REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2250** (CTA Case No. 9155)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** JJ.
TRIDHARMA MARKETING CORPORATION, Respondent.	***Promulgated:*** FEB 24 2022 3:27pm

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DECISION

UY, J.:

In the instant *Petition for Review*[1] filed on July 1, 2020[2] by petitioner, Commissioner of Internal Revenue against respondent, Tridharma Marketing Corporation, petitioner prays that the Decision dated October 9, 2019 and Resolution dated February 18, 2020, rendered by the Second Division of this Court, in CTA Case No. 9155, entitled, *"Tridharma Marketing Corporation, Petitioner vs. Commissioner of Internal Revenue, Respondent,"* be set aside and

[1] EB Docket, pp. 6 to 24.

[2] SC Administrative Circular Nos. 31-2020, 34-2020, 35-2020, 36-2020, 39-2020, and 40-2020, state that the deadline for the filing of petitions, appeals, complaints, motions, pleadings and other submissions that fall due from March 15, 2020 until May 31, 2020, is extended for 30 calendar days, counted from June 1, 2020, or until July 1, 2020. Hence, the *Petition for Review* was timely filed.

cancelled. The dispositive portions thereof respectively read as follows:

Decision dated October 9, 2019:

> "**WHEREFORE,** premises considered, the Petition for Review filed by petitioner Tridharma Marketing Corporation is **GRANTED.** Accordingly, the assessments issued against petitioner for deficiency income tax, value-added tax (VAT) and compromise penalty in the total amount of ₱43,386,774.95 for taxable year 2009 are **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED.**"

Resolution dated February 18, 2020:

> "**WHEREFORE,** respondent's Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner Commissioner of Internal Revenue is the chief official of the Bureau of Internal Revenue, tasked with enforcement of internal revenue laws with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Tridharma Marketing Corporation is a domestic corporation organized to buy, sell, distribute, and market, at wholesale or retail, all kinds of goods, commodities, wares and merchandise of every kind and description. Its principal office is located at GPH Properties Corp., Plaridel Street, Barangay Umapad, Mandaue City, Cebu.

On June 22, 2011, the BIR issued Letter Notice (LN) No. 116-RLF-09-00-00051 pertaining to respondent's importations in taxable year (TY) 2009, alleging discrepancy between importation data provided by the Bureau of Customs (BOC) and the reported VAT payments on importations in respondent's VAT returns for 2009.

In response to LN No. 116-RLF-09-00-00051, respondent sent the BIR a letter dated July 1, 2011, explaining the discrepancy between the importation data was due to timing difference.

Thereafter, respondent, through Joy de la Paz, executed two (2) *Waivers of the Defense of Prescription of the Statute of Limitations under the National Internal Revenue Code*, on May 25, 2012, which extended the period to assess until December 31, 2012, and then on December 12, 2012, which extended the period to assess until June 30, 2013.

On May 2, 2013, respondent received the *Preliminary Assessment Notice* (PAN) signed by OIC-Assistant Commissioner Alfredo V. Misajon of the Large Taxpayers Service assessing deficiency income tax and VAT in the amounts of ₱17,715,403.36 and ₱100,971,809.58, respectively, inclusive of surcharge and interest.

Respondent replied to the PAN via two (2) separate letters, signed by its president, Rene D. dela Calzada and its authorized representative, Allan A. Malapitan, filed with the BIR on May 15, 2013 and June 3, 2013, respectively.

On June 26, 2013, respondent received the Assessment Notices Nos. IT-116-LN-0051-09-13-092 13 and VT-116-LN-00051-09-13-093, together with the *Formal Letter of Demand* (FLD) signed by OIC-Assistant Commissioner Misajon assessing deficiency income tax of ₱6,440,183.56 and VAT of ₱36,921,591.39, both inclusive of surcharge and interest, as well as compromise penalty of ₱25,000.00.

On July 7, 2013, respondent received a letter from OIC-Assistant Commissioner Misajon acknowledging the receipt of its two (2) protest letters to the PAN and informing respondent that it had thirty (30) days from receipt of the FLD to file a protest.

On July 25, 2013, respondent through its duly authorized representative, Malapitan, filed a notarized *Affidavit of Protest*, maintaining that the assessments are void and petitioner's right to assess taxes for TY 2009 has already prescribed.

In a letter dated July 31, 2013, signed by OIC-Assistant Commissioner Misajon, the BIR informed respondent that it disregarded the *Affidavit of Protest* filed by Allan A. Malapitan for respondent and considered respondent to have failed to file a valid protest against the FLD.

On August 30, 2013, respondent filed an application for compromise settlement dated August 29, 2013, on the ground of doubtful validity of the BIR's assessments under Section 204 of the National Internal Revenue Code (NIRC) of 1997, as amended. Respondent paid ₱10,231,290.22, representing 40% of the basic taxes assessed in the FLD.

On September 16, 2015, respondent received the *Notice of Denial* issued by the BIR on August 26, 2015, directing it to pay the amount of ₱33,155,484.73 net of ₱10,231,290.22 which was previously paid plus all the increments incident to delinquency.

Thus, on October 1, 2015, respondent filed a *Petition for Review with Motion to Suspend Collection of Taxes* with the Court in Division.

On October 6, 2015, petitioner issued a *Warrant of Levy and/or Distraint and Service of Warrant* seeking to collect ₱43,361,774.95 based on the FLD detailed as follows:

ASSESSMENT NO.	TAX TYPE	RETURN PERIOD	BASIC TAX	SUR-CHARGE	INTEREST	TOTAL AMOUNT DUE
IT 116 LN 00051 09 13 002	IT	2009	₱3,884,115.99	₱0.00	₱2,556,067.57	₱64,407,183.56
VT 116 LN 00051 09 13 003	VT	2009	21,694,109.56	0.00	15,227,481.83	36,921,591.39
TOTAL			**₱25,578,225.55**	**₱0.00**	**₱17,783,549.40**	**₱43,361,774.95**

On October 15, 2015, during the hearing on the *Motion to Suspend Collection of Taxes*, respondent presented as its witness, Joselito R. Albaño, its Chief Finance Officer.

Thereafter, respondent filed its *Formal Offer of Documentary Exhibits in Support of Respondent's Motion to Suspend Collection of Taxes* on October 19, 2015. On October 27, 2015, respondent filed an *Urgent Motion to Resolve Motion to Suspend Collection of Taxes.*

In the Resolution dated November 6, 2015, the Court in Division admitted respondent's Exhibits "P-1 and P-1-a", "P-2", "P-3 and P-3-a", "P-4 and P-4-a", "P-5 and P-5-a", "P-6 and P-6-a", "P-8 and P-8-a", and "P-9 and P-9-a," but denied admission of Exhibits "P-7 and P-7-a." Moreover, the Court in Division granted respondent's *Motion for Suspension of Collection of Tax* subject to respondent's depositing a cash bond in the amount of ₱25,578,225.55 or posting of a GSIS bond or other surety bond in the amount equivalent to one and a half (1 1/2) of the amount being collected or ₱38,367,338.00.

On November 16, 2015, respondent filed a *Manifestation of Compliance with Submission of Surety Bond*, which was approved by the Court in Division on December 9, 2015. Accordingly, petitioner and any of the BIR's officers and/or employees were enjoined from collecting from respondent the amount of tax subject of the *Petition for Review*.

On December 28, 2015, within the extended time granted by the Court in Division, petitioner filed his *Answer (to the Petition for Review dated 30 September 2015)*, interposing the following special and affirmative defenses, *to wit*:

1. The Court in Division has no jurisdiction over the Petition for Review.
2. The assessment has already become final, executory and demandable.
3. The decision that can be appealed to the Court in Division is a Decision on Disputed Assessment, and not a Decision denying the application for compromise. Hence, the taxpayer does not have any cause of action against respondent.
4. The CIR's discretion not to accept the compromise settlement cannot be the subject of judicial determination. Therefore, he cannot be compelled by court action to exercise a power that is not ministerial but discretionary.
5. Assuming for the sake of argument that the Court in Division can exercise jurisdiction over the case, the CIR's right to assess the taxpayer for taxable year 2009 did not prescribe as the three (3) year period within which to make the assessment finds no application to the instant case.
6. The CIR's right to make the assessment has not yet prescribed with the valid execution of the waivers in accordance with law.
7. The assessments for deficiency IT, VAT, and corresponding compromise penalty have bases both in fact and in law.

8. The LN, PAN, FLD, and FAN were issued in accordance with law, rules and jurisprudence.

On February 5, 2016, respondent filed an *Urgent Motion for Inspection and Copying of Documents*, which was denied by the Court in Division in the Resolution dated April 13, 2016.

Meanwhile, after the Pre-Trial Conference on April 14, 2016, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI) on May 4, 2016. In the Resolution dated May 6, 2016, the Court in Division approved the JSFI and terminated the Pre-Trial. Thereafter, the Court in Division issued a Pre-Trial Order dated June 10, 2016.

On July 21, 2016, upon motion of respondent, Romeo De Jesus, Jr., was commissioned as the Independent Certified Public Accountant (ICPA) in CTA Case No. 9155.

On October 14, 2016, respondent filed a *Request for Subpoena Duces Tecum et ad Testificandum*, which was granted in the Resolution dated January 24, 2017.

During trial, respondent presented the following witnesses: Joy Z. Dela Paz, its Accounting Manager; Elvin John M. Santos, its Director of Supply Chain and Logistics Department; Niño Beb A. Virtudazo, a licensed customs broker and Officer-in-Charge (OIC) of Operations of Fil-port Express Brokerage; and Romeo De Jesus, Jr., the court-commissioned ICPA.

Thereafter, respondent filed its *Formal Offer of Documentary Exhibits with Motion to Correct Markings* on February 26, 2018. In the Resolution dated May 7, 2018, the Court admitted all of respondent's Exhibits.

On May 29, 2018, petitioner presented his sole witness, Revenue Officer Jennifer L. Almedilla-Potot. Thereafter, petitioner filed his *Formal Offer of Evidence* on June 13, 2018. In the Resolution dated August 6, 2018, the Court in Division admitted all of petitioner's exhibits.

Petitioner filed his *Memorandum* on September 13, 2018 while respondent filed its *Memorandum* on September 26, 2018. Hence, on

October 24, 2018, the Court in Division submitted CTA Case No. 9155 for decision.

In the assailed Decision[3] dated October 9, 2019, the Court in Division granted respondent's *Petition for Review*. The Court *a quo* cancelled and set aside the assessments issued against respondent for deficiency income tax, value-added tax (VAT) and compromise penalty in the total amount of ₱43,386,774.95 for taxable year 2009.

The CIR filed his *Motion for Reconsideration (Re: Decision dated October 9, 2019)* on October 29, 2019, while respondent filed its *Comment/Opposition (Re: Motion for Reconsideration dated October 25, 2019)* on December 9, 2019.

In the assailed Resolution[4] dated February 18, 2020, the Court in Division denied the *Motion for Reconsideration* for lack of merit.

Undaunted, petitioner filed a *Motion for Extension of Time to File Petition for Review* on March 9, 2020[5] before the Court *En Banc*. In the Resolution[6] dated March 11, 2020, the subject *Motion* was granted and petitioner was given a final and non-extendible period of fifteen (15) days from March 10, 2020, or until March 25, 2020, within which to file his Petition for Review.

Thereafter, the CIR filed the instant *Petition for Review*[7] on July 1, 2020.[8] On July 20, 2020, petitioner was directed to make the necessary amendments to his Petition for Review to conform to Section 4, Rule 7 of the Rules of Court, as amended, within five (5) days from notice.

Petitioner filed his *Compliance*[9] on August 26, 2020, and *Submission*[10] on August 27, 2020. In the Resolution[11] dated

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[3] EB Docket, pp. 28 to 60.
[4] EB Docket, pp. 61 to 63.
[5] EB Docket, pp. 1 to 4.
[6] EB Docket, pp. 5.
[7] EB Docket, pp. 6 to 24.
[8] SC Administrative Circular Nos. 31-2020, 34-2020, 35-2020, 36-2020, 39-2020, and 40-2020, state that the deadline for the filing of petitions, appeals, complaints, motions, pleadings and other submissions that fall due from March 15, 2020 until May 31, 2020, is extended for 30 calendar days, counted from June 1, 2020, or until July 1, 2020. Hence, the Petition for Review was timely filed.
[9] EB Docket, pp. 68 to 71.
[10] EB Docket, pp. 72 to 77.
[11] EB Docket, pp. 85 to 86.

September 23, 2020, petitioner was directed to submit the compliant *Verification and Certification Against Forum Shopping*.

On October 22, 2020, petitioner filed a *Manifestation*.[12] In the Resolution[13] dated November 11, 2020, petitioner's *Manifestation* was noted, and the compliant *Verification and Certification Against Non-Forum Shopping* was admitted. Moreover, respondent was directed to file its comment to the *Petition for Review*, within ten (10) days from notice. On November 24, 2020, respondent filed its *Comment/Opposition (Re: Petition for Review dated 30 June 2020)*.[14]

On January 5, 2021, the instant case was referred to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA), pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.*[15]

On January 26, 2021, respondent filed a *Manifestation with Motion (Re: Resolution dated January 5, 2021),*[16] praying that the mediation conference be terminated and the case proceed its due course, in view of the assailed Decision of the Court in Division, which cancelled the subject assessment against respondent.

Considering the refusal of respondent to mediate and in view of the *Back to Court*[17] submission of the PMC-CTA, the Court *En Banc* granted respondent's prayer for the termination of mediation proceedings, and the instant *Petition for Review* was submitted for Decision on February 9, 2021.[18]

ISSUES

The CIR raises the following assignment of errors in the instant *Petition for Review*, to wit:

"I.

WHETHER OR NOT THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT IT HAS

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[12] EB Docket, pp. 87 to 90.
[13] EB Docket, pp. 92 to 93.
[14] EB Docket, pp. 94 to 110.
[15] EB Docket, pp. 292 to 293.
[16] EB Docket, pp. 294 to 296.
[17] EB Docket, p. 297.
[18] EB Docket, pp. 301 to 302.

JURISDICTION OVER RESPONDENT'S PETITION FOR REVIEW.

II.

WHETHER OR NOT THE HONORABLE COURT IN DIVISION ERRED IN RULING THAT PETITIONER'S ASSESSMENTS ARE VOID."[19]

Petitioner's arguments:

The CIR contends that the Court in Division does not have jurisdiction over respondent's *Petition for Review*. Allegedly, the jurisdiction of this court on "other matters" under Section 7(a)(1) of R.A. No. 1125 should be understood as matters of the same kind as disputed assessment and claim for refund pertained to in the same provision.

However, petitioner submits that the Honorable Court, in its decisions declares that the CTA has blanket authority to hear and decide all tax cases. This seems to be contrary to the rule of statutory construction of *expression unius est exclusion alterius*. Had the Congress intended to grant the Honorable Court jurisdiction to resolve all tax problems, it would not have bothered to make an enumeration of cases that are within the jurisdiction of the Honorable Court as embodied in Section 7 of R.A. 1125.

Simply put, the Honorable Court cannot rule that the CTA has jurisdiction over all tax problems by mere implication of law because the law provides an enumeration and the jurisdiction of the court is limited only to those expressly included therein.

In addition, the CIR avers that his assessments are valid, even in the absence of an LOA, as there is no such requirement under the law when it is the Commissioner himself who examines the returns.

In this case, an LN signed by the Commissioner himself was issued. The Commissioner himself personally informed respondent that based on his examination of its returns (a computerized matching conducted on information/data provided by third party sources against its declaration per VAT returns) disclosed discrepancies for

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[19] EB Docket, pp. 9 to 10.

taxable year 2009. Every action in this case was in consonance with the mandate of Section 6 (A) and its relevant implementing rules.

Thus, respondent's right to due process was not violated as it was given ample opportunity to respond to the Letter Notice and to dispute the assessment. As previously mentioned under the implementing rules, it has all the processes provided in RR 12-99 at its disposal. Respondent did in fact, exhaust administrative remedies afforded to it.

Respondent's counter-arguments:

Respondent counters that the Court in Division has jurisdiction over the case. Allegedly, as held in the case of "*The Aristocrat Franchise Corporation vs. Commissioner of Internal Revenue (CTA Case No. 8732, July 28, 2016)*", it is settled that the Commissioner's *Notice of Denial* of compromise falls under "*other matters arising under the NIRC or other laws administered by the BIR*" which is within the exclusive appellate jurisdiction of the CTA in Division.

According to the respondent, the Court in Division correctly ruled that in the absence of a valid LOA, any resulting assessment is null and void. Moreover, the issuance of LN allegedly has no statutory basis under the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Thus, petitioner's reliance on Section 6 (A) of the NIRC for the issuance of the LN has no legal basis.

What is clear and undisputed on the records of the instant case is that no LOA was issued prior to the issuance of the assessments to Tridharma. Hence the Court in Division correctly ruled that before an examination of the taxpayer may be validly done, there must be a LOA issued to the concerned revenue officers authorizing the conduct of an examination. Without such a LOA, the resulting assessment or examination is a nullity.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

The Court in Division has jurisdiction to review petitioner's Notice of Denial of respondent's application for compromise.

The CIR contends that the Court in Division has no jurisdiction over the case, as the matter involved the denial of an application for compromise, which is within the exclusive purview of the CIR.

We are not convinced.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[20] It is conferred by law and not by the parties' action or conduct.[21] Specifically, this Court, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[22]

Section 7 (a) (1) of Republic Act (R.A.) No. 1125,[23] as amended by R.A. No. 9282[24] and R.A. No. 9503,[25] states:

> "**SECTION 7**. *Jurisdiction.* – The CTA shall exercise:
>
> (a) *Exclusive appellate jurisdiction to review by appeal, as herein provided:*
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue

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[20] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. 185666, February 4, 2015.
[21] *Angelito P. Magno vs. People of the Philippines, et al.,* G.R. No. 171542, April 6, 2011.
[22] *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.,* G.R. No. 221780, March 25, 2019.
[23] AN ACT CREATING THE COURT OF TAX APPEALS.
[24] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.
[25] AN ACT ENLARGING THE ORGANIZATIONAL STRUCTURE OF THE COURT OF TAX APPEALS, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> taxes, fees or other charges, penalties in relation thereto, *or* ***other matters arising under the National Internal Revenue Code*** or other laws administered by the Bureau of Internal Revenue." *(Emphasis supplied.)*

Likewise, Section 3 (a) (1), Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, enumerates the cases falling within the jurisdiction of the Court of Tax Appeals in Division, to wit:

> "**SECTION 3.** *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
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> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
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> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or ***other matters arising under the National Internal Revenue Code*** or other laws administered by the Bureau of Internal Revenue." *(Emphasis supplied.)*

A plain reading of the foregoing provisions reveal that the appellate jurisdiction of the Court of Tax Appeals is not limited to cases that involve the decisions of the petitioner on matters relating to assessments or refunds. Rather, the second part of the provision specifically covers other cases that arise out of the NIRC or other related laws administered by the BIR. The wording of the provision is clear and simple.[26]

In other words, aside from the decisions of the CIR pertaining to assessments or refunds, decisions of the CIR relating to "***other matters***" may be taken cognizance of by the CTA, if such "**other matters"** arose from the NIRC or other laws administered by the BIR.

In this case, the *Notice of Denial* of respondent's application for compromise settlement is a matter which arose from the provisions of the NIRC of 1997, as amended. To be specific, the power of the CIR

[26] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 162852, December 16, 2004.

to enter into a compromise is granted under Section 204 (A) of the NIRC of 1997, as amended, to wit:

> "**SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** — The Commissioner may —
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> xxx xxx xxx
>
> (A) Compromise the payment of any internal revenue tax, when:
>
> (1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or
>
> (2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.
>
> xxx xxx xxx"

With regard to the exercise of the CIR's authority to compromise, abate, and refund or credit taxes, it is generally true that purely administrative and discretionary functions may not be interfered with by the courts; but when the exercise of such functions by the administrative officer is tainted by a failure to abide by the command of the law, then it is incumbent on the courts to set matters right, with the Supreme Court having the last say on the matter.[27]

In other words, the discretionary authority to compromise granted to the BIR Commissioner is never meant to be absolute, uncontrolled and unrestrained. No such unlimited power may be validly granted to any officer of the government, except perhaps in cases of national emergency.[28] Thus, the BIR Commissioner would have to exercise his discretion within the parameters set by the law, and in case he abuses his discretion, this Court may correct such abuse if the matter is appealed to it.[29]

Correspondingly, any decision of the CIR in relation to the exercise of his power to enter into a compromise under Section 204 (A) of the NIRC of 1997, as amended, which is tainted by a failure to

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[27] *Philippine National Oil Company vs. Court of Appeals, et al., et seq.*, G.R. Nos. 109976 and 112800, April 26, 2005.
[28] *Id.*
[29] *Id.*

abide by the parameters set by law, is subject to this Court's exclusive appellate jurisdiction.

Hence, in the instant case, the Court in Division did not err in exercising jurisdiction to review by appeal, petitioner's *Notice of Denial* of respondent's application for compromise settlement.

The absence of an LOA renders the assessment void for violating the taxpayer's right to due process.

In the assailed Decision, the Court in Division ruled that the assessments issued by the petitioner are a nullity in the absence of a valid LOA.

However, the CIR contends that his assessments are valid, even in the absence of an LOA, as there is no such requirement under the law when it is the Commissioner himself who examines the returns. In this case, the LN subject of this case was signed by the CIR himself, pursuant to Revenue Memorandum Order Nos. 30-2003 and 42-2003.

Petitioner's argument lacks merit.

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.[30]

Section 6 (A) of the NIRC of 1997, as amended, lays down the power of the CIR or his duly authorized representative to authorize the examination of any taxpayer and the assessment of the correct amount of tax, to wit:

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

> "**SEC. 6.** ***Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.*** –
>
> (A) *Examination of Returns and Determination of Tax Due.* - After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." *(Emphasis and underscoring supplied.)*

Based on the foregoing, an authority emanating from the CIR or his duly authorized representative is required before an examination and an assessment may be made.

Relative thereto, Section 13 of the NIRC of 1997 provides that the authority of a revenue officer to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to an LOA, to wit:

> "**SEC. 13.** ***Authority of a Revenue Officer.*** - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount 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 and underscoring supplied.)*

Pursuant to the foregoing provision, a revenue officer is mandated to be first clothed with authority, through a valid LOA issued in his/her favor, before he/she can validly examine taxpayers and perform tax assessment and collection functions.

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In the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue (Medicard case),*[31] the Supreme Court emphasized the importance of obtaining prior authority, through an LOA, before conducting assessment functions. Otherwise, the resulting assessment would be rendered void, to wit:

> "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**.
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> xxx xxx xxx
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> In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:
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>> 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**. " *(Emphasis supplied.)*

On the basis of the foregoing pronouncement, it is specifically required that a revenue officer is authorized by a valid LOA, in order to exercise assessment functions. In the absence of a valid LOA issued specifically in favor of a revenue officer, the tax assessments issued by the BIR against such taxpayer shall be void.

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[31] G.R. No. 222743, April 5, 2017.

In the recent cases of *Commissioner of Internal Revenue vs. Travelers International Hotel Group, Inc.,*[32] and *Commissioner of Internal Revenue vs. Trinity Franchising and Management Corporation,*[33] the Supreme Court reiterated that an assessment will be invalid if the revenue officers lack authority to continue the audit against a taxpayer. According to the High Court, it is settled 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.[34]

In *Commissioner of Internal Revenue vs, McDonald's Philippines Realty Corp.,*[35] the Supreme Court stressed that the LOA is the ***concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the revenue officers***, pursuant to Sections 6, 10(c) and 13 of the NIRC of 1997, as amended.

Moreover, the issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. The result of the ***absence of an LOA*** is the ***nullity of the examination and assessment*** based on the violation of the taxpayer's right to due process.[36]

Anent petitioner's argument that the subject LN is valid considering it was signed by the CIR pursuant to RMO Nos. 30-2003 and 42-2003, the same lacks merit.

The foregoing argument has already been passed upon by the Supreme Court in the *Medicard case,* where it was noted that RMO No. 30-2003, as supplemented by RMO No. 42-2003, was ***amended*** by RMO No. 32-2005, which prescribed the procedure for the conversion of LNs to LOAs, to wit:

'IV. POLICIES AND GUIDELINES

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[32] G.R. No. 255487, May 3, 2021.
[33] G.R. No. 255094, April 26, 2021.
[34] *Id.,* citing *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 222743, April 5, 2017.
[35] G.R. No. 242670, May 10, 2021.
[36] *Id.*

8. In the event a taxpayer who has been issued an LN refutes the discrepancy shown in the LN, the concerned taxpayer will be given an opportunity to reconcile its records with those of the BIR within One Hundred and Twenty (120) days from the date of the issuance of the LN. However, the subject taxpayer shall no longer be entitled to the abatement of interest and penalties after the lapse of the sixty (60)-day period from the LN issuance.

9. In case the above discrepancies remained unresolved at the end of the One Hundred and Twenty (120)-day period, the revenue officer (RO) assigned to handle the LN shall recommend the issuance of [LOA) to replace the LN. The head of the concerned investigating office shall submit a summary list of LNs for conversion to LAs (using the herein prescribed format in Annex "E" hereof) to the OACIR-LTS I ORD for the preparation of the corresponding LAs with the notation "This LA cancels LN No. ________. "

xxx xxx xxx

V. PROCEDURES

xxx xxx xxx

B. At the Regional Office/Large Taxpayers Service

xxx xxx xxx

7. Evaluate the Summary List of LNs for Conversion to LAs submitted by the RDO x x x prior to approval.

8. Upon approval of the above list, prepare/accomplish and sign the corresponding LAs.

xxx xxx xxx

> 10. Transmit the approved/signed LAs, together with the duly accomplished/approved Summary List of LNs for conversion to LAs, to the concerned investigating offices for the encoding of the required information x x x and for service to the concerned taxpayers.
>
> xxx xxx xxx
>
> C. At the RDO x x x
>
> xxx xxx xxx
>
> 11. If the LN discrepancies remained unresolved within One Hundred and Twenty (120) days from issuance thereof, prepare a summary list of said LNs for conversion to LAs x x x.
>
> xxx xxx xxx
>
> 16. **<u>Effect the service of the above LAs to the concerned taxpayers</u>**.'

Pursuant to the CIR's own issuance, RMO No. 32-2005, there is a procedure to be followed in the conversion of an LN to an LOA. Accordingly, the High Court held that the Court cannot convert the LN into the LOA required under the law, *even if* it was issued by the CIR himself. Moreover, the *Medicard case* explained the crucial differences between an LOA and an LN, and why the latter cannot be accepted as sufficient or alternative compliance with the due process requirements, to wit:

> "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. **<u>The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision.</u>**
>
> xxx xxx xxx
>
> The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. x x x x **<u>Since the law specifically</u>**

> **requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it.** x x x
>
> **The following differences between an LOA and LN are crucial**. *First*, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. *Second*, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. *Third,* an LOA gives the revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. **Simply put, LN is entirely different and serves a different purpose than an LOA**. **Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner**. Unfortunately, this was not done in this case."

The foregoing jurisprudential requirements are clear, in that an LN is entirely different and serves a different purpose than an LOA. Thus, due process requires a revenue officer to secure the requisite LOA, *i.e.,* follow the procedure set forth in RMO No. 32-2005, in order to convert the LN into an LOA.

In this case, Revenue Officer Jennifer L. Almedilla-Potot testified[37] that she was tasked to continue the audit of respondent for taxable year 2009, under authority of Memorandum of Assignment (MOA) No. LN-116-2013-0514[38] dated March 5, 2013. Originally, the conduct of audit examination was assigned Revenue Officer Reynoso C. Bravo,[39] under MOA No. LN-116-2011-322 dated June 6, 2011.[40]

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[37] Judicial Affidavit of Jennifer L. Almedilla-Potot, Division Docket (CTA Case No. 9155) - Vol. 2, p. 437.
[38] Exhibit "R-1," BIR Records, p. 85.
[39] Judicial Affidavit of Jennifer L. Almedilla-Potot, Division Docket (CTA Case No. 9155) - Vol. 2, p. 437.
[40] Exhibit "R-2," BIR Records, p. 27.

Correspondingly, RO Almedilla-Potot performed assessment functions and issued the following: 1) Memorandum[41] dated April 29, 2013, recommending the issuance of a PAN; and 2) *Memorandum*[42] dated June 6, 2013, recommending the issuance of an FLD.

A perusal of the records, however, shows that there was never any LOA issued in favor of ROs Almedilla-Potot or Bravo. Rather, the alleged authority of the ROs merely stems from LN No. 116-RLF-09-00-00051 dated June 22, 2011.[43]

To be specific, the following documents all refer to or cite LN No. 116-RLF-09-00-00051,[44] to wit:

1. MOA No. LN-116-2013-0514[45] dated March 5, 2013;
2. MOA No. LN-116-2011-322[46] dated June 6, 2011;
3. *Memorandum*[47] dated April 29, 2013;
4. *Memorandum*[48] dated June 6, 2013;
5. PAN;[49] and
6. FLD with Details of Discrepancies;[50]

There was no showing, however, that LN No. 116-RLF-09-00-00051 dated June 22, 2011[51] was ever converted into an LOA, pursuant to the petitioner's own issuance, *i.e.,* RMO No. 32-2005.

Applying the principles set forth in the *Medicard* case, this Court finds that the RO who acted on respondent's case was not properly clothed with authority, as the subject LN was never converted into an LOA. Considering that RO Almedilla-Potot was *not* authorized by a valid LOA to conduct the investigation and audit of respondent, the subject tax assessment resulting therefrom is void

[41] Exhibit "R-10," BIR Records, pp. 96 to 98.
[42] Exhibit "R-13," BIR Records, pp. 160 to 163.
[43] Exhibit "P-16," Division Docket (CTA Case No. 9155) - Vol. 3, p. 1172; Exhibit "R-3," BIR Records, p. 26.
[44] Exhibit "P-16," Division Docket (CTA Case No. 9155) - Vol. 3, p. 1172; Exhibit "R-3," BIR Records, p. 26.
[45] Exhibit "R-1," BIR Records, p. 85.
[46] Exhibit "R-2," BIR Records, p. 27.
[47] Exhibit "R-10," BIR Records, pp. 96 to 98.
[48] Exhibit "R-13," BIR Records, pp. 160 to 163.
[49] Exhibit "R-11," BIR Records, pp. 91 to 95.
[50] Exhibit "R-14," BIR Records, pp. 156 to 159.
[51] Exhibit "P-16," Division Docket (CTA Case No. 9155) - Vol. 3, p. 1172; Exhibit "R-3," BIR Records, p. 26.

for violating respondent's right to due process. For being void, the same bears no valid fruit.[52]

In view of the foregoing disquisition, this Court upholds the factual findings and ruling of the Court *a quo* in the assailed Decision and Resolution.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision dated October 9, 2019 and the Resolution dated February 18, 2020 rendered by the Second Division of this Court in CTA Case No. 9155 are hereby **AFFIRMED**.

Consequently, petitioner Commissioner of Internal Revenue or any person acting on his behalf is hereby **ENJOINED** from enforcing the collection of deficiency taxes assessed against Tridharma Marketing Corporation for taxable year 2009.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
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