REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2138** (CTA Case No. 9291)
	Present:
- **versus** –	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO,** and **REYES-FAJARDO,** JJ.
ERMILO TAN NG HUA, Respondent.	**Promulgated:** NOV 11 2021 2:47pm

x--x

RESOLUTION

UY, J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION Re: Decision dated 27 November 2020"** filed on December 21, 2020, without respondent's Comment, despite due notice, as per Records Verification Report[1] dated July 12, 2021. In the said Motion, petitioner prays for the reversal and setting aside of the Court's Decision dated November 27, 2020, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision dated February

---

[1] Records Verification Report issued by Clerk IV Ma. Angelica Magpantay of the Receiving Unit and Chief Judicial Staff Officer Benjamin D. Pineda, Jr. of the Judicial Records Division.

21, 2019 and the Resolution dated September 9, 2019 rendered by the Special Third Division of this Court in CTA Case No. 9291 are hereby **AFFIRMED**.

SO ORDERED."

In support of his Motion, petitioner argues that:

1. Under Section 6 (A) of the National Internal Revenue Code (NIRC) of 1997, all returns are subject to examination by the Commissioner of Internal Revenue (CIR), and in case of discrepancy, the law merely requires that notice be given to the taxpayer.

2. A Letter of Authority (LOA) is irrelevant in this case.

THE COURT'S RULING

Petitioner's Motion lacks merit.

After a careful examination and consideration of the petitioner's Motion for Reconsideration, it is noted that the main arguments raised in the said Motion are mere reiterations of matters which have already been considered, weighed and resolved in the assailed Decision. Thus, We shall not belabor, in this Resolution, to repeat the disquisitions made therein.

Nevertheless, this Court stresses that the subject tax assessments are void, because Revenue Officers (ROs) Fely B. Pasiona and Josephine G. Gomez were not duly authorized to conduct the audit investigation.

To reiterate, Section 6 of the NIRC of 1997, as amended, states that before an examination and assessment can be made, there must first be an *authority* emanating from the CIR or his duly authorized representative. Accordingly, in order for a Revenue Officer to validly perform assessment functions, such as the examination of taxpayers and the determination of the correct amount of taxes to be collected, he or she must first be clothed with authority, pursuant to a *Letter of Authority*, as required by Section 13 of the NIRC of 1997, as amended.

In the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue (Medicard case)*,[2] it was emphasized that an LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. Hence, unless authorized by the CIR himself, or by his duly authorized representative, *through an LOA,* an examination of the taxpayer *cannot* ordinarily be undertaken. In other words, without such LOA, the tax assessments issued by the BIR against such taxpayer shall be void.

In the instant case, Group Supervisors (GS) Josephine G. Gomez testified[3] that the conduct of audit was originally assigned to RO Fely B. Pasiona, pursuant to LN No. 065-RLF-11-00-00069.[4] By authority of the subject Letter of Notice (LN), RO Pasiona exercised assessment functions, and issued the following documents:

1) Memorandum[5] dated February 27, 2014, which recommended that the case be forwarded to the Assessment Division, and after review and approval, a Preliminary if Assessment Notice (PAN) be issued to the taxpayer, if the latter failed to pay;

2) Revenue Officer's Audit Reports for IT[6] and VAT;[7] and

3) Computation Sheet.[8]

Records show, however, that RO Pasiona did not exercise assessment functions pursuant to a valid LOA. To be specific, the PAN[9] and Formal Letter of Demand (FLD)[10] does not even refer to any LOA, but only to LN No. 065-RLF-11-00-00069 as its basis for authority. In fact, GS Gomez admitted that there was, in fact, no LOA issued to authorize the examination of Hua's tax liabilities.[11]

In view of the finding that RO Pasiona, who acted on Hua's case was *not* properly clothed with authority through a valid LOA, the subject tax assessments, resulting from the investigation, audit, and

---

[2] G.R. No. 222743, April 5, 2017.
[3] Exhibit "R-12," Division Docket (CTA Case No. 9291), pp. 216 to 225, at 217; TSN dated September 25, 2017, p. 7.
[4] Exhibit "R-1," BIR Records, pp. 1 to 3.
[5] Exhibit "R-6," BIR Records, p. 340.
[6] Exhibit "R-6-a," BIR Records, p. 338.
[7] Exhibit "R-6-b," BIR Records, p. 336.
[8] Exhibit "R-6-c," BIR Records, p. 334.
[9] Exhibit "R-7," BIR Records, pp. 360 to 362.
[10] Exhibit "R-8," BIR Records, pp. 363 to 365.
[11] TSN dated September 25, 2017, p. 8.

recommendation of RO Pasiona are void. For being void, the same bears no valid fruit.[12]

It bears stressing that an LN is not a valid substitute in lieu of an LOA, even when it is issued by the CIR himself.

As discussed at length in the *Medicard* case, the Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. Considering that the law specifically requires an LOA, and even the CIR's own issuance, through RMO No. 32-2005,[13] specifically requires the conversion of the previously issued LN to an LOA, the absence an LOA cannot be simply swept under the rug. Thus, an LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under Revenue Memorandum Order (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 taxpayer.

In other words, in issuing RMO No. 32-2005, the CIR himself acknowledged that an LN cannot be converted into the LOA required under the law, even if the same was issued by the CIR himself. Conversely, a valid LOA cannot be equated to, or substituted by, a mere LN.

Administrative issuances, such as the subject RMO, have the force and effect of law, and they benefit from the same presumption of validity and constitutionality enjoyed by statutes.[14] Thus, as due process demands, and as directed by the subject RMO, after an LN has served its purpose, an RO is required to secure a valid LOA, prior to the further examination and assessment of the taxpayer concerned.

Consequently, the LN issued in favor of RO Pasiona cannot be validly equated with, or converted into, the requisite LOA. In the absence of such LOA, RO Pasiona is deemed to have *no authority* to perform assessment functions against taxpayer Hua and the subject tax assessments resulting from the said unauthorized investigation and/or audit are considered void and of no effect.

---

[12] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.
[13] SUBJECT: 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.
[14] *Chevron Philippines, Inc. vs. Bases Conversion and Development Authority, et al.*, G.R. No. 173863, September 15, 2010.

WHEREFORE, premises considered, the instant **MOTION FOR RECONSIDERATION Re: Decision dated 27 November 2020)** 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.
Associate Justice

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

MARIAN IVY F. REYES-FAJARDO
Associate Justice