REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

ENJAY HOTELS, INC.,
Petitioners,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9273

Members:

CASTAÑEDA, JR., *Chairperson,*
and
MANAHAN, *JJ.*

Promulgated:
APR 05 2019 11:00 am

x- x

RESOLUTION

MANAHAN, *J.*:

To be resolved is respondent's **Motion for Reconsideration**[1] filed on February 12, 2019 which prays that this Court reverses and sets aside its *Decision* dated January 24, 2019 and issues a new one instead, ordering the petitioner to pay the total amount of ₱37,283,707.53 for deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), final withholding VAT (FWVAT) and documentary stamp tax (DST) for taxable year (TY) 2009 as well as the resulting surcharges and interests. The dispositive portion of the assailed decision reads as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment dated January 25, 2016 assessing petitioner for deficiency income tax, value-added tax, expanded withholding tax, final withholding VAT and documentary stamp tax, plus surcharge, interest and compromise penalty, for the taxable year 2009, in the aggregate amount of ₱37,283,707.53 is hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**.

[1] Docket, CTA Case No. 9273, Vol. III, pp. 977-997.

Respondent argues that this Court erred in ruling that the assessments are void because the revenue officers who conducted the audit of petitioner's books of accounts were not authorized by a letter of authority (LOA) applying the ruling of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[2] (*Medicard* case) in the instant case.

Respondent further argues that this Court erred in granting a relief that was not prayed for by the petitioner, hence, his basic right to fair play and due process was violated.

On the other hand, petitioner avers that this Court did not commit any error in the assailed decision because the findings are pursuant to and directly related to the issue sought for resolution by both parties and that the revenue officers who conducted the audit were not authorized through a LOA. Further, it avers that this Court did not err in applying the *Medicard* case.

We deny said motion.

Respondent avers that the audit conducted by the succeeding revenue officers through a Memorandum of Assignment was valid and the governing rules that should be followed is Revenue Memorandum Order (RMO) No. 8-2006[3] particularly Item F(2) because the jurisdiction still remains with their office despite the transfer of the original revenue officers.

In 2009, the prevailing provisions of the law that governs the power of the respondent to examine any taxpayer's books of account and the requirement when such power is delegated to his revenue officers are under Sections 6(A) and 13 of the 1997 National Internal Revenue Code (NIRC), as amended, to wit:

> **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

[2] G.R. No. 222743, April 5, 2017.
[3] Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS).

> 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.
>
> xxx xxx xxx
>
> **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. (*Underscore ours*)

The above provisions of the 1997 NIRC, as amended, are implemented under RMO No. 43-90 entitled "Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit." The specific provisions of said implementing rules and regulations that govern the issuance of LOA and the procedure on an instance when there is a transfer of a revenue officers named in the said LOA are stated under its paragraph C(1) and (5), to wit:

> "C. Other policies for issuance of L/As.
>
> 1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.
>
> xxx xxx xxx
>
> 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*)

As shown in the above-provisions, the execution of an LOA is a must in every conduct of an audit or investigation. Such requirement is of equal importance when the revenue officer originally assigned in the conduct of a particular audit/investigation is transferred and a new revenue officer (RO) takes over the audit that has been conducted by the former RO.

Thus, respondent is totally mistaken that a mere memorandum of assignment will suffice as the legal basis for the succeeding ROs to take over the audit/ investigation earlier conducted by those ROs originally-named in the LOA.

Actually, such practice of issuing a referral memorandum was prohibited in a succeeding regulation which respondent issued on July 3, 2007 under RMO No. 12-2007, to wit:

> "IV. Policies and Procedures
>
> xxx xxx xxx
>
> 17. **The practice of issuing** mission orders, correspondence letters, **referral memoranda** or any other similar orders **for the purpose of audit examination and assessment of internal revenue taxes is hereby strictly prohibited**. For purposes of surveillance, stocktaking, TCVD or any similar purpose, the issuance of mission orders shall be governed by the pertinent revenue issuances issued for that purpose." (*Emphasis supplied*)

The prohibition on the issuance of referral memorandum in the conduct of an audit/investigation under Item F(17) of RMO No. 12-2007 emphasizes the importance of the issuance of an LOA to grant authority to the succeeding revenue officers as mandated under RMO No. 43-90 in all audit/investigation of an RO whether on original assignment or re-assignment bases due to the transfer of assignment or separation from the service of ROs.

A scrutiny of the provisions of Item F(2) of RMO No. 8-2006 reveals that it merely refers to the procedure on the disposition of the case dockets relative to the audit/investigation which the originally-assigned ROs are supposed to turn-over to the succeeding ROs and not the grant of authority to the latter.

Further, RMO No. 8-2006 did not repeal RMO No. 43-90 and neither did such rules and regulation prohibit the issuance of a new LOA for the succeeding ROs who will take-over the audit/investigation.

Respondent also argues that the *Medicard* case should not be applicable in the instant case because the factual antecedents in the said *Medicard* case are different.

It is true that the factual antecedents in the instant case are different from that of the *Medicard* case. However, this Court merely expounded on the disquisitions in the assailed decision as to the effect of the lack of an LOA in the conduct of audit/investigation by using the *rationale* of the Supreme Court in the said case.

Respondent should be aware that this Court is mandated to take cognizance of the rulings which are promulgated by the Supreme Court as ruled in the case of *The Heirs of Felicidad Canque v. Court of Appeals et al.*,[4] to wit:

> Clearly, the Court of Appeals committed a reversible error because it palpably failed to consider in its August 25, 1994 Decision the aforementioned ruling of the Supreme Court promulgated twenty months earlier on January 27, 1993. Unfortunately, this is not the first time for this Court to come upon such a slip. *Peltan Development vs. Court of Appeals* ruled that **every court must take cognizance of decisions this Court has rendered because they are proper subjects of mandatory judicial notice** xxx [and] **more importantly form part of the legal system**. We stress that **members of the bench have a responsibility to know and to apply the latest holdings of the Supreme Court**. The nature of their calling requires no less. (*Emphasis supplied*)

Such duty to follow the legal doctrine enunciated by the Supreme Court is not only pursuant to the doctrine of judicial notice but because it is the only institution which the courts should follow as pronounced in the case of *Manila Electric Company v. Philippine Consumers Foundation, Inc. et al.*,[5] to wit:

> A lower court cannot reverse or set aside decisions or orders of a superior court, especially of this Court, for to do so will negate the principle of hierarchy of courts and nullify the essence of review. A final judgment, albeit erroneous, is binding on the whole world. Thus, it is the duty of the lower courts to obey the Decisions of this Court and render obeisance to its status as the apex of the hierarchy of courts. "A becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation." "**There is only one Supreme Court from whose decisions all other courts should take their**

[4] G.R. No. 119184, July 21, 1997.
[5] G.R. No. 101783, January 23, 2002.

> **bearings**," as eloquently declared by Justice J. B. L. Reyes. (*Emphasis supplied*)

Further, it is well-settled that courts must be cognizant of the decisions of the Supreme Court because of the doctrine of *stare decisis* as amply explained in the case of *Amelia D. De Mesa et al. v. Pepsi Cola Products, Inc. et al.*,[6] to wit:

> The principle of *stare decisis et non quieta movere* is entrenched in Article 8 of the Civil Code, to wit:
>
> > ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.
>
> It enjoins adherence to judicial precedents. It requires our courts to follow a rule already established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. **The doctrine of stare decisis is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument**. (emphasis supplied)

Thus, petitioner's argument of erroneous usage by this Court of the abovementioned case is totally misplaced.

Lastly, respondent argues that the issue on authority of the revenue examiners to conduct the audit/investigation was never raised by the petitioner in its petition for review, thus, by granting this relief that was not prayed for by the petitioner, this Court has violated his basic right to fair play and due process.

Respondent must be aware that this Court is not precluded by law from tackling an issue not raised by any party of the case for the proper disposition of the case at hand. In fact, the 2nd paragraph of Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended, provides that this Court is not limited by the issues raised by the parties in their pleadings but may also pass upon related issues which are necessary to achieve an orderly disposition of any case at hand, to wit:

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[6] G.R. Nos. 153063-70, August 19, 2005.

> SECTION 1. Rendition of judgment. - xxx
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

Such provision of the law was supported by the decision of the Supreme Court in the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[7] which held that:

> On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
> > SECTION 1. *Rendition of judgment.* - x xx
> >
> > In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter.

Respondent should be aware that the issue on the authority of the RO to conduct the audit/investigation is directly related to the issue of the validity of the resulting assessment issued by the said RO. Notably, it is well settled that "a void assessment bears no valid fruit"[8] in the absence of a valid LOA[9] due to violation of taxpayer's right to due process[10].

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[7] G.R. No. 183408 dated July 12, 2017.

[8] *Commissioner of Internal Revenue v. Azucena T. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006.

[9] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

[10] *Supra.*, Note 2.

There being no new issues or matters raised by the respondent in the instant motion, this Court finds no compelling reason to reverse the ruling in the assailed decision.

WHEREFORE, premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit and the assailed *Decision* dated January 24, 2019 is hereby **AFFIRMED.**

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice