REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

MITSUBISHI MOTORS PHILIPPINES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9611

Members:
UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

AUG 3 1 2021
1:40 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review ("Petition") filed by petitioner **MITSUBISHI MOTORS PHILIPPINES CORPORATION** against respondent, **COMMISSIONER OF INTERNAL REVENUE** ("CIR"), praying that judgment be rendered cancelling the deficiency value added tax ("VAT") assessment issued against it, covering the period from 1 January 2012 to 31 December 2012 in the total amount of Eighty Million Six Hundred Sixteen Thousand Five Hundred Fifty Two and 12/100 Pesos (Php80,616,552.12).[1]

The Parties

Petitioner is a corporation duly organized and existing under Philippine laws with business address at No. 1 Auto Park Ave., Greenfield Automotive Park, Special Economic Zone, Sta. Rosa, Laguna. It is engaged in the assembly, importation, and sale of cars and car accessories and parts under the "MITSUBISHI" brand.[2] Petitioner is likewise registered as a Subic Bay Freeport Enterprise.[3]

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[1] See Summary of the Case in the Pre-Trial Order, Records, Vol. 1, p. 456.
[2] See Memorandum, Records, Vol. 2, p. 815; See Petition, Records, Vol. 1, p. 11.
[3] Exhibit "P-11", Records, Vol. 2, p. 774.

Respondent is the head of the Bureau of Internal Revenue ("BIR") with office address at 5/F BIR National Office Building, BIR Road, Diliman, Quezon City.[4] He is vested with authority to administer all laws pertaining to internal revenue taxes and has the jurisdiction to decide disputed tax assessments.

The Facts

On 19 April 2016, petitioner received a Preliminary Assessment Notice ("PAN") finding it liable for deficiency VAT for the taxable year 1 January 2012 to 31 December 2012 in the total amount of One Hundred Ninety Million Three Hundred Twenty Six Thousand Two Hundred Forty Seven and 06/100 Pesos (Php190,326,247.06), inclusive of interest and compromise penalties.[5] In response, petitioner filed with respondent, on 2 May 2016, its Protest to the PAN.[6]

On 16 June 2016, petitioner received the Formal Letter of Demand and Final Assessment Notice ("FLD/FAN") showing alleged deficiency VAT in the reduced amount of One Hundred Nine Million One Hundred Thirty Three Thousand Three Hundred Fifty Nine and 78/100 Pesos (Php109,133,359.78).[7]

Petitioner then filed its Protest to this FLD/FAN on 15 July 2016.[8] This was followed by its Supplementary Reply to the FLD/FAN on 14 September 2016.[9]

On 25 October 2016, petitioner received the Final Decision on Disputed Assessment ("FDDA") finding it liable for alleged deficiency VAT in the total amount of Seventy Nine Million Six Hundred Forty Eight Thousand Five Hundred Seventy Two and 58/100 Pesos (Php79,648,572.58).[10] Petitioner then filed a Motion for Reconsideration of the FDDA on 11 November 2016.[11] This prompted respondent to issue a Reply to the Motion for Reconsideration on FDDA, which was received by petitioner on 11 May 2017. In the said Reply, respondent found petitioner liable for alleged deficiency VAT in the total amount of Eighty million Six Hundred Sixteen Thousand Five Hundred Fifty Two and 12/100 Pesos (Php80,616,552.12).[12]

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4 See Petition, Records, Vol. 1, p. 11; See Statement of Facts and Issues, Pre-Trial Order, *id.*, p. 456.
5 See Statement of Facts and Issues, Pre-Trial Order, *id.*, p. 457; See Memorandum. Records, Vol. 2, p. 815; Exhibit "P-3", Records, Vol. 1, pp. 363-366.
6 See Memorandum, Records, Vol. 2, p. 816; See Exhibit "P-4", Records, Vol. 1, pp. 367-377.
7 See Statement of Facts and Issues, Pre-Trial Order, Records, Vol. 1, p. 457; See Memorandum, Records, Vol. 2, p. 816; See Exhibit "P-5", Records, Vol. 1, pp. 378-381.
8 See Memorandum, Records, Vol. 2, p. 816; See Exhibit "P-6", Records, Vol. 1, pp. 382-385.
9 See Memorandum, Records, Vol. 2, p. 816; See Exhibit "P-7", Records, Vol. 1, pp. 386-389.
10 See Statement of Facts and Issues, Pre-Trial Order, Records, Vol. 1, p. 457; See Memorandum, Records, Vol. 2, p. 816; See Exhibit "P-8", Records, Vol. 1, pp. 390-391.
11 See Memorandum, Records, Vol. 2, p. 816; See Exhibit "P-9", Records, Vol. 1, pp. 392-397.
12 See Statement of Facts and Issues, Pre-Trial Order, Records, Vol. 1, p. 457; See Memorandum, Records, Vol. 2, pp. 816-817; See Exhibit "P-10", Records, Vol. 1, pp. 398-399.

Following this, petitioner filed the instant Petition on 7 June 2017.[13]

On 21 June 2017, Summons was issued to respondent requiring him to file an Answer to the Petition.[14]

On 12 July 2017, respondent filed a Motion for Extension of Time to File Answer,[15] which was granted in a Resolution, dated 18 July 2017.[16] A Second Motion for Extension of Time to File Answer was filed by respondent on 11 August 2017,[17] which was allowed by this Court in a Resolution, dated 11 September 2017.[18]

Respondent finally filed his Answer on 31 August 2017.[19]

On 14 September 2017, this Court issued a Notice of Pre-Trial Conference, setting the Pre-Trial Conference on 6 February 2018, at 9:00 a.m.[20]

On 26 September 2017, respondent filed a Motion to Defer Transmittal of BIR Records,[21] which was granted in a Resolution, dated 10 October 2017.[22]

On 31 January 2018, respondent filed his Pre-Trial Brief.[23] On same date, respondent filed a Submission (Judicial Affidavit of Revenue Officer Leo Aldrin Reyes)[24] submitting the Judicial Affidavit of his witness, Mr. Leo Aldrin Reyes.[25]

On 1 February 2018, petitioner filed its Submission of Judicial Affidavit (Of Petitioner's Witness Editha C. Dionisio)[26] submitting the Judicial Affidavit of its witness, Ms. Editha C. Dionisio.[27]

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[13] Records, Vol. 1, pp. 10-281.
[14] *Id.*, pp. 282-283.
[15] *Id.*, pp. 284-287.
[16] *Id.*, pp. 288-289.
[17] *Id.*, pp. 290-293.
[18] *Id.*, pp. 300-302.
[19] *Id.*, pp. 294-299.
[20] *Id.*, pp. 303-304.
[21] *Id.*, pp. 305-308.
[22] *Id.*, pp. 309-310.
[23] *Id.*, pp. 311-315.
[24] *Id.*, pp. 316-319.
[25] Exhibit "R-13", *id.*, pp. 320-325.
[26] Records, Vol. 1, pp. 326-328.
[27] Exhibit "P-19", *id.*, pp. 329-422.

On 1 February 2018, respondent filed a Compliance submitting and elevating the BIR Records before this Court,[28] which was noted in a Resolution, dated 2 February 2018.[29]

On 2 February 2018, petitioner filed its Pre-Trial Brief.[30] The Pre-Trial Conference ensued on 6 February 2018.[31]

On 7 February 2018, respondent filed a Compliance submitting his Special Power of Attorney,[32] which was noted in a Resolution, dated 8 February 2018.[33]

On 21 February 2018, the parties submitted their Joint Stipulation of Facts and Issues.[34]

On 15 March 2018, this Court issued a Pre-Trial Order providing for the manner by which this case would proceed.[35]

On 11 June 2018, petitioner filed a Motion for Commissioning of an Independent Certified Public Accountant ("ICPA") seeking the appointment of Atty. Rosario S. Bernaldo, CPA as its ICPA who would inspect, examine, and verify the voluminous documents and records which are subject of the present case.[36]

On 13 June 2018, petitioner filed its Submission of Judicial Affidavit (Of Petitioner's Witness Geraldine D. Briton)[37] submitting the Judicial Affidavit of its witness, Ms. Geraldine D. Briton.[38]

On 16 July 2018, petitioner presented its ICPA, Atty. Rosario S. Bernaldo, CPA, for purposes of commissioning her as the ICPA for the present case. This Court thereafter commissioned her as the court-appointed ICPA for this case.[39]

On the same hearing date, petitioner also presented its witnesses, Ms. Editha C. Dionisio and Ms. Geraldine D. Briton.[40]

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[28] Records, Vol. 1, pp. 423-425.
[29] *Id.*, p. 426.
[30] *Id.*, pp. 427-436.
[31] *Id.*, pp. 437-441.
[32] *Id.*, pp. 442-445.
[33] *Id.*, p. 446.
[34] *Id.*, pp. 447-454.
[35] *Id.*, pp. 455-462.
[36] *Id.*, pp. 472-495.
[37] *Id.*, pp. 497-499.
[38] Exhibit "P-20", Records, Vols. 1-2, pp. 500-505.
[39] Records, Vol. 2, pp. 506-509.
[40] *Ibid.*

On 20 July 2018, petitioner filed a Manifestation and Compliance submitting documents required by this Court during the commissioning hearing of Atty. Rosario S. Bernaldo, CPA.[41] This submission was noted by this Court in a Resolution, dated 23 July 2018.[42]

On 26 July 2018, petitioner filed a Motion for Issuance of Subpoena *Duces Tecum Et Ad Testificandum* seeking the production of several documents necessary for its case and the appearance before this Court of Ms. Ma. Sheila O. Dela Cerna to testify on a matter which petitioner believed to be material to the resolution of the present case.[43] In a Resolution, dated 2 August 2018, this Court granted the Motion. A Subpoena *Duces Tecum Et Ad Testificandum* was issued wherein Ms. Ma. Sheila O. Dela Cerna or her authorized representative was commanded to appear before this Court on 13 August 2018, 1:30 p.m.[44]

On 8 August 2018, petitioner filed its Submission of Judicial Affidavit (Of Petitioner's Witness Rosel G. Panopio)[45] submitting the Judicial Affidavit of petitioner's witness, Ms. Rosel G. Panopio.[46]

On 13 August 2018, this Court issued an Order resetting the presentation of petitioner's witnesses, Ms. Ma. Sheila O. Dela Cerna and Ms. Rosel G. Panopio, to 22 October 2018, 1:30 p.m.[47] A new Subpoena *Duces Tecum Et Ad Testificandum* was issued wherein Ms. Ma. Sheila O. Dela Cerna or her authorized representative was commanded to appear before this Court on 22 October 2018, 1:30 p.m.[48]

On 15 August 2018, the ICPA transmitted her ICPA Report.[49]

On 12 September 2018, petitioner filed its Submission of Judicial Affidavit (Of Petitioner's Witness Beatrix S. Anagaran)[50] submitting the Judicial Affidavit of petitioner's witness, Ms. Beatrix S. Anagaran.[51]

On same date, petitioner filed a Manifestation manifesting its counsel's change of name,[52] which was noted by this Court in the Resolution, dated 17 September 2018.[53]

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[41] *Id.*, pp. 513-520.
[42] *Id.*, p. 521.
[43] *Id.*, pp. 522-532.
[44] *Id.*, pp. 533-535.
[45] *Id.*, pp. 536-537.
[46] Exhibit "P-27", *id.*, pp. 538-544.
[47] Records, Vol. 2, p. 545.
[48] *Id.*, p. 599.
[49] *Id.*, pp. 546-598.
[50] *Id.*, pp. 601-603.
[51] Exhibit "P-28", *id.*, pp. 604-609.
[52] Records, Vol. 2, pp. 610-612.
[53] *Id.*, p. 613.

On 27 September 2018, this Court issued an Order resetting the 22 October 2018 hearing to 15 November 2018, 9:00 a.m.[54]

During the 15 November 2018 hearing, petitioner moved for the resetting of the presentation of its witnesses as Ms. Shiela O. Dela Cerna was out of the country. The Court granted this Motion, and the presentation of Ms. Shiela O. Dela Cerna and Ms. Rosel G. Panopio was reset to 12 February 2019, 9:00 a.m. Furthermore, the presentation of Mr. Stefani C. Sano and Beatrix S. Anagaran were set for 14 March 2019, 9:00 a.m., while the presentation of the testimonies of Mr. Renato L. Ruiz and the ICPA, Atty. Rosario S. Bernaldo, CPA, were set for 11 April 2019, 9:00 a.m.[55]

On 12 February 2019, petitioner presented its witnesses, Ms. Shiela O. Dela Cerna and Ms. Rosel G. Panopio.[56]

On 22 February 2019, petitioner filed a Motion for Issuance of Subpoenas *Duces Tecum Et Ad Testificandum* seeking the production of several documents necessary for its case and the appearance of Mr. Stefani C. Sano and Ms. Beatrix S. Anagaran, both of the Subic Bay Metropolitan Authority, and Mr. Renato L. Ruiz of the BIR Revenue District Office No. 19.[57] This Motion was granted by this Court in a Resolution, dated 5 March 2019.[58] Correspondingly, Subpoenas *Duces Tecum Et Ad Testificandum* were issued requiring the production of certain documents and the appearance of Mr. Stefani C. Sano, Ms. Beatrix S. Anagaran, and Mr. Renato L. Ruiz.[59]

During the 14 March 2019 hearing, petitioner manifested that it received information that Mr. Stefani C. Sano had already retired and could thus no longer be presented before this Court. On same date, Ms. Beatrix S. Anagaran testified and underwent cross-examination.[60]

On 4 April 2019, petitioner filed a Motion to Defer Presentation of Witness, asking for a resetting of the presentation of its ICPA, Atty. Rosario S. Bernaldo, CPA, due to the 11 April 2019 hearing's close proximity to the yearly deadline for filing of Audited Financial Statements.[61] This was granted in the Resolution, dated 8 April 2019.[62] The presentation of said ICPA was reset to 23 July 2019, 9:00 a.m.

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[54] *Id.*, p. 614.
[55] *Id.*, pp. 615-617.
[56] *Id.*, pp. 618-620.
[57] *Id.*, pp. 621-640.
[58] *Id.*, pp. 641-643.
[59] *Id.*, pp. 644-646.
[60] *Id.*, pp. 649-651.
[61] *Id.*, pp. 652-657.
[62] *Id.*, pp. 680-681.

On 8 April 2019, petitioner filed a Submission of Judicial Affidavit (Of Petitioner's Witness Atty. Rosario S. Bernaldo)[63] submitting the Judicial Affidavit of petitioner's ICPA witness, Atty. Rosario S. Bernaldo, CPA, in relation to the ICPA Report she prepared for the instant case.[64] This was noted by this Court in a Resolution, dated 10 April 2019.[65]

On 10 April 2019, the Revenue District Officer of BIR Revenue District Office No. 19, Deogracias T. Villar, Jr., filed an Urgent Manifestation and Motion informing this Court that Mr. Renato L. Ruiz is no longer connected with the said district office and that, in lieu of said person, he had authorized Ms. Gemma C. Bondad, the Chief of the Administrative Section, to attend the scheduled hearing on 11 April 2019. However, Mr. Villar noted that despite diligent efforts by Ms. Bondad, the required documents identified in the Subpoenas *Duces Tecum Et Ad Testificandum* could not be located. Hence, he requested for a resetting of the aforementioned hearing to give his office enough time to locate the said documents.[66] This Motion was granted by this Court in the Resolution, dated 10 April 2019. The presentation of Ms. Bondad was scheduled for 23 July 2019, 9:00 a.m.[67]

On 10 April 2019, petitioner filed a Manifestation informing this Court that its counsel failed to attach the Lawyer's Sworn Attestation to the Judicial Affidavit of its ICPA witness, Atty. Rosario S. Bernaldo, CPA. As such, it submitted a complete copy of said Judicial Affidavit.[68] This submission was noted by this Court in a Resolution, dated 12 April 2019.[69]

On 23 July 2019, the testimonies of Ms. Gemma C. Bondad and the ICPA, Atty. Rosario S. Bernaldo, CPA, in relation to the ICPA Report she prepared for this case, were received by this Court.[70]

On 1 August 2019, petitioner filed an Urgent Motion for Setting of Commissioner's Hearing and for Additional Time to File Formal Offer of Evidence.[71] This Motion was granted by this Court in a Resolution, dated 6 August 2019.[72] Petitioner was granted an additional five (5) days to file its Formal Offer of Evidence.

On 13 August 2019, petitioner filed its Formal Offer of Evidence,[73] to which respondent interposed no objections.[74]

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[63] *Id.*, pp. 658-660.
[64] Exhibit "P-43", *id.*, pp. 661-679 and 691-710.
[65] Records, Vol. 2, p. 711.
[66] *Id.*, pp. 682-686.
[67] *Id.*, pp. 712-714.
[68] *Id.*, pp.687-710.
[69] *Id.*, p. 715.
[70] *Id.*, pp. 716-718.
[71] *Id.*, pp. 721-724.
[72] *Id.*, pp. 725-727.
[73] *Id.*, pp. 731-780.
[74] *Idi* pp. 782-785.

In a Resolution, dated 11 September 2019, this Court admitted all of the Exhibits offered by petitioner.[75]

On 19 November 2019, respondent presented his witness, Revenue Officer Leo Aldrin Reyes.[76]

Respondent then filed his Formal Offer of Evidence on 29 November 2019,[77] to which petitioner filed a Comment/Opposition (To Respondent's Formal Offer of Evidence dated 29 November 2019).[78] On 10 February 2020, this Court issued a Resolution admitting respondent's **Exhibits** "**R-4**", "**R-5**", "**R-6**", "**R-7**", "**R-8**", "**R-9**", "**R-10**", "**R-11**", "**R-12**", and "**R-12-A**".[79]

On 29 June 2020, petitioner filed its Memorandum,[80] which was noted by this Court in a Resolution, dated 30 June 2020.[81] Meanwhile, respondent failed to file his Memorandum.[82]

As such, on 3 August 2020, this Court issued a Resolution submitting the instant Petition for decision.[83]

Hence, this Decision.

The Issues[84]

> "WHETHER OR NOT PETITIONER'S SALES TO CARWORLD SUBIC INC. IN THE AMOUNT OF PHP171,260,743.45 ARE ZERO-RATED SALES";
>
> "WHETHER OR NOT INPUT TAXES IN THE AMOUNT OF PHP23,936,626.53 SHOULD BE DISALLOWED FOR ALLEGED SUPPLIER'S DEFECTIVE AND INCORRECT INVOICING"; AND
>
> "WHETHER PETITIONER IS LIABLE TO PAY THE ASSESSED DEFICIENCY VALUE ADDED TAX FOR TAXABLE YEAR 2012 IN THE TOTAL AMOUNT OF PHP80,616,552.12 PLUS 25% SURCHARGE AND 20%

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[75] *Id.*, pp. 786-792.
[76] *Id.*, pp. 795-797.
[77] *Id.*, pp. 798-804.
[78] *Id.*, pp. 806-810.
[79] *Id.*, pp. 811-813.
[80] *Id.*, pp. 814-840.
[81] *Id.*, p. 841.
[82] *Id.*, p. 842.
[83] *Id.*, pp. 844.
[84] See Issues in the Pre-Trial Order, Records, Vol. 1, p. 457.

DEFICIENCY AND DELINQUENCY INTEREST FOR LATE PAYMENT UNTIL FULLY PAID PURSUANT TO SECTIONS 248 AND 249 OF THE 1997 NIRC."

Arguments of the Parties

Petitioner's Arguments[85]

Petitioner presented the following arguments in its Memorandum:

a) The subject tax assessments are void due to the absence of a Letter of Authority ("LOA");

   i. The records of the case show that no LOA was submitted to this Court to warrant respondent's audit or examination of petitioner's books of accounts and other accounting records. Absent such authority, the deficiency tax assessment arising therefrom is a nullity;

b) Respondent's assessment against petitioner for alleged deficiency VAT lacks legal and factual basis;

   i. Petitioner's alleged VATable sales are actually zero-rated sales which are non-VATable;

   ii. ***Revenue Memorandum Circular No. 50-07*** provides that sales of goods to a registered Freeport Zone Enterprise is subject to VAT at zero percent (0%); and

   iii. Petitioner's invoices are not deficient and they comply with the requirements set by law.

Respondent's Counter-Arguments[86]

Respondent presented the following arguments in his Answer:

a) Examination of petitioner's sales account summary revealed that there were sales made to Carworld Subic, Inc. totalling One Hundred Seventy One Million Two Hundred Sixty Thousand Seven Hundred Forty Three and 43/100 Pesos (Php171,260,743.43) representing vehicle and spare parts. ***Revenue Memorandum Circular No. 22-99*** states that "sales of

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[85] See Memorandum, Records, Vol. 2, pp. 820-837.
[86] See Answer, Records, Vol. 1, pp. 294-299.

ordinary automobiles to PEZA, SBMA and other ECOZONE registered enterprises are not entitled to VAT zero-rating." Thus, the same was subjected to VAT in accordance with ***Section 106 and 108 of the National Internal Revenue Code, as amended ("NIRC")***;

b) Verification of the various purchase invoices and official receipts disclosed violations per invoicing requirement. Hence, the same should be disallowed pursuant to ***Section 113 (B) of the NIRC***; and

c) The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the respondent is wrong, but also that he is right. The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting.

The Ruling of the Court

The instant Petition is impressed with merit.

A revenue officer must first be duly authorized before conducting an examination of a taxpayer for the purpose of collecting the correct amount of tax.

Revenue officers conducting an examination of a taxpayer to determine the correct amount of taxes due should be armed with an LOA. This is a principle undeterred under our tax laws. An LOA is an instrument of due process for the protection of taxpayers. It guarantees that tax agents will act only within the authority given them in auditing a taxpayer.

Section 13 of the NIRC is clear that revenue officers conducting examinations of taxpayers must first be authorized to do so:

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

In fact, respondent, being aware of the necessity of an LOA before a revenue officer can examine a taxpayer, issued ***Revenue Memorandum Order No. 43-90 ("RMO 43-90")***,[87] which provides:

> "**Any reassignment/ transfer of cases to another RO(s),** and revalidation of L/As which have already expired, **shall require the issuance of a new L/A,** with the corresponding notation thereto, including the previous L/ A number and date of issue of said L/As."
> (Emphasis, Ours)

A cardinal rule in statutory construction is that where the law speaks in clear and categorical language, or the terms of the statute are clear and unambiguous and free from doubt, there is no room for interpretation or construction, and no interpretation or construction is called for; there is only room for application. The use of the word "shall" connotes a mandatory order and denotes an imperative obligation and is inconsistent with the idea of discretion.[88] Hence, the use of the word "shall" in ***RMO 43-90*** can only mean that the issuance of a new LOA in cases of transfer of audits to another set of revenue officers is mandatory. As such, it is clear that before an assessment can be made, the revenue officer conducting the same must first be duly authorized to do so.

The importance of an LOA as a due process requirement in issuing deficiency tax assessments was given paramount consideration by the High Court in ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue ("Medicard Case")***,[89] 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 of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** Section 6 of the NIRC clearly provides as follows:
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> > **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –*
> >
> > (A) **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

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[87] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, 20 September 1990.

[88] Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, G.R. Nos. 175707, 180035, 181092, 19 November 2014.

[89] G.R. No. 222743, 5 April 2017, citing Commissioner of Internal Revenue v. Sony Philippines, Inc., G.R. No. 178697, 17 November 2010.

> **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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> x 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.**
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> xxx xxx xxx
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> In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:
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> > 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**.
>
> 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.
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> xxx xxx xxx
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> 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."**
> (Emphasis and Underscoring, Ours)

Based on the foregoing pronouncement, an LOA is the authority given to revenue officers to enable them to examine the books of account and other accounting records of a taxpayer. In the absence of such authority, the tax assessments issued against such taxpayer shall inescapably be void.

Respondent even recognized the importance of the Supreme Court's ruling on LOAs in the ***Medicard Case*** when he issued ***Revenue Memorandum Circular No. 75-2018***,[90] which provides as follows:

> "The judicial ruling, invoking a specific statutory mandate, states that no assessments can be issued or no assessment functions or proceedings can be done without the prior approval and authorization of the Commissioner of Internal Revenue (CIR) or his duly authorized representative, through an LOA. **The concept of an LOA is therefore clear and unequivocal. Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore 'inescapably void.'**
>
> xxx xxx xxx
>
> **To help forestall any unnecessary controversy and to encourage due observance of the judicial pronouncements, any examiner or revenue officer initiating tax assessments or performing assessment functions without an LOA shall be subject to appropriate administrative sanctions."**
> (Emphasis and Underscoring, Ours)

Following these, the importance of a prior issuance of an LOA authorizing revenue officers to perform an audit or examination of a taxpayer for purposes of assessing and collecting the correct amount of taxes before said revenue officers can proceed with such audit or examination cannot be over-emphasized.

A perusal of the case records will show that LOA No. LV3-2013-00000018, dated 23 September 2013, signed by then Assistant Commissioner of the Large Taxpayer Service, Mr. Alfredo Misajon, was issued to Revenue Officers Teresa Divina Holgado and Resurreccion Ang and Group Supervisor Ernesto Gamad of the Large Taxpayers Service-Excise, authorizing them to perform an audit of petitioner's books of accounts and other accounting records for the purpose of determining the correct amount of VAT due from petitioner for the taxable year 2012.[91] Thereafter, a letter, dated 20 August 2014, with subject "Continuation of Audit/Investigation" and signed by the VAT Audit Group Manager, Ms. Rubi Ruth G. Magtagnob, was sent to petitioner informing it that Revenue Officers Leo Aldrin C. Reyes and Lilian Yvette Marie M. Aspiras and Group Supervisor Lydia A. Vito were authorized to continue the audit and examination of its books of accounts and other accounting records pursuant to Revenue Special Order No. 413-2014, dated 2 July 2014.[92]

Through the letter, dated 20 August 2014, which was allegedly issued pursuant to Revenue Special Order No. 413-2014, dated 2 July 2014, Revenue Officers Leo Aldrin C. Reyes and Lilian Yvette Marie M. Aspiras and Group

[90] SUBJECT: The Mandatory Statutory Requirement and Function of a Letter of Authority.
[91] BIR Records, Folder 1, p. 2.
[92] *Id.*, pp. 110-111.

Supervisor Lydia A. Vito were able to a) audit and examine petitioner's books of accounts and other accounting records; b) determine through audit results and findings that deficiency VAT is due from petitioner; c) recommend the issuance of the PAN through Memorandum, dated 15 April 2016;[93] d) recommend the issuance of the FLD/FAN through Memorandum, dated 10 June 2016;[94] e) recommend the issuance of the FDDA through Memorandum, dated 10 October 2016;[95] and recommend the issuance of the Reply to the Motion for Reconsideration on FDDA, dated 26 April 2017, through Memorandum, dated 10 January 2017.[96]

In totality, the aforementioned revenue officers were able to audit, examine, and inspect petitioner's books of accounts and other accounting records (which then lead to the present deficiency VAT assessment against petitioner) through such mere letter, dated 20 August 2014, despite the clear mandate of ***RMO 43-90*** requiring the issuance of a new LOA for the revenue officers to whom the audit of a taxpayer has been re-assigned.

That Revenue Officers Leo Aldrin C. Reyes and Lilian Yvette Marie M. Aspiras and Group Supervisor Lydia A. Vito examined petitioner's books of accounts and other accounting records without the requisite authority emanating from a prior issued LOA was confirmed by Revenue Officer Leo Aldrin C. Reyes himself in his Judicial Affidavit, to wit:

> "Q Please give us a background of the investigation conducted in the instant case.
>
> A By virtue of Letter of Authority (LOA) LV3-2013-00000018 dated September 23, 2013 the audit and investigation of petitioner's VAT was first assigned to Revenue Officers Teresa Divina Holgado, Resurreccion Ang under Group Supervisor Ernesto Gamad. The LOA and the Checklist of Requirements and Request for Presentation of Records dated September 23, 2013 were served to petitioner on October 2, 2013.
>
> xxx xxx xxx
>
> Q What happened after the service of the Letter of Authority and Requisition Sheet?
>
> A **<u>By virtue of Revenue Special Order dated July 2, 2014, the audit and investigation of the present case was reassigned to us. We notify petitioner of such reassignment through a Letter dated August 20, 2014.</u>**
>
> xxx xxx xxx
>
> Q What happened next?

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[93] Exhibit "R-4", *id.*, pp. 332-335.
[94] Exhibit "R-6", BIR Records, Folder 2, pp. 480-485.
[95] Exhibit "R-8", *id.*, pp. 591-596.
[96] Exhibit "R-10", *id.*, pp. 682-685.

A We conducted our audit based on the document provided by petitioner and prepared a Memorandum dated April 15, 2016 recommending the issuance of Preliminary Assessment Notice.

xxx xxx xxx

Q What happened next after you served the PAN?

A Petitioner replied to the PAN. Audit and examination was conducted and some adjustments were made. We then prepared a Memorandum recommending the issuance of formal letter of demand

xxx xxx xxx

Q What happened next?

A Petitioner paid the input tax disallowances and protested the remaining part of the assessment. We verified petitioner's protest and supplemental protest and prepared a Memorandum dated October 10, 2016 recommending the issuance of Final Decision on Disputed Assessment (FDDA)

xxx xxx xxx

Q What happened next?

A Petitioner filed a Motion for Reconsideration. We prepared a Memorandum dated January 10, 2017 recommending the denial of the motion. The same was approved thus, a letter dated April 26, 2017 denying petitioner's motion for reconsideration was served to petitioner on May 11, 2017."[97]
(Emphasis and Underscoring, Ours)

It stands clear, then, that the audit was conducted not by virtue of a LOA but by a mere Revenue Special Order dated July 2, 2014, followed by the letter, dated 20 August 2014.

Neither was there any LOA among the ten (10) pieces of documentary evidence submitted by respondent and allowed admission by the Court.[98]

Due to the absence of an LOA authorizing Revenue Officers Leo Aldrin C. Reyes and Lilian Yvette Marie M. Aspiras and Group Supervisor Lydia A. Vito to examine petitioner, the deficiency VAT assessments issued against it are void. Consequently, no tax collection can be pursued based on this deficiency VAT assessment.

[97] Exhibit "R-13", Records, Vol. 1, pp. 321-323.
[98] See respondent's Formal Offer of Evidence, Records, Vol. 2, pp. 798-804; See also Resolution, dated 10 February 2020, *id.*, pp. 812-813.

<u>The letter, dated 20 August 2014 cannot be treated as a valid LOA.</u>

It may be argued that the letter, dated 20 August 2014, which re-assigned petitioner's examination to Revenue Officers Leo Aldrin C. Reyes and Lilian Yvette Marie M. Aspiras and Group Supervisor Lydia A. Vito, authorized the said revenue officers to audit petitioner. However, a perusal of said letter, dated 20 August 2014, shows that it cannot be considered a valid LOA.

To be effective, an LOA must be issued either by respondent himself or by his duly authorized representative, who, under ***Section 13 of the NIRC***, is the Revenue Regional Director. Under ***Section D (4) of RMO 43-90***, respondent expanded the list of duly authorized representatives who may issue LOAs that would authorize the examination of taxpayers for deficiency taxes:

> "1. Regional Directors;
> 2. Deputy Commissioners;
> 3. Commissioner; and
> 4. Other officials that may be authorized by the Commissioner for the exigencies of service."[99]

Moreover, under ***Revenue Memorandum Order No. 29-07 ("RMO 29-07")***,[100] the equivalent of a Regional Director in the Large Taxpayers Service is the Assistant Commissioner or Head Revenue Executive Assistants, for they are the ones authorized to issue an LOA, to wit:

> "II. AUDIT POLICIES AND GUIDELINES
>
> 1. The Chief, Large Taxpayers Audit & Investigation Divisions/ LTDOs shall draw a list of taxpayers selected for audit under its current selection criteria. The list shall state the name of taxpayer selected for audit, the nature of business, the amount of gross sales/receipts, the selection code, the PSIC code, and the corresponding amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.
>
> **2. All Letters of Authority (LOAs) shall be issued and approved by the Assistant Commissioner/ Head Revenue Executive Assistants."** (Emphasis, Ours)

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[99] Commissioner of Internal Revenue v. Sugar Crafts, Inc., CTA EB No. 1757; CTA Case No. 8738, Resolution, dated 10 September 2019.
[100] Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service, 26 September 2007.

Consequently, a Memorandum of Assignment, a Referral Memorandum, or even a letter emanating from the BIR which seeks to authorize the audit/tax investigation of a taxpayer may be considered a valid LOA, provided that it was issued by any of the persons named above.

In the case at bar, the letter, dated 20 August 2014, was merely signed by the VAT Audit Group Manager, Ms. Rubi Ruth G. Magtagnob,[101] who was later identified as the "Officer-in-Charge, LT VAT Audit Unit" in the Memoranda prepared by the above named revenue officers.[102]

It is noteworthy that a VAT Audit Group Manager and an "Officer-in-Charge, LT VAT Audit Unit" are not among respondent's duly authorized representatives listed above who is allowed to issue an LOA. Particularly, since petitioner is under the jurisdiction of the Large Taxpayer Service of the BIR, a VAT Audit Group Manager and a "Officer-in-Charge, LT VAT Audit Unit" are not of the same position as an Assistant Commissioner or a Head Revenue Executive Assistant, who, under ***RMO 29-07***, are equivalent to Regional Directors in the Large Taxpayers Service and who are authorized under said revenue issuance to issue LOAs. Consequently, the letter, dated 20 August 2014, cannot be considered a valid LOA which may authorize Revenue Officers Leo Aldrin C. Reyes and Lilian Yvette Marie M. Aspiras and Group Supervisor Lydia A. Vito to perform an examination of petitioner's books of accounts and other accounting records.

Considering that the revenue officers who examined and audited petitioner's books of accounts and other accounting records are not armed with a proper LOA, the resulting deficiency tax assessment against petitioner is null and void.

Given the above discussions, the Court deems it unnecessary to tackle the other issues raised in the Petition.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **GRANTED.** Accordingly, the subject FLD/FAN, the FDDA, and the Reply to the Motion for Reconsideration on FDDA, dated 26 April 2017, which assessed petitioner and found it liable for deficiency VAT for taxable year 2012, are hereby **CANCELLED** and **SET ASIDE.** Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount against petitioner.

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[101] *Id.*, pp. 110-111.
[102] Exhibit "R-6", BIR Records, Folder 2, pp. 480-485; Exhibit "R-8", *id.*, pp. 591-596; Exhibit "R-10", *id.*, pp. 682-685.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution* and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice