REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

JINZAI EXPERTS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9473

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, *and*
BACORRO-VILLENA, *JJ.*

Promulgated:
FEB 18 2020 2:25 pm

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RESOLUTION

CASTAÑEDA, JR., J.:

For the Court's resolution is respondent's **Motion for Reconsideration**, filed on November 25, 2019 and received by this Court on November 29, 20219, without petitioner's comment as per Records Verification dated January 10, 2020.

In his Motion, respondent moves for the reconsideration of the Decision promulgated on November 6, 2019, in cancelling his deficiency assessments against petitioner due to lack of a Letter of Authority (LOA), the dispositive portion of which reads as follows:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED.** Accordingly, the *Final Decision* of respondent dated June 30, 2016 and the FDDA dated September 11, 2012 are hereby **SET ASIDE.** In addition, the FAN under FLD No. IT-TVN150132-08-12-0369 dated April 18, 2012 finding petitioner liable for the total amount of ₱11,776,948.84, representing alleged deficiency income tax and improperly accumulated tax, inclusive of

surcharges, interests and penalties for taxable year 2008, is **CANCELLED.**

SO ORDERED.

Respondent assails the above Decision claiming that the cited cases of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[1] and *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[2], which were used as bases in the Decision, are not on all fours with the present case. He argues that a Tax Verification Notice (TVN) is equivalent to a LOA considering that it contains all the elements necessary to establish a contract of agency between respondent and his revenue officer, in the sense that the primordial importance is that the authority be done in writing. More so, respondent also claims that there is no law prohibiting him or the regional director from delegating the power to issue a TVN to the revenue district officer. Lastly, respondent argues that issues not raised in the administrative agency cannot be raised for the first time on appeal. As such, petitioner is estopped in asserting that there was no valid LOA, which is clearly a mere afterthought and undeserving of any credence.

After due consideration, respondent's Motion for Reconsideration is bereft of merit.

On the matter of LOA, this Court reiterates its holding in the Decision assailed by respondent, *viz.*:

> "Based on the foregoing, ROs must be authorized, through an LOA, in order that said officers may validly examine the books of accounts and other accounting records of a taxpayer. In the absence of an LOA, the tax assessments issued by the BIR against such taxpayer shall be void.
>
> In the instant case, it is undisputed that RO Jamael B. Hamid's authority was only derived from a TVN, and not an LOA. Moreover, the said TVN is merely signed by a Revenue District Officer, and not a Revenue Regional Director. Correspondingly, RO Jamael B. Hamid is **not** clothed with valid authority to examine the books

[1] G.R No. 222743, April 5, 2017.
[2] G.R No. 178697, November 17, 2010.

> of accounts and other accounting records of petitioner. Not having a valid authority to examine the latter in the first place, the subject deficiency tax assessments for taxable year 2008 issued by respondent against petitioner is inescapably void. As such, the said deficiency tax assessments bear no valid fruit."[3]

Furthermore, taking que from the same reasoning arrived at in *Medicard case*, an assessment is inescapably void due to the absence of an LOA, and that the Bureau of Internal Revenue cannot convert a Letter Notice into the LOA required under the law even if the same was issued by respondent himself. In fact, it has been held that the persuasiveness of the right to due process reaches both substantial and procedural rights, and the failure of the Commissioner of Internal Revenue to strictly comply with the requirements laid down by law and its own rules is a denial of the taxpayer's right to due process.[4] Evidently, and with emphasis, a TVN issued by the revenue district officer cannot take the place of a valid LOA to satisfy the due process requirement.

With regard to respondent's contention that the doctrine of estoppel applies in the present case and that petitioner has already lost the opportunity to question the absence of the LOA since it failed to raise the said issue during the administrative proceedings, this Court cannot countenance the same.

This Court finds the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue v. Eastern Telecommunications, Inc.*[5] instructive on the matter, the pertinent portions of which read as follows:

> "The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time: *fr*

[3] *See* page 21 of the Decision.
[4] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[5] G.R. No. 163835, July 7, 2010.

> The appellate court may, in the interest of justice, properly take into consideration in deciding the case matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings. This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them."

Perforce, the second paragraph of Section 1[6] of Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) expressly provides that 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.

Evidently, this Court may take cognizance of the issue regarding the proper service of the BIR notices, which is part of the due process requirement in the issuance of a deficiency tax assessment, even if the same have not been raised in the administrative level.

Also worth noting is that, should this Court agree with respondent's argument on the matter, it would have the effect of giving validity to the questioned assessments, which are already found to be null and void. This result is not the intent of the doctrine of estoppel. Estoppel cannot validate an act that contravenes law or public policy.[7] Accordingly, for reasons of law and public policy, the doctrine of estoppel is not applicable in the instant case as the questioned assessments are null and void.

In view of the foregoing, this Court finds no cogent reason to reverse or modify the assailed Decision.

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[6] "**SECTION 1.** *Rendition of judgment.*– x x x.

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. (2002 Internal Rules of the Court of Appeals, Rule VI, secs. 9 and 10a; and Rules of Court, Rule 51, sec. 2a)"

[7] *Republic v. Sandiganbayan*, G.R. No. 152154, July 15, 2003, citing *Go Tian An v. Republic*, G.R. No. L-19833, August 31, 1966.

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

SO ORDERED.

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

We Concur:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice