REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MID-LAND QC REALTY CORPORATION,
Respondent.

CTA EB No. 1463
(CTA Case No. 8711)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

Promulgated:
DEC 15 2017 1:05pm

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DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review* filed by Commissioner of Internal Revenue on June 13, 2016 against Mid-land QC Realty Corporation, praying for the reversal and setting aside of the Decision dated January 22, 2016[1] and Resolution dated May 11, 2016[2], both rendered by the Second Division of this Court (Court in Division) in CTA Case No. 8711, entitled *"Mid-Land QC Realty Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read:

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[1] EB Docket, pp. 18 to 45; Penned by Associate Justice Caesar A. Casanova, and concurred by Associate Justice Juanito C. Castañeda, Jr. and retired Associate Justice Amelia R. Cotangco-Manalastas.
[2] EB Docket, pp. 47 to 52; supra.

Decision dated January 22, 2016:

> "**WHEREFORE,** premises considered, the Petition for Review is **GRANTED**. The Final Assessment Notice, Assessment Notice No. F-039-LNTF-07-VT-033 for Value-Added Tax, and Assessment Notice No. F-039-LNTF-07-IT-033 for Income Tax for the calendar year 2007, are declared **NULL** and **VOID**. Accordingly, the Warrant of Distraint and/or Levy for the amount of Eight Million Two Hundred Fifty Four Thousand Six Hundred Twelve Pesos and 29/100 (₱8,254,612.29) is **CANCELLED** and deemed **WITHDRAWN**.
>
> **SO ORDERED.**"

Resolution dated May 11, 2016:

> "**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration**, is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner is the duly appointed Commissioner of Internal Revenue, who holds office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

Respondent Mid-Land QC Realty Development Corporation is a corporation organized and existing under the laws of the Philippines with office address at #65 Broadway Ave., New Manila, Quezon City 1112. It is a registered taxpayer with Taxpayer Identification Number (TIN) / Value-Added Tax (VAT) Registration No. 238-613-832-000 effective June 8, 2005, and with BIR Certificate of Registration No. 3RC0000309310 issued by BIR Revenue District Office No. 39 (Quezon City).

Respondent received a copy of the *Letter Notice* (LN) No. 039-TRS-07-00-00120 dated March 15, 2010 from the BIR, stating that a computerized matching was conducted on information/data provided by the Details of Withholding Agents/Payors and Payees/Income Recipients Records of withholding agent, Fresh N Famous Food, Inc. against the declaration of the respondent's income tax returns and VAT for 2007, and alleged tax deficiencies were found.

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Subsequently, respondent received a follow-up letter from the BIR, informing the former of the discrepancy resulting from the Reconciliation of Listing as declared in tax returns filed for calendar year (CY) 2007, instructing it to refute the validity of the findings of the BIR and to present documentary evidence to reconcile the variances indicated in the LN No. 039-TRS-07-00-00120 dated March 15, 2010 as well as to settle the basic taxes.

On May 18, 2011, respondent received a *Preliminary Assessment Notice* (PAN) dated March 15, 2011, assessing respondent for alleged deficiency income tax and VAT in the aggregate amount of ₱8,254,612.29, inclusive of interests, for the CY 2007.

Thereafter, on July 6, 2012, respondent received a *First Notice Before Issuance of Warrant of Distraint and Levy* dated June 21, 2012 which indicated that it pertained to Assessment No. F-039-LNTF-07-VT-033/2007 in the amount of ₱8,254,612.29 for income tax and VAT for CY 2007.

On July 26, 2012, respondent received a *Final Notice Before Issuance of Warrant of Distraint and Levy* dated July 5, 2012 which indicated the same Assessment No., in the same amount of taxes, and for the same CY.

Respondent received, on August 23, 2013, a *Warrant of Distraint and/or Levy*, containing only its name and address, assessment/Demand No. F-039-LNTF-07-VT-033/2007, date issued 05-03-12, kind of tax IT/VT, year 2007, amount ₱8,254,612.29, signed by Clavelina S. Nacar, with all other blanks unfilled.

On September 23, 2013, respondent filed a *Petition for Review* before the Court in Division. The case was docketed as CTA Case No. 8711.

Petitioner filed his *Answer* on November 26, 2013, and interposed certain Special and Affirmative Defenses, to wit: that contrary to respondent's claim, both the *Notice for Informal Conference* and *Final Assessment Notice* (FAN) were duly sent to and received by respondent; that the Court in Division has no jurisdiction over respondent's *Petition for Review*, since the subject assessments already became final, demandable, and unappealable on account of respondent's failure to file a protest to the *Formal Letter of Demand* and assessment notices as mandated by Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended, and Section 3.1.5 of Revenue Regulations (RR) No. 12-99; that the assessments have not yet prescribed, since the same were issued on April 1, 2011 or within the three (3) year period mandated by Section 203 of the 1997 NIRC, as amended; that assuming *arguendo* that petitioner failed to issue the subject assessments within the three (3) year period under the said Section 203, still, the government's right to assess respondent for deficiency income tax and VAT for taxable year 2007 in the total amount of ₱8,254,612.29 has not yet prescribed; that the income tax and VAT deficiencies for CY 2007 has factual basis; that well-settled is the rule that the tax assessments by tax examiners are presumed correct and made in good faith; and that it is the taxpayer and not the BIR who has the duty of proving otherwise.

The case was set for pre-trial conference on January 16, 2014.

After the parties filed their *Pre-Trial Briefs*, they entered into a *Joint Stipulation of Facts and Issues* (JSFI). The Court in Division then issued the Pre-Trial Order, approving the JSFI, terminating the pre-trial, and setting the initial presentation of evidence for the respondent on February 26, 2014.

Respondent presented its witness, Ms. Angelina Salomon-Butac, who by way of Judicial Affidavit, testified that during the time she was retained as respondent's External Auditor, she received from petitioner the following: (1) *Letter Notice* (LN); (2) *Follow-up Letter*; (3) *Preliminary Assessment*; (4) *First Notice before Issuance of Warrant of Distraint and Levy*; (5) *Final Notice before Issuance of Warrant of Distraint and Levy*; and (6) *Warrant of Distraint and/or Levy*. However, she denied receipt of the *Notice for Informal Conference* and *Formal Letter of Demand* and *Assessment Notice*. She then filed with petitioner the letter dated July 20, 2012, protesting the assessment because it used as basis the Details of Withholding Agents/Payors And Payees/Income Recipients Records of Fresh N' Famous Foods, Inc. ("Chowking") which made erroneous reports on ATC WC 158 in the amount of ₱10,294,245.00 and ATC WC 120 in the amount of ₱467,462.00.

Thereafter, respondent submitted its *Formal Offer of Evidence* on March 7, 2014, offering Exhibits "A" to "R", with sub-markings. The Court in Division issued the Resolution dated April 15, 2014, admitting all exhibits, except Exhibits "M", "P", and "Q". In the Resolution dated May 20, 2014, the Court in Division eventually admitted Exhibits "P" and "Q", while Exhibit "M" was still denied.

On the other hand, petitioner presented his lone witness, Revenue Officer (RO) Cristy E. Rejuso, who testified by way of Judicial Affidavit, that she was then a member of the LN Task Force assigned to investigate respondent's discrepancy/ies on income tax and VAT for taxable year 2007 per LN No. 039-TRS-07-00-00120. The said LN was based on Details of Withholding Agents/Payors and Payees/Income Recipients Records against respondent's declarations per income tax and VAT for the year 2007. The *Follow-Up Letter* dated May 18, 2010 and a *Notice for Informal Conference* with Registry Receipt dated/posted November 25, 2010 were issued to respondent. She then prepared and submited her Audit Report on VAT and income tax, and a Memorandum Report finding respondent liable for deficiency income of ₱5,857,888.41 and deficiency VAT of ₱2,396,723.88. Thereafter, the PAN with Details of Discrepancies dated March 15, 2011 and FAN with Details of Discrepancies dated April 1, 2011 were issued to respondent.

On July 7, 2014, petitioner filed his *Formal Offer of Evidence*, consisting of Exhibits "R-1" to "R-14-A" which were all admitted by the Court in Division in the Resolution dated August 14, 2014.

In rebuttal, respondent presented Ms. Clarissa R. Hornilla, Tax Manager of Jollibee Worldwide Services who identified the Letter of Fresh and Famous Foods, Inc. to respondent dated July 11, 2012. Respondent's second rebuttal witness, Assistant Regional Director of Revenue Region No. 9, Clavelina Sim Nacar, testified on the issuance of the *Warrant of Distraint and/or Levy*.

Respondent's *Supplemental Formal Offer of Evidence*, offering Exhibit "U-Rebuttal", was admitted in the Court in Division's Resolution dated October 22, 2014.

The case was then submitted for decision on January 23, 2015, after the *Memorandum* for the respondent and petitioner's *Memorandum* were filed on November 20, 2014 and January 20, 2015, respectively.

In the assailed Decision,[3] respondent's *Petition for Review* was granted by the Court in Division, and the FAN, Assessment Notice No. F-039-LNTF-07-VT-033 for VAT, and Assessment Notice No. F-039-LNTF-07-IT-033 for income tax for CY 2007 were declared null and void. As a consequence, the *Warrant of Distraint and/or Levy* for

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[3] EB Docket, pp. to; Division Docket (CTA Case No. 8711), pp. 326 to 353.

the amount of ₱8,254,612.29 was cancelled and withdrawn by the Court in Division

Petitioner filed its *Motion for Reconsideration* on February 9, 2016.[4]

On May 11, 2016, the Court in Division rendered the assailed Resolution,[5] denying petitioner's *Motion for Reconsideration* for lack of merit, and ruled as follows:

1. There was lack of due process in the issuance of assessment notices, and thus, the *Warrant of Distraint and/or Levy* is invalid and unenforceable;
2. Even assuming both PAN and FAN were duly served upon respondent, the assessment notices would still be cancelled for lack of factual basis.

Thereafter, on May 27, 2016, petitioner filed before the Court *En Banc* a *Motion For Extension of Time (To file Petition for Review)*,[6] praying for a period of fifteen (15) days from May 28, 2016, within which to file his *Petition for Review.*

The Court *En Banc* then granted petitioner a final and non-extendible period of fifteen (15) days from May 28, 2016 or until June 12, 2016, within which to file the said *Petition for Review.*[7]

On June 13, 2016, petitioner filed the instant *Petition for Review.*[8]

Subsequently, in the Resolution dated August 1, 2016,[9] the Court *En Banc* ordered respondent to file its *Comment* to the instant Petition for Review ten (10) days from receipt thereof.

On August 24, 2016, respondent filed its *Comment* to the instant *Petition for Review.*[10]

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[4] Division Docket (CTA Case No. 8711), pp. 356 to 363.
[5] EB Docket, pp. 47 to 52; Division Docket (CTA Case No. 8711), pp. 371 to 376.
[6] EB Docket, pp. 1 to 3.
[7] Minute Resolution dated June 1, 2016, EB Docket, p. 4.
[8] EB Docket, pp. 5 to 15.
[9] EB Docket, pp. 58 to 59.
[10] EB Docket, pp. 60 to 62.

In the Resolution dated September 15, 2016,[11] the Court *En Banc* gave due course to the instant *Petition for Review*, and directed the parties to submit their respective memorandum.

Respondent filed its *Memorandum* on October 19, 2016.[12] Petitioner, however, failed to file his *Memorandum*.[13]

On December 16, 2016, the instant case was deemed submitted for decision.[14]

Hence, this Decision.

ASSIGNMENT OF ERRORS

Petitioner assigns the following errors supposedly committed by the Court in Division, to wit:

> "WITH ALL DUE RESPECT, THE DEFICIENCY INCOME TAX AND VAT ASSESSMENTS FOR THE YEAR 2007 ARE ALREADY FINAL, EXECUTORY, AND DEMANDABLE
>
> WITH ALL DUE RESPECT, THE SECOND DIVISION OF THE HONORABLE COURT ERRED IN HOLDING THAT THERE WAS LACK OF DUE PROCESS IN THE ISSUANCE OF ASSESSMENT NOTICES
>
> WITH ALL DUE RESPECT, THE SECOND DIVISION OF THE HONORABLE COURT ERRED IN HOLDING THAT THE ASSESSMENTS LACK FACTUAL BASIS".[15]

Petitioner's arguments:

Petitioner avers that the deficiency income tax and VAT assessments for the year 2007 are already final, executory, and demandable. He argues that based on Section 228 of the NIRC of 1997, as amended, and Section 3.1.5 of RR No. 12-99, respondent is

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[11] EB Docket, pp. 64 to 65.
[12] EB Docket, pp. 66 to 69.
[13] Records Verification dated November 23, 2017 issued by the Judicial Records Division of this Court, EB Docket, p. 70.
[14] Resolution dated December 16, 2016, EB Docket, pp. 72 to 73.
[15] EB Docket, pp. 7 to 8.

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required to file its protest against the FLD and Assessment Notices within thirty (30) days from the date of receipt thereof. According to petitioner, since the income tax and VAT assessments become final and unappealable by respondent's default as regards protesting the validity of the said assessments, there is no reason why petitioner cannot continue with the collection of the said deficiency taxes. Petitioner is likewise of the view that any objection against the assessment should have been pursued following the avenue paved in Section 228 of the NIRC of 1997, as amended.

Furthermore, petitioner contends that there was no lack of due process in the issuance of assessment notices, since the *Notice of Informal Conference* and FAN with *Details of Discrepancies* were both validly served to respondent.

Finally, petitioner claims that as early as 2005, assessments based on third party information was already sanctioned by Revenue Memorandum Order (RMO) No. 32-2005; and that this was based on the returns or declarations filed by third parties to which respondent had previous transactions, and the latter failed to disclose or declare with the BIR by underdeclaration or not filing any return.

Respondent's counter-arguments:

Respondent contends that the issues raised in the *Petition for Review* have already been sufficiently passed upon and fully discussed in the assailed Decision or Resolution of the *Motion for Reconsideration*. According to respondent, petitioner's allegations that the deficiency tax assessments in question were issued in accordance with law and were already final, executory, and demandable, and that there was factual basis for the questioned assessments, are both bereft of merit.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

There was indeed lack of due process.

Petitioner insists that the subject tax assessments have already attained finality, in view of the failure of respondent to file a protest against the same. In contending with the finding of lack of due process, petitioner presupposes that the BIR has validly served to respondent the required *Notice of Informal Conference* and FAN with *Details of Discrepancies*.

We do not agree. Petitioner failed to show that the BIR validly served on respondent the said notices. Thus, the subject tax assessments could not have attained finality for violation of the due process requirement under the law and regulations.

Section 228 of the NIRC of 1997 provides as follows:

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
>
> xxx xxx xxx
>
> **The taxpayer shall be informed in writing 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. xxx.
>
> xxx xxx xxx." *(Emphasis supplied)*

Relative thereto, Section 3 of RR No. 12-99,[16] embodies the due process requirement in the issuance of a deficiency tax assessment. Said provision states in part the following:

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[16] SUBJECT: Implementing the Provision of the National Internal Revenue Code of 1997 Governing the Rules of Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

"SECTION 3. ***Due Process Requirement in the Issuance of Deficiency Tax Assessment.—***

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.2 *Notice for informal conference* — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. **If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of 'Informal Conference,' in order to afford the taxpayer with an opportunity to present his side of the case.** xxx.

xxx xxx xxx.

3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX B hereof). **The same shall be sent to the taxpayer only by registered mail or by personal delivery.** If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof." *(Emphases and underscoring supplied)*

It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution. Thus, while taxes are the lifeblood of the government, the power to tax has its limits, in spite of all its plenitude.[17] Even as We concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that **it be exercised reasonably and in accordance with the prescribed procedure.**[18]

In other words, the persuasiveness of the right to due process reaches both substantial and procedural rights and **the failure of the Commissioner of Internal Revenue to <u>strictly comply</u> with the requirements laid down by law and its own rules is a denial of the taxpayer's right to due process**.[19]

In this case, to prove that the BIR has sent to respondent the required *Notice of Informal Conference* and FAN with *Details of Discrepancies*, petitioner presented, in his *Formal Offer of Evidence*,[20] *inter alia*, the following Exhibits, to wit:

Exhibit	Description	Purpose
"R-5"	Registry Receipt dated/ posted 25 November 2010 (*page 182, CTA case docket*)	To prove that the Notice for Informal Conference dated 24 November 2010 was mailed and sent to [respondent].
"R-13"	Registry Return Receipt	To prove that the FAN with Details of Discrepancies dated 1 April 2011 and Assessment Notices for deficiency VAT and income tax were sent to [respondent].

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

[18] *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014, citing *Commissioner of Internal Revenue vs. Algue, Inc.*, 241 Phil. 829, 836 (1988).

[19] Refer to *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, supra, citing *Tupas v. Court of Appeals*, G.R. No. 89571, February 6, 1991.

[20] Division Docket (CTA Case No. 8711), pp. 273 to 276.

Parenthetically, the foregoing Exhibits of petitioner, as well as his other Exhibits, were admitted by the Court in Division in the Resolution dated August 14, 2014.[21] Nevertheless, the foregoing Exhibits failed to establish that respondent was informed of the said *Notice of Informal Conference* and FAN with *Details of Discrepancies*, especially considering that respondent has denied the receipt thereof.

In *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.*,[22] the Supreme Court held:

> "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 [the taxpayer] 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 the mail, this is merely a disputable presumption subject to controversion, <u>the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee</u>.**
>
> **To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Posts or <u>the Registry return card which would have been signed by the taxpayer or its authorized representative</u>.** 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 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." *(Emphases and*

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[21] Division Docket (CTA Case No. 8711), p. 283.
[22] G.R. No. 202695, February 29, 2016.

underscoring supplied)

Based on the foregoing jurisprudential pronouncements, petitioner was able to prove the fact of mailing as regards the *Notice of Informal Conference* by virtue of Registry Receipt dated/posted November 25, 2010 (Exhibit "R-5"). However, in view of the direct denial of respondent,[23] petitioner should have proven further that the said *Notice of Informal Conference* was, in fact, received by the latter. Thus, for petitioner's failure to do so, it cannot be considered that the same *Notice* was received by respondent.

As regards the sending of the FAN with *Details of Discrepancies* and the subject Assessment Notices, while it may be true that petitioner was able to present the supposed Registry Return Receipt (Card) therefor (Exhibit "R-13"),[24] the same is unsigned by respondent or its authorized representative, or by any person for that matter. Correspondingly, the said FAN with *Details of Discrepancies* and the subject Assessment Notices cannot even be considered to have been mailed.

Hence, respondent cannot be considered to have failed to protest the subject tax assessments and that these assessments have attained finality, since respondent was not informed thereof, in violation of its right to due process.

Nevertheless, even granting that We find that there was no violation of respondent's right to due process, the subject tax assessments may still be struck down on other grounds, as will be shown hereinafter.

Respondent may still refute the findings of the BIR based on the information and data from third party sources.

Petitioner claims that as early as 2005, assessments based on third party information were already sanctioned by RMO No. 32-2005; and that this was based on the returns or declarations filed by third parties to which respondent had previous transactions, and the latter

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[23] Refer to Exhibit "R", Division Docket (CTA Case No. 8711), pp. 163 to 166, at p. 165 (Q&A, No. 5)
[24] Division Docket (CTA Case No. 8711), p. 277.

failed to disclose or declare with the BIR by underdeclaration or not filing any return.

The contentions of petitioner are unmeritorious.

Without doubt, the system using third party information obtained by the BIR has already been recognized by this Court and the Supreme Court. However, a finding of the BIR using the said system is not ironclad, and thus, may still be assailed or refuted by the concerned taxpayer.

In *Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.* (PDI),[25] the Supreme Court said:

> "Reconciliation of Listing for Enforcement (RELIEF) System is an information technology tool used by the BIR to improve tax administration. The system was created –
>
> > x x x to support third party information program and voluntary assessment program of the Bureau through the cross-referencing of third party information from the taxpayers' Summary Lists of Sales and Purchases prescribed to be submitted on a quarterly basis pursuant to Revenue Regulations Nos. 7-95, as amended by RR 13-97, RR 7-99 and RR 8-2002.
>
> In addition –
>
> > [RELIEF] can detect tax leaks by matching the data available under the Bureau's Integrated Tax System (ITS) with data gathered from third party sources (i.e. Schedules of Sales and Domestic Purchases, and Schedule of Importations submitted by VAT taxpayers pursuant to RR No. 7-95, as amended by RR Nos. 13-97, 7-99 and 8-2002).
> >
> > Through the consolidation and cross-referencing of third party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over claimed purchases (goods and services). Timely recognition and accurate reporting of unregistered taxpayers and non-filers can be made possible.
>
> Using the RELIEF system, the BIR assessed PDI for deficiency VAT and income tax amounting to ₱3,154,775.57 and ₱1,525,230.00, respectively.

[25] G.R. No. 213943, March 22, 2017.

> According to the BIR, the computerized matching conducted by its office, using information and data from third party sources against PDI's VAT returns for 2004 showed an underdeclaration of domestic purchases from its suppliers amounting to ₱317,705,610.52. PDI denied the allegation.
>
> **In ruling on the case, the CTA recognized that the BIR may obtain information from third party sources in assessing taxpayers. The CTA also stated that the BIR enjoyed a presumption of regularity in obtaining the information, and its assessments are presumed correct and made in good faith. Indeed, the burden to controvert the assessments made by the BIR lies with the taxpayer. In this case, the CTA rejected BIR's finding that PDI underdeclared its input tax and purchases. <u>According to the CTA, PDI was able to disprove BIR's assessments</u>.**
>
> The general rule is that findings of fact of the CTA are not to be disturbed by this Court unless clearly shown to be unsupported by substantial evidence. Since by the very nature of its functions, the CTA has developed an expertise to resolve tax issues, the Court will not set aside lightly the conclusions reached by them, unless there has been an abuse or improvident exercise of authority." *(Emphasis and underscoring supplied)*

Moreover, in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[26] the Supreme Court held:

> "With the advances in information and communication technology, the Bureau of Internal Revenue (BIR) promulgated RMO No. 30-2003 to lay down the policies and guidelines once its then incipient centralized Data Warehouse (DW) becomes fully operational in conjunction with its Reconciliation of Listing for Enforcement System (RELIEF System). This system can detect tax leaks by matching the data available under the BIR's Integrated Tax System (ITS) with data gathered from third-party sources. Through the consolidation and cross-referencing of third-party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over claimed

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

purchases of goods and services.

> xxx xxx xxx
>
> xxx under the RELIEF System, the presumption that the tax returns are in accordance with law and are presumed correct since these are filed under the penalty of perjury are easily rebutted and **the taxpayer becomes instantly burdened <u>to explain</u> a purported discrepancy.**" *(Emphasis and underscoring supplied)*

In this case, respondent was able to refute the BIR's findings.

We quote with approval the ruling of the Court in Division in the assailed Resolution dated May 11, 2016 as regards the BIR's findings on the supposed discrepancy between the income declared per tax returns by respondent and the amount derived from the RELIEF system, to wit:

> "As found in the records of the case, the assessments arose after a computerized matching was conducted using [*petitioner*]'s Reconciliation of Listing for Enforcement (RELIEF) and Third Party Matching – BOC Data Program. There appeared a discrepancy between the income declared per tax returns and the amount derived from the system generated document involving one of [respondent]'s withholding agents, Fresh N Famous Foods, Inc. (FNF).
>
> [*Petitioner*]'s witness, Ms. Cristy E. Rejuso, testified that she was not involved in the generation of the 'Details of Withholding Agent/Payors and Payees/Income Recipient Records', a matching document electronically generated from the BIR's computer and used in the assessment. She further conceded that she did not verify the contents of the document from FNF.
>
> Meanwhile, [*respondent*]'s witness Ms. Clarissa Hornilla, Tax Manager of Jollibee Worldwide Services, appeared in open court and testified that they erroneously posted [*respondent*]'s name in their Alpha List. The said witness, a third party, credibly testified and acknowledged their oversight while preparing the FNF Alpha List of Suppliers which erroneously reflected purchases from [*respondent*] instead of purchases from another client of FNF.

Considering that the sole basis of assessment is an unverified and unauthenticated document, without any support of externally sourced data, and considering further that the discrepancy between the amount appearing in [*respondent*]'s tax returns and Details of Withholding Agent/Payors and Payees/Income Recipient Records was the result of an erroneous posting committed by [*respondent*]'s withholding agent, the assessment must therefore fail."

In any event, even if We assume further that respondent was not able to refute the BIR's findings, the subject tax assessments is still considered void.

There was no Letter of Authority issued for the investigation of the records of respondent. Thus, the resulting tax assessments are void.

A careful examination of the case *a quo* would disclose that no Letter of Authority (LOA) was issued against respondent for taxable year 2007. Thus, the subject tax assessments are void.

The LN No. 039-TRS-07-00-00120 dated March 15, 2010 issued to respondent will not suffice. This is the ruling of the Supreme Court in the same case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[27] to wit:

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

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[27] Supra.

> 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 (Emphasis and underlining ours)

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

xxx xxx xxx

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[28] 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)

The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the

[28] 649 Phil. 519 (2010).

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LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.

The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. Simply put, LN is entirely different and serves a different purpose than an LOA. <u>Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner.</u> Unfortunately, this was not done in this case.

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.

The BIR's RELIEF System has admittedly made the BIR's assessment and collection efforts much easier

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> **and faster. <u>The ease by which the BIR's revenue generating objectives is achieved is no excuse however for its non-compliance with the statutory requirement under Section 6 and with its own administrative issuance</u>. <u>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.**
>
> 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.**" *(Emphases and underscoring supplied*

Based on the foregoing jurisprudential pronouncements, before an examination of the taxpayer may be validly done, it is a legal requirement that there must first be an LOA issued to the concerned revenue examiners, unless the petitioner (the Commissioner of Internal Revenue) himself or his duly authorized representative will conduct such an examination; and an LN does not suffice, simply because an LN is entirely different and serves a different purpose than an LOA. Without such an LOA, the resulting assessment or examination is a nullity.

In this case, there is no indication that an LOA was issued against respondent. The BIR came up with the subject tax assessments only on the basis or pursuant to an LN, particularly, LN

No. 039-TRS-07-00-00120 dated March 15, 2010. Thus, for lack of an LOA, the said tax assessments are void.

All told, the instant *Petition for Review* must perforce fail.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated January 22, 2016 and Resolution dated May 11, 2016, both rendered by the Court in Division in CTA Case No. 8711 are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
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