REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

MANILA MEDICAL SERVICES, INC., (MANILA DOCTORS HOSPITAL), *Petitioner,*	**CTA Case No. 8907**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson* *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 06 2018 10:10 a.m.

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D E C I S I O N

MANAHAN, *J.:*

This involves the *Petition for Review*[1] filed on October 10, 2014 by petitioner Manila Medical Services Inc. which prays for the nullification of the deficiency income tax (IT) and value-added tax (VAT) assessments in the aggregate amount of Seventy Nine Million Nine Hundred Sixty Thousand Four Hundred Eight and 62/100 (Php79,960,408.62) pesos and the cancellation of the Final Assessment Notice (FAN) and Warrant of Distraint or Levy (WDL) dated September 5, 2014.

THE PARTIES

Petitioner is a domestic corporation duly organized and registered under the laws of the Philippines, with address at 667 United Nations Avenue, Ermita, Manila.[2]

Respondent is the Chief of the Bureau of Internal Revenue (BIR), the government agency charged with the assessment and collection of all internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties and fines connected

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[1] Docket, Vol. I, CTA Case No. 8907, pp. 6-24.
[2] *Id.*, Vol. I, par. 1, Joint Stipulation of Facts and Issues (JSFI), p. 54.

therewith,[3] with office address at the Bureau of Internal Revenue (BIR) National Revenue Office Building, Diliman, Quezon City.

THE FACTS

Petitioner is registered with the BIR under Certificate of Registration (COR) No. 8RC0000020213 with Tax Identification No. (TIN) 000-343-183-000.[4] It is also registered with the Securities and Exchange Commission (SEC) with Company Registration No. 7927 on July 26, 2005.[5]

Petitioner received a Preliminary Assessment Notice (PAN) dated October 19, 2010, which was duly protested on November 24, 2010 and received by the respondent also on the same day through the Officer-in-Charge (OIC) of the Letter Notice (LN) Task Force of the BIR.[6]

Petitioner received a FAN dated March 25, 2013 which it protested on April 16, 2013 and received by the respondent through the OIC-Regional Director on April 18, 2013.[7]

Petitioner also filed a supplemental letter dated September 5, 2014 reiterating and further expounding its position against the assessment for the taxable year (TY) 2008.[8]

On September 12, 2014, a WDL dated September 5, 2014 was received by petitioner demanding the payment of the amount of Php79,960,408.62, representing its alleged deficiency IT and VAT including surcharges and interest.[9]

Thus, petitioner filed the instant petition on October 10, 2014. Respondent was summoned[10] by this Court on October 21, 2014 to submit her Answer[11] which the latter did on

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[3] Docket, Vol. I, JSFI, par. 3, pp. 254-255.
[4] *Id.*, Vol. I, JSFI, par. 5, p. 255.
[5] *Id.*, Vol. I, JSFI, par. 4, p. 255.
[6] *Id.*, Vol. I, JSFI, par. 6, p. 255.
[7] *Id.*, Vol. I, JSFI, par. 7, p. 255.
[8] *Id.*, Vol. I, JSFI, par. 8, p. 255.
[9] *Id.*, Vol. I, JSFI, par. 9, p. 255.
[10] *Id.*, Vol. I, Summons, p. 76.
[11] *Id.*, Vol. I, pp. 79-87. *cw*

November 21, 2014 after the Court granted[12] her motion for extension of time to file said pleading.

On November 25, 2014, this Court set the pre-trial conference of this case and both parties were required to submit their respective pre-trial briefs.[13] Petitioner filed its pre-trial brief[14] on January 30, 2015 while respondent filed hers on February 2, 2015[15]. The parties submitted a Joint Stipulation of Facts and Issues (JSFI) on February 25, 2015. This Court issued a Pre-Trial Order on March 10, 2015 where the pre-trial conference was deemed terminated.[16]

After petitioner presented its evidence, it filed its Formal Offer of Evidence (FOE)[17] on August 13, 2015 which was subsequently partly admitted and denied by this Court[18].

Petitioner moved for the reconsideration of the denied evidence on October 27, 2015[19] which was partially granted[20] by this Court. Then, respondent presented its own evidence.

Respondent then filed her FOE[21] on December 21, 2012 of which this Court admitted almost all exhibits except Exhibit "R-6-a", the Computation Sheet, for failure to present the original for comparison. Petitioner's motion to present rebuttal evidence was likewise granted[22].

After presenting its rebuttal evidence, petitioner filed its supplemental FOE[23] on March 20, 2017 which was admitted[24] by this Court. On the other hand, respondent requested this Court for the issuance of *Subpoena Duces Tecum* and *Ad*

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[12] Docket, Vol. I, Order dated November 5, 2014, p. 78.
[13] *Id.,* Vol. I, Notice of Pre-Trial Conference, p. 88.
[14] *Id.* at 108-116.
[15] *Id.* at 172-178.
[16] *Id.* at 262-269.
[17] *Id.* at 423-430.
[18] *Id.,* Vol II, pp. 545-557.
[19] *Id.,* Vol. II, Omnibus Motion for Reconsideration, pp. 562-601.
[20] *Id.,* Vol. II, Resolution dated Feb 12, 2016, pp. 643-650.
[21] *Id.* at 721-727.
[22] *Id.,* Vol. II, Resolution dated February 10, 2017, pp. 800-802.
[23] *Id.* at 813-819.
[24] *Id.,* Vol. II, Resolution dated September 8, 2017, pp. 866-868.

Testificandum[25] for surrebuttal evidence which was granted[26] by this Court.

After respondent presented said surrebuttal evidence, this Court admitted such and ordered[27] both parties to file their respective Memoranda which they have submitted both on April 2, 2018. On April 4, 2018, the case was submitted for decision.[28]

ISSUE/S

The following are the stipulated issues by the parties:[29]

1. Whether petitioner timely filed the instant petition as the WDL received by it may be considered as respondent's final decision appealable to this Court under Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended;

2. Whether the period to assess the petitioner had already prescribed;

3. Whether pharmacy sales to in-patients are included in the term "hospital services" which are exempt from VAT under Section 109(G) of the NIRC, as amended;

4. Whether petitioner has accurately reconciled the alleged discrepancy between its purchases vis-a-vis those reported in its VAT returns for TY 2008.

5. Whether the deficiency assessments on IT and VAT for TY 2008 had become final, executory and demandable;

6. Whether petitioner is liable for the alleged deficiency IT and VAT amounting to Php79,960,408.62, inclusive of surcharges and interest; and

7. Whether the Court of Tax Appeals has jurisdiction over the instant petition.

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[25] *Id.*, Vol. II Motion with Request for issuance of *Subpoena Duces Tecum* and *Ad Testificandum*, pp. 886-888.
[26] *Id.*, Vol. II, Resolution dated December 5, 2017, pp. 899-901.
[27] Docket, Vol. II, Order dated January 31, 2018, pp. 907-908.
[28] *Id.*, Vol. II, Resolution dated April 4, 2018, p. 975.
[29] *Id.*, Vol. I, JSFI, pp. 255-256.

Petitioner's Arguments[30]

Petitioner argues that its filing of the instant petition was timely filed as the WDL is the adverse decision of the respondent appealable to this Court under Section 228 of the 1997 NIRC, as amended, hence, this Court has jurisdiction on its petition. It insists that the right of the respondent to assess its deficiency taxes for TY 2008 has already prescribed.

Petitioner further argues that the Pharmacy sales to in-patients are included in the term "hospital services" which are VAT exempt under Section 109(G) of the 1997 NIRC, as amended. Petitioner also insists that it has accurately reconciled the alleged discrepancy between its purchases vi-a-vis those reported in its VAT returns for TY 2008.

Petitioner also argues that the assessment is void due to the absence of a Letter of Authority (LOA) and that said assessment has not yet become final, executory and demandable. It insists that it is not liable for the alleged deficiency IT and VAT.

Respondent's Counter-Arguments[31]

Respondent argues that the WDL is not the adverse decision that is appealable to this Court but the Final Decision on Disputed Assessment (FDDA) and that the period to assess petitioner's internal revenue taxes for TY 2008 has not yet prescribed since petitioner filed a false or fraudulent return.

Respondent insists that Pharmacy sales to in-patients are not included in the term "hospital services" which are VAT exempt under Section 109(G) of the 1997 NIRC, as amended.

RULING OF THE COURT

This Court has jurisdiction on the instant case.

First, this Court shall determine whether this Court has jurisdiction on the instant case.

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[30] Docket, Vol. II, Petitioner's Memorandum, pp. 924-962.
[31] *Id.*, Vol. II, Respondent's Memorandum, pp. 963-974.

The jurisdiction of the CTA regarding internal revenue taxes is provided under Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which provides:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (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;" (*Emphasis supplied*)

Similarly, Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals states:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (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 Code** or other laws administered by the Bureau of Internal Revenue;" (*Emphasis supplied*)

The abovementioned provisions provide that it is not only the respondent's decision on disputed assessments that is appealable before this Court but also other matters arising under the NIRC or other laws administered by the BIR.

In *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*,[32] the Supreme Court ruled:

> "Anent the first issue, petitioner argues that the CTA had no jurisdiction over the case since the CTA itself had ruled

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[32] G.R. No. 169225, November 17, 2010.

that the assessment had become final and unappealable. Citing *Protector's Services, Inc. v. Court of Appeals,*[6] the CIR argued that, after the lapse of the 30-day period to protest, respondent may no longer dispute the correctness of the assessment and its appeal to the CTA should be dismissed. The CIR took issue with the CTA's pronouncement that it had jurisdiction to decide "other matters" related to the tax assessment such as the issue on the right to collect the same since the CIR maintains that when the law says that the CTA has jurisdiction over "other matters," it presupposes that the tax assessment has not become final and unappealable.

We cannot countenance the CIR's assertion with regard to this point. The jurisdiction of the CTA is governed by Section 7 of Republic Act No. 1125, as amended, and the term "other matters" referred to by the CIR in its argument can be found in number (1) of the aforementioned provision, to wit:

Section 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided –

1. Decisions of the Commissioner of Internal Revenue in cases involving 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 or other law as part of law administered by the Bureau of Internal Revenue**. (Emphasis supplied.)

Plainly, the assailed CTA *En Banc* Decision was correct in declaring that there was nothing in the foregoing provision upon which petitioner's theory with regard to the parameters of the term "other matters" can be supported or even deduced. What is rather clearly apparent, however, is that the term "other matters" is limited only by the qualifying phrase that follows it.

Thus, on the strength of such observation, we have previously ruled that the appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the National Internal Revenue Code (NIRC) or related laws administered by the Bureau of Internal Revenue (BIR)."

In the instant case, the basis for petitioner's filing of the instant petition is respondent's issuance of the WDL. The purpose of the issuance of said WDL is for the enforcement of collection on the alleged assessment by the respondent which is within the provision of NIRC. Thus, it is classified within the "other matters arising under the NIRC or other laws administered by the BIR."

Further, petitioner's argument that the WDL is the adverse decision of the respondent appealable to this Court under Section 228 of the 1997 NIRC, as amended, is tenable.

In *Commissioner of Internal Revenue v. Algue, Inc. and the Court of Tax Appeals*[33], the Supreme Court ruled, citing the cases of *Philippine Planters Investment Co, Inc. v. Acting Commissioner of Internal Revenue*[34] and *Vicente Hidalgo v. Commissioner of Internal Revenue*[35], that the issuance of the WDL is the proof of finality of the assessment and such is tantamount to an outright denial of a taxpayer's protest, to wit:

> "... It is true that as a rule the **warrant of distraint and levy is "proof of the finality of the assessment"** and "renders hopeless a request for reconsideration," **being "tantamount to an outright denial thereof and makes the said request deemed rejected**..." (*Emphasis supplied*)

Also, in *Commissioner of Internal Revenue v. Union Shipping Corporation et al.*[36], the Supreme Court ruled that even in the absence of an FDDA, any issuance of notice or action to enforce collection is deemed respondent's final decision, to wit:

> On this issue, this Court had already laid down the dictum that the Commissioner should always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment.
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> Specifically, this Court ruled:
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> > . . . we deem it appropriate to state that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by sections 7 and 11 of Republic Act 1125, as amended. On the basis of this statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the

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[33] G.R. No. L-28896 February 17, 1988.
[34] CTA Case No. 1266, Nov. 11, 1962.
[35] CTA Case No. 1256, Oct. 22,1962.
[36] G.R. No. L-66160 May 21, 1990.

> opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues. This rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment — and, consequently, the collection of the amount demanded as taxes — by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the Commissioner from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action. (Surigao Electric Co., Inc. v. C.T.A., 57 SCRA 523, 528, [1974]).
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> xxx xxx xxx
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> Under the circumstances, the Commissioner of Internal Revenue, not having clearly signified his final action on the disputed assessment, legally the period to appeal has not commenced to run. Thus, **it was only when private respondent received the summons on the civil suit for collection of deficiency income on December 28, 1978 that the period to appeal commenced to run.**
>
> **The request for reinvestigation and reconsideration was in effect considered denied by petitioner when the latter filed a civil suit for collection of deficiency income**. So. that on January 10, 1979 when private respondent filed the appeal with the Court of Tax Appeals, it consumed a total of only thirteen (13) days well within the thirty day period to appeal pursuant to Section 11 of R.A. 1125. (*Emphasis supplied*)

The WDL as issued by the respondent is tantamount to his decision as to the final denial of petitioner's protest on the alleged assessment. It is only upon the receipt of said WDL on September 12, 2014 that the period to appeal shall commence. Pursuant to Section 228 of the 1997 NIRC, as amended, petitioner had 30 days or until October 12, 2014 to appeal the final denial of its protest through the issuance of said WDL. Thus, the filing of the instant petition on October 10, 2014, which is within the 30-day prescriptive period to file an appeal, has given this Court jurisdiction on the instant petition.

As to respondent's assertion that it had mailed a letter dated April 26, 2013[37] which was allegedly his reply to such protest and another letter dated July 1, 2013[38] which was allegedly the FDDA on the alleged assessment as well as the Preliminary Collection Letter (PCL)[39], Final Notice Before Seizure (FNBS)[40] and Memorandum dated July 21, 2014[41], petitioner denied[42] that it received all said letters and notices.

A scrutiny of the records of the case reveals that said letters were sent through registered mail[43] by respondent. However, there was no proof that petitioner indeed received said letters and notices.

In *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*,[44] it was ruled by the Supreme Court that although there is a presumption of constructive service in registered mailing, the Court is not precluded to determine whether said notices were indeed received by the respondent, *viz*:

> Under Section 203 of the National Internal Revenue Code (NIRC), respondent had three (3) years from the last day for the filing of the return to send an assessment notice to petitioner. In the case of *Collector of Internal Revenue v. Bautista*, this Court held **that an assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the CIR to the taxpayer within said period**. Receipt thereof by the taxpayer within the prescriptive period is not necessary. **At this point, it should be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive**, even beyond the prescriptive period, **the assessment notice which was timely released, mailed and sent**.
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> In the present case, records show that petitioner filed its Annual Income Tax Return for taxable year 1987 on 14 April 1988. The last day for filing by petitioner of its return was on 15 April 1988, thus, giving respondent until 15 April 1991 within which to send an assessment notice. While respondent avers that it sent the assessment notice dated 1 February 1991 on 6 February 1991, within the three (3)-year period prescribed by law, petitioner denies having received an

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37 Docket, Exhibit "R-19", Respondent's FOE, p. 763.
38 *Id.*, Exhibit "R-22", Respondent's FOE, p. 766.
39 *Id.*, Exhibit "R-26", Respondent's FOE, p. 771.
40 *Id.*, Exhibit "R-27", Respondent's FOE, p. 772.
41 *Id.*, Exhibit "R-28", Respondent's FOE, p. 773.
42 *Id.*, Petitioner's Memorandum, p. 932.
43 *Id.*, Exhibit "R-20", pp. 764-765; Exhibit "R-23", pp. 767-769; Exhibit "R-35" p. 774.
44 G.R. No. 157064, August 07, 2006.

> assessment notice from respondent. Petitioner alleges that it came to know of the deficiency tax assessment only on 17 March 1992 when it was served with the Warrant of Distraint and Levy.
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> In *Protector's Services, Inc. v. Court of Appeals*, this Court ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. **While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee**. (*Emphases supplied*)

In *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.*,[45] the Supreme Court ruled that:

> **To prove the fact of mailing, it is essential to present the registry receipt** issued by the Bureau of Posts or the **Registry return card which would have been signed by the taxpayer or its authorized representative**. **And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention**. <u>The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing.</u> While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices. (*Emphasis and underscoring supplied*)

Respondent's assertion that said letters and notices must be admitted are of no moment due to the absence of proof of petitioner's receipt of the same and his utter failure to present the registry return cards. Such failure is fatal due to his unsubstantiated allegation that petitioner received said letters and notices.

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[45] G.R. No. 202695, February 29, 2016.

The absence of Letter of Authority renders the conduct of investigation invalid

The factual antecedents of this case reveal that the tax examination was preceded by the issuance of a Letter of Notice (LN) No. 033-TRS-0800-00013[46] dated February 15, 2010. Nowhere in respondent's Answer was it mentioned that an LOA was issued nor was it offered as evidence in his FOE. Thus, petitioner's allegation that there was no LOA issued for the instant case is true as borne out by its glaring absence from the case records.

In petitioner's supplemental letter dated September 5, 2014[47], it admitted that they had received two (2) LOAs for the examination of its book of accounts for taxable year 2008, particularly, LOA No. 2008-00002264 dated July 6, 2009 and LOA No. 2007-00037491 dated July 14, 2009 where the respondent's Regional Director clarified that the second LOA merely superseded the former. However, petitioner argued that it had already settled the deficiency assessments assessed under the said examination through its payment of the deficiency taxes on February 15, 2010[48].

Thus, petitioner was surprised to receive two (2) LNs with Nos. 033-RLF-0800-00013 and 033-TRS-0800-00013 also on February 15, 2010.[49]

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue* (*Medicard*),[50] the Supreme Court ruled that the mere issuance of an LN and the absence of the required LOA is fatal to any investigation conducted by the BIR on a particular taxpayer, to wit:

> <u>An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions.</u> 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

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[46] Docket, Vol. II, Exhibit "R-1", Respondent's FOE, p. 728.
[47] *Id.*, Vol. I, Exhibit "P-16", pp. 491-499.
[48] *Id.* at 491.
[49] *Id.* at 493.
[50] G.R. No. 222743 dated April 5, 2017.

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.* -
>
> (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 of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> xxx xxx (Emphasis and underlining ours)

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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In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid. Hence, the CTA's disregard of MEDICARD's right to due process warrant the reversal of the assailed decision and resolution.

Furthermore, in the said *Medicard case*, the Supreme Court cited the earlier case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[51] which held that:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not

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

> go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**. (Emphasis and underlining ours)

Thus, based on the foregoing jurisprudence, the issuance of a mere LN and not of an LOA in the conduct of said examination or investigation renders such without valid authority, and therefore all subsequent notices of assessment and WDL issued by petitioner were null and void in violation of respondent's right to due process.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*,[52] the Supreme Court amplified the importance of observing the taxpayer's right to due process, to wit:

> It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. **In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution**. Thus, while "taxes are the lifeblood of the government," the power to tax has its limits, in spite of all its plenitude. xxx xxx (*Emphasis supplie*d)

As to the other issues raised by both parties, this Court will not belabor itself considering that there was a violation of petitioner's right to due process which renders all of respondent's issuances, i.e. PAN, FAN, PCL, WDL, and FNBS, null and void.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, the subject Final Assessment Notice and Warrant of Distraint or Levy are hereby **CANCELLED** for being **NULL AND VOID**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

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[52] G.R. No. 185371 dated December 08, 2010.

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice