REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

GLOBAL ENERGY SUPPLY CORPORATION,	**CTA CASE NO. 9673**
Petitioner,	Members:
- versus -	**CASTAÑEDA, JR.**, *Chairperson*, and **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	SEP 2 8 2020 3:02 pm

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Reconsideration** filed though registered mail on July 14, 2020 and received by this Court on July 14, 2020, with petitioner's **Comment/Opposition (to Respondent's Motion Reconsideration)** filed on July 27, 2020.

On June 11, 2020, the Court promulgated a Decision cancelling respondent's deficiency tax assessments due to his revenue officers' lack of authority in conducting the audit petitioner's books of accounts, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the present *Petition for Review* is **GRANTED**. Accordingly, the subject assessments for deficiency income tax, VAT, EWT, WTC, and DST for taxable year ending December 31, 2013, in the aggregate amount of ₱31,299,622.04, and compromise penalty in the amount of ₱30,000.00, issued by respondent against petitioner, for taxable year 2013 are **CANCELLED** and **SET ASIDE**, for being invalid.

SO ORDERED."

In his Motion, respondent prays for the reversal of the above Decision raising the following arguments, *viz.*:

I. Revenue Officer (RO) Angeline S. Ifurung had the necessary authority to investigate petitioner's books of accounts and other accounting records.

II. Petitioner is already estopped from questioning the authority of RO Ifurung.

III. Administrative authorities should be allowed the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.

IV. *Medicard* case is inapplicable in this instant case.

As to the first argument ground, respondent maintains that Revenue Officer Angeline S. Ifurung had the necessary authority to investigate petitioner's books of accounts and other accounting records. Respondent claims that RO Ifurung's authority originally emanated from the Letter of Authority (LOA) previously issued to petitioner, and not necessarily from Memorandum of Assignment (MOA) No. RR-050-RET-0803170394(AD) dated August 3, 2017 signed by Revenue District Officer Rosita U. Meniano of Revenue District Office (RDO) No. 50 –South Makati City. Respondent explains that the MOA was only issued pursuant to Revenue Memorandum Order (RMO) No. 62-10, following the replacement of the previously assigned lead officer who was transferred to another revenue district per Revenue Travel Assignment Order (RTAO) No. 04-2016 prescribed under the existing audit program.

With regard to the second argument, respondent argues that petitioner is already estopped from questioning the authority of RO Ifurung since during the course of the investigation, petitioner actively participated in all stages of the audit and did not question RO Ifurung's authority. In fact, respondent points out that petitioner in its several protest letters, never stated that the examiner who handled the investigation of its case lacks authority.

As to the third argument, respondent asserts that to allow a litigant to assume a different posture when he comes before the court and challenges the position he had accepted at the administrative level would be to sanction a procedure whereby the court – which is supposed to review administrative determinations – would not review, but determine and decide for the first time, a question not raised at the administrative forum. According to respondent, this cannot be permitted for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.

Lastly, respondent submits that the case of *Medicard Philippines Inc. v. Commissioner of Internal Revenue*[1] *(Medicard case),* is inapplicable considering that the facts therein are different from the facts of the present case. Respondent argues that in the *Medicard case,* what is involve is a Letter Notice replacing the LOA, while in the present case, the BIR did not issue an LN, but rather issued an LOA and MOA against petitioner.

On the other hand, in its comment, petitioner opposes respondent's Motion for failing to raise any new or substantial ground to warrant the reversal of the Decision he assails Petitioner asserts that a thorough review of RMO No. 62-10 shows that the RMO does not dispense with the required LOA. Petitioner argues that respondent did not present any evidence showing that the Revenue District Officer Rosita U. Meniano of RDO No. 50 –South Makati City was specifically authorized to sign the MOA to replace the previously issued LOA for the subject assessments.

Petitioner also claims that respondent erroneously argued that RO Ifurung's authority to conduct the subject assessments cannot be raised before this Court on the ground that petitioner failed to raise this in the administrative proceedings before the BIR. Petitioner continues that it is legal truism that this Court has the authority to rule on issues not raised or invoked in the administrative proceeding.

Moreover, petitioner insists that the *Medicard case* clearly applies to this case because the Supreme Court, citing *Commissioner*

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[1] G.R. No. 222743, April 5, 2017.

of Internal Revenue v. Sony Philippines, Inc.,[2] held in *Medicard* that "there must be a grant of authority before *any* revenue officer can conduct an examination or assessment. xxx. In the absence of such an authority, the assessment or examination is a nullity."

Lastly, insofar as the cancellation and setting aside of compromise penalty is concerned, petitioner asserts that the Decision of this Court has already become final and executory considering that respondent did not dispute the same in his Motion.

The Court finds respondent's Motion for Reconsideration bereft of merit. As correctly pointed out by petitioner, a simple perusal of respondent's Motion reveals that the arguments raised therein were already passed upon and extensively discussed in the assailed Decision.

To reiterate, the power to authorize the examination of a taxpayer and issue assessments is primarily lodged with respondent, pursuant to Section 6(A) of the National Internal Revenue Code (NIRC) of 1997, as amended. The said power, however, may be expressly delegated under Section 7, in relation to Sections 10 and 13 of the NIRC of 1997, as amended, but only limited to his subordinate officials with the rank equivalent to a **division chief or higher**, to wit:

> "**SEC 7.** *Authority of the Commissioner to Delegate Power.* — The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a **division chief or higher**, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: x x x.
>
> **SEC. 10.** *Revenue Regional Director.* — Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others: *Jr*

[2] G.R. No. 178697, November 17, 2010.

x x x

(c) **Issue Letters of Authority for the examination of taxpayers within the region;"**

SEC 13. *Authority of a Revenue Officer.* — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself." *(Emphasis supplied)*

In the present case, aside from the fact that RO Ifurung was not among those originally authorized in the LOA SN: eLA201100051565/LOA-050-2014-00000132 dated July 1, 2014, the alleged MOA authorizing her to continue the audit/examination of petitioner's books of account and other accounting records for taxable year 2013 were only signed by Revenue District Officer Rosita U. Meniano of RDO No. 50 and not by a Revenue Regional Director. As such, RO Ifurung and GS Carmen Sy were considered to have acted without authority when they conducted the audit and examination of petitioner's books of accounts.

As to respondent's argument that petitioner is already estopped from questioning RO Ifurung's authority in light of its alleged failure to question her authority during the tax audit and its protests, the Court does not agree. It is well-settled that 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.[3] More specifically, such doctrine was also applied in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[4] which held that:

[3] Section 1, Rule 14 of A.M. No. 05-11-07-CTA.
[4] G.R. No. 183408, 12 July 2017.

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

More so, the Court likewise disagrees with respondent's contention that the *Medicard* case is inapplicable in the present case. For ease of reference, quoted below are the pertinent ruling in the *Medicard* case, to wit:

> "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. Section 6 of the <u>NIRC</u> clearly provides as follows: *gr*

x x x

Based on the afore-quoted provision, it is clear that **unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken**. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**

x x x

Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. **To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.**

x x x

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.**" *(Emphases and underscoring supplied)*

A careful reading of the foregoing would reveal that the Supreme Court has specifically interpreted Sections 13 and 6(A) of the NIRC of 1997, as amended, in this wise: (1) an LOA is the authority given to the appropriate RO assigned to perform assessment functions, and it empowers or enables said RO to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax; (2) there must be a grant of such authority before any RO can conduct an examination or assessment; and (3) in the absence of such authority, the assessment or examination is a nullity.

It must be remembered that judicial decisions (such as the *Medicard* case) applying the laws [such as Sections 13 and 6(A) of the NIRC of 1997] or the Constitution shall form part of the legal system of the Philippines.[5] These decisions, although in themselves not laws, constitute evidence of what the laws mean. The application or interpretation placed by the Supreme Court upon a law is part of the law as of the date of the enactment of the said law since the Supreme Court's application or interpretation merely establishes the contemporaneous legislative intent that the construed law purports to carry into effect.[6] In other words, judicial decisions of the Supreme Court assume the same authority as the statute itself.[7] This means that the above-stated interpretation of the Supreme Court of Sections 13 and 6(A) of the NIRC of 1997, as amended, formed part of the said provisions as of the date of the law's enactment.

Corollary, through respondent's issuance of Revenue Memorandum Circular (RMC) No. 75-18,[8] he evidently recognized the ruling in the *Medicard case,* in this wise:

> "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 Commissioner of Internal Revenue (CIR) or his duly authorized representative, <u>through an LOA</u>. The concept of an LOA is therefore clear and unequivocal. Any tax assessment issued without**

[5] Article 8, Civil Code of the Philippines.

[6] *Perfecto S. Floresca, et al. v. Philex Mining Corporation, et al.*, G.R. No. L-30642, April 30, 1985.

[7] *Id.*

[8] "SUBJECT: The Mandatory Statutory Requirement and Function of a Letter of Authority", September 5, 2018.

> **an LOA is a violation of the taxpayer's right to due process and is therefore 'inescapably void.'**
>
> x x x
>
> To help forestall any unnecessary controversy and to encourage due observance of the judicial pronouncements, any examiner or revenue officer initiating tax assessments or performing assessment functions without an LOA shall be subject to appropriate administrative sanctions." *(Emphasis and underscoring supplied)*

Accordingly, this Court see no reason not to apply the ruling in the *Medicard case* to the present case. Having found respondent's deficiency assessments to be invalid, as the same were deemed to have been issued without authority, this Court finds no cogent reason to modify or reverse the assailed Decision.

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

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice