REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MARKETING CONVERGENCE, INC.,
Respondent.

CTA EB NO. 2109
(CTA Case No. 9301)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

DEC 03 2020
4:05 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] pursuant to Section 3(b)[2], Rule 8 of the Revised Rules of the Court of Tax Appeals

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[1] Filed on 14 August 2019, *Rollo*, pp. 6-28.

[2] **SEC. 3**. *Who may appeal; period to file petition.* —

. . .

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an

(**RRCTA**), filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**). He seeks the reversal of the Decision dated 04 January 2019[3] and Resolution dated 09 July 2019[4], respectively, of the Court's Special First Division[5] in CTA Case No. 9301, entitled *Marketing Convergence, Inc. v. Commissioner of Internal Revenue.*

The antecedent facts follow.

On 28 September 2011, respondent Marketing Convergence, Inc. (**respondent/MCI**) received Letter of Authority (**LOA**) No. LOA-116-2011-00000119 dated 23 September 2011[6], authorizing Revenue Officers (**ROs**) Reynoso Bravo (**Bravo**), William Sundiam (**Sundiam**), Miguel Sulit (**Sulit**), Meliza Wepee (**Wepee**), Maribel Serafica (**Serafica**) and Group Supervisor Wilfredo Reyes (**GS Reyes**) of the Bureau of Internal Revenue (**BIR**), to examine respondent's books of account and other accounting records for all internal revenue taxes for the period from 01 January 2010 to 31 December 2010.

Subsequently, Nestor S. Valeroso (**Valeroso**), then Officer in Charge-Assistant Commissioner for Large Taxpayers Service (**OIC-ACIR**), issued the Preliminary Assessment Notice (**PAN**) dated 12 August 2014[7], assessing respondent for alleged deficiency taxes, penalties and interests in relation to taxable year (**TY**) 2010 as follows: (1) income tax (**IT**) in the amount of ₱734,756,276.01; (2) improperly accumulated earnings tax (**IAET**) in the amount of ₱20,943,292.75; (3) value-added tax (**VAT**) in the amount of ₱359,623,098.77; (4) expanded withholding tax (**EWT**) in the amount of ₱29,231,649.86; and, (5) documentary stamp tax in the amount of ₱82,470.93.[8] Respondent received the said PAN on 15 August 2014.[9]

additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

3 Division Docket, Volume III, pp. 1700-1752.

4 Id., pp. 1801-1809.

5 Penned by Hon. Associate Justice Erlinda P. Uy, with Hon. Presiding Justice Roman G. Del Rosario and Hon. Justice Cielito N. Mindaro-Grulla, concurring.

6 Exhibit "R-3", BIR Records, p. 526.

7 Exhibit "P-4", Division Docket, Volume III, pp. 1352-1366; Exhibit "R-14", BIR Records, pp. 578-584.

8 Paragraph 3, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume II, pp. 762-763.

9 Exhibit "P-4-1", id., Volume III, p. 1352.

On 01 September 2014, respondent filed its protest letter to the PAN[10], requesting the cancellation of the subject tax assessments for want of factual and/or legal bases. Thereafter, OIC-ACIR Valeroso issued the Formal Letter of Demand and Final Assessment Notice (**FLD/FAN**) dated 07 October 2014[11], assessing respondent for alleged deficiency taxes, penalties and interests in relation to TY 2010 in the same amounts stated in the PAN.[12] Respondent received the said FLD/FAN on 07 October 2014.[13]

On 06 November 2014, respondent filed its protest letter to the FLD/FAN[14], reiterating its arguments that the assessments lack legal and/or factual bases. OIC-ACIR Valeroso then issued the Final Decision on Disputed Assessment (**FDDA**) dated 09 November 2015[15], denying respondent's protest in part, and found that respondent is liable for alleged deficiency taxes, penalties and interest in relation to TY 2010 as follows: (1) IT in the amount of ₱678,366,631.61; (2) VAT in the amount of ₱364,126,174.44; and, (3) EWT in the amount of ₱9,071,438.79.[16] Respondent received the said FDDA on 12 November 2015.[17]

On 14 December 2015, respondent filed its letter dated 12 December 2015[18] with petitioner, appealing/requesting for the reconsideration (*via* a motion for reconsideration [**MR**]) of the above tax assessments for lack of legal and/or factual bases. In response to the MR, petitioner issued the letter dated 11 February 2016[19], denying respondent's MR and reiterating the assessment in the FDDA.[20] Respondent received the said letter on 17 February 2016.[21]

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10 Exhibit "P-5", Division Docket, Volume III, pp. 1367-1393.
11 Exhibit "P-6", id., pp. 1394-1411; Exhibits "R-16", "R-17" and "R-17-1" to "R-17-4", BIR Records, pp. 614-623.
12 Paragraph 4, Summary of Admitted Facts, JSFI, Division Docket, Volume II, p. 763.
13 Exhibit "P-6-1", id., Volume III, p. 1394.
14 Exhibit "P-7", id., pp. 1412-1465.
15 Exhibit "P-8", id., pp. 1466-1475; Exhibit "R-19", BIR Records, pp. 219-225.
16 Paragraph 5, Summary of Admitted Facts, JSFI, Division Docket, Volume II, p. 763.
17 Exhibit "P-8-1", id., Volume III, p. 1466.
18 Exhibit "P-9", id., pp. 1476-1508.
19 Exhibit "P-10", id., p. 1509; Exhibit "R-22", BIR Records, p. 249.
20 Paragraph 6, Summary of Admitted Facts, JSFI, Division Docket, Volume II, p. 764.
21 Exhibit "P-10-1", id., Volume III, p. 1509.

Thereafter, or on 18 March 2016, respondent filed a Petition for Review[22] before the First Division docketed as CTA Case No. 9301, praying for the cancellation and setting aside of the FDDA dated 11 February 2016.

In his Answer filed on 15 June 2016[23], petitioner interposed special and affirmative defenses, contending that: (1) the First Division has no jurisdiction over the Petition for Review as it was filed out of time; (2) the assessment is valid and was issued pursuant to a valid LOA; (3) his right to assess respondent for TY 2010 did not prescribe; (4) respondent is estopped from assailing the validity of the waivers executed; (5) respondent is liable for the corresponding deficiency interest on the deficiency VAT and EWT assessments; (6) respondent is liable for deficiency IT and the corresponding interest and compromise penalty; (7) the assessments (for deficiency IT, VAT and EWT) have bases both in fact and in law; and, (8) the LOA, PAN, FLD/FAN and FDDA were issued in accordance with law, rules and jurisprudence.

In its Reply (to Answer dated 15 June 2016) filed on 01 July 2016[24], respondent argues that: (1) the First Division has jurisdiction over the prior Petition for Review (CTA Case No. 9301)[25]; (2) the assessment is void for lack of authority of the RO to conduct the examination; (4) the period to assess respondent's internal revenue taxes for TY 2010 has already prescribed; (5) it is not estopped from assailing the validity of the waivers as the doctrine of estoppel is inapplicable to the case; (6) no deficiency interest should be imposed on the deficiency VAT, withholding tax on compensation (**WTC**) and EWT; (7) the deficiency tax assessments lack factual and legal bases; and, (8) it is not liable for the alleged IT, VAT, WTC and EWT for TY 2010 in the aggregate amount of ₱1,051,564,124.52.

Pending the conduct of the pre-trial, petitioner filed a Motion to Defer the Transmittal of BIR Records[26], praying that the First Division defer the transmittal of the BIR Records until after the filing of his witness' affidavit. In the Order dated 28 June 2016, the First Division

22 Id., Volume I, pp. 10-55.
23 Id., pp. 245-278.
24 Id., pp. 294-338.
25 Supra at note 22.
26 Division Docket, Volume I, pp. 283-287.

granted said Motion.[27] By way of Compliance[28], petitioner transmitted the BIR Records consisting of three (3) folders.

Petitioner filed his Pre-Trial Brief on 19 January 2017[29]; while respondent filed its Pre-Trial Brief on 23 January 2017.[30]

After the pre-trial[31] and the submission of the Joint Stipulation of Facts and Issues[32] **(JSFI)**, respondent presented its witnesses, namely: (1) Darren Evan S. Santos-Ramos[33] **(Santos-Ramos)**; and, (2) Independent Certified Public Accountant **(ICPA)** Ma. Milagros F. Padernal[34] **(Padernal)**, who was commissioned on 20 April 2017.[35]

Upon conclusion of its presentation of evidence, respondent filed its Formal Offer of Evidence **(FOE)** on 11 December 2017.[36] In the Resolution dated 12 February 2018[37], the First Division admitted respondent's evidence except Exhibits "P-101-C-9", "P-130-1" to "P-130-80", "P-130-81" to "P-130-233" and "P-130-234" to "P-130-395", for not being found in the records, as well as Exhibits "P-136" and "P-138"[38], for failure to correspond to their description in the FOE.

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27 Id., p. 288.
28 Dated 18 January 2017, id., pp. 364-367.
29 Id., pp. 493-501.
30 Id., pp. 504-518.
31 Id., Volume III, pp. 1050-1065.
32 Filed on 15 February 2017, id., Volume II, pp. 762-772. The Court approved the same on 22 February 2017, id., p. 779.
33 Id., Volume II, pp. 537-576; Minutes of the hearing held on 21 March 2017 and Order dated 21 March 2017, id., Volume III, pp. 1066-1070 and 1071-1072.
34 Id., Volume III, pp. 1224-1257; Minutes of the hearing held on 27 June 2017 and Order dated 27 June 2017, id., pp. 1258-1261 and 1262-1263.
35 Id., pp. 1109-1111; refer also to her Oath of Commission, id., p. 1108.
36 Id., pp. 1309-1343.
37 Id., pp. 1523-1525.
38

Document	Exhibit No.
General Ledger (GL) T-Account	"P-101-C-9"
Payment details with supporting documents (official receipts, statements of account, suppliers' invoices)	"P-130-1" to "P-130-80"
Payment details with supporting documents (official receipts, statements of account, suppliers' invoices)	"P-130-81" to "P-130-233"
Payment details with supporting documents (official receipts, statements of account, suppliers' invoices)	"P-130-234" to "P-130-395"
Summary of Income Payments Subject to 15% EWT prepared by [MCI] traced to Payment Details and Suppliers' Invoices for CY 2010	"P-136"
Summary of Alleged Income Payments Not Subject to 2% EWT per BIR's Assessment traced to General Ledger (GL) and/or Audited Financial Statements (AFS) for CY 2010	"P-138"

On 06 March 2018, petitioner filed an MR (With Motion for Additional Time to Submit Missing ICPA Exhibits and Supplemental Offer of Evidence)[39], praying that the First Division grant: (1) ICPA Padernal a period of ten (10) days within which to submit a CD/DVD/USB containing Exhibits "P-101-C-9", "P-130-1" to "P-130-80", "P-130-81" to "P-130-233" and "P-130-235" to "P-130-395", and upon submission, admit the same for the purposes for which they are being offered; and, (2) respondent's Supplemental Offer of Evidence (as embodied in the said Motion) and admit Exhibits "P-136" and "P-137."

During the hearing held on 17 April 2018[40], the First Division partially granted respondent's MR, thereby allowing the latter's lead counsel to submit within ten (10) days from the said date or until 27 April 2018 the exhibits mentioned in the said Motion. Thereafter, petitioner presented his lone witness, RO Carolyn V. Mendoza (**Mendoza**).

On 24 April 2018, petitioner filed his FOE[41]; while respondent filed a Submission, submitting to the Court its pertinent exhibits on 27 April 2018.

In the Resolution dated 06 June 2018[42], the First Division admitted: (1) respondent's Exhibits "P-101-C-9", "P-130-1" to "P-130-80", "P-130-81" to "P-130-233", "P-130-235" to "P-130-395", "P-136" and "P-138"[43]; and, (2) all of petitioner's exhibits. In the same Resolution, the

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39 Id., pp. 1528-1534.
40 Order dated 17 April 2018, id., pp. 1539-1540.
41 Id., pp. 1542-1555.
42 Id., pp. 1574-1576.
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Document	Exhibit No.
General Ledger (GL) T-Account	"P-101-C-9"
Payment details with supporting documents (official receipts, statements of account, suppliers' invoices)	"P-130-1" to "P-130-80"
Payment details with supporting documents (official receipts, statements of account, suppliers' invoices)	"P-130-81" to "P-130-233"
Payment details with supporting documents (official receipts, statements of account, suppliers' invoices)	"P-130-235" to "P-130-395"
Summary of Comparison of Expenses Subjected to 15% EWT prepared by the Petitioner traced to Payment Details and Suppliers' Invoices for CY 2010	"P-136"
Summary of Alleged Expenses Not Subject to 2% EWT per BIR's Assessment traced to General Ledger (GL) and/or Audited Financial Statements (AFS) for CY 2010	"P-138"

First Division directed both parties to file their respective memoranda within thirty (30) days from receipt hereof.

Petitioner filed his Memorandum on 14 August 2018[44]; while respondent filed its Memorandum on 28 August 2018.[45] In the Resolution dated 03 September 2018[46], the case was submitted for decision.

In the Decision dated 04 January 2019[47], the Special First Division granted respondent's Petition for Review. Thus, the assessments for deficiency IT, VAT and EWT were cancelled. The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the FDDA dated February 11, 2016 issued by respondent, finding petitioner liable for deficiency taxes, penalties and interest in relation to TY 2010 as follows: (1) income tax in the amount of ₱678,366,631.32; (2) VAT in the amount of ₱364,126,054.41; and (3) EWT in the amount of ₱9,071,438.79, or in the aggregate amount of ₱1,051,564,124.52, inclusive of penalties, is **REVERSED** and **SET ASIDE**.
>
> **SO ORDERED.**[48]
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> ...

Petitioner then filed his MR on the above Decision but the same was denied in the similarly assailed Resolution of 09 July 2019.[49]

Aggrieved, petitioner filed the instant Petition for Review on 14 August 2019.[50]

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44 Id., pp. 1597-1628.
45 Id., pp. 1631-1694.
46 Id., p. 1696.
47 Supra at note 3; The First Division was reconstituted after the issuance of CTA Administrative Circular No. 02-18 dated 18 September 2018 entitled "Reorganizing the Three (3) Divisions of the Court".
48 Emphasis and italics in the original text.
49 Supra at note 4.
50 Division Docket, Volume III, pp. 1815-1838.

Pursuant to Part I.1.B[51] of A.M. No. 11-1-5-SC-PHILJA or the *Interim Guidelines for Implementing Mediation in the Court of Tax Appeals*, the Court *En Banc* referred the case to the Philippine Mediation Center - Court of Tax Appeals (**PMC-CTA**) for mediation.[52] However, the parties decided not to have their case mediated by the PMC-CTA.[53]

On 02 December 2019, the case was submitted for decision.[54]

Subsequently, however, respondent filed a Motion to Suspend Proceedings (**first Motion for Suspension**) on 22 January 2020[55], alleging that the parties are exploring the possibility of a compromise agreement. In the Resolution dated 12 February 2020[56], this Court directed petitioner to submit his comment on respondent's Motion for Suspension.

On 27 February 2020, petitioner filed his Comment[57] wherein he raised no objection to respondent's motion.

In the Resolution dated 30 June 2020[58], this Court granted the respondent's Motion for Suspension and thereby, suspended the proceedings for thirty (30) days from issuance thereof.

On 29 July 2020, respondent filed a Motion to Further Suspend Proceedings[59] (**second Motion for Suspension**). In its motion, respondent prayed for an additional thirty (30) days to give parties ample time to discuss the possibility of entering into a compromise settlement.

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[51] I.1. The following cases may be referred to mediation:
...
B. *Cases within the jurisdiction of the Court En Banc*:
Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over cases arising from administrative agencies — BIR, BOC, Department of Finance, Department of Trade and Industry, Department of Agriculture.

[52] See Resolution dated 21 October 2019, *Rollo*, pp. 113-114.

[53] No Agreement to Mediate dated 18 November 2019, id., p. 124.

[54] Id., pp. 126-127.

[55] Id., pp. 128-133.

[56] Id., pp. 135-136.

[57] Id., pp. 137-140.

[58] Id., pp. 142-143.

[59] Id., pp. 144-148.

In the Resolution dated 11 September 2020[60], this Court required petitioner to file his comment on respondent's Motion to Further Suspend Proceedings. However, *per* Records Verification Report dated 14 October 2020[61], petitioner failed to file his comment thereto.

In another Resolution dated 16 November 2020[62], this Court denied respondent's second Motion for Suspension because (1) it is a prohibited motion under Section 12[63], Rule 15 of A.M. No. 19-10-20-SC or the *2019 Amendments to the 1997 Rules of Civil Procedure*[64] in relation to Section 3[65], Rule 1 of the RRCTA, and (2) the period to decide the instant case is about to lapse.[66]

The parties failed to submit any compromise agreement prior to the due date to promulgate the decision. Hence, this decision.

In support of his Petition for Review, petitioner assigns the following errors to the Special First Division's actions:

I.
THE SPECIAL FIRST DIVISION ERRED IN ALLOWING MARKETING CONVERGENCE, INC. TO RAISE ISSUES FOR THE FIRST TIME ON APPEAL.

II.
THE SPECIAL FIRST DIVISION ERRED IN RULING THAT THE ASSESSMENTS ARE VOID BECAUSE THE REVENUE OFFICERS WHO CONDUCTED THE AUDIT OF MARKETING CONVERGENCE, INC.'S BOOKS OF ACCOUNTS WERE ALLEGEDLY NOT AUTHORIZED THROUGH A LETTER OF AUTHORITY.

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[60] Id., pp. 150-151.

[61] Id., p. 152.

[62] Id., pp. 160-162.

[63] **SEC. 12.** *Prohibited Motions.* — The following motions shall not be allowed:

...

(d) Motion to suspend proceedings without a temporary restraining order or injunction issued by a higher court[.]

...

[64] The 2019 Amendments to the 1997 Rules of Civil Procedure was approved by the Supreme Court En Banc on 15 October 2019 and became effective on 01 May 2020.

[65] **SEC. 3.** *Applicability of the Rules of Court.* — The Rules of Court in the Philippines shall apply suppletorily to these Rules.

[66] The instant case was submitted for decision on 02 December 2019.

III.
THE SPECIAL FIRST DIVISION ERRED IN APPLYING THE RULING OF THE SUPREME COURT IN THE CASE OF *MEDICARD PHILIPPINES, INC. v. COMMISSIONER OF INTERNAL REVENUE* TO THE INSTANT CASE.

Before Us, petitioner now argues that respondent never raised any issue on the ROs' lack of authority to conduct the audit in the administrative level as well as in its original Petition for Review (CTA Case No. 9301). Therefore, such an issue is undisputed and the Special First Division should not have considered the same when it ruled for respondent.

Citing Revenue Memorandum Order (**RMO**) No. 8-2006[67], petitioner insists that the issuance of a Memorandum of Assignment (**MOA**) is sufficient to validly reassign an existing audit to another RO. He explains that there is no requirement under the National Internal Revenue Code (**NIRC**) of 1997, as amended, that ROs must be identified in the LOA to have authority. Petitioner then submits that, since the MOA directing RO Mendoza to continue the audit or examination of respondent was issued pursuant to a previously issued LOA, there is no more need for a new LOA.

Lastly, petitioner maintains that the Supreme Court's ruling in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[68] (**Medicard**) is not applicable as it is not in all fours with the instant case, citing factual differences between *Medicard* and this case.

On the other hand, respondent in its Comment/Opposition, citing the case of *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*[69] (**Lancaster**), *Commissioner of Internal Revenue v. Swift Foods, Inc.*[70] (**Swift**) and *Nikken Philippines, Inc. v. Commissioner of Internal Revenue*[71] (**Nikken**), counters that the Court can resolve issues even if they are not raised in the parties' pleadings.

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67 Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS), 01 February 2006.
68 G.R. No. 222743, 05 April 2017.
69 G.R. No. 183408, 12 July 2017.
70 CTA EB No. 1613 (CTA Case No. 8399), 07 May 2018.
71 CTA EB No. 1569 (CTA Case No. 8714), 07 June 2018.

Respondent likewise disagrees with petitioner's insistence that a new LOA is not required in cases of reassignment of audit to a new RO. It cites the case of *Medicard* where the Supreme Court ruled that tax assessments issued by the BIR is void in the absence of a LOA. Likewise, RMO 43-90[72] which provides that a reassignment or transfer of cases to another RO requires the issuance of a new LOA. Additionally, in *Strawberry Foods Corporation v. Commissioner of Internal Revenue*[73] (**Strawberry**), where it was ruled that, in case of reassignment, the person to whom the case will be reassigned is not authorized to conduct an audit or investigation absent the necessary issuance of a new LOA specifically naming him/her therein.

Moreover, respondent insists that the doctrine laid down in *Medicard* is applicable to the instant case. Any examination conducted by ROs without authority is void thus, any assessment derived from such examination is equally void.

We rule below.

A careful and closer look at the arguments set forth by petitioner in his Petition for Review readily reveals that the grounds relied upon and the matters raised herein are mere restatements of his previous arguments before the Special First Division. All these matters have already been exhaustively discussed and passed upon in the assailed Decision and Resolution.

Be that as it may, if only to further clarify the conclusions of the Special First Division, We adopt its pronouncements, as set out below.

I. THE COURT CAN RULE ON ISSUES RAISED FOR THE FIRST TIME ON APPEAL.

In *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*[74] (**Eastern**), as cited in the assailed Resolution, the rule against raising new issues on appeal is not

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72 Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, 20 September 1990.

73 CTA Case No. 8569, 07 January 2016.

74 G.R. No. 163835, 07 July 2010.

without exceptions and this Court is thus allowed to resolve issues not raised or stipulated by the parties. The issue on whether the concerned ROs in this case are empowered by a LOA, even when not raised by the parties, is a matter of record and may be resolved accordingly especially so that it has a great bearing on the validity of the subject tax assessments.

Section 1[75], Rule 14 of the RRCTA supports clearly the above conclusion and no less than the Supreme Court has settled this authority of the Court in *Lancaster,* 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 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 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.[76]
> ...

In insisting otherwise, petitioner invokes *Aguinaldo Industries Corporation (Fishing Nets Divisions) v. Commissioner of Internal Revenue and The Court of Tax Appeals*[77] (**Aguinaldo**) that ruled:

> ...
> To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the

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75 **SEC. 1.** *Rendition of judgment.* — ...
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.

76 Citation omitted and emphasis supplied.

77 G.R. No. L-29790, 25 February 1982; Italics in the original text.

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. 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.

...

Unfortunately for petitioner, the declaration in *Aguinaldo* was made in 1982, several years prior to the promulgation of the RRCTA. At present, there is no longer any dispute that the Court may tackle issues not raised by the parties before it.

II. THE REVENUE OFFICERS WHO CONDUCTED THE AUDIT AND ASSESSMENT OF MARKETING CONVERGENCE, INC. MUST BE NAMED IN THE LETTER OF AUTHORITY (LOA).

We also agree with the Special First Division's ruling that the subject tax assessments are void because the ROs who conducted the audit of respondent's books of accounts were not authorized through an LOA.

As the records show, the audit of respondent was initially assigned to ROs Bravo, Sundiam, Sulit, Wepee, Serafica and GS Reyes by virtue of LOA No. LOA-116-2011-00000119. On 17 November 2014, Cesar D. Escalada (**Escalada**), Chief of Large Taxpayers Regular Audit Division issued MOA No. LOA-116-2014-1401[78], assigning RO Reynante DP. Martirez (**Martirez**) and GS Rolando M. Balbido (**Balbido**) for the continuation of the audit/investigation to replace the previously assigned ROs. Thereafter, the audit of respondent was again re-assigned to RO Mendoza and GS Balbido pursuant to MOA No. LOA-116-2015-1007 dated 05 October 2015[79], which was also signed by Chief Escalada.

78 Division Docket, Volume I, p. 388; Exhibit "R-1", BIR Records, p. 797.
79 Id., p. 389; Exhibit "R-2", id., p. 628.

Relevantly, petitioner's undated Memorandum (recommending the issuance of the PAN) shows that the report finding respondent liable for deficiency taxes was signed by RO Martirez and GS Balbido; while the report finding respondent liable for deficiency taxes in the aggregate amount of ₱1,051,564,244.84 set out in the Memorandum dated 05 September 2014[80] (recommending the issuance of the FLD) was signed by ROs Martirez, Mendoza and GS Balbido.

Considering that the original LOA did not reflect or carry the names of the aforementioned ROs to conduct respondent's audit and assessment pursuant to an LOA, the Special First Division correctly cancelled petitioner's assessment.

We could not agree with petitioner that a new LOA is unnecessary in cases of reassignment (of audit) to new ROs and that MOAs would suffice pursuant to RMO 8-2006. Likewise, We find no merit in his insistence that there is no requirement under the NIRC of 1997, as amended, that ROs must be identified in the LOA to validly audit and assess respondent.

The Court has consistently ruled that the RO conducting the audit investigation, whose name is not otherwise indicated in the LOA issued to the taxpayer subject of the investigation, is devoid of authority to do so.[81] Stated differently, the RO conducting the audit investigation must be named in the LOA.[82] In case of change on the RO to conduct the audit, a new LOA must be issued not merely an MOA. The latter is not an acceptable substitute for the LOA that vests the authority required for it.[83]

III. THE RULING IN *MEDICARD* IS APPLICABLE.

Lastly, the Special First Division did not err in applying the *Medicard* ruling where the Supreme Court interpreted Section 6(A) of

80 Exhibit "R-15", BIR Records, pp. 599-603.

81 *PGA Sompo Insurance Corporation v. The Commissioner of Internal Revenue*, CTA Case No. 9394, 08 August 2019.

82 Id.

83 *Ithiel Corporation v. Commissioner of Internal Revenue*, CTA Case No. 8689, 04 July 2016.

the NIRC of 1997, as amended — the provision of law which deals with the issuance of an LOA.

Section 6(A)[84] of the NIRC of 1997, as amended, provides that a valid grant of authority from the BIR Commissioner or his duly authorized representative is required before an RO can conduct an examination or issue an assessment. Such grant of authority is in the form of an LOA, pursuant to Section 13[85] of the NIRC of 1997, as amended.

We quote the relevant ruling in *Medicard*:

> ...
> Based on [Section 6(A) of the NIRC of 1997, as amended], 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.**
> ...
>
> 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

[84] **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
(A) *Examination of Returns and Determination of Tax Due.* — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
...

[85] **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.

> 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.
>
> ...
>
> 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.**[86]
>
> ...

Also, in the earlier case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[87] (**Sony**), the Supreme Court has discussed the importance of the issuance of an LOA:

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

Pursuant to *Medicard* and *Sony*, the RO must show that he has been granted authority through an LOA to conduct the examination or assessment. Otherwise, the said examination or assessment is void.

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86 Emphasis supplied and italics in the original text.
87 G.R. No. 178697, 17 November 2010; Citation omitted and emphasis supplied.

Moreover, Section C of RMO No. 43-90 requires the issuance of a new LOA in cases of reassignment/transfer of cases to another RO(s), as follows:

> ...
> C. Other policies for issuance of L/As.
>
> 1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.
>
> ...
>
> **5. Any [reassignment]/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.**[88]
>
> ...

As earlier stated, the original LOA issued to respondent did not reflect or carry the names of the ROs who conducted the audit and assessment. Even as the audit of respondent was properly reassigned to other ROs, regrettably, no new LOA was issued upon reassignment to such new ROs who were merely identified in the MOAs.

Considering that the FDDA dated 11 February 2016, which was issued pursuant to an examination conducted by ROs who were not authorized to conduct such examination *via* LOA, the said assessment is void. In arriving at this conclusion, the Special First Division correctly applied the *Medicard* ruling insofar as it underscored the importance of an LOA.

WHEREFORE, premises considered, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated 04 January 2019 and 09 July 2019, respectively, in CTA Case No. 9301, entitled *Marketing Convergence, Inc. v. Commissioner of Internal Revenue*, are hereby **AFFIRMED.**

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88 Emphasis supplied.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(With Separate Concurring Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MARKETING CONVERGENCE, INC.,
Respondent.

CTA EB NO. 2109
(CTA CASE NO. 9301)

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena, *and*
Modesto-San Pedro, *JJ*

Promulgated:
DEC 03 2020
4:05p.m.

x---x

SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, J.:

I concur with the Decision which denied the Petition for Review filed by the Commissioner of Internal Revenue (CIR) on the ground that the Revenue Officer (RO) and Group Supervisor (GS) named in the Memorandum of Assignment (MOA) were not validly authorized to conduct the investigation.

However, I am of the firm belief that notwithstanding the absence of a new Letter of Authority ("LOA") issued in their favor, Revenue Officer (RO) Reynante DP. Martirez, RO Mendoza and Group Supervisor (GS) Rolando M. Balbido may be given the authority to continue the audit and examination of respondent Marketing Convergence, Inc.'s books of accounts and other accounting records by way of a Revalidation Notice or Memorandum of Reassignment or any letter in this case, issued by the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service.

I submit that this could be validly done under the National Internal Revenue Code ("NIRC") of 1997, as amended and the laws on agency under the Civil Code.

The power of the Commissioner of Internal Revenue ("CIR") to conduct assessments is granted to him by virtue of Section 6 of the NIRC of 1997, as amended:

> "SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.** –
>
> (A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative may authorize the examination</u> of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."[1]

Section 7 of the NIRC of 1997, as amended, likewise sets limits on which powers of the CIR may be delegated by him and which powers are to be exercised exclusively by him. The issuance of an LOA is not one of the non-delegable powers of the CIR, *viz:*

> "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: Provided, however, That the following powers of the Commissioner shall not be delegated:
>
> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

[1] *Emphasis and underscoring supplied.*

(c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept."

On the contrary, issuing LOAs is a delegable power which the CIR may devolve to Revenue Regional Directors, as expounded on in Section 10 of the NIRC of 1997, as amended:

"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:

xxx

(c) **<u>Issue Letters of Authority for the examination of taxpayers</u> within the region**;

xxx

(h) **Perform such other functions as may be provided by law and as may be delegated by the Commissioner.**"[2]

An LOA is, in essence, a contract of agency. Article 1868 of the Civil Code defines agency as a contract where "a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."

[2] *Emphasis and underscoring supplied.*

In the case of *Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.*[3], the Supreme Court had the occasion to expound on the elements of agency, to wit:

> "The elements of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for him/herself; and (4) the agent acts within the scope of his/her authority. **As the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it.** Absent such mutual intent, there is generally no agency. It is likewise a settled rule that persons dealing with an assumed agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it."[4]

In an LOA, the CIR is the principal - as he is the one mandated by the law to make assessments - and the Regional Director, his agent.

May the Regional Director, the CIR's agent, appoint a sub-agent, in this case, the Revenue Officer named in the LOA? Article 1892 of the Civil Code says that he can. The said provision states:

> "Art. 1892. **The agent may appoint a substitute if the principal has not prohibited him from doing so**; but he shall be responsible for the acts of the substitute:
>
> (1) When he was not given the power to appoint one;
> (2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.
>
> All acts of the substitute appointed against the prohibition of the principal shall be void. (1721)"[5]

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to ROs Reynoso Bravo, William Sundiam, Miguel Sulit, Meliza Wepee, Marible Serafica, and Group Supervisor Wilfredo Reyes who were originally named in the LOA may be revoked,

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[3] G.R. No. 188288, January 16, 2012.
[4] *Emphasis supplied.*
[5] *Emphasis supplied.*

transferred and reassigned to ROs Martirez,[6] Mendoza and GS Balbido for continuance of audit.[7]

Said document where such authority is transferred may be equivalent to an LOA. Several reasons support this. *First*, the only directive under Section 13 of the NIRC of 1997, as amended,[8] which requires that assessment be done by ROs pursuant to an LOA, is that the grant of authority be done ***in writing***. In fact, an "[a]gency may be oral, unless the law requires a specific form."[9]

Second, although the document may not be entitled "Letter of Authority" but otherwise, it can contain all the elements necessary to establish a contract of agency between the CIR and the new Revenue Officer. The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[10] The title of the contract does not necessarily determine its true nature.[11] In fact, this Court has, time and again, declared certain documents emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.

In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the NIRC of 1997, as amended, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.[12] Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any

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[6] His authority was based on MOA No. LOA-116-2014-1401.

[7] Their authority is based on MOA No. LOA-116-2015-1007.

[8] SEC. 13. Authority of a Revenue Officers. - 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).*

[9] Civil Code of the Philippines, Article 1869.

[10] Heirs of Dr. Mario S. Intac and Angelina Mendoza Intac v. Court of Appeals and Spouses Marcelo Roy, Jr. and Josefina Mendoza-Roy and Spouses Dominador Lozada and Martina Mendoza-Lozada, G.R. No. 173211, October 11, 2012 *citing* Spouses Villaceran v. De Guzman, G.R. No. 169055, February 22, 2012; Ramos v. Heirs of Honorio Ramos, Sr., G.R. No. 140848, April 25, 2002, 381 SCRA 594, 601; Heirs of Policronio M. Ureta, Sr. vs. Heris of Liberato M. Ureta, G.R. Nos. 165748 & 165930, September 14, 2011 *citing* Lopez v. Lopez, G.R. No. 161925, November 25, 2009, 605 SCRA 358, 36.

[11] Adelfa Properties, Inc. v. Court of Appeals, G.R. No. 111238, January 25, 1995.

[12] Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, represented by Jose Mario Bunag, in his capacity as Commissioner of the Bureau of Internal Revenue, and John Doe and Jane Doe, who are persons acting for, in behalf or under the authority of Respondent, G.R. No. 215427, December 10, 2014, *citing* Lopez v. The Civil Service Commission, 273 Phil. 147, 152 (1991).

fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus*, which means that the best method of interpretation is that which makes laws consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code.[13]

I am not unaware of Revenue Memorandum Order ("RMO") No. 43-90[14] which states that "[a]ny re-assignment/transfer of cases to another RO(s)...shall require the issuance of a new L/A" However, I humbly stress and emphasize that an administrative issuance must conform, not contradict, the provisions of the enabling law. Any rule that is not consistent with the law is null and void.[15]

It is for the reasons above that, in my opinion, **ROs Martirez, Mendoza and GS Balbido who conducted the examination of respondent's records may be deemed authorized to do so without need for a new LOA, only if said letter or notice or memorandum was signed by the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service.**

Under RMO No. 29-07[16], the equivalent of a Regional Director in the Large Taxpayers Service is the Assistant Commissioner/Head Revenue Executive Assistants, for they are the ones authorized to issue an LOA, to wit:

> "II. AUDIT POLICIES AND GUIDELINES
>
> 1. The Chief, Large Taxpayers Audit & Investigation Divisions/LTDOs shall draw a list of taxpayers selected for audit under its current selection criteria. The list shall state the name of taxpayer selected for audit, the nature of business, the amount of gross sales/receipts, the selection code, the PSIC code, and the corresponding amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.
>
> 2. **All Letters of Authority (LOAs) shall be issued and approved by the <u>Assistant Commissioner/Head Revenue Executive Assistants</u>.**"[17]

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[13] Philippine International Trading Corporation v. Commission on Audit, G.R. No. 183517, June 22, 2010.
[14] Issued September 20, 1990.
[15] Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, G.R. Nos. 175707, 180035 & 181092, November 19, 2014.
[16] Issued September 26, 2007.
[17] *Emphasis and underscoring supplied.*

In the instant case however, the MOA No. LOA-116-2015-1007 dated October 5, 2015[18] was only signed by Cesar D. Escalada, Chief of LTS-RAD 1. Therefore, ROs Martirez, Mendoza and GS Balbido were without authority to continue the audit.

From all the foregoing, I vote that the Petition for Review be DENIED.

Ma. Belen RL

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[18] Exhibit "R-2".