REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

TRAVELLERS INTERNATIONAL HOTEL GROUP, INC., Petitioner,	**CTA Case No. 9168**
	Members:
- versus -	**DEL ROSARIO,** *Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	
	Promulgated: APR 02 2019 ; 1:21pm

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RESOLUTION

***DEL ROSARIO, P.J.*:**

For resolution is respondent's **"Motion for Reconsideration (Re: Decision dated 08 November 2018)"** filed on November 27, 2018, with petitioner's "Comment/Opposition (Re: Motion for Reconsideration dated November 27, 2018)" filed on January 7, 2019.

In its Motion for Reconsideration, respondent prays that the Court's Decision dated November 8, 2018 be reversed and set aside and that a judgment be rendered ordering petitioner to pay the aggregate amount of ₱2,706,880,978.75 for deficiency Income Tax, for taxable year 2010, including compromise penalty, surcharge, deficiency and delinquency interests. In support of his motion, respondent insists that:

1. The Court erred in granting a relief that was not prayed for by petitioner. Respondent's basic right to fair play and due process was violated.

2. The Court erred when it cancelled the assessment issued against respondent solely on the ground that there was no new Letter of Authority ("LOA") after the audit was reassigned to another revenue officer ("RO").

    a. The ruling of the Supreme Court in the cases *of CIR vs. Sony Philippines* and *Medicard vs. CIR* are not applicable to the instant case.

3. The Court erred when it ruled that petitioner, being a licensee of PAGCOR is exempt from income tax on its gaming operations.

On the other hand, petitioner claims the following:

1. The Court did not violate respondent's right to due process when it ruled on the lack of authority of the revenue officers to conduct the tax audit.

2. The Court did not err in ruling that respondent's tax assessment is void due to his failure to issue a new Letter of Authority pursuant to tax regulations and jurisprudence.

3. The Court did not err in ruling that petitioner, a licensee of PAGCOR, is exempt from income tax on its gaming revenues pursuant to Presidential Decree (PD) No. 1869.

THE COURT'S RULING

The Court resolves to deny respondent's Motion for Reconsideration.

Anent respondent's argument that the Court may not consider the issue on the revenue officer's lack of authority to conduct the audit as it was never raised by petitioner, the Court reiterates that in ***Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,***[1] the Supreme Court declared that the Court of Tax Appeals ("CTA") can resolve the issue involving the authority of the Revenue Officers to conduct the audit, **albeit the same was not raised by the parties in their pleadings or memoranda**, *viz.*:

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

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

xxx xxx xxx

> xxx xxx xxx, **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." (Boldfacing supplied)

For want of a valid LOA, ***Lancaster*** ultimately resolved to declare the assessment void. Applying the pronouncement in *Lancaster*, the Court is well within its right to make a proper ruling on this matter.

With regard to respondent's claim that the case of *Sony* and *Medicard* are not applicable to this case, respondent cited the Dissenting Opinion of the Honorable Justice Ma. Belen Ringpis Liban in the case of *Medtecs International Corporation vs. Commissioner of Internal Revenue (CTA EB No. 1560).* Using the reasons provided for in the said Dissenting Opinion, respondent argues that in *Sony*, the primordial issue was not the lack of an LOA but the agents exceeding the authority given; while in *Medicard*, it involved a total absence of an LOA which the Court concluded could not be supplanted by a mere Letter Notice as it violated *Medicard's* right to due process. Therefore, the same cannot be applied, since in this case, there exists a valid LOA which authorized the RO to audit petitioner's accounting records for taxable year 2010.

The Court likewise finds no merit in such contention. In this case, although a LOA was issued, the examination was reassigned to new ROs pursuant only to a Memorandum of Assignment signed by the OIC-Chief of RLTAD II.

In *Commissioner of Internal Revenue vs. Composite Materials, Inc.,*[2] the Supreme Court, citing *Medicard*, categorically held that an RO may only examine the taxpayer's books **pursuant to an LOA issued by the Regional Director** and emphasized that the Referral Memorandum issued by the Revenue District Officer ("RDO") directing another RO to continue with the examination of Composite Materials, Inc.'s (CMI) records is not equivalent to an LOA nor does it cure the RO's lack of authority, *viz.*:

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[2] G.R. No. 238352, September 12, 2018.

> "As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, **the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director**. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, ruling that in the absence of an LOA, the assessment or examination is a nullity.
>
> Here, the CTA *en banc* found that **the LOA issued in relation to the examination of CMI's book of accounts does not specifically mention the name of RO Cruz. Thus, the examination conducted by RO Cruz and the assessment issued against CMI was correctly declared null and void**.
>
> Moreover, the Court agrees with the CTA *en banc* that the **Referral Memorandum** issued by a Revenue District Officer **directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority**. To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that **<u>any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA</u>**." *(Boldfacing supplied)*

In sum, these cases made the pronouncement that the necessity of a valid LOA in audit investigations is not merely an administrative requirement but a statutory requirement which is vital to the validity of an audit of a taxpayer, and consequently, to the validity of the Final Assessment Notice ("FAN"), that may be issued after said audit. Here, the absence of an LOA authorizing the RO to audit petitioner rendered the assessment void.

Unless and until modified by the Supreme Court *En Banc*, the doctrines laid down in *Medicard, Lancaster* and *Sony* should be applied in determining the validity of assessments issued against taxpayers *sans* any LOA. Indeed, the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[3]

With regard to respondent's argument that petitioner, being a licensee of PAGCOR, is not exempt from income tax on its gaming operations, the same is a mere reiteration of its Answer to petitioner's

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[3] *Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003.

Petition for Review and Memorandum, which have been thoroughly discussed in the assailed Decision, particularly on pages 18 to 21 thereof.

All told, the Court finds no compelling reason or substantial justification to modify its findings much more reverse the assailed Decision.

WHEREFORE, respondent's **"Motion for Reconsideration (Re: Decision dated 08 November 2018)"** is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice