REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2278** (CTA Case No. 9710)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** JJ.
SUNNYPHIL INCORPORATED, Respondent.	***Promulgated:*** APR 0 8 2022 2:15 p.m.

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RESOLUTION

UY, J.:

For resolution is petitioner's ***MOTION FOR RECONSIDERATION (RE: Decision Promulgated November 3, 2021)***[1] filed on November 25, 2021, with respondent's ***COMMENT (to Petitioner's Motion for Reconsideration)***[2] filed on February 28, 2022, seeking the reconsideration and setting aside of the Court *En Banc's* Decision[3] dated November 3, 2021, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack

[1] EB Docket, pp. 126 to 135.
[2] EB Docket, pp. 140 to 146.
[3] EB Docket, pp. 68 to 85.

of merit. Accordingly, the assailed Decision dated November 8, 2019 and Resolution dated March 12, 2020, both rendered by the Court in Division in CTA Case No. 9710 are **AFFIRMED**.

Consequently, petitioner Commissioner of Internal Revenue or any person acting on his behalf is **ENJOINED** from enforcing the collection of deficiency taxes assessed against Sunnyphil Incorporated for taxable year 2013.

SO ORDERED."

CIR's arguments:

In his *Motion*, the CIR argues that the subject tax assessments are valid since the revenue officers were duly authorized to conduct the audit of Sunnyphil Incorporated (or Sunnyphil). The CIR reiterates its position that the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[4] (hereinafter referred to as *"Medicard case"*) is not applicable since the facts therein are not on all fours with the instant case.

The CIR likewise maintains that the *Memorandum of Assignment* (MOA) issued to the revenue officers is valid pursuant to the guidelines and procedures of Revenue Memorandum Order (RMO) No. 8-2006 and RMO No. 69-2010.

Finally, the CIR avers that Sunnyphil is estopped from questioning the validity and propriety of the authority of the revenue officers considering that it has actively participated in the administrative investigation during the periods covered by the BIR notices.

Sunnyphil's counter-arguments:

In its *Comment*, Sunnyphil counter-argues that the issues raised by the CIR in the instant *Motion* had already been passed upon by the First Division in CTA Case. No. 9710 and in the assailed Decision dated November 3, 2021. Allegedly, the CIR failed to present any compelling reason to deviate from the previous rulings issued by the Court. MO

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[4] G.R. No. 222743, April 5, 2017.

Moreover, Sunnyphil maintains that the application of RMO No. 8-2006 which purportedly allows the issuance of a MOA by a Revenue District Officer is patently inconsistent with the legislative mandate under Sections 6(A) and 13 of the NIRC of 1997, as amended. According to Sunnyphil, the CIR cannot, in the exercise of its interpretive power issue administrative rulings of circulars not consistent with the law sought to be applied; and that administrative agencies' issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out.

THE COURT'S RULING

We deny the instant *Motion for Reconsideration.*

After careful examination and consideration of the instant *Motion*, it is noted that the arguments raised therein are mere reiteration of matters which have already been considered, weighed and resolved in the assailed Decision.

Medicard case is applicable in the case at bar.

As for respondent's claim that the *Medicard* case is not applicable in the instant case, it must be emphasized that the CIR himself, through the issuance of Revenue Memorandum Circular (RMC) No. 75-2018[5], recognized the ruling in the *Medicard* case, in this wise:

> "The judicial ruling, invoking a specific statutory mandate, states that **no assessments can be issued or no assessment functions or proceedings can be done without the prior approval and authorization of the Commissioner of Internal Revenue (CIR) or his duly authorized representative, <u>through an LOA</u>. The concept of an LOA is therefore clear and unequivocal. Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore 'inescapably void.'**
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> xxx xxx xxx

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[5] SUBJECT: *The Mandatory Statutory Requirement and Function of a Letter of Authority.*

> To help forestall any unnecessary controversy and to encourage due observance of the judicial pronouncements, any examiner or revenue officer initiating tax assessments or performing assessment functions without an LOA shall be subject to appropriate administrative sanctions." *(Emphasis and underscoring supplied)*

It is clear from the foregoing, that any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and therefore void.

Accordingly, considering that the issue in the instant case involves the lack of a valid LOA authorizing the revenue officers to conduct the audit investigation of Sunnyphil, We see no reason not to apply the ruling in the *Medicard* case to the instant case.

Estoppel is not applicable.

With regard to the CIR's argument that Sunnyphil is estopped from questioning the authority of the revenue officers, the same is of no merit.

In *Himlayang Pilipino Plans, Inc. vs. Commissioner of Internal Revenue*[6], the Supreme Court emphasized that the failure of the taxpayer to raise the lack of the revenue officer's authority at the earliest opportunity, does not preclude the Court from considering the same as the said issue goes into the intrinsic validity of the assessment itself.

Further, jurisprudence dictates that the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied.[7]

[6] G.R. No. 241848, May 14, 2021.

[7] *Commissioner of Internal Revenue vs Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010.

In the instant case, the lack of authority of the revenue officers to conduct an audit investigation runs counter to the provision of the law and will result to a void assessment. As such, the CIR cannot invoke the doctrine of estoppel to give validity to an irregular act or a void assessment.

In sum, finding no compelling reason to reconsider, modify or reverse the assailed Decision, We reiterate our ruling that the revenue officers who conducted the audit investigation of Sunnyphil's books of accounts and accounting records for taxable year 2013 were not duly authorized through an LOA. Hence, the subject assessment notices, which came about as a result of their examination are void.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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