REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

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TANN PHILIPPINES, INC., Petitioner,	**CTA Case No. 9820**
	Members:
- versus -	**UY,** *Chairperson, and* **RINGPIS-LIBAN,** **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** AUG 02 2022 8:00 a.m.

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RESOLUTION

UY, J.:

For resolution is the ***MOTION FOR RECONSIDERATION (Re: Decision Promulgated on 16 December 2021)***[1] filed by respondent on March 10, 2022, with petitioner's ***COMMENT ON RESPONDENT'S MOTION FOR RECONSIDERATION***[2] filed on June 3, 2022, seeking the reconsideration of this Court's Decision[3] dated December 16, 2021, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the FDDA and Assessment Notices Nos. IT-122-LA158-2010-16-080; VT-122-LA158-2010-16-081; and WE-122-LA158-2010-16-082, dated July 21, 2016, issued against petitioner for deficiency

[1] Docket – Vol. 2, pp. 630 to 640.
[2] Docket – Vol. 2, pp. 647 to 654.
[3] Docket – Vol. 2, pp. 603 to 622.

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taxes for TY 2010 in the amount of ₱18,705,022.31, inclusive of increments, are **CANCELLED** and **SET ASIDE** for being null and void.

Respondent is hereby **ENJOINED** from proceeding with the collection of the said deficiency taxes during the pendency of the instant case.

SO ORDERED."

Respondent's arguments:

In support of his *Motion*, respondent argues that the Court erred in granting a relief that was no prayed for by petitioner. Allegedly, the issue on the want of authority of the revenue officer was never part of the issue raised during trial. As such, the CIR's basic right to fair play was allegedly violated.

Respondent further contends that the Court erred in ruling that the subject assessment is void. According to respondent, an LOA is not a requirement when the audit investigation is conducted by the Large Taxpayer Service (LTS) of the Office of the Commissioner of Internal Revenue (OCIR); and that the law merely requires that the CIR and his authorized representatives serve notice to the taxpayer of audit and investigation.

Finally, it is respondent's position that petitioner was not denied due process since it was informed of the identity of the revenue officers who will conduct the tax investigation.

Petitioner's counter-arguments:

In its *Comment*, petitioner counter-argues that the Court is empowered to rule on related issues necessary for the proper disposition of case; and that jurisprudence allows the CTA to look into the authority of the examining revenue officers even if the said matter has not been brought up in the pleadings.

Contrary to respondent's allegation, petitioner asserts that an LOA is required in all instances of tax examinations, and not only for audit investigations conducted by the BIR Regional Offices. MO

Petitioner likewise maintains that it is a fundamental rule in tax examinations that the revenue officers conducting the investigation should be duly authorized. In the present case, petitioner avers that it is undisputed that no new LOA was issued and that the only basis for the revenue officers' authority is a Memorandum of Assignment (MOA).

THE COURT'S RULING

After careful examination and consideration of the instant *Motion*, it is noted that the arguments raised therein are mere reiteration of matters which have already been considered, weighed and resolved in the assailed Decision.

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

The CIR argues that his basic right to fair play and due process was violated when the Court ruled on the issue of the want of authority of the revenue officers who conducted the subject tax assessment, as the same was never raised during trial.

We disagree.

To reiterate, the power of this Court to rule upon related issues was confirmed and recognized by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*[4], to wit:

> **"On whether the CTA can resolve an issue which was not raised by the parties, <u>we rule in the affirmative</u>.**
>
> 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

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[4] G.R. No. 183408, July 12, 2017.

> necessary to achieve an orderly disposition of the case. The text of the provision reads:
>
> > SECTION 1. Rendition of judgment. - xxx 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.
>
> **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 <u>even though the parties had not raised the same in their pleadings or memoranda.</u>** The CTA *En Banc* was likewise correct in sustaining the CTA Division's view concerning such matter." *(Emphasis and underscoring supplied)*

Evidently, 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 stated that this Court may consider the question on the scope of authority of revenue officer named in the LOA, which impliedly covers the issue of whether a revenue officer is authorized through an LOA in the first place.

Thus, the Court is justified in resolving the issue of whether or not the revenue officers who examined petitioner's books were authorized by the CIR or his duly authorized representative through an LOA.

The revenue officers were <u>not</u> duly authorized to conduct the audit investigation.

As regards respondent's contention that an LOA is not a requirement when the audit investigation is conducted by the OCIR, the same deserves scant consideration.

It is evident under Section 6(A) of the NIRC of 1997, as amended, that unless authorized by the CIR himself or his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.[5] In the case of *Commissioner of Internal Revenue vs Sony Philippines, Inc.*[6], the Supreme Court held that:

> "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."

Thus, petitioner's claim that an LOA is not necessary when the audit investigation is conducted by the OCIR has no legal basis.

In this case, it bears reiterating that the authority of ROs Jose R. Turbolencia and Fatima P. Sarrosa to conduct the audit of investigation of petitioner for TY 2010 was merely based on a MOA; and there is no showing that a new LOA was issued specifically authorizing the said ROs to continue the audit investigation of petitioner following the reassignment and transfer of the case.

In *Commissioner of Internal Revenue vs. Mcdonald's Philippines Realty Corp.*[7], the Supreme Court declared that a MOA or any equivalent document is **not** a proof of the existence of authority of the substitute or replacement revenue officer; and that the use of such document by an unauthorized revenue officer usurps the functions of the LOA. The Supreme Court likewise pronounced that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation **without a separate or amended LOA:** (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990.

Applying the foregoing jurisprudential pronouncement, the audit examinations conducted by ROs Turbolencia and Sarrosa are null

[5] *Medicard Philippines, Inc., vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.
[6] G.R. No. 178697, November 17,2010.
[7] G.R. No. 242670, May 10, 2021.

and void considering that their authority did not emanate from a valid grant of authority in the form of an LOA.

In fine, the Court 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 hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice