REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

HIMLAYANG PILIPINO PLANS, INC., Petitioner,	**CTA EB No. 1513** (CTA Case No. 8727)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** FEB 12 2018 4:17 p.m.

x - x

DECISION

UY, *J.*:

Before the Court *En Banc* is a *Petition for Review* filed by Himlayang Pilipino Plans, Inc. on September 30, 2016 against the Commissioner of Internal Revenue,[1] praying for the reversal of the Decision dated July 1, 2016[2] and Resolution dated August 22, 2016[3], both rendered by the Second Division of this Court (Court in Division) in CTA Case No. 8727, entitled *"Himlayang Pilipino Plans, Inc.,*

---

[1] EB Docket — Vol. 1, pp. 27 to 53.

[2] EB Docket — Vol. 1, pp. 56 to 66; Penned by Associate Justice Amelia R. Cotangco-Manalastas, now retired, and concurred by Associate Justice Juanito C. Castañeda, Jr.,

Petitioner, versus Commissioner of Internal Revenue, Respondent", the dispositive portions of which respectively read:

Decision dated July 1, 2016:

"**WHEREFORE,** premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED."

Resolution dated August 22, 2016:

"**WHEREFORE**, the instant Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Culled from the assailed Decision and the allegations in the Petition for Review and Comment, these are the established facts of this case.

Petitioner Himlayang Pilipino Plans,Inc. is a corporation duly organized and existing under Philippine laws, with office address at 12th Floor, Triumph Building, 1610 Quezon Avenue, Quezon City. It is a wholly-owned subsidiary of Himlayang Pilipino, Inc., which is also a corporation duly organized and existing under Philippine laws. Petitioner's principal purpose is to engage in the pre-need plans business. It is duly registered with the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 39, with Taxpayer's Identification No. 000-845-616-000.

Respondent is the duly appointed Commissioner of the BIR, vested with authority, among others, to abate or cancel a tax liability when the tax or any portion thereof appears to be unjustly or excessively assessed. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On September 29, 2010, respondent issued Letter of Authority No. LOA-039-2010-00000072, authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes covering the period from January 1, 2009 to December 31, 2009. It was received by petitioner on October 12, 2010.

Petitioner submitted pertinent documents relevant to the examination of its books of accounts for taxable year 2009 on July 21, 2010, July 8, 2011, and July 11, 2011. After the examination of petitioner's accounting records, petitioner was found to have deficiency taxes for taxable year 2009.

On August 28, 2012, petitioner requested an extension of time to reconcile its accounting records for taxable year 2009, which respondent granted in the letter dated August 31, 2012.

Respondent issued a *Preliminary Assessment Notice* (PAN) with *Details of Discrepancies* on December 14, 2012. The PAN and the attached *Details of Discrepancies* were received by petitioner on even date.

Petitioner contested the said PAN on December 28, 2012. However, on January 14, 2013, the *Formal Letter of Demand* (FLD) dated January 4, 2013 with Final Assessment Notices (FAN) and *Details of Discrepancies* dated January 14, 2013, were issued against petitioner; which petitioner received on the same date.

Petitioner administratively protested the FAN on February 14, 2013. It likewise submitted documents in support of its administrative protest on April 12, 2013. Due to the alleged inaction of respondent on its protest, petitioner filed a *Petition for Review* on November 7, 2013. The case was docketed as CTA Case No. 8727.

Respondent filed his *Answer* on December 16, 2013, which interposed the following arguments: the assessments were issued in accordance with the laws and regulations and contains the factual and legal bases of the assessments; petitioner failed to submit the required documents in support of its protest within sixty (60) days from the date of filing of its protest, hence, the assessment has become final, executory, and demandable, and therefore, the Court in Division no longer has jurisdiction over the petition due to the finality of the assessment; and that respondent's right to issue the assessment has not prescribed. Respondent further explains the bases of the assessments in that the income tax deficiency assessment arose from the following: the total revenues were not fully reported; certain income payments, salaries, and wages were not subjected to withholding tax and thus disallowed as deductions; and there were unaccounted sources of cash. Furthermore, according to respondent, the VAT assessment arose from failure to subject total receipts to VAT; and the unaccounted sources of cash should be subject to the same tax. Respondent also explains that the deficiency expanded withholding tax assessment arose from failure to subject income payments to withholding tax; and the deficiency documentary stamp tax assessment arose from failure to impose the documentary stamp tax on premiums collected and advances made by petitioner which qualified as loan agreements. Finally, respondent argues that tax assessments by examiners are presumed correct and made in good faith.

Respondent's *Pre-Trial Brief* was filed on January 16, 2014; while petitioner's *Pre-Trial Brief* was filed on January 24, 2014. Thereafter, the parties submitted their *Joint Stipulation of Facts and Simplification of Issues* on February 18, 2014.

The Court in Division issued the Pre-Trial Order on February 25, 2014, terminating the pre-trial and setting the case for petitioner's presentation of evidence.

Upon motion of petitioner, Enrico T. Pizarro was commissioned by the Court in Division as the Independent Certified Public Accountant for the case on April 10, 2014.

During trial, petitioner presented Leah Laxamana and Enrico T. Pizarro as its witnesses. On the other hand, respondent presented as witness, Bernard R. Bugauisan and Bacolor D. Yambing.

Petitioner formally offered Exhibits "P-1" to "P-83-1", inclusive of submarkings, which were all admitted by the Court in Division, except Exhibits "P-59.7954" and "P-60.84". On the other hand, respondent formally offered Exhibits "R-1" to "R-23-1", inclusive of submarkings, which the Court in Division admitted as respondent's evidence.

After the filing of respondent's *Memorandum* on May 22, 2015 and the submission of the *Memorandum (For the Petitioner)* on July 10, 2015, CTA Case No. 8727 was submitted for decision on July 20, 2015.

On July 1, 2016, the Court in Division promulgated the assailed Decision,[4] dismissing the *Petition for Review* in CTA Case No. 8727 for lack of jurisdiction.

Petitioner filed its *Motion for Reconsideration* on July 18, 2016.[5] Respondent filed his *Comment/Opposition* thereto on August 5, 2016,[6] pursuant to the Court in Division's Resolution dated July 21, 2016.[7]

On August 22, 2016, the Court in Division issued the assailed Resolution,[8] denying petitioner's *Motion for Reconsideration* for lack of merit.

On September 13, 2016, petitioner filed its *Motion For Extension of Time To File Petition for Review*,[9] praying that it be granted an additional fifteen (15) days from September 15, 2016, or until September 30, 2016, within which to file a *Petition for Review* with the Court *En Banc*.

The Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from September 15, 2016, or until September 30, 2016, within which to file its *Petition for Review*.[10]

Petitioner then filed before the Court *En Banc* the instant *Petition for Review* on September 30, 2016.[11]

Subsequently, in the Resolution dated October 21, 2016,[12] the Court *En Banc* ordered respondent to file its *Comment* to the instant *Petition for Review* within ten (10) days from receipt thereof.

On November 7, 2016, respondent filed his *Comment*

---

[4] EB Docket — Vol. 1, pp. 56 to 66; Division Docket (CTA Case No. 8727) — Vol. III, pp. 1158 to 1168.
[5] Division Docket (CTA Case No. 8727) — Vol. III, pp. 1169 to 1179.
[6] Division Docket (CTA Case No. 8727) — Vol. III, pp. 1182 to 1190.
[7] Division Docket (CTA Case No. 8727) — Vol. III, p. 1181.
[8] EB Docket — Vol. 1, pp. 68 to 69; Division Docket (CTA Case No. 8727) — Vol. III, pp. 1192 to 1193.
[9] EB Docket — Vol. 1, pp. 1 to 4.
[10] Minute Resolution dated September 16, 2016, EB Docket — Vol. 1, p. 26.
[11] EB Docket — Vol. 1, pp. 27 to 53.
[12] EB Docket — Vol. 2, pp. 695 to 696.

(Petitioner's Petition For Review).[13]

In the Resolution dated November 22, 2016,[14] the Court *En Banc* gave due course to the instant *Petition for Review*, and required the parties to submit their respective memoranda. Respondent filed his *Memorandum* on December 9, 2016;[15] while petitioner filed its *Memorandum* on February 3, 2017.[16]

On February 22, 2017, this case was deemed submitted for decision.[17]

Hence, this Decision.

ISSUES

Taking into consideration the allegations and arguments raised in the instant Petition for Review, the Court *En Banc* finds two issues submitted for the resolution of this Court, to wit:

1) Whether or not the Second Division of this Court erred in dismissing CTA Case No. 8727 for lack of jurisdiction; and

2) Whether or not respondent's deficiency tax assessments for taxable year 2009, including imposition of twenty percent (20%) interest and compromise penalty, are void for being erroneous and contrary to the facts, applicable laws, rules and regulations, and established jurisprudence.

Petitioner's arguments:

Relative to the foregoing issues, petitioner raises the following arguments, to wit:

"A.

THE HONORABLE SECOND DIVISION ERRED WHEN IT DISMISSED PETITIONER'S PETITION FOR REVIEW

---

[13] EB Docket — Vol. 2, pp. 697 to 702.
[14] EB Docket — Vol. 2, pp. 704 to 705.
[15] EB Docket — Vol. 2, pp. 706 to 715.
[16] EB Docket — Vol. 2, pp. 721 to 804.
[17] Resolution dated February 22, 2017, EB Docket — Vol. 2, pp. 806 to 807.

FOR LACK OF JURISDICTION."[18]

"B.

RESPONDENT CIR'S COLLECTION OF THE AMOUNT OF PHP11,793,573.91 FROM PETITIONER HPPI ON THE BASIS OF VOID ASSESSMENTS IS EQUIVALENT TO CONFISCATION OF PETITIONER HPPI'S PROPERTY WITH DUE PROCESS OF LAW."[19]

Petitioner argues that the Court in Division has the discretion to review matters if it finds that trial is necessary in arriving at a complete and just resolution of the case.

Allegedly, the Court's assumption of jurisdiction is greatly important in this case because respondent's findings are contrary to law. As exhaustively explained in the *Administrative Protest*, *Petition for Review*, *Memorandum*, and testimonies of the witnesses and ICPA, petitioner was erroneously and without legal or factual bases, assessed internal revenue taxes.

Petitioner points out that the assessment for VAT in the amount of ₱4,179,258.23 is void for being made beyond the three (3)-year prescriptive period within which the Assessment Division can assess deficiency VAT against petitioner.

Furthermore, petitioner stresses that its business is imbued with public interest; and therefore, in the interest of substantial justice and to safeguard public interest, this Court should assume jurisdiction over the instant case.

According to petitioner, respondent's collection of the amount ₱11,793,573.91 from petitioner on the basis of void assessments is equivalent to confiscation of petitioner's property without due process of law. In support of this contention, petitioner emphasizes the following:

1. Petitioner is not liable for deficiency income tax in the amount of ₱7,263,190.35, including interest;

---

[18] *Petition for Review*, EB Docket — Vol. 1, pp. 39 to 40. *Cf:* Memorandum, EB Docket — Vol. 2, p. 733.
[19] *Supra.*

2. It has no deficiency VAT liability in the amount of ₱4,179,258.23, including interest;
3. It has no deficiency EWT liability in the amount of ₱231,150.35, including interest;
4. It is not liable for deficiency DST in the amount of ₱94,974.98; and
5. It is not subject to the compromise penalty amounting to ₱25,000.00 under Sections 250 and 255 of the Tax Code, in relation to Revenue Memorandum Order No. 19-2007.

Respondent's counter-arguments:

Respondent counter-argues that the assessment is valid because it complied with the parameters provided under Section 228 of the NIRC of 1997, as amended, and Revenue Regulations (RR) No. 12-99. Allegedly, petitioner was accorded procedural and substantive due process as provided under the said provision and RR.

In addition, respondent is of the view that the income payments amounting to ₱344,799.46 to publishers of newspapers principally engaged in the printing of newspapers, magazines, reviews or bulletins that appear at regular intervals, which by express provision of Section 2.57.2(E)(4)(f) of RR No. 2-98 are subject to Creditable Withholding Tax.

Furthermore, respondent avers that the reimbursements amounting to ₱4,001,357.00 received by petitioner for the memorial services of deceased planholders are unaccounted sources of cash; and that the deposits to trust funds amounting to ₱854,897.66 are part of the gross receipts of petitioner for the purpose of computing its taxable receipts.

Finally, respondent claims that the interest on car loans extended to petitioner's management or marketing officers in accordance with petitioner's approved car plan, is subject to VAT.

THE COURT *EN BANC*'S RULING

We find no reversible error committed by the Court in Division in rendering the assailed Decision dated July 1, 2016 and Resolution dated August 22, 2016, which would merit a reversal or setting aside of the same.

It is well settled that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy.[20] It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter of an action.[21] Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties.[22] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[23]

Sections 7(a) (1) and (2) of Republic Act (RA) No. 1125[24], as amended by RA No. 9282[25], confer upon this Court, *inter alia*, the following jurisdictions, 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 other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

---

[20] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015, citing *Commissioner of Internal Revenue vs. Leonardo S. Villa and The Court of Appeals*, G.R. No. L-23988, January 2, 1968.

[21] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

[22] *Id.*, citing *Justino Laresma vs. Antonio P. Abellana*, G.R. No. 140973, November 11, 2004.

[23] *Id.*

[24] AN ACT CREATING THE COURT OF TAX APPEALS.

[25] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING THE RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> (2) **Inaction by 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, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;" *(Emphases and underscoring supplied)*

Based on the foregoing provisions, this Court has exclusive appellate jurisdiction to review by appeal a decision of, or inaction by, respondent in cases involving disputed assessments.

In this case, petitioner was not able to dispute the subject tax assessments because it failed to file its administrative protest on time. In other words, there is no "disputed assessment" to speak of. Thus, the Court in Division correctly dismissed petitioner's *Petition for Review* in CTA Case No. 8727.

To be clear, in protesting a tax assessment issued by respondent or his duly authorized revenue officers, Section 228 of the National Internal Revenue Code of 1997 provides as follows:

> "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: xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for**

> **reconsideration or reinvestigation within thirty (30) days from receipt of the assessment** in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)–day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis and underscoring supplied)*

In relation thereto, Section 3 of Revenue Regulations (RR) No. 12-99[26] provides, in part, as follows:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> xxx xxx xxx
>
> 3.1.4 *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, *otherwise, the formal letter of demand and assessment notice shall be void* (see illustration in ANNEX B hereof). Xxx.
>
> 3.1.5 *Disputed Assessment.* — **The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of**

---

[26] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

ph

> **demand and assessment notice within thirty (30) days from date of receipt thereof.** xxx.
>
> xxx xxx xxx
>
> **If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice <u>within thirty (30) days from date of receipt thereof</u>, the assessment shall become <u>final, executory and demandable</u>.**" *(Emphasis and underscoring supplied)*

Based on the foregoing provisions, it is clear that while the concerned taxpayer or its duly authorized representative may administratively protest an FLD and FAN, the period therefor is only limited to thirty (30) days from receipt thereof. Failing which, the subject assessment becomes final, executory and demandable.

In the instant case, it is undisputable that petitioner received the FLD and the subject assessment notices on January 14, 2013,[27] while it was only on February 14, 2013,[28] or thirty-one (31) days thereafter, that petitioner filed its protest thereto. Evidently, petitioner's protest was filed one day late. Correspondingly, the subject tax assessments have already become final, executory and demandable when petitioner filed the said administrative protest.

It must be emphasized that a tax assessment that has become final, executory and enforceable for failure of the taxpayer to assail the same as provided in Section 228 of the NIRC of 1997 can no longer be contested.[29] In other words, since the assessment for deficiency taxes has become final and executory, the taxpayer may not any more raise defenses which go into the merits of the assessment, *i.e.*, prescription of the Commissioner's right to assess the tax.[30]

As regards to the second issue defined in the instant Petition

---

[27] Par. 1.7, Joint Stipulation of Facts and Simplification of Issues, Division Docket (CTA Case No. 8727) – Vol. I, p. 510.
[28] Exhibit "P-13-B", Division Docket (CTA Case No. 8727) – Vol. I, p. 457.
[29] *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue*, G.R. No.148380, December 9, 2005.
[30] Refer to *Republic of the Philippines vs. Ker & Company, Ltd.*, G.R. No. L-21609, September 29, 1966; *Republic of the Philippines vs. Albert*, G.R. No. L-12996, December 29, 1961; and *Republic of the Philippines vs. Lim Tian Teng Sons Co.*, G.R. No. L-21731, March 31, 1966.

M

for Review, even granting that there is merit in petitioner's arguments that the subject tax assessments were erroneous, and that a portion of the VAT assessment has already prescribed, the same could no longer be reviewed, considered or reversed by this Court because said assessment has become final and executory.

Petitioner cannot invoke its right against confiscation of property without due process of law because it failed to observe the reglementary period within which to appropriately avail of the procedural remedy provided under Section 228 of the National Internal Revenue Code of 1997.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Decision dated July 1, 2016 and Resolution dated August 22, 2016, both rendered by the Court in Division in CTA Case No. 8727, are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(See Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(With due respect, I join PJ Del Rosario's Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I join PJ Del Rosario's Dissenting Opinion)
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 before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

HIMLAYANG PILIPINO PLANS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1513
(CTA Case No.8727)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

Promulgated:
FEB 12 2018 4:17 p.m.

x- -x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I am constrained to withhold my assent to the *ponencia* of my esteemed colleague, the Honorable Associate Justice Erlinda P. Uy, denying the Petition for Review filed by petitioner Himlayang Pilipino Plans, Inc. (HPPI) for lack of merit.

I humbly submit that the Formal Letter of Demand (FLD) with Details of Discrepancies and Assessment Notices (FAN) issued against petitioner HPPI are void *ab initio* for having been issued by respondent Commissioner of Internal Revenue (CIR) without a valid Letter of Authority. As such, the FLD and FAN could not have attained finality, notwithstanding petitioner HPPI's failure to timely protest the same.

Generally, the failure to contest the validity and correctness of a final assessment notice within the period and in the manner prescribed by law is fatal to a taxpayer's case. Upon finality of an assessment, collection of tax is justified.[1]

Otherwise stated, **the validity or correctness of an assessment which became final for failure to file a timely protest thereon may no longer be questioned on appeal.**

This rule, notwithstanding, **an assessment may not attain finality in a situation where such assessment was issued without authority as in this case.**

It is undisputed that petitioner HPPI filed its protest on the FLD and FAN on **February 14, 2013**, or thirty-one (31) days from its receipt of the FLD and FAN on **January 14, 2013**. While the protest was filed one (1)-day late of the thirty (30)-day reglementary period pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, it appears that the assessment itself suffers from fatal infirmity.

Revenue Officers who conducted audit of HPPI were not authorized by a valid letter of authority (LOA)

Records disclose that LOA No. 2009 00031349 dated June 24, 2010[2] and LOA-039-2010-00000072 dated September 29, 2010[3] issued by respondent, through Jonas DP. Amora in his capacity as Assistant Regional Director and OIC – Regional Director, specifically authorized **Revenue Officer (RO) Ruby C. Cacdac and Group Supervisor Bernardo C. Andaya**, to examine the books of accounts and other accounting records of petitioner HPPI for all internal revenue taxes for the period January 1, 2009 to December 31, 2009. Yet, it appears that the audit and examination of petitioner HPPI for 2009 was conducted or continued by ROs, **other than those named in the LOAs**.

In the Judicial Affidavit of **RO Bernard R. Bugauisan**,[4] he admitted that he was assigned to continue the audit and investigation of petitioner HPPI's books of accounts and other records for taxable

---

[1] *Ferdinand R. Marcos II vs. Court of Appeals*, G.R. No. 120880, June 5, 1997; *Protector's Services, Inc. vs. Court of Appeals,* G.R. No. 118176, April 12, 2000.
[2] BIR Records, p. 3
[3] Exhibit R-2, BIR Records, p. 1.
[4] Exhibit R-22; CTA Case No. 8272 Docket, pp. 1024-1029.

year 2009 pursuant to a Memorandum of Assignment dated October 28, 2011[5]. On the other hand, **RO Bacolor Yambing** also admitted in her Judicial Affidavit[6] that she was assigned to review the investigation conducted by RO Bugauisan. **There is, however, nothing in the parties' Joint Stipulation of Facts and Issues,[7] the Pre-Trial Order,[8] and the Exhibits submitted by the parties which would show the fact that a new LOA was issued in favor of RO Bugauisan or RO Yambing to conduct the audit and examination of petitioner HPPI for taxable year 2008.**

While petitioner HPPI failed to raise the issue of lack of authority of RO Bugauisan and RO Yambing to conduct the audit, I am of the view that the Court is not precluded from considering this issue as the absence of a valid LOA renders an assessment intrinsically void. A void assessment bears no fruit,[9] and it is settled that estoppel cannot operate to give an effect to an assessment which is *void ab initio*.

In ***Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.***,[10] the Supreme Court reiterated that the CTA can resolve the issue on the authority of the ROs to conduct the audit, albeit the same was not raised by the parties in their pleadings or memoranda, *viz.*:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the **affirmative**.
>
> xxx xxx xxx
>
> Xxx xxx xxx, **the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of 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." (Boldfacing supplied)

For want of a valid LOA, ***Lancaster*** ultimately resolved to declare the assessment void.

[5] BIR Records, p. 337.
[6] Exhibit R-23, CTA Case No. 8727 Docket, pp. 1046-1050.
[7] CTA Case No. 8272 Docket, pp. 509-522.
[8] CTA Case No. 8272 Docket, pp. 527-534.
[9] *Metro Star Superama, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 185371, December 8, 2010.
[10] G.R. No. 183408, July 12, 2017.

As the crux of the controversy revolves around whether petitioner HPPI may be held liable for deficiency taxes subject of the assessment issued by respondent CIR, the issue about the ROs' authority to conduct the audit necessarily relates thereto for its absence makes the assessment a nullity. The importance of the ROs' authority to conduct the audit cannot be over-emphasized as it goes into the issue of the validity of the assessment.

On this score, the Supreme Court's pronouncement in ***Medicard Philippines Inc. vs. Commissioner of Internal Revenue***[11] on the matter of the authority of ROs who conducted the audit and examination of the taxpayer is instructive, viz.:

> ***"The absence of an LOA violated MEDICARD's right to due process***
>
> **An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions.** Xxx xxx xxx. **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:
>
> xxx xxx xxx
>
> **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.** Xxx xxx xxx. **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
>
> **That the BIR officials herein were not shown to have acted unreasonably is beside the point <u>because the issue of their lack of authority was only brought up during the trial of the case.</u> 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>"** (Citations omitted; boldfacing and underscoring supplied)

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

(initials)

A BIR officer cannot simply subject a taxpayer to audit without valid authority issued for that purpose. Section 13 of the NIRC of 1997, as amended, provides:

> "SEC. 13. Authority of a Revenue Officer. - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions** in any district may, **pursuant to a Letter of Authority** issued by the **Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order **to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (Boldfacing supplied)

RMO No. 43-90 specifies the policy guideline in the issuance of LOAs to audit. It likewise identifies and limits the BIR Officials who are authorized to issue LOAs, *viz.*:

> "D. Preparation and issuance of L/As.
>
> xxx xxx xxx
>
> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.**" (Boldfacing supplied)

RMO No. 43-90 is also explicit that the continuation of audit by a revenue officer other than the officer named in a previous LOA requires the issuance of a new LOA:

> "C. Other policies for issuance of L/As.
>
> xxx xxx xxx
>
> 5. **Any re-assignment/transfer of cases to another ROs, 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." (Boldfacing and underscoring supplied)

Simply put, **the issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer is indispensable to the validity of an assessment.** In the language of ***Commissioner of Internal***

Revenue vs. Sony Philippines, Inc.,[12] its absence makes the assessment or examination a nullity, *viz.*:

> "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.
>
> xxx xxx xxx
>
> 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."** (Boldfacing supplied)

In his Judicial Affidavit,[13] RO Bugauisan testified that he was assigned to continue the audit and investigation of petitioner pursuant to LOA No. LOA-039-2010-00000072 dated September 29, 2010, albeit his name is not indicated in the LOA, and Memorandum of Assignment No. 039-1011-00340 dated October 28, 2011:

> "6. Q: As a Revenue Officer what are your duties and responsibilities?
> A: That among my responsibilities in said Office is to examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax or recommend the assessment of any deficiency tax due pursuant to a Letter of Authority issued by the Revenue Regional Director. (Section 13 of the National Internal Revenue Code (NIRC) of 1997, as amended)
>
> 7. Q: Are your familiar with the Petitioner of this case? Why?
> A: Yes. **I was assigned to continue the audit/investigation for all internal revenue taxes of HIMLAYANG PILIPINO PLANS, INC. for taxable year 2009.**
>
> xxx xxx xxx
>
> 10. Q: Do you have any proof of that assignment which you have just mentioned?
> A: Yes.
>
> 11. Q: What is the proof?
> A: A Letter of Authority with No. LOA-039-2010-00000072 dated September 29, 2010 and Memorandum of Assignment No. 039-1011-00340 dated October 28, 2011 was issued authorizing me to continue the audit/investigation for all internal revenue taxes of the Petitioner for taxable year 2009.

[12] G.R. No. 178697, November 17, 2010.
[13] Exhibit R-22, CTA Case No. 8727 Docket, pp.1024-1029.

12. **Q: Mr. Witness, the name specified in the Letter of Authority is not under your name, please explain.**
A: The said tax case was originally assigned to Revenue Officer Ruby C. Cacdac, however, she was transferred to other Revenue District Office. Hence, the case was reassigned to me."

As afore-discussed, **no new LOA was issued to RO Bugauisan and RO Yambing relative to the investigation of petitioner's tax liability for taxable year 2009. A new LOA issued by respondent or his duly authorized representative is indispensable for RO Bugauisan and Yambing to continue the audit and investigation of petitioner.**

The necessity of a valid LOA in audit investigations is not merely an administrative requirement but a statutory requirement, vital to the validity of an audit investigation of a taxpayer. The examination of petitioner's records by RO Bugauisan and RO Yambing, having been made without the required authority as contained in an LOA, makes the disputed assessment a nullity. Being a void assessment, the same bears no valid fruit.[14]

Finally, unless and until modified by the Supreme Court *En Banc*, the doctrines laid down in *Medicard, Lancaster* and *Sony* should be applied in determining the validity of assessments issued against taxpayers *sans* any LOA. Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.

All told, I VOTE to: (i) GRANT the Petition for Review filed by petitioner Himlayang Pilipino Plans, Inc.; and, (ii) CANCEL and SET ASIDE the Formal Letter of Demand with Details of Discrepancies and Assessment Notices, all dated January 14, 2014, issued against petitioner Himlayang Pilipino Plans, Inc.

ROMAN G. DEL ROSARIO
Presiding Justice

---

[14] *Commissioner of Internal Revenue vs. Metro Star Superama Inc.*, G.R. No. 185371, December 8, 2010.