REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

LIBERTY FLOUR MILLS, INC., Petitioner,	**CTA CASE NO. 9603**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* *and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 27 2020 3:02 pm

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Reconsideration [re: Decision dated March 02, 2020]** filed on March 16, 2020, with petitioner's **Comment/Opposition [to Respondent's Motion for Reconsideration dated 16 March 2020]** filed on June 22, 2020.

On March 2, 2020, a Decision was promulgated by this Court cancelling respondent's deficiency tax assessments against petitioner due to the lack of authority of his revenue officers in conducting the examination of petitioner's books of accounts, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the *Petition for Review* is **GRANTED**. Accordingly, the FDDA dated June 24, 2016 issued by Assistant Commissioner Nestor S. Valeroso, and respondent's *Decision* dated April 24, 2017, as well as the assessments for deficiency income tax,

IAET, VAT, EWT, and DST, in the aggregate amount of ₱204,013,305.81 inclusive of surcharge, interests and compromise penalties, for taxable year 2009, are **CANCELLED and SET ASIDE.**

SO ORDERED."

In his Motion, respondent argues that his right to due process and fair play was violated when this Court ruled on the issue of want of authority of his revenue officers even though it was not raised as an issue in the present Petition for Review, as well as in the Pre-Trial Order. More so, respondent asserts that prior to the enactment of the National Internal Revenue Code (NIRC) of 1997, the issuance of a Letter of Authority (LOA) was not a statutory requirement as the same was merely an administrative tool for audit activities under audit program. As such, respondent claims that the provisions of Revenue Memorandum Order (RMO) No. 43-90[1], the prescribing policy guidelines for the issuance of LOA, cannot apply in the present case since the RMO was promulgated on September 20, 1990, or over seven (7) years prior to enactment of the law which it supposed to implement, the NIRC of 1997.

Nonetheless, respondent argues that pursuant to RMO Nos. 08-06[2] and 62-10[3], the head of the investigating office, like the Chief of the Regular Large Taxpayers Audit Division I (RLTAD I), may validly reassign the case to another revenue officer (RO) or effect any modifications to a validly issued LOA through the issuance of a Memorandum of Assignment (MOA).

On the other hand, in its Comment, petitioner reiterated the cited the cases in the assailed Decision, *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[4] and *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*,[5] wherein it was held that the Court of Tax Appeals has the power to rule upon other issues not raised in the pleadings that are necessary to achieve an orderly disposition of the case. ℊℯ

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[1] "SUBJECT: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit", dated September 20, 1990.
[2] "SUBJECT: Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS)", dated February 1, 2006.
[3] "SUBJECT: Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures", dated June 28, 2010.
[4] G.R. No. 183408, July 12, 2017.
[5] G.R. No. 163835, July 7, 2010.

Petitioner further argues that in the present case, the Chief of the RLTAD I who signed the MOA is not authorized to issue an LOA pursuant to Section 13 of the NIRC of 1997, as amended. Thus, in the absence of such valid authority, the deficiency assessments issued by respondent against petitioner are void.

After due consideration, the Court finds respondent's Motion for Reconsideration bereft of merit.

With regard to respondent's claim that the lack of authority of his ROs was never raised as an issue in any pleadings filed during trial of the case, this Court reiterates that the *Revised Rules of the Court of Tax Appeals*,[6] specifically, Section 1 of Rule 14, explicitly states that in deciding cases 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. It is for such reason that the Supreme Court in the cited case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[7] categorically ruled that the CTA can resolve the issue involving the authority of the RO to conduct the audit, although the same was not raised by the parties in their pleadings or memoranda.

It also equally bears noting that the authority of the ROs to conduct audit investigation goes into the issue of the validity of the assessment itself. As such, any assessment arising from the examination of a taxpayer's books of accounts by a RO who is not duly authorized to do so, is inescapably void, following the oft-repeated rule that "a void assessment bears no valid fruit." Hence, it is of no consequence that the issue on the alleged want of authority of the revenue officer was never raised in any pleadings filed before this Court.

As to respondent's other argument that the Chief of the RLTAD I may effect modifications to a validly issued LOA by issuing a Memorandum of Assignment (MOA) pursuant to RMO Nos. 08-06 and 62-10, this Court does not agree.

Again, to emphasize, the power to authorize the examination of a taxpayer's books of accounts and to issue assessments is primarily

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[6] A.M. No. 05-11-07-CTA, November 22, 2005.
[7] Supra No. 4.

lodged with respondent or his duly authorized representative, pursuant to Section 6(A) of the NIRC of 1997, as amended, which provides:

> "**SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.—*
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> (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." (*Emphasis supplied*)

Respondent's power to delegate to his duly authorized representative is further elucidated under Section 7, in relation to Sections 10(c) and 13 of the same Tax Code, to wit:

> "**SEC. 7.** *Authority of the Commissioner to Delegate Power.—* **The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: x x x."
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> "**SEC. 10.** *Revenue Regional Director.—* Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, **the Revenue Regional Director shall, within the region and district offices under his jurisdiction**, among others:
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> x x x
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> (c) **Issue Letters of Authority for the examination of taxpayers within the region**;"
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> "**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

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> 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 have been performed by the Revenue Regional Director himself."

Evidently, the authority of an RO to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to Section 13 of the 1997 NIRC. Corollary, a Division Chief, specifically that of the RLTAD I, is not among those mentioned above as duly authorized representative of respondent delegated with such power.

Moreover, as to the RMOs cited by respondent, nowhere in RMO No. 62-10 does it expressly grant the Chief of the RLTAD I the authority to issue an LOA or effect modifications to a validly issued LOA through the issuance of a MOA. In fact, the said RMO is primarily issued as guidelines for the smooth transition from the use of manually prepared LOA to electronic LOA (eLOA) commencing July 1, 2010 onwards.

In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*,[8] the Supreme Court held that absent any prior authority on the part of the ROs who conducted the audit examination of taxpayer's books of accounts and other accounting records, the deficiency tax assessment arising therefrom is a nullity.

Applying the foregoing to the present case, there can be no doubt that the subject MOAs dated May 3, 2011 and August 5, 2006, respectively, did not clothe ROs Olivia F. Aviles and Marivic Bautista with the required authority to continue the examination of petitioner's books of accounts and other accounting records for taxable year 2009, since they were merely issued by the OIC-Chief Edralin M. Silario and thereafter by Chief Cesar D. Escalada, both of RLTAD I, who are not specifically sanctioned by Section 13 of the 1997 NIRC to authorize the examination of the taxpayer. Needless to say, if the RO who conducted the examination of a taxpayer is not duly authorized to do so the assessment is inescapably void.

In view thereof, this Court finds no cogent reason to reverse or modify the conclusion reached in the Decision assailed by respondent.

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

WHEREFORE, premises considered, respondent's Motion for Reconsideration [re: Decision dated March 02, 2020] is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice