REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

TOLEDO HOLDINGS CORPORATION,	**CTA CASE NO. 9375**
Petitioner,	Members: **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	MAR 03 2020 12:36 p.m.

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RESOLUTION

MODESTO-SAN PEDRO, J.:

For resolution is respondent's Motion for Reconsideration filed on 5 November 2019 ("Motion for Reconsideration"),[1] with petitioner's Comment/Opposition (To Respondent's Motion for Reconsideration Re: Decision dated October 15, 2019) filed on 4 December 2019 ("Comment").[2]

In the Motion for Reconsideration, respondent prays for the reversal of the Decision dated 15 October 2019, the dispositive portion of which provides:

> "**WHEREFORE,** in view of the foregoing, the present Petition for Review is hereby **GRANTED.** The Final Decision on Disputed Assessment and the assessment issued by respondent against petitioner for taxable year 2011 covering deficiency Donor's Tax in the total amount of **FORTY SEVEN MILLION SIX HUNDRED FORTY FIVE THOUSAND SIX HUNDRED FORTY FOUR AND 13/100 PESOS (PHP47,645,644.13)** is hereby **CANCELLED** and **WITHDRAWN.**"[3]

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1 Records, Vol. 1.
2 Records, Vol. 1.
3 *See* dispositive portion, Decision, Records, Vol. 1, p. 704.

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assessments are void because the revenue officers who conducted the audit of petitioner's books of accounts were allegedly not authorized through a letter of authority (LOA)"; and this "Court erred in applying the ruling of the Honorable Supreme Court in the case of ***Medicard v. CIR.*** The ruling is not applicable to the instant case."[4]

In its Comment, petitioner counters that "the assessment is void due to lack of a valid LOA"; and "the case of ***Medicard v. CIR*** is applicable in this case."[5]

We rule to deny the Motion for Reconsideration.

First and foremost, the issues raised in the Motion for Reconsideration have already been sufficiently discussed in the Decision dated 15 October 2019. As such, these deserve scant consideration. But to fortify this Court's Decision dated 15 October 2019, we shall tackle once more the issues raised by respondent.

The revenue officers who conducted an audit and examination of petitioner's books of accounts are not authorized to do so.

Respondent alleges that under ***Revenue Memorandum Order No. 8-2006 ("RMO 08-06"),*** the standard operating procedure, in cases where a revenue officer cannot continue the audit examination/investigation due to death, retirement, reassignment, etc., has been to issue a Memorandum of Assignment ("MOA") to other revenue officers who will continue the audit examination/investigation. Respondent alleges that the authority to audit is not derived from the MOA but from the validly issued Letter of Authority ("LOA"). The MOA is merely for the continuation of the audit which was already authorized under the LOA.

This is misplaced.

With respect to the allegation that it is standard operating procedure to issue a MOA to another revenue officer to continue the audit examination pursuant to ***RMO 08-06***, thus, it is a mere continuation of the LOA, suffice it to say that in ***Commissioner of Internal Revenue vs. Composite Materials, Inc.,***[6] the Supreme Court categorically ruled that a MOA is not equivalent to

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[4] *See* Arguments/Discussions, Motion for Reconsideration, Vol. 1, pp. 714-728.

[5] *See* Our Discussion, Comment, Vol. 1.

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

to continue the audit and examination of taxpayer's books of accounts, *viz:*

> "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 **any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA."**
>
> (Emphasis and Underscoring, Ours)

The importance of a LOA empowering a revenue officer to conduct an examination or assessment cannot be overstated. ***Section 13 of the National Internal Revenue Code ("NIRC")*** provides, as follows:

> "Section 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."
>
> (Emphasis and Underscoring, Ours)

This provision is clear that before a revenue officer can proceed with an examination or assessment of a taxpayer's books, he must be clothed with authority emanating from a LOA. In the present case, LOA No. LOA-211-2012-00000268 SN: eLA201100045404[7] dated 16 October 2012 was issued authorizing revenue officers Malik Dimakuta and Gerardo Soliman, and group supervisior Oscar Sable of the Large Taxpayers Regular Audit Division

[7] Records, Vol. 1, p. 461.

2 to examine and audit petitioner's books of accounts and other accounting records, for all internal revenue taxes for the period 1 January 2011 to 31 December 2011, *viz:*

> "SN: eLA201100045404
> LOA-211-2012-00000268
>
> LETTER OF AUTHORITY
>
> October 16, 2012
>
> TOLEDO HOLDINGS CORPORATION
> XXX
> XXX
> XXX
>
> SIR / MADAM / GENTLEMEN:
>
> The bearer(s) hereof, RO – MALIK DIMAKUTA, GERARDO SOLIMAN / GS OSCAR SABLE of the LARGE TAXPAYERS REGULAR AUDIT DIVISION 2 is/are authorized to examine your books of accounts and other accounting records for ALL INTERNAL REVENUE TAXES for the period from January 1, 2011 to December 31, 2011 pursuant to SEC. 6(A) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED. The Revenue Officer(s) identified herein are provided with the necessary identification card(s) which shall be presented to you upon request.
>
> It is requested that all required documents, books and records be provided to the Revenue Officer(s) in order to expedite the examination.
>
> You will be duly informed of the results of the examination upon approval of the report submitted by the aforementioned Revenue Officer(s).
>
> Very truly yours,
>
> (SGD.)
> KIM S. JACINTO-HENARES
> COMMISSIONER OF INTERNAL REVENUE"
>
> (Underscoring, Ours)

However, on 4 April 2013, a MOA was issued referring the case to revenue officer Luzviminda A. Pedrosa and group supervisor Fe F. Caling for the "[c]ontinuation of the audit/investigation to replace the previously assigned ROs who resigned/retired/transferred to another district office,"[8] *to wit:*

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8 Records, Vol. 1, p. 462.

No. LOA-125-2013-202
Date: April 4, 2013

MEMORANDUM TO
Revenue Officer/s : LUZVIMINDA A. PEDROSA
Group Supervisor : FE F. CALING

Subject: TOLEDO HOLDINGS CORPORATION

Referred to you is the subject case/docket for:

[x] Continuation of the audit/investigation to replace the previously assigned Revenue Officer(s) who resigned/retired/transferred to another district office.

xxx xxx xxx

[x] Others (specify) Audit of all Internal Revenue Taxes for Taxable Year 2011 pursuant to LOA-211-2012-00000268 dated 10/16/2012

The docket with the report of the case shall be submitted to the undersigned within the time frame prescribed under existing revenue issuances.

For your information and strict compliance.

[SGD.]
EDWIN T. GUZMAN
OIC-Chief RLTAD 2"

(Underscoring, Ours)

This MOA was relied upon by revenue officer Luzviminda A. Pedrosa and group supervisor Fe F. Caling as basis for continuing the audit and examination of petitioner's books of accounts. Herein lies the irregularity.

As cited above, ***Section 13 of the NIRC*** clearly requires that all revenue officers performing assessment functions must be clothed with authority emanating from a LOA. ***Revenue Memorandum Circular No. ("RMC No.") 43-90***[9] provides, as follows:

> "**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, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As."
>
> (Emphasis and Underscoring, Ours)

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

room for interpretation, only application.[10] The use of the word "shall" connotes a mandatory character; it is a word of command and must be given a compulsory, imperative, or mandatory meaning.[11] Therefore, use of the word "shall" in ***RMC No. 43-90*** can only mean that the issuance of a new LOA in cases of reassignment is mandatory and required. The old LOA authorizing the previous revenue officer/s to examine or audit a taxpayer cannot be used by the new revenue officer/s to continue the audit or assessment.

Despite the transfer of the audit/investigation to revenue officer Pedrosa, no new LOA was issued in their favor. This was confirmed by Ms. Pedrosa in her direct examination when she testified that her authority stems only from a MOA, *viz.*:

> "10Q Why are you familiar with the case?
> 10A I [was] the one who conducted the audit/investigation of petitioner for the taxable year 2011 which was originally assigned to [RO] Dimakuta.
>
> 11Q You mentioned that you continued the audit/investigation of petitioner for taxable year 2011, what is your authority to conduct the investigation of petitioner?
> 11A I was authorized under [MOA] No. TVN-125-2013-202 dated 4 April 2013 to continue the audit/investigation of petitioner's accounting records for taxable year 2011 issued pursuant to [LOA] No. LOA-211-2012-00000268 dated 16 October 2012."[12]

During cross-examination, Ms. Pedrosa further admitted that there is only one LOA issued, which does not bear her name:

> "ATTY. AVILA
> Q Madam Witness, was your name mentioned in the said Letter of Authority?
>
> MS. PEDROSA
> A No.
>
> ATTY. AVILA
> Q In relation to this case, there was only one [LOA] issued, am I correct?
>
> MS. PEDROSA
> A Yes."[13]

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10 *Rey Nathaniel C. Ifurung v. Hon. Conchita C. Carpio Morales Jardeleza, et. al.*, G.R. No. 232131, 24 April 2018, citing *Umali v. The Judicial and Bar Council*, G.R. No. 228628, 25 July 2017.

11 *UCPB General Insurance Company, Inc. v. Hughes Electronics Corporation*, G.R. No. 190385, 16 November 2016, citing *Cipriano Enriquez, et. al. v. Maximo Enriquez, et. al.*, G.R. NO. 139303: 25 August 2005.

12 *See* Judicial Affidavit of Revenue Officer Luzviminda A. Pedrosa; Records, Vol. 2, p. 575.

13 Transcript of Stenographic Notes dated November 20, 2018, pp. 6-7.

to comply with ***RMC 43-90*** and ***Section 13 of the NIRC***. With no new LOA issued, revenue officer Pedrosa clearly had no authority to continue the examination of petitioner's books of accounts and other accounting records.

This lack of authority renders the assessment or examination void as stressed by the Supreme Court in ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue,***[14] when it ruled in this wise:

> "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."
>
> (Underscoring, Ours)

The case of Medicard Philippines, Inc. v. Commissioner of Internal Revenue is applicable to the present case.

Respondent further argues that the case of ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue*** is inapplicable to the present case as the facts therein are not in all fours with the present case's facts. In ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue,*** the audit and examination was pursuant to a Letter Notice. On the other hand, in the present case, the audit and examination was made pursuant to a LOA which was merely supplanted by a MOA after the original revenue officers named in the LOA were transferred to another office.

Respondent maintained that once a LOA authorizes the audit or examination of a taxpayer, in the event that the revenue officers named in the LOA can no longer perform the audit or examination due to resignation, transfer or death, the authority to audit remains and such authority must necessarily be reassigned and assumed by another revenue officer/s. In support therein, he cited a dissenting opinion penned by Associate Justice Ma. Belen Ringpis Liban in the case of ***Medtecs International Corporation v. Commissioner of Internal Revenue***[15] which provided that a MOA can validly give authority to revenue officers to perform audit and examination of taxpayer's books of accounts under the laws of agency under the Civil Code. In addition, respondent cited the case of ***Oriental Assurance Corp. v. CIR,***[16] which provided, *viz:*

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14 G.R. No. 222743, 5 April 2017, citing *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.

15 C.T.A. EB No. 1560, 13 March 2018.

16 C.T.A. EB No. 1482 & 1487, 21 June 2018.

> "In this case, there was a re-assignment of the case to another RO and GS thru a Memorandum, thus, the continuation of the audit investigation by RO Marohombsar and GS Perez were valid."

Both contentions are misplaced.

Unless and until modified by the Supreme Court *En Banc,* the pronouncement in ***Medicard Philippines, Inc. v. Commissioner of Internal Revenue*** is applicable to all cases where the revenue officers who conducted the audit and examination of taxpayer's books of accounts are not armed with a LOA. This case made a definite and categorical 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 assessment, that may be issued after said audit.

Moreover, the citations (*i.e.,* the Dissenting Opinion of Associate Justice Ma. Belen Ringpis Liban in the case of ***Medtecs International Corporation v. Commissioner of Internal Revenue*** and ***Oriental Assurance Corp. v. CIR***), which respondent is relying on to support his contention that a MOA can give sufficient authority to a revenue officer to conduct an audit or examination of a taxpayer's books of accounts, are not binding precedents. It must be stressed that only decisions of the Supreme Court establish jurisprudence or doctrines in this jurisdiction[17] and these decisions become judicial precedents to be followed in subsequent cases by all courts of the land.[18]

Even assuming that the dissent of Associate Justice Ma. Belen Ringpis Liban in the case of ***Medtecs International Corporation v. Commissioner of Internal Revenue*** is binding and effective jurisprudence, the instant Petition for Review will still fail considering that the person who signed the MOA was a mere OIC-Chief of the RLTAD, a person. In fact, this was covered by Associate Justice Ma. Belen Ringpis Liban's Concurring Opinion in the Assailed Decision which provided, as follows:

> "... in my opinion, RO Pedrosa and GS Caling who conducted the examination of Toledo Holdings Corporation'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.**

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17 The Insular Life Assurance Co., Ltd., Employees Association-NATU, et al., v. The Insular Life Assurance Co., Ltd., et al., G.R. No. L-25291, 30 January 1971, *citing* Miranda, et al. v. Imperial, et al., 77 Phil. 1066.

18 De Mesa v. Pepsi Cola Products Phils., Inc., G.R. Nos. 153063-70, 19 August 2005.

y

Under RMO No. 29-07, the equivalent of a Regional Director in the Large Taxpayer 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. xxx
> 2. **All Letters of Authority (LOAs) shall be issued and approved by the Assistant Commissioner / Head Revenue Executive Assistants.'**

In the instant case however, the MOA No. LOA-125-2013-202 was only signed by Mr. Edwin T. Guzman, OIC-Chief RLTAD. Therefore, RO Luzviminda A. Pedrosa and GS Fe. F. Caling were without authority to continue the audit."

Based on the foregoing, Ms. Pedrosa and Ms. Caling were without authority to conduct an audit and examination of petitioner's books of accounts. Hence, the resulting assessment for the deficiency Donor's Tax assessment for taxable year 2011 is void for lack of a valid LOA.

WHEREFORE, in view of the foregoing, respondent Commissioner of Internal Revenue's **MOTION FOR RECONSIDERATION** filed on 5 November 2019 is hereby **DENIED** for lack of merit. The Decision dated 15 October 2019 is **AFFIRMED.**

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

Ma. Belen

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice