REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1948 (CTA Case No. 9181)
-versus-	Present: DEL ROSARIO, *PJ*, CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ*.
PHILIPPINE INTERNATIONAL AIR TERMINALS CO. INC., Respondent.	Promulgated: JUN 29 2020 4:08 p.m.

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DECISION

Fabon-Victorino, J.:

This Petition for Review[1] dated March 19, 2018 filed by the Commissioner of Internal Revenue challenges the Decision[2] and Resolution[3] respectively dated June 6, 2018 and September 4, 2018, rendered by the Court in Division in CTA Case No. 9181, which invalidated petitioner's deficiency income tax (IT) and value-added tax (VAT) assessments, together with increments he issued against respondent for taxable year (TY) 2011.

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1 *Rollo*, pp. 6-15.
2 Ibid. at pp. 17-31.
3 Id. at pp. 33-38.

The facts as established during the trial of the case.

Petitioner is the Commissioner of Internal Revenue (CIR) with office address at Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City. He may be served with court processes through Attorney Wilmer B. Dekit at the Legal Division, BIR Revenue Region No. 8, 2/F BIR Building, 313 Senator Gil J. Puyat Avenue, Makati City.

Respondent, on the other hand, is a domestic corporation with address at the 3rd Floor, PAIR-PAGS Center, NAIA Compound, NAIA Avenue, Pasay City. It may be served with court notices and processes through its counsel, Quasha Ancheta Peña & Nolasco at the 6th Floor of Don Pablo Building, 114 Amorsolo Street, Legaspi Village, Makati City.

In the undated Letter Notice (LN) No. 051-RLF-11-00-00158, respondent was informed that the BIR computerized-matching system revealed that a comparison between its declarations in its tax return and the summary list of sales submitted by its suppliers yielded discrepancies amounting to ₱3,571,428.57 allegedly corresponding to its unaccounted purchases.[4]

Subsequently, petitioner issued an undated Follow-Up Letter, reminding respondent that a corresponding review and issuance of a Notice of Informal Conference (NIC), Letter of Authority (LOA), Preliminary Assessment Notice (PAN) or Final Assessment Notice (FAN) shall follow in the event that it failed to refute, or reconcile the discrepancy indicated in the previously issued LN.[5]

On July 1, 2014, respondent filed a Letter dated June 30, 2014, informing petitioner[6] that it did not receive the alleged LN or any BIR correspondence relative to its alleged undeclared income.[7]

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4 Exhibit R-1.
5 Exhibit P-3.
6 through BIR Pasay Revenue District Officer Atty. Shirley A. Calapatia.
7 Exhibit P-4.

On February 12, 2015, respondent received[8] a PAN[9] with Details of Discrepancy dated February 10, 2015, finding it liable for deficiency IT and VAT with increments for TY 2011. The PAN deemed respondent's alleged undeclared purchases as unreported income subject to tax.

On February 27, 2015, respondent replied to the PAN, explaining that since it never commenced commercial operations, there could be no taxable income from which IT and VAT liability would attach.[10]

On March 16, 2015, respondent received[11] a Formal Assessment Notice[12] with Details of Discrepancy,[13] and assessment notices for IT[14] and VAT,[15] all dated March 9, 2015, assessing it for alleged deficiency IT and VAT, with increments covering TY 2011 in the aggregate amount of ₱3,169,843.45, broken down as follows:

I. Income Tax		
Taxable Income/(Loss) per Return		P -
Add: Adjustments		
Undeclared Income (Schedule 1)		3,571,428.57
Adjusted Taxable Income		P 3,571,428.57
Deficiency Income Tax		P 1,071,428.57
Add: Surcharge (50%)	P 535,714.29	
Interest (4/16/12 to 4/17/15)	643,444.23	1,179,158.52
TOTAL AMOUNT STILL DUE		P 2,250,587.09
II. Value-Added Tax		
Sales per VAT returns		P -
Add: Undeclared Sales/Receipts		3,571,428.57
Sales subject to VAT		P 3,571,428.57
Deficiency VAT		P 428,571.43
Add: Surcharge (50%)	P 214,285.71	
Interest (1/26/12 to 4/17/15)	276,399.22	490,684.93
TOTAL AMOUNT STILL DUE		P 919,256.36

8 Notations in respondent's reply to the PAN. See Exhibit P-6.
9 Exhibits P-5 to P-5-3.
10 Exhibit P-6.
11 Notations in respondent's protest to the FAN. See Exhibits P-10 to P-10-6.
12 Exhibit P-9 and P-9-1.
13 Exhibit P-9-2.
14 Exhibit P-7.
15 Exhibit P-8.

On April 8, 2015, respondent protested the FLD/FAN, reiterating its position that failure to commence any business activity negates the impression of alleged undeclared income for TY 2011. Moreover, the funds it generated during the pertinent period were not income but only advances extended to it by its stockholders.[16]

On May 20, 2015, respondent received petitioner's Letter dated May 18, 2015, informing it that its entire tax docket together with its protest letter would be endorsed to Revenue District Office (RDO) No. 51-Pasay City for reexamination.[17]

In petitioner's Letter dated June 17, 2015 and received by respondent on June 19, 2015, the latter was informed that the entire docket of the case was reassigned to Revenue Officer Jason O. Vergara under the supervision of Group Supervisor Liza C. Dimaya for further evaluation.[18]

On November 3, 2015, respondent filed a Petition for Review before the Court in Division, steadfast in its position that it did not realize any taxable income as: a) it never commenced commercial operations; and b) its monies for TY 2011 originated from stockholder advances which could not be considered income.

On June 6, 2018, the Court in Division rendered the challenged Decision,[19] disposing the case as follows:

> **WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessments for deficiency income tax and VAT under Assessment Notice Nos. IT-LN0158-11-15-342 and VT-LN0158-11-15-342 for taxable year 2011 are **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED.**

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[16] Exhibit P-10 to P-10-6.
[17] Exhibit P-11.
[18] Exhibit P-12.
[19] See Note 2.

In so ruling, the Court in Division ratiocinated that since a valid Letter of Authority (LOA) is decreed by Revenue Memorandum Circular (RMC) No. 32-2005 and jurisprudence for the efficacy of an assessment, his findings of deficiency taxes embodied in the FAN/FLD, predicated upon such LN *sans* a valid LOA, is a patent nullity and without any legal effect.

Unrelenting, petitioner moved,[20] but failed[21] to obtain a favorable reconsideration of the impugned Decision with the Court in Division. Hence, this appeal.

Petitioner maintains that the Tax Code allows the BIR to scrutinize any record or data of a taxpayer such as respondent, to determine its tax liability.[22] Section 6 thereof allows his authorized representative to issue tax assessments based on best evidence obtainable, inventory taking, surveillance, as well as prescribing gross sales and receivables. Since the Tax Code sanctions various methods to arrive at respondent's alleged unreported income, an examination of its tax liability based on a LN without any LOA, could have legal effect.

Further, Revenue Memorandum Orders (RMOs) Nos. 30-2003 and 42-2003 allow the no-contact-audit-approach examination and assessment of a taxpayer, such as respondent, via a duly issued LN. Allegedly, its tax liability was assessed and computed by matching computer-generated data with its declarations in its tax returns, the results of which were reflected in the duly issued LN.

That no LOA was issued for purposes of assessment is of no moment as it was he who personally who authorized respondent's examination through LN. Petitioner claims that in one case,[23] this Court held that a LN is deemed a notice of audit or investigation to a taxpayer. Further, since respondent's books of accounts were not subjected to audit, a mere LN would suffice for purposes of assessment.

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20 Petitioner's Motion for Reconsideration dated June 26, 2018, *rollo,* pp. 39-43.
21 See Note 3.
22 Petitioner additionally cites the foreign case of *Campbell, Jr. vs. Guetersloh,* 287 F.3d 878 (1961) as authority.
23 *Big AA Corporation vs. Bureau of Internal Revenue,* CTA Case No. 7093, February 22, 2006.

Petitioner believes that the issuance of a LN granting respondent the opportunity to rebut his findings of undeclared income stated in the subsequent Follow-Up Letter, the issuance of a PAN and a FAN with Details of Discrepancy, clearly convey his compliance with the due process requirement on assessment under Section 228 of the NIRC, as amended. In closing, he insists that respondent must be held wholly accountable for deficiency IT and VAT, with statutory increments, covering TY 2011 in the amount of ₱3,169,843.45.

In its *Comment* dated December 20, 2018,[24] respondent states that the matters set forth by petitioner in the present appeal merely mimic his arguments in his previously filed pleadings, all of which have been squarely discussed and addressed by the Court in Division in the assailed Decision and Resolution respectively dated June 6 and September 4, 2018. Be that as it may, the *Campbell* case invoked by petitioner, holding that the BIR's examination not only includes audit of books or accounting record, but also gathering information or data from other sources to determine existence of taxable income is foreign authority, hence, may not constitute a binding precedent in resolving the present controversy.[25]

Respondent further posits that the ruling of the High Court in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[26] finds application in the present case, invoking the legal tenet of *stare decisis.*[27] In the said case, it was held that a LN should be converted to a LOA before any BIR personnel may further continue with audit or examination of a taxpayer, the failure of which taints the assessment with nullity. Given that petitioner neither issued a valid LOA nor converted his previously issued LN to a LOA, the examining revenue officers were not legally endowed with competence to commence audit against it. On this account, the cancellation of the petitioner's deficiency IT and VAT assessments for TY 2011 issued against it is in order.

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24 *Rollo,* pp. 48-68.

25 Respondent cites the case of *Philippine Airlines, Inc. vs. Court of Appeals,* G.R. No. L-54470, 1990 in support of its argument.

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

27 Respondent invokes the case of *Lazatin vs. Desierto,* G.R. No. 147097 as basis of its position.

THE RULING OF THE COURT

We deny the instant petition.

Section 6(A) of the NIRC, as amended generally confines the authority to examine any taxpayer to petitioner or to his duly authorized representative. By way of exception, the same provision allows BIR personnel to audit the taxpayer provided that they are armed with an authority from petitioner or his authorized representative duly issued for that purpose, thus:

> 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: xxx.

Pertinently, Section 13 of the NIRC, as amended, mandates that a valid LOA must be issued by petitioner or his authorized representative in favor of a revenue officer(s) performing assessment functions to clothe the said RO(s) with legal competence to audit or examine any taxpayer, *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.

In fine, a LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated RO(s) to examine, verify, and scrutinize a taxpayer's books of accounts and other accounting records, in relation to internal revenue tax liabilities for a *particular period.*[28] In other words, the absence of such an authority renders the assessment or tax examination a patent nullity.[29]

Without pretension, petitioner admits that no valid LOA was issued by him or his authorized representative in favor of RO Roleo Legarda and group supervisor (GS) Narissa B. Ty to conduct examination of respondent for TY 2011. Their competence to audit respondent for the period concerned merely stemmed from a Memorandum of Assignment (MOA) dated February 15, 2013 issued by Corazon M. Montes, OIC Revenue District Officer,[30] and an undated LN No. 051-RLF-11-00-00158.[31] It simply means that the investigation on respondent by RO Legarda and GS Ty from which the deficiency IT and VAT assessments were predicated was without the requisite prior authority from petitioner or his authorized representative rendering the FAN/FLD void and without legal consequence.

It is inaccurate, if not, fallacious for petitioner to claim that Section 6 of the NIRC, as amended, legally allows the examination of a taxpayer without the benefit of a valid LOA. Contrary to his posture, the methods in securing data enumerated therein, i.e., best evidence obtainable, inventory-taking, surveillance, and presumptive sales or receipts, are simply various approaches employed by the BIR employees or revenue officers to determine the correct amount of taxes which necessarily entail the issuance of corresponding authority to examine originating from petitioner or his authorized representative. Nothing is clearer than the ruling of the Final Arbiter in one case[32] where it held, thus:

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28 *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,* G.R. No. 183408, July 12, 2017. Italics in the original.

29 See *Commissioner of Internal Revenue vs. Sony Philippines, Inc.,* G.R. No. 178697, November 17, 2010.

30 BIR Record, p. 3.

31 Exhibit R-1.

32 See Note 26.

> 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.

Neither may petitioner be relieved from the adverse consequence of non-issuance of a LOA relative to the examination made by his agents on respondent just because he personally issued the subject LN. A LN by itself does not produce the same legal effect as that of a LOA despite having been issued by petitioner himself. RMO No. 32-2003 mandates that a previously issued LN must be transmuted to a LOA before BIR personnel may proceed with further examination and assessment of the taxpayer which was not obtaining in the case at bench. Borrowing the words of the High Court,[33] to wit:

> **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.

33 Ibid.

> **Simply put, LN is entirely different and serves a different purpose than an LOA. 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.** Unfortunately, this was not done in this case. (Emphasis supplied)

The Court must also reject petitioner's proposition that the issuance of a valid LOA is warranted only when the object of examination is the taxpayer's books of account or other accounting record. Sections 6(A) and 13 of the NIRC, as amended, is certainly not on petitioner's side relative to the kind or medium of information, figures, or data to be scrutinized are covered by a LOA. Irrespective of what was being audited or validated, and save when the validation of a taxpayer was personally conducted by petitioner or his authorized representative, a LOA is a mandatory precondition to the assessments' efficacy. *Ubi lex non distinguit nec nos distinguere debemus.* Where the law does not distinguish, courts should not distinguish.[34]

Even assuming *arguendo* that RO Legarda and GS Ty were indeed authorized to conduct audit or examination of respondent for TY 2011, the nullity of the assessment may not be ignored for it is not an assessment contemplated under the Tax Code and jurisprudence.

Article 1158[35] of the Civil Code provides *inter alia,* that *obligatio ex-lege,* such as taxes are not presumed and may only be demandable upon strict adherence with the law that establishes them. The pertinent law referred thereto is Section 6(A) of the NIRC, as amended which reads:

> SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.**

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34 See *Spouses Plopenio vs. Department of Agrarian Reform,* G.R. No. 161090, July 4, 2012; *Roble Arrastre, Inc. vs. Hon. Villaflor,* G.R. No. 128509, August 22, 2006; and *Commissioner of Internal Revenue vs. Central Drug Luzon Corporation,* G.R. No. 159647, April 15, 2005.

35 **Article 1158.** Obligations derived from law are not presumed. Only those expressly determined in this Code or in special laws are demandable, and shall be regulated by the precepts of the law which establishes them; and as to what has not been foreseen, by the provisions of this Book.

> (A)Examination of Return and Determination of Tax Due. –
>
> xxx
>
> The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

The term "assessment" refers to the determination of amounts due from a person obligated to make payments.[36] In the context in which it is used in the NIRC, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.[37] It must contain not only a computation of tax liabilities, but also a demand for payment within a prescribed period.[38] Thus, a final assessment notice provides for the amount of tax due with a demand for payment.[39] Its primary purpose is to determine the amount that a taxpayer is liable to pay.[40]

In this case, the FAN[41] dated March 9, 2015 allegedly referred to the enclosed notice containing the period for respondent to pay deficiency taxes and their corresponding increments:

> In view thereof, you are hereby required to pay the aforementioned deficiency tax liabilities through the duly authorized agent bank (AAB) in which you are enrolled <u>within the time shown in the enclosed assessment notice</u>. xxx[42]

but a closer look of the assessment notices for IT[43] and VAT[44] appended to the FAN dated March 9, 2015 reveals that the respective due dates for the respective payments of deficiency IT, VAT and their resultant statutory increments remained unaccomplished. On that account, respondent's

36 See *SMI-ED Phil. Technology, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 175410, November 12, 2014.
37 *Adamson vs. Court of Appeals,* G.R. No. 120935, May 21, 2009.
38 *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation,* G.R. No. 128315, June 29, 1999.
39 *Commissioner of Internal Revenue vs. Menguito,* G.R. No. 167560, September 17, 2008.
40 See *Tupaz vs. Hon. Ulep,* G.R. No. 127777, October 1, 1999.
41 Exhibit P-9, docket (CTA Case No. 9181), pp. 216-217.
42 Ibid. at p. 217. Underscoring supplied.
43 Exhibit P-7, docket (CTA Case No. 9181), p. 214.
44 Exhibit P-8, docket (CTA Case No. 9181), p. 215.

obligation to pay deficiency taxes may not be deemed to have accrued since the assessments in question are without a date certain or fixed period to settle the same. In other words, respondent cannot be made to account for taxes which in the first place were not legally demandable.

Article 2254 of the Civil Code decrees that no vested or acquired right can arise from acts which are against the law or which infringe upon the rights of others. A right cannot spring in favor of a person from his own void or illegal act or omission.[45] For petitioner's failure to *first,* issue a valid LOA before conducting examination on respondent; and *second,* provide a permanent and determinate due date to settle the taxes in the assessment notices issued against it, he cannot claim any right to collect taxes emanating from such flawed assessments.

WHEREFORE, the Petition for Review dated October 12, 2018 filed by the Commissioner of Internal Revenue is **DENIED**. The challenged Decision and Resolution respectively dated June 6, 2018 and September 4, 2018, both rendered by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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45 See *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation),* G.R. No. 194105, February 5, 2014.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice