

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

MACARIO LIM GAW, JR.
Petitioner,

CTA Case No. 8502
For: Assessment

Members:

-versus-

**DEL ROSARIO, P.J.,
UY, and
MINDARO-GRULLA, JJ.**

**COMMISSIONER OF
INTERNAL REVENUE,**
Respondent.

Promulgated:

SEP 02 2016 10:20 a.m.

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D E C I S I O N

MINDARO-GRULLA, J.:

This resolves the Petition for Review filed on June 19, 2012 by Macario Lim Gaw, Jr. pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, otherwise known as "An Act Creating the Court of Tax Appeals," as amended¹, as well as Rule 4, Section 3 (a) (1), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA)². 

¹ Sec. 7. *Jurisdiction.* –The CTA shall exercise:

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

x x x

x x x

(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;

x x x

x x x

² Rule 4. Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

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

x x x

x x x

(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

Petitioner seeks the withdrawal and cancellation of the deficiency income tax assessment for the taxable year 2007 amounting to ₱1,295,855,151.89 as indicated in the Final Decision on Disputed Assessment (FDDA) No. 2012-0001³ issued by the Commissioner of Internal Revenue.

Petitioner Macario Lim Gaw, Jr. is an individual taxpayer, of legal age, Filipino, and with address at No. 5 David Street, Corinthian Gardens, Quezon City.⁴

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), authorized to perform the duties of his office, including, among others, the power to decide disputed assessments or other charges and penalties imposed in relation thereto pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended. Respondent holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

In November 2007, petitioner acquired six (6) parcels of land covered by Transfer Certificates of Title (TCT) Nos. 168947, 166440, 158155, 158156, 158149, and 158150 in the aggregate amount of One Billion Nine Hundred Fifty-~~4~~

other matters arising under the National Internal Revenue Code
or other laws administered by the Bureau of Internal Revenue;
x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.* –

- (a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

³ Exhibit "A".

⁴ Par. 1, Stipulation of Facts, Joint Stipulation of Facts (JSF), Docket, Vol. II, p. 564.

Seven Million Four Hundred Twenty-Two Thousand Pesos (₱1,957,422,000.00).⁵

During the period of April to June 2008, petitioner acquired four (4) more parcels of land covered by TCT Nos. 161711, 173506, 1673508, and 173510 in the aggregate amount of Two Billion Sixty-Three Million Nine Hundred Five Thousand Five Hundred Pesos (₱2,063,905,500.00).⁶

The BIR Revenue District Office (RDO) No. 52-Paranaque City issued the corresponding Certificates Authorizing Registration (CARs) in connection with petitioner's purchase of the parcels of land covered by TCT Nos. 168947, 166440, 158155, 158156, 158149, 158150, 161711, 173506, 1673508, and 173510.⁷

On April 15, 2008, petitioner filed his Annual Income Tax Return (ITR) for taxable year 2007.⁸

Thereafter, on August 25, 2010, respondent issued Letter of Authority (LOA) No. 2009-00044669.⁹ LOA No. 2009-00044669 authorized the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes.¹⁰ It covers taxable year 2008 and "Unverified prior years."

On August 26, 2010, respondent filed with the Department of Justice (DOJ) a Joint Complaint Affidavit against petitioner for violations of Sections 254 and 255 of the NIRC of 1997, as amended, docketed as NPS Docket No. XVI-INV-10H-00256.¹¹

Meanwhile, on October 4, 2010, petitioner submitted copies of his Annual Income Tax Returns for the taxable

⁵ Par. 3, Stipulation of Facts, JSF, Docket, Vol. II, p. 565.

⁶ Par. 4, Stipulation of Facts, JSF, Docket, Vol. II, p. 565.

⁷ Par. 5, Stipulation of Facts, JSF, Docket, Vol. II, p. 565.

⁸ Exhibit "JJJ".

⁹ Par. 6, Stipulation of Facts, JSF, Docket, Vol. II, p. 565; Exhibit "KKK"; Exhibit "3".

¹⁰ Par. 7, Stipulation of Facts, JSF, Docket, Vol. II, p. 565.

¹¹ Par. 8, Stipulation of Facts, JSF, Docket, Vol. II, p. 566.

years 2007 and 2008 to the BIR National Investigation Division.¹²

Respondent issued a Notice for Informal Conference¹³ on January 12, 2011, requesting a conference on January 17, 2011 pursuant to eLOA No. 211-2010-00000215.¹⁴

In a letter dated January 13, 2011,¹⁵ petitioner requested respondent to reset the scheduled January 17, 2011 Informal Conference to January 20, 2011 to discuss the audit findings, if any, covering both LOA No. 2009-00044669 and eLOA No. 211-2010-00000215.

On February 15, 2011, respondent, through the BIR National Investigation Division (NID), issued a Preliminary Assessment Notice¹⁶ (PAN) with attached Details of Discrepancies and Computation Sheets, informing petitioner of his alleged deficiency income and percentage taxes based on third-party information for taxable years 2007 and 2008.¹⁷

In a letter-reply dated March 28, 2011¹⁸, petitioner challenged the deficiency tax findings of the BIR for taxable year 2007.

Thereafter, on April 8, 2011, petitioner received a copy of the Resolution dated March 17, 2011¹⁹ issued by the DOJ in NPS Docket No. XVI-INV-10H-00256, dismissing the charges against him for violation of Section 254 of the NIRC of 1997, as amended, for the taxable year 2007; which is also the subject matter of this case. Petitioner alleges that the BIR did not file a motion for reconsideration or an appeal from the Resolution of the DOJ. 

¹² Exhibit "OOO".

¹³ Exhibit "PPP".

¹⁴ Par. 9, Stipulation of Facts, JSF, Docket, Vol. II, p. 566.

¹⁵ Exhibit "QQQ".

¹⁶ Exhibit "RRR"; Exhibit "6", Docket, Vol. II, pp. 781-789.

¹⁷ Par. 10, Stipulation of Facts, JSF, Docket, Vol. II, p. 566.

¹⁸ Exhibit "SSS".

¹⁹ Exhibit "NNN".

On May 24, 2011, respondent served on petitioner a Formal Letter of Demand dated April 8, 2011²⁰ informing petitioner of his alleged deficiency income and value-added taxes based on third-party information for taxable years 2007 and 2008.²¹

Subsequently, on June 7, 2011, petitioner, through his representative, filed a protest-letter on the Formal Letter of Demand, quoted as follows:

“Re: Protest Letter for
Macario L. Gaw, Jr.
Formal Letter of Demand for
Taxable Years 2007 and 2008
Dated April 8, 2011

Gentlemen:

This is in relation with the above-captioned matter, please be informed that we disagree to the findings stated on the Audit Result/Assessment Notice, as indicated on the BIR Form 401, as hereby attached.”²²

On June 9, 2011, petitioner, through his legal counsel, filed his protest letter²³ dated June 7, 2011 on the Formal Letter of Demand, which detailed the factual and legal bases of his protests against the deficiency tax assessments for taxable years 2007 and 2008.

On May 22, 2012, respondent served on petitioner a copy of FDDA No. 2012-0001 dated May 18, 2012.²⁴ The pertinent portions of FDDA No. 2012-0001 state: ☞

²⁰ Exhibit “TTT”; Exhibit “7”, Docket, Vol. II, pp. 790-797.

²¹ Par. 11, Stipulation of Facts, JSF, Docket, Vol. II, p. 566.

²² Par. 1, Supplemental Joint Stipulation of Facts, Docket, Vol. II, pp. 615.

²³ Exhibit “VVV”.

²⁴ Par. 12, Stipulation of Facts, JSF Docket, Vol. II, p. 566; Exhibit “A”; Exhibit “9”, Docket, Vol. II, pp. 802-812.

“This resolves the protest on deficiency Income and Value-Added Taxes inclusive of surcharges and interest for taxable years 2007 and 2008 indicated in the corresponding assessment notices as detailed below:

Taxable Year	Particulars	Amount
2007	Unexplained Source of Cash (Sec. 32 of the NIRC)	₱1,295,855,151.89
2008	VAT on Unreported Income/Sale of Ordinary Asset (Sec. 106 of the NIRC)	2,020,001,897.66
2008	Unreported Income & Unexplained Source of Cash (Sec. 32 of the NIRC)	3,201,084,829.93
TOTAL		P6,516,941,877.00
	xxx	xxx

Clearly therefore, considering that the protest filed by Mr. Gaw is *pro forma* in nature thus void and without force and effect, the above assessment of the BIR is now final, executory, and demandable. Thus, there is no other recourse for Mr. Gaw but to fulfill his tax obligations to the State by satisfying the tax deficiencies indicated in the Formal Letter of Demand.

To avoid unnecessary delay and further incremental interest, Mr. Gaw is hereby requested to pay the aggregate amount of SEVEN BILLION SIXTEEN MILLION FIVE HUNDRED FORTY ONE THOUSAND EIGHT HUNDRED FIFTY FIVE PESOS and EIGHTY CENTAVOS (₱7,016,541,855.80) including 50% surcharge and 20% annual interest for late payment until fully paid pursuant to Sections 248 and 249 of the NIRC of 1997 in satisfaction of Income Taxes and Value-Added Tax deficiencies for taxable years 2007 and 2008.

This is our final decision on the matter.”

Thus, petitioner filed the instant Petition for Review²⁵ before this Court on June 19, 2012.

In the Answer²⁶ filed on August 15, 2012, respondent interposed the following special and affirmative defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

Respondent hereby reiterates and repleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.

4. The deficiency tax assessments are supported by facts, law, rules and jurisprudence. To elucidate the concreteness of the assessment, the following developments transpired in taxable years 2007 as well as 2008.

4.1 Respondent received confidential information that petitioner committed tax evasion through his scheme of making it appear that the numerous real properties which he acquired and subsequently sold are capital assets instead of ordinary assets.

4.2 On the basis of the confidential information, respondent conducted an investigation in accordance with the BIR Rules and Regulations. From the said investigation, it was discovered that petitioner purchased six (6) parcels of land in the year 2007 amounting to ₱1,957,422,000.00 and also four (4) parcels of land in 2008 amounting to ₱2,161,761,500.00.

4.3 The following are the details of the real estate purchases made by petitioner from various sellers, to wit:

Date	Area (sq.m)	Price/ sq.m	Selling Price	Seller	TIN used by Petitioner
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²⁵ Docket, Vol. I, pp. 6-33.
²⁶ Docket, Vol. I, pp. 313-328.

11/12/07	7,390	18,000	133,020,000.00	Star Asset Mgt. Philtrust	on withholding TIN of Philtrust
11/28/07	9,000	19,000	171,000,000.00	Philtrust	TIN of Philtrust
11/29/07	24,232	18,000	436,176,000.00	Philtrust	No Payment (SPV)
11/29/07	7,175	18,000	129,150,000.00	Philtrust	108-304- 796-000
11/30/07	29,442	22,000	647,724,000.00	Philtrust	No Payment (SPV)
11/29/07	24,464	18,000	440,352,000.00	Philtrust	No Payment (SPV)
4/10/08	24,464	16,000	293,568,000.00	Allied Banking Corp.	No Payment (SPV)
6/25/08	25,041	25,500	638,545,500.00	LNC (SPCANC)	263-231- 513-000
6/26/08	18,480	25,500	471,240,000.00	LNC (SPCANC)	263-231- 513-000
6/27/08	25,904	25,500	660,552,000.00	LNC (SPCANC)	263-231- 513-000

4.4 In 2007, petitioner was able to purchase six (6) parcels of land for ₱1,957,422,000.00 with his grossly inadequate total cumulative disposable cash consisting only of ₱66,061,294.14.

4.5 Conclusively, he under-declared his income by ₱1,891,360,705.86 resulting in a deficiency income tax liability in the amount of ₱605,200,425.00 exclusive of all increments.

4.6 In 2008, petitioner sold the ten (10) parcels of land bought in years 2007 and 2008 to Eagle 1 Landholdings Inc. for the aggregate amount of ₱8,419,621,411.12 with the total purchase price of ₱4,304,324,080.00, resulting in an income of ₱4,115,297,361.12.

4.7 However, petitioner did not pay the correct income tax and the required Value Added Tax. Moreover, he also used various TINs in the acquisition as well as in the subsequent sale of these parcels of land.☞

4.8 The stratagem of petitioner to evade payment of his correct income tax and VAT liability is very clear:

4.8.1 First, he deliberately misclassified the ten (10) parcels of land he sold as capital assets because he is undoubtedly fully aware of the nature of the properties as ordinary asset subject to Income Tax and VAT.

4.8.2 Second, in the furtherance of his scheme to evade payment of correct taxes, he used multiple TINs to make it difficult for the BIR to detect at least six (6) real estate transaction which will qualify him as habitually engaged in real estate transactions making the sale of the ten (10) parcels of land a sale of ordinary asset subject to 32% Income Tax and 12 % VAT.

4.9 Petitioner is a taxpayer habitually engaged in real estate business. The subject parcels of land are ordinary assets which were sold precisely to realize billions in profits. As such, he is required to register, file and pay as a VAT taxpayer and declare the gains derived from the sale as part of his gross income in his ITR.

4.10 Under Revenue Regulations (RR) No. 7-2003 dated December 27, 2002, petitioner is classified as a taxpayer habitually engaged in real estate business, to wit:

xxx

'All real properties acquired in the course of trade or business by a taxpayer habitually engaged in the sale of real property shall be considered as ordinary assets.

Registration with the HLURB or HUDCC as a real estate dealer or developer shall be sufficient for a taxpayer to be considered as ↵

habitually engaged in the sale of real estate. **If the taxpayer is not registered with the HLURB or HDUCC as a real estate dealer or developer, he/it may nevertheless be deemed to be engaged in the real estate business through the establishment of substantial evidence (such as consummation during the preceding year of at least six (6) taxable real estate sale transactions, regardless of amount;** registration as habitually engaged in real estate business with the Local Government Unit of the Bureau of Internal Revenue, etc.)' (Emphasis and underscoring supplied.)

4.11 In relation thereto, the parcels of land subject of petitioner's real estate transactions are ordinary assets as laid down by the Supreme Court in the case of 'Tuason Jr. vs. Lingad' to wit:

- [1] the purpose for which the property was initially acquired;
- [2] the purpose for which the property was subsequently held;
- [3] extent to which improvements, if any were made to the property by the taxpayer;
- [4] the frequency, number and continuity of sales;
- [5] the extent and nature of the transactions involved;
- [6] the ordinary business of the taxpayer;
- [7] the extent of advertising, promotion, or other activities used in soliciting buyers for the sale of the property;
- [8] the listings of property with brokers;
- [9] the purpose for which the property was held at the time of sale. 

4.11.1 The sole purpose for acquiring the subject lots was to make profit and also to take advantage of the selling price (₱43,046.86 per sq.m.) as compared to the acquisition cost (₱18,000 per sq.m).

4.11.2 There was no intention to hold the subject parcels of land as an investment considering that the purchase and sale thereof were made within a period of eight (8) months. In fact, the parcels of land covered by TCT Nos. 173506, 173508 and 173510 were sold less than seventeen (17) days after these were bought by petitioner.

4.11.3 No improvements were necessary since the transactions involved the sale of bare lands, and a ready buyer was already available.

4.11.4 There were ten (10) separate purchases and sales transactions, or a total of twenty (20) transactions for the years 2007 and 2008, and with a holding period of only eight (8) months.

4.11.5 As to extent, the sum of all the numerous transactions involved is in billions of pesos. Total lot purchases made by petitioner are valued at ₱4,119,183,500.00 while the aggregate consideration for the sale is ₱8,419,621,441.12.

4.11.6 Petitioner has no registered business with the Bureau as he is merely registered as a One-Time Transaction (ONETT) taxpayer in his original TIN: 108-304-796-000 while in TIN: 263-231-513-000 he is registered as a mere 'local employee.' Moreover, his numerous transactions and the creation of a new TIN on July 22, 2008 for some of these transactions have made him a real estate dealer who is deemed engaged in real estate business. ⚡

4.11.7 Listing the subject properties with brokers is no longer necessary since a ready buyer was already available.

4.11.8 As discussed in item No. 2, all the transactions were made within a period of eight (8) months with the singular purpose of selling the lots (ordinary asset) for a business gain or profit.

4.12 Petitioner's fraudulent acts in the subject real estate transactions enabled him to evade the payment of correct internal revenue taxes. As a result, a Letter of Authority (LA No. 2009-00044669), Preliminary Assessment Notice (PAN) with annexed Details of Discrepancies, Formal Letter of Demand (FLD) with the corresponding Notices, and Final Decision on Disputed Assessment (FDDA) were issued by Respondent.

5. Contrary to the surmises and manifest conjectures of petitioner, the FDDA dated 18 May 2012 is supported by factual and legal bases for the 2007 assessments. As opposed to petitioner's baseless allegations, the foundation of the assessments were due to his deceitful acts stated above. Respondent's assessments were not only verified but also supported by documents.
6. It was petitioner's assertion that his funds for the purchases of lands came from loans under a five Billion STL Facility from BDO. Assuming without admitting that he indeed availed of loans from BDO, he cannot refute the fact that banks extend loans to persons or juridical entities with a safety net of **collaterals**. It is judicial notice that banks require securities in the form of properties to assure payments of the loans.
7. It is definite that if indeed petitioner availed billions of loans, he has a massive amount of properties which served as the collateral for the loans that he availed of. ☞

8. Likewise, petitioner cannot take refuge in the cited cases of *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*, *Commissioner of Internal Revenue vs. Alberto D. Benipayo* and *People of the Philippines vs. Pinuila* to support its assertion, as these cases were decided based on the peculiarities of the factual circumstances attendant thereto. In the case of *CIR vs. Hantex*, the case deal with the admissibility of documents which were mere photocopies of Consumption Entries. In the case of *CIR vs. Benipayo*, the case deal with the ratio of adults compared to children in the sale of theatre tickets since children's tickets are tax free. While in the case of *People of the Philippines vs. Pinuila*, the case deal with double jeopardy in a murder case which did not even deal with the civil aspect of the case.
9. Further, Letter of Authority No. (LOA) 2009-00044669 dated 25 August 2010 issued by respondent is legally valid, thereby giving legitimate authority to the Revenue Examiners to conduct investigation on petitioner.
10. Petitioner in assailing the legality of LOA No. 2009-00044669 miserably failed to take into account that his case involves **tax fraud** which is way different from ordinary deficiency assessments.
11. Petitioner cited various cases which are not on all fours with the case at bar. In the case of *International Pharmaceuticals, Inc. vs. Commissioner of Internal Revenue*, the taxpayer was not served at all with the required LOA. In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.* there was no commission of fraud in the said case. In the case of *Hilado, et al. vs. Chavez et al*, the case primarily deal with jurisdiction over the subject matter involving land dispute.
12. Assuming without admitting that petitioner indeed issued the LOA for taxable year 2008 and ↵

unverified prior year, the issuance is valid since the fraud was discovered in 2008 and there is no way for respondent to ascertain as to when the tax fraud started to take place. Respondent cannot be faulted for its duty to investigate incidents when the taxpayer had a taxable income way higher than that which was reported, more so that the government is on the verge of losing billions of pesos.

13. Moreover, petitioner's assertion of prescription pursuant to Section 203 of the Tax Code is manifestly misplaced. It cannot be over emphasized that this case involves fraud and the applicable provision is Section 222 of the Tax Code, which provides:

'SEC. 222. Exceptions as to period of Limitation of Assessment and Collection of Taxes. –

- (a) In the case of a **false or fraudulent return with intent to evade tax or failure to file a return**, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time **within ten (10) years after the discovery of the falsity, fraud or omission**: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

14. Petitioner willfully and deliberately under-declared his income by more than 30% (which constitutes fraud) in his intent to evade payment of correct taxes consisting of billions of pesos, as clearly stated in the factual and legal basis of the assessment. (

15. As opposed to petitioner's assertion that the FDDA issued by respondent is void, on the contrary it is clearly the former's protest letter which did not conform with the requirements prescribed by law and revenue regulations pertinent thereto.

16. Petitioner filed a protest letter dated 07 June 2011 described as '**Protest Letter for Macario L. Gaw, Jr. Formal Letter of Demand for Taxable Years 2007 and 2008 dated April 8, 2011.**' For ease of reference, the entire body of the letter is quoted below in full:

'This is in relation with the above captioned matter, please be informed that we disagree to the findings stated on the Audit Result/Assessment Notice, as indicated on the BIR Form 401, as hereby attached.

Thank you very much.'

17. On 4 August 2011, petitioner wrote a supplement to the protest letter earlier filed which is mere cover letter introducing additional evidence in the form of copies of promissory notes.

18. The protest letter dated 07 June 2011 submitted by petitioner was denied by respondent on the ground that it is a pro forma protest which offers no issue and cause for reconsideration. The aforesaid protest is nothing but an empty statement of objection executed simply to disagree.

19. A taxpayer or his duly authorized representative may protest administratively against the Formal Letter of Demand and corresponding assessment notices within thirty (30) days from date of receipt. The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest

shall be considered void and without force and effect.

20. Section 228 of the Tax Code provides the procedure in protesting an assessment, to wit:

'Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that the proper taxes should be assessed, he shall first notify the taxpayer of his findings:

xxx

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his representative shall issue an assessment bases on his findings.

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 the 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.' (Emphasis supplied)

21. In relation thereto, the contents of a valid protest recapitulated under Revenue Regulation (RR) No. 12-85, provides:

- '(a) Name of the taxpayer and address for the immediate past three (3) taxable years.
- (b) Nature of request whether reinvestigation or reconsideration specifying newly discovered evidence he intends to present if it is a request for investigation.
- (c) The taxable period covered.
- (d) Assessment number.
- (e) Date of receipt of assessment notice or letter of demand.
- (f) Itemized statement of the findings to which the taxpayer agrees as a basis for computing the tax due, which amount should be paid immediately upon the filing of the protest. For this purpose, the protest shall not be deemed validly filed unless payment of the agreed portion of the tax is paid first.
- (g) The itemized schedule of the adjustments with which the taxpayer does not agree.
- (h) A statement of facts and/or law in support of the protest.'

22. Whereas, the effect of a pro forma protest as stated in Revenue Regulations No. 12-99, is quoted as follows:

'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: ⚡

xxx

3.5.1 Disputed Assessment. xxx

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. xxx

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.'

23. Finally, the filing of a pro forma protest is clarified in the case of Ferdinand R. Marcos II vs. Court of Appeals, et al, the Supreme Court had these words to describe the definitive effect of failure to file a timely protest:

'Moreover, these objections to the assessments should have been raised, considering the ample remedies afforded the taxpayer by the Tax Code, with the Bureau of Internal Revenue and the Court of Tax Appeals, as described earlier, and cannot be raised now via Petition for Certiorari, under the pretext of grave abuse of discretion. The course of action taken by the petitioner reflects his disregard or even repugnance of the established institutions for governance in the scheme of well-ordered society. The subject tax assessments having become final, executory and enforceable, the same can no longer be contested by means of a disguised protest. In the main, Certiorari may not be used as a substitute for a lost appeal or remedy. This judicial policy becomes more pronounced in view of the

absence of sufficient attack against the
actuations of government.'

24. The letter protest dated 07 June 2011 made by petitioner clearly does not comply with the pre-requisites of a valid protest sanctioned under Section 228 of the Tax Code, R.R. 12-85 and established jurisprudence. The second letter dated 04 August 2011 which is a mere cover letter adducing additional evidence likewise has no statement of facts, applicable law, rules and regulations.
25. Both letters are pro forma which merely stated petitioner's disagreement or attaches documents sans explanation or clarification required by law as if no administrative protest was filed at all. Thus, the assessment is already final, executory and demandable.
26. Based on the foregoing, the finding of deficiency tax liabilities against petitioner is proper in all respects. Worthy of note, are the words of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Bank of Philippine Islands*:

'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favour of the correctness of tax assessments.'

The Pre-Trial Conference was set on September 13, 2012.²⁷ Thus, respondent's Pre-Trial Brief²⁸ was filed on

²⁷ Docket, Vol. I, p. 330.

²⁸ Docket, Vol. I, pp. 333-337.

September 7, 2012; while petitioner's Pre-Trial Brief²⁹ was filed on September 10, 2012.

The parties filed their Joint Stipulation of Facts³⁰ on October 8, 2012. This was approved by the Court in the Resolution³¹ dated October 10, 2012, which likewise terminated the Pre-Trial. Afterwards, the parties filed a Supplemental Joint Stipulation of Facts³² on December 19, 2012. This was approved by the Court via Resolution³³ dated December 27, 2012.

During trial, petitioner presented as his witness, Ms. Florita B. Santos, Managing Partner of the accounting firm Santos Verde San Juan & Associates, hired by petitioner.³⁴

Petitioner filed his Formal Offer of Documentary Exhibits³⁵ on February 1, 2013. In the Resolution³⁶ dated March 5, 2013, the Court admitted petitioner's Exhibits "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "JJJ", "KKK", "LLL", "OOO", "QQQ", "RRR", "SSS", "TTT", "UUU", "VVV", "WWW", "XXX", and "XXX-1". However, the Court denied the admission of Exhibits "NNN", "PPP", "WWW-1", "WWW-2", "WWW-3", "WWW-4", "WWW-5", "WWW-6", "WWW-7", "WWW-8", "WWW-9", "WWW-10", "WWW-11", "WWW-12", "WWW-13", "WWW-14", and "WWW-15" for failure of petitioner to have the witness identify the afore-mentioned exhibits.

On March 18, 2013, petitioner filed a Motion for Partial Reconsideration (Re: Resolution promulgated on 05 March 2013)³⁷, praying for the admission of Exhibits "NNN", "PPP", "WWW-1" to "WWW-15" as they have been properly identified by his witness. This was partially granted by the

²⁹ Docket, Vol. I, pp. 339-358.

³⁰ Docket, Vol. II, pp. 564-568.

³¹ Docket, Vol. II, pp. 570-571.

³² Docket, Vol. II, pp. 615-616.

³³ Docket, Vol. II, p. 618.

³⁴ Judicial Affidavit of Ms. Florita B. Santos, Docket, Vol. I, pp. 379-396; Minutes of the Hearing dated October 10, 2012, Docket, Vol. II, p. 569.

³⁵ Docket, Vol. II, pp. 675-684.

³⁶ Docket, Vol. II, pp. 701-702.

³⁷ Docket, Vol. II, pp. 705-709.

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Court in the Resolution³⁸ dated June 6, 2013. Exhibits "NNN" and "PPP" were admitted, however Exhibits "WWW-1" to "WWW-15" were still denied admission.

Petitioner's admitted documentary exhibits are as follows:

Exhibits	Description
A	Final Decision on Disputed Assessment No. 2012-0001 promulgated on 18 May 2012 (FDDA) consisting of eleven (11) pages
B	Banco De Oro Promissory Note No. 803102160037 amounting to Php5,000,000.00, with value date of 9 November 2007 and maturity date of 8 January 2008
C	Banco De Oro Promissory Note No. 803102160080 amounting to Php128,020,000.00, with value date of 12 November 2007 and maturity date of 8 January 2008
D	Banco De Oro Promissory Note No. 803102185553 amounting to Php185,130,000.00, with value date of 28 November 2007 and maturity date of 10 December 2007
E	Banco De Oro Promissory Note No. 803102185586 amounting to Php1,703,004,060.00, with value date of 29 November 2007 and maturity date of 10 December 2007
F	Banco De Oro Promissory Note No. 803102186034 amounting to Php380,036,000.00, with value date of 11 December 2007 and maturity date of 10 January 2008
G	Banco De Oro Promissory Note No. 803-102-186-276 amounting to Php335,388,600.00, with value date of 17 December 2007 and maturity date of 27 December 2007
H	Banco De Oro Promissory Note No. 803-102-186-275 amounting to Php164,800,000.00, with value date of 17

³⁸ Docket, Vol. II, pp. 727-729.

- December 2007 and maturity date of 27 December 2007
- I Banco De Oro Promissory Note No. 803102186316 amounting to Php98,621,040.00, with value date of 18 December 2007 and maturity date of 27 December 2007
- J Banco De Oro Promissory Note No. 803102186821 amounting to Php72,200,000.00, with value date of 10 January 2008 and maturity date of 25 January 2008
- K Banco De Oro Promissory Note No. 803-102-190-704 amounting to Php126,726,670.00, with value date of 31 March 2008 and maturity date of 02 May 2008
- L Banco De Oro Promissory Note No. 803102190804 amounting to Php72,200,000.00, with value date of 03 April 2008 and maturity date of 02 May 2008
- M Banco De Oro Promissory Note No. 803102190937 amounting to Php200,000,000.00, with value date of 09 April 2008 and maturity date of 24 April 2008
- N Banco De Oro Promissory Note No. 803102191521 amounting to Php550,975,500.00, with value date of 30 April 2008 and maturity date of 6 June 2008
- O Banco De Oro Promissory Note No. 803-102-199-408 amounting to Php572,388,600.00, with value date of 06 June 2008 and maturity date of 02 July 2008
- P Banco De Oro Promissory Note No. 803102199776 amounting to Php159,330,375.00, with value date of 23 June 2008 and maturity date of 02 July 2008
- JJJ Petitioner's Annual Income Tax Return for Taxable Year 2007
- KKK BIR's Leter of Authority No. 2009-00044669 dated 25 August 2010 (LOA)
- LLL BIR's Joint Complaint Affidavit in NPS Docket No. XVI-INV-10H-00256
- NNN DOJ Resolution dated 17 March 2011 in NPS Docket No. XVI-INV-10H-00256

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OOO	Letter dated 30 September 2010 from Santos Verde San Juan & Associates, consisting of one (1) page
PPP	BIR's Notice for Informal Conference dated 12 January 2011 signed by OIC-Chief of the National Investigation Division, Sixto C. Dy, Jr., consisting of one (1) page
QQQ	Letter dated 13 January 2011 from Santos Verde San Juan & Associates, consisting of one (1) page
RRR	BIR's Preliminary Assessment Notice dated 15 February 2011 with Annex A on Details of Discrepancies signed by the Assistant Commissioner of the Enforcement Division, James H. Roldan, consisting of nine (9) pages
SSS	Letter-Reply dated 28 March 2011 from Tan Acut Lopez and Pison Law Offices duly received by the BIR on 31 March 2011, consisting of eight (8) pages, with voluminous attachments marked as Annexes 1 to 53
TTT	BIR's Formal Letter of Demand dated 08 April 2011 with Annex A on Details of Discrepancies signed by the Assistant Commissioner of the Enforcement Division, James H. Roldan, consisting of eight (8) pages
UUU	Letter dated 07 June 2011 from Santos Verde San Juan & Associates with attached BIR Forms No. 401, consisting of four (4) pages
VVV	Protest-Letter dated 07 June 2011 from Tan Acut Lopez and Pison Law Offices duly received by the BIR on 09 June 2011, consisting of eight (8) pages, with voluminous attachments marked as Annexes 1 to 53
WWW	Letter dated 04 August 2011 from Tan Acut Lopez and Pison Law Offices duly received by the BIR on 08 August 2011, consisting of two (2) pages, with attachments marked as Annexes 2-A to 2-O
XXX	Judicial Affidavit of Ms. Florita B. Santos dated 03 October 2012, consisting of 18 pages
XXX-1	Name and Signature of Ms. Florita B. Santos

On May 17, 2013, Presiding Justice Roman G. Del Rosario voluntarily inhibited himself from the instant case, as the Division he headed, when he was Assistant Solicitor General, acted as counsel for the People of the Philippines in connection with the filing of a *Petition for Certiorari* before the Supreme Court to seek the annulment of the Resolution dated January 3, 2013 rendered by then CTA First Division in the consolidated cases of *People of the Philippines vs. Macario Lim Gaw, Jr.*, CTA Crim No. O-026; *People of the Philippines vs. Macario Lim Gaw, Jr.*, CTA Crim No. O-027; and *Macario Lim Gaw, Jr. vs. Commissioner of Internal Revenue*, CTA Case No. 8503.³⁹

Respondent presented Revenue Officer Leonesto D. Bernal as his sole witness.⁴⁰

Respondent filed his Formal Offer of Evidence⁴¹ on November 7, 2013. In the Resolution⁴² dated February 24, 2014, the Court admitted respondent's Exhibits "1", "2", "3", "5", "6", "7", "8", "9", "10", and "10-a", but denied the admission of Exhibit "4" for respondent's failure to submit the original document for comparison. In the same Resolution, the Court likewise granted petitioner's motion to set additional hearing for the presentation of rebuttal evidence.

Respondent filed a Motion for Reconsideration (Re: Resolution dated February 24, 2014)⁴³ on March 17, 2014, praying that the denial of Exhibit "4" be reconsidered and that the same be admitted as evidence for respondent.

Respondent offered the following exhibits, to wit: 

³⁹ Docket, Vol. II, pp. 722-723.

⁴⁰ Judicial Affidavit of Leonesto D. Bernal, Docket, Vol. II, pp. 747-756; Minutes of the Hearing dated October 22, 2013, Docket, Vol. II, pp. 842-846.

⁴¹ Docket, Vol. II, pp. 853-859.

⁴² Docket, Vol. II, pp. 887-888.

⁴³ Docket, Vol. II, pp. 894-897.

Exhibits	Description
1	Memorandum for CIR Kim S. Jacinto-Henares dated August 9, 2010
2	Judicial Affidavit of Leonesto D. Bernal in Criminal Case O-206 & O-207
3	Letter of Authority No. LOA 2009 00044669 dated August 25, 2010
4	Electronic Letter of Authority (eLOA) No. 2010 00015001 dated August 25, 2010
5	Notice for Informal Conference dated January 12, 2011
6	Preliminary Assessment Notice with Details of Discrepancies dated February 15, 2011
7	Formal Letter of Demand dated April 8, 2011 with Details of Discrepancies and Final Assessment Notices
8	Protest Letter received by the National Investigation Division of the BIR on June 7, 2011 captioned "PROTEST LETTER FOR MACARIO L. GAW, JR. FORMAL LETTER OF DEMAND FOR TAXABLE YEARS 2007 AND 2008 DATED APRIL 8, 2011"
9	Final Decision on Disputed Assessment dated May 18, 2012
10	Judicial Affidavit of Leonesto D. Bernal

During the hearing on March 20, 2014, instead of presenting the testimony of petitioner's witness subject of the subpoena, the parties stipulated on the Transcript of Stenographic Notes taken during the hearing held on April 25 and May 9, 2012 in CTA Crim. Case Nos. O-206 and O-207.⁴⁴ Thereafter, on March 31, 2014, petitioner filed his Formal Offer of Rebuttal Evidence,⁴⁵ as follows:

Exhibits	Description
P-1-Rebuttal inclusive of sub-markings	Certified True Copy of the Transcript of Stenographic Notes (TSN) dated 25 April 2012 in CTA Criminal Case Nos. O-206 & O-207
P-2-Rebuttal inclusive of sub-markings	Original copy of TSN dated 09 May 2012 in CTA Criminal Case Nos. O-206 & O-207

⁴⁴ Resolution dated March 20, 2014, Docket, Vol. II, pp. 904-905.

⁴⁵ Docket, Vol. II, pp. 909-911.

On April 2, 2014, petitioner filed an Extremely Urgent Verified Motion for Suspension of Collection of Taxes⁴⁶. In support of his motion, petitioner presented Ms. Florita B. Santos⁴⁷ as his witness. Petitioner then filed his Formal Offer of Evidence in Support of Motion⁴⁸ on April 22, 2014. All of his exhibits were admitted during the hearing on April 25, 2014,⁴⁹ and are enumerated as follows:

Exhibits	Description
P-1-Motion	Faithful Reproduction of the Warrant of Dstraint and/or Levy dated 11 January 2013
P-2-Motion	Certified true copy of Condominium Certificate of Title No. 101756
P-3-Motion	Certified true copy of Condominium Certificate of Title No. 82073
P-4-Motion	Certified true copy of Condominium Certificate of Title No. 82074
P-5-Motion	Certified true copy of Transfer Certificate of Title No. T-388616
P-6-Motion	Certified true copy of Transfer Certificate of Title No. T-395413
P-7-Motion	Certified true copy of Transfer Certificate of Title No. T-389050
P-8-Motion	Original copy of Notice of Sale dated 05 March 2014 published on page B-7 of the 31 March 2014 edition of the Philippine Star
P-9-Motion	Original copy of the Judicial Affidavit of Ms. Florita B. Santos dated 02 April 2014
P-9-a-Motion	Name and signature of Ms. Florita B. Santos 

⁴⁶ Docket, Vol. II, pp. 1116-1130.

⁴⁷ Exhibit "P-9-Motion", Judicial Affidavit of Ms. Florita B. Santos (In support of Petitioner's Extremely Urgent Motion for the Suspension of Collection of Taxes), Docket, Vol. II, pp. 1279-1285; Minutes of the Hearing dated April 11, 2014, Docket, Vol. II, pp. 1217-1219.

⁴⁸ Docket, Vol. II, pp. 1240-1244.

⁴⁹ Minutes of the Hearing dated April 25, 2014, Docket, Vol. II, pp. 1300-1304; Resolution dated April 25, 2014, Docket, Vol. II, pp. 1306-1307.

During the said hearing, respondent presented his witness, Revenue Officer Cynthia M. Catolico⁵⁰. Respondent verbally offered his documentary exhibits, which were all admitted by the Court.⁵¹

The documentary exhibits of respondent's are, to wit:

Exhibits	Description
R-1-Suspension	The Warrant of Dstraint and/or Levy served on the petitioner on January 16, 2013
R-2-Suspension	The Memorandum dated January 17, 2013
R-3-Suspension and R-3-1-Suspension	The testimony Ms. Cynthia M. Catolico

Petitioner filed his Memorandum (Re: Petitioner's Extremely Urgent Verified Motion for Suspension of Collection of Taxes)⁵² on April 28, 2014. Respondent likewise filed his Memorandum⁵³ on April 28, 2014.

In the Resolution⁵⁴ dated April 28, 2014, the Court granted petitioner's Extremely Urgent Verified Motion for Suspension of Collection of Taxes and directed respondent to cease and desist from collecting the alleged income tax deficiency from petitioner subject to petitioner's filing of a cash bond.

On May 6, 2014, petitioner filed a Motion to Nullify 29 April 2014 Auction Sale⁵⁵. The motion was denied by the Court in the Resolution⁵⁶ promulgated on July 21, 2014. Petitioner then filed a Motion for Reconsideration (Re: 

⁵⁰ Exhibit "R-3-Suspension", Judicial Affidavit of Revenue Officer Cynthia M. Catolico, Docket, Vol. II, pp. 1291-1296; Minutes of the Hearing dated April 25, 2014, Docket, Vol. II, pp. 1300-1304.

⁵¹ Minutes of the Hearing dated April 25, 2014, Docket, Vol. II, pp. 1300-1304; Resolution dated April 25, 2014, Docket, Vol. II, pp. 1306-1307.

⁵² Docket, Vol. II, pp. 1308-1322.

⁵³ Docket, Vol. II, pp. 1324-1335.

⁵⁴ Docket, Vol. II, pp. 1339-1346.

⁵⁵ Docket, Vol. III, pp. 1351-1360.

⁵⁶ Docket, Vol. III, pp. 1392-1395.

Resolution dated 21 July 2014)⁵⁷ on August 12, 2014. This was likewise denied by the Court in the *Resolution*⁵⁸ dated October 23, 2014.

On April 6, 2015, the Court resolved petitioner's Formal Offer of Rebuttal Evidence and admitted petitioner's Exhibits "P-1-Rebuttal" and "P-2-Rebuttal", inclusive of sub-markings.⁵⁹

On May 8, 2015, respondent filed a Motion for Issuance of Subpoena Ad Testificandum and Subpoena Duces Tecum to require Banco De Oro Assistant Manager, Ms. Filipina R. Matito, or any other officer of BDO who is competent to testify on some BDO promissory notes. This was granted by the Court and a Subpoena Duces Tecum and Ad Testificandum⁶⁰ was issued to Ms. Filipina R. Matito on May 14, 2015.

In the *Resolution*⁶¹ dated July 24, 2015, respondent was deemed to have waived his right to present sur-rebuttal evidence for failure of respondent's counsel to comply with the *Resolution*⁶² dated June 4, 2015.

Within the extended time granted by the Court,⁶³ petitioner filed his Memorandum⁶⁴ on September 28, 2015. Respondent, on the other hand, failed to file his Memorandum per Records Verification Report⁶⁵ issued by this Court's Judicial Records Division on October 2, 2015. Hence, in the *Resolution*⁶⁶ dated October 8, 2015, the Court declared the present case submitted for decision.☞

⁵⁷ Docket, Vol. III, pp. 1397-1411.

⁵⁸ Docket, Vol. III, pp. 1425-1433.

⁵⁹ *Resolution* dated April 6, 2015, Docket, Vol. III, pp. 1446-1448.

⁶⁰ Docket, Vol. III, p. 1453.

⁶¹ Docket, Vol. III, pp. 1467-1468.

⁶² Docket, Vol. III, p. 1463.

⁶³ Order dated August 27, 2015, Docket, Vol. III, p. 1472; *Resolution* dated September 16, 2015, Docket, Vol. III, p. 1478.

⁶⁴ Docket, Vol. III, pp. 1479-1524.

⁶⁵ Docket, Vol. III, pp. 1527.

⁶⁶ Docket, Vol. III, p. 1528.

Petitioner submitted the following issues⁶⁷ for this Court's resolution:

1. Whether respondent's failure to validly assess petitioner within the period prescribed by law rendered the deficiency income tax assessment against petitioner for taxable year 2007 void.
2. Whether respondent's issuance of the deficiency assessments in blatant violation of petitioner's right to due process rendered the deficiency income tax assessment against petitioner for taxable year 2007 void.
 - a. Whether the Letter of Authority No. 2009-00044669 which covers the audit of "Unverified Prior Years" is invalid, being in direct contravention of Section C of Revenue Memorandum Order No. 43-90.
 - b. Whether the Formal Letter of Demand dated 08 April 2011 and Final Decision on Disputed Assessment No. 2012-0001 dated 18 May 2012 were improperly served on petitioner.
 - c. Respondent disregarded petitioner's protest letter dated 07 June 2011 and additional submissions in support of his protest.
3. Whether the deficiency income tax assessment against petitioner for taxable year 2007 has no factual and legal bases.

Petitioner contends that respondent issued the deficiency assessment beyond the three-year prescriptive 

⁶⁷ Issues, Petitioner's Memorandum, Docket, Vol. III, pp. 1495-1496.

period provided under Section 203 of the NIRC of 1997, as amended, and is therefore void. Moreover, he argues that Letter of Authority No. 2009-00044669, which covers the audit of "unverified prior years" is invalid, being in direct contravention of Section C of Revenue Memorandum Order (RMO) No. 43-90. Petitioner further alleges that the Formal Letter of Demand dated April 8, 2011 and Final Decision on Disputed Assessment No. 2012-0001 dated May 18, 2012 were improperly served on petitioner. He also contends that respondent disregarded his protest letter dated June 7, 2011 and additional submissions in support of his protest. Lastly, petitioner avers that the deficiency income tax assessment against petitioner for taxable year 2007 has no factual or legal basis.

On the other hand, respondent argues that the deficiency tax assessments are supported by facts, laws, rules, and jurisprudence. He likewise contends that Letter of Authority No. 2009-00044669 dated August 25, 2010 is valid. Respondent alleges that in assailing the legality of the Letter of Authority, petitioner failed to take into account that the instant case involves tax fraud which is way different from ordinary deficiency assessments. Moreover, respondent asserts that since the case involves fraud, the applicable provision is Section 222 of the NIRC of 1997, as amended. Lastly, respondent points out that petitioner's protest-letter did not conform to the requirements prescribed by law and pertinent revenue regulations.

**Respondent assessed
petitioner for deficiency
taxes for taxable year 2007
within the period prescribed
by law.**

The Court shall determine first whether respondent issued the deficiency assessment within the three-year prescriptive period provided under Section 203 of the NIRC of 1997, as amended. (

Section 203 of the NIRC of 1997, as amended, mandates that internal revenue taxes must be assessed within three years reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later, thus:

*"SEC. 203. Period of Limitation Upon Assessment and Collection. – Except as provided in Section 222, **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That **in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed**. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."* (Emphasis supplied)

Pursuant to Section 74 of the NIRC of 1997, as amended, the Final Adjusted Income Tax Return of an individual taxpayer is due to be filed on or before April 15 of the following calendar year. Records show that petitioner filed his Annual Income Tax Return for taxable year 2007⁶⁸ on April 15, 2008. Pursuant to Section 203 of the NIRC of 1997, as amended, respondent had until April 15, 2011 within which to assess petitioner for deficiency income tax for taxable year 2007.

The Supreme Court, in the case of *Barcelon Roxas Securities, Inc. vs. Commissioner of Internal Revenue*,⁶⁹ held that assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the BIR Commissioner to the taxpayer within said period, to wit:

"Under Section 203 of the National Internal Revenue Code (NIRC), respondent had three (3) <

⁶⁸ Exhibit "JJJ".

⁶⁹ G.R. No. 157064, August 7, 2006.

years from the last day for the filing of the return to send an assessment notice to petitioner. In the case of *Collector of Internal Revenue v. Bautista*, this Court held that an **assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the CIR to the taxpayer within said period. Receipt thereof by the taxpayer within the prescriptive period is not necessary.** At this point, it should be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive, even beyond the prescriptive period, the assessment notice which was timely released, mailed and sent." (*Emphasis supplied*)

A perusal of the Formal Letter of Demand⁷⁰ shows that it was issued on April 8, 2011. Thus, the deficiency income tax assessment for taxable year 2007 was issued within the three (3)-year prescriptive period.

The deficiency income tax assessment issued against petitioner for taxable year 2007 is void due to the invalidity of the Letter of Authority.

The Court shall now resolve the issue pertaining to the validity of the Letter of Authority.

It must be emphasized that before any revenue officer can conduct an examination or assessment, there must be a valid Letter of Authority.

Section 6(A) of the NIRC of 1997, as amended, vests the Commissioner of Internal Revenue with the power to

⁷⁰ Exhibit "TTT"; Exhibit "7".

authorize the examination of any taxpayer and the assessment of the correct amount of tax due, 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."*
(Emphasis supplied)

In relation thereto, Section 13 of the NIRC of 1997, as amended, provides that a Letter of Authority 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.⁷¹ Section 13 provides:

*"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** ¿*

⁷¹ *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (*Emphasis supplied*)

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.⁷²

It must be noted that Section C of Revenue Memorandum Order No. 43-90⁷³ provides that a Letter of Authority should cover a period not exceeding one taxable year. It also prohibits the practice of issuing Letters of Authority covering audit of "unverified prior years". Section 3 of RMO No. 43-90 reads:

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

XXX

XXX

XXX

3. A Letter of Authority should cover a taxable period not exceeding one taxable year. The practice of issuing L/As covering audit of 'unverified prior years' is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the L/A." (*Emphasis supplied*)

Moreover, in the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*,⁷⁴ the Supreme Court also upheld the invalidity of the phrase "unverified prior

⁷² *Ibid.*

⁷³ Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, dated September 20, 1990.

⁷⁴ G.R. No. 178697, November 17, 2010.

years” in the Letter of Authority, because it violated Section C of RMO No. 43-90.

In the present case, LOA No. 2009-00044669⁷⁵ dated August 25, 2010, allowing respondent to investigate and ascertain the internal revenue taxes of petitioner, indicated the period of taxable year 2008 and unverified prior years, to wit:

“The bearer(s) hereof, Revenue Officer A.R. Aquino Under the supervision of V.C. Clemente of the National Investigation Division is/are authorized to examine your books of accounts and other accounting records for All Internal Revenue Taxes for the period from **Taxable year 2008 and Unverified prior years**. xxx” (*Emphasis supplied*)

Clearly, LOA No. 2009-00044669 is invalid having been issued in violation of Section C of RMO No. 43-90. Thus, the assessment issued by respondent for taxable year 2007 was unauthorized, because there was no valid Letter of Authority covering it.

A deficiency assessment issued without a valid authority is a nullity.⁷⁶ And considering that the Letter of Authority issued in this case authorized the audit of taxable year 2008 and “unverified prior years”, which is prohibited, the deficiency income tax assessment for taxable year 2007 is null and void. Therefore, the same must be cancelled and set aside.

Finding that the assessment for taxable year 2007 is void for being issued without a valid authority, the Court finds it no longer necessary to discuss the other issues raised. 

⁷⁵ Exhibit “KKK”; Exhibit “3”.

⁷⁶ *People of the Philippines vs. Edwin T. So, Raymond R. Lee, Techpoint Computer Corporation*, CTA EB Crim. No. 028, March 6, 2015.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency income tax assessment for taxable year 2007, amounting to ₱1,295,855,151.89 as found in FDDA No. 2012-0001, is hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.


CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

-INHIBITED-

ROMAN G. DEL ROSARIO
Presiding Justice


ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

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
Chairperson, 1st Division