REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ERLINDA ABACAN, doing business under the firm name BRISTOL SHOES, Petitioner,	**CTA CASE NO. 8814**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **MINDARO-GRULLA,** and **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 15 2020 11:02 AM

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Reconsideration (Re: Decision dated 3 December 2019)**, filed on December 18, 2019, with petitioner's **Comment [To Respondent's Motion for Reconsideration]**, filed through registered mail on February 11, 2020 and received by the Court on February 17, 2020.

On December 3, 2019, a Decision was promulgated by this Court, cancelling respondent's deficiency tax assessments by reason of the revenue officers' lack of authority in conducting the reinvestigation of petitioner's books of accounts, 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 Accordingly, the Final Decision dated March 24, 2014 is **WITHDRAWN** and **SET ASIDE**. Moreover,

the FLD and FAN No. 45-B044-09 dated January 14, 2013 are **CANCELLED** and **SET ASIDE**.

SO ORDERED.

In his Motion, respondent raises the following assignment of errors, *viz.*:

I.

WITH ALL DUE RESPECT, THE HONORABLE COURT HAS NO JURISDICTION OVER THE PETITION. THE ASSESSMENT AGAINST PETITIONER HAS ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE.

II.

THE HONORABLE COURT ERRED IN GRANTING A RELIEF THAT WAS NOT PRAYED FOR BY PETITIONER. THE ISSUE ON THE ALLEGED WANT OF AUTHORITY OF THE REVENUE OFFICER (RO) WAS NEVER PART OF THE ISSUES RAISED DURING TRIAL. RESPONDENT'S BASIC RIGHT TO FAIR PLAY AND DUE PROCESS WAS VIOLATED.

III.

THE HONORABLE COURT ERRED IN APPLYING THE RULING IN THE CASE OF SONY AND MEDICARD. THE RULINGS ARE NOT APPLICABLE TO THE INSTANT CASE.

IV.

ASSUMING FOR THE SAKE OF ARGUMENT THAT THE HONORABLE COURT MAY RULE ON AN ISSUE THAT WAS NOT PART OF THE TRIAL NOR FOUND IN THE PLEADINGS, THE HONORABLE COURT ERRED IN RULING THAT THE ASSESSMENTS ARE VOID BECAUSE THE REVENUE OFFICER WHO CONDUCTED THE AUDIT/REINVESTIGATION WAS ALLEGEDLY NOT AUTHORIZED THROUGH A LETTER OF AUTHORITY (LOA).

After due consideration, this Court resolves to deny respondent's Motion for Reconsideration.

As to the first assigned error, respondent argues that the subject assessments already became final and demandable due to petitioner's failure to submit the relevant documents in support of its request for reinvestigation. As such, he maintains that "where the assessment has already become final and executory, *x x x* no inquiry can be made therein as to the merits of the original case or the justness of the judgment relied upon."[1]

In its Comment, petitioner counters that it submitted all the documentary evidence in support of its Protest/Request for Reinvestigation dated February 11, 2013 with the Bureau of Internal Revenue (BIR). As a matter of fact, nowhere in the letter dated March 24, 2014 of Regional Director Jonas DP. Almora, which denied petitioner's protest, was it stated that petitioner failed to submit relevant documents in support of its reinvestigation.

In this aspect, this Court finds respondent's argument untenable. Respondent's allegation that that the deficiency assessments in the present case became final and demandable due to petitioner's failure to submit relevant documents in support of its request for reinvestigation cannot be sustained since submission of incomplete or lack of documentation shall only matter in respondent's evaluation of the merits of the petitioner's protest. Stated simply, lack of relevant supporting documents solely pertains to the entitlement of the taxpayer's claim in its protest, as differentiated from a taxpayer's lack of protest which results in the finality of a deficiency assessment.

With regard to the second assigned error, respondent claims that the issue on the alleged want of authority of the revenue officer (RO) was never raised during the trial of the case or in any pleadings filed before the court. Thus, this Court may not consider the same in the resolution of the case without violating respondent's constitutional right to due process of law.

On the other hand, petitioner argues that the issue on the authority of the RO who conducted the audit/examination is directly related to the issue of the validity of the assessment against petitioner. Therefore, this Court is well within its authority to rule on the issue of the want of authority of the RO in its decision.

Again, the Court does not agree with respondent's contention.

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[1] Citing *Mambulao Lumber Company v. Republic of the Philippines*, G.R. No. L-37061, September 5, 1984.

As already discussed in the assailed Decision, 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 *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*[3], categorically ruled that the Court of Tax Appeals (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 or memoranda. 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.

At this juncture, this Court reiterates its ruling that the subject Memorandum of Assignment (MOA) cannot clothe RO Espejo and Group Supervisor Abilgos with the requisite authority to examine or conduct a reinvestigation of petitioner's tax liabilities for 2009. The said MOA was merely issued by an OIC-Assistant Revenue District Officer, who has no power or authority to issue a Letter of Authority (LOA), much less to effect any modification or amendment to the previously issued LOA 045-2010-00000221 (SN: eLA201000018215) dated October 1, 2010 by OIC-Regional Director Jonas DP. Amora. Thus, the said assessment is void and could not have attained finality, contrary to the claim of respondent.

As to the third and fourth assigned errors, respondent argues that both the *Commissioner of Internal Revenue vs. Sony*

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[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."

[3] G.R. No. 183408, July 12, 2017.

[4] G.R. No. 249883-84, January 27, 2020.

Philippines, Inc.[5] (hereinafter "Sony case") and *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[6] (hereinafter "Medicard case"), are not on all fours with the present case. Respondent asserts that what the LOA authorizes is the conduct of audit of a taxpayer by the BIR's ROs. As such, in the event that the said ROs can no longer perform the audit due to resignation, transfer, or death, said authority remains and the conduct of audit must necessarily be reassigned and assumed by another RO, which is only a logical consequence of the vast powers given to respondent by the National Internal Revenue Code (NIRC) in making assessments and collecting the right amount of taxes.

Furthermore, citing Revenue Memorandum Order (RMO) No. 8-2006[7], respondent claims it is the standard operating procedure of the BIR to issue a MOA to other ROs in cases of re-assignment. The RMO however qualifies that only one (1) LOA per taxable year can be issued to the taxpayer who will handle the case. Thus, there is a need for respondent to issue a MOA to other RO to continue the audit under the previously issued LOA.

Unfortunately, this Court is not swayed.

Perforce, the main issue in the *Medicard* and *Sony* cases is the authority of a RO to conduct an assessment without a valid LOA. The High Court emphasized the importance and significance of an LOA in examining the books of accounts and other accounting records of a taxpayer in accordance with Sections 6(A)[8], 10(c)[9], and

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[5] G.R. No. 178697, November 17, 2010.

[6] G.R. No. 222743, April 5, 2017.

[7] PRESCRIBING GUIDELINES AND PROCEDURES IN THE IMPLEMENTATION OF THE LETTER OF AUTHORITY MONITORING SYSTEM (LAMS), February 1, 2006.

[8] "SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. —

(A) Examination of Returns 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."

[9] "SEC. 10. Revenue Regional Director. - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:

x x x

(c) Issue Letters of authority for the examination of taxpayers within the region;(d) Provide economical, efficient and effective service to the people in the area;(e) Coordinate with regional offices or other departments, bureaus and agencies in the area;(f) Coordinate with local government units in the area;(g) Exercise control and supervision over the officers and employees within the region; and(h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner."

13[10] of the NIRC of 1997, as amended, and that the absence of such an authority, the assessment or examination is a nullity. Verily, having the interpretation placed upon a law by a competent court establishes the contemporaneous legislative intent of the law.

In the same vein, respondent cannot rely on the provisions of RMO No. 8-2006 as the same runs counter to Sections 6(A) and 13 of the NIRC of 1997, as amended, as well as to the pronouncements made by the Supreme Court in *Medicard* and *Sony* cases. It must be remembered that, in case of discrepancy between the basic law and the implementing rules and regulations, the basic law prevails because rules and regulations cannot go beyond the provisions of the basic law it seeks to implement.[11] More so, considering the foregoing cases have already been decided and ruled upon with finality by the Supreme Court, the same already forms part of the legal system of the Philippines and shall have the force of law. Needless to say, there is only one Supreme Court from whose decisions all other courts should take their bearings.[12]

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Decision dated 03 December 2019), filed on December 18, 2019, is **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

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[10] "SEC. 13. Authority of a Revenue Officer. — Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself."

[11] *Felix B. Perez and Amante G. Doria v. Philippine Telegraph and Telephone Company and Jose Luis Santiago*, G.R. No. 152048, April 7, 2009.

[12] Justice J.B.L. Reyes spoke in *Albert v. Court of First Instance of Manila [Branch VI]*, L-26364, May 29, 1968, 23 SCRA 948, 961., at pp. 230-231.