REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

SALCEDO RISTORANTE ITALIANO, INC., Petitioner,	**CTA EB No. 1774** (CTA Case No. 8880)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** JJ
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** NOV 04 2019 2:05pm

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DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review* filed by Salcedo Ristorante Italiano, Inc. on February 19, 2018 against the Commissioner of Internal Revenue,[1] praying for the reversal and setting aside of the Decision dated June 22, 2017[2] and the Resolution dated December 12, 2017[3], both rendered by the Second

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[1] EB Docket, pp. 43 to 52.

[2] Penned by Associate Justice Juanito C. Castañeda, Jr., concurred by Associate Justice Catherine T. Manahan. Associate Justice Caesar A. Casanova (now retired) was on leave, EB Docket, pp. 54 to 77.

[3] Penned by Associate Justice Juanito C. Castañeda, Jr., concurred by Associate Justices Caesar A. Casanova and Catherine T. Manahan, EB Docket, pp. 78 to 82.

Division of this Court (Court in Division) in CTA Case No. 8880, entitled *"Salcedo Ristorante Italiano Inc., Petitioner, versus Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read as follows:

Decision dated June 22, 2017:

"**WHEREFORE,** in view of the foregoing, the instant Petition for Review is **PARTLY GRANTED.** The value-added tax, expanded withholding tax and withholding tax on compensation assessments, including the imposition of the compromise penalties, are hereby **CANCELLED**.

However, petitioner is **ORDERED** to pay deficiency income tax in the amount of ₱1,285,642.00, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997.

In addition, petitioner is **ORDERED** to pay:

(a) Deficiency interest at the rate of 20% per annum on the basic deficiency income tax of ₱1,028,513.60 computed from April 15, 2009 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and,

(b) Delinquency interest at the rate of 20% per annum on the total amount of ₱1,285,642.00 (representing basic deficiency income tax of ₱1,028,513.60 and 25% surcharge of ₱257,128.40) and on the deficiency interest which have accrued as afore-stated in (a) computed from September 5, 2014 until full payment thereof pursuant to Section 249(C) of the NIRC, as amended.

SO ORDERED."

Resolution dated December 12, 2017:

"**WHEREFORE**, the motions of both parties are **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner Salcedo Ristorante Italiano, Inc., a subsidiary company of Merry Cooks, Inc., is a domestic corporation established and existing under the laws of the Republic of the Philippines with address at No. 156 Guava Drive, Ayala Alabang, Muntinlupa City. It is primarily engaged in food service industry with a restaurant outlet in Makati City.

Respondent is the Commissioner of Internal Revenue, vested by law with authority to conduct investigation of internal revenue taxes paid by taxpayers, issue deficiency tax assessments and decide on any disputed deficiency internal revenue tax assessments or other charges, penalties imposed in relation thereto pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended.

On the following dates, petitioner filed its tax returns for taxable year 2008 with registered address at 114 H.V. Dela Costa Street, Salcedo Village, Makati City, *viz*:

Tax Returns	Date of Filing of Returns
Income Tax	
Calendar Year 2008	Wednesday, April 15, 2009
Value-Added Tax	
First Quarter – CY 2008	Friday, April 25, 2008
Second Quarter – CY 2008	Tuesday, July 22, 2008
Third Quarter – CY 2008	Tuesday, October 28, 2008
Fourth Quarter – CY 2008	Friday, January 23, 2009
Expanded Withholding Tax	
January 2008	Monday, February 11, 2008
February 2008	Monday, March 10, 2008
March 2008	Thursday, April 10, 2008
April 2008	Monday, May 12, 2008
May 2008	Tuesday, June 10, 2008
June 2008	Thursday, July 10, 2008
July 2008	Monday, August 11, 2008
August 2008	Monday, September 8, 2008
September 2008	Friday, October 10, 2008
October 2008	Monday, November 10, 2008
November 2008	Wednesday, December 10, 2008
December 2008	Thursday, January 15, 2009
Withholding Tax on Compensation	
January 2008	Monday, February 11, 2008

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February 2008	Monday, March 10, 2008
March 2008	Thursday, April 10, 2008
April 2008	Monday, May 12, 2008
May 2008	Tuesday, June 10, 2008
June 2008	Thursday, July 10, 2008
July 2008	Monday, August 11, 2008
August 2008	Monday, September 8, 2008
September 2008	Friday, October 10, 2008
October 2008	Wednesday, November 5, 2008
November 2008	Wednesday, December 10, 2008
December 2008	Thursday, January 15, 2009

In the *Memorandum of Assignment* (MOA) dated February 10, 2012, because of the alleged failure of the petitioner to comply with a previously issued *Subpoena Duces Tecum* dated September 21, 2011, Revenue District Officer Ricardo B. Espiritu of Revenue District Office (RDO) No. 50 - South Makati referred the matter to Revenue Officer (RO) Gene G. Etorma. The subject of the said MOA is the audit/verification of all internal revenue tax liabilities for taxable year 2008 of petitioner, pursuant to Tax Verification Notice No. 000147692 dated June 11, 2009. The case was referred to RO Etorma for the *"immediate assessment based on Best Evidence Obtainable Rule"* under Revenue Memorandum Circular (RMC) No. 23-2000".

In the *Notice of Informal Conference* dated February 17, 2012, petitioner was invited for an informal conference at RDO No. 50 to go over the BIR's findings; to offer explanation or present objections to said findings; and to submit at said conference whatever documentary evidence it may have to support any objection against the proposed assessment.

Based on the Integrated Tax System of the Bureau of Internal Revenue (BIR), petitioner's registered address was 114 H.V. Dela Costa Street, Salcedo Village, Makati City.

Acting on this information, RO Etorma attempted to serve the *Notice of Informal Conference* in said registered address but was informed by the building administrator that petitioner already moved out of the building.

RO Etorma, thus, inquired if petitioner had an existing lease contract in the building. The building administrator issued a *Certification* dated February 29, 2012, which stated that petitioner *"does not have any existing lease contract with Classica Tower*

Condominium Assoc. Inc. and [is] *no longer occupying Unit GF-1 at 114 H.V. Dela Costa St., Salcedo Village, Makati City."*

In the *Memorandum Report* dated March 26, 2012 and addressed to the Regional Director, RO Etorma noted that petitioner, despite receiving a *Subpoena Duces Tecum*, still failed to present their books of account and other accounting records and, thus, he was instructed by the Legal Division to assess the taxpayer based on the best evidence obtainable under Section 6(B) of the 1997 NIRC and RMC No. 23-2000. He reported that he tried to serve the *Notice of Informal Conference* but the taxpayer could no longer be located in their registered address.

Furthermore, the *Report* stated that "[t]*he building administrator certified that the taxpayer is no longer occupying their old address, while Barangay Bel Air and* [Makati City] *Business Permit Office certified that the taxpayer's last known address is still their old registered address with the BIR. The undersigned* [Etorma] *then mailed the NIC* [Notice of Informal Conference] *on 2-28-12 to the treasurer and the corporate secretary xxx. The NIC mailed to the Treasurer was returned to the sender (undersigned) on March 23, 2012."* After a summary of his audit findings, RO Etorma concluded the report by stating "[i]*n view of the foregoing, it is respectfully recommended that the case be forwarded to the Assessment Division for issuance of pre-assessment notice."*

Sometime in June 2012, petitioner stopped its operations and closed its business outlet in Makati City. However, it did not inform respondent of the cessation of its business and did not update the BIR registration system. Petitioner, nonetheless, continued to monitor its receipt of correspondences in said address.

Thereafter, RO Etorma submitted the *Memorandum Report* dated November 11, 2012 which reiterated his findings and recommendations in the earlier memorandum that the case be forwarded to the Assessment Division for the issuance of the *Preliminary Assessment Notice* (PAN).

Thereafter, the PAN dated December 10, 2012 was issued and sent to petitioner via registered mail. The PAN was returned to sender. As an alternative mode, RO Etorma also sent the PAN by registered mail to petitioner's Corporate Secretary and the Treasurer based on its General Information Sheet (GIS).

Respondent then issued the *Formal Assessment Notice* (FAN) dated May 8, 2013 for the taxable year 2008 detailed as follows:

Income tax	₱2,236,036.52
Value-added tax	1,059,984.93
Expanded withholding tax	80,208.34
Withholding tax on compensation	216,798.31
Compromise penalty	12,000.00

Because of the previous difficulty in locating petitioner in its registered address, RO Etorma once again sent the FAN by registered mail to Ma. Gianina Suarez, the Corporate Secretary based on the petitioner's GIS.

In the *letter* dated May 23, 2013 addressed to the Chief of Assessment Division, Revenue Region No. 8, and signed by Ma. Gianina Suarez, Corporate Secretary, the petitioner designated Atty. Carlos V. Jaurigue as its duly authorized representative.

On June 10, 2013, petitioner filed a *protest letter* against the assessments citing therein the grounds for cancellation.

Accordingly, respondent reinvestigated the case. In the *Memorandum of Assignment* dated July 2, 2013, RO Villaflor A. Lagundi was assigned to conduct further evaluation of the assessment against petitioner.

In the *Memorandum* for the Regional Director, RO Lagundi stated she *"conforms with the original revenue officer's citation of Section 223 of the NIRC relative to the suspension of prescription to assess subject taxpayer, which states that 'the suspension of the statute of limitation provided in Section 203 will occur when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected' xxx. In view thereof, it is respectfully recommended that this docket be forwarded to* [the] *Assessment Division for the issuance of Final Decision on Disputed Assessment (FDDA)."*

On July 28, 2014, petitioner received a copy of the *Final*

Decision on Disputed Assessment (FDDA) dated July 18, 2014 from respondent, informing it that it is still liable to pay deficiency internal revenue taxes, inclusive of interest. Petitioner also received a copy of the *Details of Discrepancies* attached to the FDDA, citing the grounds for the deficiency tax assessments. Respondent, through the Regional Director of Revenue Region No. 8, confirmed that the FDDA dated July 18, 2014 was the final decision on the protest against the assessments.

Hence, on August 27, 2014, petitioner filed a *Petition for Review* before the Court in Division. The case was docketed as CTA Case No. 8880.

Respondent filed his *Answer* in CTA Case No. 8880 on October 22, 2014, and raised the following special and affirmative defenses: 1) that the running of the prescriptive period to assess is tolled considering that petitioner cannot be located on its registered business address; 2) that the assessment notices was issued within the prescriptive period allowed by law; 3) that the assessment notices sent to petitioner are still valid even if the three (3) year period had already lapsed because the applicable period of limitation within which to assess the petitioner is ten (10) years on the ground that it filed false VAT returns and false withholding tax returns for taxable year 2008; 4) that petitioner's declaration in its VAT returns deducting ₱568,650.57 from its output tax of ₱620,450.30 without substantiation by documentary evidence is considered as substantial overstatement of deduction constituting *prima facie* evidence of false or fraudulent VAT returns; 5) that respondent's right to assess petitioner for deficiency expanded withholding tax and withholding tax on compensation for the taxable year 2008 has not yet prescribed pursuant to Section 222 of the 1997 NIRC; 6) that assessments are *prima facie* presumed correct and made in good faith; and 7) taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance.

Thereafter, the Court in Division set the Pre-trial Conference on December 4, 2014. Respondent filed his *Pre-Trial Brief* on November 27, 2014, while petitioner filed its *Pre-Trial Brief* on November 28, 2014.

Petitioner's initial presentation of evidence was set on January 26, 2015 for the testimony of its lone witness, Rodrigo Bacon, Jr., Accounting Manager of petitioner's parent company, Merry Cooks, Inc. The hearing was however reset upon motion of petitioner, to February 25, 2015, and then again, to March 11, 2015.

In the Resolution dated January 29, 2015, the Court in Division ordered both parties' counsels to show cause why they should not be cited for contempt for failure to comply with the December 4, 2014 Order of the Court to file their *Joint Stipulation of Facts and Issues.*

In the Resolution promulgated February 27, 2015, the Court in Division dismissed the case for failure of the petitioner to comply with its lawful Order dated December 4, 2014, and for failure of the parties to comply with the Resolution dated January 29, 2015.

Petitioner filed a *Motion for Reconsideration* of the February 27, 2015 Resolution, which was granted by the Court in Division in its May 21, 2015 Resolution.

On June 15, 2015, the parties filed their *Joint Stipulation of Facts and Issues*, which was approved by the Court in Division in its Pre-Trial Order dated June 23, 2015.

With the termination of the pre-trial, the initial presentation of evidence for the petitioner was set on August 5, 2015 which was again reset to August 10, 2015, upon motion of the petitioner. On August 10, 2015, petitioner's witness, Rodrigo Bacon, Jr., testified. Thereafter, petitioner was also granted until September 3, 2015 to file its formal offer of evidence.

Subsequently, on September 4, 2015, petitioner filed its *Formal Offer of Evidence* (FOE). Acting on petitioner's FOE, the Court admitted all of petitioner's Exhibits on October 12, 2015.

Respondent presented as witnesses, RO Etorma, on October 21, 2015, and RO Lagundi, on December 2, 2015.

On December 15, 2015, respondent filed his FOE. The Court in Division admitted respondent's Exhibits, except for Exhibits "R-10" and "R-10-a". However, upon *Motion for Reconsideration* and considering the corrections made by respondent, the Court in Division admitted Exhibits "R-10" and "R-10-a". Thus, CTA Case No. 8880 was submitted for decision on July 7, 2016.

On June 22, 2017, the Court in Division rendered the assailed *Decision*, partly granting petitioner's *Petition for Review.*[4]

Respondent then filed a *Motion for Reconsideration (of the Decision dated 22 June 2017)* on July 7, 2017.[5] Petitioner likewise filed a *Motion for Partial Reconsideration (of the Decision)* on July 10, 2017.[6]

The Court in Division issued the assailed *Resolution*, denying both motions for lack of merit.[7]

On February 1, 2018, petitioner filed a *Motion for Extension of Time to File Petition for Review* before this Court *En Banc*, praying for an extension period of thirty (30) days from February 3, 2018, or until March 4, 2018, within which to file its *Petition for Review.*[8] However, the Court *En Banc* granted petitioner an extension of fifteen (15) days only, from February 2, 2018 or until February 17, 2018, within which to file the said *Petition for Review.*[9]

On February 19, 2018, petitioner filed the instant *Petition for Review.*[10] Subsequently, in the Resolution dated March 26, 2018, the Court *En Banc* directed respondent to file his *Comment.*[11]

On June 14, 2018, the Court *En Banc* resolved to give due course to the *Petition for Review* sans *Comment* from respondent despite due notice. The parties were granted a period of thirty (30) days from notice, within which to file their respective memoranda.[12]

On August 10, 2018, respondent filed a *Motion for Extension of Time to File Memorandum,*[13] praying for an additional thirty (30) days from August 10, 2018, or until September 9, 2018, within which to file his *Memorandum.*

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[4] EB Docket, pp. 54 to 77; Division Docket (CTA Case No. 8880), pp. 251 to 274.
[5] Division Docket (CTA Case No. 8880), pp. 285 to 291.
[6] Division Docket (CTA Case No. 8880), pp. 275 to 281.
[7] EB Docket, pp. 78 to 82; Division Docket (CTA Case No. 8880), pp. 299 to 303.
[8] EB Docket, pp. 1 to 3.
[9] Minute Resolution dated February 2, 2018, EB Docket, p. 42.
[10] February 17, 2018—the deadline set by the Court *En Banc* for the filing of petitioner's *Petition for Review*, fell on a Saturday.
[11] EB Docket, pp. 85 to 86.
[12] Resolution dated June 14, 2018, EB Docket, pp. 89 to 90.
[13] EB Docket, pp. 91 to 93.

Respondent filed his *Memorandum* on September 4, 2018;[14] while petitioner failed to file its *Memorandum*.[15] Thereafter, the instant case was submitted for decision on November 14, 2018.[16]

Hence, this Decision.

THE ISSUES

Petitioner raises the following issues for the Court *En Banc*'s resolution, to wit:

> "1. Whether or not the Honorable Court erred in holding that the Petitioner failed to substantiate the documents necessary to substantiate its claim of expenses;
>
> 2. Whether or not the Honorable Court failed to consider that the Petitioner has proven that it has submitted all the documents for the year 2008 covering the expenses claimed and revenues earned by Petitioner to the Respondent Bureau of Internal Revenue;
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> 3. Whether or not the Honorable Court failed to consider that the Respondent Bureau of Internal Revenue was able to ascertain the whereabouts of the Corporate Secretary of the Petitioner and thus the suspension of the running of the prescriptive period was lifted from the time of knowledge of the address of the Corporate Secretary; and
>
> 4. Whether or not the Honorable Court failed to determine whether the prescriptive period of three (3) years has lapsed as of May 8, 2013 after deducting the period from February, 2012 up to the time the address of the Corporate Secretary was ascertained by the Revenue Examiners of the Respondent Bureau of Internal Revenue

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[14] EB Docket, pp. 96 to 101.
[15] Records Verification dated October 15, 2018 issued by the Judicial Records Division of this Court, EB Docket, p. 102.
[16] Resolution dated November 14, 2018, EB Docket, pp. 104 to 105.

in the determination of the three (3) year prescriptive period."[17]

Petitioner's arguments:

Petitioner argues that the Court in Division erred in declaring that petitioner failed to present evidence to substantiate its claims of expenses for the year 2008; and that the Court in Division erred in failing to consider the submission by petitioner of all its invoices and official receipts to the BIR, pursuant to the directive of the *Subpoena Duces Tecum* issued against petitioner.

Moreover, petitioner submits that the Court in Division erred in failing to consider that the respondent BIR was able to ascertain the address of the Corporate Secretary of the petitioner. And thus, the suspension of the running of the three (3) year prescriptive period to issue the assessment must be lifted.

Furthermore, according to petitioner, the Court in Division erred when it failed to determine whether the prescriptive period of three (3) years lapsed as of May 8, 2013, after deducting the period from February, 2012 up to the time the address of the Corporate Secretary of petitioner was ascertained by the BIR.

Respondent's counter-arguments:

Respondent counter-argues that the grounds raised by petitioner in its *Petition for Review* are a mere rehash of the arguments raised in its *Motion for Reconsideration* of the assailed Decision dated June 22, 2017.

Respondent further contends that the Court in Division did not commit any reversible error with regard to its Resolution dated December 12, 2017, partly denying the *Petition for Review* on the issue of income tax.

However, respondent disagrees with the Resolution of the Court in Division in cancelling the assessments on value added tax

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[17] EB Docket, p. 41.

(VAT), expanded withholding taxes, withholding tax on compensation, including the imposition of compromise penalties.

Furthermore, respondent alleges that Section 203 of the 1997 NIRC is not applicable in the instant case; and that the three (3) year prescriptive period should not be invoked, because the applicable period of limitation within which to assess the petitioner is ten (10) years on the ground that the petitioner filed false VAT returns and false Withholding Tax Returns for taxable year 2008, pursuant to Section 222(a) of the 1997 NIRC, as amended.

According to respondent, petitioner substantially under-declared its income payments subjected to withholding tax. Under Section 248(B) of the 1997 NIRC, as amended, the substantial payments shall constitute *prima facie* evidence of false or fraudulent return, which in turn, carries with it the applicability of the ten-year prescriptive period.

THE COURT *EN BANC*'S RULING

Before resolving the issues raised by petitioner in the instant case, and notwithstanding the fact that this matter was not raised herein by petitioner, this Court *En Banc* finds it necessary to rule on one related issue to achieve a thorough and orderly disposition of the instant case, to wit:

> "Whether or not the revenue officers who examined petitioner were authorized by respondent or his duly authorized representative, through a Letter of Authority (LOA)."

Legal basis to resolve the foregoing issue.

Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA) reads as follows:

"RULE 14
JUDGMENT, ITS ENTRY AND EXECUTION

SECTION 1. – *Rendition of judgment* – xxx

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> **In deciding a 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.**" *(Emphasis supplied)*

Based on the foregoing, this Court is not bound by the issues specifically raised by the parties, but may also rule upon related issues necessary to achieve an orderly disposition of the case.[18] Such power of this Court is confirmed and recognized by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[19] *viz*:

> **"On whether the CTA can resolve an issue which was not raised by the parties, <u>we rule in the affirmative</u>.**
>
> 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 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 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 <u>even though the parties had not raised the same in their pleadings or memoranda</u>.** The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter." *(Emphasis and underscoring supplied)*

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[18] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.
[19] G.R. No. 183408, July 12, 2017.

Such being the case, the above-stated issue may lawfully be considered and resolved by this Court *En Banc.*

RO Gene G. Etorma was not authorized under a valid and existing LOA to examine and assess petitioner for deficiency taxes

Section 6 of the NIRC of 1997, as amended, read as follows:

> "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, <u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>: *Provided, however*, that failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." (*Underscoring Supplied)*

Pursuant to the said provision, an authorization from respondent or his duly authorized representative is necessary in order to examine any taxpayer and to assess the correct amount of tax.

Relative thereto, it must be noted that within the region and district offices under his jurisdiction, the Regional Director is vested, *inter alia*, with the power to issue Letters of Authority, in accordance with Section 10 of the NIRC of 1997, which provides as follows:

> "SEC. 10. *Revenue Regional Director.* – Under the rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:
>
> xxx xxx xxx

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(c) **Issue Letters of Authority for the examination of taxpayers within the region**;

xxx xxx xxx" *(Emphasis Supplied)*

In addition, Section 13 of the NIRC of 1997 states that an RO assigned to perform assessment functions may examine taxpayers in order to collect taxes from, or to recommend the issuance of a deficiency tax assessment against, the said taxpayers, pursuant to an LOA issued by the Regional Director, to wit:

"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." *(Emphasis Supplied)*

Based on the foregoing provisions, an LOA issued by the Revenue Regional Director is necessary before an RO can examine any taxpayer in order to collect the correct amount of tax or to recommend the assessment of any deficiency tax due. Simply stated, without a Letter of Authority, a Revenue Officer cannot examine any taxpayer or recommend the assessment of any deficiency tax due.

The importance and significance of a Letter of Authority to examine taxpayers in order to collect the correct amount of tax or to recommend the assessment of any deficiency tax due was emphasized by the Supreme Court in the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* ("*Medicard* case"),[20] to wit:

"An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to

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

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. xxx

xxx xxx xxx

xxx xxx xxx, [I]t 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

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)*

Furthermore, respondent, through the issuance of Revenue Memorandum Circular (RMC) No. 75-2018,[21] recognized the said *Medicard* case, in this wise:

[21] SUBJECT: The Mandatory Statutory Requirement and Function of a Letter of Authority.

> "The judicial ruling, invoking a specific statutory mandate, states that no assessments can be issued or no assessment functions or proceedings can be done without the prior approval and authorization of the Commissioner of Internal Revenue (CIR) or his duly authorized representative, through an LOA. **The concept of an LOA is therefore clear and unequivocal. Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore 'inescapably void.'**
>
> xxx xxx xxx
>
> To help forestall any unnecessary controversy and to encourage due observance of the judicial pronouncements, any examiner or revenue officer initiating tax assessments or performing assessment functions without an LOA shall be subject to appropriate administrative sanctions." *(Emphasis supplied)*

Moreover, in the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[22], the Supreme Court held that:

> "Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**." (Emphasis and underlining ours)

It is evident from the foregoing that a grant of authority is indispensable before an RO can conduct an examination or assessment, and that the absence thereof results to the nullity of the examination or the tax assessment itself.

In the instant case, records show that the authority for the examination of petitioner's records emanated not from an LOA, but from TVN No. 00147692 dated June 11, 2009,[23] issued to RO Ma. Antoinette Suarez by Revenue District Officer Florante R. Aninag.

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[22] GR. No. 178697, November 17, 2010.
[23] BIR Records, p. 60.

And to prove the authority of RO Etorma to conduct an investigation of petitioner's internal revenue taxes for taxable year 2008, respondent merely offered in evidence the *Memorandum of Assignment* dated February 10, 2012 issued by Revenue District Officer Ricardo B. Espiritu,[24] marked as Exhibit "R-1".[25] A perusal of the said *Memorandum of Assignment* shows that the same was only issued "[p]*ursuant to Tax Verification Notice No. 000147692 dated June 11, 2009.*"

The issuance of the same *Memorandum of Assignment* was confirmed in the testimony of RO Etorma himself, in his Judicial Affidavit,[26] to wit:

> "Q5: How did you come to know the petitioner in this case?
>
> A: I came to know the petitioner in this case when I received a **<u>Memorandum of Assignment dated February 10, 2012 in connection with the Tax Verification Notice No. 00147692 dated June 11, 2009 duly issued by respondent, authorizing myself to conduct an immediate assessment</u>** based on Best Evidence Obtainable Rule under RMC No. 23-2000 relative to the petitioner's all internal revenue tax liabilities for taxable year 2008."

Clearly, RO Etorma was not authorized, through an LOA, to examine petitioner's records, and to recommend the assessment of any deficiency taxes against petitioner. Consequently, applying the above-quoted jurisprudential pronouncements in the *Medicard* and Sony cases, and consistent with respondent's RMC No. 75-2018 upholding the pronouncement in the *Medicard* case, the subject tax assessments, including the subject deficiency income tax assessment, are inescapably void.

Apropos, it is well-settled that a void assessment bears no valid fruit.[27]

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[24] Division Docket (CTA Case No. 8880), p. 217.
[25] BIR Records, p. 71.
[26] Exhibit "R-11, Division Docket (CTA Case No. 8880), pp. 46 to 52, at p. 47.
[27] *Commissioner of Internal Revenue vs. Azucena T. Reyes; Azucena T. Reyes vs. Commissioner of Internal Revenue,* G.R. No. 159694 & 163581, January 27, 2006.

Considering the foregoing findings, it is no longer necessary for the Court *En Banc* to address the issues raised by petitioner in the instant case.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. The Decision dated June 22, 2017 and Resolution dated December 12, 2017 rendered by the Court in Division in CTA Case No. 8880 are hereby **MODIFIED**. Accordingly, the deficiency income tax assessment issued against petitioner, inclusive of penalties, for taxable year 2008, is **CANCELLED AND SET ASIDE** for being null and void.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON LEAVE
MARIA ROWENA MODESTO-SAN PEDRO
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