REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE INTERNATIONAL AIR TERMINALS CO., INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9181

Members:

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

Promulgated:

SEP 04 2018 4:00 pm

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RESOLUTION

MANAHAN, *J.:*

This resolves respondent's Motion for Reconsideration filed through registered mail on June 26, 2018 and received by the Court on July 2, 2018. Petitioner filed its Comment (to Respondent's Motion for Reconsideration dated June 26, 2018), on July 20, 2018.

Respondent seeks reconsideration of the assailed Decision dated June 6, 2018, which disposed of the case as follows:

> **WHEREFORE**, the instant Petition for Review is **GRANTED**. Accordingly, the assessments for deficiency income tax and VAT under Assessment Notice Nos. IT-LN0158-11-15-342 and VT-LN0158-11-15-342 for taxable year 2011 are **CANCELLED** and **WITHDRAWN**.[1]

In his motion, respondent argues that Section 6 of the 1997 National Internal Revenue Code, as amended (NIRC), does not limit the power of the Commissioner of Internal Revenue (CIR) to examine and to determine the tax deficiency of any

[1] Decision dated June 6, 2018, p. 14.

taxpayer only through the issuance of Letters of Authority (LOAs). Respondent cites Revenue Memorandum Order (RMO) No. 30-2003[2] which provides for a system-generated issuance of Letter Notices (LNs) as a mode of informing taxpayers of the discrepancies uncovered through the Reconciliation of Listing for Enforcement System (RELIEF), as well as the procedure for effective collection thereon. Respondent states that RMO No. 30-2003 clearly distinguished an LOA from an LN and clarified the effect of the issuance of an LN in situations where an investigation of the taxpayer under an LOA is either pending or has been terminated, or when no LOA has been issued. Respondent also cites RMO No. 42-2003[3] which authorized a "no-contact-audit-approach" in the examination and assessment, and the issuance of LNs without need of conducting an examination of a taxpayer's books. Respondent finally argues that since the LN issued against petitioner was issued by the CIR directly and not through an authorized representative (i.e. a Regional Director), then the issuance of an LOA is not a requirement.

On the other hand, petitioner argues that respondent's cited case of *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.* (*Hantex* case)[4] and foreign jurisprudence is not applicable to the instant case. Petitioner states that the *Hantex* case has already been overturned by *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[5] (*Medicard* case), and that *Medicard* was correctly applied by the Court in the instant case. Petitioner also notes that respondent failed to mention RMO No. 32-2005[6] in his Motion for Reconsideration as this RMO clearly prescribes the revised guidelines and procedures on the conversion of LNs to LOAs and the necessity of an LOA as part of the due process requirement in tax assessments. Finally, petitioner argues that even the issuance of the LN itself is questionable considering that petitioner only received a "Follow-up Letter" referring to said LN and that it did not receive the

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[2] Guidelines and Procedures in the Extraction, Analysis, Disclosure/Dissemination, Utilization, and Monitoring of RELIEF data for Audit and Enforcement Purposes, September 18, 2003.
[3] Prescribing Additional Guidelines Governing the Rules on Assessment of National Internal Revenue Taxes covered by a Letter Notice (LN) issued under the RELIEF System as defined in Revenue Memorandum Order (RMO) NO. 30-2003 and other data matching processes, October 23, 2003.
[4] G.R. No. 136975, March 31, 2005.
[5] G.R. No. 222743, April 7, 2017.
[6] 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.

actual LN itself. Thus, petitioner argues that the Court correctly cancelled the assessments.

We find no compelling reason to modify or reverse the assailed Decision. The Supreme Court has categorically stated in the *Medicard* case that the absence of an LOA is a violation of the right to due process, and that an LN is different from an LOA such that an LN cannot be considered as the LOA required under the law, even if the LN was issued by the CIR himself. The relevant portions of the *Medicard* case are repeated below:

> Noticeably, both RMO No. 30-2003 and RMO No. 42-2003 are silent on the statutory requirement of an LOA before any investigation or examination of the taxpayer may be conducted. As provided in the RMO No. 42-2003, the LN is merely similar to a Notice for Informal Conference. However, for a Notice of Informal Conference, which generally precedes the issuance of an assessment notice to be valid, the same presupposes that the revenue officer who issued the same is properly authorized in the first place.
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> With this apparent lacuna in the RMOs, in November 2005, RMO No. 30-2003, as supplemented by RMO NO. 42-2003, was amended by RMO No. 32-2005 to fine tune existing procedures in handling assessments against taxpayers' issued LNs by reconciling various revenue issuances which conflict with the NIRC. Among the objectives in the issuance of RMO No. 32-2005 is to prescribe procedure in the resolution of LN discrepancies, <u>conversion of LNs to LOAs</u> and assessment and collection of deficiency taxes.
>
> IV. POLICIES AND GUIDELINES
>
> xxx xxx xxx
>
> 8. **<u>In the event a taxpayer who has been issued an LN refutes the discrepancy shown in the LN</u>**, the concerned taxpayer will be given an opportunity to reconcile its records with those of the BIR within One Hundred and Twenty (120) days from the date of the issuance of the LN. However, the subject taxpayer shall no longer be entitled to the abatement of interest and penalties after the lapse of the sixty (60)-day period from the LN issuance.

9. **In case the above discrepancies remained unresolved at the end of the One Hundred and Twenty (120)-day period, the revenue officer (RO) assigned to handle the LN shall recommend the issuance of [LOA] to replace the LN**. The head of the concerned investigating office shall submit a summary list of LNs for conversion to LAs (using the herein prescribed format in Annex "E" hereof) to the OACIR-LTS/ORD for the preparation of the corresponding LAs with the notation "This LA cancels LN NO. _____"

xxx xxx xxx

V. PROCEDURES

xxx xxx xxx

B. At the Regional Office/Large Taxpayers Service

xxx xxx xxx

7. Evaluate the Summary List of LNs for Conversion to LAs submitted by the RDO xxx prior to approval.

8. Upon approval of the above list, prepare/accomplish and sign the corresponding LAs.

xxx xxx xxx

10. Transmit the approved/signed LAs, together with the duly accomplished/ approved Summary List of LNs for conversion to LAs, to the concerned investigating offices for the encoding of the required information xxx and for service to the concerned taxpayers.

xxx xxx xxx

C. At the RDO xxx

xxx xxx xxx

11. If the LN discrepancies remained unresolved within One Hundred and Twenty (120) days from issuance thereof,

> prepare a summary list of said LNs for conversion to LAs xxx.
>
> xxx xxx xxx
>
> 16. **Effect the service of the above LAs to the concerned taxpayers.**

In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid. Hence, the CTA's disregard of MEDICARD's right to due process warrant the reversal of the assailed decision and resolution.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said 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 authority, the assessment or examination is a nullity**. (Emphasis and underlining ours)

The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. Since the law specifically requires an LOA and RMO NO. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.[7] (*Citations omitted; boldfacing and underscoring in the original; underscoring supplied*)

In the instant case, the alleged tax assessments through the Preliminary Assessment Notice and Final Assessment Notices for deficiency income tax and VAT were made only on the basis of or pursuant to a mere LN, specifically LN No. 051-RLF-11-00-00158[8]. It is relevant to note that petitioner denies receiving said LN considering that it only received the undated Follow-up Letter on June 19, 2014.[9] Further, it is relevant that the PAN and FAN were issued without a valid LOA first received by petitioner. Thus, for lack of an LOA, the tax assessments for deficiency income tax and VAT for taxable year 2011 are void.

WHEREFORE, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[7] *Medicard Philippines, Inc. v. CIR*, G.R. No. 22743, April 5, 2017.
[8] BIR Records, Exhibit "R-1", p. 2.
[9] Docket, Vol. I, Joint Stipulation of Facts and Issues, pp. 259-260.