REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MEDICARD PHILIPPINES, INC. ("MEDICARD") Petitioner,	**CTA EB NO. 1224** (CTA Case No. 7948)
	Present:
- versus -	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated:
	SEP 02 2015
	2:10 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This Petition for Review filed by petitioner MEDICard Philippines, Inc., seeks for the Court to reverse and set aside the Decision[1] promulgated on June 5, 2014 and the Resolution[2] promulgated on September 15, 2014.

The dispositive portion of the assailed Decision reads:

[1] Decision dated June 5, 2014, penned by Associate Justice Ma. Belen M. Ringpis-Liban, Division Docket, Vol. II, pp. 1190-1240.
[2] Resolution promulgated on September 15, 2014, Division Docket, Vol. III, pp. 1336-1339.

"**WHEREFORE**, premises considered, the deficiency VAT assessment issued by respondent against petitioner covering taxable year 2006 is hereby **AFFIRMED WITH MODIFICATIONS**. Accordingly, petitioner is ordered to pay respondent the amount of ₱223,173,208.35, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Basic Deficiency VAT	₱178,538,566.68
Add: 25% Surcharge	44,634,641.67
Total	**₱223,173,208.35**

In addition, petitioner is ordered to pay:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency VAT of ₱178,538,566.68 computed from January 25, 2007 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

(b) Delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱223,173,208.35 representing basic deficiency VAT of ₱178,538,566.68 and 25% surcharge of ₱44,634,641.67 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from June 19, 2009 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED."[3]

On the other hand, the dispositive portion of the Resolution promulgated on September 15, 2014 reads:

"**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED."[4]

[3] Supra., note 1, p. 1239.
[4] Supra., note 2, p. 1339.

THE FACTS

The following are the antecedent facts[5] as found by the Court in Division:

"Petitioner Medicard is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal offices at the 9th Floor, Sagittarius Building, H.V. Dela Costa St., Salcedo Village, Makati City. Its primary purpose is to

> 'establish, maintain, adopt, and engage in the business of developing and promoting prepaid medical, health maintenance, and related services, with the aim or (sic) providing and offering to the public, a comprehensive, systematic and prevention-oriented concept of medical and health maintenance programs, thru the accreditation and integration and professional management, of the services of a pool of licensed and competent physicians, surgeons, medical specialists, and the participation of medical clinics, hospitals, medical and health research centers of institutions.'

It is a VAT-registered taxpayer with Taxpayer Identification No. 000-476-995-000 as evidenced by its Bureau of Internal Revenue **(BIR)** Certificate of Registration No. 0000015774 dated June 21, 1994. It had clearance to operate as a Health Maintenance Organization **(HMO)** from January 13, 2004 to January 12, 2011.

Respondent is the Commissioner of the BIR vested with authority to administer and enforce national internal revenue laws, including, among others, the power to issue tax assessments. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner filed its First, Second, and Third Quarterly VAT Returns through Electronic Filing and Payment System **(EFPS)** on April 20, 2006, July 25, 2006 and October 20, 2006, respectively, and its Fourth Quarterly VAT Return on January 25, 2007.

Finding discrepancies between its Income Tax and VAT Returns, respondent CIR issued against petitioner Letter Notice **(LN)** No. 122-VT-06-00-00020 dated September 20, 2007. This was followed by the issuance of a Preliminary Assessment Notice **(PAN)**

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[5] Supra., note 1, pp. 1190-1201.

against petitioner for deficiency VAT, which the latter received on November 9, 2007. A Memorandum dated December 10, 2007 was likewise issued recommending the issuance of a Formal Assesssment Notice **(FAN)** against petitioner. The Memorandum was submitted to the CIR and signed by Revenue Officers Romualdo I. Plocios and Matias D. Fadri III and Group Supervisor Juvy S. dela Peña.

On January 4, 2008, petitioner received respondent's FAN containing Assessment Number: LTDO-122-VT-2006-00001 dated December 10, 2007 for alleged deficiency VAT for taxable year 2006 in the total amount of ₱196,614,476.69, inclusive of penalties, computed as follows:

Receivable from members, beginning		45,265,483.00
Add/Deduct Adjustments		
1. Membership fees for the year	1,956,016,629.00	
2. Administrative service fees	3,388,889.00	
3. Professional fees	11,522,346.00	
4. Processing fees	11,008,809.00	
5. Rental income	119,942.00	
6. Unearned fees, ending	405,616,650.00	2,387,673,265.00
		2,432,938,748.00
Less: Receivable from members, ending	85,189,221.00	
Unearned fees, beginning	412,184,856.00	497,374,077.00
Gross receipts subject to VAT		1,935,564,671.00
VAT Rate		12%
Output tax due		207,381,929.04
Less: Input tax		25,794,078.24
VAT payable		181,587,850.80
Less: VAT payments		15,816,053.22
VAT payable		165,771,797.58
Add: Increment		
Surcharge		
Interest (1-26-07 to 12-31-07 or 339 days)	30,792,679.11	
Compromise penalty	50,000.00	30,842,679.11
Total Deficiency VAT Payable		P196,614,476.69

The "Details of Discrepancies" (Schedule 1) attached to the assessment notice invoked the following legal justifications:

"Section 4.108.3(k) of RR 16-2005 states that:

'**k) Health Maintenance Organization (HMOs)** are entities, organized in accordance with the provisions of the Corporation Code of the Philippines and licensed by the appropriate government agency, which arranges for coverage or designated managed care services needed by the plan holders/members for fixed prepaid membership fees

> and for a specified period of time. HMO's gross receipt shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax. The compensation for their services representing their services fees, is presumed to be the total amount received as enrollment fee from their members plus other charges received.'
>
> This was further clarified under new RMC 81-2007 which provides that the taxable base of HMOs for VAT purposes shall be the gross receipts without any deduction.
>
> And in CIR vs. Philippine Health Care Providers, Inc. GR 168129, dated April 24, 2007, it ruled that 'as respondent does not actually provide medical and/or hospital services, as provided under Section 103 on exempt transactions, but merely arranges for the same, its services are not VAT-exempt.'.'

Under date January 28, 2008, petitioner filed with respondent its Protest Letter to protest the Formal Assessment Notice dated December 10, 2007.

The Protest reads in pertinent part:

> 'In this connection, we hereby protest said deficiency value added tax assessment based on the following factual and legal grounds:
>
> 1. Section 109(G) of the 2005 Tax Code expressly provides that 'medical, dental, hospital and veterinary services, except those rendered by professionals' shall be exempt from value added tax. Accordingly, a person (other than an individual who is a professional) shall be exempt from value added tax when it provides medical, dental, hospital and veterinary services.
>
> In this case, Medicard, which is a juridical person and is not thus a 'professional,' renders two (2) types of services, namely: (a) medical, dental and hospital services; and (b) services as an independent contractor, to members.

2. Unlike the case of Philippine Health Care Providers, the services of Medicard to its members are not limited to merely arranging for the provision by the hospitals and clinics of medical and/or hospital services. As a general rule, Medicard actually and directly provides medical and laboratory services to members and the services of hospitals and clinics are availed of only by members when the medical, hospital and laboratory services are beyond the competence of the doctors hired by and the clinics and laboratories being operated and maintained by Medicard. In other words, we take strong objection against the findings of the revenue officers that no actual and direct medical and laboratory services were provided by Medicard to members, so much so that the entire amount of membership fees received from members.

In this connection, the 2006 audited balance sheet of Medicard shows that it owns x-ray and laboratory facilities, which are used by it in providing medical and laboratory services to members.

3. Part of the P1.9 billion membership fees for the year includes P319 million fees received from clients that are registered with the Philippine Export Zone Authority (PEZA), based on certificate of registration submitted by them to Medicard. These are zero-rated sales of services.

4. While RMC 81-2007 provides that the taxable base of HMOs shall be the gross receipts without any deduction, it created a prima facie presumption that no medical and laboratory services were actually and directly provided by the HMOs to members, following the findings of the CTA in the case of Philippine Health Care Provider. The same position was taken by the Secretary of Finance, upon the recommendation of the Commissioner of Internal Revenue, when he promulgated Revenue Regulations No. 16-2005. The last sentence in Section 4.108.3(k) states '[T]he compensation for their services representing their service fees, is presumed to be the total amount received as enrollment fee from their members plus other charges received.' We want to reiterate that Medicard did provide medical and laboratory services, as evidenced by the documentary evidence described above; hence, only part of the membership fees should be subject to tax. Jr

5. The BIR included in the taxable gross receipts the entire amount of professional fees amounting to P11.5 million. For your information, P5.6 million of the amount represents advances for professional fees due from clients which were made by Medicard. Moreover, the balance of the professional fees amounting to P5.8 million was already subjected to value added tax and to include the same to the taxable gross receipts would mean double taxation, for VAT purposes.

6. As in professional fees, the BIR included in the taxable gross receipts the entire amount of processing fees in the amount of P11 million. It should be noted that P4.2 million of said amount was for medical services (e.g. medical evaluation annual physical examination and pre-employment examination) rendered by Medicard. The balance of P6.8 million is exempt from value added tax either because (a) the amount represents gross receipts for medical services rendered by Diagnostics Networks Inc. (DNI), a subsidiary company of Medicard merged to the latter on September 12, 2006, which performed medical services through the former's clinics, or (b) the amount represents fees for medical services directly and actually rendered by Medicard to its members; hence, exempt from value added tax.

7. Assuming for the sake of argument that Medicard is liable to VAT, the 12% VAT rate was erroneously applied by the BIR on the entire gross receipts for the year 2006. It must be pointed out that the gross receipts for January, 2006 were still subject to 10% VAT, and the 12% VAT rate was made effective only on or after February 1, 2006, pursuant to the provisions of Republic Act No. 9337, as implemented by Revenue Memorandum Circular No. 8-2006, dated January 31, 2006.

8. If we assume that Medicard is liable for the value added tax on its gross receipts, it necessarily follows that it over declared its taxable income and overpaid its corporate income tax for the year. Also, the amount of gross receipts subject to VAT will be reduced accordingly.

9. Lastly, it should be pointed out that if Medicard were liable to value added tax, equity demands that Medicard should be made to pay only the basic value added tax, without surcharge and deficiency interest, for it did not

> pass on the value added tax to its members, based on the BIR ruling issued by former Commissioner Beethoven Rualo. Doing so would adversely affect the profitability market share, and viability of the company.'

On February 14, 2008, respondent issued a Tax Verification Notice **(TVN)** authorizing Revenue Officer Romualdo Plocios to verify the supporting documents to petitioner's Protest. By a letter dated March 18, 2008, petitioner submitted to respondent additional supporting documentary evidence in aid of its Protest.

On June 19, 2009, petitioner received respondent's FDDA dated May 15, 2009, denying petitioner's Protest Letter dated January 28, 2008 and Letter dated March 18, 2008. The dispositive portion of the FDDA reads:

> '**IN VIEW HEREOF,** we deny your letter protest and hereby reiterate in toto assessment of deficiency value added tax in total sum of P196,614,476.99. It is requested that you pay said deficiency taxes immediately. Should payment be made later, adjustment has to be made to impose interest until date of payment. This is our final decision. If you disagree, you may take an appeal to the Court of Tax Appeals within the period provided by law, otherwise, said assessment shall become final, executory and demandable.'

Accordingly, petitioner filed the instant Petition for Review on July 20, 2009.

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In the Answer filed on August 24, 2009, respondent interposed substantially the following special and affirmative defenses:

> 1. Petitioner was duly informed of the deficiency tax assessments against it and was given an opportunity to be heard;
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> 2. Section 108.3(k) of Revenue Regulations No. 16-2005 defines an HMO as a corporation which 'arranges for coverage or designated managed care services needed by plan holders/members for fixed prepaid membership fees and for a specified period of time,' and provides that an HMO's 'gross receipts shall be the total amount of money or

its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax,' such that the 'compensation for their services representing their service fee, is presumed to be the total amount received as enrolment fee from their members plus charges received';

3. Accordingly, petitioner's compensation for services as an HMO is taxable for VAT purposes based on the total amount received from the members' enrolment fees including other charges;

4. The Supreme Court has held that an entity that does not actually provide medical and/or hospital services as provided under the NIRC of 1997 provisions on VAT exempt transactions is not VAT exempt on its sales of services;

5. The enrolment fees in the amount of P319,000,000.00 received from clients registered with the Philippine Export Zone Authority (PEZA) are not subject to zero-rate for VAT purposes because: (a) the presentation of PEZA Certificates of Registration of these clients is insufficient factual basis; (b) petitioner will be subject to zero-rate only upon approval of an application for VAT zero-rating of its sales to VAT-registered customers pursuant to Section 106(A)(2)(c) of the Tax Code; and (c) the service fees received by petitioner are from employees of PEZA-registered enterprises and not directly from PEZA-registered enterprises;

6. The amount of P5.6 million representing advances for professional fees due from clients made by petitioner forms part of gross receipts subject to VAT. Moreover, the declared amount of P5.8 million was not subjected to double taxation because the computation of petitioner's gross taxable receipts is the sum of the entire taxable receipts less VAT payments that petitioner made in 2006, and was therefore properly treated as subject to VAT;

7. The professional fees amounting to P11,008,809.00 was treated entirely as taxable receipt for VAT purposes pursuant to Section 108(A) of the NIRC of 1997 pertaining to VAT on sale of services in relation to

Section 108.3(k) of RR No. 16-2005. The gross amount collected by petitioner is within the context of compensation for services, and petitioner's service fees are presumed to be the total amount received as enrolment fees from its members;

8. BIR Ruling No. DA (VAT-054) 529-2008 dated 15 December 2008 which ruled that petitioner is VAT exempt has been revoked due to procedural infirmity, which revocation was circularized through Revenue Memorandum Circular No. 2-2009;

9. In *Commissioner of Internal Revenue vs. Bank of Philippine Islands* the Supreme Court held that 'tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments'.

Petitioner submitted its Pre-Trial Brief on September 8, 2009, while Respondent's Pre-Trial Brief was filed on September 4, 2009.

On May 17, 2010, petitioner requested a reinvestigation of the deficiency VAT assessment, which respondent granted via Letter dated May 24, 2010.

The parties submitted their Joint Stipulation of Facts and Issues on December 7, 2010. On February 8, 2011, the Court adopted the same and terminated the pre-trial.

Upon motion of petitioner dated March 16, 2001, in accordance with Section 5(a), Rule 12 of the 2005 Revised Rules of the CTA, as amended, the Court appointed Richard R. Lapres of Manabat Delgado Amper and Co. as the Independent Certified Public Accountant (ICPA) for this case on March 29, 2011.

During the hearing, petitioner presented Mark Y. Borja, Richard R. Lapres and Miriam Villafuerte as its witnesses. Petitioner then formally offered its documentary evidence on March 23, 2012, consisting of Exhibits "A" to "BBBB", inclusive of sub-markings.

Respondent filed a Motion to Admit Attached Comment, which the Court granted via Resolution dated June 5, 2012. In the same Resolution, the Court admitted petitioner's documentary evidence except some of the sub-markings of the following exhibits:

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on the ground that they were not submitted to the Court for proper marking or identification, or that they were not identified in the judicial affidavit of petitioner's witnesses.

Petitioner moved for the partial reconsideration of the aforesaid Resolution on June 22, 2012, which motion the Court denied on July 27, 2012. Thus, petitioner filed with the CTA *En Banc* a Petition for Review on September 3, 2012 seeking to reverse and set aside the ruling of the Court in Division denying admission of the aforesaid exhibits.

On November 8, 2012, the CTA *En Banc* gave due course to petitioner's Petition for Review filed on September 3, 2012 and docketed as CTA EB No. 925.

Petitioner and respondent having filed their memoranda in this case on December 12, 2012 and December 14, 2012, respectively, the Court *En Banc* issued its Decision on June 19, 2013, denying the petition for lack of merit. Petitioner's Motion for Reconsideration of this Decision was denied by the CTA *En Banc* in its Resolution dated October 23, 2013.

Meanwhile, respondent presented her sole witness Romualdo [Palacios], and subsequently filed her Formal Offer of Documentary Evidence on February 18, 2013.

Still meanwhile, petitioner's related motions dated February 5, 2013 and April 26, 2013, both seeking to defer the filing of the parties' memoranda on account of the then pending CTA EB 925, were denied by the Court. Petitioner's Supplemental Formal Offer of Evidence also dated February 5, 2013 was however admitted in the Court's Resolution of March 1, 2013.

On the other hand, the Court admitted respondent's Formal Offer of Evidence dated February 14, 2013 in its Resolution dated March 26, 2013. *Jc*

Respondent Filed her Memorandum on May 31, 2013, and Petitioner, on July 10, 2013. This considering, the instant case was submitted for decision on July 15, 2013."

On June 5, 2014, the Court in Division promulgated the assailed Decision affirming the respondent's assessment, with modifications. Subsequently, on June 24, 2014, petitioner filed its Motion for Reconsideration[6] with the Court in Division. On September 15, 2014, the Court in Division issued a Resolution denying petitioner's motion for lack of merit.

On September 25, 2014, petitioner filed a Motion for Extension of Time to File Petition for Review,[7] which the Court *En Banc* granted on September 29, 2014.[8]

On October 15, 2014, petitioner filed the present Petition for Review.[9]

On November 12, 2014, the Court *En Banc* directed respondent to file her Comment,[10] which respondent filed on December 22, 2014.[11] Thereafter, on January 22, 2015, the Court *En Banc* issued a Resolution[12] giving due course to the Petition for Review and requiring the parties to submit their memoranda.

On March 11, 2015, petitioner submitted its Memorandum,[13] while on March 12, 2015, respondent filed her Manifestation,[14] stating that she is adopting her arguments raised in her Comment. Consequently, the case was submitted for decision on May 7, 2015.[15]

Hence, this Decision.

THE ISSUES

Petitioner raised the following issues in its Petition for Review:

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[6] Motion for Reconsideration, Division Docket, Vol. III, pp. 1241-1293.
[7] Court *En Banc* Docket, pp. 1-5.
[8] Minute Resolution dated September 29, 2014, Court *En Banc* Docket, p. 42.
[9] Court *En Banc* Docket, pp. 43-93.
[10] Court *En Banc* Docket, pp. 208-209.
[11] Comment, Court En Banc Docket, pp. 219-228.
[12] Court *En Banc* Docket, pp. 230-231.
[13] Court *En Banc* Docket, pp. 232-368.
[14] Court *En Banc* Docket, pp.369-371.
[15] Court *En Banc* Docket, pp. 374-375.

"a. The Honorable Court erred in not ruling that the assessment for alleged deficiency value added tax for taxable year 2006 in the total amount of P196,614,476.69, inclusive of penalties is invalid due to the absence of letter of authority;

b. The Honorable Court erred in ruling that the principle of *estoppel in pais* applies in this case;

c. The Honorable Court erred in not ruling that the Respondent Commissioner of Internal Revenue's Decision promulgated on May 15, 2009 denying Petitioner's protest letter dated January 28, 2008 and letter dated March 18, 2008 is null and void, and consequently, the Respondent's Formal Assessment Notice (assessment number: LTDO-122-VT-2006-00001) dated December 10, 2007 against the petitioner for alleged deficiency value added tax for taxable year 2006 in the total amount of P196,614,476.69, inclusive of penalties, should be cancelled and declared as null and void for lack of factual and legal basis;

d. The Honorable Court erred in not ruling that applying the 10% vat rate for January, 2006, the Respondent's subject assessments should be reduced by P2,490,153.56; and

e. The civil penalties imposed by the Honorable Court are contrary to law and jurisprudence."[16]

THIS COURT'S RULING

We partially grant the Petition.

The Court shall first resolve the procedural aspect of this case.

Petitioner is not estopped from raising the issue of invalidity of the assessment due to the non-issuance of LOA

Petitioner avers that it is not estopped from raising the issue of invalidity of the assessment because of the non-issuance of LOA, pursuant to Section 5, Rule 10 of the Revised Rules of Court. On the other hand, respondent agrees with the ruling of the Court in Division when it ruled that: *Jc*

[16] Assignment of Errors, Petition for Review, Court *En Banc* Docket, p. 51.

> "The Court likewise holds that on the basis of the principle of *estoppel in pais* established in jurisprudence above, petitioner cannot be allowed to repudiate the CIR's jurisdiction to issue the assessment after repeatedly invoking the same jurisdiction to secure for itself the cancellation or modification of the same assessments. Having successively and aggressively utilized all the remedies provided in law for protesting respondent's assessments on grounds other than for lack of jurisdiction, petitioner cannot now be heard to complain that such assessments are from the beginning procedurally infirm."[17]

We disagree.

This Court notes that petitioner did not, in its Petition for Review before the Court in Division, or in any of the stages in the proceedings *a quo*, question the power of the CIR to issue the subject assessment. What it did question, as when it was elicited during the cross examination of respondent's witness -- Revenue Officer Mr. Romualdo I. Palacios,[18] was the absence of LOA which, for petitioner, affects the validity of the assessment.

In other words, there is no issue raised in this case with respect to the power of the CIR to issue the subject assessment. Rather, the question raised, as a consequence of the cross examination of respondent's witness, is the validity of the assessment which is a proper subject of appeal before the Court.[19] *The presence or absence of LOA does not affect the power of the CIR to make assessments, although it may affect the validity thereof.*

Consequently, petitioner may not be estopped from questioning the validity of the assessment when it was discovered during the respondent's witness' cross examination that no LOA was issued therefore. In relation thereto, Section 5, Rule 10 of the Revised Rules of Court provides:

> "SEC. 5. *Amendment to conform to or authorize presentation of evidence.* – When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as

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[17] Supra., Note 1, Division Docket, Vol. II, p. 1213.
[18] Id., p. 1204; Transcript of Stenographic Notes, pp. 22-23.
[19] "SEC. 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,**
xxx xxx xxx"*(Emphasis supplied)*

> may be necessary to cause them to conform to the evidence and to raise these issues as may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made."

Under the afore-cited rule, when issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and amendment thereof shall be allowed to conform to the evidence presented. However, the failure to amend does not affect the result of the trial of these issues.

Here, petitioner cannot be estopped from raising the issue of non-issuance of LOA because it arose during the proceedings when respondent presented her evidence. Nevertheless, the Court is empowered to rule on this issue, pursuant to the above-quoted provision and considering that the determination thereof is germane to petitioner's cause of action.

Considering that petitioner is not estopped from raising as issue the non-issuance of LOA, We shall now proceed to rule upon the merits of this case.

The absence of LOA in this case does not invalidate the subject assessment

Petitioner contends that the assessment made by respondent is invalid due to the absence of a LOA. Meanwhile, the issuance of LN and TVN is not sufficient proof of authority of the revenue officer to examine petitioner.

On the other hand, respondent asserts that Section 6 of the National Internal Revenue Code of 1997, as amended (NIRC of 1997, as amended), does not limit the power of the CIR to determine deficiencies only through the issuance of LOAs.

In ruling in favor of respondent, the Court in Division held that:

> "To declare that the CIR, in the determination of deficiency VAT, should at all times necessarily issue an LOA is

to deprive her of the vast powers given her by the National Internal Revenue Code (Tax Code) to make assessments and collect the right amount of taxes. Thus, while the examination of taxpayers by a Revenue Officer working under an LOA is one way by which the CIR collects deficiency taxes under Section 13 of the Tax Code, Section 6 does not in any way limit the power of the CIR to determine tax deficiencies only through the issuance of LOAs.

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The Tax Code authorizes the CIR to issue tax assessments other than by force of LOAs alone, such as on the basis of "the best evidence obtainable" or through "inventory-taking, surveillance and prescribing presumptive gross sales and receivables." In extreme situations, the BIR resorts to "jeopardy assessments" even without the benefit of an audit.

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RMO No. 30-2003 dated September 18, 2003 was prefaced as follows:

> The Bureau of Internal Revenue is in the process of establishing a state-of-the-art, centralized Data Warehouse (DW) geared towards enhancing revenue collection. The shift to non-traditional enforcement techniques serves to widen the coverage of xxx auditing system (known as) "Reconciliation of Listing for Enforcement" (RELIEF) (which) can detect tax leaks by matching the data available under the Bureau's Integrated Tax System (ITS) with data gathered from third party sources xxx Through the consolidation and cross-referencing of third party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over claimed purchases (goods and services).
>
> RMO No. 30-2003 provided for a system-generated issuance of LNs as a mode of informing taxpayers of the discrepancies uncovered through RELIEF, as well as the procedure for effecting collection thereon. This RMO contained provisions that clearly distinguished an LOA from an LN, and clarified the effect of the issuance of an LN in situations where an investigation of the taxpayer under an LOA is either pending or has been terminated, or when no LOA had

> before been issued. In all cases, the policy under this RMO is to collect on the LNs.
>
> RMO No. 42-2003 dated October 23, 2003 then prescribed additional guidelines to RMO No. 30-2003. It authorized a "no-contact-audit-approach" examination and assessment, and the issuance of LNs without need of conducting an examination of a taxpayer's books if so warranted by the results of the matching of computer data with other information or returns filed by the taxpayers with the BIR. xxx xxx xxx
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> xxx xxx xxx

In the present case, respondent issued an LN to petitioner informing the latter of the discrepancies on its VAT and Income Tax Returns. LN No. 122-VT-06-00-00020 states that:

> 'Records show that as a health maintenance organization (HMO) contemplated under Revenue Regulations No. 16-2005, **the data/information reflected per income tax return against your declarations per VAT returns disclosed the following discrepancy/findings** for calendar year 2006:
>
> xxx xxx xxx
>
> In line with the Bureau's policy of affording taxpayers the opportunity to reconcile the above discrepancy (ies), you are being invited to the LTDO-Makati, Office of Chief Virgilio Cembrano located at 5/F ATRIUM BLDG., MAKATI AVENUE, MAKATI CITY on September 25, 2007 at 10:00 a.m.'

Respondent complied with the procedural requirements for the issuance of the assessment, including giving petitioner the opportunity to rebut its findings. It first issued the LN; then the Preliminary Assessment Notice; then the Final Assessment Notice and the Details of Discrepancies which contained the facts and the law upon which the assessment is based pursuant to Section 228 of the NIRC; then the TVN that authorized Revenue Officer Romualdo [Palacios] to conduct an investigation on the taxpayer. During the investigation, petitioner submitted additional documents to the BIR.

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> RMC 32-2007 was issued on October 8, 2007, or subsequent to the issuance of the LN in this case on September 20, 2007. A reading of the RMC in its entirety, as opposed to a reading of some of its provisions in isolation as petitioner would have us do, reveal that it was intended to be applied to LNs issued after its promulgation. In any case, by reiterating in its Section III (14) the provision of RMC 40-2003 (amending RMC 30-2003) defining an LN as a <u>*notice of audit/investigation*</u>, and further quoting the ruling in *Big AA Corporation, represented by Erlinda L. Stohner vs. BIR, that LNs issued against a taxpayer xxx may be considered as a "notice of audit or investigation"* ***in the absence of evident error or clear abuse of discretion***," RMC 32-2007 cannot be deemed to have obviated the provisions of RMC 30-2003 as amended allowing the issuance of assessment on the basis of an LN."*(Emphasis supplied)*

We agree with the Court in Division.

In its drive to efficiently perform its functions, the BIR issued the then RMO 30-2003 and RMO 42-2003, respectively, prescribing guidelines for the use of a centralized Data Warehouse to detect tax leaks through non-traditional ways, pursuant to its "no-contact-audit-approach" of examination and assessment. One of the features thereof is that an LN shall serve as a discrepancy notice to taxpayer similar to a Notice for Informal Conference to the concerned taxpayer.

In relation thereto, RMC 40-2003, which amended RMC 30-2003, provides that LNs **issued against a taxpayer may be considered as a notice of audit or investigation in the absence of evident error or clear abuse of discretion.**

By virtue of the foregoing RMOs and RMC, respondent, in the instant case, issued the LN and proceeded with the issuance of PAN without issuing LOA which, as petitioner asserts, renders the assessment void.

However, a careful evaluation of the said RMOs and RMC, as applied in the instant case, reveals that the respondent or her representatives may proceed with the investigation of petitioner even without the issuance of LOA, for the following reasons:

> *First*, the issuance of LOA in this case is not indispensable. None of the financial books or records of petitioner was examined by the BIR which requires the issuance of LOA; and

Second, there is no evidence presented by petitioner to show that respondent issued the LN with evident error or clear abuse of discretion. What petitioner questions is the absence of LOA which, as earlier pointed, is not indispensable in light of the factual antecedents of this case.

It must be stressed that an LOA is issued to authorize a Revenue Officer to examine the taxpayer's books of account. Thus, when there is no examination of taxpayer's books of account, it necessarily follows that there is no need to issue an LOA with regard thereto.

In the present case, respondent is under no obligation to issue an LOA to examine petitioner's books of account when there is no examination thereof. Thus, the finding of discrepancies between petitioner's income tax returns and VAT returns leading to VAT deficiency assessment by matching petitioner's declarations therein, suffice to initiate the assessment process.

At any rate, a perusal of the records reveal that petitioner was given ample opportunity to respond to the subject LN issued by the BIR. It was likewise given ample opportunity to dispute the subject assessment. Hence, based from the reasons stated above, the mere absence of an LOA in this case does not invalidate the aforesaid assessment.

In view thereof, We see no cogent reason to declare as invalid the subject assessment.

Premiums paid by petitioner's clients form part of its gross receipts

Petitioner avers that the amounts it received from its member-clients are earmarked or intended to be paid for medical, dental and hospital services to independent hospital, clinics and medical professionals. In addition, these amounts do not redound to the benefit of the petitioner and are merely held for the account of the member-clients. Thus, these amounts should not form part of petitioner's gross receipts pursuant to Revenue Regulations No. 4-2007 (RR No. 4-2007).

On the other hand, respondent contends that petitioner merely arranges for health services to be provided to its members, but it does not itself provide the health services. Thus, following the ruling of the Supreme Court in *Commissioner of Internal Revenue v. Philippine Health Care Providers*,[20] an entity that does not actually provide medical or hospital ~~

[20] G.R. No. 168129, April 24, 2007.

services under the NIRC of 1997 provisions on VAT exempt transactions is not VAT exempt on its sales of services.

Section 11 of RR No. 4-2007 provides:

> "**Section 11. GROSS RECEIPTS. – Sec. 4.108-4 of RR No. 16-2005 is hereby amended to read as follows:**
>
> **SEC. 4.108-4.** ***Definition of Gross Receipts.*** – ***'Gross Receipts'*** refers to the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for services rendered and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the VAT, **except those amounts earmarked for payment to unrelated third (3rd) party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor.**
>
> A payment is a payment to a third (3rd) party if the same is made to settle an obligation of another person, e.g., customer or client, to the said third party, which obligation is **evidenced by the sales invoice/official receipt issued by said third party to the obligor/debtor (e.g., customer or client of the payor of the obligation).**
>
> An advance payment is an advance payment on behalf of another if the same is paid to a third (3rd) party for a present or future obligation of said another party which obligation is **evidenced by a sales invoice/official receipt issued by the obligee/creditor to the obligor/debtor (i.e., the aforementioned "another party") for the sale of goods or services by the former to the latter.**
>
> xxx xxx xxx" *(Emphasis supplied)*

Section 11 of RR No. 4-2007 categorically amended Section 4.108-4 of Revenue Regulations No. 16-2005 (RR No. 16-2005), which pertains to the general definition of gross receipts. However, a reading of Section 4.108-3(k) of RR No. 16-2005 reveals that HMOs are governed by specific rules, as follows:

> "**SEC. 4.108-3.** ***Definitions and Specific Rules on Selected Services.*** –

xxx xxx xxx

> (k) Health Maintenance Organizations (HMOs) are entities, organized in accordance with the provisions of the Corporation Code of the Philippines and licensed by the appropriate government agency, which arranges for coverage or designated managed care services needed by plan holders/members for fixed prepaid membership fees and for a specified period of time.
>
> **HMOs gross receipts shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax**. The compensation for their services representing their service fee, is presumed to be the total amount received as enrollment fee from their members plus other charges received."*(Emphasis supplied)*

Under Section 4.108-3(k) of RR No. 16-2005, HMOs gross receipts shall be the total amount of money or its equivalent representing the service fee actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the value-added tax. In contrast with the amendment introduced by Section 11 of RR No. 4-2007, to Section 4.108.4 of RR No. 16-2005, Section 4.108-3 of RR No. 16-2005 does not mention of any amount earmarked or received as reimbursement for advance payment to be excluded from gross receipts.

Likewise, it is noteworthy that Section 10 of RR No. 4-2007 amended Section 4.108-3 (e), (f), (h), (i) and (j) of RR No. 16-2005, but the same did not amend Section 4.108-3(k) of RR No. 16-2005. Hence, the necessary conclusion is that Sections 10 and 11 of RR No. 4-2007 did not amend Section 4.108-3(k) of RR No. 16-2005 and as such, the latter provision is still applicable with respect to the determination of gross receipts of HMOs.

In other words, what is applicable in this case is Section 4.108-3(k) of RR No. 16-2005, and not Section 11 of RR No. 4-2007 amending Section 4.108-4 of RR No. 16-2005, with respect to the composition of petitioner's gross receipts. To reiterate, Sections 10 and 11 of RR No. 4-2007 did not amend Section 4.108-3(k) of RR No. 16-2005, which provides for specific rules *vis a vis* HMOs gross receipts. Thus, there is no basis to exclude petitioner's alleged amounts earmarked for payment to medical, dental and hospital services to independent hospital, clinics and medical professionals, following the specific rules for HMOs under Section 4.108-3(k) of RR No. 16-2005.

More so, RR No. 4-2007 which was issued on February 7, 2007, cannot be applied retroactively in the instant case considering that the covered period involved in this Petition is taxable year 2006.

Considering the foregoing, We find no merit to petitioner's arguments.

Petitioner failed to substantiate the adjustments recommended by the ICPA

Petitioner posits that the auditor's journal entries for the setting-up and reversal of Unearned Fees in 2005 and 2006 should be deducted from the gross receipts for taxable year 2006. Likewise, all other adjustments recommended by the ICPA should be considered.

Section 3, Rule 13 of the 2005 Revised Rules of the CTA, as amended, provides:

> "SEC. 3. *Findings of independent CPA.* – The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.**"*(Emphasis supplied)*

Under the above-quoted provision of the rules, the findings of the ICPA shall not be conclusive upon this Court, and such findings and conclusions are subject to verification.

Upon verification of the records, however, the Court subscribes to the findings[21] of the Court in Division that petitioner failed to substantiate all the adjustments recommended by the ICPA. Thus, We see no cogent reason to disturb said findings. *Je*

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[21] Supra., Note 1, pp. 1226-1230.

Petitioner's earnings from its clinic and laboratory facilities are not determinable or separable from the total earnings from its members' premium payments

Likewise, petitioner contends that under Section 109 (G) of the NIRC of 1997, as amended, medical, dental, hospital and veterinary services, except those rendered by professionals, shall be exempt from VAT. Considering that petitioner owns and operates clinics and employ professional staff who provide medical, dental and laboratory services to their member-clients and their employees, the professional fees and charges corresponding to their services should be exempt from VAT.

On the other hand, respondent agrees with the ruling of the Court in Division that petitioner's operation of clinics and laboratories is not a line of business that is distinct from its operations as an HMO but rather, a desirable incident to its core business as a service contractor. Being incidental to its business, petitioner's operation of its clinics and laboratories is deemed a transaction in the course of trade or business.

In ruling against petitioner, the Court in Division held that:

> "The operation of clinics and laboratories by petitioner is not a line of business that is distinct from its operations as an HMO, but rather a desirable incident to its core business as a service contractor. As argued by respondent, what is being subjected to tax is the activity of contracting to provide 'probable' future medical and health services in exchange of 'pre-paid pre-negotiated membership fees.' It is markedly different from a firm which owns a hospital or clinic and having in its employ a complement of medical or dental staff, renders medical, hospital or dental services and is paid for services just rendered.
>
> When petitioner explains in its Memorandum that its members have an option to choose who between petitioner and accredited hospitals will render them medical services, to wit:
>
>> 'As a general rule, Petitioner actually and directly provides medical and laboratory services to members. Members have a choice of availing of medical, hospital and laboratory services either from Petitioner's clinics or from accredited facilities depending on what is more convenient to them. xxx;'

> It suggests that petitioner itself is uncertain if its members would in fact avail themselves of such medical services, thus making it equally uncertain what portions of the fees they pay, if any at all, should be subject to or exempt from VAT.
>
> The rule is that upon receipt of membership fees, the value-added tax immediately accrues. Petitioner would however have portions of the fees received by it declared VAT exempt, conditioned and dependent on whether or not the members actually elected to utilize petitioner's clinics and laboratory facilities, a proposition that renders the payment of VAT subject to the discretion of the members. Therefore, at the time petitioner received the premium payments, at which exact time likewise VAT accrued, petitioner admits it actually had no way of knowing which of the amounts qualified as VAT exempt. There is no evidence that petitioner 'segregated' the amounts it claims as VAT-exempt at the time it received the premiums from its clients."[22]

We agree with the ruling of the Court in Division.

True, Section 109 (G) of the NIRC of 1997, as amended, provides that medical, dental, hospital and veterinary services, except those rendered by professionals, shall be exempt from VAT. Thus, petitioner's medical, dental and laboratory services could have been VAT-exempt.

However, the VATable transaction and the time and manner by which the membership fees or premiums were collected, prevent the applicability of Section 109 (G) of the NIRC of 1997, as amended, in favor of petitioner.

Since the membership fees or premiums were pre-paid by petitioner's clients, VAT accrues the moment the same were paid. In other words, it is petitioner's sale of service of procuring for its members, any and all future and contingent health services covered by their respective contracts, in consideration of the membership fees or premiums which are pre-paid, that is subject to VAT. Whether or not petitioner's future and contingent health services were eventually rendered in its clinics or laboratories do not affect the VATability of petitioner's transactions, as the same were already subjected thereto the moment it sold its services to its member-clients.

Hence, We likewise see no compelling reason to disturb the ruling of the Court in Division.

[22] Supra., Note 1, Division Docket, Vol. II, pp. 1221-1222.

Petitioner's January 2006 sales is subject to 10% VAT

On this score, the Court in Division held that:

> "The ICPA noted that a number of documents have not been verified despite due diligence of the procedures performed due to the huge volume of documents as well as time constraint and damage caused by the 2009 flooding of Metro Manila brought about by Typhoon Ondoy.
>
> Based on the findings and observations of the ICPA, this Court finds that the procedures and evidence provided to substantiate the final report does not directly and sufficiently establish that portion pertaining to petitioner's January income that is subject to ten percent (10%) rate."[23]

Based from the observation of the Court in Division, the pieces of evidence presented by petitioner to substantiate the final ICPA report dated August 1, 2011, do not sufficiently establish the portion of petitioner's January 2006 income that is subject to 10% VAT.

In relation thereto, the ICPA states in his Judicial Affidavit[24] that:

"**Q10.** **Mr. Lapres, you mentioned that due to the voluminous transactions being examined and the limited time provided for your verification process of the said voluminous transactions, there are still a huge volume of documents that you have to verify to be able to ascertain the completeness of all documents provided for the year 2006. Is this correct?**

A10. Yes.

Q11. **As a Commissioned Independent CPA in the instant case, what additional audit procedure, if any, do you consider is necessary to be able to ascertain the completeness of all documents provided for the year 2006?**

A11. To date, there are approximately sixty-five (65) boxes of Petitioner's voluminous supporting

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[23] Supra., Note 1, Division Docket, Vol. II, p. 1237.
[24] Exhibit "GGG", Division Docket, Vol. I, pp. 305-323.

documents that we have not yet examined. We could not estimate, however, the total number of boxes of voluminous supporting documents.

In this regard, I, together with my team of Certified Public Accountants intend to examine the documents from these sixty-five (65) boxes which are high value items, i.e. those documents which involve transactions with high peso value. In this way, we can vouch documents that significantly support Petitioner's case given the limited time for audit examination.

Q12. For your abovementioned additional audit procedure, how much time would you need to examine the remaining voluminous documents?

A12. With due respect to this Honorable Court, I would need as much time as I can have. However, my team and I will try to finish the audit of the remaining voluminous documents that significantly support Petitioner's case, within forty-five (45) days from today."[25]

Records show that on September 14, 2011, petitioner submitted before the Court in Division a Supplemental ICPA Report.[26] In this regard, the ICPA computed petitioner's output tax due as follows:

Gross receipts subject to VAT	663,309,440.75
VAT at 10% for the month of January, 2006 (10%x1/12)	0.83%
VAT at 12% for the months of Feb to Dec, 2006 (12%x11/12)	11.00%
Output tax due	78,491,617.16[27]

Verification of the records shows that while petitioner generated sales for January 2006, it failed to provide an itemization of its VATable gross receipts for the year 2006 on a monthly basis. Thus, the ICPA used the ratio of 1/12 to determine petitioner's gross receipts for January 2006.

We find that the ICPA's basis in determining petitioner's gross receipts for January 2006 is inaccurate.

A perusal of the records shows that respondent's examiners recommended the adjustment of the Final Assessment Notice (FAN) to

[25] Id., Division Docket, Vol. I, pp. 318-319.
[26] Exhibit "KKK", Division Docket, Vol. I, pp. 360-366.
[27] Id., p. 365.

consider the 10% VAT rate for the month of January 2006 based on petitioner's declared gross receipts per Monthly VAT Return,[28] *to wit:*

> "Moreover, we concur to their observation that the applicable VAT rate for January 2006 is still at 10% instead of 12% effective February 1, 2006, pursuant to RA 9337, as implemented by RMC 8-2006.

	12%	**10%**	**Difference**
Taxable Sales/Receipts - January 2006	124,507,677.87	124,507,677.87	-
Output tax thereof	14,940,921.34	12,450,767.79	2,490,153.56

> xxx xxx xxx"

Further examination of the records submitted to the Court reveals that petitioner submitted its Monthly VAT Return for January 2006 where it declared its gross receipts for the said period. Thus, the Court shall determine the correct deficiency VAT of petitioner on the basis thereof.

Petitioner's VAT Returns for the taxable year 2006 shows the following:

BIR Records pp. 1-4	
Period	**Total Sales**
1Q	₱ 520,314,983.18
2Q	536,136,727.26
3Q	458,868,634.94
4Q	427,938,756.22
TOTAL	**₱1,943,259,101.60**

BIR Records pp. 116-123	
1st Quarter	**Total Sales**
Jan	₱124,507,677.87
Feb	28,044,786.66
Sub-total	*₱152,552,464.53*
Mar	367,762,518.65
Total	**₱520,314,983.18**

To arrive at the correct ratio for determining petitioner's total sales for January 2006 as opposed to the ICPA's ratio of 1/12, We divide petitioner's total sales for January 2006 as per Monthly VAT Return, by its total gross receipts for the taxable year 2006, as follows:

Total sales for January 2006 per Monthly VAT Return	₱ 124,507,677.87
Divided by total gross receipts for the taxable year 2006	₱1,943,259,101.60
Ratio of January sales to total sales of 2006	**6.41%**

[28] Exhibit "6", BIR Records, pp. 137-140.

Thus, the correct basis in determining petitioner's gross receipts/sales for the month of January 2006 is 6.41%. Applying the said ratio to the total gross receipts subject to VAT in the amount of ₱1,834,572,484.48, as found by the Court in division, petitioner's adjusted deficiency VAT for the year 2006 amounts to ₱176,187,687.58, computed as follows:

Period	Ratio	Gross Receipts	VAT Rate	Output Tax Due
Jan 2006	6.41%	₱ 117,543,954.76	10%	₱ 11,754,395.48
Feb-Dec 2006	93.59%	1,717,028,529.72	12%	206,043,423.57
TOTAL	100.00%	₱1,834,572,484.48		₱217,797,819.04
Less: Input tax				25,794,078.24
VAT Payable				₱192,003,740.80
Less: Payments				15,816,053.22
Basic Deficiency VAT				**₱176,187,687.58**

Considering the foregoing, We find that the adjustment of petitioner's VAT liability is in order.

The imposition of the civil penalties is correct

Finally, petitioner argues that the civil penalties imposed against it are unjust and unduly burdensome as it constitutes double imposition of interest. Alternatively, petitioner posits that should this Court find it liable for deficiency VAT for 2006, equity demands that it should be made to pay only the basic VAT without surcharge and deficiency interest because it did not pass the VAT to its members.

We do not agree.

In the case of *Philippine Aerospace Development Corporation v. Commissioner of Internal Revenue*,[29] this Court exhaustively discussed the propriety of the simultaneous imposition of deficiency and delinquency interest, in this wise:

> "The propriety of the simultaneous imposition of deficiency and delinquency interests was more definitively resolved in April 2013. This was in *First Lepanto Taisho Insurance Corporation v. Commissioner of Internal Revenue*, where the Supreme Court upheld a 2011 decision of this Court affirming the imposition of delinquency interest under Section

[29] CTA EB No. 1035 (CTA Case No. 7830), promulgated on March 11, 2015, penned by Associate Justice Ma. Belen M. Ringpis-Liban.

249(c)(3) of the 1997 NIRC. The Supreme Court ruled this imposition 'to be proper, because failure to pay the deficiency tax assessed within the time prescribed for its payment justifies the imposition of interest at the rate of twenty percent (20%) per annum, which interest shall be assessed and collected from the date prescribed for its payment until full payment is made.'

Earlier in 2011, the Supreme Court sustained the 2005 rulings of this Court imposing 20% delinquency tax on deficiency taxes, inclusive of deficiency interest, in *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*.

In 2006, the Supreme Court also upheld a 2004 Court of Appeals decision where the latter imposed delinquency interest at 20% per annum in addition to the interest on deficiency VAT and deficiency documentary stamp tax, in *Michel J. Lhuiller Pawnshop, Inc. v. Commissioner of Internal Revenue*, although without discussion of the propriety of multiple simultaneous interests.

And even earlier, in 2000, the Supreme Court likewise upheld the imposition of 20% annual delinquency interest on deficiency amusement tax, inclusive of 20% deficiency interest, in *Philippine Basketball Association v. Court of Appeals, Court of Tax Appeals, and Commissioner of Internal Revenue*.

Actually, double interests have been sustained by the Supreme Court at least as early as 1971, in *Commissioner of Internal Revenue v. Connel Bros. (Phil.) and Court of Tax Appeals*. Under the tax law at the time, R.A. No. 2343 of 1959, these were the "interest on deficiency" and what may be referred to as "additional interest" (in case of non-payment within the prescribed period), at the rates of 6% per annum and 1% per month, respectively.

It is abundantly clear, from the foregoing discussion of the law and jurisprudence, that under the circumstance laid down by Section 249(c)(3) of the Tax Reform Act of 1997 – *i.e.*, in case of failure to pay a deficiency tax, or any surcharge or interest on such deficiency tax – delinquency interest of 20% per annum shall be assessed and collected.

The petitioner asked whether or not simultaneous deficiency and delinquency interests 'are allowed by law and equity.' The answer is in the law itself, which does not merely allow but prescribes simultaneous imposition under the aforecited circumstance. As this is undoubtedly proper under

> the law – and petitioner has not assailed the validity of the law itself – there is neither need nor duty for this Court to expand the discussion to the realm of equity, for 'equity is applied only in the absence of, and never against, statutory law, and the rule is that 'equity follows the law.'"[30]

Verily, We explained in the *Philippine Aerospace* case that, following the various and consistent rulings of the Supreme Court, there is nothing repugnant with the simultaneous imposition of deficiency and delinquency interests. Thus, the Court in Division is correct in imposing the aforesaid civil penalties in the instant case.

Petitioner further argues that the delinquency penalty is due and collectible only if it fails to pay in full amount the deficiency tax within 30 days counted from the date the decision becomes final and executory.

Petitioner's argument is specious.

As presently worded, Section 249 of the NIRC of 1997, as amended, states:

> "SEC. 249. **Interest.** –
>
> (A) *In General.* - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
>
> (B) *Deficiency Interest.* - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
>
> (C) *Delinquency Interest.* - In case of failure to pay:
>
> (1) The amount of the tax due on any return to be filed, or

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[30] Id., citing *First Lepanto Taisho Insurance Corporation v. CIR,* G.R. No. 197117, Apr. 10, 2013; *Rizal Commercial Banking Corporation v. CIR,* G.R. No. 170257, Sept. 7, 2011; *Michel Lhuiller Pawnshop, Inc. v. CIR,* G.R. No. 166786, May 3, 2006; *Philippine Basketball Association v. Court of Appeals, Court of Tax Appeals and CIR,* G.R. No. 119122, Aug. 8, 2000; *CIR v. Connel Bros. (Phil.) and Court of Tax Appeals,* G.R. Nos. L-27752-53, Aug. 30, 1971, 40 SCRA 416; and *Philippine Rabbit Bus Lines, Inc. v. Hon. Ludivico D. Arciaga,* et al., G.R. No. L-29701, March 16, 1987.

> (2) The amount of the tax due for which no return is required, or
>
> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.
>
> (D) *Interest on Extended Payment.* - If any person required to pay the tax is qualified and elects to pay the tax on installment under the provisions of this Code, but fails to pay the tax or any installment hereof, or any part of such amount or installment on or before the date prescribed for its payment, or where the Commissioner has authorized an extension of time within which to pay a tax or a deficiency tax or any part thereof, there shall be assessed and collected interest at the rate hereinabove prescribed on the tax or deficiency tax or any part thereof unpaid from the date of notice and demand until it is paid."

Nowhere from the afore-quoted provision of the law can it be found that delinquency interest is due and collectible only if a taxpayer fails to pay in full amount the deficiency tax within 30 days counted from the date the decision becomes final and executory. As such, we uphold the Court in Division's imposition of 20% deficiency and 20% delinquency interest, in addition to the 25% surcharge.

In sum, except for the adjustment of petitioner's VAT liability in relation to its January 2006 gross receipts, We see no compelling reason to reverse the assailed Decision and Resolution.

WHEREFORE, in view thereof, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the Decision dated June 5, 2014 is hereby **MODIFIED**, as follows:

> "**WHEREFORE**, premises considered, the deficiency VAT assessment issued by respondent against petitioner covering taxable year 2006 is hereby **AFFIRMED WITH MODIFICATIONS**. Accordingly, petitioner is ordered to pay respondent the reduced amount of ₱220,234,609.48, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows: Je

Basic Deficiency VAT	₱176,187,687.58
Add: 25% Surcharge	44,046,921.90
TOTAL	**₱220,234,609.48**

In addition, petitioner is ordered to pay:

(a) Deficiency interest at the rate of 20% per annum on the basic deficiency VAT of ₱176,187,687.58 computed from January 25, 2007 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

Delinquency interest at the rate of 20% per annum on the total amount of ₱220,234,609.48 (representing basic deficiency VAT of ₱176,187,687.58 and 25% surcharge of ₱44,046,921.90) and on the deficiency interest which have accrued as afore-stated in (a), computed from June 19, 2009 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended."

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice