REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

ENJAY HOTELS, INC., *Petitioner,*	**CTA Case No. 9273**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson* *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 24 2019 11:00 a.m.

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DECISION

MANAHAN, *J.:*

This Petition for Review[1] filed by petitioner Enjay Hotels, Inc. on February 24, 2016 prays for the cancellation of the Final Decision on Disputed Assessment in the aggregate amount of ₱37,283,707.53 representing petitioner's alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), final withholding VAT (FWVAT) and documentary stamp tax (DST) with surcharge, interest and compromise penalty for taxable year 2009.

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with office address at 19th Floor, Tower One & Exchange Plaza, Ayala Avenue, Makati City.[2] It is also a Bureau of Internal Revenue (BIR)-registered corporation engaged in the hotel business.[3]

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[1] Docket, CTA Case No. 9273, Vol. I, pp. 10-34.

[2] *Id.,* Vol. II, Paragraph 2, Relevant Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), p. 420.

[3] Par. 3, *Ibid.*; and Exhibit "P-1".

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the one vested by law with the authority to assess and collect all national internal revenue taxes, fees, and charges. He holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

Petitioner filed its quarterly VAT returns for the four (4) quarters of Calendar Year (CY) 2009 with the BIR, through the Electronic Filing and Payment System (EFPS), on the following dates:[4]

VAT Returns (CY 2009)	Date of Filing
Amended First Quarter[5]	December 21, 2009
Amended Second Quarter[6]	December 21, 2009
Amended Third Quarter[7]	December 21, 2009
Fourth Quarter[8]	January 25, 2010

It, likewise, filed its monthly remittance returns of Creditable Income Taxes Withheld (Expanded) for all twelve (12) months of CY 2009 with the BIR, through EFPS, on the following dates:[9]

EWT Returns (CY 2009)	Date of Filing
January[10]	February 10,2009
February[11]	March 10, 2009
March[12]	April 8, 2009
April[13]	May 8, 2009
May[14]	June 10, 2009
June[15]	July 10, 2009
July[16]	August 10,2009
August[17]	September 10, 2009

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[4] Docket, Vol. II, Par. 4, Relevant Stipulated Facts, JSFI, p. 421.
[5] Exhibit "P-7-A".
[6] Exhibit "P-7-B".
[7] Exhibit "P-7-C".
[8] Exhibit "P-7-D".
[9] Docket, Vol. II, Par. 5, Relevant Stipulated Facts, JSFI, p. 421.
[10] Exhibit "P-9-A".
[11] Exhibit "P-9-B".
[12] Exhibit "P-9-C".
[13] Exhibit "P-9-D".
[14] Exhibit "P-9-E".
[15] Exhibit "P-9-F".
[16] Exhibit "P-9-G".

September[18]	October 9, 2009
October[19]	November 10, 2009
November[20]	December 10, 2009
December[21]	January 29, 2010

Similarly, petitioner also filed its monthly remittance returns of VAT and Other Percentage Taxes Withheld for the months of October to November 2009 with the BIR, through EFPS, on the following dates:[22]

Withholding VAT Returns (CY 2009)	**Date of Filing**
October[23]	November 10, 2009
November[24]	December 10, 2009
December[25]	January 14, 2010

On April 16, 2010, petitioner filed with the BIR its annual Income Tax Return[26] for CY 2009.[27]

Then, on May 24, 2010, petitioner received Letter of Authority (LOA) No. 126-2010-00000037[28] dated May 14, 2010 from then CIR Joel L. Tan-Torres, covering the investigation/audit of its internal revenue taxes for taxable year 2009.[29]

Seeking reconsideration of the said audit investigation, petitioner executed several Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code ("Waivers" for brevity) on October 25,

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[17] Exhibit "P-9-H".
[18] Exhibit "P-9-I".
[19] Exhibit "P-9-J".
[20] Exhibit "P-9-K".
[21] Exhibit "P-9-L".
[22] Docket, Vol. II, Par. 6, Relevant Stipulated Facts, JSFI, p. 421.
[23] Exhibit "P-10-A".
[24] Exhibit "P-10-B".
[25] Exhibit "P-10-C".
[26] Exhibit "P-8".
[27] Docket, Vol. II, Par. 7, Relevant Stipulated Facts, JSFI, p. 421.
[28] BIR Records, Exhibit "R-1", p. 2.
[29] Docket, Vol. II, Par. 8, Relevant Stipulated Facts, JSFI, p. 421.

2012[30], February 25, 2013[31], September 12, 2013[32], and May 22, 2014[33].

On June 11, 2014, petitioner received a Preliminary Assessment Notice[34] (PAN) of even date together with Details of Discrepancies.

Thereafter, petitioner received a Formal Letter of Demand[35] (FLD) on September 10, 2014 from then CIR Kim S. Jacinto-Henares.[36]

Attached to the FLD was the Final Assessment Notice (FAN), assessing petitioner for deficiency income tax, VAT, EWT, FWVAT, fringe benefits tax (FBT), and DST, inclusive of surcharge, interests and compromise penalty for taxable year 2009.[37]

On October 10, 2014, petitioner sent a Protest Letter[38] to the BIR formally protesting the tax assessments in the FLD.

On December 9, 2014, or within sixty (60) days from the filing of the Protest Letter, petitioner filed a Submission Letter[39] of even date, submitting additional documents in support of its Protest Letter.[40]

Then, on January 25, 2016, respondent issued a Final Decision on Disputed Assessment[41] (FDDA), which petitioner received on even date, denying the Protest Letter and finding petitioner liable for the following deficiency tax, *viz.*:

Deficiency Income Tax	₱ 15,051,026.51
Add: Interest (4/16/2010 to 1/31/2016)	17,438,119.31
Compromise Penalty	50,000.00
Total Amount Due	32,539,145.82

[30] BIR Records, Exhibit "P-6-A"; and Exhibit "R-5", p. 255.
[31] *Id.*, Exhibit "P-6-B"; and Exhibit "R-6", p. 256.
[32] *Id.*, Exhibit "P-6-C"; and Exhibit "R-9", p. 258.
[33] *Id.*, Exhibit "P-6-D"; and Exhibit "R-10", p. 433.
[34] *Id.*, Exhibit "R-10-a", pp. 425-432.
[35] *Id.*, Exhibit "P-2"; and Exhibit "R-12", pp. 461-474.
[36] Docket, Vol. II, Par. 9, Relevant Stipulated Facts, JSFI, p. 422.
[37] *Ibid.*, Par. 10.
[38] Exhibit "P-3".
[39] Exhibits "P-4" and "P-4-A".
[40] Docket, Vol. II, Par. 12, Relevant Stipulated Facts, JSFI, p. 422.
[41] BIR Records, Exhibit "P-5"; and Exhibit "R-13", pp. 508-513.

Deficiency VAT	₱	1,054,812.59
Add: Interest (1/26/2010 to 1/31/2016)		1,269,150.51
Compromise Penalty		25,000.00
Total Amount Due		2,348,963.10
Deficiency EWT	₱	690,686.06
Add: Interest (1/16/2010 to 1/31/2016)		834,832.24
Compromise Penalty		20,000.00
Total Amount Due		1,545,518.30
Deficiency FWVAT	₱	74,904.22
Add: Interest (1/26/2010 to 1/31/2016)		90,536.73
25% Surcharge		18,726.06
Compromise Penalty		12,000.00
Total Amount Due		196,167.01
Deficiency DST	₱	222,188.00
Add: 25% Surcharge		55,547.00
Interest (1/11/2010 to 1/31/2016)		285,178.30
Compromise Penalty		16,000.00
Total Amount Due		578,913.30
Compromise Penalty	₱	75,000.00
Total Amount of Taxes Due		**₱37,283,707.53**[42]

Undaunted, petitioner elevated the matter to this Court via the instant Petition for Review on February 24, 2016.[43]

On May 8, 2016, respondent filed his Answer[44] interposing the following special and affirmative defenses, *viz.*:

> "**SPECIAL AND AFFIRMATIVE DEFENSES**
>
> **The right to assess has not prescribed**
>
> 4. Petitioner allege (*sic*) that it is not liable for deficiency taxes because the period to assess has already prescribed.
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> 5. Petitioner, however admits that a total of five waivers were executed by petitioner's corporate officer, Ms. Elaine Marie F. Alzona. Noteworthy is the fact that the latter is also the signatory of petitioner in this instant Petition for Review filed with this Honorable Court.

[42] Docket, Vol. II, Par. 13, Relevant Stipulated Facts, JSFI, pp. 422-423.
[43] *See* Par. 15, *Ibid.*
[44] Docket, Vol. I, pp. 105-115.

6. That the series of waivers executed by Ms. Alzona extended the period to assess such that when the Formal Letter of Demand was sent on 10 September 2014, the period to assess has not yet prescribed.

7. Now, petitioner comes to this Honorable Court and seeks to invalidate its very own waivers so as to escape its tax liability. It must be remembered it was petitioner's representative (sic) who were the ones who prepared the waiver, and that the agreement to extend the period to assess was mutually agreed upon by both petitioner and respondent. As stated in the waivers, 'the intent and purpose of this waiver is to afford the Commissioner of Internal Revenue ample time to carefully consider the legal and/or factual questions involved in the determination of the aforesaid tax liabilities', at the same time allow petitioner ample time to submit documents to refute the findings of the revenue officers.

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

9. Although also pronounced in that said case that it was an exception to the general rule, respondent submits that the facts and issues (sic) discussed in that case is similar to the case at bar which is worthy to be taken judicial notice by this Honorable Court. To quote the decision in the said case,

> *First*, the parties in this case are in *pari delicto* or 'in equal fault.' *In pari delicto* connotes that the two parties to a controversy are equally culpable or guilty and they shall have no action against each other. However, although the parties are *in pari delicto*, the Court may interfere and grant relief at the suit of one of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by one party who is in equal guilt with the other.
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> **Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need.** Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents. **As between the parties, it would be more equitable if petitioner's lapses were allowed to pass and consequently uphold the**

Waivers in order to support this principle and public policy.

Second, the Court has repeatedly pronounced that parties must come to court with clean hands. Parties who do not come to court with clean hands cannot be allowed to benefit from their own wrongdoing. Following the foregoing principle, **respondent should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.**

Third, **respondent is estopped from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case.** Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. **Respondent executed five Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.**

Finally, the Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.

It is true that petitioner was also at fault here because it was careless in complying with the requirements of RMO No. 20-90 and RDAO 01-05. Nevertheless, **petitioner's negligence may be**

> **addressed by enforcing the provisions imposing administrative liabilities upon the officers responsible for these errors. The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is obviously in bad faith.**

10. The case at bar is similar to the above quoted case.

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

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

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

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

15. Furthermore, it is even more glaring that the signatory of the waivers, Ms. Elaine Marie F. Alzona, is a duly authorized representative of petitioner because not only did she represent herself as such to respondent's revenue officers, even up to the filing of this instant petition she is still the authorized representative of petitioner as can be seen from the Verification and Certification of Non-Forum Shopping where she is still the signatory. Common sense dictates that such circumstances clearly show that she has always been an authorized representative of petitioner.

<u>Assessment are in accordance with law</u>

16. Petitioner hinged it's contention on the fact that respondent's assessment was based on the comparison of its Summary List of Sales to the Summary List of Purchases of its customers and on data coming from Third Party Information.

17. Section 5 of the Tax Code empowers the Commissioner of Internal Revenue to obtain from any person, other than the person subject to audit or investigation, any information to determine the liability of a taxpayer for any internal revenue tax quoted herewith, to wit:

> SEC. 5. Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons. – In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:
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> x x x
>
> (B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government- owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members;.

18. Pursuant to Section 5 of the Tax Code, as amended, the RELIEF (Reconciliation of Listing for Enforcement) system was created to support the third party information program of the Bureau of Internal Revenue through cross-referencing of third party information from Summary List of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations No. 7-1995, as amended by Revenue Regulations 13-1997, Revenue Regulations No. 7-1999 and Revenue Regulations No. 8-2002.

19. Accordingly, respondent, in comparing petitioner's SLP vs. MAP (Monthly Alphalist of Payees) vs. RELIEF, she did not rely on mere estimates or presumptions as petitioner contended.

20. To emphasize, respondent based its assessment for undeclared purchases on actual reported sales and purchases of taxpayers pursuant to the clear mandate of the Tax Code, as amended.

Petitioner is liable for deficiency internal revenue taxes

Income Tax

21. After considering petitioner's protest to the Formal Letter of Demand, petitioner's income tax liability has been reduced from ₱137,756,970.31 to ₱32,539,145.82 only. A detailed computation of the income tax can be found in the Formal Letter of Demand dated 25 January 2016.

22. In the petition for review, petitioner argues primarily that the EWT has no factual basis because respondent based its computation on the audited financial statements which, according to petitioner, 'may include amounts: (i) subjected to withholding tax at rates other than 1%; (ii) exempt from withholding tax; or (iii) actually subjected to 1%EWT.'

23. This reasoning deserves scant consideration because the same has already been reviewed by respondent's revenue officers during the audit investigation and the same has been considered but ultimately petitioner was still found liable for income tax in the aggregate amount of ₱32,539,145.82.

24. On petitioner's allegation that it should not be liable for deficiency income because it was entitled to an income tax holiday ('ITH') incentive, the same is also in error. Based on the evaluation of the Board of Investments, other income amounting to ₱31,096,391.25 are not entitled to ITH as these were not listed in petitioner's registered activity as Operator of Tourist Accommodation Facilities under the Modernization Program. Hence, petitioner's income tax liability.

Value Added Tax

25. As previously discussed, verification of petitioner's sales transaction yielded a difference in their unrecorded sales amounting to ₱330,983.32, hence subjected to deficiency value added tax of ₱39,718.00.

Expanded Withholding Tax

26. Verification also disclosed that petitioner failed to pay corresponding expanded withholding tax on its income payments as shown on Schedule 3 of the FDDA under Income Tax. This led to basic deficiency EWT in the amount of ₱690,686.06.

Final Withholding VAT

27. Verification also disclosed that petitioner failed to pay the corresponding final withholding VAT due on TSA - Training Services paid to non-resident foreign corporation, pursuant to Section 114 of the NIRC and Section 4.114.2 of RR 16-2005.

Documentary Stamp Tax

28. Petitioner was also found liable for DST for rental income and rental expenses and receivables from affiliates in the total amount of ₱222,188.00.

Compromise Penalty

29. Petitioner is being penalized for supplying incorrect information in the Summary List of Sales and Summary List of Purchases and non-submission of Summary List of Importation pursuant to Section 113 of the Tax Code, as amended in relation to RR 16-2005 and RMO 19-2007 for the schedule of compromise penalties.

Final discussions

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

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

32. All presumptions are in favor of the correctness of tax assessments. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and

correctness of the assessment will justify the judicial upholding of said assessment notice." *(Citations Omitted)*

On June 1, 2016, a Notice of Pre-Trial Conference[45] was issued by this Court setting the pre-trial conference of this case on June 23, 2016.

Then, on June 20, 2016, both parties simultaneously filed their Petitioner's Pre-Trial Brief[46] and Respondent's Pre-Trial Brief[47], respectively. Shortly after, a Joint Stipulation of Facts and Issues[48] (JSFI) was submitted by the parties on July 13, 2016. Consequently, a Pre-Trial Order[49] was issued by this Court on August 2, 2016, approving the parties' JSFI and which further deemed the pre-trial terminated.

During trial, petitioner presented and offered the testimony, by way of Judicial Affidavit, of its Tax Associate Manager, Ms. Jocelyn G. Anier[50], and the Assistant Financial Controller of Bonifacio Hotel Ventures, Inc., Ms. Michelle R. Quilala[51], as its witnesses.

On October 10, 2016, petitioner filed, through registered mail, its Formal Offer of Documentary Evidence[52] offering Exhibits "P-1" to "P-23-A", inclusive of sub-markings. Accordingly, in the Resolution[53] dated December 12, 2016, the Court admitted all of petitioner's exhibits and deemed it to have rested its case. The initial presentation of evidence for respondent was then set on December 12, 2016 at 9:00 a.m.

For his part, respondent presented and offered the testimony, by way of Judicial Affidavit, of his lone witness Revenue Officer Greg M. Buhain[54].

On June 27, 2017, respondent filed, through registered mail, his Respondent's Formal Offer of Evidence[55] offering

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[45] Docket, Vol. I, pp. 121-122.
[46] *Id.*, pp. 391-404.
[47] *Id.*, pp. 410-415.
[48] *Id.*, Vol. II, pp. 420-425.
[49] *Id.*, pp. 434-440.
[50] *Id.*, Vol. II, Amended Judicial Affidavit of Jocelyn G. Anier (In Question and Answer Form) dated August 3, 2016, pp. 446-453.
[51] *Id.*, Vol. I, Judicial Affidavit of Michelle R. Quilala (In Question and Answer Form) dated June 17, 2016, pp. 124-137.
[52] *Id.*, Vol. II, pp. 624-636.
[53] *Id.*, Docket (Vol. III), pp. 840-841.
[54] *Id.*, Judicial Affidavit of Mr. Greg M. Buhain dated June 13, 2017, pp. 872-882.
[55] *Id.*, Vol. III, pp. 893-898.

Exhibits "R-1" to "R-14-a", inclusive of sub-markings. As such, in the Resolution[56] dated November 17, 2017, this Court admitted respondent's exhibits in their entirety. More so, he parties were given a period of thirty (30) days within which to submit their respective Memoranda.

In compliance, petitioner filed, through registered mail, on December 27, 2017 its Memorandum[57], while respondent, on the other hand, filed his Memorandum[58] on January 29, 2018.

Hence, in the Resolution[59] dated February 1, 2018, the instant case was submitted for decision.

ISSUE

The sole issue[60] submitted by the parties for this Court's resolution is, whether petitioner is liable for the deficiency tax assessments in the aggregate amount of ₱37,283,707.53 for CY 2009.

Petitioner's Arguments

Petitioner primarily claims that the subject deficiency tax assessments have already prescribed. It claims that the Waivers executed suffer numerous infirmities thereby making them invalid – such as, lack of a written notarized authority from petitioner's Board of Directors.

Moreover, petitioner also asserts that respondent was not duly furnished a copy of the second waiver. As such, it follows therefore that the subsequent third and fourth waivers were executed already beyond the prescriptive period.

Finally, petitioner argues that even assuming arguendo that the deficiency tax assessments were issued within the prescriptive period, the same have no factual and legal bases.

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[56] Docket, Vol. III, pp. 907-908.
[57] *Id.*, pp. 914-940.
[58] *Id.*, pp. 942-952.
[59] *Id.*, p. 953.
[60] *Id.*, Vol. II, Stipulated Issue, JSFI, p. 424.

Respondent's Counter-Arguments

Respondent argues that his right to assess petitioner has not yet prescribed. He cites the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*[61] as applicable in the case at bar.

Respondent likewise insists that the subject assessments are made in accordance with law and that petitioner is liable for deficiency internal revenue taxes, specifically income tax, VAT, EWT, FWVAT, DST and compromise penalty.

RULING OF THE COURT

Verily, jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[62]

In relation thereto, Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended, provides that:

> "**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:
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> x x x
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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

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[61] G.R. No. 212825, December 7, 2015.

[62] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue,* G.R. No. 185666, February 4, 2015 *citing Commissioner of Internal Revenue vs. Leonardo S. Villa, et al.*, G.R. No. L-23988, January 2, 1968; *Justino Laresma vs Antonio P. Abellana,* G.R. No. 140973, November 11, 2004; and, *Lt. Col. Rodrigo S. De Guzman, et al. vs. Municipal Circuit Judge Marcelino M. Escalona, et al.*, G.R. No. L-51773, May 16, 1980.

> 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.
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> 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.
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> 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."

Applying the foregoing provision in the instant case, petitioner has thirty (30) days from January 25, 2016[63], the date of receipt of the FDDA, or until February 24, 2016 within which to appeal the said decision before this Court. Considering that petitioner filed the instant Petition for Review[64] on February 24, 2016, the same is considered as timely filed.

However, although timely filed, there is a lingering question of fact, more particularly the authority of the revenue officers (ROs) who conducted the audit examination of petitioner.

It must be noted that the issue on want of authority of the BIR examiners to conduct the audit investigation was not raised in the Petition for Review or in the proceedings before the Court. However, the Court is not precluded from including such issue in the exercise of its original appellate jurisdiction and to rule on the same following the pronouncement of the Supreme Court in the recent case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*[65], to wit:

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[63] BIR Records, Exhibit "P-5"; and Exhibit "R-13", pp. 508-513.
[64] *Supra.*, Note No. 1.
[65] G.R. No. 183408, July 12, 2017.

"On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.

Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:

SECTION 1. *Rendition of judgment.* — x x x

In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

The above section is clearly worded. **On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda.** The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter." (*Emphases supplied*)

Following thereon, while it is true that Section 6(A)[66] of the 1997 NIRC, as amended, vests unto the CIR the power to authorize the examination and the assessment of the correct amount of tax due of any taxpayer, Section 13 of the same code, also provides that a Letter of Authority is required. It is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers 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. Section 13 is quoted hereafter, as follows:

"**SEC. 13. Authority of a Revenue Officer.** — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a**

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

> **Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Emphasis Supplied)*

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.[67]

It also bears stressing that the authority of BIR examiners to conduct audit investigation goes into the validity of an assessment itself; as such, any assessment arising from the conduct of audit examination of a taxpayer's books of accounts by a BIR examiner who is not duly authorized to do so, is a complete nullity. It follows the time-honored principle that, "a void assessment bears no valid fruit"[68].

Going back to the present case, records reveal that it was ROs Gerald Alan Quebral, Belinda Balagtas, Wenceslao Jr Concepcion, Cecille Uy and Group Supervisior (GS) Noemi Castro who were originally authorized to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for taxable year 2009 under Letter of Authority (LOA) No. 126-2010-00000037[69] dated May 14, 2010 and issued by then CIR Joel L. Tan-Torres.

However, through the Memorandum of Assignment (MOA) No. 126-RE-2013-0066[70] dated March 19, 2013 issued by Antonio Jonathan G. Jaminola, Officer In Charge (OIC)-Chief, Regular Large Taxpayers (LT) Audit Division 3, ROs Ofelia P. Gratuito and GS Guia T. Bobis were directed to replace the previously assigned ROs and continue the audit/investigation of petitioner for taxable year 2009 in view of the transfer of RO Belinda Balagtas to LTDO Makati.

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[67] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.
[68] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation and Liquigaz Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 215534 and 215557, April 18, 2016.
[69] *Supra.*, Note No. 28.
[70] BIR Records, Exhibit "R-7", p. 17.

Similarly, a MOA No. 126-OT-7-13-59[71] dated July 12, 2013 was likewise issued by OIC-Chief Antonio Jonathan G. Jaminola to ROs Ofelia P. Gratuito and GS Guia T. Bobis relative to the audit/verification of petitioner's income tax holiday for calendar year ended December 31, 2009.

As such, in the Memorandum Report[72] dated July 15, 2014, it was ROs Ofelia P. Gratuito and GS Guia T. Bobis, who recommended the issuance of the PAN and, subsequently, the FLD with FAN against petitioner for its alleged deficiency taxes for taxable year 2009. Unfortunately, however, the said ROs are not the ones named in the LOA No. 126-2010-00000037. Their supposed authority emanated only from the aforementioned MOA No. 126-RE-2013-0066 dated March 19, 2013 and Memorandum of Assignment No. 126-OT-07-13-59 dated July 12, 2013 issued by OIC-Chief Antonio Jonathan G. Jaminola.

Parenthetically, in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[73], the Supreme Court ruled that having such prior authority before conducting the necessary investigation or examination by the revenue officers on taxpayer's books of accounts and other accounting records is a must, otherwise, the deficiency tax assessment arising therefrom is a nullity, to wit:

> 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**. (*Emphasis supplied*)

In fact, the Supreme Court in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[74] emphasized the vital significance of issuing an LOA for the validity of an assessment:

> "An 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. An LOA is premised on the

[71] BIR Records, p. 380.
[72] *Id.*, Exhibit "R-11", pp. 456-460.
[73] G.R. No. 178697, November 17, 2010.
[74] G.R. No. 222743, April 5, 2017.

fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:

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

Based on the afore-quoted provision, it is clear that **<u>unless authorized by the CIR himself or by his duly authorized representative</u>**, **<u>through an LOA</u>**, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**

x x x

Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physicially kept by MEDICARD was examined. **To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.**

x x x

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

> **<u>assessment issued by the CIR is inescapably void.</u>**" *(Emphases and underlining supplied)*

Thus, finding that the audit investigation of petitioner's books of accounts was made without proper authority, the resulting deficiency tax assessments therefrom are considered void. In view of the foregoing, this Court no longer needs to further belabor on the merits of the subject assessments.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated January 25, 2016 assessing petitioner for deficiency income tax, value-added tax, expanded withholding tax, final withholding VAT and documentary stamp tax, plus surcharge, interest and compromise penalty, for the taxable year 2009, in the aggregate amount of ₱37,283,707.53 is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

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

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice