REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1306** (CTA Case No. 8367)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
FARCON MARKETING CORPORATION, Respondent.	***Promulgated:*** JUN 05 2017 3:41 p.m.

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RESOLUTION

UY, *J.*:

This resolves petitioner's **"MOTION FOR RECONSIDERATION (Decision of 21 November 2016)"**[1] filed on December 12, 2016, without respondent's Comment despite due notice,[2] praying for the reversal of the Court *En Banc*'s Decision dated November 21, 2016, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **DENIED** for lack of merit. The assailed Decision dated February 3, 2015 and Resolution dated April 16, 2015 are hereby **AFFIRMED.**

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[1] Docket, pp. 107 to 115.
[2] Records Verification dated March 6, 2017 of the Court's Judicial Records Division.

SO ORDERED."

In support of the instant *Motion for Reconsideration*, petitioner argues as follows, to wit:

1. The assessment is valid because it has factual and legal bases; and

2. The assessment is valid because there was a valid grant of authority.

THE COURT *EN BANC'S* RULING

Petitioner's *Motion for Reconsideration* lacks merit.

After a careful examination and consideration of the petitioner's *Motion for Reconsideration*, it is noted that the petitioner's argument that the subject assessment has factual and legal bases is a mere reiteration of that which has already been considered, weighed and resolved in the assailed Decision. Thus, We shall not belabor, in this Resolution, to repeat the disquisitions made therein.

However, We shall accordingly address petitioner's argument that the assessment is valid on the ground that there was allegedly a valid grant of authority.

Particularly, petitioner is of the view that "the Tax Verification Notice issued to the taxpayer bears the insignia of authority to examine and verify a taxpayer's records for taxable year 2007."[3]

We are not convinced.

In the very recent case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,*[4] the Supreme Court held that the absence of a Letter of Authority affects the validity of the assessment, to wit:

> "An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to

[3] Docket, p. 112.
[4] G.R. No. 222743, April 5, 2017.

examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:

> **SEC. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement*. –
>
> (A) **Examination of Return 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. x x x

Based on the afore-quoted provision, 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**." *(Emphasis supplied.)*

This pronouncement echoes the sentiment in the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*,[5] which states that:

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

> "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."

Based on the foregoing jurisprudential pronouncements, it is clear that a revenue officer must be clothed with authority before proceeding with an examination or assessment. Moreover, that authority must be embodied in a Letter of Authority, and not in the form of a mere notice to the taxpayer.

A perusal of the records in this case reveals that the assessment was precipitated by a mere Tax Verification Notice, instead of a valid Letter of Authority. Considering that the revenue officer who conducted the examination was not validly authorized to do so, the assessment is void in this case.

Assuming *arguendo*, that the Revenue Memorandum Order (RMO) No. 20-2008, which is being invoked by the petitioner to justify the non-issuance of a Letter of Authority, is deemed sufficient to clothe the subject revenue officer with authority to conduct an examination of records and books of accounts of petitioner, there is no showing that the said revenue officer complied with the requirements of the said RMO.

A cursory examination of the subject RMO shows that while it authorizes the issuance of a mere Tax Verification Notice, instead of a Letter of Authority to certain taxpayers, the grant of authority is qualified. In fact, the objectives of the said RMO are clear, in that there must first be an establishment of benchmarks or a taxpayer's profile on tax payments in relation to their gross sales/revenues/ receipts, and a pre-audit, prior to the issuance of a Tax Verification Notice, Letter of Authority, Letter Notice, or Mission Orders, as the case may be.

In this case, petitioner failed to make mention if the examination of the taxpayer resulted from the profiling of taxpayers on the basis of the RMO, or it should have been covered by a valid Letter of Authority, for being a generic "examination of all revenue taxes," as stated in Tax Verification Notice No. 2001-001144729.

In any case, irrespective of a pronouncement that the absence of a Letter of Authority is non-fatal in determining the validity of the subject assessment, the final outcome would remain unchanged, because the subject deficiency tax assessment is devoid of any factual or legal basis.

WHEREFORE, premises considered, the instant *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice