

**REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY**

**SPECIAL FIRST DIVISION**

**MONTALBAN METHANE POWER CORPORATION,**     **CTA CASE NO. 9408**

Petitioner,     Members:

- versus -

**DEL ROSARIO, P.J., Chairperson,  
UY, and  
MINDARO-GRULLA, JJ.**

**COMMISSIONER OF INTERNAL  
REVENUE,**

Promulgated:

Respondent.

OCT 18 2019 : 9:54 am

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**RESOLUTION**

***MINDARO-GRULLA, J.:***

For resolution is respondent's **Motion for Reconsideration**, filed on July 4, 2019, with petitioner's **Opposition [Re: Motion for Reconsideration dated 4 July 2018 (*sic*)]**, filed thru registered mail on August 27, 2019 and received by the Court on September 3, 2019.

Respondent moves for reconsideration of the Court's Decision (assailed Decision) promulgated on June 14, 2019, the dispositive portion of which reads:

"**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the deficiency VAT and EWT assessments for taxable year 2009 under the Formal Letter of Demand/Final Assessment Notice issued on May 20, 2014 and the Final Decision on Disputed Assessment issued on June 30, 2016 are **CANCELLED** and **SET ASIDE**.

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**SO ORDERED."**

In the instant motion, respondent argues that the Court erred in ruling that the assessments are void on the basis that the revenue officers who conducted the audit of petitioner's books of accounts were allegedly not authorized through a Letter of Authority (LOA).

Citing Revenue Memorandum Order (RMO) No. 8-2006<sup>1</sup>, respondent avers that where both the Revenue Officer (RO) and Group Supervisor (GS) have resigned/retired or transferred to another Revenue Region (RR), the case shall be reassigned to another RO under the supervision of another GS within the same RDO thru a memorandum issued by the head of the investigating office to the concerned taxpayer and the concerned RO and/or GS. As such, respondent asserts that the Memorandum of Assignment (MOA) directing ROs Evangeline Casipe, Denver Gomez, Roque Doloiras and Ednalyn Naty Dayacap under the supervision of GS Lanie Luna to continue the audit/examination for taxable year 2009 is proper.

Respondent further posits that the MOA subsequently issued derived its authority from the original LOA initially issued. Accordingly, the source of the ROs authority to investigate is not the MOA but the validly issued LOA itself. Thus, the MOA is merely for the continuation of the audit which was already authorized under the LOA.

Moreover, respondent argues that RMO No. 8-2006 only allows one LOA per taxable year to be issued to a taxpayer. Hence, the need for respondent to issue a MOA to other RO to continue the audit under the previously issued LOA.

Respondent further contends that the *Sony*<sup>2</sup> and *Medicard*<sup>3</sup> cases, which were made reference by the Court as bases for the decision, are not applicable on the ground that the facts and issues raised in the said cases are different with the instant case. Comparing the three cases, respondent presented the relevant facts and issues as follows:

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<sup>1</sup> Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring Systems (LAMS), February 1, 2006

<sup>2</sup> *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010

<sup>3</sup> *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017

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| <b><i>Sony Case</i></b>                                                                                                                                                                                                                                                                               | <b><i>Medicard Case</i></b>                                                                                                                                                                                                                                                 | <b><i>Instant Case</i></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Sony was issued a LOA for 1997 and Unverified Prior Years (UPY);</li> <li>• After examination, Sony was assessed for taxes outside the period of the LOA; and</li> <li>• At issue is whether the assessment for 1997 and the LOA for UPY is valid</li> </ul> | <ul style="list-style-type: none"> <li>• Medicard was issued a Letter Notice (LN) for 1996 VAT discrepancies;</li> <li>• Medicard was assessed for 1996 VAT based on the LN; and</li> <li>• At issue is whether the 1996 VAT assessment based on the LN is valid</li> </ul> | <ul style="list-style-type: none"> <li>• Petitioner received a valid LOA authorizing examination for 2009;</li> <li>• A memorandum of assignment was issued to Revenue Officers Evangeline Casipe, Denver Gomez, Roque Doloiras and Ednallyn Naty Dayacap under the supervision of Group Supervisor Lanie Luna; and</li> <li>• At issue is whether the memorandum properly authorized ROs Casipe, Gomez, Doloiras, and Dayacap, and GS Luna to continue the assessment of petitioner.</li> </ul> |

Respondent avers that the facts and issues in the cited cases are clearly far different from that of the instant case.

Further, respondent insists that what the LOA authorizes is the conduct of audit of a taxpayer by the BIR's revenue officers. Hence, in the event that the revenue officers indicated therein can no longer perform the audit due to resignation, transfer or death, such authority remains and the conduct of the audit must necessarily be reassigned and assumed by another BIR's revenue officer.

On his final argument, respondent maintains that the issue on the authority of the revenue examiners to conduct the audit/investigation was never raised by petitioner in its Petition for Review or during trial. Thus, the Court may not consider the same in the decision of the case without violating respondent's procedural

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and substantive due process as he was neither given the opportunity to be heard on the particular issue.

On the other hand, petitioner counters that the Motion for Reconsideration of the respondent should be denied on the ground that in the recent CTA case *Opulent Landowners, Inc. vs. Commissioner of Internal Revenue*<sup>4</sup>, which is allegedly on all fours with the instant case, the Court *En Banc* reiterated that the Court may resolve issues not raised by the parties in their pleadings or memoranda; and that it is mandatory that a new LOA be issued, not merely a MOA, in case of re-assignment or transfer of cases to another revenue officer.

Petitioner further contends that respondent was given an opportunity to be heard on the issue by his filing of the instant motion.

The Court finds respondent's arguments untenable.

Sections 6 and 13 of the National Internal Revenue Code (NIRC) of 1997, as amended, clearly provide that a valid grant of authority, in the form of a Letter of Authority, from the CIR or his duly authorized representative is required before a revenue officer conducts an examination or issue an assessment. The provisions state:

*"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, **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)*

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<sup>4</sup> CTA EB Nos. 1802 and 1803, July 5, 2019.

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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 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." (*Emphasis and underscoring supplied*)

Nowhere in the above-cited provisions allow the issuance of a memorandum or any form of document, other than an LOA, granting authority to a Revenue Officer to conduct an audit/examination.

A cardinal rule in statutory construction is that, where the law speaks in clear and categorical language, or the terms of the statute are clear and unambiguous and free from doubt, there is no room for interpretation or construction and no interpretation or construction is called for; there is only room for application.<sup>5</sup> Hence, the revenue officer must have valid grant of authority in the form of an LOA to conduct an audit/examination or assess the taxpayer, whether the case was originally assigned to him or was re-assigned/transferred to him.

As to respondent's allegation that the issuance of MOA is necessary in case of re-assignment on the ground that only one LOA can be issued to the same taxpayer, for the same tax type and period, it must be reiterated that in case of re-assignment/transfer of cases, the issuance of an LOA is still required as implemented under Section C (1) and (5) of RMO No. 43-90<sup>6</sup>, which provides:

C. Other policies for issuance of L/As.

<sup>5</sup> *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 175707, 180035, 181092, November 19, 2014, 740 SCRA 640.

<sup>6</sup> Amendment of Revenue Memorandum Order No. 37-90, prescribing revised policy guidelines for Examination of Returns and Issuance of Letters of Authority to Audit".

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**1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.**

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**5. Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.**  
*(Emphasis supplied)*

It can be gleaned from the aforementioned provision that a new LOA is to be issued, with the corresponding notation indicating the previous LOA number and date of issue of the LOA, to authorize the new revenue officer to continue the audit/examination. Only one LOA is issued to the taxpayer since the previously issued LOA is deemed cancelled with the issuance of a new LOA. Hence, contrary to the contention of the respondent, the authority granted to another revenue officer under an LOA for the continuity of the audit/examination cannot be replaced by a MOA.

Moreover, pursuant to Section D (2) and (3) of RMO No. 43-90, the names of the revenue officers and group supervisor are to be indicated in the LOA, to wit:

"RMO No. 43-90

D. Preparation and issuance of L/As.

XXX XXX XXX

1. The Regional Director shall prepare and sign the L/As for returns recommended by the RDO for assignment to the ROs, indicating therein the name and address of the taxpayer, **the name of the RO(s) to whom the L/A is assigned**, the taxable period and kind of tax; after which he shall forward the same to the RDO or Chief, Assessment Branch, who in turn shall indicate the date of issue of the L/A prior to its issuance.

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2. **The L/As for investigation of taxpayers by National Office audit offices (including the audit division in the Sector Operations Service and Excise Tax Service) shall be prepared in accordance with the procedures in the preceding paragraph, by their respective Assistant Commissioners and signed by the Deputy Commissioner concerned or the Commissioner. The L/As for investigation of taxpayer by the intelligence and Investigation Office and any other special audit teams formed by the Commissioner shall be signed by the Commissioner of Internal Revenue."**

Considering the foregoing, the LOA specifically grants authority to the revenue officers and group supervisor named therein. Hence, revenue officers or group supervisors not indicated in the LOA are not authorized to conduct an audit/examination. Accordingly, in the instant case, only the ROs and GS indicated in LOA-121-2010-00000019<sup>7</sup> dated May 14, 2010, specifically, Group Supervisor Ma. Luisa Lim and Revenue Officers Reynante Martirez, Resurreccion Ang, Teresa Divina Holgado and Criscela Lacsamana from the Excise Large Taxpayers Regular Audit Division I of the Large Taxpayers Services are authorized to conduct the audit/examination of petitioner's internal revenue taxes for the taxable year 2009.

On respondent's argument that the *Sony* and *Medicard* cases are not applicable on the basis that the facts and issues in the said cases are different in the instant case, the Court disagrees with respondent.

It is true that in the *Sony* case, the revenue officer went beyond its authority when it assessed the taxpayer beyond the period in the LOA while in the *Medicard* case, the assessment was based on a Letter of Notice. However, it is worthy to stress that the common denominator in the said cases is the requirement that the revenue officer must have an authority, in the form of an LOA, to conduct an audit/examination, and the absence thereof voids the assessment.

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<sup>7</sup> Exhibit "R-1", BIR Records, p. 34.

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In the instant case, an LOA was issued specifying the revenue officers who will be conducting the audit/examination of petitioner's internal revenue taxes for the taxable year 2009. Subsequently, a Memorandum of Assignment was issued replacing the revenue officers indicated in the LOA, and no new LOA was issued/ attached to the said memorandum. Clearly, as no new LOA was issued, the revenue officers under the MOA have no authority to conduct the audit/investigation or issue an assessment; thus, voids the assessment.

Respondent points out that the issue on the authority of the revenue examiners to conduct the audit/investigation was never raised by petitioner in its Petition for Review or during trial. Respondent claims that the issue should not be considered as it violates his procedural and substantive due process as he was neither given the opportunity to be heard on the particular issue.

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy. It is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.<sup>8</sup>

As discussed in the assailed Decision, in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*<sup>9</sup>, the Supreme Court confirmed the power and jurisdiction of this Court to resolve the issue on the extent of authority of revenue officers to conduct the audit, even though the same was not raised by the parties in their pleadings or memoranda. Thus, it is proper to determine the authority of the revenue officers, even if it is not raised by the parties, as the issue affects the jurisdiction of the Court.

**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration** is hereby **DENIED** for lack of merit and the assailed Decision is hereby **AFFIRMED**.

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<sup>8</sup> *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015.

<sup>9</sup> G.R. No. 183408, July 12, 2017.

**SO ORDERED.**

  
**CIELITO N. MINDARO-GRULLA**  
Associate Justice

WE CONCUR:

  
**ROMAN G. DEL ROSARIO**  
Presiding Justice

  
**ERLINDA P. UY**  
Associate Justice