REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

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REPUBLIC OF THE PHILIPPINES, Petitioner,	**CTA EB NO. 2339** (CTA OC No. 023)
	Present:
- versus –	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** JJ.
	Promulgated:
ROBIEGIE CORPORATION, Respondent.	APR 0 8 2022 2:19 p.m.

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RESOLUTION

UY, J.:

For resolution is petitioner's "**MOTION FOR RECONSIDERATION**" filed through registered mail on January 7, 2022, with respondent's ***"COMMENT/OPPOSITION TO THE MOTION FOR RECONSIDERATION (RE: Decision promulgated on December 02, 2021)"*** filed on February 8, 2022. In the said Motion, petitioner prays for the setting aside of the Court's Decision dated December 2, 2021, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision dated June 8, 2020 and the Resolution dated August 26, 2020 rendered by the Second Division of this Court in CTA OC No. 023 are hereby **AFFIRMED**.

SO ORDERED."

In support of his Motion, petitioner argues that:

1. The Court erred in ruling that the assessments are void because the Revenue Officer (RO) who conducted the audit of respondent's books of accounts was allegedly not authorized through an LOA.

2. The case of *Commissioner of Internal Revenue vs. Sony Philippines*[1] is not applicable to the instant case.

In its Comment/Opposition, respondent counters that:

1. There must be a grant of authority before any RO can conduct an examination or assessment. In the absence of such authority, the assessment or examination is a nullity.

2. An RO must be authorized through an LOA, in order for the said officer to validly examine the books of accounts and other accounting records of a taxpayer. In the absence of an LOA, tax assessments issued by the BIR are void.

THE COURT'S RULING

Petitioner's Motion lacks merit.

After a careful examination and consideration of the petitioner's Motion for Reconsideration, it is noted that the main arguments raised in the said Motion are mere reiterations of matters which have already been considered, weighed and resolved in the assailed Decision. Thus, We shall not belabor, in this Resolution, to repeat the disquisitions made therein.

Nevertheless, this Court stresses that Section 13 of the NIRC of 1997, as amended, mandates that an RO should first be clothed with authority by a valid LOA issued in his/her favor, before he/she can validly examine taxpayers and perform tax assessment and collection functions.

The case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue (Medicard case)*,[2] emphasized that an LOA is the

[1] G.R. No. 178697, November 17, 2010.
[2] G.R. No. 222743, April 5, 2017.

authority given to the appropriate RO assigned to perform assessment functions. It empowers or enables said RO to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. Hence, unless authorized by the CIR himself, or by his duly authorized representative, *through an LOA,* an examination of the taxpayer *cannot* ordinarily be undertaken. In other words, without such LOA, the tax assessments issued by the BIR against such taxpayer shall be void.

In *Commissioner of Internal Revenue vs. Travelers International Hotel Group, Inc.,*[3] and *Commissioner of Internal Revenue vs. Trinity Franchising and Management Corporation,*[4] the Supreme Court reiterated that an assessment will be invalid if the revenue officers lack authority to continue the audit against a taxpayer. According to the High Court, it is settled 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.[5]

Meanwhile, in *Commissioner of Internal Revenue vs, McDonald's Philippines Realty Corp.,*[6] the Supreme Court stressed that the LOA is the *concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the revenue officers*, pursuant to Sections 6, 10(c) and 13 of the NIRC of 1997, as amended.

Relative thereto, RMO No. 43-90 prescribes the revised policy guidelines for the audit/investigation and issuance of letters of authority to audit. Specifically, it requires that **all** audits/investigations should be conducted under a Letter of Authority, and requires the issuance of a **new LOA** in case of any reassignment or transfer of cases to another RO.

In the instant case, LOA No. 00037842[7] dated July 27, 2009, authorizes RO Jose Francisco David, Jr.[8] (JF David) and Group Supervisor Felix M. Roy[9] (F. Roy) of RDO NO. 31 Sta. Cruz, to examine respondent's books of accounts and other accounting

[3] G.R. No. 255487, May 3, 2021.
[4] G.R. No. 255094, April 26, 2021.
[5] *Id.*, citing *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[6] G.R. No. 242670, May 10, 2021.
[7] Exhibit "P-3", Docket – Vol. 3, pp. 1145 to 1147.
[8] Paragraph 6, *Joint Stipulation of Facts and Issues*, Docket, p. 143.
[9] *Id.*

records for all internal revenue taxes for the period January 1, 2008 to December 31, 2008.

Records show that RO Cecille D. Dy[10] and Group Supervisor Andres Bisares[11] conducted the investigation of respondent's tax liabilities, whose work was subsequently reviewed by RO John Paulo Leonardo.[12] A perusal of Memorandum Referral No. 031-0006-10 dated January 28, 2010, however, shows that RO Cecille D. Dy was ***not*** validly authorized by a new LOA, when she exercised assessment functions, as confirmed by the petitioner in the *Joint Stipulation of Facts and Issues.*[13]

Considering that the RO Dy acted on respondent's case, without being authorized a new LOA issued in her favor, the tax assessments, resulting from the investigation, audit, and recommendation of RO Dy is void. For being void, the same bears no valid fruit.[14]

Assuming *arguendo,* that Memorandum Referral No. 031-0006-10 would be accepted by this Court as a valid substitute for an LOA, it would still be *insufficient* as basis to confer authority upon RO Dy to perform assessment functions.

As discussed in the assailed Decision, the subject Memorandum Referral was signed by a Revenue District Officer, as the Head of the Revenue District Office/Investigating Office, which was conducting the audit of respondent. A Revenue District Officer, however, is not among the list of officials authorized to sign an LOA, to wit:

1. Commissioner of Internal Revenue;
2. Regional Directors;
3. Deputy Commissioners;
4. Assistant Commissioner/Head Revenue Executive Assistants (for Large Taxpayers); and
5. Other officials that may be authorized by the Commissioner for the exigencies of service.

Hence, even if this Court would accept the subject Memorandum Referral as an equivalent to an LOA, the same would

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[10] Preliminary Assessment Notice (PAN), Exhibit "P-16." Docket, pp. 132 to 135.
[11] Judicial Affidavit of Edna A. Ortalla, Exhibit "P-40." Docket, pp. 128 to 131, at 129.
[12] *Id.*
[13] Paragraph 6, Docket, p. 143.
[14] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010.

still be invalid, as it was not signed by an official empowered to confer authority upon an RO to perform assessment functions.

Finally, this Court reiterates that the *Sony Philippines*[15] case is applicable in the instant case.

In the said case, the Supreme Court interpreted Sections 6 (A) and 13 of the NIRC of 1997. To be precise, the foregoing case established the following: 1) According to Section 13 of the NIRC of 1997, an LOA is the authority given to the appropriate Revenue Officer assigned to perform assessment functions, which 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; 2) there must be a grant of authority before any Revenue Officer can conduct an examination or assessment; 3) the Revenue Officer so authorized must not go beyond the authority given; and 4) in the absence of such an authority, *i.e.,* LOA, the assessment or examination is in fact, a nullity.

Judicial decisions, such as the *Sony Philippines* case, applying or interpreting the laws or the Constitution, shall form a part of the legal system of the Philippines,[16] and judicial decisions of the Supreme Court assume the same authority as the statute itself.[17] Accordingly, the Court *a quo* did not err in applying the foregoing jurisprudential pronouncements.

WHEREFORE, premises considered, the instant **MOTION FOR RECONSIDERATION** is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[15] G.R. No. 178697, November 17, 2010.
[16] Article 8, New Civil Code.
[17] *Perfecto S. Floresca, et al., vs. Philex Mining Corporation, et al.,* G.R. No. L-30642, April 30, 1985.

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice