REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

YAN AN CARGO CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **9865**

Members:

CASTAÑEDA, JR., *Chairperson,*
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
MAR 1 1 2022 4:09 pm

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Motion for Reconsideration"[1] (**MR**), filed on 22 June 2021, without petitioner's comment despite due notice.[2] He seeks the reversal of this Court's Decision in the above-captioned case dated 01 June 2021[3] (**assailed Decision**). The dispositive portion of which reads:

> ...
>
> **WHEREFORE**, premises considered, the Petition for Review filed on 29 June 2018 by Yan An Cargo Corporation is hereby **GRANTED**. The assessment against petitioner Yan An Cargo Corporation for deficiency income tax and value-added tax for taxable year 2010 embodied in the Formal Letter of Demand dated 03

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1 Division Docket, pp. 348-360.
2 *Per* Records Verification dated 22 November 2021, id., p. 363.
3 Id., pp. 335-347.

> September 2013 is hereby **CANCELLED**. Respondent Commissioner of Internal Revenue is hereby **ENJOINED** from enforcing the collection of the deficiency taxes arising from the said Formal Letter of Demand.
>
> **SO ORDERED.**
>
> ...

In his MR, respondent insists that this Court erred in ruling that the subject assessment for deficiency taxes was made without proper authority. According to him, the Letter Notice (**LN**) No. 077-RLF-10-00-00263[4], which was based on a computerized matching of information or data allegedly from third party sources, is sufficient to grant authority to the revenue officers (**ROs**) who conducted the examination of petitioner's books of accounts and other accounting records for the taxable year (**TY**) 2010.

Respondent further argues that Revenue Memorandum Order (**RMO**) No. 32-2005[5], which provides that the RO assigned to handle the LN shall recommend the issuance of a Letter of Authority (**LOA**) to replace the LN, does not apply to the present case as petitioner did not refute the discrepancies stated in the LN. Considering that there was no protest to the findings in the LN, it follows that there are also no unresolved discrepancies after the lapse of the 120-day period from the issuance of the LN. Respondent thus maintains that the RO was not required to recommend the issuance of an LOA to replace the LN. Consequently, the LN remained the source of authority to conduct the audit investigation of petitioner's tax liability.

As previously mentioned, petitioner did not file its comment to respondent's MR despite due notice.

We resolve.

After due consideration of respondent's arguments, We find no compelling reason to modify or reverse the assailed Decision.

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4 BIR Records, p. 1.

5 *Prescribing Guidelines and Procedures in Handling Letter Notices for Deployment via the Information Delivery Portal in the Years 2005 Onwards for Audit and Enforcement Purposes.*

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[6] (**Medicard**), the Supreme Court categorically ruled that the absence of an LOA is a violation of the right to due process, and that an LN is different from an LOA such that an LN cannot be considered as the LOA required under the law. The relevant portions of the ruling in *Medicard* are repeated below:

> ...
>
> Noticeably, both RMO No. 30-2003 and RMO No. 42-2003 are silent on the statutory requirement of an LOA before any investigation or examination of the taxpayer may be conducted. As provided in the RMO No. 42-2003, the LN is merely similar to a Notice for Informal Conference. However, for a Notice of Informal Conference, which generally precedes the issuance of an assessment notice to be valid, the same presupposes that the revenue officer who issued the same is properly authorized in the first place.
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> With this apparent lacuna in the RMOs, in November 2005, RMO No. 30-2003, as supplemented by RMO NO. 42-2003, was amended by RMO No. 32-2005 to fine tune existing procedures in handling assessments against taxpayers' issued LNs by reconciling various revenue issuances which conflict with the NIRC. Among the objectives in the issuance of RMO No. 32-2005 is to prescribe procedure in the resolution of LN discrepancies, conversion of LNs to LOAs and assessment and collection of deficiency taxes.
>
> **IV. POLICIES AND GUIDELINES**
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> ...
>
> **8.** **<u>In the event a taxpayer who has been issued an LN refutes the discrepancy shown in the LN</u>**, the concerned taxpayer will be given an opportunity to reconcile its records with those of the BIR within One Hundred and Twenty (120) days from the date of the issuance of the LN. However, the subject taxpayer shall no longer be entitled to the abatement of interest and penalties after the lapse of the sixty (60)-day period from the LN issuance.
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> **9.** **<u>In case the above discrepancies remained unresolved at the end of the One Hundred and Twenty (120)-day period, the revenue officer (RO) assigned to handle the LN shall recommend the issuance of [LOA] to replace the LN</u>**. The head of the concerned investigating office shall submit a summary list of LNs for conversion to LAs (using the herein prescribed format in Annex "E" hereof) to the OACIR-

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6 G.R. No. 222743, 05 April 2017; Citations omitted, emphasis, italics and underscoring in the original text.

> LTS/ORD for the preparation of the corresponding LAs with the notation. "This LA cancels LN NO. _____"

...

In this case, there is no dispute that no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD. Therefore no LOA was also served on MEDICARD. The LN that was issued earlier was also not converted into an LOA contrary to the above quoted provision. Surprisingly, the CIR did not even dispute the applicability of the above provision of RMO 32-2005 in the present case which is clear and unequivocal on the necessity of an LOA for the assessment proceeding to be valid. Hence, the CTA's disregard of MEDICARD's right to due process warrant the reversal of the assailed decision and resolution.

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:

> 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. **<u>In the absence of such an authority, the assessment or examination is a nullity</u>**.

The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Under RR No. 12-2002, LN is issued to a person found to have underreported sales/receipts per data generated under the RELIEF system. Upon receipt of the LN, a taxpayer may avail of the BIR's Voluntary Assessment and Abatement Program. If a taxpayer fails or refuses to avail of the said program, the BIR may avail of administrative and criminal remedies, particularly closure, criminal action, or audit and investigation. Since the law specifically requires an LOA and RMO NO. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug, as the CIR would have it. In fact Revenue Memorandum Circular No. 40-2003 considers an LN as a notice of audit or investigation only for the purpose of disqualifying the taxpayer from amending his returns.

The following differences between an LOA and LN are crucial. First, an LOA addressed to a revenue officer is specifically required under 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 120 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 that 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.
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> ...
>
> The BIR's RELIEF System has admittedly made the BIR's assessment and collection efforts much easier and faster. The ease by which the BIR's revenue generating objectives is achieved is no excuse however for its non-compliance with the statutory requirement under Section 6 and with its own administrative issuance. In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on the one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.
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> ...

Similar to the above-quoted case, the present case arose from tax assessments for deficiency income tax (**IT**) and value-added tax (**VAT**) only on the basis of or pursuant to a mere LN[7], without a subsequent LOA having been issued. Thus, for lack of an LOA, the tax assessments for deficiency IT and VAT for TY 2010 are void.

WHEREFORE, premises considered, respondent's Motion for Reconsideration filed on 22 June 2021 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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7 Supra at note 4.

WE CONCUR:

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

LANEE S. CUI-DAVID
Associate Justice