**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**SECOND DIVISION**

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| **GENIOGRAPHICS INCORPORATED,** Petitioner, | **CTA CASE NO. 9712** |
| | Members: |
| - versus - | **CASTAÑEDA, JR.**, *Chairperson,* *and* **BACORRO-VILLENA,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: SEP 18 2020 9:12 am |

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# RESOLUTION

***CASTAÑEDA, JR., J.:***

Submitted before this Court are the following:

1. respondent's **Motion for Reconsideration**, filed through registered mail on February 26, 2020 and received by the Court on March 5, 2020 with petitioner's **Comment (To Respondent's Motion for Reconsideration dated 26 February 2020)** filed through electronic mail on July 8, 2020; and,

2. respondent's **Withdrawal of Counsel** filed on July 22, 2020.

On February 10, 2020, the Court promulgated a Decision cancelling respondent's deficiency tax assessments against petitioner for absence of a Letter of Authority (LOA), the dispositive portion of which reads as follows:

> "**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**."

This Court shall first address respondent's Withdrawal of Counsel. Respondent's counsel, Atty. Albert C. Arpon, has withdrawn as counsel for respondent for all legal and intent purpose. Both officer-in-charge Chiefs Wilmer B. Dekit and Philip A. Mayo of Revenue Region No. 8B-South NCR and Revenue Region 8A-Makati, respectively, have signed their conformity thereto.

Accordingly, respondent's Withdrawal of Counsel is **NOTED**. Let copies of all order, notices, pleadings, and other court processes be addressed to respondent's new counsel if record, *Atty. Raul SJ. DE Guzman*, with office address at the Legal Division, Revenue Region 8A-Makati, 2/F BIR Regional Office Bldg., 313 Sen. Gil Puyat Avenue, Makati City.

That having been settled, this Court shall now proceed to respondent's Motion for Reconsideration.

In the assailed Decision, this Court ruled that the audit and examination performed by respondent's revenue officers against petitioner's books of accounts and other accounting record was void due to the absence of an LOA. As such, respondent filed the present Motion, raising the following arguments:

> *First*, the tax audit/investigation of petitioner's deficiency taxes for taxable year 2012, subject of Letter Notice (LN) No. 048-RFLTRS-12-00-000149 issued by the CIR himself was authorized under Section(A) of 1997 NIRC in relation to RMO 40-03 and RMO 55-10.
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> *Second*, the doctrine enunciated by the Supreme Court in the cases of "CIR vs. Sony Phils., Inc." and "Medicard Phil., Inc. vs. CIR", as cited by this Court, is not applicable to the issues in the instant case since the facts therein are not in all fours in the case at bar.
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> *Third*, petitioner cannot raise in the instant case the issue of lack of LOA for the first time on appeal before the

Court since it failed to raise such issue in the administrative level of the BIR.

As to the *first* argument, respondent claims that meticulous study of Section 6(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Revenue Memorandum Order (RMO) No. 40-03 and RMO No. 55-10, under the RELIEF System of the BIR, would reveal that nowhere therein does it provide that an LOA must first be issued before a computerized/manual matching of sales and purchases data contained in the Schedules of Sales and Domestic Purchases, under the RELIEF System may be made.

Respondent further argues that since it was already proven that the Letter Notice (LN) No. 048-RLFTRS-12-00-000149 emanated from the power of the Commissioner of Internal Revenue (CIR) under Section 6(A) of the NIRC of 1997, as amended, in relation to RMO No. 40-03 and RMO No. 55-10, therefore, the issuance of LOA, as ascribed by this Court, is no longer necessary under the RELIEF System of the Bureau of Internal Revenue.

With regard to the *second* argument, respondent maintains that the doctrine enunciated by the Supreme Court in the cases of "CIR vs. Sony Phil., Inc." and "Medicard Phils., Inc. vs. CIR" is not applicable in the present case since the facts therein are not in all fours in the case at bar.

Finally, respondent argues that since petitioner's *Letter Protest* dated February 20, 2015, against the FAN failed question the fact that there was no LOA issued or served to petitioner for taxable year 2012 during the administrative level, petitioner cannot anymore raise the issue for the first time on appeal.

On the other hand, in its Comment/Opposition, petitioner points out that the arguments raised by the respondent is a rehash of the issues already resolved by this Court in the Decision assailed by respondent.

Petitioner further claims that respondent failed to properly serve the instant Motion to petitioner's counsel. The Motion was served by registered mail at petitioner's counsel's old address and, therefore, petitioner never received it. Petitioner asserts that respondent's service is defective because he mailed it to the wrong address notwithstanding petitioner's manifestation and notice of its counsel's new address.

Petitioner also asserts that respondent failed to explain why the doctrine enunciated in the cases of *Sony Phils* and *Medicard* are not applicable herein. Respondent blatant use of the phrase, "not in all fours in the case at bar" without providing any more explanation does not justify the non-application of the referenced jurisprudence to the present case.

Conversely, petitioner claims that similar to the *Medicard Philippines* case, it is undisputed that no LOA was also issued herein prior to the issuance of the Final Assessment Notice (FAN) thereby rendering the assessment proceeding void. Furthermore, the previously issued LN was not converted into an LOA in violation of the guidelines laid down in RMO No. 32-05, which requires for the issuance of an LOA for the assessment proceeding to be valid. Petitioner continuous that respondent's failure to observe its very own rules and regulations in the conduct of his assessment violates the law and disregard due process.

Lastly, petitioner maintains that it can raise the issue of lack of LOA even for the first time on appeal. Petitioner maintains that the Court has the power and authority to take cognizance of the issue of the absence of LOA and its consequent effect on the assessment proceedings notwithstanding the claim that it was not raised in the administrative level.

After consideration, respondent's Motion for Reconsideration is bereft of merit.

With regard to the respondent's argument that issuance of an LOA is no longer necessary under the RELIEF System of the BIR, this Court reiterates LNs cannot be converted into LOAs that are required by law, even if the same was issued by the CIR himself. Incidentally, a LN is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Due process demands, as recognized under RMO No. 32-05, that after a LN has serve its purpose, the revenue officer should have properly secured a LOA before proceeding with the further examination and assessment of the petitioner.[1]

[1] *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

As to whether this Court can resolve an issue which was not raised in the administrative proceedings, the Supreme Court in the case of *Commissioner of Internal Revenue v. Eastern Telecommunications, Inc.*,[2] held that 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. 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 so, Section 1, Rule 14 of A.M. No. 05-11-07-CTA or the "Revised Rules of Court of Tax Appeals" (RRCTA ), reads as follows:

"RULE 14

JUDGMENT, ITS ENTRY AND EXECUTION

SECTION 1. – *Rendition of judgment* – x x x

**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)*

From the above provision, this Court 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.[3] Needless to state, the determination of whether the subject tax assessments are valid is not only related to the issues raised by the parties, but is also crucial, since taxpayers, including petitioner, must not be held liable under an invalid tax assessment, if such is the case.

Evidently, this Court may take cognizance of the issue of lack of LOA, which is part of the due process requirement in the issuance of

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

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

a deficiency tax assessment, even if the same was raised for the first time on appeal.

With regard to petitioner's arguments that respondent failed to timely file the Motion for Reconsideration because it was improperly served to petitioner's counsel, Sections 1 and 2 of Rule 15 of RRCTA provides when to file a Motion for Reconsideration, thus:

> "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. He shall file a motion for reconsideration or new trial **within fifteen days from the date he received notice of the decision**, resolution or order of the Court in question.
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> SEC. 2. Opposition. – The adverse party may file an opposition to the motion for reconsideration or new trial within ten days after his receipt of a copy of the motion for reconsideration or new trial of a decision, resolution or order of the Court." *(Emphasis supplied)*

In the present case, records show that the Decision promulgated on February 10, 2020 was received by the respondent on February 12, 2020. As such, respondent filed the instant Motion for Reconsideration via registered mail on February 26, 2020. Counting fifteen (15) days from February 12, 2020, the actual date of receipt of the Decision, respondent's Motion was timely filed within the prescribed reglementary period. However, respondent served his Motion for Reconsideration to petitioner's counsel's old address which is why petitioner did not received a copy thereof. While this true, petitioner nonetheless was notified the Resolution dated March 11, 2020 regarding the respondent's Motion for Reconsideration and was even given a period of ten (10) days from receipt of the Resolution to file its comment thereto.

Also, upon receipt of the Resolution dated March 11, 2020, petitioner's counsel immediately went to this Court on June 30, 2020 to request, via letter, a copy of the respondent's Motion for Reconsideration. Thus, enabling it to file its comment on July 8, 2020 via electronic mail.

It has been consistently held by this Court that it is a fundamental principle that technical rules of procedure are not ends in themselves but are primarily designed to aid in the administration of justice. What should guide judicial action is the principle that a party-litigant should be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor, or property on technicalities. The rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed.[4]

In view of the foregoing, the Court finds that respondent failed to raise a new or substantial matter, or compelling reason to justify the reversal or modification of the assailed Decision.

**WHEREFORE**, premises considered, respondent's Motion Reconsideration is **DENIED**, for lack of merit.

**SO ORDERED.**

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

I Concur:

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

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[4] *Heirs of Amada A. Zaulda vs. Isaac Z. Zaulda*, G.R. No. 201234, March 17, 2014.