REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1350** (CTA Case No. 8531)
-*versus*-	Present: *Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, JJ.*
CEBU MITSUMI, INC., *Respondent.*	Promulgated: AUG 16 2016 2:38 p.m.

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DECISION

BAUTISTA, J:

The Case

This is a Petition for Review[1] under *Section 3(b)*[2], *Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")* seeking the

[1] *Rollo, CTA EB No. 1350, Petition for Review,* pp. 7-41, with annexes.

[2] "SECTION 3. *Who May Appeal; Period to File Petition.* — xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review."

nullification of the Decision[3] promulgated on May 21, 2015 and the Resolution[4] promulgated on August 5, 2015 by the Second Division of the CTA ("Second Division") in the case of *"Cebu Mitsumi, Inc. v. Commissioner of Internal Revenue"* docketed as CTA Case No. 8531, involving deficiency income tax assessment in the total amount of Eighteen Million Two Hundred Thirty-Six Thousand Four Hundred Ninety-One and 8/100 Philippine Pesos (Php18,236,491.08) for taxable year ended March 31, 2009.[5]

The Parties[6]

Petitioner, Cebu Mitsumi, Inc. ("CMI"), is a domestic corporation duly organized and existing under the laws of the Philippines with principal office address at MRI Special Economic Zone, Sabang, Danao City, Cebu, Philippines. It is an Ecozone Export Enterprise, engaged in the production of magnetic heads, floppy disk drives, connectors, flexible printed circuits, digital audio tape deck mechanisms for data streamers, magnetic drums, optical heads for CD-ROM drives, CD-ROM drives, membrane switch units, reel motors, pressed and molded parts, spindle motors, floppy disk adapters, DC micro motors, IC modules, camera modules and monolithic integrated circuits.

Respondent Commissioner of Internal Revenue ("CIR") is the chief of the Bureau of Internal Revenue ("BIR"), the government agency charged with the assessment and collection of all internal revenue taxes, fees and charges, and the enforcement of all forfeitures, penalties and fines connected therewith.

The Facts

As stated in the Assailed Decision[7] dated May 21, 2015, the factual antecedents of this case are as follows:

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[3] *Records, CTA Case No. 8531, Vol. 2, May 21, 2015 Assailed Decision,* pp. 1198-1205; penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justice Juanito C. Castañeda, Jr. concurring and Associate Justice Caesar A. Casanova on leave.
[4] *Id., August 5, 2015 Assailed Resolution,* pp. 1224-1225; penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova concurring.
[5] *Rollo, CTA EB No. 1350, Petition for Review,* pp. 7-8.
[6] *Records, CTA Case No. 8531, Vol. 2, May 21, 2015 Assailed Decision,* pp. 1198-1199.
[7] *Id.* at 1198-1205.

On May 18, 2012, [CMI] received from [the CIR] a Formal Letter of Demand [("FLD")] with Assessment Notice No. 123-IT-20-2009-2012-05-27, assessing [CMI] for alleged deficiency income tax. On May 30, 2012, [CMI] filed a Letter of Protest/Request for Investigation against the said [FLD].

On July 19, 2012, [CMI] received from [the CIR] a Final Decision on Disputed Assessment [("FDDA")] demanding payment of alleged deficiency income tax for taxable year ended March 31, 2009.

In the FDDA, [the CIR] disallowed the deduction of [CMI's] brokerage, freight & handling, training[], and repairs & maintenance expenses from [CMI's] Gross Revenue on the basis that these expenses are allegedly not included under Revenue Regulations [("RR")] No. 11-2005. [The CIR] computed [CMI's] alleged deficiency income tax as follows:

Undeclared Rental Income under 5% GIT Legal Basis: *Sec. 24 of [Republic Act ("RA") No.] 8748*			Php	2,144,085.35
Disallowed Expenses (not included in *RR [No.] 11-2005*				
Brokerage, Freight & Handling	Php	24,796,768.00		
Training Expenses		2,338,840.00		
Repairs & Maintenance		197,356,985.00	Php	224,492,593.00
Total			Php	226,636,678.35
Rate				5%
Basic			Php	11,331,833.92
Add: Interest July 15, 2009 - July 31, 2012				6,904,657.16
Total Amount Due			Php	18,236,491.08

Considering receipt of the FDDA on July 19, 2012 [CMI] had until August 18, 2012 to appeal to the CTA, thus, the [] petition filed [on] August 17, 2012 [before the Second Division], is timely filed.

Upon notice and after an extension was granted, [the CIR] filed [his] Answer on October 18, 2012. Pre-trial briefs were filed by the [CIR] and [CMI] on November 1, 2012 and November 19, 2012, respectively. After pre-trial, the parties submitted their Joint Stipulation of Facts and Issues [("JSFI")] on December 12, 2012. The [Second Division] issued its Pre-Trial Order on January 3, 2013.

[CMI] presented as witnesses: [its] Finance Manager, Mr. Edwin Alvero[;] and independent certified public accountant [("ICPA")], Mr. Elmer P. Minerva. On November 25, 2013, [CMI] submitted its Formal Offer of Evidence. The [Second Division] admitted Exhibits "A" to "O-1", in its Resolution dated January 17, 2014. On February 4, 2014, [CMI] filed a Motion for Reconsideration of the [Second Division's] denial of

> admission of certain documents, which the [Second Division] only partially granted in a Resolution dated March 17, 2014.
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> On December 12, 2013, [CMI] filed a Motion to Reopen Case in order for [it] to present additional evidence, which the [Second Division] granted in a Resolution dated February 3, 2014. [CMI] recalled Mr. Edwin Alvero on February 26, 2014 and March 17, 2014.
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> [CMI] filed its Supplemental Formal Offer of Evidence on March 27, 2014. In the Resolution[] dated May 12, 2014, the [Second Division] admitted Exhibits "R", "S", "T", "U", "V", and "AA-ABX-07-002-00". Subsequently, and upon verification, Exhibits "AA-ABX-07-001-00", "P", "Q", "W", "Y", "Z", "AA", "BB", "CC", "DD", "K", "K-1", "EE", and "EE-1" were also admitted.
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> [The CIR], on the other hand, presented revenue officer, Ms. Vivian Pollisco, as its sole witness. The [CIR] filed its Formal Offer of Documentary Evidence on July 7, 2014. On September 4, 2014, the Court admitted Exhibits "1", "3", "5", "7", "7-a", "9", "9-a", "10", and "12". Upon reconsideration, Exhibits "8" and "11" were also admitted.
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> The case was deemed submitted for decision on March 3, 2015, upon the submission of [CMI's] Memorandum, on January 20, 2015, and [the CIR's] Memorandum, received by [the Second Division] on February 2, 2015.

On May 21, 2015, the Second Division promulgated the Assailed Decision[8], the dispositive portion thereof reads as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, Assessment Notice No. 123-IT-20-2009-2012-05-27 is hereby **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED.**[9]

The Second Division explained that a Letter of Authority ("LOA") is required under *Section 13 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*;[10] that no LOA was issued

[8] *Records, CTA Case No. 8531, Vol. 2, May 21, 2015 Assailed Decision*, pp. 1198-1205.
[9] *Id.* at 1205.
[10] *Id.* at p. 1203.

prior to the investigation and assessment in the instant case, making the assessment void for having been issued without a LOA;[11] and that it did not discuss the other details of the assessment on account of the void assessment.[12]

Not satisfied with the Decision, the CIR filed by registered mail a Motion for Reconsideration Re: Decision dated May 21, 2015[13] on June 8, 2015. CMI filed its corresponding Comment/Opposition (to Motion for Reconsideration re: Decision dated May 21, 2015)[14] on July 2, 2015.

On August 5, 2015, the Second Division issued a Resolution[15], where it held the following:

> **WHEREFORE**, premises considered, [CMI's] Motion for Partial Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[16]

The Second Division clarified that estoppel by laches cannot make a void assessment legally valid since a void assessment bears no valid fruit; and reiterated its stand that since no LOA was issued, the assessment is void.[17]

Upon the denial of its Motion for Reconsideration and after being granted an extension[18], the CIR raised the instant case to the Court *En Banc* when it filed a Petition for Review[19] on September 14, 2015, praying that:

> **WHEREFORE**, it is most respectfully prayed of this Honorable Court that the instant Petition for Review be given due course and judgment be rendered ordering [respondent] to pay the amount of [Php]18,236,491.08 as deficiency income tax for fiscal year ended March 31, 2009, plus 25% surcharge and 20% deficiency and delinquency interest for late payment from

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[11] *Records, CTA Case No. 8531, Vol. 2, May 21, 2015 Assailed Decision,* p. 1203-1204.
[12] *Id.* at p. 1205.
[13] *Id., Motion for Reconsideration,* pp. 1206-1213.
[14] *Id.,* pp. 1216-1222.
[15] *Id., August 5, 2015 Assailed Resolution,* pp. 1224-1225.
[16] *Id.* at 1225.
[17] *Id.*
[18] *Rollo, CTA EB No. 1350,* pp. 1-6.1.
[19] *Id., Petition for Review,* pp. 7-41, with annexes.

July 15, 2009 until fully paid pursuant to Sections 248 and 249 of the 1997 NIRC.

Other relief[s] just and equitable under the premises are likewise prayed for.[20]

On November 23, 2015, CMI filed its Comment (to Petition for Review dated September 9, 2015)[21].

On January 4, 2016, the Court *En Banc* issued a Resolution[22] ordering the parties to file their respective Memoranda within thirty (30) days from notice.

On February 12, 2016, the CIR filed a Manifestation[23] stating that he is adopting the arguments he raised in the Petition for Review as his Memorandum.

On February 15, 2016, respondent filed its Memorandum[24].

On March 1, 2016, the Court promulgated a Resolution[25] submitting the case for decision, hence, this Decision.

The Issues

Based on the Petition for Review[26] filed by the CIR, the assigned errors/issues of the case are as follows:

WHETHER THE PARTIAL PAYMENT MADE BY RESPONDENT AND ACTIVE PARTICIPATION DURING AUDIT AND INVESTIGATION OPERATES AS AN ADMISSION THAT WILL PLACE RESPONDENT IN ESTOPPEL FROM QUESTIONING THE VALIDITY OF THE ASSESSMENT.

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[20] *Rollo, CTA EB No. 1350, Petition for Review, Prayer,* p. 24.
[21] *Id., Comment (to Petition for Review dated September 9, 2015),* pp. 49-74.
[22] *Id.,* pp. 76-77.
[23] *Id., Manifestation,* pp. 78-80.
[24] *Id., Respondent's Memorandum,* pp. 82-114.
[25] *Id.,* pp. 116-117.
[26] *Id., Petition for Review,* pp. 7-41, with annexes.

WHETHER RESPONDENT IS LIABLE TO PAY THE ALLEGED DEFICIENCY INCOME TAX FOR TAXABLE YEAR ENDED MARCH 31, 2009 AMOUNTING TO PHP18,236,491.08 AS WELL AS INTEREST AND SURCHARGES PROVIDED IN *SECTION 248 AND 249 OF THE 1997 NIRC.*[27]

The Ruling of the Court En Banc

Petitioner's arguments[28]

The CIR avers that the absence of a LOA will not invalidate a duly issued assessment, citing the ruling in *Medicard Philippines Inc. v. Commissioner of Internal Revenue, CTA Case No. 7948, June 5, 2014* that the *1997 NIRC* authorized it to issue assessments other than by force of LOAs alone; that the FLD religiously complied with the provisions of *Section 228 of the 1997 NIRC;* that the participation and subsequent partial payment made by CMI operates as an admission that will place it in estoppel; and that CMI is not entitled to deduct from its gross sales and revenues the expenses incurred related to brokerage, fright & handling, training, and repairs & maintenance expenses.

Respondent's counter-arguments[29]

CMI counter-argues that the assessment is void as no LOA was issued; that the fact that no LOA was issued was actually judicially admitted by petitioner; that it is not estopped from raising the issue of invalidity of the assessment due to non-issuance of a LOA; that in the case of *Medicard Philippines Inc. v. Commissioner of Internal Revenue, CTA EB No. 1224 (CTA Case No. 7948), September 2, 2015,* the CTA *En Banc* held that a taxpayer is not estopped from questioning the validity of an assessment when it was discovered during cross examination that no LOA was issued; that estoppel cannot validate an act that contravenes law or is against public policy; that an assessment without a LOA is void and the principle of laches by estoppel cannot make it valid; that the FLD has no factual and legal bases; that its payment of the assessed deficiency income tax on the alleged undeclared rental income and disallowed repairs & maintenance expenses extinguished its obligation; that it is entitled to deduct from its gross sales and

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[27] *Rollo, CTA EB No. 1350, Petition for Review,* p. 10.
[28] *Id.* at 10-23.
[29] *Id., Respondent's Memorandum,* pp. 89-112.

revenues the expenses it incurred related to brokerage, freight & handling, training, and repairs & maintenance; and that it is not liable to pay deficiency income tax for the taxable year ended March 31, 2009 with interest and surcharges.

The Court *En Banc* finds no merit in the instant Petition for Review.

The *Medicard* case is not on all fours with the case at bar, as to the necessity of a LOA.

It must be noted that the CIR, in arguing its case in the Petition for Review, cited the decision of the Third Division of the CTA ("Third Division") in *Medicard Philippines Inc. v. Commissioner of Internal Revenue, CTA Case No. 7948, June 5, 2014.* This was appealed before the CTA *En Banc,* leading to the CTA *En Banc*'s decision in *Medicard Philippines Inc. v. Commissioner of Internal Revenue, CTA EB No. 1224 (CTA Case No. 7948), September 2, 2015,* which in turn was used as basis by CMI in its Memorandum. Hence, the Court *En Banc* finds it necessary to discuss this case in detail:

> The CIR found discrepancies between Medicard's Income Tax and Value-Added Tax ("VAT") Returns and issued a Letter Notice ("LN"). This was followed by the issuance of a PAN and a FAN, the latter was protested to by Medicard. The CIR then issued a Tax Verification Notice ("TVN"), authorizing a revenue officer to verify the supporting documents to the protest.
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> Medicard's protest was denied through a FDDA, and it filed a Petition for Review with the Third Division entitled *"Medicard Philippines Inc. v. Commissioner of Internal Revenue",* docketed as CTA Case No. 7948. One of the issues of the case is "whether a LOA was issued upon the revenue officers to examine the taxpayer's books of accounts and accounting records for VAT for the taxable year 2006 in arriving at the assessment."
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> The Third Division issued a decision on June 5, 2014 stating that it is undisputed that there was no LOA issued; that *Section 13 of the 1997 NIRC* provides that a LOA is issued by the Revenue

Regional Director to authorize a Revenue Officer to 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. Moreover, it discussed that *Revenue Memorandum Order ("RMO") No. 1-00* defines a LOA as that which "authorizes or empowers a designated Revenue Officer to examine, verify and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period."

Further, the Third Division referred to the doctrine in *Commissioner of Internal Revenue v. Sony Philippines, Inc., G.R. No. 178697, November 17, 2010,* in which the Supreme Court ruled that there must be a grant of authority before any revenue officer can conduct an examination or assessment; that said revenue officer so authorized must not go beyond the authority given; and that in the absence of an authority, the assessment or examination is a nullity.

In declaring the assessment valid, the Third Division first explained that the ruling in *Sony* involved the issuance of an LOA that is *prima facie* irregular and violative of the BIR's own rules and regulations; that such rulings were compelled by due process requirements that demand fair warning to the taxpayer on the extent and limit of the investigation, and, at the same time, by a need to establish constraints on the authority of the revenue officer who is acting under delegated authority from the CIR; and that as the taxpayer cannot be without notice on the coverage of the tax investigation, neither can the examiner claim blanket authority to so investigate.

However, the Third Division's decision declared that the ruling in *Sony* is inapplicable to the *Medicard* case since the issuance by the CIR of the LN and the TVN are themselves the authority for the issuance of the assessment; that the *1997 NIRC* authorizes the CIR to issue tax assessments other than by force of LOAs alone; that, in fact, *RMO No. 30-2003 dated September 18, 2003* provided for a system-generated issuance of LNs as a mode of informing taxpayers of the discrepancies uncovered through Reconciliation of Listing for Enforcement ("RELIEF"), which can detect tax leaks by matching the data available under the BIR's Integrated Tax System ("ITS") with data gathered from third party sources; and that *RMO No. 30-2003* authorized a "nocontact-audit-approach" examination and assessment, and the issuance of LNs without need of conducting an examination of a taxpayer's books if so warranted by the results of the matching of computer data with other information or returns filed by the taxpayers with the BIR.

The Third Division ended the discussion on this issue by stating that on the basis of the principle of estoppel in pais, Medicard cannot be allowed to repudiate the CIR's jurisdiction to issue the assessment after repeatedly invoking the same jurisdiction to secure for itself the cancellation or modification of the same assessments; and that Medicard cannot now be heard to complain that such assessments are from the beginning procedurally infirm.

Medicard filed its Motion for Reconsideration with the Third Division, which was denied for lack of merit. Leading to Medicard filing a Petition for Review with the Court *En Banc* entitled *"Medicard Philippines v. Commissioner of Internal Revenue,"* docketed as CTA *EB* No. 1224.

The Court *En Banc* reversed the Third Division's findings as to estoppel. It stated that Medicard is not estopped from raising the issue of invalidity of the assessment due to the non-issuance of LOA.

However, as to the LOAs, the Court *En Banc* sustained the Third Division's ruling that a LOA is not necessary since it is issued to authorize a revenue officer to examine the taxpayer's books of account. Hence, the CIR is under no obligation to issue a LOA to examine Medicard's books of account when there is no examination thereof. Thus, the finding of discrepancies between Medicard's Income Tax Returns and VAT Returns leading to VAT deficiency assessment by matching Medicard's declarations therein, suffice to initiate the assessment process.

It must be emphasized that the reason why the Court *En Banc* declared that there is no need for a LOA in the *Medicard* case is due to the fact that there was a LN, as well as a TVN, issued to Medicard. In the case at bar, there was no LOA issued to CMI. Neither was there any LN nor TVN. Therefore, the doctrine in *Medicard* does not apply.

The doctrine in the *Sony* case is applicable and the assessment is void for lack of LOA.

Sections 6 and 13 of the 1997 NIRC provide the general rule that LOAs are necessary to establish the authority of the revenue officers, to wit:[30]

> SECTION 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
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> (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. xxx
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> xxx xxx xxx
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> 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.

Therefore, in keeping with the general rule, the Supreme Court in the *Sony* case explained that:[31]

> 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.

[30] Underscoring ours.
[31] Underscoring ours.

It must be noted that in the *Sony* case, there was no LOA, no LN and no TVN. Records reveal that the same is likewise true when it comes to CMI. Therefore, due to the fact that there was no LOA (not even a LN or TVN) issued to CMI, the resulting assessment is a nullity, as extensively explained by the Second Division in its Assailed Decision.

The CIR's other arguments in the present Petition for Review did not contain any new and/or compelling averment as it is a mere rehash of previously discredited arguments. Therefore, the Court *En Banc* finds it unnecessary to discuss the other remaining issues.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision promulgated on May 21, 2015 and the Assailed Resolution promulgated on August 5, 2015 by the Second Division of the CTA are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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