**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## FIRST DIVISION

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| **SAN MIGUEL FOODS, INC. (as surviving corporation in a merger involving MONTEREY FOODS CORPORATION),** Petitioner, | **CTA CASE NO. 9046** |
| | Members: |
| | **DEL ROSARIO,** *P.J., Chairperson* **UY,** *and* **MINDARO-GRULLA,** *JJ.* |
| - versus - | |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: JUN 04 2018 ; 1:05 pm |

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## RESOLUTION

**MINDARO-GRULLA, *J.*:**

For the Court's resolution is respondent's **Motion for Reconsideration**, filed on March 1, 2018, with petitioner's **Opposition [to Respondent's Motion for Reconsideration]**, filed on March 16, 2018.

Respondent moves for the reconsideration of the Decision promulgated on February 12, 2018, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent's Formal Letter of Demand with attached Final Assessment Notices and Details of Discrepancy, dated October 9, 2014, issued against petitioner for deficiency income tax, VAT and DST for the period

January 1, 2010 to August 31, 2010 and the Final Decision on Disputed Assessment (FDDA) dated January 12, 2015, for being intrinsically void, are hereby **CANCELLED**.

**SO ORDERED**."

Respondent raises the following grounds in support of his motion:

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 in ruling that the Revenue Officer (RO) who conducted the audit investigation of respondent's books of accounts was not authorized and further declaring the subject assessment void for lack of authority of the revenue officer who conducted the audit investigation; and

3. The Court erred in applying the ruling of the Supreme Court *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* (*Medicard case*).[1]

On the other hand, petitioner alleges that respondent's claim of denial of due process is devoid of merit. It asserts that the regularity of the issuance of, and the formal requisites to, the assessment and Letter of Authority (LOA) are determinative of its liability for the alleged deficiency taxes. Petitioner also states that it is within the authority of the Court to determine the validity of the LOA even if the parties do not raise the same as a question. It further argues that respondent's contention that the *Medicard case* finds no application in the case is misplaced. It contends that the case is clear that the prior grant of the authority must be expressly and clearly granted before any RO can conduct an examination or assessment. The absence thereof renders the assessment a complete nullity.

Respondent's arguments lack merit.

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

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Respondent contends that his basic right to fair play and due process was violated when the Court granted a relief that was never prayed for by petitioner. He maintains that the issues on the lack of demand to pay the taxes due within the specific period and the lack of valid LOA were never raised by petitioner in its Petition for Review.

It must be stressed that the foregoing issue had already been ruled by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[2] which confirmed the authority of this Court to resolve the question on the scope of authority of the ROs to conduct the audit even though the parties had not raised the same in their pleadings or memoranda. Moreover, Rule 14, Section 1 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, provides that 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.

It is worthy to note that the lack of demand to pay the taxes within a specific period and lack of a valid LOA relate to the validity of the assessment itself. To reiterate, an assessment should contain not only a computation of tax liabilities but also a demand for payment within a specific period. Moreover, there must be a grant of authority before any revenue officer can conduct an examination or assessment. In the absence of such an authority, the assessment or examination is a nullity. A void assessment bears no fruit and it is settled that estoppel cannot operate to give an effect to an assessment which is *void ab initio*.

Thus, while the lack of demand to pay the taxes within a specific period and lack of a valid LOA were not specifically included in the issues raised by the parties, the Court is not precluded from considering these issues as their absence renders an assessment intrinsically void.

Upon examination of the records of the case, the Court found that the Formal Letter of Demand (FLD) and Final Assessment Notices (FANs) issued against petitioner failed to demand payment of the taxes due within a specific period. It also held that the RO who conducted the audit of petitioner was not duly authorized pursuant to a valid LOA. It must be emphasized that Revenue Memorandum Order (RMO) No. 43-90 requires that the continuation of audit by a

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

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revenue officer other than the officer named in a previous LOA requires the issuance of a new LOA.

In this case, there is nothing in the records which would show that a new LOA was issued granting RO Maria Gracielle Cecilia F. San Pedro and Group Supervisor (GS) Allan M. Maniego to continue the audit of petitioner for the period January 1, 2010 to August 31, 2010. Also, an examination of the Memorandum of Assignment indicates that the GS assigned to continue the audit was GS Juvy S. De la Peña and not GS Allan M. Maniego. Therefore, the absence of a new LOA authorizing RO Maria Gracielle Cecilia F. San Pedro and GS Allan M. Maniego to continue the audit of petitioner for the period January 1, 2010 to August 31, 2010 rendered the assessment issued against petitioner void.

Respondent also claims that the *Medicard case* has no relevance to the instant case. He argues that the said case involved complete absence of LOA. He contends that in the present case, nothing is irregular in the LOA and that the audit was merely transferred to other revenue officer and petitioner was duly notified of such transfer.

Based on Section 13 of the National Internal Revenue Code (NIRC) of 1997, 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.[3] It is well settled that an officer of the Bureau of Internal Revenue (BIR) cannot simply subject a taxpayer to audit without a valid authority for that purpose.

The *Medicard case* merely affirms this requirement that there must be a grant of authority before any RO can conduct an examination or assessment. Without such an authority, the assessment or examination is a nullity.

In this regard, the absence of a new LOA giving RO Maria Gracielle Cecilia F. San Pedro and GS Allan M. Maniego the authority to continue the audit of petitioner for the period January 1, 2010 to August 31, 2010 rendered the assessment issued against petitioner void.

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[3] *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.

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Consequently, the Court ruled that the FLD with attached FANs and Details of Discrepancy for deficiency income tax, Value Added Tax (VAT) and Documentary Stamp Tax (DST) for the period January 1, 2010 to August 31, 2010 and the Final Decision on Disputed Assessment (FDDA) must be cancelled for being intrinsically void.

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

**SO ORDERED.**

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

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

**ERLINDA P. UY**
Associate Justice