REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* No. 2452** (CTA Case No. 9571)
	Present:
- versus -	**DEL ROSARIO,** *P.J.,* **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
CHEVRON SERVICES PHILIPPINES, INC., *Respondent.*	Promulgated: NOV 24 2022 4:24 pm

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a *Petition for Review* posted by the Commissioner of Internal Revenue (CIR) on April 5, 2021 and received by the Court on May 17, 2021[1] which seeks to reverse and set aside the Decision dated July 15, 2020,[2] and the Resolution dated February 17, 2021[3], both rendered by the Third Division of this Court (Court in Division) in CTA Case No. 9571 entitled *"Chevron Services Phils., Inc. vs. Commissioner of Internal Revenue."*

We quote the dispositive portions of the assailed Decision and Resolution as follows:

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[1] EB Docket, pp. 6-31.
[2] EB Docket, pp. 35-59.
[3] EB Docket, pp. 62-71.

Decision dated July 15, 2020 :

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**.
>
> Accordingly, the *Final Denial Letter* dated March 1, 2017 issued by Regional Director Glen A. Geraldino against petitioner is hereby **REVERSED and SET ASIDE**. Furthermore, the FAN, assessing petitioner of the deficiency income tax and VAT, in the aggregate amount of P52,292,668.88, inclusive of interest and surcharges, for the CY 2011, is **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

Resolution dated February 17, 2021

> "**WHEREFORE,** premises considered, respondent's Motion for Reconsideration (of the Decision dated 15 July 2020) is **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE PARTIES

Petitioner CIR is the duly appointed head of the Bureau of Internal Revenue (BIR) vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including *inter alia,* the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the 1997 National Internal Revenue Code (NIRC), as amended, and other tax laws, rules and regulations. Her principal office address is at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, where she may be served with summons and other legal processes of this Court.

Respondent is a domestic corporation duly organized and existing under Philippine laws with principal office address at 6/F, 6750 Ayala Avenue, Makati City.

THE FACTS

The facts as found by the Third Division are as follows:

"On January 31, 2013, petitioner received a copy of the Letter Notice (LN) No. 047-RLF-11-00-00045 dated January 28, 2013 for CY ended December 31, 2011, stating that based on a computerized matching of information/data provided by third party sources, petitioner had undeclared sales and purchases in the amounts of P50,565,677.81 and P3,633,350.12, respectively, for CY 2011.

Subsequently, petitioner received a copy of respondent's *Preliminary Assessment Notice* (PAN) dated November 18, 2016, stating that petitioner was liable for deficiency income tax and VAT in the total amount of P52,118,113,39, xxx xxx xxx

xxx xxx xxx

Petitioner filed its letter dated December 9, 2016 with the BIR on the same date, seeking the cancellation of the said PAN as the findings provided therein do not have legal or factual bases.

On January 12, 2017, petitioner received respondent's *letter* dated December 28, 2016, acknowledging the receipt of petitioner's reply to PAN but nevertheless claimed that the Reply will only form part of the docket because a *Formal Assessment Notice* (FAN) has already been issued against petitioner on December 20, 2016. In the said FAN dated December 20, 2016, petitioner was assessed for deficiency income tax the amount of P37,159,539.06, and for deficiency VAT amounting to P15,133,129.82, inclusive of surcharges and interests, for CY 2011.

Thus, on February 2, 2017, petitioner filed its *Protest* to the FAN, requesting for a reinvestigation and cancellation of the subject deficiency tax assessments, for lack of legal and factual bases.

Thereafter, petitioner received a copy of the letter dated March 1, 2017 (the *Final Denial Letter*) on March 10, 2017, signed by Regional Director Glen A. Geraldino, informing petitioner that its request for reinvestigation could not be given favorable action for having been filed beyond thirty (30) days from receipt of the FAN.

On April 10, 2017, petitioner filed the instant Petition for Review before this Court.

xxx xxx xxx"

On July 15, 2020, the Court in Division rendered the assailed Decision granting respondent's Petition for Review in CTA Case No. 9571 and consequently cancelled and set aside the Formal Assessment Notice (FAN) for calendar year 2011 for deficiency income tax, value-added (VAT), in the aggregate amount of P52,292,668.88, inclusive of interest and surcharges.

On August 28, 2020 petitioner posted her Motion for Reconsideration (of the Decision dated 15 July 2020) assailing the Decision promulgated by the Court in Division. This was received by the Court on September 7, 2020.

In the assailed Resolution dated February 17, 2021, the Court in Division denied petitioner's Motion for Reconsideration primarily on the ground that said motion was belatedly filed.

On March 16, 2021, petitioner filed a Motion for Extension of Time to File Petition for Review with the Court *En Banc*.

In a Minute Resolution dated March 18, 2021,the Court granted the Motion for Extension giving petitioner until April 1, 2021 within which to file her Petition for Review.

On April 5, 2021,[4] petitioner posted the instant Petition for Review which was received by the Court on May 17, 2021.

In a Resolution dated June 10, 2021, the Court directed petitioner's counsel to submit the Official Receipt issued by the Integrated Bar of the Philippines (IBP) as proof of payment of her IBP dues for the year 2021, within five (5) days from notice.

In the same Resolution, the Court also ordered respondent to file its comment on the Petition for Review, within ten (10) days from notice.

On June 24, 2021, petitioner filed her Compliance attaching therewith a copy of the IBP official receipt of her counsel.

On June 25, 2021, respondent filed its Comment (Re: Petition for Review dated March 31, 2021).

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[4] April 1 and 2, 2021 fell on a Maundy Thursday and Good Friday, both regular non-working holidays. The next business day was on April 5, 2021.

On July 12, 2021, the Court referred the case to mediation for the possibility of the parties reaching an amicable settlement.

On October 21, 2021, the Mediation Staff Assistant of the Philippine Mediation Unit – Court of Tax Appeals (PMC Unit-CTA), Ms. Avigail B. Sanchez, issued a No Agreement to Mediate indicating that the parties decided not to have their case mediated by the PMC Unit -CTA.

On November 24, 2021, the Court submitted petitioner's Petition for Review for decision.

THE ISSUES

The issues raised by the petitioner in her Petition for Review are as follows:

1. Whether the Honorable Third Division of the CTA erred in ruling that petitioner's Motion for Reconsideration was belatedly filed;

2. Whether the Honorable Third Division of the CTA erred in granting respondent's Petition for Review and not upholding the deficiency assessments for income tax and value-added tax in the aggregate amount of P52,292,668.88, inclusive of interest and surcharges, for the CY 2011 made by the petitioner against the respondent; and

3. Whether the Honorable Third Division of the CTA erred in denying herein petitioner's Motion for Reconsideration.

Petitioner's arguments:

Petitioner impugns the supposed belated filing of her Motion for Reconsideration by citing the Supreme Court (SC) Circular No. 43A-2020 issued on August 3, 2020 which merely suspended the period within which to file pleadings, motions and other court submissions due to the suspension of court operations during the period August 4 to August 18, 2020.

Petitioner narrates that she received the Decision promulgated by the Court in Division on July 29, 2020 and had fifteen (15) days from receipt or until August 13, 2020 within

which to file a Motion for Reconsideration. However, on August 2, 2020, the Supreme Court issued SC Administrative Circular No. 43-2020 followed by SC Administrative Circular No. 43A-2020 issued on August 3, 2020 in view of the imposition of the Modified Enhanced Community Quarantine (MECQ) in Metro Manila and other nearby provinces, suspending the reglementary periods for said filings from August 4, 2020 to August 18, 2020. Petitioner interprets this suspension as having been lifted on August 18, 2020, hence, the filing of her Motion for Reconsideration (via registered mail) on August 28, 2020 was still within the 15-day period provided by Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA).

Even assuming without admitting that her Motion for Reconsideration was not timely filed, petitioner asserts that cases before the courts should be determined based on the merits after according full opportunity to all parties to ventilate their causes and defense and that the Supreme Court has, in various occasions, relaxed the strict observance of procedural rules to advance substantial justice.

On another procedural issue, petitioner alleges that respondent filed its protest to the Formal Letter of Demand and Formal Assessment Notice (FLD/FAN) beyond the thirty (30)-day period provided under Section 228 of the 1997 NIRC, as amended, making it final and executory. Relatedly, petitioner challenges the jurisdiction of the Court in Division to take cognizance of the Petition for Review of respondent (then the petitioner) in the face of a final and executory assessment.

Petitioner additionally argues that the FLD/FAN was duly received by respondent on December 22, 2016 and not on January 3, 2017 and refutes the assertion of respondent that the recipient of the said FLD/FAN is not its employee, neither was he authorized to receive official notices on its behalf. Petitioner considers this allegation as hearsay since the supposed recipient, Mr. Richard Intalan, was not called to the witness stand by respondent to testify on his alleged lack of authority.

Lastly, petitioner avers that theories and arguments not raised in the lower courts should not be considered for the first time on appeal, citing as support, several jurisprudence on this issue.

Respondent's counter-arguments:

In its Comment to the Petition for Review, respondent echoes the ruling of the Court in Division that petitioner's Motion for Reconsideration was belatedly filed on August 28, 2020 based on the provisions of Rule 8, Section 3 (b) of the Revised Rules of the Court of Tax Appeals (RRCTA). It also maintains that petitioner has the burden of proving that the so-called substituted service of the FLD/FAN was duly accomplished on January 3, 2017. It cited the case of *Commissioner of Internal Revenue vs. GJM Philippines Manufacturing, Inc.,*[5] where it was supposedly held that if a taxpayer denies ever having received the assessment, it is incumbent upon the sender to dispute this allegation by competent evidence showing that it was indeed received by the taxpayer.

Respondent firmly attests to the jurisdiction of the Court in Division over its Petition for Review because the FLD/FAN did not attain finality as a protest thereto was timely filed.

Violation of its right to due process was also raised by respondent as seen in the alleged haste of petitioner in issuing the FLD/FAN barely a day after it filed a protest to the PAN. It submits that Section 228 of the 1997 NIRC, as amended, and Revenue Regulations (RR) No. 12-99, as amended, mandates the officers of the BIR to consider the arguments in the protest against the PAN and cites the decision of the Supreme Court in the case of *Commissioner of Internal Revenue (CIR) vs. Avon Products Manufacturing, Inc.,*[6] as its jurisprudential support.

Lastly, respondent states that the doctrine of *estoppel* is not applicable to the case and that the questioned assessments are null and void due to the absence of a Letter of Authority (LOA) of the revenue officers who conducted the audit and examination of its books of accounts and other accounting records for the taxable year 2011.

THE COURT *EN BANC*'S RULING

The Court will first rule on the timeliness of the filing of petitioner's Motion for Reconsideration with the Court in

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[5] G.R. No. 202695, February 29, 2016.
[6] *CIR vs. Avon Products Manufacturing, Inc.,/Avon Products Manufacturing, Inc. vs. CIR,* G.R. No. 201398-99/G.R. No. 201418-19, October 3, 2018.

Division as this is an integral issue determinative of the Court *a quo's* jurisdiction over the instant Petition for Review.

Petitioner contravenes the finding of the Court in Division in its Resolution dated February 17, 2021 on the belated filing of her Motion for Reconsideration and narrates that having received the decision of the Court in Division dated July 15, 2020 on July 29, 2020, it had fifteen (15) days or until August 13, 2020 within which to file a motion for reconsideration. However, the said period fell on the alleged suspension of the reglementary period for the filing of pleadings and motions by virtue of the issuance of SC Administrative Circular No. 43A-2020 dated August 3, 2020, hence, she claims that she had until August 28, 2020 within which to file the motion for reconsideration.

Let us analyze.

Pertinent portions of SC Administrative Circular No. 43-2020 dated August 2, 2020 are quoted hereunder for reference:

> "Due to the reported surge in Covid-19 cases, the Court *en banc* has provided the following guidelines in the operation of the courts from 3-14 August 2020:
>
> 1. Unless herein provided, ALL the courts in the National Capital Judicial Region and those in areas under Enhanced Community Quarantine or Modified Enhanced Community Quarantine, SHALL BE PHYSICALLY CLOSED to all court users, and shall only be reached through their respective hotline numbers, email addresses and/or Facebook accounts as posted on the website of the Supreme Court. All inquiries on cases or transactions, including requests for documents and services, shall be coursed and acted upon through the said numbers, addresses and accounts of the concerned court, or through the Judiciary Public Assistance Section of the Supreme Court in accordance with A.C. 28-2020.
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> xxx xxx xxx
>
> 5. The Court of Appeals, Sandiganbayan and Court of Tax Appeals shall continue to receive petitions and pleadings electronically, and in accordance with Paragraph 1 herein, and process the same pursuant to their respective internal rules.
>
> xxx xxx xxx"

On August 3, 2020, an Addendum to the above administrative circular[7] was issued, and portions of which are quoted hereunder, as follows:

> "In view of the imposition of Modified Enhanced Community Quarantine (MECQ) in Metro Manila, Cavite, Rizal, Bulacan and Laguna from 4 to 18 August 2020, and in addition to the provisions of Administrative Circular No. 43-2020 [inadvertently numbered as A.C. No. 42-2020], dated 2 August 2020, the courts in said areas during the period of 4 to 18 August 2020 shall also observe, as follows:
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> 1. The reglementary periods for the filing of petitions, appeals, complaints, motions, pleadings and other court submissions before the courts **shall be suspended from 4 to 18 August 2022, and shall resume on 19 August 2020**, without prejudice to those who have already filed such pleadings and documents within their reglementary periods. In the same manner, the periods for court actions with prescribed period are likewise suspended, **and shall resume on 19 August 2020**.
>
> 2. Administrative Circular No. 43-2020 *[inadvertently numbered as A.C. No. 42-2020]* shall be extended until 18 August 2020).
>
> All previously issued circulars and their respective provisions which are not inconsistent herewith shall remain valid and in effect."

As mentioned earlier, petitioner received the Decision of the Court in Division on July 29, 2020 and had fifteen (15) days within which to file a motion for reconsideration pursuant to Section 1 of Rule 15 of the RRCTA, quoted as follows:

> **"Rule 15**
> **Motion for Reconsideration or New Trial**
>
> Section 1. *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial **for fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question**." (Emphasis supplied)

Counting fifteen (15) days from July 29, 2020, petitioner had until August 13, 2020 within which to file her Motion for

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[7] SC Administrative Circular No. 43A-2020.

Reconsideration. However, the last day (August 13, 2020) fell within the period when the courts were declared physically closed on August 3 to 14, 2020.[8] Noteworthy is the fact that the same circulars declared the resumption of court operations on August 19, 2020.

It can be assumed that with the filing of petitioner's Motion for Reconsideration on August 28, 2020, she interpreted the physical closure of the courts from the period August 3 to 14, 2020 as giving her an additional period of ten (10) days counted from August 19, 2020 within which to file the said motion and thus, subtracting five (5) days before the physical closure on August 4, 2020, the aggregate period of fifteen (15) days was deemed complied with.

The counting of the fifteen (15)-day period by petitioner could be interpreted in two ways: one, that petitioner thought that she had an additional period of fifteen (15) days from August 13, 2020 within which to file her motion for reconsideration; or two, subtracting five (5) days from the period counted from July 30, 2020 to August 4, 2020, the remaining ten (10)-day period resumed on August 19, 2020. Either way, the filing of the Motion for Reconsideration on August 28, 2020 could have been the fifteenth and last day as may have been the position of petitioner.

After a close analysis of the aforequoted SC Administrative Circulars, we find that petitioner timely filed her Motion for Reconsideration with the Court in Division.

The facts show that petitioner received the assailed Decision dated July 15, 2020 on July 29, 2020. Counting fifteen (15) days from said date, she had until August 13, 2020 within which to file her motion for reconsideration pursuant to the aforequoted Section 1 of Rule 15 of the RRCTA. However, on August 2, 2020 and August 3, 2020, the Supreme Court issued SC Administrative Circular No. 43-2020 and 43A-2020, respectively, with the latter suspending the reglementary periods for filing of petitions, appeals, complaints, motions and other court submissions from August 4 to 18, 2020 and declared its resumption on August 19, 2020.

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[8] SC Administrative Circular No. 43-2020 dated August 2, 2020 and SC Administrative Circular No. 43A-2020.

Counted from July 30, 2020 to August 4, 2020 (start date of the period of suspension), petitioner had a remaining balance of ten (10) days within which to file her motion for reconsideration which started to run on August 19, 2020, thus, giving petitioner until August 28, 2020 as the last day to file her motion for reconsideration.

Considering that petitioner's Motion for Reconsideration was filed on August 28, 2022, the same was filed within the prescribed fifteen (15) day period.

On the issue of jurisdiction, petitioner insists that the failure of respondent to make a timely protest to the FAN/FLD deprives the Court of jurisdiction to take cognizance of the respondent's Petition for Review filed with the Court in Division. She alleges that respondent received the FAN/FLD dated December 20, 2016 on December 22, 2016 and filed its administrative protest only on February 2, 2017 which is way beyond the thirty (30) day period prescribed under Section 228 of the 1997 NIRC, as amended, as implemented by Section 3.1.5, paragraph 4 of Revenue Regulations (RR) No. 12-99, as amended. Petitioner contravenes respondent's claim that it received the FAN/FLD only on January 3, 2017 (by registered mail) and considers this to be without factual basis as the FAN/FLD was served via substituted service and received by Mr. Richard Intalan at its registered business address.

It remains undisputed that service of the FAN/FLD was done via two modes of service, i.e., substituted service and by registered mail. If the former mode of service were to be considered, the administrative protest filed on January 3, 2017 was filed beyond the thirty (30)-day period prescribed by Section 228 of the 1997 NIRC, as amended. However, if the latter mode of service were to be the reckoning point of the said thirty (30)-day period, then the filing of the protest was timely made.

After due deliberation on this particular issue, this Court finds that we should not waste our time analyzing the validity of the substituted service considering that the evidentiary standards for proving the same were found wanting by the Court in Division. In her Petition for Review filed with the Court En Banc, petitioner neither disputed the service done by registered mail nor the date when respondent received the same via this mode, focusing instead on the validity of the substituted service.

The question as to why it had to resort to service via registered mail of the FAN/FLD to respondent after having served the same by personal/substituted service raises doubts as to the latter's validity and convinces the Court to lean on the more reliable mode of service by registered mail. Compared to substituted service of official notices, service by registered mail is superior in terms of evidentiary value as it involves the use of the government's postal services.

We therefore put more weight on the allegation of respondent that it received the FAN/FLD via registered mail on January 3, 2017, thus the protest filed on February 2, 2017 was timely filed in accord with the provisions of Section 228 of the 1997 NIRC, as amended, quoted as follows:

> "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
>
> 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, on

> the decision shall become final, executory and demandable." (Emphasis supplied)

We therefore agree with the Court in Division that the Court has jurisdiction to entertain the instant case.

Going now to the substantial merits of the case, we find the deficiency tax assessments issued for taxable year 2011 to be invalid and devoid of legal basis for lack of a Letter of Authority (LOA).

Petitioner asserts that this particular issue was not raised by respondent in its protest to the PAN and the FAN and neither was it raised in its Petition for Review filed with the Court in Division. The silence of respondent on this particular issue is considered by petitioner as a classic case of *estoppel* and should have prevented the Court from ruling on the matter.

We find this argument bereft of merit as the Court has time and again ruled that Section 1 Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA) allows the Court to rule upon related issues to achieve an orderly disposition of the case, and we quote:

> **"Rule 14**
> **Judgement, its Entry and Execution**
>
> Section 1. – *Rendition of Judgment.-*
>
> **In deciding a case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case**." (Emphasis supplied)

This has been recognized by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[9] and we quote:

> "On whether the CTA can resolve an issue which was not raised by the parties, **we rule in the affirmative**.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties **but may also rule upon related issues necessary to achieve an orderly disposition of the case**." (emphasis supplied)

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[9] G.R. No. 183408, July 12, 2017.

Further, in the case of *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.,*[10] the Supreme Court ruled in this manner, thus:

> "The general rule is that the appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.
>
> xxx xxx xxx"
>
> **"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.** xxx xxx xxx" (emphasis supplied)

In the instant the case, the validity of the subject deficiency assessments for taxable year 2011 is a matter of public importance because taxpayers cannot be held liable under an invalid tax assessment following the doctrine that a void assessment bears no valid fruit.[11]

The Court is not prohibited from resolving the issue of lack of an LOA which is related to the lack of authority of the Revenue Officers (ROs) to conduct an audit of respondent's books of accounts and other accounting records for taxable year 2011.

The records of this case and the facts as ascertained by the Court in Division show that a Letter Notice (LN) was issued by petitioner on January 28, 2013 and received by petitioner on January 31, 2013 for taxable year 2011. The records and the evidence adduced during trial do not show that an LOA was issued prior to the investigation of respondent's books of

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[10] G.R. No. 163835, July 7, 2010.
[11] Samar-I Electric Cooperative vs. CIR, G.R. No. 193100, December 10, 2014.

accounts and other accounting records nor after the LN issuance.

The said LN states that "based on a computerized matching of information/data provided by third party sources, petitioner had undeclared sales and purchases in the amounts of P50,565,677.81 and P3,633,350.12, respectively, for CY 2011."[12]

The alleged undeclared sales became the basis for the findings of income tax and value-added tax deficiencies embodied in the PAN issued on November 18, 2016 and subsequently, the FAN issued on December 20, 2016.

Well-established is the rule that an LOA is necessary to clothe the ROs with the requisite authority to examine a taxpayer's accounting records.

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 accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.[13] The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.[14] An LOA addressed to a revenue officer is specifically required under the 1997 NIRC, as amended, before an examination of taxpayer may be had.[15]

Sections 6(A) and 13 of the 1997 NIRC, as amended, provide as follows:

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

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[12] Decision dated July 15, 2020, EB Docket, pp.35-60.
[13] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[14] *Commissioner of Internal Revenue vs. De La Salle University, Inc., etseq.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.
[15] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

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

Based on the foregoing provisions, it is clear that unless authorized by respondent himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.

Furthermore, any examination by unauthorized revenue officers who are not clothed with an LOA, can only give rise to invalid tax deficiency assessments.[16]

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* ("*Medicard* case"),[17] the Supreme Court emphasized the importance and significance of an LOA in examining the books of accounts and other accounting records of taxpayers and in assessing internal revenue taxes, 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. xxx xxx xxx" (Emphasis supplied)

The *Medicard* case also distinguished between an LN and an LOA giving emphasis on the necessity of the latter document

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[16] *Commissioner of Internal Revenue vs. Opulent Landowners, Inc.*, G.R. Nos. 249886-84, January 27, 2020.
[17] G.R. No. 222743, April 5, 2017.

before an audit or examination may be commenced, thus:

> "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 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. xxx xxx xxx Simply put, LN is entirely different and serves a different purpose than an LOA. **Due process, demands, as recognized under RMO 32-2005, that after an LN has serve *(sic)* its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner**." (Emphasis supplied)

Based on the foregoing disquisitions, the Court finds that the assessments issued by petitioner are void and without any effect for having been issued in violation of respondent's right to due process.

WHEREFORE, premises considered, the Petition for Review filed by petitioner CIR is **DENIED** for lack of merit and the Decision dated July 15, 2020 and Resolution dated February 17, 2021 of the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
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