REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

METRO RAIL TRANSIT CORPORATION, *Petitioner,*	**CTA CASE NO. 9651** Members:
-versus-	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 2 3 2023 9:20 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a Petition for Review,[1] filed by petitioner Metro Rail Transmit Corporation ("MRTC") against respondent Commissioner of Internal Revenue ("CIR"), seeking the cancellation of the Final Decision on Disputed Assessment ("FDDA") issued against petitioner demanding payment of ₱9,687,807,050.62 for alleged deficiency Income Tax, Improperly Accumulated Earnings Tax ("IAET"), Expanded Withholding Tax ("EWT"), Withholding Tax on Compensation ("WTC"), Documentary Stamp Tax ("DST") inclusive of surcharges, interests, and compromise penalties for taxable year 2012.[2]

The Parties

Petitioner, MRTC, is a corporation duly organized and existing under the laws of the Philippines whose primary purpose is to build, lease, maintain, and transfer a railway transit system in Metro Manila known as Phase I of the Light Rail Transit System (LRT) Line 3, built pursuant to the Agreement,

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[1] *See* Petition for Review, Records Vols. 1-3, pp. 10-1487.
[2] *Ibid.;* Pre-Trial Order, dated 19 February 2019, Records Vol. 14, pp. 6660-6671.

dated 8 August 1997, between Metro Rail Transit Corp. Limited and the Department of Transportation and Communications.[3]

Meanwhile, respondent is the chief of the Bureau of Internal Revenue ("BIR"), the government agency mandated by law to assess and collect all national internal revenue taxes, fees, and charges.[4]

The Facts

Respondent issued a Letter of Authority,[5] dated 6 January 2014, authorizing **Revenue Officer ("RO") Junely Ivanhoe Fernandez, RO Rayan James Dizon**, and **Group Supervisor ("GS") Cristina Costales** of Regular LT Audit Division 2 to examine petitioner's books of accounts and other accounting records for all internal revenue taxes including documentary stamp tax and other taxes for the period 1 January 2012 to 31 December 2012.

On 14 April 2014, MRTC received a Preliminary Assessment Notice ("PAN") from the BIR's Large Taxpayers Service[6] with attached Details of Discrepancies[7] assessing petitioner for alleged deficiency taxes for the year 2012 in the total amount of ₱5,574,722,813.15 with the following details:

	Income Tax	IAET	EWT	WTC	DST
Basic Tax	₱ 1,023,223.75	₱ 4,079,270,913.21	₱ 7,051,937.48	₱ 23,984.96	₱ 140,175,082.46
Surcharge	-	1,019,817,728.30	-	2,375.00	35,043,770.62
Interest	217,540.17	252,579,514.08	1,847.028.01	6,282.09	37,482.433.01
Compromise Penalty	25,000.00	50,000.00	50,000.00	6,000.00	50,000.00
TOTAL	₱ 1,265,763.92	₱ 5,351,718,155.59	₱ 8,948,965.49	₱ 38,642.05	₱ 212,751,286.09

MRTC then filed a Reply to the PAN addressed to the BIR's Large Taxpayers Service,[8] requesting the cancellation of the alleged deficiency tax assessments for lack of factual and legal basis.[9]

On 10 October 2014, the BIR issued an Amended PAN, with attached Details of Discrepancies,[10] which was received by petitioner on even date.[11] In the Amended PAN, petitioner's alleged deficiency assessment was increased to ₱6,926,203,506.93 with the following details:

[3] Exhibit "P-1", Records Vol. 21, pp. 10127-10136
[4] *See* Facts, Pre-Trial Order, Records Vol. 14, p. 6661.
[5] Exhibit "R-1", BIR Records, p. 2.
[6] *See* Facts, Pre-Trial Order, Records Vol. 14, p. 6661; Exhibit "R-5", BIR Records, pp. 307-309; Exhibit "P-31", Records Vol. 24, pp. 11652-11662.
[7] Exhibit "R-5-A", BIR Records, pp. 299-306.
[8] *See* Facts, Pre-Trial Order, Division Records Vol. 14, p. 6661; Exhibits "P-32" and "P-32-A", Records Vol. 24, pp. 11663-11686.
[9] Exhibits "P-32" and "P-32-A", Records Vol. 24, pp. 11663-11686.
[10] Exhibit "R-7-A", BIR Records, pp. 402-407.
[11] *See* Facts, Pre-Trial Order, Records Vol. 14, p. 6661; Exhibit "R-7", BIR Records, pp. 408-409; Exhibit "P-33", Records Vol. 24, pp. 11687-11698.

	Income Tax	IAET	EWT	WTC	DST
Basic Tax	₱ 997,997.56	₱ 4,576,725,904.38	₱ 7,051,509.28	₱ 19,079.85	₱ 292,558,866.10
Surcharge	-	1,144,181,476.09	-	-	73,139,716.52
Interest	307,875.41	722,244,964.64	2,523,087.97	-	106,283,029.16
Compromise Penalty	25,000.00	50,000.00	50,000.00	-	50,000.00
TOTAL	₱ 1,325,872.97	₱ 6,443,202,345.11	₱ 9,624,597.22	₱ 19,079.85	₱ 472,031,611.78

On 24 October 2014, MRTC filed a Reply to the Amended PAN, once again requesting the cancellation of the alleged deficiency tax assessment for lack of factual and legal basis.[12]

On 30 June 2015, respondent issued a Formal Letter of Demand ("FLD") with Assessment Notices and Details of Discrepancies,[13] which was formally served to petitioner on 1 July 2015.[14] In the FLD/FANs, petitioner was assessed deficiency taxes in the amount of ₱7,633,617,841.29 with the following details:

	Income Tax	IAET	EWT	WTC	DST
Basic Tax	₱ 997,997.56	₱ 4,576,725,904.38	₱ 4,736,262.70	₱ 9,215.46	₱ 292,558,866.10
Surcharge	-	1,144,181,476.09	-	-	73,139,716.52
Interest	453,336.97	1,389,318,438.92	2,385,000.23	4,640.55	148,924,485.81
Over-withheld tax due to error in comp.				9,500.00	
Compromise Penalty	30,000.00	50,000.00	40,000.00	3,000.00	50,000.00
TOTAL	₱ 1,481,334.53	₱ 7,110,275,819.39	₱ 7,161,262.93	₱ 26,356.01	₱ 514,673,068.43

MRTC filed its Protest with the BIR on 30 July 2015,[15] then submitted all relevant supporting documents in relation to its Protest on 24 September 2015.[16]

On 9 May 2017, Edralin M. Silario, Chief of the Regular Large Taxpayers Audit Division 2, issued Memorandum of Assignment ("MOA") No. TVN-125-2017-20 to Revenue Officer Ma. Catalina G. Benedicto ("**RO Benedicto**") and Group Supervisor Joseph Christian B. Santos ("**GS Santos**") for the "continuation of the audit/investigation to replace the previously assigned Revenue Officer(s) who resigned".[17]

On 27 June 2017, RO Benedicto submitted the Memorandum which served as basis for the FDDA.[18] The findings of RO Benedicto in the said Memorandum were reviewed by GS Santos.[19]

[12] *See* Facts, Pre-Trial Order, Records Vol. 14, p. 6661; Exhibits "P-34" and "P-34-A", Records Vol. 24, pp. 11699-11745.
[13] *See* Facts, Pre-Trial Order, Records Vol. 14, p. 6661; Exhibits "P-35" and "P-35-A", Records Vol. 24, pp. 11746-11767; Exhibits "R-9" and "R-9-A", BIR Records, pp. 819-826.
[14] *Ibid.*
[15] *See* Facts, Pre-Trial Order, Records Vol. 14, p. 6661; Exhibit "P-36", Records Vol. 24, pp. 11768-11808.
[16] Exhibits "P-37" and "P-37-A", *id.*, pp. 11809-11812.
[17] Exhibits "P-114" and "P-114-1", Records Vol. 26, p. 12795; Exhibit "R-11", BIR Records, p. 1194.
[18] Exhibits "P-115", "P-115-1", "P-115-2", Division Records Vol. 26, pp. 12803-12804.
[19] *Ibid.*

On 13 July 2017, respondent issued a Final Decision on Disputed Assessment ("FDDA") with Details of Discrepancies and Assessment Notices, which was received by petitioner on 13 July 2017, demanding payment of ₱9,687,807,050.62 inclusive of interests, surcharges, and compromise penalties,[20] the details of which are as follows:

	Income Tax	**IAET**	**EWT**	**WTC**	**DST**
Basic Tax	₱ 997,997.56	₱ 4,576,725,904.38	₱ 4,734,797.52	₱ 32,284.54	₱ 292,558,866.10
Surcharge	-	1,144,181,476.09	-	-	73,139,716.52
Interest	873,863.07	3,317,812,806.30	4,379,363.40	-	272,199,975.14
Compromise Penalty	-	-	-	-	-
TOTAL	₱ 1,871,860.63	₱ 9,038,720,186.77	₱ 9,114,160.92	₱ 32,284.54	₱ 637,898,557.76

Petitioner then filed the instant Petition for Review[21] on 16 August 2017, praying for the cancellation of the FDDA issued against MRTC demanding payment of ₱9,687,807,050.62 inclusive of interests, surcharges, and compromise penalties.

Summons was served upon respondent on 6 October 2017.[22] Petitioner was notified of such service in a Resolution, dated 12 October 2017.[23]

Respondent filed his Answer on 21 November 2017,[24] interposing the following defenses:

(1) The BIR correctly assessed petitioner for deficiency income tax arising from the discrepancy between income payments claimed as expenses per Audited Financial Statements/ Income Tax Returns and the amount subjected to withholding tax per Alphalist/remittance returns which showed that the corresponding withholding taxes were not remitted in full;
(2) The assessment on IAET has factual and legal basis;
(3) Contrary to petitioner's claim, the FDDA and attached Details of Discrepancies clearly stated the factual and legal basis of the EWT;
(4) Petitioner can be held liable for WTC arising from the discrepancy of error in computation per Alphalist using automatic computation;
(5) Petitioner is liable for deficiency DST arising from its debt instruments in the form of advances to affiliates and finance lease;
(6) Petitioner is liable for surcharge and penalties for failure of petitioner to file and/or timely pay the tax due thereon; and that

[20] *See* Facts, Pre-Trial Order, Records Vol. 14, p. 6661; Exhibit "P-38", Records Vol. 4, pp. 1515-1540; Exhibits "R-13", "R-13-A", and "R-13-B", BIR Records, pp. 1274-1287; Exhibits "R-14", "R-14-A", "R-14-B", "R-14-C", "R-14-D", and "R-14-E", *id.*, pp. 1268-1273.
[21] Petition for Review, Records Vols. 1-3, pp. 10-1487
[22] Records Vol. 4, pp. 1541.
[23] *Id.*, pp. 1548-1550.
[24] *Id.*, pp. 1560-1573.

(7) the Court has no jurisdiction to rule on the EWT deficiency assessment for failure of petitioner to contest the assessment on rent, professional fees, and director's fees.

On 10 May 2019, respondent filed his Supplemental Answer,[25] interposing the following additional defenses:

(1) Petitioner should not be allowed to attack for the first time on appeal the validity of the assessment on the ground of lack of authority;
(2) The assessments were made pursuant to a valid Letter of Authority; the continuation of the audit by another RO not named in the LOA does not invalidate the assessment; and
(3) ***RMO No. 43-90*** and ***Medicard Case*** find no application in the instant case.

Meanwhile, on 29 December 2017, respondent transmitted the BIR Records of the case, consisting of One Thousand Three Hundred Forty-Six (1,346) consecutively numbered pages contained in one (1) folder, and filed the corresponding Compliance,[26] of which the Court took note in a Minute Resolution dated 3 January 2018.[27]

Respondent and petitioner filed their Pre-Trial Briefs on 7 November 2018[28] and 9 November 2018,[29] respectively. Following the filing of both parties' Pre-Trial Briefs, the Pre-Trial Conference was held on 13 November 2018.[30]

The parties filed their Joint Stipulation of Facts and Issues ("JSFI") on 3 December 2018,[31] which the Court admitted and approved in its Resolution,[32] dated 10 December 2018. Thus, on 19 February 2019, the Pre-Trial Order[33] was rendered.

During trial, petitioner presented the following witnesses:

[25] Records Vol. 15, pp. 6814-6826.
[26] Records Vol. 4, pp. 1584-1587.
[27] *Id.*, p. 1588.
[28] Records Vol. 4, pp. 1781-1785.
[29] *Id.*, pp. 1815-1862.
[30] Records Vol. 13, p. 6241; *See also* Order dated 13 November 2018, Records Vol. 14, pp. 6532-6534.
[31] *Id.*, pp. 6552-6565.
[32] *Id.*, pp. 6581-6582.
[33] *Id.*, pp. 6660-6670.

(1) Mr. Romeo B. De Jesus, Jr., the Court-Commissioned Independent Certified Public Accountant, who testified and identified his Judicial Affidavit[34] during the hearings on 30 July 2019, 21 May 2019, and 30 July 2019;
(2) Atty. Roxanne B. Tadique, who testified and identified her Judicial Affidavit[35] during the hearing on 21 May 2019;
(3) Dr. Daniel Vincent H. Borja, Associate Professor at the University of the Philippines, who testified and identified his Judicial Affidavit[36] during the hearing on 21 May 2019;
(4) Mr. Churchill Longanilla, Accounting Supervisor of MRT Development Corporation, who testified and identified his Judicial Affidavit[37] and Supplemental Judicial Affidavit[38] during the hearing on 21 May 2019;
(5) Atty. Vincent S. Ventus, petitioner's Corporate Secretary, who testified and identified his Judicial Affidavit[39] during the hearing on 25 June 2019; and
(6) Ms. Carmen Cintura, petitioner's Former Accountant, who testified and identified her Amended Judicial Affidavit[40] during the hearing on 25 June 2019.

Petitioner formally offered its documentary evidence on 13 September 2019,[41] without comment from respondent despite order.

In a Resolution dated 3 December 2019,[42] the Court admitted all of petitioner's formally offered documentary evidence except for the following:

Exhibit	Reason for denial
Exhibits "P-39-1", "P-98", "P-98-1", "P-98-A", "P-98-A-1", "P-98-B", "P-98-B-1", "P-102", "P-110", "P-125-001", "P-125-005" to "P-125-007", and "P-125-014" to "P-125-050"	Failure to correspond with the documents actually marked
Exhibits "P-102-1" and "P-110-1"	In view of the denial of Exhibits "P-102" and "P-110", respectively

[34] Exhibits "P-96", "P-96.1", and "P-96.2", Records Vol. 14, pp. 6594-6603; Exhibits "P-130", "P-130-1", "P-130-2", Records Vol. 18, pp. 8508-8534.
[35] Exhibits "P-106", "P-106-1", and "P-106-2", Records Vol. 15, 7085-7090.
[36] Exhibits "P-88", "P-88-1", and "P-88-2", Records Vol. 11, pp. 4870-4883.
[37] Exhibits "P-87", "P-87-1", and "P-87-2", Records Vol. 7, pp. 3362-3441.
[38] Exhibits "P-105", "P-105-1", and "P-105-2", Records Vol. 15, pp. 6849-6887.
[39] Exhibits "P-86", "P-86-1", and "P-86-2", Records Vol. 26, pp. 12570-12618; Exhibits "P-107", "P-107-1", and "P-107-2", *id.*, pp. 12678-12690.
[40] Exhibits "P-108", "P-108-1", and "P-108-2", Records Vol. 26, pp. 12691-12780.
[41] Records Vols. 21-26., pp. 9990-12850.
[42] Records Vol. 26, pp. 12858-12864.

Exhibits "P-11", "P-11-1", "P-12", "P-12-A", "P-13", "P-13-A", "P-14", "P-14-A", "P-18", "P-18-A", "P-18-B", and "P-18-C"	For failure to present the originals for comparison
Exhibits "P-41", "P-41-A", and "P-41-B Exhibits "P-44", "P-44-A", "P-44-B", "P-44-C", "P-44-D", "P-44-E", and "P-44-F" Exhibits "P-50", "P-50-A", "P-50-B", "P-50-C", "P-50-D", "P-50-E", "P-50-F", and "P-50-G" Exhibits "P-71", "P-71-1", and "P-72" Exhibit "P-73"	For failure to comply with the requisites for admissibility of secondary evidence
Exhibits "P-123-011" and "P-127-001" to "P-127-010"	For being unreadable, or not properly scanned or blurred

Subsequently, on 26 December 2019, petitioner filed a Motion for Partial Reconsideration[43] for the admission of the foregoing denied exhibits, without respondent's Comment despite order.[44]

In a Resolution dated 8 October 2020,[45] the Court admitted all of the foregoing Exhibits and noted the following:

(1) The amended description of Exhibits P-98", "P-98-1", "P-98-A", "P-98-A-1", "P-98-B", "P-98-B-1", "P-102", "P-110", and "P-125-001" to "P-125-050";
(2) In petitioner's Motion for Partial Reconsideration, Exhibit "P-1<u>2</u>5-024" pertaining to a letter dated 16 July 2007 was inadvertently identified as "July 16 2007 (P-1<u>3</u>5-024);
(3) In petitioner's Motion for Reconsideration, it inadvertently identifies a letter dated <u>3</u>0 April 2012 marked as Exhibit "P-125-046" as a letter dated <u>1</u>0 April 2012; and
(4) The clear and readable versions of Exhibits "P-123-011" and "P-127-001" to "P-127-010" attached to the Motion for Partial Reconsideration and the marking of the substitute versions accordingly.

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[43] *Id.*, pp. 12865-12918.
[44] *Id.*, p. 1298.
[45] *Id.*, pp. 12938-12948.

Thereafter, respondent presented his sole witness, Revenue Office Ma. Catalina Benedicto who testified and identified her Judicial Affidavit[46] during the hearing on 11 March 2021.

Respondent formally offered his documentary evidence[47] on 26 May 2021 with petitioner's Comment (on Respondent's Formal Offer of Evidence)[48] filed on 28 May 2021.

In a Resolution,[49] dated 17 December 2021, the Court admitted all of respondent's formally offered documentary evidence except for Exhibits "R-15" and "R-16" for failure to mark the said exhibits.

Respondent filed his Memorandum[50] on 8 February 2022 while petitioner filed its Memorandum[51] on 16 March 2022.

With the filing of both parties' respective memoranda, the case was submitted for decision on 23 March 2022.[52]

The Issue[53]

The sole issue submitted for this Court's resolution is:

Whether or not petitioner is liable to pay assessed deficiency income tax, expanded withholding tax, withholding tax on compensation, documentary stamp tax, and improperly accumulated tax in the aggregate amount of ₱9,687,807,050.62 plus surcharge and interests and compromise penalties for taxable year 2012.

Arguments of the Parties

Petitioner's Arguments[54]

Petitioner asserts that the assessment is void for lack of authority of Revenue Officer Benedicto to conduct an audit against MRTC as no LOA was issued in her favor.

46 Exhibits "R-18" and "R-18-a", Records Vol. 4, pp. 1791-1801
47 Records Vol. 27, pp. 12944-12949.
48 *Id.*, pp. 12950-12966.
49 *Id.*, pp. 12970-12971.
50 *Id.*, pp. 12972-12985.
51 *Id.*, pp. 12994-13152.
52 *Id.*, p. 13155.
53 *See* Issue, Pre-Trial Order, Records Vol. 14, p. 6661.
54 *See* Memorandum for Petitioner, Records Vol. 27, pp. 12994-13152.

Assuming RO Benedicto had such authority, petitioner maintains that the assessment must be cancelled for lack of factual and legal basis.

First, petitioner is not liable for the payment of corporate income taxes, including deficiency taxes, interests, and penalties assessed in respect thereof considering that: (a) the Republic assumed the responsibility to pay petitioner's corporate income taxes under the BLT Agreement; and (b) petitioner properly withheld the tax due on its income payments to its suppliers which should be deducted from its gross income.

Second, the alleged deficiency IAET assessment is void for lack of legal and factual basis considering that these advances on dividends were constructive dividends, which had to be booked as receivables, distributed with no expectation of repayment.

Third, the alleged deficiency DST assessments are void and must be cancelled considering that: (a) the Republic has confirmed the exemption of the DST from the BLT Agreement; (b) the advances to affiliates cannot be the subject of DST as these are not loan agreements; (c) ***RMC No. 46-2014*** cannot be applied to a transaction that occurred before the ***1997 Tax Code*** and the ***Financing Company Act of 1998*** became effective; (d) ***RMC No. 46-2014*** unduly expanded the coverage of ***Section 179 of the Tax Code*** on what are considered as debt instruments subject of DST; (e) ***RMC No. 46-2014*** is not applicable to the BLT Agreement; the BLT Agreement is not a statutory finance lease; (f) ***RMC No. 46-2014*** incorrectly equated a finance lease with a debt instrument; (g) the BIR has considered the ERPs under the BLT Agreement as rental fees subject to VAT. The BIR is thus precluded from treating the BLT Agreement as a finance lease for purposes of imposing DST and, at the same time, treating it as a regular lease arrangement for purposes of imposing VAT.

Fourth, the alleged deficiency EWT assessment is void for lack of legal and factual basis considering that: (a) Petitioner has no record that it was notified in writing that it was included in the top 20,000 private corporations, thus, there is no basis to compel the withholding from local suppliers of goods and services not enumerated under ***Section 2.57.2 of RR No. 2-98***; (b) The literal interpretation of ***RR No. 2-98*** requiring the withholding of taxes from all local suppliers of goods and services, including those that bill customers at face value, is against one of the principles of a sound tax system, i.e., administrative feasibility; (c) The BIR's purported right to assess supposed deficiency EWT for the months of January through May 2012 has already prescribed; (d) Petitioner was not a withholding agent in respect of the accrual of maintenance fees due to Sumitomo because these were not part of Petitioner's deductible expenses; and (e) Even assuming that a written notification is not necessary, the ICPA has found that the total alleged deficiency withholding tax due is ₱80,205.14.

Fifth, petitioner cannot be held liable for the alleged deficiency WTC inasmuch as the FDDA admitted that there was over-withholding of WTC.

Sixth, on surcharges and penalties, assuming the DST and IAET assessments were correct, these were brought about or were result of non-compliance due to a difficult interpretation of the law. Petitioner relied on the Republic's express representation to Petitioner that no DST is due on the BLT Agreement. Compromise penalties cannot likewise be imposed or collected without the taxpayer's conformity.

Respondent's Arguments[55]

For his part, respondent maintains that the assessment has factual and legal bases.

First, respondent claims that petitioner was assessed IAET pursuant to ***Section 29(A) of the Tax Code, as amended*** as implemented by ***Revenue Regulations ("Rev. Regs.") No. 2-2001*** and ***Revenue Memorandum Circular ("RMC") No. 35-2011*** due to its accumulation of earnings without distribution to its stockholders. Respondent explains that IAET is imposed as a penalty tax for failure to divide or distribute the accumulated earnings to the shareholders where they would be imposed dividend tax. Due to the improper accumulation of said earnings, the aforesaid purpose was defeated hence the assessment of 10% IAET.

Respondent further claims that the term "reasonable needs of the business" in ***Rev. Regs. 2-2001*** does not include concerns relating to tax assessments to the LGUs and the BIR.

Respondent disagrees with petitioner's claim that the Republic of the Philippines is responsible for the IAET, relying on the case of ***Cyanamid Philippines, Inc. v. Commissioner of Internal Revenue.***[56]

Second, respondent maintains that the FDDA and attached Details of Discrepancies clearly stated the factual and legal basis of the EWT. It reiterated the findings in the Details of Discrepancies that the fact that petitioner did not claim the expense will not relieve the latter from its obligations as a withholding agent.

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[55] *See* Memorandum for Respondent, *id.*, pp. 12972-12985.
[56] G.R. No. 108067, 20 January 2000.

Third, respondent reiterates the explanation in the Details of Discrepancies that petitioner is liable for WTC arising from a discrepancy in error in computation per Alphalist using automatic computation.

Fourth, respondent maintains that petitioner is liable for DST arising from its debt instrument in the form of advances to affiliates and finance lease.

Finally, respondent maintains that petitioner is liable for surcharge and penalties for failure of petitioner to file and/or timely pay the tax due thereon.

The Ruling of the Court

The instant Petition for Review is meritorious.

Cases filed in the Court of Tax Appeals are litigated *de novo.*

Respondent contends that petitioner cannot attack the validity of the assessment for the first time on appeal.

Respondent's contention is erroneous.

Settled is the rule that cases filed before this Court are litigated *de novo*.[57] As such, parties are expected to litigate and prove every minute aspect of their case anew by presenting, formally offering, and submitting to the CTA all evidence required for the successful prosecution of its claim.[58] The Court may consider and evaluate anew evidence submitted before it and make its own factual determination of the case.

Similarly, in the more recent case of ***Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.***,[59] the Supreme Court ruled:

> "The law creating the CTA specifically provides that proceedings before it shall **not be governed strictly by the technical rules of evidence.** The **paramount consideration remains the ascertainment of truth**. Thus, the CTA is **not limited by the evidence presented in the administrative claim in the Bureau of Internal Revenue**. The claimant **may present new and additional evidence** to the CTA to support its case for tax refund.

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[57] Commissioner of Internal Revenue v. Univation Motor Philippines, Inc., G.R. No. 231581, 10 April 2019.
[58] *Id.*; Philippine Airlines, Inc. v. Commissioner of Internal Revenue, G.R. No. 206079-80 and 206309, 17 January 2018.
[59] G.R. No. 231581, 10 April 2019.

> Cases filed in the CTA are **litigated de novo** as such, respondent "should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim." Consequently, the **CTA <u>may give credence to all evidence presented by respondent</u>, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.**"[60]
> (Emphasis and underscoring, Ours.)

In view of the foregoing, respondent's contention that the Court may not rule on defenses not raised at the administrative level has no merit. To stress, the inquiry of this Court is not limited to determining whether the findings of the BIR are consistent with law considering the supporting documents submitted at the administrative level. Rather, jurisprudence has settled that this Court may consider and evaluate anew evidence submitted before it and make its own factual determination of the case.

<u>The assessment is void for lack of authority of the tax agents who conducted audit examination and performed assessment functions.</u>

The ***National Internal Revenue Code of 1997 ("Tax Code"), as amended***, mandates that only the Commissioner or his duly authorized representative to authorize examination of the taxpayer and the assessment of the correct amount of tax, *viz.*:

> "**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</u> 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 and underscoring, Ours.)

In the case of ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue***,[61] the Supreme Court categorically pronounced that an examination of a taxpayer's books and accounting records, to be valid, must be based on a valid LOA, and that the absence of such LOA violates the taxpayer's right to due process thereby rendering the entire assessment void:

[60] Citations omitted; Emphasis and underscoring supplied.
[61] G.R. No. 222743, 5 April 2017.

"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 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, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax:** Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> xxx xxx xxx (Emphasis and underlining ours)

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.** 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**.

...

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:

> 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 and underlining ours).

..."

(Emphasis and underscoring, Ours.)

Further, in ***Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.***,[62] the Supreme Court emphasized that due process requires the identification of tax agents authorized to continue the tax audit or investigation through an LOA:

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

> "The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. In ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue***, We have ruled that the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued. In that case, We have stated that "[d]ue process demands x x x that after [a Letter Notice] has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case." The result of the absence of a LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process.
>
> To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, **there is a link between the said LOA and the revenue officer who will conduct the examination and assessment**; and **the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA**. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. **In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.**" (Emphasis, Ours.)

In the more recent case of ***Republic of the Philippines v. Robiegie Corporation,***[63] the Supreme Court reiterated the ruling in the ***Medicard Case*** and cited the BIR's own issuance requiring the issuance of a new LOA in case of assignment or transfer of cases to another RO:

> "Considering that **an LOA clothes the appropriate revenue officer with the authority to assess and examine the books of account and records of a taxpayer,** such power is necessarily subject to reasonable limitations. In particular, Section C (5) of RMO NO. 43-90, specifically requires that **any re-assignment/transfer of cases to another RO shall require the issuance of a new LOA**:
>
> C. Other policies for issuance of L/As.
>
> 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."
>
> (Emphasis, Ours.)

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[63] G.R. No. 260261, 3 October 2022.

Following the foregoing jurisprudential pronouncements, due process requires that the taxpayer should be informed of the names of the tax agents who are duly authorized to conduct examination of the taxpayer's books and accounting records and perform assessment functions through an LOA. It is a jurisdictional requirement of a valid audit and therefore a valid assessment. There has to be a link between the LOA and the tax agents who will conduct an examination of the taxpayer's books of accounts and accounting records.

More importantly and pivotal to this case, "any reassignment/transfer of cases to another RO shall require the issuance of a new LOA".[64]

In the present case, records show that no new LOA was issued to RO Benedicto and GS Santos. Instead, what was issued by RLTAD Chief Edralin M. Silo is a MOA[65] authorizing RO Benedicto and GS Santos to continue the reinvestigation.

Accordingly, the absence of a new or separate LOA specifically identifying RO Benedicto and GS Santos as the new RO and GS, respectively, who would continue the audit examination of the respondent's books of accounts for TY 2012 and perform assessment functions, rendered them without authority to conduct the said audit and recommend the issuance of the deficiency tax assessments. The resulting tax assessments are consequently null and void. For being void, the same bears no valid fruit.

To reiterate, the absence of a LOA is fatal to the validity of respondent's deficiency assessment against petitioner. The Memorandum of Assignment issued to petitioner is not equivalent to a LOA. Being a void assessment, no valid fruit can be derived therefrom.[66]

Having arrived at the foregoing conclusion, We find it unnecessary to discuss and rule upon the other points raised in the instant petition.

WHEREFORE, in light of the foregoing considerations, the Petition for Review filed by petitioner Metro Rail Corporation is hereby **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated 13 July 2017 issued against petitioner demanding payment of ₱9,687,807,050.62 which includes all basic taxes, surcharges, interests, and compromise penalties assessed for taxable year 2012 are hereby **CANCELLED** and **SET ASIDE**.

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[64] *Ibid.*
[65] Exhibit "R-11", BIR Records, p. 1194.
[66] Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, et al., G.R. Nos. 215534 and 215557, 18 April 2016; Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue G.R. No. 241848, 14 May 2021.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

ERLINDA P. UY
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