REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

GREAT HOLIDAY ENTERTAINMENT SERVICES, INC. (NOW MERGED WITH NEW COAST HOTEL, INC.),
Respondent.

CTA EB NO. 1843
(CTA Case No. 8864)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

SEP 24 2019

2:57 p.m.

x---x

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *en banc* is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (CIR) against the respondent Great Holiday Entertainment Services, Inc.[2] (Great Holiday) seeking the reversal of the Decision dated September 13, 2017[3] (Assailed Decision) rendered by the First Division of this Court in CTA Case No. 8864, as well as the Resolution dated April 2, 2018[4] (Assailed Resolution) denying its motion for reconsideration.

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[1] *Rollo*, pp. 5-16, with Annexes "A" and "B", pp. 17-39.
[2] Now merged with New Coast Hotel, Inc.
[3] *Id.*, pp. 18-33.
[4] *Id.*, pp. 35-39.

In the Petition, the CIR prays that both the Assailed Decision and Resolution be reversed and set aside; that judgment be rendered upholding the assessment issued against Great Holiday; and that Great Holiday be ordered to pay the CIR the total amount of 183,251.87, representing deficiency Income Tax, inclusive of increments, for taxable year (TY) 2007.

The Parties

Petitioner CIR 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 of 1997, as amended, (Tax Code) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, respondent Great Holiday is a domestic corporation duly organized and existing under Philippine laws, with principal office at 5/F Casino Filipino-Hyatt, Hyatt Regency Hotel and Casino Manila, 1588 M. H. Del Pilar corner Pedro Gil, Malate, City of Manila.[5]

The Facts[6]

Great Holiday filed its Annual Income Tax Return[7] (ITR) for calendar year 2007 on April 14, 2008.

On July 21, 2008, the CIR issued a Tax Verification Notice[8] (TVN) authorizing Revenue Officer (RO) Teresita P. Reyes to verify the supporting documents and/or pertinent records of Great Holiday relative to its internal revenue taxes for calendar year 2007. As such, the List of Audit Requirements per Tax Type[9], Second Request for Presentation of Records[10], and Final Notice[11] were issued to Great Holiday, requesting it to present its accounting records.

On July 2, 2010, the Articles and Plan of Merger of Great Holiday as the absorbed corporation and New Coast Hotel, Inc. (NCHI) as the surviving corporation were approved by the Securities and Exchange Commission (SEC).[12] As a result, the entire assets and liabilities of Great Holiday were transferred and

[5] Docket, p. 570, Joint Stipulation of Facts and Issues (JSFI), par. 2; Exhibit "P-2", p. 223.
[6] As found by the First Division and as culled from the records of the case.
[7] *Id.* at Note 5, pp. 304 to 306, Exhibit "P-8".
[8] *Id.*, p. 757, Exhibit "R-1".
[9] *Id.*, p. 758, Exhibit "R-2".
[10] *Id.*, p. 759, Exhibit "R-3".
[11] *Id.*, p. 760, Exhibit "R-4".
[12] *Id.*, p. 642, Exhibit "P-1".

absorbed by NCHI.

Prior to its merger with NCHI on July 2, 2010, Great Holiday was a registered taxpayer with the BIR with Tax Identification No. (TIN) 236-629-865.[13]

On December 1, 2010, a Post Reporting Notice[14] was issued informing Great Holiday that a preliminary assessment had been submitted for final evaluation after an investigation of its 2007 internal revenue tax was conducted pursuant to the Tax Verification Notice.

On February 24, 2011, a Preliminary Assessment Notice (PAN)[15] was issued against Great Holiday assessing it for alleged deficiency income tax in the amount of ₱2,919,859.17.

On April 1, 2011, Great Holiday received a copy of the Final Assessment Notice[16] (FAN) and Formal Letter of Demand[17] (FLD), which demanded payment of deficiency income tax for calendar year 2007 in the total amount of P2,934,168.64, inclusive of increments, under Assessment Notice No. 33-07-I T-1476.[18] Based on the FLD, the deficiency income tax assessment was computed as follows:[19]

Taxable Income per Return		₱ -
Add: Adjustments per Investigation		
Disallowed Expenses		
Professional Fees-Non-withholding		89,926.00
Unsupported Expenses:		
Office Supplies	₱ 125.00	
Taxes & Licenses	500.00	
Miscellaneous	8,567.00	9,192.00
Depreciation-No proof of acquisition of assets		5,095,826.00
Adjusted Taxable Income		₱ 5,194,944.00
Tax Due		₱ 1,818,230.40
Less: Payments/Credits		-
Deficiency Income Tax		₱ 1,818,230.40
Add: 25% Surcharge *(Sec.* 248		-
20% interest p.a. from __to 3/31/11 (Sec. 249)	₱ 1,090,938.24	
Compromise Penalty *(Sec.* 254 in relation to RMO 19-2007)	25,000.00	1,115,938.24
Total Deficiency Income Tax		₱ 2,934,168.64

Great Holiday protested the FAN/FLD by filing a protest letter[20] with the

[13] *Id.*, p. 571, JFSI, par. 3.
[14] *Id.*, p. 761, Exhibit "R-5".
[15] *Id.*, pp. 768 to 769, Exhibit "R-11".
[16] *Id.*, p. 773, Exhibit "R-14".
[17] *Id.*, pp. 771 to 772, Exhibit "R-13".
[18] *Id.*, pp. 247 to 250, Exhibit "P-3".
[19] *Id.*, p. 571, JFSI, par. 5.
[20] *Id.*, pp. 251 to 258, Exhibit "P-4".

Revenue Region No. 6 on April 29, 2011.[21]

The CIR partially granted Great Holiday's protest by reducing the income tax assessment to ₱183,251.87. Great Holiday received the copy of the decision on July 10, 2014. The assessed amount of ₱183,251.87 is computed as follows:[22]

Taxable Income per Return		₱ 5,194,944.00
Add (Less): Adjustments per Re-Investigation		
Re-Allowed Pre-Operating Expenses		(4,982,991.21)
Adjusted Taxable Income per Re-Investigation		211,952.79
Income Tax Due		74,183.40
Less: Tax Credits and Payment		-
Deficiency Income Tax		74,183.40
Add: Interest (from 04-15-2008 up to 07-30-2014)	₱ 97,068.47	
Compromise Penalty	₱ 12,000	109,068.47
Total amount due		₱ 183,251.87

Since August 9, 2014 fell on a Saturday, Great Holiday filed its Petition for Review with the CTA on August 11, 2014.[23]

The CIR filed his Answer[24] on September 9, 2014, interposing the special and affirmative defenses that the assessment is valid and correct and that Great Holiday has the burden of proof to impugn its validity; tax assessments by examiners are presumed correct and made in good faith; the burden of proof is on the taxpayer contesting the validity or correctness of an assessment; and that taxes are the life blood of the government and should be collected without unnecessary hindrance.

Petitioner filed a Motion for Summary Judgment (With Urgent Motion to Defer Pre-Trial)[25] on November 3, 2014, which the Court denied on January 20, 2015.[26]

Great Holiday filed its Pre-Trial Brief[27] on May 18, 2015; while the CIR's Pre-Trial Brief[28] was filed on November 6, 2014. The parties then submitted their Joint Stipulation of Facts and Issues[29] on July 10, 2015. The Court in Division approved the parties' joint stipulations and terminated the pre-trial on July 21, 2015.[30] Consequently, the Court in Division issued a Pre-Trial Order[31] on August

[21] *Id.*, p. 571, JFSI, par. 6.
[22] *Id.*, p. 571, JFSI, par. 7; pp. 259 to 260, Exhibit "P-5"; p. 782, Exhibit "R-22".
[23] *Id.*, p. 572, JSFI, par. 13.
[24] *Id.*, pp. 102 to 106.
[25] *Id.*, pp. 108 to 116.
[26] *Id.*, pp. 192 to 195.
[27] *Id.*, pp. 498 to 514.
[28] *Id.*, pp. 153 to 157.
[29] *Id.*, pp. 570 to 586.
[30] *Id.*, p. 589.
[31] *Id.*, pp. 591 to 607.

10, 2015.

To prove its claim, Great Holiday presented Ms. Luzviminda P. Sanchez as its sole witness. Subsequently, Great Holiday formally offered its documentary evidence, which were all admitted by the Court in Division, as follows:[32]

Exhibit No.	Document
P-1	Certificate of Filing of the Articles and Plan of Merger between Great Holiday and New Coast Hotel, Inc. (NCHI) issued by the Securities and Exchange Commission (SEC) on July 2, 2010
P-2	Great Holiday's Certificate of Incorporation issued by the SEC on February 10 2005
P-3	FLD and FAN dated March 30, 2011 issued by the BIR, Revenue Region No. 6, received by Great Holiday on April 1, 2011
P-4	Great Holiday's protest letter dated April 29, 2011 filed with the CIR on even date
P-5	The CIR's FDDA dated July 4, 2014 addressed to Great Holiday
P-6	Great Holiday's Annual Income Tax Return (ITR) for CY 2005 which was filed with the BIR on May 3, 2006, signed by Great Holiday's former Treasurer, Ms. Yvonne Lo
P-6-1	Great Holiday's Audited FS for CY 2005, stamped as received by the BIR on May 3, 2006, and signed by its external auditor, Mr. Manolito F. Gonzales of SyCip Gorres Velayo & Co. (SGV & Co.)
P-7	Great Holiday's Annual ITR for CY 2006 which was filed with the BIR on April 16, 2007, signed by its former Treasurer, Mr. Kan Wonq
P-7-1	Great Holiday's Audited FS for CY 2006, stamped as received by the BIR on April 16, 2007, and signed by its external auditor, Mr. Jose Pepito Zabat III of SGV & Co.
P-8	Great Holiday's Annual ITR for CY 2007 which was filed with the BIR on April 14, 2008, signed by its former Treasurer, Mr. Kan Wonq
P-8-1	Great Holiday's Quarterly ITR for the 1st quarter of CY 2007 which was filed with the BIR on May 30, 2007, signed by petitioner's former Treasurer, Mr. Kan Wonq
P-8-2	Great Holiday's Quarterly ITR for the 2nd quarter of CY 2007 which was filed with the BIR on August 29, 2007, signed by its former Treasurer, Mr. Kan Wong
P-8-3	Great Holiday's Quarterly ITR for the 3rd quarter of CY 2007 which was filed with the BIR on November 27, 2007, signed by its former Treasurer, Mr. Kan Wonq
P-8-4	Great Holiday's Audited FS for CY 2007, stamped as received by the BIR on April 14, 2008, and signed by its external auditor, Mr. Jose Pepito Zabat III of SGV & Co.
P-9	Great Holiday's Annual ITR for CY 2008 which was filed with the BIR on April 7, 2009, signed by its former Treasurer, Mr. Kan Wonq
P-9-1	Great Holiday's Audited FS for CY 2008, stamped as received by the BIR on April 7, 2009, and signed by its external auditor, Mr. Jose Pepito Zabat III of SGV & Co.

[32] *Id.*, pp. 727 to 728, Resolution dated January 15, 2016.

Exhibit No.	Document
P-10	Great Holiday's Annual ITR for CY 2009 which was filed with the BIR through the Electronic Filing and Payment System (EFPS) on April 12, 2010
P-10-1	Great Holiday's Audited FS for CY 2009, stamped as received by the BIR on April 12, 2010, and signed by its external auditor, Mr. Jose Pepito Zabat III of SGV & Co.
P-11	Great Holiday's Annual ITR for CY 2010 (Short Period Return), which was filed with the BIR on September 30, 2010, signed by its former Treasurer, Mr. Kan Wong
P-11-1	Great Holiday's Audited FS for the six months ended July 2, 2010, stamped as received by the BIR on September 30, 2010, and signed by its external auditor, Mr. Jose Pepito Zabat III of SGV & Co.
P-12	Service Invoice No. 1267 issued by Salvador, Guevara & Associates (SGA) to Great Holiday
P-13	Service Invoice No. 1382 issued by SGA to Great Holiday
P-14	Service Invoice No. 1466 issued by SGA to Great Holiday
P-15	Service Invoice No. 1591 issued by SGA to Great Holiday
P-16	Service Invoice No. 1761 issued by SGA to Great Holiday
P-17	Service Invoice No. 1840 issued by SGA to Great Holiday
P-18	Service Invoice No. 1923 issued by SGA to Great Holiday
P-19	Service Invoice No. 2025 issued by SGA to Great Holiday
P-20	Service Invoice No. 2103 issued by SGA to Great Holiday
P-21	Service Invoice No. 2201 issued by SGA to petitioner
P-22	Service Invoice No. 2313 issued by SGA to Great Holiday
P-23	Service Invoice No. 2413 issued by SGA to Great Holiday
P-24	Billing Invoice No. V55630 issued by SGV & Co. to Great Holiday
P-25	Billing Invoice No. V49266 issued by SGV & Co. to Great Holiday
P-26	Billinq Invoice No. V44221 issued by SGV & Co. to Great Holiday
P-27	Amended Articles of Partnership of Sycip, Gorres, Velayo & Co.
P-28	Articles of General Partnership of Salvador, Guevara & Associates
P-29	Great Holiday's Summary of Fixed Assets as of December 31, 2007
P-30	Service Invoice No. 1121 issued by New F.S. Cool Aire Industries, Inc. to NCHI
P-31	Official Receipt No. 0939 issued by New F.S. Cool Aire Industries Inc. to NCHI
P-32	Great Holiday's voucher dated April 30, 2007 covering the payment of ₱855,000.00 to New F.S. Cool Aire Industries Inc. for the supply of labor and materials for the installation of 51 fans
P-33	Sworn Statement of Ms. Luzviminda P. Sanchez to Questions Propounded by Attv. Marvin B. Ibarra dated May 15, 2015
P-33-1	Signature of Ms. Luzviminda P. Sanchez

The CIR, on the other hand, presented ROs Teresita D. Reyes, Winchester M. Aritao, and Yzarina D. Brana. The CIR then formally offered his documentary evidence, which were all admitted by the Court in Division[33], as follows:

[33] *Id.*, pp. 811 to 812, Resolution dated July 27, 2016.

Exhibit No.	Document
R-1	Tax Verification Notice No. TVN 2003 001015014 dated July 21, 2008
R-2	List of Audit Requirements
R-3	Second Request for Presentation of Records dated September 01, 2008
R-4	Final Notice dated January 25, 2010
R-5	Post Reporting Notice dated December 01, 2010 with attached Computation of Deficiency Income Tax
R-5-a	Computation of Deficiency Income Tax
R-6	RO's Audit Report on Income Tax (BIR Form 0500)
R-7	Memorandum Report dated December 21, 2010
R-8	1st Indorsement dated December 21, 2010
R-9	Assignment Slip
R-10	RO's Audit Report on Income Tax (BIR Form 0500)
R-11	PAN dated February 24, 2011 with Details of Discrepancy
R-12	BIR letter to Great Holiday
R-13	FLD dated March 30, 2011
R-14	Assessment Notice No. 33-07-IT 1476 dated March 30, 2011
R-15	BIR letter to Great Holiday dated May 16, 2011
R-16	1st Indorsement dated May 16, 2011
R-17	Memorandum of Assignment No. RR06-033-PRO-0511 - 001706 dated May 18, 2011
R-18	RO's Audit Report on Income Tax (BIR Form 0500)
R-19	Memorandum Report dated March 26, 2014
R-20	3rd Indorsement
R-21	Assignment Slip
R-22	FDDA dated July 04, 2014 with attached Details of Discrepancies
R-22-a	Details of Discrepancies
R-23	Judicial Affidavit of RO Teresita P. Reves
R-23-1	Signature atop the printed name "Teresita P. Reyes"
R-24	Judicial Affidavit of RO Winchester M. Aritao
R-24-1	Signature atop the printed name "Winchester M. Aritao"
R-25	Judicial Affidavit of RO Yzarina D. Brana
R-25-1	Signature atop the printed name "Yzarina D. Brana"

The Court in Division submitted the case for decision on September 27, 2016,[34] after the filing of Great Holiday's Memorandum[35] on September 19, 2016 and of the CIR's Memorandum[36] on September 13, 2016.

On September 13, 2017, the Court in Division promulgated the Assailed Decision granting Great Holiday's Petition and declaring the deficiency income tax assessment dated March 30, 2011 issued by the CIR against Great Holiday for TY 2007 null and void. The dispositive portion of the Assailed Decision

[34] *Id.*, p. 851.
[35] *Id.*, pp. 822 to 840.
[36] *Id.*, pp. 842 to 848.

reads, as follows:

> "**WHEREFORE,** premises considered, the Petition for Review filed by petitioner Great Holiday Entertainment Services, Inc. is hereby **GRANTED**. Accordingly, the deficiency income tax assessment dated March 30, 2011 issued by respondent against petitioner for taxable year 2007 is declared **NULL** and **VOID**.
>
> **SO ORDERED.**"[37]

On October 3, 2017, the CIR filed his Motion for Reconsideration thereof through registered mail, praying for the reversal of the Assailed Decision, to which Great Holiday filed its Comment (Re: Motion for Reconsideration dated October 2, 2017) on January 9, 2018.

On April 2, 2018, the Court in Division issued the Assailed Resolution denying the motion for lack of merit.[38] The dispositive portion of the Assailed Resolution reads, as follows:

> "**WHEREFORE,** premises considered, respondent's **Motion for Reconsideration (Re: Decision dated September 13, 2017)** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"[39]

Within an extended period granted by the Court *en banc*[40], the CIR timely filed his appeal via Petition for Review on May 15, 2018.

On June 1, 2018, Great Holiday was directed to file Comment thereto.[41]

After being granted an extension by the Court *en banc*[42], Great Holiday filed its Comment (Re: Petition for Review dated May 15, 2018)[43] on June 25, 2018.[44]

On July 9, 2018, the Court *en banc* issued a Resolution giving due course

[37] *Id.* at Note 3, p. 33.
[38] *Id.* at Note 4.
[39] *Id.*, p. 39.
[40] *Id.* at Note 1, p. 41.
[41] *Id.*, pp. 75-76.
[42] *Id.*, p. 47.
[43] *Id.*, pp. 77-88.
[44] *Id.*, pp. 53-62.

to the Petition for Review and ordering the parties to file their respective memoranda.[45]

On August 31, 2018, the CIR posted his Petitioner's Memorandum through registered mail which the Court *en banc* received on September 7, 2018[46], after being granted an extension.[47] Great Holiday timely filed its Memorandum, as well, on September 28, 2018.[48]

On November 22, 2018, the Court *en banc* issued a Resolution submitting the case for decision.[49]

The Assignments of Errors

The CIR argues that the Court in Division erred in granting Great Holiday's Petition for Review and declaring the deficiency income tax assessment for TY 2007 null and void.

The Arguments of the Parties

The CIR argues that the 2007 deficiency income tax assessment against Great Holiday amounting to ₱183,251.87 is valid and enforceable. The original assessment against Great Holiday found it liable for ₱2,934,168.64 based on the findings of the investigation conducted pursuant to the TVN duly issued.

The CIR further argues that although Great Holiday claimed that it had no revenue for TY 2007, his re-investigation revealed that Great Holiday had overstated its pre-operating expenses resulting in the deficiency income tax assessment of ₱183,251.87. Great Holiday's claim for professional fees in the amount of ₱89,926.00 was properly disallowed as, during the re-investigation, it failed to present proof that its payment of professional fees was exempt from withholding tax imposed under the Tax Code. The disallowance of Great Holiday's other expenses in the amount of ₱8,692.00 was likewise properly disallowed as it failed to substantiate its claim. Lastly, Great Holiday's depreciation expense in the amount of ₱113, 334.79 was properly disallowed as Great Holiday failed to present evidence that those assets it claimed was properly acquired by it.

On the other hand, Great Holiday counters that the CIR's assessment is

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[45] *Id.*, pp. 66-65.
[46] *Id.*, pp. 70-77.
[47] *Id.*, p. 69.
[48] *Id.*, pp. 79-93.
[49] *Id.*, pp. 95-96.

null and void because the ROs who caused the issuance of the assessment did not have authority to examine its books of accounts for CY 2007 which is a violation of Great Holiday's right to due process.

Great Holiday also argues that, even assuming that the assessment was validly issued, the deficiency income tax assessment should be cancelled for lack of basis because Great Holiday did not derive any gain or profit in CY 2007. Consequently, it may not be held liable for any deficiency income tax even if the CIR disallows all of its deductible expenses for CY 2006.

Finally, Great Holiday argues that the net operating loss resulting from the deduction of the subject pre-operating expenses was beyond the scope of the assessment as it could only be the subject of assessment in the taxable year where it was claimed as a deduction.

The Ruling of the Court

In thoroughly considering this appeal by way of Petition for Review, it is glaringly evident that the CIR has not addressed the most crucial point raised by the Court in Division in the Assailed Decision - the absence of a valid grant of authority in making the subject assessment.

The Court in Division declared the deficiency income tax assessment dated March 30, 2011 issued by the CIR null and void on this basis, and for good reason.

Sections 6(A), 10 and 13 of the NIRC of 1997 provide as follows, 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.

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> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or his duly authorized representative." *(Emphasis supplied)*
>
> x x x x x x xxx
>
> "SEC. 10. *Revenue Regional Director.* - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, **the Revenue Regional Director shall**, within the region and district offices under his jurisdiction, among others:
>
> x x x x x x x x x
>
> (c) **Issue Letters of Authority** for the examination of taxpayers within the region;
>
> x x x x x x x x x"*(Emphasis supplied)*
>
> "SEC. 13. *Authority of* a *Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Emphasis and underscoring supplied)*

Prior to the promulgation of the assailed Decision and Resolution, the Supreme Court had already enriched Philippine Taxation Law jurisprudence with its holding in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue.*[50] In *Medicard,* the Supreme Court held that the absence of a Letter of Authority affects the validity of the assessment, to wit:

> "**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

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

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:

> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement*. -
>
> (B) Examination of Return 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. x x x
>
> 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." *(Emphasis supplied.)*

This pronouncement reiterates the doctrine in the prior case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.,*[51] which states that:

> "Based on Section 13 of the Tax Code, a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the

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

correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.

x x x x x x x x x

Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity." *(Emphasis supplied)*

Based on the foregoing jurisprudential pronouncements, it is clear that a revenue officer must be clothed with authority before proceeding with an examination or assessment. Moreover, that authority must be embodied in a Letter of Authority, and not in the form of a mere notice to the taxpayer.

A perusal of the records in this case reveals that the assessment was precipitated by a mere Tax Verification Notice (TVN), instead of a valid Letter of Authority. The exhibits formally offered by the CIR, despite being admitted into evidence, also do not contain a Letter of Authority, just a TVN[52].

It is apparent, therefore, that the authority relied upon by the revenue officers who conducted the audit and investigation of the taxpayer was faulty. By any account, it is not the LOA issued either by the CIR or the Revenue Regional Director, as the law requires.

In this case, the authority to examine and verify Great Holiday's records for calendar year 2007 was made only pursuant to TVN No. 2003 001015014 dated July 21, 2008, authorizing RO Teresita P. Reyes to verify the supporting documents and/or pertinent records of Great Holiday relative to its internal revenue taxes. However, since there is no LOA, the authority given pursuant to the TVN does not extend to the examination of Great Holiday's books of accounts and other accounting records.

As ratiocinated by the Court in Division in the Assailed Decision:

"Applying the Supreme Court's ruling in the *Medicard* case to the present case, the TVN issued to Revenue Officer Reyes cannot be converted into the LOA required under the law even if the same was issued by [the CIR]. As a consequence, the revenue officer has

[52] *Id.* at Note 1, p. 25.

> no authority to examine [Great Holiday's] financial books and records. Even if [the CIR] or the revenue officer did not examine the accounting books and records of [Great Holiday], they still had no authority to examine or investigate [Great Holiday] in relation to its alleged tax deficiency as the TVN is confined only to the verification of [Great Holiday's] supporting documents. Thus, the assessment that was issued against petitioner is void."

The CIR has not given *Us* any ground persuasive enough to reverse or set aside the Court in Division's ruling. Considering that the RO who conducted the examination was not validly authorized to do so by virtue of an LOA signed by the CIR or the Regional Director, the subject tax assessment or examination is a nullity.

In *Commissioner of Internal Revenue vs. BASF Coating + Inks Phils., Inc.*[53], the Supreme Court reminds us of the consequences of an invalid assessment, thus:

> "**An invalid assessment bears no valid fruit. The law imposes a <u>substantive</u>, not merely a formal, requirement.** To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence."[54]

Accordingly, the Court *en banc* upholds the assailed Decision and Resolution. With the foregoing findings, the Court deems it unnecessary to resolve other matters raised.

WHEREFORE, premises considered, the Petition for Review is **DENIED**. The assailed Decision dated September 13, 2017 and the Resolution dated April 2, 2018 of the First Division in CTA Case No. 8864 are **AFFIRMED.**

SO ORDERED.

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[53] G.R. No. 198677, November 26, 2014.
[54] *Id.*

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO- SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice