REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

CHEVRON SERVICES PHILIPPINES, INC.,
Respondent.

CTA *EB* NO. 2452
(CTA Case No. 9571)

Present:

DEL ROSARIO, *P.J.,*
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:
MAY 10 2023 4:01 p.m.

x- x

RESOLUTION

MANAHAN, *J.*:

For resolution is petitioner's *Motion for Reconsideration (of the Decision dated 24 November 2022)* posted on December 16, 2022 which was received by the Court on December 28, 2022 with respondent's *Comment (Re: Motion for Reconsideration dated December 16, 2022)* filed on February 8, 2023.

Petitioner seeks reconsideration of the Court's Decision promulgated on November 24, 2022, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the Petition for Review filed by petitioner CIR is **DENIED** for lack of merit and the Decision dated July 15, 2020 and

Resolution dated February 17, 2021 of the Court in Division are hereby **AFFIRMED**.

SO ORDERED."

Petitioner requests the Court to revisit its Decision (assailed Decision) based on the following arguments, and we quote:

I. THE NECESSITY OF PROVING THAT THE TAX ASSESSMENT IS INVALID LIES WITH THE PARTY ASSAILING THE VALIDITY OF THE ASSESSMENT;

II. ASSUMING *ARGUENDO* THAT THERE IS A LACK OF VALID LETTER OF AUTHORITY (LOA), THE LETTER NOTICE (LN) ISSUED TO RESPONDENT VALIDLY AUTHORIZED THE ASSESSMENT AGAINST THE LATTER;

III. RESPONDENT'S ADMINISTRATIVE PROTEST LETTER WAS FILED OUT OF TIME;

IV. THE FORMAL ASSESSMENT NOTICE (FAN) WAS RECEIVED BY THE RESPONDENT ON 22 DECEMBER 2016 AND NOT ON 03 JANUARY 2017;

V. SUBSTITUTED SERVICE OF NOTICE IS WARRANTED WHEN THE IMPOSSIBILITY OF PERSONAL SERVICE IS CLEARLY APPARENT;

VI. THE HONORABLE COURT HAS NO JURISDICTION OVER THE PETITION FOR REVIEW FILED BY RESPONDENT ON 10 APRIL 2017;

VII. PETITIONER FULLY COMPLIED WITH THE DUE PROCESS REQUIREMENT UNDER SECTION 228 OF THE TAX CODE, AS AMENDED, RR 12-99 AND RR 18-2013; AND,

VIII. ADMINISTRATIVE AUTHORITIES SHOULD BE ALLOWED THE PRIOR OPPORTUNITY TO DECIDE CONTROVERSIES WITHIN ITS COMPETENCE, AND

IN MUCH THE SAME WAY THAT, ON THE JUDICIAL LEVEL, ISSUES NOT RAISED IN THE LOWER COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.

Petitioner asserts that the LN is equivalent to an LOA, hence a sufficient basis to clothe the revenue examiners with the requisite authority to conduct the examination/audit of respondent's books of accounts and other accounting records citing the provisions of Revenue Memorandum Order (RMO) No. 42-2003 which allegedly sanctions the determination of a taxpayer's possible deficiency taxes without conducting a detailed examination of its accounting books and records. In the so-called "no-contact-audit approach" described under RMO No. 42-2003, petitioner contends that an LN duly signed by him satisfies the purpose of an LOA since the former stands as the authority of the assigned officers who will handle the audit and investigation of the taxpayer, hence, no need for the issuance of an LOA.

Petitioner additionally raises the issue of *estoppel* on the part of respondent due to its failure to mention the alleged lack of an LOA in its protests against the Preliminary Assessment Notice (PAN) and the FAN as well as in the Petition for Review filed with the Court in Division. Petitioner observes that it was only in its appeal with the Court *En Banc* that this issue was raised thereby violating the doctrine of exhaustion of administrative remedies while also contravening the prohibition against raising issues for the first time on appeal.

Lastly, petitioner reiterates his theory that the Formal Letter of Demand and the Final Assessment Notice (FLD/FAN) have become final, executory and demandable because of the belated filing of the protest which deprives the Court of the jurisdiction to take cognizance of the Petition for Review filed by the respondent with the Court in Division. Petitioner insists that respondent received the FLD/FAN on December 22, 2016 and filed its protest only on February 2, 2017 which is way beyond the thirty (30)-day period prescribed under Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended, and as implemented by Revenue Regulation (RR) No. 12-99, as amended.

In its *Comment (Re: Motion for Reconsideration dated December 16, 2022)*, respondent maintains that the issuance of an LN did not cure the absence of an LOA and such contention of petitioner is contrary to substantive law.

It was also observed by respondent that the arguments raised by petitioner in his Motion for Reconsideration are mere rehashed statements that have been judiciously passed upon by the Court in the assailed Decision but nevertheless emphasizes that the Court is correct in its ruling that the FAN was not validly served by substituted service because it was received by a person who is neither its employee nor its duly authorized representative. Respondent agrees with the Court that more evidentiary weight should be given to the service of the FLD/FAN via registered mail as it involves the use of the government's postal service. Reckoned from the date of its receipt of the registered mail on January 3, 2017, respondent avers that the protest filed on February 2, 2017 is within the thirty (30)-day period prescribed by Section 228 of the 1997 NIRC, as amended, as implemented by RR No. 12-99, as amended.

Lastly, respondent cites Section 1 of Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA)[1] and related jurisprudence to dispute the allegation of petitioner that it is estopped from raising issues or matters that were not raised in the administrative level nor in the Petition for Review filed with the Court in Division.

RULING OF THE COURT

Noticeable from a perusal of the arguments of petitioner is the repetitious nature of the issues raised in the Petition for Review which the Court *En Banc* had already deliberated and passed upon in the assailed Decision. For emphasis and to settle the matters clearly, this Court once again rules that the issuance of an LN does not amount to an authority to conduct

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[1] **"Rule 14**
Judgement, its Entry and Execution
Section 1. – *Rendition of Judgment.*-
xxx xxx xxx
In deciding a 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." om

an investigation on a taxpayer's books of accounts and other accounting records and does not amount as a valid replacement of the LOA. Petitioner's reliance on RMO No. 42-2003 in support of his theory is misplaced as the LN described in said issuance serves a purpose different from that of an LOA. RMO No. 42-2003 describes the detailed process of the "Reconciliation of Listing Enforcement" (RELIEF) System established under RMO No. 30-2003 and outlines the objectives for the issuance of an LN. As succinctly but clearly ruled by the Supreme Court in the case of *Medicard Philippines, Inc., vs. CIR,*[2] (*Medicard* case) an LN "shall serve as a discrepancy notice to taxpayer similar to a Notice for Informal Conference to the concerned taxpayer." Seen from this perspective, the issuance of an LN still presupposes that the revenue officer who issued the same was, at the start of the audit process, properly authorized to do so. We quote the Supreme Court ruling in the *Medicard* case, thus:

> "xxx xxx xxx However for a Notice of Informal Conference, which generally precedes the issuance of an assessment notice to be valid, **the same presupposes that the revenue officer who issued the same is properly authorized in the first place**." (emphasis supplied)

In the instant case, petitioner neither presented the LOA as evidence nor alleged that the same was issued prior to the issuance of the LN. We find the following portion of the ruling in the *Medicard* case instructive, and we quote:

> "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 earlier was also not converted into an LOA contrary to the above-quoted provision. **Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid**. xxx xxx xxx" (emphasis supplied)

As regards the lack of jurisdiction of the Court due to the final and executory nature of the FLD/FAN, this Court reiterates that contrary to the contention of petitioner, the protest was filed within the thirty (30)-day period prescribed

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[2] G.R. No. 222743, April 5, 2017. *cmr*

under Section 228 of the 1997 NIRC, as amended. As mentioned in the assailed Decision, the records show that the FLD/FAN for taxable year 2011 was sent by registered mail and received by respondent on January 3, 2017, thus, the protest filed on February 2, 2017 was within the thirty (30)-day period for filing a protest thereby negating the allegation that the FLD/FAN had become final and executory.

On the last issue, we need not belabor the point raised by petitioner as regards the Court's limitation on ruling on arguments not raised in the administrative level and the court below, as it is already well-entrenched that this principle admits of exceptions. We again quote the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.,*[3] to wit:

> "The general rule is that the appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.
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> xxx xxx xxx
>
> **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**. xxx xxx xxx" (emphasis supplied)

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[3] G.R. No. 163835, July 7, 2010. *am*

WHEREFORE, premises considered, the *Motion for Reconsideration (of the Decision dated 24 November 2022)* filed by petitioner CIR is hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

(ON OFFICIAL BUSINESS)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(On Leave)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice