REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

IMA LAND HOLDINGS, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9505

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

Promulgated:
NOV 23 2020 1:10 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review ("Petition") filed by petitioner, **IMA LAND HOLDINGS, INC.**, against respondent, **COMMISSIONER OF INTERNAL REVENUE** ("CIR"), praying that this Court render judgment cancelling and withdrawing the Final Letter of Demand ("FLD"), dated 12 January 2016, and Assessment Notices Nos. RR9-57-eLA-12-IT-009; RR9-57-eLA-12-WE-009; RR9-57-eLA-12-DS-099; and RR9-57-eLA-12-MC-009, all dated 12 January 2016 representing deficiency Income Tax ("IT"), Expanded Withholding Tax ("EWT"), Documentary Stamp Tax ("DST"), and Compromise Penalty for taxable year ended 31 December 2012 ("TY 2012"), amounting to a total of Php8,368,814.25.[1]

The Parties

Petitioner is a corporation existing under and by virtue of laws of the Republic of the Philippines with registered address located at 114 Technology Avenue, Phase II, Laguna Technopark, Binan, Laguna.

[1] See Summary of the Case in the Pre-Trial Order, Records, Vol. 1, p. 191.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") vested under the appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including, *inter alia,* the power to decide disputed assessments and cancel and abate tax liabilities, pursuant to the provisions of the ***National Internal Revenue Code of 1997 ("NIRC")*** and other laws, rules, and regulations. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The Facts

On 24 October 2013, respondent issued a Letter of Authority No. ("LOA") 057-2013-0000222 authorizing revenue officer Eden Sandoval and group supervisor Leopoldo Bulda of Revenue District Office No. 57 ("RDO 57") to examine the books of accounts and other accounting records of petitioner.[2]

On 1 July 2014, respondent issued Letter Notice No. 057-RLFTRS-12-00-00436 ("LN") against petitioner requiring the latter to explain an alleged under declaration of its sales. The LN referred the audit of petitioner's tax liabilities for TY 2012 to the aforementioned revenue officers.[3]

On 11 May 2015, respondent issued Memorandum of Assignment No. 057-LA-0092-5/11/2015 referring the continuation of the audit/investigation to revenue officer Amapola Jane San Juan and group supervisor Eden Sandoval on account of the latter's promotion from being a revenue officer to a group supervisor.[4] Similarly, through Memorandum of Assignment No. 057-LN-112-5/11/2015, the LN was reassigned to the same revenue officers.[5]

On 15 October 2015, revenue officer Amapola Jane San Juan drafted a Memorandum (which was noted by group supervisor Eden Sandoval) recommending the issuance of a Preliminary Assessment Notice ("PAN") against petitioner.[6] Said PAN, dated 22 December 2015, from BIR Revenue Region No. 9 ("RR 9"), RDO 57, showing alleged deficiency IT, EWT, DST, and Compromise Penalty, was received by petitioner on 1 February 2016.[7] On 12 February 2016, petitioner filed a Protest to the PAN.[8]

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[2] See Exhibit "R-2," BIR Records, p. [illegible].
[3] See Exhibit "R-3," *Id.*, pp. 1-3.
[4] See Exhibit "R-1," *Id.*, p. 260.
[5] See Exhibits "R-4" and "R-5," *Id.*, pp. [illegible]-18.
[6] See Exhibit "R-8," *Id.*, pp. 310-321.
[7] See Exhibit "P-5," *Id.*, pp. 330-333.
[8] See Exhibit "P-8," Records, Vol. 1, pp. 2[illegible]-282.

On 18 February 2016,[9] petitioner received the FLD, dated 12 January 2016,[10] and Assessment Notices Nos. RR9-57-eLA-12-IT-009;[11] RR9-57-eLA-12-WE-009;[12] RR9-57-eLA-12-DS-099;[13] and RR9-57-eLA-12-MC-009,[14] all dated 12 January 2016,[15] allegedly showing that petitioner has deficiency IT, EWT, DST, and Compromise Penalty for TY 2012, amounting to a total of Php8,368,814.25. Petitioner then filed before respondent its Protest to the FLD and its corresponding assessment notices on 18 March 2016.[16] On 17 May 2016,[17] petitioner submitted its supporting documents in relation to its Protest to the FLD and its corresponding assessment notices.[18]

Due to respondent's inaction, petitioner filed the instant Petition on 13 December 2016.[19]

On 28 February 2017, Summons was issued against respondent,[20] and on 16 March 2017, respondent filed a Motion for Additional Time to File Answer,[21] which was granted by this Court in a Resolution, dated 21 March 2017.[22] On 12 April 2017, respondent again filed an Urgent Motion for Extension to File Answer,[23] which was granted by this Court in a Resolution, dated 24 April 2017.[24]

On 6 May 2017, Respondent finally filed his Answer on 6 May 2017.[25]

Following the Pre-Trial Conference, trial began on 19 February 2018 when petitioner presented its first witness, Mr. Eric B. Alcones.[26] Its next witnesses, Ms. Lucia Lorna R. Nabong and Atty. Javierose M. Ramirez, took the witness stand on 16 April 2018.[27]

For his part, respondent presented its witness, Mr. William B. Landicho on 2 April 2019 and Ms. Amapola Jane C. San Juan on 18 June 2020.

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[9] See Exhibit "P-6-a," BIR Records, p. 342.
[10] See Exhibit "P-6," and "R-16", *Id.*, pp. 334-337.
[11] See Exhibit "P-7," *Id.*, p. 341.
[12] See Exhibit "P-7-A," *Id.*, p. 340.
[13] See Exhibit "P-7-B," *Id.*, p. 339.
[14] See Exhibit "P-7-C," *Id.*, p. 338.
[15] See Exhibit "R-17," *Id.*, pp. 338-341.
[16] See Exhibit "P-9," Records, Vol. 1, pp. 283-288.
[17] See Exhibit "P-10-A," *Id.*, p. 289.
[18] See Exhibit "P-10," *Id.*, pp. 289-291.
[19] See Records, Vol. 1, p. 10.
[20] *Id.*, p. 57.
[21] *Id.*, pp. 58-61.
[22] *Id.*, pp. 62-63.
[23] *Id.*, pp. 65-68.
[24] *Id.*, pp. 69-71.
[25] *Id.*, pp. 72-83.
[26] *Id.*, pp. 208-210.
[27] *Id.*, pp. 237-238.

On 16 October 2019, petitioner filed its Memorandum.[28] On the other hand, respondent filed his Memorandum on 4 November 2019.[29]

With the filing of the parties' respective Memoranda, this Court issued a Resolution submitting the instant Petition for decision.[30]

Hence, this Decision.

The Issues[31]

WHETHER PETITIONER IS LIABLE TO PAY THE ALLEGED IT, EWT, DST AND COMPROMISE PENALTY FOR TY 2012;

WHETHER THE FLD AND ASSESSMENT NOTICES ISSUED FOR TY 2012 AGAINST PETITIONER AND THE RIGHT OF THE GOVERNMENT THROUGH THE BIR TO COLLECT SUCH ALLEGED DEFICIENCY TAXES HAD PRESCRIBED PURSUANT TO ***SECTION 203 AND 222 OF THE 1997 NATIONAL INTERNAL REVENUE CODE, AS AMENDED ("NIRC");***

WHETHER PETITIONER HAS LEGAL AND FACTUAL BASES IN PROTESTING THE VALIDITY OF THE ASSESSMENT FOR DEFICIENCY TAXES FOR TY 2012; AND

WHETHER THE PETITION FOR REVIEW SHOULD BE DISMISSED FOR BEING PREMATURELY FILED.

Arguments of the Parties

Petitioner's Arguments[32]

Petitioner averred the following in its Memorandum:

a) This Honorable Court has jurisdiction over the present Petition. Petitioner timely filed the Petition (*i.e.,* 13 December 2016) within thirty (30) days from the lapse of one hundred eighty (180) days (*i.e.,*

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[28] *Id.*, pp. 377-415.
[29] *Id.*, pp. 417-429.
[30] *Id.*, pp. 430-431.
[31] See Issues in the Pre-Trial Order; Records, Vol. 1, p. 192.
[32] See Memorandum, Records, Vol. 1, pp. 391-414.

13 November 2016) from the submission of the complete documents in support of the Protest to the FLD (*i.e.,* 17 May 2016);

b) The absence of a valid LOA in favor of revenue officer Amapola Jane C. San Juan invalidates the present assessment. The Memorandum of Assignment referring the audit of petitioner to said revenue officer was merely signed by a Revenue District Officer;

c) Non-observance of the fifteen (15)-day period within which a taxpayer is allowed to file a Reply to a PAN violated petitioner's right to due process which rendered the present assessment invalid;

d) Petitioner is not a related party to Bank of the Philippine Islands and Isuzu Autoparts Manufacturing Corporation, as contemplated under ***Section 36 (B) (3) of the NIRC***;

e) The present assessment is barred by prescription; and

f) The Assessment Notices, all dated 12 January 2016, did not set and fix the tax liability, which is still subject to modification or adjustment.

Respondent's Counter-Arguments[33]

Respondent alleged the following in his Memorandum:

a) Petitioner failed to file a valid Protest to the FLD. It failed to state the facts, the applicable law, rules and regulations, or jurisprudence to support the same. As the Protest to the FLD is void and without force and effect, the assessment became final and executory;

b) The assessment has factual and legal bases;

c) The assessment was made within the prescriptive period. Petitioner failed to explain its claim of prescription; and

d) The Petition was prematurely filed. Petitioner filed the instant case without waiting for respondent's decision on its Protest against the FLD.

The Ruling of the Court

We rule to **GRANT** the instant **Petition for Review**. The assessment issued by respondent against petitioner is void.

[33] See Memorandum, Records, Vol. 1, pp. 418-426.

<u>This Court has jurisdiction over the present Petition.</u>

Section 228 of the NIRC provides, as follows:

> **Section 228.** *Protesting of Assessment.* -
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.
>
> Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> **<u>If the protest</u>** is denied in whole or in part, or **<u>is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days</u>** from receipt of the said decision, or **<u>from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.</u>**.

In the present case, petitioner submitted its supporting documents in relation to the Protest to the FLD on 17 May 2016 via registered mail.[34] Following the one hundred eighty (180)-day period given to respondent to act on said Protest, which is counted from the date of submission of complete supporting documents, respondent had until 13 November 2016 within which to make a decision on said Protest.

Since respondent did not act on petitioner's Protest to the FLD by 13 November 2016, petitioner had the option of either waiting for an actual decision by respondent and appeal the same within thirty (30) days from receipt or immediately filing an appeal within thirty (30) days from the expiration of the one hundred eighty (180)-day period.

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[34] See Exhibit "P-10-A", Records, Vol. 1, p. 289.

Petitioner opted to immediately file an appeal after the lapse of the one hundred eighty (180)-day period. Counting thirty (30) days from 13 November 2016, petitioner had until 13 December 2016 within which to file a Petition for Review before this Court. As petitioner filed the instant Petition exactly on said date,[35] this Court has jurisdiction.

Revenue officer San Juan was not armed with a valid LOA when she conducted the audit of petitioner's books of accounts and other accounting records.

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

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

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

In fact, respondent, being aware of the necessity of an LOA before a revenue officer can examine a taxpayer, issued ***Revenue Memorandum Order No. 43-90 ("RMO 43-90")***[36] which provides:

> "**Any reassignment/ transfer of cases to another RO(s)**, and revalidation of L/As which have already expired, **shall require the issuance of a new L/A**, with the

[35] See Petition, Records, Vol. 1, p. 10.
[36] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, 20 September 1990.

corresponding notation thereto, including the previous L/ A number and date of issue of said L/As."
(Emphasis, Ours)

A cardinal rule in statutory construction is that where the law speaks in clear and categorical language, or the terms of the statute are clear and unambiguous and free from doubt, there is no room for interpretation or construction and no interpretation or construction is called for; there is only room for application. The use of the word "shall" connotes a mandatory order and denotes an imperative obligation and is inconsistent with the idea of discretion.[37] Hence, the use of the word "shall" in ***RMO 43-90*** can only mean that the issuance of a new LOA in cases of transfer of audits to another set of revenue officers is mandatory. As such, it is clear that before an assessment can be made, the revenue officer conducting the same must first be authorized to do so.

The importance of an LOA as a due process requirement in issuing deficiency tax assessments was given paramount consideration by the High Court in ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue ("Medicard Case")***,[38] *viz*:

> **"An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** Section 6 of the NIRC clearly provides as follows:
>
> > **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</u> may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
> >
> > x x x x

[37] Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, G.R. Nos. 175707, 180035, 181092, 19 November 2014.
[38] G.R. No. 222743, 5 April 2017, citing Commissioner of Internal Revenue v. Sony Philippines, Inc., G.R. No. 178697, 17 November 2010.

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 bè 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.**

xxx xxx xxx

In the case of *Commissioner of Internal Revenue v. 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. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**.

Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination "of a taxpayer" may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.

xxx xxx xxx

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.**

(Emphasis and Underscoring, Ours)

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

Respondent even recognized the importance of the Supreme Court's ruling on LOAs in the ***Medicard Case*** when he issued ***Revenue Memorandum Circular No. 75-2018***,[39] which provides, as follows:

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

(Emphasis and Underscoring, Ours)

Therefore, the importance of an LOA before revenue officers can pursue an audit of a taxpayer to assess and collect deficiency taxes cannot be over-emphasized. Without an LOA, deficiency tax assessments issued are inescapably void.

In the case at bar, LOA 057-2013-0000222 was issued on 24 October 2013 authorizing then revenue officer Eden Sandoval and group supervisor Leopoldo Bulda of RDO 57 to examine the books of accounts and other accounting records of petitioner for TY 2012.[40] Then, due to revenue officer Eden Sandoval's promotion as a group supervisor, Memorandum of Assignment No. 057-LA-0092-5/11/2015 was issued on 11 May 2015 referring the continuation of the audit/investigation to revenue officer Amapola Jane San Juan and, now group supervisor, Eden Sandoval.[41]

Through Memorandum of Assignment No. 057-LA-0092-5/11/2015, revenue officer Amapola Jane San Juan a) determined that deficiency IT, EWT, and DST were due from petitioner, and as a result, issued Audit

[39] SUBJECT: The Mandatory Statutory Requirement and Function of a Letter of Authority.
[40] See Exhibit "R-2", BIR Records, p. 98.
[41] See Exhibit "R-1", BIR Records, p. 260.

Findings for petitioner to refute;[42] b) recommended, through a Memorandum dated 15 October 2015,[43] the issuance of a PAN against petitioner; and c) endorsed said Memorandum to RR 9,[44] which lead to the issuance of the PAN, the FLD, and the Assessment Notices against petitioner.[45]

It is clear from the foregoing that Ms. Amapola Jane San Juan examined petitioner's books of accounts and other accounting records without a prior LOA issued in her favor. This was confirmed during her cross-examination, *viz*:

> "ATTY. MONTENEGRO
>
> Q Do you have a copy of your judicial affidavit? I refer you, can you go to page 2 question no. 11.
>
> MS. SAN JUAN
>
> A Yes.
>
> ATTY. MONTENEGRO
>
> Q You mentioned that your authority to investigate is by virtue of the Memorandum of Assignment, is that correct?
>
> MS. SAN JUAN
>
> A Yes, sir.
>
> ATTY. MONTENEGRO
>
> Q Also in page 3, question no. 15, you mentioned of a Letter of Authority?
>
> MS. SAN JUAN
>
> A Yes, sir.
>
> ATTY. MONTENEGRO
>
> Q Now, were you named as a Revenue Examiner, authorizing you to examine petitioner in that Letter of Authority?

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[42] See Exhibits "R-6" and "R-6-A", BIR Records, pp. 295-300.
[43] See Exhibit "R-8", BIR Records, pp. 310-321.
[44] See Exhibit "R-9", BIR Records, pp. 326-327.
[45] See Judicial Affidavit of Revenue Officer Amapola Jane C. San Juan, Exhibit "R-14", Records, Vol. 1, p. 154.

MS. SAN JUAN

A No, my supervisor was the one mentioned in the Letter of Authority."[46]

Although during her re-direct examination, it was established that her group supervisor, Ms. Eden Sandoval, was very much involved in the audit as the latter was, in fact, the revenue officer named in the LOA,[47] it remains that Ms. San Juan, a revenue officer who conducted an examination of petitioner, was not authorized by an LOA to perform said examination.

To affirm the validity of an assessment even if one of the revenue officers who performed the examination is not authorized by an LOA would utterly disregard the above provisions of the ***NIRC***, administrative issuances, and related jurisprudence mandating the necessity of an LOA in favor of revenue officers who will perform an audit/investigation of a taxpayer.

Usually in a tax audit, the BIR assigns several revenue examiners (comprising of a group supervisor and a revenue officer) to conduct an examination of a taxpayer. To allow only one or some of these revenue examiners to be armed with an LOA will create possibilities for abuse. The BIR may, for example, name only a single revenue examiner in an LOA before forcing the taxpayer to deal with a plethora of examiners named only in subsequent MOAs, causing uncertainty in the taxpayer as to who is and is not actually authorized to examine its records.

It is noteworthy that an LOA is a safeguard against abuses that may be perpetrated by revenue officers against taxpayers. An LOA guarantees a taxpayer that only persons named therein are allowed to examine its books of accounts and other accounting records. Hence, taxpayers have a right to deny other revenue officers not so named from auditing them for potential deficiency tax assessments.

Following the absence of an LOA authorizing Ms. Amapola San Juan to examiner petitioner, the deficiency tax assessments issued against it are void.

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[46] TSN for 18 June 2019 Hearing, pp. 7-8.
[47] *Id.*, at pp. 10-11.

Memorandum of Assignment No. 057-LA-0092-5/11/2015 cannot be treated as a valid LOA.

It may be argued that Memorandum of Assignment No. 057-LA-0092-5/11/2015, which referred petitioner's examination to Ms. Amapola San Juan, authorized Ms. Amapola San Juan to examine petitioner. However, a perusal of Memorandum of Assignment No. 057-LA-0092-5/11/2015 shows that it cannot be considered a valid LOA.

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

> 1. Regional Directors;
> 2. Deputy Commissioners;
> 3. Commissioner; and
> 4. Other officials that may be authorized by the Commissioner for the exigencies of service.[48]

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

In the case at bar, Memorandum of Assignment No. 057-LA-0092-5/11/2015 was merely signed by Revenue District Officer Ramer D. Narvaez of RDO 57.[49] As a Revenue District Officer is not one of respondent's duly authorized representatives who is allowed to issue an LOA, said Memorandum of Assignment cannot be considered a valid LOA which may authorize Ms. Amapola San Juan to perform an examination of petitioner's books of accounts and other accounting records.

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

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[48] Commissioner of Internal Revenue v. Sugar Crafts, Inc., CTA EB No. 1757, CTA Case No. 8738, Resolution, dated 10 September 2019.
[49] See Exhibit "R-1", Records, Vol. 1, p. 260; See TSN for 18 June 2019 Hearing, p. 11.

<u>Respondent failed to observe the fifteen (15)-day period given to taxpayers to file a Reply to the PAN.</u>

Yet another reason to grant the Petition is the denial of due process to petitioner. In ***Commissioner of Internal Revenue v. Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle – Health Science Institute), Inc.***,[50] the Court *En Banc* had the occasion to discuss the importance of the fifteen (15)-day period to file a Reply to the PAN *vis-à-vis* due process in tax assessment, *viz*:

> "As oft-repeated, Section 228 of the NIRC of 1997, as amended and RR No. 12-99, specifically Section 3.1.2 thereof, prescribed a fifteen (15)-day period from receipt of a PAN within which a taxpayer may respond thereto. It is well-settled that the right of the taxpayer to respond to the PAN is an important part of the due process requirement in the issuance of a deficiency tax assessment. In wantonly disregarding respondent's right to be heard with regard to its positions or arguments against the PAN, the BIR clearly violated respondent's right to due process as enshrined in Section 228 of the NIRC of 1997, as amended and RR No. 12-99. To be sure, procedural due process is not satisfied with the mere issuance of a PAN, sans giving the taxpayer an opportunity to respond thereto.
>
> In *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* the Supreme Court emphasized the importance of complying with the requirement to send a PAN to the taxpayer as an integral part of due process in the issuance of a deficiency tax assessment. It then declared in no uncertain terms that **<u>the failure of the CIR to strictly comply with the requirements laid down by law and its own rules</u>** is a denial of Metro Star's right to due process. Undeniably, providing the taxpayer with a copy of the PAN is meaningless to the concept of due process if, after all, his right to respond to it within the prescribed period would be ignored.
>
> Although petitioner was given ample opportunity to contest the Formal Letter of Demand dated January 9, 2009 and Assessment Notice No. 54-2005, **the fatal infirmity that attended its issuance prior to the lapse of the period to respond to the PAN is not cured thereby**. In *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue,* the Supreme Court categorically ruled that the non-compliance with statutory and procedural due process renders the final assessment notice as null and void, *viz:*
>
>> 'In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of

[50] CTA EB No. 1151, 17 February 2015

> statutory and procedural due process to contest the assessment before it was issued. xxx.'

It is worthy to note that, in a number of cases, the Court of Tax Appeals (CTA) has declared void any assessment that fails to comply with the due process requirement. In A Brown Co., Inc. vs. Commissioner of Internal Revenue, the CT A ruled that an assessment is void because of the multiple violations of due process committed by the BIR. The violations include, among others: **(1) issuance of the final assessment only four (4) days after the issuance of the PAN; and (2) the lack of opportunity given to the taxpayer to reply to the PAN within fifteen (15) days from its receipt.**

Similarly, in *Puratos Philippines, Inc. vs. Commissioner of Internal Revenue,* the Court ruled that:

> **'Given that the FAN was issued on the same day petitioner received the PAN, it is evident that respondent violated the provisions of Section 228 of the NIRC of 1997, as well as of the provisions of Revenue Regulations Nos. 12-85 and 12-99 and Revenue Memorandum Order No. 37-94, which give the taxpayer a period of fifteen days within which to reply to the PAN.** Even assuming that there was an Informal Conference that took place between petitioner and respondent, and that during the conference and even thereafter, petitioner, through its counsel, requested a copy of the FAN, the fact remains that as indicated in the FAN, it was issued on the same day the PAN was received by petitioner. Clearly, petitioner was denied of its right to due process.'

The above rulings were reiterated in Yumex Philippines Corporation vs. Commissioner of Internal Revenue wherein the assessments were cancelled on the ground of non-observance by the CIR of the 15-day period granted to the taxpayer to respond to the PAN, *viz*:

> 'Respondent violated Section 228 of the NIRC of 1997, as amended, and the provisions of Revenue Regulations No. 12-99, which give the taxpayer a period of fifteen days within which to reply to the PAN. **In view of respondent's violation of petitioner's right to due process, the assessment would thus be considered void.'**

In view of the palpable violation of respondent's right to procedural due process pursuant to Section 228 of the NIRC of 1997, as amended, and the provisions of RR 12-99, the Formal Letter of Demand dated January 9, 2009 and Assessment Notice No. 54-2005- - being fatally infirmed - - should be considered void.

Truth to tell, a void assessment bears no fruit and it cannot give rise to an obligation to pay deficiency taxes. In the absence of a valid assessment, there is no legal basis for petitioner to collect from respondent, through the Preliminary Collection Letter dated March 4, 2010, the deficiency EWT in the aggregate amount of Php3,531,893.24 (inclusive of interest and compromise penalty) for fiscal year ending May 31, 2005."

Applying the above ruling, petitioner was clearly deprived of its guaranteed period to file a Reply to the PAN. When it received a copy of the PAN on 1 February 2016,[51] petitioner became entitled to a full fifteen (15)-day period, or until 16 February 2014, within which to file a Reply to said PAN in order to contest the deficiency tax assessment contained therein before a final assessment is issued against it. Unfortunately, even before receipt of the PAN, respondent already issued an FLD and Assessment Notices on 12 January 2016.[52]

This was confirmed by the testimony of Ms. Amapola San Juan in her direct examination, when she testified that the PAN, the FLD and the latter's corresponding Assessment Notices were immediately issued by RR 9 after she forwarded her Memorandum dated 15 October 2015 with the entire docket of the case, and in her cross-examination, when she confirmed that the FLD's date was 12 January 2016 while the PAN was personally served to petitioner on 1 February 2016, *to wit:*

Direct Examination:

"39Q What happened to the Memorandum that you mentioned?

39A Our Memorandum dated October 15, 2015 with the entire docket of this case was forwarded and indorsed to the Office of the Regional Director, Revenue Region No. 9 – San Pablo City as shown by the 1st Indorsement dated October 15, 2015.

xxx xxx xxx

42Q After the entire docket of this case was forwarded and indorsed to Revenue Region No. 9, what happened next, if any?

42A I was informed that the Assessment Notices adopting our audit findings were issued and mailed to petitioner. I was also tasked to serve the Assessment Notices personally.

43Q You mentioned of the Assessment Notices, what are these Assessment Notices?

43A Preliminary Assessment Notice and Formal Letter of Demand with Audit Result/Assessment Notice (BIR Form 0401)."[53]

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[51] See Exhibit "P-5-a", BIR Records, p. 333-A; See TSN for 18 June 2019 Hearing, p. 9.
[52] See Exhibit "P-6" and "R-16", BIR Records, pp. 334-337; See Exhibit "P-7", BIR Records, p. 341; See Exhibit "P-7-A", BIR Records, p. 340; See Exhibit "P-7-B", BIR Records, p. 339; See Exhibit "P-7-C", BIR Records, p. 338; See Exhibit "R-17", BIR Records, pp. 338-341.
[53] See Judicial Affidavit of Revenue Officer Amapola Jane C. San Juan, Exhibit "R-14", Records, Vol. 1, p. 154.

Cross Examination:

"ATTY. MONTENEGRO

Q I would like to refer you to your answer to question no. 46 of page 8. I would just like to confirm that the Formal Letter of Demand you identified as Exhibit R-16 dated January 29, 2016, is that correct?

MS. SAN JUAN

A I think that is correct but can I check the docket.

ATTY. MONTENEGRO

Q Exhibit R-16?

MS. SAN JUAN

A Yes, this is the Formal Letter of Demand.

ATTY. MONTENEGRO

Q And the date is?

MS. SAN JUAN

A January 12, 2016.

ATTY. MONTENEGRO

Q My next question is on your answer to question no. 49, on page 8, I would just like to confirm your answer that you were the one who personally served the Preliminary Assessment Notice?

MS. SAN JUAN

A Yes sir, I personally served the Preliminary Assessment Notice.

ATTY. MONTENEGRO

Q And the date of your service was on?

MS. SAN JUAN

A The PAN was served on February 1, 2016."[54]

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[54] See TSN for 18 June 2019 Hearing, pp. 8-9.

From this, it is manifest that petitioner was not only denied the full fifteen (15)-day period guaranteed under ***Revenue Regulation No. 12-99*** within which to file a Reply to the PAN, it was also a victim of pre-judgment as a final assessment has been issued by the BIR even before it was allowed to contest the assessment found in the PAN. These severely violated petitioner's right to due process enshrined in the ***1987 Constitution, the Tax Code,*** jurisprudence, and related administrative issuances.

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

WHEREFORE, in view of the foregoing, the present Petition for Review is hereby **GRANTED**. The Assessment issued by respondent against petitioner for TY 2012 covering deficiency IT, EWT, DST and Compromise Penalty in the total amount of **EIGHT MILLION THREE HUNDRED SIXTY EIGHT THOUSAND EIGHT HUNDRED FOURTEEN AND 25/100 PESOS (PHP8,368,814.25)** is hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice