REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2338** (CTA Case No. 9269)
- versus -	*Present*: **DEL ROSARIO**, *P.J.*, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, *and* **FERRER-FLORES**, *JJ*.
INDRA VERHOMAL MENGHRAJANI, represented by daughter SAVITRI V. MENGHRAJANI, Respondent.	Promulgated: JAN 18 2023 4:05pm

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court *En Banc*'s resolution is petitioner Commissioner of Internal Revenue's (**petitioner**'s/**CIR**'s) "Motion for Reconsideration (Re: Decision dated 30 June 2022)[1] (**MR**) filed on 20 July 2022, with respondent Indra Verhomal Menghrajani (**respondent**'s) "Comment Re: Motion for Reconsideration)" filed on 06 September 2022.[2]

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[1] *Rollo*, pp. 111-123.
[2] Id., pp. 128-135; Received on 14 September 2022.

The MR assails the Court *En Banc*'s Decision[3] promulgated on 30 June 2022 (**assailed Decision**). The dispositive portion of which reads:

> ...
>
> **WHEREFORE**, in view of the foregoing, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 09 October 2020 is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 24 September 2019 and Resolution dated 26 June 2020 of the Third Division in CTA Case No. 9269, entitled *Indra Verhomal Menghrajani, represented by daughter, Savitri V. Menghrajani v. Hon. Kim Jacinto-Henares in her capacity as Commissioner of Internal Revenue*, are **AFFIRMED**.
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> Consequently, petitioner Commissioner of Internal Revenue or any person duly acting on his or her behalf is **ENJOINED** from proceeding with the collection of the taxes assessed against respondent Indra Verhomal Menghrajani as provided in the Assessment Notice (**AN**) Nos. 34-08-IT-4040 and 34-08-VT-4041 and Formal Letter of Demand all dated 09 January 2013 representing deficiency income tax and value-added tax for calendar year 2008.
>
> **SO ORDERED.**
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> ...

In the MR, petitioner maintains that the Court's Third Division had no jurisdiction over respondent's prior Petition for Review.

Petitioner contends that the Final Assessment Notice (**FAN**) dated 09 January 2013 with attached Details of Discrepancies and the corresponding Assessment Notices (**ANs**) were duly served upon respondent by registered mail, as evidenced by Registry Return Receipt No. 917270. Since respondent had thirty (30) days from receipt of the FAN within which to file a protest thereto but failed to do so, the assessment is now considered final, executory, and demandable.

Here, petitioner implores the Court *En Banc* to take a second look at the *ratio* of the assailed Decision as the fact of mailing is duly supported by the Registry Return Receipts Nos. 918054 and 917270 issued by Philippine Postal Corporation, as well as the transmittal of the Preliminary Assessment Notice (**PAN**) and FAN to the post office for mailing. Petitioner adds that respondent has only one address on

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[3] Id., pp. 88-110.

record and that the Bureau of Internal Revenue (**BIR**) is bereft of any information as to any change thereof.

As regards the issue on the authority of the revenue officers (**ROs**) to conduct the audit, petitioner claims that the absence of a Letter of Authority (**LOA**) does not render the assessment null and void. Petitioner emphasizes that since it was himself or herself who issued the subject Letter Notice (**LN**), there is no need to issue an LOA pursuant to Section 6(A)[4] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. In other words, an LOA is only indispensable when it is the Regional Director (**RD**) who authorizes the examination but not when it is petitioner himself or herself.

Furthermore, under Revenue Memorandum Order (**RMO**) No. 42-2003[5], the LN already serves as notice to the taxpayer of the discrepancy in its return.

Lastly, petitioner maintains that in the absence of proof to the contrary, the assessment should be given full weight and credit as the same are *prima facie* presumed correct and made in good faith and the taxpayer has the duty to prove otherwise.

On the other hand, respondent avers that a reading of petitioner's MR reveals that no new matter was raised therein and that all of his or her previous arguments have already been addressed in the assailed Decision.

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4 **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.

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided,* That within three (3) years from the date of such filing, the same may be modified, changed, or amended: *Provided, further,* That no notice for audit or investigation of such return, statement or declaration has in the meantime, been actually served upon the taxpayer.

...

5 Prescribing Additional Guidelines Governing the Rules on Assessment of National Internal Revenue Taxes covered by a Letter Notice (LN) issued under the RELIEF System as defined in Revenue Memorandum Order (RMO) No. 30- 2003 and other data matching processes.

According to respondent, the said MR should be considered as a *pro forma* motion as it did not point out specifically the findings or conclusions in the judgment that are not supported by the evidence or which are contrary to law.

The foregoing procedural infirmity notwithstanding, respondent maintains that the Third Division had jurisdiction over her prior petition pursuant to Section 11[6] of Republic Act (**RA**) No. 1125[7], as amended.

In the case at bar, respondent received petitioner's 10 January 2016 Decision[8] on 26 January 2016 stating that the same constitutes as his or her final decision on the matter. As her prior petition was filed on 24 February 2016 or within thirty (30) days from its receipt of the said Decision, the Third Division had jurisdiction over its case.

As to the merits of the case, since respondent denied the receipt of the notices, the burden shifts to the party favored by the presumption to prove that the mailed matter was indeed received by the addressee. However, the records would show that petitioner failed to discharge the burden of disproving respondent's claim that she did not receive the subject ANs or that the registry return card was indeed signed by respondent or her authorized representative.

Lastly, respondent claims that since the examination and resulting assessments were issued pursuant only to an LN and which was not replaced by an LOA, as required by RMO No. 32-2005[9], the assessments were therefore invalid for lack of authority of examiners to conduct the audit.

We resolve.

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6 **SEC. 11**. *Who May Appeal; Mode of Appeal; Effect of Appeal*. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

...

7 AN ACT CREATING THE COURT OF TAX APPEALS.

8 Annex "A", Petition for Review, Division Docket, Volume I, pp. 46-57.

9 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.

After considering the arguments of both parties, the Court *En Banc* is constrained to deny petitioner's MR.

It must be emphasized that petitioner failed to raise any new argument or present novel matter which the Court, either in Division and *En Banc,* has not previously scrutinized, studied and discussed.

A simple reading of the instant MR would reveal that the same contains the very identical arguments it earlier raised in his or her MR[10] (on the Third Division's Decision dated 24 September 2019[11]) as well as in his or her Petition for Review[12] before the Court *En Banc*.

In *Licomcen Incorporated v. Foundation Specialists, Inc.*[13], the Supreme Court, citing *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*[14], held that:

> ...
> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, x x x deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); i.e., the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.
> ...

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10 Division Docket, Volume IV, pp. 1518-1523.
11 Id., pp. 1494-1517.
12 *Rollo*, pp. 5-23.
13 G.R. No. 167022, 31 August 2007.
14 G.R. No. 109645, 04 March 1996.

For emphasis, however, the Court *En Banc* deems it proper to briefly reiterate its discussion in the assailed Decision as regards petitioner's argument that since the LN was issued by petitioner himself or herself, there is no more need for the issuance of an LOA.

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[15], the Supreme Court gave no weight to such argument and held that the LN is not the same as an LOA, even if the said LN was issued by the CIR himself or herself, and that the said LN must still be converted into an LOA, to wit:

> ...
> **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 the 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 than 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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[15] G.R. No. 222743, 05 April 2017; Citation omitted and emphasis supplied.

> **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 physically kept by MEDICARD was examined.** To 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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> ...

In sum, as petitioner merely recycled his or her previous submissions and arguments, the Court *En Banc* finds no cogent reason to disturb the assailed Decision.

WHEREFORE, in view of the foregoing, Commissioner of Internal Revenue's Motion for Reconsideration filed on 20 July 2022 is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

x - x

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice