REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION
****

SUNNYPHIL INCORPORATED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9421

Members:

UY, *Chairperson*,
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ*

Promulgated:

FEB 06 2020
1:06 p.m.

x - x

RESOLUTION

UY, J.:

For resolution is respondent's "***MOTION FOR RECONSIDERATION***"[1] filed on November 6, 2019, with petitioner's "***OPPOSITION/COMMENT (against respondent's motion for reconsideration)***"[2] filed on November 28, 2019, seeking for a reconsideration and setting aside of this Court's Decision dated October 9, 2019[3], the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Petitioner is entitled to the refund of taxes it paid for taxable year 2006, as the same was collected under a void assessment.
>
> Accordingly, respondent is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner, the aggregate amount of **₱8,906,107.84,**

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[1] Docket, pp. 361 to 366.
[2] Docket, pp. 370 to 377.
[3] Docket, pp. 339 to 360.

representing the payment of assessed deficiency taxes, including penalties, for taxable year 2006.

SO ORDERED."

Respondent's arguments:

In his *Motion for Reconsideration*, respondent argues that the Court erred in granting a relief that was not prayed for by petitioner. Allegedly, respondent was denied due process and fair play when the Court ruled on the validity of the assessment that was never raised by petitioner.

Respondent likewise contends that the Court erred in ruling that the subject assessment is void and that petitioner is entitled to the refund of taxes it paid for taxable year 2006. According to respondent, the audit conducted by Revenue Officer (RO) Luzviminda Sabile and Group Supervisor (GS) Virginia Lapito, through a Re-Assignment Notice was valid pursuant to the guidelines and procedures of Revenue Memorandum Order (RMO) No. 8-2006.

Further, it is respondent's position that the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[4] (hereinafter referred to as *"Medicard case"*) is not applicable in this case.

Petitioner's counter-arguments:

In its Opposition/*Comment*, petitioner counter-argues that the Court has the authority to address the issue of validity of the subject assessment.

Petitioner maintains that the right of respondent to collect the alleged deficiency tax is void. As such, the payment made for the said assessment should be deemed erroneous and illegal and therefore subject to refund.

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

THE COURT'S RULING

The CIR's *Motion for Reconsideration* lacks merit.

This Court may rule on related issues necessary to achieve an orderly disposition of the case.

The CIR argues that it was denied due process and fair play when this Court ruled on the issue of the lack of authority of the revenue officer who conducted the subject tax assessment, as the same was never raised by petitioner.

We are not persuaded.

To reiterate, the power of this Court to rule upon related issues was confirmed and recognized by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*[5], to wit:

> "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. The text of the provision reads:
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> > SECTION 1. *Rendition of judgment.* - x x x.
> >
> > 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**.
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> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the

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

> 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." (Emphasis supplied)

Based on the foregoing, it is clear that the Supreme Court did not only affirm this Court's authority to rule upon related issues necessary to achieve an orderly disposition of the case; but also specifically states that this Court may consider the question on the scope of authority of revenue officers who were named in the LOA, which impliedly covers the issue of whether an RO is authorized through an LOA in the first place.

Thus, the Court is justified in resolving, in the assailed Decision, the issue of whether or not the RO who examined petitioner was authorized by the CIR or his duly authorized representative, through an LOA.

With respect to respondent's reliance on RMO No. 8-2006 which provides that only one LOA shall be issued to the same taxpayer, for the same tax type and period; and that in case of reassignment, a memorandum to that effect shall be issued, the same is untenable.

This is simply because it would run counter to Sections 6(A)[6] and 13[7] of the NIRC of 1997, and the corresponding pronouncement of the Supreme Court in the *Medicard case*, which became a part of the legal system of the Philippines.[8] As such, the provisions of RMO

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[6] **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.*

[7] **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.*

[8] Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines. (Article 8, Civil Code of the Philippines)

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No. 8-2006 cannot be considered as valid,[9] and must not be adhered to, as it is not legally binding. A mere administrative issuance cannot amend the law; the former cannot purport to do any more than implement the latter. [10] It must be remembered that BIR circulars and rulings cannot prevail over the clear and plain language of the Tax Code. [11]

As for respondent's claim that the *Medicard* case is not applicable in the instant case, it bears noting that the CIR himself, through the issuance of Revenue Memorandum Circular (RMC) No. 75-2018[12], recognized the ruling in the *Medicard* case and states the consequences for ROs initiating tax assessments or performing assessment functions without an LOA, to wit:

> "The judicial ruling, invoking a specific statutory mandate, states that **no assessments can be issued or no assessment functions or proceedings can be done without the prior approval and authorization of the Commissioner of Internal Revenue (CIR) or his duly authorized representative, <u>through an LOA</u>. The concept of an LOA is therefore clear and unequivocal. Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore 'inescapably void.'**
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> xxx xxx xxx
>
> To help forestall any unnecessary controversy and to encourage due observance of the judicial pronouncements, **<u>any examiner or revenue officer initiating tax assessments or performing assessment functions without an LOA</u> shall be subject to appropriate administrative sanctions.**" *(Emphasis and underscoring supplied)*

Accordingly, We see no reason not to apply the ruling in the *Medicard case* to the instant case.

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[9] Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution. [Article 7 (last paragraph), Civil Code of the Philippines]
[10] *Secretary of Finance Cesar v. Purisima, et al. vs. Philippine Tobacco Institute, Inc.*, G.R. No. 210251, April17, 2017, citing *Commissioner of Internal Revenue v. Seagate Technology (Philippines),* G.R. NO. 153866, February 11, 2005.
[11] *Security Bank Corporation (formerly Security Bank and Trust Company) vs. The Commissioner of Internal Revenue,* G.R. No. 130838, August 22, 2006.
[12] SUBJECT: *The Mandatory Statutory Requirement and Function of a Letter of Authority.*

In sum, the Court finds no compelling reason to reverse or modify the assailed Decision.

WHEREFORE, in light of the foregoing considerations, respondent's ***MOTION FOR RECONSIDERATION*** filed on November 6, 2019 is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice