REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

JED MARKETING CORPORATION, Petitioner,	**CTA CASE NO. 9709**
	Members:
- versus -	**DEL ROSARIO,** *P.J.*, Chairperson, **FABON-VICTORINO,** and **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 0 9 2020 2:52pm

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DECISION

DEL ROSARIO, *P.J.*:

Before the Court is the Petition for Review[1] filed on November 6, 2017 by Jed Marketing Corporation (petitioner) against the Commissioner of Internal Revenue (respondent), praying that the assessments issued against petitioner for income tax, value-added tax, withholding tax on compensation, documentary stamp taxes and compromise penalty for taxable year (TY) 2013 in the total amount of ₱94,755,465.46 be cancelled and withdrawn.

THE PARTIES

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address located at 91-A, Bagsakan Road, FTI Complex, Taguig City.[2]

Respondent[3] is the duly appointed Commissioner of Internal Revenue (CIR), vested under appropriate laws with the authority to carry out the functions, duties and responsibilities of said office,

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[1] Docket, pp. 10-76.
[2] Paragraph II(A)(1), Pre-Trial Order (PTO), Docket, p. 158.
[3] The incumbent CIR is Hon. Caesar R. Dulay.

including, *inter alia*, the power to decide disputed assessments, grant tax refunds and issue tax credit certificates, pursuant to the provisions of the National Internal Revenue Code (NIRC) and other tax laws, rules and regulations.[4]

THE FACTS

On December 4, 2015, a Letter of Authority (LOA) (AUDM35/005558/2015) with SN: eLA201200036523[5] was issued by Regional Director Jonas DP Amora authorizing Revenue Officer (RO) Rio Virgo Cruz and Group Supervisor (GS) Frederico Pilarca to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2013 to December 31, 2013.

On April 12, 2016, Memorandum of Assignment (MOA) No. MOA0442015LOA-0000230[6] was issued by Revenue District Officer Florante R. Aninag referring to RO Gene G. Etorma and GS Elizabeth C. Arias petitioner's case/docket for continuation of the audit/investigation to replace the previously assigned Revenue Officer who transferred to another district office.

In the Letter dated April 19, 2016,[7] Revenue District Officer Aninag informed petitioner that due to the transfer of RO Cruz to another district office, RO Etorma and GS Arias were assigned to continue the audit and investigation of petitioner for taxable year (TY) 2013.

On December 23, 2016, petitioner received a Preliminary Assessment Notice dated December 22, 2016 (PAN), representing alleged deficiency income tax (IT), value-added tax (VAT), withholding tax on compensation (WTC) and documentary stamp tax (DST) for TY 2013.[8]

On January 6, 2017, petitioner filed a Protest Letter dated January 5, 2017 against the PAN.[9]

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[4] Paragraph II(A)(2), PTO, Docket, p. 158.
[5] BIR Records, p. 3.
[6] BIR Records, p. 655.
[7] BIR Records, p. 656.
[8] Paragraph II(A)(3), PTO, Docket, p. 158.
[9] Paragraph II(A)(4), PTO, Docket, p. 158.

On January 16, 2017, petitioner received Assessment Notices dated January 12, 2017[10] with Formal Assessment Notice Part I and Part II (FAN)[11] for alleged deficiency IT, VAT, WTC, DST and Compromise Penalty for TY 2013, *viz.*:

Kind of Tax	Assessment Number	Amount
IT	IT-ELA36523-13-17-176	₱ 89,137,787.73
VAT	VT-ELA-36523-13-17-176	89,170.19
WTC	WC-ELA36523-13-17-176	3,858,810.02
DST	DS-ELA36523-13-17-176	1,634,697.52
Compromise Penalty	MC-ELA36523-13-17-176	35,000.00
	TOTAL	**₱ 94,755,465.46**

On February 10, 2017, petitioner filed a Protest Letter dated February 9, 2017 against the FAN.[12]

On April 11, 2017, petitioner submitted relevant documents in support of its Protest Letter dated February 9, 2017.[13]

Due to respondent's inaction, petitioner filed the present petition on November 6, 2017.

On January 22, 2018, respondent posted his Answer[14] raising as his special and affirmative defenses that: 1) petitioner was afforded due process because it was able to reply and/or file its protest to the PAN and FAN; 2) the assessed amount are based on pertinent provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and relevant revenue regulations; 3) petitioner's allegation of prescription must be clearly shown being a special affirmative defense; 4) assessments are *prima facie* presumed correct and made in good faith, thus, taxpayers have the duty to prove otherwise; and 5) petitioner should be reminded that taxes are the lifeblood of the government so it should be calculated without unnecessary hindrance.

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[10] Paragraph II(A)(5), PTO, Docket, p. 158; Exhibits "P-35" to "P-40", Docket, pp. 635-639.
[11] Exhibits "P-40" to "P-40-a", Docket, pp. 640-644.
[12] Paragraph II(A)(6), PTO, Docket, p. 158.
[13] Exhibit "P-42", Docket, pp. 657-658.
[14] Docket, pp. 86-93.

The Pre-Trial Conference was conducted on March 22, 2018[15] and the Pre-Trial Order[16] was issued on May 23, 2018.

During trial, petitioner presented two (2) witnesses, Rosalie Tanguanco[17] and Mae Cristina M. Galanza,[18] the Court-commissioned Independent Certified Public Accountant (ICPA).

On February 7, 2019, petitioner filed its Formal Offer of Evidence.[19] After considering respondent's Comment to (Petitioner's Formal Offer of Evidence),[20] the Court admitted in evidence all of petitioner's offered exhibits in the Resolutions dated May 3, 2019[21] and August 6, 2019.[22]

Respondent, on the other hand, presented as his sole witness, RO Etorma.[23]

On October 17, 2019, Respondent's Formal Offer of Exhibits[24] was filed. After considering petitioner's Comment to Respondent's Formal Offer of Evidence,[25] the Court admitted in evidence all of respondent's offered exhibits in the Resolution dated November 8, 2019.[26]

On January 15, 2020,[27] the Court submitted the case for decision after noting the filing of the Memorandum (For the Petitioner)[28] on November 28, 2019 and posting of the Memorandum for Respondent on December 16, 2019.[29]

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[15] Order dated March 22, 2018, Docket, pp. 140-142.
[16] Docket, pp. 157-169.
[17] Exhibit "P-46" (Judicial Affidavit of Rosalie Tanguanco), Docket, pp. 705-715; Order dated June 14, 2018, Docket, pp. 188-190.
[18] Exhibits "P-128" and "P-131" (Judicial Affidavits of Mae Cristina M. Galanza), Docket, pp. 363-369, 732-737; Order dated September 4, 2018, Docket, pp. 371-372; Order dated January 29, 2019, Docket, pp. 413-414.
[19] Docket, pp. 418-435.
[20] Docket, pp. 744-745.
[21] Docket, pp. 750-751.
[22] Docket, pp. 809-810.
[23] Exhibit "R-3" (Judicial Affidavit of RO Gene G. Etorma), Docket, pp. 107-113; Order dated October 8, 2019, Docket, pp. 812-813.
[24] Docket, pp. 815-817.
[25] Docket, pp. 819-820.
[26] Docket, pp. 824-825.
[27] Resolution dated January 15, 2020, Docket, p. 882
[28] Docket, pp. 828-865.
[29] Docket, pp. 866-879.

THE ISSUES

The parties stipulated the following issues:

1. Whether the present assessment is null and void for violating petitioner's right to be heard with regard to its position or arguments against the PAN, in violation of due process requirements mandated under Section 228 of the NIRC of 1997, as amended, and Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013;

2. Whether petitioner is liable to pay the aggregate amount of ₱94,755,465.46 representing the alleged deficiency IT, VAT, WTC, DST and Compromise Penalty for TY 2013;

3. Whether the applicable prescriptive period on the part of respondent to assess petitioner's deficiency VAT and WTC for TY 2013 is ten (10) years; and,

4. Whether the FAN dated January 5, 2017 issued against petitioner representing alleged tax deficiencies for TY 2013 and the right of the Government through the Bureau of Internal Revenue to collect such alleged deficiency taxes had prescribed pursuant to Sections 203 and 22 of the NIRC of 1997, as amended.[30]

THE ARGUMENTS

Petitioner's arguments

Petitioner asserts that respondent injudiciously ignored its Protest dated January 5, 2013 having issued the FAN after only four (4) working days from its submission of its protest. He claims that considering the substantial amount involved in the present assessment, a more reasonable and logical period to consider all the arguments raised in the protest is necessitated. Such failure to provide a reasonable period to evaluate petitioner's protest is tantamount to a denial of due process.

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[30] Paragraph II(B), PTO, Docket, pp. 161-162.

Petitioner also contends that the absence of a validly issued LOA to RO Etorma to audit it renders the present assessment void. He submits that the MOA signed by the Revenue District Officer is not sufficient to clothe RO Etorma with authority to audit petitioner. Further, respondent did not offer in evidence the LOA referred to in the said MOA.

Further, it claims that the Court has the power to resolve the issue on the validity of the authority of revenue examiners to conduct the audit leading to the present assessment. its purported failure to raise the issue of lack of authority of the examining revenue officer in the administrative level does not preclude its subsequent insistence that the assessment is intrinsically void for want of a valid LOA.

Petitioner also submits that the assessments for VAT and WTC for TY 2013 are already barred by prescription having been issued beyond the three (3) – year period to assess.

Lastly, petitioner posits that the FAN is also invalid as it did not contain a fixed and definite amount of tax to be paid, citing *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*[31]

Respondent's counter-arguments

Respondent refutes petitioner's claim that it was deprived of its right to due process. He asserts that petitioner was afforded due process because it was able to reply and/or file its protest to the notices that were issued or sent to it.

He maintains that the assessment of petitioner's deficiency tax liability was issued within the period allowed by law. It is incumbent upon petitioner to positively establish when the prescriptive period started to run. Allegedly a close scrutiny of petitioner's VAT returns revealed that petitioner's declarations therein were substantially deficient in amount and did not disclose the truth regarding the correct amount of sales subject to tax. Moreover, petitioner failed to withhold and remit the corresponding withholding tax on salaries and wages. Hence, the FAN was made within the extraordinary period of ten (10) years counted from the discovery of said falsity pursuant to Section 222(A) of the NIRC of 1997, as amended.

[31] G.R. No. 215957, November 9, 2016.

He emphasizes that assessments are *prima facie* presumed correct and made in good faith and the taxpayer has the duty of proving otherwise.

Lastly, he posits that taxes are important because they are the lifeblood of the government and, as such, should be collected without unnecessary hindrance.

THE RULING

The Petition for Review was timely filed; hence, the Court has acquired jurisdiction over the case

The Court of Tax Appeals (CTA) is a court of special jurisdiction. It can only take cognizance of such matters as are clearly within its jurisdiction.[32] Section 7 of Republic Act (RA) No. 1125,[33] as amended, defines the jurisdiction of the CTA, *viz.*:

> "SEC. 7. *Jurisdiction.* – The Court of Tax Appeals shall exercise:
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> (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, or other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue; xxx" *(Boldfacing supplied)*

On the other hand, under Section 11 of RA No. 1125,[34] as amended, in relation to Section 3(a), Rule 8 of the Revised Rules of

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[32] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.*, G.R. No. 169778, March 12, 2014.
[33] An Act Creating the Court of Tax Appeals.
[34] RA No. 1125, Section 11. Who may appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. Xxx.

the Court of Tax Appeals (RRCTA),[35] a party adversely affected by a decision, ruling or **inaction** of the CIR may appeal to the CTA by way of a petition for review within thirty (30) days from receipt of the copy of such decision or ruling or within thirty (30) days after the expiration of the specific period of action.

In the case at bar, petitioner received the FAN on January 16, 2017 and filed its protest thereon on February 10, 2017. On April 11, 2017, within the sixty (60) – day period granted under Section 228 of the NIRC of 1997, as amended, for submission of relevant supporting documents, petitioner submitted documents in support of its protest. Pursuant to the law and rules, respondent had until October 8, 2017 to decide petitioner's Protest Letter dated February 9, 2017.

Despite the lapse of the period to decide, respondent did not issue any decision thereon. Consequently, petitioner had until November 7, 2017 within which to appeal respondent's inaction. Since the Petition for Review was timely filed on November 6, 2017, the Court has acquired jurisdiction to take cognizance of the case.

The RO and GS who continued the audit of petitioner were not authorized by a valid LOA; hence, the assessments issued pursuant to said audit are void *ab initio*

While the issue of the authority of the ROs to conduct audit of petitioner was not included in the parties' stipulated issues, and was raised by petitioner only during trial[36] and in its memoranda, the Court is nonetheless vested with sufficient authority to consider the same, pursuant to Section 1, Rule 14 of the RRCTA which provides that "in

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[35] RRCTA, Rule 8, Section 3. Who may appeal; period to file petition. –
(a) A party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of the copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of taxes.
[36] Transcript of the Stenographic Notes of the October 8, 2019 Hearing, p.10.

deciding cases, the Court may not limit itselt to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case." The authority of ROs who audited petitioner is relevant in determining the validity of the disputed assessments.

In *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,*[37] the Supreme Court clarified that the CTA can indeed resolve the issue involving the authority of the ROs to conduct the audit, albeit the same was not raised by the parties in their pleadings or memoranda.

In the case at bar, RO Etorma and GS Arias trace their authority to carry out the investigation of petitioner, relative to its tax liability for TY 2013, to MOA No. MOA0442015LOA-0000230 dated April 12, 2016, [38] which was issued by Revenue District Officer Aninag.

Perusal of the BIR Records would show that LOA with SN: eLA201200036523[39] issued by Regional Director Amora authorized RO Cruz and GS Pilarca to examine petitioner's books of accounts and other accounting records for TY 2013. The issuance of the PAN and FAN, however, was made upon the recommendation[40] of RO Etorma and GS Arias, who were not named in the said LOA. As aforementioned, RO Etorma and GS Aria's authority to continue petitioner's audit investigation was pursuant to a mere MOA No. MOA0442015LOA-0000230 dated April 12, 2016, issued by Revenue District Officer Aninag.

Notably, respondent failed to present a new LOA issued to RO Etorma and GS Arias in relation to the audit of petitioner's tax liability for TY 2013.

The NIRC of 1997, as amended, is clear and categorical in requiring a specific authority from the **CIR or from his duly authorized representatives** before an examination of a taxpayer may be made.[41] Section 6 thereof provides:

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[37] G.R. No. 183408, July 12, 2017.
[38] BIR Records, p. 655.
[39] BIR Records, p. 3.
[40] Exhibit "R-1", BIR Records, pp. 806-808.
[41] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

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

An officer of the Bureau of Internal Revenue (BIR) cannot simply subject a taxpayer to audit without valid a LOA issued for that purpose. Section 13 of the NIRC of 1997, as amended, states:

> "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." *(Boldfacing and underscoring supplied)*

More importantly, the *"authorized representative"* contemplated under Section 6 of the NIRC of 1997, as amended, who is vested with the power to issue an LOA is no other than a **Revenue Regional Director** pursuant to Section 13 thereof. And such power to issue an LOA may not be delegated by the Revenue Regional Director to any other officer - - much less to a Revenue District Officer. On this point, the pronouncement in *NPC Drivers and Mechanics Association, (NPC DAMA) et al. vs. The National Power Corporation et al.*[42] is instructive, *viz.:*

> "We agree with petitioners. In enumerating under Section 48 those who shall compose the National Power Board of Directors, the legislature has vested upon these persons the power to exercise their judgment and discretion in running the affairs of the NPC. xxx xxx xxx. It is to be presumed that in naming the respective department heads as members of the board of directors, the legislature chose these secretaries of the various executive departments on the basis of their personal qualifications and acumen

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[42] G.R. No. 156208, September 26, 2006.

which made them eligible to occupy their present positions as department heads. Thus, the department secretaries cannot delegate their duties as members of the NPB, much less their power to vote and approve board resolutions, because it is their personal judgment that must be exercised in the fulfillment of such responsibility.

xxx [T]he rule enunciated in the case of *Binamira v. Garrucho* is relevant in the present controversy, to wit:

An officer to whom a discretion is entrusted cannot delegate it to another, the presumption being that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and unless the power to substitute another in his place has been given to him, he cannot delegate his duties to another." *(Boldfacing supplied)*

Revenue Memorandum Order (RMO) No. 43-90 specifies the policy guidelines in the issuance of LOAs to audit. It is explicit that the continuation of audit by a revenue officer other than the officer named in a previous LOA, **requires the issuance of a <u>new</u> LOA**:

"C. Other policies for issuance of L/As.

1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority.**

xxx xxx xxx

5. **<u>Any re-assignment/transfer of cases to another RO(s)</u>**, and revalidation of L/As which have already expired, **<u>shall require the issuance of a new L/A</u>, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.**" (Boldfacing supplied and underlining supplied)

The Supreme Court's pronouncement in *Medicard Philippines Inc. vs. Commissioner of Internal Revenue*[43] on the significance of a valid authority of ROs to conduct an audit and examination of the taxpayer is very instructive, *viz.*:

"***The absence of an LOA violated MEDICARD's right to due process***

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers

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

or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. **An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** Section 6 of the NIRC clearly provides as follows:

xxx xxx xxx

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

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

> "Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. xxx. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**."

xxx xxx xxx

xxx In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: **to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. <u>The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute</u>.**

That the BIR officials herein were not shown to have acted unreasonably is beside the point <u>because the issue of their lack of authority was only brought up during the trial of the</u>

> 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.**" *(Boldfacing and underlining supplied)*

In *Medicard*, the Supreme Court declared as void the disputed assessment for lack of an LOA authorizing the ROs to examine the taxpayer's books of account and other accounting records.

Further, *Commissioner of Internal Revenue vs. Composite Materials, Inc.*[44] is categorical in holding that an RO may only examine the taxpayer's books pursuant to an LOA issued by the Revenue Regional Director, further emphasizing that the Referral Memorandum issued by the Revenue District Officer directing another RO to continue with the examination of Composite Materials, Inc.'s records is not equivalent to an LOA nor does it cure the RO's lack of authority, is *apropos*, *viz.*:

> "As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, **the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director**. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue,* ruling that in the absence of an LOA, the assessment or examination is a nullity.
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> Here, the CTA *en banc* found that the LOA issued in relation to the examination of CMI's book of accounts does not specifically mention the name of RO Cruz. Thus, the examination conducted by RO Cruz and the assessment issued against CMI was correctly declared null and void.
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> Moreover, the Court agrees with the CTA *en banc* that the **Referral Memorandum** issued by a Revenue District Officer **directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority.** To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that **any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA.**" *(Boldfacing supplied)*

[44] G.R. No. 238352, September 12, 2018.

The necessity of a valid LOA in audit investigations is not merely an administrative requirement but a statutory requirement which is vital to the validity of an audit of a taxpayer, and necessarily, to the validity of the FAN, that may be issued after said audit.

In the present case, MOA No. MOA0442015LOA-0000230 dated April 12, 2016, cannot be treated as an LOA as precisely, any re-assignment of cases requires the issuance of a new LOA. The said MOA's fatal infirmity is further highlighted by the fact that it was **signed and issued by a Revenue District Officer only** and not by a Revenue Regional Director. Otherwise stated, the said MOA cannot be regarded as a valid LOA within the context of the law and regulations. It is clear in the language of RMO No. 43-90 that *"any re-assignment/transfer of cases to another RO(s) ... shall require the issuance of a new L/A."* The phrase emphasizes the mandatory nature of the said requirement.

It is trite that the BIR has the duty of exacting compliance with pertinent rules and regulations as it has the burden of ensuring that the right of the government to assess and collect tax deficiencies would not be defeated by its failure to comply with its own rules.

Without a new LOA issued to RO Etorma and GS Arias in relation to the audit of petitioner's tax liability for TY 2013, the conduct of the audit of petitioner is legally flawed. The absence of an LOA authorizing the RO to audit petitioner rendered the PAN and FAN issued against petitioner void. Needless to say, a void assessment bears no fruit[45] and must be slain at sight.

Considering the Court's declaration that the assessments are void, it need not belabor the other issues raised by the parties.

WHEREFORE, from the foregoing discussion, the Petition for Review filed on November 6, 2017 by Jed Marketing Corporation is hereby **GRANTED**. Assessment Nos. IT-ELA36523-13-17-176, VT-ELA36523-13-17-176, WC-ELA-36523-13-17-176, DS-ELA36523-13-17-176, and MC-ELA36523-13-17-176 with Formal Assessment Notice (Part I and Part II), all dated January 12, 2017, are hereby **CANCELLED** and **WITHDRAWN**.

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[45] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
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