REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

VESTA PROPERTY HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1847
(CTA Case No. 9234)

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

VESTA PROPERTY HOLDINGS, INC.,
Respondent.

CTA EB NO. 1848
(CTA Case No. 9234)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ*

Promulgated:

MAR 0 2 2020 4:12 p.m.

x - x

RESOLUTION

UY, *J.*:

For resolution is the **"MOTION FOR RECONSIDERATION (Re: Decision dated 27 September 2019)"**[1] filed by the Commissioner of

[1] EB Docket, pp. 168 to 189.

Internal Revenue (CIR) on October 22, 2019, with the **"COMMENT (Re: Motion for Reconsideration dated October 22, 2019)"**[2] filed by Vesta Property Holdings Inc. (VPHI) on December 3, 2019, praying for the reversal and setting aside of the Court *En Banc's* Decision dated September 27, 2019[3], the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the *Petition for Review* in CTA EB No. 1847 filed by VPHI is **GRANTED**; while the *Petition for Review* in CTA EB No. 1848 filed by the CIR is **DENIED** for lack of merit.
>
> Accordingly, the Decision dated November 28, 2017 and the Resolution dated April 6, 2018, both rendered by the Court in Division in CTA Case No. 9234, are **REVERESED** and **SET ASIDE**. The deficiency tax assessment issued against VPHI for taxable year 2009 is **CANCELLED** and **SET ASIDE** for being void.
>
> **SO ORDERED.**"

CIR's arguments:

In his *Motion*, the CIR argues that the Court *En Banc* erred in granting a relief that was not prayed for by VPHI; that the want of authority of the revenue officer was never part of the issues raised during the trial and even on appeal; and that the CIR's right to fair play and due process was violated.

Assuming for the sake of argument that the Court may rule on an issue that was not part of the trial, nor found in the pleadings, the Court allegedly erred in ruling on an undisputed issue, and in ruling that the assessments are void because the ROs who conducted the audit were allegedly not authorized through a Letter of Authority (LOA).

Further, the CIR contends that there is no requirement in the law that revenue officers must be identified in the Letter of Authority (LOA). According to the CIR, the Memorandum of Assignment directing RO Cristina Lati to continue the audit is proper pursuant to

---

[2] EB Docket, pp. 198 to 210.
[3] EB Docket, pp. 136 to 153.

rb

the guidelines and procedures of Revenue Memorandum Order (RMO) No. 8-2006.

VPHI's counter-arguments:

In its Comment, VPHI argues that the *Court En Banc* has the authority to rule on matters relevant to the case even if the same have not been directly questioned by the parties. According to VPHI, while the validity of the LOA was not directly and specifically raised as an issue, such is directly and inextricably tied with the issue on the validity of the subject assessment

Allegedly, the Final Letter of Demand (FLD) issued by the CIR is void since the revenue officer who conducted the audit and recommended the issuance of the assessment notices was not authorized under LOA.

Finally, VPHI submits that the assailed Decision is consistent with the ruling in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[4] (hereinafter referred to as "*Medicard case"*) where the Supreme Court held that the absence of a valid LOA renders the assessment null and void.

THE COURT *EN BANC'S* RULING

The CIR's *Motion for Reconsideration* lacks merit.

This Court is empowered to rule on related issues necessary to achieve an orderly disposition of the case.

The CIR argues that his basic right to fair play and due process was violated when this Court ruled on the issue of the lack of authority of the revenue officer who conducted the subject tax assessment, as the same was never raised by VPHI.

We disagree.

---

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

MD

To reiterate, the power of this Court to rule upon related issues was confirmed and recognized by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*[5], to wit:

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> 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:
>
> > 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**.
>
> 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." (Emphasis supplied)

Based on the foregoing, it is clear that the Supreme Court did not only affirm this Court's authority to rule upon related issues necessary to achieve an orderly disposition of the case; but also specifically states that this Court may consider the question on the scope of authority of revenue officers who were named in the LOA, which impliedly covers the issue of whether an RO is authorized through an LOA in the first place. Thus, this Court is authorized to resolve the said issue in case.

---

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

rt

Furthermore, in *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.,*[6] the Supreme Court held that the Court may relax the rule against raising new issues on appeal when compelling reasons so warrant or when justice requires it, to wit:

> "The general rule is that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.
>
> xxx xxx xxx
>
> **The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court <u>may relax when compelling reasons so warrant or when justice requires it</u>.** What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:
>
> > **The appellate court may, in the <u>interest of justice</u>, properly take into consideration in deciding the case <u>matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignored</u>, although they have not been specifically raised as issues by the pleadings.** This is in consonance with the liberal spirits that pervades the Rules of Court, and the modern

---
[6] G.R. No. 163835, July 7, 2010.

ro

> trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them. [Emphasis supplied.]
>
> xxx xxx xxx
>
> **Another exemption from the rule against raising new issues on appeal is when <u>the question involves matters of public importance.</u>**" (Emphasis and underscoring supplied.)

On the basis of the foregoing pronouncement, it is clear that while it is a general rule that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein, the same admits of certain exceptions, namely,

(i) in the interest of justice, matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignore, and

(ii) questions involving matters of public importance.

The question of whether RO Lati who conducted the investigation of VPHI's books of accounts and other accounting records for taxable year 2009 was authorized to do so is a matter of record. The BIR records submitted vis-a-vis the evidence presented by the parties in the proceedings below can easily be examined to answer the said question. Furthermore, the same question is a matter of *public importance*. Taxpayers must always be assured that the ROs who conduct examination of their books of accounts and other accounting records for any given period are properly authorized by an LOA, pursuant to Section 6(A) of the National Internal Revenue Code (NIRC) of 1997, and as enunciated in the *Medicard case.*

With the foregoing disquisitions, the Court *En Banc* is justified in resolving, the issue of whether or not the RO who examined VPHI was authorized by the CIR or his duly authorized representative, through an LOA.

RMO No. 8-2006 is not applicable in the instant case.

The CIR's reliance on RMO No. 8-2006 which provides that only one LOA shall be issued to the same taxpayer, for the same tax type and period; and that in case of reassignment, a memorandum to that effect shall be issued, is untenable.

This is simply because it would run counter to Sections 6(A)[7] and 13[8] of the NIRC of 1997, and the corresponding pronouncement of the Supreme Court in the *Medicard case*, which became a part of the legal system of the Philippines.[9] As such, the provisions of RMO No. 8-2006 cannot be considered as valid,[10] and must not be adhered to, as it is not legally binding. A mere administrative issuance cannot amend the law; the former cannot purport to do any more than implement the latter. [11] It must be remembered that BIR circulars and rulings cannot prevail over the clear and plain language of the Tax Code. [12]

Section 17 of the NIRC of 1997 cannot be used as a legal basis to dispense with the issuance of a Letter Of Authority to authorize Revenue Officers who would perform assessment functions.

---

[7] **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.*

[8] **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.*

[9] Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines. (Article 8, Civil Code of the Philippines)

[10] Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution. [Article 7 (last paragraph), Civil Code of the Philippines]

[11] *Secretary of Finance Cesar v. Purisima, et al. vs. Philippine Tobacco Institute, Inc.*, G.R. No. 210251, Apri117, 2017, citing *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, G.R. NO. 153866, February 11, 2005.

[12] *Security Bank Corporation (formerly Security Bank and Trust Company) vs. The Commissioner of Internal Revenue*, G.R. No. 130838, August 22, 2006.

NB

The CIR also argues that Section 17 of the NIRC of 1997 provides the transfer or reshuffling of revenue officers, which allegedly means that, in natural occurrence of things, the RO indicated in the LOA need not be the one to complete the audit; and that there will be instances where the ROs would either retire, be reassigned, be taken ill, or die, prior to the completion of the audit investigation.

The argument of the CIR is misplaced.

Section 17 of the NIRC of 1997 provides as follows:

> "SEC. 17. *Assignment of Internal Revenue Officers and Other Employees to Other Duties.* - The Commissioner may, subject to the provisions of Section 16 and the laws on civil service, as well as the rules and regulations to be prescribed by the Secretary of Finance, upon the recommendation of the Commissioner, assign or reassign internal revenue officers and employees of the Bureau of Internal Revenue, without change in their official rank and salary, to other or special duties connected with the enforcement or administration of the revenue laws as the exigencies of the service may require: *Provided*, That internal revenue officers assigned to perform assessment or collection functions shall not remain in the same assignment for more than three (3) years: *Provided, further*, That assignment of internal revenue officers and employees of the Bureau to special duties shall not exceed one (1) year."

A cursory reading of the foregoing provision would reveal that the NIRC of 1997 indeed grants the CIR the power to assign or reassign internal ROs and employees, subject to certain limitations, one of which is that internal ROs assigned to perform assessment or collection functions shall not remain in the same assignment for more than three (3) years. However, nothing in the said provision states that the required LOA can be dispensed with; neither does it provide an exemption to the legal requirement that an RO must be authorized, through an LOA, to perform his/her assessment or collection functions.

It must be noted that the issue here is not whether an RO can be re-assigned to another BIR office, without completing the audit being made on a taxpayer. Instead, it is whether or not the ROs who conducted the investigation of the taxpayer are authorized to do so, through an LOA, as required by law and jurisprudence.

The Court *En Banc* is mindful that there can be instances where an RO, previously authorized through an LOA, may not be able to complete the examination of the concerned taxpayer, by reason of retirement, reassignment, illness, or death, of the said RO. But what is not acceptable to this Court is the CIR's proposition that because of such instances, there can already be an excuse not to issue an LOA. To the mind of the Court, such proposition finds no basis in law and jurisprudence.

Moreover, despite the presence of any of the above-enumerated instances, the CIR or his duly authorized representative is not prevented from legally issue another LOA in favor of the ROs who are intended to replace the one(s) previously authorized.

Accordingly, it bears reiterating that the failure of the CIR to issue a new LOA authorizing RO Lati to conduct the examination of VPHI's books of accounts and accounting records for taxable year 2009 makes the subject assessment a nullity.

In sum, the Court finds no cogent reason to disturb the findings in the assailed Decision.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(I join the Separate Concurring Opinion of Associate Justice Liban)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(I reiterate my Separate Concurring Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I reiterate my Dissenting Opinion dated September 27, 2019)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice