

**REPUBLIC OF THE PHILIPPINES**  
*Court of Tax Appeals*  
**QUEZON CITY**

*Third Division*

**SELLERY PHILS. ENTERPRISES  
INC.,**

*Petitioner,*

*-versus-*

**COMMISSIONER OF INTERNAL  
REVENUE,**

*Respondent.*

**CTA CASE NO. 10047**

Members:

**UY, Chairperson,**

**RINGPIS-LIBAN, and**

**MODESTO-SAN PEDRO, JJ.**

Promulgated:

**MAY 24 2022**

*3:30 p.m.*

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**DECISION**

***MODESTO-SAN PEDRO, J.:***

**The Case**

This Petition for Review (“Petition”), filed by petitioner **SELLERY PHILS. ENTERPRISES INC.** against respondent **COMMISSIONER OF INTERNAL REVENUE (“CIR”)**, prays that the Court order the suspension of collection or enforcement of the subject assessment and upon proper proceeding, render judgment ordering the cancellation and withdrawal of respondent’s Final Letter of Demand and Assessment Notice (“FLD”) assessing petitioner for alleged deficiency Income Tax (“IT”) and Value Added Tax (“VAT”) in the total amount of Fifty Million Ninety Thousand Eight Hundred Fifteen Pesos and Thirteen Centavos (Php50,090,815.13), inclusive of interest, penalty, and surcharges for taxable year (“TY”) 2013.<sup>1</sup>

**The Parties**

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines and registered with the Securities and Exchange Commission (“SEC”) engaged in the business of buying, selling, distributing, and marketing plumbing fixtures and accessories, architectural hardware, builders and cabinets, and household accessories,

<sup>1</sup> See Statement of the Case in the Pre-Trial Order, Records, Vol. 3, p. 1037.

among others. Petitioner is related to two (2) affiliates, namely HomeAid Depot (“HomeAid”) and Buildex Improvement Center Inc. (“Buildex”).<sup>2</sup>

Respondent is the government authority duly designated to collect all taxes, grant refunds, issue and abate tax assessments, and examine books of accounts and returns filed with it to determine the correctness of taxes paid under the *National Internal Revenue Code of 1997, as amended* (“NIRC”).<sup>3</sup>

### The Facts

Sometime in 2011, petitioner ceased its business operations. Subsequently, on 14 April 2015, its Board of Directors decided to permanently dissolve the company.<sup>4</sup>

On 20 May 2015, petitioner filed an Application for Registration Information Update with the Bureau of Internal Revenue (“BIR”) Revenue District Office (“RDO”) No. 25-A for a) cessation of petitioner’s BIR registration effective 5 May 2015 and b) cancellation of petitioner’s Tax Identification Number (“TIN”).<sup>5</sup>

Upon receiving the closure application, respondent issued three (3) Letters of Authority (“LOA”) on 25 August 2015 authorizing revenue officer (“RO”) Jayson Baello and group supervisor (“GS”) Marita Panteriori to conduct a mandatory audit of petitioner’s books of accounts and other accounting records to determine any tax liability for TY 2012-2014.<sup>6</sup>

On 18 May 2016, a Memorandum of Assignment was issued by Revenue District Officer of RDO No. 25-A, Carlos S. Salazar, in favor of RO Cristina C. Yu and GS Rodolfo M. Roldan, Jr. to continue the audit of petitioner’s accounting records in light of the previous RO and GS’ resignation/retirement/transfer to another RDO.<sup>7</sup>

During the audit, respondent attributed certain sales made by petitioner’s affiliates, HomeAid and Buildex, to Robinsons Handyman, Inc., Waltermart Handyman, Inc., Handyman Expressmart, Inc., and other entities under the Robinsons Group (collectively, “Robinsons Group”) as petitioner’s own sales.<sup>8</sup> According to petitioner, this occurred because Robinsons Group erroneously used petitioner’s TIN in its Summary List of Purchases (“SLP”) for its purchases from HomeAid or Buildex (*i.e.*, the purchases were declared

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<sup>2</sup> See Statement of Facts and Issues in the Pre-Trial Order, *id.*, p. 1038.

<sup>3</sup> *Ibid.*

<sup>4</sup> Exhibit “P-20”, Records, Vol. 1, p. 268, Vol. 2, p. 598.

<sup>5</sup> Exhibit “P”, Records, *id.*, p. 553.

<sup>6</sup> Exhibits “P-1” to “P-3”, Records, *id.*, pp. 554-562.

<sup>7</sup> Exhibit “R-3”, BIR Records, p. 23.

<sup>8</sup> Exhibit “P-20”, Records, Vol. 1, pp. 269-270, Vol. 2, pp. 599-600; Exhibit “P-22”, Records, Vol. 1, pp. 329-500; Exhibit “P-38”, Records, Vol. 3, pp. 1106-1479.

under the names of HomeAid or Buildex but the TIN used was that of petitioner).<sup>9</sup> To address this issue, petitioner submitted Certifications from Robinsons Group attesting that the latter's purchases were made from HomeAid or Buildex and not from petitioner and that it improperly used petitioner's TIN instead of HomeAid and Buildex's respective TINs in declaring these purchases.<sup>10</sup>

On 9 June 2016, respondent issued a Letter Notice ("LN") finding certain discrepancies in the amount of sales declared by petitioner as compared to the SLP filed by its alleged customers.<sup>11</sup>

Subsequently, a Memorandum was issued by RO Yu recommending the issuance of a Preliminary Assessment Notice ("PAN") against petitioner assessing the latter for deficiency IT and VAT.<sup>12</sup>

Following this recommendation, a PAN was issued by respondent on 17 July 2017 finding petitioner liable for deficiency IT and VAT in the amounts of Twenty One Million Seven Hundred Thousand One Hundred Eighty Seven and Seventy Seven Centavos (Php21,700,189.77) and Twenty Six Million Three Hundred Seventy Five Thousand Sixty Seven and Forty Five Centavos (Php26,375,067.45), respectively.<sup>13</sup> A copy of the PAN was sent by RO Yu to petitioner via registered mail at the address "78 C. Jose Street, Malibay, Pasay City" on 21 July 2017 under Registry Receipt No. RD 761 120 173 zz.<sup>14</sup>

Afterwards, respondent issued a Formal Letter of Demand with its corresponding Assessment Notices ("FAN/FLD") on 6 September 2017, assessing petitioner for deficiency IT and VAT in the amounts of Twenty Two Million Six Hundred Fifty Two Thousand Nine Hundred Fourteen and Eighty Nine Centavos (Php22,652,914.89) and Twenty Seven Million Four Hundred Thirty Seven Thousand Nine Hundred and Twenty Four Centavos (Php27,437,900.24), respectively.<sup>15</sup> A copy of the FAN/FLD was sent by RO Yu to petitioner through registered mail at the address "78 C. Jose Street, Malibay, Pasay City" on 28 September 2017.<sup>16</sup>

On 22 January 2018, respondent issued a Preliminary Collection Letter ("PCL") against petitioner seeking the collection of alleged deficiency IT and VAT in the amounts as stated in the FAN/FLD. These were sent by respondent to petitioner through registered mail on 24 January 2018 to two addresses.

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<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*; Exhibits "P-4" to "P-8", Records, Vol. 2, pp. 563-567; Exhibits "P-9" to "P-13", *id.*, pp. 943-947.

<sup>11</sup> Exhibit "R-4", BIR Records, pp. 41-45.

<sup>12</sup> Exhibits "R-15", Records, Vol. 2, p. 887; Exhibits "R-5" and "R-6", BIR Records, pp. 61-65.

<sup>13</sup> Exhibit "R-9", BIR Records, pp. 100-103.

<sup>14</sup> Exhibit "R-10", *id.*, pp. 104-105.

<sup>15</sup> Exhibits "R-11", "R-12", and "R-13", *id.*, pp. 108-111.

<sup>16</sup> Exhibits "R-14", *id.*, pp. 112-113.

namely “78 C. Jose Street, Malibay, Pasay City” and “Violeta Village, Ilang-Ilang St., Guiguinto, Bulacan”.<sup>17</sup>

On 5 February 2018, respondent issued a Final Notice Before Seizure (“FNBS”) against petitioner seeking the collection of the amount as stated in the FAN/FLD. This document was sent through registered mail by respondent on 15 February 2018 to the same addresses where the PCL was sent.<sup>18</sup>

On 8 May 2018, a Warrant of Distrain and/or Levy (“WDL”) was issued against petitioner, seeking the collection of the amount as provided in the FAN/FLD. The WDL was served constructively as petitioner could not be located.<sup>19</sup>

On 17 August 2018, respondent issued Warrants of Garnishment. These were sent to various banks, seeking the collection of the alleged deficiency IT and VAT assessment against petitioner.<sup>20</sup> However, no bank account could be found under petitioner’s name.

Through Access Letters sent to the Land Transportation Office (“LTO”) and the City Government of Pasay, respondent found out that certain motor vehicles and real property were still under the name of petitioner.

Considering this, a Notice of Encumbrance was sent by respondent to the LTO on 8 October 2018 to annotate respondent’s claim for deficiency IT and VAT against petitioner.<sup>21</sup> Likewise, on 12 February 2019, respondent issued a Notice of Tax Lien to the City Government of Pasay to establish the lien or encumbrance in favor of the government over petitioner’s real properties located with the aforesaid local government unit in relation to the former’s claim for deficiency IT and VAT against the latter.<sup>22</sup>

On 22 January 2019, respondent issued letters to petitioner’s incorporators seeking from them the payment of the deficiency IT and VAT assessed in the FAN/FLD. These were served through registered mail on 6 February 2019.<sup>23</sup>

When petitioner’s former president, Mr. Lloyd Nicholai Uyliapco, received the letter on 15 February 2019, he then asked petitioner’s former Chief Financial Officer, Mr. Alex G. Halili, to coordinate with respondent. On the same date, Mr. Halili instructed his accounting staff to meet with the Collection Division of Revenue Region No. 5 (“RR 5”). According to

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<sup>17</sup> *Id.*, pp. 118-119.

<sup>18</sup> *Id.*, pp. 120-121.

<sup>19</sup> *Id.*, pp. 135-141.

<sup>20</sup> *Id.*, pp. 196-208, 218-225, 227, 237-238, 263

<sup>21</sup> *Id.*, p. 226.

<sup>22</sup> *Id.*, p. 281.

<sup>23</sup> *Id.*, pp. 276-280.

petitioner, it was only when its representatives went to the Collection Division of RR 5 on 15 February 2019 that it learned of the existence of the PAN and FAN/FLD.<sup>24</sup>

Hence, upon being informed of the presence of the FAN/FLD on 15 February 2019, petitioner filed the instant Petition with Urgent Motion to Suspend Tax Collection on 15 March 2019 to question the validity of the deficiency IT and VAT being assessed against it.<sup>25</sup>

Summons were issued to respondent requiring him to file an Answer to the Petition.<sup>26</sup>

On 2 May 2019, petitioner submitted the Judicial Affidavit of Mr. Alex G. Halili in support of its Urgent Motion to Suspend Tax Collection.<sup>27</sup> He was presented before this Court during the hearing on 7 May 2019.<sup>28</sup>

Upon motion by petitioner, this Court allowed the presentation of another witness from the Robinsons Group to testify in support of petitioner's Urgent Motion to Suspend Tax Collection.<sup>29</sup> The witness chosen by petitioner was Ms. Jessica Bugnot.<sup>30</sup> She was presented during the hearing on 19 June 2019.<sup>31</sup>

On 17 June 2019, respondent filed his Answer.<sup>32</sup>

On 24 June 2019, petitioner filed its Formal Offer of Documentary Exhibits in support of its Urgent Motion to Suspend Tax Collection.<sup>33</sup> In a Resolution, dated 28 August 2019, this Court admitted petitioner's Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-14", "P-17", "P-18", "P-19", "P-20", "P-21", "P-21-A", "P-21-B", "P-21-C", "P-21-D", "P-21-E", "P-21-F", "P-21-G", "P-21-H", "P-21-I", "P-21-J", "P-21-K", "P-21-L", "P-21-M", "P-21-N", "P-21-O", and "P-22 to P-22-B" but denied admission of Exhibits "P-9", "P-10", "P-11", "P-12", "P-13", "P-15", and "P-16" for failure to submit the originals for comparison, and Exhibits "P-4-A", "P-6-A", "P-7-A", "P-8-A", "P-9-A", and "P-20-A", for not being found in the records of the case.<sup>34</sup>

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<sup>24</sup> Exhibit "P-20", Records, Vol. 1, p. 271.

<sup>25</sup> *Id.*, pp. 12-262.

<sup>26</sup> *Id.*, p. 265.

<sup>27</sup> *Id.*, pp. 266-320.

<sup>28</sup> *Id.*, pp. 327-328.

<sup>29</sup> *Ibid.*

<sup>30</sup> Exhibit "P-22", *Id.*, pp. 329-500.

<sup>31</sup> Records, Vol. 2, pp. 520-522.

<sup>32</sup> *Id.*, pp. 502-513.

<sup>33</sup> *Id.*, pp. 523-808.

<sup>34</sup> *Id.*, pp. 812-814.

On 19 September 2019, petitioner filed a Motion for Partial Reconsideration with Manifestation asking the Court to admit the Exhibits denied admission in the Resolution, dated 28 August 2019.<sup>35</sup> In a Resolution, dated 27 September 2019, this Court treated petitioner's Motion as a Motion for Reconsideration with Motion to Set Additional Commissioner's Hearing, ordered respondent to comment on petitioner's Motion, set an additional commissioner's hearing for the marking of petitioner's additional evidence and correct the markings, and ordered petitioner to file an Amended Formal Offer of Evidence to effect the above Motion.<sup>36</sup> On 16 October 2019, respondent filed a Comment setting forth his objections to petitioner's Motion.<sup>37</sup> On 21 October 2019, petitioner filed an Amended Formal Offer of Evidence as ordered in the Resolution, dated 27 September 2019.<sup>38</sup> In a Resolution, dated 25 November 2019, this Court granted petitioner's Motion, admitted Exhibits "P-4-A", "P-6-A", "P-7-A", "P-8-A", "P-9 to P-9-A", "P-10 to P-10-A", "P-11 to P-11-A", "P-12 to P-12-A", "P-13 to P-13-A", "P-15", "P-16", and "P-20-A", and set for resolution the Urgent Motion to Suspend Tax Collection.<sup>39</sup>

On 7 October 2019, respondent elevated the BIR Records.<sup>40</sup>

On 18 October 2019, respondent filed his Pre-Trial Brief.<sup>41</sup> On the same date, respondent submitted the Judicial Affidavit of RO Yu<sup>42</sup> and RO Arjen Mars M. Mirabuna.<sup>43</sup>

On 28 November 2019, petitioner submitted the Judicial Affidavit of Nida B. Rinon.<sup>44</sup> On the next day, petitioner filed its Pre-Trial Brief.<sup>45</sup>

The Pre-Trial Conference then proceeded on 3 December 2019. Petitioner manifested during the said proceedings that it will be adopting the testimonies of Mr. Alex G. Halili and Ms. Jessica Bugnot during the hearings for the Urgent Motion to Suspend Tax Collection.<sup>46</sup>

On 10 January 2020, this Court granted petitioner's Urgent Motion to Suspend Tax Collection with the bond requirement dispensed with.<sup>47</sup>

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<sup>35</sup> *Id.*, pp. 818-856.

<sup>36</sup> *Id.*, pp. 857-860.

<sup>37</sup> *Id.*, pp. 870-877.

<sup>38</sup> *Id.*, pp. 919-948.

<sup>39</sup> *Id.*, pp. 960-968.

<sup>40</sup> *Id.*, pp. 861-863.

<sup>41</sup> *Id.*, pp. 878-883.

<sup>42</sup> Exhibit "R-15", *id.*, pp. 884-899.

<sup>43</sup> Exhibit "R-16", *id.*, pp. 900-918.

<sup>44</sup> Exhibit "P-23", *id.*, pp. 969-986.

<sup>45</sup> *Id.*, pp. 987-1001.

<sup>46</sup> *Id.*, pp. 1004-1006.

<sup>47</sup> *Id.*, pp. 1007-1019.

The parties filed their Joint Stipulation of Facts and Issue on 16 January 2020.<sup>48</sup>

Thereafter, this Court issued a Pre-Trial Order.<sup>49</sup>

On 23 June 2020, petitioner's witness, Ms. Nida B. Rinon, testified before this Court. During the same hearing, petitioner moved and was allowed to file a Supplemental Judicial Affidavit of Mr. Alex G. Halili.<sup>50</sup>

On 8 July 2020, petitioner filed the Supplemental Judicial Affidavit of Mr. Alex G. Halili.<sup>51</sup> Mr. Alex G. Halili once again testified before this Court on 23 July 2020. Likewise, during the hearing, petitioner moved to adopt all Exhibits presented and offered during the Urgent Motion to Suspend Tax Collection as evidence for the main case.<sup>52</sup>

On 20 August 2020, petitioner filed its Supplemental Formal Offer of Evidence.<sup>53</sup>

On 15 October 2020, respondent presented his witness, RO Yu.<sup>54</sup>

On 19 November 2020, RO Mirabuna testified.<sup>55</sup>

On 27 November 2020, respondent filed his Formal Offer of Evidence,<sup>56</sup> to which petitioner filed a Comment/Opposition.<sup>57</sup> On 27 January 2021, this Court issued a Resolution admitting respondent's Exhibits "R-1", "R-2", "R-2a", "R-3", "R-4", "R-5", "R-5a", "R-6", "R-7", "R-9", "R-9a", "R-9b", "R-9c", "R-10 and R-10a", "R-11", "R-12", "R-13", "R-13a", "R-14", "R-14a", "R-15", "R-15-a", "R-16", and "R-16-a".<sup>58</sup>

On 3 March 2021, respondent filed his Memorandum.<sup>59</sup> Meanwhile, petitioner filed its Memorandum on 18 March 2021.<sup>60</sup>

As such, on 25 May 2021, this Court issued a Resolution submitting the instant Petition for decision.<sup>61</sup>

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<sup>48</sup> Records, Vol. 3, pp. 1020-1028.

<sup>49</sup> *Id.*, pp. 1036-1046.

<sup>50</sup> *Id.*, pp. 1102-1104.

<sup>51</sup> Exhibit "P-38", *Id.*, pp. 1105-1289, 1296-1479.

<sup>52</sup> *Id.*, pp. 1291-1295.

<sup>53</sup> *Id.*, pp. 1481-1500; Records, Vol. 4, pp. 1501-1522.

<sup>54</sup> Records, Vol. 4, pp. 1545-1547.

<sup>55</sup> *Id.*, pp. 1571-1573.

<sup>56</sup> *Id.*, pp. 1575-1579.

<sup>57</sup> *Id.*, pp. 1581-1585.

<sup>58</sup> *Id.*, pp. 1586-1588.

<sup>59</sup> *Id.*, pp. 1589-1600.

<sup>60</sup> *Id.*, pp. 1602-1623.

<sup>61</sup> *Id.*, pp. 1624-1625.

Hence, this Decision.

### **The Issues**<sup>62</sup>

“WHETHER OR NOT PETITIONER IS LIABLE TO PAY THE ALLEGED DEFICIENCY INCOME TAX IN THE AMOUNT OF PHP22,652,914.89 AND DEFICIENCY VAT IN THE AMOUNT OF PHP27,437,900.24, OR THE AGGREGATE AMOUNT OF PHP50,090,815.13 FOR TAXABLE YEAR 2013”; AND

“WHETHER OR NOT RESPONDENT’S ASSESSMENT FOR TAXABLE YEAR 2013 HAS ALREADY PRESCRIBED.”

### **Arguments of the Parties**

#### **Petitioner’s Arguments**<sup>63</sup>

Petitioner avers the following in its Memorandum:

- a) The ROs who audited petitioner were not properly armed with an LOA;
  - i. When petitioner filed its closure applications, three (3) LOAs were issued by respondent on 25 August 2015 authorizing RO Jayson Baello and GS Marita Panteriori to conduct a mandatory audit of petitioner’s books of accounts and other accounting records to determine any tax liability for TY 2012-2014;
  - ii. However, as shown by the evidence presented, it was RO Yu who conducted the audit. She even confirmed this during cross-examination;
  - iii. The LOAs issued by respondent do not name RO Yu as one of those ROs authorized to conduct an audit of petitioner’s books of accounts and other accounting records. Consequently, the deficiency IT and VAT assessment issued against petitioner is void;
  
- b) The assessment failed to comply with due process requirements under ***Section 228 of the NIRC***, as implemented by ***Revenue Regulations No. 12-99, as amended, (“RR 12-99”)***; ✓

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<sup>62</sup> See Issues in the Pre-Trial Order; Records, Vol. 3, pp. 1038-1039.

<sup>63</sup> See Memorandum, Records, Vol. 4, pp. 1606-1620.



- i. It must be emphasized that petitioner did not receive a copy of the PAN and FAN/FLD.
  - ii. Respondent failed to adduce proof that petitioner indeed received a copy of the PAN and FAN/FLD.
  - iii. As petitioner did not receive the PAN and FAN/FLD, the instant assessment is invalid, and it did not become final and executory. Accordingly, petitioner did not become delinquent on the tax liabilities as alleged by respondent.
- c) The authority of respondent to issue the subject assessments have already prescribed.
- i. Assuming that the FAN/FLD were properly served, the assessment has already prescribed.
  - ii. Under *Section 203 of the NIRC*, internal revenue taxes should be assessed within three (3) years after the last day prescribed by law for the filing of the return.
  - iii. Petitioner filed its Income Tax Returns for TY 2013 on 14 April 2014.<sup>64</sup> Consequently, respondent only had until 15 April 2017 to assess a deficiency IT against petitioner for TY 2013.
  - iv. On the other hand, petitioner's VAT Returns for TY 2013<sup>65</sup> were filed on the following dates and thus had the following periods for assessment:
- | Quarter | Date Filed      | Date of Prescription |
|---------|-----------------|----------------------|
| First   | 25 April 2013   | 25 April 2016        |
| Second  | 25 July 2013    | 25 July 2016         |
| Third   | 22 October 2013 | 22 October 2016      |
| Fourth  | 27 January 2014 | 27 January 2017      |
- v. The issuance of the FLD/FAN was only made on 6 September 2017. Hence, the deficiency IT and VAT assessments against petitioner have already prescribed.
- d) The assessments for the alleged deficiency IT and VAT for TY 2013 lack legal and factual bases.
- i. During the audit conducted for the closure application, petitioner has adequately explained and shown proof before respondent that

<sup>64</sup> Exhibit "P-21".

<sup>65</sup> Exhibit "P-26" to "P-29".

its alleged under-declaration of sales found through third party information matching was solely due to the erroneous use by the Robinsons Group of petitioner's TIN in the former's SLP when the actual purchases were made from HomeAid and Buildex.

- ii. However, this was not taken into consideration when respondent issued the FAN/FLD.
- iii. **Revenue Memorandum Circular No. 50-07** provides that sales of goods to a registered Freeport Zone Enterprise is subject to VAT at zero percent (0%); and
- iv. Petitioner's invoices are not deficient and they comply with the requirements set by law

### **Respondent's Counter-Arguments**<sup>66</sup>

Respondent counter argues the following in his Memorandum:

- a) Petitioner is liable to pay the deficiency IT and VAT assessment considering that the same was issued in accordance with applicable laws and regulations.
- b) The factual and legal bases for the subject assessment are all contained in the FAN/FLD.
- c) In fact, due to the failure of petitioner to timely file its Protest to the FAN/FLD, the assessment has become final and executory, and as such, is already due and demandable.
- d) **Section 228 of the NIRC** requires that a Protest be filed first before respondent before a case can be filed with this Court. As no such Protest was filed, the instant Petition has been filed without a cause of action and should be dismissed outright. This is a blatant violation of the rule on exhaustion of administrative remedies.
- e) Cessation of business operations does not preclude respondent from investigating a taxpayer for potential tax liability. In fact, a taxpayer who applied for cancellation of its BIR Registration, such as herein petitioner, will be subjected to mandatory audit. ✓

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<sup>66</sup> See Memorandum, Records, Vol. 4, pp. 1591-1599.

## The Ruling of the Court

The instant **Petition is impressed with merit.**

**A revenue officer must first be duly authorized before conducting an examination of a taxpayer for the purpose of collecting the correct amount of tax.**

Revenue officers conducting an examination of a taxpayer to determine the correct amount of taxes due should be armed with an LOA. This is a principle undeterred under our tax laws. An LOA is an instrument of due process for the protection of taxpayers. It guarantees that tax agents will act only within the authority given them in auditing a taxpayer.

*Section 13 of the NIRC* is clear that revenue officers conducting examinations of taxpayers must first be authorized to do so:

**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, Ours.)

In fact, respondent, being aware of the necessity of an LOA before a revenue officer can examine a taxpayer, issued *Revenue Memorandum Order No. 43-90 ("RMO 43-90")*<sup>67</sup> which provides:

**“Any reassignment/ transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/ A number and date of issue of said L/As.”**

(Emphasis, Ours.)

A cardinal rule in statutory construction is that where the law speaks in clear and categorical language, or the terms of the statute are clear and unambiguous and free from doubt, there is no room for interpretation or construction and no interpretation or construction is called for; there is only room for application. The use of the word “shall” connotes a mandatory order and denotes an imperative obligation and is inconsistent with the idea of

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<sup>67</sup> Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, 20 September 1990.

discretion.<sup>68</sup> Hence, the use of the word “shall” in *RMO 43-90* can only mean that the issuance of a new LOA in cases of transfer of audits to another set of revenue officers is mandatory. As such, it is clear that before an assessment can be made, the revenue officer conducting the same must first be duly authorized to do so.

The importance of an LOA as a due process requirement in issuing deficiency tax assessments was given paramount consideration by the High Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue (“Medicard Case”)*,<sup>69</sup> to wit:

**“An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:**

*SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –*

**(A) Examination of Return and Determination of Tax Due.-** After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

X X X X

**Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.** The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**

XXX XXX XXX

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

<sup>68</sup> *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 175707, 180035, 181092, 19 November 2014.

<sup>69</sup> G.R. No. 222743, 5 April 2017, citing *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.

Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity.**

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 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.

XXX XXX XXX

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, Ours.)

Based on the foregoing pronouncement, an LOA is the authority given to revenue officers to enable them to examine the books of account and other accounting records of a taxpayer. In the absence of such authority, the tax assessments issued against such taxpayer shall inescapably be void.

Respondent even recognized the importance of the Supreme Court's ruling on LOAs in the *Medicard Case* when he issued *Revenue Memorandum Circular No. 75-2018*,<sup>70</sup> which provides:

"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.'**

XXX XXX XXX

**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.** ✓

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<sup>70</sup> SUBJECT: The Mandatory Statutory Requirement and Function of a Letter of Authority.

(Emphasis and Underscoring, Ours)

Following these, the importance of a prior issuance of an LOA authorizing revenue officers to perform an audit or examination of a taxpayer for purposes of assessing and collecting the correct amount of taxes before said revenue officers can proceed with such audit or examination cannot be over-emphasized.

Recently, the Supreme Court highlighted the importance of a Letter of Authority as an instrument of due process when it ruled in the *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*,<sup>71</sup> that a Letter of Authority should specifically name the revenue officers who will pursue the tax audit, to wit:

“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 the issuance of a Letter Notice to a taxpayer was not sufficient if no corresponding LOA was issued. In that case, We have stated that ‘[d]ue process demands xxx that after [a Letter Notice] has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case.’ The result of the absence of a LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process.

To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. **In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.**

We do not agree with the petitioner's statement that the LOA is not issued to the revenue officer and that the same is rather issued to the taxpayer. The petitioner uses this argument to claim that once the LOA is ✓

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<sup>71</sup> G.R. No. 242670, 10 May 2021.

issued to the taxpayer, ‘any’ revenue officer may then act under such validly issued LOA.

The LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the revenue officers, pursuant to Sections 6, 10(c) and 13 of the NIRC. Naturally, this grant of authority is issued or bestowed upon an agent of the BIR, i.e., a revenue officer. Hence, petitioner is mistaken to characterize the LOA as a document ‘issued’ to the taxpayer, and that once so issued, ‘any’ revenue officer may then act pursuant to such authority.”  
(Emphasis and Underscoring, Ours.)

A perusal of the case records will show that LOA No. LOA-25A-2015-00000050, dated 25 August 2015, signed by then OIC-Regional Director of RR 5, Mr. Gerardo R. Florendo, was issued to RO Jayson Baello and GS Marita Panteriori, of RDO No. 25-A, authorizing them to perform an audit of petitioner’s books of accounts and other accounting records for the purpose of determining the correct amount of taxes due from petitioner for TY 2013.<sup>72</sup> Thereafter, on 18 May 2016, a Memorandum of Assignment was issued by the Revenue District Officer of RDO No. 25-A, Mr. Carlos S. Salazar, in favor of RO Cristina C. Yu and GS Rodolfo M. Roldan, Jr. to continue the audit of petitioner’s accounting records in light of the previous RO and GS’ resignation/retirement/transfer to another RDO.<sup>73</sup>

Through the Memorandum of Assignment, RO Yu was able to a) audit and examine petitioner’s books of accounts and other accounting records; b) determine through audit results and findings that deficiency IT and VAT is due from petitioner; c) recommended the issuance of the PAN through a Memorandum;<sup>74</sup> and d) convince respondent to issue a PAN<sup>75</sup> and FAN/FLD.<sup>76</sup> In totality, the aforementioned RO was able to audit, examine, and inspect petitioner’s books of accounts and other accounting records (which then lead to the present deficiency IT and VAT assessment against petitioner) through a mere Memorandum of Assignment, despite the clear mandate of **RMO 43-90** requiring the issuance of a new LOA for the revenue officers to whom the audit of a taxpayer has been re-assigned.

It is clear from the foregoing that RO Yu examined petitioner’s books of accounts and other accounting records without the requisite authority emanating from a prior issued LOA. This was confirmed in her testimony, *viz*:

“ATTY. APAYA

Good morning, Ms. Witness.

Q You identified in your Judicial Affidavit a document marked as Exhibit R-3. ✓

<sup>72</sup> Exhibit “R-2”, BIR Records, p. 21.

<sup>73</sup> Exhibit “R-3”, *id.*, p. 23.

<sup>74</sup> Exhibits “R-15”, Records, Vol. 2, p. 887; Exhibits “R-5” and “R-6”, BIR Records, pp. 61-65.

<sup>75</sup> Exhibit “R-9”, BIR Records, pp. 100-103.

<sup>76</sup> Exhibits “R-11”, “R-12” and “R-13”, *id.*, pp. 108-111.

REVENUE OFFICER YU

A Yes, sir.

ATTY. APAYA

Q In the said Memorandum of Assignment marked as R-3, can you please tell the court who signed the said document?

REVENUE OFFICER YU

A It was signed by our Revenue District Officer Carlos Salazar and it was assigned to me.

ATTY. APAYA

Thank you, ma'am. That would be all, your Honors.

JUSTICE LIBAN

Re-direct?

ATTY. CORRO

None, your Honors.

JUSTICE LIBAN

All right. So we're done with this, you have a question, yes.

JUSTICE SAN PEDRO

Just one question, Ms. Witness. You have no letter of authority in your name, just the Memorandum of Assignment?

JUSTICE LIBAN

In your name ha.

JUSTICE SAN PEDRO

In your name.

REVENUE OFFICER YU

The letter of authority is issued...interrupted

JUSTICE SAN PEDRO

No. My question is, Is there a letter of authority bearing your name?

REVENUE OFFICER YU

None. None, your Honors. ✓



JUSTICE SAN PEDRO

Only the Memorandum of Assignment. Is there a letter of authority bearing the name of your Group Supervisor Rodolfo Roldan, Jr.?

REVENUE OFFICER YU

None, your Honors.

JUSTICE SAN PEDRO

Thank you.

JUSTICE LIBAN

All right. So the only letter of authority here is your Exhibit R-2? There is only one letter of authority and that's Exhibit R-2, tama ba? R-2? It's attached to your affidavit.

REVENUE OFFICER YU

Yes, your Honor."<sup>77</sup>

Following these, no other conclusion can be reached aside from finding that RO Yu conducted an audit, examination and inspection of petitioner's books of accounts and other accounting records without an LOA authorizing her to do so. She merely relied on a Memorandum of Assignment as source of her authority to examine petitioner.

It is noteworthy that an LOA is a safeguard against abuses that may be perpetrated by revenue officers against taxpayers. An LOA guarantees a taxpayer that only persons named therein are allowed to examine his books of accounts and other accounting records. Hence, he or she has a right to deny other revenue officers not so named from auditing him or her for potential deficiency tax assessments.

Due to the absence of an LOA authorizing RO Yu to examine petitioner, the deficiency IT and VAT assessments issued against it are void. Consequently, no tax collection can be pursued based on this deficiency VAT assessment.

**The Memorandum of Assignment  
cannot be treated as a valid LOA.**

It may be argued that the Memorandum of Assignment, which re-assigned petitioner's examination to RO Yu, authorized the latter to audit petitioner. However, a perusal of the Memorandum of Assignment would show that it cannot be considered a valid LOA. ✓

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<sup>77</sup> TSN for 15 October 2020 Hearing, pp. 6-8.

To be effective, an LOA must be issued either by respondent himself or by his duly authorized representative, who under *Section 13 of the NIRC*, is the Revenue Regional Director. Under *Section D (4) of RMO 43-90*, respondent expanded his list of duly authorized representatives who may issue LOAs that would authorize the examination of taxpayers for deficiency taxes:

- “1. Regional Directors;
2. Deputy Commissioners;
3. Commissioner; and
4. Other officials that may be authorized by the Commissioner for the exigencies of service.”<sup>78</sup>

Consequently, a Memorandum of Assignment, a Referral Memorandum, or any other letter emanating from the BIR which seeks to authorize the audit/tax investigation of a taxpayer may be considered a valid LOA provided that it was issued by any of the persons named above.

In the case at bar, the Memorandum of Assignment was merely signed by the Revenue District Officer of RDO No. 25-A, Mr. Carlos S. Salazar.<sup>79</sup>

It is noteworthy that a Revenue District Officer is not one of respondent’s duly authorized representatives listed above who is allowed to issue an LOA. Consequently, the subject Memorandum of Assignment cannot be considered a valid LOA which may authorize RO Yu to perform an examination of petitioner’s books of accounts and other accounting records.

Considering that the revenue officer who examined and audited petitioner’s books of accounts and other accounting records is not armed with a proper LOA, the resulting deficiency IT and VAT assessments against petitioner are null and void.

Given the above discussions, the Court deems it unnecessary to tackle the other issues raised in the Petition.

**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. The subject IT and VAT assessments issued against petitioner for TY 2013 in the amounts of Twenty Two Million Six Hundred Fifty Two Thousand Nine Hundred Fourteen and Eighty Nine Centavos (Php22,652,914.89) and Twenty Seven Million Four Hundred Thirty Seven Thousand Nine Hundred and Twenty Four Centavos (Php27,437,900.24), respectively, or in the aggregate amount of Fifty Million Ninety Thousand Eight Hundred Fifteen and Thirteen Centavos (Php50,090,815.13), are hereby declared **NULL AND VOID**. Accordingly, the subject FLD/FAN, the PCL, FNBS, the WDLs, the Warrants of Garnishment, the Notice of Encumbrance sent to the LTO, Notice of Tax Lien ✓

<sup>78</sup> *Commissioner of Internal Revenue v. Sugar Crafts, Inc.*, CTA EB No. 1757, CTA Case No. 8738, Resolution, dated 10 September 2019.

<sup>79</sup> Exhibit “R-3”, BIR Records, p. 23.


sent to the City Government of Pasay, and the Letters, dated 22 January 2019 sent to petitioner's incorporators seeking to assess and collect petitioner of the above mentioned deficiency IT and VAT assessment, are hereby **CANCELLED** and **SET ASIDE**. Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

**SO ORDERED.**

  
**MARIA ROWENA MODESTO-SAN PEDRO**  
Associate Justice


**WE CONCUR:**

  
**ERLINDA P. UY**  
Associate Justice

  
**MA. BELEN M. RINGPIS-LIBAN**  
Associate Justice


**ATTESTATION**

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

  
**ERLINDA P. UY**  
Associate Justice  
Chairperson

## CERTIFICATION

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

  
ROMAN G. DEL ROSARIO  
Presiding Justice ✓