REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1818** **(CTA CASE No. 8852)**
-versus-	*Present*: **DEL ROSARIO, P.J, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.***
CATERING PROFESSIONALS, INC., *Respondent.*	**Promulgated:** AUG 09 2019 2:32 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Before the Court *En Banc* is a Motion for Reconsideration[1] filed by the Commissioner of Internal Revenue, seeking to set aside this Court's Decision promulgated on April 29, 2019,[2] the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the Petition for Review is **DENIED** for lack of merit. The Decision and Resolution dated November 28, 2017 and March 6, 2018, respectively, of the former Second Division in CTA Case No. 8852 are **AFFIRMED**.

[1] Filed on May 16, 2019 through registered mail; *En Banc* Docket, pp. 94-97.
[2] *En Banc* Docket, pp. 78-86.

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SO ORDERED."

In his motion, the CIR alleges that Catering Professionals Inc. (CPI) is estopped from assailing the validity of the assessment due to lack of a Letter of Authority (LOA), which was never raised in the administrative level and that the assessment is legally anchored on Letter Notice (LN) even without an LOA pursuant to Section 6 of the 1997 National Internal Revenue Code (NIRC), as amended, in relation to Revenue Memorandum Order No. 55-2010.

On the other hand, CPI filed its Comment/Opposition[3] on July 15, 2019, stating therein that it cannot be estopped from questioning the validity of the assessment due to lack of an LOA and that an LN cannot be equivalent to an LOA.

The motion is bereft of merit.

This Court has no reason to deviate from the findings in the assailed Decision, and concludes that the assessment is void for lack of a valid LOA.

In the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,*[4] the Supreme Court affirmed that this Court can resolve an issue not raised by the parties in their pleadings or memoranda, to wit:

> "<u>On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative</u>.
>
> Under Section 1, Rule 4 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is <u>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</u>. The text of the provision reads:

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[3] *En Banc* Docket, pp. 102-109.
[4] G.R. No. 183408, July 12, 2017.

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SECTION 1. Rendition of judgment. –

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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 scope of authority of 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." (Italics in the original; Underlining supplied.)

The Supreme Court allows raising the issue of the validity of an LOA although not raised by the parties before the CTA, the more so the taxpayer could raise the issue before this Court although not raised in the administrative level. Moreover, as to the issue of raising an argument for the first time before this Court, it must be emphasized that Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) provides categorically that the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial (*trial de novo*),[5] as judicial claims are litigated *de novo* and decided based on what has been presented and formally offered by the parties during the trial.[6]

To reiterate, records show that the examination and assessment against CPI was made on the basis of an LN and not on a validly issued LOA. The assailed Decision correctly applied the Supreme Court case of *Medicard Philippines Inc. vs. Commissioner of Internal Revenue (the "Medicard*

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[5] *Commissioner of Internal Revenue vs. Union Cement Corporation*, CTA EB Case No. 895, March 22, 2013.
[6] *Commissioner of Internal Revenue vs. Philippine Bank of Communications*, CTA EB Case No. 933 (CTA Case No. 7915), October 7, 2013, citing the case of *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, CTA EB Case No. 775 (CTA Case No. 7828), July 24, 2012.

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Case")[7] in ruling that the examination must be pursuant to an LOA issued by the Regional Director and this Court cannot convert the LN into the LOA as it is entirely different and serves a different purpose than an LOA, thus:

> "The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself.
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> xxx xxx xxx
>
> The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the SIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 10 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. Simply put, LN is entirely different and serves a different purpose than an LOA.
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> xxx xxx xxx"

Based on the foregoing, revenue officers must be authorized by an LOA to validly examine the accounting records of a taxpayer.[8] In the absence of such LOA, the tax assessments issued by the BIR shall be void.[9] Considering that the Revenue Officers who conducted the examination in this case were not validly authorized to do so, the assessment issued against CPI is void.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

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[7] G.R. No. 222743, November 17, 2010.
[8] *Commissioner of Internal Revenue vs. Herbalife International Philippines, Inc.*, CTA EB No. 1612 & 1631, November 15, 2018.
[9] *Ibid.*

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SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(on leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

NO PART
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice