dated October 29, 2010.

RO I **Danny P. Rodrigo,**[23] assigned as revenue examiner in Revenue District No. 41-Mandaluyong since April 28, 2009, testified in June of 2009, he was assigned to audit the accounting record of petitioner under LOA No. 00010862, to ascertain payment of correct internal revenue taxes for taxable year 2008. In connection thereto, he issued several requests for presentation of records but petitioner failed to respond. In view thereof, he requested for the issuance of a subpoena *duces tecum* which petitioner likewise ignored despite receipt.

Thereafter, a Notice for Informal Conference was issued with the finding that petitioner was liable for deficiency IT, VAT, and EWT. Notwithstanding notice, petitioner failed to appear or pay the tax deficiencies. Consequently, petitioner's docket was forwarded to the Assessment Division of the BIR for the issuance of the PAN and the FAN.

The witness admitted that the LOA was for taxable year 2008 while the PAN was for the taxable period 2007. However, the Details of Discrepancy attached to the PAN

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[19] Docket, pp. 300-313.
[20] Docket, pp. 327-328.
[21] Docket, pp. 333-334.
[22] See Affidavit dated February 21, 2013, docket pp. 224-227
[23] See Affidavit dated February 27, 2013, docket pp. 220-223

indicated that the LOA was for calendar year ending December 31, 2007. Since he had no participation in the drafting or issuance of the PAN, he had no personal knowledge if such PAN or FAN were actually issued.

In the Resolution[24] dated November 25, 2014, the Court admitted all the evidence formally offered by respondent[25].

On January 27, 2015, the case was submitted for decision.[26]

THE ISSUES

The parties submitted the following issues[27] for resolution:

1. Whether or not the alleged Warrant of Distraint and/or Levy is valid and enforceable; and

2. Assuming the Warrant of Distraint and/or Levy is valid and enforceable, whether or not the formal assessment notices should be cancelled for lack of factual and legal bases.

DISCUSSION/RULING

The validity of the Warrant of Distraint and/or Levy rests upon the validity of the tax assessment. Thus, to proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[28]

The law requires respondent to inform in writing the taxpayer, such as petitioner, of the law and the facts upon which her assessment is made. Otherwise, the assessment is void. This condition is explicitly required in Section 228 of

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[24] Docket, pp. 368-369.
[25] Docket, pp. 350-356.
[26] Docket, p. 405.
[27] Pre-Trial Order, docket, p. 261.
[28] Commissioner of Internal Revenue vs. BASF Coating + Inks Phils. Inc., G.R. No. 198677, November 26, 2014.

the NIRC, as amended[29] and implemented under Revenue Regulations (RR) No. 12-99, specifically in Section 3 thereof[30].

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[29] 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:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

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

[30] SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* -

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 *Notice for informal conference.* - The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

3.1.2 ***Preliminary Assessment Notice (PAN).*** - If after review and evaluation by **the Assessment Division or by the Commissioner or his duly authorized representative**, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office **shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based** (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

3.1.3 *Exceptions to Prior Notice of the Assessment.* - The notice for informal conference and the preliminary assessment notice shall not be required in any of the following cases, in which case, issuance of the formal assessment notice for the payment of the taxpayer's deficiency tax liability shall be sufficient:

(i) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the tax return filed by the taxpayer; or

(ii) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(iii) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(iv) When the excise tax due on excisable articles has not been paid; or

(v) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

3.1.4 *Formal Letter of Demand and Assessment Notice.* - **The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative.** The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX B hereof). **The same shall be sent to the taxpayer only by registered mail or by personal delivery.** If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the

As part of the due process requirements, the notices relative to tax assessment must be served on and received by the taxpayer. In the instant case, respondent insists but petitioner denies receipt of the Notice for Informal Conference[31] and the FAN/FLD with attached Details of Discrepancies[32], although it confirmed receipt of the following documents:

1. LOA No. 2008-00010862 dated June 23, 2009;[33]
2. Second Request For Presentation of Books and Other Accounting Records;[34]
3. Final Notice from the BIR dated August 10, 2009;[35]
4. Undated PAN with Details of Discrepancies;[36]
5. Letter dated June 27, 2011;[37]
6. Collection Letter dated April 23, 2012;[38]
7. Final Notice Before Seizure;[39] and
8. Warrant of Distraint and/or Levy.[40]

Respondent even claims that petitioner admitted the receipt of the Letter dated June 27, 2011 informing it about the FAN.

It has been ruled that if the taxpayer denies receipt of the assessment from the BIR, the *onus probandi* is shifted on respondent to prove by clear and competent evidence that such notice was indeed received by the taxpayer-addressee in the due course of mail.[41] Although there is no specific requirement that the taxpayer should receive the notice within the said period, *due process requires at the very least that such notice actually be received.*[42]

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duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof.

[31] Exhibit "2", BIR Records, pp. 75-81.
[32] Exhibit "7", BIR Records, pp. 120-127.
[33] Exhibit "P-19", docket, p. 59.
[34] Exhibit "P-20", docket, p. 60.
[35] Exhibit "P-21", docket, p. 61.
[36] Exhibit "P-22", docket, pp. 65-71.
[37] Exhibit "P-24", docket, p. 75.
[38] Exhibit "P-25", docket, p. 76.
[39] Exhibit "P-27", docket, p. 80.
[40] Exhibit "P-28", docket, p. 81.
[41] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[42] *Estate of the late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue*, G.R. No. 155541, January 27, 2004.

An examination of the Notice for Informal Conference reveals that a certain SG Pacelo H.B. received it. A signature above the printed name, SG Pacelo, possibly a security guard, and the date March 30, 2010 appear and below is the printed name of one Geraldine Ayllon but without any signature.

Significantly, there is no indication that SG Pacelo H.B. has been authorized to receive any communication for and in behalf of petitioner. Without proof of his authorization, or at the very least his connection with petitioner, his receipt of the Notice for Informal Conference is of no moment. His receipt cannot be deemed that of petitioner.

Even assuming that the Notice for Informal Conference was received by petitioner, there is no evidence that petitioner received the FAN and the FLD[43] dated October 29, 2010 with attached Details of Discrepancies. Nothing in the record shows that it was mailed or sent through whatever means by respondent and that it was received by petitioner. In fact, during the re-cross examination of respondent's witness Danny Rodrigo, he admitted that he had no personal knowledge as to whether the PAN and the FAN/FLD were served or even issued.[44]

The FLD itself does not contain any indication of receipt or even notation that the said document was received by anyone.

As to the alleged admission by petitioner in the Letter dated May 3, 2012 that it received the FAN on July 7, 2011, witness Grace Cristobal-Santillan clarified that petitioner was actually referring to Letter dated June 27, 2011 informing it about respondent's issuance of the FAN and not to the FAN. To be sure the letter informing the taxpayer that a FAN/FLD has been issued cannot be considered sufficient compliance to the express requirement of the law that the taxpayer must be informed in writing of the law and the facts upon which a tax assessment is based. The law imposes a substantive, not merely a formal, requirement.[45]

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[43] BIR Record pp. 122-124
[44] Transcript of Stenographic Notes (TSN) dated September 18, 2014, pp. 17-18.
[45] Commissioner of Internal Revenue vs. Metro Star Superama, Inc., supra, note 41.

The issuance of a valid formal assessment is a substantive prerequisite to tax collection, for it contains not only a computation of tax liabilities but also a demand for payment within a prescribed period, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor. Due process requires that it must be served on and received by the taxpayer.[46]

For lack of competent proof of petitioner's receipt of the Fan or the FLD dated October 29, 2010, the subject assessment is invalid and void[47] being in violation of petitioner's right to due process.

Even it petitioner received the FLD, the same will not save the day for respondent. The material discrepancy in the taxable year subject of the assessment created serious doubt and confusion as to the period of assessment, again, resulting in violation of petitioner's right to due process of law.

The following documents issued by respondent showed that the taxable year subject of assessment was **taxable year 2008**:

1. LOA No. 2008-00010862 dated June 23, 2009;
2. Notice for Informal Conference;
3. Final Notice from the BIR dated August 10, 2009;
4. Memorandum of RO Danny P. Rodrigo and Group Supervisor Corazon C. San Pedro dated April 26, 2010;[48]
5. Docket Information Sheet and Action Slip;[49]
6. Final Notice Before Seizure; and
7. Warrant of Distraint and/or Levy.

The following, on the other hand, are documents indicating that the subject of assessment was **taxable year 2007**:

1. Second Request For Presentation of Books and Other Accounting Records;[50]

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[46] *Commissioner of Internal Revenue vs. Dominador Menguito*, G.R. No. 167560, September 17, 2008.
[47] *Commissioner of Internal Revenue vs. Reyes*, G.R. No. 159694, January 27, 2006.
[48] Exhibit "3", BIR Records, pp. 86-87.
[49] Exhibit "5", BIR Records, p. 94.

2. PAN with Details of Discrepancies;[51]
3. Letter dated June 27, 2011;[52] and
4. Collection Letter dated April 23, 2012.[53]

Moreover, on the first page of the FLD, the period or year covered was erased and altered to reflect the year 2008, without any countersignature.[54] On the second page of the same FLD, the year subject of assessment was calendar year 2007.[55] Notably, respondent failed to explain this discrepancy.

This discrepancy in the taxable year subject of assessment is very significant as it will affect the computation of interest pertaining to the alleged deficiency taxes reckoned from January and April of the year 2008 as shown in both the PAN and the FLD, to wit:

Deficiency Interest for IT	4/16/08 to 11/29/10[56]
Deficiency Interest for VAT	1/26/08 to 11/29/10[57]
Deficiency Interest for EWT	1/16/08 to 11/29/10[58]

Since the computation of deficiency interest was reckoned from January 16, 2008 for VAT and EWT, and from April 16, 2008 for income tax, the taxable year subject of assessment cannot be for the year 2008, and must be for the year 2007.

Regardless of whether the assessment was for 2007 or 2008, respondent fell short in the due process requirement in the issuance of the subject deficiency tax assessment. The LOA No. 2008-00010862 of June 23, 2009 allegedly pertained to taxable year 2008. However, the PAN and FAN/FLD was for the taxable year 2007.

On the other hand, if the assessment was for the year 2007, the PAN and the FLD were invalid since there was no

[50] Exhibit "P-20", docket, p. 60.
[51] Exhibit "P-22", docket, pp. 65-71.
[52] Exhibit "P-24", docket, p. 75.
[53] Exhibit "P-25", docket, p. 76.
[54] BIR Record, p. 124.
[55] Exhibit "7", BIR Records, p. 123.
[56] Exhibit "7", BIR Records, p. 123
[57] Ibid.
[58] Ibid.

LOA issued to authorize the audit and assessment of petitioner for the said year.

The indispensability of a LOA in a tax assessment cannot be ignored for there must be a grant of authority before any revenue officer can conduct an audit and assessment, to wit:

> "Based on Section 13 of the Tax Code, a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
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> > **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 **<u>may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from **<u>authorizing the examination of any taxpayer</u>**. xxx [Emphases supplied]
>
> **Clearly, there must be a grant of authority before any revenue officer can**

> **conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.**" [59] *(Emphasis supplied)*

Note that the taxable year subject of assessment must be certain, in relation to the service of PAN and FAN/FLD, to determine whether or not respondent's right to assess and collect the tax assessed are within the prescriptive period. The very reason why the law provided for prescription is to give taxpayers peace of mind, that is, to safeguard them from unreasonable examination, investigation, or assessment.[60] Also, without a definite taxable year, the taxpayer would be at a loss in presenting its case and in adducing supporting documents; thus, no effective protest can be made.

Under the circumstance, confusion was already apparent right from the start when petitioner protested the PAN informing it of deficiency taxes for **calendar year ending December 31, 2007** in relation to LOA No. 00010862 which authorized the examination of books of accounts and other accounting records for the period of **January 1, 2008 to December 31, 2008**. In response to the PAN, petitioner submitted its Protest Letter[61] dated October 4, 2010 disputing the assessment for **calendar year ending December 31, 2007**. The issuance of the Warrant of Distraint and/or Levy for taxable year 2008 by respondent heightened further the confusion in violation of petitioner's right to due process.

Tax laws are civil in nature. Under our Civil Code, acts executed against the mandatory provisions of law are void, except when the law itself authorizes the validity of those acts. Failure to comply with Section 228 does not only render the assessment void, but also finds no validation in any provision in the Tax Code. The Court cannot condone

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[59] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.,* G.R. No. 178697, November 17, 2010.
[60] *Commissioner of Internal Revenue vs. Standard Chartered Bank*, G.R. No. 192173, July 29, 2015.
[61] Exhibit "P-23", docket, pp. 72-74.

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errant or enterprising tax officials, as they are expected to be vigilant and law-abiding.[62]

Since the subject delinquency tax assessments is deemed invalid, the Warrant of Distraint and/or Levy enforcing collection of the said assessment, is likewise invalid.

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

WHEREFORE, premises considered, the Petition for Review filed by petitioner Artdepot, Inc. is hereby **GRANTED**. The Preliminary Assessment Notice, the Formal Letter of Demand dated October 29, 2010, and the Assessment Notices for deficiency income tax, value-added tax, and expanded withholding tax all dated October 29, 2010, are declared **NULL** and **VOID**. Accordingly, the Warrant of Distraint and/or Levy for the amount of P4,801,723.69 is **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

WE CONCUR:

Ma. Belen M. Ringpis-Liban

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[62] Commissioner of Internal Revenue vs. Reyes, G.R. NO. 159694, January 27, 2006 and Reyes vs. Commissioner of Internal Revenue, G.R. NO. 163581

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.

LOVELL R. BAUTISTA
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice