REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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PEOPLE OF THE PHILIPPINES, Plaintiff, - versus - **ACTIVE TRAVEL & TOURS, INC., SEE SIU HUNG DONISIO AND SEE SIU YING DIONISIO,** Both of 1839 Leveriza Street Pasay City Accused.	**CTA CRIM. CASE NOS. O-737 & O-738** For: Violation of Section 255 in relation to Sections 253 (d) and 256 of the National Internal Revenue Code (NIRC) of 1997, as amended. Members: **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.* Promulgated: MAY 24 2021 1:44 p.m.

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RESOLUTION

For resolution is plaintiff's ***MOTION FOR RECONSIDERATION ON THE CIVIL ASPECT OF THE RESOLUTION***[1] filed on February 3, 2021, with accused's ***COMMENT/OPPOSITION (Re: Plaintiff's Motion for Reconsideration on the Civil Aspect of the Resolution)***[2] filed on March 1, 2021, praying for the reconsideration of the Resolution[3] dated January 15, 2021, insofar as the civil aspect of these consolidated cases is concerned. The dispositive portion of the assailed Resolution reads:

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[1] Docket (CTA Crim Case No. O-737) – Vol. 2, pp. 762 to 767.
[2] Docket (CTA Crim Case No. O-737) – Vol. 2, pp. 777 to 780.
[3] Docket (CTA Crim Case No. O-737) – Vol. 2, pp. 735 to 758.

"**WHEREFORE**, in light of the foregoing considerations, accused's ***Demurrer to Evidence*** is hereby **GRANTED**.

Accordingly, CTA Criminal Case Nos. O-737 and O-738 are **DISMISSED**. Accused Active Travel and Tours, Inc., See Siu Hung Dionisio and See Siu Ying Dionisio are hereby **ACQUITTED** of the crimes charged in these consolidated cases for failure of the prosecution to prove their guilt beyond reasonable doubt.

The presentation of evidence for the defense previously scheduled on January 20, 2021 is hereby **CANCELLED**.

SO ORDERED."

Plaintiff's arguments:

In support of its *Motion*, plaintiff argues that accused are liable to pay the assessed deficiency taxes. According to plaintiff, the Court erred in ruling that a *Tax Verification Notice* (TVN) and *Memorandum of Assignment* (MOA) are not considered as valid notice of audit.

Allegedly, the absence of a *Letter of Authority* (LOA) does not render the deficiency tax assessment null and void; and that there is no such requirement under the law. According to plaintiff, the CIR has inherent power to examine whether the correct amount of taxes have been declared and paid.

Plaintiff likewise claims that the LOA is not indispensable especially when it is the CIR who authorizes the examination of the returns of the taxpayers; and that the only requirement under Section 6(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, is that notice be given to the taxpayer.

Further, Revenue Memorandum Order (RMO) No. 69-2010 dated August 11, 2010 allegedly allows the issuance of a MOA for the continuation of the examination of a taxpayer due to the resignation, retirement of the original revenue officer; and that the said BIR issuance expressly repealed all revenue issuances inconsistent therewith, including RMO No. 43-90 and RMO No. 12-2007.

Finally, plaintiff contends that tax assessments are *prima facie* presumed correct and made in good faith; and that the taxpayer has the duty to prove otherwise.

Accused's counter-arguments:

In their *Comment/Opposition*, accused submit that without a validly issued LOA, a revenue officer has no authority to conduct a tax investigation and that any assessment issued on the basis thereof is null and void. According to the accused, any reassignment or transfer of cases to anther revenue officer or revalidation of an expired LOA shall require the issuance of a new LOA.

Considering that a void assessment bears no valid fruit, the subject assessment cannot attain finality and thus the corporate taxpayer cannot be held civilly liable.

Further, accused maintain that their supposed civil liability had already been extinguished by their acquittal and that there is no final and valid assessment.

THE COURT'S RULING

We deny the instant "*Motion for Reconsideration on the Civil Aspect of the Resolution*" filed by the plaintiff.

RMO No. 69-2010 may not be validly invoked to dispense with the issuance of LOA.

Plaintiff's reliance on RMO No. 69-2010[4] dated August 11, 2010, deserves scant consideration. Pertinent portions of RMO No. 69-2010, read as follows:

"III. Policies and Guidelines

8. Manual serially-numbered MOA shall be issued for the following cases:

8.1 Reassignment for the continuation of the audit/investigation of a case to another RO due

[4] SUBJECT: *Guidelines on the Issuance of Electronic Letters of Authority, Tax Verification Notices, and Memoranda of Assignment.*

> **to resignation/retirement/transfer of the original RO;"** *(Emphasis supplied.)*

While a reading of the said RMO shows that a MOA is required to be issued in case of reassignment for the continuation of the audit/investigation of a case to another Revenue Officer (RO), there is nothing therein which dispenses with the mandatory issuance of LOA for purposes of granting authority to a RO to continue the investigation. Thus, the same could not have revoked the requirements laid down under RMO No. 43-90.

It must be remembered that in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[5] *(or "Medicard case")*, the Supreme Court elucidated on the importance and significance of an LOA in examining the books of accounts and other accounting records of taxpayers and in assessing internal revenue taxes, to wit:

> "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 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.**
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> xxx xxx xxx
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> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. <u>Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void</u>.**" *(Emphases and underscoring supplied.)*

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

Further, it must be emphasized that the CIR, through the issuance of Revenue Memorandum Circular (RMC) No. 75-2018[6], recognized the ruling in the *Medicard* case relative to the mandatory nature of an LOA, in this wise:

> "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, <u>through an LOA</u>. 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.'**
>
> xxx xxx xxx
>
> 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)*

To reiterate, without any LOA authorizing the revenue officers to examine the books of accounts and accounting records of accused Active Travel and Tours, Inc. for taxable year 2008, the assessment arising from such investigation is a nullity. Correspondingly, there is no legal obligation on the part of the accused to pay the subject deficiency tax assessments.

Accordingly, as to accused's civil liability, the same cannot validly prosper considering that the subject assessments are null and void.

In sum, the Court finds no compelling reason to reconsider, modify or reverse the assailed Resolution.

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[6] SUBJECT: *The Mandatory Statutory Requirement and Function of a Letter of Authority.*

WHEREFORE, in light of the foregoing considerations, plaintiff's ***Motion for Reconsideration on the Civil Aspect of the Resolution*** is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice