REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

LUFTHANSA GERMAN AIRLINES - PHILIPPINE BRANCH,
Respondent.

CTA EB NO. 1489
(CTA Case No. 8601)

Present:

DEL ROSARIO, *PJ*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

OCT 03 2017 4:25 p.m.

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DECISION

Fabon-Victorino, J.:

Assailed in this *Petition for Review*[1] is the March 21, 2016 Decision[2] and June 27, 2016 Resolution[3] both rendered by the Court in Division in CTA Case No. 8601. The assailed Decision cancelled the deficiency income tax (IT) assessment for taxable year 2008 issued by petitioner against respondent in the amount of ₱10,599,262.63, inclusive of interest and penalties, while the similarly assailed Resolution denied petitioner's subsequently filed *Motion for Reconsideration*.

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[1] *En Banc* docket, pp. 7-18.
[2] *En Banc* docket, pp. 22-49.
[3] *En Banc* docket, pp. 50-51.

THE FACTS AND THE PROCEEDINGS

The pertinent facts, as culled from the record, are as follows:

Petitioner Commissioner of Internal Revenue is the chief of the Bureau of Internal Revenue (BIR), with the power to assess and collect taxes, fees and charges from taxpayers as well as to enforce all forfeitures, penalties and fines connected with such taxes. He may be served with summons and other court processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent Lufthansa German Airlines - Philippine Branch, is a duly registered Philippine Branch of Deutsche Lufthansa Aktiengesellschaft, a corporation organized and existing under the laws of the Federal Republic of Germany.[4] It is licensed[5] to engage in air travel transport business in the Philippines with Tax Identification No. 000-592-425-000.

On June 8, 2009, respondent filed its Annual Income Tax Return (ITR) for calendar year (CY) 2008.[6]

On July 6, 2009, respondent, through its Account Executive Wynvie Lee, received Letter of Authority (LOA) No. 00033709[7] dated July 1, 2009, authorizing the examination of its books of accounts and other accounting records relative to its internal revenue taxes for CY 2008.

On March 23, 2012, respondent received the Preliminary Assessment Notice [8] (PAN) with Details of Discrepancies dated March 7, 2012, to which it filed a protest on April 4, 2012.[9]

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[4] Exhibit "B", *Rollo*, pp. 1980 to 2003.
[5] Exhibits "A" and "A-1", *Rollo*, p. 1976.
[6] Exhibit "H", *Rollo*, p. 1651.
[7] Exhibit "1", BIR records, folder I, p. 4.
[8] Exhibit "K", *Rollo*, pp. 1673 to 1674.
[9] Exhibits "L", "L-1", and "L-2", *Rollo*, pp. 494 to 503.

On April 12, 2012, respondent received a Formal Letter of Demand[10] (FLD) dated April 10, 2012, with attached Details of Discrepancies and Audit Result/Assessment Notice (FAN), assessing it for alleged deficiency IT for CY 2008 in the total amount of ₱43,002,601.23, inclusive of interest and penalties.

On May 3, 2012, respondent paid the amount of ₱3,951,990.00 as additional IT for CY 2008.[11]

The following day or on May 4, 2012, respondent protested the FLD.[12]

On December 11, 2012, respondent received the Final Decision on Disputed Assessment (FDDA)[13] dated November 20, 2012, upholding the deficiency IT assessment but in the reduced amount of ₱10,599,262.63, inclusive of interest and penalties.

This prompted respondent to elevate the matter via a *Petition for Review*[14] before the Court in Division on January 10, 2013.

In his *Answer*[15], petitioner explained that respondent was assessed on its Gross Philippine Billings (GPB) from its on-line air carrier activities using the 2.5% tax rate under Section 28(A)(3)(a) of the National Internal Revenue Code (NIRC) of 1997, as amended, and not the 1.5% tax rate per the RP-Germany Tax Treaty, since respondent failed to file an application for tax treaty relief required under Revenue Memorandum Order (RMO) No. 1-2000[16]. Allegedly, the gross revenue derived by respondent from its off-line air carrier activities are subject to 35% tax rate under Section 28 of the NIRC of 1997, as amended, invoking the case *Commissioner of Internal Revenue vs. British Overseas Airways Corporation, et al*[17] as its authority. Finally, the disallowance of respondent's write downs on receivables and

[10] Exhibit "M", *Rollo*, pp. 526 to 527.
[11] Exhibits "P" and "Q", *Rollo*, pp. 1744 and 1745, respectively.
[12] Exhibits "N", "N-1", "N-1-a", "N-2", and "N-3", *Rollo*, pp. 553 to 566.
[13] Exhibit "O", *Rollo*, pp. 576 to 585; Exhibit "18", BIR records, folder II, pp. 773 to 785.
[14] *Rollo*, pp. 6-22.
[15] *Rollo*, pp. 82 to 95.
[16] Procedures for Processing Tax Treaty Relief Application.
[17] G.R. No. L-65773-7, April 31, 1987.

losses on current available for sale financial assets was in accord with section 42(B) of the NIRC of 1997, as amended.

After trial, the Court in Division promulgated the assailed Decision on the March 21, 2016, disposing the case as follows:

> **WHEREFORE**, premises considered, the deficiency income tax assessment issued by respondent[18] against petitioner[19] covering taxable year 2008 is hereby **CANCELLED**.
>
> **SO ORDERED**.

The Court in Division ruled that respondent is entitled to the preferential tax rate of 1.5% under the RP-Germany Tax Treaty on its on-line air carrier activities as it was able to prove that it is a resident of the Federal Republic of Germany and it is licensed to engage in air travel transport in the Philippines. Citing the case of *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue*[20] *(Deutsche Bank case),* the Court in Division explained that non-compliance with the prior application rule as required by RMO No. 1-2000 should not operate to automatically divest entitlement to the tax treaty relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. However, the Court in Division upheld the propriety of the deficiency income tax assessment covering respondent's income from its off-line air carrier activities within the Philippines. It ruled that respondent failed to prove with sufficient evidence that its flown revenue is only ₱386,146,970.52 for CY 2008 as against the amount of ₱468,616,159.51 found by petitioner. In view of the foregoing, a re-computation was made using the 1.5% rate on respondent's on-line air carrier activities under the RP-Germany Tax Treaty, the result of which showed that respondent did not incur any deficiency IT for taxable year 2008 but instead, incurred a net overpayment amounting to ₱4,170,648.81.

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[18] Petitioner herein.
[19] Respondent herein.
[20] G.R. No. 188550, August 19, 2013.

Aggrieved, petitioner moved[21] for reconsideration but it was denied in the equally assailed Resolution of June 27, 2016.

Hence, the instant *Petition for Review* filed on August 11, 2016, raising the lone issue as follows:

> WHETHER RESPONDENT IS LIABLE FOR DEFICIENCY INCOME TAX FOR THE TAXABLE YEAR ENDED DECEMBER 31, 2008 IN THE AMOUNT OF ₱10,599,262.63 AS WELL AS INTEREST AND SURCHARGES PROVIDED IN SECTIONS 248 AND 249 OF THE NIRC OF 1997.

Petitioner insists that respondent must be subjected to a rate of 2.5% pursuant to Section 28(A)(3)(a) of the NIRC of 1997, as amended, and not the 1.5% rate as stated in the Tax Treaty given that respondent failed to file an application to avail of the benefit of the tax treaty provisions as required under RMO No. 1-2000. For petitioner, availment of tax treaty provision are not *ipso facto* granted to a taxpayer who wishes to avail of the benefits of the tax treaty. Certain procedures must be complied with to be entitled to the benefits of the said tax treaty such as those provided in RMO No. 1-2000 aimed to streamline the processing of tax treaty applications in order to improve efficiency and service to the taxpayers. RMO No. 1-2000 was not issued to supersede a tax law or treaty, but it was issued for proper and orderly implementation thereof, says petitioner.

On the other hand, the compromise penalty was imposed pursuant to RMO No. 19-2007[22] due to respondent's failure to register its books of accounts and the tickets being issued to its passengers.

As a final note, petitioner invokes the doctrine enunciated in *Sy Po vs. Court of Tax Appeals*[23] that all presumptions are in favor of the correctness of tax assessments.

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[21] *Rollo*, pp. 2149-2156.
[22] The Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code
[23] 164 SCRA 524.

Respondent in its Comment [24] submits that the arguments raised by petitioner had already been meticulously discussed, passed upon and considered by the Court in Division in the assailed Decision of March 21, 2016 and Resolution of June 27, 2016. Nevertheless, it agrees with the finding of the Court in Division that the denial of its availment of the preferential tax rate of 1.5% provided under the RP-Germany Tax Treaty for its failure to file a tax treaty relief application is without basis. Citing the Deutsche Bank case, a prior application for a tax treaty relief is not mandatory in order to avail of the benefits of an income tax treaty, respondent maintains. As to petitioner's justification for the imposition of compromise penalty under RMO No. 19-2007, suffice it to say that it is no longer relevant as respondent already paid in full the assessed compromise penalty as early as June 25, 2013.

On October 14, 2016, the instant Petition for Review was submitted for decision.[25]

RULING OF THE COURT *EN BANC*

The instant Petition for Review is bereft of merit.

Indisputably, all the arguments raised by petitioner in his main pleading shows that they were the very same flawed arguments he raised in his *Answer* and *Motion for Reconsideration* earlier filed with the Court in Division which had been considered and thoroughly discussed and passed upon in the assailed Decision of March 21, 2016 and Resolution of June 27, 2016. Be that as it may, and only for emphasis, petitioner's arguments shall be discussed anew to highlight the ruling of the Court in Division.

Petitioner holds that respondent must be subjected to tax at the rate of 2.5% on its GPB pursuant to Section 28(A)(3)(a) of the NIRC of 1997, as amended, and not to the preferential tax rate of 1.5% provided under the RP-Germany Tax Treaty on the ground that the latter failed to

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[24] *En Banc* docket, pp. 63-71.
[25] Resolution, *En Banc* docket, pp. 74-75.

file an application to avail the benefit of the tax treaty provisions as required under RMO No. 1-2000.

But as ruled in the *Deutsche Bank case*, non-compliance with RMO No. 1-2000 does not automatically deprive a taxpayer of the benefits provided under Philippine tax treaties. The Supreme Court explicates it, ruling as follows:

> Our Constitution provides for adherence to the general principles of international law as part of the law of the land. The time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. **Every treaty in force is binding upon the parties, and obligations under the treaty must be performed by them in good faith. More importantly, treaties have the force and effect of law in this jurisdiction**.
>
> Tax treaties are entered into 'to reconcile the national fiscal legislations of the contracting parties and, in turn, help the taxpayer avoid simultaneous taxations in two different jurisdictions.' *CIR v. S.C. Johnson and Son, Inc.* further clarifies that 'tax conventions are drafted with a view towards the elimination of international juridical double taxation, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods. The apparent rationale for doing away with double taxation is to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed vital in creating robust and dynamic economies. Foreign investments will only thrive in a fairly predictable and reasonable international investment climate and the protection against double taxation is crucial in creating such a climate.' Simply put, tax treaties are

entered into to minimize, if not eliminate the harshness of international juridical double taxation, which is why they are also known as double tax treaty or double tax agreements.

'A state that has contracted valid international obligations is bound to make in its legislations those modifications that may be necessary to ensure the fulfillment of the obligations undertaken.' **Thus, laws and issuances must ensure that the reliefs granted under tax treaties are accorded to the parties entitled thereto. The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements**. More so, when the RP-Germany Tax Treaty does not provide for any pre-requisite for the availment of the benefits under said agreement.

Likewise, it must be stressed that there is nothing in RMO No. 1-2000 which would indicate a deprivation of entitlement to a tax treaty relief for failure to comply with the 15-day period. We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but the CTA's outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is not in harmony with the objectives of the contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations.

Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax

> treaty. **At most, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.**
>
> **The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000.** Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, *e.g.*, the imposition of a fine or penalty. But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief. (*Citations omitted; Emphasis supplied*)

Clear as a day that a prior application for tax treaty relief is not mandatory before a taxpayer may enjoy the relief provided under Philippine tax treaties. Not only is the requirement illogical, but it is also an imposition not found at all in the applicable tax treaties.[26] After all, the application for a tax treaty relief from the BIR merely operate to confirm the entitlement of the taxpayer to the relief, and not for the granting of the relief being sought.

Anent the insistence of petitioner that the imposition of the compromise penalty against respondent was based on RMO No. 19-2007, the Court *En Banc* is one with the Court in Division in holding, thus:

> It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement

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[26] *CBK Power Company Limited vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 193383-84, and 193407-08, January 14, 2015.

> between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer. Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized. (*Citations omitted*)

WHEREFORE, the *Petition for Review* filed by petitioner Commissioner of Internal Revenue on August 11, 2016 is hereby **DENIED**, for lack of merit. Accordingly, the assailed Decision and Resolution dated March 21, 2016 and June 27, 2016, respectively, are **AFFIRMED.**

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

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

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1489** (CTA Case No. 8601)
	Present:
- versus -	**DEL ROSARIO**, *P.J.*, **CASTAÑEDA, JR.**, **BAUTISTA**, **UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, *and* **MANAHAN**, *JJ.*
LUFTHANSA GERMAN AIRLINES – PHILIPPINE BRANCH, Respondent.	Promulgated: OCT 03 2017 4:25 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* of my esteemed colleague, the Honorable Associate Justice Esperanza R. Fabon-Victorino, which denied the Petition for Review filed by the Commissioner of Internal Revenue (CIR) for lack of merit.

The *ponencia* essentially found that the arguments put forth by the CIR in his Petition for Review were mere reiterations of his previous arguments which have been considered and throughly passed upon by the Court in Division that rendered the assailed Decision and Resolution.

At any rate, irrespective of the merits of CIR's arguments, I submit that the deficiency income tax assessment issued against respondent Lufthansa German Airlines – Philippine Branch should be cancelled and set aside for being intrinsically void.

Records disclose that the disputed assessment sprung from the Letter of Authority (LOA) No. 2008-00033709 dated July 1, 2009 issued by petitioner, through Zenaida G. Garcia, OIC-ACIR, Large Taxpayers Service, which authorized Revenue Officers (RO) Olivia Sison, Gerald Alan Quebral and Belinda Balagtas, and Group Supervisor Erlinda V. Ulgado, to examine the books of accounts and other accounting records of respondent for all internal revenue taxes for taxable year 2008.[1] In a Letter dated February 25, 2010, signed by Laura M. Salita, OIC-Chief, LTRAD 3, petitioner informed respondent that the examination of its internal revenue tax liabilities for the taxable year 2008 under LOA No. 2008-00033709 dated July 1, 2009, was **reassigned** to ROs Fatima P. Sarrosa, under Group Supervisor Noemi D. Castro, for the **continuance of investigation.**[2] Notably, there is nothing in the parties' Joint Stipulation of Facts and Issues,[3] the Pre-Trial Order,[4] and their respective Exhibits which would show that a **new LOA was issued in favor of RO Sarrosa and Group Supervisor Castro**.

While respondent failed to raise the issue of lack of authority of RO Sarrosa and Group Supervisor Castro 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***[5] 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*.**"

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[1] Exhibit R-1, BIR Records, p. 4.
[2] Exhibit R-4, BIR Records, p. 14.
[3] CTA Division Docket, pp. 818-825.
[4] CTA Division Docket, pp. 1181-1202.
[5] G.R. No. 100152, March 31, 2000.

Moreover, very recently, in ***Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.***,[6] 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 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 Sarrosa and Group Supervisor Castro to

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

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.[7]

In the present case, the crux of the controversy revolves on whether respondent may be held liable for deficiency income tax subject of the assessment issued by petitioner. **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***[8] on the matter of the authority of ROs 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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> xxx xxx xxx
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> **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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[7] *Ramona T. Logronio vs. Roberto Taleseo,* G.R. No. 134602, August 6, 1999.
[8] G.R. No. 222743, April 5, 2017.

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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. **In the absence of such an authority, the assessment or examination is a nullity.** (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

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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.[9] 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, **<u>pursuant to a Letter of Authority</u>** issued by the **Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order **to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Boldfacing and underscoring supplied)*

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.
>
> xxx xxx xxx
>
> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized**

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

> **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 only upon prior authorization by the Commissioner himself**." *(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 RO is indispensable to the validity of an assessment. In the language of ***CIR vs. Sony Philippines, Inc.***[10]:

> "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)*

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

In this case, it is undisputed that RO Sarrosa and Group Supervisor Castro - - the revenue officer and group supervisor who continued the audit and investigation of respondent's books of accounts and other accounting records - - are not named in LOA No. 2008-00033709. RO Sarrosa admitted in her Judicial Affidavit[11] that the audit of respondent's books for the year 2008 was merely transferred to her, to wit:

> 7. Q: **Please give us a background of the investigation conducted in the instant case?**
>
> A. By virtue of **Letter of Authority No. 2008-00033709 dated July 1, 2009**, the investigation of all internal revenue taxes of Lufthansa German Airlines for taxable year January 1 to December 31, 2008 **was first assigned to Revenue Officers Olivia Sison, Gerald Alan Quebral, Belinda Balagtas under Group Supervisor Erlinda Ulgado**. The said Letter of Authority with Letter Request for Submission of documents dated July 2, 2009 was served to petitioner on July 6, 2009, Then a Final Notice for presentation of Books of Accounts and other accounting records dated August 6, 2009 was served to petitioner on August 11, 2009.
>
> 8. Q: If shown to you the Letter of Authority marked as Exhibit "1", (page 4 of the 1st folder of BIR Records), Letter Request, marked as Exhibit "2", (page 3 of the 1st folder of BIR Records) and the Final Notice marked as Exhibit "3", (page 2 of the 1st folder of BIR Records), would you be able to identify it *(sic)*?
>
> A: Yes.
>
> 9. **Q: I am showing to you the Letter of Authority No. *(sic)* No. 2008-00033709 dated July 1, 2009 and Letter Request for Submission of documents dated July 2, 2009 and the Final Notice dated August 6, 2009, what is the relation of these documents to the LOA and notices you earlier mentioned?**
>
> A: This is the Letter of Authority with Letter Request and Final Notice that I referred to earlier.
>
> 10. Q: What is your authority to conduct investigation/examination of all internal revenue tax liabilities of Lufthansa German Airlines for taxable year 2008?
>
> A: **A <u>Letter of Reassignment</u> was served to petitioner through Kathleen Guerero, Deputy Manager, on March 5, 2010, <u>informing them that the review and</u>**

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[11] Exhibit R-19; CTA Division Docket, pp. 127-134.

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> **examination of their internal revenue taxes for taxable year 2008 was transferred to us.**
>
> 11. **Q: I am showing to you the Letter of Reassignment dated February 25, 2010, marked as Exhibit "4", (page 14 of the 1st folder of BIR Records) what is the relation of this letter to the letter you earlier mentioned?**
>
> A: This is the Letter of Reassignment I referred to earlier. *(Additional boldfacing and underscoring supplied)*

Notably, there is nothing in RO Sarrosa's testimony that confirmed the issuance of a new LOA in her favor. LOA No. 2008-00033709, which was identified by RO Sarrosa in her Judicial Affidavit, is the very same LOA that was issued to ROs Sison, Quebral and Balagtas and Group Supervisor Ulgado.

Even the Letter of Reassignment dated February 25, 2010[12] addressed to respondent is categorical in stating that the **basis of RO Sarrosa and Group Supervisor Castro's authority to audit respondent is the LOA wherein their names do not appear**, *viz.*:

> "Please be informed that the examination of your all internal revenue tax liabilities for the taxable year ended December 31, 2008 under **Letter of Authority No. 00033709 dated July 1, 2009** originally assigned to Revenue Officers O. Sison, G. Quebral & B. Balagtas under Group Supervisor Erlinda V. Ulgado has been **reassigned to Revenue Officer Fatima P. Sarrosa under Group Supervisor Noemi D. Castro for continuation of investigation**." (Boldfacing supplied)

Indeed, there is no denying that **no new LOA was issued to RO Sarrosa and Group Supervisor Castro in relation to their investigation of respondent's tax liability for taxable year 2008. This procedural lapse, or the absence of a new LOA, rendered the assessment issued pursuant thereto void. Being a void assessment, the same bears no fruit.**[13]

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

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[12] Exhibit R-4, BIR Records, p. 14.

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

controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[14]

All told, I VOTE to: (i) DENY the Petition for Review filed by the Commissioner of Internal Revenue for lack of merit; and, (ii) CANCEL and SET ASIDE the deficiency income tax assessment issued against respondent Lufthansa German Airlines – Philippine Branch for the taxable year 2008 for being VOID.

ROMAN G. DEL ROSARIO
Presiding Justice

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[14] *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.