REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1818 (CTA CASE No. 8852)
	Present:
-versus-	DEL ROSARIO, P.J, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
CATERING PROFESSIONALS, INC., *Respondent.*	Promulgated: APR 29 2019 1:40 pm

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on July 28, 2018 is the Petition for Review for the Court *En Banc* under *Section 4(b), Rule 8*[1] *of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended,* of the Decision in the case entitled *Catering Professionals Inc. vs. Commissioner of Internal*

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[1] **SEC. 4.** *Where to appeal; mode of appeal.* –

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

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Revenue, docketed as CTA Case No. 8852, dated November 28, 2017,[2] and March 6, 2018,[3] both rendered by the former Second Division of this Court, the dispositive portions of which read as follows:

> <u>CTA Case No. 8852</u>
> <u>Decision dated November 28, 2017:</u>
>
> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assessment of petitioner's deficiency income tax and value added tax for the taxable year 2010, as well as the Preliminary Collection Letter and Final Notice Before Seizure issued by the respondent to enforce the collection of the said deficiency tax liabilities are **CANCELLED** and **DEEMED WITHDRAWN** for being **NULL AND VOID**.
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> **SO ORDERED.**"
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> <u>CTA Case No. 8852</u>
> <u>Resolution dated March 6, 2018:</u>
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> "**WHEREFORE,** finding no compelling reason to reverse the ruling of this Court in the assailed Decision, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

The facts of the case, as recited by the former Second Division in its Decision, read as follows:

> "Catering Professionals, Inc., is a corporation duly organized and existing under the laws of the Philippines, with principal office address at Unit 2 Phase 2 Busunuaga, Tierra Nueva, Cupang, Muntinlupa City.

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[2] Penned by former Associate Justice Caesar A. Casanova, concurred in by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Catherine T. Manahan *En Banc Docket*, pp. 10-34.
[3] *Ibid.,* pp. 36-38.

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On the other hand, respondent Commissioner of Internal Revenue is duly appointed and empowered to perform the duties of his office, including, among others, the power to decide, cancel and abate tax liabilities as provided by law.

Petitioner is registered with the Bureau of Internal Revenue (BIR) as evidenced by its Certificate of Registration bearing Tax Identification No. 227-315-088-000 and OCN 9RC0000107997, and is primarily engaged in the conduct of restaurant and catering services.

Sometime in 2012, petitioner received Letter Notice No. 53BRLF 10-00021 dated February 27, 2012, informing it that a computerized matching conducted by the BIR disclosed discrepancies on the information/data provided by third party sources against petitioner's declarations per VAT returns for the calendar year ended 2010.

On December 27, 2013, petitioner received a Preliminary Assessment Notice (PAN) dated December 26, 2013, finding that petitioner has deficiency income tax and VAT due for taxable year 2010. Thereafter, petitioner sent a letter dated January 7, 2014 addressed to the respondent thru Mr. Nestor Valeroso, requesting for a re-audit and reinvestigation of respondent's findings in the PAN.

Respondent later issued a Formal Assessment Notice (FAN) dated January 20, 2014, a Preliminary Collection Letter (PCL) dated May 29, 2014, and a Final Notice Before Seizure (FNBS) dated June 16, 2014, which were all allegedly received on June 30, 2014.

Due to the FNBS issued by respondent, petitioner filed the [instant] Petition for Review on July 30, 2014."

The former Second Division granted Catering Professionals Inc. (CPI)'s Petition for Review and cancelled the FAN, PCL and FNBS issued by the Commissioner of Internal Revenue (CIR) for being null and void. According to

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the Court in Division, a letter of authority (LOA) is absent in this case. Applying the Supreme Court case of *Medicard Philippines Inc. vs. Commissioner of Internal Revenue (the "Medicard Case"),*[4] in the absence of such authority, the assessment or examination is a nullity.

As *per* assailed Resolution herein, the former Second Division denied the CIR's Motion for Reconsideration, thus, the CIR filed this instant Petition for Review[5] before the Court *En Banc* on March 21, 2018.

As alleged in his Petition, the CIR merely anchored his stand on the failure of CPI to file its protest on time.

CPI filed its Comment[6] to the Petition for Review on June 14, 2018.

We rule.

CPI raised before the Court in Division that neither an LOA was ever served upon it, nor was there any actual audit conducted by the Bureau of Internal Revenue (BIR). This was not refuted by the CIR.

It must be emphasized that before any revenue officer may conduct an examination and issue an assessment, there must be a valid grant of authority in his or her favor.[7]

In the *Medicard Case*, the Supreme Court elucidated on the importance and significance of an LOA in examining the books of accounts and other accounting records of taxpayers and in assessing internal revenue taxes, to wit:

> "<u>An LOA is the authority given to the appropriate revenue officer assigned to perform assessment</u>

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[4] G.R. No. 222743, November 17, 2010.
[5] *En Banc Docket,* pp. 1-6.
[6] *Ibid.,* pp. 57-66.
[7] *Builder Steel Corporation vs. Hon. Kim S. Jacinto Henares, in her capacity as Commissioner of Internal Revenue, Alfredo V. Misajon and Nestor S. Valeroso, in their capacity as OIC-Assistant Commissioner Large Taxpayer Service, Bureau of Internal Revenue,* CTA Case No. 9050, December 17, 2018.

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

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

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.
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> 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 physicially 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.
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> 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." (Citations and emphases in the original omitted; underlinings supplied.)

Based on the foregoing, revenue officers must be authorized by an LOA to validly examine the accounting

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records of a taxpayer.[8] In the absence of such LOA, the tax assessments issued by the BIR shall be void.[9]

In the case at bar, the examination and assessment against CPI was made on the basis of a Letter Notice (LN) and not on a validly issued LOA. The Court in Division correctly applied the *Medicard Case* in ruling that the Court cannot convert the LN into the LOA as it is entirely different and serves a different purpose than an LOA, thus:

> "The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself.
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> xxx xxx xxx
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> 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 SIR'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 10 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.
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> xxx xxx xxx"[10]

It bears stressing that the authority of BIR examiners to conduct audit investigation goes into the validity of an assessment itself; as such, any assessment arising from the conduct of audit examination of a taxpayer's books of accounts by a BIR examiner who is not duly authorized to do so, is a complete nullity.[11] Thus, considering that the

[8] *Commissioner of Internal Revenue vs. Herbalife International Philippines, Inc.*, CTA EB No. 1612 & 1631, November 15, 2018.
[9] *Ibid.*
[10] *Supra*, note 4.
[11] *Enjay Hotels, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 9273, January 24, 2019.

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Revenue Officers who conducted the examination in this case were not validly authorized to do so, the assessment issued against CPI is void. It follows the time-honored principle that "a void assessment bears no valid fruit".[12] In view of the foregoing, this Court no longer needs to further elucidate on the merits of the subject assessments.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The Decision and Resolution dated November 28, 2017 and March 6, 2018, respectively, of the former Second Division in CTA Case No. 8852 are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

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[12] *Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation and Liquigaz Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 215534 and 215557, April 18, 2016.

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 among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice