REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

ERMILO TAN NG HUA
Petitioner,

CTA Case No. 9291

- versus -

Members:

COMMISSIONER OF INTERNAL REVENUE, represented by Regional Director ALBERTO S. OLASIMAN, Bureau of Internal Revenue, Revenue Region No. 10, Legazpi City,
Respondent.

FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

SEP 09 2019
9:06 a.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

On February 21, 2019, the Court promulgated a Decision,[1] the dispositive portion of which reads:

> **WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Final Decision on Disputed Assessment and Assessment Notice No. 065-11-114-096-192-000, both dated January 20, 2016, are hereby **CANCELLED AND SET ASIDE**.
>
> **SO ORDERED**.

Unconvinced, respondent Commissioner of Internal Revenue (CIR) filed the instant *Motion for Reconsideration*

[1] Docket, pp. 387-401.

(Re: Decision dated 21 February 2019)[2] on March 18, 2019, assailing the foregoing Decision on the grounds quoted below:

> I. WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN RULING THAT THE DEFICIENCY TAX ASSESSMENT ISSUED AGAINST PETITIONER IS VOID FOR ALLEGED LACK OF LETTER OF AUTHORITY.
>
> II. THE HONORABLE COURT'S POWER OF JUDICIAL REVIEW OVER DECISIONS OF THE COMMISSIONER OF INTERNAL REVENUE ON DISPUTED ASSESSMENT IS BY NATURE EXCLUSIVE AND APPELLATE. PETITIONER SHOULD NOT BE ALLOWED TO BELATEDLY RAISE ISSUES THAT WERE NEGLECTED DURING THE ADMINISTRATIVE PROCEEDINGS.

Respondent avers that the absence of a Letter of Authority (LOA) does not render the deficiency tax assessment null and void as it is not required under the law. Respondent believes that Section 6(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, only requires notice to the erring taxpayer which he claims to have been satisfied with the issuance and service of a Letter Notice (LN) to petitioner.

Besides, the issue on the alleged lack of LOA was belatedly raised by petitioner. Respondent contends that the Court's power of judicial review over his decisions on disputed assessment is by nature exclusive and appellate. That being the case, the Court must only determine, by review, the propriety of the decision he rendered based on the arguments and documents presented in the administrative level. Thus, petitioner should not be allowed to raise for the first time on appeal issues, errors or defenses, in relation to the assailed tax assessment, which were forgotten or abandoned in the administrative level.

Citing the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[3] (*Medicard* case), petitioner counters that the Supreme Court itself, in interpreting Section 6(A) of the NIRC of 1997, as amended,

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[2] Docket, pp. 402-412.
[3] G.R. No. 222743, April 5, 2017.

has ruled that an LOA is required for a valid tax examination and the subsequent issuance of an assessment by a revenue officer. The Supreme Court also declared an LN cannot take the place of an LOA. Thus, invoking the principle of *stare decisis et non quieta movere*, petitioner submits that respondent's motion for reconsideration should be denied for lack of merit.

On the ground that the absence of an LOA may no longer be raised on appeal before the Court as the same was not raised during the administrative level, petitioner argues that: (1) the determination of the legal effect or significance of the absence of an LOA is within the Court's competence; (2) denial of substantive due process, which is the result of failure to follow the legal requirement of a Letter of Authority, is a question of law; (3) respondent must have confused a question of fact from a question of law; and (4) a void assessment is akin to void judgment.

Respondent's *Motion* must fail.

On the ground that issues not raised in the administrative level should not be raised for the first time on appeal before this Court, suffice it to say that the Court is empowered to rule related issues necessary to achieve an orderly disposition of the case as ruled 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, we rule in the affirmative.**
>
> 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**

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

> **disposition of the case.** The text of the provision reads:
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> > 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. (*Emphasis supplied*)

To be sure, **the validity of the subject assessment is a related issue necessary to achieve an orderly disposition of the present case**. Thus, in order to determine the merits of the arguments of both parties regarding the factual and legal bases of the subject assessment and to dispose the case judiciously, it was imperative for the Court to rule first on the validity of the assessment issued against petitioner.

Besides, the rule against raising new issues on appeal is not without exceptions. In *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*,[5] the Supreme Court held:

> The general rule is that appeals can only raised questions of law or fact that (a) were raised in the court below, and (b) are

[5] G.R. No. 163835, July 7, 2010.

within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.

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The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:

> **The appellate court may, in the interest of justice, properly take into consideration in deciding the case matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignore, although they have not been specifically raised as issues by the pleadings**. This is in consonance with the liberal spirits that pervades the Rules of

> Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them.
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> xxx xxx xxx
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> Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance. (*Emphasis supplied*)

While it is a general rule that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein, the same admits of certain exceptions, namely, (i) in the interest of justice, matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignore, and (ii) questions involving matters of public importance.

In the instant case, the question of whether the ROs who conducted the examination/audit of petitioner's books of accounts and other accounting records for taxable year 2011 were authorized to do so is a matter of record. A revisit of the Preliminary Assessment Notice (PAN), as well as, the Formal Letter of Demand (FLD) issued by respondent against petitioner during the administrative level reveals that petitioner was assessed pursuant to **Letter Notice No. 065-RLF-11-00-00069** and not pursuant to a validly issued LOA.

Moreover, cases brought before this Court are litigated de novo. Pieces of evidence not presented or issues not raised in the administrative level may be presented or raised during the trial of the case before this Court. Note that under Section 8 of Republic Act No. 1125, the Court of Tax Appeals is a court of record, thus it is bound to conduct a formal trial (trial de novo) where the parties to a case must present their respective evidence in support of their respective cases for the appreciation of the Court.[6] By such reason, there is nothing that stands in the way of the Court to determine on its own the correctness of the BIR's assessment and decision. It may therefore, scrutinize, one by one, all documents submitted by the parties and can make its own determination of the taxpayer's tax liabilities.[7] This definitely includes determination of issues not raised in the administrative levels which must be resolved for the orderly and judicious administration of justice.

Anent respondent's contention that the absence of an LOA does not render the deficiency tax assessment null and void there being no such requirement under the law, obviously respondent failed to consider the ruling of the Final Arbiter in the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*,[8] where the Supreme Court discussed the essence of an LOA, thus:

> **Based on Section 13 of the Tax Code, a Letter of Authority or 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**. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
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> **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**

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[6] Commissioner of Internal Revenue v. Manila Mining Corporation, G.R. No 153204, August 31, 2005.
[7] Tyco Information Solutions Corp. v. Bureau of Internal Revenue, (CTA Case No. 8592) April 3, 2018.
[8] G.R. No. 178697, November 17, 2010.

> **beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity**. (*Boldfacing supplied*)

WHEREFORE, the instant *Motion for Reconsideration (Re: Decision dated 21 February 2019)* filed by respondent Commissioner of Internal Revenue on March 18, 2019 is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice