REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

INTERVET PHILIPPINES, INC., *Petitioner,*	**CTA Case No. 9909** *Members*:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, *and* **REYES-FAJARDO**, *JJ.*
THE COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** FEB 24 2022 10:10 am

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DECISION

***DEL ROSARIO, P.J.*:**

This is a Petition for Review[1] filed on August 16, 2018 by petitioner Intervet Philippines, Inc. against respondent Commissioner of Internal Revenue, praying that judgment be rendered cancelling the deficiency Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT), Documentary Stamp Tax (DST), and compromise penalties for taxable year (TY) 2014 in the aggregate amount of ₱49,107,493.90, inclusive of interest and increments.

THE PARTIES

Petitioner Intervet Philippines, Inc. is a corporation duly organized and existing under the laws of the Philippines with principal office at the 28th Floor Philamlife Tower, 8767 Paseo de Roxas, Makati City, Metro Manila.[2] It is a domestic corporation engaged in the wholesale of animal health products. It is a wholly owned subsidiary of a multinational corporation that is ultimately owned by Merck & Co.,

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[1] CTA Docket Vol. I, pp. 12-38.
[2] Par. 1, I. Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), CTA Docket Vol. I, p. 423.

Inc., a corporation organized and domiciled in the United States of America.[3] Petitioner is registered as a taxpayer under the jurisdiction of Revenue District Office (RDO) No. 050, which is under the direct supervision and control of Revenue Region No. 8 (Makati City).[4]

Respondent is the incumbent Commissioner of Internal Revenue (CIR) who holds office at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.[5]

THE FACTS

On August 4, 2015, petitioner received a Letter of Authority (LOA) No. eLA201100082524 dated July 28, 2015 signed by Regional Director Jonas DP. Amora of Revenue Region No. 8 (RR8) – Makati City, authorizing Revenue Officer (RO) Michael Felipe and Group Supervisor (GS) Roderick Cantillana of RDO No. 050 – South Makati to examine the books of accounts and other accounting records of petitioner **for all internal revenue taxes for the period January 1, 2014 to December 31, 2014** pursuant to Section 6 (A) and Section 10 (C) of the National Internal Revenue Code (NIRC) of 1997, as amended.[6]

On the same date, petitioner also received LOA No. eLA201100078772 dated July 31, 2015 signed by Regional Director Amora, authorizing RO Mohaimen Marangit and GS Renan Plata of RR8 – VAT Audit Team to examine the books of accounts and other accounting records of petitioner **for VAT for the period January 1, 2014 to June 30, 2014** pursuant to Revenue Memorandum Order (RMO) No. 20-2012 and the VAT Audit Program.[7]

Thereafter, petitioner received a Letter dated April 12, 2016 from Revenue District Officer Rosita U. Meniano informing it that in view of the transfer of RO Felipe to another revenue district office, RO Helalla M. Lao and GS Josalyn E. Tan are authorized to continue audit and investigation of petitioner's books of accounts and other accounting records for all internal revenue taxes for TY 2014 pursuant to e-LOA No. 00082524 dated July 28, 2015 and Memorandum of Assignment (MOA) No. RR8-050-REA-040516-364 dated April 5, 2016.[8]

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[3] Par. 3, I. Summary of Admitted Facts, JSFI, CTA Docket Vol. I, p. 423.
[4] Par. 4, I. Summary of Admitted Facts, JSFI, CTA Docket Vol. I, p. 423.
[5] Par. 2, I. Summary of Admitted Facts, JSFI, CTA Docket Vol. I, p. 423.
[6] Exhibit "P-1", CTA Docket Vol. II, pp. 700-702.
[7] Exhibit "P-2", CTA Docket Vol. II, p. 703.
[8] Exhibit "P-3", CTA Docket Vol. II, p. 704.

On January 26, 2017, petitioner requested the BIR through a Letter of even date to Revenue District Officer Meniano for the revalidation of the LOA No. eLA201100082524.[9]

On March 20, 2017, respondent issued a Subpoena Duces Tecum which was served to petitioner by RO Lao on April 7, 2017.[10]

On May 12, 2017, petitioner submitted its books of accounts and other documents covered by the Subpoena Duces Tecum with transmittal Letter dated May 10, 2017.[11]

On November 23, 2017, petitioner received the Preliminary Assessment Notice (PAN) dated November 22, 2017 finding it liable for deficiency IT, VAT, EWT, DST, and compromise penalties in the aggregate amount of ₱48,734,868.52.[12]

On December 8, 2017, petitioner filed a Protest to the PAN of even date.[13]

On December 15, 2017, petitioner received the Formal Assessment Notice (FAN)[14] together with five (5) Assessment Notices,[15] all dated December 8, 2017, assessing petitioner for deficiency IT, VAT, EWT, DST and compromise penalties in the aggregate amount of ₱49,107,493.90 for TY 2014, broken down as follows:[16]

KIND OF TAX	BASIC TAX	SURCHARGE	INTEREST	TOTAL
IT	₱17,195,440.25	₱	₱9,516,380.63	₱26,711,820.88
VAT	11,144,362.72		6,656,085.13	17,800,447.85
EWT	871,166.13		525,086.44	1,396,252.57
DST	1,700,000.00	425,000.00	1,033,972.60	3,158,972.60
Compromise Penalty	40,000.00			40,000.00
			TOTAL	**₱49,107,493.90**

[9] Exhibit "P-4", CTA Docket Vol. II, pp. 705-707.
[10] Exhibit "P-5", CTA Docket Vol. II, p. 708.
[11] Exhibit "P-6", CTA Docket Vol. II, pp. 709-710.
[12] Par. 5, I. Summary of Admitted Facts, JSFI, CTA Docket Vol. I, pp. 423-424.
[13] Exhibit "P-7", CTA Docket Vol. II, pp. 711-728.
[14] Exhibit "P-8", CTA Docket Vol. II, pp. 729-735.
[15] Exhibits "P-8-1", "P-8-2", "P-8-3", "P-8-4", and "P-8-5", CTA Docket Vol. II, pp. 736-740.
[16] Par. 6, I. Summary of Admitted Facts, JSFI, CTA Docket Vol. I, p. 424.

On January 15, 2018, petitioner filed a Protest Letter dated January 12, 2018 against the FAN.[17]

On March 16, 2018, petitioner submitted relevant schedules and documents in support of its Protest Letter dated January 12, 2018.[18]

On June 27, 2018, petitioner received from the Revenue Region No. 8 Collection Division a Preliminary Collection Letter (PCL) dated June 22, 2018 stating that to avoid accumulation of interest and surcharges, it is requested that petitioner pay the assessments within 10 days from receipt of the PCL.[19]

On July 6, 2018, petitioner filed with the Revenue Region No. 8 Collection Division a Letter dated July 2, 2018 raising its objections to the PCL, including the fact that its FAN protest is still pending resolution.[20]

On July 17, 2018, petitioner received the Final Notice Before Seizure (FNBS) dated July 6, 2018 issued by the Revenue Region No. 8 Collection Division demanding the settlement of petitioner's tax liabilities within ten (10) days from notice otherwise there will be service and execution of Warrants of Distraint and/or Levy and Garnishment as well as referral of the case to the Revenue Region No. 8 Legal Division for filing of appropriate judicial action.[21]

On July 25, 2018, petitioner filed with the Regional Director of Revenue Region No. 8 a Letter of even date requesting for the grant of its request for reinvestigation and the withdrawal of the FNBS for being premature.[22]

On August 16, 2018, petitioner filed the present Petition for Review.[23] The case was raffled to the CTA Second Division. Subsequently, the case was transferred to the CTA First Division pursuant to the Order dated September 24, 2018.[24]

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[17] Par. 7, I. Summary of Admitted Facts, JSFI, CTA Docket Vol. I, p. 424; Exhibit "P-9", CTA Docket Vol. II, pp. 741-757.
[18] Exhibit "P-10", CTA Docket Vol. II, pp. 758-759.
[19] Par. 8, I. Summary of Admitted Facts, JSFI, CTA Docket Vol. I, p. 424; Exhibit "P-11", CTA Docket Vol. I, p. 760.
[20] Exhibit "P-12", CTA Docket, Vol. II, pp. 761-763.
[21] Par. 9 and 10, I. Summary of Admitted Facts, JSFI, CTA Docket Vol. I, p. 424; Exhibit "P-13", CTA Docket Vol. I, p. 764.
[22] Exhibit "P-14", CTA Docket Vol. II, pp. 765-766.
[23] CTA Docket Vol. I, p. 12.
[24] CTA Docket Vol. I, p. 110.

On October 4, 2018, within the extended period,[25] respondent filed his Answer,[26] raising the following Special and Administrative Defenses: (i) the Court lacks jurisdiction over the Petition for Review; (ii) the FAN in this case is already final and executory since petitioner failed to file protest against it within the 30-day period provided under Section 228 of the NIRC of 1997, as amended; (iii) the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the CIR is wrong but that it is right; and, (iv) assessments are presumed correct and official functions are regularly done.

On October 15, 2018, petitioner filed a Reply[27] to respondent's Answer stating that the protest letter to the FAN filed by petitioner with the BIR on January 15, 2018 is found in the BIR Records.

Petitioner's Pre-Trial Brief[28] was filed on January 18, 2019, while the Respondent's Pre-Trial Brief[29] was filed on January 22, 2019. The Pre-Trial Conference was held on January 24, 2019.[30]

On January 18, 2019, petitioner filed a Motion for Production of Documents.[31]

On January 23, 2019, respondent filed a Motion for Leave of Court to Amend or Modify the Answer dated September 21, 2018 (with Amended Answer).[32]

During the Pre-Trial Conference, the Court granted petitioner's Motion for Production of Documents and also directed the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) pursuant to the Supreme Court Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.[33]

On February 8, 2019, petitioner filed a Motion to Suspend Referral of Case to the Philippine Mediation Center – Court of Tax

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[25] Order dated October 2, 2018, CTA Docket Vol. I, p. 112.
[26] CTA Docket Vol. I, pp. 114-123.
[27] CTA Docket Vol. I, pp. 124-127.
[28] CTA Docket, Vol. I, pp. 235-244.
[29] CTA Docket, Vol. I, pp. 255-261.
[30] CTA Docket Vol. I, pp. 132-133 and 277.
[31] CTA Docket, Vol. I, pp. 247-252.
[32] CTA Docket, Vol. I, pp. 262-275.
[33] CTA Docket Vol. I, pp. 278-280.

Appeals and Further Proceedings.[34]

On March 13, 2019, the Court issued a Resolution denying both respondent's Motion for Leave of Court to Amend or Modify the Answer dated September 21, 2018 (with Amended Answer) and petitioner's Motion to Suspend Referral of Case to the Philippine Mediation Center – Court of Tax Appeals and Further Proceedings.[35] The Court also directed the parties to appear before the PMC-CTA on April 1, 2019 and suspended the proceedings on the case for thirty (30) days starting from the date of the preliminary mediation conference.

On May 15, 2019, the Court received a Request for Extension[36] from the mediator, Ret. Justice Rodrigo V. Cosico, requesting for a final extension of the period allowed for the settlement of the case for thirty (30) days or until June 21, 2019. This was granted in the Resolution dated June 4, 2019.[37]

On June 24, 2019, the Court received the Mediator's Report signed by Ret. Justice Cosico declaring the subject mediation unsuccessful.[38]

On July 15, 2019, the parties filed a Joint Motion to Admit Attached Joint Stipulation of Facts and Issues and to Suspend Court Proceedings during the Pendency of Respondent's Reinvestigation.[39] In the Resolution[40] dated July 31, 2019, the Court admitted the parties Joint Stipulation of Facts and Issues[41] but denied the Joint Motion to Suspend Court Proceedings during the Pendency of Respondent's Reinvestigation.

On September 9, 2019, the Court issued the Pre-Trial Order.[42]

Upon motion[43] of petitioner, the Court commissioned Katherine O. Constantino as Independent Certified Public Accountant (ICPA) on December 5, 2019.[44]

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[34] CTA Docket Vol. I, pp. 324-327.
[35] CTA Docket Vol. I, pp. 388-391.
[36] CTA Docket Vol. I, p. 394.
[37] CTA Docket Vol. I, pp. 406-407.
[38] CTA Docket Vol. I, p. 408.
[39] CTA Docket Vol. I, pp. 419-422.
[40] CTA Docket Vol. I, pp. 429-430.
[41] CTA Docket Vol. I, pp. 423-427.
[42] CTA Docket Vol. I, pp. 434-445.
[43] CTA Docket Vol. I, pp. 466-469.
[44] CTA Docket Vol. I, pp. 517-519.

During trial, petitioner presented testimonial and documentary evidence. It presented the following witnesses: Estela B. Valenzuela,[45] petitioner's Finance Controller; and, Katherine O. Constantino,[46] the Court-commissioned ICPA.

The Formal Offer of Evidence for Petitioner Intervet Philippines, Inc. was filed on February 3, 2020.[47] Petitioner's exhibits were admitted in evidence in the Resolution[48] dated June 4, 2020, save for Exhibits "P-128" to "P-131" and "P-156" for failure to present their originals for comparison.

On September 25, 2020, petitioner filed a Manifestation and Motion (To Strike Out Testimony from the Records)[49] praying for the Court to deny the admission of the testimonies of ROs Ominsahri S. Botawan and Helalla M. Lao, or portions thereof; and, strike out from the records of this case the Judicial Affidavits of ROs Botawan and Lao. This was denied by the Court in the Resolution[50] dated November 16, 2020.

In the Order[51] dated November 17, 2019, respondent's right to present evidence was deemed waived considering the absence of the counsel for respondent despite a second call during the hearing for the presentation of respondent's witnesses.

On December 15, 2020, respondent filed a Motion for Reconsideration of the Order dated November 17, 2020.[52] This was denied by the Court in the Resolution[53] dated February 23, 2021.

The Memorandum for the Petitioner[54] was filed on December 17, 2020, while respondent failed to file his memorandum.[55] Thereafter, the case was submitted for decision on June 28, 2021.[56]

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[45] Exhibit "P-17", CTA Docket Vol. I, pp. 137-161; and Minutes of Hearing dated September 10, 2019, CTA Docket Vol. I, p. 446.
[46] Exhibit "P-21", CTA Docket Vol I, pp. 673-681; and Minutes of Hearing dated January 23, 2020, CTA Docket Vol. I, pp. 684-685.
[47] CTA Docket Vol. II, pp. 688-699.
[48] CTA Docket Vol. II, pp. 807-809.
[49] CTA Docket Vol. II, pp. 810-817.
[50] CTA Docket Vol. II, pp. 864-865.
[51] CTA Docket Vol. II, p. 867.
[52] CTA Docket Vol. II, pp. 872-877.
[53] CTA Docket Vol. II, pp. 988-989.
[54] CTA Docket Vol. II, pp. 928-967.
[55] CTA Docket Vol. II, p. 990.
[56] CTA Docket Vol. II, p. 992.

ISSUES

The parties stipulated the following issues for the Court's resolution:[57]

1. Whether or not the assessments against petitioner for deficiency income tax, VAT, EWT, DST, and compromise penalties for the taxable year 2014 in the aggregate amount of ₱49,107,493.90, inclusive of interest and increments, are void and/or invalid for being issued pursuant to a tax investigation conducted by revenue officers not authorized by a Letter of Authority.

2. Whether or not petitioner is liable for the assessments for deficiency income tax, VAT, EWT, DST, and compromise penalties for the taxable year 2014 in the aggregate amount of ₱49,107,493.90, inclusive of interest and increments.

PARTIES' ARGUMENTS

Petitioner argues that: (i) the assessments are void and should have no force and effect because they were issued following an audit by revenue officers who are not specifically named and authorized in the 2014 LOA; and, (ii) the assessments are devoid of any legal and/or factual basis.[58]

Respondent, on the other hand, counter-argues that: (i) the Court lacks jurisdiction over the Petition for Review; (ii) the FAN in this case is already final and executory since petitioner failed to file protest against it within the 30-day period provided under Section 228 of the NIRC of 1997, as amended; (iii) the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the CIR is wrong but that it is right; and, (iv) assessments are presumed correct and official functions are regularly done.[59]

THE COURT'S RULING

This Court finds the Petition for Review meritorious.

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[57] II. Stipulation of Issues, JSFI, CTA Docket Vol. I, p. 425.
[58] Memorandum for Petitioner, CTA Docket Vol. II, pp. 928-967.
[59] Special and Affirmative Defenses, Answer, CTA Docket Vol. I, pp. 117-123.

The Court has jurisdiction over the Petition for Review

The CTA is a court of special jurisdiction. It can only take cognizance of such matters as are clearly within its jurisdiction.[60] Section 7 of Republic Act (RA) No. 1125,[61] as amended, defines the jurisdiction of the CTA, *viz.*:

> "SEC. 7. *Jurisdiction.* - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue; xxx" (*Boldfacing supplied*)

On the other hand, under Section 11 of RA No. 1125,[62] as amended, in relation to Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA),[63] a party adversely affected by a decision, ruling or inaction of the CIR may appeal to the CTA by way of a petition for review within thirty (30) days from receipt of the copy of such decision or ruling or within thirty (30) days after the expiration of the specific period of action.

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[60] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.
[61] An Act Creating the Court of Tax Appeals.
[62] RA No. 1125, Section 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 xxx 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 actions as referred to in Section 7(a)(2) herein. xxx
[63] RRCTA, Rule 8, Section 3. *Who may appeal; period to file petition.* –
(a) A party adversely affected by a decision, ruling or 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 the copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on 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 within the two-year period prescribed by law from payment or collection of taxes.

Based on the foregoing, this Court has exclusive appellate jurisdiction to take cognizance of decisions involving disputed assessments and the concerned taxpayer or party adversely affected by a decision of respondent may file an appeal with this Court within thirty (30) days after the receipt of such decision.

In the present case, petitioner filed the Petition for Review to appeal the assessments against it for deficiency IT, VAT, EWT, DST and compromise penalties for TY 2014 after receiving on July 17, 2018 the FNBS[64] dated July 6, 2018.

In *Commissioner of Internal Revenue vs. Isabela Cultural Corporation*[65] *(Isabela case)*, the Supreme Court held that the FNBS which indicates that the taxpayer was being given "this LAST OPPORTUNITY" to pay; otherwise, its properties would be subjected to distraint and levy, constitutes the CIR's final decision, *viz.*:

> "Indisputably, respondent received an assessment letter dated February 9, 1990, stating that it had delinquent taxes due; and it subsequently filed its motion for reconsideration on March 23, 1990. In support of its request for reconsideration, it sent to the CIR additional documents on April 18, 1990. The next communication respondent received was already the Final Notice Before Seizure dated November 10, 1994.
>
> In the light of the above facts, **the Final Notice Before Seizure cannot but be considered as the commissioner's decision disposing of the request for reconsideration filed by respondent, who received no other response to its request. Not only was the Notice the only response received; its content and tenor supported the theory that it was the CIR's final act regarding the request for reconsideration. The very title expressly indicated that it was a final notice prior to seizure of property. The letter itself clearly stated that respondent was being given "this LAST OPPORTUNITY" to pay; otherwise, its properties would be subjected to distraint and levy.** How then could it have been made to believe that its request for reconsideration was still pending determination, despite the actual threat of seizure of its properties?" (*Boldfacing supplied*)

In light of the foregoing, it is evident that the issuance of the subject FNBS constitutes the final decision of respondent that is appealable before this Court.

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[64] Exhibit "P-13", CTA Docket Vol. II, p. 764.
[65] G.R. No. 135210, July 11, 2001.

In this case, as in the *Isabela case*, the FNBS dated July 6, 2018 stated that petitioner was being given a last opportunity to settle its tax liabilities; otherwise, the BIR shall serve and execute the Warrant of Distraint and/or Levy and Garnishment it already prepared to enforce collection of petitioner's account, to wit:

> "On various dates this office sent you a letter requesting the settlement of the above account. However, despite the considerable length of time given to you, we have not been favored with any reply.
>
> In this connection, we would like to inform you that we are again giving you the **last opportunity** to make the necessary settlement of the above stated tax liability/ies within ten (10) days from receipt of this notice. Should we fail to hear from you within this period, this office, much to our regret, will be constrained to **serve and execute the Warrant of Distraint and/or Levy and Garnishment already prepared to enforce the collection of your account**. Simultaneously, to protect the interest of the government, your case will be referred to the Legal Division for filing of appropriate judicial action.
>
> Please give this matter your preferential attention.
>
> Very truly yours,
>
> (Signed)
> ALICE S.A GONZALES
> Chief, Collection Division"[66]
> *(Boldfacing supplied)*

Applying the *Isabela case*, the FNBS issued in this case constitutes as the final decision of CIR on petitioner's protest, which is appealable to the CTA.

Considering that petitioner received the FNBS dated July 6, 2018 on July 17, 2018, it had thirty (30) days therefrom or until August 16, 2018 within which to appeal the final decision to the CTA. The Petition for Review was therefore timely filed on August 16, 2018.[67]

Respondent argues that the Court has no jurisdiction to take cognizance of the Petition for Review. He contends that the FAN dated December 8, 2017 had already become final and executory since petitioner failed to file a protest against it within the thirty (30)-day period provided under Section 228 of the NIRC of 1997, as amended.[68]

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[66] Exhibit "P-13", CTA Docket Vol. II, p. 764.
[67] CTA Docket Vol. I, p. 12.
[68] NIRC of 1997, as amended, Section 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be

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Contrary to respondent's argument, the FAN dated December 8, 2017 did not yet become final and executory. A perusal of the records shows that petitioner received the FAN dated December 8, 2017 on December 15, 2017. Counting thirty (30) days therefrom, petitioner had until January 14, 2018 within which to file its protest against the FAN. January 14, 2018, however, fell on a Sunday, thus petitioner had until January 15, 2018. Petitioner's protest against the FAN was timely filed on January 15, 2018.[69]

Considering that petitioner timely filed its Petition for Review and that the FAN dated December 8, 2017 has not yet become final and executory, the Court has jurisdiction over the present case.

The RO and GS who continued the audit of petitioner were not authorized by a valid LOA; hence, the assessments issued pursuant to said audit are void ab initio

As borne by the records, the continuation of the audit and examination of petitioner's books of accounts and other accounting records for TY 2014 was undertaken by RO Lao and GS Tan pursuant to MOA No. RR8-050-REA-040516-364 dated April 5, 2016.[70]

Petitioner argues that the assessments are void because they were issued following an audit by ROs who are not specifically named and authorized in the 2014 LOA.

The Court finds petitioner's contention meritorious.

Perusal of the BIR Records shows that LOA No. eLA201100082524[71] dated July 28, 2015 authorized RO Felipe and GS Cantillana to examine the books of accounts and other accounting

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assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:

xxx xxx xxx

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within (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. xxx

[69] Exhibit "P-9", CTA Docket Vol. II, pp. 741-757.
[70] Exhibit "P-3", CTA Docket Vol. II, p. 704.
[71] Exhibit "P-1", CTA Docket Vol. II, pp. 700-702.

records of petitioner for all internal revenue taxes for the period January 1, 2014 to December 31, 2014. On the other hand, LOA No. eLA201100078772[72] dated July 31, 2015 authorized RO Marangit and GS Plata to examine the books of accounts and other accounting records of petitioner for VAT for the period January 1, 2014 to June 30, 2014.

Petitioner was informed through a Letter[73] dated April 12, 2016 from Revenue District Officer Meniano that in view of the transfer of RO Felipe to another revenue district office, RO Lao and GS Tan are authorized to continue the audit and investigation of petitioner for all internal revenue taxes for TY 2014 pursuant to e-LOA No. 00082524 dated July 28, 2015 with MOA No. RR8-050-REA-040516-364 dated April 5, 2016.

Notably, respondent failed to present a new LOA authorizing RO Lao and GS Tan to continue the aforestated audit of petitioner for its tax liabilities for TY 2014.

Section 6 of the NIRC of 1997, as amended, is clear and categorical in requiring a specific authority from the CIR or from his duly authorized representatives before an examination of a taxpayer may be made, to wit:

> "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, **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." (*Boldfacing supplied*)

An officer of the BIR cannot simply subject a taxpayer to audit without a valid LOA issued for that purpose. Section 13 of the NIRC of 1997, as amended, states:

> "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 <u>Letter of Authority</u> issued by the <u>Revenue</u>**

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[72] Exhibit "P-2", CTA Docket Vol. II, p. 703.
[73] Exhibit "P-3", CTA Docket Vol. II, p. 704.

> **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." (*Boldfacing and underscoring supplied*)

In *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[74] the Supreme Court was clear in holding that the issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer is indispensable to the validity of an 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.
>
> xxx xxx xxx
>
> 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**." *(Boldfacing and underscoring supplied)*

This principle was also reiterated in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[75] to wit:

> "Based on the afore-quoted provision, **it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, 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." (*Boldfacing supplied*)

Moreover, RMO No. 43-90 is explicit in requiring the issuance of a new LOA when an audit is continued by a revenue officer other than the officer named in a previous LOA, *viz.*:

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[74] G.R. No. 178697, November 17, 2010.
[75] G.R. No. 222743, April 5, 2017.

"C. Other policies for issuance of L/As.

1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.

xxx xxx xxx

5. **Any re-assignment/transfer of cases to another RO(s)**, and revalidation of L/As which have already expired, **shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As**." (*Boldfacing supplied and underlining supplied*)

Furthermore, in the recent case of *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*,[76] (*McDonald's case*) the Supreme Court held that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting or replacing them with new ROs 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 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 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. The Supreme Court's discussion in this case as to the practice of transferring the ROs named in the LOA and replacing them with new ROs who do not have a new LOA issued in their name is instructive, *viz.*:

"This **practice of reassigning or transferring revenue officers**, who are the original authorized officers named in the LOA, and subsequently substituting or replacing them with new revenue officers who do not have a new or amended LOA issued in their name, has been the subject of several CTA decisions, including *Ithiel Corporation v. CIR, Strawberry Foods Corporation v. CIR, Sugar Crafts, Inc. v. CIR, CIR v. Marketing Convergence, Inc., Exclusive Networks-PH Inc. v. CIR*, and the decision in the court a quo.

The Court hereby puts an end to this practice.

I. The Reassignment or Transfer of a Revenue Officer Requires the Issuance of a New or Amended LOA for the Substitute or Replacement Revenue Officer to Continue the Audit or Investigation

[76] G.R. No. 242670, May 10, 2021.

xxx The issuance of an LOA is premised on the 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.

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Pursuant to the above provisions, only the CIR and his duly authorized representatives may issue the LOA. The authorized representatives include the Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR.

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B. The Use of Memorandum of Assignment, Referral Memorandum, or Such Equivalent Document, Directing the Continuation of Audit or Investigation by an Unauthorized Revenue Officer Usurps the Functions of the LOA

It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers. However, notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination and assessment is another thing. **The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts.** It is issued by the **<u>revenue district officer</u>** or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.

The petitioner wants the Court to believe that once an LOA has been issued in the names of certain revenue officers, a subordinate official of the BIR can then, through a mere memorandum of assignment, referral memorandum, or such equivalent document, rotate the work assignments of revenue officers who may then act under the general authority of a validly issued LOA. But an LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer.

The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative. The memorandum of assignment,

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> referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10(c) and 13 of the NIRC. Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.
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> **In summary, We rule that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting 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 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 BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990**."[77] (*Boldfacing and underscoring supplied*)

Indubitably, in the present case, there was no new LOA issued to RO Lao and GS Tan in relation to the audit of petitioner's tax liabilities for TY 2014. While MOA No. RR8-050-REA-040516-364 dated April 5, 2016 was issued, the same cannot be regarded as a valid LOA within the context of the law. Hence, RO Lao and GS Tan had no valid authority to continue the audit or investigation on petitioner.

Since the conduct of the audit of petitioner was legally flawed, the assessments issued against it are inescapably void. Needless to say, a void assessment bears no fruit[78] and must be slain at sight.

In light of the foregoing, the Court need not belabor the other issues raised by the parties.

WHEREFORE, premises considered, the Petition for Review filed on August 16, 2018 by petitioner Intervet Philippines, Inc. is **GRANTED**. Accordingly, the Formal Assessment Notice and Assessment Notice Nos. IT-ELA82524-14-17-1706, VT-ELA82524-14-

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[77] *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021.

[78] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

17-1706, WE-ELA82524-14-17-1706, DS-ELA82524-14-17-1706, and MC-ELA82524-14-17-1706, all dated December 8, 2017, Preliminary Collection Letter dated June 22, 2018 and Final Notice Before Seizure dated July 6, 2018 are **CANCELLED AND SET ASIDE** for being void ab initio.

The Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the disputed Income Tax, Value-Added Tax, Expanded Withholding Tax, Documentary Stamp Tax, and compromise penalties for TY 2014 in the aggregate amount of ₱49,107,493.90, inclusive of interest and increments arising from the Formal Assessment Notice and Assessment Notice Nos. IT-ELA82524-14-17-1706, VT-ELA82524-14-17-1706, WE-ELA82524-14-17-1706, DS-ELA82524-14-17-1706, and MC-ELA82524-14-17-1706, all dated December 8, 2017, Preliminary Collection Letter dated June 22, 2018 and Final Notice Before Seizure dated July 6, 2018 issued against petitioner Intervet Philippines, Inc. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice