REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2014** (CTA Case No. 8907)
	Present:
- versus -	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
MANILA MEDICAL SERVICES, INC. (MANILA DOCTORS HOSPITAL), Respondent.	***Promulgated:*** SEP 01 2020 2:10pm

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DECISION

UY, *J.*:

Before the Court *En Banc* is a *Petition for Review* filed by the Commissioner of Internal Revenue, Petitioner, against Manila Medical Services, Inc., (Manila Doctors Hospital), Respondent, on March 6, 2019, assailing the Decision dated November 6, 2018[1] and Resolution dated January 30, 2019[2], rendered by the Special Second Division of this Court (Court in Division) in CTA Case No. 8907 entitled "*Manila Medical Services, Inc., (Manila Doctors Hospital), Petitioner, vs. Commissioner of Internal Revenue, Respondent*", the dispositive portions of which respectively read:

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[1] Penned by Associate Justice Catherine T. Manahan, and concurred by Associate Justice Juanito C. Castañeda, Jr., EB Docket, pp. 25 to 39;

[2] Penned by Associate Justice Catherine T. Manahan, and concurred by Associate Justice Juanito C. Castañeda, Jr, EB Docket, pp. 41 to 44.

<u>Decision dated November 6, 2018</u>:

"**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."

<u>Resolution dated January 30, 2019</u>:

"**WHEREFORE**, premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit and the assailed DECISION is hereby **AFFIRMED**.

SO ORDERED."

THE FACTS

Petitioner is the Chief of the Bureau of Internal Revenue (BIR), the government agency charged with assessment and collection of all internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties and fines connected therewith, with office address at the BIR National Revenue Office Building, Diliman, Quezon City.

On the other hand, respondent Manila Medical Services, Inc. (Manila Doctors Hospital) is a domestic corporation duly organized and registered under the laws of the Philippines, with address at 667 United Nations Avenue, Ermita, Manila.

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

Respondent received a Preliminary Assessment Notice (PAN) dated October 19, 2010, which was duly protested on November 24, 2010 and received by the petitioner also on the same day through the

Officer-in-Charge (OIC) of the Letter Notice (LN) Task Force of the BIR.

Thereafter, respondent received a FAN dated March 25, 2013 which it protested on April16, 2013 and received by petitioner through the OIC-Regional Director on April 18, 2013.

In a supplemental letter dated September 5, 2014 addressed to petitioner, respondent reiterated and further expounded its position against the assessment for taxable year (TY) 2008.

On September 12, 2014, a Warrant of Distraint and Levy (WDL) dated September 5, 2014 was received by respondent demanding the payment of the amount of ₱79,960,408.62, representing its alleged deficiency Income Tax (IT) and Value-Added Tax (VAT) including surcharges and interest.

Thus, respondent filed a *Petition for Review* on October 10, 2014 before the Court in Division and the same was docketed as CTA Case No. 8907.

As directed by the Court in Division, petitioner filed his *Answer* on November 21, 2014 within the extension period granted by the Court in Division alleging among others, the following special and affirmative defenses, to wit: 1) that the BIR records clearly show that the BIR, prior to the issuance of the WDL dated September 5, 2014, has issued a letter dated April 26, 2013 and was posted at the Manila Central Post Office on April 26, 2013 under Registry Receipt No, 911204 and received by Enrico Vidal, respondent's representative on June 21, 2013; 2) that respondent filed a false return; 3) that the assessment has become final and executory, hence, not appealable to the Court of Tax Appeals; and 4) that petitioner has the burden of showing the incorrectness of the subject assessment.

The Court in Division set the case for pre-trial conference on November 25, 2014, and both parties were required to submit their respective pre-trial briefs. Respondent filed its *Pre-Trial Brief* on January 30, 2015, while petitioner filed his on February 2, 2015. The parties submitted their *Joint Stipulation of Facts and Issues* on February 25, 2015. The Court in Division issued a Pre-Trial Order on March 10, 2015, and the pre-trial conference was deemed terminated.

After respondent presented its evidence, it filed its *Formal Offer of Evidence (FOE)* on August 13, 2015 which was subsequently partly admitted and denied by the Court in Division.

Respondent moved for reconsideration of the denied evidence on October 27, 2015 which was partially granted by the Court in Division. Thereafter, petitioner presented its evidence and correspondingly filed his FOE on December 21, 2012 of which the Court in Division admitted almost all exhibits except Exhibit "R-6-a", the Computation Sheet, for failure to present the original for comparison. Respondent's motion to present rebuttal evidence was likewise granted.

Subsequently, respondent presented its rebuttal evidence and filed its Supplemental FOE on March 20, 2017, which was admitted by the Court in Division.

For his part, petitioner requested for the issuance of Subpoena Duces Tecum and Ad Testificandum for surrebuttal evidence which was granted by the Court in Division. After petitioner's presentation of said sur-rebuttal evidence, and admission of its sur-rebuttal evidence, the Court in Division ordered both parties to file their respective Memoranda. Both parties submitted their respective Memoranda on April 2, 2018. On April 4, 2018, CTA Case No. 8907 was submitted for decision.

On November 6, 2018, the Court in Division rendered the assailed Decision granting the Petition for Review in CTA Case No. 8907. Accordingly, the subject Assessment Notice and Warrant of Distraint or Levy were cancelled for being null and void.

Thereafter, petitioner filed a *Motion for Reconsideration* on November 23, 2018. [3] The Court in Division denied petitioner's motion on January 30, 2019, for lack of merit.

As recourse, petitioner filed a *Motion for Extension of Time to File Petitioner for Review*[4] before the Court *En Banc* on February 15, 2019, praying for an extension of fifteen (15) days from February 19,

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[3] Division Docket (CTA Case No. 8907) – Vol. 2, pp. 992-998.
[4] EB Docket, pp. 1 to 3.

2019 or until March 6, 2019. The Court *En Banc* granted petitioner's motion on February 19, 2019.[5]

Subsequently, petitioner filed the instant *Petition for Review* before the CTA *En Banc* on March 6, 2019[6] praying for the reversal and setting aside of the Decision dated November 6, 2018 and Resolution dated January 30, 2019, all rendered by the Special Second Division.

On March 27, 2019, the Court *En Banc* ordered respondent to file its *Comment* to the *Petition for Review.*[7] Upon its motion[8], the Court *En Banc* granted respondent a final and non-extendible period of fifteen (15) days from April 14, 2019, or until April 29, 2019, within which to file its Comment on the Petition for Review.[9] Subsequently, respondent filed another *Motion for Extension of Time to File Comment* on April 29, 2019,[10] praying for an additional fifteen (15) days from April 29, 2019, or until May 14, 2019, within which to submit Comment.

In view of the filing of its *Comment (To Petitioner's Petition for Review dated March 5, 2019)* on May 14, 2019[11], respondent's motion for extension of time to file comment was deemed granted by the Court *En Banc* on May 21, 2019.[12]

Thereafter, on June 3, 2019, the Court *En Banc* referred the instant case to mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for initial appearance pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.*[13]

On June 26, 2019, the PMC-CTA filed a *No Agreement to Mediate* before the Court *En Banc,* stating that the parties have agreed not to have the instant case mediated by the Philippine

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[5] EB Docket, p. 4.
[6] EB Docket, pp. 5 to 20.
[7] Resolution dated March 27, 2019, EB Docket, pp. 47 to 48.
[8] Respondent's "*Motion for Extension of Time to File Comment*" filed on April 12, 2019, EB Docket, pp. 49 to 54.
[9] EB Docket, p. 55.
[10] EB Docket, pp. 56 to 60.
[11] EB Docket, pp. 61 to 73.
[12] EB Docket, p. 74.
[13] EB Docket, pp. 76 to 77.

Mediation Center Unit – CTA.[14]

On July 10, 2019, the Court *En Banc* gave due course to the instant case and ordered the parties to submit their respective memoranda within thirty (30) days from notice.[15]

Respondent filed its *Memorandum* on August 16, 2019.[16] While on even date, petitioner posted his *Petitioner's Memorandum and* received by this Court on August 27, 2019.[17] Consequently, the instant case was submitted for decision on September 18, 2019.[18]

Hence, this Decision.

ASSIGNMENTS OF ERRORS

Petitioner raises the following issues for the resolution of the Court *En Banc*, to wit:

> " I.
>
> THE HONORABLE COURT COMMITTED A REVERSIBLE ERROR IN DECIDING THAT THE WDL IS THE ADVERSE DECISION OF BIR APPEALABLE TO THE HONORABLE COURT OF TAX APPEALS.
>
> II.
>
> WHETHER THE RIGHT OF THE BIR TO ASSESS RESPONDENT HAS ALREADY PRESCRIBED.
>
> III.
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> WHETHER PHARMACY SALES TO IN-PATIENTS ARE INCLUDED IN THE TERM "HOSPITAL SERVICES" WHICH ARE EXEMPT FROM VAT UNDER SECTION 109(G) OF THE TAX CODE OF 1997."[19]

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[14] EB Docket, pp. 78.
[15] EB Docket, pp. 83 to 84.
[16] EB Docket, pp. 85 to 107.
[17] EB Docket, pp. 108 to 119.
[18] EB Docket, pp. 122 to 123.
[19] *Petition for Review*, EB Docket, pp. 9 to 10.

Petitioner's arguments:

Petitioner argues that respondent belatedly filed its Petition for Review as the WDL received by respondent is not the adverse decision appealable to the Court of Tax Appeals given that a Final Decision on Disputed Assessment (FDDA) was issued to and received by respondent.

Allegedly, the period to assess respondent's internal revenue taxes for taxable year 2008 has not yet prescribed since respondent filed a false or fraudulent return for taxable year 2008.

Lastly, petitioner argues that pharmacy sales to in-patients are not included in the term "hospital services" which are exempt from VAT under Section 109(G) of the National Internal Revenue Code (NIRC) of 1997.

Respondent's counter-arguments:

Respondent counter-argues that the instant Petition for Review is just a reiteration of the allegations, which the Court in Division has already ruled upon in its Decision and Resolution dated November 6, 2018 and January 30, 2019, respectively.

According to petitioner, it timely filed its Petition for Review in CTA Case No. 8907. Allegedly, the WDL that it received is the adverse decision appealable to the Court of Tax Appeals under Section 228 of the NIRC of 1997 given that no FDDA was issued to and/or received by the respondent.

Moreover, respondent contends that the absence of a letter of authority is fatal to the case of petitioner.

Lastly, respondent submits that its sales to in-patients are exempt from VAT as per Section 109(G) of the NIRC of 1997, as amended.

THE COURT *EN BANC*'S RULING

Upon careful perusal of the issues and arguments raised by petitioner CIR in his Petition for Review, the Court *En Banc* finds that these issues and arguments have been thoroughly passed upon and appropriately resolved by the Court in Division in the assailed Decision and Resolution dated November 6, 2018 and January 30, 2019.

The Court has jurisdiction over the present case

Petitioner assails the jurisdiction of the Court over the instant case. Allegedly, reliance on the WDL dated September 5, 2014 as the basis of respondent's Petition for Review is misplaced. The WDL came out only after the FDDA was issued by the BIR, which was duly received by respondent on July 9, 2013. It should have been the FDDA which respondent should have used as the basis of its action to the Court of Tax Appeals and not the issued WDL.

We are not persuaded by petitioner's arguments as We affirm the findings of the Court in Division that this Court has jurisdiction over the present case.

As discussed in the assailed Decision, Section 7(a)(1) of Republic Act (RA) No. 1125,[20] as amended by RA No. 9282,[21] specifies the jurisdiction of the Court of Tax Appeals (CTA), to wit:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, **other matters arising under the National**

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[20] AN ACT CREATING THE COURT OF TAX APPEALS.
[21] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> **Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue;"** *(Emphasis supplied)*

Additionally, Section 3(a)(1), Rule 4 of the Revised Rules of the CTA likewise provides:

> "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)*

In the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,*[22] the Supreme Court held that the appellate jurisdiction of the CTA is **not limited** to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The wording of the provision is clear and simple. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the BIR.[23]

Further, the term "**other matters arising under this Code"** was explained by the Supreme Court in *Commissioner of Internal Revenue vs. Court of Tax Appeals (Second Division) and Petron Corporation*[24], to wit:

> "As the CIR aptly pointed out, the phrase "other matters arising under this Code," as stated in the second paragraph of Section 4 of the NIRC, **should be**

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[22] G.R. No. 162852, December 16, 2004.
[23] *Commissioner of Internal Revenue vs. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010.
[24] G.R. No. 207843, July 15, 2015.

> **understood as pertaining to those matters directly related to the preceding phrase "disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto"** and must therefore not be taken in isolation to invoke the jurisdiction of the CTA. In other words, the subject phrase should be used only in reference to cases that are, to begin with, subject to the exclusive appellate jurisdiction of the CTA, i.e., those controversies over which the CIR had exercised her quasi-judicial functions or her power to decide disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto, not to those that involved the CIR's exercise of quasi-legislative powers." (*Emphasis and underscoring supplied)*

It is clear from the foregoing that the term "**other matters**" pertain to matters directly related to the disputed assessments or refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto. Thus, this Court exercises jurisdiction to review, on appeal, aside from refund and assessment case, "other matters arising under the NIRC or other laws administered by the BIR", which include the determination of the validity of the warrant of distraint and levy[25].

In the instant case, considering that the subject WDL is directly related to the assailed assessment, and that the issuance thereof by petitioner is one of the remedies for the collection of delinquent taxes sanctioned under Section 206 of the NIRC of 1997 and BIR rules and regulations, We thus find that the Court in Division did not err in taking cognizance of CTA Case No. 8907 filed by respondent.

The FDDA dated July 1, 2013 cannot be considered as the adverse decision appealable to the CTA for failure to comply with legal requirements

Petitioner insists that the FDDA should be the adverse decision appealable before the CTA and not the WDL. According to petitioner,

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[25] *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 162852, December 16, 2004.

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the BIR issued the letter dated April 26, 2013 in reply to respondent's protest letter dated April 18, 2013. Thereafter, petitioner issued the FDDA dated July 1, 2013. Petitioner contends that the said letters were posted at the Manila Central Post Office on April 26, 2013 and on July 1, 2013, respectively, as evidenced by the BIR's transmittal letters addressed to the Postmaster, Central Post Office, Lawton, Manila, under Registry Receipt No. 911204 dated April 26, 2013 and Registry Receipt No. 919264 dated July 1, 2013 respectively.

On the other hand however, respondent denies having received the FDDA.

In instances when a taxpayer denies having received an assessment from the CIR, as in this case, the burden of proving otherwise rests upon the CIR. Relative thereto, the pronouncement of the Supreme Court in the case of *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*[26] is instructive, to wit:

> "**If the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.** Here, the *onus probandi* has shifted to the BIR to show by contrary evidence that GJM indeed received the assessment in the due course of mail. It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee.
>
> **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**. The Court does not put

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

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. 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."

Based on the foregoing, considering that respondent-taxpayer denies having received an assessment, FDDA in this case, from the petitioner-CIR, it becomes incumbent upon petitioner to prove by competent evidence that the said FDDA was indeed received by respondent. Furthermore, the presentation of the registry receipt or the registry return card is essential to prove completeness of service. In this case, petitioner notably failed to do so.

In support of his allegation that the FDDA was served and received by respondent, petitioner presented the following evidence for the purposes stated in his Formal Offer of Evidence filed in CTA Case No. 8907, to wit:

Exhibit No.	Description / Nature of Documentary Evidence	Purpose stated in the Formal Offer of Evidence
Exhibit "R-22"	BIR Letter (Final Decision on Disputed Assessment) dated July 1, 2013 with attached Registry Receipt[27]	To prove that the letter dated July 1, 2013 was sent to petitioner through registered mail under Registry Receipt No. 919264 dated July 1, 2013 at Central Post Office, Manila.[28]
Exhibit "R-23"	Copy of Transmittal to Postmaster Central Post Office dated July 1, 2013 with attached Registry Receipt[29]	To prove that the letter dated July 1, 2013 was sent to petitioner through registered mail under Registry receipt No. 919264 dated July 1, 2013 at Central Post Office, Manila[30]

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[27] Common Exhibit, "P-114" and "R-22", Division Docket (CTA Case No.8907) – Vol. 2, p. 766.
[28] Respondent's Formal Offer of Evidence, Division Docket (CTA Case No.8907) – Vol. 2, p. 724.
[29] Exhibit "R-23", Division Docket (CTA Case No.8907) – Vol. 2, pp. 767 to 769.
[30] *Id.*

<table>
<tr><td>Exhibit "R-36"</td><td>Certification 911204 from the Office of the Postmaster – Central Post Office Manila dated November 19, 2014;[31]</td><td rowspan="2">To prove that the said certifications pertaining to the mail matters contained therein were validly issued by Manila Central Post Office through Mr. Rodrigo S. P. Romero, then head of the Records Unit. To prove that the registered mail matters contained therein were received by the petitioner Manila Medical Services.[32]</td></tr>
<tr><td>Exhibit "R-37"</td><td>Certification 919264 from the Office of the Postmaster – Central Post Office Manila dated November 20, 2014.[33]</td></tr>
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We however find the foregoing documentary evidence insufficient to prove actual receipt of the FDDA by respondent's authorized representative. As already noted by the Court in Division, petitioner failed to present the registry return card to show that respondent's representative received the FDDA.

Further, the Certifications obtained from the Office of the Postmaster – Central Post Office Manila dated November 19 and 20, 2014, cannot be given weight. The Court *En Banc* notes that Rodrigo S.P. Romero who executed the Certification did not testify because, allegedly, he already passed away. Instead, petitioner's witness, Brenda Zantua, testified only as to the authenticity and execution of the said Certifications and not on the factual circumstances of the service of the FDDA.

Hence, We affirm the Court in Division's finding that petitioner's failure to present the registry return cards is fatal to its assertion that the FDDA was validly served upon respondent.

Nevertheless, assuming *arguendo* that respondent received the FDDA, the same would still be invalid as the same failed to comply with the requirements set forth in Section 3.1.6 of Revenue Regulations (RR) No. 12-99, as follows:

> "3.1.6 *Administrative Decision on a Disputed Assessment.* – **The decision of the Commissioner or his duly authorized representative shall (a) state the**

[31] Exhibit "R-36", Division Docket (CTA Case No.8907) – Vol. 2, p. 911.
[32] Order dated January 31, 2018, Division Docket (CTA Case No. 8907) – Vol. 2, pp. 907 to 908.
[33] Exhibit "R-37", Division Docket (CTA Case No.8907) – Vol. 2, p. 912.

> **facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based,** ***otherwise, the decision shall be void,*** in which case, **the same shall not be considered a decision on a disputed assessment**; and (b) that the same is his *final decision." (Emphasis Supplied)*

Clearly from the foregoing, the administrative decision on a disputed assessment of the Commissioner or his duly authorized representative, must state the facts, pertinent law, rules and regulations or jurisprudence upon which the decision is based, otherwise the decision shall be void.

In this case, petitioner claims that said decision is contained in the FDDA dated July 1, 2013, which reads as follows:

> "REPUBLIC OF THE PHILIPPINES
> DEPARTMENT OF FINANCE
> BUREAU OF INTERNAL REVENUE
> Revenue Region No. 6
> Manila
>
> JUL 01 2013
>
> MANILA MEDICAL SERVICES, INC.
> 667 Manila Doctors Hospital
> UN Avenue, 666 Ermita, Manila
>
> Attention: Mr. Florencio A. Tenorio
> Deputy Controller
>
> Sir:
>
> This is in connection with your 2008 all internal revenue tax liabilities pursuant to Letter Notice No. 033-RLF-08-00-00013 dated February 15, 2010, involving the amounts of P25,057,904.40 and P27,602,368.40 representing deficiency value-added and income taxes, respectively, under Final Assessment Notice Nos. 33-08-VT(LNTF)-4846 and 33-08-IT(LNTF)-4847, both dated March 25, 2013.
>
> Please be informed that due to your failure to act on our letter dated April 26, 2013, the entire docket of the above case will be forwarded to Collection Division, this region, for the enforcement of collection through summary remedies to protect the interest of the

[initials]

government. This serves as our Final Decision on Disputed Assessment.

Very truly yours,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue
By:

(SGD)
SIMPLICIO A. MADULARA
OIC-Regional Director[34]"

Clearly, the aforequoted FDDA dated July 1, 2013 failed to comply with the provisions of Sec. 3.1.6 of RR No. 12-99, as it merely informed respondent of its supposed tax liabilities without providing any details, the applicable law, rules and regulations, or jurisprudence on which the decision is based. Merely notifying the taxpayer of its tax liabilities without elaborating on its details is insufficient.[35] Hence, the FDDA is void. Therefore, it is as if there was no decision rendered by the CIR.[36]

The assessment against respondent is void because there was no valid grant of authority to conduct an examination or assessment

In the assailed Decision, the Court in Division found that the tax examination against respondent was preceded by the issuance of a Letter Notice (LN) No. 033-TRS-0800-00013 dated February 15, 2010, and that nowhere in petitioner's Answer was it mentioned that a Letter of Authority (LOA) was issued, nor was it offered as evidence in his FOE. Thus, the Court in Division sustained respondent's allegation that there was no LOA issued in the instant case.

We uphold the findings of the Court in Division.

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[34] Common Exhibit "P-114" and "R-22", Division Docket (CTA Case No. 8907) – Vol. 2, p. 766

[35] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation et seq.*, G.R. Nos. 215534 and 215557, April 18, 2016.

[36] *Id.*

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In the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[37] the Supreme Court elucidated on the importance of an LOA and the consequences of the absence thereof in a tax assessment case. The High Court said:

> "**An LOA is the authority given 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:
>
>> 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, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer</u>** 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 x (Emphasis and underlining Ours)
>
> Based on the afore-quoted provision, it is clear that **<u>unless authorized by the CIR himself or by his duly authorized representative, through an LOA</u>, an examination of the taxpayer cannot ordinarily be undertaken.** The circumstances contemplated under Section 6 where the taxpayer may be assessed through

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

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 <u>without prior authority</u>.**

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In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[38] the Court said that:

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

Based on the foregoing jurisprudence, a revenue officer must be authorized, **through an LOA**, to validly examine the books of accounts and other accounting records of a taxpayer. In the absence of an LOA, the tax assessments issued by the BIR against such taxpayer shall be void.

In the instant case, petitioner presented as witness, Revenue Officer (RO) Ethel C. Evangelista for the purpose of proving that she was duly authorized to conduct the investigation of the tax case of respondent for TY 2008.[39] However, in her testimony, she made no mention about the issuance of an LOA in her favor.

Moreover, although LOA No. 2007 0037491 dated July 14, 2009 issued by Arnel SD. Guballa, OIC-Regional Director of Revenue Region No. 6 is attached to the BIR Records of this case, the said LOA authorized RO E. Demadura/J. Macuha and Group Supervisor J. Tabor of the Special Investigation Division, to examine

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[38] 649 Phil. 519 (2010).
[39] Par. 3, Offer of Judicial Affidavit of Revenue Office Ethel C. Evangelista as her direct testimony, Division Docket (CTA Case No. 8907) – Vol. 1, p. 206.

respondent's books of account and other accounting records for all internal revenue taxes for the period from January 1, 2008 to December 31, 2008 of respondent. Clearly, RO Evangelista was not mentioned in said LOA.

Besides, LOA No 2007 0037491 dated July 14, 2009 cannot be considered by the Court as the same was not presented in evidence by petitioner in CTA Case No. 8907. It is well-settled that the courts cannot consider evidence which has not been formally offered.[40]

But even assuming *arguendo* that the same was offered and admitted in evidence, the same is still of no moment. As mentioned earlier, RO Ethel Evangelista, who prepared the Notice of Informal Conference[41] and the PAN dated October 19, 2010[42] against respondent, was not among the Revenue Officers named in the above-mentioned LOA authorized to conduct examination of respondent's books of account and other accounting records for TY 2008. Thus, the subject tax assessment issued against respondent must perforce be void.

Considering that the assessment is void, the Court *En Banc* will no longer discuss the other issues raised in the present petition.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Decision dated November 6, 2018 and the Resolution dated January 30, 2019 rendered by the Court in Division in CTA Case No. 8907, are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[40] *Far East Bank & Trust Company vs. Commissioner of Internal Revenue,* G.R. No. 149589, September 15, 2006.
[41] Q12, Exhibit "R-41", Division Docket (CTA Case No. 8907), p. 211.
[42] Q19, Exhibit "R-41", Division Docket (CTA Case No. 8907), p. 213.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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 the Court.

ROMAN G. DEL ROSARIO
Presiding Justice