REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2162** *(CTA Case No. 9766)*
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
DEL MONTE PHILIPPINES, INC., *Respondent.*	Promulgated: FEB 19 2021 11:30 am

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **Petition for Review**, filed last 8 November 2019,[1] with respondents' **Comment/Opposition (to the Petition for Review dated 4 November 2019) ("Opposition")**, filed on 28 January 2020.[2]

The Parties

Petitioner **COMMISSIONER OF INTERNAL REVENUE ("CIR")** is the Commissioner of the Bureau of Internal Revenue ("BIR") duly appointed to exercise the powers and perform the duties of his office

[1] Records, pp. 6-51.
[2] *Id.*, pp. 55-69.

including, inter alia, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the ***Tax Code***. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent **DEL MONTE PHILIPPINES, INC. ("DMPI")** is a corporation duly organized and existing under Philippine laws to engage in the business of processing, manufacturing, and packing of food products, with office address at 10th Floor, JY Campos Centre, 9th Avenue corner 30th Street, Bonifacio Global City, Taguig City, Metro Manila.

The Facts

The following are the undisputed facts as stated in the Decision, dated 15 July 2019, to wit:[3]

"THE FACTS

On December 12, 2013, petitioner filed with the BIR, through the Electronic Filing and Payment System ("EFPS"), an electronic copy of its original **November 2013 Monthly Remittance Return of Income Taxes Withheld on Compensation** [referred to herein as Withholding Tax on Compensation ("WTC") Return] for a total amount of ₱26,739,317.66, with Filing Reference No. 011300008205342. On December 16, 2013, petitioner paid the WTC due for the month of November 2013 in the amount of ₱26,739,317.66, using Filing Reference No. 011300008205342.

On January 14, 2014, petitioner filed with the BIR, through the EFPS, an electronic copy of its **original December 2013 WTC Return** for a total amount of ₱27,090,147.14, with Filing Reference No. 011400008350720 issued by the BIR.

Petitioner subsequently filed, through the EFPS, an **amended December 2013 WTC Return** on January 20, 2014, reflecting a total amount due of **₱26,926,896.72**, with **Filing Reference No. 011400008378200**. On the same date, petitioner paid the WTC in the amount of **₱26,739,317.66**, by erroneously using **Filing Reference No. 011300008205342**, which filing reference number pertains to the November 2013 WTC Return.

Considering that the WTC for November 2013 was already paid, the EFPS Payment Details for November 2013 reflected two (2) payments -- the first payment on December 16, 2013 (in the amount of ₱26,739,317.66) and the second payment on January 20, 2014 (in the amount of ₱26,739,317.66). Consequently, there was no payment reflected for December 2013.

[3] See Annex "A", Petition, *Id.*, pp. 31-33.

Upon inquiry with the BIR Large Taxpayers Division - Makati, petitioner was informed that since it filed its Amended December 2013 WTC return and paid through the EFPS, **it had to pay the amount due for December 2013 using the correct Filing Reference Number as it was the only way to reflect payment for the December 2013 WTC Return.**

On January 21, 2014, petitioner paid the entire amount due of ₱26,926,896.72 on its December 2013 WTC Return under the correct Filing Reference No. 011400008378200.

On March 6, 2014, petitioner received an Audit Results/Assessment Notice (RPS) dated February 20, 2014 from the BIR Large Taxpayer's Division - Makati. The Audit Results/Assessment Notice (RPS) assessed petitioner for surcharge, interest and compromise penalty, in the total amount of ₱6,796,478.64, based on the WTC due (₱26,926,896.72) for its December 2013 WTC Return, as follows:

Particulars	Payable	
Surcharge	Php	6,731,724.18
Interest (1/21/14) (1 day)	Php	14,754.46
Compromise	Php	50,000.00
Deficiency Tax Due	Php	**6,796,478.64**

On March 11, 2014, petitioner filed an Appeal Letter to Mr. Alfredo V. Misajon, then OIC-ACIR Large Taxpayers Service - Makati, asking that only the difference between the December and November 2013 WTC due, in the amount of ₱187,579.06, be subjected to interest.

On the same date, petitioner filed an Application for Abatement or Cancellation of Tax, Penalties and/or Interest Under Rev. Reg. No. 19-2007 (BIR Form No. 2110) with the BIR Large Taxpayers Service-Makati, citing the reason as "Late payment of tax under meritorious circumstance."

On October 10, 2016, respondent issued the Notice of Denial, which was received by petitioner on January 11, 2018.

On February 12, 2018, petitioner filed the subject Petition for Review before this Court."

On 15 July 2019, the Court in Division issued the assailed Decision, the dispositive portion of which provides, as follows:

"**WHEREFORE,** premises considered, the Petition for Review is hereby **GRANTED.** Accordingly, the Audit Results/ Assessment Notice dated February 20, 2014 assessing petitioner for payment of surcharge, interest and compromise penalty in the amount of Php6,796,478.64 for the late payment of petitioner's Withholding Tax on Compensation Return for the month of December 2013 and the subsequent Notice of Denial dated October 10, 2016 are **CANCELLED** and **SET ASIDE.**"

The Court in Division then issued the assailed Resolution, dated 01 October 2019, denying petitioner's Motion for Reconsideration (re: Decision dated 15 July 2019),[4] which was received by petitioner on 9 October 2019.[5]

On 23 October 2019, petitioner filed a Motion for Extension of Time to File Petition for Review,[6] which was granted in a Resolution, dated 25 October 2019.[7]

Thereafter, the instant Petition was filed on 8 November 2019.

Afterwards, this Court issued a Resolution, dated 5 December 2019, requiring respondent to file a Comment on the Petition within ten (10) days from notice.[8] Thereafter, respondent filed the Opposition on 28 January 2020.

On 24 February 2020, this Court issued a Resolution submitting the Petition for Decision.[9]

Hence, this Decision.

The Assigned Errors

Petitioner failed to specifically provide for the assigned errors in the assailed Decision and Resolution. The following pertains to the summarized assigned errors as shown by the arguments in the Petition:

(A)

THE HONORABLE COURT IN DIVISION ERRED IN ASSUMING JURISDICTION OVER THE PRESENT PETITION.

(B)

THE HONORABLE COURT IN DIVISION ERRED IN GRANTING A RELIEF NOT PRAYED FOR BY RESPONDENT.

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[4] Annex "B", Petition, *Id.*, pp. 48-50.
[5] Records, p. 6.
[6] *Id.*, pp. 1-4.
[7] *Id.*, p. 5.
[8] *Id.*, pp. 52-54.
[9] *Id.*, pp. 74-76.

Arguments of the Parties

Petitioner argued as follows:[10]

1. The CIR's power to abate surcharges and/or the penalties cannot be the subject of judicial determination. It is beyond this Court's jurisdiction to rule upon petitioner's decision on abatement applications. Rather, what is within the jurisdiction of this Court are decisions on disputed assessments which do not include denials of abatement applications.

2. To exercise the power of abatement is to enter into a contract. Hence, consent is essential. The mutuality of contracts hinders this Court from contracting for the parties.

3. The exercise of the power of abatement is a waiver on the part of the government of its right to receive the contributions from its inhabitants, hence, the waiver must be voluntary.

4. The Honorable Court erred in granting a relief that was not prayed for by respondent. Petitioner's basic right to fair play and due process was violated.

5. Assuming the Honorable Court may rule on an issue that was not raised by petitioner during trial nor was derived from the pleadings, the collection of surcharge and penalties accompanying the tax liabilities is justified and in accordance with law and the rules despite the absence of a Letter of Authority ("LOA") and Preliminary Assessment Notice ("PAN").

In the Opposition, respondent counter-argued the following:[11]

1. The Honorable Court has jurisdiction over the instant case.

2. The Honorable Court may rule upon related issues which are necessary to an orderly disposition of the case.

3. Respondent is not liable for surcharge, interest and compromise penalty.

4. In any case, respondent is entitled to an abatement under ***Section 204 (B) (1) of the Tax Code*** and under ***Revenue Regulation No. 13-01, as amended by Revenue Regulation No. 04-12.***

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[10] *Id.*, pp. 8-21.
[11] *Id.*, pp. 55-66.

<u>The Ruling of the Court En Banc</u>

*This Court resolves to **DENY** the **Petition** for lack of merit.*

<u>This Court has undeniable jurisdiction to try the present Petition.</u>

Petitioner contends that this Court has no jurisdiction to decide upon the propriety of the CIR's actions on abatement applications. For him, this Court's jurisdiction is solely limited to the CIR's decisions on disputed assessments, which does not include abatement as the same is contractual in nature. Petitioner posits that should this Court decide to assume jurisdiction over an abatement application, the same would be tantamount to this Court violating the mutuality of contracts. This is erroneous.

Section 7 (a) (1) of Republic Act No. 1125, as amended by Republic Act Nos. 9282 and 9503, provides this Court jurisdiction over "other matters" arising from the implementation of the Tax Code or other laws administered by the BIR, *to wit.:*

> "**SEC. 7. Jurisdiction. — The CTA shall exercise:**
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **<u>other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue</u>; x x x**"
> (Emphasis and underscoring, Ours)

This provision is similarly echoed in ***Section 3 (a) (1) of the Revised Rules of the Court of Tax Appeals***, *viz.*:

> "**SEC. 3.** ***Cases within the jurisdiction of the Court in Divisions.*** **–**
> **The Court in Divisions shall exercise:**
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **<u>other matters arising under the National Internal</u>**

> **<u>Revenue Code or other laws administered by the Bureau of Internal Revenue</u>**;"
> (Emphasis and underscoring, Ours)

Petitioner's decision on respondent's abatement application (*i.e.*, Denial Letter, dated 10 October 2016) falls under such other matters (aside from the CIR's actions or inactions on assessments or refunds) arising from the implementation of the provisions of the ***Tax Code***. Indeed, the Denial Letter, dated 10 October 2016, is an exercise of the CIR's power to abate taxes provided in ***Section 204 (B) of the Tax Code***. As such, it is subject to this Court's exclusive appellate jurisdiction. This has been confirmed in the case of ***Commissioner of Internal Revenue v. Pacific Hub Corporation***,[12] which provided, as follows:

> **"The Court in Division has jurisdiction to review petitioner's Notice of Denial of respondent's application for abatement.**
>
> To repeat, petitioner contends that the Court in Division has no jurisdiction over the case, as the matter involved the denial of an application for abatement, which is within the exclusive purview of petitioner.
>
> We are not convinced.
>
> Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy. It is conferred by law and not by the parties' action or conduct. Specifically, this Court, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.
>
> Section 7(a)(1) of RA No. 1125, as amended by RA Nos. 9282 and 9503, to wit:
>
> > 'SECTION 7. Jurisdiction.- The CTA shall exercise:
> >
> > (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
> >
> > **(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, **or other matters arising under the National Internal Revenue Code** or other laws administered by the Bureau of Internal Revenue.' (Emphasis supplied.)
>
> Based on the foregoing, the appellate jurisdiction of this Court is not limited to cases which involve decisions of petitioner on matters relating the assessments or refunds. The second part of the provision covers **other cases that arise out of the NIRC or related laws**

[12] CTA EB No. 1837, 8 November 2019.

> **administered by the BIR.** The wording of the provision is clear and simple.
>
> Thus, other than decisions of petitioner pertaining to assessments or refunds, decisions of petitioner relating to *'other matters'* may be taken cognizance of by this Court, for as long as the said **'other matters'** arose under the NIRC or other laws administered by the BIR.
>
> Without doubt, the Notice of Denial of respondent's application for abatement is a matter, which arose under the NIRC of 1997. This must be so because the power of petitioner to abate taxes is granted under Section 204(B) of the NIRC of 1997, to wit:
>
>> 'SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. - **The Commissioner may**
>>
>> XXX XXX XXX
>>
>> (B) **Abate or cancel a tax liability,** when:
>>
>> (1) The tax or any portion thereof appears to be unjustly or excessively assessed; or
>>
>> (2) The administration and collection costs involved do not justify the collection of the amount due.' (Emphases supplied)
>
> It is generally true that purely administrative and discretionary functions may not be interfered with by the courts; but when the exercise of such functions by the administrative officer is tainted by a failure to abide by the command of the law, then it is incumbent on the courts to set matters right, with the Supreme Court having the last say on the matter. Specifically, petitioner would have to exercise his discretion within the parameters set by the law, and in case he abuses his discretion, this Court may correct such abuse if the matter is appealed to it.
>
> **Correspondingly, any decision of petitioner in relation to the exercise of the power to abate or cancel a tax liability tainted by a failure to abide by the command of the law, is subject to this Court's exclusive appellate jurisdiction.** Such being the case, the Court in Division has exclusive appellate jurisdiction to review by appeal petitioner's Notice of Denial of the application for abatement of respondent, since the same is alleged to have been issued in violation of the latter's right to due process in the proceedings *a quo.*"
> (Emphasis, Ours)

Thus, it is well-settled that this Court can assume jurisdiction over an appeal of the CIR's decision on an abatement application, which is the subject of the present case.

<u>This Court may rule upon issues not raised by the parties but necessary to achieve an orderly disposition of the case.</u>

Petitioner insists that he was denied his right to due process when this Court ruled upon an issue not raised by the parties. We disagree.

Section 1, Rule 14 of the RRCTA provides:

> "RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION. 1. Rendition of judgment.-The Court shall decide the cases brought before it in accordance with Section 15, paragraph (1), Article VIII of the 1987 Constitution. The conclusions of the Court shall be reached in consultation by the Members on the merits of the case before its assignment to a Member for the writing of the decision. The presiding justice or chairman of the Division shall include the case in an agenda for a meeting of the Court *en banc* or in Division, as the case may be, for its deliberation. If a majority of the justices of the Court *en banc* or in Division agree on the draft decision, the *ponente* shall finalize the decision for the signature of the concurring justices and its immediate promulgation. Any justice of the Court *en banc* or in Division may submit a separate written concurring or dissenting opinion within twenty days from the date of the voting on the case. The concurring and dissenting opinions, together with the majority opinion, shall be jointly promulgated and attached to the rollo.
>
> **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.** *(2002 Internal Rules of the Court of Appeals, Rule VI, secs. 9 and 10a; and Rules of Court, Rule 51, sec. 2a)"*
> (Emphasis, Ours)

This Court, in deciding a case, is not limited to the issues raised or agreed upon by the parties in their respective pleadings. It may also consider other related matters necessary to dispose of a case on the merits. As such, the Supreme Court, in ***Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.***,[13] ruled that this Court has the power to take into consideration matters of record having some bearing to the ultimate disposition of the case which the parties have failed to raise in their pleadings or the lower courts unfortunately ignored, to wit:

[13] G.R. No. 163835, 7 July 2010.

> "The general rule is that appeals can only raised questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.
>
> xxx xxx xxx
>
> 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. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:
>
>> **The appellate court may, in the interest of justice, properly take into consideration in deciding the case matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignore, although they have not been specifically raised as issues by the pleadings. This is in consonance with the liberal spirits that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them.**
>
> xxx xxx xxx
>
> **Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance."**
> (Emphasis, Ours)

Furthermore, in the recent case of ***Commissioner of Internal Revenue v. Lancaster Philippines, Inc.***,[14] the Supreme Court categorically declared that this Court can resolve an issue not raised by the parties, *viz.*:

> "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

[14] G.R. No. 183408, 12 July 2017.

> 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:
>
>> 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.
>
> 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 memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter."

From these pronouncements, it cannot be denied that this Court may rule on matters of record in the present case which neither respondent nor petitioner raised in their respective pleadings or presented during trial which are necessary for the orderly disposition of the case.

In the present case, petitioner faults this Court in Division's act of independently considering the issues on the presence of a valid LOA and the prior issuance of a PAN prior to a final assessment despite neither being particularly raised by respondent and petitioner in their respective pleadings nor presented during trial. This action by the Court in Division, however, was proper, considering that these two (2) matters are necessary to determine whether the assessment (*i.e.,* the Audit Results/Assessment Notice) was properly issued against respondent. If, indeed, no valid LOA was issued authorizing the issuance of such deficiency tax assessment or no PAN was issued before the issuance of such final assessment, then the assessment against respondent is null and void. With a void assessment, petitioner cannot insist on collecting the amount subject of the application for abatement. It is well-settled that no collection can be pursued from a void assessment as the same bears no fruit.[15] Following the above discussions, the Court in Division appropriately touched upon the issues on the presence of a valid LOA and the existence of a PAN, despite these not being raised by the parties in their respective pleadings or during trial.

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[15] Commissioner of Internal Revenue v. Metro Star Superama, Inc., G.R. No. 185371, 8 December 2010, *citing* Commissioner of Internal Revenue v. Reyes, G.R. Nos. 159694 & 163581, 27 January 2006.

<u>The assessment issued against respondent is void due to the absence of a LOA and a PAN.</u>

We agree with the Court in Division that the Audit Results/Assessment Notice is void for violating respondent's right to due process in deficiency tax assessments. Particularly, the assessment is void as, first, it was issued against respondent absent a valid LOA and, second, no PAN was issued prior to the final assessment.

Absence of a valid LOA

Elementary is the rule that revenue officers conducting an examination of a taxpayer for purposes of determining the correct amount of taxes due must be armed with an LOA. An LOA is a guarantee that tax agents will act only within the authority given them in auditing a taxpayer. It is an instrument of due process for the protection of taxpayers.

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

> **SEC. 13.** ***Authority of a Revenue Officer.*** - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, <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, Ours)

In fact, even respondent is aware of the necessity of an LOA before a revenue officer can conduct an audit of a taxpayer as shown by his revenue issuances on the matter. ***Revenue Memorandum Order No. 43-90 ("RMO 43-90")***[16] provides:

> **"Any reassignment/ transfer of cases to another RO(s),** and revalidation of L/As which have already expired, **shall require the issuance of a new L/A,** with the corresponding notation thereto, including the previous L/ A number and date of issue of said L/As."
> (Emphasis, Ours)

[16] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, 20 September 1990.

A cardinal rule in statutory construction is that, where the law speaks in clear and categorical language, or the terms of the statute are clear and unambiguous and free from doubt, there is no room for interpretation or construction, and no interpretation or construction is called for; there is only room for application. The use of the word "shall" connotes a mandatory order and denotes an imperative obligation and is inconsistent with the idea of discretion.[17] Hence, the use of the word "shall" in ***RMO 43-90*** can only mean that the issuance of a new LOA in cases of transfer of audits to another set of revenue officers is mandatory. Therefore, it is clear that before an assessment can be made, the revenue officer conducting the same must first be authorized to do so.

The importance of an LOA as a due process requirement in audits of taxpayers for issuing deficiency tax assessments was given paramount consideration by the High Court in ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue ("Medicard Case")***,[18] *viz.*:

> "**An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** Section 6 of the NIRC clearly provides as follows:
>
> > **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
> >
> > (A) **Examination of Return and Determination of Tax Due.**- After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative</u> may authorize the examinationof 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
>
> **<u>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</u>**. 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

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

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. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**.

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.**

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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<u>. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.</u>**
(Emphasis and Underscoring, Ours)

As clearly enunciated by the Supreme Court, an LOA is the authority given to the appropriate revenue officers to enable them to examine the books of account and other accounting records of a taxpayer. In the absence of such authority, the tax assessments issued against such taxpayer shall be void.

In the case at bar, the absence of a valid LOA authorizing the issuance of the assessment against respondent remains unperturbed as petitioner did not deny the said finding in the Petition. Hence, the following findings by the Court in Division in the Decision, dated 15 July 2019, remain:[19]

> "In the present case, it is undisputed that no LOA was issued by respondent to examine the records of petitioner prior to the issuance of the Audit Results/Assessment Notice (RPS). **<u>Since the Audit Results/Assessment Notice (RPS) was issued, without an audit being</u>**

[19] Annex "A", Petition, Records, p. 41.

> **conducted pursuant to a valid LOA, the same is patently void. Being a void assessment, the Audit Results/Assessment Notice (RPS) bears no fruit and must be slain at sight."**
> (Emphasis and Underscoring, Ours)

Certainly, on this finding alone, the assessment against respondent is void.

Absence of a PAN

Section 228 of the Tax Code enumerates the instances when a PAN is unnecessary prior to issuance of a final assessment, *viz.*:

> "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: Provided, however, That a pre-assessment notice shall not be required in the following cases:
>
> **(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or**
>
> **(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or**
>
> **(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or**
>
> **(d) When the excise tax due on excisable articles has not been paid; or**
>
> **(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.**
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> xxx xxx xxx"
>
> (Emphasis, Ours)

Section 3.1.2 of Revenue Regulations No. 12-99, as amended by Revenue Regulations No. 18-13, which implements the aforesaid provision, provides a similar list of instances where a PAN is unnecessary before a final assessment can be issued.

The present case does not fall within any of the above instances. Furthermore, petitioner did not deny the Court in Division's factual finding (that no PAN was issued prior to the Audit Results/Assessment Notice) in the Petition. As such, the right to due process afforded to taxpayers in assessment proceedings has been violated considering that no PAN was issued by petitioner and received by respondent prior to the issuance of the final assessment. Consequently, the assessment issued against respondent is void based on this ground. This was one of the categorical declarations made by the Supreme Court in the case of ***Commissioner of Internal Revenue v. Metro Star Superama, Inc.***,[20] which provided that

> "From the provision quoted above, it is clear that the sending of a PAN to taxpayer to inform him of the assessment made is but part of the 'due process requirement in the issuance of a deficiency tax assessment,' the absence of which renders nugatory any assessment made by the tax authorities. The use of the word 'shall' in subsection 3.1.2 describes the mandatory nature of the service of a PAN. The persuasiveness of the right to due process reaches both substantial and procedural rights and the failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of Metro Star's right to due process. Thus, for its failure to send the PAN stating the facts and the law on which the assessment was made as required by Section 228 of R.A. No. 8424, the assessment made by the CIR is void."

The importance of complying with the due process requirements cannot be belittled as it ensures that the government in collecting taxes will only act within the bounds provided by law. The Supreme Court emphasized this matter in ***Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. and Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue***,[21] which provides, as follows:

> "Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.
>
> The 1997 National Internal Revenue Code, also known as the Tax Code, and revenue regulations allow a taxpayer to file a reply or otherwise to submit comments or arguments with supporting documents at each stage in the assessment process. Due process requires the Bureau of Internal

[20] G.R. No. 185371

[21] G.R. Nos. 201398-99 and 201418-19, 3 October 2018.

Revenue to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity.

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This Court has, in several cases, declared void any assessment that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulation No. 12-99.

In Commissioner of Internal Revenue v. Metro Star Superama, Inc., this Court held that failure to send a Preliminary Assessment Notice stating the facts and the law on which the assessment was made as required by Section 228 of the Tax Code rendered the assessment made by the Commissioner as void. This Court explained:

> Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigationsthat taxpayers should be able to present their case and adduce supporting evidence. (Citation omitted)

In Commissioner of Internal Revenue v. Reyes, this Court ruled as void an assessment for deficiency estate tax issued by the Commissioner for failure to inform the taxpayer of the law and the facts on which the assessment was made, in violation of Section 228 of the Tax Code.

In Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue, this Court ruled, among others, that the taxpayer was deprived of due process when the Commissioner failed to issue a notice of informal conference and a Preliminary Assessment Notice as required by Revenue Regulation No. 12-99, in relation to Section 228 of the Tax Code. Hence, the assessment was void.

Compliance with strict procedural requirements must be followed in the collection of taxes as emphasized in Commissioner of Internal Revenue v. Algue, Inc.:

> Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.
>
> xxx xxx xxx
>
> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural

> reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.
>
> But 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. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate ... that the law has not been observed. (Emphasis supplied)

> In this case, Avon was able to amply demonstrate the Commissioner's disregard of the due process standards raised in Ang Tibay and subsequent cases, and of the Commissioner's own rules of procedure. Her disregard of the standards and rules renders the deficiency tax assessments null and void."

As petitioner failed to comply with the due process requirements afforded to taxpayers in assessment proceedings, namely a) absence of a LOA authorizing the assessment and b) failure to issue a PAN prior to the final assessment, the assessment issued against respondent is void beyond any doubt.

Following the above discussions, this Court deems it unnecessary to resolve the remaining issues.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision, dated 15 July 2019, and the Resolution, dated 01 October 2019, promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

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