REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

***EN BANC***
*********

**OPULENT LANDOWNERS, INC.,**
Petitioner,

**- versus -**

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA EB NO. 1802**
(CTA Case No. 8956)

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**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

**- versus -**

**OPULENT LANDOWNERS, INC.,**
Respondent.

**CTA EB NO. 1803**
(CTA Case No. 8956)

***Present:***

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

***Promulgated:***

OCT 16 2019
4:12 p.m.

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# RESOLUTION

**UY, *J.*:**

For resolution is the **"MOTION FOR RECONSIDERATION (Re: Decision dated 05 July 2019)"** filed by the Commissioner of Internal

Revenue (CIR) on July 24, 2019,[1] with the **"COMMENT *(on Commissioner of Internal Revenue's Motion for Reconsideration)*"** filed by Opulent Landowners Inc. (OLI) on August 29, 2019,[2] praying for the reversal and setting aside of the Court *En Banc's* Decision dated July 5, 2019, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the *Petition for Review* in CTA EB No. 1802 filed by OLI is **GRANTED**; while the *Petition for Review* in CTA EB No. 1803 filed by the CIR is **DENIED** for lack of merit.
>
> Accordingly, the Decision dated September 19, 2017 and the Resolution dated February 14, 2018, both rendered by the Court in Division in CTA Case No. 8956, are **REVERESED** and **SET ASIDE**. The deficiency tax assessments issued against OLI for taxable year 2009 are **CANCELLED** and **SET ASIDE** for being null and void.
>
> **SO ORDERED.**"

***CIR's arguments:***

In his *Motion*, the CIR argues that the Court *En Banc* erred in granting a relief that was not prayed for by OLI; that want of authority of the revenue officer (RO) was never part of the issues raised during the trial and even on appeal; and that the CIR's right to fair play and due process was violated.

Assuming for the sake of argument that the Court may rule on an issue that was not part of the trial, nor found in the pleadings, the Court allegedly erred in ruling on an undisputed issue, and in ruling that the assessments are void because the ROs who conducted the audit were allegedly not authorized through a Letter of Authority (LOA).

Finally, the CIR contends that the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[3] ("*Medicard* case") is not applicable and that the same is not on all fours with the instant case.

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[1] EB Docket, pp. 162 to 189.
[2] EB Docket, pp. 194 to 205.
[3] G.R. No. 222743, April 5, 2017.

***OLI's arguments:***

In its *Comment*, OLI argues that the authority of the examining officers is an issue that goes into the validity of the deficiency assessment and that its resolution is necessary to "achieve an orderly disposition of the case". Thus, OLI maintains that the Court acted well within its authority.

Likewise, OLI claims that as early as the *Petition for Review* filed with the Court in Division, one of its prayers is to declare as null and void the assessment notices. It submits that in resolving the validity of the assessments, the same would necessarily entail the examination of all the aspects that lead to its issuance, one of which is the authority of the examining officers.

OLI further points out that the *Medicard* case is applicable in the instant case since the basic facts in both cases are essentially the same; and that the examining officers in both cases were allegedly not armed with the proper authority as embodied in an LOA.

Lastly, OLI stresses that it is the issuance of an LOA, and not a mere *Memorandum of Assignment* (MOA), which gives specific RO/s the authority to perform assessment functions.

## THE COURT *EN BANC'S* RULING

The CIR's *Motion for Reconsideration* lacks merit.

***This Court is empowered to rule on related issues necessary to achieve an orderly disposition of the case.***

The CIR contends that his basic right to fair play and due process was violated when the Court *En Banc* addressed the issue, which was never raised during trial or in the pleadings, relative to the authority of the ROs to examine OLI's books of accounts and other accounting records for taxable year 2009.

We disagree.

To reiterate, in *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[4] the matter was already settled by the Supreme Court, to wit:

> "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 x x.
> >
> > 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." *(Emphasis supplied)*

Based on the foregoing jurisprudential pronouncements, the Supreme Court did not only affirm this Court's authority to rule upon related issues necessary to achieve an orderly disposition of the case; but also specifically states that this Court may consider the question on the scope of authority of revenue officers who were named in the LOA, which impliedly covers the issue of whether an RO is authorized through an LOA in the first place. Thus, this Court is authorized to resolve the said issue, as in this case.

Furthermore, in *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*,[5] the Supreme Court held:

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[4] G.R. No. 183408, July 12, 2017.
[5] G.R. No. 163835, July 7, 2010.

"The general rule is that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.

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The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:

> **The appellate court may, in the interest of justice, properly take into consideration in deciding the case *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings.** This is in consonance with the liberal spirits that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them. [Emphasis supplied.]

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Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance."

On the basis of the foregoing pronouncements, it is clear that while it is a general rule that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein, the same admits of certain exceptions, namely, (i) in the interest of justice, *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignore, and (ii) questions involving *matters of public importance*.

The question of whether the ROs who conducted the investigation of OLI's books of accounts and other accounting records for taxable year 2009 were authorized to do so is *a matter of record*. The BIR Records submitted by the CIR on May 7, 2015[6] vis-à-vis the evidence presented by the parties in the proceedings below can easily be examined to answer the said question. Furthermore, the same question is *a matter of public importance*. Taxpayers must always be assured that the ROs who conduct examination of their books of accounts and other accounting records for any given period are properly authorized by an LOA, pursuant to Section 6(A) of the National Internal Revenue Code (NIRC) of 1997, and as enunciated in the *Medicard* case.

With the foregoing disquisitions, the Court *En Banc* is justified in resolving, in the assailed Decision, the issue of whether or not the RO(s) who examined OLI was authorized by the CIR or his duly authorized representative, through an LOA.

***An LOA is the authority given to ROs to perform assessment functions.***

In the instant *Motion for Reconsideration*, the CIR contends that an LOA is not an "authorization letter" of the ROs; and that there is no requirement in the law that ROs must be identified in the LOA to have authority.

We likewise disagree.

In the *Medicard* case, the Supreme Court defined what an LOA is, to wit:

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[6] Division Docket (CTA Case No. 8956), p. 267.

> "**An 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. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** xxx.

Thus, the CIR's contention is contrary to the above-stated definition. Clearly, an LOA is, in fact, an authorization letter for the appropriate ROs assigned to perform assessment functions. It is so because the power to examine was ***not*** statutorily given to the said ROs, and for the latter to exercise such power, authority must be given to them by the CIR or his duly authorized representative. Such being the case, it is required that the ROs so authorized must be identified in the LOA. Without such authority to examine, the concerned ROs cannot perform assessment functions.

***Section 17 of the NIRC of 1997 cannot be used as a legal basis to dispense with the issuance of an LOA to authorize ROs who would perform assessment functions.***

The CIR also argues that Section 17 of the NIRC of 1997 provides the transfer or reshuffling of revenue officers, which means that, in natural occurrence of things, the RO indicated in the LOA need not be the one to complete the audit; and that there will be instances where the ROs would either retire, be reassigned, be taken ill, or die, prior to the completion of the audit investigation.

The argument of the CIR is misplaced.

Section 17 of the NIRC of 1997 provides as follows:

> "SEC. 17. *Assignment of Internal Revenue Officers and Other Employees to Other Duties.* – The Commissioner may, subject to the provisions of Section 16 and the laws on civil service, as well as the rules and

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> regulations to be prescribed by the Secretary of Finance, upon the recommendation of the Commissioner, assign or reassign internal revenue officers and employees of the Bureau of Internal Revenue, without change in their official rank and salary, to other or special duties connected with the enforcement or administration of the revenue laws as the exigencies of the service may require: *Provided*, That internal revenue officers assigned to perform assessment or collection functions shall not remain in the same assignment for more than three (3) years: *Provided, further,* That assignment of internal revenue officers and employees of the Bureau to special duties shall not exceed one (1) year."

A cursory reading of the foregoing provision would reveal that the NIRC of 1997 indeed grants the CIR the power to assign or re-assign internal ROs and employees, subject to certain limitations, one of which is that internal ROs assigned to perform assessment or collection functions shall not remain in the same assignment for more than three (3) years. However, nothing in the said provision states that the required LOA can be dispensed with; neither does it provide an exemption to the legal requirement that an RO must be authorized, through an LOA, to perform his/her assessment or collection functions.

It must be noted that the issue here is not whether an RO can be re-assigned to another BIR office, without completing the audit being made on a taxpayer. Instead, it is whether or not the ROs who conducted the investigation of the taxpayer are authorized to do so, through an LOA, as required by law and jurisprudence.

The Court *En Banc* is mindful that there can be instances where an RO, previously authorized through an LOA, may not be able to complete the examination of the concerned taxpayer, by reason of retirement, reassignment, illness, or death, of the said RO. But what is not acceptable to this Court is the CIR's proposition that because of such instances, there can already be an excuse not to issue an LOA. However, the said proposition finds no basis in law and jurisprudence. Despite the presence of any of the above-enumerated instances, the CIR or his duly authorized representative can still legally issue another LOA in favor of the ROs who are intended to replace the one(s) previously authorized.

***MOA is not sufficient to grant Revenue Officer the authority to conduct an audit investigation.***

The Court *En Banc* cannot subscribe to the CIR's view to the effect that a Memorandum Of Assignment or MOA is sufficient to authorize a Revenue Officer or RO to conduct the examination of OLI's books, since the MOA is merely the continuation of the audit which was already authorized under the LOA.

Again, We disagree.

As already pointed out in the assailed Decision, the failure of the CIR or his duly authorized representative to issue a new LOA runs counter to Revenue Memorandum Order (RMO) No. 43-90 dated September 20, 1990,[7] which lays down the guidelines for the audit/investigation and issuance of LOA (*hereinbelow referred to as L/A*), pertinent portions of which state:

> "C. Other policies for issuance of L/As.
>
> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority**.
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> xxx xxx xxx
>
> 5. <u>**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**</u>, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As." *(Emphases and underscoring supplied.)*

Based on the foregoing, all audit investigations must be conducted by a duly designated RO authorized to perform audit and examination of a taxpayer's books and accounting records, pursuant to an LOA. In case of re-assignment or transfer of cases to another RO, it is mandatory that a new LOA be issued with the corresponding notation thereto.

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[7]SUBJECT: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

In the present case, no new LOA was issued, and the only basis for the concerned ROs' authority was MOA No. ELTAD II-2013-LOA-0045 dated February 20, 2013 signed by Linda Grace Sagun, the OIC-Chief of Excise LT Audit Division II.[8] Thus, there being no new LOA issued, the said ROs were not duly authorized to conduct the audit investigation.

As for the CIR's reliance on RMO No. 8-2006 dated February 1, 2006,[9] the same is untenable.

Pertinent portions of the said administrative issuance read as follows:

> "IV. GUIDELINES
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> To ensure uniformity in the handling of LAs, the following guidelines are given:
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> xxx xxx xxx
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> F. **On Disposition of Dockets**
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> xxx xxx xxx
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> 2. In case the report of investigation submitted for review was returned to the investigating office for compliance with additional requirements and the original investigating Revenue Office (RO) and/or the Group Supervisor (GS) has been transferred, resigned or retired:
>
>    a. where the RO has resigned/retired or transferred but not the GS, the case shall be reassigned to another RO under the supervision of the same GS
>
>    b. where the GS has resigned/retired or transferred but not the RO, the case shall be continued by the same RO

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[8] Exhibit "R-1", BIR Records, p. 458; Refer also to Exhibit "R-20" (8Q/8A and 9Q/9A), Division Docket (CTA Case No. 8956), pp. 256 to 266.

[9] SUBJECT: Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS).

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c. where the GS has resigned/retired or transferred and the RO has also been transferred to another RDO but within the same RR, the case shall be remanded to the same RO, thru the previous RDO, by the AD. Updating of the status of the case shall be made by the same RO through authorized access given to the previous RDO

d. where the RO has resigned/retired or transferred to another RR but the GS is still assigned within the same RR, the case shall be remanded to the same GS, thru the previous RDO, by the AD. Updating of the status of the case shall be made by the same GS based on authorized access given by the previous RDO

e. where both the RO and the GS have resigned/retired or transferred to another RR, the case shall be reassigned to another RO under the supervision of another GS within the same RDO

**<u>In case of reassignment, a memorandum to that effect shall be issued by the head of the investigating office to the concerned taxpayer and the concerned RO and/or GS</u>**." *(Emphasis and underscoring supplied.)*

It is evident from the foregoing that Section IV, F(2) of RMO No. 8-2006 merely provides the procedure for the disposition of the docket of a case in case of reassignment of the concerned BIR personnel, through the issuance of a memorandum to that effect to the concerned taxpayer and the concerned RO and/or GS. Notably, the last paragraph pertaining to the issuance of a "memorandum to that effect" falls under the subheading "On Disposition of Dockets". Hence, the scope of the issuance of a memorandum should be taken to pertain only to the "disposition of dockets" of a reassigned or transferred case to another RO.

For sure, it cannot be taken to mean that the issuance of a MOA is tantamount to an LOA which thereby grants authority to the new RO to continue the audit/investigation of taxpayers.

Correspondingly, Section IV, F(2) of RMO No. 8-2006 could not have amended or repealed the requirement under the aforequoted provision of RMO No. 43-90 for the issuance of a new LOA in case of reassignment/transfer of cases to another RO.

In effect, Section IV, F(2) of RMO No. 8-2006 cannot be validly invoked by petitioner to dispense with the issuance of the new LOA for the ROs who merely continued the audit investigation of OLI for taxable year 2009.

But even granting that the earlier quoted provisions of RMO No. 8-2006 is to the effect that in the event of reassignment/transfer of a case to another RO, the issuance of an LOA can be dispensed with, the same is of no moment.

This is simply because it would run counter to the aforequoted Section 6(A) of the NIRC of 1997, and the corresponding pronouncement of the Supreme Court in the *Medicard* case, which became a part of the legal system of the Philippines.[10] As such, the said provisions of RMO No. 8-2006 cannot be considered as valid,[11] and must not be adhered to, as it is not legally binding. A mere administrative issuance cannot amend the law; the former cannot purport to do any more than implement the latter.[12]

Relative thereto, it must be emphasized that the CIR himself, through the issuance of Revenue Memorandum Circular (RMC) No. 75-2018[13], recognizes the ruling in the *Medicard* case and states the consequences for ROs initiating tax assessments or performing assessment functions without an LOA, to wit:

> "The judicial ruling, invoking a specific statutory mandate, states that **no assessments can be issued or no assessment functions or proceedings can be done without the prior approval and authorization of the**

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[10] Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines. (Article 8, Civil Code of the Philippines)

[11] Administrative or executive acts, orders or regulations shall be valid only when they are not contrary to the laws or the Constitution. [Article 7 *(last paragraph)*, Civil Code of the Philippines]

[12] *Secretary of Finance Cesar v. Purisima, et al. vs. Philippine Tobacco Institute, Inc.*, G.R. No. 210251, April 17, 2017.

[13] SUBJECT: The Mandatory Statutory Requirement and Function of a Letter of Authority.

> **authorized representative, <u>through an LOA</u>. The concept of an LOA is therefore clear and unequivocal. Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore 'inescapably void.'**
>
> xxx xxx xxx
>
> To help forestall any unnecessary controversy and to encourage due observance of the judicial pronouncements, **<u>any examiner or revenue officer initiating tax assessments or performing assessment functions without an LOA</u> shall be subject to appropriate administrative sanctions.**" *(Emphases and underscoring supplied)*

Correspondingly, We see no reason not to apply the said ruling in the *Medicard* case to the instant case.

In sum, We find no cogent reason to disturb the findings in the assailed Decision.

**WHEREFORE**, in light of the foregoing considerations, the instant *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

**SO ORDERED.**

**ERLINDA P. UY**
*Associate Justice*

WE CONCUR:

**ROMAN G. DEL ROSARIO**
*Presiding Justice*

Juanito C. Castañeda Jr.
*( I reiterate my Concurring and Dissenting Opinion )*
**JUANITO C. CASTAÑEDA, JR.**
*Associate Justice*

**ESPERANZA R. FABON-VICTORINO**
*Associate Justice*

**CIELITO N. MINDARO-GRULLA**
*Associate Justice*

**ON LEAVE**
**MA. BELEN M. RINGPIS-LIBAN**
*Associate Justice*

*( Concur with Justice Castañeda's Concurring and Dissenting Opinion )*
**CATHERINE T. MANAHAN**
*Associate Justice*

**JEAN MARIE A. BACORRO-VILLENA**
*Associate Justice*

**MARIA ROWENA MODESTO-SAN PEDRO**
*Associate Justice*