Republic of the Philippines
Supreme Court
Manila

**THIRD DIVISION**

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| **AFP GENERAL INSURANCE CORPORATION,** | **G.R. No. 222133** |
| *Petitioner,* | Present: |
| *- versus -* | LEONEN, *J.*, *Chairperson*,<br>HERNANDO,<br>INTING<br>DELOS SANTOS, and<br>ROSARIO, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** | Promulgated:<br>November 4, 2020 |
| *Respondents.* | |

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**D E C I S I O N**

**INTING, *J.*:**

This resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by AFP General Insurance Corporation (AGIC) assailing the Decision[2] dated January 4, 2016 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 1223 (CTA Case No. 8191). The assailed Decision modified the Amended Decision[3] dated September 1, 2014 of the CTA Third Division (CTA Division) in CTA Case No. 8191 which ordered AGIC to pay deficiency tax assessments, plus surcharge and interests, under respondent Commissioner of Internal Revenue's (CIR) Formal Letter of Demand (FLD)[4] dated April 6, 2010.

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1 *Rollo*, Vol. 1, pp. 42-93.

2 *Id.* at 9-35; penned by Associate Justice Amelia R. Cotangco-Manalastas with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Ma. Belen M. Ringpis-Liban, concurring. Associate Justice Erlinda P. Uy, concurring and dissenting, and Presiding Justice Roman G. Del Rosario, inhibited.

3 *Id.* at 177-208; penned by Associate Justice Lovell R. Bautista with Associate Justices Esperanza R. Fabon-Victorino and Ma. Belen M. Ringpis-Liban, concurring.

4 *Id.* at 275-278; issued by Deputy Commissioner Gregorio V. Cabantac of the Legal and Inspection Group, Bureau of Internal Revenue.

*The Antecedents*

The CIR, through Deputy CIR Gregorio V. Cabantac, issued Letter of Authority (LOA) No. 00021964[5] dated May 7, 2008, empowering Bureau of Internal Revenue (BIR) Revenue Officers Mercedes J. Espina and Jonas P. Punza to examine AGIC's books of account and records in relation to taxable year 2006.[6] It contained the following notation: "[t]his [LOA] becomes void if it contains erasures, or if not served to the taxpayer within 30 days from the date hereof, or if dry seal of BIR office is not present."

As a result of the audit investigation, the CIR issued a Preliminary Assessment Notice[7] (PAN) against AGIC. AGIC responded to the PAN through a Letter[8] dated January 25, 2010 addressed to the CIR.

In turn, the CIR issued a Revised PAN[9] dated February 19, 2010, with attached details of discrepancies,[10] finding AGIC liable for deficiency income tax (IT), documentary stamp tax (DST) on the increase of capital stock, value-added tax (VAT), late remittance of DST on insurance policies, expanded withholding tax (EWT) amounting to ₱13,158,571.63,[11] ₱486,833.25,[12] ₱8,730,457.05,[13] ₱2,212,705.47,[14] and ₱785,077.29,[15] respectively, inclusive of penalties,[16] surcharge, and interest.

Subsequently, the CIR issued a Formal Letter of Demand (FLD)[17] dated April 6, 2010, with attached details of discrepancy[18] and assessment notices,[19] requesting AGIC to pay deficiency internal revenue taxes amounting to ₱25,647,389.04, computed as follows:

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5 *Id.* at 319.
6 *Id.*
7 *Id.* at 295-298.
8 *Id.* at 301-307.
9 *Id.* at 308-311.
10 *Id.* at 312-315.
11 *Id.* at 308.
12 *Id.*
13 *Id.* at 309.
14 *Id.*
15 *Id.* at 310.
16 With civil penalty amounting to ₱50,000.00, *id.* at 311.
17 *Id.* at 275-278.
18 *Id.* at 279-282.
19 *Id.*

| Tax Type | Basic Tax | Surcharge | Interest | Compromise Penalty | Subtotal |
|---|---|---|---|---|---|
| IT | ₱8,294,889.09 | - | ₱4,976,933.45 | ₱25,000.00 | ₱13,296,822.54 |
| DST* | 250,000.00 | 62,500.00 | 162,500.00 | 16,000.00 | 491,000.00 |
| VAT | 4,092,402.38 | 2,046,201.19 | 2,660,061.55 | - | 8,798,665.12 |
| DST** | 316,237.83 | 1,114,521.99 | 710,216.39 | 77,000.00 | 2,217,976.21 |
| EWT | 470,863.74 | | 306,061.43 | 16,000.00 | 792,925.17 |
| Civil penalty | | | | | 50,000.00 |
| Total | | | | | ₱25,647,389.04 |

* DST on the increase of capital stock
** late remittance of DST on insurance policies

AGIC formally protested these assessments on April 22, 2010 (administrative protest).[20]

Due to the CIR's alleged inaction on its protest, AGIC elevated the assessment case to the CTA docketed as CTA Case No. 8191.[21] In turn, the CIR filed an answer to AGIC's petition.

*Ruling of the CTA Division*

*Decision*[22] *dated March 13, 2014.*

After trial, the CTA Division partially granted AGIC's petition.[23] It ruled as follows:

*First*, the assessment for unremitted DST on insurance policies must be cancelled. It pertains to taxable year 2005; thus, outside the coverage of the subject LOA, which was issued for "the examination of books of accounts and other accounting for the taxable year 2006."[24] *Second*, the period for assessment for deficiency VAT had already prescribed by the time the CIR issued the FLD on April 6, 2010. *Third*,

[20] *Id.* at 293-294.
[21] See Petition for Review for Annulment and Cancellation of Disputed Assessment under Formal Letter of Demand dated April 6, 2010 for the Taxable Year 2006, *id.* at 242-271.
[22] *Id.* at 192-208.
[23] *Id.* at 205.
[24] *Id.* at 199.

in contrast, the CIR timely assessed AGIC for its late remittance of DST on insurance policies pertaining to January, February, and May 2006, as well as deficiency DST on the increase in capital stock. *Fourth*, AGIC failed "to substantiate its claims of undue disallowance of its legitimate expenses [in relation to IT], erroneous assessment for [EWT], and the correct computation of its deficiency [IT and EWT]."[25] *Fifth*, the amounts of compromise penalty for each tax type must be cancelled because there is no showing that the parties mutually agreed on the imposition thereof.[26] *Sixth*, AGIC applied for the tax amnesty program under Republic Act No. (RA) 9480, which covered all unpaid internal revenue taxes for taxable year 2005 and prior years. However, AGIC failed to submit its Statement of Assets, Liabilities and Net worth (SALN), a required attachment to the taxpayer's application under RA 9480. Failure to fully comply with the documentary requirements of the amnesty law disqualifies AGIC from availing itself of RA 9480's benefits.[27]

Based on its findings, the CTA Division reduced the total assessment to ₱12,746,567.80.[28] In addition, it ordered AGIC to pay the following: (a) *20% deficiency interest* on the amount of basic deficiency tax (IT, DST on increase of capital stock, and EWT) as prescribed under Section 249(B) of the National Internal Revenue Code of 1997 (Tax Code); (b) *20% delinquency interest* on the amount of basic deficiency tax (IT, DST on increase of capital stock, and EWT) *plus surcharge*, as prescribed under Section 249(C) of the Tax Code; (c) *20% delinquency interest* on the incremental amounts resulting from the late remittance of DST on insurance policies, as prescribed under Section 249(C) of the Tax Code; and (d) *20% delinquency interest* on the total amount of deficiency interest computed under (a) above, as prescribed under Section 249(C) of the Tax Code.

Both parties moved to reconsider the aforementioned Decision.

For its part, AGIC insisted that the CTA Division failed to resolve the principal issue of the case: LOA No. 00021964's validity. According to AGIC, the subject LOA is invalid "for failure of the concerned [r]evenue [o]fficer to have the same revalidated after x x x 120 days [*i.e.*, within which the tax authorities must issue an audit

[25] *Id.* at 201.
[26] *Id.* at 202.
[27] *Id.* at 203-205.
[28] Basic tax deficiency plus 25% surcharge, *id.* at 205-206.

investigation report], pursuant to Revenue Memorandum Order No. [RMO] 38-88 dated August 24, 1988, as reiterated in Revenue Memorandum Circular [RMC] No. 40-2006, dated July 13, 2006."[29] The CIR countered that "the non-revalidation of a [LOA] would only warrant a disciplinary action against the concerned [r]evenue [o]fficer, and not render the same invalid or void."[30]

On the other hand, respondent CIR pointed out that "[a]s proven during trial, [AGIC] never filed a return for [DST on] insurance policies for taxable year 2005."[31] Thus, the applicable prescriptive period is 10 years counted from the discovery of the falsity, fraud, or omission (non-filing). Further, the discrepancies between the audited financial statements and the unregistered general ledger resulted in an under-declaration of gross income subject to [VAT].[32]

*Amended Decision dated September 1, 2014.*

Ruling on the parties' motions, the CTA Division held as follows: *first*, the revenue officers' failure to have the LOA revalidated after the 120-day reglementary period does not nullify the LOA. Under the aforecited tax issuances, such failure gives rise to administrative sanctions/penalties, but does not invalidate the LOA itself.[33] *Second*, the cancellation of the assessment for unremitted DST on insurance policies for taxable year 2005 was proper inasmuch as the subject LOA only covered taxable year 2006. *Third*, in the PAN and Memoranda filed before the CTA Division, respondent CIR clearly alleged that the deficiency VAT assessment was grounded on the "substantial [under-declaration] of taxable sales, receipts or income and failure to report sales, receipts or income in an amount exceeding x x x 30% of that declared per return."[34] However, AGIC failed to refute the assessments, including the alleged under-declaration.

Consequently, the CTA reinstated the deficiency tax assessment and ordered AGIC to pay deficiency VAT amounting to

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[29] *Id.* at 181.
[30] *Id.*
[31] *Id.* at 180.
[32] *Id.*
[33] *Id.* at 184.
[34] *Id.* at 187.

₱6,138,603.57,[35] inclusive of 50% surcharge and the following interests: *20% deficiency interest* on the amount of basic deficiency VAT, as prescribed under Section 249(B) of the Tax Code; (b) *20% delinquency interest* on the amount of basic deficiency VAT *plus surcharge*, as prescribed under Section 249(C) of the Tax Code.[36]

Aggrieved, AGIC brought the case before the CTA *En Banc*.

*Ruling of the CTA En Banc*

In its assailed Decision, the CTA *En Banc* modified the CTA Division ruling to reduce the amount of deficiency VAT assessment to ₱5,912,622.72, inclusive of 50% surcharge, plus applicable interests.[37]

The court *a quo* ruled as follows: *first*, when the concerned revenue officers failed to submit their report within 120 days after service of the LOA, they likewise failed to submit the subject LOA for revalidation. However, their failure to do so did not affect the LOA's validity. RMO 38-88 and RMC 40-06 do not treat an LOA as void once it is not revalidated within the said period.[38] *Second*, verily, Revenue Audit Memorandum Order No. (RAMO) 01-00 invalidates an LOA that: (a) remains unserved 30 days after its issuance, and (b) is not submitted for revalidation. However, there is proof that AGIC received the LOA dated May 7, 2008 on May 13, 2008 or within 30 days from its issuance.[39] *Third*, AGIC did not present its DST returns for taxable year 2006. "Having failed to do so, [AGIC] failed to prove that the subject deficiency DST assessment is already barred by prescription x x x."[40] *Fourth*, AGIC failed to establish that it withheld the proper taxes on its expenses. "[T]he consequence of non-withholding of taxes is the disallowance of the related expense as deduction from gross income, resulting in an increase in taxable income and consequently to the income tax due."[41] *Fifth*, the tax authorities alleged that, for VAT purposes, AGIC failed to report gross receipts for VAT purposes by

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[35] *Id.* at 189.
[36] *Id.* at 190.
[37] *Id.* at 33-34.
[38] *Id.* at 18.
[39] *Id.* at 20-21.
[40] *Id.* at 22.
[41] *Id.* at 25.

38.88%.[42] This under-declaration is *prima facie* evidence of a false return, which allowed the BIR 10 years, instead of the usual three, to assess. Likewise, AGIC failed to dispute the output VAT it allegedly did not remit.[43] Thus, AGIC was properly assessed therefor.

After evaluation, the CTA *En Banc* upheld the assessments for IT, EWT, and DST, amounting to ₱12,746,567.80,[44] as computed in the CTA Division Decision dated March 13, 2014. In addition, it ordered AGIC to pay deficiency VAT amounting to ₱5,912,622.72,[45] which brought the total assessment to ₱18,659,190.52 computed as follows:

| Tax Type | Basic Tax | Surcharge Sec. 248(A)(3) | 20% Interest Sec. 249 | Subtotal |
|---|---|---|---|---|
| IT | ₱8,294,889.09 | ₱2,073,722.27 | | ₱10,368,611.36 |
| DST* | 250,000.00 | 62,500.00 | | 312,500.00 |
| EWT | 470,863.74 | 117,715.94 | | 588,579.68 |
| DST** | - | 1,035,462.53 | 441,414.23 | 1,476,876.76 |
| CTA Division*** | ₱9,015,752.83 | ₱3,289,400.74 | ₱441,414.23 | ₱12,746,567.80 |
| VAT**** | 3,941,748.48 | 1,970,874.24 | | 5,912,622.72 |
| Total | ₱12,957,501.31 | ₱5,260,274.98 | ₱441,414.23 | ₱18,659,190.52 |

* on increase of capital stock
** late remittance of DST on insurance policies
*** CTA Division Decision dated March 13, 2014
**** as modified by the CTA *En Banc*

Hence, AGIC filed the present petition.

AGIC insists that the CTA *En Banc* erred in upholding the assessments for the following reasons: *first*, the *subject LOA was invalid* because it remained "un-revalidated"[46] despite (a) belated service thereof,[47] and (b) the non-submission of a report within the reglementary 120-day period.[48] *Second*, AGIC admits that it was liable for deficiency EWT and withholding tax on compensation (WTC).[49] However, it was not liable for *deficiency IT* because: (a) the

[42] *Id.* at 30.
[43] *Id.* at 29.
[44] Inclusive of 25% surcharge, plus applicable interests, *id.* at 33.
[45] Inclusive of 50% surcharge, plus applicable interests, *id.*
[46] *Id.* at 54.
[47] *Id.* at 60-62.
[48] *Id.* at 56-59.
[49] *Id.* at 71.

assessments amount to double taxation,[50] and (b) the CIR already recognized that the expenses in question were legitimate.[51] Thus, it was estopped from questioning its deductibility for income tax purposes. *Third*, it was not liable for *deficiency DST and VAT* because (a) the CIR's authority to assess these taxes have already prescribed,[52] (b) the assessments amount to double taxation,[53] and (c) AGIC's availment of tax amnesty extinguished its liabilities therefor.[54]

*Issues*

In order to ascertain AGIC's liability for deficiency taxes, the Court shall resolve the following issues:

(1) Was the subject LOA invalid?;

(2) Had the CIR's power to assess AGIC for deficiency *VAT* and *DST* already prescribed by the time it issued the FLD dated April 6, 2010?;

(3) Did the deficiency IT and VAT assessments amount to double taxation?; and

(4) Did AGIC's application for tax amnesty under RA 9480 extinguish its liabilities for the deficiency DST and VAT?

Notably, only the deficiency IT, VAT, and DST assessments remain at issue, taking into account AGIC's admission of its liability for deficiency EWT.[55]

*The Court's Ruling*

The petition has no merit.

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[50] *Id.* at 64-68.
[51] *Id.* at 69-70.
[52] *Id.* at 74-78.
[53] *Id.* at 79-82.
[54] *Id.* at 82-84.
[55] *Id.* at 71.

It is settled that tax assessments are *prima facie* correct. At the same time, tax authorities enjoy the presumption of regularity in the performance of their duties in relation to tax investigation and assessment.[56] Thus, in denying deficiency tax liability, it is incumbent upon a taxpayer to show clearly that the assessment is void or erroneous, or that the tax authorities had been remiss in issuing the same.[57]

After a judicious review of the case records, the Court finds that AGIC failed to discharge this burden.

I

Validity of LOA No. 00021964

*The power to assess and the power to audit a taxpayer.*

The power to assess necessarily includes the authority to examine any taxpayer for purposes of determining the correct amount of tax due from him.[58] Verily, the law vests the BIR with general powers in relation to the "assessment and collection of all national internal revenue taxes."[59] However, certainly, not all BIR personnel

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[56] See *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, 494 Phil. 306, 335 (2005).

[57] *Commissioner of Internal Revenue v. Hon. Gonzalez, et al.*, 647 Phil. 462, 492 (2010), citing *Marcos II v. CA*, 339 Phil. 253, 271-272 (1997); *Collector of Internal Revenue v. Bohol Land Transportation Co.*, 107 Phil. 965 (1960)

[58] Section 6(A), Tax Reform Act of 1997 (Tax Code) provides:

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

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

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided,* That within three (3) years from the date of such filing, the same may be modified, changed, or amended: *Provided, further,* That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer.

[59] Section 2, Tax Code provides:

SECTION 2. Powers and Duties of the Bureau of Internal Revenue. — The Bureau of Internal Revenue shall be under the supervision and control of the

may *motu proprio* proceed to audit a taxpayer. Only "the CIR or his duly authorized representative may *authorize the examination of any taxpayer*"[60] and issue an assessment against him.[61]

That a representative has in fact been authorized to audit a taxpayer is evidenced by the LOA, which "empowers a designated [r]evenue [o]fficer to examine, verify, and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period."[62]

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Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws.

[60] Section 6(A), Tax Code.

[61] Section 228, Tax Code provides:

SECTION 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

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 duly authorized representative shall issue an assessment based 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 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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[62] Updated Handbook on Audit Procedures and Techniques Volume I (Revision—Year 2000), Revenue Audit Memorandum Order No. 1-00, [March 17, 2000].

In cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessment shall be void and ineffectual.[63] In the present case, AGIC uses this principle to invalidate the deficiency tax assessments in the present case.

Petitioner AGIC insists that the subject LOA is defective because it was not revalidated: (a) upon the expiration of the 30-day period of service and (b) upon the expiration of the 120-day period, as required by RMO No. 38-88 and RMC No. 40-06.

In other words, AGIC relies on defects allegedly arising from non-compliance with the LOA revalidation requirements. At this juncture, We must distinguish between the requirement of revalidating an LOA that is *unserved*, as opposed to revalidating it *after service,* due to the lapse of the reglementary period mentioned in RMO No. 38-88.

*Revalidating an unserved LOA.*

The LOA commences the audit process and informs the taxpayer that he shall be investigated for possible deficiency tax assessment.[64] RAMO 1-00 dated March 17, 2000 prescribes the use of the Updated Handbook on Audit Procedures and Techniques, defines an LOA, and describes its function and the manner by which it shall be served, to wit:

> 2. Serving of Letter of Authority
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> 2.1 On the first opportunity of the Revenue Officer to have personal contact with the taxpayer, he should present the Letter of Authority (LA) together with a copy of the Taxpayer's Bill of Rights. The LA should be served by the Revenue Officer assigned to the case and no one else. He should have the proper identification card and should be in proper attire.
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> 2.2 A Letter of Authority authorizes or empowers a designated Revenue Officer to examine, verify and scrutinize a

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[63] See *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, 808 Phil. 528 (2017).

[64] *Commissioner of Internal Revenue v. De La Salle University, Inc.*, 799 Phil. 141, 174 (2016). Citation omitted.

taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.

*2.3 A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue; otherwise, it becomes null and void unless revalidated. The taxpayer has all the right to refuse its service if presented beyond the 30-day period depending on the policy set by top management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words "Revalidated on _____" on the face of the copy of the Letter of Authority issued.* (Italics supplied.)

LOA No. 00021964 echoes Subparagraph 2.3 above, *viz.*:

IMPORTANT: Please address any communication on this matter to the authorized officer(s) of the National Investigation Division x x x *This Letter of Authority becomes void* if it contains erasures, *or if not service to the taxpayer within 30 days from the date hereof,* or if dry seal of BIR is not present. (Italics supplied.)

The foregoing rule invalidates a previously issued LOA, which has remained unserved for more than 30 days past its issuance date, unless the same is revalidated.

In the exercise of the power to assess and collect taxes,[65] the BIR has the commensurate duty to uphold a taxpayer's fundamental right to due process. Thus, its authority must be understood to take effect only after the CIR or his duly authorized representative *issues an LOA* and the designated revenue officer *serves it* upon the intended taxpayer. That a LOA remains unserved signifies that the tax authorities have yet to formally apprise the taxpayer and, consequently, have not commenced actual audit.

Read in these lights, the rules clearly impose a *30-day expiration period for service.* Upon expiration, the LOA becomes *wholly unenforceable*, inasmuch as it cannot be served without revalidation upon the taxpayer who, in turn, has the right to refuse the same.

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[65] Section 2, Tax Code.

The revalidation requirement involving an *unserved LOA* is imposed on the revenue officer because he/she exclusively derives authority therefrom. It is intended to *reconfirm his/her designation* as the BIR personnel duly authorized (by the CIR) to examine the taxpayer's books and *extend the period of service*. Otherwise, his/her subsequent presence in a taxpayer's premises for a supposed tax audit shall be illegitimate.

In the case at bar, the CIR issued LOA No. 00021964 on May 8, 2008, the 30th day therefrom fell on June 6, 2008. However, AGIC claimed to have received the subject LOA only on June 13, 2008. By that time, without revalidation, the LOA had already become null and void.[66]

The argument has no merit.

*First*, whether or not the tax authorities actually served the subject LOA within 30 days from issuance is a factual question, which is outside the scope of the Court's review sought through a Rule 45 petition.[67] The Court is not a trier of facts. The Court shall not reexamine or reevaluate "the truthfulness or falsity of the allegations of the parties".[68]

*Second*, the CTA *En Banc* found that AGIC received the LOA dated May 7, 2008 on May 13, 2008 or well within the 30-day reglementary period of service. The Court gives utmost respect to the findings of the tax court as the Court recognizes its expertise on tax matters.[69] The Court shall uphold these findings as long as there is no showing of grave abuse of discretion[70] and its ruling is supported by substantial evidence.[71]

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66 *Rollo*, Vol. I, p. 61.

67 Rule 45, Section 1, Rules of Court. See also *Phil. Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*, 823 Phil. 1043, 1063-1064 (2018).

68 *Pascual v. Burgos, et al.*, 776 Phil. 167, 183 (2016). Also see *Phil. Airlines, Inc. (PAL) v. Commissioner of Internal Revenue, supra.*

69 *Winebrenner & Iñigo Insurance Brokers, Inc.*, v. *Commissioner of Internal Revenue*, 752 Phil. 375, 397 (2015). Citations omitted.

70 *Rep. of the Phils. v. Team (Phils.) Energy Corp.*, 750 Phil. 700, 717 (2015). Also see *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, 826 Phil. 329, 347 (2018).

71 *Phil. Airlines, Inc. (PAL) v. Commissioner of Internal Revenue, supra* note 67 at 1065, citing *Commissioner of Internal Revenue v. Tours Specialists, Inc., and the Court of Tax Appeals*, 262 Phil. 437, 442 (1990).

*Third*, even if the Court brushes aside these recognized principles and follows AGIC's reasoning, it is clear that they would have had the legal right to refuse service of an LOA it believed was defective due to lack of revalidation.[72] However, it is undisputed that AGIC did not contest the LOA upon receipt and allowed the tax authorities to proceed with and complete the audit.

Moreover, AGIC did not question the timeliness of the LOA's service in any of the following: reply[73] to the PAN, two-page formal administrative protest to the FLD,[74] Petition for Review,[75] and Motion for Reconsideration[76] before the CTA Division. AGIC raised this argument only on appeal (to the CTA *En Banc*).

To the Court's mind, AGIC's failure to exercise its right to refuse the service of an allegedly defective LOA shows that they had acquiesced to the tax authorities' investigation. That it waited until after the issuance of the PAN, FLD, as well as the CTA Division's adverse decision before objecting to this irregularity could only be interpreted as a mere afterthought to resist possible tax liability.

*Revalidating a served LOA in connection with the "120-day rule."*

Alternatively, AGIC argues that the subject LOA also became null and void when it was not submitted for revalidation after the lapse of a supposed "120-day period."[77]

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[72] Paragraph 2.3, RAMO 1-00.
[73] *Rollo*, Vol. 1, pp. 301-307.
[74] *Id.* at 293-294.
[75] *Id.* at 242-271.
[76] *Id.* at 209-226.
[77] *Id.* at 59.

AGIC relies on RMC 40-06,[78] which imposes a "120-day rule" in connection with LOA re-validation. The circular refers to RMO 38-88, which provides as follows:

> This Order aims to set the guidelines on the revalidation of Letters of Authority (LAs) for a more effective and efficient investigation and reporting on cases:
>
> The following are henceforth prescribed:
>
> 1. Revalidation of Letters of Authority shall be limited to only once in the regional offices and twice in the National Office after issuance of the original LA.
>
> 2. A revalidation shall be covered by the issuance of a new Letter of Authority under the name(s) of the same investigating officer(s), and the superseded LA(s) shall be attached to the new LA issued.
>
> 3. Requests for revalidation shall be supported with a progress report on the case and a justification for said revalidation.
>
> 4. The Division Chief/RDO shall indorse the request for revalidation which shall be duly approved or disapproved by the Assistant Commissioner (SOS)/Regional Director.
>
> *5. The Division Chief/RDO shall be responsible for the monthly monitoring of LAs issued to ensure that reports are rendered within the reglementary 120-day period. The Division Chief/RDO shall be jointly responsible with the REOs for cases with LAs pending beyond the 120-day period.*
>
> *6. It shall be the duty of the Division Chief/RDO to report immediately to the Inspection Service any tax case for which no report of investigation has been rendered 120 days after the issuance of an LA.* (Italics supplied.)

The foregoing issuance refers to the "120-day period" as the time within which an investigation report shall be rendered.

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[78] The objectives of RMC 40-06 are: "This Circular is issued to clarify certain issues concerning the jurisdictions of the Large Taxpayer Service (LTS), the Enforcement Service (ES) and the Revenue Regions, including the Revenue District Offices (RDOs) and Divisions under them, performing audit and investigation functions, and to prescribe guidelines and procedures which must be observed in the performance of such audit and investigation functions and in the disposition of tax cases."

AGIC claims that LOA No. 00021964 was nullified due to the assigned revenue officers' failure to: (1) render the investigation report within this period, and (2) submit the LOA for revalidation. Thus, the resulting tax assessments are also void.[79]

Notably, the above-cited issuances mention a "120-day period/rule," but do not provide a complete context within which the rule was established. Thus, to evaluate the theory, the Court must look into other related tax issuances to determine the nature and intended effect of the reglementary period adverted to by AGIC.

An early tax issuance[80] mentions both 30 and 120-day reglementary periods in imposing an LOA revalidation requirement, *viz.*:

> REVENUE MEMORANDUM ORDER NO. 43-64
>
> SUBJECT : Period of Limitation for Action on Cases Received
>
> TO : All Department Heads, Regional Directors, Division Chiefs, Chief Revenue Officers and Others Concerned
>
> In order to expedite the flow of papers assigned for action to each and every employee of the Bureau, the following guidelines are hereby promulgated for the compliance of all concerned:
>
> 1. All income tax, business tax, estate and inheritance tax, amusement tax and other kinds of tax returns assigned to fieldmen for investigation or reinvestigation should be accompanied by an authority to investigate. For this purpose dockets received from any branch in the region or any division in the National Office shall likewise be subject to the issuance of the corresponding authority to investigate.
>
> *2. Fieldmen are hereby enjoined to serve the authority to investigate within thirty (30) days from the date of the issuance and to conduct the investigation and submit the report thereon within one hundred twenty (120) days from the date of the issuance of the authority. Any authority to investigate which has not been reported within the above-mentioned period is considered void and the examiner concerned is prohibited from further investigation or contact with the taxpayer after the said period unless the authority is revalidated.*

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[79] *Rollo*, Vol. 1, p. 57, 59.

[80] Period of Limitation for Action on Cases Received, Revenue Memorandum Order No. 43-64, [July 3, 1964].

> 3. Any examiner who believes that he may not be able to submit the report of investigation within the required period should prepare a memorandum to his superior officer detailing the progress of the investigation and the reasons why he needs an additional period within which to terminate the investigation. The said memorandum should be reviewed by the superior official who will make the corresponding recommendation for the issuance of a revalidated authority or to issue a revalidated authority for the said case if he is the officer authorized to do so. (Italics supplied.)

RMO 43-64, read together with RMO 38-88, discredits AGIC's claim.

The issuance confirms that a revenue officer assigned to an audit is *duty-bound* to render an investigation report within 120 days from the LOA's issuance. The *120-day period for rendering an investigation report* was intended as an internal efficiency measure: to expedite the conduct of audits and ensure that BIR examiners regularly report open investigations and their progress.

Nonetheless, the revenue officer may validly request for LOA revalidation, which shall be supported by a progress report and an enumeration of reasons to justify his request.[81]

The superior officer or the Division Chief/Revenue District Officer (RDO) shall review the request. If justified, he/she shall recommend the LOA's revalidation and endorse the request to the CIR/his duly authorized representative for the latter's approval.

Without revalidation, the LOA shall be considered void and the assigned revenue officer is "prohibited from *further* investigation and contact with the taxpayer." The revalidation requirement here is aimed at *reconfirming* the revenue officer's authority and *extending the period of audit*. It contemplates a *served LOA* and *an on-going audit investigation*. Stated differently, the revenue officer was already authorized to commence an audit only that he was unable to conclude it within 120 days.

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[81] Item No. 3, RMO 38-88.

Given this context, it is clear that failure to comply with the 120-day rule does not void LOA *ab initio*. The expiration of the 120-day period merely renders an LOA *unenforceable*, inasmuch as the revenue officer must first seek ratification of his *expired authority to audit* to be able to validly continue investigation beyond the first 120 days.

That the revenue officer is unable to conduct *further* investigation does not invalidate his/her authority during the first 120 days or the procedures he/she had already performed within that period. He/she may instead render a report based on the results of his/her initial investigation from which an assessment may be legitimately issued.

In any case, AGIC does not even allege facts showing that the assigned revenue officers continued with their audit investigation beyond the first 120 days after issuance/service of the LOA. Failure to revalidate the LOA in accordance with the 120-day rule shall only be an issue in cases where tax authorities proceeded with an extended audit without first seeking the requisite revalidation.

Furthermore, even if the Court assumes that the BIR illegally extended their investigation, AGIC could have also resisted further investigation as early as the 121st day after the LOA's issuance/service if it truly believed that the assigned revenue officers no longer possessed the requisite authority. That it kept silent about the supposed violation and complained only when it was already found liable for deficiency taxes, once again, only show that it acquiesced to the BIR's extended audit, if any.

Based on the foregoing, absent any showing that the failure to revalidate resulted in a violation of AGIC's right to due process, the Court upholds the subject LOA's validity.

II

Prescription of the CIR's Power to Assess Deficiency VAT and DST

*Prescriptive period of the power to assess.*

In general, the CIR may issue a tax assessment within a three-year prescriptive period counted from: (a) the statutory deadline to file a return for the specific tax type, or (b) if filed beyond the deadline, the date of actual filing of the tax return, whichever is later.[82] However, by exception, this prescriptive period may be extended to ten years, in case of a false or fraudulent return with intent to evade tax or of failure to file a return.[83]

AGIC argues that the CIR's assessments for unremitted DST on insurance policies and deficiency VAT were issued beyond the *three-year prescriptive period.*

*Unremitted DST on insurance policies.*

In the assailed Decision, the CTA upheld the timeliness of the unremitted DST assessment after finding that AGIC failed to present in evidence its 2006 DST returns, which would have shown the actual date on which these were filed.

The CTA's ruling is supported by law and jurisprudence.

Prescription is a matter of defense. The taxpayer has the burden of proving that the prescriptive period has lapsed, including positively identifying when the prescriptive period began to run and exactly when it expired.[84] Consequently, AGIC cannot avail itself of the defense of prescription inasmuch as they failed to present proof of actual filing of their DST returns.

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[82] See Section 203, Tax Code.

[83] Section 222(a), Tax Code provides:

> SECTION 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 of 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.

[84] *PNOC v. Court of Appeals*, 496 Phil. 506, 582 (2005), citing *Querol v. Collector of Internal Revenue*, 116 Phil. 615 (1962).

*Deficiency VAT.*

On the other hand, the court *a quo* upheld the timeliness of the issuance of the deficiency VAT assessment after applying the 10-year prescription period, instead of the general rule of three years.

A careful reading of the petition reveals that AGIC assails this ruling by relying heavily on the claim that the *three-year prescriptive period* had already expired. AGIC did not even allege facts or present proof to dispute the correctness of applying the *10-year prescriptive period.* Certainly, AGIC's argument must be stricken down for being unresponsive and unsubstantiated.

In any case, the court *a quo's* application of the 10-year period was justified by its finding that AGIC had under-declared their 2006 gross receipts subject to VAT by 38.88%.[85]

Under the Tax Code, failure to report sales, receipts, or income of at least 30% of the amount declared in the return constitutes *prima facie* evidence of a false or fraudulent return.[86] This presumption shall stand as AGIC did not present proof to dispute the finding of under-declaration. There being an undisputed case of a false or fraudulent return, an exception to the general rule, the CTA *En Banc* correctly applied the 10-year prescriptive period under Section 222(a), instead of the three-year period under Section 203 of the Tax Code.

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[85] *Rollo*, Vol. 1, p. 30.

[86] Section 248(B), Tax Code provides:

SECTION 248. Civil Penalties. —

x x x x

(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: Provided, further, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.

III

Deficiency IT and VAT assessments *vis-á-vis* double taxation

There is double taxation if there are two taxes imposed "on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period, and the taxes must be of the same kind or character."[87]

According to AGIC, the CIR's deficiency IT and VAT assessments amount to double taxation.

*Deficiency IT due to disallowed expenses.*

The CIR assessed AGIC for *deficiency EWT* for failure to withhold required taxes on its expenses. At the same time, the CIR disallowed those expenses from being claimed as deductions from taxable income, resulting in a *deficiency IT* assessment. In other words, both the deficiency EWT and IT assessments were grounded on the fact of non-withholding.

AGIC admits its liability for *deficiency EWT* as a result of its failure to withhold taxes from expense payments. However, it theorizes that the CIR cannot simultaneously assess them for *deficiency IT* arising from the disallowance of the very same expenses.[88]

The Court disagrees with AGIC's contention. That the above-mentioned assessments both arose from AGIC's failure to withhold the required taxes does not in itself amount to double taxation.

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[87] *The City of Manila v. Coca-Cola Bottlers Philippines, Inc.*, 612 Phil. 609, 632 (2009), citing *Commissioner of Internal Revenue v. Bank of Commerce*, 498 Phil. 673, 692 (2005).

[88] *Rollo*, Vol. 1, p. 67.

The CIR issued a *deficiency EWT* assessment against AGIC in its capacity as a *withholding agent.* Enterprises such as AGIC are legally obliged under Section 57[89] of the Tax Code to deduct in advance a percentage of tax from his payment to a third party and remit the same to the government. The third party, from whom the taxpayer purchased a good/service, is the actual income earner in the transaction. Although acting merely as an agent of the government in the collection of taxes, a withholding entity who fails to deduct and remit as required shall be liable for deficiency withholding tax, such as EWT.[90]

On the other hand, the *deficiency IT* assessment was issued against AGIC in its capacity as a *domestic corporation* liable for tax on its own taxable income as provided under Section 27[91] of the Tax Code. In computing taxable income, the law allows a corporate income taxpayer to claim deductions from its gross income (*e.g.*, business

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[89] Section 57, Tax Code provides:

> SECTION 57. *Withholding of Tax at Source.* —
>
> (A) *Withholding of Final Tax on Certain Incomes.* — Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24(D)(1); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E); 27(D)(1), 27(D)(2), 27(D)(3), 27(D)(5); 28(A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7)(c), 28(B)(1), 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c); 33; and 282 of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.
>
> (B) *Withholding of Creditable Tax at Source.* — The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year.
>
> (C) *Tax-free Covenant Bonds.* — In any case where bonds, mortgages, deeds of trust or other similar obligations of domestic or resident foreign corporations, contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed in this Title upon the obligee or to reimburse the obligee for any portion of the tax or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon or to retain therefrom under any law of the Philippines, or any state or country, the obligor shall deduct and withhold a tax equal to thirty percent (30%) of the interest or other payments upon those bonds, mortgages, deeds of trust or other obligations, whether the interest or other payments are payable annually or at shorter or longer periods, and whether the bonds, securities or obligations had been or will be issued or marketed, and the interest or other payment thereon paid, within or without the Philippines, if the interest or other payment is payable to a nonresident alien or to a citizen or resident of the Philippines.

[90] See *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*, G.R. No. 211289, January 14, 2019.

[91] Section 27 of the Tax Code provides the "Rates of Income Tax on Domestic Corporations."

expenses),[92] provided that the tax required to be withheld from these items has been remitted to the BIR.[93] Otherwise, these will be disallowed, just as in AGIC's case.

It is not contested that both *deficiency EWT* and *IT* assessment were consequences of AGIC's failure to withhold. However, the *deficiency IT* arising from the disallowance of items claimed as deductions should not be confused with *deficiency EWT* imposed on a withholding agent for its failure to withhold.[94] To be sure, that an individual or corporation is simultaneously a withholding agent and income taxpayer is not a rare and obnoxious incident that would give rise to double taxation.

*Deficiency VAT.*

AGIC asserts that the CIR included gross receipts already subjected to VAT in 2005 in computing the VAT due for 2006. Thus, the deficiency VAT assessment is arbitrary and amounts to double taxation.[95]

AGIC is mistaken.

The CTA *En Banc* already found that there was nothing in the computation of deficiency VAT that pertained to 2005 gross receipts. It explained:

> Even though 2005 figures are involved, respondent is not assessing petitioner for deficiency VAT for 2005, rather respondent is questioning the discrepancy of P93,259.52 between the amount of input tax carried over from the 4th quarter of 2005 declared per return (P226,002.97) and per general ledger (P132,743.45). The input tax carried over from the 4th quarter of 2005 will have an effect on the total allowable input tax for 2006 (and consequently on the VAT payable for 2006) since the Tax Code allows the excess input tax in a given quarter to be carried over to the succeeding

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[92] Section 34, Tax Code.

[93] Section 2.58.5, Revenue Regulations No. (RR) 2-98, as amended by RR 14-02, [September 9, 2002].

[94] See *LG Electronics Philippines, Inc v. Commissioner of Internal Revenue*, 749 Phil. 155 (2014).

[95] *Rollo*, Vol. 1, p. 79.

> quarter/s. Hence, petitioner should account for the alleged discrepancy, unfortunately, petitioner failed to do so.
>
> Respondent also made an adjustment of P15,359.11, alleging that this amount was claimed as creditable input VAT for 2006 but pertains to 2005, hence, was deducted from the input VAT claimed, which has the effect of increasing the output VAT due. Hence, petitioner should prove that this amount is not "out-of-period" input taxes. Again, petitioner failed to do so.[96]

While the allegation of double taxation is a legal question, the matter of the 2005 gross receipts inclusion in the 2006 VAT computation is a factual one. The Court shall not brush aside the tax court's findings as long as supported by substantial evidence and not tainted by grave abuse.[97]

IV

AGIC's Availment of Tax Amnesty

Finally, AGIC insists that the assessments for deficiency VAT and late remittance of DST on insurance policies were extinguished by their availment of tax amnesty under RA 9480.

The CIR counters that while AGIC applied for tax amnesty, it failed to comply with the requirements under the tax amnesty law. More specifically, it did not submit its SALN as of December 31, 2005, which RA 9480 required to be attached to its application.

The Court agrees with the CIR.

The mere filing of an application for tax amnesty will not extinguish the taxpayer's tax liabilities. The taxpayer-applicant shall be immune from taxes specified under a tax amnesty law only upon

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[96] *Id.* at 31.

[97] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 224327, June 11, 2018, 866 SCRA 104, 113.

*completion* of the requirements set forth under the law itself and applicable tax issuances.[98]

In the present case, the CTA Division found that while AGIC lodged an application, they did not submit a SALN, a required attachment under RA 9480.[99] Aside from their bare claims that they in fact availed of tax amnesty, AGIC does not offer proof showing that they have fully complied with the requirements under RA 9480, particularly the requirement to submit a SALN. Thus, the Court shall no longer disturb the findings of the court below.

**WHEREFORE**, the instant petition is **DENIED**. The Decision dated January 4, 2016 of the Court of Tax Appeals *En Banc* in CTA EB Case No. 1223 (CTA Case No. 8191) is **AFFIRMED**.

**SO ORDERED.**

**HENRI JEAN PAUL B. INTING**
*Associate Justice*

WE CONCUR:

**MARVIC M.V.F. LEONEN**
*Associate Justice*
*Chairperson*

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[98] See *Commissioner of Internal Revenue v. Philippine Aluminum Wheels, Inc.*, 816 Phil. 638, 645-646 (2017), citing *Philippine Banking Corp. v. Commissioner of Internal Revenue*, 597 Phil. 363, 388 (2009).

[99] See Court of Tax Appeals Division Decision dated March 13, 2014, *id.* at 192-208.

**RAMON PAUL L. HERNANDO**
*Associate Justice*

**EDGARDO L. DELOS SANTOS**
*Associate Justice*

**RICARDO R. ROSARIO**
*Associate Justice*

## ATTESTATION

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

**MARVIC M.V.F. LEONEN**
*Associate Justice*
*Chairperson*

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**DIOSDADO M. PERALTA**
*Chief Justice*