REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

BUKIDNON SECOND ELECTRIC COOPERATIVE, INC. (BUSECO),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 9761 & 9819

Members:

RINGPIS-LIBAN, *Chairperson,*
MODESTO-SAN PEDRO, *and*
FERRER-FLORES, *JJ.*

Promulgated:

AUG 29 2024 1:12 p.m.

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RESOLUTION

FERRER-FLORES, J.:

For resolution are the following:

1. respondent's **Motion for Partial Reconsideration (Re: Decision dated 28 November 2023)** filed on December 28, 2023, without petitioner's comment as per Records Verification Report dated January 29, 2024; and,

2. petitioner's **Motion for Reconsideration** filed through registered mail on January 30, 2024, and received by the Court on February 19, 2024, with respondent's **Comment (Re: Motion for Reconsideration dated 30 January 2024)** filed on May 13, 2024.

In the Decision promulgated on November 28, 2023, the Court cancelled respondent's tax assessments in CTA Case No. 9761, for violating petitioner's right to due process of law, and dismissed petitioner's judicial appeal in CTA Case No. 9819, for lack of jurisdiction, the dispositive portion is quoted as follows:

> **WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* for CTA Case No. 9761 is **GRANTED**. Accordingly, the assessments for deficiency income tax, VAT and compromise penalty issued against petitioner, in the total amount of ₱76,392,075.92, for taxable year 2012, are **CANCELLED** and **SET ASIDE**.
>
> On the other hand, the *Petition for Review* for CTA Case No. 9819 is **DISMISSED** on jurisdictional grounds.
>
> **SO ORDERED.**

Undaunted, both parties implore the Court to take a second and hard look on the conclusions reached in the assailed Decision and pray that the same be partially reconsidered based on their respective *Motions*.

Respondent's Motion for Partial Reconsideration

In his *Motion for Partial Reconsideration*, respondent mainly asserts that the Court erred in granting the *Petition for Review* in CTA Case No. 9761 by cancelling and setting aside his deficiency income tax and value-added tax (VAT) assessments for taxable year (TY) 2012 in the total amount of ₱76,392,075.92.

Respondent argues that the Revenue Officer (RO) had the authority to conduct the audit investigation on petitioner's tax liability for TY 2012. He submits that Section 13 of the National Internal Revenue Code (NIRC) of 1997, as amended, is not in all fours applicable in the present case, as there was no actual examination of petitioner's books of accounts. Respondent insists that a Letter Notice (LN) is already sufficient since it is served upon taxpayers who were found to have under-declared their sales or purchases through the Third-Party Information Program of the Bureau of Internal Revenue (BIR).

Respondent further claims that, under Revenue Memorandum Circular (RMC) No. 40-2003,[1] an LN is considered a notice of audit and investigation and the receipt thereof prevents the concerned taxpayer from amending the relevant tax return. Respondent states that Revenue Memorandum Order (RMO) No. 30-2003[2] likewise authorizes the issuance of an LN in conducting a "no-contact-audit-approach" examination without the need of an actual inspection of a taxpayer's books of accounts by simply matching the results

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[1] SUBJECT: Effect of the Issuance and Receipt of Letter Notice to the Taxpayer's Right to Amend its Tax Returns as Provided under Section 6 of the National Internal Revenue Code", dated July 3, 2003.

[2] "SUBJECT: Guidelines and Procedures in the Extraction, Analysis, Disclosure/Dissemination, Utilization, and Monitoring of RELIEF data for Audit and Enforcement Purposes", dated September 18, 2003.

of computer data with other information or returns filed by taxpayers. As such, respondent asserts that there is no strict requirement for the existence of a Letter of Authority (LOA) in a "no-contact-audit-approach" since an LN is sufficient pursuant to RMO No. 30-2003.

Moreover, respondent points out that an LN is similar to an LOA since both are considered as contract of agency wherein respondent is the principal and the Revenue Regional Director is his agent. Respondent expounds that the ROs named in the LOA are mere sub-agents of the Revenue Regional Director which are same as in an LN; and, the only difference is the manner of the examination of the taxpayer by the ROs, *i.e.*, the "no-contact-audit-approach". Hence, respondent maintains that, although the LN was not entitled a "Letter of Authority", it still contains all the elements necessary to establish a contract of agency between the respondent and the RO.

The Court finds respondent's *Motion for Partial Reconsideration* bereft of merit.

Notably, a closer evaluation of the arguments raised by respondent in his *Motion for Partial Reconsideration* reveals that the arguments relied upon are mere rehash of the matters alleged in his *Memorandum* dated October 28, 2022,[3] which had been settled and resolved by the Court in the assailed Decision.

Again, it must be stressed that an LOA cannot be dispensed with just because none of the books of accounts or financial records being physically kept by taxpayer were examined. In the case of *Republic of the Philippines v. Robiegie Corporation*,[4] the Supreme Court reiterated that the requirement of a RO's authorization is not dependent on whether the taxpayer may be required to physically open his books and financial records but on whether a taxpayer is being subject to examination, to wit:

> The necessity of a validly issued LOA for the valid conduct of a taxpayer investigation by an RO is a well-settled doctrine embodied in our statutory and case law. In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue,* which involved a deficiency value-added tax assessment in the context of the BIR's electronic '**no-contact-audit approach**,' we discussed the dual function of an LOA as the modality for the delegation of the CIR's investigatory power and as a manifestation of due process:
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>> 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

[3] Docket – Vol. 2, pp. 617 to 644.
[4] G.R. No. 260261, October 3, 2022.

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. x

x x x

Based on [Section 6(A) of the NIRC], 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 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.

x x x

Contrary to the ruling of the CTA en banc, **an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined**. To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. **The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.**

The BIR's RELIEF System has admittedly made the BIR's assessment and collection efforts much easier and faster. **The ease by which the BIR's revenue generating objectives is achieved is no excuse however for its noncompliance with the statutory requirement under Section 6 and with its own administrative issuance. In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers.** The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute. *(Emphases supplied)*

Moreover, the Supreme Court also comprehensively discussed the nature and differences of an LN and an LOA in the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[5] as follows:

> **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. 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. 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.
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> The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. Simply put, LN is entirely different and serves a different purpose than an LOA. *(Emphases supplied)*

Clearly, there must be a grant of authority before any RO can conduct an examination or assessment. Due process demands, as recognized under RMO No. 32-2005,[6] that after an LN has serve its purpose, the RO should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. In the absence of such an authority, the assessment or examination is a nullity.[7]

Applying the foregoing, particularly for CTA Case No. 9761, considering that the examination and assessments conducted by respondent's

[5] G.R. No. 222743, April 5, 2017.
[6] 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.
[7] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

ROs were performed pursuant only to an LN, the deficiency income tax, VAT and compromise penalty assessments for TY 2012 are, therefore, inescapably void for the ROs lack of authority in conducting the same. A void assessment bears no valid fruit.[8] As such, the Court upholds the conclusions rendered in the Decision promulgated on November 28, 2023.

That having been settled, the Court shall now proceed to discuss the merit of petitioner's *Motion for Reconsideration.*

Petitioner's Motion for Reconsideration

In its *Motion for Reconsideration*, petitioner seeks the reversal of the conclusion reached by the Court in CTA Case No. 9819. Petitioner asserts that the denial of its Protest Letter against respondent's Formal Letter of Demand and Final Assessment Notice (FLD/FAN) on March 23, 2018 is already sufficient to make the assessment final, even without waiting for the Final Decision on Disputed Assessment (FDDA). Petitioner argues that what is important is that, upon denial, petitioner has thirty (30) days within which to elevate the said denial via the filing of a Petition for Review before the Court. As such, petitioner avers that when it protested the FLD/FAN, which was, thereafter, denied, the case was already deemed ripe for the filing of the Petition for Review before the Court. Nonetheless, petitioner submits that since it did not submit the *Waiver of the Statute of Limitations under Section 222 in relation to Section 203 of the National Internal Revenue Code of 1997, as amended*, ("waiver" hereafter) as required by the BIR within the specified time on March 27, 2018, petitioner then concluded that its Protest Letter to the FLD/FAN was already deemed denied.

On the other hand in his *Comment*, respondent maintains that the Court has no jurisdiction over CTA Case No. 9819. Respondent accentuates that it has long been established that the Court of Tax Appeals (CTA) is a court of special jurisdiction and, as such, it can only take cognizance of such matters as are clearly within its jurisdiction. He emphasizes that the "decision" contemplated by law that is appealable to the Court is one rendered on a disputed assessment, which means that it is primordial that there first be a decision by the Commissioner of Internal Revenue (CIR) or his authorized representative. Respondent reiterates that in the present case there was yet no decision rendered by respondent since petitioner did not wait for the issuance of the FDDA when it filed the *Petition for Review* in CTA Case No. 9819, which therefore deprived the Court of jurisdiction to hear the same.

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8 *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation, etseq.*, G.R. No. 215534 and G.R. No. 215557, April 18, 2016.

The Court finds petitioner's *Motion for Reconsideration* devoid of merit.

To stress, Section 7(a)(1) of Republic Act (RA) No. 1125,[9] as amended by RA No. 9282,[10] provides that the CTA shall exercise exclusive appellate jurisdiction to review by appeal, decisions of the CIR in cases involving disputed assessments, among others. The rule is that for the CTA to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the CIR to warrant a decision from which a Petition for Review may be elevated to the CTA. Where an adverse ruling has been rendered by the CIR with reference to a disputed assessment, the taxpayer may then appeal the same within thirty (30) days after receipt thereof.[11] To reiterate, what is appealable to the CTA are decisions of the CIR on the protest of the taxpayer against the assessments.[12]

Furthermore, the CIR should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by Sections 7 and 11 of RA No. 1125, as amended. On the basis of his statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues.[13]

Going back to CTA Case No. 9819, the letter dated February 20, 2018 issued by Regional Director Hermeno A. Palamine, clearly shows that the same cannot be considered as a "decision" on the protest of the taxpayer against the subject tax assessments. Scrutiny of the said letter indicates that it merely informed petitioner of the legal basis of the taxability of its income from its electric service operations and other sources, and further required petitioner to submit a waiver in order for the BIR to act on its request for reconsideration. Nowhere does it state in clear and unequivocal language that such letter already constitutes respondent's final determination of the disputed assessment. Thus, it was erroneous for petitioner to consider the said letter as respondent's final decision and prematurely appeal the same to this Court.

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9 AN ACT CREATING THE COURT OF TAX APPEALS.

10 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

11 *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, et al.*, G.R. No. 148380, December 9, 2005.

12 *Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc.*, G.R. No. 221780, March 25, 2019.

13 Supra No. 11.

Time and again, it has been held that the perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.[14] The right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[15]

Correspondingly, in view of petitioner's premature filing of its *Petition for Review* in CTA Case No. 9819, the Court did not acquire jurisdiction to take cognizance of the same. To stress, by way of reiteration, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[16]

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by both parties in their respective *Motions*, the Court finds no compelling reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration (Re: Decision dated 28 November 2023)** and petitioner's **Motion for Reconsideration are** both **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[14] *China Banking Corp. v. City Treasurer of Manila*, G.R. No. 204117, July 1, 2015; *Commissioner of Internal Revenue v. Fort Bonifacio Development Corporation*, G.R. No. 167606, August 11, 2010.

[15] *Manila Mining Corporation v. Amor*, G.R. No. 182800, April 20, 2015; *Commissioner of Internal Revenue v. Fort Bonifacio Development Corporation*, supra.

[16] *Escandor v. Carpio-Morales, et. al.*, supra, citing the case of *Velasquez, Jr. v. Lisondra Land, Inc.*, supra.