REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2357** *(CTA Case No. 9712)*
-versus-	Present: **DEL ROSARIO, P.J., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
GENIOGRAPHICS, INCORPORATED, *Respondent.*	Promulgated: AUG 08 2022 2:58 p.m.

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D E C I S I O N

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **PETITION FOR REVIEW ("Petition")**, filed through registered mail on 6 October 2020,[1] with respondent's **COMMENT (To Petition for Review dated 28 September 2020) ("Comment")**, filed on 15 January 2021.[2]

The Parties

Petitioner **COMMISSIONER OF INTERNAL REVENUE** ("CIR") is the head of the Bureau of Internal Revenue ("BIR") and empowered to perform the duties of said office, including, among others, the power to decide

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1 Records, pp. 1-50.
2 *Id.*, pp. 62-74.

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, as amended, ("NIRC")*** or other laws or portions thereof administered by the BIR. He may be served summons, pleadings, and other processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Respondent **GENIOGRAPHICS, INCORPORATED** is a corporation duly organized and existing under and by virtue of the laws of the Philippines.

The Facts

In the Petition, petitioner admitted the following facts as found by the Court in Division:[3]

> "Petitioner was served on 4 December 2014 with Letter Notice (LN) No. 048-RLFTRS-12-00-00149.
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> Subsequently, petitioner was served with a Preliminary Assessment Notice (PAN) dated 2 October 2015 together with Details of Discrepancies on the alleged deficiency Income and Value-Added Tax for the taxable year 2012.
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> Later on petitioner was served with Formal Assessment Notice (FAN) dated 11 November 2015.
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> On 5 October 2017, petitioner received a Final Decision on Disputed Assessment (FDDA) dated September 13, 2017.
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> Hence, the instant petition was filed on November 6, 2017.
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> After a Motion for Extension to file Answer, respondent filed his Answer on January 12, 2017 interposing, inter alia, the following defenses, to wit:
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> > '7. Petitioner in its Letter dated 20 February 2015 (duly filed with the Office of the BIR Regional Director, Revenue Region 8-Makati on November 13, 2015), in protest of the BIR Formal Assessment Notice (FAN) dated November 11, 2015, the latter clearly failed to allege nor question the fact that there was no letter or authority or LOA issued or served to petitioner by the BIR for taxable year 2012. Hence, not having raised such issue in the administrative level, petitioner cannot raised the same for the first time on appeal with this Court, without violating the basic principles of fair play, justice and due process. Thus, it is settled that 'issues not properly brought and ventilated below may not be raised first time on appeal. xxx.

[3] *Id.*, pp. 3-4.

8. The deficiency income tax and value added tax assessments issued by the respondent CIR to petitioner for taxable year 2012 was legally anchored under Section 6(A) of the 1997 Tax Code (i.e. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement) in relation to Revenue Memorandum Order No. 55-2010 (i.e. Revision in the Procedures on the Issuance of Letters of Authority)

xxx.

9. This Court in the case of BIG AA Corporation represented by Erlinda L. Stohner vs. Bureau of Internal Revenue CTA Case No. 7093, February 22, 2006 has already ruled that:

'letter notices' issued against a taxpayer in connection with the information of under declarations of sales and purchases gathered through the Third Party Information Program may be considered as a 'notice of audit or investigation' in the absence of evident error or clear abuse of discretion.

10. Petitioner was assessed deficiency income tax and value added tax, inclusive of 50% surcharge and 20% interest for taxable year 2012 for the reason that during the administrative investigation of its tax case, petitioner failed to substantiate or controvert by substantial evidence the BIR factual findings, as indicated under the Details of Discrepancies attached to the BIR PAN xxx, FAN xxx and FDDA.

11. Respondent fully complied with the due process requirements mandated under Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations No. 12-99 and further amended by Revenue Regulations No. 18-2013, when the subject PAN, FAN and FDDA were issued and served to petitioner. The BIR records clearly show that petitioner were fully appraised of the legal and factual bases on how and why the BIR arrived such findings and conclusions assessing petitioner deficiency income tax and value added tax, inclusive of 50% surcharge and 20% interest for taxable year 2012, and was duly afforded opportunity to controvert such findings of respondent when petitioner in fact was able to file letter dated 20 February 2015 in protest against the subject FAN, on November 13, 2015 pursuant to Section 228 of the 1997 Tax Code.

12. Settled is the rule that the essence of due process in taxation is the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. xxx.

xxx.

> 15. Investigation disclosed that the 50% surcharges were imposed on petitioner's deficiency income and value added tax liabilities for taxable year 2012, pursuant to Section 248 (B) of the 1997 Tax Code since the latter failed to report sales, receipts or income in an amount exceeding 30% of that declared per its tax return for the year involved, which is a prima facie evidence of a false or fraudulent return.
>
> xxx.'
>
> Thereafter, a Notice of Pre-Trial Conference was issued by this Court setting the case for Pre-Trial Conference on February 15, 2018. Accordingly, petitioner filed its Pre-Trial Brief on February 12, 2018 while the Pre-Trial Brief for the respondent was filed on February 7, 2018.
>
> On March 12, 2018, the parties filed their Joint Stipulation of Facts Thereafter, a Pre-Trial Order was issued by this Court on March 19, 2018 thereby the pre-trial conference was deemed terminated.
>
> The trial of the case then ensued."

On 10 February 2020, the Court in Division rendered the Assailed Decision, the dispositive portion of which provides:[4]

> "**WHEREFORE,** premises considered, the Petition for Review filed by Geniographics, Incorporated is **GRANTED.** Accordingly, the Final Decision on Disputed Assessment dated September 13, 2017, for deficiency Income Tax and Value Added Tax, covering Taxable Year 2012 is **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED.**"

On 26 February 2020, petitioner filed through registered mail his Motion for Reconsideration on the Assailed Decision, which was denied for lack of merit by the Court in Division in a Resolution, dated 18 September 2020.[5]

On 6 October 2020, petitioner filed the instant Petition.

The Court *En Banc* then issued a Resolution, dated 22 December 2020, requiring respondent to file a Comment to the Petition within ten (10) days from notice.[6] On 15 January 2021, respondent filed the Comment.

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4 Decision, dated 10 February 2020, *id.*, p. 37.
5 Resolution, dated 18 September 2020, Annex "B", Petition, *id.*, pp. 39-46.
6 *Id.*, pp. 59-61.

Afterwards, the Court *En Banc* issued the Resolution, dated 28 January 2021, noting the filing of the Comment and referring the instant case to mediation.[7] However, on 29 May 2021, the Court *En Banc* received a No Agreement to Mediate from the Philippine Mediation Center Unit.[8]

On 14 July 2021, this Court *En Banc* issued a Resolution submitting the instant case for decision.[9]

Hence, this Decision.

The Assigned Errors[10]

The Petition raised the following issues for resolution by the Court *En Banc:*

1. Whether the tax audit/investigation of respondent's deficiency taxes for taxable year 2012, subject of Letter Notice ("LN") No. 048-RFTRS-12-00-000149 issued by the CIR himself was authorized under the ***NIRC*** in relation to ***Revenue Memorandum Order No. 40-03 ("RMO 40-03")*** and ***Revenue Memorandum Order No. 55-10 ("RMO 55-10");***

2. Whether the doctrine enunciated by the Supreme Court in the cases of ***Commissioner of Internal Revenue v. Sony Philippines, Inc.*** and ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue,*** as cited by the Court in Division, is not applicable to the issues in the instant case; and

3. Whether or not respondent can raise in the instant case the issue of lack of Letter of Authority ("LOA") for the first time on appeal before this Court when it failed to raise such issue in the administrative level of the BIR.

Arguments of the Parties

Petitioner presented the following arguments:[11]

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7 *Id.*, pp. 75-77.
8 *Id.*, p. 78.
9 *Id.*, pp. 79-81.
10 *Id.*, p. 5.
11 *Id.*, pp. 5-11.

1. The tax audit/investigation of respondent's deficiency taxes for taxable year 2012, subject of LN No. 048-RLFTRS-12-00-000149 issued by the CIR himself, was authorized under ***Section 6 (A) of the NIRC*** in relation to ***RMO 40-03*** and ***RMO 55-10***;

2. The doctrine enunciated by the Supreme Court in the cases of ***Commissioner of Internal Revenue v. Sony Philippines, Inc.*** and ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue***, as cited by the Court in Division, is not applicable to the issues in the instant case since the facts therein are not in all fours in the case at bar; and

3. Respondent cannot raise, in the instant case, the issue of a lack of LOA for the first time on appeal when it failed to raise such issue in the administrative level of the BIR.

In its Comment, respondent counter-alleged as follows:[12]

1. Contrary to the claim of the CIR, the doctrine enunciated by the Supreme Court in the cases of ***Commissioner of Internal Revenue v. Sony Philippines, Inc.*** and ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue*** squarely applies in the instant case. Petitioner's arguments are a mere rehash of the legal issues already resolved by the Court in Division in its Decision, dated 10 February 2020, and Resolution, dated 18 September 2020; and

2. Contrary to petitioner's claim, the taxpayer can raise before this Court the issue of lack of LOA even for the first time on appeal.

The Ruling of the Court En Banc

This Court resolves to **DENY** the **Petition** for lack of merit.

The arguments raised in the present Petition are mere reiterations of those adequately and judiciously tackled, resolved, decided, and passed upon in the Decision, dated 10 February 2020, and Resolution, dated 18 September 2020.

[12] *Id.*, pp. 64-73.

A LN is different from a LOA. The former cannot replace the latter. A LOA is needed to make a valid assessment.

Petitioner claims that LN No. 048-RFTRS-12-00-000149, issued by the CIR himself, authorized the audit of respondent in the case at bar. This is misplaced.

In the case of ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue ("Medicard")***,[13] which cited the case of ***Commissioner of Internal Revenue v. Sony Philippines, Inc.***,[14] both of which are wholly applicable to the case at bar, the Supreme Court ruled that a LN serves as a mere discrepancy notice to the taxpayer similar to a Notice of Informal Conference. It does not serve as a replacement to a LOA. The High Court in ***Medicard*** ruled in this wise:

> "The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact, Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.
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> **The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 10 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner.** Unfortunately, this was not done in this case.

[13] G.R. No. 222743, 5 April 2017.
[14] 649 Phil. 519 (2010).

> 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 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.**
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> **The BIR's RELIEF System has admittedly made the BIR's assessment and collection efforts much easier and faster. The ease by which the BIR's revenue generating objectives is achieved is no excuse however for its non-compliance with the statutory requirement under Section 6 and witb its own administrative issuance. In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at tbe same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR' s revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.**
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> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void."
> (Emphasis and underscoring, Ours.)

Indeed, the requirement of a LOA is indispensable under tax assessments. Basic is the rule that before revenue officers can issue assessment notices, they should first be armed with a LOA. This is a principle undeterred under our tax laws. A LOA is an instrument of due process for the protection of taxpayers. It guarantees that tax agents will act only within the authority given them in examining a taxpayer. A mere LN cannot ensure the observance of this due process guarantee.

Sections 6 (A) and 13 of the NIRC are clear that revenue officers assigned to perform assessment functions must first be authorized to do so:

> **"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:** *Provided, however;* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
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> xxx xxx xxx
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> **"SEC. 13.** ***Authority of a Revenue Officer.*** - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district** in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due **in the same manner that the said acts could have been performed by the Revenue Regional Director himself."**
> (Emphasis and underscoring, Ours.)

It is clear, therefore, that before an assessment can be made, a revenue officer must first be duly authorized to perform said assessment. This would allow such revenue officer to examine or investigate a taxpayer's books of accounts for purposes of ascertaining the tax liability.

The importance of a LOA as a due process requirement in issuing deficiency tax assessments was given paramount consideration by the High Court recently in ***Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.***,[15] as follows:

> "To comply with due process in the audit or investigation by the BIR, the taxpayer needs to be informed that the revenue officer knocking at his or her door has the proper authority to examine his books of accounts. The only way for the taxpayer to verify the existence of that authority is when, upon reading the LOA, there is a link between the said LOA and the revenue officer who will conduct the examination and assessment; and the only way to make that link is by looking at the names of the revenue officers who are authorized in the said LOA. If any revenue officer other than those named in the LOA conducted the examination and assessment, taxpayers would be in a situation where they cannot verify the existence of the authority of the revenue officer to conduct the examination and assessment. Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment."

As duly found by the Court in Division and verified by the Court *En Banc*, and as admitted by petitioner himself, the revenue officers whose efforts led to the issuance of the Preliminary Assessment Notice, Final Assessment Notice, and Final Decision on Disputed Assessment did not have a valid LOA.

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[15] G.R. No. 242670, 10 May 2021.

They clearly had no authority to issue an assessment against respondent. Thus, the deficiency income tax assessment issued against respondent is null and void.

This Court may rule upon the issue on the lack of a LOA not raised during the administrative proceedings.

Petitioner claims that the Court in Division incorrectly ruled on the issue of a lack of a LOA despite this matter not being raised during the administrative proceedings before the BIR. This is erroneous.

It must be emphasized that ***Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals)*** provides categorically that the Court of Tax Appeals shall be a court of record. As such, it is required to conduct a formal trial (trial *de novo*) where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration. Consequently, parties before this Court may raise new matters not taken into consideration during the administrative proceedings before the BIR.

Moreover, in ***Commissioner of Internal Revenue v. Eastern Telecommunications, Inc.,***[16] the Supreme Court ruled that held that the rule against raising new issues on appeal is not without exceptions, to wit:

> "The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:
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> The appellate court may, in the interest of justice, properly take into consideration in deciding the case matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings. This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them."

More importantly, this Court has the power to decide issues not even raised by the parties in their respective pleadings or memoranda, especially if the issue concerns the authority of the revenue officers to conduct audit/investigation of a taxpayer's books of accounts and other accounting

[16] G.R. No. 163835, 7 July 2010.

records.[17] Hence, there is no reason why the same issue, while not raised during the administrative proceedings, is disallowed to be part of a taxpayer's appeal before this Court.

WHEREFORE, the instant Petition is hereby **DENIED** for lack of merit. Accordingly, the Decision, dated 10 February 2020, and Resolution, dated 18 September 2020, promulgated by the Court in Division are hereby **AFFIRMED**.

Petitioner Commissioner of Internal Revenue, his duly authorized representatives, or any other person acting on his behalf are hereby **ENJOINED** from enforcing the collection of deficiency Income and Value-Added Tax for the taxable year 2012 assessed against respondent Geniographics, Incorporated in the Final Decision on Disputed Assessment dated 13 September 2017. This order of suspension is **IMMEDIATELY EXECUTORY**, consistent with ***Section 4, Rule 39 of the Rules of Court***.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

[17] Commissioner of Internal Revenue v. Lancaster Philippines, Inc., G.R. No. 183408, 12 July 2017.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
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