

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS

Quezon City

**EN BANC**

COMMISSIONER OF INTERNAL  
REVENUE,

*Petitioner,*

*-versus-*

YAN AN CARGO CORPORATION,

*Respondent.*

CTA EB NO. 2587

(CTA Case No. 9865)

Present:

DEL ROSARIO, P.J.,  
UY,  
RINGPIS-LIBAN,  
MANAHAN,  
BACORRO-VILLENA,  
MODESTO-SAN PEDRO  
REYES-FAJARDO,  
CUI-DAVID, and  
FERRER-FLORES, JJ.

Promulgated:

FEB 14 2023

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**DECISION**

***DEL ROSARIO, P.J.:***

This is a Petition for Review filed on April 18, 2022 by the Commissioner of Internal Revenue (CIR), seeking for the nullification of the Decision dated June 1, 2021 (assailed Decision) of the Court's Second Division (Court in Division) in *Yan An Cargo Corporation vs. CIR*, docketed as CTA Case No. 9865, which cancelled the disputed deficiency income tax and value-added tax (VAT) assessments for taxable year (TY) 2010 as embodied in the Formal Letter of Demand dated September 3, 2013, and the Resolution dated March 11, 2022 (assailed Resolution) of the Court in Division, which denied petitioner's Motion for Reconsideration dated June 21, 2021 for lack of merit.

**THE PARTIES**

Petitioner CIR is the head of the Bureau of Internal Revenue (BIR), the government agency charged with implementing the National

Internal Revenue Code (NIRC) of 1997, as amended.<sup>1</sup> Petitioner is vested with authority to decide, among others, cases involving disputed assessments and other matters arising under the NIRC of 1997, as amended, and other laws administered by the BIR.<sup>2</sup>

Respondent is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at Long Se Lee Bldg., Burgos Extension, Villamonte, Bacolod City, Negros Occidental.<sup>3</sup>

### THE FACTS

The undisputed facts, as disclosed in the assailed Decision, are as follows:

“On 24 February 2012, respondent **[now the petitioner]** issued Letter Notice (LN) No. 077-RLF-10-00-00263 to petitioner **[now the respondent]**. The LN was based on a computerized matching of information or data allegedly from third party sources, indicating discrepancies against the declarations in petitioner’s VAT returns for TY 2010.

More than a year later or on 11 July 2013, petitioner received a Preliminary Assessment Notice (PAN) dated 26 June 2013. Petitioner then replied thereto.

On 03 September 2013, respondent issued a Formal Letter of Demand (FLD) with Details of Discrepancy, holding petitioner liable for deficiency IT and VAT, itemized as follows:

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Petitioner received the FLD on 03 October 2013. Disagreeing with the assessment, it filed a Protest on 22 October 2013. Later, its Protest was denied in the Final Decision on Disputed Assessment (FDDA) dated 09 January 2014, received on 24 January 2014.

On 21 February 2014, petitioner elevated the said FDDA to respondent himself *via* a Motion for Reconsideration (MR). On 09 May 2018, respondent denied petitioner’s MR with finality (CIR’s Decision) and the latter received the same on 31 May 2018.

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<sup>1</sup> Par. 2, Relevant Stipulated Facts, Joint Stipulation of Facts and Issues, Court in Division Docket, p. 205.

<sup>2</sup> Assailed Decision, CTA EB Docket, p. 28.

<sup>3</sup> Assailed Decision, CTA EB Docket, p. 28.



Aggrieved, petitioner filed the instant Petition for Review on 29 June 2018. Respondent filed his Answer on 08 October 2018.”<sup>4</sup>

After trial, the Court in Division promulgated the assailed Decision on June 1, 2021, granting the Petition for Review of respondent. The dispositive portion of the assailed Decision reads:

“WHEREFORE, premises considered, the Petition for Review filed on 29 June 2018 by Yan An Cargo Corporation is hereby GRANTED. The assessment against petitioner Yan An Cargo Corporation for deficiency income tax and value-added tax for taxable year 2010 embodied in the Formal Letter of Demand dated 03 September 2013 is hereby CANCELLED. Respondent Commissioner of Internal Revenue is hereby ENJOINED from enforcing the collection of the deficiency taxes arising from the said Formal Letter of Demand.

SO ORDERED.”

Petitioner filed a Motion for Reconsideration on June 22, 2021, and the same was denied in the assailed Resolution dated March 11, 2022 for lack of merit, the dispositive portion of which states:

“WHEREFORE, premises considered, respondent’s Motion for Reconsideration filed on 22 June 2021 is hereby DENIED for lack of merit.

SO ORDERED.”

Undaunted, petitioner filed a Motion for Extension of Time to File Petition for Review on March 29, 2022 before the Court *En Banc*,<sup>5</sup> and the same was granted in the Minute Resolution dated March 30, 2022. Petitioner was granted a final and non-extendible period of fifteen (15) days from March 31, 2022 or until April 15, 2022 within which to file the Petition for Review.<sup>6</sup>

Petitioner filed the present Petition for Review on April 18, 2022.<sup>7</sup>

In the Resolution dated May 17, 2022, respondent was directed to comment on the Petition for Review within ten (10) days from receipt thereof.<sup>8</sup>

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<sup>4</sup> Assailed Decision, CTA EB Docket, pp. 28-29.

<sup>5</sup> CTA EB Docket, pp. 1-4.

<sup>6</sup> CTA EB Docket, p. 5.

<sup>7</sup> CTA EB Docket, pp. 6-45.

<sup>8</sup> CTA EB Docket, pp. 47-48.

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On June 16, 2022, respondent filed via electronic mail and licensed courier its Comment/Opposition (To CIR's Petition for Review dated 18 April 2022),<sup>9</sup> which was noted in the Court *En Banc's* Resolution dated July 7, 2022.<sup>10</sup> In the same Resolution, this case was referred to the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) pursuant to Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.

On September 5, 2022, the Court received "PMC-CTA Form 6-No Agreement to Mediate" stating that the parties decided not to have this case mediated by PMC-CTA.<sup>11</sup>

On September 29, 2022, the present case was submitted for decision.<sup>12</sup>

### **PETITIONER'S ARGUMENTS**

Petitioner advances the following arguments in support of the present Petition for Review, *viz.*:

1. The Court in Division erred in ruling that the assessment was made without proper authority. The LN is sufficient to grant authority to conduct the assessment;
2. The FLD and FDDA have bases in fact and in law;
3. Respondent is liable to pay the deficiency income tax and deficiency VAT assessments;
4. Respondent is liable for surcharge and interest; and,
5. The assessments issued against respondent are valid and lawful.

### **RESPONDENT'S ARGUMENTS**

In its Comment/Opposition to the Petition for Review, respondent states its agreement to the Court in Division's ruling that the absence of an LOA is a violation of the taxpayer's right to due process which renders the assessment null and void. Respondent posits that an LN is different from an LOA and the issuance of the former does not

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<sup>9</sup> CTA EB Docket, pp. 58-90.

<sup>10</sup> CTA EB Docket, pp. 95-97.

<sup>11</sup> CTA EB Docket, p. 98.

<sup>12</sup> CTA EB Docket, pp. 100-101.



equate to the issuance of the latter; and as the CIR's assessments against it were not made pursuant to an LOA, such assessments are void. Thus, respondent cannot be made liable to pay the deficiency income tax and VAT assessments as well as the deficiency interest on VAT.

## **ISSUE**

Whether or not the Court in Division erred in cancelling the deficiency income tax and VAT assessments against respondent for taxable year 2010.

## **THE COURT *EN BANC*'S RULING**

### ***Jurisdiction over the case***

The Court *En Banc* shall first determine whether the Petition for Review was filed on time.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

"SEC. 3. *Who may appeal; period to file petition.* – xxx

b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review."

Petitioner filed a Motion for Extension of Time to File Petition for Review on March 29, 2022, seeking for an extension of fifteen (15) days from March 31, 2022 or until April 15, 2022 within which to file a Petition for Review, pursuant to the aforesaid provision of the RRCTA. Such motion was granted in the Court *En Banc*'s Minute Resolution dated March 30, 2022, thereby allowing petitioner to file a Petition for Review until April 15, 2022. April 15, 2022 fell on a Holiday,<sup>13</sup> and the next working day is April 18, 2022.

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<sup>13</sup> "Good Friday" under Proclamation No. 1236 dated October 29, 2021.



On April 18, 2022, petitioner filed the Petition for Review assailing the Decision and Resolution of the Court in Division. The filing of the said Petition for Review was timely. With the timely filing of the Petition for Review, the Court *En Banc* has jurisdiction over this case.

### **Effect of lack of LOA**

It is undisputed that the deficiency income tax and VAT assessments in this case were based on a mere LN. No LOA was issued for the examination of respondent's books of accounts and other accounting records.

In *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,<sup>14</sup> the Supreme Court declared the following:

***"The absence of an LOA violated MEDICARD's right to due process***

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. Section 6 of the NIRC clearly provides as follows:

**SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –**

**(A) Examination of Return 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.

x x x x (Emphasis and underlining ours)

Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others

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<sup>14</sup> G.R. No. 222743, April 5, 2017.



has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.

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In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:

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. (Emphasis and underlining ours)

**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 10 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 served 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.

**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

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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."

The probative value of an LN *vis-à-vis* the required authority in the examination and assessment of a taxpayer has been settled in *Medicard*.

Clearly, an examination and assessment of a taxpayer require *sine qua non* the issuance of an LOA, and not merely an LN. The absence of an LOA renders the assessment a nullity.

The principle of *stare decisis et non quieta movere*, as embodied in Article 8 of the Civil Code of the Philippines, enjoins adherence to judicial precedents. It requires courts to follow a rule already established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land.<sup>15</sup> The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.<sup>16</sup>

Since the assessments in this case were based on a mere LN, and that the BIR failed to issue an LOA, like in *Medicard*, the Court in Division correctly declared that respondent's right to due process was violated, and that the assessments are void.

Considering that the assessments are void due to absence of an LOA, the Court *En Banc* finds it unnecessary to belabor on the other issues raised in the present Petition for Review.

All told, the Court *En Banc* finds no reason to modify or reverse the assailed Decision and assailed Resolution of the Court in Division.

**WHEREFORE**, premises considered, the present Petition for Review filed on April 18, 2022 is **DENIED** for lack of merit. Accordingly, the Decision dated June 1, 2021 and Resolution dated March 11, 2022 issued by the Court in Division in CTA Case No. 9865 are **AFFIRMED**.

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<sup>15</sup> *Filinvest Development Corporation vs. Commissioner of Internal Revenue and Court of Tax Appeals*, G.R. No. 146941, August 9, 2007.

<sup>16</sup> *De Mesa et al. vs. Pepsi Cola Products Phils., Inc. et al.*, G.R. No. 153063-70, August 19, 2005.



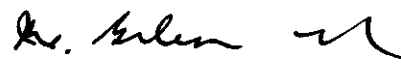
Petitioner, Commissioner of Internal Revenue, his representatives, agents, and any person acting on his behalf are **ENJOINED** from collecting or taking any further action on the subject assessed deficiency taxes embodied in the Formal Letter of Demand dated September 3, 2013.

**SO ORDERED.**

  
**ROMAN G. DEL ROSARIO**  
Presiding Justice

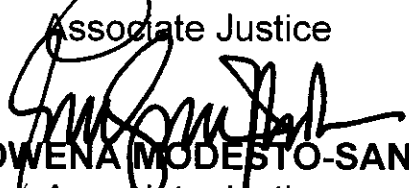
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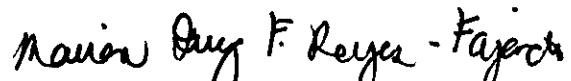
  
**ERLINDA P. UY**  
Associate Justice

  
**MA. BELEN M. RINGPIS-LIBAN**  
Associate Justice

  
**CATHERINE T. MANAHAN**  
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

  
**CORAZON G. FERRER-FLORES**  
Associate Justice

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### **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