Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

GREAT HOLIDAY ENTERTAINMENT SERVICES, INC. (NOW MERGED WITH NEW COAST HOTEL, INC.)
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8864
For: Assessment

Members:

DEL ROSARIO, P.J., *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

SEP 13 2017 10:42 am

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D E C I S I O N

MINDARO-GRULLA, J.:

This resolves the Petition for Review filed on August 11, 2014 by Great Holiday Entertainment Services, Inc. (now merged with New Coast Hotel, Inc.), pursuant to Section 7(a)(1)[1] of Republic Act (RA) No. 1125[2], as amended, as well as Section 3(a)(1)[3] of Rule 4 and

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[1] Sec. 7. *Jurisdiction*. - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; xxx.

[2] Act Creating the Court of Tax Appeals.

[3] Sec. 3. *Cases within the jurisdiction of the Court in Division*. – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

Section 4(a)[4] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

Petitioner appeals the Final Decision on Disputed Assessment (FDDA) dated July 4, 2014 issued by the Commissioner of Internal Revenue, partially denying the administrative protest of Great Holiday Entertainment Services, Inc. against the Formal Letter of Demand (FLD) and the Final Assessment Notice (FAN) dated March 30, 2011, and ordering the payment of deficiency income tax for calendar year 2007 in the amount of ₱183,251.87.[5]

Petitioner Great Holiday Entertainment Services, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office at 5/F Casino Filipino-Hyatt, Hyatt Regency Hotel and Casino Manila, 1588 M. H. Del Pilar corner Pedro Gil, Malate, City of Manila.[6]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Annual Income Tax Return[7] (ITR) for calendar year 2007 on April 14, 2008.

On July 21, 2008, respondent issued a Tax Verification Notice[8] (TVN) authorizing Revenue Officer Teresita P. Reyes to verify the supporting documents and/or pertinent records of petitioner relative

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[4] Sec. 4. *Where to appeal; mode of appeal.* –
(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.
[5] Pre-Trial Order, Docket, p. 591
[6] Par. 2, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 570; Exhibit "P-2", Docket, p. 223
[7] Exhibit "P-8", Docket, pp. 304 to 306
[8] Exhibit "R-1", Docket, p. 757

to petitioner's internal revenue taxes for calendar year 2007. As such, the List of Audit Requirements per Tax Type[9], Second Request for Presentation of Records[10], and Final Notice[11] were issued to petitioner, requesting petitioner to present its accounting records.

On July 2, 2010, the Articles and Plan of Merger of petitioner as the absorbed corporation and New Coast Hotel, Inc. (NCHI) as the surviving corporation were approved by the Securities and Exchange Commission (SEC).[12] As a result, the entire assets and liabilities of petitioner were transferred and absorbed by NCHI.

Prior to its merger with NCHI on July 2, 2010, petitioner was a registered taxpayer with the Bureau of Internal Revenue and with Tax Identification No. (TIN) 236-629-865.[13]

On December 1, 2010, a Post Reporting Notice[14] was issued informing petitioner that a preliminary assessment had been submitted for final evaluation after an investigation of its 2007 internal revenue tax was conducted pursuant to the Tax Verification Notice.

On February 24, 2011, a Preliminary Assessment Notice (PAN)[15] was issued against petitioner assessing it for alleged deficiency income tax in the amount of ₱2,919,859.17.

On April 1, 2011, petitioner received a copy of the Final Assessment Notice[16] and Formal Letter of Demand[17], which demanded payment of deficiency income tax for calendar year 2007 in the total amount of ₱2,934,168.64, inclusive of increments, under Assessment Notice No. 33-07-IT-1476.[18] Based on the FLD, the deficiency income tax assessment was computed as follows:[19]

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[9] Exhibit "R-2", Docket, p. 758
[10] Exhibit "R-3", Docket, p. 759
[11] Exhibit "R-4", Docket, p. 760
[12] Exhibit "P-1", Docket, p. 642
[13] Par. 3, JSFI, Docket, p. 571
[14] Exhibit "R-5", Docket, p. 761
[15] Exhibit "R-11", Docket, pp. 768 to 769
[16] Exhibit "R-14", Docket, p. 773
[17] Exhibit "R-13", Docket, pp. 771 to 772
[18] Exhibit "P-3", Docket, pp. 247 to 250
[19] Par. 5, JSFI, Docket, p. 571

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Taxable Income per Return		₱ -
Add: Adjustments per Investigation		
Disallowed Expenses		
Professional Fees-Non-withholding		89,926.00
Unsupported Expenses:		
Office Supplies	₱ 125.00	
Taxes & Licenses	500.00	
Miscellaneous	8,567.00	9,192.00
Depreciation-No proof of acquisition of assets		5,095,826.00
Adjusted Taxable Income		₱ 5,194,944.00
Tax Due		₱ 1,818,230.40
Less: Payments/Credits		-
Deficiency Income Tax		₱ 1,818,230.40
Add: 25% Surcharge (Sec. 248		-
20% interest p.a. from __ to 3/31/11 (Sec. 249)	₱ 1,090,938.24	
Compromise Penalty (Sec. 254 in relation to RMO 19-2007)	25,000.00	1,115,938.24
Total Deficiency Income Tax		₱ 2,934,168.64

Petitioner protested the FAN/FLD by filing a protest letter[20] with the Revenue Region No. 6 on April 29, 2011.[21]

Respondent partially granted petitioner's protest by reducing the income tax assessment to ₱183,251.87. The copy of the decision was received by petitioner on July 10, 2014. The assessed amount of ₱183,251.87 is computed as follows:[22]

Taxable Income per Return		₱ 5,194,944.00
Add (Less): Adjustments per Re-Investigation		
Re-Allowed Pre-Operating Expenses		(4,982,991.21)
Adjusted Taxable Income per Re-Investigation		211,952.79
Income Tax Due		74,183.40
Less: Tax Credits and Payment		-
Deficiency Income Tax		74,183.40
Add: Interest (from 04-15-2008 up to 07-30-2014)	₱97,068.47	-
Compromise Penalty	₱ 12,000	109,068.47
Total amount due		₱ 183,251.87

Since August 9, 2014 fell on a Saturday, petitioner filed this Petition for Review on August 11, 2014.[23]

Respondent filed his Answer[24] on September 9, 2014, which interposed the following special and affirmative defenses:

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[20] Exhibit "P-4", Docket, pp. 251 to 258
[21] Par. 6, JSFI, Docket, p. 571
[22] Par. 7, JSFI, Docket, p. 571; Exhibit "P-5", Docket, pp. 259 to 260; Exhibit "R-22", Docket, p. 782
[23] Par. 13, JSFI, Docket, p. 572
[24] Docket, pp. 102 to 106

"16. The assessment is valid and correct and the petitioner has the burden of proof to impugn its validity (*Behn Meyer & Co. vs. Collector of Internal Revenue, 27 Phil. 647*), Thus, similarly held, tax assessments by examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise (*Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc. 145 SCRA 671*); and assessments duly made by the BIR examiner and approved by her superior officers will not be disturbed (*Gutierrez vs. Villegas, 8 SCRA 547*).

17. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right (*Tan Guan vs. Court of Tax Appeals), et. Al., 19 SCRA 903 [1967]; Collector of Internal Revenue vs. Bohol Land Transportation Co. 107 Phil. 967 [1960]*).

18. Taxes are the life blood of the government and should be collected without unnecessary hindrance (Marcos II vs. Court of Appeals, 273 SCRA 47). Public policy dictates that collection of taxes should be accorded paramount importance for the sustenance of government. Thus, for the interest of the government, the subject assessment must be paid by the respondent without unnecessary delay."

Petitioner filed a Motion for Summary Judgment (With Urgent Motion to Defer Pre-Trial)[25] on November 3, 2014, which the Court denied on January 20, 2015.[26]

Petitioner filed its Pre-Trial Brief[27] on May 18, 2015; while respondent's Pre-Trial Brief[28] was filed on November 6, 2014. Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[29] on July 10, 2015. The Court approved the parties' joint stipulations and terminated the pre-trial on July 21, 2015.[30] Consequently, the Court issued a Pre-Trial Order[31] on August 10, 2015.

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25 Docket, pp. 108 to 116
26 Resolution, Docket, pp. 192 to 195
27 Docket, pp. 498 to 514
28 Docket, pp. 153 to 157
29 Docket, pp. 570 to 586
30 Resolution, Docket, p. 589
31 Docket, pp. 591 to 607

To prove its claim, petitioner presented Ms. Luzviminda P. Sanchez as its sole witness. Subsequently, petitioner formally offered its documentary evidence, which were all admitted by the Court.[32]

Petitioner's documentary evidence are as follows:

Exhibit No.	Document
P-1	Certificate of Filing of the Articles and Plan of Merger between petitioner and New Coast Hotel, Inc. (NCHI) issued by the Securities and Exchange Commission (SEC) on July 2, 2010
P-2	Petitioner's Certificate of Incorporation issued by the SEC on February 10, 2005
P-3	Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) dated March 30, 2011 issued by the same Bureau of Internal Revenue (BIR), Revenue Region No. 6, received by petitioner on April 1, 2011
P-4	Petitioner's protest letter dated April 29, 2011 filed with respondent on even date
P-5	Respondent's Final Decision on Disputed Assessment dated July 4, 2014 addressed to petitioner
P-6	Petitioner's Annual Income Tax Return (ITR) for CY 2005 which was filed with the BIR on May 3, 2006, signed by petitioner's former Treasurer, Ms. Yvonne Lo
P-6-1	Petitioner's Audited FS for CY 2005, stamped as received by the BIR on May 3, 2006, and signed by petitioner's external auditor, Mr. Manolito F. Gonzales of SyCip Gorres Velayo & Co. (SGV & Co.)
P-7	Petitioner's Annual ITR for CY 2006 which was filed with the BIR on April 16, 2007, signed by petitioner's former Treasurer, Mr. Kan Wong
P-7-1	Petitioner's Audited FS for CY 2006, stamped as received by the BIR on April 16, 2007, and signed by petitioner's external auditor, Mr. Jose Pepito Zabat III of SGV & Co.
P-8	Petitioner's Annual ITR for CY 2007 which was filed with the BIR on April 14, 2008, signed by petitioner's former Treasurer, Mr. Kan Wong
P-8-1	Petitioner's Quarterly ITR for the 1st quarter of CY 2007 which was filed with the BIR on May 30, 2007, signed by petitioner's former Treasurer, Mr. Kan Wong
P-8-2	Petitioner's Quarterly ITR for the 2nd quarter of CY 2007 which was filed with the BIR on August 29, 2007, signed by petitioner's former Treasurer, Mr. Kan Wong

[32] Resolution dated January 15, 2016, Docket, pp. 727 to 728

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Exhibit No.	Document
P-8-3	Petitioner's Quarterly ITR for the 3rd quarter of CY 2007 which was filed with the BIR on November 27, 2007, signed by petitioner's former Treasurer, Mr. Kan Wong
P-8-4	Petitioner's Audited FS for CY 2007, stamped as received by the BIR on April 14, 2008, and signed by petitioner's external auditor, Mr. Jose Pepito Zabat III of SGV & Co.
P-9	Petitioner's Annual ITR for CY 2008 which was filed with the BIR on April 7, 2009, signed by petitioner's former Treasurer, Mr. Kan Wong
P-9-1	Petitioner's Audited FS for CY 2008, stamped as received by the BIR on April 7, 2009, and signed by petitioner's external auditor, Mr. Jose Pepito Zabat III of SGV & Co.
P-10	Petitioner's Annual ITR for CY 2009 which was filed with the BIR through the Electronic Filing and Payment System (EFPS) on April 12, 2010
P-10-1	Petitioner's Audited FS for CY 2009, stamped as received by the BIR on April 12, 2010, and signed by petitioner's external auditor, Mr. Jose Pepito Zabat III of SGV & Co.
P-11	Petitioner's Annual ITR for CY 2010 (Short Period Return), which was filed with the BIR on September 30, 2010, signed by petitioner's former Treasurer, Mr. Kan Wong
P-11-1	Petitioner's Audited FS for the six months ended July 2, 2010, stamped as received by the BIR on September 30, 2010, and signed by petitioner's external auditor, Mr. Jose Pepito Zabat III of SGV & Co.
P-12	Service Invoice No. 1267 issued by Salvador, Guevara & Associates (SGA) to petitioner
P-13	Service Invoice No. 1382 issued by SGA to petitioner
P-14	Service Invoice No. 1466 issued by SGA to petitioner
P-15	Service Invoice No. 1591 issued by SGA to petitioner
P-16	Service Invoice No. 1761 issued by SGA to petitioner
P-17	Service Invoice No. 1840 issued by SGA to petitioner
P-18	Service Invoice No. 1923 issued by SGA to petitioner
P-19	Service Invoice No. 2025 issued by SGA to petitioner
P-20	Service Invoice No. 2103 issued by SGA to petitioner
P-21	Service Invoice No. 2201 issued by SGA to petitioner
P-22	Service Invoice No. 2313 issued by SGA to petitioner
P-23	Service Invoice No. 2413 issued by SGA to petitioner
P-24	Billing Invoice No. V55630 issued by SGV & Co. to petitioner
P-25	Billing Invoice No. V49266 issued by SGV & Co. to petitioner
P-26	Billing Invoice No. V44221 issued by SGV & Co. to petitioner
P-27	Amended Articles of Partnership of Sycip, Gorres, Velayo & Co.
P-28	Articles of General Partnership of Salvador, Guevara & Associates.
P-29	Petitioner's Summary of Fixed Assets as of December 31, 2007
P-30	Service Invoice No. 1121 issued by New F.S. Cool Aire Industries, Inc. to NCHI
P-31	Official Receipt No. 0939 issued by New F.S. Cool Aire Industries, Inc. to NCHI
P-32	Petitioner's voucher dated April 30, 2007 covering the payment of Php855,000.00 to New F.S. Cool Aire Industries,

Exhibit No.	Document
	Inc. for the supply of labor and materials for the installation of 51 fans
P-33	Sworn Statement of Ms. Luzviminda P. Sanchez to Questions Propounded by Atty. Marvin B. Ibarra dated May 15, 2015
P-33-1	Signature of Ms. Luzviminda P. Sanchez

On the other hand, respondent presented Revenue Officers Teresita D. Reyes, Winchester M. Aritao, and Yzarina D. Braña. Afterwards, respondent formally offered his documentary evidence, which were all admitted by the Court.[33]

Respondent formally offered the following exhibits, to wit:

Exhibit No.	Document
R-1	Tax Verification Notice No. TVN 2003 001015014 dated July 21, 2008
R-2	List of Audit Requirements
R-3	Second Request for Presentation of Records dated September 01, 2008
R-4	Final Notice dated January 25, 2010
R-5	Post Reporting Notice dated December 01, 2010 with attached Computation of Deficiency Income Tax
R-5-a	Computation of Deficiency Income Tax
R-6	Revenue Officer's Audit Report on Income Tax (BIR Form 0500)
R-7	Memorandum Report dated December 21, 2010
R-8	1st Indorsement dated December 21, 2010
R-9	Assignment Slip
R-10	Revenue Officer's Audit Report on Income Tax (BIR Form 0500)
R-11	Preliminary Assessment Notice dated February 24, 2011 with Details of Discrepancy
R-12	BIR letter to petitioner
R-13	Formal Letter of Demand dated March 30, 2011
R-14	Assessment Notice No. 33-07-IT 1476 dated March 30, 2011
R-15	BIR letter to petitioner dated May 16, 2011
R-16	1st Indorsement dated May 16, 2011
R-17	Memorandum of Assignment No. RR06-033-PRO-0511-001706 dated May 18, 2011
R-18	Revenue officer's Audit Report on Income Tax (BIR Form 0500)
R-19	Memorandum Report dated March 26, 2014
R-20	3rd Indorsement
R-21	Assignment Slip

[33] Resolution dated July 27, 2016, Docket, pp. 811 to 812

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Exhibit No.	Document
R-22	Final Decision on Disputed Assessment dated July 04, 2014 with attached Details of Discrepancies
R-22-a	Details of Discrepancies
R-23	Judicial Affidavit of Revenue Officer Teresita P. Reyes
R-23-1	Signature atop the printed name "Teresita P. Reyes"
R-24	Judicial Affidavit of Revenue Officer Winchester M. Aritao
R-24-1	Signature atop the printed name "Winchester M. Aritao"
R-25	Judicial Affidavit of Revenue Officer Yzarina D. Braña
R-25-1	Signature atop the printed name "Yzarina D. Braña"

The Court declared the case deemed submitted for decision on September 27, 2016,[34] after the filing of petitioner's Memorandum[35] on September 19, 2016 and of respondent's Memorandum[36] on September 13, 2016.

The parties submitted the following main issue for this Court's disposition:[37]

> "Whether or not the deficiency income tax assessment against petitioner for taxable year 2007 amounting to ₱183,251.87 is valid."

The Court will determine first whether the case was timely filed.

Pertinent to the resolution of this matter is Section 228 of the National Internal Revenue Code of 1997, as amended, which provides:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx

34 Resolution, Docket, p. 851
35 Docket, pp. 822 to 840
36 Docket, pp. 842 to 848
37 Issues, JSFI, Docket, p. 574

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The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Based on the afore-quoted provision, petitioner has thirty (30) days from receipt of the denial of the protest within which to file an appeal before this Court.

Since petitioner received the Final Decision on Disputed Assessment on July 10, 2014[38], petitioner had 30 days therefrom or until August 9, 2014 within which to appeal the said FDDA. Considering that August 9, 2014 fell on Saturday, this Petition for Review was filed on the next working day which was August 11, 2014. Thus, the instant Petition for Review was timely filed.

The Court will now address the main issue.

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[38] Par. 7, JSFI, Docket, p. 571

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It is worthy to mention the long-established legal principle that a void assessment bears no valid fruit. The law imposes a substantive, not merely a formal, requirement. And to proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[39]

A careful perusal of the records shows that only a TVN, instead of a Letter of Authority (LOA), was issued in this case.

At this juncture, the Court deems it proper to discuss the effects of the absence of a Letter of Authority in this case in order to determine whether the assessment is valid or not.

In the recent case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[40], the Supreme Court held that the absence of a LOA would violate the taxpayer's right to due process, 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:
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> > **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
> >
> > (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**

[39] *Samar-I Electric Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 193100, December 10, 2014

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

> **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.
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> 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.

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In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid. xxx.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, 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. **<u>In the absence of such an authority, the assessment or examination is a nullity.</u>** (Emphasis and underlining ours)

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> The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. xxx"

The Supreme Court has further ruled in the afore-mentioned case that the LOA cannot be dispensed with even if the financial books or records of the taxpayer have not been examined, *viz*:

> "xxx, 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 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."

The TVN dated July 21, 2008 has authorized Revenue Officer Teresita P. Reyes to verify the supporting documents of petitioner relative to its internal revenue taxes for calendar year 2007. However, since there is no LOA, the authority given pursuant to the TVN does not extend to the examination of petitioner's books of accounts and other accounting records.

Applying the Supreme Court's ruling in the *Medicard* case to the present case, the TVN issued to Revenue Officer Reyes cannot be converted into the LOA required under the law even if the same was issued by respondent. As a consequence, the revenue officer has no authority to examine petitioner's financial books and records. Even if respondent or the revenue officer did not examine the accounting books and records of petitioner, they still had no authority to examine or investigate petitioner in relation to its alleged tax deficiency as the TVN is confined only to the verification of petitioner's supporting documents. Thus, the assessment that was issued against petitioner is void.

Assuming for argument's sake that the assessment is valid, the Court still finds that petitioner is not liable for any deficiency income tax.

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DEFICIENCY INCOME TAX

Respondent disallowed the pre-operating expenses of petitioner, resulting in deficiency income tax, to wit:

> "The deficiency Income Tax assessment arose from disallowances of Professional Fees for non-withholding (Sec. 34 K), and failure to present supporting documents on Office Supplies, Taxes and Licenses and Miscellaneous Expenses (Sec. 34). Depreciation Expense was also disallowed due to failure to present proof of acquisition of assets pursuant to Section 34 of the NIRC."[41]

Based on the Details of Discrepancies[42] attached to the FDDA, the amount of disallowed pre-operating expenses was reduced from ₱5,194,944.00 to ₱211,952.79, as shown below:

Particular	Per FS	Per Reinvestigation	Difference
Depreciation	₱ 5,095,826.00	₱ 4,982,491.21	₱ 113,334.79
Professional fee	89,926.00	-	89,926.00
Taxes and licenses	500.00	500.00	-
Others	8,692.00	-	8,692.00
Total	**₱5,194,944.00**	**₱4,982,991.21**	**₱211,952.79**

Petitioner argues that it may not be held liable for any deficiency income tax in calendar year 2007 because it did not have any revenue for the said year. Allegedly, it can be gleaned from the computation of deficiency income tax in the FLD that petitioner did not have any taxable income in calendar year 2007. Nevertheless, respondent assessed petitioner for the purported deficiency income tax by treating the disallowed expenses as petitioner's adjusted taxable income for calendar year 2007.

On the other hand, respondent maintains that petitioner can be held liable for deficiency income tax for calendar year 2007 even if it did not derive any revenue during the year. Under Section 34(D)(3) of the NIRC of 1997, as amended, a taxpayer is supposedly allowed to carry over as a deduction from gross income its net operating loss for

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[41] Exhibit "R-13", Docket, p. 771

[42] Exhibit "R-22-a", Docket, p. 783

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any taxable year immediately preceding the current taxable year which had not been previously offset as a deduction from gross income for the next three (3) consecutive years immediately following the year of such loss.

Respondent's assessment is unfounded.

A perusal of petitioner's Annual and Quarterly Income Tax Returns[43] and Audited Financial Statements[44] for calendar year 2007 clearly shows that petitioner did not earn any revenue for the year. As disclosed therein, petitioner had not yet started commercial operations as of December 31, 2007.

In the case of *Commissioner of Internal Revenue vs. The Court of Appeals, et al.*[45], the Supreme Court ruled that the three elements in the imposition of income tax are: (1) there must be gain or profit, (2) the gain or profit is realized or received, actually or constructively, and (3) it is not exempted by law or treaty from income tax.

Absence of any of the afore-mentioned elements, no income tax may be imposed upon petitioner. It is settled that the determining factor for the imposition of income tax is whether any gain or profit was derived from a transaction.[46] To repeat, petitioner did not derive any gain or profit in the subject taxable year.

In relation thereto, assuming the disallowance of pre-operating expenses is proper, no income tax may result therefrom. Following the computation, respondent added back the disallowed expenses to the taxable income. Since petitioner had no taxable income, only the disallowed expenses necessarily formed part of the adjusted taxable income. However, it should be noted that, in the first place, petitioner did not even benefit from the deduction of the disallowed expenses. Hence, respondent erred in translating and subjecting the disallowed expenses to income tax.

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[43] Exhibits "P-8" and "P-8-1" to "P-8-3", Docket, pp. 304 to 306, 308, 310, and 312, respectively
[44] Exhibit "P-8-4", Docket, pp. 313 to 336
[45] G.R. No. 108576, January 20, 1999
[46] *Ibid.*, citing *The Collector of Internal Revenue vs. The Administratrix of the Estate of Lorenzo Echarri*, G.R. No. L-45544, April 25, 1939

Even assuming that petitioner would carry over the net operating loss resulting from the deduction of the subject pre-operating expenses, the same may only be the subject of assessment in the taxable year when it is claimed as deduction.

In fine, petitioner is not liable for any deficiency income tax.

WHEREFORE, premises considered, the Petition for Review filed by petitioner Great Holiday Entertainment Services, Inc. is hereby **GRANTED**. Accordingly, the deficiency income tax assessment dated March 30, 2011 issued by respondent against petitioner for taxable year 2007 is declared **NULL and VOID**.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division