REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2587** *(CTA Case No. 9865)*
	Present:
-versus-	**DEL ROSARIO**, *P.J.*, **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO REYES-FAJARDO, CUI-DAVID,** and **FERRER-FLORES,** *JJ.*
YAN AN CARGO CORPORATION, *Respondent.*	Promulgated: MAY 1 1 2023 11:35am

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves petitioner's **Motion for Reconsideration (Re: Decision dated 14 February 2023)** filed on March 9, 2023, with respondent's **Comment/Opposition (Re: Petitioner's Motion for Reconsideration dated 9 March 2023)** filed on March 27, 2023.

Petitioner seeks reconsideration of the Court *En Banc's* Decision promulgated on February 14, 2023 *(assailed Decision)*, sustaining the Court in Division's declaration that the assessments in this case are void considering that the same were made *sans* a valid Letter of Authority (LOA), but only on the basis of a mere Letter Notice (LN). The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the present Petition for Review filed on April 18, 2022 is **DENIED** for lack of merit. Accordingly, the Decision dated June 1, 2021 and Resolution dated March 11, 2022 issued by the Court in Division in CTA Case No. 9865 are **AFFIRMED**.

x x x

SO ORDERED."

Petitioner advances the following arguments in support of his motion, *viz.:*

(i) The Court in Division erred in ruling that the assessments are void because the revenue officers who conducted the audit were allegedly not authorized through an LOA;

(ii) An LOA is unnecessary in this case since there was no physical examination of the books of accounts and other accounting records of respondent; the subject of this case is the verification of declarations made in respondent's income tax return (ITR) versus the transactions declared by its suppliers;

(iii) Respondent did not raise in any of its argument the lack of LOA even during the administrative proceedings; hence, petitioner is deprived of his right to basic fair play when the Court ruled [on such issue] in favor of respondent;

(iv) Respondent was accorded with due process as it was able to participate in the administrative proceedings;

(v) Respondent was not denied due process because it was informed of the discrepancies in its declarations and was given an opportunity to refute the same; and,

(vi) The assessments issued against respondent are valid and lawful.

Respondent, on the other hand, asserts that this Court *En Banc* was correct in denying the Petition for Review. Respondent reiterates that its right to due process was violated. No LOA was issued, yet the principle that an LOA must be issued prior to examination and assessment of a taxpayer has been consistently applied in a plethora of cases. The purpose of the LN is to notify the taxpayer that a discrepancy is found based on the BIR's relief system. The LN does not grant authority to conduct an examination. Regardless of whether the books or records of the taxpayer were actually examined or not, an LOA is necessary. Assuming *arguendo* that respondent was able to meaningfully participate in the assessment, such does not change the fact that the examination was conducted absent a valid LOA.

THE COURT *EN BANC'S* RULING

Petitioner's motion is devoid of merit.

The arguments advanced by petitioner in his present motion are mere reiteration or amplification of his arguments in his Petition for Review before the Court *En Banc* which were sufficiently considered and settled in the assailed Decision.

For petitioner's better understanding of the requirement of an LOA, it is worth echoing the clear declaration in ***Medicard Philippines, Inc. vs. Commissioner of Internal Revenue***,[1] *viz.:*

> "The following differences between an LOA and LN are crucial. First, an **LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had** while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. Second, an LOA is valid only for 30 days from date of issue while an LN has no such limitation. Third, an LOA gives the revenue officer only a period of 10 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such a limitation. Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under RMO No. 32-2005, that **after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner**. Unfortunately, this was not done in this case.
>
> Contrary to the ruling of the CTA *en banc*, **<u>an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined.</u>** 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**.
>
> xxx xxx xxx
>
> 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**." *(Boldfacing and underscoring supplied)*

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

Anent petitioner's contention that he was deprived of his right to basic fair play when the Court ruled on the issue of lack of LOA as respondent did not raise the same in any of its arguments even in the administrative proceedings, the Court finds the same bereft of merit.

In ***Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.***[2] the Supreme Court sustained the authority of the CTA to resolve an issue not raised by the parties in a case, *viz.:*

> "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 text of the provision reads:
>
> > SECTION 1. *Rendition of judgment.* - xxx
> >
> > 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.
>
> 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."

Thus, there being no substantial argument or cogent reason put forth by petitioner that would merit the reconsideration sought, the Court sees no reason to modify, much more reverse, the assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Re: Decision dated 14 February 2023) filed on March 9, 2023 is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate 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