REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

FIRST TELECOM PHILIPPINES, INC., *Petitioner,*	**CTA Case No. 10486**
	Members:
-*versus*-	**MANAHAN**, *Chairperson,* **REYES-FAJARDO**, *and* **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 14 2024 3:58 p.m.

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DECISION

MANAHAN, J.:

THE CASE

In this *Petition for Review (With urgent Motion to Suspend Collection of tax and Dispense with Payment of Bond)*[1] filed on March 17, 2021, petitioner First Telecom Philippines, Inc. (FTPI) seeks for the Court to cancel and withdraw the Final Decision on Disputed Assessment (FDDA) involving deficiency Income Tax (IT), Value-Added Tax (VAT), Expanded Withholding Tax (EWT), Improperly Accumulated Earnings Tax (IAET), Documentary Stamp Tax (DST), and compromise penalties, inclusive of interest and penalties for taxable year (TY) 2013 in the total amount of One Billion Two Hundred Thirty-Nine Million Eight Hundred Nineteen Thousand Nine Hundred Sixty and 29/100 Pesos (P1,239,819,960.29).

[1] Docket, Vol. I, pp. 7-57.

THE PARTIES

FTPI is a domestic corporation duly organized and existing under Philippine laws, with principal office address at 2-D Ison Building, 1 MC Ison Street corner Rizal Avenue, Dolores, Taytay, Rizal.[2]

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), with office address at BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

On February 4, 2015, respondent issued a Letter of Authority (LOA)[3] authorizing: (1) Revenue Officer (RO) Jan Andre Abellera; (2) RO Johnro Galicia; and (3) Group Supervisor (GS) Gilquin Tolentino, to examine FTPI's books of accounts and other accounting records covering the taxable year 2013.[4]

On February 6, 2015, the BIR, through the Chief of Regular Large Taxpayers Audit Division (RLTAD)-I, Cesar D. Escalada, issued a letter[5] to FTPI, as follows:

> "The bearer hereof, Revenue Officers, Ruby Ann B. Oradia and Aurelio Agustin T. Zamora are authorized to assist in the examination of your books of accounts and other accounting records for All Internal Revenue tax liabilities for the taxable year 2013, pursuant to Letter of Authority No. 0116-2015-00000010 dated February 4, 2015. They are provided with the necessary identification cards which shall be presented to you upon request.
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> It is requested that all facilities be extended to the Revenue Officers as supervised by Group Supervisor Gilquin B. Tolentino."

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[2] The Parties, par. 1, Docket, Vol. I, p. 8.
[3] Exhibit "P-4", Docket, Vol. I, p. 230.
[4] Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), par. 3, Docket, Vol. II, p. 675.
[5] Exhibit "P-5", Docket, Vol. I, p. 231.

During examination, FTPI executed a "Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code (NIRC)" on May 22, 2017.[6]

On December 7, 2017,[7] respondent issued a Preliminary Assessment Notice (PAN) against FTPI.

On December 22, 2017,[8] FTPI filed its Reply to the PAN with attached Details of Discrepancies dated December 21, 2017.

On December 28, 2017,[9] FTPI received the Formal Letter of Demand (FLD) and Audit Result/Assessment Notice (AR/AN).

On January 26, 2018,[10] FTPI filed its Protest to the FLD dated January 25, 2018.

On February 16, 2021,[11] FTPI received the Final Decision on Disputed Assessment (FDDA).

On March 17, 2021, FTPI filed the instant Petition for Review.[12]

On June 14, 2021, respondent filed his Comment and Opposition (*Re: Petitioner's Urgent Motion to Suspend Collection of tax and Dispense with Payment of Bond*).[13]

On June 25, 2021, FTPI filed its Formal Offer of Evidence.[14] On June 30, 2021, respondent filed his Comment (*Re: Formal Offer of Evidence dated 25 June 2021*).[15]

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[6] Summary of Admitted Facts, JSFI, par. 4, Docket, Vol. II, p. 675; Exhibit "P-6", Docket, Vol. I, p. 234.
[7] Exhibit "P-7", Docket, Vol. I, pp. 235-239; Exhibit "R-7", BIR Records, pp. 326-328.
[8] Exhibit "P-8", Docket, Vol. I, pp. 240-246.
[9] Exhibit "P-9", Docket, Vol. I, pp. 247-257.
[10] Exhibit "P-10", Docket, Vol. I, pp. 258-264.
[11] Exhibit "P-11", Docket, Vol. I, pp. 265-270.
[12] See Note 1.
[13] Docket, Vol. I, pp. 158-171.
[14] Docket, Vol. I, pp. 181-192.
[15] Docket, Vol. I, pp.479-481.

On July 21, 2021, respondent filed through registered mail his Answer.[16] He interposed the following special and affirmative defenses: (1) The service of the FDDA is valid; (2) The issues on the authority of the ROs and non-revalidation of LOA were not raised in the administrative level; (3) The conduct of the audit and investigation and the resulting assessments are valid; (4) An LOA is not required when the audit is conducted by the office of respondent; (5) Assuming that an LOA is required, the examination of petitioner's books of accounts and other accounting records was conducted pursuant to a valid LOA; (6) The non-revalidation of the LOA does not invalidate the assessments; (7) The issuance of the FLD is valid; (8) There was no denial of FTPI's right to procedural due process; (9) FTPI executed a valid waiver and thus, the period to assess was effectively extended; (10) FTPI is liable for deficiency IT, VAT, EWT, IAET and DST, plus penalties, surcharges and interest for TY 2013; and, (11) FTPI failed to overcome the presumption of validity and correctness of the assessments.

On October 14, 2021, the Court issued a Resolution[17] admitting FTPI's pieces of evidence in support of its subject motion. On November 19, 2021, the Court issued a Resolution[18] denying FTPI's *Urgent Motion to Suspend Collection of Tax and Dispense with Payment of Bond.*

On November 29, 2021, the Court issued a *Notice of Pre-Trial Conference.*[19]

On January 9, 2022, FTPI filed through electronic mail (e-mail) its *Motion for Reconsideration (Re: Resolution dated November 19, 2021).*[20]

On February 3, 2022, FTPI filed its *Pre-Trial Brief.*[21] On February 11, 2022, respondent filed its *Respondent's Pre-Trial Brief.*[22]

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[16] Docket, Vol. I, pp. 485-518.
[17] Docket, Vol. II, pp. 541-542.
[18] Docket, Vol. II, pp. 549-558.
[19] Docket, Vol. II, pp. 559-561.
[20] Docket, Vol. II, pp. 600-611.
[21] Docket, Vol. II, pp. 565-598.
[22] Docket, Vol. II, pp. 618-622.

On March 31, 2022, FTPI filed its *Motion to Admit Supplemental Motion for Reconsideration.*[23]

On April 26, 2022, the Court issued a Resolution:[24] (1) Granting FTPI's Motion to Admit Supplemental Motion for Reconsideration; (2) Admitting FTPI's Supplemental Motion for Reconsideration; and (3) Denying FTPI's Motion for Reconsideration (Re: Resolution dated November 19, 2021 and the subsequent Supplemental Motion for Reconsideration.

On July 7, 2022, the Court conducted the Pre-Trial[25] of the case. On July 21, 2022, the parties filed their Joint Stipulation of Facts and Issues.[26] On September 16, 2022, the Court issued a *Pre-Trial Order.*[27]

During hearing, FTPI presented the following witnesses: (1) Mr. Ulysses Lao[28] – FTPI's Treasurer; (2) Ms. Gina Hernandez[29] - FTPI's External Accounting Consultant; (3) Mr. Raymund J. Manaig[30] - Court Commissioned Independent Certified Public Accountant; (4) Mr. Clark Vincent M. Zara[31] – Assistant Vice President (VP) and Center Head of Tax Compliance and Reporting of Smart Communications, Inc.; and, (5) Ms. Maria Jaimita P. Sabido[32] - VP for Channel Development Capabilities Support of Smart Communications, Inc.

On December 9, 2022, FTPI filed its *Formal Offer of Evidence (With Motion to Correct Description of Documentary Exhibits).*[33] On December 23, 2022, respondent filed his *Comment (on Petitioner's Formal Offer of Evidence with Motion to Correct Description of Documentary Exhibits).*[34] On February 3,

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[23] Docket, Vol. II, pp. 641-643.
[24] Docket, Vol. II, pp. 659-663.
[25] Minutes of the Hearing dated July 7, 2022, Docket, pp. 670-670-B.
[26] Docket, Vol. II, pp. 674-698.
[27] Docket, Vol. II, pp. 742-775.
[28] Exhibit "P-90", Judicial Affidavit of Ulysses Lao, Docket, Vol. I, pp. 67-88; Exhibit "P-96", Supplemental Judicial Affidavit of Ulysses Lao; Docket, Vol. I, pp. 145-148; Minutes of the Hearing dated September 1, 2022, Docket, Vol. II, pp. 739-739-C.
[29] Exhibit "P-91", Docket, Vol. I, pp. 93-99; Minutes of the Hearing dated September 1, 2022, Docket, Vol. II, pp. 739-739-C.
[30] Exhibit "P-98", Judicial Affidavit of Raymund J. Manaig, Docket, Vol. II, pp. 722-727; Exhibit "P-102", Judicial Affidavit of Raymund J. Manaig, Docket, Vol. II, pp. 803-825; Minutes of the Hearing dated September 1, 2022, Docket, Vol. II, pp. 739-739-C.
[31] Exhibit "P-93", Judicial Affidavit of Mr. Clark Vincent M. Zara, Docket, Vol. I, pp. 115-127; Order dated November 8, 2022, Docket, Vol. II, pp. 1083-1085.
[32] Exhibit "P-92", Judicial Affidavit of Maria Jaimita P. Sabido, Docket, Vol. I, pp. 104-109; Order dated November 8, 2022, Docket, Vol. II, pp. 1083-1085.
[33] Docket, Vol. II, pp. 870-898.
[34] Docket, Vol. II, pp. 1091-1093.

2023, the Court issued a Resolution[35] admitting FTPI's pieces of evidence.

On the other hand, respondent presented his lone witness, Mr. Jan Andre Abellera,[36] RO II of the BIR.

On April 24, 2023, respondent filed his *Formal Offer of Evidence.*[37] On May 5, 2023, FTPI filed its *Comment/Opposition (On Respondent's Formal Offer of Evidence Dated April 20, 2023).*[38] On June 14, 2023, the Court issued a Resolution[39] admitting respondent's pieces of evidence, except for Exhibit "R-13" due to failure to submit the duly marked exhibit. The Court likewise ordered the parties to file their respective memoranda.

On July 25, 2023, FTPI filed its Memorandum.[40] On the other hand, on August 7, 2023, respondent filed his Memorandum.[41]

On August 15, 2023,[42] the Court issued a Minute Resolution submitting the case for decision.

THE ISSUE

The parties submitted the following issue for resolution of the Court: Whether petitioner is liable for the alleged deficiency IT, VAT, EWT, IAET, DST, and compromise penalties, inclusive of interest and penalties for TY 2013 in the total amount of One Billion Two Hundred Thirty-Nine Million Eight Hundred Nineteen Thousand Nine Hundred Sixty and 29/100 Pesos (P1,239,819,960.29).[43]

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[35] Docket, Vol. II, pp. 1099-1103.
[36] Exhibit "R-15, Docket, Vol. I. pp. 524-533; Order dated February 28, 2023, Docket, Vol. II, pp. 1150-1151.
[37] Docket, Vol. II, pp. 1185-1192.
[38] Docket, Vol. II, pp. 1196-1203.
[39] Docket, Vol. II, pp. 1214-1216.
[40] Docket, Vol. III, pp. 1217-1281.
[41] Docket, Vol. III, pp. 1285-1324.
[42] Minute Resolution, Docket, Vol. III, p. 1328.
[43] Statement of the Issue to be Resolved, JSFI, Docket, Vol. II, p. 676.

THE RULING

The Court has jurisdiction over the instant case

Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended, provides for the periods to judicially elevate the adverse decision or inaction of respondent, as follows:

> "***SEC. 228. Protesting of Assessment***. - x x x
>
> xxx xxx xxx
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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."*(Emphasis supplied)*

In *Lascona Land Co., Inc. v. Commissioner of Internal Revenue,*[44] the Supreme Court explained the options of a taxpayer in relation to judicial appeal, as follows:

> "In *RCBC v. CIR*, the Court has held that in case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: (1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision."[45]

Based on the provisions of Section 228 of the 1997 NIRC, as amended, in relation to the *Lascona* case, if respondent fails to act on the protest within the one hundred eighty (180)-day period, the taxpayer may either: (1) file a Petition for Review before the CTA within thirty (30) days after the lapse of said period; or (2) wait for the respondent's final decision despite being issued beyond the 180-day period, and raise an appeal to the CTA within thirty (30) days from receipt thereof. "[T]hese

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[44] G.R. No. 171251, March 5, 2012, 683 Phil. 430-442.
[45] *Id.*, citing G.R. No. 168498, April 24, 2007, 522 SCRA 144.

options are mutually exclusive and resort to one bars the application of the other."[46]

Here, FTPI filed its Protest to the FLD on January 26, 2018.[47] Meanwhile, more than three (3) years had already lapsed when respondent issued the FDDA on February 16, 2021.[48] Thus, FTPI opted to avail the second (2nd) option, *i.e.*, wait for the respondent's final decision despite being issued beyond the 180-day period, and raise an appeal to the CTA within thirty (30) days from receipt thereof. Counting 30 days from February 16, 2021, FTPI had until March 18, 2021, within which to file its judicial appeal.

Considering that the instant petition was filed on March 17, 2021,[49] the same is timely filed. As such, the Court has jurisdiction over the instant case.

RO Ruby Ann B. Oradia and RO Aurelio Agustin T. Zamora are not duly authorized to conduct the audit and examination of FTPI's books of accounts and other accounting records. Hence, the subject assessments are void

Section 13 of the 1997 NIRC, as amended, provides:

> "**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 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)*

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[46] See Note 45.
[47] See Note 10.
[48] See Note 11.
[49] See Note 12.

With respect to the importance of an LOA as part of the due process requirement in the BIR audit investigation, the Supreme Court had already made various pronouncements, as follows:

In *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[50] the Supreme Court ruled that:

> "Based on Section 13 of the Tax Code, a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
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> xxx xxx xxx
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> 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."

In *Medicard Philippines, Inc.* v. *Commissioner of Internal Revenue*,[51] the Supreme Court ruled that:

> "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:
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> > **SEC. 6**. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
> >
> > (A) **Examination of Return and Determination of Tax Due**.- After a return has been filed as required

[50] G.R. No. 178697, November 17, 2010.
[51] G.R. No. 222743, April 5, 2017.

> 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.
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> xxx xxx xxx

> 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 *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*,[52] the Supreme Court pertinently ruled that:

> *"xxx Likewise, the CTA EB correctly held that the deficiency tax assessments were invalid due to the revenue officers' lack of authority to do so. Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers."*

Finally, in the more recent case of *Commissioner of Internal Revenue v. Wellington Investment & Manufacturing Corporation*,[53] the Supreme Court said that:

> "We recently ruled in *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.* that (1) the reassignment or transfer of an RO requires the issuance of a new or amended LOA for the substitute or replacement RO to continue the audit or investigation; (2) the use of a memorandum of assignment, referral memorandum, **or such equivalent document**, directing the continuation of audit or investigation by an unauthorized RO usurps the functions of the LOA; and (3) Revenue Memorandum Order (RMO) No. 43-90 expressly and specifically requires the issuance of a new LOA if ROs are reassigned or transferred. We declared:

[52] G.R. Nos. 249883-84, January 27, 2020.
[53] Resolution, G.R. No. 249795, November 29, 2022.

> The practice of reassigning or transferring revenue officers originally named in the Letter of Authority *(LOA)* and substituting or replacing them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the Commissioner of Internal Revenue *(CIR)* or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing Bureau of Internal Revenue *(BIR)* rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his duly authorized representative to examine the taxpayer's books of accounts.
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> In *Himlayang Pilipino Plans, Inc. v. Commissioner of Internal Revenue*, the examination of the taxpayer's books of accounts was reassigned to another RO sans issuance of a new LOA; the authority of the subsequent RO therein was anchored only upon the MOA signed by the revenue district officer. We thus declared void the assessments against the taxpayer for having been issued without an LOA by the CIR or his duly authorized representative.
>
> The RMOs cited by petitioner, namely RMO Nos. 08-2006 and 69-2010, merely provide additional regulations in case of reassignment of revenue officers and should not be interpreted to remove the requirement of an LOA. Rather, the MOA, referral memorandum, or any equivalent document are issued for the purpose of reassignment and transfer of cases of revenue officers, and not for the purpose of vesting authority on an RO to examine a taxpayer's books of accounts, which is the function of an LOA."*(Emphasis supplied)*

Here, RO Ruby Ann B. Oradia and RO Aurelio Agustin T. Zamora were authorized to conduct the examination of FTPI's books and accounting records only through a letter issued by Chief of RLTAD-I Cesar D. Escalada on February 6, 2015.[54] Considering that the said ROs' authority did not emanate from a new or amended LOA, the subject assessments are void.

Consequently, a void assessment bears no fruit.[55] Considering the invalidity of the assessment, the Court need not belabor on the other issues raised by the parties.

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[54] See Note 5.
[55] *Commissioner of Internal Revenue v. Unioil Corporation*, G.R. No. 204405, August 4, 2021.

ACCORDINGLY, the instant *Petition for Review (With urgent Motion to Suspend Collection of tax and Dispense with Payment of Bond)* is **GRANTED**. Consequently, the Final Decision on Disputed Assessment received by petitioner on February 16, 2021 is **WITHDRAWN** and the Formal Letter of Demand and Audit Result/Assessment Notices received by petitioner on December 28, 2017 are **CANCELLED** and **SET ASIDE**. Respondent Commissioner of Internal Revenue or any person duly acting on his behalf is **ENJOINED** from proceeding with the collection of the taxes arising therefrom.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(on official business)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
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.

CATHERINE T. MANAHAN
Associate Justice
3rd Division, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice