REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MSEI CORPORATION,
Respondent.

CTA *EB* NO. 2044
(CTA Case No. 9167)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUN 0 8 2021
3:38 p.m.

x -- x

RESOLUTION

MODESTO-SAN PEDRO, J.:

For resolution is petitioner's ***Motion for Reconsideration Re: Decision dated 29 October 2020 (hereinafter referred to as "Motion")***, posted on 23 November 2020,[1] with respondent's ***Comment & Opposition (Re: Petitioner CIR's "Motion for Reconsideration" dated 23 November 2020) (hereinafter referred to as "Comment")***, filed on 18 December 2020.

In his Motion, petitioner insists that the Court *En Banc* erred in affirming the Decision and Resolution of the Court in Division cancelling the assessment notices and the Final Decision on Disputed Assessment ("FDDA") issued against respondent in the aggregate amount of ₱1,175,855.77 for taxable year 2009 on the ground that no Letter of Authority ("LOA") was issued to the revenue officers who conducted its audit and assessment.

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[1] Petitioner received a copy of the assailed Decision on 6 November 2020. Hence, he has until 23 November 2020 (since the end of the 15-day period fell on a Saturday) to file his Motion. Considering that the Motion was posted on 23 November 2020, the same was timely filed.

Petitioner explains that the issuance of an LOA is in the nature of procedural law, whereas his authority to perform the audit and assessment of a taxpayer is substantive law, pursuant to ***Section 6(A) of the National Internal Revenue Code of 1997, as amended (hereinafter referred to as the "Tax Code")***. On this basis, he argues that the Court *En Banc* should have sustained the validity of the assessments since, in cases of conflict, procedural law must always give way to substantive law.

He points out that the issuance of an LOA is only relevant in cases when the audit is authorized by the Regional Director and not by petitioner himself. He states that the Tax Code did not mention that an LOA is an indispensable requirement in audit examinations and assessments directly authorized by him.

Petitioner further contends that the absence of an LOA did not violate respondent's right to due process since it was given ample time to respond to the assessments issued against it.

Lastly, he argues that the Court erred in resolving an issue that was not prayed for by respondent in its pleadings, violating his basic right to due process.

Meanwhile, respondent counters that petitioner's arguments are not tenable. It alleges that petitioner failed to contest the fact that the revenue officers who conducted its audit were not duly armed with an LOA, rendering the subsequent assessment void. It stresses that the issuance of an LOA is not merely procedural but a mandatory requirement under the Tax Code. It reiterates that the Court in Division has the power to resolve the issue on the revenue officer's lack of authority even if it was not raised in its pleadings since it is relevant in the resolution of the herein case.

After a careful review of the arguments raised by both parties, the Court *En Banc* finds petitioner's contentions bereft of merit.

In ***Bernabe v. Alejo***,[2] the Supreme Court differentiated substantive from procedural law, to wit:

> "Bustos v. Lucero distinguished substantive from procedural law in these words:
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> > x x x. **Substantive law creates substantive rights** and the two terms in this respect may be said to be synonymous. Substantive rights is a term which includes those rights which one enjoys under the legal system prior to the disturbance of normal relations. **Substantive law is that part of the law which creates, defines and regulates**

[2] G.R. No. 140500, 21 January 2002.

> **rights, or which regulates the rights and duties which give rise to a cause of action**; that part of the law which **courts are established to administer**; as **opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtains redress for their invasion.**
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> Recently, in Fabian v. Desierto, the Court laid down **the test for determining whether a rule is procedural or substantive**:
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> > "[I]n determining whether a rule prescribed by the Supreme Court, for the practice and procedure of the lower courts, abridges, enlarges, or modifies any substantive right, **the test is whether the rule really regulates procedure, that is, the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them. If the rule takes away a vested right, it is not procedural**. If the **rule creates a right such as the right to appeal, it may be classified as a substantive matter**; but if it **operates as a means of implementing an existing right** then the rule deals **merely with procedure.**"[3]

In short, substantive law is that part of the law which creates, defines, and regulates rights and, in turn, gives rise to a cause of action. Meanwhile, procedural law is that set of rules which regulates procedure or the processes to enforce or obtain redress from an invasion of an existing right.

On this basis, the LOA cannot be considered part of procedural law since it is not a process or procedure in enforcing a right. In fact, it is clearly part of substantive law since it is the very authority or right granted to the revenue officer in order for him/her to conduct the audit and assessment of a taxpayer. This is consistent with the findings of the Supreme Court in ***Commissioner of Internal Revenue v. Sony Philippines, Inc., (hereinafter referred to as "Sony Case")***,[4] to wit:

> "Based on Section 13 of the Tax Code, **a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It 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.** The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
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> xxx xxx xxx
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> **Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment**. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**."[5]

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[3] Emphasis supplied.
[4] G.R. No. 178697, 17 November 2010.
[5] Emphasis supplied.

Contrary to petitioner's point of view, an LOA is an indispensable requirement before a revenue officer can conduct the audit and assessment of a taxpayer. This is so because, other than petitioner, all other agents of the Bureau of Internal Revenue ("BIR") have no inherent or explicit right to audit and assess a taxpayer. It is only petitioner who explicitly has the power to do this. Hence, before a revenue officer may conduct such aforementioned acts, he or she must first be authorized by petitioner. This is the clear import of ***Section 6(A) of the Tax Code***, which states:

> "SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. -**
>
> (A) Examination of Return 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."[6]

Although ***Section 6(A) of the Tax Code*** does not specifically mention the term "LOA," this does not discount the fact that the authority mentioned in the above-quoted provision pertains to the same.

A close reading of the other provisions of the Tax Code, most specifically its ***Section 13***, identifies the authority granted to a revenue officer to conduct the audit and assessment of a taxpayer as the LOA. Consistent with the rule under statutory construction that "every part of the statute must be interpreted with reference to the context, i.e., that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment,"[7] it follows that the LOA mentioned in ***Section 13*** is also the same authority described under ***Section 6(A) of the Tax Code***.

This interpretation is, likewise, consistent not only with the ***Sony Case*** but also with ***Medicard Philippines, Inc. v. CIR (hereinafter referred to as "Medicard Case")***,[8] which provides:

> "Based on the afore-quoted provision, **it is clear 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**. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or**

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[6] Emphasis supplied.
[7] Philippine International Trading Corporation v. Commission on Audit, G.R. No. 183517, 22 June 2010.
[8] G.R. No. 222743, 5 April 2017.

> **his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**"[9]

Considering the importance of the LOA, it, therefore, cannot be equated as an equivalent of a Letter Notice as suggested by petitioner. The ***Medicard Case*** is clear that the Letter Notice is merely "a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns" and not an instrument conferring authority to audit and assess a taxpayer. It is not the same as the LOA, even if the same should be issued by petitioner himself. The former is materially different from the later. These differences were discussed by the Supreme Court in the ***Medicard Case***, to wit:

> "The following differences between an LOA and LN are crucial. **First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 120 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under RMO No. 32-2005, that after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner. Unfortunately, this was not done in this case.**"[10]

To reiterate, the LOA is an indispensable requirement in the performance of the audit and assessment of a taxpayer, not only because it serves as the authority conferred by the CIR, who has the explicit right under the Tax Code to perform the said function, to his authorized revenue officers, but also because it protects the due process rights of the taxpayer, considering that it is through the LOA that the taxpayer is informed of the scope of the investigation to be performed and the authority of the said revenue officer.

Lastly, the Court *En Banc* cannot subscribe to the argument of petitioner that the Court violated his right to due process when it resolved the issue on the revenue officers' authority, which was not raised by respondent in its pleadings. As explained in the assailed Decision, ***Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals***[11] as elaborated in ***Commissioner of Internal Revenue v. Lancaster Philippines, Inc.***[12] provides that the Court of Tax Appeals is not bound by the issues raised by the parties. Correlatively, it may rule on related issues necessary to achieve an orderly disposition of the case.

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[9] Emphasis supplied.
[10] Emphasis supplied.
[11] A.M. No. 05-11-07-CTA, 22 November 2005.
[12] G.R. No. 183408, 12 July 2017.

Applying the said rule in this case, it cannot be denied that a review of the revenue officers' authority is intrinsically related to the issue of the validity of the assessments issued against respondent. Given the same, this Court is well within its authority to resolve the said issue.

In view of the foregoing, this Court finds no reason to disturb the findings of the Court *En Banc* in the assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration Re: Decision dated 29 October 2020 is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice