REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA OC No. 021

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, and
BACORRO-VILLENA, *JJ.*

- versus –

GEORGE A. TALAMAYAN, JR.,
Respondent.

Promulgated:

DEC 03 2019
9:10 a.m.

x---x

DECISION

CASTAÑEDA, JR., *J.:*

This is a Complaint[1] for collection of alleged final and executory assessment, filed on December 19, 2016, by plaintiff Commissioner of Internal Revenue (CIR), against defendant George A. Talamayan, Jr., seeking that judgment be rendered holding defendant liable to pay the amount of Two Million Forty Seven Thousand Thirty One Pesos and 98/100 (₱2,047,031.98), allegedly representing deficiency Income Tax and Value Added Tax (VAT), inclusive of interests, surcharges, and penalties for calendar year (CY) 2008.

[1] Docket, pp. 6-22.

THE FACTS

Plaintiff Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR) who is vested under appropriate laws, the power to make tax assessments, collect taxes, and decide, approve and grant tax protests. He holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

Defendant is a resident of No. 07 Cliff Drive, Purok Ongasan, Loakan Proper, Baguio City[2] and doing business under the name of Rockgates Trading and Construction[3] located at IB-046 Km 6, Betag, La Trinidad, Benguet.[4]

On October 8, 2009, Regional Director, Norberto D. Vitug of Revenue Region No. 2, issued Letter of Authority (LOA)[5] No. LOA 200800047783, authorizing Revenue Officer Christy B. Daytec (RO Daytec) of Revenue District Office (RDO) No. 9, La Trinidad, Benguet, to examine defendant's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2008 to December 31, 2008.

On October 13, 2009, RO Daytec issued a First Request for Presentation of Records[6], requesting the submission of documents needed in the conduct of the required examination in order to ascertain the correct internal revenue tax liabilities of defendant.

On November 17, 2009, RO Daytec issued a Second Request for Presentation of Records[7], reiterating the request for the presentation of defendant's records as listed in the First Request in order to facilitate the conduct of the required examination.

On December 4, 2009, Revenue District Officer, Teogenes T. Abrigo, Jr. of RDO No. 9, La Trinidad, Benguet issued a Final Request for Presentation of Records[8], reiterating the request for presentation of the books of accounts and other related documents of defendant, with the warning that failure to comply with the above request would result in the issuance of a subpoena *duces tecum*.

[2] Exhibit "P-24", BIR Records, p. 97.
[3] As culled from BIR Records, p. 3.
[4] Exhibit "P-21", BIR Records, p. 92.
[5] Exhibit "P-4", BIR Records, p. 29.
[6] Exhibit "P-5", BIR Records, p. 10.
[7] Exhibit "P-6", BIR Records, p. 27.
[8] Exhibit "P-7", BIR Records, p. 7.

On June 15, 2011, defendant received Subpoena *Duces Tecum* (SDT) SDT No. RR2-11-28[9] dated June 13, 2011 issued by OIC-Regional Director, Eduardo T. Bajador of Revenue Region No. 2, directing defendant to appear and to bring and submit the documents listed therein.

On December 16, 2011, Regional Director Eduardo T. Bajador referred to and filed with the Provincial Prosecutor of Benguet the Affidavit-Complaint executed by RO Daytec, pursuant to the latter's recommendation for the criminal prosecution of the defendant.[10]

On December 23, 2011, Revenue District Officer Irene A. Goze (RDO Goze) of Revenue District Office (RDO) No. 9 – La Trinidad, Benguet issued a Reference Slip[11] in favor of RO Katrina L. Estacio (RO Estacio) for defendant's assessment based on best evidence obtainable.

On January 24, 2012, RDO Goze issued a Notice of Informal Conference[12], informing defendant that an investigation of tax liabilities in the total amount of ₱2,047,031.99 for CY 2008 under LOA No. LOA 200800047783 dated October 8, 2009 was conducted by RO Estacio, initially assigned to RO Daytec and requesting him to submit his objection to the proposed assessment or to appear in an informal conference.

On March 22, 2012, RO Estacio issued a Memorandum Report[13] relative to the examination of all internal revenue tax liabilities of defendant for CY 2008 covered by LOA No. LOA 200800047783 dated October 8, 2009, recommending the case be considered for assessment.

On April 24, 2012, Regional Director Eduardo T. Bajador issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies[14], assessing defendant for deficiency Income Tax and VAT, inclusive of interests, surcharges and penalties in the aggregate amount of ₱2,047,031.98. The PAN with attached Details of Discrepancies were

[9] Exhibit "P-8", BIR Records, p. 18.
[10] Exhibit "P-10", BIR Records, pp. 33-38.
[11] BIR Records, p. 41.
[12] Exhibit "P-12", BIR Records, p. 42.
[13] Exhibit "P-13", BIR Records, pp. 64-65.
[14] Exhibit "P-14", BIR Records, pp. 70-71.

served to defendant via registered mail as evidenced by the Registry Return Receipt No. 919.[15]

On May 10, 2012, Regional Director Eduardo T. Bajador issued a Formal Letter of Demand/Final Assessment Notice (FLD/FAN)[16], assessing defendant for deficiency Income Tax and VAT, inclusive of interests, surcharges and penalties in the aggregate amount of ₱2,047,031.98. The FLD-FAN was served via registered mail on May 23, 2012 as evidenced by the Registry Return Receipt No. 827.[17]

On August 13, 2012, RDO Goze issued a First Notice[18], demanding payment of the unpaid tax liabilities in the aggregate amount of ₱2,047,031.99. The same was served via registered mail on August 24, 2012 as evidenced by Registry Return Receipt.[19] On September 11, 2012, RDO Goze issued a 2nd Notice[20], reiterating her demand for the payment of defendant's unpaid tax liabilities in the total amount of ₱2,047,031.99. The same was served via registered mail as evidenced by Registry Return Receipt.[21]

On October 21, 2013, Revenue District Officer Christine M. Cardona issued a Final Notice Before Seizure or Garnishment[22], giving defendant the last opportunity to make the necessary settlement of the amount of his tax liabilities in the total amount of ₱2,047,031.99, inclusive of interests, surcharges and penalties. The same was served to defendant via registered mail on October 29, 2013 and October 30, 2013, as evidenced by Registry Return Receipt.[23]

On September 16, 2014, Revenue Officer Michael C. Dacay issued a Warrant of Distraint and/or Levy No. 2014-007[24] and was served to defendant on September 19, 2014.

Plaintiff filed the subject Complaint on December 19, 2016. Defendant, however, failed[25] to file its Answer to the Complaint.

[15] Exhibit "P-15", BIR Records, p. 71A.
[16] Exhibits "P-2" and "P-3", BIR Records, pp. 72-73.
[17] Exhibit "P-16", BIR Records, p. 72A.
[18] Exhibit "P-17", BIR Records, p. 77.
[19] Exhibit "P-17-a", BIR Records, p. 78.
[20] Exhibit "P-18", BIR Records, p. 79.
[21] Exhibit "P-18-a", BIR Records, p. 80.
[22] Exhibit "P-19", BIR Records, p. 82.
[23] *Ibid.*
[24] Exhibit "P-20", BIR Records, p. 87.
[25] Records Verification dated May 2, 2018, Docket, p. 194.

On May 29, 2018, plaintiff filed an Omnibus Motion 1.) Motion to Declare Defendant in Default; 2.) To Allow Plaintiff to Present his Evidence Ex-Parte[26], which was granted by the Court in the Resolution[27] dated July 3, 2018.

Plaintiff presented[28] his sole witness, Mr. Michael C. Dacay.

On September 7, 2018, plaintiff filed his Formal Offer of Evidence[29], offering Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-17-a", "P-18", "P-18-a", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25" and "P-26", as his documentary evidence. The Court admitted all the exhibits formally offered by plaintiff in the Resolution[30] dated October 4, 2018.

Plaintiff filed his Memorandum[31] on December 10, 2018. The case was submitted[32] for decision on December 17, 2018.

THE ISSUE

> Whether defendant is liable to pay his delinquent tax liabilities in the aggregate amount of Two Million Forty-Seven Thousand Thirty-One Pesos and 98/100 (₱2,047,031.98) under an assessment which has become final, executory and demandable.[33]

THIS COURT'S RULING

After thorough evaluation of the case records, this Court finds that the present Complaint for tax collection should be denied on the ground that the deficiency assessments upon which the present case is anchored on are intrinsically void. The invalidity of the deficiency assessments is due to the absence of authority on the part of the revenue officer who conducted the examination of defendant's books of accounts and other accounting records.

[26] Docket, pp. 195-199.
[27] Docket, pp. 202-204.
[28] Minutes of the hearing dated September 5, 2018, Docket, p. 225.
[29] Docket, pp. 227-236.
[30] Docket, pp. 242-243.
[31] Docket, pp. 251-262.
[32] Resolution dated December 17, 2018, Docket, p. 263.
[33] Complaint and Memorandum, Docket, pp. 13-14 and 255-256.

While the lack of authority of the revenue officer to conduct the audit was not specifically raised as an issue, this Court is not precluded from considering the same given that a void assessment bears no fruit.[34]

In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[35] the Supreme Court also emphatically ruled that the Court of Tax Appeals can resolve an issue which was not raised by the parties. The Supreme Court said:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> **Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** The text of the provision reads:
>
> > SECTION 1. *Rendition of judgment.* — x x x
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. **On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda.** The CTA En Banc was likewise correct in sustaining the CTA Division's view ge

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[34] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006, 516 Phil. 176, 189-190; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010, 637 SCRA 633; *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.*, G.R. No. 198677, November 26, 2014, 743 SCRA 113; *Samar-I Electric Cooperative v. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014, 744 SCRA 459; *Commissioner of Internal Revenue v. Fitness By Design, Inc.*, G.R. No. 215957, November 9, 2016, 808 SCRA 422.

[35] G.R. No. 183408, July 12, 2017.

> concerning such matter." *(Emphasis supplied and citation omitted)*

One of the powers granted to the Commissioner of Internal Revenue (CIR) under the National Internal Revenue Code of 1997, as amended (1997 NIRC), is the power to assess deficiency tax. Section 6(A) of the 1997 NIRC is explicit on the matter, to wit:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>
> (A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative. x x x" *(Emphasis supplied)*

In the exercise of his assessment powers, the CIR is also empowered to conduct by himself the examination of any taxpayer, or he may authorize other tax officers to conduct such examination. Section 6(A) of the 1997 NIRC likewise vested the CIR's duly authorized representatives the power to authorize the examination of any taxpayer for the purpose of collecting the correct amount of tax. The term "duly authorized representative" under Section 6(A) of the 1997 NIRC which may authorize examination of taxpayers refers to a Revenue Regional Director, in accordance with Sections 10 and 13 of the 1997 NIRC. The term likewise refers to other tax officials with the rank equivalent to a division chief or higher, pursuant to the CIR's authority to delegate powers vested in him under Section 7 of the 1997 NIRC. Notably, the issuance of LOAs for the examination of taxpayers is not one of those enumerated powers which the CIR cannot delegate. Section 7 of the 1997 NIRC reads as follows: *gr*

"SEC. 7. *Authority of the Commissioner to Delegate Power.* — **The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: *Provided, however,* That the following powers of the Commissioner shall not be delegated:

(a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

(c) The power to compromise or abate, under Sec. 204(A) and (B) of this Code, any tax liability: *Provided, however,* That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept." *(Emphasis supplied)*

Section 10 of the 1997 NIRC, in enumerating the powers of a Revenue Regional Director include, among others, the power to issue letters of authority for the examination of taxpayers within the region under his/her jurisdiction. The said provision, in part, reads: *Je*

> "SEC. 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 x x x x x x
>
> **(c) Issue Letters of Authority for the examination of taxpayers within the region;**
>
> x x x x x x x x x
>
> (h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner." *(Emphasis supplied)*

On the other hand, Section 13 of the 1997 NIRC, in defining the authority of a revenue officer to conduct the examination of taxpayers for purposes of an assessment, provides as follows:

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

In relation to the foregoing provisions, Revenue Memorandum Order (RMO) No. 43-90 issued by the CIR identifies those officials who are authorized to issue and sign LOA. It may be noted that a Revenue District Officer is not included therein. The relevant portion of the said issuance reads:

"D. Preparation and issuance of L/As. *ye* x x x x x x x x x

> 4. 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 <u>but only upon prior authorization by the Commissioner himself</u>**." *(Emphasis and underscoring supplied)*

To reiterate, only the CIR or his duly authorized representatives who can authorize the examination of taxpayers for purposes of assessment of any deficiency taxes. Stated differently, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.[36]

Considering that only the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of an LOA, logically speaking, it is only them who can effect any modification or amendment to a previously issued LOA, should the need therefor arises.

Parenthetically, RMO No. 43-90 provides that any reassignment or transfer of cases to another revenue officers shall require the issuance of a new LOA. Be that as it may, this Court is of the view that the same would not necessarily negate the authority of the CIR and his duly authorized representatives to effect amendment or modification of a previously-issued LOA instead of just issuing a new one in order for the assessment of a taxpayer to validly proceed. Note that RMO No. 43-90 itself does not state the legal effect in the event that the named revenue officers under the previously-issued LOA are transferred or reassigned and a new or replacement LOA is not issued. A duly issued LOA, valid in all other respects, does not automatically become invalid just because the revenue officers named therein happened to be reassigned or transferred. Indeed, to construe it otherwise would be tantamount to the curtailment of the statutorily granted authority of the CIR and its duly authorized representatives to

[36] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

authorize the audit examination of taxpayers by a mere RMO provision. It must be emphasized that an RMO is merely an internal issuance containing directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow and the like which are necessary to carry out programs or to achieve policy goals and objectives.[37] As such, they do not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR and may change from time to time as the exigencies of service may require, or as may be allowed given particular factual contexts, provided only that due process or statutory rights are not subverted.[38]

In the present case, the revenue officer named under LOA No. LOA 200800047783 dated October 8, 2009 was different from the one who actually examined defendant's books of accounts and other accounting records for the period from January 1, 2008 to December 31, 2008. As it appears, RO Estacio conducted the audit on the basis of a mere Reference Slip issued by RDO Goze of RDO No. 9 – La Trinidad, Benguet.

Guided by the foregoing disquisition, this Court holds that the Reference Slip issued by RDO Goze of RDO No. 9 – La Trinidad, Benguet cannot validly grant RO Estacio the authority to conduct the examination pursuant to LOA No. LOA 200800047783 dated October 8, 2009. In her capacity as a Revenue District Officer, Ms. Irene A. Goze is bereft of any power to authorize the examination of taxpayers or to effect any modification or amendment to a previously issued LOA because, as mentioned earlier, only the CIR or his duly authorized representatives are granted such power.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[39] the Supreme Court held that absent any prior authority on the part of the revenue officers who conducted the audit/examination of taxpayer's books of accounts and other accounting records, the deficiency tax assessment arising therefrom is a nullity.

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[37] Revenue Administrative Order No. 001-12 dated April 2, 2012.
[38] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 7948, June 5, 2014, penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino.
[39] G.R. No. 178697, November 17, 2010, 649 Phil. 519.

This Court need not discuss the matter of defendant's failure to file his protest, for it is well-settled that a void assessment bears no fruit.[40]

WHEREFORE, premises considered, the subject Complaint, is **DENIED**. Accordingly, the Formal Letter of Demand/Final Assessment Notice, assessing defendant for deficiency Income Tax and Value Added Tax, inclusive of interests, surcharges and penalties in the aggregate amount of ₱2,047,031.98 for calendar year 2008 and Final Notice Before Seizure or Garnishment and Warrant of Distraint and/or Levy No. 2014-007 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

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

WE CONCUR:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(With due respect, please see Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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

ATTESTATION

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

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
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SECOND DIVISION

COMMISSIONER OF INTERNAL, REVENUE
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- versus -

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Members:

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MINDARO-GRULLA, *and,*
BACORRO-VILLENA, *JJ.*

Promulgated: DEC 03 2019

9:10 a.m.

x - x

DISSENTING OPINION

BACORRO-VILLENA, J.:

With all due respect, I beg to differ with the *ponencia* of our distinguished Chairman and colleague. Despite the doctrine laid down in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[1] (**Medicard**) which, in sum, held that an assessment pursued on the basis of an invalid Letter of Authority (**LOA**) is devoid of legal effect, equally applicable to the case are the rules on prescription and jurisdiction. It must be noted that the controversy in *Medicard* stemmed from a *timely* filed petition for review before this Court of the Bureau of Internal Revenue's (**BIR's**) disputed assessment. Similarly, in

[1] G.R. No. 222743, 05 April 2017.

Commissioner of Internal Revenue v. Sony Philippines, Inc.[2], as cited in the *ponencia,* another timely filed petition for review reached this Court. In the case at bar, such is not the case; rather, the BIR's assessment against respondent had already become final and executory.

In *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.,*[3] the Supreme Court stated that, "to be sure, **the fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the <u>validity or correctness of the assessment may no longer be questioned on appeal</u>**."[4]

Moreover, in *Marcos II v. Court of Appeals et al.*[5], the Supreme Court barred a taxpayer from questioning the validity of an assessment that had become final, executory and demandable. There, the petitioner assailed the validity of the BIR's assessment for deficiency estate tax liabilities on numerous grounds. The Supreme Court, in affirming the Court of Appeals' decision, held that:

> ...
>
> ... Petitioner, and the other heirs never questioned the assessments served upon them, allowing the same to lapse into finality, and prompting the BIR to collect the said taxes by levying upon the properties left by President Marcos.
>
> ...
>
> If there is any issue as to the validity of the BIR's decision to assess the estate taxes, this should have been pursued through the proper administrative and judicial avenues provided for by law.
>
> ...

Therefore, to cancel the final assessment herein is to allow respondent to circumvent well-established doctrine that what could not be done directly cannot be done indirectly.[6] To give him relief even when he did not bother to comply with BIR's requirements, or to contest the assessment before it or even answer petitioner's complaint

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[2] G.R. No. 178867, 17 November 2010.
[3] G.R. No. 169225, 17 November 2010; underscoring and emphasis supplied.
[4] Emphasis supplied.
[5] G.R. No. 120880, 05 June 1997.
[6] *Tawang Multi-purpose Cooperative v. La Trinidad Water District*, G.R. No. 166471, 22 March 2011.

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(to question the validity of the BIR's assessment in a collection case) is tantamount to allowing him to file an appeal from the assessment of the BIR, *without* observing proper procedure and outside of the periods clearly spelled out in Section 228 of the National Internal Revenue Code (**NIRC**), which states:

> ...
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.
>
> Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> 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 one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable.**
> ...

The foregoing reveals that the issue of the LOA's validity had already been long foreclosed from judicial review. **To now entertain the issue of the LOA's absence in a *collection case* is to reopen and disturb a decision that had long become final and executory. To do such would further reward the inaction of respondent and go against the time-honored principle that, "equity aids the vigilant, not those who slumber on their rights."**[7] To likewise nullify the *final* assessment which validity respondent did not attempt to question is putting a premium for his disregard of the administrative processes and rewarding him, in effect, for his delinquency.

Additionally, to set aside the BIR's *final* assessment on the basis of a supposed LOA that was not questioned by the respondent will set a dangerous precedent as taxpayers who are already aware of the defects in the BIR's assessment shall, instead of filing a petition for review before this Court, will merely wait for a collection suit to be

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[7] *Henson v. Director of Lands*, G.R. No. L-10812, 26 March 1918.

filed against them and raise the assessment's irregularities therein, rendering the provisions of Section 228 in relation to Rule 4, Section 3(a)[8] of the Revised Rules of the CTA completely useless and without forceful effect. It is also not farfetched that taxpayers may opt to altogether disregard the administrative processes, wait for the BIR to file a collection case in court for the latter's *final* assessed taxes, question the *final* assessment and save themselves from filing their own appeal and paying their own appeal docket fees. Either way, the *errant* taxpayer gets the upper hand and robs the government of the much-needed taxes that sustain its existence. If the Court were to lend succor to the taxpayer for the BIR's shortcomings, the taxpayer should have (at least) done his or her part of observing the administrative procedures, rules and laws; and not when, by his or her own inaction and disregard (of the said administrative procedures, rules and laws), he had allowed the assessment to lapse into finality.

With the above disquisitions, I vote to grant petitioner Commissioner of Internal Revenue's Complaint for Collection (of his *final* and *executory* assessment) against respondent George A. Talamayan, Jr., in the amount of ₱2,047,031.98, representing deficiency

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[8] A.M. No. 05-11-07-CTA, 22 November 2005.

...

SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(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;

(2) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal [R]evenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code.

x - x

income tax and value-added tax (inclusive of interests, surcharges, and penalties for calendar year 2008).

JEAN MARIE A. BACORRO-VILLENA
Associate Justice