REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

PEOPLE OF THE PHILIPPINES, *Petitioner,*	**CTA EB CRIM. NO. 063** *(CTA CRIM. CASE NO. O-336)*
	Members:
-versus-	**DEL ROSARIO**, *P.J.*, **CASTAÑEDA, JR.**, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, *and*, **MODESTO-SAN PEDRO**, *JJ.*
CORAZON C. GERNALE, *Respondent.*	Promulgated: MAY 2 7 2021 1:17 p.m.

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves petitioner's **Motion for Reconsideration (Re: Decision dated 30 July 2020)** filed on September 2, 2020, *sans* respondent's comment thereon despite notice as per Resolution dated September 15, 2020.[1]

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[1] A copy of the September 15, 2020 Resolution, which directed respondent to comment on petitioner's Motion for Reconsideration within ten (10) days from receipt thereof, was served on respondent's counsel through registered mail on September 16, 2020. Respondent's counsel is presumed to have been notified of such Resolution, following by analogy the provision of Section 10, Rule 13 of the Rules of Court, as amended, which states:

> Section 10. *Presumptive service.* — There shall be presumptive notice to a party of a court setting if such notice appears on the records to have been mailed at least twenty (20) calendar days prior to the scheduled date of hearing and if the addressee is from within the same judicial region of the court where the case is pending, or at least thirty (30) calendar days if the addressee is from outside the judicial region.

Petitioner seeks reconsideration of the Court *En Banc's* Decision promulgated on July 30, 2020, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is **DENIED** for lack of merit. Accordingly, the September 26, 2018 Decision and the December 17, 2018 Resolution, both rendered by the Special Third Division in *People of the Philippines vs. Corazon C. Gernale, CTA Crim. Case No. O-336*, are **AFFIRMED**.
>
> **SO ORDERED**."

In its Motion, petitioner faults the Court in ruling on an issue that was not part of the proceedings nor was part of the Petition for Review. Petitioner argues that the issue on the alleged absence of Letter of Authority (LOA) was not brought up during trial nor discussed in the Decision of the Court in Division. Thus, the Court *En Banc* may not consider the same in the resolution of the Petition for Review without violating petitioner's constitutional right to due process and without disregarding the very rules the Court seeks to implement. Petitioner asserts that while it is aware of Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA), it submits that such provision was intended to allow the Court to resolve the main issue in the proper perspective, but not to resolve as a main issue a matter not derived from the pleadings or proceedings. Petitioner posits that achieving an orderly disposition of the cases under the RRCTA is not synonymous with violating litigants' basic right to fair play and due process.

Petitioner also argues that the Court erred in ruling that the deficiency tax assessment issued against respondent is void for the alleged lack of an LOA. It submits that the absence of an LOA does not render the deficiency tax assessment null and void. According to petitioner, there is no such requirement under Section 6(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, for the existence of an LOA. An LOA is not indispensable when it is the Commissioner of Internal Revenue (CIR) who authorizes the examination of the returns of taxpayers, and the only requirement stated therein is that a notice be given to the taxpayer. It adds that an LOA is indispensable only when it is the Regional Director who authorizes the audit of a taxpayer following Sections 10 and 13 of the NIRC of 1997, as amended.

Petitioner asserts that under Revenue Memorandum Order (RMO) Nos. 30-2003 and 42-2003, the Letter Notice (LN) serves as a notice to the taxpayer of the discrepancy in his return. In the present case, an LN signed by the CIR was issued, personally informing the taxpayer that based on an examination of returns, *i.e.*, a computerized matching conducted on information/data provided by third party sources against the declaration in respondent's VAT returns disclosed discrepancies for calendar year ended 2003.

Petitioner finally argues that the findings of deficiency income tax and VAT against the subject taxpayer for taxable year 2003 is proper in all respects.

THE COURT *EN BANC'S* RULING

To begin with, it is noteworthy that the present case is an appeal by petitioner of the Court in Division's Decision on the civil aspect of the criminal proceedings filed against respondent for violation of Section 255, in relation to Sections 253(d) and 256, of the NIRC of 1997, as amended, for the alleged failure to pay the deficiency income tax and VAT of Gernale Electrical Contractor Corporation (GECC) for taxable year 2003.

The Court in Division ruled that there is no basis to hold GECC and respondent civilly liable for non-payment of alleged deficiency taxes, in view of its finding that the assessment is void for petitioner's failure to prove: (i) the fact of mailing of the Preliminary Assessment Notice (PAN); and, (ii) that GECC or any of its authorized representative actually received the PAN.

In the assailed Decision, the Court *En Banc* ruled that the assessment is a nullity as it arose from a mere LN, without an audit being conducted pursuant to a valid LOA. The Court *En Banc* declared that no civil liability for deficiency income tax and VAT may be adjudged against GECC (which was not indicted as an accused in CTA Crim. Case No. O-336) and respondent as the facts upon which such civil liability arising from law may arise do not exist.

The conclusion in the assailed Decision was reached by the Court *En Banc* based on evidence which petitioner itself has presented before the Court in Division, particularly the Letter Notice No. 034-R-03-00-S-00009 dated October 27, 2004 issued by the then CIR Guillermo L. Parayno, Jr.[2] which was offered to prove, among others,

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[2] Exhibit "P-3", CTA Crim. Case No. O-336 Docket, p. 502.

that the audit of GECC was authorized.[3] Such document is part of the records of the case and was admitted in evidence[4].

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.[5]

In *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[6] the Supreme Court sustained the Court in resolving an issue about an LOA even though the parties had not raised the same in their pleadings, *viz.*:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
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> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:
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>> SECTION 1. Rendition of judgment. — 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.
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> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter."

Part of the due process requirement for assessment of internal revenue taxes is the BIR's compliance with the issuance of an LOA. The importance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer has been extensively discussed in the assailed Decision. To be sure,

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[3] Plaintiff's Formal Offer of Evidence filed on December 10, 2015, CTA Crim. Case No. O-336 Docket, p. 487.
[4] CTA Crim. Case No. O-336 Docket, pp. 566-567.
[5] Sec. 1 (par. 2), Rule 14 of the Revised Rules of the Court of Tax Appeals, as amended.
[6] G.R. No. 183408, July 12, 2017.

the audit of a taxpayer by a revenue officer and the BIR's subsequent issuance of assessment notices/demand, without the prerequisite LOA, are patently void. Thus, the Court *En Banc* finds it irrelevant to discuss the fact of mailing and receipt of the PAN, as what petitioner wants this Court to do, as there is no indication on records that the conduct of examination was authorized through a validly issued LOA. Any discussion relating to the fact of mailing and receipt of PAN would be merely academic as it would not change the outcome of this appealed case.

Anent respondent's contentions that (i) an LOA is not an indispensable requirement when it is the CIR who authorizes the examination of the returns of taxpayers; and (ii) the only requirement stated in Section 6(A) of the NIRC of 1997, as amended, is that a notice be given to the taxpayer, the same have been sufficiently addressed in the assailed Decision, particularly on pages 8 to 10 thereof, *viz.:*

> "In *Medicard Philippines Inc. vs. Commissioner of Intemal Revenue*[7] the Supreme Court emphasized the vital significance of an LOA to the validity of an assessment, **albeit the assessment was made pursuant to an LN**:
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> xxx xxx xxx
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> > **The Court cannot convert the LN into the LOA required under the law *<u>even if the same was issued by the CIR himself</u>*.** Xxx xxx xxx. **Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, *<u>the absence thereof cannot be simply swept under the rug</u>***, as the CIR would have it. Xxx xxx xxx
> >
> > Xxx xxx xxx. **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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> > xxx **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and**

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

> **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*.**" xxx
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> The issuance of an LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer is indispensable to the validity of an assessment. *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[8] declares:
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> > 'Clearly, **there must be a grant of authority before any revenue officer can conduct an examination or 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***.' xxx
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> Since the assessment arose from a mere LN, without an audit being conducted pursuant to a valid LOA, the assessment that resulted therefrom is a nullity. Thus, the Court finds that no civil liability for deficiency income tax and VAT may be adjudged against GECC (who was not indicted as an accused in CTA Crim. Case No. O-336) and, with more reason - - upon respondent as the facts upon which such liability arising from law may arise do not exist. As oft-repeated, the FAN issued against GECC is void, there being no LOA which authorized the audit and examination of GECC's records; hence, the FAN could neither bear any fruit[9] nor be a valid source of obligation to pay deficiency taxes by GECC and/or respondent." *(Underscoring and italics supplied)*

Clearly, an LOA is an indispensable requirement for assessment of internal revenue taxes. An LN, even if issued by the CIR, has to be converted to an LOA. In the absence of a validly issued LOA, the resulting assessment is inescapably void.

The foregoing having been stated, *Medicard* should be applied to this case. Unquestionably, the interpretation of the Supreme Court of the NIRC of 1997, as amended, forms part of the legal system.[10] Article 8 of the Civil Code enjoins adherence to judicial precedents. The law requires courts to follow a rule already established in a final decision of the Supreme Court.[11] The teaching in ***Inocencio Tugade***

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[8] G.R. No. 178697, November 17, 2010.
[9] Commissioner of Internal Revenue vs. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.
[10] Article 8, Civil Code of the Philippines (Republic Act No. 386).
[11] San Roque Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 203249, July 23, 2018.

vs. Court of Appeals and People of the Philippines[12] is instructive, *viz.:*

> "Respondent Court of Appeals really was devoid of any choice at all. It could not have ruled in any other way on the legal question raised. **This Tribunal having spoken, its duty was to obey. It is as simple as that**. There is relevance to this excerpt from *Barrera v. Barrera:* **The delicate task of ascertaining the significance that attaches to a** constitutional or **statutory provision**, an executive order, a procedural norm or a municipal ordinance **is committed to the judiciary**. It thus discharges a role no less crucial than that appertaining to the other two departments in the maintenance of the rule of law. **To assure stability in legal relations and avoid confusion, it has to speak with one voice. It does so with finality, logically and rightly, through the highest judicial organ, this Court. What it says then should be definitive and authoritative, binding on those occupying the lower ranks in the judicial hierarchy. They have to defer and to submit**. The ensuing paragraph of the opinion in Barrera further emphasizes the point: Such a thought was reiterated in an opinion of Justice J.B.L. Reyes and further emphasized in these words: Judge Gaudencio Cloribel need not be reminded that **the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.**" *(Boldfacing supplied)*

All told, this Court finds no cogent reason to modify, much more, reverse the assailed Decision.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (Re: Decision dated 30 July 2020)** filed on September 2, 2020 is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[12] G.R. No. L-47772, August 31, 1978.

WE CONCUR:

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

ERLINDA P. UY
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice