REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SECOND DIVISION</u>

MAKATI AGRO TRADING, INC., Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA CASE NO. 9735

Members:

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

Promulgated:

JUN 1 0 2020 4:05 pm

x - x

RESOLUTION

MINDARO-GRULLA, J.:

Before this Court is respondent's **Motion Reconsideration**, filed through registered mail on November 21, 2019 and received by this Court on November 27, 2019, with petitioner's **Comment (Re: Motion for Reconsideration)**, filed on January 3, 2020.

On October 31, 2019, a Decision was promulgated by this Court, cancelling respondent's deficiency tax assessments for lack of authority of his revenue officer in conducting the assessments against petitioner, the dispositive portion of which reads as follows:

> **WHEREFORE**, in view of the foregoing, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency income tax and value-added tax assessments issued by respondent against petitioner covering taxable year 2007 are **CANCELLED AND SET ASIDE**.
>
> **SO ORDERED**.

In his Motion, respondent primarily asserts that the deficiency tax assessments issued against petitioner cannot be considered void plainly due its revenue officer (RO)'s lack of Letter of Authority (LOA). He claims that the nature of his relationship with that of his ROs is similar to a contract of agency, thus the required authority of his RO to conduct the tax examination of petitioner's books and other accounting records for taxable year 2007 was deemed complied with by way of a Tax Verification Notice (TVN) duly issued on December 10, 2008. Respondent cites the concurring opinion in the Court of Tax Appeals (CTA) *en banc* case of *R.A. Oben Holdings, Inc. vs. Commissioner of Internal Revenue*[1] (*"RA Oben Holdings"* case hereafter) to bolster its claim. Lastly, respondent argues that petitioner cannot raise the issue of the lack of LOA for the first time on appeal without violating the basic principles of fair play, justice and due process.

On the other hand, in its Comment, petitioner argues that the requirement of first issuing an LOA cannot be dispensed with. As already extensively discussed in this Court's Decision dated October 31, 2019, lack of LOA results in void assessments.

After due consideration, the instant motion is bereft of merit.

As correctly pointed out by petitioner, the *RA Oben Holdings* is not applicable in the present case since an LOA was issued in the said case which was subsequently revalidated, conversely in the present case there was no LOA issued at all.

With regard to the issue of the lack of LOA is raised herein for the first time and thus cannot be tackled without violation respondent's right to due process, this Court does not agree.

Section 1[2], Rule 14 of A.M. No. 05-11-07-CTA, or Revised Rules of the Court of Tax Appeals, explicitly states that this 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. It is for such reason that the Supreme Court in the case of

[1] EB No. 1454 (CTA Case No. 8723), September 18, 2017.
[2] "SECTION 1. *Rendition of judgment.* — The Court shall decide the cases brought before it in accordance with Section 15, paragraph (1), Article VIII of the 1987 Constitution. 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."

Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.[3], categorically ruled that the CTA can resolve the issue involving the authority of the RO to conduct the audit, although the same was not raised by the parties in their pleadings. In fact, the foregoing ruling was even reiterated by the Supreme Court in the Resolution of the recent case of *Commissioner of Internal Revenue vs. Opulent Landowners, Inc.*[4]

Likewise, it equally bears noting that the authority of the ROs to conduct audit investigation goes into the issue of the validity of the assessment itself. In the absence of such authority, the deficiency tax assessment issued against petitioner, arising from the audit or reinvestigation that the revenue officer conducted is inescapably void. Thus, it is of no moment that the issue on the alleged want of authority of the RO was never raised during the trial of the case or in any pleadings filed before the Court.

Lastly, this Court has already thoroughly discussed in the assailed Decision that a RO must be clothed with authority before proceeding with an examination or assessment. That authority must be embodied in LOA, and not in the form of a mere notice to the taxpayer. The TVN in this case is not the valid LOA contemplated by law.

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

SO ORDERED.

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

We Concur:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[3] G.R. No. 183408, July 12, 2017.
[4] G.R. No. 249883-84, January 27, 2020.