REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB CASE NO. 1956 (CTA CASE NO. 9179)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.*
ORIENT OVERSEAS CONTAINER LINE, LTD. Represented by OOCL (Philippines), INC., *Respondent.*	Promulgated: DEC 04 2019 3:45 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

For resolution is the Commissioner of Internal Revenue's (CIR) "Motion for Reconsideration (Re: Decision promulgated 22 August 2019)" filed on September 6, 2019, with Orient Overseas Container Line Ltd.'s (OOCLL) "Comment" filed on October 7, 2019.

In his Motion for Reconsideration, the CIR prays that the Court's Decision dated August 22, 2019 be reversed and set aside and that a judgment be rendered ordering OOCLL to pay the aggregate amount of ₱105,740,107.18 for deficiency Income Tax, Percentage Tax, Expanded Withholding Tax and Fringe Benefit Tax for taxable period July 1, 2009 to June 30, 2010, plus surcharge, deficiency and delinquency interests. In support of his motion, the CIR insists that the Court erred when it cancelled the assessment issued against OOCLL on the ground that there was no new Letter of Authority ("LOA") after the audit was reassigned to another revenue officer ("RO") and that the Court's reliance to Revenue Memorandum Order No. (RMO) 43-90[1] and the ruling of the Supreme Court in the case of *Medicard Philippines Inc. vs. Commissioner of Internal Revenue* (the "*Medicard Case*")[2] are misplaced.

The Court resolves to deny the CIR's Motion for Reconsideration.

With regard to the CIR's claim that the case of *Medicard* is not applicable to this case, the CIR argues that in *Medicard*, it involved a total absence of an LOA which the Court concluded could not be supplanted by a mere Letter Notice as it violated Medicard's right to due process. Therefore, the same cannot be applied, since in this case, there exists a valid LOA which authorized the RO to audit OOCLL's accounting records.

The Court finds no merit in such contention. In this case, although an LOA was issued, the examination was reassigned to new ROs pursuant only to a Memorandum of Assignment signed by the OIC-Chief of RLTAD II.

To reiterate, in *Commissioner of Internal Revenue vs. Composite Materials, Inc. (the "Composite Case"),*[3] the Supreme Court categorically held that an RO may only examine the taxpayer's books pursuant to an LOA issued by the Regional Director in accordance with Section 13[4] of the

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[1] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, September 20, 1990.
[2] G.R. No. 222743, April 5, 2017.
[3] G.R. No. 238352, September 12, 2018.
[4] 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, <u>pursuant to a Letter of Authority issued by the Revenue Regional Director</u>, 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. (Underlining supplied.)

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National Internal Revenue Code (NIRC) of 1997, as amended.

The Supreme Court in the *Composite Case* further emphasized that the Referral Memorandum issued by the Revenue District Officer directing another RO to continue with the examination of the taxpayer records is not equivalent to an LOA nor does it cure the RO's lack of authority, *viz:*

> "As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, ruling that in the absence of an LOA, the assessment or examination is a nullity.
>
> Here, the CTA *en banc* found that the LOA issued in relation to the examination of CMI's book of accounts does not specifically mention the name of RO Cruz. Thus, the examination conducted by RO Cruz and the assessment issued against CMI was correctly declared null and void.
>
> Moreover, the Court agrees with the CTA *en banc* that the Referral Memorandum issued by a Revenue District Officer directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority. To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA." (Underlining supplied)

In the assailed Decision, the *Medicard Case* was merely cited on the disquisitions as to the effect of the lack of an LOA in the conduct of audit/investigation by using the

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rationale of the Supreme Court in the said case.[5] However, the fact still remains that there is non-compliance in the issuance of a new LOA signed by authorized signatories in case of reassignment. It must be reiterated that the Chief of LTS-RLTAD II is not included under those authorized signatories of an LOA and only the CIR or his duly authorized representatives may issue a new LOA in case of reassignments for investigation and audit.

As to the contention that Revenue Memorandum Order (RMO) No. 43-90 is inapplicable because it was issued before the creation of the 1997 NIRC, the enactment of the latter cannot be said to repeal the former or by any subsequent issuance of the CIR for this matter. In fact, the provisions of RMO 43-90 that requires an issuance of an LOA in cases of reassignments[6] and identifies those officials who are authorized to issue and sign the LOA,[7] cannot be considered inconsistent with the provisions of the current NIRC. Thus, the issuance of an LOA is of equal importance when the RO originally assigned in the conduct of a particular audit/investigation is transferred and a new RO takes over the audit that has been conducted by the former RO.[8]

All told, the Court finds no compelling reason or substantial justification to modify its findings much more reverse the assailed Decision.

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[5] *Enjay Hotels, Inc., vs. Commissioner of Internal Revenue,* CTA Case No. 9273, April 5, 2019.

[6] "Any reassignment/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." (Underscoring supplied.)

[7] "D. Preparation and issuance of L/As.

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> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself." (Underlining supplied.)

[8] *Supra,* note 5.

WHEREFORE, the Commissioner of Internal Revenue's Motion for Reconsideration (Re: Decision promulgated 22 August 2019) is hereby **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

With due respect, I maintain my DO dtd. Aug. 22, 2019.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice