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

## *En Banc*

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| **COMMISSIONER OF INTERNAL REVENUE,** *Petitioner,* | **CTA *EB* NO. 1535** (CTA Case No. 8655) |
| *-versus -* | **Present:** **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.* |
| **MCDONALD'S PHILIPPINES REALTY CORPORATION,** *Respondent.* | **Promulgated:** JAN 04 2018 3:55 p.m. |

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# *DECISION*

***BAUTISTA, J.:***

## *The Case*

Submitted for decision to the Court *En Banc* under *Section 4(b)*[1], *Rule 8 of the 2005 Revised Rules of the CTA, as amended ("RRCTA"),* is a Petition for Review[2] of the Decision[3] dated June 1, 2016 ("Assailed

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[1] SEC. 4. *Where to appeal; mode of appeal.* –

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *En Banc* shall act on the appeal.

[2] *Rollo, CTA EB No. 1535, Petition for Review ("PFR"),* pp. 10-67, with annexes.

[3] *Records, CTA Case No. 8655, Vol. 2, Assailed Decision,* pp. 834-853; penned by Associate Justice Erlinda P. Uy, with Presiding Justice Roman G. Del Rosario concurring, while Associate Justice Cielito N. Mindaro-Grulla was on leave.

Decision"), and the Resolution[4] dated October 3, 2016 ("Assailed Resolution"), rendered by the Court of Tax Appeals ("CTA") First Division ("Court in Division") in CTA Case No. 8655, praying for the Court *En Banc* to *(1)* give due course to the present Petition for Review, *(2)* reverse and set aside the Assailed Decision and the Assailed Resolution of the Court in Division, *(3)* render a new decision dismissing the original Petition for Review filed before the Court *a quo*, and *(4)* find respondent liable to pay the amount of Php16,229,506.83 representing deficiency value-added tax ("VAT") for taxable year ("TY") 2006, inclusive of interest.[5]

## *The Parties*[6]

Petitioner Commissioner of Internal Revenue ("CIR") is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR"), vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including *inter alia*, the power to decide disputed assessments and cancel and abate tax liabilities, pursuant to the provisions of the *1997 National Internal Revenue Code, as amended ("1997 NIRC")* and other tax laws, rules, and regulations. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent McDonald's Philippines Realty Corporation ("MPRC") is a corporation organized and existing under the laws of Delaware, U.S.A.; and is licensed to do business in the Philippines through its Philippine branch, with office address at 17th Floor Citibank Center Building, Paseo de Roxas, Salcedo Village, Makati City.

## *The Facts*

As stated in the Assailed Decision, the factual antecedents of the case are as follows:

> [Respondent] established its branch office in the Philippines for the purpose of purchasing and leasing back

[4] *Records, Vol. 2, Assailed Resolution,* pp. 904-911; penned by Associate Justice Erlinda P. Uy, with Presiding Justice Roman G. Del Rosario and Associate Justice Cielito N. Mindaro-Grulla concurring.
[5] *Rollo, PFR, Prayer,* p. 31.
[6] *Records, Vol. 2, Assailed Decision, The Facts,* pp. 834-835.

two (2) existing McDonald's Restaurants to Golden Arches Development Corporation [("GADC")] and to engage in the development of new McDonald's restaurant sites which will then be leased to McGeorge Foods, Inc.

On August 31, 2007, the BIR Large Taxpayers Service [("LTS")] issued Letter of Authority [("LOA")] No. 00006717 authorizing Eulema Demadura, Lover Loveres, Josa Gomez, and Ernalyn dela Cruz, BIR Revenue Officers [("ROs")] of LTDO No. 122, Makati, to examine the books of accounts and other accounting records of [respondent] for all internal revenue taxes covering the period from January 1, 2006 until December 31, 2006.

On January 25, 2011, [respondent] received a copy of [petitioner]'s Formal Letter of Demand [("FLD")] dated January 11, 2011 with attached Audit Result/Assessment Notice No. LTDO-122-VT-2006-00013 dated January 11, 2011 and Audit Result/Assessment Notice No. LTDO-122-IT-2006-00014 dated January 31, 2011 with Details of Discrepancies wherein [petitioner] demanded payment of [respondent]'s alleged deficiency income tax and VAT liabilities for CY 2006 in the aggregate amount of [Php]17,486,224.38, inclusive of interest.

On February 23, 2011, [respondent] filed a Protest Letter against the FLD, requesting the cancellation and withdrawal of the deficiency income tax and VAT assessments for CY 2006.

Thereafter, on April 18, 2013, [respondent] received a copy of [petitioner]'s Final Decision on Disputed Assessment [("FDDA")] with attached Audit Result/Assessment Notice No. LTDO-122-VT-2006-00013 dated January 11, 2011 with Details of Discrepancies. In the FDDA, [petitioner] (1) granted [respondent]'s request for cancellation of [petitioner]'s deficiency income tax assessments for calendar year 2006, and (2) reiterated its demand for payment of [respondent]'s alleged deficiency VAT for [CY] 2006 in the total amount of [Php]16,229,506.83.

Aggrieved by [petitioner]'s decision, [respondent] filed the instant Petition for Review on May 20, 2013.

[Petitioner] filed [his] Answer on August 22, 2013, interposing the following Special and Affirmative Defenses, to wit:

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On June 1, 2016, the Court in Division promulgated the Assailed Decision[8], the dispositive portion thereof reads as follows:

> **WHEREFORE**, in light of the foregoing consideration, the instant Petition for Review is **GRANTED.** The deficiency VAT assessment issued by [petitioner] against [respondent] for CY 2006 is **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED.**[9]

On June 17, 2016, petitioner filed by registered mail a Motion for Reconsideration (Re: Decision Dated 1 June 2016)[10], to which respondent filed its Comment/Opposition (Re: Motion for Reconsideration Dated June 17, 2016)[11] by registered mail on July 29, 2016.

On October 3, 2016, the Court in Division promulgated the Assailed Resolution[12], with the following dispositive portion:

> **WHEREFORE**, premises considered, [petitioner]'s Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED.**[13]

On October 21, 2016, petitioner filed a Motion for Extension of Time to File Petition for Review[14], which was granted by the Court *En Banc* in a Minute Resolution[15] dated October 25, 2016.

On November 7, 2016, petitioner filed by registered mail the instant Petition for Review[16] with the Court *En Banc*, docketed as CTA *EB* No. 1535.

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[7] *Records, Vol. 2, Assailed Decision, The Facts,* pp. 835-836.
[8] *Id.* at 834-853.
[9] *Id., Dispositive Portion,* p. 853; emphases retained.
[10] *Records, Vol. 2, Motion for Reconsideration (Re: Decision Dated 1 June 2016),* pp. 856-865.
[11] *Id., Comment/Opposition (Re: Motion for Reconsideration Dated June 17, 2016),* pp. 881-897.
[12] *Id., Assailed Resolution,* pp. 904-911.
[13] *Id., Dispositive Portion,* p. 911; emphases retained.
[14] *Rollo, Motion for Extension of Time to File Petition for Review,* pp. 1-5.
[15] *Id., Minute Resolution,* p. 6.
[16] *Id., PFR,* pp. 10-67, with annexes.

On December 16, 2016, the Court *En Banc* issued a Resolution[17] requiring respondent to file its comment, not a motion to dismiss; to which it complied by filing a Comment (Re: Petition for Review Dated November 7, 2016)[18] on January 23, 2017, after being granted[19] an extension by the Court *En Banc*.

On February 13, 2017, the Court *En Banc* issued a Resolution[20] giving due course to the Petition for Review and ordering the parties to file their respective Memoranda.

On March 24, 2017, respondent filed a Motion for Extension of Time to File Memorandum[21]; which was granted[22] by the Court *En Banc* on March 28, 2017.

With the filing of respondent's Memorandum[23] on April 17, 2017, and the issuance of a Records Verification Report[24] dated April 19, 2017 stating that petitioner failed to file his Memorandum, the Court *En Banc* resolved[25] to submit the case for decision on May 9, 2017; hence this Decision.

Thereafter, on June 5, 2017, petitioner submitted a Motion to Admit Attached Memorandum with Entry of Appearance[26]. On June 29, 2017, the Court *En Banc* then required[27] respondent to file its comment; to which it complied by filing a Comment (Re: CIR's Motion to Admit Attached Memorandum)[28] on August 14, 2017.

On September 19, 2017, the Court *En Banc* issued a Resolution[29] denying petitioner's Motion to Admit Attached Memorandum.

## *The Issues*[30]

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[17] *Rollo, Resolution,* pp. 70-71.
[18] *Id., Comment (re: Petition for Review Dated March 9, 2016),* pp. 77-99.
[19] *Rollo, Motion for Extension of Time to File Comment (Re: Petition for Review Dated November 7, 2016),* pp. 72-75; *Rollo, Minute Resolution,* p. 76.
[20] *Rollo, Resolution,* pp. 101-102.
[21] *Id., Motion for Extension of Time to File Memorandum,* pp. 103-105.
[22] *Id., Minute Resolution,* p. 106.
[23] *Id., respondent's Memorandum,* pp. 107-131.
[24] *Id., Records Verification Report,* p. 132.
[25] *Id., Resolution,* pp. 134-135.
[26] *Rollo, Motion to Admit Attached Memorandum with Entry of Appearance,* unnumbered pages.
[27] *Id., Resolution,* pp. 137-138.
[28] *Id., Comment (Re: CIR's Motion to Admit Attached Memorandum),* pp. 145-151.
[29] *Id., Resolution,* pp. 153-156.
[30] *Id., PFR, Issues to be Tried and Resolved,* pp. 21-22.

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WHETHER THE RO WHO CONDUCTED THE AUDIT INVESTIGATION OF RESPONDENT'S BOOKS OF ACCOUNTS WAS AUTHORIZED TO DO SO;

WHETHER RESPONDENT IS ESTOPPED FROM QUESTIONING THE AUTHORITY OF THE RO WHO CONDUCTED THE AUDIT EXAMINATION; AND

WHETHER RESPONDENT IS LIABLE FOR DEFICIENCY VAT IN THE TOTAL AMOUNT OF PHP16,229,506.83, INCLUSIVE OF INTEREST FOR TY 2006.

***Petitioner's Arguments***[31]

On one hand, petitioner argues that the RO has authority to conduct the audit on MPRC's tax liability for TY 2006; and that *paragraph 17 of Revenue Memorandum [Order] ("RMO") No. 12-2007* refers to original issuances of mission orders, correspondence letters, referral memoranda, or any other similar orders; thus, it is not applicable to a case where an LOA was already issued authorizing the audit of a taxpayer. Petitioner states that a subsequently issued referral memoranda or memorandum of assignment derives its authority from the original LOA; that they are given to other ROs to continue the audit investigation made by the original ROs; that under *RMO No. 30-2000*, only one LOA *per* taxable year can be issued to a taxpayer; that it is commonly known that the ROs indicated in the original LOA will not always complete their audit investigation due to unforeseen circumstances; and that *Section 17 of the 1997 NIRC* provides for the transfer or reshuffling of ROs.

Petitioner posits that *Section 13 of the 1997 NIRC* is not absolute, invoking *RMO No. 8-2006*, which states that where both the RO and the Group Supervisor ("GS") have resigned, retired, or transferred to another revenue region, the case shall be reassigned to another RO under the supervision of another GS within the same Revenue District Office ("RDO"); that it has been the standard operating procedure to issue a memorandum to other ROs who will continue the audit of the original RO who has been reassigned; that an RMO is

[31] *Rollo, PFR, Arguments/Discussion*, pp. 22-31.

an issuance directed to a BIR personnel containing directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow, and the like, which are necessary to carry out programs or to achieve policy goals and objectives; that the RMO relied upon by respondent does not grant it a vested right over the internal work procedure of the BIR; and that any violation in the said RMO would only result in the administrative liability of the RO, but it would not affect the assessment against respondent.

Petitioner also points out that even without a valid LOA, he has authority to investigate a taxpayer for deficiency VAT; that the *1997 NIRC* authorizes the CIR to issue tax assessments other than by force of LOAs alone, such as on the basis of the best evidence obtainable, inventory-taking, surveillance, prescribing presumptive gross sales and receivables, and even jeopardy assessments without the benefit of an audit.

Further, petitioner insists that respondent is estopped from questioning the authority of the RO due to its active participation in the audit investigation; that respondent never questioned the RO's authority during the investigation; and that it is only when it received an adverse assessment did it complain that the RO had no authority to conduct the examination. Petitioner goes on to say that to uphold the validity of the assessment would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need; and that it would be more equitable if petitioner's lapses were allowed to pass and consequently uphold the waivers in order to support the principle.

***Respondent's Counter-Arguments***[32]

On the other hand, respondent contends that the arguments raised by petitioner are mere restatements of its arguments in his Motion for Reconsideration of the Assailed Decision; and that said arguments have already been exhaustively considered and eventually dismissed by the Court in Division; hence, should be denied outright for lack of merit.

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[32] *Rollo, respondent's Memorandum, Discussion,* pp. 113-129.

Respondent counter-argues that RO Rona B. Marcellano ("RO Marcellano"), GS Frances E. Leonida, and GS Juvy S. Dela Pena had no authority to investigate its books of accounts and other accounting records for CY 2006, and this was not disputed by petitioner; and that as held by the Court in Division, the LOA is the jurisprudentially recognized document which gives the ROs named therein the power to examine the books of account and other accounting records of a taxpayer. Respondent cites the case *CIR v. Sony Philippines, Inc.*[33], wherein the Supreme Court held that there must be a grant of authority before any RO can conduct an examination or assessment; that the RO so authorized must not go beyond the authority given; and that in the absence of such authority, the assessment is a nullity.

Respondent also contends that *Section 13 of the 1997 NIRC* provides that the requirement for the issuance of an LOA to an RO is mandatory. Respondent challenges petitioner's interpretation of *RMO No. 8-2006* which allows the reassignment of a case to another RO under the supervision of another GS within the same RDO in situations wherein the handling RO has resigned, retired, or transferred to another Revenue Region. Respondent contends that *RMO No. 8-2006* applies to cases where the audit has already been completed and the report of investigation has been returned to the investigating office for compliance with additional requirements; that it does not authorize an RO to examine a taxpayer's books of accounts pursuant to a mere memorandum; that to interpret it otherwise would run counter to *Section 13 of the 1997 NIRC;* and that administrative issuances must not override, but must remain consistent with the law they seek to apply and implement.

Respondent contends that there is nothing in *RMO No. 12-2007* that would lead to the conclusion that the prohibition in *paragraph 17* applies only to original issuances of referral memoranda; and that the mere fact that Referral Memorandum No. 122-LOA-1208-00039 ("Referral Memorandum") states that the transfer of the tax docket to RO Marcellano was made pursuant to LOA No. 00006717, does not necessarily give the Referral Memorandum the same force and effect as the original LOA. Respondent cites *RMO No. 43-90* and *Strawberry Foods Corp. v. CIR*[34], wherein the Court in Division ruled that the assessment is void for lack of authority to conduct the same, and *Ithiel Corporation v. CIR*[35] wherein the Court in Division also ruled

[33] G.R. No. 178697, November 17, 2010, 635 SCRA 234.
[34] CTA Case No. 8569, January 7, 2016; *Entry of Judgment* was issued on August 2, 2016, certifying that the case has become final and executory.
[35] CTA Case No. 8689, July 4, 2016.

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that a memorandum of assignment is not a valid substitute for a LOA to authorize an RO to examine a taxpayer's books of accounts and other accounting records in relation to his/her/its tax liabilities.

Respondent maintains that it is not estopped from questioning the authority of RO Marcellano; that the elements of estoppel are wanting in this case; that respondent raised the RO's lack of authority in their reply to the Preliminary Assessment Notice ("PAN"); that respondent merely complied in good faith with the RO's requests for documents, believing that the RO conducting the examination had the requisite authority to do so; and citing *CIR v. Kudos Metal Corporation*[36], respondent insists that the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with *RMC No. 43-90* and *RMO No. 12-2007.*

### *The Ruling of the Court En Banc*

At the outset, it must be stated that the issues and the arguments raised by petitioner are the same issues he raised before the Court in Division, and were already considered, passed upon, and exhaustively discussed in the Assailed Decision and the Assailed Resolution.

Petitioner argues that: *(1)* only one LOA *per* taxable year can be issued to a taxpayer pursuant to *RMO No. 30-2000*[37]; *(2)* the Referral Memorandum gets its authority from the original LOA; and *(3)* the issuance of a referral memorandum to other ROs who will continue the audit has been the standard operating procedure.

The Court *En Banc* is not persuaded.

**The RO who conducted the audit of respondent's books acted without authority.**

The Court *En Banc* finds merit in respondent's contention that the issuance of an LOA to an RO is mandatory. Pertinent to the issue is *Section 13 of the 1997 NIRC,* which provides as follows:

[36] G.R. No. 178087, May 5, 2010, 620 SCRA 232.
[37] *2000 Audit Program for Excise Taxpayers,* issued on June 23, 2000.

> Section 13. *Authority of a Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.[38]

In order to implement *Section 13 of the 1997 NIRC, RMO No. 43-90*[39] provides as follows:

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

A cardinal rule in statutory construction is that, where the law speaks in clear and categorical language, or the terms of the statute are clear and unambiguous and free from doubt, there is no room for interpretation or construction and no interpretation or construction is called for; there is only room for application.[40] The use of the word "shall" connotes a mandatory order and denotes an imperative obligation and is inconsistent with the idea of discretion. Hence, the use of the word "shall" in *RMO No. 43-90* can only mean that the issuance of a new LOA in cases of reassignment is mandatory. Therefore, it is clear that before an assessment can be made, the RO conducting the same must first be authorized to do so.

Moreover, *BIR's General Audit Procedures and Documentation*[41] *("BIR's GAPD")* provides the following:

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[38] Underscoring ours.
[39] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, Dated September 20, 1990.
[40] *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue,* G.R. Nos. 175707, 180035, 181092, November 19, 2014, 740 SCRA 640.
[41] BIR's General Audit Procedures and Documentation, https://www.bir.gov.ph/index.php/taxpayer-bill-of-rights.html, last accessed November 2, 2017.

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> 5. How often can a Letter of Authority be revalidated? A Letter of Authority is revalidated through the issuance of a new LA. However, a Letter of Authority can be revalidated—
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> Only once, for LAs issued in the Revenue Regional Offices or the Revenue District Offices; or
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> Twice, in the case of LAs issued by the National Office.
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> Any suspended LA(s) must be attached to the new LA issued (RMO 38-88).[42]

The Supreme Court, in *CIR v. Sony Philippines, Inc.*[43], ruled in this wise:

> Based on Section 13 of the Tax Code, a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer. xxx
>
> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.[44]

The Supreme Court affirmed this in the very recent case of *Medicard Philippines, Inc. v. CIR*[45] *("Medicard case")*, wherein the Supreme Court held that the absence of an LOA violated petitioner therein's right to due process, thus the Court *En Banc* quotes, to wit:

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

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[42] Underscoring ours.
[43] G.R. No. 178697, November 17, 2010, 635 SCRA 234.
[44] Underscoring ours.
[45] G.R. No. 222743, April 5, 2017, citing *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010, 635 SCRA 234.

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> An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:
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> xxx xxx xxx
>
> Based on the afore-quoted provision, <u>it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.</u> The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, <u>unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.</u>[46]

Based on the above-stated sources, an authority from the CIR or from his duly authorized representative is required before an examination of a taxpayer may be made, such authority comes in the form of an LOA. The LOA is proof that the person/s named therein is/are authorized to conduct the necessary investigation/audit, it is an express grant of authority. In the absence of a valid LOA, the assessment or examination is a nullity. In the case at bar, records show that LOA 2007-00006717[47] issued on August 31, 2007 states the following:

> MCDONALDS PHILS. REALTY CORPORATION
> 17/F Citibank Center, 8741 Paseo de Roxas
> Makati City
>
> SIR / MADAM/ GENTLEMEN:

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[46] Underscoring ours.
[47] *Records, Vol. 1, Exhibit "P-2,"* p. 527; *BIR Records, Exhibit "R-2,"* p. 1.

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> The bearer(s) hereof, Revenue Officers Eulema Demadura, Lover Loveres, Josa Gomez and Ernalyn dela Cruz of the LT District Office No. 122 - Makati is/are authorized to examine your books of accounts and other accounting records for ALL INTERNAL REVENUE TAXES for the period from January 01, 2006 to December 31, 2006. He is/They are provided with the necessary identification card(s) which shall be presented to you upon request.
>
> It is requested that all facilities be extended to the Revenue Officer(s) in order to expedite the examination.
>
> To be supervised by G/S Marilyn P. San Diego[.][48]

Meanwhile, the Referral Memorandum[49] issued on December 2, 2008 serves as a memorandum to RO Marcellano and GS Edenny Lingan referring the tax docket of respondent to them. According to petitioner, this Referral Memorandum derives its authority from the original LOA. This Referral Memorandum reads as follows:

> MEMORANDUM TO:
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> | | | |
> |---|---|---|
> | [RO]/s | : | **RONA MARCELLANO** |
> | Thru [GS] | : | **EDENNY LINGAN** |
> | Subject | : | **[MPRC]** |
>
> Referred to you herewith is the tax docket of **[MPRC]** pursuant to **LOA No. 00006717** dated August 31, 2007, for taxable year **2006** All Internal Revenue Taxes, in view of the transfer of assignment of RO *Eulema Demadura* pursuant to RTAO No. 163-2008 dated September 16, 2008. You are hereby directed to continue with the audit and/or act on the case and to submit a report thereon without further delay, for appropriate action.[50]

A reading of the LOA shows that only ROs Eulema Demadura, Lover Loveres, Josa Gomez and Ernalyn dela Cruz were assigned to conduct the audit of respondent's books. This LOA excludes the name of RO Marcellano. It must be emphasized that the grant of authority to RO Marcellano should be in a form of a new LOA, which

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[48] Emphases retained.
[49] *BIR Records, Exhibit "R-1,"* p. 2.
[50] Emphases retained.

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is absent in this case. Therefore, the Referral Memorandum is not enough basis for RO Marcellano's authority.

There is likewise no merit in petitioner's claim that the Referral Memorandum gets its authority from the original LOA. *BIR's GAPD* provides the following:

> 6. How much time does a Revenue Officer have to conduct an audit? <u>A Revenue Officer is allowed only one hundred twenty (120) days from the date of receipt of a Letter of Authority by the Taxpayer to conduct the audit and submit the required report of investigation. If the Revenue Officer is unable to submit his final report of investigation within the 120-day period, he must then submit a Progress Report to his Head of Office, and surrender the Letter of Authority for revalidation.</u>[51]

Applying the above rule to the case at bar, the LOA was received by respondent through a certain Cornelia M. Saguit on September 4, 2007, counting one hundred and twenty (120)-days therefrom, the original RO had until January 2, 2008 to conduct the audit and to submit the report. However, an audit report[52] was submitted by RO Marcellano only on April 19, 2010. Therefore, instead of continuing with the audit beyond the prescribed period, RO Marcellano should have just submitted a Progress Report and surrendered the LOA for revalidation, that is, for the issuance of a new LOA, which is wanting in this case. There was no record that the LOA was revalidated on or before the expiration of the given period. Having failed to prove that petitioner followed this procedure, the LOA has ceased to be valid. Thus, even if the Court *En Banc* finds merit in petitioner's claim that the Referral Memorandum derives its validity from the LOA, said LOA at that time was already ineffective. Therefore, the Referral Memorandum is invalid since it cannot derive validity from an ineffective LOA.

There is likewise no merit in petitioner's argument that the issuance of a referral memorandum to another RO, who will continue the audit of an RO who has been transferred or reassigned, has been the standard operating procedure. The audit policies and procedure that should be followed by revenue officers have been clearly enumerated in the *BIR's GAPD* under the section "Taxpayer Bill of

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[51] Underscoring ours.
[52] *BIR Records, Audit Report,* pp. 276-282.

Rights." Thus, to say that it has been the standard operating procedure is wrong in all aspects. The facts of the case would show that petitioner has been following the wrong standard operating procedure, which is detrimental to the taxpayer's rights.

**Respondent is not estopped from questioning the RO's lack of authority.**

The doctrine of estoppel springs from equitable principles and the equities in the case.[53] It is designed to aid the law in the administration of justice where without its aid injustice might result.[54]

The elements of estoppel are: *(1)* the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; *(2)* the other in fact relies, and relies reasonably or justifiably, upon that communication; *(3)* the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and *(4)* the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action.[55]

In this case, petitioner failed to establish all of the elements above-stated. Petitioner failed to present any evidence to show that respondent had knowledge, notice, or suspicion that RO Marcellano had no authority to examine its records. Moreover, assuming otherwise, there is no indication that respondent communicated such fact to petitioner in a misleading way, either by words, conduct or silence.

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[53] *Philippine National Bank v. Court of Appeals,* G.R. No. L-30831, November 21, 1979, 94 SCRA 368.
[54] *Id.*
[55] *Philippine Bank of Communications v. Court of Appeals, et. al.,* G.R. No. 109803, April 20, 1998, 289 SCRA 178.

**Respondent is not liable for the assessment covered by the LOA.**

In view of the above-stated findings, the Court *En Banc* views that failure to return the original LOA for revalidation is tantamount to the same LOA having lost its validity. A void assessment bears no valid fruit.[56] Thus, RO Marcellano acted without authority when she conducted the audit of respondent, making the assessment is null and void. Accordingly, respondent is not liable for the deficiency VAT assessment for TY 2006 covered by the invalid LOA.

A word of caution for petitioner, continuous practice of an act for a long period of time, unchecked and unnoticed, does not make it the law. While the Court *En Banc* appreciates the efforts of the CIR to comply with its mandate of tax collection, he must be reminded to exercise due diligence in the performance of his functions. Being the head of the government agency empowered to assess and collect all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgment in all cases decided in its favor by the CTA and the ordinary courts,[57] he must see to it that all his issuances are in accordance with the provisions of the *1997 NIRC* and its amendatory laws, and that the same will be followed by no less than the officers and employees who are tasked to conduct the audit, assessment, and collection under his name.

It is said that taxes are what we pay for a civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his/her share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.[58]

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[56] *Commissioner of Internal Revenue v. BASF Coating + Inks Phils. Inc.*, G.R. No. 198677, November 26, 2014, 743 SCRA 124.
[57] *Section 2, 1997 NIRC.*
[58] *Supra* note 58.

Even as the Court *En Banc* acknowledges 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.[59] In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one hand, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the *1987 Constitution*. Thus, while taxes are the lifeblood of the government, the power to tax has its limits, in spite of all its plenitude.[60]

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated June 1, 2016 and the Resolution dated October 3, 2016 of the Court in Division, are hereby **AFFIRMED** and **UPHELD.**

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

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[59] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014, 729 SCRA 113, citing *Commissioner of Internal Revenue v. Algue, Inc.*, G.R. No. L-28896, February 17, 1988, 158 SCRA 9.

[60] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014, 729 SCRA 113, citing *Commissioner of Internal Revenue v. Metro Star Superama*, G.R. No. 185371, December 8, 2010, 637 SCRA 633.

**CAESAR A. CASANOVA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

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

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

Catherine T. Manahan
**CATHERINE T. MANAHAN**
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