



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **January 23, 2023**, which reads as follows:*

“**G.R. No. 259264 (Commissioner of Internal Revenue, Petitioner v. Ermilo Tan Ng Hua, Respondent)**.— The Court resolves to **DENY** the Petition for Review on *Certiorari*¹ for failure of the Commissioner of Internal Revenue (petitioner) to show any reversible error on the part of the Court of Tax Appeals *En Banc* in rendering the assailed Decision² and in issuing the challenged Resolution,³ which denied its Petition for Review⁴ and the Motion for Reconsideration⁵ thereof, respectively, in CTA EB No. 2138.

Petitioner intransigently avouches that under Section 6(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, all returns are subject to examination, and in case of discrepancy, the law merely requires that *notice* be given to a taxpayer to comply with the due process requirement. Citing further Revenue Memorandum Order (RMO) Nos. 30-2003⁶ and 42-2003,⁷ petitioner argues that the assessment of taxes based on the examination of returns is allowed even without the necessity of a Letter of Authority (LOA). Thus, petitioner postulates that an LOA is *not* indispensable and a Letter Notice (LN) suffices for the validity of a tax audit.

¹ *Rollo*, pp. 10-31.

² *Id.* at 33-49. The Decision dated November 27, 2020 was penned by Senior Associate Justice Erlinda P. Uy, with the concurrence of Presiding Justice Roman G. Del Rosario, Associate Justices Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Jean Marie A. Bacorro-Villena and Maria Rowena Modesto-San Pedro.

³ *Id.* at 51-55. The Resolution dated November 11, 2021 was penned by Senior Associate Justice Erlinda P. Uy, with the concurrence of Presiding Justice Roman G. Del Rosario, Associate Justices Juanito C. Castañeda, Jr., Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro and Marian Ivy F. Reyes-Fajardo.

⁴ *Id.* at 139-152.

⁵ *Id.* at 81-89.

⁶ Subject: Prescribes the guidelines and procedures in the extraction, analysis, disclosure/dissemination, utilization, and monitoring of RELIEF data for audit and enforcement purposes, issued on October 1, 2023.

⁷ Subject: Prescribes additional guidelines on the assessment of national internal revenue taxes covered by “Letter Notice” issued under the RELIEF System, issued on November 21, 2023.

Petitioner's avouchment fails to impress.

An LOA gives the appropriate revenue officer assigned the authority to perform assessment functions.⁸ It empowers and enables said revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The issuance of 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 Commissioner of Internal Revenue himself or his duly authorized representatives.⁹

Here, having found that no LOA was issued prior to the issuance of the Preliminary Assessment Notice, Formal Letter of Demand and Final Assessment Notice against Ermilo Tan Ng Hua (respondent) for taxable year (TY) 2011, the Court of Tax Appeals (CTA) *En Banc* held that the revenue officers were not duly authorized to conduct the audit investigation. Resultantly, the tax assessment against respondent was a nullity.¹⁰

The Court could not agree more.

Contrary to petitioner's asseveration, LN No. 065-RLF-11-00-00069¹¹ received by respondent on October 25, 2013 was not sufficient to cloth the revenue officers with authority to conduct the audit/investigation. **An LN is not tantamount to an LOA.** This is true even if the LN was issued pursuant to the Reconciliation for Listing and Enforcement (RELIEF) System of the BIR.

The RELIEF System is a tool hatched by the BIR under RMO No. 30-2003, which "can detect tax leaks by matching the data available under the BIR's Integrated Tax System (ITS) with data gathered from third-party sources (*i.e.*, Schedules of Sales and Domestic Purchases, and Schedule of Importations submitted by VAT taxpayers). Through the consolidation and cross-referencing of third party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over

⁸ See *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021 [Per J. J. Lopez, Third Division].

⁹ *Id.*

¹⁰ *Rollo*, pp. 41-42.

¹¹ *Id.* at 90.

claimed purchases of goods and services. Timely recognition and accurate reporting of unregistered taxpayers and non-filers can be made possible.¹²

Upon this point, the Court hews to the doctrinal precedent drawn in the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*¹³—

RMO No. 30-2003 was supplemented by RMO No. 42-2003, which laid down the “*no-contact-audit approach*” in the CIR’s exercise of its power to authorize any examination of taxpayer and the assessment of the correct amount of tax. The *no-contact-audit* approach includes the process of computerized matching of sales and purchases data contained in the Schedules of Sales and Domestic Purchases, and Schedule of Importation submitted by VAT taxpayers under the RELIEF System pursuant to RR No. 7-95, as amended by RR Nos. 13-97, 7-99 and 8-2002. This may also include the matching of data from other information or returns filed by the taxpayers with the BIR such as Alphalist of Payees subject to Final or Creditable Withholding Taxes.

Under this policy, even without conducting a detailed examination of taxpayer’s books and records, if the computerized/manual matching of sales and purchases/expenses appears to reveal discrepancies, the same shall be communicated to the concerned taxpayer through the issuance of LN. The LN shall serve as a discrepancy notice to taxpayer similar to a Notice for Informal Conference to the concerned taxpayer. Thus, under the RELIEF System, a revenue officer may begin an examination of the taxpayer even prior to the issuance of an LN or even in the absence of an LOA with the aid of a computerized/manual matching of taxpayers’ documents/records. Accordingly, under the RELIEF System, the presumption that the tax returns are in accordance with law and are presumed correct since these are filed under the penalty of perjury are easily rebutted and the taxpayer becomes instantly burdened to explain a purported discrepancy.

Noticeably, both RMO No. 30-2003 and RMO No. 42-2003 are silent on the statutory requirement of an LOA before any investigation or examination of the taxpayer may be conducted. As provided in the RMO No. 42-2003, the LN is merely similar to a Notice for Informal Conference. However, for a Notice of Informal Conference, which generally precedes the issuance of an assessment notice to be valid, **the same presupposes that the revenue officer who issued the same is properly authorized in the first place.**

With this apparent lacuna in the RMOs, in November 2005, RMO No. 30-2003, as supplemented by RMO No. 42-2003, was amended by RMO No. 32-2005 to fine tune existing procedures in handing assessments against taxpayers’ issued LNs by reconciling various revenue

¹² See I. Background of RMO No. 30-2003.

¹³ 808 Phil 528 (2017) [Per J. Reyes, Third Division].

issuances which conflict with the NIRC. Among the objectives in the issuance of RMO No. 32-2005 is to prescribe procedure in the resolution of LN discrepancies, conversion of LNs to LOAs and assessment and collection of deficiency taxes.

IV. POLICIES AND GUIDELINES

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8. In the event a taxpayer who has been issued an LN refutes the discrepancy shown in the LN, the concerned taxpayer will be given an opportunity to reconcile its records with those of the BIR within One Hundred and Twenty (120) days from the date of the issuance of the LN. However, the subject taxpayer shall no longer be entitled to the abatement of interest and penalties after the lapse of the sixty (60)-day period from the LN issuance.

9. In case the above discrepancies remained unresolved at the end of the One Hundred and Twenty (120)-day period, the revenue officer (RO) assigned to handle the LN shall recommend the issuance of [LOA] to replace the LN. The head of the concerned investigating office shall submit a summary list of LNs for conversion to [LOAs] (using the herein prescribed format in Annex "E" hereof) to the OACIR-LTS/ORD for the preparation of the corresponding [LOAs] with the notation "This [LOA] cancels LN No. _____"

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V. PROCEDURES

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B. At the Regional Office/Large Taxpayers Service

X X X X X X X X X

7. Evaluate the Summary List of LNs for Conversion to [LOAs] submitted by the RDO x x x prior to approval.
8. Upon approval of the above list, prepare/accomplish and sign the corresponding [LOAs].

X X X X X X X X X

10. Transmit the approved/signed [LOAs], together with the duly accomplished/approved Summary List of LNs for conversion to [LOAs], to the concerned investigating offices for the encoding of the required information x x x and for service to the concerned taxpayers.

X X X X X X X X X

C. At the RDO x x x

x x x x x x x x x

11. If the LN discrepancies remained unresolved within One Hundred and Twenty (120) days from issuance thereof, prepare a summary list of said LNs for conversion to [LOAs] x x x.

x x x x x x x x x

16. **Effect the service of the above [LOAs] to the concerned taxpayers.**

x x x x x x x x x

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.¹⁴ [Emphases and underscoring supplied]

¹⁴ *Id.* at 541-545.

Given this clear-cut pronouncement in *Medicard*, the Court sees no point on belaboring the issue at hand, even more so in view of Revenue Memorandum Circular (RMC) No. 75-2018,¹⁵ which *expressly* recognized the ruling in *Medicard*, viz.:

The judicial ruling, invoking a specific statutory mandate, states that no assessments can be issued or no assessment functions or proceedings can be done without the prior approval and authorization of the Commissioner of Internal Revenue (CIR) or his duly authorized representative, through an LOA. **The concept of an LOA is therefore clear and unequivocal. Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and is therefore "inescapably void."**

X X X X

To help forestall any unnecessary controversy and to encourage due observance of the judicial pronouncements, any examiner or revenue officer initiating tax assessments or performing assessment functions without an LOA shall be subject to appropriate administrative sanctions. [Emphasis and underscoring supplied]

Evidently, only one logical conclusion can be inferred— an assessment, whether or not a result of the *no-contact-audit approach* under the BIR's RELIEF System, can only be *validly* issued upon the prior approval and authorization of petitioner or his duly authorized representative, through an LOA. Mere issuance of notice to a taxpayer does not suffice.

In epitome, the CTA *En Banc* committed no reversible error in affirming the cancellation of the Final Decision on Disputed Assessment¹⁶ dated January 20, 2016 issued against respondent.

WHEREFORE, the instant Petition for Review on *Certiorari* is hereby **DENIED**. The November 27, 2020 Decision and the November 11, 2021 Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 2138 are **AFFIRMED**.

¹⁵ Subject: The Mandatory Statutory Requirement and Function of a Letter of Authority, issued on September 5, 2018.

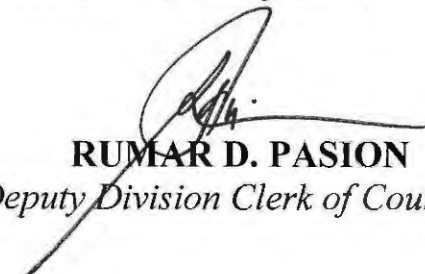
¹⁶ *Rollo*, pp. 96-97.

SO ORDERED.”

By authority of the Court:

MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court

By:


RUMAR D. PASION
Deputy Division Clerk of Court
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