REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

MA. ERLINDA T. ONG,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **10100**

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
JUN 26 2023 2:10 pm

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is the "Motion for Reconsideration (Re: Decision dated 16 January 2023)"[1] (**MR**) filed by respondent Commissioner of Internal Revenue (**respondent/CIR**) on 03 February 2023[2], with "Comment (On Respondent's Motion for Reconsideration)"[3] filed by petitioner Ma. Erlinda T. Ong (**petitioner/Ong**) on 20 March 2023. The motion seeks the reversal of this Court's Decision dated 16 January 2023[4] (**assailed Decision**) which dispositive portion reads:

> ...
>
> **WHEREFORE**, the foregoing considered, the Petition for Review of petitioner Ma. Erlinda T. Ong filed on 01 July 2019 is hereby **GRANTED**. Accordingly, the Final Assessment Notice and/or Formal Letter of Demand dated 10 December 2013 and the Final Decision on Disputed Assessment dated 17 April 2015 are hereby **CANCELLED** and **SET ASIDE**. Consequently, respondent Commissioner of Internal

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1 Division Docket, pp. 546-562.
2 Received on 09 February 2023.
3 Id., pp. 566-567.
4 Id., pp. 531-545.

Revenue or any person duly acting on his or her behalf is hereby **ENJOINED** from proceeding with the collection of the taxes arising therefrom.

SO ORDERED.

...

In granting petitioner's Petition for Review and cancelling the assessment, the Court essentially ruled that the Bureau of Internal Revenue's (**BIR**'s) agents who conducted the audit investigation of petitioner were not legally authorized by a Letter of Authority (**LOA**) in violation of petitioner's right to due process, to wit:

...

A reading of RMO No. 8-2006 that respondent cited yields that in case of reassignment, the head of the investigating office shall issue a memorandum to that effect. However, the same does not *ipso facto* make such memorandum a substitute for an LOA required in Section 13 of the NIRC of 1997, as amended. Put differently, while a memorandum may be issued by the head of the investigating office in cases of reassignment, the same does not and could not properly confer authority on the assigned RO to examine a taxpayer's books of account and accounting records. This view is espoused in the recent ruling of the Supreme Court in the case of *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp*. There, the Supreme Court ruled:

...

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 and assessment 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. The memorandum of assignment, referral memorandum, or any equivalent document is not issued by the CIR or his duly authorized representative for the purpose of vesting upon the revenue officer authority to examine a taxpayer's books of accounts. **It is issued by the revenue district officer or other subordinate official for the purpose of reassignment and transfer of cases of revenue officers.**

...

> 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. **The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR or his duly authorized representative under Sections 6, 10(c) and 13 of the NIRC. Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.**
>
> ...
>
> In summary, **We rule that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation without a separate or amended LOA** (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990.
>
> ...

Applying the above principles, the MOA in herein case (which is meant to just be an internal document of the BIR) did not confer authority on RO Justiniana to conduct the audit of petitioner and examine petitioner's books of accounts and other accounting records.

In the case of *Commissioner of Internal Revenue v. Opulent Landowners, Inc.*, the Supreme Court further reiterated that only the ROs **actually named** in the LOA are authorized to examine the taxpayer, to wit:

> ...
>
> ... Likewise, the CTA *EB* correctly held that the deficiency tax assessments were invalid due to revenue officers' lack of authority to do so. Under prevailing jurisprudence, a LOA is statutorily required under the National Internal Revenue Code in order to clothe the revenue officers with authority to examine taxpayers. It is axiomatic that only **the revenue officers actually named under the LOA are authorized to examine the taxpayer...**

> In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against respondent, the resulting assessments are void.
>
> ...
>
> It is also worth noting that respondent did not offer the said MOA as evidence. It is likewise not found in the BIR Records. Thus, the Court could not ascertain whether the MOA complies with the requirements of the relevant law and regulation, for the same to be substantially considered as an LOA for the purpose of vesting authority unto an RO (to examine a taxpayer's books of accounts).
>
> As things so stand, considering that RO Justiniana is not named in the LOA and is thus not authorized to conduct such investigation, the resulting assessment against petitioner is inescapably void. Well-entrenched are the principles that in the absence of such an authority, the assessment or examination is a nullity and a void assessment bears no fruit.
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> Due to the invalidity of the assessment against petitioner, the Court finds it unnecessary to tackle the other issues raised as their resolution could no longer change the outcome of the case.[5]
>
> ...

In the instant motion, respondent contends that the assessment against petitioner should be upheld because it was issued with legal and factual basis. Further, petitioner was not denied due process as she was allowed an opportunity to be heard and was made fully aware of the substitution of revenue officers (**ROs**) who were named in the Memorandum of Authority (**MOA**) (and which she herself had duly received). Respondent further argues that Revenue Memorandum Order (**RMO**) No. 8-2006[6] only allows a single LOA to be issued against a taxpayer within a taxable year (**TY**) thus, necessitating the use of the MOA for substitution of ROs.

In her Comment, petitioner fully agrees with the assailed Decision harping on the lack of due process in the conduct of the assessment.

We resolve.

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5 Supra at note 4, pp. 541-543; Citations omitted, emphasis and underscoring in the original text.

6 Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS).

After another careful review of the parties' arguments and the records, We find the MR to be devoid of merit.

In the assailed Decision, the Court has already ruled that an MOA may become a valid source of authority provided that it complies with all the requirements for the issuance of an LOA. However, to reiterate, the MOA itself from which respondent grounds the ROs authority to continue the investigation of petitioner was not presented before the Court. Therefore, the Court could not verify whether the MOA in herein case complies with the requisites provided under the National Internal Revenue Code (**NIRC**) of 1997, as amended, Sections 6 and 13, to wit:

> ...
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> **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.
>
> ...
>
> **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.[7]
>
> ...

The Court is not blind to the fact that there may be instances where the ROs originally named in the LOA would not be able to continue the investigation of a taxpayer for one reason or another thus, necessitating the substitution of the ROs. To require ROs to continue an assessment until the very end, although they may be rendered

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7 Emphasis supplied.

physically, or legally unable to maintain an assessment's validity, would be absurd to say the least. It is a well-established principle that, "[t]he law does not require the impossible".[8] In other words, the law and this Court are not so legally inflexible to the point that such circumstances remain unforeseen possibilities as respondent's arguments would suggest.

All that the Court requires of respondent is for it to prove his or her compliance with the legal requisites provided by the NIRC of 1997, as amended, to legally clothe the BIR agents with the authority to conduct an assessment despite such authority not being in the form of an LOA. However, respondent has failed to do the same. As it is, respondent has not presented any convincing evidence to corroborate his or her claims that RO Justiniana was validly authorized to continue the audit of petitioner since, the MOA itself was never presented and offered as evidence.

With the foregoing, the Court has no other option but to consider respondent's claim as self-serving. As a result, the Court is thus left with those pieces of evidence available such as the LOA. As We found in the assailed Decision, RO Justiniana is *not* one of those agents named in the LOA therefore leading the Court to invalidate the assessment due to the former's lack of authority to conduct the same.

The assessment's illegality having been established clearly, there would be no further reason for the Court to examine the results of respondent's investigation, as the same would not change the outcome of this case, the assessment itself being declared void.

WHEREFORE, the foregoing premises considered, the "Motion for Reconsideration (Re: Decision dated 16 January 2023)" filed by respondent on 03 February 2023 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

8 *Louis "Barok" C. Biraogo v. The Philippine Truth Commission of 2010*, G.R. No. 192935, 07 December 2010.

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice