REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE
Petitioner,

- *versus* -

MANILA MEDICAL SERVICES, INC. (MANILA DOCTORS HOSPITAL),
Respondent.

CTA EB No. 2014
(CTA Case No. 8907)

Present:

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

Promulgated:

JAN 2 1 2021 2:15 p.m.

x - x

RESOLUTION

UY, *J.*:

For resolution is petitioner's ***MOTION FOR RECONSIDERATION (Re: Decision promulgated on 01 September 2020)*** filed on September 28, 2020,[1] with respondent's ***COMMENT (To Petitioner's Motion for Reconsideration dated September 25, 2020)*** filed on October 26, 2020.[2]

In the said *Motion*, petitioner moves for the reversal and setting aside of the Court *En Banc*'s Decision promulgated on September 1, 2020, the dispositive portion of which reads:

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[1] EB Docket, pp. 150 to 169.
[2] EB Docket, pp. 173 to 185.

"**WHEREFORE,** in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Decision dated November 6, 2018 and the Resolution dated January 30, 2019 rendered by the Court in Division in CTA Case No. 8907, are **AFFIRMED**.

SO ORDERED."

Petitioner's arguments:

In his *Motion for Reconsideration*, petitioner maintains his argument that the Court has no jurisdiction over the original petition filed by respondent.

According to petitioner, the Final Decision on Disputed Assessment (FDDA) issued to and received by respondent was the adverse decision appealable to the Court of Tax Appeals (CTA) and not the Warrant of Distraint and/or Levy (WDL) pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997. With the failure of respondent to timely appeal the decision on the disputed assessment to the CTA, the assessment has become final and unappealable.

Petitioner also argues that the fact of mailing of the FDDA was supported by evidence and that the case of *Commissioner of Internal Revenue vs. GJM Philippines*[3] (*GJM* case) is inapplicable to the instant case.

Lastly, petitioner argues that the Letter of Authority (LOA) need not be formally offered as evidence in order to be admissible citing Section 4 of Rule 129 of the Rules on Evidence; that the existence and receipt of the LOA was admitted by respondent during trial; and that cases of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[4] (*Sony* case) and *Medicard Philippines Inc. vs. Commissioner of Internal Revenue*[5] (*Medicard* case) are inapplicable to the instant case, having different set of facts in the said two cases.

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[3] G.R. No. 202695, February 29, 2016.
[4] G.R. No. 178697, November 17, 2010.
[5] G.R. No. 222743, April 5, 2017.

Respondent's counter-arguments:

On the other hand, respondent counter-argues that petitioner raises no new arguments in the instant motion that could convince the Court to reverse the decision.

Allegedly, the WDL contains a final determination of the alleged tax deficiencies and constitutes as an act of respondent on "other matters" arising under the NIRC of 1997; that the original Petition for Review was filed on time before the Court in Division and the deficiency tax assessment did not become final, executory and demandable.

Respondent maintains that no FDDA was issued to and/or received by respondent, reiterating that in respondent's letter dated September 5, 2015, there was no further communication from the petitioner after the issuance of the Preliminary Assessment Notice and Final Assessment Notice. Moreover, respondent argues that petitioner was not able to present the registry return card which is the best evidence that petitioner can offer to show if indeed respondent's representative received the FDDA.

Lastly, respondent contends that the mere issuance of a letter notice without the requisite LOA is fatal to any investigation by the BIR on any particular taxpayer. Failure on the part of the BIR to comply with the procedure harms the taxpayer, whose right to due process is denied.

THE COURT *EN BANC'S* RULING

Petitioner's *Motion for Reconsideration* lacks merit.

Except for petitioner's argument that the LOA need not be formally offered as evidence in order to be admissible citing Section 4 of Rule 129 of the Rules on Evidence, We find that no new arguments were raised by petitioner to justify the reconsideration sought in the instant motion. Instead, petitioner presents averments that are mere rehash of arguments already considered by the Court in Division and the Court *En Banc*.

Thus, the Court *En Banc* finds no compelling reason to warrant a reconsideration of its assailed Decision.

Petitioner argues that the Court *En Banc* erred in ruling that the assessments are void because the Revenue Officer (RO) who conducted the audit of respondent's books of accounts were not authorized through a LOA. Citing Section 4, Rule 129 of the Rules of Evidence, petitioner argues that the LOA need not be formally offered as evidence in order to be admissible. The existence and receipt of the LOA was admitted by respondent during trial, citing a portion from the Court in Division's decision, to wit:

> "In petitioner's supplemental letter dated September 5, 2014, it admitted that they had received two (2) LOAs for the examinations of its book of accounts for taxable year 2008, particularly, LOA No. 2008-00002264 dated July 6, 2009 and LOA No. 2007-00037491 dated July 14, 2009 where the respondent's Regional Director clarified that the second LOA merely superseded the former. However, petitioner argued that it had already settled the deficiency assessments assessed under the said examination through its payment of the deficiency taxes on February 15, 2010."[6]

Petitioner's argument deserves scant consideration.

It bears reiterating that in the assailed Decision of this Court, it was not only the failure of petitioner to present and offer in evidence LOA No 2007-00037491 dated July 14, 2009 in CTA Case No. 8907, that led to the denial of his Petition for Review in the instant case, but more so, because Revenue Officer Ethel C. Evangelista who audited respondent's books of account for TY 2008 was not duly authorized to do so by way of a Letter of Authority, and We quote :

> "In the instant case, petitioner presented Revenue Officer (RO) Ethel C. Evangelista for the purpose of proving that she was duly authorized to conduct the investigation of the tax case of respondent for TY 2008. However, in her testimony, she made no mention about the issuance of an LOA in her favor.

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[6] Decision dated November 6, 2018, CTA Case No. 8907, EB Docket, p. 36.

> Moreover, although LOA No. 2007 0037491 dated July 14, 2009 issued by Arnel SD. Guballa, OIC-Regional Director of Revenue Region No. 6 is attached to the BIR Records of this case, the said LOA authorized RO E. Demadura/J. Macuha and Group Supervisor J. Tabor of the Special Investigation Division, to examine respondent's books of account and other accounting records for all internal revenue taxes for the period from January 1, 2008 to December 31, 2008 of respondent. Clearly, RO Evangelista was not mentioned in said LOA.
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> Besides, LOA No. 2007 0037491 dated July 14, 2009 cannot be considered by the Court as the same was not presented in evidence by petitioner in CTA Case No. 8907. It is well-settled that the courts cannot consider evidence which has not been formally offered."[7]

Pursuant to the foregoing discussions in the assailed Decision, We find no cogent reason to reconsider and modify Our Decision dated September 1, 2020. As mentioned earlier, We find that the averments raised by petitioner in the instant motion are mere rehash of arguments already fully considered by the Court in Division and the Court *En Banc.*

WHEREFORE, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[7] Decision dated September 1, 2020, EB Docket, pp. 141 to 142.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice