REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2259** (CTA Case No. 9473)
	Present:
-*versus*-	**DEL ROSARIO, *P.J.*,** **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** *and* **CUI-DAVID, *JJ.***
	Promulgated:
JINZAI EXPERTS, INC., *Respondent.*	FEB 09 2022 10:45a.m.

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D E C I S I O N

MANAHAN, J.:

This resolves the *Petition for Review*[1] filed by petitioner Commissioner of Internal Revenue (CIR) on July 1, 2020, pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended[2], which prays for the reversal and setting aside of the *Decision* dated November 6, 2019[3] (Assailed Decision) and the *Resolution* dated February 18, 2020[4] (Assailed Resolution) promulgated by the Second Division of the Court of Tax Appeals (CTA) in CTA Case No. 9473 entitled "*Jinzai Experts, Inc. vs. Commissioner of Internal*

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[1] *Rollo*, CTA EB No. 2259, pp. 5-20.

[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).

[3] *Rollo*, pp. 25-47.

[4] *Id.*, pp. 49-53.

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Revenue", and the promulgation of a new judgment instead denying respondent's claim for refund.

The Facts

Petitioner CIR is the head of the Bureau of Internal Revenue (BIR), the government agency charged with, among others, the powers and duties, as well as the responsibility of collecting national internal revenue taxes.[5]

Respondent Jinzai Experts, Inc. (JEI), on the other hand, is a domestic corporation duly organized under Philippine laws, engaged in labor services and lending for productive and provident purposes, with principal office at Unit 6 MG Center Building Langkaan Dasmarinas, Cavite.[6]

On February 3, 2010, petitioner issued Tax a Verification Notice (TVN) No. 00150132 to respondent, signed by Revenue District Officer Raul Vicente Recto, authorizing Revenue Officer (RO) Jamael B. Hamid [with Group Supervisor (GS) Roberto H. Dureza] to verify the supporting documents and/or pertinent records relative to respondent's alleged internal revenue tax liabilities for taxable year/period 2008.[7]

On March 29, 2012, respondent received the Preliminary Assessment Notice dated March 28, 2012.[8]

On April 18, 2012, petitioner issued the Final Assessment Notice (FAN) under Formal Letter of Demand (FLD) No. IT-TVN150132-08-12-0369.

On May 9, 2012, respondent filed a protest contesting its tax liability.[9]

On September 13, 2012, respondent received the Final Decision on Disputed Assessment (FDDA) dated September 11, 2012 denying its protest. Under the FDDA, the aggregate amount of the alleged deficiency taxes for taxable year 2008, inclusive of statutory increments, is ₱11,776,948.84, broken down as follows:

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[5] *Rollo*, CTA EB No. 2259, Decision, p. 26.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*

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Type	Amount Due
Deficiency Income Tax	₱ 9,559,742.73
Deficiency Improperly Accumulated Earnings Tax	2,167 206.11
Compromise Penalty	50,000.00
Total (with ITR)	**₱ 11,776,948.84**

On October 3, 2012, respondent filed with the Office of petitioner, a request for reconsideration of the FDDA. However, in its *Final Decision* dated June 30, 2016, petitioner denied such request and ordered respondent to pay the aggregate amount of the alleged deficiency taxes stated in the FDDA, within thirty (30) days from receipt thereof.[10]

Petitioner then filed a Petition for Review before the Court in Division on September 21, 2016.

After the trial, the Court in Division rendered the Assailed Decision, the dispositive portion of which reads as follows:

> "**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the *Final Decision* of respondent dated June 30, 2016 and the FDDA dated September 11, 2012 are hereby **SET ASIDE**. In addition, the FAN under FLD No. IT-TVN150132-08-12-0369 dated April 18, 2012 finding petitioner liable for the total amount of ₱11,776,948.84, representing alleged deficiency income tax and improperly accumulated tax, inclusive of surcharges, interests and penalties for taxable year 2008, is **CANCELLED**.
>
> **SO ORDERED**."

Petitioner moved for the reconsideration of the Assailed Decision but was denied anew under the Assailed Resolution where the dispositive portion reads as follows:

> "**WHEREFORE,** premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.
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> **SO ORDERED**."

Hence, the instant Petition for Review was filed by petitioner CIR on July 1, 2020.

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[10] Rollo, CTA EB No. 2259, Decision, p. 26.

On January 12, 2021, this Court submitted the case for decision in view of the failure of respondent to file its comment to petitioner's Petition for Review despite due notice under the Resolution dated September 16, 2020, which was received by the respondent on September 24, 2020.

The Issue

The fundamental issue for the resolution of this Court is as follows:

> Whether the TVN is equivalent to an LOA which will serve as the authority of the RO to conduct the tax examination of taxpayers relative to their claims for refund.

Arguments of Petitioner

Petitioner CIR argues that the cases of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[11] (*Medicard* case) and *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[12] (*Sony* case) are not applicable in the instant case because the issue in the instant case is the issuance of a TVN.

Petitioner CIR insists that there is no law prohibiting the petitioner as well as his Regional Directors to delegate the issuance of TVN to the Revenue District Officer and that such TVN is equivalent to a LOA.

Petitioner argues further that an administrative officer should be allowed to decide within his/her level of competence just like in the judicial level where the issues not raised in the lower court cannot be raised for the first time on appeal and that respondent is already estopped from assailing the issuance of said TVN.

Ruling of the Court *En Banc*

This Court shall determine first whether the instant petition is filed on time. Sections 1 and 3(b), Rule 8 of the RRCTA provide that:

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[11] G.R. No. 222743, April 5, 2017.
[12] G.R. No. 178697, November 17, 2010.

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> SECTION 1. *Review of cases in the Court en banc.*- In cases falling under the exclusive appellate jurisdiction of the Court *en banc,* the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.
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> xxx xxx xxx
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> SEC. 3. *Who may appeal; period to file petition.*- (a) xxx xxx xxx
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> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration** or new trial **may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Emphasis supplied*)

The records of the case reveal that the instant petition was preceded by a Motion for Reconsideration which is the subject of the Assailed *Resolution* dated February 18, 2020. The latter was received by petitioner CIR on February 24, 2020. Thus, petitioner CIR had fifteen (15) days from such receipt or until March 10, 2020. However, petitioner CIR posted a *Motion for Extension of Time to File Petition for Review* on March 9, 2020 requesting for additional period of fifteen (15) days to file said petition which was granted under Minute Resolution dated June 1, 2020 taken into consideration the Supreme Court (SC) issued Administrative Circular No. 39-2020 which provides *inter alia* that:

> "4. The filing of petitions, appeals, complaints, motions, pleadings and other submissions that fall due up to 31 May 2020 before the courts in areas under MECQ areas is extended for 30 calendar days, counted from 1 June 2020, but pleadings and other court submissions may still be filed by the parties within the reglementary period on or before 31 May 2020 through electronic means, if preferred and able. In the same manner, the periods for court actions with prescribed periods of courts in areas under MECQ are likewise extended for 30 calendar days counted from 1 June 2020."

Thus, the filing of the Petition for Review on July 1, 2020 was on time.

Now, let us determine the substantive issues raised by petitioner.

The absence of an LOA prior to the issuance of notice of assessment is fatal not only on the tax examination conducted but also on the notices subsequently issued

The factual antecedents of the case reveal that a TVN No. 00150132 was issued to serve as the authority of RO Jamael B. Hamid with GS Dureza to verify the supporting documents and/or pertinent records relative to respondent's alleged internal revenue tax liabilities for taxable year/period 2008, instead of an LOA.

Sections 6(A) and 13 of the 1997 National Internal Revenue Code (NIRC), as amended, provides:

> **SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement*.** -
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> (A) *Examination of Returns and Determination of Tax Due.* - After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
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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. (*Additional boldfacing and underscoring ours*)

As shown in the abovementioned provisions, the authority delegated by petitioner, as stated under Section 6 of the 1997 NIRC, as amended, must be pursuant to the issuance of an LOA and there was no other equivalent notice as to such authority that was provided under that law that may substitute other than the required LOA.

Thus, even other forms of authority will not cure the lack of an LOA as held in the case of *Commissioner of Internal Revenue v. Composite Materials, Inc.*[13], to wit:

> "As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, ruling that in the absence of a LOA, the assessment or examination is a nullity.
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> Moreover, the Court agrees with the CTA en banc that **Referral Memorandum issued by a Revenue District Officer directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority**. To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that **any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA**" (*Emphasis supplied*)

The Supreme Court, in the recent case of *Commissioner of Internal Revenue v. Opulent Landowners, Inc.* [14] (*Opulent* case), emphasizes that the LOA is the document that will satisfy the delegation of authority by petitioner to his representatives of his power to make assessment under the 1997 NIRC, as amended, to wit:

> "... Under prevailing jurisprudence, **a LOA is statutorily required under the National Internal Revenue Code in order to clothe revenue officers with authority to examine taxpayers**. It is axiomatic that only the revenue officers actually named under the LOA are authorized to examine the taxpayer...." (*Emphasis supplied*)

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[13] G.R. No. 238352, September 12, 2018.
[14] G.R. Nos. 249883-84, January 27, 2020.

Thus, a TVN which was nowhere mentioned in the 1997 NIRC, as amended, is not an LOA that vested an authority to RO to conduct tax examination into the financial records of a taxpayer.[15]

Moreover, in the recent case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*[16], the Supreme Court emphasizes the importance of LOA in the conduct of tax examination, to wit:

> An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers and 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. The issuance of 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.
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> xxx xxx xxx
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> Unless authorized by the CIR himself or by his duly authorized representative, an examination of the taxpayer cannot be undertaken. 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. **There must be a grant of authority, <u>in the form of a LOA</u>, before any revenue officer can conduct an examination or assessment**. The revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity. (*Emphasis and underscoring supplied*)

Thus, the rationale for the authority of an RO in the form of an LOA in conducting tax examination of taxpayers embodied in the cases of *Medicard* and *Sony* as cited in the Assailed Decision, as well as the above-cited *McDonald's* case, is definitely applicable in the instant case.

The lack of the required LOA shall invalidate the tax examination itself as well as the notices issued after such

[15] CTA EB No. 1774, November 4, 2019.
[16] G.R. No. 242670, May 10, 2021.

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examination "for it is well-settled that a void assessment bears no fruit."[17]

As to the issue on whether this Court can rule on issues raised for the first time before it, Section 1, Rule 14 of the RRCTA provides that:

> RULE14
> JUDGMENT, ITS ENTRY AND EXECUTION
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> SECTION. 1. *Rendition of judgment.*-The Court shall decide the cases brought before it in accordance with Section 15, paragraph (1), Article VIII of the 1987 Constitution. The conclusions of the Court shall be reached in consultation by the Members on the merits of the case before its assignment to a Member for the writing of the decision. The presiding justice or chairman of the Division shall include the case in an agenda for a meeting of the Court *en banc* or in Division, as the case may be, for its deliberation. If a majority of the justices of the Court *en banc* or in Division agree on the draft decision, the *ponente* shall finalize the decision for the signature of the concurring justices and its immediate promulgation. Any justice of the Court *en banc* or in Division may submit a separate written concurring or dissenting opinion within twenty days from the date of the voting on the case. The concurring and dissenting opin ions, together with the majority opinion, shall be jointly promulgated and attached to the rollo.
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> **In deciding the 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 provision was emphasized by the Supreme Court in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[18] to wit:

> "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....;
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> xxx xxx xxx
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> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its

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[17] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 08, 2010.
[18] G.R. No. 183408, July 12, 2017.

> authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter."

The ascertainment of truth is the paramount interest of this Court, hence, it is not bound by technical rules as held by the Supreme Court in *BPI-Family Savings Bank, Inc. v. Court of Appeals, et al.*[19], to wit:

> "... The law creating the Court of Tax Appeals, however, specifically provides that proceedings before it "shall not be governed strictly by the technical rules of evidence." **The paramount consideration remains the ascertainment of truth**. Verily, the quest for orderly presentation of issues is not an absolute. It should not bar courts from considering undisputed facts to arrive at a just determination of a controversy." (*Emphasis supplied*)

Considering that the tax examination itself as well as the notices issued are invalidated, the other issues raised by petitioner will no longer be discussed.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the *Decision* dated November 6, 2019 and *Resolution* dated February 18, 2020 are hereby **AFFIRMED.**

Respondent, his representatives, agents, or any person acting on his behalf are hereby **ENJOINED** from taking any further action against petitioner arising from the FLD, FAN and FDDA.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

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[19] G.R. No. 122480, April 12, 2000.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

J. C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

Ma. Belen M. Ringpis-Liban
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
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