REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

MEDTECS INTERNATIONAL CORPORATION LIMITED,
Petitioner,

CTA EB No. 1560
(CTA Case No. 8538)

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1561
(CTA Case No. 8538)

- versus -

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

MEDTECS INTERNATIONAL CORPORATION LIMITED,
Respondent.

Promulgated:

MAR 13 2018 4:29 p.m.

x - x

DECISION

UY, *J.*:

Before the Court *En Banc* are two (2) consolidated *Petitions for Review* filed as follows: CTA EB No. 1560 filed by Medtecs International Corporation Limited, as petitioner, against the Commissioner of Internal Revenue, as respondent; and CTA EB No. 1561 filed by the Commissioner of Internal Revenue, as petitioner, against Medtecs International Corporation Limited, as respondent.

Both *Petitions* assail the Decision dated November 4, 2015[1] and Resolution dated November 15, 2016[2] rendered by the Third Division of this Court (Court in Division) in CTA Case No. 8538 entitled *"Medtecs International Corporation Limited, Petitioner, vs. Commissioner of Internal Revenue"*, the dispositive portions of which respectively read:

<u>Decision dated November 4, 2015</u>:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, the assessments issued by respondent against petitioner for taxable year 2006 covering deficiency expanded withholding tax in the amount of ₱8,827.83 and compromise penalties in the amount of ₱162,000.00 are **CANCELLED AND WITHDRAWN**. However, the assessments of deficiency income tax, value-added tax, withholding tax on compensation, and documentary stamp tax are **AFFIRMED WITH MODIFICATIONS**.
>
> Consequently, petitioner is **ORDERED TO PAY FIVE MILLION THREE HUNDRED NINETY SEVEN THOUSAND FIVE HUNDRED EIGHTY EIGHT PESOS AND TWENTY THREE CENTAVOS (₱5,397,588.23)** representing deficiency income tax, value-added tax, withholding tax on compensation, and documentary stamp tax for taxable year 2006, inclusive of the twenty-five percent (25%) surcharge and twenty percent (20%) deficiency interest imposed under Section 248(A)(3) and 249(B) of the NIRC of 1997, as amended, computed as follows:

---

[1] Penned by Associate Justice Ma. Belen Ringpis-Liban, concurred by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino, EB Docket (CTA EB No. 1560), pp. 47 to 90; EB Docket (CTA EB No. 1561), pp. 20 to 63.

[2] *Supra*, EB Docket (CTA EB No. 1560), pp. 91 to 101; EB Docket (CTA EB No. 1561), pp. 64 to 74.

Deficiency Tax	Basic Tax	25% Surcharge	20% Deficiency Interest	Total
Income Tax	₱2,045,393.42	₱511,348.36	₱2,179,885.04	₱4,736,626.82
Value-added Tax	14,400.00	3,600.00		18,000.00
Withholding Tax on Compensation	132,783.92	33,195.98		165,979.90
Documentary Stamp Tax	381,585.21	95,396.30		476,981.51
Total	**₱2,574,162.55**	**₱643,540.64**	**₱2,179,885.04**	**₱5,397,588.23**

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of 20% per annum on the total amount of **₱5,397,588.23** computed from August 11, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

Resolution dated November 15, 2016:

"**WHEREFORE**, premises considered, petitioner's Motion for Partial Reconsideration (with Motion to Present Additional Evidence) and Respondent's Motion for Partial Reconsideration (of the Decision dated November 4, 2015) are hereby **DENIED** for lack of merit. The Decision dated November 4, 2015 is hereby **AFFIRMED**.

SO ORDERED."

THE FACTS

Medtecs International Corporation Limited (Medtecs) is the Philippine branch of Medtecs International Corporation Limited (Bermuda), duly registered with the Securities and Exchange Commission on July 6, 1998. Its principal office address is at 7th Street, Phase II, Bataan Processing Zone, Mariveles, Bataan. Medtecs is also registered with the Philippine Economic Zone Authority (PEZA) as an ECOZONE Export Enterprise at the Bataan Economic Zone.

The Commissioner of Internal Revenue (CIR) is vested with power to decide administrative tax cases, including disputed assessments. He holds office at the Bureau of Internal Revenue National Office Building, Agham Road, Diliman, Quezon City.

On December 3, 2007, Letter of Authority (LOA) No. LOA 2001 00074246 was issued authorizing Revenue Officer (RO) Roel Vergel Narag to examine Medtec's books of accounts and other accounting records for all internal revenue taxes covering the period of January 1, 2006 to December 31, 2006. The CIR thus asked Medtecs to present the latter's records for the subject period.

Thereafter, the CIR sent to Medtecs a *Notice of Informal Conference* (NIC) dated September 23, 2008, which Medtecs received on September 25, 2008, containing a recommendation for possible assessment of deficiency tax liabilities for taxable year 2006. The Informal Conference on the results of the investigation pursuant to the LOA was not held.

On March 16, 2009, the NIC was amended pursuant to the Memorandum dated January 22, 2009, stating, among others, that Medtecs has not signified any formal intention regarding the matter. The amended NIC was received by petitioner on April 14, 2009.

Medtecs, on May 6, 2009, sent a letter, stating its position on the preliminary findings of the RO. The CIR sent a *Reply*, which was received by Medtecs on November 24, 2009, stating, among others, that Medtecs failed to attach supporting documents to support its position.

On May 28, 2009, the CIR notified Medtecs of the reassignment to another revenue officer of the investigation of Medtecs' tax case. Likewise, the CIR informed Medtecs on July 21, 2009 that upon pre-audit/investigation, it was found out that the latter had deficiency taxes for taxable year 2006.

A recommendation for the issuance of a *Preliminary Assessment Notice* (PAN) against Medtecs was made on July 28, 2011. Consequently, the CIR issued the PAN dated August 18, 2011 with Details of Discrepancies, assessing Medtecs for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), and documentary stamp tax (DST) for taxable year 2006 in the aggregate amount of ₱10,050,587.02.

On September 23, 2011, Medtecs filed its protest against the PAN. The same was given due course and a re-investigation was granted by the Regional Director, pursuant to the *Memorandum* dated September 30, 2011.

Subsequently, the CIR issued the *Formal Letter of Demand* (FLD) and *Audit Results/Assessment Notices* dated February 28, 2012, with *Details of Discrepancies*, assessing Medtecs of the following alleged deficiency taxes:

Deficiency Income Tax	35%	5%
Taxable net income per audit	₱ 6,788,883.00	₱15,066,367.46
Income tax due	2,376,109.05	753,318.37
Total income tax		3,129,427.42
Less: Tax paid		1,084,034.00
Balance		2,045,393.42
20% Interest p.a.		2,147,663.00
TOTAL AMOUNT DUE & COLLECTIBLE		₱ 4,193,056.52
Deficiency VAT		
Taxable receipts per audit		6,962,983.33
VAT due		835,558.00
25% Surcharge		208,889.50
20% Interest p.a.		919,113.80
TOTAL AMOUNT DUE & COLLECTIBLE		₱ 1,963,561.30
Deficiency EWT		
Expanded withholding tax due		279,168.59
Less: Remittance		274,964.86
Balance		4,203.73
20% Interest p.a.		4,624.10
TOTAL AMOUNT DUE & COLLECTIBLE		₱ 8,827.83
Deficiency WTC		
Withholding tax due on compensation		3,024,551.55
Less: Remittance		2,827,501.45
Balance		197,050.10
20% Interest p.a.		222,009.78
TOTAL AMOUNT DUE & COLLECTIBLE		₱ 419,059.88
Deficiency DST		
DST		1,596,709.78
25% Surcharge		399,177.45
20% Interest p.a.		1,756,380.76
TOTAL AMOUNT DUE & COLLECTIBLE		₱3,752,267.98
Compromise Penalty (RMO 19-2007)		
Compromise penalty on deficiency income tax		50,000.00
Compromise penalty on deficiency VAT		20,000.00
Compromise penalty on deficiency EWT		1,000.00
Compromise penalty on deficiency WTC		16,000.00
Compromise penalty on deficiency DST		75,000.00

TOTAL AMOUNT DUE & COLLECTIBLE		₱ 162,000.00

On April 10, 2012, Medtecs protested the FLD. Medtecs then submitted its documents in support of its administrative protests against the FLD on June 7, 2012.

The CIR issued the *Final Decision on Disputed Assessment* on July 23, 2012, denying Medtecs' protest. Hence, Medtecs filed a Petition for Review before the Court in Division on August 30, 2012 against the Commissioner of Internal Revenue docketed as CTA Case No. 8538.

In his *Answer* in said case filed on October 31, 2012, the CIR interposed the following special and affirmative defenses, as follows:

> *First*, the Court in Division has no jurisdiction over Medtecs' *Petition for Review.*
>
> *Second*, the CIR observed due process during the assessment of Medtecs. Contrary to Medtecs' claims, the CIR gave Medtecs every chance to support its claim.
>
> *Third*, as required by Section 228 of the Tax Code and Revenue Regulations (RR) No. 12-99, Medtecs was informed of the legal and factual bases of the assessment issued against it.
>
> *Fourth*, Medtecs is liable for deficiency income tax for taxable year 2006.
>
> *Fifth*, Medtecs is liable for deficiency VAT for taxable year 2006 as Other Operating Income and Miscellaneous Income are subject to VAT at the rate of 12%, pursuant to Section 105 of the Tax Code.
>
> *Sixth*, Medtecs is liable for the assessed deficiency EWT as Repairs and Maintenance, Advertising Documentation and Handling Expenses of ₱212,378.59; ₱26,687.73; and ₱27,780.00, respectively, should be subject to EWT in accordance with Section 57 of the Tax Code and Section 2.57.1 of RR No. 2-98.
>
> *Seventh*, Medtecs is also liable for the assessed deficiency WTC on salaries and wages in the amount of

ꟿ

₱3,914,001.91, in accordance with Sections 78 and 79 of the Tax Code as implemented by RR No. 2-98.

Eighth, Medtecs is liable for the assessed deficiency DST, contrary to its claim that it is exempted from paying it due to its 5% preferential tax rate in lieu of all taxes.

Finally, all presumptions are in favor of the correctness of tax assessments.

After the pre-trial conference held on November 29, 2012, the parties filed their Joint Stipulation of Facts and Issues on December 12, 2012. Thereafter, the Court in Division issued the Pre-Trial Order dated January 2, 2013.

During trial, Medtecs presented its sole witness, Wilson Pastelero. On the other hand, the CIR presented Revenue Officers Roel Vergel G. Narag, Mary Ann T. Villasol-Canare, and Pacita D. Macandili, as his witnesses. The parties formally offered their respective documentary and testimonial evidence in the course of the proceedings before the Court in Division.

The case *a quo* was submitted for decision on November 6, 2014, after Medtecs filed its Memorandum on September 3, 2014 and the CIR filed his Memorandum on October 30, 2014.

On November 4, 2015, the Court in Division rendered the assailed Decision[3] which partially granted Medtecs' *Petition for Review*, and ordered Medtecs to pay ₱5,397,588.23, representing deficiency income tax, VAT, WTC, and DST for taxable year 2006, inclusive of the twenty-five percent (25%) surcharge and twenty percent (20%) deficiency interest, plus the twenty percent (20%) delinquency interest.

On November 26, 2015, the CIR filed his *Motion for Partial Reconsideration (of the Decision dated November 4, 2015)*,[4] and Medtecs filed its *Motion for Partial Reconsideration (With Motion to Present Additional Evidence)*.[5]

---

[3] EB Docket (CTA EB No. 1560), pp. 47 to 90; EB Docket (CTA EB No. 1561), pp. 20 to 63; and Division Docket (CTA Case No. 8538) – Vol. 3, pp. 1566 to 1609.
[4] Division Docket (CTA Case No. 8538) – Vol. 3, pp. 1620 to 1623.
[5] Division Docket (CTA Case No. 8538) – Vol. 3, pp. 1625 to 1668.

In the assailed Resolution dated November 15, 2016,[6] the Court in Division denied Medtecs' *Motion for Partial Reconsideration (With Motion to Present Additional Evidence)*, and the CIR's *Motion for Partial Reconsideration (of the Decision dated November 4, 2015)*, for lack of merit.

Thus, on December 1, 2016, Medtecs filed before the Court *En Banc* a *Motion for Extension of Time to File Petition For Review*,[7] praying for an additional fifteen (15) days from December 3, 2016, or until December 18, 2016 to file its *Petition for Review*. The Court *En Banc* granted Medtecs a final and non-extendible period of fifteen (15) days or until December 18, 2016, within which to file its *Petition for Review*.[8]

Likewise, the CIR filed a *Motion for Extension of Time (To File Petition For Review)* on December 2, 2016,[9] praying for an extension of fifteen (15) days from December 3, 2016 or until December 18, 2016, to file his *Petition for Review*. The Court *En Banc* also granted the CIR an extension of fifteen (15) days from December 3, 2016, or until December 18, 2016, to file a *Petition for Review*.[10]

On December 19, 2016, Medtecs filed its *Petition for Review* before the Court *En Banc* docketed as CTA EB No. 1560.[11] On even date, the CIR filed his *Petition for Review* before the Court *En Banc* docketed as CTA EB No. 1561.[12]

In the Resolution dated January 17, 2017,[13] the Court *En Banc* ordered the CIR to file his *Comment* on Medtecs' *Petition for Review* in CTA EB No. 1560. However, no Comment was filed by the CIR.[14]

Meanwhile on January 20, 2017, considering that the instant cases are appeals from the Decision dated November 4, 2015 and Resolution dated November 15, 2016 rendered by the Court in

---

[6] EB Docket (CTA EB No. 1560), pp. 91 to 101; EB Docket (CTA EB No. 1561), pp. 133 to 143; Division Docket (CTA Case No. 8538) – Vol. 3, pp. 1791 to 1801.
[7] EB Docket (CTA EB No. 1560), pp. 1 to 4.
[8] Minute Resolution dated December 8, 2016, EB Docket (CTA EB Case No. 1560), p. 5.
[9] EB Docket (CTA EB No. 1561), pp. 1 to 4.
[10] Minute Resolution dated December 5, 2016, EB Docket (CTA EB No. 1561), p. 6.
[11] EB Docket (CTA EB No. 1560), pp. 6 to 46.
[12] EB Docket (CTA EB No. 1561), pp. 78 to 87.
[13] EB Docket (CTA EB No. 1560), pp. 103 to 104.
[14] Records Verification dated March 6, 2017 issued by the Judicial Records Division of this Court, EB Docket (CTA EB No. 1560), p. 109.

Division in CTA Case No. 8538, CTA EB No. 1561 was consolidated with CTA EB No. 1560.[15]

In the Resolution dated February 2, 2017,[16] the Court *En Banc* ordered Medtecs to file its *Comment* on the CIR's *Petition for Review* in CTA EB No. 1561. On March 9, 2017, Medtec filed its *Comment.* [17] Thus, the instant consolidated cases were deemed submitted for decision on March 28, 2017.[18]

Hence, this Decision.

ASSIGNMENT OF ERROR

In **CTA EB No. 1560**, Medtecs assigned the following error supposedly committed by the Court in Division, to wit:

> "...the CTA-Division erred in upholding [the CIR]'s deficiency income tax, VAT, WTC, and DST assessments for CY 2006 in the amount of Php5,397,588.23. Furthermore, the records of the case show that there are peremptory legal issues which render these deficiency tax assessments null and void..."[19]

Medtecs' arguments:

In support of the foregoing assignment of error, Medtecs raises the following grounds for the reversal of the assailed Decision and Resolution, *viz*:

1. As borne by the records, the CIR's right to assess Medtecs' deficiency taxes for calendar year (CY) 2006 has already prescribed pursuant to Section 203 of the National Internal Revenue Code (NIRC) of 1997;

2. The CIR's deficiency tax assessments against Medtecs for CY 2006 are null and void because the records of the case show that the Revenue Officer (RO) who conducted the examination of Medtecs' books of accounts and

---

[15] Minute Resolution dated January 20, 2016, EB Docket (CTA EB No. 1560), p. 105.
[16] EB Docket (CTA EB No. 1560), pp. 107 to 108.
[17] EB Docket (CTA EB No. 1560), pp. 117 to 124.
[18] Resolution dated March 28, 2017, EB Docket (CTA EB No. 1560), pp. 127 to 128.
[19] EB Docket (CTA EB No. 1560), p. 12.

accounting records, and who recommended the issuance of the deficiency tax assessments for CY 2006, had no authority to do so under Letter of Authority (LOA) No. 2001-00074246 dated December 3, 2007;

3. The CIR's deficiency tax assessments against Medtecs for CY 2006 are null and void because respondent failed to observe administrative due process in the issuance of the assessments; and

4. Even assuming for the sake of argument that the deficiency tax assessments for CY 2006 have not yet prescribed and that due process was observed in the issuance of the assessments, Medtecs submits that the deficiency income tax, VAT, WTC, and DST assessments for CY 2006 should nevertheless be cancelled for lack of legal and factual basis.

ISSUE

On the other hand, in **CTA EB No. 1561**, a lone issue was raised by the CIR, to wit:

> "WHETHER RESPONDENT IS LIABLE FOR THE ENTIRETY OF THE ASSESSED DEFICIENCY DOCUMENTARY STAMP TAX ON STOCK OPTION FOR TAXABLE YEAR 2006."

The CIR's arguments:

The CIR argues that the burden of proof is on Medtecs to prove that the assessment was erroneous; that the BIR examiners were justified in their position that the net movement of the current account for calendar year 2006 was attributable entirely to stock option issuance; and that Medtecs failed to prove that it increased capitalization through other means other than stock options issuance.

Medtecs' counter-arguments:

Medtecs points out that there is no factual basis for the CIR's computation of the alleged grant of employee stock options in the staggering amount of US$4,738,005.00 in CY 2006; and that Medtecs' Audited Financial Statements (AFS) proves that the amount of employee stock options granted in CY 2006 is only US$1,723.00.

THE COURT *EN BANC*'S RULING

Medtecs' *Petition for Review* in CTA EB No. 1560 is meritorious; while the CIR's *Petition for Review* in CTA EB No. 1561 lacks merit.

Since Medtecs raises, in effect, the pivotal issue of whether or not the RO who conducted the examination of its books and accounts and accounting records for taxable year 2006 had no authority to do so, such issue shall be primarily dealt with.

Specifically, Medtecs avers that the tax assessment is a nullity because RO Mary Ann Canare, the RO who examined Medtecs' books of accounts and who recommended the issuance of the deficiency tax assessments, did not have the authority to do so under the LOA.

We agree with Medtecs.

The Supreme Court, in the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[20] explains the importance and significance of an LOA in examining the books of accounts and other accounting records of taxpayers, 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 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. Section 6 of the NIRC clearly provides as follows:
>
> > SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –

---

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

> (A) **Examination of Return 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.
>
> x x x x (Emphasis and underlining ours)

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. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**

xxx xxx xxx

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[21] the Court said that:

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

xxx xxx xxx

Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. **To begin with, Section 6 of the NIRC requires an authority from the CIR or from**

---

[21] 649 Phil. 519 (2010).

his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.

xxx xxx xxx

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority is 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. <u>Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.</u>**" *(Emphases and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, ROs must be authorized, through an LOA, to examine the books of accounts and other accounting records of a taxpayer; in the absence thereof, the tax assessments issued by the BIR against such taxpayer is a nullity.

In addition, the law even requires that an LOA must have been issued in favor of an RO, in order for such an RO to examine taxpayers and to perform tax assessment and collection functions. Section 13 of the NIRC of 1997 provides as follows:

"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, <u>pursuant to a Letter of Authority issued by the Revenue Regional Director</u>, 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 and underscoring supplied)*

In this case, records show that it was RO Roel Vergel Narag who was authorized to examine Medtec's books of accounts and other accounting records for taxable year 2006 under LOA No. 2001 00074246 dated December 3, 2007.[22] It was only through an undated *Re-Assignment Notice* where RO Mary Ann Canare was "authorized" to continue the examination of the Medtecs' books and accounting records.[23] Thereafter, invoking the very same LOA (LOA 2001 00074246), RO Canare recommended the issuance of a PAN against Medtecs.[24]

Thus, RO Canare cannot be considered as validly authorized to examine Medtecs' books of accounts and other accounting records for taxable year 2006. This must be so because her authority to examine did not spring from, or was not made pursuant to, an LOA, as required by law and jurisprudence.

As a corollary, the issuance of the said *Re-Assignment Notice* in favor of RO Canare is of no moment, since it is not an LOA. In addition, as correctly pointed out by Medtecs, Revenue Memorandum Order No. 12-2007 provides, in part, as follows:

> "IV. Policies and Procedures
>
> xxx xxx xxx
>
> 5. **All LAs[25]/ANs shall be prepared, approved and signed by the RD for 2006 tax returns, unless otherwise directed by the Commissioner.**
>
> xxx xxx xxx
>
> 17. **The practice of issuing mission orders, correspondence letters, referral memoranda or any other similar orders for the purpose of audit examination and assessment of internal revenue taxes is hereby strictly prohibited**. For purposes of surveillance, stocktaking, TCVD or any similar purpose,

---

[22] Exhibit "1", BIR Records, p. 41.
[23] Exhibit "5", BIR Records, p. 348.
[24] Exhibit "7", BIR Records, pp. 382 to 383.
[25] That is, "Letters of Authority" or LOA.

> the issuance of mission orders shall be governed by the pertinent revenue issuances issued for that purpose." *(Emphases and underscoring supplied)*

Pursuant to the foregoing provisions, the issuance of *Re-Assignment Notice* for purposes of audit examination and tax assessment is strictly prohibited. Thus, the said *Re-Assignment Notice* cannot be a source of authority for an RO to examine the books of accounts and other accounting records of taxpayers.

Correspondingly, since RO Canare was not authorized, through an LOA, the subject tax assessments, which came about as a result of the said RO's examination of Medtecs's books of accounts and accounting records for taxable year 2006, are void.

Finding that the subject tax assessments are void, for being issued for want of authority to conduct an examination of Medtecs' books of account and other accounting records for taxable year 2006 on the part of the concerned RO, it becomes unnecessary to address the other issues raised by Medtecs, in its *Petition for Review*. In the same vein, the issue raised by the CIR, in his *Petition for Review*, has become moot.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* in CTA EB No. 1560 filed by Medtecs is **GRANTED**. Accordingly, the assailed Decision dated November 4, 2015, and the Resolution dated November 15, 2016, are **REVERSED** and **SET ASIDE**. For being void, the FLD and *Audit Results/Assessment Notices* dated February 28, 2012, with *Details of Discrepancies*, assessing Medtecs of deficiency income tax, VAT, EWT, WTC, and DST for taxable year 2006, are **CANCELLED** and **SET ASIDE**.

On the other hand, the *Petition for Review* in CTA EB No. 1561 filed by the CIR is **DENIED.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(With due respect, I join Justice Liban's Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(With due respect, please see Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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

MEDTECS INTERNATIONAL CORPORATION LIMITED,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1560
(CTA CASE NO. 8538)

x--x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MEDTECS INTERNATIONAL CORPORATION LIMITED,
Respondent.

CTA EB NO. 1561
(CTA Case No. 8538)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, ***and***
MANAHAN, *JJ.*

Promulgated:

MAR 13 2018 4:29 p.m.

x- -x

DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With due respect to my esteemed colleague, Associate Justice Uy, I register my dissent to the *ponencia* with respect to the finding that the continuation of audit of petitioner's books and records by Revenue Officer (RO) Mary Ann Canare requires not just a mere referral memorandum but a new Letter of Authority (LOA) and that the subject tax assessments which came about as a result of RO Canare's examination of Medtec's books of accounts and accounting records for taxable year 2006 is void.

I believe that both the *Sony*[1] and the *Medicard*[2] case are not on all fours with the case at bar. In *Sony,* the primordial issue was not the lack of an LOA but the agents exceeding the authority given. Where the "LOA 19734 covered the period 1997 and unverified prior years", the CIR acting through its revenue officers went beyond the scope of their authority because they included records from January to March 1998 in coming up with their assessment. The Supreme Court then concluded that "the CIR knew which period should be covered by the investigation. Thus, if CIR wanted or intended the investigation to include the year 1998, it should have done so by including it in the LOA or issuing another LOA."

The *Medicard* case, on the other hand, involved a total absence of an LOA which the Court concluded could not be supplanted by a mere Letter Notice as it violated Medicard's right to due process.

The above-captioned *Medtecs* case differs from *Sony* and *Medicard* in that an LOA exists in *Medtecs* and the assessment was limited to examining books of account or accounting records within the period indicated in the LOA. The main issue raised in the *ponencia* goes to the authority of the actual RO that continued the assessment and concluded the same. This was given by way of a Referral Memorandum upon the reassignment of the RO named in the LOA. I submit that this could validly be done under the NIRC of 1997, as amended, (NIRC) and the laws on agency under the Civil Code.

The power of the Commissioner of Internal Revenue (CIR) to conduct assessments is granted to him by virtue of Section 6 of the NIRC, thus:

> "SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. --
>
> (A) Examination of Returns and Determination of Tax Due. - After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer** and the assessment of the correct amount of tax:

[1] *Commissioner of Internal Revenue v. Sony Philippines*, Inc., G.R. No. 178697, November 17, 2010.
[2] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

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

The NIRC, in Section 7 thereof[3], likewise sets limits on which powers of the CIR may be delegated by him and which powers are to be exercised exclusively by him. Notably, issuing LOAs is a delegable power which the CIR may devolve to Revenue Regional Directors, as expounded on in Section 10 of the NIRC, thus:

> **"SEC. 10. Revenue Regional Director.** - Under 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: x x x
>
> x x x x x x x x x
>
> **(c) Issue Letters of authority for the examination of taxpayers within the region;**
>
> x x x x x x x x x
>
> **(h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner.**" *(Emphasis supplied)*

On the other hand, a Revenue Officer may perform assessment functions pursuant to a validly issued LOA under Section 13 of the NIRC, thus:

---

[3] **SEC. 7.** ***Authority of the Commissioner to Delegate Power*** - The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:

(a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

(c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept.

> "**SEC. 13. Authority of a Revenue Officers.** - 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."

An LOA is, in essence, a contract of agency. Article 1868 of the Civil Code states that "[b]y the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter." In an LOA, the CIR is the principal -- as he is the one mandated by the law to make assessments -- and the Revenue Regional Director (RRD), his agent. The RO/s named in the LOA are mere sub-agents of the (RRD).

In the case of *Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.*[4], the Supreme Court had occasion to expound on the elements of agency, to wit:

> "The elements of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for him/herself; and (4) the agent acts within the scope of his/her authority. **As the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it.** Absent such mutual intent, there is generally no agency. It is likewise a settled rule that persons dealing with an assumed agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and **in case either is controverted, the burden of proof is upon them to establish it.**" *(Emphasis supplied)*

May the RRD, the CIR's agent, appoint a sub-agent? Article 1892 of the Civil Code says that he can. The said provision states:

[4] G.R. No. 188288, January 16, 2012.

"Art. 1892. The agent may appoint a substitute **if the principal has not prohibited him from doing so**; but he shall be responsible for the acts of the substitute:

(1) When he was not given the power to appoint one;

(2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.

All acts of the substitute appointed against the prohibition of the principal shall be void." *(Emphasis supplied)*

This power to appoint a sub-agent necessarily includes the power to revoke the same. This is what happened when the authority given to the RO Roel Vergel Narag who was originally named in the LOA was revoked and transferred and reassigned to RO Canare for continuance of audit by way of Referral Memorandum.

Much emphasis has been placed in the *ponencia* on how a Referral Memorandum is not equivalent to a Letter of Authority. Under the provisions on Agency, Article 1869 states that "[a]gency may be oral, unless the law requires a specific form", referring to those instances wherein a Special Power of Attorney is necessary. Section 13 of the NIRC, on the other hand, requires that assessment be done by ROs pursuant to a Letter of Authority which, in essence is a directive that the grant of authority be done ***in writing***.

Although the Referral Memorandum was not entitled "Letter of Authority", it contains all the elements necessary to establish a contract of agency between the CIR and RO Canare. The testimony of RO Canare also points to her acceptance and carrying out of the agency, to wit:

"Q: Why are you familiar with the subject matter?

A: I am one of the Revenue Examiners assigned to continue the conduct of investigation/examination for all internal revenue tax liabilities of Medtecs International Corporation, Limited for the period January 1, 2006 to December 31, 2006.

Q: What was your authority to conduct investigation/examination for all internal revenue tax liabilities of Medtecs International Corporation, Limited for taxable year 2006.

A: A Memorandum of Assignment was issued for me to continue the investigation of the tax liabilities of Medtecs International Corporation, Limited for taxable year 2006 pursuant to Letter of Authority No. LOA 2001 00074246 03 December 2007.

Q: What happened after the Memorandum of Assignment was issued?

A: I personally served the Re-Assignment Notice dated 19 May 2009 to Medtecs International Corporation, Limited on 28 May 2009. Since, they have a pending protest on the assessment as reflected on the Amended Notice for Informal Conference (NIC), I served a Final Five Day Letter on 21 July 2009 to reiterate the findings made in the Amended NIC and ask for additional supporting documents to substantiate their positioni based on their protest.

Q: I have here a copy of the Re-Assignment Notice sent to Medtecs International Corporation, Limited, what relation does this document have to the letter you earlier mentioned?

A: This is the Re-Assignment Notice that I personally served to petitioner on 28 May 2009.

Q: I also have here a copy of a letter, marked as Exhibit "6" for respondent, what relation does this document have to the letter you earlier mentioned?

A: This is Final Five Day Letter that I personally served to petitioner on 21 July 2009 that I was referring to earlier.

Q: What happened after you served the Final Five Day Letter?

A: The petitioner still failed to attach supporting documents to support its position. Hence, on 24 November 2009, we sent a Reply-Letter to Medtecs International Corporation, Limited stating thereon its failure to submit pertinent documents."

Considering that, given the facts of the case, RO Canare did not exceed the authority given to her and the audit was limited to examining books of account or accounting records within the period indicated in the LOA in coming up with the assessment, all the elements for a contract of agency are present. That the document granting authority to RO Canare to continue the audit under the LOA is referred to as a Referral Memorandum is of no moment. The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[5] The title of the contract does not necessarily determine its true nature.[6] In fact, this Court has, time and again, declared certain documents emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.

In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the NIRC, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.[7] Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimum interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws.[8]

More important is the glaring fact that the principal, the CIR, has acknowledged, if not ratified, the agency granted to RO Cruz to conduct the audit through the act of championing this very case.

Finally, the *ponencia* upholds the argument of petitioner that Revenue Memorandum Order (RMO) No. 12-2007, in Section IV, Item 17 thereof, provides for the prohibition of the issuance of "referral memoranda or any other similar orders for the purpose of audit examination and assessment of internal revenue taxes."

I submit that in cases of conflict between laws and administrative issuances, that the former should prevail. The nature and character of an RMO has been discussed in *Medicard Philippines, Inc. (MEDICARD) vs. Commissioner of Internal Revenue*[9], thus:

---

[5] *Heirs of Dr. Mario S. Intac and Angelina Mendoza Intac vs. Court of Appeals and Spouses Marcelo Roy, Jr. and Josefina Mendoza-Roy and Spouses Dominador Lozada and Martina Mendoza-Lozada*, G.R. No. 173211, October 11, 2012 citing *Spouses Villaceran v. De Guzman, G.R. No. 169055, February 22, 2012; Ramos v. Heirs of Honorio Ramos, Sr.*, G.R. No. 140848, April 25, 2002, 381 SCRA 594, 601; *Heirs of Policronio M. Ureta, Sr. vs. Heris of Liberato M. Ureta*, G.R. Nos. 165748 & 165930, September 14, 2011 citing *Lopez v. Lopez*, G.R. No. 161925, November 25, 2009, 605 SCRA 358, 36.

[6] *Tiu Peck vs. Court of Appeals*, G.R. No. 104404, May 6, 1993.

[7] *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, represented by Jose Mario Buñag, in his capacity as Commissioner of the Bureau of Internal Revenue, and John Doe and Jane Doe, who are persons acting for, in behalf or under the authority of Respondent*, G.R. No. 215427, December 10, 2014, citing *Lopez v. The Civil Service Commission*, 273 Phil. 147, 152 (1991).

[8] *Gordon vs. Veridiano II*, 167 SCRA 51 (1988).

[9] CTA Case No. 7948, June 5, 2014.

> "A revenue memorandum order or RMO is an issuance directed to BIR personnel containing directives or instructions outlining procedures, techniques, methods, processes, operations, activities, work flow and the like which are necessary to carry out programs or achieve policy goals and objectives. RMC Order No. 32-2007 afore-quoted, and relied upon petitioner here as basis for saying that an LOA should have been issued in this case, is one such issuance that is a natural and necessary incident to the power of the Commissioner to lay down delineations of functions among BIR officials. **It does not grant any vested right to any taxpayer over any particular work procedure, which procedure is internal to the BIR and may change from time to time as the exigencies of services may require, or as may be allowed given particular factual contexts, provided only that due process or statutory rights are not subverted."** *(Emphasis supplied)*

RMO 12-2007 cannot serve to derogate the powers of the CIR and the Regional Directors granted under Sections 6 and 10 of the NIRC of 1997, respectively. RMO 12-2007, being an administrative issuance, also cannot prevail over the above-cited provisions of the Civil Code on agency which, under the hierarchy of laws, reigns supreme over it.

It is for the reasons above that, in my opinion, RO Canare who conducted the examination of petitioner's records was deemed authorized to do so.

I therefore vote to **DENY** the Petitions for lack of merit and **AFFIRM** the Decision dated November 4, 2015 and the Resolution dated November 15, 2016 in CTA Case No. 8538.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice