REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* No. 2266** (CTA Case No. 9700)
	Present:
- *versus* -	**DEL ROSARIO,** *P.J.,* **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
MISAMIS ORIENTAL RURAL ELECTRIC SERVICE COOPERATIVE I, INC., (MORESCO I), *Respondent.*	*Promulgated:* OCT 12 2022 4:03 pm

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Decision dated November 4, 2019:

"**WHEREFORE**, the foregoing considered, the Petition for Review filed by petitioner Misamis Oriental Rural Electric Service Cooperative I, Inc. is **GRANTED**. Accordingly, the Preliminary Assessment Notice dated 12 January 2017 and Assessment Notice with Final Letter of Demand dated 22 February 2017 issued against petitioner are **CANCELLED** and **SET ASIDE**.

SO ORDERED."

Resolution dated June 4, 2020:

"**WHEREFORE,** with the foregoing, respondent's Motion for Reconsideration filed on 20 November 2019 is **DENIED**. Accordingly, the Court's Decision on 04 November 2019 is hereby **AFFIRMED**."

SO ORDERED."

THE PARTIES

Petitioner CIR is the duly appointed head of the Bureau of Internal Revenue (BIR) vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said Office, including *inter alia,* the power to decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the 1997 National Internal Revenue Code (NIRC), as amended, and other tax laws, rules and regulations. Her principal office address is at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, where she may be served with summons and other legal processes of this Court.

Respondent is a corporation duly organized and existing under Philippine laws and is an electric cooperative, duly registered with the National Electrification Administration (NEA) pursuant to Presidential Decree (PD) 269.

THE FACTS

The facts as found by the Second Division are as follows:

"On 15 April 2013, petitioner filed its Annual Income Tax Return (ITR) for taxable year 2012. On 04 December 2014, petitioner received a Letter of Authority (LOA) with an Audit Checklist of Requirements from the BIR. The LOA authorized Revenue Officer Ahmed Yadhari Bantuas (RO Bantuas) of Revenue District Office (RDO) No. 98, Cagayan de Oro City, to examine petitioner's books of accounts and records for verification of its tax liabilities for 2012.

On 21 January 2015, petitioner also received a First Notice signed by RO Bantuas, requiring the submission of mandatory documents for BIR's investigation.

On 06 February 2015, the BIR sent petitioner a Second and Final Notice, containing a similar demand to submit documents, with further instruction for it to do so within 10 days from notice. Thus, on 11 February 2015, petitioner forwarded a compact disc (CD) to RO Bantuas, containing digital copies of the following documents: (1) Inventory List; (2) general ledger; (3) sales register; (4) sales journal; (5) purchase journal; (6) cash/check disbursement; (7) general journal; (8) trial balance; (9) payroll register; (10) lapsing schedule; (11) schedule of receivables and liabilities; (12) external auditor worksheet; and (13) audited financial statements (AFS).

On 18 December 2015, petitioner executed a Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code **(NIRC) (first waiver)** allowing the BIR to assess and collect tax liabilities from it for the year 2012 until 31 December 2016.

Prior to the expiration of the first waiver, petitioner executed another waiver on 16 November 2016 **(second waiver)** extending the BIR's authority until the end of the first taxable quarter of year 2017 or until 31 March 2017.

On 02 February 2017, petitioner received a Preliminary Assessment Notice (PAN) wherein the BIR found its income tax return for 2012 deficient therefore, holding petitioner liable for for the following amounts:

Tax Type	Basic	20% Interest	Total
Income Tax	23,709,487.13	17,782,115.35	41,491,602.48
Grand Total			41,491,602.48

> The BIR further assessed petitioner for P25,000, as compromise penalty, for failing to file its quarterly income tax return.
>
> Disagreeing with the assessment, petitioner filed its Protest against the PAN on 17 February 2017. It argued that it could not be liable for income taxes since PD 269 exempts it from payment thereof and that it is under the direct supervision of the NEA. In a letter dated 27 February 2017, the BIR denied petitioner's Protest mostly on the ground of deficiency in form. The BIR stated, among others, that the protest did not contain a request for reconsideration or reinvestigation that Revenue Regulation No. 12-99 required and that petitioner did not execute a waiver of the defense of prescription (a pre-condition to a protest as mandated by Revenue Memorandum Order (RMO) No. 20-90), thereby rendering the protest ineffective.
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> Later, petitioner received Assessment Notices with an attached FLD, dated 22 February 2017, holding petitioner liable for a tax deficiency amounting to P42,084,339.65, xxx xxx xxx.
>
> Still later, petititoner sent another Protest, dated 10 April 2017, debating the BIR's findings in the FLD. Respondent never acted on petitioner's protest, hence, the present petition."

On November 4, 2019, the Court in Division rendered the assailed Decision granting respondent's Petition for Review in CTA Case No. 9700 and consequently cancelled and set aside the Preliminary Assessment Notice (PAN) dated January 12, 2017 and the Formal Letter of Demand and Assessment Notice (FLD/FAN) dated February 22, 2017 issued against respondent for taxable year 2012.

On November 20, 2019, petitioner posted his Motion for Reconsideration of the assailed Decision dated November 4, 2019.

In the assailed Resolution dated June 4, 2020, the Court in Division denied petitioner's Motion for Reconsideration and consequently affirmed the assailed Decision dated November 4, 2019.

Petitioner received the assailed Resolution on June 10, 2020 denying her Motion for Reconsideration.

On June 24, 2020, petitioner filed a Motion for Extension

of Time to File Petition for Review praying for an extension of fifteen (15) days from June 25, 2020 or until July 10, 2020 within which to file her Petition for Review with the Court *En Banc.*[4]

In a Minute Resolution dated June 26, 2020, the Court *En Banc* granted petitioner's Motion for Extension of Time to File Petition for Review and gave petitioner a non-extendible period of fifteen (15) days from June 25, 2020 or until July 10, 2020, within which to file the Petition for Review.

On July 9, 2020, petitioner posted the instant Petition for Review which was received by the Court on July 15, 2020.

In a Resolution dated September 7, 2020, the Court *En Banc* ordered petitioner to submit a compliant Amended Verification and Certification of Non-Forum Shopping within ten (10) days from notice.

On September 21, 2020, petitioner filed her Compliance to the Resolution dated September 7, 2022 and attached a compliant Verification and Certification Against Non-Forum Shopping which was noted and admitted by the Court *En Banc* in a Resolution dated October 15, 2020. In this same Resolution, the Court ordered respondent to file its comment or opposition to the Petition for Review within ten (10) days from notice.

Respondent filed its *Comment/Opposition to the Petition* via a licensed courier, LBC, which was received by the Court on January 11, 2021.

On January 26, 2021, the Court issued a Resolution submitting the case for mediation for the possibility of reaching an amicable settlement and ordered the parties or their representatives to appear before Ms. Avigail B. Sanchez, the Mediation Staff Assistant, at the Philippine Mediation Center Unit- Court of Tax Appeals (PMC-CTA) on April 26, 2021.

On June 7, 2021, Ms. Sanchez, issued a "Back to Court" due to the refusal of respondent to submit the case for mediation.

In a Resolution dated October 13, 2021, the Court *En Banc* submitted the instant case for decision.

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[4] EB Docket, pp.1-2.

THE ISSUE

The grounds raised by the petitioner in her Petition for Review are as follows:

1. Petitioner's right to fair play and due process was violated when the Honorable Court ruled on a matter not raised as an issue by petitioner in its Petition for Review or Pre-Trial Brief, not joined by the parties, nor defined by the Court in the Pre-Trial Order; and

2. Assuming that the Court may suddenly decide the case based on an issue that was never raised by respondent, was never joined by the pleadings, never raised at the pre-trial conference, never defined by the Court in the pre-trial order and never tried by the parties-still the assessment was issued pursuant to a valid letter of authority.

Petitioner's arguments:

Petitioner submits that the Court in Division erred in ruling on an issue which was not raised by respondent in its Petition for Review during trial nor raised by the parties during the pre-trial, hence, never defined in the Pre-Trial Order issued by the Court in Division. Petitioner refers to the issue of the alleged lack of authority of the revenue officers (ROs) who conducted the audit/investigation of respondent's books of accounts and other accounting records for taxable year 2012 which led to the cancellation of the FLD/FAN in the assailed Decision dated November 4, 2019. Petitioner contends that this is a clear violation of her right to procedural and substantive due process as she was neither heard nor given the opportunity to be heard on this particular issue. Petitioner acknowledges that the Revised Rules of the Court of Tax Appeals (RRCTA) allows the Court to rule on issues not stipulated by the parties but submits that this was never intended to allow said Court to rule on an issue not derived from the pleadings and not tried by the parties and neither is it a license to violate a litigant's right to fair play and due process.

Petitioner argues that the purpose of a pre-trial is to achieve an orderly disposition of cases, hence, it should not be

taken for granted. The fact that the issue of lack of authority of the ROs was not tackled during the pre-trial of the case and was not mentioned in the Court's Pre-Trial Order should cancel out any disposition on the matter.

Even assuming that the Court may decide a case based on an issue that was never raised by respondent in its pleadings nor even included in the Pre-Trial Order, petitioner still contends that the Court erred in ruling that the reassignment of the audit/investigation of respondent's accounting records to revenue officer (RO) Maricel Arthur through a Memorandum of Assignment (MOA) rendered the FLD/FAN for calendar 2012 invalid. She also expressed a contrary opinion to the ruling of the Court in Division which held that it would have been different if the MOA was issued/signed by the CIR or by the Regional Director and not by a Revenue District Officer (RDO). Petitioner believes that an RDO is authorized to reassign the conduct of an audit through a duly issued MOA and cites Revenue Memorandum Order (RMO) No. 8-2006 which states that in "cases of reassignment, a memorandum to that effect shall be issued by the head of the investigating office." She additionally argues that RMO No. 62-2010 which contains a standard format of a MOA refers to the signatory as the "Authorized Revenue Official/Head, Investigating Office." Petitioner asserts that an RDO acts as the head of the investigating office and may validly reassign the case to another revenue officer through the issuance of a MOA.

Respondent's counter-arguments:

In its Comment and/or Opposition to the Petition, respondent narrates that ROs Maricel Arthur and Regine Macas who conducted the actual audit and investigation and who testified in the trial of this case are not the ones authorized under the original LOA which named RO Ahmad Yadhari Bantuas to conduct said audit. Respondent agrees with the Court in Divison when it held that the MOA issued to Maricel Arthur and Regine Macas did not confer them with the legal authority to conduct the examination of respondent's books of accounts and other accounting records for taxable year 2012 and that the issuance of a MOA is not equivalent to a LOA rendering the resultant FLD/FAN to be void and without any effect.

THE COURT *EN BANC*'S RULING

We shall first rule on the timeliness of the appeal filed by petitioner with the Court *En Banc.*

Records show that petitioner received a copy of the assailed Resolution dated June 10, 2020 (denying its Motion for Reconsideration) on June 16, 2020 giving her until July 1, 2020 to file a Petition for Review with the Court *En Banc.*

On June 26, 2020, petitioner filed a Motion for Extension of Time to File Petition for Review, requesting for an additional period of fifteen (15) days from July 1, 2020 or until July 16, 2020 within which to file an appeal with the Court *En Banc.*

The Court *En Banc* granted the said motion of petitioner and gave the latter until July 16, 2020 within which to file her Petition for Review.

Petitioner subsequently posted her Petition for Review with the Court *En Banc* on July 16, 2020, thus was timely filed.

We now proceed to rule on the merits of the arguments raised by petitioner.

The issues raised by petitioner in her Petition for Review are not novel and this Court has time and again held that it could take cognizance of issues not raised by the parties if the resolution of such is essential to carry out its mandate to arrive at a just and orderly disposition of cases brought before it. The Court has likewise ruled in numerous cases that the issuance of a LOA authorizing the ROs named therein is necessary to conduct an audit/examination of a taxpayer's books of accounts and other accounting records.

Now to the specifics of these two rulings.

In the case of *CIR vs. Lancaster Philippines, Inc.,*[5] the Supreme Court recognized the Court of Tax Appeals' disposition of an issue which may not have been raised by the parties, and we quote as follows:

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

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

> 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**." (Emphasis supplied)

In another case,[6] the Supreme Court emphasized the primacy of a just determination of a controversy and recognized the discretion of the Court to rule on undiputed facts to achieve this purpose, and we quote:

> "True, strict procedural rules generally frown upon 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 technical rules of evidence.' The paramount consideration remains the ascertainment of truth. Verily, the quest for orderly presentation of issues is not absolute. It should not bar the courts from considering undisputed facts to arrive at a just determination of a controversy."

While it is true that the parties did not raise the lack of authority of the ROs during trial, the Court in Division correctly disposed of the same as it was an integral element in the determination of the validity of the tax deficiency assessments issued for taxable year 2012. We quote with approval, the assailed Decision when it finally disposed of this matter, thus:

> "In herein case, what is in issue is the assessment for deficiency taxes for calendar year 2012. In determining the validity of such assessment, a review of the revenue officers' authority to conduct the audit which resulted to the assessments is intrinsically related to the issue of validity of the assessments."

As to the issue of lack of authority of the ROs who conducted the audit of respondent's books of accounts and its accounting records pertaining to taxable year 2012, it is no longer in dispute that the issuance of a valid LOA is an essential part of the due process rights of a taxpayer and this was elucidated by the Supreme Court in the case of *Medicard Philippines, Inc. vs. CIR*,[7] and we quote as follows:

> **"The absence of an LOA violated Medicard's right to due process.**

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[6] *BPI Family Savings Bank Inc. vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*, G.R. No. 122480, April 12, 2000.
[7] G.R. No. 222743, April 5, 2017.

> 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. xxx xxx xxx" (Emphasis supplied)

Moreover, Section 6 (A) of the 1997 NIRC, as amended, specifically mandates that a RO must be authorized by the CIR or by her duly authorized representative before it may conduct an examination of any taxpayer, and we quote:

> "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." (Emphasis supplied)

Likewise, Section 10 (c) and Section 13 of the 1997 NIRC, as amended, also specifically provides that this authority is in the form of a LOA duly issued by the Revenue Regional Director, and we quote:

> "Section 10. Revenue Regional Director. – Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional Director shall, within the region and district offices under his jurisdiction, among others:
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> xxx xxx xxx
>
> (c) Issue Letters of Authority for the examination of taxpayers within the region."
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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**

> **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." (Emphasis supplied)

The controversy in the instant case lies in the alleged lack of authority of ROs Maricel Arthur and Regine Macas who continued the audit after the originally authorized[8] RO Bantuas was transferred to another office. The records show that the authority to continue the investigation/examination of respondent's books of accounts and other accounting records was transferred to RO Arthur via MOA No. 0982014LOA8032 signed by Revenue District Officer (RDO), Venerando B. Homez.

It is worthy to stress and as likewise observed by the Court in Division that RO Maricel Arthur was not named in the original LOA issued by the BIR but was assigned to continue the audit by way of a MOA signed by a RDO who is not one of the officials tasked to issue LOAs pursuant to the aforequoted Section 6 (A) in relation to Section 13 of the 1997 NIRC, as amended.

RMO No. 43-90 also requires the issuance of a new LOA in cases of reassignment or transfer to another RO, and we quote a portion thereof as follows:

> "**Any reassignment 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 provided)

Based on the foregoing, the Court finds that the MOA assigning the continuation of the audit of respondent's records for taxable year 2012 to RO Maricel Arthur cannot pass for a LOA which vests intrinsic validity to the FLD/FANs issued as a result thereof. We again subscribe to the the findings of the Court in Division in the assailed Decision, as follows:

> "From the foregoing, there can be no clearer evidence

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[8] Under LOA No. 098-2014-00000353/e (LA) dated November 27, 2014.

> but that there was no new LOA issued for RO Arthur (more so for RO Macas) to conduct the investigation of petitioner. As both are without LOAs, their investigation and subsequent assessment of petitioner's tax deficiency could not be sanctioned."

In the case of *CIR vs. McDonald's Philippines Realty Corp.*[9] *(McDonald's* case) the Supreme Court ruled that the use of a MOA, Referral Memorandum, or such equivalent document directing the continuation of a tax audit or investigation by another revenue officer vests no authority on such revenue officer, and we quote:

> "It is true that the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers. However, notice of the fact of reassignment and transfer of cases is one thing; proof of the existence of authority to conduct an examination is another thing. **The memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer**." (Emphasis supplied)

We also concur with the ruling of the Court in Division in its Resolution dated June 4, 2020 when it held that it could have been decided differently if the MOA was signed by the CIR herself or by the Revenue Regional Director. We are not persuaded by petitioner's argument that the RDO is authorized to sign a MOA as head of the investigating office, and we again quote the Supreme Court in the *McDonald's* case which considered the practice of reassigning ROs and substituting them with a new set of ROs (without a separate LOA) as a usurpation of the statutory power of the CIR, and we further quote:

> "The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, **is in effect a usurpation of the statutory power of the CIR or his duly authorized representative**." (Emphasis supplied)

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[9] G.R. No. 242670, May 10, 2021.

WHEREFORE, premises considered, the Petition for Review posted by the CIR on July 9, 2020 is **DENIED**.

Accordingly, the Decision dated November 4, 2019 and Resolution dated June 4, 2020 of the Second Division of this Court are **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice