REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2219** (CTA Case No. 9540)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
COMPANIA DE GARAY, INC., Respondent.	Promulgated: JUN 21 2022 4:26 pm

x- -x

DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] dated September 24, 2019 ("Assailed Decision") and Resolution[2] dated January 08, 2020 ("Assailed Resolution") of the Court of Tax Appeals Second Division ("Second Division"), cancelling the assessments under Assessment Notice No. RR-16-099-082-2016 for deficiency income tax, value-added tax ("VAT") and compromise penalty for taxable year 2012.

---

1 Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Cielito N. Mindaro-Grulla and Jean Marie A. Bacorro-Villena concurring; Docket, pp. 421-431.

2 *Id.*, pp. 458-460.

The Parties

Petitioner Commissioner of Internal Revenue ("CIR") of the Bureau of Internal Revenue ("BIR") is duly appointed to exercise the powers and perform the duties of his office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

Respondent Compania De Garay, Inc. is a corporation duly organized and existing under the laws of the Philippines, with principal office at Sayre Highway, Poblacion Sur, Don Carlos, Bukidnon. It operates under the business style Garay General Merchandise, engaged in the business of buying and selling various goods and merchandise and duly registered with the BIR, District 99 under TIN 006252194000.[4]

The Facts

The facts as found by the Second Division are as follows:

> "On August 26, 2014, [Respondent] received Letter Notice (LN) No. 099-RLFTRS-12-00-00032, finding a one hundred percent (100%) under-declaration on sales in the amount of [Php]2,678,944.64. On even date, [Respondent] likewise received a letter dated August 12, 2014 from the BIR affording it the opportunity to reconcile the said discrepancy. Consequently, the BIR issued a Follow-up Letter dated September 8, 2014 to remind [Respondent] of the above-findings.
>
> On September 23, 2015, [Respondent] through its President – Florentine T. Garay, executed a Waiver of the Defense of Prescription under Statute of Limitations of National Internal Revenue Code (NIRC).
>
> On October 13, 2015, [Respondent] received a Notice of Informal Conference dated October 5, 2015 with attached Computation Sheet from the BIR.
>
> On December 10, 2015, 8 [Respondent] received the Preliminary Assessment Notice (PAN) dated December 2, 2015. On December 22, 2015, [Respondent] sent its Reply to the PAN.

---

3 *Id.*, Decision dated September 24, 2019, The Facts, p. 422.

4 *Id.*, Decision dated September 24, 2019, The Facts, pp. 421-422.

> On January 29, 2016, [Respondent] received the Formal Demand Letter and the subject Assessment Notice No. RR-16-099-082-2016. On February 23, 2016, [Respondent] sent its Letter Protest dated February 22, 2016. In its Protest, [Respondent] raised the non-issuance of a Letter of Authority (LOA) and the propriety of requiring it to submit a Summary List of Sales and Purchases.
>
> Thereafter, the BIR sent its Reply dated February 29, 2016 to the said Letter Protest, granting [Respondent] a period of sixty (60) days from filing of its protest to submit relevant supporting documents. On February 1, 2017, [Respondent] received a copy of the Final Decision on Disputed Assessment (FDDA) dated January 12, 2017 where the BIR upheld its assessment. Thus, on February 24, 2017, [Respondent] filed the instant Petition for Review.[5]

The Ruling of the Second Division

On September 24, 2019, the Second Division promulgated the Assailed Decision, the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review is **GRANTED**. Accordingly, the assessments under Assessment Notice No. RR-16-099-082-2016 for deficiency Income Tax, Value Added Tax and Compromise Penalty for taxable year 2012 are **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**"[6]

Aggrieved, Petitioner filed a "Motion for Reconsideration RE: Decision dated 24 September 2019"[7] on October 11, 2019, which the Second Division denied in the Assailed Resolution, to wit:

> "**WHEREFORE**, [Petitioner's] Motion for Reconsideration Re: [*sic*] Decision dated 24 September 2019 is **DENIED**, for lack of merit.
>
> **SO ORDERED.**"[8]

---

5 *Id.*, Decision dated September 24, 2019, The Facts, pp. 422-423.
6 *Id.*, Decision dated September 24, 2019, p. 430.
7 *Id.*, pp. 433-440.
8 *Id.*, Resolution dated January 08, 2020, p. 460.

The Proceedings in the Court of Tax Appeals En Banc

On January 29, 2020, Petitioner filed a "Motion for Extension of Time to Petition for Review"[9], asking until February 13, 2020 within which to file his petition.

On January 30, 2020, a Minute Resolution[10] was issued granting Petitioner's "Motion for Extension of Time to Petition for Review".

On February 13, 2020, Petitioner filed the present "Petition for Review"[11].

On March 11, 2020, the Court issued a Resolution[12] ordering Petitioner to submit a duplicate original or certified true copy of the decision appealed from within ten (10) days from notice.

On July 01, 2020, Petitioner filed a "Manifestation"[13] with attached certified true copy of the Decision dated September 24, 2019.

On July 17, 2020, the Court issued a Resolution[14] noting Petitioner's "Manifestation" and ordering Respondent to comment on the Petition for Review within ten (10) days from notice.

On November 09, 2020, Respondent filed *via* registered mail its "Comment (On Petition for Review)"[15] ("Comment").

On January 12, 2021, the Court issued a Resolution[16] noting Respondent's Comment and referring the case to mediation with the Philippine Mediation Center – Court of Tax Appeals ("PMC-CTA").

Noting the PMC-CTA's "Back to Court" form stating that Respondent refused mediation, the Court issued a Resolution[17] on October 13, 2021, submitting the instant case for decision.

---

[9] Rollo, pp. 1-4. Record shows that Petitioner received the January 08, 2020 Resolution on January 14, 2020; Docket, p. 457.
[10] *Id.*, p. 5.
[11] *Id.*, pp. 6-33.
[12] *Id.*, pp. 35-37.
[13] *Id.*, pp. 38-41.
[14] *Id.*, pp. 55-56.
[15] *Id.*, pp. 59-68
[16] *Id.*, pp. 70-71.
[17] *Id.*, pp. 76-77.

Assignment of Error

Petitioner raises a single ground in support of his petition – the Second Division erred when it held that the absence of a Letter of Authority ("LOA") renders the assessment void.[18]

The Arguments of Parties

Petitioner posits that under the law, there is no requirement for an LOA only that a notice be given to the taxpayer. Under Section 6(A) of the National Internal Revenue Code ("NIRC") of 1997, as amended, Petitioner has inherent powers to examine the filed tax return and determine the actual correct amount of tax.

According to Petitioner, Revenue Memorandum Order ("RMO") No. 42-2003[19] allows the examination of tax returns without the necessity of an LOA, and that a Letter Notice ("LN") serves as a notice to the taxpayer of the discrepancy of his or her tax return.

Petitioner also avers that Respondent's right to due process was not violated as it was given ample opportunity to respond to the LN and dispute the assessment.

Lastly, Petitioner submits that an LOA is only indispensable when it is the Regional Director who authorizes the audit of a taxpayer. Unlike in Section 6(A) of the NIRC of 1997, as amended, Sections 10 and 13 mandate that a revenue officer conducting an audit under the authority of a Regional Director may only do so pursuant to an LOA. This is not the case when it is the Commissioner of the BIR who himself authorized the audit of the taxpayer, in which case an LN suffices.

On the other hand, Respondent in its Comment maintains that Petitioner failed to issue an LOA in lieu of the LN, in accordance with the provisions of RMO No. 32-2005[20].

Likewise, Respondent's asserts that Petitioner failed to observe its own rules under Revenue Regulation No. 18-2013[21], violating Respondent's right to due process.

---

[18] *Id.*, "Petition for Review" dated February 10, 2020, Ground for the Petition, p. 8.

[19] Prescribing Additional Guidelines Governing the Rules on Assessment of National Internal Revenue Taxes covered by a Letter Notice (LN) issued under the RELIEF System as defined in Revenue Memorandum Order (RMO) No. 30-2003 and other data matching processes, October 23, 2003.

[20] Prescribing Guidelines and Procedures in Handling Letter Notices for Deployment via the Information Delivery Portal in the Years 2005 Onwards for Audit and Enforcement Purposes, November 24, 2005.

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the Assailed Resolution, denying Petitioner's "Motion for Reconsideration RE: Decision dated 24 September 2019", on January 08, 2020. Petitioner received said Resolution on January 14, 2020.[22] Pursuant to Rule 4, Section 2(a)(1)[23] in relation to Rule 8, Section 3(b)[24] of the Revised Rules of the Court of Tax Appeals[25] (RRCTA), Petitioner had fifteen (15) days from date of receipt of the resolution or until January 29, 2020 within which to file his petition for review.

On January 29, 2020, Petitioner filed a "Motion for Extension of Time to Petition for Review", asking until February 13, 2020 within which to file his petition, which this Court granted in a Minute Resolution dated January 30, 2020.

On February 13, 2020, Petitioner timely filed the present "Petition for Review". Hence, the Court *En Banc* validly acquired jurisdiction over the case.

We now proceed to the merits of the case.

---

21 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment, November 28, 2013.

22 Docket, p. 457.

23 **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

xxx xxx xxx

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

24 **Sec. 3.** *Who may appeal; period to file petition.* — x x x

(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. (Rules of Court, Rule 42, sec. 1a)

25 A.M. No. 05-11-07-CTA, November 22, 2005.

At the outset, Petitioner presents no new argument to persuade Us that it has a meritorious case. These arguments were already passed upon, addressed and resolved in the Assailed Decision. Nevertheless, we will discuss, once again, the demerits of Petitioner's arguments which may serve as a guidepost in deciding issues of similar nature in the future.

The assessment issued by Petitioner against Respondent is void in the absence of a valid LOA

Section 6(A) of the NIRC of 1997, as amended, lays down the power of Respondent or his duly authorized representative to authorize the examination of any taxpayer and the assessment of the correct amount of tax, to wit:

> "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, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax</u>**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."[26]

Based on the foregoing provision, an authority emanating from Respondent or his duly authorized representative is required **before an examination and an assessment may be made against a taxpayer**.

Relative thereto, Section 13 of the NIRC of 1997, as amended, provides that the authority of a revenue officer to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to an LOA, as follows:

> "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, <u>pursuant to a Letter of Authority</u> issued by the Revenue Regional Director, examine taxpayers within the jurisdiction**

[26] *Emphasis and underscoring supplied.*

> **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."[27]

Thus, a grant of authority through an LOA must be made, assigning a revenue officer to perform tax assessment functions, in order that such officer may examine a taxpayer and collect the correct amount of tax, or to recommend the assessment of any deficiency tax due.

In the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[28] ("*Medicard v. CIR*"), the Supreme Court emphasized the importance of obtaining prior authority, through an LOA, before conducting assessment functions. Otherwise, the resulting assessment would be rendered void, *viz.*:

> "Based on the afore-quoted provision, it is clear that **unless authorized by the CIR himself or by his duly authorized representative, <u>through an LOA</u>**, 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 others 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.
>
> xxx xxx xxx
>
> In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:
>
>> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **<u>In the absence of such an authority, the assessment or examination is a nullity.</u>**"[29]

[27] *Emphasis and underscoring supplied.*
[28] G.R. No. 222743, April 05, 2017.
[29] *Emphasis and underscoring supplied.*

Petitioner however argues that the subject LN is valid considering it was signed by the CIR himself pursuant to RMO No. 42-2003.

Petitioner is mistaken. The foregoing argument had already been answered in *Medicard v. CIR*. RMO No. 30-2003, as supplemented by RMO No. 42-2003, was amended by RMO No. 32-2005[30], the latter prescribing the procedure in the resolution of LN discrepancies, conversion of LNs to LOAs and assessment and collection of deficiency taxes. The pertinent parts of the decision state:

> "IV. POLICIES AND GUIDELINES
>
> xxx xxx xxx
>
> 8. In the event a taxpayer who has been issued an LN refutes the discrepancy shown in the LN, the concerned taxpayer will be given an opportunity to reconcile its records with those of the BIR within One Hundred and Twenty (120) days from the date of the issuance of the LN. However, the subject taxpayer shall no longer be entitled to the abatement of interest and penalties after the lapse of the sixty (60)-day period from the LN issuance.
>
> **9. In case the above discrepancies remained unresolved at the end of the One Hundred and Twenty (120)-day period, the revenue officer (RO) assigned to handle the LN shall recommend the issuance of [LOA]** *[sic]* **to replace the LN**. The head of the concerned investigating office shall submit a summary list of LNs for conversion to LAs (using the herein prescribed format in Annex 'E' hereof) to the OACIR-LTS I ORD for the preparation of the corresponding LAs with the notation 'This LA cancels LN__________ No.'"[31]

Pursuant to Petitioner'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 in *Medicard v. CIR* held that the Court cannot convert the LN into the LOA required under the law, even if it was issued by the CIR himself, to wit:

> "In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. **The LN that was issued**

[30] Subject: Prescribing Guidelines and Procedures in Handling Letter Notices for Deployment via the Information Delivery Portal in the Years 2005 Onwards for Audit and Enforcement Purposes, Dated November 24, 2005.

[31] *Emphasis supplied.*

earlier was also not converted into an LOA contrary to the above quoted provision.

xxx xxx xxx

The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. **<u>Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it</u>**. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns."[32]

In the present case, LN No. No. 099-RLFTRS-12-00-00032[33] was issued by Petitioner against Respondent, finding a one hundred percent (100%) under-declaration of sales in the amount of Php2,678,944.64. A Notice of Informal Conference[34], Preliminary Assessment Notice (PAN)[35], Formal Demand Letter[36] and Final Decision on Disputed Assessment (FDDA)[37] were issued pursuant to the said LN. Evidently, the authority of the revenue officer to conduct an examination of Respondent's tax liabilities was already lacking since the beginning. Under RMO No. 32-2005, the LN should have been converted to an LOA before proceeding with the further examination and issuance of assessment against Respondent.

Considering that the examination and assessments were issued pursuant only to an LN, the income tax, VAT and compromise penalty assessments are void for lack of authority.

Finally, Petitioner is of the incorrect notion that an LN, although not entitled as an LOA, is equivalent to an LOA.

As pointed out in *Medicard v. CIR*, an LN is a mere notification from the BIR to a taxpayer informing the latter that "a discrepancy is found based on the

---

32 *Emphasis and underscoring supplied.*
33 BIR Records, Exhibits "R-1" and "R-2", pp. 1-4.
34 Docket, Exhibit "P-5", p. 299.
35 *Id.*, Exhibit "P-6", pp. 300-304.
36 *Id.*, Exhibit "P-8", pp. 306-313.
37 *Id.*, Exhibit "P-11", pp. 320-321.

BIR's RELIEF System" through the computerized matching conducted between the taxpayer's return/s and third-party sources. In contrast, an LOA assigns a particular revenue officer to examine the books of account and other accounting records of a taxpayer for a particular type of tax for a specific taxable period. These two are separate and distinct from one another, and cannot be interchangeable.

WHEREFORE, premises considered, the Petition for Review filed with the Court *En Banc* on February 13, 2020 is **DENIED** for lack of merit. Accordingly, the September 24, 2019 Decision and January 08, 2020 Resolution in CTA Case No. 9540 are **AFFIRMED**.

Consequently, Petitioner is **ENJOINED** and **PROHIBITED** from collecting against Respondent the amounts representing the assessed deficiency income tax, VAT, and compromise penalty which were set aside and cancelled by this Court.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Maria 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