REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

REPUBLIC OF THE PHILIPPINES,
Plaintiff,

CTA EB NO. 2805
(CTA OC No. 025)

Present:

Del Rosario, P.J.,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo,
Cui-David,
Ferrer-Flores, and
Angeles, JJ.

- *versus* -

MR. RANSON DIODELL N. TENERIFE doing business under the name "MOTORINA TRADING",
Defendant.

Promulgated:
JUL 10 2024 2:15 pm

x---x

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *En Banc* is a Petition for Review[1] filed by the Republic of the Philippines on October 13, 2023. The Petition for Review seeks the reversal of the Decision dated June 14, 2023,[2] (Assailed Decision) as well as the Resolution dated September 22, 2023[3] (Assailed Resolution) of the Special First Division (Court in Division)[4] of this Court in CTA OC No. 025.

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[1] Court *En Banc's* Docket, pp. 1-13.
[2] *Id.*, pp. 20-31.
[3] *Id.*, pp. 33-35.
[4] Composed of Presiding Justice Roman G. Del Rosario, Associate Justice Catherine T. Manahan and Associate Justice Marian Ivy F. Reyes-Fajardo *(ponente)*.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

> 'WHEREFORE, the Complaint dated August 31, 2018, filed by the Republic of the Philippines, is **DENIED**, for lack of merit.
>
> The Republic of the Philippines, through the Commissioner of Internal Revenue, his representatives, agents, or other persons acting in his behalf, are **ENJOINED** from collecting on Ranson Diodell N. Tenerife, the deficiency income tax, value-added tax, and compromise penalty covering TY 2010, amounting to ₱14,329,447.71.
>
> **SO ORDERED.**'

Assailed Resolution:

> 'WHEREFORE, plaintiff's Motion for Reconsideration (Re: Decision promulgated 14 June 2023), filed on July 6, 2023, is **DENIED**, for lack of merit. The Decision dated June 14, 2023, is **AFFIRMED**.
>
> **SO ORDERED.**'

THE FACTS

The facts of the present case were laid down by the Court in Division in the Assailed Decision as follows:[5]

> "Plaintiff Republic of the Philippines, is represented by the Commissioner of Internal Revenue, Chief of the Bureau of Internal Revenue (BIR), the government agency vested with the authority to administer and enforce national internal revenue taxes, including, among others, the assessment and collection of all internal revenue taxes, fees, and charges. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City, where he may be served with summons, notices and other court processes.

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[5] Court *En Banc's* Docket, pp. 20-23 (Citations omitted).

Defendant Ranson Diodell N. Tenerife, doing business under the name 'Motorina Trading,' is the taxpayer. He may be served with summons, notices, and other court processes through his counsel QCV Law at Centro Maximo Building, corner Ranudo and Jakosalem Streets, Cebu City, Philippines.

On July 10, 2012, defendant received the BIR's undated Letter Notice (LN) No. 082-RLF-10-00-00166, informing him that he has undeclared local purchases for TY 2010, amounting to P16,423,077.44. Said figure emanated from the summary list of sales submitted by defendant's alleged suppliers to the BIR.

On February 14, 2013, defendant received the BIR's Notice of Informal Conference.

On May 9, 2013, the BIR issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies, containing the proposed assessment for deficiency IT, and VAT, for TY 2010, in the total amount of ₱13,966,898.40.

On July 29, 2013, the BIR issued a Formal Letter of Demand and Final Assessment Notices, with Details of Discrepancies (FLD/FAN), assessing defendant for deficiency IT, VAT, and compromise penalty for TY 2010, in the total amount of ₱14,329,447.71.

On September 1, 2014, the BIR issued a Preliminary Collection Letter (PCL), demanding from defendant, the payment of deficiency IT, VAT, and compromise penalty for TY 2010, in the total amount of ₱14,329,447.71.

On September 17, 2014, the BIR issued a Final Notice Before Issuance of Warrant, reiterating its demand for payment against defendant, of the deficiency IT, VAT, and compromise penalty for TY 2010, in the total amount of ₱14,329,447.71.

On November 14, 2014, defendant received the Warrant of Distraint and/or Levy (WDL) dated October 15, 2014, issued by the BIR.

On September 5, 2018, plaintiff filed a Complaint, docketed as CTA OC No. 025.

On October 29, 2018, defendant filed an Answer with Special Affirmative Defense.

During the pre-trial conference held on June 24, 2021, we required the parties to formulate a Joint Stipulation of Facts and Issues (JSFI), set the dates for the marking of the parties' respective evidence, as well as the presentation of their respective witnesses.

On July 19, 2021, the parties submitted their JSFI.

On October 13, 2021, we issued a Pre-Trial Order.

During trial, plaintiff presented revenue officers (ROs): *one*, Judy S. Sayson; *two*, Josyl Ann Z. Aranas; *three*, Juliet Balbona; and *four*, Maria Delia Ortega, as its witnesses.

On November 2, 2021, plaintiff filed its Formal Offer of Evidence, to which defendant filed a comment on November 16, 2021.

Under Resolution dated March 11, 2022, Exhibits **'P-1,' 'P-2,' 'P-3,' 'P-4,' 'P-5,' 'P-6,' 'P-7,' 'P-8,' 'P-9,' 'P-10,' 'P-11,' 'P-12,'** and **'P-14,'** were admitted as evidence for plaintiff, and it was deemed to have rested its case.

Defendant presented himself as witness. Thereafter, he offered, and we admitted his testimony as evidence.

By Resolution dated June 15, 2022, this case was submitted for decision, taking into account the respective filing of plaintiff and defendant's memorandum on June 3 and 6, 2022."

On June 14, 2023, the Court in Division rendered the Assailed Decision denying plaintiff-appellant's Complaint for lack of merit.

Aggrieved, plaintiff-appellant filed a Motion for Reconsideration (Re: Decision promulgated 14 June 2023) which the Court in Division denied in the Assailed Resolution.

On October 13, 2023, plaintiff-appellant filed the present Petition for Review.

In a Minute Resolution dated November 17, 2023, this Court ordered the defendant-appellee to file his Comment to the Petition for Review.[6]

[6] *Id.*, p. 36.

On January 9, 2024, defendant-appellee filed his Compliance and Comment.[7]

In a Minute Resolution dated April 3, 2024, this Court submitted the present case for decision.[8]

THE ISSUE

Plaintiff filed the present Petition for Review on the basis of the lone assignment of error stated below: [9]

> "WHETHER OR NOT THE SPECIAL FIRST DIVISION OF THE HONORABLE COURT ERRED WHEN IT RULED THAT THE FORMAL LETTER OF DEMAND/FINAL ASSESSMENT NOTICE (FAN/FLD) ISSUED BY THE BIR AGAINST DEFENDANT FOR TAXABLE YEAR 2010 IS VOID BECAUSE THE AUDIT OR EXAMINATION CONDUCTED BY THE BIR PERSONNEL AGAINST HIM HAS NO PRIOR PERMISSION FROM THE COMMISSIONER OF INTERNAL REVENUE OR HIS DULY AUTHORIZED REPRESENTATIVE; HENCE IT MAY NOT BE USED AS VALID BASIS OF THE COLLECTION SUIT AGAINST HIM."

THE COURT *EN BANC*'S RULING

In the Assailed Decision, the Court in Division ruled that the Formal Letter of Demand and Final Assessment Notices with Details of Discrepancies (FLD/FAN) issued by the Bureau of Internal Revenue (BIR) against the defendant-appellee is void because the audit or examination conducted by the BIR personnel has no prior permission from the Commissioner of Internal Revenue (CIR) or his duly authorized representatives. Accordingly, the same may not be used as a valid basis for the collection suit against the defendant-appellee. The Court in Division cited as basis in support of such ruling the Supreme Court case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[10] where it was essentially held that a Letter Notice (LN) is not the same as or an equivalent of a Letter of Authority (LOA) and the absence of an LOA authorizing the issuance of an assessment is tantamount to a violation of due process rendering the assessment void.

[7] *Id.*, pp. 38-41.
[8] *Id.*, p. 49.
[9] *Id.*, p. 3.
[10] G.R. No. 222743, April 5, 2017 ("*Medicard*").

In the present Petition for Review, the plaintiff-appellant posits that Section 13 of the National Internal Revenue Code of 1997, as amended, which requires the issuance of an LOA prior to the conduct of an audit or examination is not applicable because there was no actual examination of the defendant-appellee's books conducted in the present case. Citing both Revenue Memorandum Circular No. 40-2003 and Revenue Memorandum Order No. 30-2003, the plaintiff-appellant postulates that there is no strict requirement for the existence of an LOA in "no-contact audit approach" and, in such cases, it is sufficient that an LN was issued in compliance with RMO No. 30-2003.

The plaintiff-appellant also advances the view that an LOA is, in essence, a contract of agency between the CIR, as the principal, and the Revenue Regional Director, as an agent, with the revenue officers named in the LOA as mere sub-agents of the Revenue Regional Director. Plaintiff-appellant likewise argues that an LOA also serves as a letter notice.

Finally, the plaintiff-appellant asserts the presumption of correctness of tax assessments. It maintains that the taxpayer contesting an assessment has the burden to prove not only that the CIR is wrong but the taxpayer is right. Otherwise, the presumption of correctness of the assessment stands.

After thorough evaluation of the factual antecedents of the present case, the arguments presented, as well as the relevant laws and jurisprudence on the matter, the Court *En Banc* finds that the present Petition for Review must be denied for lack of merit. Truth be told, the arguments raised by the plaintiff-appellant in support of the present Petition for Review are substantially the same as those raised in *Medicard* which had already been controverted and categorically debunked by the Supreme Court in the said case. Given the factual similarities between *Medicard* and the present case, *Medicard* should accordingly be applied as a controlling precedent. The Court *En Banc* finds no compelling reason to disturb the Court in Division's findings in the Assailed Decision and Resolution.

With respect to the plaintiff-appellant's argument that an LOA is not required in the present case because no actual examination of the defendant-appellee's books was conducted, the following discussion in *Medicard* is on point:

> **"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.**
>
> The BIR's RELIEF System has admittedly made the BIR's assessment and collection efforts much easier and faster. The ease by which the BIR's revenue generating objectives is achieved is no excuse however for its non-compliance with the statutory requirement under Section 6 and with its own administrative issuance. **In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers.** The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.
>
> 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.**" *(Emphasis supplied)*

The rule as laid down by *Medicard* is that an LN must first be converted into an LOA before a revenue officer may proceed with the further examination and assessment of a taxpayer. An examination and assessment of a taxpayer without prior issuance of an LOA is tantamount to a violation of due process rendering the assessment void. Considering the foregoing, it is clear that the plaintiff-appellant's postulate that there is no strict requirement for the existence of an LOA in "no-contact audit approach" and, in such cases, it is sufficient that an LN was issued in compliance with RMO No. 30-2003 is bereft of any merit. Even in the context of a "no-contact audit approach," the prior issuance of an LOA is a statutory requisite. This much is true as, in fact, the CIR himself had acknowledged the clear-cut pronouncement by the Supreme Court in *Medicard* when he issued Revenue Memorandum Circular No. 75-2018[11] wherein he states:

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[11] The Mandatory Statutory Requirement and Function of a Letter of Authority (issued on September 5, 2018).

> 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, through an LOA. **The concept of an LOA is therefore clear and unequivocal. Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore "inescapably void."** *(Emphasis supplied)*

As regards the plaintiff-appellant's theory of agency and its invocation of the presumption of correctness of the tax assessment, the Court *En Banc* finds that the same have no relevance whatsoever to the resolution of the present controversy.

Given the invalidity of the FLD/FAN, the present collection suit simply has no leg to stand on.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(On Leave)

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice