

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

TRICOM SYSTEMS (PHILIPPINES), CTA Case No. 9514
INC.,

Petitioner, *Members:*

- versus -

UY, Chairperson,
RINGPIS-LIBAN, and
MODESTO-SAN PEDRO, JJ.

COMMISSIONER OF INTERNAL
REVENUE,

Promulgated:

Respondent.

JUL 07 2022
4:00 p.m.

X - - - - - X

DECISION

UY, J.:

Before this Court is a *Petition for Review*¹ filed on January 4, 2017 by petitioner Tricom Systems (Philippines), Inc., against respondent Commissioner of Internal Revenue (CIR), praying for the following: (1) that respondent's Decision dated November 25, 2016 be reversed and set aside; (2) that the tax assessments covering petitioner's taxable year (TY) 2006 for the alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), and interests thereon, be cancelled; and (3) that the Preliminary Assessment Notice (PAN) dated June 4, 2010, Formal Assessment Notice (FAN) dated November 15, 2011, Final Decision on Disputed Assessment (FDDA) dated October 9, 2015 and the Assessment Notices issued based thereon, be cancelled.

THE PARTIES

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines with address at 2nd Floor,

¹ Docket – Vol. 1, pp. 10 to 48.

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Metro House Building, 345 Sen. Gil Puyat Avenue, Makati City 1200.² It may be served with all notices, pleadings, resolutions, orders, decisions, and other legal processes of this Court through its counsel, Feria Tantoco Daos, at their office address at 8th Floor DPC Place, 2322 Chino Roces Avenue, Makati City 1231.³

On the other hand, respondent is the Commissioner of Internal Revenue.⁴ He may be served with all notices, pleadings, resolutions, orders, decisions, and other legal processes of this Court at the Legal Division, Revenue Region 8, 2nd Floor, BIR Building, 313 Gil Puyat Avenue, Makati City.⁵

THE FACTS

On July 13, 2007, petitioner received Letter of Authority (LOA) 2001 00046967 (LOA No. 00046967) signed by then Regional Director Nelson M. Aspe, informing petitioner that the Bureau of Internal Revenue (BIR) officers are being authorized to examine its books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2006 to December 31, 2006. Attached to LOA No. 00046967 is the checklist of documents for examination of the assigned BIR officers.⁶

On August 7, 2007, petitioner submitted several documents to Revenue Officer (RO) Rodolfo De Guzman, Jr. (De Guzman, Jr.).⁷

On October 3, 2007, petitioner received a Reassignment/ Revalidation Notice dated July 10, 2007, informing petitioner that LOA No. 00046967 was revalidated on September 7, 2007 because of the reassignment of the examination to RO Conchita Cruz (Cruz).⁸ Also on even date, petitioner received a Second Notice dated

² *Petition for Review (PFR)*, par. 2.01, Docket – Vol. 1, p.11, *vis-à-vis* Exhibit “P-16-a”, Docket – Vol. 6, p. 2845.

³ *PFR*, signature of counsel, Docket – Vol. 1, p. 47.

⁴ *Pre-Trial Order*, Statement of Facts and Issues, par. 1, Docket – Vol. 4, p. 1895.

⁵ *Answer*, par. 2.2, Docket – Vol. 2, p. 541.

⁶ *Pre-Trial Order*, Statement of Facts and Issues, par. 4, Docket – Vol. 4, p. 1895; Exhibits “P-17” to “P-17-a”, Docket – Vol. 6, pp. 2866 to 2867.

⁷ *PFR*, par. 4.03, Docket – Vol. 1, p. 13, *vis-à-vis* Exhibit “P-18”, Docket – Vol. 6, p. 2868.

⁸ *Pre-Trial Order*, Statement of Facts and Issues, par. 5, Docket – Vol. 4, p. 1895; Exhibit ICPA “P-56”, ICPA USB.

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September 14, 2007, alleging that petitioner did not present the records as enumerated in the BIR checklist.⁹

In a letter dated October 3, 2007, petitioner informed the BIR through Assistant Revenue District Officer Fe G. Sevidal that it had previously submitted photocopies of some documents, as stated in the checklist, with an undertaking to submit additional records.¹⁰

On October 16, 2007, petitioner submitted additional documents as evidenced by an Acknowledgment Receipt duly signed and received by RO Cruz of even date.¹¹

Despite the foregoing, the BIR, through Revenue District Officer Manuel V. Mapoy (Mapoy), issued a Final Notice dated November 15, 2007, informing petitioner to submit the records requested by the BIR.¹²

Petitioner also submitted additional documents to the BIR as evidenced by Acknowledgment Receipts signed and received on November 20, 2007 and November 22, 2007.¹³

On October 30, 2008, petitioner received another Revalidation/Re-assignment Notice informing petitioner that LOA No. 00046967 has been revalidated/reassigned on October 28, 2008 to replace the previously assigned revenue officers with RO Maryrose M. Vega (Vega) and Group Supervisor (GS) Roland F. Zamora (Zamora), who were authorized to continue the examination of petitioner's books of accounts and other accounting records.¹⁴

On January 22, 2009, petitioner sent the BIR, through Revenue District Officer Mapoy, a letter stating its compliance with the Second Notice requiring petitioner to present/produce additional accounting

⁹ *PFR*, par. 4.05, Docket – Vol. 1, p. 13, *vis-à-vis* Exhibit ICPA “P-56.1, ICPA USB.

¹⁰ *PFR*, par. 4.05, Docket – Vol. 1, p. 13, *vis-à-vis* Exhibit ICPA “P-56.2”, ICPA USB.

¹¹ *PFR*, par. 4.06, Docket – Vol. 1, p. 13, *vis-à-vis* Exhibit “P-19”, Docket – Vol. 6, p. 2869.

¹² *PFR*, par. 4.07, Docket – Vol. 1, p. 14, *vis-à-vis* Exhibit ICPA “P-56.4”, ICPA USB.

¹³ *PFR*, par. 4.07, Docket – Vol. 1, p. 14, *vis-à-vis* Exhibits “P-20” and “P-20-a”, Docket – Vol. 6, pp. 2870 to 2871.

¹⁴ *Pre-Trial Order*, Statement of Facts and Issues, par. 6, Docket – Vol. 4, p. 1895; Exhibit ICPA “P-56.8”, ICPA USB.

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books/records.¹⁵ The BIR acknowledged receipt of petitioner's letter dated January 22, 2009.¹⁶

On December 18, 2009, petitioner received a Notice for Informal Conference (NIC) from Revenue District Officer Teodoro G. Galicia (Galicia) inviting petitioner, within five (5) days from receipt of the NIC, to submit other documentary evidence to support its objection against the BIR's proposed assessment.¹⁷

On December 29, 2009, petitioner, through its Accounting Manager, Jose Rizal A. Medina, signed a Waiver of the Defense of Prescription (First Waiver), which was prepared by the BIR and which purportedly intended to extend the right of the government to assess petitioner's tax liabilities for TY 2006 not later than April 30, 2009.¹⁸

On February 18, 2010, petitioner sent a letter to Revenue District Officer Galicia, submitting several documents to clarify the discrepancies in the BIR's 2006 audit assessment.¹⁹

On March 23, 2010, petitioner received a Post Reporting Notice from the BIR informing the former that the audit/investigation of all its internal liabilities for calendar/fiscal year December 21, 2006 has already been submitted for review. Based on the report of investigation, petitioner has an alleged tax deficiency of ₱29,021,342.23.²⁰

On April 6, 2010, petitioner signed another Waiver of the Defense of Prescription (Second Waiver), purportedly intended to extend the right of the government to assess not later than June 30, 2010.²¹

On June 4, 2010, petitioner received a PAN dated of even date and Details of Discrepancies from the BIR informing petitioner of deficiencies in its income tax, VAT, EWT, and WTC for TY 2006.²²

¹⁵ *PFR*, par. 4.10, Docket – Vol. 1, p. 14, *vis-à-vis* Exhibit “P-21”, Docket – Vol. 6, p. 2872.

¹⁶ *Pre-Trial Order*, Statement of Facts and Issues, par. 7, Docket – Vol. 4, p. 1895.

¹⁷ *Pre-Trial Order*, Statement of Facts and Issues, par. 8, Docket – Vol. 4, pp. 1895 to 1896; Exhibit ICPA “P-60”, ICPA USB.

¹⁸ *PFR*, par. 4.13, Docket – Vol. 1, p. 15, *vis-à-vis* Exhibit “P-11”, Docket – Vol. 3, p. 1067.

¹⁹ *PFR*, par. 4.14, Docket – Vol. 1, p. 15, *vis-à-vis* Exhibit “P-23”, Docket – Vol. 6, p. 2874.

²⁰ *Pre-Trial Order*, Statement of Facts and Issues, par. 9, Docket – Vol. 4, p. 1896; Exhibit “P-24”, Docket – Vol. 6 p. 2880.

²¹ *PFR*, par. 4.16, Docket – Vol. 1, p. 15, *vis-à-vis* Exhibit “P-11-a”, Docket – Vol. 3, p. 1068.

²² *Pre-Trial Order*, Statement of Facts and Issues, par. 10, Docket – Vol. 4, p. 1896; Exhibit ICPA “P-57”, ICPA USB.

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On June 21, 2010, petitioner signed another Waiver of the Defense of Prescription (Third Waiver)²³ purportedly intended to extend the right of the government to assess not later than December 31, 2010.

On July 13, 2010, petitioner submitted its protest against the PAN through a letter dated July 13, 2010.²⁴

On December 28, 2010, petitioner signed another Waiver of the Defense of Prescription (Fourth Waiver)²⁵, purportedly intended to extend the right of the government to assess not later than June 30, 2011.

On June 30, 2011, petitioner signed the last Waiver of the Defense of Prescription (Fifth Waiver)²⁶, purportedly intended to extend the right of the government to assess not later than December 31, 2011.

On November 18, 2011, petitioner received a FAN and Details of Discrepancies dated November 15, 2011 from the BIR informing petitioner that its request for reinvestigation has been granted. However, based on the report submitted by RO Robertson T. Gazzingan (Gazzingan), petitioner allegedly failed to submit the relevant documents for the cancellation of the PAN. Hence, the FAN has been issued against petitioner for the alleged deficiency income tax, VAT, EWT and WTC for TY 2006.²⁷

On December 5, 2011, petitioner submitted a Letter Protest to the FAN.²⁸ On February 14, 2012, petitioner received a letter dated February 3, 2012 from the BIR stating that RO Helalla M. Lao (Lao) under GS Raul G. Gorospe (Gorospe) shall conduct the reinvestigation of all petitioner's internal revenue liabilities for TY 2006.²⁹

²³ *PFR*, par. 4.18, Docket – Vol. 1, p. 16, *vis-à-vis* Exhibit “P-11-b”, Docket – Vol. 3, p. 1069.

²⁴ *PFR*, par. 4.19, Docket – Vol. 1, p. 16, *vis-à-vis* Exhibit “P-25”, Docket – Vol. 6, pp. 2887 to 2894.

²⁵ *PFR*, par. 4.21, Docket – Vol. 1, p. 16, *vis-à-vis* Exhibit “P-11-c”, Docket – Vol. 3, p. 1070.

²⁶ *PFR*, par. 4.22, Docket – Vol. 1, p. 16, *vis-à-vis* Exhibit “P-11-d”, Docket – Vol. 3, p. 1071.

²⁷ *Pre-Trial Order*, Statement of Facts and Issues, par. 12, Docket – Vol. 4, p. 1896; Exhibit “P-12”, Docket – Vol. 3, pp. 1072 to 1076.

²⁸ *PFR*, par. 4.24, Docket – Vol. 1, pp. 16 to 17, *vis-à-vis* Exhibit “P-26”, Docket – Vol. 6, pp. 2895 to 2900.

²⁹ *Pre-Trial Order*, Statement of Facts and Issues, par. 14, Docket – Vol. 4, pp. 1896 to 1897; Exhibit ICPA “P-59”, ICPA USB.

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On October 15, 2015, petitioner received the FDDA dated October 9, 2015 from the BIR representing the alleged deficiency income tax, VAT, EWT, and WTC for TY 2006.³⁰

In a letter dated October 20, 2015, petitioner sent its protest to the FDDA, assailing the FDDA and requesting for its cancellation.³¹

On December 6, 2016, petitioner received a copy of the Decision dated November 25, 2016, denying petitioner's appeal to the FDDA and demanding payment of the total amount of ₱49,493,899.07, representing the alleged deficiency income tax, VAT, EWT, and WTC, all with interest, for TY 2006, within thirty (30) days from receipt of the Decision.³²

Aggrieved, petitioner filed the instant *Petition for Review*³³ on January 4, 2017, which was initially raffled to the First Division of this Court.

On April 10, 2017, respondent filed his *Answer*³⁴ interposing special and affirmative defenses, which include, among others, the following:

- 1) Petitioner's protest against the FAN is focused on the items under the disallowances under the income tax assessment, as well as the withholding taxes found due upon petitioner. Petitioner has not put forth any argument to dispute the VAT assessment; thus, the VAT assessment is an undisputed item that must be upheld for having attained finality, pursuant to Revenue Regulations (RR) No. 12-99, as amended, which implements Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended.
- 2) The assessments were issued against petitioner due to its failure to submit the additional relevant supporting documents within sixty (60) days from the date of the filing of its protest, as required under Section 228 of the 1997 NIRC, as amended. 

³⁰ *Pre-Trial Order*, Statement of Facts and Issues, par. 15, Docket – Vol. 4, p. 1897; Exhibit “P-13”, Docket – Vol. 3, pp. 1077 to 1078.

³¹ *PFR*, par. 4.28, Docket – Vol. 1, p. 17, *vis-à-vis* Exhibit “P-28”, Docket – Vol. 6, pp. 2902 to 2903.

³² *PFR*, par. 4.31, Docket – Vol. 1, p. 17, *vis-à-vis* Exhibit “P-14”, Docket – Vol. 3, pp. 1086 to 1099.

³³ Docket – Vol. 1, pp. 10 to 48.

³⁴ Docket – Vol. 2, pp. 541 to 549.

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- 3) The issuance of the FAN did not violate petitioner's right to due process. Petitioner was able to present its side on the disputed assessments on numerous occasions.
- 4) The legal and factual bases on which the protest is based must be stated in order for the protest to be considered valid, pursuant to RR No. 12-99, as amended.
- 5) The effect of a void protest is as if no protest was filed by the taxpayer; thus, the assessment attained finality pursuant to RR No. 12-99, as amended.
- 6) Petitioner was unable to sufficiently rebut the presumption of regularity accorded to tax examiners in case of disputed assessments.
- 7) The reconciliation petitioner offered in its protest to the FAN is a mere reiteration of the reconciliation it previously offered in its protest to the PAN. Considering that the FAN was subsequently issued even after such arguments were raised by petitioner in its protest to the PAN, this could only mean that the grounds raised by petitioner were already decided upon by the concerned BIR personnel handling the case. Absent any showing that the assessments were made arbitrarily and without legal basis, the assessments must be upheld.

On May 8, 2017, petitioner filed an *Urgent Omnibus Motion for the Suspension of Collection of Taxes and To Dispense with the Posting of Bond*.³⁵

During the hearing of petitioner's *Urgent Omnibus Motion for the Suspension of Collection of Taxes and To Dispense with the Posting of Bond* held on May 16, 2017, petitioner presented Jose Rizal A. Medina. He testified on direct examination by way of *Judicial Affidavit*³⁶ (1) to support petitioner's position that the immediate tax collection of petitioner's alleged tax liability would substantially jeopardize petitioner's interests; (2) that the government's right to assess and collect the alleged tax liability had already prescribed; (3) that the alleged tax liability being collected was based on a totally void and erroneous assessment and collection that justify petitioner from posting the required bond for the suspension of collection of taxes; and (4) to prove that the tax being assessed by the BIR has

³⁵ Docket – Vol. 2, pp. 553 to 596.

³⁶ Exhibit “P-15”, Docket – Vol. 2, pp. 609 to 618.

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not yet become final and executory due to the timely filing of the *Petition for Review* before this Court.³⁷

On May 19, 2017, petitioner filed a *Manifestation [Re: Willingness to Post a Surety Bond]*.³⁸

On May 22, 2017, respondent filed a *Very Strong Opposition/Comment (to the Urgent Omnibus Motion for the Suspension of Collection of Taxes and To Dispense with the Posting of Bond)*.³⁹ Of even date, petitioner filed its *Formal Offer of Documentary Exhibits [In Support Of Petitioner's Urgent Omnibus Motion For The Suspension Of Collection of Taxes And To Dispense With The Posting Of Bond]*.⁴⁰

On June 22, 2017, petitioner filed a *Reply [To Respondent's Very Strong Opposition/Comment (To the Urgent Omnibus Motion for the Suspension of Collection of Taxes and to Dispense with the Posting of Bond)]*.⁴¹

On August 10, 2017, petitioner filed a *Motion for Production, Inspection and Copying of Documents*,⁴² praying that respondent be ordered to produce the documents enumerated therein for inspection and copying.

In the *Resolution* dated August 16, 2017,⁴³ the Court resolved petitioner's *Formal Offer of Documentary Exhibits [In Support Of Petitioner's Urgent Omnibus Motion For The Suspension Of Collection of Taxes And To Dispense With The Posting Of Bond]*; partially granted petitioner's *Urgent Omnibus Motion for the Suspension of Collection of Taxes and To Dispense with the Posting of Bond*; and noted petitioner's *Manifestation [Re: Willingness to Post a Surety Bond]*.

During the Pre-Trial Conference on August 17, 2017, the parties' counsels agreed to submit their *Joint Stipulation of Facts and*

³⁷ *Minutes of the Hearing* dated May 16, 2017, Docket – Vol. 2, pp. 782 to 787; *Order* dated May 16, 2017, Docket – Vol. 2, pp. 789 to 790.

³⁸ Docket – Vol. 2, pp. 796 to 786.

³⁹ Docket – Vol. 2, pp. 927 to 930.

⁴⁰ Docket – Vol. 3, pp. 931 to 939

⁴¹ Docket – Vol. 3, pp. 1125 to 1137.

⁴² Docket – Vol. 3, pp. 1223 to 1229.

⁴³ Docket – Vol. 3, pp. 1232 to 1239.

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*Issues on or before September 18, 2017.*⁴⁴

On August 17, 2017, respondent filed his *Comment (on the Motion for Production, Inspection and Copying of Documents)*⁴⁵ and *Reply (to Request for Admission)*.⁴⁶ Meanwhile, on August 23, 2017, respondent filed a *Compliance*,⁴⁷ forwarding the entire BIR records of petitioner to the Court.

On August 29, 2017, petitioner filed its *Compliance [With the Resolution Promulgated on 16 August 2017 On Posting of Surety Bond]*,⁴⁸ stating that it deposited a cash bond to the Court.

On September 18, 2017, petitioner filed: 1) a *Manifestation [Re: Joint Stipulation of Facts]*,⁴⁹ and 2) a copy of the draft *Joint Stipulation of Facts*.⁵⁰

In the *Resolution*⁵¹ dated December 6, 2017, the Court partially granted petitioner's *Motion for Production, Inspection and Copying of Documents*, and noted the admitted/denied statements in respondent's *Reply (to Request for Admission)*. On January 8, 2018, petitioner filed a *Motion for Partial Reconsideration [Of this Honorable Court's Resolution Promulgated on December 6, 2017]*.⁵²

Meanwhile, in the *Records Verification*⁵³ dated January 19, 2018, it was alleged that both parties failed to file their *Joint Stipulation of Facts and Issues*.

In the *Resolution*⁵⁴ dated January 24, 2018, the Court, among other things, directed respondent to file his *Comment on the Motion*

⁴⁴ *Minutes of the Hearing* dated August 17, 2017, Docket – Vol. 3, pp. 1251 to 1253; *Order* dated August 17, 2017, Docket – Vol. 3, pp. 1257 to 1260.

⁴⁵ Docket – Vol. 3, pp. 1268 to 1269.

⁴⁶ Docket – Vol. 3, pp. 1264 to 1266.

⁴⁷ Docket – Vol. 3, pp. 1263.

⁴⁸ Docket – Vol. 3, pp. 1271 to 1274.

⁴⁹ Docket – Vol. 3, pp. 1303 to 1304.

⁵⁰ Docket – Vol. 3, pp. 1307 to 1311.

⁵¹ Docket – Vol. 4, pp. 1789 to 1795.

⁵² Docket – Vol. 4, pp. 1799 to 1821.

⁵³ Docket – Vol. 4, p. 1823. The *Records Verification* was issued by Ms. Leocadia L. De Alday, Records Officer I, and Ms. Jocelyn M. Candelaria, Records Officer III, of the Judicial Records Division.

⁵⁴ Docket – Vol. 4, pp. 1873 to 1874.

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for *Partial Reconsideration [Of this Honorable Court's Resolution Promulgated on December 6, 2017]*, within ten (10) days from notice. Meanwhile, for failure of the parties to file their *Joint Stipulation of Facts and Issues*, the parties' right to file the same was deemed waived.

On January 29, 2018, respondent filed his *Opposition/Comment (to the Motion for Reconsideration)*.⁵⁵

Subsequently, the Court issued the *Pre-Trial Order*⁵⁶ on February 2, 2018.

On February 12, 2018, petitioner filed a *Reply [To Respondent's Opposition/Comment dated January 29, 2018]*.⁵⁷

On February 14, 2018, petitioner filed *Motion to Amend [The Pre-Trial Order Dated 2 February 2018]*⁵⁸ which was granted in the *Resolution*⁵⁹ dated May 3, 2018. However, in lieu of an amended *Pre-Trial Order*, the Clerk of Court was ordered to issue a *Supplemental Pre-Trial Order*⁶⁰ to include a list of petitioner's additional documentary exhibits.

During trial, petitioner presented the following witnesses: 1) Jose Rizal A. Medina, petitioner's Accounting Manager; and 2) Garry S. Pagaspas, the Court-commissioned Independent Certified Public Accountant (ICPA).

On May 18, 2018, petitioner filed its *Formal Offer of Documentary Exhibits*,⁶¹ which was resolved in the *Resolution*⁶² dated September 3, 2018.

In the *Order*⁶³ dated October 1, 2018, the instant case was transferred to the Third Division of this Court pursuant to CTA



⁵⁵ Docket – Vol. 4, pp. 1888 to 1890.

⁵⁶ Docket – Vol. 4, pp. 1894 to 1909.

⁵⁷ Docket – Vol. 4, pp. 1912 to 1921.

⁵⁸ Docket – Vol. 4, pp. 1923 to 1929.

⁵⁹ Docket – Vol. 6, pp. 2633 to 2639.

⁶⁰ The *Supplemental Pre-Trial Order* was issued on July 25, 2019, Docket – Vol. 6, pp. 2983 to 2987.

⁶¹ Docket – Vol. 6, pp. 2800 to 2835.

⁶² Docket – Vol. 6, pp. 2954 to 2958.

⁶³ Docket – Vol. 6, p. 2959.

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Administrative Circular No. 02-2018 entitled “*Reorganizing the Three (3) Divisions of the Court*” dated September 18, 2018.

For his part, respondent presented as witnesses RO Gazzingan and RO Lao. Upon completion of the testimonies of respondent’s witnesses during the hearing held on June 27, 2019, the Court granted the motion of petitioner’s counsel to present rebuttal witness, in the person of Atty. Ronald Mark Daos.

Thereafter, respondent filed his *Formal Offer of Evidence* on July 10, 2019.⁶⁴ In the *Resolution*⁶⁵ dated September 26, 2019, the Court resolved respondent’s *Formal Offer of Evidence* denying some of respondent’s documentary exhibits.⁶⁶ Hence, on October 10, 2019, respondent filed a *Motion for Reconsideration (on the Resolution promulgated on September 26, 2019)*.⁶⁷

On October 1, 2019, petitioner filed a *Manifestation [Re: Submission of Judicial Affidavit]*⁶⁸ with attached *Judicial Affidavit [Of Ronald Mark Daos on Rebuttal]*⁶⁹ to refute the testimony of RO Gazazingan. The Court noted the *Manifestation* in the *Minute Resolution*⁷⁰ dated October 15, 2019.

In the *Resolution*⁷¹ dated January 9, 2020, the Court granted respondent’s prayer in its *Motion for Reconsideration (on the Resolution promulgated on September 26, 2019)* for the setting of a commissioner’s hearing for the marking and comparison of respondent’s exhibits that were denied admission due to failure to mark the same.⁷²

In the *Resolution* dated June 26, 2020, the Court, among other

⁶⁴ Docket – Vol. 6, pp. 2966 to 2975.

⁶⁵ Docket – Vol. 6, pp. 3020 to 3021.

⁶⁶ The Court admitted respondent’s exhibits except for Exhibits “R-3”, “R-3-a”, and “R-7-a”, for failure to present the originals for comparison; and Exhibits “R-14”, “R-14-a”, “R-14-b”, “R-14-c”, “R-14-d”, “R-14-e”, “R-15”, “R-15-a”, “R-15-b”, “R-15-c”, “R-15-d”, “R-15-e”, “R-16”, “R-17”, “R-18”, “R-18-a”, “R-19”, “R-20”, “R-21”, “R-22”, “R-23”, “R-24”, “R-26”, “R-26-a”, “R-27”, “R-27-a”, “R-28”, “R-28-a”, “R-29”, “R-29-a”, “R-29-b”, “R-30”, “R-30-a”, “R-31”, “R-32”, and “R-32-a”, for failure to mark these exhibits.

⁶⁷ Docket – Vol. 6, pp. 3022 to 3024.

⁶⁸ Docket – Vol. 6, pp. 3025 to 3026.

⁶⁹ Exhibit “P-93”, Docket – Vol. 6, pp. 3028 to 3035.

⁷⁰ Docket – Vol. 6, p. 3046.

⁷¹ Docket – Vol. 6, pp. 3056 to 3058.

⁷² Exhibits “R-3”, “R-3-a”, “R-7-a”, “R-14”, “R-14-a”, “R-14-b”, “R-14-c”, “R-14-d”, “R-14-e”, “R-15”, “R-15-a”, “R-15-b”, “R-15-c”, “R-15-d”, “R-15-e”, “R-16”, “R-17”, “R-18”, “R-18-a”, “R-19”, “R-20”, “R-21”, “R-22”, “R-23”, “R-24”, “R-26”, “R-26-a”, “R-27”, “R-27-a”, “R-28”, “R-28-a”, “R-29”, “R-29-a”, “R-29-b”, “R-30”, “R-30-a”, “R-31”, “R-32”, and “R-32-a”.

things, partially granted respondent's *Motion for Reconsideration (on the Resolution promulgated on September 26, 2019)*.⁷³

During the hearing held on October 15, 2020, petitioner presented its rebuttal witness, Atty. Ronald Mark Daos. Thereafter on October 26, 2020, petitioner filed its *Formal Offer of Supplementary Documentary Exhibits [Rebuttal Evidence]*.⁷⁴

In the *Resolution*⁷⁵ dated January 27, 2021, the Court admitted all of petitioner's supplementary exhibits and ordered the parties to file their respective memorandum within a period of thirty (30) days from receipt of said *Resolution*.

Considering however the failure of both parties to file their respective memoranda,⁷⁶ the filing of the same was deemed waived, and the instant case was submitted for decision in the *Resolution* dated September 7, 2021.⁷⁷ Hence, this *Decision*.

THE ISSUE

The sole issue for resolution of the Court is:

"Whether or not Tricom Systems (Philippines), Inc. is liable for deficiency Income Tax, VAT, EWT, WTC for taxable year 2006, in the total amount of ₱49,493,899.07, inclusive of interest, penalty, and surcharges."⁷⁸

Petitioner's arguments:

Petitioner argues that the tax assessments issued by respondent are invalid for failure to clearly state the facts and the laws upon which the deficiency assessments are based. Allegedly,

⁷³ The Court admitted Exhibits "R-14", "R-14-a", "R-14-b", "R-14-c", "R-14-d", "R-14-e", "R-15", "R-15-a", "R-15-b", "R-15-c", "R-15-d", "R-15-e", "R-16", "R-17", "R-18", "R-18-a", "R-19", "R-20", "R-21", "R-22", "R-23", "R-24", "R-26", "R-26-a", "R-27", "R-7-a", "R-28", "R-28-a", "R-29", "R-29-a", "R-29-b", "R-30", "R-30-a", "R-31", "R-32", and "R-32-a", Docket – Vol. 6, pp. 3100 to 3103..

⁷⁴ Docket – Vol. 6, pp. 3110 to 3120.

⁷⁵ Docket – Vol. 6, pp. 3131 to 3132.

⁷⁶ Docket – Vol. 6, p. 3143. The *Records Verification* was issued by Ms. Leocadia L. De Alday, Records Officer I and Ms. Rosemarie R. Tera, Records Officer III of the Judicial Records Division.

⁷⁷ Docket – Vol. 6, p. 3145.

⁷⁸ *Pre-Trial Order*, Issue, Docket – Vol. 4, p. 1897.

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respondent failed to give the factual and legal bases of his deficiency findings and vaguely explained the deficiency assessment through computation and comparison tables.

Petitioner further contends that respondent's right to assess petitioner for alleged deficiency taxes for TY 2006 had already prescribed. While petitioner did execute five (5) waivers which purportedly intended to extend the right of the government to assess petitioner's tax liabilities for TY 2006, there can be no valid extension of respondent's right to make an assessment on the basis of said waivers considering that such right no longer exists when the waivers were allegedly executed and/or accepted. Petitioner emphasizes that there is nothing to extend once the deadline has occurred.

As regards the deficiency income tax, petitioner claims that the discrepancy between the revenue officer's result of examination and the Audited Financial Statement (AFS) was attributable to errors of the BIR examination. Respondent also merely assumed that petitioner erroneously failed to withhold some expenses because there were discrepancies in the figures in the AFS and the Alphalist. Moreover, respondent did not consider other expenses that were subject to creditable withholding tax (CWT). Likewise, respondent assessed the amounts reflected as Net Operating Loss Carry-Over, Minimum Corporate Income Tax, and excess tax credits on petitioner's income tax return on the ground that these amounts were already forwarded to succeeding periods. Lastly, the tax credits claimed by petitioner for payments subjected to the CWT were properly supported and explained before respondent.

With respect to deficiency VAT, petitioner maintains that the alleged undeclared income was based on respondent's erroneous examination. Petitioner also claims that in its protest and position papers, it categorically and repeatedly refuted the undeclared income findings of respondent; thus, to say that petitioner failed to dispute the VAT assessment is incorrect.

Petitioner likewise asserts that the EWT and WTC deficiency findings were merely based on a comparison of the AFS and Alphalist figures. Respondent allegedly failed to consider that the discrepancy between the AFS and the Alphalist was due to some income payments not subject to income taxes, timing difference, and proper identification of expenses. nb

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In addition, petitioner avers that considering that it has no tax deficiencies, there was no basis for the imputation of the 20% interest per year.

Finally, petitioner claims that its protest is valid and it squarely refuted each item of assessment including the VAT assessment, and that it submitted the necessary documents requested by respondent.

Respondent's counter-arguments:

Respondent counter-argues that petitioner's protest against the FAN is focused on the items under the disallowances under the income tax assessment, as well as the withholding taxes due upon petitioner. Petitioner has not put forth any argument to dispute the VAT assessment; thus, the VAT assessment, being an undisputed item of assessment, must be upheld for having attained finality.

Respondent also claims that the revenue officers who handled petitioner's disputed assessment had always made it clear that the assessments were issued because of petitioner's failure to submit the additional relevant supporting documents within sixty (60) days from the date of the filing of its protest.

Allegedly, the issuance of the FAN did not violate petitioner's right to due process because petitioner was able to present its side on the disputed assessments on numerous occasions.

Likewise, respondent contends that the legal and factual basis for the dispute must be stated in the protest in order for the protest to be considered as validly raised by the taxpayer. Failure to do so allegedly renders the protest filed by petitioner void and without force and effect. The effect of a void protest is as if no protest was filed by petitioner; thus the assessment has attained finality.

Lastly, respondent avers that petitioner was unable to sufficiently rebut the presumption of regularity accorded to tax examiners in case of disputed assessments. Absent any showing that the assessment were made arbitrarily and without legal basis, the assessments must be upheld.

THE COURT'S RULING

The *Petition for Review* is meritorious. 

The Court has authority to rule upon any issue related to the case although not raised by the parties.

Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, provides:

“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.” (Emphasis supplied)

Based on the foregoing, the Court is not limited to the issues specifically raised by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case.⁷⁹

Relative thereto, the issue as to whether or not the revenue officers were properly authorized to conduct an examination or assessment of petitioner is a vital issue. The lack of the said appropriate authority will affect the validity of the subject assessment issued against petitioner.

Hence, the Court shall first address this vital issue.

The revenue officers were not authorized to conduct an examination or assessment of petitioner.

Section 6 (A) of the 1997 NIRC, as amended, lays down the power of the CIR or his duly authorized representative to authorize the examination of any taxpayer and the assessment of the correct amount of tax, *to wit*:

“SECTION. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —

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⁷⁹ *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

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(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**, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.” (*Emphasis supplied*)

Relative thereto is Section 13 of the 1997 NIRC, as amended, provides that the authority of a revenue officer to examine taxpayers or to recommend the assessment of any deficiency tax due must be exercised pursuant to an LOA, *to wit*:

“SECTION. 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 and underscoring supplied*)

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,⁸⁰ (*Medicard case*) the Supreme Court emphasized the importance of an LOA, which grants authority to BIR officials to examine taxpayers, or to recommend the assessment of any deficiency tax due, *to wit*:

“Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, **Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an**

⁸⁰ G.R. No. 222743, April 5, 2017.

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examination "of a taxpayer" may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.

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That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **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 and underscoring supplied*)

Furthermore, respondent, through the issuance of Revenue Memorandum Circular No. 75-2018,⁸¹ recognized the ruling in the *Medicard* case, in this wise:

"The judicial ruling, invoking a specific statutory mandate, states that **no assessments can be issued or no assessment functions or proceedings can be done without the prior approval and authorization of the Commissioner of Internal Revenue (CIR) or his duly authorized representative, through an LOA.** The concept of an LOA is therefore clear and unequivocal. **Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore 'inescapably void.'**

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To help forestall any unnecessary controversy and to encourage due observance of the judicial pronouncements, any examiner or revenue officer initiating tax assessments or performing assessment functions without an LOA shall be subject to appropriate administrative sanctions." (*Emphasis and underscoring supplied*)

⁸¹ SUBJECT: The Mandatory Statutory Requirement and Function of a Letter of Authority.

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Clearly, there must be a grant of authority, through an LOA, before any revenue officer can conduct an examination or assessment. In the absence of such an authority, the assessment or examination is a nullity.⁸²

In the instant case, records reveal that pursuant to LOA No. 00046967⁸³ only RO De Guzman, Jr. and GS Joriz U. Saldajeno (Saldajeno) were authorized to examine petitioner's books of accounts and other accounting records for TY 2006.

On September 7, 2007, LOA No. 00046967 was revalidated⁸⁴ and the investigation of petitioner was reassigned to RO Cruz to replace the previously assigned revenue officer. Subsequently, on October 28, 2008, LOA No. 00046967 was again revalidated⁸⁵ to replace the previously assigned revenue officers, and the examination of petitioner was reassigned to RO Vega and GS Zamora.

Meanwhile, a Memorandum of Assignment (MOA) dated November 4, 2009⁸⁶ was issued by Revenue District Officer Galicia directing RO Gazzingan and GS Gorospe to continue the audit and investigation of petitioner's internal revenue taxes for TY 2006, and to replace the previously assigned revenue officers, pursuant to LOA No. 00046967. Thereafter, a MOA dated December 21, 2011⁸⁷ was issued by Revenue District Officer Galicia referring RO Lao and GS Gorospe for "ONE TIME TRANSACTIONS", again, pursuant to LOA No. 00046967.

Evidently, the supposed authority of RO Cruz, RO Vega and GS Zamora to conduct the investigation of petitioner was merely based on the revalidated LOA No. 00046967; the authority of RO Gazzingan and GS Gorospe to continue the audit and investigation of petitioner was based on the MOA dated November 4, 2009; and the authority of RO Lao and GS Gorospe for "one time transactions" was based on the MOA dated December 21, 2011. As a corollary, it bears noting that there is no showing that a new LOA was issued

⁸² *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

⁸³ Exhibit "P-17", Docket – Vol. 6, p. 2866.

⁸⁴ Exhibit ICPA "P-56", ICPA USB.

⁸⁵ Exhibit ICPA "P-56.8", ICPA USB.

⁸⁶ Exhibit "R-25", Docket – Vol. 6, p. 2976.

⁸⁷ Exhibit "R-26", BIR Records, p. 485.

NO

specifically authorizing said revenue officers to continue the audit investigation of petitioner.

The failure of respondent to issue a new LOA runs counter to Revenue Memorandum Order (RMO) No. 43-90, which lays down the guidelines for the audit/investigation and issuance of LOAs, the pertinent portions of which state:

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

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

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

It is clear from the foregoing that all audit investigations must be conducted by a duly designated revenue officer authorized to perform the audit and examination of the taxpayer's books and accounting records, pursuant to an LOA. In case of reassignment or transfer of cases to another revenue officer, it is mandatory that a new LOA be issued with the corresponding notation thereto. In the absence of such an authority, the assessment or examination is a nullity.⁸⁸

In the present case, it is undisputed that no new LOA was issued. The only basis for RO Cruz, RO Vega and GS Zamora's authority was the revalidated LOA No. 00046967; for RO Gazzingan and GS Gorospe's authority, the MOA dated November 4, 2009; and for RO Lao and GS Gorospe's authority, the MOA dated December 21, 2011.

The reassignment of the examination of petitioner's books of accounts and other accounting records to RO Cruz, RO Vega and GS Zamora through revalidation violated RMO No. 43-90 cited above, which states that **any reassignment/transfer of cases shall require the issuance of a new LOA.**

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⁸⁸ *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

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Here, petitioner received the two Reassignment/Revalidation Notices not because RO De Guzman, Jr. and GS Saldajeno, the original revenue officers named in LOA No. 00046967, failed to serve LOA No. 00046967 to petitioner within thirty (30) days from its date of issue,⁸⁹ or because RO De Guzman, Jr. and GS Saldejano failed to render an investigation report within 120 days⁹⁰ after the issuance of LOA No. 00046967.⁹¹ Petitioner received the first Reassignment/Revalidation Notice because the investigation of petitioner was reassigned to RO Cruz, and subsequently the second Reassignment/Revalidation Notice because the examination of petitioner was reassigned to RO Vega and GS Zamora. Thus, considering that there were reassignments/transfers — and not simply a revalidation — then a new LOA must be issued pursuant to RMO No. 43-90.

Anent the MOAs dated November 4, 2009 and December 21, 2011 issued in favor of RO Gazzingan and GS Gorospe, and RO Lao and GS Gorospe, respectively, the Supreme Court clarified in the recent case of *Commissioner of Internal Revenue v. McDonald's*

⁸⁹ Part VIII, (C), (2), (2.3) of Revenue Audit Memorandum Order No. 01-00 [Subject: Updated Handbook on Audit Procedures and Techniques Volume 1 (Revision – Year 2000)] provides: “A letter of authority must be served or presented to the taxpayer within 30 days from its date of issue; otherwise, it becomes null and void unless revalidated. The taxpayer has all the right to refuse its service if presented beyond the 30-day period depending on the policy set by top management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words “Revalidated on _____” on the face of the copy of the Letter of Authority issued.”

⁹⁰ Pursuant to RMO No. 44-2010, it is only beginning June 1, 2010 that the rule on the need for revalidation of LOAs due to the failure of ROs to complete the audit within the prescribed period was withdrawn.

⁹¹ Paragraph 5 of RMO No. 38-88 (Subject: Guidelines on Revalidation of Letters of Authority) provides: “The Division Chief/RDO shall be responsible for the monthly monitoring of LAs issued to ensure that reports are rendered within the reglementary 120-day period. The Division Chief/RDO shall be jointly responsible with the REOs for cases with LAs pending beyond the 120-day period.”

Meanwhile, Paragraph 6 of RMO No. 38-88 provides: “It shall be the duty of the Division Chief/RDO to report immediately to the Inspection Service any tax case for which no report of investigation has been rendered 120 days after the issuance of an LA.”

Part IV (E) of RMO No. 08-06 [Subject: Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS)] provides: “In case the audit of cases covered by LAs cannot be completed within the prescribed period, the RO may request for revalidation of the LA. Only one revalidation shall be allowed provided the RO shall render a progress report on the case duly noted by the GS and approved by the head of the investigating division/office. The previously issued LA shall be stamped “Revalidated on _____” and shall be signed by the Regional Director/ACIR-LTS. The concerned investigating office shall update the LA status in the LAMS by indicating in the remarks column “Revalidated on (date)”.

*Philippines Realty Corp.*⁹² that an MOA is not proof of the existence of authority of the substitute or replacement revenue officer. We quote:

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

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The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently **substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative. The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10(c) and 13 of the NIRC. Hence, the issuance of such memorandum of assignment, investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that**

⁹² G.R. No. 242670, May 10, 2021.

belongs exclusively to the CIR himself or his duly authorized representatives.

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In summary, We rule that **the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations; particularly RMO No. 43-90 dated September 20, 1990.** (*Emphasis and underscoring supplied*)

Applying the foregoing, it is evident that RO Cruz, RO Vega, GS Zamora, RO Gazzingan, GS Gorospe, and RO Lao were not duly authorized to conduct the examination of petitioner. The revalidation of LOA No. 00046967 and the issuance of the MOAs are insufficient to clothe them with authority to conduct the examination of petitioner.

Even assuming that a new LOA is no longer necessary in case of reassignment of the audit/examination to a new revenue officer, and that a Reassignment/Revalidation Notice and/or an MOA is sufficient to authorize the new revenue officer to continue the audit/examination of a taxpayer as long as the aforementioned documents are signed by the CIR or his duly authorized representative pursuant to Sections 10 and 13 of the 1997 NIRC, as amended, and RMO No. 43-90, the MOA issued in the instant case is still insufficient to clothe RO Gazzingan, GS Gorospe, and RO Lao with authority to continue the examination of petitioner. The MOAs dated November 4, 2009 and December 21, 2011 were signed by Revenue District Officer Galicia and not by the CIR or the Revenue Regional Director.

Accordingly, the subject tax assessments are inescapably void, and thus, bear no valid fruit.⁹³

⁹³ *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. No. 159694 and 163581, *etseq.*, January 27, 2006.

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Consequently, there exist sufficient legal basis to grant the instant *Petition for Review* and it therefore becomes unnecessary to address the remaining arguments raised by petitioner in this case.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, respondent's Decision dated November 25, 2016 is **REVERSED** and **SET ASIDE**; the tax assessments covering petitioner's TY 2006 for the alleged deficiency income tax, VAT, EWT, WTC, and interests thereon, are **CANCELLED** and **SET ASIDE**.

Consequently, respondent, or any person acting on his behalf, is **ENJOINED** from enforcing the collection of deficiency taxes assessed against petitioner.

SO ORDERED.


ERLINDA P. UY
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 case was assigned to the writer of the opinion of the Court's Division.


ERLINDA P. UY
Associate Justice
Chairperson, Special 3rd Division

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