REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

JED MARKETING, CORP., Petitioner,	**CTA CASE NO. 9687**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 0 6 2020 8:35 AM

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Reconsideration**, filed through registered mail on July 1, 2020 and received by the Court on July 8, 2020, with petitioner's **Comment/Opposition**, filed on July 22, 2020.

On June 10, 2020, the Court promulgated a Decision, cancelling respondent's deficiency income tax assessment against petitioner for violating its right to due process of law, the dispositive portion of the said Decision reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the assailed *Final Decision* holding petitioner liable for income tax for taxable year 2007 in the total amount of ₱22,640,164.15, inclusive of interest and surcharge, is **WITHDRAWN and SET ASIDE**. Moreover, the FAN dated January 24, 2011 and FDDA dated August 10, 2012 are **CANCELLED** and **SET ASIDE**. *gr*

SO ORDERED."

In his Motion, respondent urges this Court to reconsider the above Decision considering that the tax audit was made prior to the promulgation of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[1] *("Medicard case" hereafter)*, which the Court cites as basis in finding his revenue officer (RO)'s want of authority. Respondent continues that the re-assignment of the tax audit case to another RO is permitted pursuant to Revenue Memorandum Order (RMO) No. 62-2010 and 69-2010.

Respondent also claims that petitioner is estopped from questioning the authority of the RO due to its active participation in the audit investigation, and for not having raised the said issue during the investigation.

Lastly, respondent asserts that neither he nor petitioner submitted the issue of the validity of a Letter of Authority (LOA) in the present case. As such, the respondent did not feel the necessity to present to the Court any evidence in relation thereto. Nonetheless, he maintains that the presumption of regularity of performance of official duties applies in the present case.

On the other hand, in its Comment, petitioner argues that although the *Medicard case* was promulgated by the Supreme Court on April 5, 2017, it nevertheless cited the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[2] *("Sony case" hereafter)*, which was promulgated on November 17, 2010 as the primary basis with regard to the issue of LOA. Thus, since the subject Formal Assessment Notice (FAN) of the present case is dated January 24, 2011, the *Sony case* is clearly relevant to the present case.

Moreover, petitioner maintains that the interpretation of the Supreme Court in the *Medicard case* constitutes a part of the law as of the date it was originally passed since it establishes the contemporaneous legislative intent of the law, following the doctrine enunciated in *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*.[3] gr

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[1] G.R. No. 222743, April 5, 2017.
[2] G.R. No. 178697, November 17, 2010.
[3] G.R. No. 197525, June 4, 2014.

Petitioner also claims that the absence of the required LOA results in the invalidity of the assessment. Thus, the doctrine of estoppel is not applicable as the questioned assessment is null and void.

Lastly, citing the case of *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.,*[4] petitioner insists that the prima facie correctness of tax assessment does not apply upon proof that an assessment is utterly without foundation, or one that is arbitrary and capricious. It likewise claims that the presumption of regularity of the assessment is overturned by evidence showing that the assessment is null and void on the bases of lack of LOA and violation of petitioner's right to due process.

This Court finds respondent's Motion for Reconsideration bereft of merit.

With regard to respondent's claim that the tax audit was made prior to the promulgation of *Medicard case*, petitioner correctly applied the the contemporaneous legislative intent doctrine, wherein the Supreme Court's interpretation of a statute constitutes part of the law as of the date it was originally passed. As held in the case *Columbia Pictures, Inc., et al. v. Court of Appeals, et al.*[5]:

> "Article 4 of the Civil Code provides that '(l)aws shall have no retroactive effect, unless the contrary is provided.['] Correlatively, Article 8 of the same Code declares that '(j)udicial decisions applying the laws or the Constitution shall form part of the legal system of the Philippines.'
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> Jurisprudence, in our system of government, cannot be considered as an independent source of law; it cannot create law. While it is true that judicial decisions which apply or interpret the Constitution or the laws are part of the legal system of the Philippines, still they are not laws. Judicial decisions, though not laws, are nonetheless evidence of what the laws mean, and it is for this reason that they are part of the legal system of the Philippines.

[4] G.R. No. 136975, March 31, 2005.
[5] G.R. No. 110318 August 28, 1996; citing *Roque Senarillo v. Epifanio Hermosisima*, et al., G.R. No. L-10662, December 14, 1956.

Judicial decisions of the Supreme Court assume the same authority as the statute itself.

Interpreting the aforequoted correlated provisions of the Civil Code and in light of the above disquisition, this Court emphatically declared in *Co vs. Court* of Appeals, et al. that the principle of prospectivity applies not only to original amendatory statutes and administrative rulings and circulars, but also, and properly so, to judicial decisions. x x x.

x x x

The reasoning behind *Senarillos vs. Hermosisima* that judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect, is all too familiar. Such judicial doctrine does not amount to the passage of a new law but consists merely of a construction or interpretation of a pre-existing one, x x x.

It is consequently clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed, subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a **reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith**. To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication."

Guided by the foregoing disquisition, the ruling in *Medicard case* may be applied to the present case even if the tax audit was made prior to the promulgation of the said case.

As to the other issues raised by respondent regarding the authority of respondent's RO to continue the conduct of the audit investigation, the same were already settled by this Court in the Decision assailed. Nonetheless, the Court reiterates that the authority of the RO to conduct audit investigation goes into the issue of the validity of the assessment itself. As such, any assessment arising from the examination of a taxpayer's books of accounts by a RO who is not duly authorized to do so, is inescapably void, following the oft-repeated rule that "a void assessment bears no valid fruit." Hence, it is of no consequence that the issue on the alleged want of authority of the revenue officer was never raised by petitioner during the investigation.

Lastly, the Court finds the presumption of regularity in the performance of service as not applicable in the present case since the presumption only applies where there is no clear deviation from the regular performance of duty. In the present case, the presumption was amply overthrown by the fact that respondent violated petitioner's right to due process when he failed to show that the PAN has been issued against petitioner, indicating the law and the facts on which the proposed assessment is made; and when respondent failed to set and fix a definite amount of tax liability of petitioner. Accordingly, respondent's failure to observe the procedures laid down in Section 228 of the National Internal Revenue Code, as amended, as well as its implementing rules, Revenue Regulations No. 12-99 dated September 6, 1999, as amended, nullify the presumption.

WHEREFORE, in view of the foregoing, respondent's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice