**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***First Division***

**THE HEIRS OF EMILIO L. GAN,** *Petitioners,*

**CTA Case No. 9600**

Members:

*-versus-*

**DEL ROSARIO, *P.J.***, *Chairperson* *and* **MANAHAN**, *JJ.*

**COMMISSIONER OF INTERNAL REVENUE,** *Respondent.*

Promulgated:
JAN 08 2021 9:04am

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# *Amended Decision*

**MANAHAN, *J.*:**

This resolves petitioners' **Motion for Reconsideration** filed on August 25, 2020, without respondent's comment. It seeks the reversal of this Court's *Decision* dated June 29, 2020 (*Assailed Decision*) and the grant instead of its Petition for Review to cancel and set aside the Formal Letters of Demand dated January 25, 2016 and July 19, 2016 for being null and void and utterly without basis and foundation.

Petitioners aver that their counsel, Atty. Vanessa Iway, mistakenly counted the last day of the reglementary period for the filing of the instant petition for review (PFR) on May 25, 2017 which resulted in the late filing of their PFR. Such mistake was allegedly attributable to the circumstance of Atty. Iway's giving birth to her child on May 1, 2017 and the subsequent demands of motherhood that caused her a lot of sleepless nights. Thus, petitioners are asking for the relaxation of the technical rules of procedure because of such fact and considering that the instant petition is meritorious and not frivolous or dilatory.

We find merit in the instant motion.

In *Lilia Sanchez v. Court of Appeals, et al.*[1], the Supreme Court relaxed the application of technical rules when there is merit in the case and the dismissal thereof was due to the negligence of the counsel and not of the petitioner, to wit:

> "Despite the procedural lapses present in this case, we are giving due course to this petition as there are matters that require immediate resolution on the merits to effect substantial justice.
>
> The Rules of Court should be liberally construed in order to promote their object of securing a just, speedy and inexpensive disposition of every action or proceeding.
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> The rules of procedure should be viewed as mere tools designed to aid the courts in the speedy, just and inexpensive determination of the cases before them. Liberal construction of the rules and the pleadings is the controlling principle to effect substantial justice. Litigations should, as much as possible, be decided on their merits and not on mere technicalities.
>
> Verily, the negligence of petitioner's counsel cannot be deemed as negligence of petitioner herself in the case at bar. A notice to a lawyer who appears to have been unconscionably irresponsible cannot be considered as notice to his client. Under the peculiar circumstances of this case, it appears from the records that counsel was negligent in not adequately protecting his client's interest, which necessarily calls for a liberal construction of the Rules.
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> The rationale for this approach is explained in *Ginete v. Court of Appeals* —
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> *This Court may suspend its own rules or exempt a particular case from its operation where the appellate court failed to obtain jurisdiction over the case owing to appellant's failure to perfect an appeal. Hence, with more reason would this Court suspend its own rules in cases where the appellate court has already obtained jurisdiction over the appealed case. This prerogative to relax procedural rules of the most mandatory character in terms of compliance, such as the period to appeal has been invoked and granted in a considerable number of cases x x x x*
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> *Let it be emphasized that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle. The power to suspend or even disregard rules can be so pervasive and compelling as*

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[1] G.R. No. 152766, June 20, 2003.

> *to alter even that which this Court itself has already declared to be final, as we are now constrained to do in the instant case x x x x*
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> *The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice.*
>
> Aside from matters of life, liberty, honor or property which would warrant the suspension of the Rules of the most mandatory character and an examination and review by the appellate court of the lower court's findings of fact, the other elements that should be considered are the following: (a) the existence of special or compelling circumstances, (b) the merits of the case, (c) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (d) a lack of any showing that the review sought is merely frivolous and dilatory, and (e) the other party will not be unjustly prejudiced thereby.
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> The suspension of the Rules is warranted in this case since the procedural infirmity was not entirely attributable to the fault or negligence of petitioner. Besides, substantial justice requires that we go into the merits of the case to resolve the present controversy that was brought about by the absence of any partition agreement among the parties who were co-owners of the subject lot in question. Hence, giving due course to the instant petition shall put an end to the dispute on the property held in common."

Further, this Court is not strictly governed by technical rules and its primordial and paramount interest is the ascertainment of the truth and rendering a just decision based on the same. As held in *BPI-Family Savings Bank, Inc. v. Court of Appeals, et al.*[2]:

> "True, strict procedural rules generally frown upon the submission of the Return after the trial. The law creating the Court of Tax Appeals, however, specifically provides that proceedings before it "shall not be governed strictly by the technical rules of evidence." The paramount consideration remains the ascertainment of truth. Verily, the quest for orderly presentation of issues is not an absolute. It should not bar courts from considering undisputed facts to arrive at a just determination of a controversy."

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[2] G.R. No. 122480, April 12, 2000.

The factual antecedents of the case reveal that the appeal is indeed meritorious since the conduct of the tax audit on petitioner was authorized by a Letter Notice (LN) and not by the required Letter of Authority (LOA) under the 1997 National Internal Revenue Code, as amended.

It may be recalled in the *Assailed Decision* that on July 1, 2014, the Bureau of Internal Revenue (BIR) issued the *Letter of Notice* (LN) No. 057-RLFTRS-12-00-00363 against the late Emilio L. Gan, showing an alleged discrepancy in the latter's local purchases for taxable year 2012. On the same date, the BIR, thru Revenue District Officer (RDO) Ramer D. Narvaez, of Revenue District No. 57, issued the *Memorandum of Assignment* (MOA) No. 057-LN-444-7/1/2014, referring the case/docket of the late Gan to Revenue Officer (RO) Grace Gonzaga, and Group Supervisor (GS) Nimpha Malaguit.

After having knowledge of the demise of the late Gan, another MOA numbered 057-LN-1140-8/28/2014 was issued by RDO Narvaez, assigning to RO Clemente Tenorio, and GS Emily Singson, the case/docket of the late Gan for "(c)*ontinuation of the audit/investigation previously assigned to Revenue Officer Grace Gonzaga, for consolidation of Application for Closure of Business.*"

In the Memorandum dated September 30, 2015, RO Tenorio recommended, with the approval of RDO Narvaez, that the whole case docket of the late Gan be forwarded to the Assessment Division, Revenue Region No. 9 – San Pablo City, *"for the issuance of the statutory assessment notices provided by law"* which resulted to the issuance of the Preliminary Assessment Notice (PAN) and Formal Letter of Demand (FLD).

Sections 6(A) and 13 of the 1997 National Internal Revenue Code (NIRC), as amended, provide:

> **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, <u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer</u> 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.
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> xxx xxx xxx
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> **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. (*Underscore ours*)

The above provisions of the 1997 NIRC, as amended, are implemented under Revenue Memorandum Order (RMO) No. 43-90 entitled "Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit." The specific provisions of said RMO that govern the issuance of an LOA and the procedure to be followed when there is a transfer or reassignment of tax cases to another RO are found in paragraph C(1) and (5), to wit:

> "C. Other policies for issuance of L/As.
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> 1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.
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> xxx xxx xxx
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> 5. **Any re-assignment/transfer of cases to another RO(s)**, and revalidation of L/As which have already expired, **shall require the issuance of a new L/A**, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As." (*Emphasis supplied*)

In *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[3], the Supreme Court ruled that having such prior authority before conducting the necessary investigation or examination by the revenue officers on taxpayer's books of accounts and other accounting records is a must, otherwise, the deficiency tax assessment arising therefrom is a nullity, to wit:

> Clearly, **there must be a grant of authority before any revenue officer can conduct an examination or**

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

> **assessment**. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**. (*Emphasis supplied*)

In fact, the Supreme Court in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[4] emphasized the vital significance of issuing an LOA for the validity of an assessment:

> "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. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:
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>> 'SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* -
>>
>> (A) Examination of Return and Determination of Tax Due.- After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative may authorize the examination of any taxpayer</u>** 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.'
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> Based on the afore-quoted provision, it is clear that **<u>unless authorized by the CIR himself or by his duly authorized representative, through an LOA</u>**, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**
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> Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physicially kept by MEDICARD was examined. **To**

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

> **begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.**
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> x x x
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> **That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.**" *(Emphases and underlining supplied)*

As to the transfer of assignment to ROs Grace Gonzaga and Clemente Tenorio through an MOA, such issuance is not equivalent to an LOA and not a cure to RO's lack of authority to conduct audit investigation as held in *Commissioner of Internal Revenue v. Composite Materials, Inc.*[5], to wit:

> "As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, ruling that in the absence of a LOA, the assessment or examination is a nullity.
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> xxx xxx xxx
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> Moreover, the Court agrees with the CTA en banc that **Referral Memorandum issued by a Revenue District Officer directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority**. To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that **any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA**" (*Emphasis supplied*)

Thus, the succeeding reports, the assessment notices, and the Formal Letters of Demands were all null and void.

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[5] G.R. No. 238352, September 12, 2018.

**WHEREFORE**, premises considered, the instant *Motion for Reconsideration* is hereby **GRANTED**. Accordingly, the Court's *Decision* dated June 29, 2020 is **REVERSED** and **SET ASIDE**. The *Formal Letters of Demand* dated January 25, 2016 and July 19, 2016 and the *Assessment Notices* for deficiency income tax and value-added tax amounting to Php983,251.20 and Php39,927.39, respectively, are hereby **CANCELLED**.

**SO ORDERED**.

**CATHERINE T. MANAHAN**
Associate Justice

**I CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ROMAN G. DEL ROSARIO**
Presiding Justice