REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL THIRD DIVISION

BUKIDNON SECOND ELECTRIC COOPERATIVE, INC. (BUSECO), Petitioner	**CTA CASE NOS. 9761 & 9819**
	Present:
vs.	**RINGPIS-LIBAN**, *Chairperson*, **MODESTO-SAN PEDRO**, and **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 28 2023 4:10 p.m.

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DECISION

***FERRER-FLORES, J.*:**

STATEMENT OF THE CASE[1]

Before this Court are the Petitions for Review of the consolidated cases of CTA Case Nos. 9761 & 9819 filed by petitioner **Bukidnon Second Electric Cooperative, Inc. (BUSECO)** praying for the nullification and cancellation of the *Formal Letter of Demand* (FLD) and *Final Assessment Notice* (FAN) Nos. RR16-099-165-2017, dated June 16, 2017, and RR16-099-291-2017, dated December 27, 2017, issued by respondent **Commissioner of Internal Revenue** against petitioner **Bukidnon Second Electric Cooperative, Inc. (BUSECO)** for taxable years (TYs) 2012 and 2014:

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[1] Summary of the Cases, Pre-Trial Order dated December 19, 2019, Docket (CTA Case No. 9761) – Vol. 1, pp. 394 to 395.

CTA Case No. 9761:

Income tax	₱75,751,408.62
Value-added tax (VAT)	590,667.30
Compromise penalty	50,000.00

CTA Case No. 9819:

Income tax	₱47,703,170.33
VAT	8,458,830.31
Expanded withholding tax (EWT)	336,636.78
Compromise penalties	25,000.00

THE PARTIES

Petitioner BUSECO is a non-stock non-profit electric cooperative, with principal office address at Manolo Fortich, Bukidnon. It was issued a Certificate of Registration by the National Electrification Administration (NEA),[2] pursuant to Presidential Decree (PD) No. 269.[3]

Respondent CIR is empowered, among others, to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties in relation thereto, and other matters arising from the implementation of the National Internal Revenue Code (NIRC) of 1997, as amended, and other laws administered by the Bureau of Internal Revenue (BIR). His office address is at the BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

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[2] Par. 1, The Parties, *Petition for Review*, Docket (CTA Case No. 9761) – Vol. 1, p. 10, vis-à-vis par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket (CTA Case No. 9761) – Vol. 1, p. 277; Par. 1, The Parties, *Petition for Review*, Docket (CTA Case No. 9819), p. 10, vis-à-vis par. 1, Summary of Admitted Facts, JSFI, Docket (CTA Case No. 9761) – Vol. 1, p. 359.

[3] Creating the "National Electrification Administration" as a Corporation, Prescribing its Powers and Activities, Appropriating the Necessary Funds Therefor and Declaring a National Policy Objective for the Total Electrification of the Philippines on an Area Coverage Basis, the Organization, Promotion and Development of Electric Cooperatives to Attain the Said Objective, Prescribing the Terms and Conditions for their Operations, the Repeal of Republic Act No. 6038, and for Other Purposes, August 6, 1973.

[4] Par. 3, Summary of Admitted Facts, JSFI, Docket (CTA Case No. 9761) – Vol. 1, p. 277.

ANTECEDENTS (ADMINISTRATIVE LEVEL)

For CTA Case No. 9761:

On August 18, 2014, petitioner was furnished with a copy of *Letter Notice* (LN) No. 099-RLFTRS-12-00-00024 of even date, signed by Revenue District Officer (RDO) Merlyn DV. Vicente of Revenue District Office No. 99 Malaybalay City, with VAT discrepancies noted, covering calendar year (CY) ending December 31, 2012.[5]

Thereafter, on September 4, 2014, petitioner received the follow up letter dated August 28, 2014 from RDO Vicente.[6]

On October 27, 2015, petitioner received an undated letter from RDO Vicente, informing petitioner that a report of investigation was submitted for appropriate action, and a corresponding Computation Sheet was attached detailing petitioner's VAT liabilities amounting to ₱541,621.25, inclusive of legal increments.[7]

Subsequently, on January 13, 2016, petitioner received from Regional Director (RD) Glen A. Geraldino of BIR Revenue Region No. 16, Cagayan de Oro City, the *Preliminary Assessment Notice* (PAN) dated December 8, 2015, finding petitioner liable for deficiency VAT for TY 2012, in the amount of ₱495,317.32.[8]

In the letter dated January 28, 2016 addressed to RD Geraldino, petitioner requested respondent for an additional fifteen (15) days within which to address the assessment stated in the aforementioned PAN.[9]

Subsequently, on February 29, 2016, petitioner filed the letter dated February 9, 2016 protesting the PAN.[10]

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[5] Par. 4, Summary of Admitted Facts, JSFI, Docket (CTA Case No. 9761) – Vol. 1, p. 277; Exhibit "P-3", (CTA Case No. 9761) – Vol. 1, p. 38; Exhibit "R-1", BIR Records (CTA Case No. 9761), pp. 480 to 482.

[6] Par. 5, Summary of Admitted Facts, JSFI, Docket (CTA Case No. 9761) – Vol. 1, p. 277; Exhibit "R-3", BIR Records (CTA Case No. 9761), p. 479.

[7] Par. 6, Summary of Admitted Facts, JSFI, Docket (CTA Case No. 9761) – Vol. 1, p. 277.

[8] Par. 7, Jurisdictional Allegations, *Petition for Review*, Docket (CTA Case No. 9761) – Vol. 1, p. 11, vis-à-vis par. 2, *Answer*, Docket (CTA Case No. 9761) – Vol. 1, p. 139; Par. 7, Summary of Admitted Facts, JSFI, Docket (CTA Case No. 9761) – Vol. 1, p. 277.

[9] Par. 8, Jurisdictional Allegations, *Petition for Review*, Docket (CTA Case No. 9761) – Vol. 1, p. 11, vis-à-vis BIR Records (CTA Case No. 9761), p. 264.

On March 15, 2016 petitioner received the FLD/FAN, issued by RD Geraldino on February 5, 2016, finding petitioner liable for deficiency VAT, with interest and compromise penalty, in the aggregate amount of ₱555,585.67.[11]

Petitioner sent the letter dated April 7, 2016 to RD Geraldino on even date, stating, among others, that it has been religiously paying its tax due and no deficiency tax has been incurred for the subject period.[12]

Thereafter, on May 29, 2017, petitioner received a new PAN dated May 5, 2017,[13] signed by RD Hermeno A. Palamine, finding petitioner liable with corresponding deficiency taxes for TY 2012:

Tax Type	Basic tax	50% Surcharge	20% Interest	Total
Income tax	₱32,349,671.40	₱16,174,835.70	₱27,226,901.52	₱75,751,408.62
VAT	313,271.67		277,395.63	590,667.30
Compromise penalty				50,000.00
			Grand Total	**₱76,372,075.92**

Petitioner protested the aforementioned new PAN in its letter dated June 5, 2017.[14]

On June 19, 2017, petitioner received a new FLD/FAN dated June 16, 2017,[15] demanding payment of the following deficiency taxes for TY 2012:

Tax Type	Basic tax	50% Surcharge	20% Interest	Total
Income tax	₱32,349,671.40	₱16,174,835.70	₱27,226,901.52	₱75,751,408.62
VAT	313,271.67		277,395.63	590,667.30
Compromise penalty				50,000.00
			Grand Total	**₱ 76,372,075.92**

[10] Par. 9, Jurisdictional Allegations, *Petition for Review*, Docket (CTA Case No. 9761) – Vol. 1, p. 11, vis-à-vis BIR Records (CTA Case No. 9761), p. 433.

[11] Par. 10, Jurisdictional Allegations, *Petition for Review*, Docket (CTA Case No. 9761) – Vol. 1, p. 12 vis-à-vis Par. 2, *Answer*, Docket (CTA Case No. 9761) – Vol. 1, p. 139; BIR Records (CTA Case No. 9761), pp. 265 to 269; Exhibit "P-7", Docket (CTA Case No. 9761) – Vol. 1, pp. 71 to 76.

[12] Par. 11, Jurisdictional Allegations, *Petition for Review*, Docket (CTA Case No. 9761) – Vol. 1, p. 12 vis-à-vis BIR Records (CTA Case No. 9761), p. 239.

[13] Par. 12, Jurisdictional Allegations, *Petition for Review*, Docket (CTA Case No. 9761) – Vol. 1, p. 12 vis-à-vis Par. 2, *Answer*, Docket (CTA Case No. 9761) – Vol. 1, p. 139; Exhibit "R-6", BIR Records (CTA Case No. 9761), pp. 95 to 99.

[14] Par. 13, Jurisdictional Allegations, *Petition for Review*, Docket (CTA Case No. 9761) – Vol. 1, p. 12 vis-à-vis BIR Records (CTA Case No. 9761), pp. 28 to 30.

[15] Par. 14, Jurisdictional Allegations, *Petition for Review*, Docket (CTA Case No. 9761) – Vol. 1, p. 12 vis-à-vis Par. 2, *Answer*, Docket (CTA Case No. 9761) – Vol. 1, p. 139; Exhibits "R-7" to "R-8", BIR Records (CTA Case No. 9761), pp. 55 to 62.

Petitioner received the letter dated July 7, 2017 from RD Palamine on July 20, 2017, informing petitioner that its letter dated June 5, 2017, requesting reconsideration of the tax assessments for TY 2012, was received by respondent on June 23, 2017, and that a subsequent FLD/FAN dated June 16, 2017 was already sent to petitioner.[16]

On July 14, 2017, petitioner filed a *Protest* before Revenue Region No. 16, Malaybalay City, Bukidnon.[17]

<u>For CTA Case No. 9819:</u>

On April 22, 2016, petitioner received a Letter of Authority (LOA) dated April 14, 2016 (SN: eLA201100013013/LOA No. 099-2016-00000086),[18] signed by RD Geraldino, wherein Revenue Officers (ROs) Al Philip Agad, Sittie Aisah Dimaporo, Shiela May Joy Mira, and Group Supervisor (GS) Geraldine Jadap, were authorized to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period TY 2014.

Then, on December 8, 2017, petitioner received the PAN dated December 4, 2017,[19] wherein respondent assessed petitioner with the following deficiency taxes, for TY 2014:

Income tax	₱45,705,360.83
VAT	8,058,533.33
EWT	321,340.38
Compromise penalties	25,000.00

In the letter dated December 21, 2017, petitioner submitted its protest to the PAN.[20]

[16] Par. 15, Jurisdictional Allegations, *Petition for Review*, Docket (CTA Case No. 9761) – Vol. 1, p. 12 vis-à-vis BIR Records (CTA Case No. 9761), p. 25.
[17] Exhibit "P-8", Docket (CTA Case No. 9761) – Vol. 1, pp. 94 to 101 and BIR Records (CTA Case No. 9761), pp. 14 to 21.
[18] Par. 8, Jurisdictional Allegations, *Petition for Review*, Docket (CTA Case No. 9819), p. 11 vis-à-vis Par. 1, *Answer*, Docket (CTA Case No. 9819), p. 160; Exhibit "R-1", BIR Records (CTA Case No. 9819), p. 506.
[19] Par. 9, Jurisdictional Allegations, *Petition for Review*, Docket (CTA Case No. 9819), p. 11; Exhibit "R-19", BIR Records (CTA Case No. 9819), pp. 659 to 664.
[20] Par. 14, Jurisdictional Allegations, *Petition for Review*, Docket (CTA Case No. 9819) – Vol. 1, p. 12; Exhibit "R-22", BIR Records (CTA Case No. 9819), pp. 712 to 713.

On January 5, 2018, petitioner received the FLD/FAN dated December 27, 2017,[21] demanding payment of the following deficiency taxes for TY 2014, *viz.*:

Income tax	₱47,703,170.33
VAT	8,458,830.31
EWT	336,636.78
Compromise penalties	25,000.00

Petitioner then filed its *Protest Letter* (with request for reconsideration), dated January 23, 2018, on January 29, 2018.[22]

In reply, respondent issued the letter dated February 20, 2018,[23] which was received by petitioner on March 23, 2018, stating, among others, that its *"request for reconsideration cannot be granted unless a 'Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code' is executed with a Special Power of Attorney authorizing the person executing such waiver in behalf of the Cooperative."*

PROCEEDINGS BEFORE THIS COURT

For CTA Case No. 9761:

Due to respondent's inaction on petitioner's request for reconsideration, petitioner filed the present *Petition for Review* on February 1, 2018.[24]

Respondent filed his *Answer* on May 21, 2018,[25] interposing his special and affirmative defenses.

Respondent transmitted to the Court the *BIR Records* of this case on July 13, 2018.[26]

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[21] Exhibits "R-20" to 'R-21", BIR Records (CTA Case No. 9819), pp. 727 to 723; Par. 11, Jurisdictional Allegations, *Petition for Review*, Docket (CTA Case No. 9819), p. 12.
[22] Par. 13, Jurisdictional Allegations, *Petition for Review*, Docket (CTA Case No. 9819), p. 12; Exhibit "R-24", BIR Records (CTA Case No. 9819), pp. 734 to 741.
[23] Par. 10, Jurisdictional Allegations, *Petition for Review*, Docket (CTA Case No. 9819), p. 12; Exhibit "R-25", BIR Records (CTA Case No. 9819), p. 749.
[24] Docket (CTA Case No. 9761) – Vol. 1, pp. 10 to 27.
[25] Docket (CTA Case No. 9761) – Vol. 1, pp. 139 to 159.
[26] Respondent's *Compliance* dated July 12, 2018, Docket (CTA Case No. 9761) – Vol. 1, pp. 262 to 264.

The Pre-Trial Conference for this case was set and held on July 17, 2018.[27] Prior thereto, *Respondent's Pre-Trial Brief* was submitted on July 12, 2018;[28] and the *Pre Trial Brief for the Petitioner* was filed on July 13, 2018.[29]

On August 24, 2018, the parties submitted their *Joint Stipulation of Facts and Issues* for CTA Case No. 9761.[30] The Pre-Trial Order dated September 6, 2018 was then subsequently issued by the Court,[31] thereby deeming the termination of the Pre-Trial Conference.

In the Resolution dated October 22, 2018,[32] the Court ordered the consolidation of CTA Case No. 9761 with CTA Case No. 9819, and initially scheduled the Pre-Trial Conference for CTA Case No. 9819 on February 7, 2019.

For CTA Case No. 9819:

On April 20, 2018, petitioner filed the present *Petition for Review*.[33] The case was initially raffled to this Court's Second Division.

On his part, respondent submitted his *Answer* on July 23, 2018,[34] for this case interposing his special and affirmative defenses.

Respondent transmitted to the Court the *BIR Records* of this case on July 31, 2018.[35]

The Pre-Trial Conference was set on August 30, 2018.[36] During the supposed hearing on the said conference, however, petitioner's counsel manifested that he will be filing a Motion for the Consolidation of CTA

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[27] Notice of Pre-Trial Conference dated May 24, 2018, Docket (CTA Case No. 9761) – Vol. 1, pp. 161 to 162; Minutes of the hearing held on, and Order dated, July 17, 2018, Docket – Vol. 2, pp. 267, and 273 to 274, respectively.
[28] Docket (CTA Case No. 9761) – Vol. 1, pp. 167 to 170.
[29] Docket (CTA Case No. 9761) – Vol. 1, pp. 188 to 191.
[30] Docket (CTA Case No. 9761) – Vol. 1, pp. 276 to 281.
[31] Docket (CTA Case No. 9761) – Vol. 1, pp. 288 to 294.
[32] Docket (CTA Case No. 9761) – Vol. 1, pp. 301 to 303; Docket (CTA Case No. 9819) – Vol. 1, pp. 231 to 233.
[33] Docket (CTA Case No. 9819), pp. 10 to 22.
[34] Docket (CTA Case No. 9819), pp. 160 to 178.
[35] Respondent's *Compliance* dated July 30, 2018, Docket (CTA Case No. 9819) – Vol. 1, pp. 182 to 184.
[36] Notice of Pre-Trial Conference dated July 26, 2018, Docket (CTA Case No. 9819) – Vol. 1, pp. 180 to 181.

Case No. 9819 with CTA Case No. 9761, raffled with the Court's Third Division, thereby resulting in the cancellation of the said conference.[37]

Respondent's Pre-Trial Brief was submitted on August 24, 2018.[38]

On September 7, 2018, petitioner filed a *Motion to Consolidate with Attached Pre Trial Brief and Judicial Affidavit,*[39] attaching therewith the *Pre Trial Brief for the Petitioner*[40] and the *Judicial Affidavit of Ms. Christy B. Escarro.*[41]

In the Resolution dated September 12, 2018,[42] the Second Division of this Court granted petitioner's *Motion to Consolidate*, and directed the consolidation of CTA Case No. 9819 with CTA Case No. 9761, the case bearing the lower docket number, subject to the conformity of the Third Division of this Court.

<u>For the consolidated cases:</u>

During the hearing held on May 14, 2019, the Court directed the parties to proceed to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for possible mediation.[43] However, the parties decided not to have their case mediated by the PMC-CTA.[44]

The Pre-Trial Conference in CTA Case No. 9819 proceeded on September 24, 2019, as earlier scheduled.[45]

Subsequently, the parties submitted their *Joint Stipulation of Facts and Issues* in CTA Case No. 9819 on November 20, 2019.[46]

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[37] Minutes of the hearing held on, and Order dated, August 30, 2018, Docket (CTA Case No. 9819) – Vol. 1, pp. 194 to 195.
[38] Docket (CTA Case No. 9819) – Vol. 1, pp. 188 to 192.
[39] Docket (CTA Case No. 9819) – Vol. 1, pp. 197 to 198.
[40] Docket (CTA Case No. 9819) – Vol. 1, pp. 199 to 206.
[41] Exhibit "P-15", Docket (CTA Case No. 9819) – Vol. 1, pp. 207 to 213.
[42] Docket (CTA Case No. 9819) – Vol. 1, p. 217; Docket (CTA Case No. 9761) – Vol. 1, p. 296.
[43] Minutes of the hearing held on, and Order dated, May 14, 2019, Docket (CTA Case No. 9761) – Vol. 1, pp. 305 and 308 to 309, respectively.
[44] *No Agreement to Mediate* dated June 18, 2019, Docket (CTA Case No. 9761) – Vol. 1, p. 311.
[45] Resolution dated June 26, 2019, Docket (CTA Case No. 9761) – Vol. 1, p. 315; Minutes of the hearing held on, and Order dated, September 24, 2019, Docket (CTA Case No. 9761) – Vol. 1, pp. 319, and 321 to 323, respectively.
[46] Docket (CTA Case No. 9761) – Vol. 1, pp. 356 to 363.

In the Resolution dated November 28, 2019,[47] the Court admitted and approved the parties' *Joint Stipulation of Facts and Issues* in CTA Case No. 9819, thereby deeming the termination of the Pre-Trial in the said case. The Pre-Trial Order was then issued on December 19, 2019.[48]

Trial then ensued, with the parties presenting and offering their respective testimonial and documentary evidence.

Petitioner offered the testimonies of the following witnesses, namely: (1) Ms. Christy B. Escarro,[49] petitioner's Finance Services Department Manager; and (2) Mr. Gervacio I. Piator,[50] the Court-commissioned Independent Certified Public Accountant (ICPA).[51]

On March 10, 2020, the *Report* of the ICPA for CTA Case No. 9819 was submitted.[52]

On November 9, 2020, petitioner then filed its respective *Formal Offer of Evidence* for CTA Case Nos. 9761[53] and 9819[54]. Respondent submitted his *Comment* on November 25, 2020.[55] In the Resolution dated February 4, 2021,[56] the Court admitted petitioner's offered exhibits, *except* for the following:

<u>For CTA Case No. 9761</u>:

1. Exhibits "P-2" and "P-5", for being mere provisionally marked photocopies; and,

2. Exhibits "P-6", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14" and "P-15, for failure to have the enumerated exhibits marked.

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[47] Docket (CTA Case No. 9761) – Vol. 1, p. 385.
[48] Docket (CTA Case No. 9761) – Vol. 1, pp. 394 to 404.
[49] Exhibit "P-17", Docket (CTA Case No. 9761) – Vol. 1, pp. 192 to 197; Exhibit "P-15", Docket (CTA Case No. 9819) – Vol. 1, pp. 207 to 213; Minutes of the hearing held on, and Order dated, October 20, 2020, Docket (CTA Case No. 9761) – Vol. 1, pp. 522 to 524.
[50] Exhibit "P-20", Docket (CTA Case No. 9761) – Vol. 2, pp. 506 to 509; Minutes of the hearing held on, and Order dated, September 30, 2020, Docket (CTA Case No. 9761) – Vol. 2, pp. 519 to 521.
[51] *Oath of Commission* dated January 28, 2020, Docket (CTA Case No. 9761) – Vol. 1, p. 406; Minutes of the hearing held on, and Order dated, January 28, 2020, Docket (CTA Case No. 9761) – Vol. 1, pp. 405, and 409 to 410, respectively.
[52] Exhibit "P-20-b", Docket (CTA Case No. 9761) – Vol. 2, pp. 510 to 511.
[53] Docket (CTA Case No. 9761) – Vol. 2, pp. 525 to 528.
[54] Docket (CTA Case No. 9761) – Vol. 2, pp. 530 to 539.
[55] Docket (CTA Case No. 9761) – Vol. 2, pp. 542 to 543.
[56] Docket (CTA Case No. 9761) – Vol. 2, pp. 549 to 550.

For CTA Case No. 9819:

1. Exhibits "P-2", "P-3", "P-3A", "P-3B", "P-3C", "P-3D", "P-3E", "P-3F", "P-3G", "P-3H", "P-3I", "P-3J", "P-3K", "P-3L", "P-3M", "P-3N", "P-3O", "P-3P", "P-3Q", "P-3R", "P-3S", "P-3T", "P-3U", "P-3V", "P-3W", "P-3X", "P-4A", "P-4B", "P-4C", "P-4D", "P-4E", "P-4F", "P-4G", "P-4H", "P-4I", "P-4J", "P-4K", "P-4L", "P-4M", "P-4N", "P-4O", "P-4P", "P-4Q", "P-4R", "P-4S", "P-4T", "P-4U", "P-4V", "P-4W", "P-4X", "P-5A", "P-5B", "P-5C", "P-5D", "P-6", "P-7", "P-10", and "P-13", for being mere provisionally marked photocopies;

2. Exhibits "P-8", "P-9", "P-11", and "P-12", for failure to have the enumerated exhibits marked; and,

3. The ICPA Report and Judicial Affidavit of ICPA Gervacio I. Piator, which were collectively offered as "P-14" but were marked as "P-19", "P-20", "P-20-A", "P-20-B", and "P-20-B-1".

Thereafter, respondent offered the testimonies of ROs Shiela May Joy Mira[57] and Harly A. Macasling.[58]

On July 4, 2022, *Respondent's Formal Offer of Evidence* was submitted.[59] In the Resolution dated July 27, 2022,[60] the Court submitted *Respondent's Formal Offer of Evidence* for resolution, in view of petitioner's manifestation during the hearing held on May 4, 2022 that it will no longer file a comment thereon.

Thus, in the Resolution dated September 20, 2022,[61] the Court admitted respondent's exhibits, except for Exhibits "R-21", "R-23", "R-24" and "R-25", for failure to have the same identified.

The *Memorandum for the Petitioner* was filed on August 23, 2022,[62] while respondent's *Memorandum* was submitted on November 2, 2022.[63]

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[57] Exhibit "R-28", Docket (CTA Case No. 9819) – Vol. 1, pp. 222 to 229; Minutes of the hearing held on, and Order dated, May 4, 2022, Docket (CTA Case No. 9761) – Vol. 2, pp. 567 to 569.
[58] Exhibit "R-27", Docket (CTA Case No. 9761) – Vol. 1, pp. 177 to 187; Minutes of the hearing held on, and Order dated, May 4, 2022, Docket (CTA Case No. 9761) – Vol. 2, pp. 567 to 569.
[59] Docket (CTA Case No. 9761) – Vol. 2, pp. 582 to 587.
[60] Docket (CTA Case No. 9761) – Vol. 2, p. 591.
[61] Docket (CTA Case No. 9761) – Vol. 2, pp. 615 to 616.

This case was deemed submitted for decision on November 28, 2022.[64]

THE ISSUES

The parties failed to stipulate a common issue and submitted the following respective issues for the Court's resolution:

CTA CASE NO. 9761

For Petitioner:

1. Whether or not the assessment is valid; and,

2. Whether or not the assessment of the alleged tax liabilities of the petitioner has already prescribed.

For Respondent:

1. Whether petitioner is liable to pay the assessed deficiency Income Tax and Value-Added Tax, for taxable year 2012, plus Surcharge, Interest and Compromise Penalties.

CTA CASE NO. 9819

1. Whether petitioner is liable to pay the assessed deficiency Income Tax plus Surcharge, Interest and Compromise Penalties;

2. Whether petitioner is liable to pay the assessed deficiency Value-Added Tax plus Surcharge, Interest and Compromise Penalties; and

3. Whether or not the assessment of the alleged tax liabilities of the petitioner has already prescribed."[65]

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[62] Docket (CTA Case No. 9761) – Vol. 2, pp. 592 to 600.
[63] Docket (CTA Case No. 9761) – Vol. 2, pp. 617 to 644.
[64] Docket (CTA Case No. 9761) – Vol. 2, p. 647.

This Court raises the following issue for its resolution, to wit:

<u>CTA Case No. 9761</u>:

Whether or not there was a valid authority to examine petitioner for TY 2012.

<u>CTA Case No. 9819:</u>

Whether or not the Court has jurisdiction over the case.

Petitioner's arguments:

For CTA Case No. 9761, petitioner argues that respondent does not have the authority to conduct the audit and investigation; and that prescription has already set in. It maintains that it is permanently exempt from income tax under PD No. 269, as amended.

For CTA Case No. 9819, petitioner claims that it is permanently exempted from paying income tax for TY 2014, and therefore, not liable to pay any deficiency tax as assessed by respondent.

Respondents' counter-arguments:

Respondent counter-argues that the RO has the authority to conduct the audit investigation on petitioner's tax liability for TY 2012. He contends that the three (3)-year limitation within which to make the assessment finds no application to the instant case as petitioner filed a false and fraudulent return. Respondent also posits that petitioner is liable for deficiency taxes assessed, inclusive of surcharge, interests and compromise penalties for TYs 2012 and 2014, and that the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the respondent is wrong but the taxpayer is right.

Apart from the foregoing, respondent asserts, in his *Answer* for CTA Case No. 9819, that since the prescriptive period for which petitioner may appeal to this Court has not yet commenced, the judicial appeal is premature and, thus, warrants the dismissal of the instant petition.

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[65] Issues, Pre-Trial Order dated December 19, 2019, Docket (CTA Case No. 9761) – Vol. 1, pp. 396 to 397.

THE COURT'S RULING

The *Petition for Review* for CTA Case No. 9761 is granted; while the *Petition for Review* for CTA Case No. 9819 is dismissed.

For CTA Case No. 9761:

The tax assessments for taxable year 2012 are null and void since the RO who conducted the investigation of petitioner was not duly authorized to do so.

The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[66]

In *AFP General Insurance Corporation vs. Commissioner of Internal Revenue*,[67] the Supreme Court held as follows:

> "The power to assess necessarily includes the authority to examine any taxpayer for purposes of determining the correct amount of tax due from him. Verily, the law vests the BIR with general powers in relation to the 'assessment and collection of all internal revenue taxes.' However, certainly, not all BIR personnel may *motu proprio* proceed to audit a taxpayer. Only 'the CIR or his duly authorized representative may *authorize the examination of any taxpayer*' and issue an assessment against him.
>
> **That a representative has in fact been authorized to audit a taxpayer is evidenced by the LOA**, which 'empowers a designated [r]evenue [o]fficer to examine, verify, and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.'
>
> **In cases where the BIR conducts an audit without a valid LOA**, or in excess of the authority duly provided therefor, **the resulting assessment shall be void and ineffectual**. xxx." *(Emphasis and underscoring added)*

Based on the foregoing jurisprudential pronouncements, an assessment must be preceded by a valid LOA, before the BIR may conduct

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[66] *Commissioner of Internal Revenue vs. De La Salle University, Inc., et seq.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.
[67] G.R. No. 222133, November 4, 2020.

an investigation of a taxpayer; otherwise, the resulting tax assessment shall be void and ineffectual.

Moreover, in *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*,[68] the Supreme Court ruled that the issuance of an LN to a taxpayer was not sufficient if no corresponding LOA was issued, thus:

> "An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. **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 <u>only to the CIR himself or his duly authorized representatives</u>.**
>
> Section 6 of the NIRC provides:
>
> SECTION 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 representatives** may authorize the examination of any taxpayer and the assessment of the correct amount of tax[.] (Emphasis supplied)
>
> Section 10(c) of the NIRC provides:
>
> SECTION 10. Revenue Regional Director. – Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the **Revenue Regional Director** shall, within the region and district offices under his jurisdiction, among others:
>
> x x x
>
> (c) **Issue Letters of Authority** for the examination of taxpayers within the region[.] (Emphasis supplied)
>
> Section 13 of the NIRC provides:
>
> SECTION 13. Authority of a Revenue Officer. – Subject to the rules and regulations to be prescribed by the

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

> 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)

Section D(4) of RMO No. 43-90 dated September 20, 1990 provides:

> For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself. (Emphasis supplied)

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.

Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. 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. There must be a grant of authority, <u>in form of a LOA</u>, before any revenue officer can conduct any of these kinds of examination or assessment. The revenue officer so authorized must not go beyond the authority given. **<u>In the absence of such an authority, the assessment or examination is a nullity.</u>**

A. Due Process Requires Identification of Revenue Officers Authorized to Continue the Tax Audit or Investigation

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 **<u>the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued</u>. In that case, We have stated that <u>'[d]ue process demands x x x that after [a Letter Notice] has serve its purpose, the revenue officer should have</u>**

n

> **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."** *(Emphases added)*

On the basis of the foregoing, it must be emphasized that the issuance of LOA prior to examination and assessment is a requirement of due process. Mere issuance of an LN to taxpayer is not sufficient if no corresponding or subsequent LOA was issued. To be sure, due process demands that after an LN has serve its purpose, the RO should have properly secured an LOA before proceeding with the further examination and assessment of the concerned taxpayer. The result of the absence of an LOA renders the examination and assessment a nullity, based on the taxpayer's right to due process.

Consistent with the foregoing principles, the Supreme Court, in the later case of *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*,[69] made a similar pronouncement, to wit:

> "In *Medicard Philippines, Inc. v. CIR*, the Court nullified the deficiency VAT assessment against Medicard Philippines because there was no LOA issued by the CIR prior to the issuance of PAN and FAN. **The Letter of Notice earlier sent to Medicard Philippines was not validly converted into a LOA.** According to the Court in Medical Philippines:
>
> > What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. **Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void."** *(Emphasis added and citation omitted)*

Based on the records in this case, there is only an undated LN No. 099-RLFTRS-12-00-00024[70] which preceded the subject PAN and FLD/FAN, and no indication at all that the said LN was converted into an LOA. In fact, in the original PAN dated December 8, 2015 addressed to petitioner,[71] the BIR stated, *inter alia*, the following:

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[69] G.R. No. 241848, May 14, 2021.
[70] Exhibit "P-3", (CTA Case No. 9761) – Vol. 1, p. 38; Exhibit "R-1", BIR Records (CTA Case No. 9761), pp. 480 to 482.
[71] Exhibit "P-5", Docket (CTA Case No. 9761) – Vol. 1, p. 44; Par. 7, Jurisdictional Allegations, *Petition for Review*, Docket (CTA Case No. 9761) – Vol. 1, p. 11 vis-à-vis Par. 2, *Answer*, Docket (CTA Case

> "Please be informed that in the report of reconciliation submitted by Revenue Officer Amor Charmaigne G. Hernandez pursuant to **Letter Notice No. 099-RLFTRS-12-00-00024** resulting from the Third Party Data-Matching and Reconciliation of Listing for Enforcement System (RELIEF) of the Bureau against your **2012** Value-Added Tax declaration, it was ascertained that there is still due from you the total amount of Four Hundred Ninety Five Thousand Three Hundred Seventeen Pesos & 32/100 (₱495,317.32), inclusive of interest, . . ." *(Emphasis added)*

The Court likewise notes that, in the FLD/FAN dated February 5, 2016,[72] the BIR merely reiterated verbatim the foregoing paragraph.

It can also be inferred in the new PAN dated May 5, 2017[73] and new FLD/FAN dated June 16, 2017,[74] that the authority of RO Harly A. Macasling was derived from the same LN No. 099-RLFTRS-12-00-00024.[75]

Moreover, respondent's witness, RO Macasling, admitted in his Judicial Affidavit that he used to be one of the revenue officers assigned, through an undated LN No. 099-RLFTRS-12-00-00024,[76] to investigate/examine petitioner's records for TY 2012.[77] He further testified on cross-examination that, after the issuance of PAN and the filing of protest by petitioner, the latter's case was re-assigned to him for reinvestigation through the *Memorandum* dated July 20, 2016,[78] and not through an LOA. He also testified that he requested for the issuance of an LOA in his favor, but the same was not acted upon by his superior for unknown reason.[79] It must be emphasized that his reinvestigation thereon resulted to the issuance of a new PAN dated May 5, 2017[80] and FLD/FAN dated June 16, 2017.[81] Such being the case, RO Macasling, who examined the books of petitioner was not validly authorized to conduct audit on petitioner's records for TY 2012 nor to resolve petitioner's request for reinvestigation.

No. 9761) – Vol. 1, p. 139; Par. 7, Summary of Admitted Facts, JSFI, Docket (CTA Case No. 9761) – Vol. 1, p. 277.

72 Exhibit "P-7", Docket (CTA Case No. 9761) – Vol. 1, p. 71.
73 Exhibit "R-6", BIR Records (CTA Case No. 9761), pp. 95 to 99.
74 Exhibit "R-7", BIR Records (CTA Case No. 9761), pp. 58 to 62.
75 Exhibit "P-3", (CTA Case No. 9761) – Vol. 1, p. 38; Exhibit "R-1", BIR Records (CTA Case No. 9761), pp. 480 to 482.
76 Exhibit "P-3", (CTA Case No. 9761) – Vol. 1, p. 38; Exhibit "R-1", BIR Records (CTA Case No. 9761), pp. 480 to 482.
77 Q&A Nos. 10 to 13, Exhibit "R-27", Docket (CTA Case No. 9761) – Vol. 1, p. 178.
78 Exhibit "R-2", BIR Records (CTA Case No. 9761), p. 227.
79 Transcript of Stenographic Notes at the hearing held on May 4, 2022, pp. 6 to 7.
80 Exhibit "R-6", BIR Records (CTA Case No. 9761), p. 95.
81 Exhibit "R-7", BIR Records (CTA Case No. 9761), pp. 55 to 58.

Apropos, the importance of the lack of the RO's authority to conduct an audit cannot be overemphasized because it goes into the validity of the assessment.[82] To emphasize, in the absence of such authority, the assessment or examination is a nullity.[83]

Correspondingly, the subject tax assessments issued against petitioner for TY 2012 are void, for lack of authority on the part of RO Macasling to examine petitioner's books for TY 2012, and to resolve petitioner's request for reinvestigation. Being void, the said tax assessments bear no fruit.[84] As such, it becomes unnecessary to address the respective issues and the remaining arguments raised by the parties.

For CTA Case No. 9819:

The Court has no jurisdiction.

Section 7(a)(1) of Republic Act (RA) No. 1125[85], as amended by RA No. 9282[86], reads, in part, as follows:

> "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 in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;" *(Emphasis added)*

The word "decision" in the above quoted provision has been interpreted to mean the decisions of respondent on the protest of the taxpayer against the assessments.[87] In other words, appealable to this Court

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82 *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 241848, May 14, 2021.
83 *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.
84 *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*, supra.
85 AN ACT CREATING THE COURT OF TAX APPEALS.
86 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.
87 *Allied Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 175097, February 5, 2010.

is a decision that refers not to the assessment itself, but to one made on the protest against such assessment.[88]

Furthermore, Section 3.1.5 of Revenue Regulations (RR) No. 12-99,[89] as amended by RR No. 18-2013,[90] provides as follows, to wit:

> "3.1.5 ***Final Decision on a Disputed Assessment (FDDA).*** — **The decision of the Commissioner or his duly authorized representative** shall state the (i) facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void* (see illustration in ANNEX 'C' hereof), and (ii) **that the same is his** [or her] ***final decision.***" *(Emphasis added)*

Relative thereto, it must be emphasized that it is jurisprudentially mandated that respondent should always indicate to the taxpayer in clear and categorical language what constitutes his or her final determination of the disputed assessment.[91]

In the present case, petitioner claims that its *Petition for Review* was timely filed, as it assails RD Palamine's reply letter dated February 20, 2018,[92] which it claimed was respondent's denial letter of its protest.[93] For easy reference, said letter reads:

> "This pertains to your letter requesting for reconsideration against the issued Final Assessment Notice and Formal Letter of Demand (FAN/FLD) pursuant to **Letter of Authority No. 099-2016-00000086 (eLA201100013013)** dated April 14, 2016 as a result of the investigation of your **2014** all internal revenue tax liabilities.
>
> Please be apprised that the Bureau sustained the taxability of your income from electric service operations and other sources considering Revenue Memorandum Circular No. 074-2013. Moreover, your request for reconsideration cannot be granted unless a '**Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code**' is executed with a Special Power of Attorney authorizing the person executing such waiver in behalf of the Cooperative.

[88] *People of the Philippines vs. Sandiganbayan (Fourth Division), et al.*, G.R. No. 152532, August 16, 2005.

[89] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, September 6, 1999.

[90] SUBJECT: Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Delinquency Tax Assessment, November 28, 2013.

[91] *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 148380, December 9, 2005.

[92] Exhibit "R-25", BIR Records (CTA Case No. 9819), p. 749.

[93] Refer to pars. 14 and 15, *Petition for Review*, Docket (CTA Case No. 9819), p. 12.

> In view thereof, you are advised to submit duly executed Waiver with Special Power of Attorney within **five (5) days** from the receipt hereof. Otherwise, the assessment shall become final, executory, and demandable."

However, a cursory ready of the foregoing letter would show that the same cannot be considered as a "decision" on the protest of the taxpayer against the subject tax assessments, as it merely informed petitioner of the legal basis of the taxability of its income from its electric service operations and other sources, and required petitioner to submit a *Waiver of the Defense of Prescription* in order for the BIR to act on its request for reconsideration. The letter does not state in clear and unequivocal language that it already constitutes respondent's final determination of the disputed assessment. Thus, it was an error for petitioner to appeal the said letter of RD Palamine as respondent's decision appealable to this Court.

Consequently, since petitioner erred in construing the reply letter dated February 20, 2018 of RD Palamine as final decision of respondent on its protest, this Court has no recourse but to dismiss the case outright for lack of jurisdiction.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* for CTA Case No. 9761 is **GRANTED**. Accordingly, the assessments for deficiency income tax, VAT and compromise penalty issued against petitioner, in the total amount of ₱76,392,075.92, for taxable year 2012, are **CANCELLED** and **SET ASIDE**.

On the other hand, the *Petition for Review* for CTA Case No. 9819 is **DISMISSED** on jurisdictional grounds.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
2nd Division Chairperson

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 consolidated cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice