REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

R.A. OBEN HOLDINGS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1454
(CTA Case No. 8723)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:

SEP 18 2017 3:31 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

Before the CTA *En Banc* is the petition for review of petitioner R.A. Oben Holdings, Inc. ("petitioner") filed on May 3, 2016 assailing the Decision[1] and the Resolution[2] promulgated on January 6, 2016 and on April 7, 2016, respectively, by the CTA Third Division in the case entitled *"R.A. Oben Holdings, Inc. v. Commissioner of Internal Revenue,"* docketed as CTA Case No. 8723.

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[1] *Rollo*, pp. 40-60; Penned by Associate Justice Esperanza R. Fabon-Victorino, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Ma. Belen M. Ringpis-Liban.
[2] *Rollo*, pp. 61-68.

The dispositive portion of the January 6, 2016 Decision reads:

"**WHEREFORE,** the instant Petition for Review filed by petitioner R.A. Oben Holdings, Inc. on October 31, 2013, is hereby **DENIED**. Consequently, the Assessment Notice No. 33-08-VT-3119 for deficiency VAT issued by respondent Commissioner of Internal Revenue against petitioner R.A. Oben Holdings, Inc. is **UPHELD.** Accordingly, petitioner is **DIRECTED TO PAY** respondent basic deficiency VAT in the amount of Php946,301.81 and the fifty percent (50%) surcharge imposed under Section 248(B) of the NIRC of 1997, as amended, in the amount of Php473,150.91, or the total amount of Php1,419,452.72.

In addition, petitioner is **DIRECTED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of Php946,301.81, computed from January 25, 2009 until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) Delinquency interest at the rate of 20% per annum on the total amount of Php1,419,452.72 and on the 20% deficiency interest which have accrued as afore-stated (a), computed from February 24, 2012 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

The dispositive portion of the April 7, 2016 Resolution reads:

"**WHEREFORE**, the Motion for Reconsideration filed by petitioner R.A. Oben Holdings, Inc. on January 27, 2016, is hereby **DENIED**, for lack of merit.

SO ORDERED." ✓

THE FACTS

The facts of the case as found by the CTA Third Division, as stated in the January 6, 2016 Decision are:[3]

> "Petitioner R.A. Oben Holdings, Inc. is a domestic corporation xxx xxx xxx.
>
> Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), with the authority to decide disputed assessments, cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations. xxx xxx xxx.
>
> On April 15, 2009, petitioner filed its Annual Income Tax Return (ITR) for taxable year 2008.
>
> On July 24, 2009, respondent, through Regional Director Arnel SD. Guballa, issued a Letter of Authority (LOA) No. 2007-00037795 authorizing Revenue Officer (RO) Ma. Dolores M. Ferry and Group Supervisor Arceli N. Puno, both of Revenue Region No. 33, to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for taxable year 2008 and the List of Audit requirements that were served on petitioner on July 29, 2009.
>
> On September 3, 2009, the Second Request for Presentation of Records was served upon petitioner.
>
> On November 26, 2009, RO Ma. Dolores M. Ferry recommended the reassignment of the investigation for continuance as she was transferred to another district.
>
> On March 24, 2010, the Revenue District Officer (RDO) reassigned the investigation to RO Minda A. Cayago with directive to revalidate the LOA.
>
> On April 15, 2010, petitioner filed an Amended Annual ITR for taxable year 2008.
>
> On June 9, 2010, a *Subpoena Duces Tecum* was issued to petitioner.

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[3] *Rollo*, pp. 40-48.

On September 29, 2011, petitioner was issued a Notice of Informal Conference dated September 26, 2011.

On November 21, 2011, petitioner received a revised Notice of Informal Conference dated November 17, 2011.

On January 12, 2012, petitioner received a Preliminary Assessment Notice (PAN) dated January 5, 2012.

On February 2, 2012, petitioner received a Formal Letter of Demand (FLD) dated January 24, 2012, with Assessment Notice No. 33-08-VT-3119; Assessment Notice No. 33-08-WE-3120 and Assessment Notice No. 33-08-MC-3121, for deficiencies on Value-Added Tax (VAT) in the amount of Php1,944,118.40, Expanded Withholding Tax (EWT) in the amount of Php307,613.77 and Compromise Penalty in the amount of Php18,000.00 for the year ending December 31, 2008.

On February 24, 2012, petitioner submitted its Formal Protest Letter together with supporting documents against the FAN.

On March 14, 2012, respondent issued a letter acknowledging petitioner's payment of Php307,613.77 and Php18,000.00 on February 16, 2012, in full settlement of petitioner's deficiency EWT and compromise penalty, respectively. Consequently, the deficiency assessments on EWT and the compromise penalty were cancelled.

On October 4, 2013, petitioner received a copy of the Final Decision on Disputed Assessment (FDDA) dated September 25, 2013, signed by Simplicio A. Madulara, OIC-Regional Director of Revenue Region No. 6 pertaining to the remaining deficiency assessment on VAT in the amount of Php1,944,118.40 for taxable year 2008 based on the gross income found under Item No. 19A of its Annual ITR for 2008 filed on April 15, 2009.

On October 31, 2013, petitioner filed the instant Petition for Review assailing the said FDDA. *yr*

On December 13, 2013, respondent filed her Answer, basically interposing the following Special and Affirmative Defenses: 1) the VAT assessment is not yet barred by prescription since petitioner filed a false return and that pursuant to Section 222 of Republic Act (RA) No. 8424, as amended, and the case of *Aznar vs. Court of Tax Appeals, et al.,* respondent has ten (10) years from the discovery of such falsity to assess or file a proceeding in court for collection of such tax without such assessment, and 2) that petitioner has the burden of proof to show that the subject assessment has no factual basis since presumptions are in favor of the correctness of the assessment.

After the pre-trial conference, a Pre-Trial Order dated March 14, 2014 was issued based on the parties' Joint Stipulation of Facts and Issues.

To substantiate its claim, petitioner presented its lone witness **Angelina L. Esteves**, who by way of Judicial Affidavit testified that she has been petitioner's Accounting Clerk since October 2008. As such, she files the Returns and pays the taxes due from petitioner to the BIR and ensures that petitioner complies with tax laws, rules and regulations. She is also the custodian of petitioner's financial documents including tax returns and financial statements.

On February 2, 2012, petitioner received from BIR Revenue Region No. 6 a FLD and FAN dated January 24, 2012 for VAT and EWT deficiencies for taxable year 2008. Per FLD, the BIR compared the rental income of Php15,949,631.00 reflected in the ITR, and the rental income of Php8,063,782.63 in the VAT Returns and concluded that petitioner had unreported rental income in 2008 not subjected to 12% VAT amounting to Php7,885,848.37.

This finding according to the witness was based on petitioner's ITR that the BIR used in the investigation which was only tentative. To rectify the mistake, petitioner adjusted the amount of rental income in its amended ITR which reconciled with the amount of rental income declared in its VAT returns.

Further, the error in the amount of gross income or rental income of Php15,949,531.00 indicated in the Original ITR for taxable year 2008 was due to petitioner's accounting system *gr* program which automatically added the rental income from 2007 in the amount of Php7,902,175.00 to that of 2008, thus, a total rental income of Php15,949,530.00.

Petitioner filed a Protest Letter dated February 23, 2012 to the FAN signed by Ana Ma. Teresa O. Reyes. Petitioner's receipt of the FDDA dated September 25, 2013 on October 4, 2013 prompted it to consult its external tax lawyer and file the instant Petition.

During cross-examination, the witness explained that she used a software program from Alas Group in the preparation of petitioner's ITR. When she printed petitioner's original ITR, the amount in the system was doubled. Consequently, the amount reflected in petitioner's tentative/Original ITR was incorrect. She gave the printed Original ITR to petitioner's external auditor.

Respondent, on the other hand, presented ROs Minda A. Cayago and Fernando R. Gonzales.

In his Judicial Affidavit, **RO Fernando R. Gonzales** declared that he has been a Revenue Officer-Reviewer at the Assessment Division of Revenue Region No. 6 — Manila since October 1, 1999. As such, he reviewed petitioner's 2008 internal revenue tax docket together with the investigation report of RO Minda A. Cayago. Thereafter, he prepared BIR Form No. 0500 or the Audit Report on VAT, EWT and Compromise Penalty.

He also prepared the PAN with attached Details of Discrepancies which he transmitted to the Administrative Division of Revenue Region No. 6 — Manila for mailing to petitioner at its registered address at 2F Carolina Bldg. 2106 Mother Ignacia St., Malate, Manila.

On January 24, 2012, the Billing Section issued to petitioner the FAN for deficiency VAT, EWT and Compromise Penalty in the amounts of Php1,944,118.40, Php307,613.77, Php18,000.00, respectively under Assessment Notice No. 33-08-VT-3119, 33-08-EWT-3120 and 33-08-MC-3121, as well as the FLD 33 signed by the Regional Director of Revenue Region No. 6 — Manila. *fc*

RO Gonzales added that he reviewed petitioner's 2008 Annual ITR, LOA, the list of audit requirements, the Second Request for Presentation of Documents, the ITS print out, worksheet, Memorandum by the RO assigned in the case, Final Request for Presentation of Records, Progress Report, Revalidation Notice and endorsement up to Reference Slip dated February 5, 2012. On January 5, 2012, he issued the PAN against petitioner but endorsed it to the BIR's Billing Section for mailing, hence, he did not know if it was sent to petitioner personally or via registered mail. He confirmed that petitioner filed a Protest Letter against the FAN dated February 15, 2012 questioning the deficiency VAT assessment and at the same time paid the deficiency EWT and the Compromise Penalty indicated in the PAN issued on January 5, 2012.

By way of Judicial Affidavit, **RO Minda A. Cayago** testified that in 2009, she was a Revenue Officer of RDO No. 33, Revenue Region No. 6, BIR — Manila under the control and supervision of Group Supervisor Marvin C. Sevilla.

Petitioner's 2008 internal revenue tax docket was re-assigned to her for continuance of the investigation after RO Dolores M. Ferry was transferred to another RDO. RO Ferry turned over to her petitioner's Annual ITR dated April 15, 2009, LOA dated July 24, 2009, List of Audit Requirements per Tax Type, the Second Request for Presentation of Records and the Memorandum dated November 26, 2009. After the review, she prepared the Final Request for Presentation of Records. For petitioner's failure to comply, she prepared a Memorandum for issuance of *Subpoena Duces Tecum*.

In compliance to the *Subpoena Duces Tecum*, petitioner sent its Annual ITR for taxable year 2008 filed on April 15, 2010 together with other documents. After the audit investigation, she prepared a Notice of Informal Conference which was followed by a Memorandum showing discrepancies on the income, value added and withholding taxes as compared with the amounts reported in petitioner's financial statements. In view thereof, she recommended that the case be forwarded to the BIR's Assessment Division for issuance of a PAN.

Subsequently, she received a Memorandum from OIC-Chief, Assessment Division directing her to assess petitioner based on the Original ITR and its financial statements prior to the issuance of the LOA and to submit an Amended Post ~

Reporting Notice. In compliance with the said directive, she made a recomputation and prepared a Revised Notice of Informal Conference, BIR Form No. 0500 Series, and a Memorandum for the Assessment Division indicating her compliance and reiterating the request for issuance of the PAN, then returned the tax docket to the Assessment Division.

Later, she received a Memorandum of Assignment No. RR06-033-PRO-0312-4473 for the reinvestigation of petitioner's VAT deficiency per its Protest Letter for taxable year 2008 and a Letter dated March 14, 2012 stating that it already paid its alleged deficiency EWT and Compromise Penalty. Despite opportunity granted, petitioner failed to submit additional documents for the re-evaluation of the assessment. For this reason, she prepared another Memorandum recommending the return of the case to the Assessment Division. On September 25, 2013, OIC-Regional Director Simplicio A. Madulara issued the assailed FDDA on petitioner's remaining VAT deficiency.

The witness further testified that after she recommended the issuance of a *Subpoena Duces Tecum*, petitioner submitted its Annual ITR, Financial Statement, Official Receipts, Books of Account and other Schedules. Based on the submitted official receipts, petitioner's total cash collection amounted to Php22,128,000.00. She compared the said amount with that in the Annual ITR and VAT Returns, and made a computation for deficiency VAT. She also compared the cash receipt book with the official receipts which were returned to petitioner, thus, they were no longer available when the PAN was prepared.

She confirmed that petitioner filed an Amended Annual ITR for 2008 on April 15, 2010 on the alleged ground that its 2008 Original ITR was erroneous because the total revenue for 2007 was added to the 2008 total revenue. Petitioner however failed to prove it. She proceeded to assess petitioner on the basis of its Original 2008 Annual ITR and disregarded its 2008 Amended ITR for it was filed after the issuance of the LOA.

The case was submitted for decision on January 20, 2015 after respondent filed her Memorandum on January 5, 2015 and that of petitioner, on January 12, 2015."

On January 6, 2016, the CTA Third Division denied petitioner's Petition for Review. 9r

On April 7, 2016, the CTA Third Division also denied petitioner's Motion for Reconsideration.

On May 3, 2016, petitioner timely filed its Petition for Review [Review by Appeal of the Decision of Court in Division] with the CTA *En Banc*.[4] Respondent, however, failed to file a Comment on the petition.[5]

On July 26, 2016, this Court ordered the parties to file their respective Memoranda. Both parties filed their respective Memoranda, thus, this case was submitted for decision on September 28, 2016.

Hence, this decision.

ISSUES

In its Petition for Review, petitioner states the following grounds for the allowance of the petition:[6]

I. The Court a quo gravely erred in holding that petitioner's VAT returns for the four quarters of taxable year 2008 are "False Returns" and that the VAT assessment is not yet prescribed.

II. The Court a quo gravely erred in finding that the testimony of petitioner's witness, Angelina L. Esteves, was self-serving and that the petitioner failed to present other pieces of evidence in support of its defenses against the VAT assessment.

III. The Court a quo gravely erred in adjudging that the presumption of correctness of the present VAT assessment was not refuted by petitioner's evidence. In fact, the VAT assessment is not supported by actual facts and is merely based on presumptions.

IV. The Court a quo gravely erred in upholding the imposition of both the fifty percent (50%) surcharge and the deficiency interest for lack of legal basis.

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[4] *Rollo*, p. 1.
[5] *Id.*, p. 208.
[6] *Id.*, pp. 9-10.

THIS COURT'S RULING

The petition is denied.

After a careful review of the assailed Decision and Resolution as well as the records of this case, the Court *En Banc* finds that the issues (with exception of the issue on deficiency interest which is raised for the first time) and arguments raised by petitioner have already been considered by the CTA Third Division in its assailed Decision and Resolution. Be that as it may, pertinent issues need to be emphasized.

Taxpayer has the burden to refute the presumption of the falsity of the VAT returns and to prove that it had filed accurate returns

There is a *prima facie* evidence[7] of false VAT returns as discussed in the assailed Decision, to quote:

> "Hence, when there is failure on the part of the taxpayer to report sales/receipts/income exceeding thirty percent (30%) of that declared per return, there is substantial underdeclaration of sales/receipts/income which constitute *prima facie* evidence of a false return. In the instant case, the alleged difference in the amount of Php7,885,848.37 between petitioner's income per its Original Annual ITR and the total income per its Quarterly VAT Returns is equivalent to ninety-eight percent (98%) of that declared per VAT Return. In other words, *prima facie* evidence of false returns exists."

In *Commissioner of Internal Revenue v. Asalus Corporation,*[8] *(Asalus case),* the Supreme Court ruled that it is the taxpayer who has the duty to "to refute the presumption of the falsity of the return and to prove that it had filed accurate returns. Its failure to overcome the same warranted the application of the ten (10)-year prescriptive period for assessment under Section 222 of the NIRC." *ʃr*

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[7] A *prima facie* evidence is one which that will establish a fact or sustain a judgment unless contradictory evidence is produced. (*Commissioner of Internal Revenue v. Asalus Corporation*, GR No. 221590, February 22, 2017).
[8] GR No. 221590, February 22, 2017.

Under Section 248 (B) of the NIRC[9], there is a *prima facie* evidence of a false return if there is a substantial underdeclaration of taxable sales, receipt or income. The failure to report sales, receipts or income in an amount exceeding 30% what is declared in the returns constitute substantial underdeclaration. A *prima facie* evidence is one which that will establish a fact or sustain a judgment unless contradictory evidence is produced.

In other words, when there is a showing that a taxpayer has substantially underdeclared its sales, receipt or income, there is a presumption that it has filed a false return. As such, the CIR need not immediately present evidence to support the falsity of the return, unless the taxpayer fails to overcome the presumption against it.

Applied in this case, the audit investigation revealed that there were undeclared VATable sales more than 30% of that declared in Asalus' VAT returns. Moreover, Asalus' lone witness testified that not all membership fees, particularly those pertaining to medical practitioners and hospitals, were reported in Asalus' VAT returns. The testimony of its witness, in trying to justify why not all of its sales were included in the gross receipts reflected in the VAT returns, supported the presumption that the return filed was indeed false precisely because not all the sales of Asalus were included in the VAT returns.

Hence, **the CIR need not present further evidence as the presumption of falsity of the returns was not overcome. Asalus was bound to refute the presumption of the falsity of the return and to prove that it had filed accurate returns. Its failure to overcome the same warranted the application of the ten (10)-year prescriptive period for assessment under Section 222 of the NIRC.** To require the CIR to present additional evidence in spite of the presumption provided in Section 248(B) of the NIRC would render the said provision inutile. *(Emphases Supplied.)* gr

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[9] 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. *(Emphases Supplied.)*

Applying the *Asalus* case in the instant case, it is therefore the duty of petitioner to refute the presumption of the falsity of the return **and** to prove that it had filed accurate returns.

Petitioner alleges that its VAT returns for the four quarters of taxable year 2008 are not false returns and thus the VAT assessment is already barred by prescription. Petitioner points out that the falsity of the petitioner's quarterly VAT returns for taxable year 2008 is not even an issue raised in the present petition and that the issue that was raised by respondent is the falsity of the Annual Income Tax Return filed on April 2009, which was made part of the Pre-Trial Order.

The allegations lack merit.

After a careful review of the totality of the evidence formally offered by both parties and admitted by the CTA Third Division, this Court reiterates that "petitioner failed to present evidence to overturn the presumption of correctness of respondent's assessment."[10] In effect, petitioner failed to refute the presumption of the falsity of the VAT returns.

Also, petitioner failed to prove that it filed accurate VAT returns because even if, for the sake of argument, the amended ITR was considered, "there is still a difference between the income declared on the amended Annual ITR (Php8,047,355.00) *vis-à-vis* the total income per Quarterly VAT Returns (Php8,063,781.63)."[11]

Considering the finding of falsity in the VAT returns, the general rule that internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return or from the day the return was filed, whichever is later[12] does not apply in this case. Section 114(A) of the NIRC[13] requires the filing of the quarterly return of the amount of the gross sales or receipts within twenty-five (25) days following the close of each taxable quarter, provided that payment of the VAT shall be on a monthly basis. *gr*

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[10] *Rollo*, p. 59.
[11] Assailed Decision, p.17; *Rollo*, p. 56.
[12] Section 203 of the National Internal Revenue Code of 1997, as amended, states:

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

[13] SEC. 114. Return and Payment of Value-Added Tax. —

(A) *In General.* — Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however*, That VAT-registered persons shall pay the value-added tax on a monthly basis.

We emphasize that a "false return simply involves a 'deviation from the truth, whether intentional or not.'"[14]

Clearly, this case falls under Section 222(a) of the NIRC of 1997, as amended, which states:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or 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." (Underscoring Supplied)

This Court, thus, reiterates pertinent portions of the assailed Decision, as follows:

> "In the instant case, petitioner could no longer modify, change or amend its original Annual ITR for taxable year 2008 since a notice to audit or investigate under LOA No. 2007 000337795 was already served upon it on July 29, 2009. Moreover, there is still a difference between the income declared on the amended Annual ITR (Php8,047,355.00) *vis-à-vis* the total income per Quarterly VAT Returns (Php8,063,781.63). Thus, the amended Annual ITR for taxable year 2008 deserves scant consideration.
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> For failure to overcome respondent's finding of substantial underdeclaration of income in 2008, such finding must be sustained. Since petitioner's Quarterly VAT Returns for the four quarters of 2008 are false, as defined in the cited *Aznar* case, the ten (10)-year prescriptive period provided under Section 222(a) of the NIRC of 1997, as amended, applies.
>
> In the case at hand, the ten-year period commenced from the issuance of the Notice of Informal Conference on September 25, 2011, when respondent discovered after

[14] *Commissioner of Internal Revenue v. Fitness by Design, Inc.* G.R. No. 215957, November 9, 2016 citing *Aznar v. Court of Tax Appeals,* 157 Phil. 510 (1974).

investigation that petitioner was liable to pay deficiency VAT. Evidence shows that the FLD and Assessment Notice was issued within the prescribed period on January 24, 2012 and received by petitioner on February 2, 2012. Indubitably, the FLD is deemed valid with the force and effect of law."[15]

The Court is not convinced with the testimony of petitioner's witness

In the weighing of evidence, documentary evidence prevails over testimonial evidence.[16] The documentary evidence in this case prevails over the testimony of petitioner's witness.

Petitioner alleges that the testimony of Ms. Angelina L. Esteves is not self-serving and is supported by other pieces of competent documentary evidence.

The allegation is bereft of merit.

It is worthy to mention that in the case of *British American Tobacco v. Camacho,*[17] the Supreme Court pronounced that "[e]xcept for its self-serving testimonial evidence, no sufficient documentary evidence was presented to substantiate this claim." In like manner, the CTA Third Division used the term "self-serving testimony" in the assailed Decision when it ruled that "[b]ut aside from this self-serving testimony, no other evidence was presented in support thereof."

The testimony of petitioner's witness is not enough to convince this Court that the alleged error in the amount of gross income or rental income indicated in the Original ITR for taxable year 2008 was due to petitioner's accounting system program which automatically added the rental income from 2007 in the amount of Php7,902,175.00 to that of 2008, thus, a total rental income of Php15,949,530.00. Likewise, the amended ITR cannot bolster petitioner's allegation that it is the correct ITR because the LOA was already served upon the petitioner. Section 6(A) of the 1997 NIRC, as amended, allows amendment of the return within three (3) years from the date of filing provided that the Letter of Authority (LOA) has not yet been served to the taxpayer.[18] Based on the records of this case, the ITR for

[15] Assailed Decision, p. 17; *Rollo*, p. 56.
[16] *Go v. Court of Appeals*, G.R. No. 112550, February 5, 2001.
[17] G.R. No. 163583, April 15, 2009.
[18] Section 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements For Tax Administration and Enforcement.—*

xxx xxx xxx

taxable year 2008 was amended and filed on April 15, 2010. The LOA was already served on July 29, 2009, thus, the amended ITR filed on a later date cannot be considered as proof of the alleged correct gross rental income subject to VAT. The law does not allow the amendment of the return after LOA has been served on the taxpayer.

We agree with the findings of the CTA Third Division, as follows:

> "But aside from this **self-serving testimony**, no other evidence was presented in support thereof. **Petitioner neither showed how the error in the software program occurred or committed nor was it sufficiently explained how the accounting clerk Angelina L. Esteves wrongfully encoded the data. Further, after encoding, the print out was given to petitioner's external auditor who as such was supposed to review the same. Significantly, the result of the alleged program error was never rectified until the BIR audit.** Admittedly, petitioner filed an Amended Annual ITR for 2008 on April 15, 2010 to allegedly correct the error in the figures indicated in the returns, however, as observed by RO Minda A. Cayago, the same was filed after the issuance of the LOA."[19] *(Emphases Supplied.)*

Deficiency VAT assessment is based on the filed ITR and VAT returns

Petitioner avers that the VAT assessment against the petitioner is not based on actual facts, but merely on presumption.

The allegation lacks merit.

In *Holiday Inns, (Phils.), Inc. v. Commissioner of Internal Revenue,*[20] "*Holiday Inns* case" for brevity, the ten-year period of limitation was applied in deficiency VAT assessment because falsity was established when the declared gross income from sale of services in the Annual Income Tax Return (ITR) was higher than the taxable sales reported in its VAT returns. Pertinent portions of the said Decision read: Je

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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 .

[19] Assailed Decision, p. 12; *Rollo,* p. 51.

[20] CA-G.R. SP No. 78828, September 9, 2004.

> "As to whether or not the deficiency assessment for VAT had already prescribed, HIPI argues that the VAT assessment had indeed prescribed following the three-year period of limitation under Section 203 of the Tax Code. It faults the CTA for applying the ten-year period of limitation under Section 222, contending that there was not even an allegation on the part of the CIR that it filed a false or fraudulent return, as in fact it did not even impose the 50% surcharge. Furthermore, HIPI points out that it did not declare the amount of P269,967.02 which corresponds to its management fee, because it believed in good faith that it was not subject to the VAT. As such, there was really no deliberate attempt or malicious intent to evade payment of the tax. Besides, the return cannot be considered as false or fraudulent because the amount of P269,967.02 which was not declared in the VAT return is not even 5% of its total sales subject to VAT and is way below the 30% underdeclaration threshold under Section 248(B) of the Tax Code.
>
> This Court agrees with the CTA that the **ten-year period of limitation should apply. The falsity of the VAT return filed by HIPI is established by the fact that in its 1995 Annual Income Tax Return, HIPI's declared gross income from sale of services representing management fees was higher than the taxable sales reported in its VAT returns by P269,967.02.** This was not denied by HIPI albeit it claimed good faith in not declaring the said amount. That notwithstanding, this Court is not inclined to sustain HIPI's defense of good faith, otherwise, any taxpayer filing a false return can easily escape liability. While there may be truth to HIPI's claim that it had no malicious intent to evade payment of the tax, this does not preclude a finding of a false return. This is because while a *fraudulent return* implies a malicious and deliberate intent to evade the payment of the tax, a false return merely implies a deviation from the correct amount of the tax. That the 50% surcharge was not imposed does not mean that the return filed by HIPI was correct. In fact, the 30% threshold on substantial underdeclaration under Section 248(B) of the Tax Code is but a mere *prima facie* presumption of the filing of a false or fraudulent return. Thus, the fact that HIPI underdeclared 5% only of its total sales does not mean that it did not file a false return. To sustain HIPI's interpretation would certainly be absurd." *(Emphases Supplied.)*

In the *Holiday Inns* case, it is clear that a comparison of the gross income in the ITR and gross income reflected in the VAT returns is a procedure to determine whether there is falsity in the returns; and that a finding that the declared income in the ITR is higher than the income reflected in the VAT returns establishes that fact of falsity.

Applying the *Holiday Inns* case in the instant case, We agree that there is falsity in this case which warrants the application of the ten-year prescriptive period.

It is undisputed that there is a difference in the rental income per original ITR and the rental income per VAT returns in taxable year 2008. Pertinent portions of Annex A of the Preliminary Assessment Notice (PAN) explained the details of discrepancy with respect to the deficiency VAT, as shown below:

"Annex A

Details of Discrepancies

Deficiency Value Added Tax:

Deficiency value added tax was assessed pursuant to Sec. 106 and 222 of the 1997 NIRC at the rate of twelve percent of taxable receipts per investigation not subjected to VAT in the amounts of P7,885,848.37 or by 49.49% below of that declared per return, to wit:

	Percentage		Amount
Rental Income per Original ITR	100%		P15,949,631.00
Rental Income per VAT Returns:			
1st Q		2,012,299.86	
2nd Q		1,905,426.83	
3rd Q		2,003,744.90	
4th Q	50.55%	2,142,311.04	8,063,782.63
Difference (Sch.1)	49.45%		P7,885,848.37

The fifty percent (50%) surcharge shall be collected at the same time and manner as part of the tax pursuant to Sec. 248(B) of the 1997 of the Tax Code for failure to report receipts/income in an amount exceeding thirty percent (30%) of that declared per return."[21]

We reiterate with approval the findings of the CTA Third Division, as follows:

"Evidence shows that respondent informed petitioner that the deficiency VAT assessment was issued on account of its filing of false returns and that the falsity was due to the discrepancy discovered between the declared income per original Annual ITR in the amount of Php15,949,531.00 and

[21] Exhibit "R-22", BIR Records, p. 247.

the total income per Quarterly VAT Returns in the amount of Php8,063,781.63 for taxable year 2008."

The CTA Division is correct in the imposition of both the 50% surcharge and the deficiency interest

Petitioner contends that the imposition of the 50% surcharge and deficiency interest on VAT Assessment lacks legal basis.

On the other hand, respondent argues that for failure of petitioner to report income in an amount exceeding thirty percent (30%) of that declared per return, the Court in Division is correct in upholding respondent's imposition of 50% surcharge based on Section 248(B) of the NIRC of 1997, as amended. Petitioner was found to have underdeclared by 98% its income for taxable year 2008. Likewise, respondent contends that in upholding the deficiency VAT assessment, the Court correctly imposed the deficiency interest and delinquency interest, both at the rate of twenty (20%) per annum, pursuant to Section 249 of the NIRC of 1997, as amended.

Petitioner is mistaken.

A plain reading of Section 248(B)[22] of the NIRC of 1997, as amended, shows that in case of a false return, 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.

With respect to the issue on deficiency interest, this Court will no longer discuss the same because this is the first time that petitioner raised this on appeal.

Higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal.[23] Issues not previously ventilated cannot be raised for the first time on appeal.[24] *gr*

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[22] *Supra*, Note 9.
[23] *Mercado, et al. vs. Spouses Espina*, G.R. No. 173987, February 25, 2013.
[24] *Bank of the Philippine Islands vs. Shembergh Biotech Corporation and Benson Dakay, G.R. No. 162291, August 11, 2010, 628 SCRA 70, 76; National Association of Electricity Consumers for Reforms, Inc. (NASECORE) vs. Energy Regulatory Commission (ERC)*, G.R. No. 190795, July 6, 2011, 653 SCRA 642, 651, citing *Rasdas vs. Estenor*, G.R. No. 157605, December 13, 2005, 477 SCRA 538, 551.

This Court reiterates that "[t]ax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise."[25]

Based on the foregoing discussions, the CTA *En Banc* agrees with the findings and conclusions rendered by the CTA Third Division in this case.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The January 6, 2016 Decision and April 7, 2016 Resolution of the CTA Third Division in CTA Case No. 8723 are **AFFIRMED.**

SO ORDERED.

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

WE CONCUR:

(See Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

(With due respect, I join PJ's dissent.)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

[25] *Commissioner of Internal Revenue v. Gonzalez*, G.R. No. 177279, October 13, 2010, *citing Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue,* G.R. No. 168498, April 24, 2007, 522 SCRA 144, 149-150, citing *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005, 454 SCRA 301, 329.

(With due respect, I join PJ's Dissenting Opinion.)
CIELITO N. MINDARO-GRULLA
Associate Justice

(See Concurring Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(See Dissenting Opinion)
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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

R.A. OBEN HOLDINGS, INC., Petitioner,	**CTA EB NO. 1454** (CTA Case No. 8723)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated:
	SEP 18 2017 3:31 p.m.

x - x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I hesitate to give my assent to the *ponencia* of my learned colleague, the Honorable Juanito C. Castañeda, Jr., which denied the Petition for Review filed by R.A. Oben Holdings, Inc. thereby affirming the assailed Decision and Resolution of the Court in Division.

The assailed Decision upheld the VAT assessment issued by the Commissioner of Internal Revenue (CIR) against petitioner, and directed the latter to pay basic deficiency VAT of ₱946,301.81 for taxable year 2008, as well as surcharge, deficiency interest and delinquency interest pursuant to Sections 248(B), 249(B), 249(C) of the National Internal Revenue Code of 1997, as amended. The assailed Resolution denied petitioner's Motion for Reconsideration for lack of merit.

Records disclose that the disputed assessment sprung from the Letter of Authority (LOA) No. 2007-00037795 issued by respondent, through Regional Director Arnel SD. Guballa, which authorized Revenue Officer (RO) Ma. Dolores M. Ferry and Group Supervisor Arceli N. Puno to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for taxable year 2008. [1] On November 26, 2009, RO Ferry recommended the **reassignment** of the investigation for continuance in view of her transfer to another Revenue District Office (RDO).[2] In the assailed Decision, the Court in Division found that on March 24, 2010, the **Revenue District Officer of RDO No. 33 reassigned** the investigation to RO Minda A. Cayago with a directive to revalidate the LOA.[3] I note, however, that there is nothing in the parties' Joint Stipulation of Facts and Issues,[4] the Pre-Trial Order,[5] and the Exhibits submitted by the parties which would show the fact that the Revenue District Officer reassigned the investigation to RO Cayago.[6] Truth to tell, **a careful perusal of the records reveal that no new LOA was issued in favor of RO Cayago**.

While petitioner failed to raise the issue of lack of authority of RO Cayago to conduct the audit, I am of the view that the Court is not precluded from considering this issue as the absence of a valid LOA renders an assessment intrinsically void. A void assessment bears no fruit, and it is settled that estoppel cannot operate to give an effect to an assessment which is void *ab initio*.

On this point, the teachings in ***Acebedo Optical Company, Inc. vs. The Honorable Court of Appeals***[7] is most enlightening:

> "Xxx xxx xxx. The fact that petitioner acquiesced in the special conditions imposed by the City Mayor in subject business permit does not preclude it from challenging the said imposition, which is *ultra vires* or beyond the ambit of authority of respondent City Mayor. ***Ultra vires* acts or acts which are clearly beyond the scope of one's authority are null and void and cannot be given any effect. The doctrine of estoppel cannot operate to give effect to an act which is otherwise null and void or *ultra vires*.**"

[1] Exhibit R-2, BIR Records, p. 27.
[2] Exhibit R-5, BIR Records, p. 92.
[3] CTA Division Docket, p. 407; CTA EB Rollo, p. 41.
[4] CTA Division Docket, pp. 82-88.
[5] CTA Division Docket, pp. 101-108.
[6] CTA Division Docket, pp. 83 & 102.
[7] G.R. No. 100152, March 31, 2000.

Moreover, very recently, in ***Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.***,[8] 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.
>
> 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 issued 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:
>
> > 'SECTION 1. Rendition of judgment. – x x x
> >
> > In deciding the case, the Court may not limit itself to the 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 valid LOA, ***Lancaster*** ultimately resolved to declare the assessment void, *viz.*:

> "In sum, and considering the foregoing premises, we find no cogent reason to overturn the assailed decision and resolution of the CTA. As the CTA decreed, Assessment Notice LTAID II IT-98-00007, dated 11 October 2002, in the amount of P6,466,065.50 for

[8] G.R. No. 183408, July 12, 2017.

> deficiency income tax should be cancelled and set aside. **<u>The assessment is void for being issued without valid authority</u>**. Furthermore, there is no legal justification for the disallowance of Lancaster's expenses for the purchase of tobacco in February and March 2008." (Boldfacing and underscoring supplied)

In other words, although the parties did not specifically put into issue the authority of RO Cayago to continue the investigation that ultimately led to the issuance of the present disputed tax assessment, I submit that the Court has the authority to rule upon matters wich 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.[9]

In the present case, the crux of the controversy revolves on whether petitioner may be held liable for deficiency taxes subject of the assessment issued by respondent **The issue about the RO's authority to conduct audit necessarily relates thereto as its absence makes the assessment a nullity.** The importance of RO's authority to conduct the audit cannot be over-emphasized as it goes into the issue of the validity of the assessment.

On this score, the Supreme Court's pronouncement in ***Medicard Philippines Inc. vs. Commissioner of Internal Revenue***[10] on the matter of the authority of revenue officers who conducted the audit and examination of the taxpayer is instructive, *viz.*:

> ***"The absence of an LOA violated MEDICARD's right to due process***
>
> **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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[9] *Ramona T. Logronio vs. Roberto Taleseo,* G.R. No. 134602, August 6, 1999.
[10] G.R. No. 222743, April 5, 2017.

xxx xxx xxx

Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, 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**.

xxx xxx xxx

In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid. xxx xxx xxx.

In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, the Court said that:

> 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. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**. (Emphasis and underscoring ours)

xxx xxx xxx

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 because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.**" *(Citations omitted; boldfacing and underscoring supplied)*

In the aforequoted case, the Supreme Court declared as void the disputed assessment for lack of an LOA authorizing the revenue officers to examine the taxpayer's books of account and other accounting records.

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.[11] Section 6 of the NIRC 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)*

A BIR officer 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, 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

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

> **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)*

RMO No. 43-90 specifies the policy guidelines in the issuance of LOAs to audit. It likewise identifies and limits the BIR Officials who are authorized to issue LOAs, *viz.*:

> "D. Preparation and issuance of L/As.
>
> 1. All L/As for cases selected and listed pursuant to RMO No. 36-90 to be audited in the revenue regions shall be prepared and signed by the Regional Director (RD).
>
> 2. The Regional Director shall prepare and sign the L/As for returns recommended by the RDO for assignment to the ROs, indicating therein the name and address of the taxpayer, the name of the RO(s) to whom the L/A is assigned, the taxable period and kind of tax; after which he shall forward the same to the RDO or Chief, Assessment Branch, who in turn shall indicate the date of issue of the L/A prior to its issuance.
>
> 3. The L/As for investigation of taxpayers by National Office audit offices (including the audit division in the Sector Operations Service and Excise Tax Service) shall be prepared in accordance with the procedures in the preceding paragraph, by their respective Assistant Commissioners and signed by the Deputy Commissioner concerned or the Commissioner. The L/As for investigation of taxpayer by the intelligence and Investigation Office and any other special audit teams formed by the Commissioner shall be signed by the Commissioner of Internal Revenue.
>
> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner**. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority but <u>only upon prior authorization by the Commissioner himself</u>**." *(Boldfacing supplied)*

RMO No. 43-90 is explicit that the continuation of audit by a revenue officer other than the officer named in a previous LOA, **requires the issuance of a new LOA**:

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

> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority.**
>
> xxx xxx xxx
>
> 5. **Any re-assignment/transfer of cases to another RO(s)**, and revalidation of L/As which have already expired, **shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.**" *(Boldfacing supplied)*

As aforestated, the issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer is indispensable to the validity of an assessment. In the language of ***CIR vs. Sony Philippines, Inc.***[12]*:*

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

In this case, it is undisputed that RO Cayago - - the revenue officer who continued the audit and investigation of petitioner's books of accounts and other accounting records - - is not named in LOA No. 2007-00037795. RO Cayago even recognized in her Judicial Affidavit[13] that the audit was merely re-assigned to her for continuance of the investigation of petitioner's books of accounts and accounting records for taxable year 2008, to wit:

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[12] G.R. No. 178697, November 17, 2010.
[13] Exhibit R-32; CTA Division Docket, pp. 321-327.

Q4. Ms. Witness, in your capacity as Revenue Officer, do you know the taxpayer, R.A. Oben Holdings, Inc.?

A. Yes sir, I know the corporate taxpayer R.A. Oben Holdings, Inc., because the 2008 all internal revenue tax docket R.A. Oben Holdings, Inc., **was re-assigned to me for continuance of investigation after Revenue Officer Dolores M. Ferry was transferred to another revenue district office** and the docket of Petitioner bearing the Annual Income Tax Return for taxable year 2008, Letter of Authority and other documents served by Revenue Officer Dolores M. Ferry to the Petitioner were referred to me.

Q5. Madame Witness, will you be able to identify the Annual Income Tax Return for taxable year 2008, the Letter of Authority and other documents served by Revenue Officer Dolores M. Ferry to the Petitioner, if the documents are shown to you Ms. Witness?

A. Yes, Sir.

Q6. I'm now showing to you the following documents denominated as follows: **Annual Income Tax Return stamped dated 15 April 2009, Letter of Authority dated 24 July 2009, List of Audit Requirements per Tax Type, Second Request for Presentation of Records, Memorandum dated 26 November 2009, previously marked as Exhibit "R-1" to "R-5"**, respectively, what is the relation of these documents to the one you mentioned earlier, Ms. Witness?

A. <u>**These are the documents that were given to me for continuation of the audit investigation of R.A. Oben Holdings, Inc.**</u>, after Revenue Officer Dolores M. Ferry was assigned to another revenue district office." (Boldfacing with underline supplied)

Notably, there is nothing in RO Cayago's testimony that confirmed the issuance of a new LOA in her favor. The LOA dated 24 July 2009, marked as Exhibit R-2[14] and identified by RO Cayago in her Judicial Affidavit[15] is the very same LOA that was issued to RO Ferry and Group Supervisor Puno.

Even the Memorandum of RO Cayago dated October 10, 2011 to the Revenue District Officer of RDO No. 33 is categorical in stating that the **basis of her authority to audit petitioner is the LOA wherein her name does not appear**, *viz.*:

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[14] CTA Division Docket, p. 330.
[15] CTA Division Docket, p. 322.

> "This report pertains to the results of investigation conducted on the above-named taxpayer **pursuant to Letter of Authority No. 00037795 dated July 24, 2009** covering all internal revenue tax liabilities for taxable year 2008 originally assigned to Revenue Officer Ma. Dolores Ferry under Group Supervisor Arceli Puno and referred to the undersigned for continuance of investigation." (Boldfacing supplied)

Indeed, there is no denying that **no new LOA was issued to RO Cayago in relation to her investigation of petitioner's tax liability for taxable year 2008**. **This procedural lapse, or the absence of a new LOA rendered the assessment issued pursuant thereto void.**

While a perusal of the BIR Records disclosed that there is a Revalidation Notice [16] issued by Regional Director Alfredo V. Misajon, dated July 24, 2009, there is nonetheless no indication that it was received by petitioner. **Besides, the Revalidation Notice cannot cure the intrinsic infirmity of the assessment made by RO Cayago.**

Not only that. The Revalidation Notice may not be given any probative value as it was not offered in evidence. The declaration in *Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs*,[17] is edifying, *viz.*:

> "Time and again, this Court has consistently declared that cases filed before the CTA are litigated *de novo*, party-litigants must prove every *minute aspect* of their cases. Section 8 of R.A. No. 1125, as amended by R.A. No. 9282, categorically described the CTA as a court of record. Indubitably, **no evidentiary value can be given to any documentary evidence merely attached to the BOC Records, as the rules on documentary evidence require that such documents must be formally offered before the CTA**. xxx
>
> xxx xxx xxx
>
> As a matter of fact, **even if the aforesaid documentary evidence was included as part of the ROC Records submitted before the CTA in compliance with a lawful order of the court, this does not permit the trial court to consider the same in view of the fact that the Rules prohibit it**. The reasoning forwarded by the CTA in Division in its Resolution dated 24

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[16] BIR Records, p. 99.
[17] G.R. No. 195876, December 5, 2016.

> February 2009, that the apparent purpose of transmittal of the records is to enable it to appreciate and properly review the proceedings and findings before an administrative agency, is misplaced. Unless any of the party formally offered in evidence said Memorandum, and accordingly, admitted by the court *a quo*, it cannot be considered as among the legal and factual bases in resolving the controversy presented before it.
>
> xxx xxx xxx
>
> Clearly therefore, **evidence not formally offered during the trial cannot be used for or against a party litigant by the trial court in deciding the merits of the case. Neither may it be taken into account on appeal**. Since the rule on formal offer of evidence is not a trivial matter, failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, any evidence that has not been offered and admitted thereafter shall be excluded and rejected." *(Boldfacing supplied)*

Unless and until modified by the Supreme Court *En Banc*, the doctrines laid down in *Medicard, Lancaster* and *Sony* should be applied in determining the validity of assessments issued against taxpayers *sans* any LOA, albeit the issue on the absence thereof is belatedly, if not at all, raised by the taxpayer. Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[18]

One last point. To recognize as valid the act of a revenue officer by applying the laws on contract and on agency is not supported by jurisprudence. The law on contracts and on agency cannot substitute *nay* supersede the provision of the NIRC (a special law which governs, among others, the conduct of the audit and examination of taxpayers to determine the payment of correct amount of internal revenue taxes) which requires the issuance of an LOA by the Revenue Regional Director before an audit and examination of a taxpayer's books and accounting records may be conducted. It is well-settled that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation. **The general rule of requiring adherence to the letter in construing statutes applies with**

[18] *Development Bank of the Philippines v. NLRC*, March 1, 1995, 242 SCRA 59; *Albert v. Court of First Instance of Manila (Branch VI)*, L-26364, May 29, 1968, 23 SCRA 948 cited in the Concurring Opinion of Sandoval-Gutierrez, J., *Raul L. Lambino v. The Commission on Elections*, G.R. No. 174153, October 25, 2006.

particular strictness to tax laws and provisions of a taxing act are not to be extended by implication.[19]

In fine, the examination of petitioner's records by RO Cayago, having been made without the required authority as contained in an LOA, makes the disputed assessment a nullity. Being a void assessment, the same bears no fruit.[20]

All told, I VOTE to: (i) GRANT the Petition for Review filed by R.A. Oben Holdings, Inc.; (ii) REVERSE and SET ASIDE the Court in Division's Decision dated January 6, 2016 and Resolution dated April 7, 2016; and, (iii) CANCEL and SET ASIDE the deficiency value-added tax assessment issued against petitioner for the taxable year 2008 for being VOID.

ROMAN G. DEL ROSARIO
Presiding Justice

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[19] *Commissioner of Internal Revenue vs. Julieta Ariete*, G.R. No. 164152, January 21, 2010

[20] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

R.A. OBEN HOLDINGS, INC., Petitioner,	**CTA EB NO. 1454** (CTA Case No. 8723)
- versus -	Members: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 18 2017 3:31 p.m.

x- -x

CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

I concur in the *ponencia* in denying the instant Petition for Review filed by R.A. Oben Holdings, Inc. ("Petitioner") for lack of merit.

However, I would like to emphasize and expound on the authority of Revenue Officer Minda A. Cayago ("RO Cayago") to conduct the audit, the actual RO who continued the assessment and concluded the same. For this, I believe that a brief discussion of the factual antecedents of the case is in order.

Records reveal that Revenue Officer Ma. Dolores M. Ferry ("RO Ferry") and Group Supervisor Arceli N. Puno ("GS Puno") were originally authorized to conduct the audit of Petitioner's books for taxable year 2008. The Letter of Authority[1] ("LOA") reads as follows:

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1 Letter of Authority, BIR Records, page 27.

LOA 2007-00037795

JUL 24 2009

LETTER OF AUTHORITY

R.A. OBEN HOLDINGS, INC.
2/F CAROLINA BLDG., 2106 MADRE IGNACIA ST.
MALATE, MANILA
TIN NO. 001-268-194

SIR/ MADAM/ GENTLEMEN:

The bearer(s) hereof, Revenue Officer/s: M. FERRY Group Supervisor: A. PUNO of the RDO No. 33, Malate Intramuros Ermita Port Area is/ are authorized to examine your books of accounts and other accounting records for ALL INTERNAL REVENUE TAXES for the period from January 1, 2008 to December 31, 2008. He is/They are provided with the necessary identification card(s) which shall be presented to you upon request.

xxx

Very truly yours,
(Original Sgd.)
ARNEL DS. GUBALLA
SIGNATURE OF AUTHORIZED OFFICER
Regional Director
TITLE/POSITION

The above LOA has a stamp reading "revalidated", signed by Regional Director Alfredo V. Misajon ("RD Misajon").

On November 26, 2009, RO Ferry issued a Memorandum[2] addressed to the Revenue District Officer of Revenue District Office No. 33 recommending the reassignment of the investigation for continuance, as she was transferred to another district. The same was signed by RO Ferry and noted by GS Puno.

Consequently, a Revalidation Notice[3] was issued by RD Misajon pertaining to LOA No. 2007-00037795 dated July 24, 2009, authorizing RO Cayago to replace the previously assigned RO, and to continue the audit of Petitioner's books for taxable year 2008. The Revalidation Notice provides, *viz*:

[2] Memorandum, BIR Records, page 92.
[3] Revalidation Notice, BIR Records, page 98.

REVALIDATION NOTICE

R.A. OBEN HOLDINGS, INC.
2/F Carolina Bldg., 2106 madre Ignacia St.
Malate, Manila

Subject	:	LOA No. 00037795
Date Issued	:	July 24, 2009
Taxable Year:		2008

Sir/ Madam:

With reference to the subject Letter of Authority for the examination of your All Internal Revenue [sic] tax liabilities covering the taxable year 2008 which remains pending to date, please be informed that the aforesaid Letter of Authority has been revalidated…due to the following:

(x) To replace the previously assigned Revenue Officer
(x) The report of investigation cannot be rendered within the prescribed period due to:

( ) xxx
( ) xxx
( ) xxx
(x) Your failure to present the required records/documents for examination

xxx

In view thereof, the bearer hereof Revenue Officer **MINDA A. CAYAGO** is now authorized to continue the examination of your books of accounts, and all other accounting records and related documents.

xxx

Very truly yours,
(Sgd.)
ALFREDO V. MISAJON
Regional Director

A Memorandum of Assignment[4] was also issued by Revenue District Officer Josephine S. Virtucio, referring the audit of Petitioner for taxable year 2008 to RO Cayago pursuant to LOA No. 2007-00037795 dated July 24, 2009.

[4] Memorandum of Assignment, BIR Records, page 393.

From the foregoing, it is clear that notwithstanding the absence of a new LOA issued in her favor, RO Cayago was given the authority to continue the audit and examination of Petitioner's books of accounts and other accounting records by way of a Revalidation Notice, upon the reassignment of RO Ferry who was named in the LOA. In concurring with the *ponencia*, I submit that this could be validly done under the National Internal Revenue Code of 1997 ("1997 NIRC") and the laws on agency under the Civil Code.

The power of the Commissioner of Internal Revenue (CIR) to conduct assessments is granted to him by virtue of Section 6 of the 1997 NIRC:

> "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."[5]

Section 7 of the 1997 NIRC likewise sets limits on which powers of the CIR may be delegated by him and which powers are to be exercised exclusively by him. The issuance of an LOA is not one of the non-delegable powers of the CIR, *viz:*

> "SEC. 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 of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:
>
> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

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[5] *Emphasis and underscoring supplied.*

> (c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
>
> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept."

On the contrary, issuing LOAs is a delegable power which the CIR may devolve to Revenue Regional Directors, as expounded on in Section 10 of the 1997 NIRC:

> "SEC. 10. **Revenue Regional Director.** – Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:
>
> xxx
>
> (c) **<u>Issue Letters of authority for the examination of taxpayers</u> within the region;**
>
> xxx
>
> (h) **Perform such other functions as may be provided by law and as may be delegated by the Commissioner.**"[6]

An LOA is, in essence, a contract of agency. Article 1868 of the Civil Code defines agency as a contract where "a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."

In the case of *Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.*[7], the Supreme Court had the occasion to expound on the elements of agency, to wit:

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[6] *Emphasis and underscoring supplied.*

[7] G.R. No. 188288, January 16, 2012.

> "The elements of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for him/herself; and (4) the agent acts within the scope of his/her authority. **As the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it.** Absent such mutual intent, there is generally no agency. It is likewise a settled rule that persons dealing with an assumed agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it."[8]

In an LOA, the CIR is the principal -- as he is the one mandated by the law to make assessments -- and the Revenue Regional Director ("RRD"), his agent.

Now, may the RRD, the CIR's agent, appoint a sub-agent, in this case, the RO/s named in the LOA? Article 1892 of the Civil Code says that he can. The said provision states:

> "Art. 1892. **The agent may appoint a substitute if the principal has not prohibited him from doing so**; but he shall be responsible for the acts of the substitute:
>
> (1) When he was not given the power to appoint one;
> (2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.
>
> All acts of the substitute appointed against the prohibition of the principal shall be void. (1721)"[9]

This power to appoint a sub-agent necessarily includes the power to revoke the same. This is what happened in the instant case. The authority given to RO Ferry who was originally named in the LOA was revoked, transferred and reassigned to RO Cayago, for continuance of audit by way of a Revalidation Notice.

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8 *Emphasis supplied.*
9 *Emphasis supplied.*

Said Revalidation Notice is equivalent to an LOA. Several reasons support this. *First*, the only directive under Section 13 of the 1997 NIRC[10], which requires that assessment be done by ROs pursuant to an LOA, is that the grant of authority be done ***in writing***. In fact, an "[a]gency may be oral, unless the law requires a specific form."[11]

Second, although the Revalidation Notice was not entitled "Letter of Authority", it contains all the elements necessary to establish a contract of agency between the CIR and RO Cayago. The testimony of RO Cayago points to her acceptance and carrying out of the agency, to wit:

> "**Q4:** Ms. Witness, in your capacity as Revenue Officer, do you know the taxpayer, R.A. Oben Holdings, Inc.?
>
> **A:** Yes Sir, I know the corporate taxpayer R.A. Oben Holdings, Inc., because the 2008 all internal revenue tax docket R.A. Oben Holdings, Inc., was reassigned to me for continuance of investigation after Revenue Officer Dolores M. Ferry was transferred to another revenue district office and the docket of Petitioner bearing the Annual Income Tax Return for taxable year 2008, Letter of Authority and other documents served by Revenue Officer Dolores M. Ferry to the Petitioner were referred to me.
>
> xxx
>
> **Q7:** What happened next, Madame Witness, if any?
>
> **A:** I reviewed the tax docket of R.A. Oben Holdings, Inc., and made the Final Request for Presentation of Records as standard procedure for presentation of records which was signed by our Revenue District Officer Danilo C. Mendoza and was sent to the corporate taxpayer."[12]

Note that under the provisions on agency, acceptance by the agent may be express or implied from his acts which carry out the agency.[13] Moreover, considering that, given the facts of the case, RO Cayago did not exceed the authority given to her and the audit was limited to examining books of account

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[10] SEC. 13. Authority of a Revenue Officers. - 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." (*Emphasis supplied)*.

[11] Civil Code of the Philippines, Article 1869.

[12] Judicial Affidavit of Revenue Officer Minda A. Cayago, Docket, pp. 321-322.

[13] Civil Code of the Philippines, Article 1870.

or accounting records within the period indicated in the LOA in coming up with the assessment, all the elements for a contract of agency are present.

Third, that the document granting authority to RO Cayago to continue the audit under the LOA is referred to as a Revalidation Notice is of no moment. The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[14] The title of the contract does not necessarily determine its true nature.[15] In fact, this Court has, time and again, declared certain documents emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.

Lastly, is the glaring fact that the principal, the CIR, has acknowledged, if not ratified, the agency granted to RO Cayago to conduct the audit through the act of championing this very case.

In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the 1997 NIRC, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.[16] Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code.[17]

I am not unaware of Revenue Memorandum Order No. 43-90[18] which states that "[a]ny re-assignment/transfer of cases to another RO(s)...shall require the issuance of a new L/A" However, I humbly stress and emphasize

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14 Heirs of Dr. Mario S. Intac and Angelina Mendoza Intac v. Court of Appeals and Spouses Marcelo Roy, Jr. and Josefina Mendoza-Roy and Spouses Dominador Lozada and Martina Mendoza-Lozada, G.R. No. 173211, October 11, 2012 *citing* Spouses Villaceran v. De Guzman, G.R. No. 169055, February 22, 2012; Ramos v. Heirs of Honorio Ramos, Sr., G.R. No. 140848, April 25, 2002, 381 SCRA 594, 601; Heirs of Policronio M. Ureta, Sr. vs. Heris of Liberato M. Ureta, G.R. Nos. 165748 & 165930, September 14, 2011 *citing* Lopez v. Lopez, G.R. No. 161925, November 25, 2009, 605 SCRA 358, 36.

15 Adelfa Properties, Inc. v. Court of Appeals, G.R. No. 111238, January 25, 1995.

16 Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, represented by Jose Mario Bunag, in his capacity as Commissioner of the Bureau of Internal Revenue, and John Doe and Jane Doe, who are persons acting for, in behalf or under the authority of Respondent, G.R. No. 215427, December 10, 2014, *citing* Lopez v. The Civil Service Commission, 273 Phil. 147, 152 (1991).

17 Philippine International Trading Corporation v. Commission on Audit, G.R. No. 183517, June 22, 2010.

18 Issued September 20, 1990.

that an administrative issuance must conform, not contradict, the provisions of the enabling law. Any rule that is not consistent with the law is null and void.[19]

Finally, I believe that the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 222743, April 5, 2017* is not on all fours with the instant case and should not be applied to the same. *Medicard* involved a **total absence of an LOA** which the Court concluded could not be supplanted by a mere Letter Notice as it violated Medicard's right to due process. In contrast, a LOA was issued in the case at bar, and the issue herein is whether there was authority granted to RO Cayago, the RO who continued the audit in replacement of the RO named in the LOA.

It is for the reasons above that, in my opinion, RO Cayago who conducted the examination of Petitioner's records was deemed authorized to do so.

I therefore vote for the **DENIAL** of the Petition for Review filed by the Petitioner.

Ma. Belen [signature]

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[19] Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, G.R. Nos. 175707, 180035 & 181092, November 19, 2014.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

R.A. OBEN HOLDINGS, INC., *Petitioner,*	**CTA *EB* NO. 1454** (CTA Case No. 8723)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 18 2017 3:31 p.m.

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Dissenting Opinion

MANAHAN, J.:

With due respect, I disagree with the finding of falsity in the return sufficient to warrant the application of the ten (10)-year prescriptive period.

The *ponencia* cites the recent case of *Commissioner of Internal Revenue v. Asalus Corporation,*[1] which again reiterated that a "mere showing that the returns filed by the taxpayer were false, notwithstanding the absence of intent to defraud, is sufficient to warrant the application of the ten (10)-year prescriptive period under Section 222 of the NIRC." This reiterates the declaration in *Aznar v. Court of Tax Appeals (Aznar),*[2] that a false return "merely implies a deviation from the truth, whether intentional or not," while a fraudulent

[1] G.R. No. 221590, February 22, 2017.
[2] G.R. No. L-20569, August 23, 1974.

return "implies intentional or deceitful entry with intent to evade the taxes due."

However, in the later case of *Commissioner of Internal Revenue v. Philippine Daily Inquirer*,[3] the Supreme Court stated that the entry of wrong information due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return.

Thus, the applicability of the ten-year period does not apply to every "false" return. The definition of a "false" return should be revisited, and that a "false return" be considered as such if it has been filed with intent to evade tax.

This is especially important considering that taxes are self-assessed, which system is aptly described by the Supreme Court as:

> Taxes are generally self-assessed. They are initially computed and voluntarily paid by the taxpayer. The government does not have to demand it. If the tax payments are correct, the BIR need not make an assessment.
>
> The self-assessing and voluntarily paying taxpayer, however, may later find that he or she has erroneously paid taxes.[4]

Furthermore, it bears repeating that the application of *Aznar* should not be on of unbridled discretion.[5] Thus, it is important to keep in mind that even in *Aznar*, the Supreme Court provided a qualification regarding the application of the ten-year prescriptive period, *to wit*:

> The ordinary period of prescription of 5 years [now, three years] within which to assess tax liabilities under Sec. 331 [now Sec. 203] of the NIRC should be applicable in normal circumstances, but <u>whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent returns intended to evade payment of tax or failure to file</u>

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[3] G.R. No. 213943, March 22, 2017.
[4] SMI-ED Phils. Technology, Inc. v. Commissioner of Internal Revenue, G.R. No. 175410, November 12, 2014.
[5] Ayala Hotels, Inc. v. Commissioner of Internal Revenue, CTA Case No. 6002, January 10, 2002.

> returns, the period of ten years ... from the time of the discovery of the falsity, fraud or omission ... should be the one enforced.[6]

Taking these cases together, a taxpayer is allowed to file a claim for refund upon finding that a tax has been erroneously paid. On the reverse side, should the taxpayer find that there is an error in its return and/or deficient taxes paid, the taxpayer may file an amended return, or should the BIR be the one to detect the error, then an assessment shall be issued.

The very meaning of a deficiency assessment is that there was an error or omission on the part of the taxpayer in the preparation of its return or the payment of its tax. But each and every error does not and should not result to the operation of the ten-year prescriptive period. Otherwise, on the strength of the *Aznar* definition of "false returns", BIR examiners conducting regular tax audits, who, logically as a matter of course, would always come up with tax findings of either under-declaration of income or over-declaration of deductions, or both, could mercilessly and arbitrarily raise the argument of "false return" giving rise to the ten-year prescriptive period. The result would be a lackadaisical implementation of the statutory principle that the statute of limitations (SOL) is a remedial measure and should be strictly construed against the taxing authority and liberally in favor of the taxpayer.

Thus, in the instant case, I find that petitioner's error in its return was not sufficient to give rise to the application of the ten-year prescriptive period.

First, there was no design to mislead or deceive on the part of the taxpayer. I give credence to the evidence and testimony provided by petitioner that the mistake arose from the inclusion of the 2007 gross income in the 2008 return. Petitioner provided other documentary evidence to support the amount of rental income declared in the quarterly VAT returns.

Second, there was no intentional non-disclosure or omission so as to put the BIR at a disadvantage in the investigation since the BIR was not prevented from issuing the

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[6] *Supra*, Note 2.

deficiency assessment within the regular three (3)-year prescriptive period. The assessment was based on and easily determinable from the comparison of petitioner's Annual Income Tax Return and Quarterly VAT returns. All of these returns are already in respondent's custody and available for examination. However, it is notable that even at the preliminary conference stage, the first and second quarters have prescribed. At the Preliminary Assessment Notice (PAN) stage, the first three quarters have already prescribed, yet there was no evidence that respondent requested for the issuance of a waiver of the defense of prescription.

Finally, there was no fraudulent intent or willful intent to evade the payment of the correct amount of tax.

Based on the foregoing, the assessment for deficiency VAT for taxable year 2008 has prescribed and should be cancelled.

I vote to grant the petition for review.

CATHERINE T. MANAHAN
Associate Justice