REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PUEBLO DE ORO DEVELOPMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9553

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

DEC 12 2019 11:13 a.m.

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DECISION

MANAHAN, J.:

This involves a Petition for Review filed by Pueblo de Oro Development Corporation on March 24, 2017, against the Commissioner of Internal Revenue (CIR), seeking the cancellation of the alleged deficiency income tax (IT) assessment issued against it in the aggregate amount of ₱35,284,993.00 for taxable year 2012.[1].

THE FACTS

Petitioner Pueblo De Oro Development Corporation is a corporation duly organized and existing under the laws of the Philippines, with principal office address at the 17th Floor Robinsons Summit Center, 8783 Ayala Avenue, Makati City.[2] It is registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number 004-668-888-00000.[3] As a new

[1] Petition for Review, Docket, Vol. I, pp. 10-49.
[2] Exhibits "P-2" and "P-3", Docket – Vol. IV, pp. 1459 to 1470, and 1471 to 1482.
[3] Exhibit "P-5", Docket – Vol. IV, pp. 1496 to 1497.

developer of low cost mass housing projects, petitioner was registered with the Board of Investments (BOI) under Certificate of Registration Nos. 2008-263 dated September 10, 2008,[4] 2010-227 dated December 21, 2010,[5] 2010-228 dated December 21, 2010,[6] and 2011-254 dated November 29, 2011.[7]

Respondent Commissioner of Internal Revenue is being sued herein as a public officer duly appointed by the President of the Philippines and as the head of the BIR – the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees and charges.[8]

Petitioner filed its 2012 Income Tax Return (ITR) on April 12, 2013.[9]

On January 27, 2016, respondent issued a Preliminary Assessment Notice (PAN),[10] assessing petitioner for deficiency income tax, inclusive of interest and penalties, for taxable year 2012, in the total amount of ₱33,814,119.24.

Subsequently, on February 22, 2016, respondent issued a Formal Letter of Demand (FLD) dated February 22, 2016,[11] reiterating petitioner's deficiency income tax, inclusive of interest and penalties, for taxable year 2012 in the total amount of ₱33,814,119.24, attaching therewith the *Details of Discrepancy*.

On March 29, 2016, petitioner filed with the BIR Large Taxpayer's Division Office its protest letter dated March 21, 2016.[12]

On May 12, 2016, petitioner received a Final Decision on Disputed Assessment (FDDA) dated May 4, 2016 issued by Mr. Nestor S. Valeroso, Assistant Commissioner, Large Taxpayers Service, substantially upholding the deficiency income tax assessment against petitioner, now in the amount of

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[4] Exhibit "P-17", Docket – Vol. IV, pp. 1533 to 1538.
[5] Exhibit "P-18", Docket – Vol. II, pp. 641 to 647.
[6] Exhibit "P-19", Docket – Vol. II, pp. 648 to 655.
[7] Exhibit "P-20", Docket – Vol. II, pp. 656 to 662.
[8] Refer to Par. 2, Petition for Review, Docket – Vol. I, p. 11.
[9] Exhibit "P-12", Docket – Vol. II, pp. 606 to 612.
[10] Exhibit "P-6", Docket – Vol. II, pp. 533 to 536.
[11] Exhibit "P-7", Docket – Vol. II, pp. 537 to 540.
[12] Exhibit "P-8", Docket – Vol. IV, pp. 1498 to 1524.

₱35,284,993.00, inclusive of interest and penalties, with attached Details of Discrepancy and Audit Result/Assessment Notice dated May 4, 2016.[13]

On June 9, 2016, petitioner filed with the office of respondent the letter dated June 9, 2016,[14] requesting for the reconsideration and eventual cancellation/withdrawal of the FDDA against petitioner on the ground that said FDDA is null and void, and the corresponding deficiency income tax assessment lacks factual and legal bases.

Thereafter, on February 22, 2017, petitioner received respondent's FDDA dated February 21, 2017, with attached Details of Discrepancy and Audit Result/Assessment Notice dated February 21, 2017,[15] reiterating the ruling made by Mr. Nestor S. Valeroso, Assistant Commissioner, Large Taxpayers Service, in his FDDA dated May 4, 2016.

Petitioner filed the instant *Petition for Review* before this Court on March 24, 2017.[16] This case was raffled to the Second Division of this Court.

On April 3, 2017, this Court issued summons against the respondent, and was ordered to submit an *Answer* to the said *Petition for Review.*[17] Respondent filed, on April 20, 2017, a *Motion for Extension of Time to File Answer,*[18] which the Court granted in the Order dated April 24, 2017,[19] giving respondent an additional period of fifteen (15) days from April 21, 2017, or until May 6, 2017, within which to file an *Answer.*

However, on May 3, 2017, respondent filed an *Urgent Motion for Extension of Time to File Answer,*[20] which the Court granted in its Order dated May 5, 2017,[21] giving respondent a non-extendible period of thirty (30) days from May 6, 2017 or until June 5, 2017, to file his *Answer.*

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[13] Exhibit "P-9", Docket – Vol. II, pp. 567 to 572.
[14] Exhibit "P-10", Docket – Vol. II, pp. 573 to 605.
[15] Exhibit "P-11", Docket – Vol. I, pp. 168 to 173.
[16] Docket – Vol. I, pp. 10 to 53.
[17] Docket – Vol. I, p. 390.
[18] Docket – Vol. I, pp. 392 to 395.
[19] Docket – Vol. I, p. 396.
[20] Docket – Vol. I, pp. 397 to 399.
[21] Docket – Vol. I, p. 401. aw

Nonetheless, on June 6, 2017, respondent filed his *Final Motion for Additional Time to File Answer*,[22] which the Court granted in the Order dated June 9, 2017,[23] giving respondent a final and non-extendible period of fifteen (15) days, or until June 21, 2017, within which to file his *Answer*, with a final warning to respondent's counsel that no further extension will be allowed.

On July 11, 2017, the Judicial Records Division of the Court issued a Records Verification,[24] stating that counsel for respondent failed to file an *Answer* to the instant *Petition for Review*.

Consequently, on July 28, 2017, petitioner filed a *Motion to Declare Respondent Commissioner of Internal Revenue in Default*,[25] praying that respondent be declared in default.

On August 10, 2017, respondent filed a *Motion to Admit Attached Answer*,[26] attaching therewith his *Answer*.

After requiring the parties to submit their respective memorandum,[27] the Court declared respondent in default,[28] which has the effect of granting petitioner's *Motion to Declare Respondent Commissioner of Internal Revenue in Default*, and denying respondent's *Motion to Admit Attached Answer*.

The trial of the case then ensued *ex parte*.

During trial, petitioner presented its lone witness, Dennis Puno,[29] petitioner's Vice President – Controller.

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[22] Docket – Vol. I, pp. 402 to 406.
[23] Docket – Vol. I, p. 407.
[24] Docket – Vol. I, p. 408.
[25] Docket – Vol. I, pp. 409 to 416.
[26] Docket – Vol. I, pp. 417 to 431.
[27] Order dated August 17, 2017 vis-à-vis respondent's *Memorandum* filed on August 22, 2017, and petitioner's *Memorandum* filed on August 22, 2017, Docket – Vol. I, p. 438, 439 to 446, 448 to 459, respectively.
[28] Resolution dated September 14, 2017, Docket – Vol. I, pp. 464 to 468.
[29] Exhibits "P-1", "P-39, and "P-49", Docket – Vol. II, pp. 473 to 505, and pp. 798 to 803, Docket – Vol. III, pp. 1002 to 1015, respectively; Minutes of the hearing held on, and Order dated, October 11, 2017, Docket – Vol. II, pp. 785 and 787; Minutes of the hearing held on, and Order dated, February 19, 2018, Docket – Vol. III, pp. 990 to 99; Minutes of the hearing held on, and Order dated, April 18, 2018, Docket – Vol. III, pp. 1406 to 1407.
Order dated October 11, 2017, Docket – Vol. II, p. 787; Order dated April 18, 2018, Docket – Vol. IV, p. 407.

On July 3, 2018, petitioner filed its *Formal Offer of Evidence.*[30] Respondent filed its *Comment Re: Petitioner's Formal Offer of Evidence* on July 13, 2018.[31]

In the Resolution dated August 7, 2018,[32] the Court admitted all of petitioner's exhibits, and gave the parties thirty (30) days from notice to file their respective memorandum.

On September 13, 2018, petitioner filed a *Manifestation and Motion for Clarification,*[33] praying to clarify the Resolution dated August 7, 2018 to state that only petitioner is given a period of thirty (30) days within which to file its memorandum.

On September 14, 2018, petitioner filed through registered mail its Memorandum, which was received by the Court on September 21, 2018.[34]

In the Order dated September 24, 2018,[35] the instant case was transferred from the Court's Second Division to its First Division.

In its Resolution dated October 2, 2018,[36] the Court clarified that the directive for the submission of memorandum within the period of thirty (30) days from notice pertains only to petitioner, and not to respondent.

On December 12, 2018, the Court deemed the case submitted for decision.[37]

THE ISSUES

Based on the grounds raised by petitioner,[38] the issues are as follows:

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[30] Docket – Vol. IV, pp. 1429 to 1456.
[31] Docket – Vol. IV, pp. 1822 to 1824.
[32] Docket – Vol. IV, pp. 1827 to 1828.
[33] Docket – Vol. IV, pp. 1829 to 1834.
[34] Docket – Vol. IV, pp. 1874 to 1907.
[35] Docket – Vol. IV, pp. 1909.
[36] Docket – Vol. IV, pp. 1912 to 1913.
[37] Resolution dated December 12, 2018, Docket – Vol. IV, p. 1915.
[38] *Petition for Review*, Docket – Vol. I, p. 15; and Petitioner's *Memorandum*, Docket – Vol. IV, p. 1880, respectively.

a. Whether the deficiency income tax assessment is void due to the non-issuance of a Letter of Authority (LOA) by respondent;

b. Whether respondent violated petitioner's right to procedural due process;

c. Whether the deficiency income tax assessment is valid; and

d. Whether respondent erred in upholding the deficiency income tax assessment.

Petitioner's arguments:

Petitioner argues that the deficiency income tax assessment is void due to the non-issuance of an LOA by the respondent. Petitioner cites Sections 6 and 13 of the 1997 National Internal Revenue Code (NIRC) which provides that an LOA is the authority given to revenue examiners/officers to examine the books of accounts and other accounting records of a taxpayer for the purpose of issuing a tax assessment and for the subsequent collection of the correct amount of tax. Without the requisite LOA, petitioner considers the FLD and assessment notice void and without any effect.

Petitioner also assails the reliance of the CIR on the findings of the BOI without the BIR conducting its own independent investigation of its books of accounts and other accounting records. Petitioner alleges that the CIR merely relied on the information given by the BOI as to the alleged amount of income not qualified for the Income Tax Holiday (ITH) incentive and from there computed the amount of alleged deficiency income taxes due for taxable year 2012 which became the basis of the FLD and assessment notice issued against it.

In sum, petitioner's arguments are rooted in the alleged violation of its right to due process thereby making the assessment void.

As earlier mentioned, respondent was declared in default in the Court's Resolution dated September 4, 2017, hence he was barred from filing an Answer or any other pleading to present his opposition or arguments, if any, against the Petition for Review.

THE RULING OF THE COURT

We shall first delve on the argument raised by petitioner regarding the lack of an LOA which renders the instant tax assessment void and without any effect.

We are called to analyze the foregoing issue in the light of the relevant provisions of the 1997 NIRC, as amended, in relation to the relevant laws on investment particularly Executive Order (EO) 226 otherwise known as the Omnibus Investments Code of 1987 and its related issuances because the case revolves around a BOI-registered enterprise.

As mentioned in the factual narration of this Decision, petitioner is a BOI-registered enterprise engaged in the construction and development of low-cost mass housing with its initial registration done on September 20, 2008 under Certificate of Registration No. 2008-263. [39] Petitioner subsequently registered with the BOI and received Certificates of Registration dated December 21, 2010 and November 29, 2011.

Under the Omnibus Investments Code of 1987, a business enterprise may register with the BOI and avail of several incentives either as an export enterprise (where 50% or 70% of its annual total production are exported) or as one qualified to engaged in activities that are included in the Investment Priorities Plan (IPP).

One of the incentives provided under the Omnibus Investments Code of 1987 is the ITH which exempts the registered enterprise from the payment of income taxes for a particular period depending on whether one is classified as a "pioneer" or "non-pioneer" firm.

The records show that petitioner initially registered with the BOI as a developer of low-cost mass housing projects which qualifies it as a "Preferred Activity" entitled to the said incentives under the 2008 IPP, described as follows:

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[39] Exhibit "P-17", Court Docket, page 272.

"Part III
Specific Guidelines

I. Preferred Activities

(B) Infrastructure

This covers the development of physical infrastructure (road, bridges and tollways), power generation (using renewable and other energy sources adopting the environmentally-friendly technologies except oil-fired power generating plants, Small Power Utilities Group (SPUG) and privatized plants), **mass housing (socialized and low-cost),** water supply (limits to projects that will supply waterless barangays), mass rail transport, pipeline projects for oil and gas, and projects under the Build-Operate-Transfer (BOT) Law. (emphasis supplied)

Subsequent to the 2008 BOI registration, petitioner again applied as a New Developer of Low Cost Mass Housing Project and was issued a Certificate of Registration by the BOI on December 21, 2010.[40] On November 29, 2011[41] petitioner elevated its registration status as an "Expanding Developer of Low Cost Mass Housing Project " and was issued a Certificate of Registration on November 29, 2011.

No. 11 of the Terms and Conditions of this latest registration with the BOI required the petitioner to fulfill the following, and we quote:

"No. 11. The enterprise shall submit proof of compliance, that at least twenty (20%) of the total subdivision area or total subdivision project cost has been allocated and developed for socialized housing within one (1) year from date of registration or prior to availment of ITH, whichever is earlier. This may be done thru any of the following modes: (1) New Settlement; (2) Slum Upgrading; and (3) Joint Venture Projects with either the local government units (LGUs) or any of the housing agencies. **Otherwise, the ITH for that particular taxable year shall be deemed forfeited."** (emphasis supplied)

In several letters addressed to the BIR, the BOI declared that the grant of the ITH incentives for the calendar year 2012 has been denied for failure of petitioner to comply with the 20% socialized housing requirement as specified in the aforequoted condition.

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[40] Exhibit "P-18", Docket – Vol. II, pp. 641 to 647.
[41] Exhibit "P-20", Docket – Vol. II, pp. 656 to 662.

Using this information/report as basis, the BIR issued a PAN and subsequently an FLD against petitioner for income tax deficiencies for taxable year 2012 due to the denial of the ITH incentive on the following projects of petitioner, to wit:

a. La Aldeo Del Rio Project;
b. Forest View Homes;
c. The Courtyards;
d. Others without BOI Endorsement.

Petitioner assails the validity of the FLD for being issued without a prior investigation being conducted by the BIR and without a requisite authority in the form of an LOA.

From the facts adduced from the trial of this case, the issues may be simplified into two questions - whether or not the forfeiture of the ITH incentive by the BOI can serve as the sole basis of respondent in issuing an assessment without the requisite independent investigation and examination of petitioner's books and accounting records, and whether or not this situation falls under the exceptions where an LOA is no longer required.

We rule in the negative.

We recognize that the BOI has its own rules in implementing the grant of incentives under the Omnibus Investments Act of 1987 and we also accord the proper respect on its judgment when it comes to the determination of whether or not an enterprise registered with its office has fulfilled the terms and conditions for the availment of incentives such as the ITH. However, such determination is not a blanket conclusion that will encompass the authority of the BIR to issue deficiency tax assessments. Neither should the conclusion of the BOI be the sole basis for the issuance of an assessment because clearly the BIR has the responsibility to determine the exact amount of tax deficiencies that will result in the forfeiture and/or suspension of the ITH incentive via an examination of the records of the taxpayer prior to the issuance of an assessment. There is a factual aspect, such as the determination of the amount of deficiency tax, that has to be considered before an assessment may be issued.

Section 6(A) of the 1997 NIRC, as amended, reads:

"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**: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." (emphasis supplied)

In the grant of tax incentives by an investment promotion agency such as the BOI, close coordination with the taxing authority, such as the BIR, is essential so as to ensure that said incentives are given only on the basis of whether these registered enterprises qualify under the relevant law. It for this reason that a Memorandum of Agreement between the BOI, the BOI Autonomous Region of Muslim Mindanao (BOI-ARMM) and the BIR was executed on March 1, 2007 (MOA) for the primary purpose of closely monitoring the tax incentives granted to registered enterprises and to ensure that the conditions for its availment were being fulfilled.

If tax refunds are like tax exemptions, it could also be said that tax incentives are like tax exemptions, which should be strictly construed against the taxpayer and its availment closely monitored by the regulatory bodies.

The full text of the MOA between the BOI and BIR was circularized in Revenue Memorandum Circular (RMC) No. 17-2007 issued on March 5, 2007.

The question of the necessity of an independent investigation by the BIR and the prior issuance of an LOA may serve as a point of contention in light of the provisions of the MOA on the deferment of the issuance of the LOAs and Letter Notices (LNs) as applied to BOI and BOI-ARMM registered enterprises. We quote relevant portions of the MOA, thus:

"II. The BIR shall:

1. xxx xxx xxx

2. **Defer issuance of Letter of Authority (LOA)** Letter Notice (LN)/Tax Verification Notice (TVN) to BOI/BOI-ARMM-registered enterprises whose operations are 100% registered with the BOI-BOI-ARMM until after the

> completion of BOI/BOI-ARMM evaluation of the ITH application but not to exceed one and half (1 ½) years from the last day prescribed by law for filing of the annual ITR." (emphasis supplied)

It would seem from the afore-quoted provision that the issuance of the LOAs is to be deferred in the case of BOI/BOI-ARMM registered enterprises by virtue of the MOA. However, a close reading would reveal that this deferment is not perpetual but is only before the completion of the evaluation of the enterprise's ITH application and not to exceed 1 and ½ years from the last day prescribed by law for filing of the annual ITR.

Records show that petitioner used the calendar taxable period and filed its 2012 Annual ITR on April 12, 2013.[42] The letters of the BOI addressed to the BIR informing the latter that petitioner failed to comply with the 20% Socialized Housing Requirement thereby forfeiting its ITH incentives were dated June 30, 2015, September 17, 2015 and September 18, 2015, which should have triggered a tax investigation by the BIR, immediately thereafter and which should have been conducted with the requisite LOA due to the fact that the period of its deferment has already lapsed counted from April 15, 2013 (which is the last day prescribed by law for filing of its annual ITR for 2012).

The facts also show that the PAN was issued on January 27, 2016 while the FLD was issued on February 22, 2016 without any evidence that an independent investigation was conducted relative to the decision of the BOI with regard to the forfeiture of the ITH entitlement of petitioner. The BOI's findings cannot serve as a substitute for the investigation that the BIR should have conducted prior to the issuance of the PAN, FLD and the assessment notice. Even the provisions of the MOA recognize the responsibility of the BIR to conduct a post-audit review of the dockets bearing on ITH incentive availment by the BOI/BOI-ARMM registered enterprises. We again quote relevant portions of the MOA:

> "The BIR shall:
>
> 1. xxx xxx xxx
>
> 2. Xxx xxx xxx
>
> 3. **Conduct post-audit/review of the dockets bearing on ITH incentive availment endorsed by the**

[42] Exhibit "P-12", Docket – Vol. II, pp. 606 to 612.

> **BOI/BOI/ARMM prior to the end of the prescriptive period provided under Section 203 of the Tax Code, as amended,** through the Assessment Service in the BIR National Office;
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> **If any deficiency tax assessment arises from the review of incentive availment, the Assessment Service shall transmit its findings of discrepancy and the corresponding documents to the concerned RDOs to enforce the immediate collection thereof, including increments accruing thereon;"**(emphasis supplied)
>
> Xxx xxx xxx

It is quite plain from the provisions of the MOA that the BIR should still conduct its own investigation and thereafter issue a tax assessment, if proven that a deficiency exists. The conduct of such tax investigation leading to the issuance of an assessment should conform to the applicable laws and regulations taking into consideration the right of the taxpayer to due process.

Unfortunately, the BIR failed to do so in the instant case.

Interestingly, the MOA was revoked by RMC No. 14-2012 issued on April 4, 2012 but this did not have the effect of nullifying our above disquisitions and pronouncements but instead emphasized the authority and responsibility of the BIR to conduct its own investigation relative to the availment of incentives by BOI-registered enterprises, prior to the issuance of an assessment. The reasons stated by then Commissioner of Internal Revenue in RMC No. 14-2012, Kim Jacinto-Henares, in revoking the MOA is due to the perception that it limits the authority of the BIR to investigate the tax returns filed by BOI, BOI-ARMM registered enterprises, and we quote:

> "The Memorandum entered into between the BIR and the Board of Investments (BOI) and BOI-Autonomous Region of Muslim Mindanao (BOI-ARMM); and BIR and Philippine Economic Zone Authority (PEZA), both entered into on March 1, 2007 **contain provisions limiting the authority of the BIR to investigate returns filed by enterprises under BOI's, BOI-ARMM's and PEZA's jurisdictions.** Said provisions are contrary to law, and thus for this reason, said MOAs are hereby being revoked." (emphasis supplied)

As can be gleaned from the respective *Details of Discrepancy* attached to the FDDA dated May 4, 2016,[43] and FDDA dated February 21, 2017, [44] the adjustments in petitioner's taxable income, resulting to the subject deficiency income tax assessment at the regular corporate income tax rate of 30%, are based on the following:

SCHEDULE 1:		
INCOME NOT ENTITLED TO INCOME TAX HOLIDAY (ITH) – LA ALDEA DEL RIO (COR 2008-263)	ANNEX A-1	₱ 7,472,575.74
INCOME NOT ENTITLED TO ITH – FOREST VIEW HOMES 3 (COR 2010-227)	ANNEX A-2	35,558,360.00
INCOME NOT ENTITLED TO ITH – THE COURTYARDS (COR 2010-228)	ANNEX A-3	5,910,819.00
INCOME NOT ENTITLED TO ITH – WITHOUT BOI ENDORSEMENTS (THE COURTYARDS 2)	ANNEX A-4	18,462,713.00
TOTAL		₱67,404,467.74

It is shown that the said Annexes A-1,[45] A-2,[46] and A-3,[47] are correspondences from the BOI addressed to the BIR, informing the latter of the **results of its review** of the BOI regarding petitioner's ITH incentive in 2012. It is thus not hard to discern that respondent merely relied on the information provided by the BOI, as to the supposed amounts of petitioner's revenue or income not entitled to ITH, regarding the La Aldea Del Rio, Forest View Homes 3, and The Courtyards Projects, respectively, in arriving at the said amounts. Clearly, respondent issued a decision not based on his own independent consideration of the facts governing the case, insofar as the said amounts are concerned.

This is error on the part of respondent, and is violative of petitioner's right to due process.

In *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc., etseq.*,[48] the Supreme Court said:

> "In *Ang Tibay v. The Court of Industrial Relations*,[49] this Court observed that although quasi-judicial agencies 'may be said to be free from the rigidity of certain procedural requirements[, it] does not mean that it can, in justiciable

[43] Refer to Exhibit "P-9", Docket – Vol. II, p. 570.
[44] Refer to Exhibit "P-11", Docket – Vol. I, pp. 170 to 172.
[45] Exhibit "P-13", Docket – Vol. IV, pp. 1525 to 1531.
[46] Exhibit "'P-14", Docket – Vol. II, pp. 620 to 626.
[47] Exhibit "'P-15", Docket – Vol. II, pp. 627 to 633.
[48] G.R. Nos. 201398-99, and 201418-19, October 3, 2018.
[49] 62 Phil. 635 (1940) [Per J. Laurel, *En Banc*].

cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.' It then enumerated the fundamental requirements of due process that must be respected in administrative proceedings:

(1) The party interested or affected must be able to present his or her own case and submit evidence in support of it.

(2) The administrative tribunal or body must consider the evidence presented.

(3) There must be evidence supporting the tribunal's decision.

(4) The evidence must be substantial or 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'

(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.

(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.

(7) The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.

xxx xxx xxx

The second to the <u>sixth</u> requirements refer to the party's 'inviolable rights applicable at the deliberative stage.' xxx." *(Emphases and underscoring ours)*

Based on the foregoing jurisprudential pronouncements, one of the fundamental requirements of due process in administrative proceedings is that the *"administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case."* The High Court even continued that the said requirement, *inter alia,* is considered as the concerned party's *"inviolable right".*

In this case, as already observed, insofar as the supposed amounts of income not entitled to ITH, *i.e.*, ₱7,472,575.74, ₱35,558,360.00, ₱5,910,819.00, respondent's FDDA dated

February 21, 2017,[50] and the FDDA dated May 4, 2016,[51] merely relied on the BOI's results of its review regarding petitioner's ITH incentive in 2012. Clearly, respondent and the BIR did not base their own independent consideration of the said facts.

Such being the case, there was a violation of petitioner's right to due process, as to the findings of the said amounts of revenues or income not entitled to ITH.

As to the resolution of the issue of a lack of an LOA, this is inextricably intertwined with the failure of the BIR to conduct an independent investigation and consideration of the petitioner's books of accounts and other accounting records, i.e., no investigation therefore there was no LOA to speak of.

We find that, in this case, the lack of an LOA as well as a solid investigation of the taxpayer's tax records rendered the assessment void.

We cannot however undermine the importance of an LOA as it is essential to clothe the revenue officers/examiners with the authority to examine the taxpayer and to recommend the issuance of an assessment as provided in Section 13 of the 1997 NIRC, as amended, and we quote:

> "Section 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 *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[52] the Supreme Court held as follows:

> "An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It

[50] Refer to Exhibit "P-11", Docket – Vol. I, pp. 171 to 172.

[51] Refer to Exhibit "P-9", Docket – Vol. II, p. 570.

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

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[53] 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 may authorize the examination of any taxpayer</u>** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> x x x x (Emphasis and underlining Ours)

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

xxx xxx xxx

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[54] 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**

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[53] That is, respondent in this case.
[54] 649 Phil. 519 (2010).

> **such an authority, the assessment or examination is a nullity**. (Emphasis supplied)
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> xxx xxx xxx
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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 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.**
>
> xxx xxx xxx
>
> 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 supplied)

With the declaration that the FLD and the assessment notice are void, this Court sees no need to resolve the substantive merits of the assessment. It is well-settled that a void assessment bears no valid fruit.[55]

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**.

Accordingly, respondent's FDDA dated February 21, 2017, and the FDDA dated May 4, 2016 issued by Assistant Commissioner Nestor S. Valeroso, both demanding payment from petitioner for deficiency income tax for taxable year 2012 in the amount of ₱35,284,993.00, inclusive of interest and penalties, are **REVERSED** and **SET ASIDE**.

Moreover, the *Audit Result/Assessment Notice* dated May 4, 2016 and *Audit Result/Assessment Notice* dated February 21,

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[55] Samar I-Electric Cooperative vs. CIR, G.R. No. 193100, December 10, 2014.

2017, attached to the said FDDAs, respectively, are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice