REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1888** (CTA Case No. 8932)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** JJ.
LAPANDAY HOLDINGS CORPORATION, Respondent.	***Promulgated:*** NOV 18 2020 11:32 a.m.

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DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed on August 8, 2018 by petitioner, Commissioner of Internal Revenue against respondent, Lapanday Holdings Corporation, praying for the reversal and setting aside of the Decision dated January 24, 2018[2] and the Resolution dated July 5, 2018[3], both rendered by the Second Division of this Court (Court in Division) in CTA Case No. 8932, entitled *"Lapanday Holdings Corporation, Petitioner, versus*

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[1] EB Docket, pp. 5 to 16.

[2] Penned by Associate Justice Caesar A. Casanova, and concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Catherine T. Manahan, EB Docket, pp. 20 to 43.

[3] EB Docket, pp. 45 to 48.

Commissioner of Internal Revenue", Respondent, the dispositive portions of which, respectively read as follows:

Decision dated January 24, 2018:

> "**WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated October 24, 2014 for deficiency Value Added Tax in the total amount of ₱9,028,751.01 inclusive of surcharges and interests for taxable year 2008 is **CANCELLED**.
>
> **SO ORDERED**."

Resolution dated July 5, 2018:

> "**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 the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR Building, Diliman, Quezon City.

On the other hand, respondent Lapanday Holdings Corporation (or Lapanday) is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office address at 3rd Floor 8101 Lapanday Centre, 2263 Pasong Tamo Extension, Makati City. It is an investment holding company whose primary purpose is to handle, manage and own agricultural enterprises, except management of fund, securities, portfolios and other similar assets of the managed corporation similar entities.

Lapanday electronically filed its quarterly value-added tax (VAT) returns on the following dates:

Quarter (Year 2008)	Date Filed
1st Quarter	April 25, 2008
2nd Quarter	July 24, 2008
3rd Quarter	October 27, 2008
4th Quarter	January 26, 2009

On May 17, 2010, Lapanday received an undated Letter Notice LN No. 048-TRS-08-00-00027 issued by Commissioner Joel L. Tan-Torres, for the discrepancy on its gross sales/revenue/receipts.

On November 22, 2010, Lapanday received the *Notice for Informal Conference*, inviting it to appear for an informal conference to enable it to present its side of the case.

Thereafter, Lapanday received on August 3, 2012, the *Preliminary Assessment Notice* (PAN) with *Details of Discrepancies* with *Details of Discrepancies* dated May 31, 2012, assessing it of deficiency VAT in the amount of ₱7,394,067.98 for taxable year 2008.

On November 20, 2012, Lapanday received a *Formal Letter of Demand (*FLD) together with *Assessment Notice* No. F-048-LNTF-08-VT-0006 and *Details of Discrepancies*, all dated October 10, 2012 for the deficiency VAT on interest income in the amount of ₱7,479,323.97 for taxable year 2008.

Lapanday then filed its *Protest Memorandum* dated December 18, 2012, on December 19, 2012,

On January 8, 2013, Lapanday received a *Letter* dated January 3, 2013 stating that the entire docket together with the letter of protest will be forwarded to the Revenue District Office (RDO) No. 48-West Makati for appropriate action.

On January 18, 2013, Lapanday received a *Letter* dated January 8, 2013 informing it about the continuation of the audit investigation and the reassignment of the docket to Revenue Officer (RO) Magdalena Susana A. Ventura.

Lapanday submitted on February 14, 2013, a *Letter* dated February 12, 2013 stressing and showing the chronology of events to strengthen its position on the period of prescription.

Subsequently, on October 28, 2014, Lapanday received from the CIR the *Final Decision on Disputed Assessment* (FDDA) together with *the Details of Discrepancies*, all dated October 24, 2014, denying its protest.

Thus, Lapanday filed its *Petition for Review with Urgent Motion for the Suspension of Tax Collection*[4] before the Court in Division on November 24, 2014, entitled, *"Lapanday Holdings Corporation, Petitioner, versus Commissioner of Internal Revenue, Respondent,"* and docketed as CTA Case No. 8932.

The CIR filed his Answer in CTA Case No. 8932 on January 31, 2015, interposing special and affirmative defenses, among others, the following:

(1) Lapanday failed to substantiate or controvert by substantial evidence the BIR factual findings, as shown under the Details of Discrepancies attached to the PAN, FAN, Letter of Demand and the FDDA;

(2) That the CIR fully complied with the due process requirements mandated under Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations (RR) No. 12-99;

(3) That the assessment issued against Lapanday for deficiency VAT for taxable year ending 2008 was made in accordance with law and regulations;

(4) That assessments are prima facie presumed correct and made in good faith; and

(5) In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

During the hearing held on January 22, 2015, the Court denied

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[4] Division Docket (CTA Case No. 8932), pp. 6 to 31.

Lapanday's *Urgent Motion for the Suspension of Tax Collection* on the ground that the instant case involves an ordinary appeal on the FDDA of the BIR and that the latter has not yet issued any preliminary collection letter nor warrant of distraint/levy.

The Pre-Trial Conference was held on September 3, 2015 and the parties filed their *Joint Stipulation of Facts and Issues (or JSFI)* on October 2, 2015. The JSFI was approved by the Court in its Pre-Trial Order dated October 13, 2015.

During trial, Lapanday presented two (2) witnesses, namely: (1) Manolito B. Dagatan[5] and (2) Luzviminda T. Aguilar[6].

On March 17, 2016, Lapanday filed its *Formal Offer of Documentary Evidence* and after resolution[7] thereof, petitioner rested its case.

On June 29, 2016 and July 27, 2016, the CIR presented his sole witness, RO Magdalena Susana A. Ventura[8]. Thereafter, he filed his *Formal Offer of Evidence* on September 5, 2016. Upon resolution thereof, the CIR rested his case.

Lapanday filed its Memorandum on January 17, 2017; while the CIR filed his *Manifestation and Motion* on January 16, 2017, stating that he is adopting all his arguments in his Answer dated January 23, 2015. On February 6, 2017, the Court in Division issued a Resolution submitting CTA Case No. 8932 for decision.

On January 24, 2018, the Court in Division rendered its assailed Decision[9] granting the *Petition for Review* in CTA Case No. 8932. The Court *a quo* ordered the cancellation of the *Final Decision on Disputed Assessment* dated October 24, 2014 for deficiency VAT for taxable year 2008.

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[5] *Judicial Affidavit of Manolito B. Dagatan*, Exhibit "P-21", Division Docket (CTA Case No. 8932), pp. 314 to 322; *Amended Judicial Affidavit of Manolito B. Dagatan*, Exhibit "P-22", Division Docket (CTA Case No. 8932), pp. 276 to 284.

[6] *Judicial Affidavit of Luzminda T. Aguilar*; Exhibit "P-23", Division Docket (CTA Case No. 8932), pp. 251 to 255.

[7] Resolution dated May 6, 2016, Division Docket (CTA Case No. 8932), pp. 473-474.

[8] *Judicial Affidavit of Revenue Officer Magdalena Susana A. Ventura*; Exhibit "R-22", BIR Records, pp. 223 to 229.

[9] EB Docket, pp. 20 to 43; Division Docket (CTA Case No. 8932), pp. 526 to 549.

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On February 8, 2018, the CIR filed his *Motion for Reconsideration.*[10] Lapanday failed to file its comment thereto, as per *Records Verification Report*[11] dated April 3, 2018.

In the assailed Resolution[12] promulgated on July 5, 2018, the Court in Division denied the CIR's *Motion for Reconsideration* for lack of merit.

On July 19, 2018, the CIR filed a *Motion for Extension of Time to File Petition for Review*[13], before the Court *En Banc* praying for an extension of fifteen (15) days from July 24, 2018 or until August 8, 2018, within which to file his *Petition for Review*, which was granted by the Court *En Banc* on July 23, 2018.[14]

On August 8, 2018, the CIR then filed the instant *Petition for Review* before the Court *En Banc.*[15]

In the Resolution dated August 30, 2018,[16] Lapanday was directed to file its comment on the instant *Petition for Review* within ten (10) days from receipt thereof. On January 7, 2019, a *Records Verification Report*[17] was issued by the Judicial Records Division stating that Lapanday failed to file its comment.

In the Resolution dated February 21, 2019, the Court *En Banc* referred the instant case for mediation in the Philippine Mediation Center Unit– Court of Tax Appeals (PMCU-CTA) pursuant to Section II of the *Interim Guidelines for Implementing Mediation in the CTA* approved by the Supreme Court on January 18, 2011.[18]

On September 13, 2019, the PMCU-CTA returned the case to the Court *En Banc* in view of the non-appearance of both parties.[19]

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[10] Division Docket (CTA Case No. 8932), pp. 553 to 560.
[11] Division Docket (CTA Case No. 8932), p. 565.
[12] Division Docket (CTA Case No. 8932), pp. 567 to 570.
[13] EB Docket, pp. 1 to 3.
[14] Minute Resolution dated July 23, 2018, EB Docket, p. 6.
[15] EB Docket, pp. 5 to 17.
[16] EB Docket, pp. 50 to 51.
[17] EB Docket, p. 52.
[18] EB Docket, pp. 54 to 55.
[19] EB Docket, p. 56.

On September 24, 2018, a *Second Notice to Appear* was issued directing the parties to appear at the PMCU-CTA on October 28, 2019.[20] On October 31, 2019, the PMCU-CTA returned the case to the Court *En Banc* due to non-appearance of Lapanday.[21]

In the Resolution[22] dated November 15, 2019, the Court *En Banc* terminated the mediation proceedings; reinstated the Court's proceedings in the instant case; and ordered the CIR to submit a copy of Revenue Delegation Authority (RDAO) No. 2-2007 establishing the authority of Regional Director Glen A. Geraldino to execute the *Verification and Certification (Against Forum Shopping)*, within three (3) days from notice.

The CIR filed its *Compliance*[23] on November 28, 2019, submitting a certified true copy of RDAO Nos. 3-2006 and 02-2007.

On January 8, 2020, the instant case was deemed submitted for decision.[24] Hence, this Decision.

THE ISSUES

The CIR raises a sole issue for the resolution of the Court *En Banc,* to wit:

"ISSUES FOR RESOLUTION

I.

WHETHER OR NOT THE SECOND DIVISION OF THIS HON. COURT BLATANTLY ERRED IN CANCELLING THE FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) DATED OCTOBER 24, 2014 ISSUED BY PETITIONER TO HEREIN RESPONDENT INVOLVING ITS DEFICIENCY VAT IN THE TOTAL AMOUNT OF ₱9,028,751.01 (INCLUSIVE OF SURCHARGE AND INTEREST), FOR TAXABLE YEAR 2008, FOR BEING VOID AB INITIO, DUE TO ALLEGED LACK OF A LETTER OF AUTHORITY (LOA) OF THE REVENUE EXAMINERS WHO CONDUCTED THE AUDIT AND INVESTIGATION OF RESPONDENT'S BOOKS OF

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[20] EB Docket, p. 57.
[21] EB Docket, p. 58.
[22] EB Docket, pp. 60 to 63.
[23] EB Docket, pp. 63 to 70.
[24] EB Docket, pp. 72 to 74.

ACCOUNTS AND OTHER ACCOUNTING RECORDS FOR TAXABLE YEAR 2008."

The CIR's arguments:

The CIR argues that the authority to conduct the tax audit/investigation of Lapanday's deficiency taxes for taxable year 2008, subject of the assailed LN No. 048-TRS-08-00-0027, emanates from the power of the CIR under Section 6(A) of the 1997 NIRC, in relation to RMO No. 40-2003[25] and RMO No. 55-2010. Allegedly, the issuance of an LOA is not necessary under the RELIEF System of the BIR.

Further, it is the CIR's position that the doctrines enunciated by the Supreme Court in the cases of *Commissioner of Internal Revenue vs Sony Philippines Inc.*[26] ("*Sony* case") and *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[27] ("Medicard case"), cited by the Court in Division, are not applicable to the issues in the instant case since the facts therein are not on all fours with the case at bar.

The CIR likewise contends that the issue of lack of LOA cannot be raised for the first time on appeal before the Court *a quo* since Lapanday failed to raise such issue in the administrative level of the BIR.

Finally, the CIR maintains that it is a settled rule that the VAT assessment is prima facie presumed correct and made in good faith, and that Lapanday has the duty of proving otherwise.

THE COURT *EN BANC'S* RULING

The *Petition for Review* is bereft of merit.

The Court is empowered to resolve related issues necessary to achieve an orderly disposition of the case.

The CIR argues that the issue of the lack of authority of the revenue officers cannot be raised for the first time on appeal before

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[25] Should be RMO No. 42-2003.
[26] GR. No. 178697, November 17, 2010.
[27] G.R. No. 222743, April 5, 2017.

the Court *a quo* since Lapanday failed to raise such issue in the administrative level of the BIR.

We disagree.

The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts.[28]

In the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,*[29] the Supreme Court recognized the CTA's power to rule on related issues necessary to achieve an orderly disposition of the case, to wit:

> "**On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.**
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
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> > SECTION 1. *Rendition of judgment.* – xxx
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
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> **The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or**

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[28] *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010.
[29] G.R. No. 183408, July 12, 2017.

> **memoranda.** The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter." *(Emphasis and underscoring supplied)*

In the aforequoted ruling, the Supreme Court did not only affirm this Court's authority to rule upon related issues necessary to achieve an orderly disposition of the case; but also specifically states that the **CTA may consider the question on the scope of authority of revenue officers** who were named in the LOA, which impliedly covers the issue of whether an RO is authorized through an LOA.

Thus, We find that the Court in Division did not err in resolving the issue on the authority of the revenue officer/s in this case.

The revenue officers were <u>not</u> duly authorized to conduct the audit investigation; hence, the resulting tax assessments are void.

Section 6(A) of the NIRC of 1997, as amended lays down the power of the CIR or his duly authorized representative to authorize the examination of any taxpayer and the assessment of the correct amount of tax, to wit:

> "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, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>**: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." *(Emphasis and underscoring supplied.)*

Based on the foregoing, an authority emanating from the CIR or his duly authorized representative is required before an examination and an assessment may be made.

Relative thereto, Section 13 of the NIRC of 1997, as amended provides that the authority of a RO to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to a LOA, to wit:

> "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, <u>pursuant to a Letter of Authority issued by the Revenue Regional Director,</u> 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 and underscoring supplied.)*

Evidently, a grant of authority, through an LOA, must be issued assigning an RO to perform tax assessment functions, in order that such officer may examine taxpayers and collect the correct amount of tax, or to recommend the assessment of any deficiency tax due.

<u>*Medicard case is applicable in the case at bar.*</u>

In the instant case, a careful examination of the records of the case shows that **<u>no LOA</u>** was issued to Lapanday for taxable year 2008. Thus, We sustain the Court in Division's ruling that the subject tax assessment is void.

Contrary to the CIR's allegation, LN No. 048-TRS-08-00-00027[30] received by Lapanday on May 17, 2010, is not sufficient to cloth the revenue officers with authority to conduct the subject audit/investigation because said LN is not equivalent to an LOA.

The ruling of the Supreme Court in the *Medicard* case squarely applies to the instant case, to wit:

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

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[30] Exhibit "P-11", Division Docket (CTA Case No. 8932), p. 436.

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

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In the case of *Commissioner of Internal Revenue 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**. (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 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. Due process demands, as recognized under RMO No. 32-2005, that after an LN

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<u>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*, **<u>an LOA cannot be dispensed with</u>** 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 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 done, it is a legal requirement that there must first be an **LOA** issued to the concerned revenue examiners, unless the CIR 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 by the CIR to Lapanday. The BIR came up with the subject tax assessments only on the basis of LN No. 048-TRS-08-00-00027. Thus, the subject VAT assessment is void.

As regards the CIR's reliance on RMO No. 42-2003[31] dated October 23, 2003, and RMO No. 55-2010 dated June 11, 2010[32], the same is untenable. It bears emphasis that the issuance of an LOA cannot be dispensed with as the same would run counter to the aforequoted Section 6(A) of the NIRC of 1997, as amended, which is the substantive law on the matter; and the corresponding judicial pronouncement of the Supreme Court in the *Medicard* case, which became part of the legal system of the Philippines.[33]

As such, RMO Nos. 42-2003 and 55-2010 cannot be considered as legally binding[34] and must not be adhered to. A mere

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[31] SUBJECT: *Prescribing Additional Guidelines Governing the Rules on Assessment of National Internal Revenue Taxes covered by a Letter Notice (LN) issued under the RELIEF System as defined in Revenue Memorandum Order (RMO) No. 30-2003 and other data matching processes.*

[32] SUBJECT: *Revision in the Procedures on the Issuance of Letters of Authority.*

[33] Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines. (Article 8, Civil Code of the Philippines).

[34] Administrative or executive acts, orders or regulations shall be valid only when they are not contrary to the laws or the Constitution. [Article 7 *(last paragraph)*, Civil Code of the Philippines].

administrative issuance cannot amend the law; the former cannot purport to do any more than implement the latter.[35]

Relative thereto, it must be noted that the CIR, through the issuance of Revenue Memorandum Circular (RMC) No. 75-2018[36], recognized the ruling in the *Medicard* case, in this wise:

> "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, <u>through an LOA</u>. 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.'**
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> xxx xxx xxx
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> 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 supplied)*

Thus, We see no reason not to apply the foregoing pronouncement to the instant case.

<u>*The Sony Philippines case is applicable in the instant case.*</u>

We likewise disagree with the CIR's contention that the *Sony Philippines* case has no relevance to the instant case.

For ease of reference, We quote the pertinent ruling in the *Sony*

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[35] *Secretary of Finance Cesar V. Purisima, et al. vs. Philippine Tobacco Institute, Inc.*, G.R. No. 210251, April 17, 2017.

[36] SUBJECT: *The Mandatory Statutory Requirement and Function of a Letter of Authority.*

Philippines case, to wit:

> "**Based on Section 13 of the Tax Code, a Letter of Authority or 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.** The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
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>> 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, **the Commissioner or his duly authorized representative <u>may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from **authorizing the examination of any taxpayer.** x x x (Emphases supplied)
>
> **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.**" *(Emphases supplied)*

A more careful reading of the foregoing would reveal that the High Court has specifically interpreted Sections 13 and 6(A) of the NIRC of 1997, as amended, in this wise: (1) an LOA is the authority given to the appropriate RO assigned to perform assessment functions, and it empowers or enables said RO to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax; (2) there must be a grant of such authority before any RO can conduct an examination or assessment; and (3) in the absence of such authority, the assessment or examination is a nullity.

It must be remembered that judicial decisions (such the *Sony* case and the *Medicard* case) applying the laws [such as Sections 13 and 6(A) of the NIRC of 1997, as amended] or the Constitution shall form part of the legal system of the Philippines.[37] These decisions, although in themselves not laws, constitute evidence of what the laws mean. The application or interpretation placed by the Supreme Court upon a law is part of the law as of the date of the enactment of the said law since the High Court's application or interpretation merely establishes the contemporaneous legislative intent that the construed law purports to carry into effect.[38] In other words, judicial decisions of the Supreme Court assume the same authority as the statute itself.[39] This means that the above-stated interpretation of the High Court of Sections 13 and 6(A) of the NIRC of 1997, as amended, formed part of the said provisions as of the date of the law's enactment.

To reiterate, We find that the ROs who conducted the audit/investigation of Lapanday for taxable year 2008 were **not authorized through an LOA** to perform the said tax investigation. Accordingly, the subject VAT assessment which came about as a result of their examination of Lapanday's books of accounts and accounting records for taxable year 2008, is void. To stress, a void assessment bears no valid fruit.[40]

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated January 24, 2018 and Resolution dated July 5, 2018, both rendered by the Court in Division in CTA Case No. 8932 are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[37] Article 8, Civil Code of the Philippines (Republic Act No. 386).
[38] *Floresca, et al. vs. Philex Mining Corporation, et al.*, G.R. No. L-30642, April 30, 1985.
[39] *Id.*
[40] *Commissioner of Internal Revenue vs. Azucena T. Reyes, etseq.*, G.R. Nos. 159694 and 163581, January 27, 2006.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice