REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

MSEI CORPORATION, *Petitioner,*	**CTA CASE NO. 9167**
-versus-	**Members:**
	FABON-VICTORINO, *and* **RINGPIS-LIBAN, JJ.**
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	
	Promulgated: DEC 17 2018 3:12 p.m.

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DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

The case involves the Petition for Review[1] filed on October 9, 2015 by MSEI Corporation, praying for the cancellation of the Final Assessment Notice (FAN) and the Final Decision on Disputed Assessment (FDDA) that found it liable for alleged deficiency income tax and value-added tax (VAT) in the aggregate amount of ₱1,175,855.77, inclusive of surcharges and interests, for calendar year (CY) 2009.

THE FACTS

Petitioner MSEI Corporation is a corporation engaged in the business of trading goods such as electrical equipment/individual filters on wholesale or retail basis. Its principal office address is at Governor Drive, Brgy. Mabuhay, Carmona, Cavite.[2]

[1] Docket, pp. 12-24.
[2] Par. 1, Petition for Review, docket, p. 12.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On September 1, 2011[3], petitioner was sent a Letter Notice (LN) No. 54A-RLF-09-03-00042[4] dated August 8, 2011 issued by former BIR Commissioner Kim S. Jacinto-Henares, for alleged discrepancies as a result of the computerized matching conducted by the BIR on the information provided by third-party sources against petitioner's declaration per returns for CY 2009.

Thereafter, petitioner received a Letter[5] dated August 17, 2011 inviting it for a dialogue concerning the issuance of the LN.

Petitioner sent a Letter[6] dated September 13, 2011 to the BIR, stating that a certain Emerald Garments Manufacturing Corporation appearing in the LN is not a client of petitioner.[7]

Petitioner received a Follow-Up Letter[8] dated September 21, 2011 issued by Revenue District Officer (RDO) Honorata S. Aguilar. Petitioner sent a Letter[9] dated October 18, 2011 to the BIR in response to the Follow-Up Letter dated September 21, 2011.

On March 6, 2012[10], petitioner received a Notice for Informal Conference[11] dated February 22, 2012 from RDO Honorata Aguilar. Petitioner sent a Letter[12] dated March 8, 2012 in response to the Notice for Informal Conference[13], alleging that the deficiencies were part of the false transactions made by some clients that are not familiar to its normal sales transactions.

Petitioner then received the Preliminary Assessment Notice (PAN) dated May 16, 2014 with Details of Discrepancies[14], assessing it for alleged deficiency taxes for CY 2009.[15]

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[3] Par. 1, Joint Stipulation of Facts and Issues (JSFI), docket, p. 173.
[4] Exhibit "P-1", docket, p. 214; Exhibit "R-1", BIR Records, p. 3.
[5] Exhibit "P-2", docket, p. 215.
[6] Exhibit "P-3", docket, p. 217.
[7] Par. 2(a), JSFI, docket, p. 173.
[8] Exhibit "P-4", docket, pp. 218-219; Exhibit "R-2", BIR Records, pp. 12-13.
[9] Exhibit "P-5", docket, p. 220.
[10] As culled from Exhibit "P-7", docket, p. 223.
[11] Exhibit "P-6", docket, pp. 221-222; Exhibit "R-3", BIR Records, pp. 18-19.
[12] Exhibit "P-7", docket, p. 223.
[13] Par. 2(b), JSFI, docket, p. 173.
[14] Exhibit "P-8", docket, pp. 224-227; Exhibit "R-9", BIR Records, pp. 116-119.
[15] Par. 2(e), JSFI, docket, p. 174.

On July 25, 2014[16], petitioner received the Formal Letter of Demand (FLD) dated June 27, 2014 with Details of Discrepancies and Final Assessment Notices[17] issued by Revenue Region No. 9 – Regional Director Jose N. Tan, assessing it for alleged deficiency income tax and VAT, including surcharges and interests, in the total amount of ₱1,175,855.77 for CY 2009. Petitioner sent a Letter of Dispute[18] dated July 30, 2014, stating that it is not amenable to the conclusion of the Assessment Notice and Details of Discrepancies.[19]

On October 9, 2014[20], petitioner received a Letter[21] dated September 25, 2014 issued by Regional Director Jose N. Tan, requiring it to file a protest stating the supporting facts, applicable laws, rules and regulations, or jurisprudence.

Mr. Tagumpay L. Marasigan, President and CEO of petitioner, sent a Protest Letter (LN # 54A-RLF-09-03-00042)[22] dated October 20, 2014 to the Regional Director of Revenue Region No. 9.[23] Petitioner was informed that its letter request together with the whole docket was forwarded to Revenue District Office No. 54A-Trece Martirez City for further evaluation.[24]

On September 9, 2015[25], petitioner received the FDDA dated August 18, 2015. Consequently, petitioner filed the present Petition for Review before the Court on October 9, 2015.

Respondent filed his Answer[26] through registered mail on December 28, 2015 and received by the Court on January 7, 2016, interposing the following Special and Affirmative Defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

> 4. On the basis of the foregoing allegations and in further support of the Specific Denials herein set forth, respondent respectfully alleges as her defense that:
>
> ***The requirement of due process was properly complied with in issuing the Formal Letter of***

[16] As culled from Exhibit "P-10", docket, p. 233.
[17] Exhibit "P-9", docket, pp. 228-232; Exhibit "R-10", BIR Records, pp. 120-125.
[18] Exhibit "P-10," docket, p. 233.
[19] Par. 2(c), JSFI, docket, p. 173.
[20] As culled from Exhibit "P-12", docket, p. 238.
[21] Exhibit "P-11", docket, p. 237.
[22] Exhibit "P-12", docket, p. 238.
[23] Par. 2(d), JSFI, docket, p. 174.
[24] Exhibit "P-13", docket, p. 239.
[25] Par. 3, Petition for Review, docket, p. 12.
[26] Docket, pp. 71-81.

Demand/Final Assessment Notice and Final Decision on Disputed Assessment

5. In compliance with Section 228 of the NIRC, the Notice of Informal Conference, Preliminary Assessment Notice (PAN) and Formal Letter of Demand/Final Assessment Notice (FLD/FAN) and the Final Decision on Disputed Assessment contained the facts and law on which the assessment was based.

6. Petitioner was apprised of and was able to effectively protest the tax assessment against it when it replied and continuously communicated with respondent in the course of investigation. A testament to this communication are the following letters from petitioner:

a. Letter dated September 13, 2011
b. Letter dated March 8, 2012 with Informal Conference as the Subject
c. Letter dated January 29, 2013
d. Letter of Dispute dated July 30, 2014

7. The chance afforded to petitioner is a clear opportunity to be heard and to refute the findings of its deficiency tax assessment. As such, procedural due process was satisfied. In the case of Ledesma v. Court of Appeals, the Honorable Supreme Court elaborates on the well-established doctrine of due process in administrative proceedings as follows:

> 'Due process, as a constitutional precept does not always and in all situations require a trial-type proceeding. **Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek reconsideration of the action or ruling complained of.** (Emphasis supplied)

8. Further, in the case of St. Maria vs. Department of Agrarian Reform Adjudication Board the Honorable Supreme Court held:

> 'Finally, anent petitioners' lamentation that they had been denied due process, we differ. In administrative proceedings, a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process. As we held in *Casimiro v. Tandog*: **The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of.** 'To be heard' does not mean only verbal arguments in court; one may be heard also thru pleadings. **Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.** (emphasis supplied)

9. Based on the above discussion, respondent CIR properly cited the pertinent provision of the law and facts to support her findings and the assessment issued was in compliance with Section 228 of the NIRC of 1997, as amended.

The present case squarely falls within exceptions stated under Section 222 of the Tax Code.

10. Section 222 of the NIRC of 1997, as amended provides for the exceptions from the three year period to assess. It specifically enumerates the circumstances in which the period of limitation under Section 203 of the Tax Code cannot be applied. Section 222 states that:

> SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken

> cognizance of in the civil or criminal action for the collection thereof.

11. As stated in the Final Decision on Disputed Assessment, a fifty percent surcharge was imposed for deficiency income tax and value added taxes pursuant to the provision of Section 248 (B) of the NIRC which states:

> 'In case of willful neglect to file the return within the period prescribed by the Code or rules and regulation, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, that a substantial under-declaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute a prima facie evidence of a false or fraudulent return.'

12. The discussion of the Honorable Supreme Court in the case of Commissioner of Internal Revenue vs. Arturo Tulio is enlightening in the instant case, to wit:

> '**Section 223 specifies three (3) instances when the running of the three-year prescriptive period does not apply. These are: (1) filing a false return, (2) filing a fraudulent return with intent to evade tax or (3) failure to file a return.** The period within which to assess tax is ten years from discovery of the fraud, falsification or omission.
>
> **Here, respondent failed to file his tax returns for 1986 and 1987. On September 14, 1989, petitioner found respondent's omission. Hence, the running of the ten-year prescriptive period within which to assess and collect taxes due from respondent commenced on that date until September 14, 1999**. The two final assessment notices were issued on February 28, 1991, well within the prescriptive period of three (3) years. When respondent failed to question or protest the deficiency assessments within thirty (30) days therefrom, or until March 30, 1991, the same became final and executory.

> As we held in Marcos II vs. Court of Appeals, **the omission to file an estate tax return,** and the subsequent failure to contest or appeal the assessment made by the BIR is fatal, **considering that under Section 223 of the NIRC, in case of failure to file a return, the tax may be assessed at any time within ten years after the omission, and any tax so assessed may be collected by levy upon real property within three years following the assessment of the tax (as was done here).** Since the estate tax assessment had become final and unappealable, there is now no reason why petitioner should not enforce its authority to collect respondent's deficiency percentage taxes for 1986 and 1987.

13. Clearly the period of limitations finds no application in the present case.

Petitioner is liable to pay its deficiency income tax, value added tax and 50% surcharge all for taxable year 2009.

14. Respondent correctly assessed petitioner for deficiency income tax, value added tax as stated in the Final Decision on Disputed Assessment, to wit:

INCOME TAX

Additional Gross Income (P 561,747,47) – Computerized verification on information/data provided by third party sources as stated per LN No. 054A-RLF-09-03-00042 against the declaration per ITR pursuant to RMO No. 13-2012, resulted to discrepancy on undeclared income amounting to P561,747.47, thus, assessed pursuant to the provision of Sections 5, 6 (B) and 32 (A) of the National Internal Revenue Code.

Sales per LN	P 3,176,172.93
Sales per ITR	577,896.00
Undeclared Sales	2,598,276.93
Multiply by: GP Rate	21.62%
Undeclared Income	P 561,747.47
Percentage of Undeclared Sales	449.61%

15. VALUE-ADDED TAX

Computerized matching on information/data provided by third party sources as stated per LN No. 054A-RLF-09-03-00042 against the declaration per VAT Return pursuant to RMO No. 13-2012, resulted to discrepancy on sales amounting to P2,729,122.97, thus, assessed pursuant to the provision of Sections 5, 6 (B) and 106 of the National Revenue Code, as implemented by of Revenue Regulation No. 16-2005.

Sales per LN	₱	3,176,172.93
Sales per VAT returns		447,049.96
Undeclared Sales	₱	2,729,122.97
Percentage of Undeclared Sales		610.47%

16. FIFTY PERCENT (50%) SURCHARGE ADDITION ON INCOME AND VALUE-ADDED TAXES

Fifty percent (50%) surcharge has been imposed for the deficiency income and value-added taxes pursuant to the provision of Section 248 (B) of the National Internal Revenue Code, which states that, 'In case of willfully neglect to file the return within the period prescribed by the Code or rules and regulation, or in case a false or fraudulent return is willful made, the penalty to be imposed shall be fifty percent (50%) of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: Provided, that a substantial under-declaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute a prima facie evidence of a false or fraudulent return'.

17. All told, the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong, but also that the taxpayer is right. The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting.

18. Well-settled is the rule that tax assessments are entitled to the presumption of correctness 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 *(Sy Po vs. Court of tax Appeals, 164 SCRA 524).*

Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices."

The pre-trial conference was set on March 29, 2016.[27] Respondent's Pre-Trial Brief[28] was filed on March 22, 2016; while petitioner's Pre-Trial Brief[29] was filed on March 23, 2016.

The parties filed their Joint Stipulation of Facts and Issues[30] on April 12, 2016. Subsequently, the Court issued the Pre-Trial Order[31] on April 25, 2016.

Petitioner presented Mr. Tagumpay L. Marasigan as its witness.[32]

On August 12, 2016, petitioner filed its Formal Offer of Evidence[33], offering Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-15-A", "P-15-B", and "P-16-A" as its documentary evidence. Respondent filed his Comment with Manifestation[34] on October 11, 2016.

In the Resolution[35] dated October 21, 2016, the Court admitted all the exhibits formally offered by petitioner.

On the other hand, respondent presented Revenue Officers Wilma G. Enrique[36] and Grace Nario-Mangubat as witnesses.[37]

On August 17, 2017, respondent filed his Formal Offer of Evidence[38], offering Exhibits "R-1", "R-2", "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-10", "R-11", and "R-12". Petitioner filed its Comment and Opposition[39] on October 12, 2017.

In the Resolution[40] dated October 20, 2017, the Court admitted all the exhibits formally offered by respondent.

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[27] Notice of Pre-Trial Conference dated January 11, 2016, docket, pp. 83-84.
[28] Docket, pp. 93-97.
[29] Docket, pp. 117-120.
[30] Docket, pp. 173-177.
[31] Docket, pp. 180-185.
[32] Minutes of the hearing dated July 11, 2016, docket, p. 192.
[33] Docket, pp. 206-213.
[34] Docket, pp. 287-290.
[35] Docket, p. 297.
[36] Minutes of the hearing dated February 6, 2017, docket, p. 298.
[37] Minutes of the hearing dated July 10, 2017, docket, p. 303.
[38] Docket, pp. 311-314.
[39] Docket, pp. 322-325.
[40] Docket, pp. 327-328.

On December 4, 2017, petitioner filed its Memorandum[41]. In the Records Verification Report[42] of the Judicial Records Division of this Court, it was stated that respondent failed to file his Memorandum in this case. Hence, in the Resolution dated January 10, 2018, the Court declared the case submitted for decision.[43]

THE ISSUE

The parties submitted the following issue for the Court's resolution:[44]

> Whether petitioner is liable to pay the total amount of One Million One Hundred Seventy-Five Thousand Eight Hundred Fifty-Five Pesos and Seventy-Seven Centavos (₱1,175,855.77), the alleged deficiency taxes for taxable year 2009, as well as applicable surcharges and deficiency and delinquency interests, pursuant to Sections 248 and 249 of the NIRC of 1997.

THE RULING OF THE COURT

The Court will determine first whether the case was timely filed.

Pertinent to the resolution of this matter is Section 228 of the National Internal Revenue Code of 1997, as amended, which provides:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his

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[41] Docket, pp. 333-350.
[42] Records Verification dated December 28, 2017, docket, p. 354.
[43] Resolution dated January 10, 2018, docket, p. 356.
[44] JSFI, docket, p. 174.

duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Pursuant to Section 228 of the NIRC of 1997, petitioner has 30 days from receipt of the FLD/FAN within which to file its administrative protest and another 30 days from receipt of respondent's decision, or from the lapse of the 180-day period within which to file its Petition for Review with the Court of Tax Appeals.

Petitioner received the FLD dated June 27, 2014 with Details of Discrepancies and Final Assessment Notices issued by Regional Director Jose N. Tan on July 25, 2014, assessing it for alleged deficiency income tax and VAT, including surcharges and interests, in the total amount of ₱1,175,855.77 for CY 2009. Petitioner had 30 days from July 25, 2014 or until August 25, 2014[45] within which to file its administrative protest with respondent. Petitioner sent a Letter of Dispute dated July 30, 2014, reiterating that it is not amenable to the conclusion of the FAN and Details of Discrepancies.

On September 9, 2015, petitioner received the FDDA dated August 18, 2015. Counting 30 days from September 9, 2015, petitioner had until October 9, 2015 within which to file its Petition for Review with the Court. Hence, the Petition for Review filed by petitioner on October 9, 2015 was timely filed within the 30-day prescriptive period.

Records of the case show that no Letter of Authority (LOA) was issued for the examination of petitioner's books of accounts and other accounting records for its internal revenue taxes for CY 2009. For this reason, it is necessary to rule first on whether the Court has jurisdiction to decide on the

[45] August 24, 2014 fell on Sunday.

scope of the authority of the revenue officers to examine petitioner, although this issue was not raised by the parties in their respective pleadings.

In the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*[46], the Supreme Court reiterated and confirmed the power and jurisdiction of the Court of Tax Appeals to resolve the issue regarding the authority of Revenue Officers to conduct audit, as follows:

> "The law vesting unto the CTA its jurisdiction is Section 7 of Republic Act No. 1125 (*R.A. No. 1125*) which in part provides:
>
> > Section 7. *Jurisdiction.* – The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided:
> >
> > > (1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other penalties imposed in relation thereto, or ***other matters*** arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue; xxx. (emphasis supplied)
>
> Under the aforecited provision, the jurisdiction of the CTA is not limited only to cases which involve decisions or inactions of the CIR on matters relating to assessments or refunds but also includes other cases arising from the NIRC or related laws administered by the BIR. Thus, for instance, we had once held that the question of whether or not to impose a deficiency tax assessment comes within the purview of the words '*other matters arising under the National Internal Revenue Code.*'
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> The jurisdiction of the CTA on such ***other matters arising under the NIRC*** was retained under the amendments introduced by R.A. No. 9282. Under R.A. No. 9282, Section 7 now reads:
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> Sec. 7. *Jurisdiction.* – The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

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

> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or ***other matters*** arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
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> 2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or ***other matters*** arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; xxx. (emphasis supplied)

Is the question on the authority of revenue officers to examine the books and records of any person cognizable by the CTA?

It must be stressed that the assessment of internal revenue taxes is one of the duties of the BIR. Section 2 of the NIRC states:

> Sec. 2. *Powers and Duties of the Bureau of Internal Revenue.* – The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the ***assessment*** and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts.
>
> The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws. (emphasis supplied)

In connection therewith, the CIR may authorize the examination of any taxpayer and correspondingly make an assessment whenever necessary. Thus, to give more teeth to such power of the CIR, to make an assessment, the NIRC authorizes the CIR to examine any book, paper, record, or data of any person. The powers granted by law to the CIR are intended, among other things, to determine the liability of any person for any national internal revenue tax.

It is pursuant to such pertinent provisions of the NIRC conferring the powers to the CIR that the petitioner (CIR) had, in this case, authorized its revenue officers to conduct an examination of the books of account and accounting records of Lancaster, and eventually issue a deficiency assessment against it.

From the foregoing, it is clear that the issue on whether the revenue officers who had conducted the examination on Lancaster exceeded their authority pursuant to LOA No. 00012289 may be considered as covered by the terms 'other matters' under Section 7 of R.A. No. 1125 or its amendment, R.A. No. 9282. The authority to make an examination or assessment, being a matter provided for by the NIRC, is well within the exclusive and appellate jurisdiction of the CTA.

On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.

Under Section 1, Rule 4 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:

> SECTION 1. *Rendition of judgment.* - x x x
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case.

The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter."

Based on the afore-quoted jurisprudence, the authority to make an examination or assessment, being a matter provided for by the NIRC, is well within the exclusive and appellate jurisdiction of the CTA under the phrase "other matters" arising under the NIRC or other laws administered by the BIR. Moreover, the Court is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

As earlier stated, records show that no LOA was issued against petitioner for CY 2009. The question now is whether Letter Notice No. 54A-RLF-09-03-00042 dated August 8, 2011, issued by former BIR Commissioner Kim S. Jacinto-Henares, would suffice.

The answer is in the negative.

Section 6(A) of the NIRC of 1997, as amended, grants the Commissioner of Internal Revenue the power to authorize the examination of any taxpayer and the assessment of the correct amount of tax due, to wit:

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

In relation thereto, Section 13 of the NIRC of 1997, as amended, provides that a Letter of Authority is the authority given to the appropriate revenue officer assigned to perform assessment functions. Section 13 provides:

> "SEC. 13. *Authority of a Revenue Officer.* – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could

have been performed by the Revenue Regional Director himself." (*Emphasis supplied*)

The Supreme Court's pronouncement in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[47] is instructive:

"***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:

xxx xxx xxx

Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.

xxx xxx xxx

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

Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that

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

> the revenue officer so authorized must not go beyond the authority given. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**. (Emphasis and underlining ours)

The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.

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

Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial

> records but only on whether a taxpayer is being subject to examination.
>
> The BIR's RELIEF System has admittedly made the BIR's assessment and collection efforts much easier and faster. The ease by which the BIR's revenue generating objectives is achieved is no excuse however for its non-compliance with the statutory requirement under Section 6 and with its own administrative issuance. 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."

In other words, there must first be a grant of authority before a revenue officer can conduct an examination and issue a tax assessment. For these reasons, the issuance of a mere LN instead of an LOA would not suffice.

To emphasize, the audit process normally commences with the issuance by the BIR Commissioner of an LOA. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[48]

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[48] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc., supra.*

In this case, there is no indication that an LOA was issued against petitioner but only LN No. 54A-RLF-09-03-00042 dated August 8, 2011 issued by former BIR Commissioner Kim S. Jacinto-Henares. In the absence of competent proof that the revenue examiners who conducted the audit and investigation of petitioner's books of accounts and other accounting records for CY 2009 were duly authorized pursuant to a valid LOA, the deficiency tax assessment issued against petitioner, arising from the audit they conducted, is void ab initio.

It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power. But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate, as it has here, that the law has not been observed.[49]

Finding that the assessment for CY 2009 is void for being issued without a valid authority, the Court finds it no longer necessary to discuss the issue raised by the parties.

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. Accordingly, the assessment notices and the Final Decision on Disputed Assessment that found petitioner liable for alleged deficiency income tax and value-added tax in the aggregate amount of ₱1,175,855.77 for calendar year 2009 are **CANCELLED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[49] *Commissioner of Internal Revenue vs. San Miguel Corporation*, G.R. Nos. 205045 and 205723, January 25, 2017, citing *Commissioner of Internal Revenue vs. Algue, Inc., et al.*, G.R. No. L-28896, February 17, 1988.

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

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

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

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