REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

COMPANIA DE GARAY, INC.,
Respondent.

CTA EB NO. 2219
(CTA Case No. 9540)

Present:
DEL ROSARIO, *P.J.,*
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:
DEC 09 2022 4:05

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RESOLUTION

RINGPIS-LIBAN, *J.*:

This resolves Petitioner's "Motion for Reconsideration (Re: Decision dated 21 June 2022)"[1] ("Motion for Reconsideration") filed on July 13, 2022, with Respondent's "Comment on Motion for Reconsideration"[2] ("Comment") filed on September 02, 2022 *via* registered mail.

Petitioner's Motion for Reconsideration prays for the reversal and setting aside of the Decision promulgated on September 24, 2019 by the Court of Tax Appeals Second Division ("Second Division") and subsequent Resolution dated January 08, 2020 in CTA Case No. 9540. Essentially, Petitioner requests that the Decision promulgated on June 21, 2022, affirming the court a quo's Decision and Resolution, be overturned and that a new judgment be rendered declaring the validity of the subject assessments.

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1 Rollo, pp. 91-102.
2 *Id.,* pp. 107-114.

The dispositive portion of the Decision promulgated by this Court on June 21, 2022 reads:

> "**WHEREFORE**, premises considered, the Petition for Review filed with the Court *En Banc* on February 13, 2020 is **DENIED** for lack of merit. Accordingly, the September 24, 2019 Decision and January 08, 2020 Resolution in CTA Case No. 9540 are **AFFIRMED**.
>
> Consequently, Petitioner is **ENJOINED** and **PROHIBITED** from collecting against Respondent the amounts representing the assessed deficiency income tax, VAT, and compromise penalty which were set aside and cancelled by this Court.
>
> **SO ORDERED.**"[3]

In her Motion for Reconsideration, Petitioner contends that the Court erred in ruling that the assessment issued against Respondent is void due to the revenue officer's lack of authority to conduct the assessment; that the latter was made pursuant to a Letter Notice ("LN") instead of a Letter of Authority ("LOA"). Furthermore, Respondent's right to due process was not violated as it was given the ample opportunity to respond to the LN and dispute the assessment.

Likewise, Petitioner argues that the LOA is not indispensable especially when it is the Commissioner of Internal Revenue ("CIR") who authorizes the examination of the returns of taxpayers. This is because the only requirement in Section 6(A) of the National Internal Revenue Code ("NIRC") of 1997, as amended, is that notice be given to the taxpayer. It is only when the authority to audit a taxpayer emanates from a Regional Director that an LOA becomes relevant pursuant to Sections 10 and 13 of the NIRC of 1997, as amended.

Lastly, Petitioner posits that the Court erred in enjoining Petitioner from collecting the assessed deficiency taxes. Respondent failed to show the existence of its clear and unmistakable right to an exemption, and consequently, to an injunctive relief upon the collection of its tax liability. Moreover, the Decision of this Court has yet to reach finality and as such the government should not be prevented from collecting taxes.

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[3] *Id.,* Decision dated June 21, 2022, p. 89.

On the other hand, Respondent in its Comment maintains that the arguments interposed by Petitioner are mere rehash that deserve scant consideration.

Respondent points out that the issuance of an LOA is indispensable to justify a valid assessment. Additionally, no recommendation from the assigned revenue officer was issued for the issuance of an LOA by the Regional Director as enunciated in Revenue Memorandum Order ("RMO") No. 32-2005[4].

Respondent asserts as well that the issue at bar in not novel, and that the Supreme Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[5] upheld the right of a taxpayer to due process as it distinguished an LOA from LN requiring the former in making an assessment valid.

In closing, Respondent submits that Petitioner did not observe its own rules under Section 3 of Revenue Regulations ("RR") No. 12-99, as amended by RR No. 18-2013.

We resolve to deny Petitioner's Motion for Reconsideration for lack of merit.

The arguments raised by Petitioner in her motion are mere recapitulation of the arguments she has raised in her Petition for Review filed with this Court. In addition, these issues have been amply considered, weighed and resolved in the Decision promulgated on June 21, 2022. Thus, We shall not belabor, in this Resolution, to repeat the disquisitions made therein.

We find no reversible error in the Court in Division's decision that absence of an LOA renders the subject assessments as null and void. Section 6(A)[6] of the NIRC of 1997, as amended, must be read in conjunction with

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4 Prescribing Guidelines and Procedures in Handling Letter Notices for Deployment via the Information Delivery Portal in the Years 2005 Onwards for Audit and Enforcement Purposes, November 24, 2005.

5 G.R. No. 222743, April 05, 2017.

6 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.

Sections 10(c)[7] and 13[8]. *Ut res magis valeat quam pereat.* It is a basic rule in statutory construction that because a statute is enacted as a whole and not in parts or sections, the statute should be construed and given effect as a whole. A provision or section which is unclear by itself may be made clear by reading and construing it in relation to the whole statute.[9]

Section 6(A) declares that an authorization must first be made before a taxpayer may be examined and his or her correct amount of tax assessed. To complete the picture, Sections 10(c) and 13 specifies that the authorization being referred to is the LOA. This was clarified by the Supreme Court in *Commissioner of Internal Revenue v. Mcdonald's Philippines Realty Corp.*[10], to wit:

> "**The LOA is** the concrete manifestation of **the grant of authority bestowed** by the CIR or his authorized representatives to the revenue officers, **<u>pursuant to Sections 6, 10(c) and 13 of the NIRC.</u>**"[11]

The High Court further explained in the said case that the issuance of an LOA is not a mere technicality or formality but a requirement of due process in the audit or investigation by the Bureau of Internal Revenue (BIR), the LOA issued prior to examination and assessment of a taxpayer.

Anent Petitioner's contention that an LOA is only needed when the authority to audit a taxpayer emanates from a Regional Director, again Section 6(A) of the NIRC of 1997, as amended, must be read together with Sections 10(c) and 13. The authority to be given to a revenue officer by the CIR or his duly authorized representative pertains to the LOA itself. Every part of a statute should be given effect on the theory that it was enacted as an integrated measure and not as a hodge-podge of conflicting provisions.[12]

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7 SEC. 10. *Revenue Regional Director.* - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:

xxx xxx xxx

(c) Issue Letters of authority for the examination of taxpayers within the region;

8 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.

9 Ruben E. Agpalo, Statutory Construction, Sixth Edition (2009).

10 G.R. No. 242670, May 10, 2021.

11 *Emphasis and underscoring supplied.*

12 JMM Promotions & Management, Inc. v. National Labor Relations Commission and Ulpiano L. De Los Santos, G.R. No. 109835, November 22, 1993.

Additionally, the recognition that the issuance of an LOA is still mandatory even if such authority came from the CIR may be found in the BIR's own issuance. Section D(4) of RMO No. 43-90[13] provides:

> "For the proper monitoring and coordination of the issuance of Letter of Authority, the **only BIR officials authorized to issue and <u>sign Letters of Authority</u> are the Regional Directors, the Deputy Commissioners and the <u>Commissioner</u>**. 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."[14]

Finally, Petitioner is mistaken in her notion that this Court is not empowered in enjoining her from collecting the assessed deficiency taxes, when we ruled in Our Decision promulgated on June 21, 2022 that the assessments in the instant case were void. The determination of the invalidity of the subject assessments necessarily carries with it the verdict that the same should not be enforced by Petitioner against Respondent.

It is recognized principle that courts have power to do all things reasonably necessary for the administration of justice within the scope of its jurisdiction, and for the enforcement of its judgment and mandates.[15] The decree prohibiting Petitioner from collecting the invalidated assessments is an ancillary relief granted to Respondent. It is intended to guarantee that this Court's judgment will not be rendered nugatory and ineffectual, albeit it has yet to reach finality by virtue of the instant motion for reconsideration.

In sum, the Court *En Banc* finds no cogent reason to overturn the September 24, 2019 Decision and January 08, 2020 Resolution of the Second Division.

WHEREFORE, premises considered, Petitioner's "Motion for Reconsideration (Re: Decision dated 21 June 2022)" is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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13 September 20, 1990.
14 *Emphasis and underscoring supplied.*
15 Philippine Airlines Employees Association vs. Philippine Air Lines, Inc., G.R. No. L-18559, June 30, 1964.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
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

CORAZON G. FERRER-FLORES
Associate Justice