REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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HEMISPHERE – LEO BURNETT, INC., Petitioner,	**CTA EB No. 2371** (CTA Case No. 9749)
	Present:
- versus -	**DEL ROSARIO,** P.J., **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** JJ.
COMMISSIONER OF INTERNAL REVENUE, CAESAR R. DULAY, OIC-ASSISTANT COMMISSIONER OF LARGE TAXPAYERS SERVICE, TERESITA M. ANGELES, AND THE BUREAU OF INTERNAL REVENUE, Respondents.	***Promulgated:*** AUG 30 2022 11:36 am

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RESOLUTION

UY, J.:

For resolution is petitioner's ***MOTION FOR RECONSIDERATION***[1] filed on May 4, 2022, without respondent's comment despite due notice,[2] praying that the Court *En Banc's Decision* promulgated on April 11, 2022 be reversed and set aside. The dispositive portion thereof reads as follows:

[1] EB Docket, pp. 218 to 250.

[2] Records Verification dated June 29, 2022 issued by Leocadia D. Victoria, Records Officer I, Receiving Unit – Judicial Records Division, and noted by Benjamin D. Pineda, Jr., Chief Judicial Staff Officer, Judicial Records Division, states that respondents failed to file their Comment on petitioner's *Motion for Reconsideration*. Per *Notice of Resolution* dated May 25, 2022, respondents received the *Resolution* dated May 25, 2022 ordering them to file their Comment on the *Motion for Reconsideration* within five (5) calendar days from notice, on May 30, 2022.

> "**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. Accordingly, the *Decision* promulgated on June 3, 2020, and the *Resolution* promulgated on October 6, 2020 by the Second Division of this Court in CTA Case No. 9749 are hereby **AFFIRMED**.
>
> **SO ORDERED.**"

Petitioner's arguments:

In its *Motion*, petitioner reiterates its position that the instant case involves both factual and legal issues. According to petitioner, the filing of all its returns for the period January 1, 2012 to December 31, 2012 are factual matters from which the reckoning dates of the three (3)-year prescriptive period are counted.

Petitioner likewise asserts that the Court *En Banc* erred in ruling that the prescriptive periods under Sections 203 and 222 of the National Internal Revenue Code (NIRC) of 1997, as amended, do not apply to the issuance of a Letter of Authority (LOA). Allegedly, the issuance of the LOA is part of the audit process or assessment. As such, the same should be governed by the three (3)-year prescriptive period. Consequently, an LOA issued beyond the three (3)-year prescriptive period under Section 203 of the NIRC of 1997, as amended, is akin to the absence of an LOA which will result in the declaration of nullity and cancellation of the tax assessment.

Relying on Revenue Audit Memorandum Order (RAMO) No. 01-00[3] and Revenue Memorandum Circular (RMC) No. 141-19,[4] petitioner contends that an LOA should be issued before the expiration of the three (3)-year prescriptive period.

Further, petitioner invokes the Supreme Court's ruling in *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*[5] (*PDI* case) to back up its assertion that under Section 222 of the NIRC of 1997, as amended, fraud is never imputed, and the fraud contemplated by law is actual and not constructive.

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[3] Dated March 17, 2000.
[4] Dated December 20, 2019.
[5] G.R. No. 213943, March 22, 2017.

Allegedly, the burden rests upon respondents to prove that the issuance of the subject LOA falls under the exception to the general rule found in Section 222 (a) of the NIRC of 1997, as amended.

Moreover, petitioner claims that the Court *En Banc* erred in assuming that the ten (10)-year prescriptive period is applicable in the instant case even though respondents did not allege and present any evidence that petitioner filed false or fraudulent returns for taxable year 2012.

In addition, petitioner maintains that it is entitled to the issuance of a *Writ of Prohibition* permanently enjoining respondents from implementing the subject LOA because respondents acted with grave abuse of discretion amounting to lack or excess of jurisdiction when they issued the subject LOA beyond the three (3)-year prescriptive period; thus, null and void.

Finally, petitioner argues that a void LOA cannot be the basis of a valid tax assessment for a void LOA can only correspond to a void tax assessment.

THE COURT *EN BANC*'S RULING

We deny the instant *Motion for Reconsideration*.

After a careful examination and consideration of petitioner's arguments in the instant *Motion*, We note that the same are mere reiterations of matters which have already been considered, weighed and resolved in the assailed *Decision*.

The prescriptive periods under Sections 203 and 222 of the NIRC of 1997, as amended, do not apply to the issuance of an LOA.

As already discussed in the assailed *Decision*, Sections 203 and 222 of the NIRC of 1997, as amended, govern the issuance of a tax assessment and <u>**not**</u> the issuance of an LOA.

To emphasize, an assessment is different from an LOA. In the context in which it is used in the NIRC of 1997, as amended, **an assessment is a written notice and demand made by the Bureau of Internal Revenue (BIR) on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed**.[6] On the other hand, **an LOA is the authority given to the appropriate revenue officer to examine the books of account and other accounting records of the taxpayer in order to determine the taxpayer's correct internal revenue liabilities and for the purpose of collecting the correct amount of tax. The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.**[7]

Without a doubt, an LOA, which authorizes a revenue officer to examine the books of account and other accounting records of a taxpayer, is distinct and separate from an assessment, which is a written notice and demand for the settlement of a tax liability that has been definitely determined.

In fact, in *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*,[8] the Supreme Court declared that the assessment contemplated in Sections 203 and 222 of the NIRC of 1997, as amended, refers to the **service of the FAN** for it contains not only a computation of tax liabilities but also a demand for payment within a prescribed period; and that as soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded.

Accordingly, what is required to be issued within the three (3)-year prescriptive period or the extended period under Sections 203 and 222 of the NIRC of 1997, as amended, is the FAN and not the LOA.

There is likewise no merit in petitioner's contention that an LOA should be issued before the expiration of the three (3)-year prescriptive period as allegedly stated in RAMO No. 01-00 and RMC No. 141-19. A cursory reading of said issuances reveals that there is nothing therein which specifically mandates that an LOA must be issued prior to the lapse of the three (3)-year prescriptive period under Section 203 of the NIRC of 1997, as amended.

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[6] *Lucas G. Adamson, et al. v. Court of Appeals, et al.*, G.R. Nos. 120935 and 124557, May 21, 2009.
[7] *Commissioner of Internal Revenue v. De La Salle University, Inc.*, G.R. Nos. 196596 and 198841, November 9, 2016.
[8] G.R. No. 227544, November 22, 2017.

As regards petitioner's reliance on the *PDI* case, the same is specious as the issues and factual milieu in the said case are not on all fours with the present case. In the *PDI case,* what is involved is the issue on whether the *Waivers of the Statute of Limitation* executed by the BIR and the taxpayer effectively extended the three (3)-year prescriptive period; and consequently, whether the assessment made through the Formal Letter of Demand was issued within the prescriptive period.

In the instant case, however, the issue primarily hinges on whether the issuance of LOA is governed by the rules on prescription. Furthermore, it must be noted that unlike in the *PDI* case, no FAN has yet been issued by respondents in this case.

Evidently, the ruling in the *PDI* case finds no application in the present case in view of the disparity of the issues involved as well as the factual background of the case.

Moreover, with respect to petitioner's insistence that the three (3)-year prescriptive period should apply to the instant case since fraud is never imputed, the same deserves scant consideration.

It bears reiterating that it is premature at this point to conclude that petitioner is entitled to the benefits granted under Section 203 of the NIRC of 1997, as amended, considering that no actual assessment has yet been issued by respondents. Further, as held in the assailed *Decision*, the BIR should not be restrained, in the first instance, to determine whether there is fraud or falsity in the tax returns filed by taxpayers, including petitioner.

Petitioner is not entitled to a Writ of Prohibition.

Petitioner argues that it is entitled to the issuance of a *Writ of Prohibition* permanently enjoining respondents from implementing the subject LOA because respondents acted with grave abuse of discretion amounting to lack or excess of jurisdiction when they issued the subject LOA beyond the three (3)-year prescriptive period; thus, null and void.

We disagree.

As discussed in the assailed *Decision*, in order for a Petition for Prohibition to prosper, there should be, among other things, grave abuse of discretion amounting to lack or excess of jurisdiction.[9] There is grave abuse of discretion when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or that the lower court has exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility. It must be so patent and gross as to amount to an evasion or virtual refusal to perform the duty enjoined or to act in contemplation of law.[10]

In the instant case, We find that respondents neither acted capriciously nor whimsically in issuing the subject LOA. As already discussed, the issuance of an LOA is not governed by the rules on prescription under Sections 203 and 222 of the NIRC of 1997, as amended. Accordingly, grave abuse of discretion cannot be imputed to respondents.

In view of the foregoing, the Court *En Banc* finds no compelling reason to reconsider, modify, or reverse the assailed *Decision*.

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:

(With due respect, I reiterate my Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(With due respect, I maintain my vote in the Decision)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[9] Section 2, Rule 65 of the Revised Rules of Court.
[10] *David Delfin v. Court of Appeals, et al.*, G.R. No. L-21022, February 27, 1965.

(I concur with Justice Erlinda P. Uy)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With due respect, I maintain my vote in the Decision)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice