REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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SALCEDO RISTORANTE, ITALIANO, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1774
(CTA Case No. 8880)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

DEC 15 2020 10:35 am

x - x

RESOLUTION

UY, *J.*:

For this Court's resolution is respondent's ***MOTION FOR RECONSIDERATION (OF THE DECISION DATED 04 NOVEMBER 2019)*** posted on November 21, 2019 and received by the Court *En Banc* on January 27, 2020.[1] without comment from petitioner despite due notice.[2]

In the Resolution dated March 2, 2020, petitioner was directed to its Comment to the instant motion.[3]

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[1] EB Docket, pp. 143 to 157.
[2] Records Verification Report dated September 29, 2020, EB Docket, p. 170.
[3] EB Docket, pp. 168-169

In the Records Verification issued by Leocadia De Alday, Records Officer I, of the Judicial Records Division of this Court dated September 29, 2020[4], it was stated that as of said date, no Comment on Respondent's Motion for Reconsideration was filed by petitioner.

Hence, this Resolution.

In the instant *Motion*, respondent assails the Court *En Banc*'s Decision promulgated on November 6, 2019, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. The Decision dated June 22, 2017 and Resolution dated December 12, 2017 rendered by the Court in Division in CTA Case No. 8880 are hereby **MODIFIED.** Accordingly, the deficiency income tax assessment issued against petitioner, inclusive of penalties, for taxable year 2008, is **CANCELLED AND SET ASIDE** for being null and void.
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> **SO ORDERED.**"

Respondent's arguments:

In his *Motion for Reconsideration*, respondent argues that the Petition for Review should be dismissed for being filed out of time and that the perfection of appeal is the manner and within the period permitted by law is not only mandatory but jurisdictional. Allegedly, the late filing of the Petition for Review raises a jurisdictional problem as it deprives the Court of jurisdiction over the appealed resolution.

Respondent also argues that the officers who conducted the examination and audit of petitioner's account are validly clothed with authority to conduct said examination and consequently to recommend the assessment of the subject deficiency income tax against petitioner.

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[4] EB Docket, p. 170.

Further, respondent asserts that the 1997 Tax Code, as amended, specifically Section 6 thereof does not limit the power of the CIR to examine and to determine tax deficiency of any taxpayer only through the issuance of Letter of Authorities (LOA).

According to respondent, Revenue Memorandum Order (RMO) No. 19-2009 authorizes the issuance of Tax Verification Notices (TVN) instead of LOA in cases falling under item III (B).

Revenue District Officers are allegedly considered duly authorized representatives of the CIR to authorize the examination of a taxpayer for a taxable period and that the subject deficiency tax assessment was issued through a valid authority under TVN No. 00147692 and pursuant to RMO No. 19-2009.

Respondent also claims that the issue on whether or not the revenue officers who examined petitioner's books of account were authorized by respondent or his duly authorized representative, was never raised by petitioner.

Lastly, respondent argues that estoppel by laches has already set in this case.

THE COURT *EN BANC'S* RULING

Respondent's *Motion for Reconsideration* lacks merit.

The Petition for Review before the Court En Banc was filed on time.

In his motion, respondent claims that the Petition for Review should be dismissed for being filed out of time. Respondent points out that the period granted to extend the filing of the Petition for Review for petitioner was only until **February 17, 2019**, and that the Petition for Review filed on **February 19, 2019**, is already way beyond the granted period to appeal.

Respondent is mistaken.

Upon verification, it appears that the last day of the extension period granted to petitioner to file the Petition for Review in this case, was until **February 17, 2018**[5] and not on **February 17, 2019.** Notably, February 17, 2018 falls on a Saturday.

Relative thereto, Section 1, Rule 22 of the 1997 Rules of Civil Procedure, as amended by A.M. No. 19-08-15-SC,[6] states the rule on the computation of time, when the last day of the period falls on a Saturday, Sunday, to wit:

> "RULE 22
> Computation of Time
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> Section 1. *How to compute time.* – **In computing any period of time prescribed or allowed** by these Rules, or by order of the court, or **by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.**" (*Emphases and underscoring supplied)*

As mentioned earlier, petitioner was granted by the Court *En Banc* an extension period of fifteen (15) days to file its Petition for Review from February 2, 2018, or until February 17, 2018. It is noteworthy that the Court *En Banc* mentioned in the assailed Decision that February 17, 2018 fell on a Saturday.[7] Thus, applying the aforequoted provision, the filing of the Petition for Review on February 19, 2018 was on time.

Section 6 of the NIRC of 1997, as amended, does not dispense with the requirement to issue an LOA.

Respondent argues that Section 6 of the 1997 Tax Code, as amended, does not limit the power of the CIR to examine and to determine tax deficiency of any taxpayer only through the issuance of

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[5] See Minute Resolution dated February 2, 2018, EB Docket, p. 42.
[6] 2019 Proposed Amendments to the 1997 Rules of Civil Procedure.
[7] EB Docket, p. 115.

LOAs; that the Tax Code authorizes the CIR to issue tax assessments other than by force of LOAs alone, such as on the basis of "best evidence obtainable" or "through inventory-taking, surveillance and prescribing presumptive gross sales of receivables."

Respondent's argument is misplaced.

We reiterate the pronouncement of the Supreme Court on the indispensable requirement of an LOA in the case of *Medicard Philippines vs. Commissioner of Internal Revenue, (Medicard)*[8] 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**. Section 6 of the NIRC clearly provides as follows:
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> xxx xxx xxx
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> Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. **The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking or surveillance among other has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, 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.**" (*Emphasis supplied*)

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

Contrary to respondent's assertions, the methods in securing data enumerated in Section 6 of the NIRC of 1997, as amended, such as best evidence obtainable, inventory-taking, surveillance, among others, are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes which necessarily entail the issuance of a corresponding authority to examine originating from respondent or his authorized representative.

It bears stressing that a revenue officer must be authorized, **through an LOA**, in order that the said officer may validly examine the books of accounts and other accounting records of taxpayer. In the absence of such an authority, the assessment or examination is a nullity.[9]

RMO 19-2009 is not applicable in the instant case.

Respondent argues in summary that RMO No. 19-2009 authorizes the issuance of TVN instead of LOA in cases falling under paragraph III (B). According to respondent, RMO 19-2009 expressly provides that only one LOA/TVN shall be issued for each taxable year or period to include all internal revenue tax liabilities of a taxpayer and shall remain to be valid and enforceable even without the mark of the BIR dry seal as long as the LOA or TVN is authentic and duly issued by the authorized revenue official. Respondent asserts that the BIR issued TVN No. 00147692 and the same was signed by Revenue District Officer Florante R Aninag. Hence, the subject deficiency tax assessment was issued through valid authority under TVN 00147692 and pursuant to RMO No. 19-2009.

Respondent's argument is untenable.

The foregoing arguments run counter to Sections 6 (A)[10] and

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[9] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

[10] 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.

13[11] of the NIRC of 1997, as amended, and the corresponding pronouncement of the Supreme Court in the *Medicard* case, which became a part of the legal system of the Philippines.[12] As such, the provisions of RMO No. 19-2009 cannot be considered as valid,[13] 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.[14] It must be remembered that BIR circulars and rulings cannot prevail over the clear and plain language of the Tax Code.[15]

The Sony Case and Medicard Case are applicable to the instant case.

Anent respondent's claim that the *Medicard* and *Sony*[16] *cases* are not applicable to the instant case, the same is without merit.

While it is true that the factual antecedents and issues in the abovementioned cases are different, specifically in the *Medicard* case, it involves the issue of the validity of an assessment based on a Letter of Notice; while the *Sony* case involves the validity of an assessment issued for unverified prior years; however, the Supreme Court in the said cases ruled on the issue pertaining to the importance of the authority granted to revenue officers to conduct audit and assessment of a specific taxpayer. It is well-settled that courts must be cognizant of the decisions of the Supreme Court because of the doctrine of *stare decisis*. The said doctrine is based on the principle that once a question of law has been examined and

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[11] 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 not have been performed by the Revenue Regional Director himself.

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

[13] 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]

[14] *Secretary of Finance vs. Purisima, et al., vs. Philippine Tobacco Institute, Inc.,* G.R. No. 210251, April 17, 2017, citing *Commissioner of Internal Revenue vs. Seagate Technology (Philippines),* G.R. No. 153866, February 11, 2005.

[15] *Security Bank Corporation (formerly Security Bank and Trust Company) vs. The Commissioner of Internal Revenue,* G.R. No. 130838, August 22, 2006.

[16] G.R. No. 178697, November 17, 2010.

decided, it should be deemed settled and closed to further argument.[17]

Hence, We see no reason not to apply the said rulings in the *Medicard* case and *Sony* case to the instant case.

The CTA has the power to rule upon related issues necessary to achieve an orderly disposition of the case.

Respondent argues that the issue on whether or not the revenue officers who examined petitioner's books of account were authorized by respondent or his duly authorized representative was never raised by petitioner in any of its pleading nor asserted as an issue during the Pre-Trial Conference. Hence, it was improper to consider said issue on appeal and that estoppel by laches has already set in.

We do not agree.

In the case of *Commissioner of Internal Revenue vs. Eastern Telecommunications, Inc.,*[18] the Supreme Court's pronouncement is instructive, to wit:

> "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. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:
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> > **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**

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[17] *Amelia D. De Mesa, et al., vs. Pepsi Cola Products, Inc., et al.,* G.R. Nos. 153063-70, August 19, 2005.
[18] G.R. No. 163835, July 7, 2010.

> **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. [Emphasis supplied].

Moreover, the Court *En Banc* reiterates that Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) states that the Court, in deciding a case, 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.

To the mind of the Court *En Banc,* it is necessary to rule on the authority of the revenue officer who conducted the audit of petitioner's books of account as it affects the validity of the subject tax assessments. Hence, the lack of LOA, which is an essential part of the due process requirement in the issuance of a deficiency tax assessment, is an issue that may be considered and resolved by the Court *En Banc.*

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* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice