

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

**ELECTROBYTE
ENVIRONMENTAL
CONCERNS CORPORATION,**

Petitioner,

-versus-

**COMMISSIONER OF
INTERNAL REVENUE,**
Respondent.

CTA CASE NO. 9914

Members:

**DEL ROSARIO, P.J., Chairperson,
MANAHAN, and
REYES-FAJARDO, JJ.**

Promulgated:

MAY 11 2022

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed on August 28, 2018 by petitioner Electrobyte Environmental Concerns Corporation, praying for the cancellation and withdrawal of the disputed deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding taxes on compensation (WTC), final withholding taxes (FWT), and Final Withholding on VAT (FWVAT) assessments in the total amount of ₱16,233,834.22, inclusive of surcharges, interests and compromise penalties, for taxable year (TY) 2006.

THE PARTIES

Petitioner Electrobyte Environmental Concerns Corporation is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) with Registration No. A200018663. It is primarily engaged in the business of trading goods, such as but not limited to electronic products, computer spare parts and supplies, on wholesale/retail basis.¹ It is registered with the Bureau of Internal Revenue (BIR) as shown in its Certificate of Registration No. 9RC0001125976E with Tax Identification Number (TIN) 208-841-799-000.²

¹ Par. 1, Joint Stipulation of Facts, Docket Vol. II, p. 839; Certificate of Incorporation, Exhibit "P-1", Docket Vol. II, pp. 888-908, 890; Certificate of Filing of Amended Articles of Incorporation, Exhibit "P-2", Docket Vol. II, pp. 909-915, 911.

² Par. 1, Joint Stipulation of Facts, Docket Vol. II, p. 839; BIR Certificate of Registration, Exhibit "P-3"; Docket Vol. II, p. 916.

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Respondent Commissioner of Internal Revenue (CIR), on the other hand, is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including, among others, the power to cancel disputed assessments. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.³

THE FACTS

On October 4, 2007, petitioner received a **Letter of Authority** LOA 2001 00068982 dated October 2, 2007 (LOA No. 00068982) issued by OIC-Regional Director Ma. Nieva A. Guerrero, Revenue Region No. 8, Makati City, authorizing **Revenue Officer (RO) Reynante Martirez/Group Supervisor (GS) Efren Clemente** to examine its books of accounts and other accounting records for all internal revenue taxes for TY 2006.⁴

Petitioner, through Mr. Salvador Malaza, received a **Notice for Informal Conference** dated September 10, 2009 informing it that the audit report under the aforesaid LOA was already submitted by **RO Rayan James M. Dizon** and the same was already under review, with a recommendation for possible assessment of deficiency taxes for TY 2006. The said notice requested petitioner for an informal conference to enable petitioner to present its side of the case, that is - for petitioner to submit documents and provide legal basis to prove its arguments against the deficiency taxes.⁵

Petitioner executed the "*Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code*" (the 1st Waiver) on October 15, 2009 extending the period of prescription to December 31, 2010,⁶ which was accepted by the BIR.⁷

Petitioner received through Mr. Malaza a **Post Reporting Notice** dated April 26, 2010, informing petitioner that **the investigation pursuant to the aforesaid LOA conducted by RO Dizon and supervised by GS Romeo J. Tomas** was already

³ Par. 6, Parties to the Petition, Petition for Review, which was admitted respondent's Answer, Docket Vol. I, pp. 12 and 442.

⁴ Par. 2, Joint Stipulation of Facts, Docket Vol. II, p. 839; Letter of Authority, Exhibit "P-4", Docket Vol. II, p. 917.

⁵ Par. 5, Joint Stipulation of Facts, Docket Vol. II, p. 840; Notice for Informal Conference, Exhibit "P-5", Docket Vol. II, p. 919.

⁶ Par. 6, Joint Stipulation of Facts, Docket Vol. II, p. 840; Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code, Exhibit "P-7", Docket Vol. II, p. 930.

⁷ Exhibit "P-7-B", Docket Vol. II, p. 930.



completed/submitted for review, and based on the report of investigation, petitioner was still found to have deficiency taxes totaling ₱11,267,130.75.⁸

Petitioner, through Mr. Malaza, received a **Preliminary Assessment Notice** (PAN) dated July 29, 2010 on July 30, 2010 from the BIR, assessing it for alleged deficiency income tax, VAT, VAT on Importation, EWT, WTC, FWT, and FWWAT, totaling ₱10,273,471.07, for TY 2006.⁹

On August 13, 2010, petitioner filed a request for extension of time to file a Reply to the PAN, requesting for an additional thirty (30) days, which was subsequently granted.¹⁰

On August 16, 2010, petitioner and the BIR executed the 2nd Waiver extending the period of prescription to June 30, 2011.¹¹

On September 13, 2010, petitioner filed a Reply to the PAN.¹²

On April 11, 2011, petitioner received a second Post Reporting Notice dated April 8, 2011 from the BIR informing petitioner that it still has alleged deficiency taxes totaling ₱10,971,714.99.¹³

On May 20, 2011, petitioner received through Mr. Malaza a **Formal Assessment Notice** (FAN) dated May 20, 2011, requesting payment of alleged deficiency income tax, VAT, VAT on Importation, EWT, WTC, FWT, and FWWAT in the total amount of ₱11,017,422.88 for TY 2006.¹⁴

⁸ Par. 7, Joint Stipulation of Facts, Docket Vol. II, p. 840; Post Reporting Notice, Exhibit "P-8", Docket Vol. II, p. 931.

⁹ Par. 8, Joint Stipulation of Facts, Docket Vol. II, p. 840; Preliminary Assessment Notice, Exhibit "P-9", Docket Vol. II, p. 943.

¹⁰ Par. 9, Joint Stipulation of Facts, Docket Vol. II, p. 841; Exhibit "P-10", Docket Vol. II, p. 956.

¹¹ Par. 11, Joint Stipulation of Facts, Docket Vol. II, p. 841.

¹² Par. 12, Joint Stipulation of Facts, Docket Vol. II, p. 841; Exhibit "P-12", Docket Vol. II, pp. 958-967.

¹³ Par. 10, Joint Stipulation of Facts, Docket Vol. II, p. 841.

¹⁴ Par. 13, Joint Stipulation of Facts, Docket Vol. II, p. 841; Formal Assessment Notice with Assessment Notices IT-LA68982-06-11-0515, VT-LA68982-06-11-0515, WE-LA68982-06-11-0515, WC-LA68982-06-11-0515, WF-LA68982-06-11-0515, WG-LA68982-06-11-0515, MC-LA68982-06-11-0515, all dated May 20, 2011, Docket Vol. II, pp. 974-990.



On June 21, 2011¹⁵ or well within the 30-day period provided by law to file a protest against a FAN, petitioner duly filed a Protest and a Request for Reinvestigation to the FAN.¹⁶

Petitioner received a Final Decision on Disputed Assessment (FDDA) dated August 29, 2014 on September 3, 2014, requesting payment of the alleged deficiency income tax, VAT, VAT on Importation, EWT, WTC, FWT, and FWWAT totaling ₱14,896,435.84 for TY 2006.¹⁷

On October 3, 2014 or well within the 30-day period provided by law to file an appeal, petitioner duly filed an Appeal on the Final Decision on Disputed Assessment (*or the Administrative Appeal*) before the respondent CIR.¹⁸

Petitioner received the Decision of respondent CIR dated July 19, 2018 on July 27, 2018, ordering it to pay the alleged deficiency income tax, VAT, VAT on Importation, EWT, WTC, FWT, and FWWAT, totaling ₱16,233,834.22, for TY 2006.¹⁹

On August 28, 2018²⁰ or well within the 30-day period provided by law to file a Petition for Review with the Court of Tax Appeals (CTA), petitioner duly filed the present Petition for Review appealing the aforesaid Decision of respondent CIR.²¹

This case was originally raffled to the Court's Third Division and the same was later transferred to this Division in the Order dated October 1, 2018.²²

¹⁵ The 30-day period ends on June 19, 2011 which was a Sunday and June 20, 2011 was a Special Non-Working Holiday under Proclamation No. 154, s. 2011 (Par. 14, Joint Stipulation of Facts, Docket Vol. II, p. 841).

¹⁶ Par. 14, Joint Stipulation of Facts, Docket Vol. II, p. 841.

¹⁷ Par. 15, Joint Stipulation of Facts, Docket Vol. II, p. 841; Final Decision on Disputed Assessment, Exhibit "P-17", Docket Vol. II, pp. 1005-1012.

¹⁸ Par. 16, Joint Stipulation of Facts, Docket Vol. II, p. 841; Appeal on the Final Decision on Disputed Assessment of Electrobyte Environmental Concerns Corp. for Taxable Year Ending December 31, 2006, Exhibit "P-18", Docket Vol. II, pp. 1013-1026.

¹⁹ Par. 17, Joint Stipulation of Facts, Docket Vol. II, p. 841; Decision of respondent dated July 19, 2018, Exhibit "P-19", Docket Vol. II, pp. 1027-1041.

²⁰ The 30-day period ends on August 26, 2018 which was a Sunday and August 27, 2018 was a Regular Holiday under Proclamation No. 269, s. 2018 (Par. 18, Joint Stipulation of Facts, Docket Vol. II, pp. 841-842).

²¹ Par. 18, Joint Stipulation of Facts, Docket Vol. II, pp. 841-842.

²² Docket Vol. I, p. 438.



Within the extended period,²³ respondent posted his Answer on October 22, 2018,²⁴ raising the following special and affirmative defenses: (i) petitioner was assessed of deficiency income tax, VAT, EWT, WTC, FWT, FWWAT and compromise penalty for TY 2006 for the reason that during the administrative investigation of its tax case by the BIR, petitioner failed to submit supporting evidence against the BIR findings, as specifically shown under the Details of Discrepancies attached to the PAN, FAN and FDDA; (ii) petitioner was assessed within the prescriptive period under Section 222(b) of the NIRC of 1997, as amended, in view of the *Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* duly executed by petitioner; (iii) the assessments were made in accordance with law and regulations; and, (iv) an assessment is *prima facie* presumed correct and made in good faith; the taxpayer has the duty of proving otherwise, and in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

In a Resolution dated November 20, 2018,²⁵ this case was referred to mediation in the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) pursuant to Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals;²⁶ and the proceedings of the case were suspended for thirty (30) days starting from the date of the preliminary mediation conference. The proceedings of this case were further suspended at the instance of both parties in their efforts to reach an amicable compromise settlement.²⁷

In the Resolution dated July 28, 2020, the parties were directed to update the Court as to the status of their compromise agreement.²⁸ In compliance therewith, the parties filed their Joint Manifestation on September 7, 2020,²⁹ stating that the Offer of Compromise is still ongoing a final evaluation before the National Evaluation Board.

²³ Resolution dated October 19, 2018, Docket Vol. I, pp.440-441.

²⁴ Docket Vol. I, pp. 442-446.

²⁵ Docket Vol. I, pp. 449-450.

²⁶ A.M. No. 11-1-5-SC-PHILJA dated January 18, 2011.

²⁷ Both parties' Request for Extension filed on February 4, 2019, (Docket, p. 454), Joint Motion to Suspend Proceedings filed on June 24, 2019 (Docket, p. 457-458), and Joint Manifestation & Motion to Suspend Proceedings filed on October 7, 2019, (Docket, pp. 467-469) which were granted in the Court's Resolution issued on February 12, 2019, July 18, 2019, and January 20, 2020, respectively (Docket, pp. 456, 464-466, 472-473).

²⁸ Docket Vol. I, pp. 477-478.

²⁹ Docket Vol. I, pp. 479-480.



Considering that the period of more than one (1) year had lapsed since the parties first filed their Joint Motion to Suspend Proceedings on June 24, 2019, and noting that the case has been pending for more than two (2) years, this Court set the case for Pre-Trial Conference on November 19, 2020 in a Resolution dated September 16, 2020.³⁰

Petitioner's Pre-Trial Brief was filed on November 16, 2020,³¹ while respondent's Pre-Trial Brief (With Attached Special Power of Attorney) was filed on November 18, 2020.³²

On November 19, 2020, the Pre-Trial Conference was held and the parties agreed to formulate a summary of admissions and stipulation of facts to be incorporated in a Joint Stipulation of Facts and Issues.³³ On even date, the Court received the Mediator's Report of (*Ret.*) Justice Amelia R. Cotangco-Manalastas, indicating that there was an unsuccessful mediation between the parties,³⁴ which was noted in the Resolution dated December 14, 2020.³⁵

On December 4, 2020, the parties filed their Joint Stipulation of Facts,³⁶ which was approved in the Resolution dated December 21, 2020.³⁷ In the same Resolution, the pre-trial was deemed terminated. The Pre-Trial Order was issued on March 4, 2021.³⁸

During trial, petitioner presented its testimonial and documentary evidence. It filed its Formal Offer of Evidence on March 3, 2021,³⁹ with respondent's Comment thereon filed on March 18, 2021.⁴⁰ Petitioner's formally offered exhibits were all admitted in the Court's Resolution dated July 7, 2021.⁴¹

As respondent's counsel manifested that he was not presenting any witness,⁴² the parties were ordered to file their respective memoranda in the same Resolution dated July 7, 2021.

³⁰ Docket Vol. I, pp. 483-484.

³¹ Docket Vol. II, pp. 509-523.

³² Docket Vol. II, pp. 809-816.

³³ Docket Vol. II, pp. 821-822.

³⁴ Docket Vol. II, p. 823.

³⁵ Docket Vol. II, p. 845.

³⁶ Docket Vol. II, pp. 839-842.

³⁷ Docket Vol. II, p. 848.

³⁸ Docket Vol. II, pp. 1090-1106.

³⁹ Docket Vol. II, pp. 873-887.

⁴⁰ Docket Vol. II, pp. 1107-1108.

⁴¹ Docket Vol. II, pp. 1115-1117.

⁴² Minutes of hearing dated February 16, 2021, Docket Vol. II, p. 867.



The Memorandum for Petitioner was filed on October 26, 2021,⁴³ while respondent failed to file his memorandum per Records Verification [Report] dated December 3, 2021.⁴⁴

This case was submitted for decision in the Resolution dated January 5, 2022.⁴⁵

ISSUE

Whether or not petitioner is liable to pay deficiency income tax, VAT, VAT on Importation, EWT, WTC, FWT, FWWAT and compromise penalty for TY 2006, in the aggregate amount of ₱16,233,834.22, inclusive of interest and surcharge.⁴⁶

PETITIONER'S ARGUMENTS

Petitioner advances the following arguments in support of its Petition for Review:

1. The tax assessment is null and void as the RO and GS who conducted and completed the investigation did not have authority under LOA No. 0068982. RO Dizon and GS Tomas (who conducted and completed the tax investigation and assessment) were not the authorized revenue officers named in LOA No. 00068982, in violation of Sections 6(A) and 13 of the National Internal Revenue Code (NIRC) of 1997, as amended.⁴⁷ LOA No. 00068982 specifically designated RO Martinez (*sic*)/GS Clemente. Records are bereft of any new LOA or re-assignment notice or memorandum of sort issued by respondent authorizing RO Dizon and GS Tomas to continue the tax investigation and examination.⁴⁸
2. Respondent double-counted the amount ₱1,337,398.38 in the dispositive portion of his Decision dated July 19, 2018 considering that the total amount of alleged deficiency VAT of ₱8,450,362.40 as shown in the FDDA and in the FAN already includes the said amount of ₱1,337,398.38. Since the amount of ₱1,337,398.38 is without basis and erroneously added to the assessed deficiency taxes, it is considered null and void.⁴⁹

⁴³ Docket Vol. II, pp. 1118-1162.

⁴⁴ Docket Vol. II, p. 1163.

⁴⁵ Docket Vol. II, p. 1165.

⁴⁶ Order dated November 19, 2020; Pre-Trial Order issued on March 4, 2021; Docket Vol. II, pp. 821-822, 1090-1106.

⁴⁷ Docket Vol. II, pp. 1130, 1132.

⁴⁸ Docket Vol. II, p. 1136.

⁴⁹ Docket Vol. II, pp. 1145-1147.



3. The right of respondent to issue tax assessments for TY 2006 had already prescribed.⁵⁰ The 2nd Waiver executed on August 16, 2010, extending the period of prescription to June 30, 2011, is defective as it was not duly accepted by respondent CIR. Respondent's period to assess was only up to December 31, 2010, the period stated in the 1st Waiver. Since the FAN was issued only on May 20, 2011, the same is void as the right of respondent to assess deficiency taxes had already prescribed.⁵¹
4. The right of respondent to collect deficiency taxes had already prescribed.⁵² No warrant of distraint and/or levy or any notice of collection has been issued, nor any proceeding was instituted, by respondent to collect since petitioner's receipt of FAN on May 20, 2011. Consequently, the period of prescription to collect the same had already prescribed.⁵³
5. The right of respondent to assess and collect the deficiency taxes had already been extinguished,⁵⁴ considering that its compromise payments have been above board and approved by the Regional Evaluation Board (REB).⁵⁵ While the assessments pertaining to income tax and VAT have not been approved by the National Evaluation Board (NEB), respondent is already in estoppel and laches. Since March 11, 2019, the date of the Offer of Compromise, respondent has yet to secure the NEB approval. The actuations of respondent clearly amounted to estoppel, and he should be estopped from denying the compromise agreement that has been successfully agreed upon by respondent's authorized representatives.⁵⁶ The NEB should not hold hostage the agreement of the parties under a court-mandated mediation.⁵⁷

RESPONDENT'S ARGUMENTS

Respondent presented the following counter-arguments in support of his prayer for the denial of the Petition for Review:

1. Petitioner was assessed of deficiency income tax, VAT, EWT, WTC, FWT, FWWAT and compromise penalty for TY 2006 for the reason that during the administrative investigation of its tax case by the BIR, petitioner failed to substantiate or submit supporting evidence against the BIR findings, as specifically shown under the Details of Discrepancies attached to the PAN, FAN and FDDA;

⁵⁰ Docket Vol. II, p. 1147.

⁵¹ Docket Vol. II, pp. 1149.

⁵² Docket Vol. II, p. 1150.

⁵³ Docket Vol. II, pp. 1150-1151, 1159.

⁵⁴ Docket Vol. II, p. 1151.

⁵⁵ Docket Vol. II, p. 1156.

⁵⁶ Docket Vol. II, p. 1157.

⁵⁷ Docket Vol. II, p. 1158.



2. Petitioner was assessed by respondent within the prescriptive period under Section 222(b) of the NIRC of 1997, as amended, in view of the *Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code* duly executed by petitioner;
3. The assessments issued against petitioner were made in accordance with law and regulations; and,
4. An assessment is *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise, and in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.⁵⁸

THE COURT'S RULING

***The Court has
jurisdiction over the case***

The present case is a Petition for Review assailing the Decision of respondent dated July 19, 2018 which sustained the FDDA issued by respondent's representative. This Court is vested with authority to review the said assailed Decision of the respondent pursuant to Section 7(a)(1) of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282,⁵⁹ in relation to Section 3(a)(1), Rule 4 of RRCTA, as amended.⁶⁰

Under Section 228 of the NIRC of 1997, as amended, a taxpayer adversely affected by a decision of the CIR on the disputed assessment is given a remedy to appeal with the Court within thirty (30) days from receipt of the assailed decision, *viz.*:

⁵⁸ Respondent's Special and Affirmative Defenses as stated in his Answer posted on October 22, 2018; Docket Vol. I, pp. 442-446.

⁵⁹ Sec. 7. Jurisdiction. - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue[.]

⁶⁰ SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* - The Court in Divisions shall exercise:

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

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue[.]



"SEC. 228. Protesting of Assessment. -xxx

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

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Boldfacing supplied)*

Considering that petitioner received respondent's Decision on July 27, 2018, petitioner has thirty (30) days therefrom, or until August 28, 2018 *(since the 30th day - August 26, 2018 fell on a Sunday, and August 27, 2018 was a holiday)* to appeal before the Court. Petitioner's filing of the Petition for Review on August 28, 2018⁶¹ is well within the thirty (30) day period of appeal as provided under Section 228 of the NIRC of 1997, as amended, in relation to Section 11 of R.A. No. 1125, as amended by R.A. No. 9282.⁶²

Determination of the merits of the case

The Court shall proceed to resolve the issue of whether or not petitioner is liable to pay deficiency income tax, VAT, EWT, WTC, FWT, FWWAT, and compromise penalty for TY 2006, in the aggregate amount of P16,233,834.22, inclusive of interest and surcharge.

The Court shall first determine the authority of RO Dizon and GS Tomas to continue the audit of petitioner for TY 2006.

Section 6 of the NIRC of 1997, as amended, is clear and categorical in requiring a specific authority from the CIR or from his

⁶¹ Docket Vol. I, p. 10.

⁶² SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - **Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.** *(Boldfacing supplied)*



duly authorized representatives before an examination of a taxpayer may be made, to wit:

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

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

An RO cannot simply subject a taxpayer to audit without a valid LOA issued for that purpose. Section 13 of the NIRC of 1997, as amended, states:

"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." (Boldfacing & underscoring supplied)

Revenue Memorandum Order No. 43-90 is explicit in stating that all audit/investigations, whether field or office audit, should be conducted under an LOA, and that a new LOA is required when an audit is continued by a revenue officer other than the officer named in a previous LOA, viz.:

"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.

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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." (Boldfacing supplied and underlining supplied)

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Commissioner of Internal Revenue vs. Sony Philippines, Inc.,⁶³ further declares that the issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer is indispensable to the validity of an assessment, to wit:

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

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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.**
(*Boldfacing and underscoring supplied*)

This principle was also reiterated in ***Medicard Philippines, Inc. vs. Commissioner of Internal Revenue***,⁶⁴ to wit:

“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.

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xxx **Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it.** xxx

xxx **an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had.**

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⁶³ G.R. No. 178697, November 17, 2010.

⁶⁴ G.R. No. 222743, April 5, 2017.



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.** (Boldfacing supplied)

Furthermore, the declaration in the more recent case of ***Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.***,⁶⁵ is instructive:

"I. The Reassignment or Transfer of a Revenue Officer Requires the Issuance of a New or Amended LOA for the Substitute or Replacement Revenue Officer to Continue the Audit or Investigation

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The issuance of an LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.

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Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. Unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority. There must be a grant of authority, in the form of a LOA, before any revenue officer can conduct an examination or assessment. 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.

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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 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

⁶⁵ G.R. No. 242670, May 10, 2021.



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.

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Applying the above principles to the case at bar, it is clear that Marcellano was not authorized under a new and separate, or amended, LOA to continue the audit or investigation of the respondent's books of accounts for C.Y. 2006. The August 31, 2007 LOA was originally issued to revenue officers Eulema Demadura, Lover Loveres, Josa Gomez, and Ernalyn dela Cruz. The original revenue officer, Demadura, was transferred to another assignment. Pursuant to a mere referral memorandum, revenue officer Marcellano continued the audit of the respondent's books of accounts. **No new LOA was issued in the name of Marcellano to conduct the audit of the respondent's books of accounts. Moreover, the August 31, 2007 LOA was not amended or modified to include the name of Marcellano. Hence, the authority under which Marcellano continued the audit or investigation was not pursuant to the statutory power of the CIR or his duly authorized representative to grant the authority to examine the taxpayer's books of accounts.**

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.** *(Boldfacing supplied)*

Petitioner theorizes that the tax assessment is null and void as the RO and GS who conducted and completed the investigation were not those named in the LOA. Testifying on this point, petitioner's witness, Mr. Salvador Malaza, averred:⁶⁶

"14. Q: You mentioned about letter of authority, if shown a copy of that document will you be able to identify it?

A: Yes sir.

15 Q: I am showing to you a copy of a Letter of Authority ("LoA") No. 00068962 dated 4 October 2007 which will be marked as Exhibit "P-4" issued by OIC-Regional Director Ma. Nieva A. Guerrero of Revenue Region 8 Makati City together with an attachment letter to be

⁶⁶ Exhibit "P-23", Docket Vol. II, p. 524-541.



marked as Exhibit "P-4-A", what if any is the relation of this with the document you mentioned?

A: This the document sir.

16. Q: Who was the authorized representative of the BIR in this LOA 00068982 if you know?

A: They were **RO Reynante Martinez (sic) and/or Efren Clemente** sir.

xxx

xxx

xxx

21. Q: What if any happened during the audit investigation of Electrobyte?

A: There were several notices for presentation of accounting records which were all cancelled after Electrobyte complied sir.

22. Q: What else if any happened during the audit investigation of Electrobyte if you know?

A: **The investigation was unofficially reassigned to other Ros/GOs sir.**

23. Q: **What proof if any do you have that the then ongoing audit investigation was assigned unofficially to other Ros/GOs?**

A: **Electrobyte received a Notice of Informal Conference dated September 10, 2009 with attached Computation Sheet and Details of Discrepancies which had another Revenue Officer assigned sir.**

24. Q: You mentioned about a Notice of Informal Conference with attached Computation Sheet and Details of Discrepancies if shown a copy of that document will you be able to identify it?

A: Yes sir.

25. Q: I am showing to you a copy of a Notice of Informal Conference dated September 10, 2009 with Subject Matter-Letter of Authority Number 00068982 together with attached Computation Sheet and Details of Discrepancies to be marked as Exhibits "P-5" and the Subject Matter as "P-5-A" respectively what if any would be the relation of these with the one that you mentioned?

A: This is the same document and the attachment sir.

26. Q: **You mentioned that the audit was unofficially assigned to another Revenue Officer where in this document if you know would it show that the audit investigation was assigned to another RO or Revenue Officer?**

A: **Here sir. (Witness is pointing to the name Rayan James M. Dizon to be marked as Exhibit "P-5-B")**



xxx

xxx

xxx

45. Q: What other document if any did you file after this waiver of statute of limitations or Exhibit "P-7"?
- A: We also filed a letter response to the finding of the notice of informal conference sir[.]
46. Q: What if any happened after you filed that response to the findings?
- A: **We received a Post Reporting Notice from the BIR,** sir.
47. Q: You mentioned about a Post Reporting Notice, if shown a copy of that document will you be able to identify it?
- A: Yes sir.
48. Q: I am showing to you a copy of a Post Reporting Notice dated April 26, 2010 which will be marked as Exhibit "P-8" what if any is the relation of this with the document you mentioned?
- A: This the document sir.
49. Q: **Who if you know was the BIR officer assigned in this Post Reporting Notice dated April 26, 2010?**
- A: **Rayan James M. Dizon, sir.**
50. Q: What if any is you (*sic*) proof that it was Rayan James M. Dizon who was assigned in this document?
- A: Here sir. (Witness is pointing to the name Rayan James M. Dizon, to be bracketed and marked as Exhibit "P-8-A")
(*Boldfacing and underscoring supplied*)

The testimony of Mr. Malaza is duly supported by documentary evidence.

The **Notice for Informal Conference** issued to petitioner by the BIR, dated September 10, 2009,⁶⁷ reads as follows:

"NOTICE FOR INFORMAL CONFERENCE

The President
ELECTROBYTE ENVIRONMENTAL CONCERNS CORPORATION
U-6B 6/F Trans-Phil House,
1177 Chino Roces Ave. cor. Bagtikan St.,
San Antonio Village, Makati City

Subject: **Letter of Authority No. 00068982 dated October 2, 2007**

⁶⁷ Exhibit "P-5"; CTA Docket Vol. II, p. 919.



**All Internal Revenue Tax Liabilities
For the period January 1, 2006 to December 31, 2006**

Sir/Madam:

Please be informed that **the report covering the subject was already submitted by Revenue Officer Rayan James M. Dizon is now under review by this Office. The report contains recommendation for possible assessment of deficiency taxes covering the above-mentioned period (see attached Computation Sheet and Details of Discrepancies).**

Pursuant to Revenue Regulations No. 12-99 in relation to Section 228 of the 1997 NIRC, as amended, which require this office to notify you of the results of audit/investigation and to enable you to present your side of the case, you and/or authorized representative are requested to appear for an informal conference in this Office within fifteen (15) days from receipt hereof and submit the necessary documents and provide legal basis to prove your contentions/arguments against the above deficiency taxes.

Please give this matter your preferential attention, otherwise, this Office shall forward the case to the Assessment Division of this Region for the issuance of Preliminary Assessment Notice without further notice.

Very truly yours,

(signed)

TEODORO G. GALICIA
Revenue District Officer

*(Original emphases removed; new
boldfacing & underscoring supplied)*

Moreover, the **Post Reporting Notice** issued to petitioner by the BIR, dated April 26, 2010,⁶⁸ reads:

"POST REPORTING NOTICE

**ELECTROBYTE ENVIRONMENTAL CONCERNS CORPORATION
U-6B 6/F Trans-Phil House,
1177 Chino Roces Ave. cor. Bagtikan St.,
San Antonio Village, Makati City**

Attention: Elizabeth P. Rivera
Chief Operating Officer

MADAM:

This is to inform you that the investigation of your All Internal Revenue Tax Liabilities for the calendar year ending December 31, 2006 pursuant to Letter of Authority No. 00068982

⁶⁸ Exhibit "P-8"; CTA Docket Vol. II, p. 931.



dated October 2, 2007 conducted by Revenue Officer RAYAN JAMES M. DIZON and supervised by Group Supervisor ROMEO J. TOMAS has already been completed/submitted for review.

The report of investigation showed that there is still due from you deficiency taxes as follows:

Income Tax:	P 4,366,256.07
Value-added Tax:	1,405,656.66
Value-added Tax on Importation:	4,686,377.01
Expanded Withholding Tax:	42,713.46
Withholding Tax on Compensation:	60,123.35
Final Withholding Tax:	522,273.75
Final Withholding of VAT:	183,730.45
TOTAL	<u>P11,267,130.75</u>

If you agree to the above computed deficiency taxes, you may pay the same at any Authorized Agent Bank (AAB). May we request you to furnish this office with the photocopies of the proof/s of payment so that the report of investigation can be submitted for review and approval by higher authorities. Please be reminded, however, that the above amount does not include audit findings (1) based on any data/information that has/have been and/or may be generated from the Bureau's RELIEF SYSTEM; and (2) on any claim for refund/TCC that may be filed by the taxpayer in the future.

Very truly yours,

(signed)

TEODORO G. GALICIA
Revenue District Officer

*(Original emphases removed; new
boldfacing & underscoring supplied)*

It bears stressing that a Notice for Informal Conference is part of the due process requirement in the issuance of a deficiency tax assessment. It is under this phase that the BIR (*through its RDO, or Special Investigation Division in the case of Revenue Regional Office; or by the Chief of Division in the case of National Office*) informs the taxpayer of discrepancies in the payment of internal revenue after a Report is submitted by the Revenue Officer who audited the taxpayer's records. Section 3 of Revenue Regulations No. 12-99 provides:

"SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 **Notice for informal conference.** — **The Revenue Officer who audited the taxpayer's records shall**, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If



the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of 'Informal Conference,' in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

3.1.2 Preliminary Assessment Notice (PAN). xxx

3.1.3 Exceptions to Prior Notice of the Assessment. xxx

3.1.4 Formal Letter of Demand and Assessment Notice. xxx
(*Boldfacing and underscoring supplied*)

Based on admitted evidence, there is no denying that the revenue officer who audited the books of accounts and other accounting records of petitioner under LOA No. 00068982 for the concerned period of TY 2006 was **RO Dizon** as revealed by the BIR's Notice for Informal Conference. Consistent with RR No. 12-99, the said notice informed petitioner of the Report of RO Dizon about the possible assessment of deficiency taxes for TY 2006, and requested petitioner to appear for an informal conference, otherwise, the BIR shall forward the case to the Assessment Division for the issuance of Preliminary Assessment Notice without further notice.

As also disclosed in the case records, audit/investigation of petitioner's books of accounts and other accounting records is based on LOA 00068982. Under the said LOA, it was **RO Martinez/GS Clemente** who were given the authority to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for TY 2016.⁶⁹ There is no indication in the records that a new LOA was issued to **RO Dizon** and **GS Tomas** to continue the audit of the books of accounts and other accounting records of petitioner. To borrow the language of the *McDonald's* case, the authority under which RO Dizon

⁶⁹ Par. 2, Joint Stipulation of Facts, Docket Vol. II, p. 839; Letter of Authority, Exhibit "P-4", Docket Vol. II, p. 917.



and GS Tomas conducted the audit was not pursuant to the statutory power of the CIR or his duly authorized representative to grant the authority to examine the taxpayer's books of accounts.

Interestingly, respondent opted not to present any evidence despite the fact that there is a question as to the authority of RO Dizon and GS Tomas to audit petitioner. Respondent could have easily disproved the admitted evidence by presenting contrary evidence because it ought to know the tax records of all taxpayers.⁷⁰ Having failed to do so, the presumption that evidence willfully suppressed would be adverse if produced, therefore, arises.⁷¹

Since there was no LOA issued to RO Dizon and GS Tomas, the conduct of audit/investigation/examination of petitioner's books of accounts and other accounting records for TY 2006 was legally flawed, and assessments issued against it are inescapably void. Needless to say, a void assessment bears no valid fruit⁷² and must be slain at sight.

WHEREFORE, premises considered, the Petition for Review filed on August 28, 2018 by petitioner Electrobyte Environmental Concerns Corporation is hereby **GRANTED**. The Formal Assessment Notices (Parts I and II) and Assessment Notices, all dated May 20, 2011, are hereby **CANCELLED** and **WITHDRAWN**. The Final Decision on Disputed Assessment dated August 29, 2014 and the Decision dated July 19, 2018 of respondent Commissioner of Internal Revenue, directing Electrobyte Environmental Concerns Corporation to pay the amounts of ₱5,147,014.79, ₱1,337,398.38, ₱8,450,362.40, ₱46,914.09, ₱91,836.97, ₱831,084.79, ₱285,222.80 and ₱44,000.00 representing deficiency Income Tax, Value-Added Tax, Expanded Withholding Tax, Withholding Tax on Compensation, Final Withholding Tax, Final Withholding on VAT, and Compromise Penalty for taxable year 2006, including interest that may have accrued thereon until actual payment thereof, are **REVERSED** and **SET ASIDE**.

Respondent Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing collection and/or taking any further action

⁷⁰ BPI-Family Savings Bank, Inc. vs. Court of Appeals et al., G.R. No. 122480, April 12, 2000.

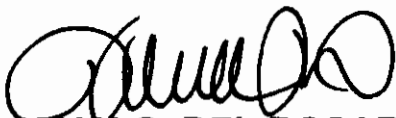
⁷¹ Section 3, Rule 131 of the Rules of Court states the disputable presumptions which are satisfactory if uncontradicted, and one of which is that evidence willfully suppressed would be adverse if produced.

⁷² Commissioner of Internal Revenue vs. Azucena T. Reyes, G.R. Nos. 159694 & 163581, January 27, 2006; Commissioner of Internal Revenue vs. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.

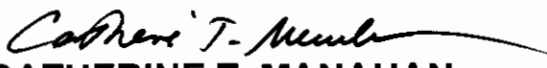
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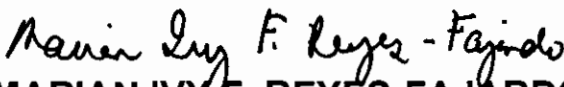
against petitioner Electrobyte Environmental Concerns Corporation arising from the Formal Assessment Notices (Parts I and II) and Assessment Notices, all dated May 20, 2011, Final Decision on Disputed Assessment dated August 29, 2014 and the Decision dated July 19, 2018. This order of suspension is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:


CATHERINE T. MANAHAN
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice