Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

GENIOGRAPHICS INCORPORATION, Petitioner,	**CTA CASE NO. 9712**
	Members: CASTAÑEDA, JR., *Chairperson,* MINDARO-GRULLA, and BACORRO-VILLENA, *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 10 2020 10:50 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on May 20,2019 is a Petition for Review filed on November 6, 2017, which prays that the Final Decision on Disputed Assessment dated September 13, 2017, issued against petitioner for deficiency income tax and value added tax for taxable year 2012 be declared void.

THE PARTIES

Petitioner Geniographics, Incorporated is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business located at Unit 1102 Cityland Pasong Tamo Tower, 2210 Don Chino Roces Avenue, Makati City.[1]

Respondent Commissioner of Internal Revenue is the Chief of the Bureau of Internal Revenue (BIR), with office address at BIR National Office Building, Agham Road, Diliman, Quezon City, where summons and other processes of this Court may be served.[2]

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[1] Paragraph I.b, Joint Stipulations of Facts, docket p. 97.
[2] Paragraph I.c, *Id.*

ANTECEDENTS

Petitioner was served on 4 December 2014 with Letter Notice (LN) No. 048-RLFTRS-12-00-00149.[3]

Subsequently, petitioner was served with a Preliminary Assessment Notice (PAN) dated 2 October 2015 together with Details of Discrepancies on the alleged deficiency Income and Value-Added Tax for the taxable year 2012. [4]

Later on petitioner was served with Formal Assessment Notice (FAN) dated 11 November 2015.[5]

On 5 October 2017, petitioner received a Final Decision on Disputed Assessment (FDDA) dated September 13, 2017[6].

Hence, the instant petition was filed on November 6, 2017

After a Motion for Extension to file Answer, respondent filed his *Answer*[7] on January 12, 2017 interposing, *inter alia*, the following defenses, to wit:

> *"7. Petitioner in its* <u>*Letter dated 20 February 2015*</u> *(duly filed with the Office of the BIR Regional Director, Revenue Region 8-Makati on* <u>*November 13, 2015*</u>*), in protest of the BIR Formal Assessment Notice (FAN) dated November 11, 2015, the latter clearly failed to allege nor question the fact that there was no letter or authority or LOA issued or served to petitioner by the BIR for taxable year 2012. Hence, not having raised such issue in the administrative level, petitioner cannot raised the same for the first time on appeal with this Court, without violating the basic principles of fair play, justice and due process. Thus, it is settled that "issues not properly brought and ventilated below may not be raised first time on appeal. Xxx.*

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[3] Paragraph I.d, *Id., Exhibit "P-1".*
[4] Paragraph I.e, *Id., Exhibit "P-5" and "P-6".*
[5] Paragraph I.f, *Id. Exhibit "P-7".*
[6] *Exhibit "P-10".*
[7] Docket pp.53-60.

8. The deficiency income tax and value added tax assessments issued by the respondent CIR to petitioner for taxable year 2012 was legally anchored under ***Section 6(A) of the 1997 Tax Code*** *(i.e Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement) in relation to* ***Revenue Memorandum Order No. 55-2010*** *(i.e Revision in the Procedures on the Issuance of Letters of Authority)*

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9. This Court in the case of BIG AA Corporation represented by Erlinda L. Stohner vs. Bureau of Internal Revenue CTA Case No. 7093, February 22, 2006 has already ruled that:

> ***"letter notices" issued against a taxpayer in connection with the information of under declarations of sales and purchases gathered through the Third Party Information Program may be considered as a "notice of audit or investigation" in the absence of evident error or clear abuse of discretion.***

10. Petitioner was assessed deficiency income tax and value added tax, inclusive of 50% surcharge and 20% interest for taxable year 2012 for the reason that during the administrative investigation of its tax case, petitioner failed to substantiate or controvert by substantial evidence the BIR factual findings, as indicated under the Details of Discrepancies attached to the BIR PAN xxx, FAN xxx and FDDA.

11. Respondent fully complied with the due process requirements mandated under Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations No. 12-99 and further amended by Revenue Regulations No. 18-2013, when the subject PAN, FAN and FDDA were issued and served to petitioner. The BIR records clearly show that petitioner were fully appraised of the legal and factual bases on how and why the BIR arrived such findings and conclusions assessing petitioner deficiency income tax and value added tax, inclusive of 50% surcharge and 20% interest for taxable year 2012, and was duly afforded opportunity to controvert such findings of respondent <u>when petitioner in fact was able to file letter dated 20 February 2015 in protest against the subject FAN, on November 13, 2015</u> pursuant to Section 228 of the 1997 Tax Code.

12. Settled is the rule that the essence of due process in taxation is the reasonable opportunity to be heard and

> *submit any evidence one may have in support of one's defense. Xxx.*
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> *xxx.*
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> *15. Investigation disclosed that the 50% surcharges were imposed on petitioner's deficiency income and value added tax liabilities for taxable year 2012, pursuant to Section 248 (B) of the 1997 Tax Code since the latter failed to report sales, receipts or income in an amount exceeding 30% of that declared per its tax return for the year involved, which is a prima facie evidence of a false or fraudulent return.*
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> *xxx."*

Thereafter, a *Notice of Pre-Trial Conference* was issued by this Court setting the case for *Pre-Trial Conference* on February 15, 2018. Accordingly, petitioner filed its *Pre-Trial Brief*[8] on February 12, 2018 while the *Pre-Trial Brief*[9] for the respondent was filed on February 7, 2018.

On March 12, 2018, the parties' filed their *Joint Stipulation of Facts*[10]. Thereafter, a Pre-Trial Order[11] was issued by this Court on March 19, 2018 thereby the pre-trial conference was deemed terminated.

The trial of the case then ensued.

During trial, petitioner presented as witnesses, Anthony C Villanueva[12], President of petitioner, and Patrocinio Serrano[13], Accountant of petitioner, who both testified on direct by way of judicial affidavits.

After giving their respective testimonies, Petitioner's *Offer of Evidence* [14] was filed on June 18, 2018. On July 19, 2018 and October 10, 2018, the Court issued Resolutions[15]

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[8] *Id., pp. 69-77*
[9] *Id., pp. 64-68*
[10] *Id., pp. 97-98*
[11] *Id., pp. 105-112.*
[12] *Id., pp. 80-83.*
[13] *Id., pp. 84-94.*
[14] *Id. pp. 139-147.*
[15] *Id. pp. 224-226; pp. 268-269.*

admitting petitioner's evidence except for Exhibit "P-11", to wit:

Exhibit:	Particulars:
P-1	Letter Notice (LN) No. 048-RLFTRS-12-00-00149 dated 20 November 2014
P-2	Details of Withholding Agents/Payors and Payees/Income Recipients Records (Source: Withholding Tax Returns – Alphalists), LN No. 048-RLFTRS-12-00-00149
P-3	Letter of the Petitioner to the Respondent dated 20 February 2015
P-4	Handwritten letter of petitioner's accountant dated 9 March 2015 addressed to the respondent and acknowledged receipt by the respondent on 9 March 2015
P-5	Preliminary Assessment Notice dated 2 October 2015
P-6	Details of Discrepancies attached to P-5
P-7	Formal Assessment Notice (FAN) dated 11 November 2015
P-8	Letter of the respondent dated 22 December 2016
P-9	Letter of respondent dated 28 January 2016
P-10	Final Decision on Disputed Assessment (FDDA) dated 13 September 2017
P-12	Certificate of Creditable Tax Withheld at Source (Form 2307) for the period 3rd month of the First Quarter of the tax year 2012 for the amount of Php1,524,631.68 with tax withheld in the amount of Php30,492.63
P-13	Sun Life of Canada Philippines Statement of Account covering Invoice Nos. 0593 and 0594 for the amount of Php681,761.74 each
P-14	Geniographics Inc. Sales Invoice No. 0594 dated 27 March 2012 in the amount of Php681,761.74

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P-15	Geniographics Inc. Sales Invoice No. 0595 dated 27 March 2012 in the amount of P681,761.74
P-16	Geniographics Inc. Publication Order No. 0188 dated 7 March 2012 in the amount of Php1,177,925.90
P-17	Philstar Invoice for P.O. No. 0188 dated 16 March 2012 in the amount of Php1,177,925.90
P-18	Philstar Official Receipt No. 326391 dated 20 July 2012 in the amount of Php578,445.76
P-19	Philstar Official Receipt No. 326392 dated 20 July 2012 in the amount of Php578,445.76
P-20	Certificate of Creditable Tax Withheld at Source (Form 2307) for the period 1st month of the Second Quarter of the tax year 2012 for the amount of Php128,000.00 with tax withheld in the amount of Php2,560.00
P-21	Sun Life of Canada Philippines Statement of Account covering Invoice No. 0008 for the amount of Php522,684.00
P-22	Geniographics Inc. Billing Statement No. 0008 dated 25 April 2012 in the amount of Php522,684.00
P-23	Geniographics Inc. Publication Order No. 0189 dated 12 April 2012 in the amount of Php451,538.26
P-24	Philstar Invoice Advertising Bill for P.O. No. 0189 dated 26 April 2012
P-25	Philstar Official Receipt No. 328143 dated 20 August 2012 in the amount of Php147,825.03
P-26	Philstar Official Receipt No. 328867 dated 31 August 2012 in the amount of Php147,825.03
P-27	Certificate of Creditable Tax Withheld at Source (Form 2307) for the period 3rd month of the Second Quarter of the tax year 2012 for the amount of

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	Php1,707,587.48 with tax withheld in the amount of Php30,492.63
P-28	Sun Life of Canada Statement of Account covering Invoice Nos. 0012 and 0013 dated 28 June 2012 in the amount of P681,761.74 each
P-29	Geniographics Inc. Billing Statement No. 0012 dated 18 June 2012 in the amount of Php681,761.74
P-30	Geniographics Inc. Billing Statement No. 0013 dated 18 June 2012 in the amount of Php681,761.74
P-31	Geniographics Publication Order No. 0190 dated 11 June 2012 in the amount of Php1,177,925.90
P-32	Philstar Advertising Bill for P.O. No. 0191 dated 26 June 2012 in the amount of Php1,177,925.90
P-33	Philstar Official Receipt No. 333982 dated 19 December 2012 in the amount of Php289,222.88
P-34	Philstar Official Receipt No. 333985 dated 4 December 2012 in the amount of Php289,222.80
P-35	Cerficate of Creditable Tax Withheld At Source (Form 2307) for the period 2nd month of the Third Quarter of the tax year 2012 for the amount of Php594,682.14 with tax withheld in the amount of Php11,893.64
P-36	Sun Life of Canada Philippines Statement of Account covering Invoice No. 0023 for the amount of Php522,684.00
P-37	Geniographics Billing Statement No. 0023 dated 27 July 2012 in the amount of Php522,684.00
P-38	Geniographics Publication Order No. 0191 dated 17 July 2012 in the amount of Php451,538.26
P-39	Philstar Advertising Bill for P.O. No. 0191 dated 10 August 2012

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P-40	Philstar Official Receipt No. 331960 dated 30 October 2012 in the amount of Php147,825.02
P-41	Philstar Official Receipt No. 331243 dated 18 October 2012 in the amount of Php147,825.03
P-42	Certificate of Creditable Tax Withheld at Source (Form 2307) for the period 1st month of the Fourth Quarter of the tax year 2012 for the amount of Php762,315.83 with tax withheld in the amount of P15,246.32
P-43	Sun Life of Canada Philippines Statement of Account covering Invoice No. 0032 for the amount of Php681,761.73
P-44	Geniographics Billing Statement No. 0032 dated 18 September 2012 in the amount of Php681,761.73
P-45	Geniographics Publication Order No. 0192 dated 7 September 2012 in the amount of Php588,962.95
P-46	Philstar Advertising Bill for P.O. No. 0192 dated 20 September 2012 in the amunt of P588,962.95
P-47	Philstar Official Receipt No. 337407 dated 28 February 2013 in the amount of Php192,815.25
P-48	Philstar Official Receipt No. 336913 dated 20 February 2013 in the amount of Php192,815.25
P-49	Philstar Official Receipt No. 33474 dated 31 January 2013 in the amount of Php192,815.25
P-50	Certificate of Creditable Tax Withheld At Source (Form 2307) for the period 1st month of the Fourth Quarter of the tax year 2012 for the amount of Php405,810.55 with tax withheld in the amount of Php8,116.21
P-51	Sun Life of Canada Philippines Statement of Account covering Invoice No. 0037 for the amount of Php454,507.82

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P-52	Geniographics Billing Statement No. 0037 dated 24 September 2012 in the amount of Php454,507.82
P-53	Geniographics Publication Order No. 0193 dated 18 September 2012 in the amount of Php392,641.96
P-54	Philstar Advertising Bill for P.O. 0193 dated 27 September 2017 for the amount of Php392,641.96
P-55	Philstar Official Receipt No. 338088 dated 19 March 2013 in the amount of Php128,543.50
P-56	Philstar Official Receipt No. 338708 dated 2 April 2013 in the amount of Php128,593.50
P-57	Philstar Official Receipt No. 339645 dated 22 April 2013 in the amount of Php128,543.40
P-58	Articles of Incorporation of the Petitioner Corporation
P-59	Annual Income Tax Return for the tax year 2012

On the other hand, respondent presented Revenue Officer Annaliza A. Alberto[16] Revenue Officer Sharon S Zafe[17] as witnesses by way of judicial affidavits.

On February 14, 2019, respondent filed his *Formal Offer of Evidence*[18] which the Court admitted in a Resolution[19] dated March 15, 2019, to wit:

Exhibit:	Description:
R-1	BIR Records bearing the BIR examiners report of investigation of petitioner's deficiency income and value-added taxes, for CY 2012
R-2	BIR Letter Notice (LN) No. 048-RLFTRS-12-00-00149
R-2-a	Name and Specimen Signature of CIR Kim Jacinto-Henares

[16] *Id. pp. 246-253.*
[17] *Id. pp. 274-283.*
[18] *Id. pp. 302-310.*
[19] *Id. pp. 316-317.*

R-2-b	Details of Withholding Agents, Payors and Payees Income Recipients Records
R-2-c	Proof of receipt by petitioner of the said BIR Letter Notice (LN) No. 048-RLFTRS-12-00-00149 with attached Details of Withholding Agents, Payors and Payees Income Recipients Records
R-3	BIR Follow-Up Letter dated Jan. 8, 2015 addressed to petitioner
R-3-a	Name and Specimen Signature of Wilfredo V. Pilapil - Revenue District Officer of BIR RDO No. 48-West Makati
R-3-b	Proof of receipt by petitioner of the said BIR Follow-Up Letter dated Jan. 8, 2015
R-4	BIR Letter dated April 22, 2015 addressed to Sun Life of Canada Philippines, Inc.
R-4-a	Name and Specimen Signature of Wilfredo V. Pilapil - Revenue District Officer of BIR RDO No. 48-West Makati
R-4-b	Proof of service to Sun Life of Canada Philippines, Inc. of the said BIR Letter dated April 22, 2015
R-5	Memorandum Report of Revenue Officer Sharon S. Zafe
R-5-a	Name and Specimen Signature of Revenue Officer Sharon S. Zafe
R-6	BIR Preliminary Assessment Notice (PAN) dated October 2, 2015
R-6-a	Name and Specimen Signature of Jonas DP. Amora, Regional Director of BIR RR8-Makati
R-6-b	Details of Discrepancies dated October 2, 2015 attached to the BIR Preliminary Assessment Notice (PAN) dated October 2, 2015
R-6-c	Name and Specimen Signature of Jonas DP Amora, Regional Director of BIR RR8-Makati
R-6-a	Proof of receipt by petitioner of the said BIR Preliminary Assessment Notice (PAN) dated October 2, 2015
R-7	BIR Formal Assessment Notice (FAN) dated Nov. 11, 2015

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R-7-a	Name and Specimen Signature of Jonas DP. Amora, Regional Director of BIR RR8-Makati
R-7-b	Details of Discrepancies dated November 11, 2015 attached to the BIR Formal Assessment Notice (FAN) dated Nov. 11, 2015
R-7-c	Name and Specimen Signature of Jonas DP. Amora, Regional Director of BIR RR8-Makati
R-7-d	Proof of receipt by petitioner of the said BIR Formal Assessment Notice (FAN) dated Nov. 11, 2015
R-8	Letter Protest dated February 20, 2015 of petitioner against the BIR Formal Assessment Notice (FAN) dated Nov. 11, 2015
R-8-a	Proof of receipt by the BIR of the said Letter Protest dated February 20, 2015 of petitioner
R-9	BIR Letter dated December 22, 2015 addressed to petitioner
R-9-a	Name and Specimen Signature of Jonas DP. Amora, Regional Director of BIR RR8-Makati
R-10	BIR Memorandum No. RR8-048-PRO-0116-00003 dated 20 January 2016
R-10-a	Name and Specimen Signature of Wilfredo V. Pilapil - Revenue District Officer of BIR RDO No. 48-West Makati
R-10-b	Name and Specimen Signature of Revenue Officer Annaliza A. Alberto
R-11	BIR Letter dated Jan. 28, 2016 addressed to petitioner
R-11-a	Name and Specimen Signature of Wilfredo V. Pilapil - Revenue District Officer of BIR RDO No. 48-West Makati
R-11-b	Proof of receipt by petitioner of the said BIR Letter dated Jan. 28, 2016
R-12	Memorandum Report dated October 3, 2016 of Revenue Officer Annaliza A. Alberto
R-12-a	Name and Specimen Signature of Revenue Officer Annaliza A. Alberto

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R-13	BIR Final Decision on Disputed Assessment (FDDA) dated September 13, 2017
R-13-a	Name and Specimen Signature of Glen A. Geraldino, Regional Director, BIR Revenue Region No. 8-Makati
R-13-b	Details of Discrepancies dated September 13, 2017 attached to the BIR Final Decision on Disputed Assessment (FDDA) dated September 13, 2017
R-13-c	Name and Specimen Signature of Glen A. Geraldino, Regional Director, BIR Revenue Region No. 8-Makati
R-13-d	Proof of receipt by petitioner of the said BIR FDDA
R-14	Sworn Judicial Affidavit dated September 3, 2018 of Revenue Officer Annaliza A. Alberto
R-14-a	Name and Specimen Signature of Revenue Officer Annaliza A. Alberto
R-15	Sworn Judicial Affidavit dated January 21, 2019 of Revenue Officer Sharon S. Zafe
R-15-a	Name and Specimen Signature of Revenue Officer Sharon S. Zafe

Petitioner filed its *Memorandum* on May 6, 2019[20]. However, respondent failed to file his memorandum per Records Verification dated May 7, 2019. Hence, the case was deemed submitted for decision on May 20, 2019.

THE ISSUE RAISED[21]

The parties have agreed on the following issue for the resolution of the Court:

> Whether or not the petitioner is liable to pay the disputed deficiency income tax and value added tax assessments for taxable year 2012.

[20] *Id. pp.321-342.*
[21] Par. II, Joint Stipulations of Facts

Petitioner's arguments:

Petitioner submits that the absence of a Letter of Authority (LOA) renders the assessment void. Allegedly, the Letter Notice (LN) issued was not converted into LOA contrary to guidelines in Revenue Memorandum Order (RMO) No. 32-2005 leading to nullification of the assessment.

Petitioner avers that an LOA cannot be dispensed with as Section 6 of the National Internal Revenue Code (NIRC) requires authority from the Commissioner or from duly authorized representatives before an examination of a taxpayer must be made.

Moreover, petitioner states that granting without conceding that RMO 55-2010 which states in part that in "..order to expedite the processing of LN cases, the issuance of Notice of Informal Conference may immediately commence even without prior issuance of LOA.." in the present case, still the fact remains and as allegedly admitted by respondent's witness, no Notice of Informal Conference was issued by respondent.

Also, petitioner maintains that the issue of lack of authority can still be raised in the present petition.

Lastly, petitioner submits that the alleged deficiency assessments have no factual and legal basis.

Respondent's counter-arguments:

In his Answer, respondent contends that for failure of petitioner to raise the issue on lack of authority of the examiner in the administrative level, the same cannot be raised for the first time on appeal with this Court, for violating the basic principles of fair play, justice and due process.

Moreover, respondent maintains that he fully complied with the due process requirements mandated under Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations No. 12-99 and further amended by Revenue

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Regulations No. 18-2013, when the subject PAN, FAN and FDDA were issued and served to petitioner. Allegedly, petitioner was fully appraised of the legal and factual bases on how and why the BIR arrived such findings and conclusions assessing petitioner deficiency income tax and value added tax, inclusive of 50% surcharge and 20% interest for taxable year 2012.

We resolve in favor of petitioner.

The petition for review was seasonably filed

Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that a taxpayer adversely affected by the decision of the Commissioner of Internal Revenue may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the adverse decision; otherwise, the assessment shall become final, executory and demandable.

In the present case, the FDDA dated September 13, 2017 was received by petitioner on October 5, 2017, thus petitioner had thirty (30) days or until November 4, 2017 to file the petition for review before this Court. November 4, 2017 falls on a Saturday, hence the instant petition filed on November 6, 2017 was still filed within the period prescribed vesting jurisdiction to this Court.

The assessment issued by respondent against petitioner is void in the absence of LOA

Section 6 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides as follows:

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"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."

Pursuant to said provision, an authorization from the CIR or from his duly authorized representative is needed in order to examine any taxpayer. In relation to Sections 10 and 13 of the NIRC of 1997, as amended, the authorization needed to examine any taxpayer is the "Letter of Authority" (LOA) and the duly authorized representative referred is the Revenue Regional Director, to wit:

"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*

xxx xxx xxx.

(c) ***Issue Letters of authority for the examination of taxpayer within the region;***

xxx xxx xxx.

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 ours)*

Evidently, an LOA from the Revenue Regional Director is needed before a Revenue Officer can examine taxpayers

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records, 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. Otherwise stated, a Revenue Officer cannot examine a taxpayer or recommend the assessment of any deficiency tax due in the absence of a LOA.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[22], the categorically ruled as follows:

> *"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."*

The absence of authorization or an LOA of a Revenue Officer, to examine taxpayers in order to collect the correct amount of tax or to recommend the assessment of any deficiency tax due cannot be overly emphasized.

Also, Section 13 of the National Internal Revenue Code (NIRC) provides:

> *"xxx xxx*
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> *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."*

The audit process commences with the service of a duly issued LOA to a taxpayer who has been selected for audit. A Letter of Authority is the authority given to the appropriate revenue officer assigned to perform assessment functions. Before any revenue officer can conduct an examination or assessment, there must be grant of authority. It serves to authorize the revenue officer assigned to examine the taxpayers' books and records for a particular period. Also, an

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[22] G.R. No. 178697, November 17, 2010.

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audit and examination should be in accordance with the procedures prescribed by law.

RMO No. 43-90 mandates as follows:

"xxx xxx

C. Other policies for issuance of L/As.

*1. All **audits/ investigations,** whether field audit or office audit, **should be conducted under a Letter of Authority.***

xxx xxx

Accordingly, RAMO 1-00 provides as follows:

xxx xxx

*2.3 A Letter of Authority **must be served or presented to the taxpayer within 30 days from its date of issue**; otherwise it becomes null and void, unless revalidated.*

In case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[23] the Supreme Court expounded that under RMO No. 32-2005, previously issued Letter Notice should be converted first to LOA before a revenue office proceed with further examination and assessment of the taxpayer. To wit:

Under this policy, even without conducting a detailed examination of taxpayer's books and records, if the computerized/manual matching of sales and purchases/expenses appears to reveal discrepancies, the same shall be communicated to the concerned taxpayer through the issuance of LN. The LN shall serve as a discrepancy notice to taxpayer similar to a Notice for Informal Conference to the concerned taxpayer. Thus, under the RELIEF System, a revenue officer may begin an examination of the taxpayer even prior to the issuance of an LN or even in the absence of an LOA with the aid of a computerized/manual matching of taxpayers': documents/records. Accordingly, under the RELIEF System, the presumption that the tax returns are in accordance with law and are presumed correct since these are filed under the penalty of perjury are easily rebutted and the taxpayer

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

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becomes instantly burdened to explain a purported discrepancy.

Noticeably, both RMO No. 30-2003 and RMO No. 42-2003 are silent on the statutory requirement of an LOA before any investigation or examination of the taxpayer may be conducted. As provided in the RMO No. 42-2003, the LN is merely similar to a Notice for Informal Conference. However, for a Notice of Informal Conference, which generally precedes the issuance of an assessment notice to be valid, the same presupposes that the revenue officer who issued the same is properly authorized in the first place.

With this apparent lacuna in the RMOs, in November 2005, RMO No. 30-2003, as supplemented by RMO No. 42-2003, was amended by RMO No. 32-2005 to fine tune existing procedures in handing assessments against taxpayers'· issued LNs by reconciling various revenue issuances which conflict with the NIRC. Among the objectives in the issuance of RMO No. 32-2005 is to prescribe procedure in the resolution of LN discrepancies, conversion of LNs to LOAs and assessment and collection of deficiency taxes.

IV. POLICIES AND GUIDELINES

x x x x

***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. "*

x x x x

V. PROCEDURES

x x x x

B. At the Regional Office/Large Taxpayers Service

x x x x

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.

x x x x

Decision 11 G.R. No. 222743

x x x x

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.

x x x x

C. At the RDO x x x

x x x x

11. If the LN discrepancies remained unresolved within One Hundred and Twenty (120) days from issuance thereof, prepare a summary list of said LN s for conversion to LAs x x x.

x x x x

*16. **<u>Effect the service of the above LAs to the concerned taxpayers</u>**.*

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. Hence, the CTA's disregard of MEDICARD's right to due process warrant the reversal of the assailed decision and resolution.

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In the case of Commissioner of Internal Revenue v. 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 underlining ours)*

The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. *Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation.* ***Since the law specifically 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. In fact, Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.***

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 10days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation.[31] 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. Unfortunarely, this was not done in this case. *(Emphasis Supplied)*

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Clearly, the assessment issued by respondent against petitioner is void in the absence of LOA.

Lastly, the Court does not agree with respondent's arguments that since petitioner failed to raise the issue of no LOA during the administrative proceedings, petitioner cannot anymore raise the same with this Court. It must be emphasized that Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) provides categorically that the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (trial de novo) where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration.

Moreover, in *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[24] the Supreme Court affirmed the power and jurisdiction of this Court to resolve the issue on the authority of revenue officers to conduct the audit even if it was not raised by the parties in their pleadings or memoranda, to wit:

> *"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 issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:*
>
> > *'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)*

Evidently, whether a revenue examiner's authority to conduct audit was never raised as an issue in the administrative level or in the petition before this Court, it is of

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

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no consequence. The Court may rule related issues necessary to achieve an orderly disposition of the case. The determination of a revenue examiner's authority to conduct audit is necessary to achieve an orderly disposition of the case for the absence of a LOA will violate a taxpayer's right to due process and render the assessment thereon void.

To reiterate, the Supreme Court is very clear in the cases of Medicard,[25] Lancaster[26] and Sony[27], that the absence of LOA or authority to examine taxpayer records in the first place, renders the assessment void. Here, the, assessment is void ab initio and without legal effect.

In view of the foregoing, the deficiency tax assessments of herein petitioner for the Taxable Year 2012 are void. Consequently, this Court finds that the discussion on the other issues presented in this case becomes unnecessary.

WHEREFORE, premises considered, the Petition for Review filed by Geniographics, Incorporated is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated September 13, 2017, for deficiency Income Tax and Value Added Tax, covering Taxable Year 2012 is **CANCELLED** and **SET ASIDE**.

SO ORDERED.

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

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[25] Medicard Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 222743, April 5, 2017.
[26] Commissioner of Internal Revenue v. Lancaster Philippines, Inc., G.R. No. 183408, July 12, 2017.
[27] Commissioner of Internal Revenue v. Sony Philippines, Inc., G.R. No. 178697, November 17, 2010.

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice