REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2250** (CTA Case No. 9155)
	Present:
- versus –	**DEL ROSARIO,** *P.J.*, **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** *JJ.*
TRIDHARMA MARKETING CORPORATION, Respondent.	**Promulgated:** JUL 05 2022 11:35 am

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RESOLUTION

UY, *J.*:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION [re: Decision dated February 24, 2022]"** filed on March 16, 2022,[1] with respondent's **"COMMENT/OPPOSITION (Re: *Motion for Reconsideration* dated 16 March 2022)"** filed on May 10, 2022. In the said Motion, petitioner prays for the reversal and setting aside of the Court's Decision dated February 24, 2022, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision dated October 9, 2019 and the Resolution dated February 18, 2020

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[1] A copy of which was received by this Court on March 29, 2022.

rendered by the Second Division of this Court in CTA Case No. 9155 are hereby **AFFIRMED**.

Consequently, petitioner Commissioner of Internal Revenue or any person acting on his behalf is hereby **ENJOINED** from enforcing the collection of deficiency taxes assessed against Tridharma Marketing Corporation for taxable year 2009.

SO ORDERED."

In support of his Motion, petitioner argues that:

1. A motion for reconsideration is not *pro forma* just because it reiterated the arguments earlier passed upon and rejected by the court.

2. The Court erred in affirming the ruling of the Court in Division that it has jurisdiction over respondent's Petition for Review. The assessments for taxable year 2009 being undisputed became final, executory and demandable.

3. Under Section 6 (A) of the NIRC of 1997, as amended, all returns are subject to examination by the BIR and in case of discrepancy, the law merely requires that notice be given to the taxpayer.

4. The assessments issued against respondent are valid.

In its Comment, respondent counters that:

1. The Court *En Banc* has jurisdiction over the Petition for Review filed by respondent.

2. The Court *En Banc* correctly ruled that absent a valid Letter of Authority (LOA), any resulting assessment is null and void.

THE COURT'S RULING

Petitioner's Motion lacks merit.

After a careful examination and consideration of the petitioner's Motion for Reconsideration, it is noted that the main arguments raised in the said Motion are mere reiterations of matters which have already been considered, weighed and resolved in the assailed Decision. Thus, We shall not belabor, in this Resolution, to repeat the disquisitions made therein.

Nevertheless, this Court stresses that the Court in Division has jurisdiction to review petitioner's *Notice of Denial* of respondent's application for compromise.

A plain reading of Section 7 (a) (1) of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282 and R.A. No. 9503, in relation to Section 3 (a) (1), Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, shows that the appellate jurisdiction of the Court of Tax Appeals is not limited to cases that involve the decisions of the petitioner on matters relating to assessments or refunds. On the contrary, the aforesaid provisions include ***"other matters arising under the National Internal Revenue Code."***

In the instant case, the *Notice of Denial* of respondent's application for compromise settlement is a matter which arose from the CIR's exercise of its power to enter into a compromise, as provided under Section 204 (A) of the NIRC of 1997.

Contrary to petitioner's contention that courts cannot interfere with the CIR's exercise of discretionary powers, the Supreme Court has held that "*the discretionary authority to compromise granted to the BIR Commissioner is never meant to be absolute, uncontrolled and unrestrained. No such unlimited power may be validly granted to any officer of the government, except perhaps in cases of national emergency.*[2] *Thus, the BIR Commissioner would have to exercise his discretion within the parameters set by the law, and in case he abuses his discretion, this Court may correct such abuse if the matter is appealed to it.*"[3]

Accordingly, any decision of the CIR in relation to the exercise of his power to enter into a compromise under Section 204 (A) of the NIRC of 1997, as amended, which is tainted by a failure to abide by the parameters set by law, is *subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.*

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[2] *Philippine National Oil Company vs. Court of Appeals, et al., et seq.*, G.R. Nos. 109976 and 112800, April 26, 2005.
[3] *Id.*

Thus, We find no reversible error in the Court in Division's exercise of jurisdiction, to review by appeal, petitioner's *Notice of Denial* of respondent's application for compromise settlement, since the same has been alleged to have been issued despite there being reasonable doubt as to the validity of the claim against the taxpayer.

Anent petitioner's contention that the absence of an LOA does not render the subject deficiency tax assessment null and void, the same is without merit.

It bears reiterating that a revenue officer must be authorized by a valid LOA, in order to exercise assessment functions. In the absence of a valid LOA issued specifically in favor of a revenue officer, the tax assessments issued by the BIR against such taxpayer shall be void.[4]

In fact, the LOA is the ***concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the revenue officers***, pursuant to Sections 6, 10(c) and 13 of the NIRC of 1997, as amended.[5]

As such, the issuance of an LOA prior to examination and assessment is a ***requirement of due process***. It is not a mere formality or technicality. The result of the ***absence of an LOA*** is the ***nullity of the examination and assessment*** based on the violation of the taxpayer's right to due process. [6]

With regard to petitioner's argument that the subject Letter of Notice (LN) is valid considering it was signed by the CIR pursuant to RMO Nos. 30-2003 and 42-2003, the same has already been passed upon in the *Medicard* case. In the *Medicard* case, it was emphasized that RMO No. 30-2003, as supplemented by RMO No. 42-2003, was ***amended*** by RMO No. 32-2005, which prescribed a specific procedure for the conversion of LNs to LOAs.

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[4] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 222743, April 5, 2017 *(Medicard Case)*; *Commissioner of Internal Revenue vs. Travelers International Hotel Group, Inc.,* G.R. No. 255487, May 3, 2021; and *Commissioner of Internal Revenue vs. Trinity Franchising and Management Corporation,* G.R. No. 255094, April 26, 2021.
[5] *Commissioner of Internal Revenue vs, McDonald's Philippines Realty Corp*, G.R. No. 242670, May 10, 2021.
[6] *Id.*

Pursuant to the CIR's own issuance, RMO No. 32-2005, there is a procedure to be followed in the conversion of an LN to an LOA. Accordingly, the High Court held that the Court cannot convert the LN into the LOA required under the law, *even if* it was issued by the CIR himself.

Considering that the revenue officer who acted on respondent's case was not properly clothed with authority, *i.e.,* a valid LOA, to conduct the investigation and audit of respondent, the subject tax assessment resulting therefrom is void for violating respondent's right to due process. For being void, the same bears no valid fruit.[7]

WHEREFORE, in light of the foregoing considerations, the instant **MOTION FOR RECONSIDERATION [re: Decision dated February 24, 2022]** is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[7] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice