REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

BLOAT AND OGLE, INC.,
Respondent.

CTA *EB* NO. 1578
(CTA Case No. 8682)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

SEP 18 2018
4:12 p.m.

x- x

DECISION

MANAHAN, J.:

Before the Court of Tax Appeals *En Banc* is the instant Petition for Review[1] filed on January 27, 2017, seeking the reversal of the Decision dated September 2, 2016 and the Resolution dated December 16, 2016, promulgated by the Third Division of this Court (Court in Division) in CTA Case No. 8682

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[1] EB Docket, pp. 4-9.

entitled, *"Bloat and Ogle, Inc. vs. Commissioner of Internal Revenue* , the dispositive portions of which read as follows:

Decision dated September 2, 2016

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED.** The Formal Letter of Demand No. 043A-B190-07 dated December 29, 2010, as well as Assessment Notices for deficiency income tax, value-added tax, expanded withholding tax, improperly accumulated earnings tax, along with compromise penalties and surcharges, amounting to Php676,668.43 for taxable year 2007, are hereby **CANCELLED** and **WITHDRAWN.**
>
> **SO ORDERED.**

Resolution dated December 16, 2016

> "**WHEREFORE**, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the Decision dated September 2, 2016 is **AFFIRMED** and **UPHELD.**"

THE FACTS

The facts, as found by the Division, are as follows:

> "BAOI filed its Monthly Remittance Return of Income Taxes Withheld on Compensation (BIR For No. 1601-C) for the year 2007 on the following dates:
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> xxx xxx xxx
>
> On February 11, 2008, BAOI filed an Amended Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604-CF), together with an Alphalist of Employees as of December 31 with no previous employer within the year. On the same date, it filed its Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (BIR Form No. 1604-E).
>
> On March 1, 2008, BAOI filed an Application for Registration Information Update (BIR Form No. 1905 changing

its registered address to Unit 18C Strata 300, P. Guevarra St., Sa Juan City, 1500.

On April 15, 2008, BAOI filed its Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) for the 1st, 2nd, 3rd and 4th Quarters of 2007 and its Annual Income Tax Return (BIR Form No. 1702) for 2007, using its old registered address.

On October 13, 2008, BIR Revenue Region No. 7 ("RR No. 7"), Revenue District No. 43, Pasig City, issued Tax Verification Notice ("TVN") No. 2003 00121121 covering all internal revenue taxes of petitioner for taxable year 2007, along with First Notice, both addressed to petitioner at its old registered address and received by petitioner's representative, a certain Lucil Vargas on October 25, 2008.

On November 4, 2008, RR No. 7, Revenue District No. 43, Pasig City, issued its Second Request for Presentation of Records, which was sent by registered mail to petitioner on November 7, 2008. However, the same were returned to sender with a note on the envelope which reads: "RTS moved out 11/11/08.

Revenue District No. 43, Pasig City then issued an undated Third and Final Notice with the following address – "Formerly (sic) address:18C Strata Suites 300 P. Guevarra St., the new registered address of petitioner. This was received by petitioner's representative, a certain Connie S. Galan.

On June 25, 2009, the Office of the Pasig City Treasurer issued a Certification that petitioner has retired its business license on February 11, 2008. This was followed by a letter dated July 9, 2009 from the Barangay Chairman of Barangay San Antonio, Pasig City stating that petitioner has yet to secure a Barangay Clearance for a Business Permit for 2008.

On August 27, 2009, the Chief of the Legal Division of RR No. 7 issued a *Subpoena Duces Tecum* against the President of petitioner at its old registered address, this was sent to petitioner by registered mail on September 3, 2009.

On September 14, 2009, the Senior Property Manager of Medical Plaza Ortigas Condominium Corporation issued a Certification stating that petitioner is a former tenant at Unit 1404 located at Medical Plaza Ortigas, 25 San Miguel Avenue, Pasig City; that petitioner is no longer occupying the said unit, and that has moved out two (2) years ago with no forwarding address or contact number given.

On October 13, 2010, a Notice of Informal Conference was sent to BAOI via registered mail at its new address.

On December 28, 2010, the Assessment Division of BIR RR No. 7 issued a Formal Letter of Demand ("FLD") with Demand Number 043-B190-07, with attached Details of Discrepancies, and Final Assessment Notices ("FAN") for Income Tax, CAT, Withholding EWT, Improperly Accumulated Earnings Tax, and Compromise Penalty at the address 16F Strata Suites, 300 P. Guevarra St., San Juan, Metro Manila. The FLD contains the following details:

xxx xxx xxx

On January 28, 2011, BIR RR No. 7 received BAOI's administrative protest dated January 27, 2011, disputing the FLD and the FAN.

On March 29, 2011, BIR RR No. 7 received BAOI's submission of the relevant documents in support of its protest.

On June 19, 2013, Ms. Ruth Vivian G. Gadia, Chief Collection Division, RR No. 7, wrote BAOI informing it of the reassignment of its case to Revenue Officer ("RO") Remedios May Roque ("Ms. Roque", who shall proceed with the collection of the said outstanding deficiency taxes through summary remedies; and requesting it "to settle the tax liabilities within ten (10) days from receipt of the notice otherwise, they shall be constrained to enforce the collection thru administrative summary remedies provided for by law, without further notice."

On July 31, 2013, BAOI filed the instant Petition for Review.

xxx xxx xxx

During trial in the Division level, respondent Commissioner of Internal Revenue filed his Answer and questioned the jurisdiction of the Court in this manner:

> "The Honorable CTA has no jurisdiction over the Petition for Review. The Letter dated 19 June 2013 does not constitute a Final Decision on Disputed Assessment. The petition filed by the petitioner pertains to a Letter dated 19 June 2013 (signed by the Chief of the Collection Division) and not to a Final Decision on Disputed Assessment."

In the assailed Decision[2], promulgated on September 2, 2016, the Court in Division granted the Petition for Review and consequently cancelled the subject Formal Letter of Demand and the Final Assessment Notices (FLD/FANs) for taxable year 2007.

Aggrieved, herein petitioner Commissioner of Internal Revenue filed on October 5, 2016, a Motion for Reconsideration, which was denied by the Court in a Resolution dated December 16, 2016.

On January 27, 2017, petitioner filed a Petition for Review with the Court *En Banc.*

On April 3, 2017, the Court issued a Resolution ordering respondent to file its Comment on the Petition for Review within ten (10) days from receipt thereof, after which the parties are directed to submit their respective memoranda.

The respondent failed to file its Comment to the Petition for Review which prompted the Court to direct the parties to submit their respective memoranda.[3]

The Records Verification Report dated October 25, 2017 shows that both parties failed to file their respective memoranda.

The instant Petition for Review was submitted for decision on November 23, 2017. [4]

Hence this Decision.

Issue

The issue raised by petitioner for the resolution of the Court *En Banc* is as follows:

> Whether the Third Division of the Honorable Court erred in not considering the herein assessments as final, executory and demandable by reason of the

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[2] EB Docket, pp.13-30.
[3] Court En Banc Resolution dated July 17, 2017, EB Docket, pp. 61-62.
[4] EB Docket, page 65.

failure of respondent to timely file the Petition for Review.

Petitioner's Arguments:

Petitioner reiterates the proposition that the Court has no jurisdiction to take cognizance of the Petition on the ground that the subject deficiency tax assessments have become final, executory and demandable.

Petitioner avers that the failure of respondent to submit relevant documents in support of its protest within the sixty (60) day period pursuant to Section 228 of the 1997 NIRC, as amended, made the assessments final and unappealable.

As a consequence, petitioner maintains that the Petition for Review was filed beyond the thirty (30) day period from the lapse of the 180-day period for the submission of relevant documents to support the protest and this petitioner asserts, made the assessments final and executory.

The other contention of petitioner relates to the Final Decision on the Disputed Assessment (FDDA) supposedly issued by its office. Petitioner argues that the letter dated June 19, 2013[5] signed by the Chief of the Collection Division is not the FDDA appealable to this Court. Petitioner maintains that such letter is merely a notice informing the taxpayer that the case was re-assigned to another revenue officer and that said office is authorized to proceed with the collection of deficiency taxes through summary remedies. Petitioner concludes that the tenor of such letter is not the final decision envisioned by the law and implementing regulations to be the FDDA appealable to the Court.

Lastly, petitioner takes issue with the signatory to the supposed "FDDA" because it is only the Regional Director who is authorized to sign it. He further avers that the Chief of the Collection Division who signed the questioned FDDA, has no authority to sign this document.

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[5] Exhibit "P-5", Court Docket, page 404.

Respondent no longer filed any Comment nor Memorandum to rebut the arguments propounded by the petitioner in its Petition for Review with the Court *En Banc.*

Ruling of the Court *En Banc*

The Court must first resolve the issue of jurisdiction as this will be determinative of the authority of the Court to resolve the other issues raised in this case.

Petitioner's argument against the jurisdiction of this Court is two-pronged, one is based on the finality of the tax assessments issued against the respondent, the other is based on the type and nature of the FDDA appealable to this Court.

Petitioner maintains that the failure of respondent to submit relevant supporting documents within sixty (60) days from the filing of its protest resulted to the assessments becoming final and executory pursuant to the provisions of Section 228 of the 1997 NIRC.

We quote the pertinent portions of Section 228 of the 1997 NIRC:

> "SEC. 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:
>
> xx xxx xxx
>
> 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.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty

> (30) days from receipt of the assessment 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.**" (emphasis supplied)

xxx xxx xxx

It is clear from the aforequoted provision that the taxpayer must submit relevant supporting documents *within sixty (60) days* from filing of the protest otherwise the tax assessments shall become final.

We analyze the records and evidence to determine the veracity of petitioner's contentions.

During trial in the Division level, respondent Bloat and Ogle, presented a copy of the protest letter filed against the FLD/FANs dated January 27, 2011 and received by the BIR on January 28, 2011.[6] It also presented the transmittal letter dated March 29, 2011 proving the submission of the documents in support of the protest which was received by the BIR on March 29, 2011.[7]

Counted from January 28, 2011 which is the date the protest was filed with the BIR, the submission of the supporting documents on March 29, 2011 is well within the sixty-day period mandated by law. In fact, March 29, 2011 is the sixtieth day counted from January 28, 2011. Note that Section 228 of the 1997 NIRC provides that the sixty-day period shall be reckoned from the date of filing of the protest which in this case was on January 28, 2011. Thus, with the filing of the timely protest and its relevant supporting documents, the FANs did not become final, executory and demandable.

As to petitioner's second contention that the letter dated June 19, 2013 signed by the Chief of the Collection Division, is not the FDDA appealable to this Court, we find this likewise without merit.

Petitioner insists that the said letter does not have the tone of finality characteristic of an FDDA. On the contrary, petitioner insists that this letter construed by the respondent

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[6] Exhibit "P-3", Court Docket, Volume I, pp. 392-398.
[7] Exhibit "P-4", Court Docket, Volume I, pp. 398-403.

as the FDDA merely informs the taxpayer of the re-assignment of the case to another revenue officer and does not communicate in any way the final decision of the petitioner on the protest filed.

We quote relevant portions of the subject Letter dated June 19, 2013[8] and signed by the Chief of the Collection Division, Ruth Vivian G. Gadia:

> "In view of the creation of the Arrears Management Team and the centralization of the collection enforcement function in the Collection Division of this Region, please be informed that the enforcement of the abovementioned case has been reassigned to Revenue Officer Remedios May Roque pursuant to Memorandum of Assignment xxx xxx xxc. **Consequently, RO R,A. Roque shall proceed with the collection of the outstanding deficiency taxes through summary remedies.**
>
> In this connection, you are requested to settle the above stated tax liability within ten (10) days from receipt of this Notice. **Otherwise, we shall be constrained to enforce the collection thereof thru the administrative summary remedies provided by law, without further notice."** (emphasis supplied)

The statement that the collection of the alleged deficiency taxes will proceed via "administrative summary remedies" should taxpayer fail to pay the deficiency taxes within ten days from receipt of said letter, is a clear denial of the protest filed by respondent because it no longer opens the avenue for reconsideration of the findings of the examiner re the alleged tax deficiencies of respondent. The option to collect the deficiency taxes as communicated by the representative of respondent signifies finality of the action on the protest which would prompt a taxpayer to avail of the judicial remedies to reverse said decision.

We then agree with the Court in Division when it upheld the aforequoted letter to be the FDAA as the final decision appealable to this Court, and we quote:

> "According to the letter, in the event wherein BAOI fails to pay the alleged deficiency taxes. The BIR 'shall proceed with the collection of the said outstanding deficiency taxes through summary remedies" It emphasizes the final nature of the letter, thus, it is right for the BAOI to consider this as the final

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[8] Exhibit "P-5", Court Docket, Volume I, page 404.

> decision on its protest, which prompted it to file the instant Petition for Review."

On various occasions, the Supreme Court has interpreted certain language used and actions taken by revenue officials to be the final decision appealable to this Court. The reason for the variety in decisions of this nature stems from the fact that in some instances, no such letter with the title "Final Decision on Disputed Assessment" is issued, instead a Warrant of Garnishment (WOG) or a Warrant of Distraint/Levy (WDL)or a Final Notice Before Seizure (FNBS) and other untitled official notices etc., are issued leaving the taxpayers and ultimately the courts in a quandary on how to interpret which letter or action is contestable before this Court.

In one case, the Supreme Court held that a Final Notice Before Seizure (FNBS) is equivalent to a denial because of the use of the words "last opportunity to pay, otherwise its properties would be subject to distraint and levy."[9]

In spite of the variety of decisions on what may be treated as a final decision appealable to this Court, the unifying rule is that **there must be finality in the tenor of the language which should be communicated unequivocally to the taxpayer.** In short, the taxpayer must be made aware, in no uncertain terms, that its protest has been denied giving the impression that recourse to the courts becomes a necessity.

In the case of *CIR vs. Isabela Cultural Corporation*[10], the Supreme Court ascribed importance to the wordings used in the letter and the "threat" of collection to determine whether or not the letter is to be considered as the final decision, and we quote:

> "The letter itself clearly stated that respondent was being given this LAST OPPORTUNITY to pay, otherwise its properties would be subject to distraint and levy. How then could it have been made to believe that its request for reconsideration was still pending determination, despite the actual threat of seizure of its properties?"

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[9] CIR vs. Isabela Cultural Corporation, G.R. No. 135210 dated July 11, 2001.
[10] G.R. No. 135210, July 11, 2001. *an*

In *CIR vs. Ayala Securities Corporation and the Honorable Court of Tax Appeals*[11], the Supreme Court made mention that finality is to be construed on the letter's reiteration of the assessment issued against the taxpayer and the subsequent demand for its immediate payment.

In the questioned letter dated June 19, 2013, we find that the words '*otherwise, we shall be constrained to enforce collection thereof through administrative summary remedies*" coupled with the words "*without further notice*" signify finality leaving the taxpayer with no recourse but to seek judicial redress to restrain or at least delay the collection efforts of the BIR.

Guided by jurisprudence and the spirit of the law, this Court is also reminded of the admonition made by the Supreme Court to the Commissioner of Internal Revenue in the case of *Allied Banking Corporation vs. CIR*[12] when it comes to communicating its decisions to the taxpayer, thus:

> "The Commissioner of Internal Revenue (CIR) as well as his duly authorized representative must indicate clearly and unequivocally to the taxpayer whether an action constitutes a final determination on a disputed assessment. Words must be carefully chosen in order to avoid any confusion that could adversely affect the rights and interest of the taxpayer.
>
> xxx xxx xxx
>
> We have time and again reminded the CIR to indicate, in a clear and unequivocal language, whether his action on a disputed assessment constitutes his final determination thereon in order for the taxpayer concerned to determine when his or her right to appeal to the tax court accrues. Viewed in the light of the foregoing, respondent is now estopped from claiming that he did not intend the Formal Letter of Demand with Assessment Notices to be a final decision."[13]

The other issue raised by petitioner on the supposed FDDA is the lack of authority of the Chief of the Collection Division to sign the questioned letter bolstering his theory that the said letter is not an FDDA appealable to this Court.

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[11] CIR vs. Ayala Securities Corporation and the Honorable Court of Tax Appeals, G.R. No. L-29485, March 31, 1976.
[12] G.R. No. 175097, February 5, 2010.
[13] Allied Banking Corporation vs. CIR, G.R. No. 175097, February 5, 2010.

We do not agree.

Section 7 of the 1997 NIRC authorizes the Commissioner of Internal Revenue to delegate the powers vested in him by law to subordinate officials with the rank equivalent to a division chief or higher, and we quote, *viz:*

> Section 7. *Authority of the Commissioner to Delegate Power.* – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or **such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation by the Commissioner xxx xxx xxx". (emphasis supplied)

The Supreme Court, in the case of *Oceanic Wireless Network vs. CIR, et.al.,*[14] has recognized the delegability of some of the powers of the Commissioner of Internal Revenue which includes the power to sign demand letters issued to delinquent taxpayers and we quote:

> "As amended by Republic Act No. 8424, Section 7 of the Code authorizes the BIR Commissioner to delegate the powers vested in him under the pertinent provisions of the Code to any subordinate official with the rank equivalent to a division chief or higher, except the following:
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> xxx xxx xxx
>
> **It is clear from the above provision that the act of issuance of the demand letter by the Chief of the Accounts Receivable and Billing Division does not fall under any of the exceptions that have been mentioned as non-delegable."** (emphasis supplied)

It is important to point out that the above resolution of the issues raised by petitioner in its Petition for Review does not alter this Court's focus on the pivotal element that led to the cancellation of the deficiency tax assessments for taxable year 2007. The Court in Division found that the failure of petitioner to establish that a PAN was issued and received by respondent is tantamount to a violation of its right to due process affecting

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[14] G.R. No. 148380, December 9, 2005.

the validity of the FANs which were subsequently issued against the respondent. We quote portions of the said Decision[15], viz:

> "Nonetheless the undated PAN was still addressed at BAOI at its old registered address. This discrepancy remained unexplained by respondent, neither did she provide proof to support the claim that the PAN was indeed sent to BAOI. Thus for failure to establish that the PAN was sent and received by the BAOI, the presumption that the PAN was never issued to BAOI remains, which is a violation of BAOI's right to due process.
>
> Section 228 of the 1997 NIRC and Revenue Regulation (RR) No. 12-99 clearly state that the taxpayer shall be informed in writing of the law and the facts on which the assessment is based and it should be given the opportunity to respond to the PAN. It further provides that in the event that the taxpayer fails to respond to the PAN, the corresponding assessment will be issued.
>
> The Supreme Court has already ruled that failure to strictly comply with the notice requirements prescribed under Section 228 of the 1997 NIRC, as amended and RR 12-99, is a denial of due process."

It is unfortunate that petitioner, in its Petition for Review with the Court *En Banc*, also failed to challenge nor rebut the findings of the Court in Division that a PAN was never received by respondent, instead he tried to re-focus the angle of attention to the non-submission of supporting documents and the nature of the supposed decision appealable to this Court. Neither issue could garner the same primacy in the eyes of this Court than the failure on the part of the petitioner to establish the fact of issuance and receipt of the PAN by respondent. The non-receipt of the PAN in this case was determinative of the validity of the subsequent FANs.

In implementing the aforequoted Section 228 of the 1997 NIRC, the Bureau of Internal Revenue (BIR) issued Revenue Regulations (RR) No. 12-99 which provided the due process requirements in the issuance of a deficiency tax assessments, to wit:

> Section 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

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[15] EB Docket, pp. 13-30.

xx xxx xxx

> 3.1.2 Preliminary Assessment Notice (PAN). – If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based. xxx xxx xxx

The Supreme Court in the case of *CIR vs. Metro Star Superama*[16] affirms the mandatory character of the issuance of the PAN and links its non-issuance to the invalidity of the tax assessments, and we quote

> "Indeed Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive not merely a formal requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations – that taxpayers should be able to present their case and adduce supporting evidence.
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> xxx xxx xxx
>
> **Thus for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. 8424, the assessment made by the CIR is void."** (emphasis supplied)

Having established that respondent never received the PAN, the events that came thereafter became irrelevant such as the issuance of the FANs, the filing of the protest, the submission of supporting documents and the issuance of the FDDA.

A void assessment bears no valid fruit.[17]

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[16] G.R. No. 185371, December 8, 2010.
[17] Samar-I Electric Cooperative vs. CIR, G.R. No. 193100, December 10, 2014.

It bears stressing that the awesome power of taxation is not without its limits as expressed by the Supreme Court in the case of *CIR vs. BASF Coating + Inks Phils., Inc.* [18], and we quote:

> "But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate that the law has not been observed."

Thus, we concur with the Court in Division that the petitioner "failed to observe due process when he did not serve the PAN to BAOI", thus the FLD and the FANs that were issued are rendered void.

WHEREFORE, the Petition for Review dated January 23, 2017 filed by the Commissioner of Internal Revenue is hereby **DENIED,** for lack of merit.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[18] G.R. No. 198677, November 26, 2014.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

BLOAT AND OGLE, INC.,
Respondent.

CTA EB No. 1578
(CTA Case No.8682)

Present:
Del Rosario, P.J.,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

Promulgated:

SEP 18 2018 4:12 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by petitioner Commissioner of Internal Revenue and in upholding the findings of the Court in Division that petitioner failed to observe due process when he did not serve a Preliminary Assessment Notice (PAN) to respondent. As a consequence thereof, the Formal Letter of Demand (FLD) and Final Assessment Notices (FANs), all dated December 28, 2010, were rendered void.

In addition thereto, I submit that the FLD and FANs are void as no valid Letter of Authority (LOA) was issued to authorize the audit and examination of respondent's records for the year 2007.

Records disclose that the disputed assessment emanated from the **Tax Verification Notice (TVN) 2003 00121121 dated October**

13, 2008[1] **issued by petitioner, through Revenue District Officer (RDO) Rey Asterio L. Tambis**, which authorized Revenue Officer Melirose Trazona to verify the supporting documents and/or pertinent records of respondent covering the taxable period 2007, relative to its "ALL INTERNAL REVENUE TAXES". On May 19, 2009, RDO Tambis issued a Memorandum re-assigning the audit of respondent's records to Revenue Officer Ofelia Yumang and Group Supervisor Aurea Guevarra.

It is apparent that the authority of the Revenue Officers to audit respondent's supporting documents and pertinent records for the taxable year 2007 emanated, **not from a Letter of Authority issued by petitioner or the concerned Revenue Regional Director**, but from the TVN and Memorandum issued by **RDO Tambis**.

While respondent failed to raise the issue of lack of a valid LOA, I am of the view that the Court *En Banc* is not precluded from considering this issue as the absence of a valid LOA renders an assessment intrinsically void.[2] A void assessment bears no fruit,[3] and estoppel cannot operate to give effect to an assessment which is *void ab intio*.

In *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[4] the Supreme Court reiterated and confirmed the CTA's power and jurisdiction to resolve the issue on the authority of the ROs to conduct the audit, albeit the same was not raised by the parties in their pleadings or memoranda, *viz.*:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
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> Under Section 1, Rule 4 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
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> > 'SECTION 1. Rendition of judgment. - x x x In deciding the case, the Court may not limit itself to the

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[1] Exhibit "R-1".
[2] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,* G.R. No. 183408, July 12, 2017; *Medicard Philippines Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743. April 5, 2017; *Commissioner of Internal Revenue vs. Sony Philippines, Inc.,* G.R. No. 178697, November 17, 2010.
[3] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010.
[4] G.R. No. 183408, July 12, 2017.

> issues stipulated by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case.'
>
> The above section is clearly worded. **On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda.** The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter." *(Boldfacing supplied)*

For want of a valid LOA, ***Lancaster*** ultimately resolved to declare the assessment void, *viz.*:

> "Xxx. As the CTA decreed, Assessment Notice LTAID IIIT98-00007, dated 11 October 2002, in the amount of P6,466,065.50 for deficiency income tax should be cancelled and set aside. **<u>The assessment is void for being issued without valid authority</u>**." *(Boldfacing and underscoring supplied)*

In other words, although the parties did not specifically put into issue the authority of the Revenue Officers to conduct the audit that ultimately led to the issuance of the present disputed tax assessment, I submit that the Court has jurisdiction to rule upon matters which are vital in the disposition of the case; otherwise, the Court would abdicate its primary objective which is the just resolution of disputes brought before it.[5]

In the present case, the crux of the controversy revolves around whether respondent may be held liable for deficiency taxes subject of the FLD and FANs issued by petitioner. The issue about the Revenue Officer's authority to conduct the audit necessarily relates thereto as its absence makes the assessment a nullity. The Supreme Court's pronouncement in *Medicard Philippines Inc. vs. Commissioner of Internal Revenue*[6] declaring that an LOA is indispensable to the validity of an assessment is instructive, *viz.*:

> *"The absence of an LOA violated MEDICARD's right to due process*
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> xxx xxx xxx

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[5] *Ramona T. Logronio vs. Roberto Taleseo,* G.R. No. 134602, August 6, 1999.
[6] G.R. No. 222743, April 5, 2017.

> xxx xxx xxx. In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: **to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.**
>
> **That the BIR officials herein were not shown to have acted unreasonably is beside the point <u>because the issue of their lack of authority was only brought up during the trial of the case</u>. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. <u>Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.</u>"** *(Citations omitted; boldfacing and underscoring supplied)*

To be sure, the National Internal Revenue Code (NIRC) of 1997, as amended, is clear and categorical in requiring an authority from the **CIR or from his duly authorized representatives** before an examination of a taxpayer may be made.[7] Section 6 thereof provides:

> "**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. xxx" *(Boldfacing supplied)*

An officer of the Bureau of Internal Revenue cannot simply subject a taxpayer to audit without valid authority issued for that purpose. Section 13 of the NIRC of 1997, as amended, provides:

> "**SEC. 13**. *Authority of a Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance,

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[7] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 222743, April 5, 2017.

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> upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions** in any district may, **pursuant to a Letter of Authority** issued by the **Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order **to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Boldfacing and underscoring supplied)*

Even assuming that the TVN and Memorandum may be treated as an LOA, the same are still void considering that they were issued by an RDO and not by a Regional Director. Section 13 of the NIRC of 1997, as amended, is categorical in stating that a Revenue Officer cannot subject a taxpayer to audit without a valid **LOA issued by the Regional Director** for that purpose.

Since Section 13 of the NIRC of 1997, as amended, is plain and simple in its language, there is no need for further interpretation. In the language of *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*,[8] citing *Rizal Commercial Banking Corporation vs. Intermediate Appellate Court and BF Homes, Inc.*:[9]

> "**It bears stressing that the first and fundamental duty of the Court is to apply the law. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application** (Cebu Portland Cement Co. vs. Municipality of Naga, 24 SCRA-708 [1968])." *(Boldfacing supplied)*

The general rule of requiring adherence to the letter in construing statutes applies with particular strictness to tax laws and provisions of a taxing act are not to be extended by implication.[10]

The issuance of LOAs is not just a plain ministerial act but calls for the exercise of discretion by the Regional Director. The authority to issue LOAs cannot be further delegated to an RDO. Indeed, **there is nothing in the NIRC which gives the Regional Director the power to delegate his duty of issuing LOAs or substitute another in his place**. On this point, the pronouncement in *NPC Drivers and*

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[8] G.R. No. 196907, March 13, 2013.
[9] G.R. No. 74851, December 9, 1999.
[10] *Commissioner of Internal Revenue vs. Julieta Ariete,* G.R. No. 164152, January 21, 2010.

Mechanics Association, (NPC DAMA) vs. The National Power Corporation[11] is instructive, *viz.*:

> "We agree with petitioners. In enumerating under Section 48 those who shall compose the National Power Board of Directors, the legislature has vested upon these persons the power to exercise their judgment and discretion in running the affairs of the NPC. Xxx xxx xxx. It is to be presumed that in naming the respective department heads as members of the board of directors, the legislature chose these secretaries of the various executive departments on the basis of their personal qualifications and acumen which made them eligible to occupy their present positions as department heads. **Thus, the department secretaries cannot delegate their duties as members of the NPB, much less their power to vote and approve board resolutions, because it is their personal judgment that must be exercised in the fulfillment of such responsibility**.
>
> Xxx, the rule enunciated in the case of *Binamira v. Garrucho* is relevant in the present controversy, to wit:
>
> > **An officer to whom a discretion is entrusted cannot delegate it to another, the presumption being that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and unless the power to substitute another in his place has been given to him, he cannot delegate his duties to another**.
>
> Xxx." *(Citations omitted; Boldfacing supplied)*

In fine, for want of a valid LOA, issued by the Regional Director, the audit of respondent's financial records and documents for the taxable year 2007 and the FLD and FANs issued as a consequence thereof are void.

All told, I VOTE to DENY the Petition for Review filed by the Commissioner of Internal Revenue.

ROMAN G. DEL ROSARIO
Presiding Justice

[11] G.R. No. 156208, September 26, 2006.