REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

KOKOLOKO NETWORK CORPORATION,
Petitioner,

CTA Case No. 9574

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, and
BACORRO-VILLENA, *JJ.*

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 18 2019 2:35 pm

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RESOLUTION

CASTAÑEDA, JR., ***J.:***

For resolution of this Court is respondent Commissioner of Internal Revenue's (CIR) *Motion for Reconsideration (Decision dated 24 September 2019)*[1] filed on October 11, 2019 with petitioner Kokoloko Network Corporation's *Comment/Opposition [Re: Petitioner's Motion for Reconsideration dated 11 October 2019]*[2] filed on November 4, 2019.

[1] Docket, Vol. III, pp. 1361-1372.
[2] *Id.*, pp. 1375-1383.

Respondent assails the Decision dated September 24, 2019,[3] (the "Assailed Decision") of this Court granting petitioner's Petition for Review.

Respondent moves for reconsideration of the Assailed Decision based on the following grounds:

a. This Court erred in ruling that the Letter of Authority (LOA) issued is invalid for having [been] served beyond thirty (30) days from the date of its issuance;[4]

b. This Court erred in ruling that the revenue officers who conducted the audit examination have no authority to do so;[5] and

c. This Court erred in ruling that the assessment is void because of violation of petitioner's due process rights.[6]

In his *Motion*, respondent argues that this Court erred in ruling that the LOA issued is invalid for having been served beyond thirty (30) days from the date of its issuance. In stating so, respondent insists that petitioner was estopped because the latter accepted the LOA even though it was served beyond 30 days from date of its issuance.[7]

Respondent also claims that this Court erroneously ruled that the revenue officers who conducted the audit examination of petitioner's books of account and other accounting records have no authority to do so. Respondent theorizes that an LOA is not an "authorization letter" of the revenue officers but is issued to taxpayers to inform them that the audit of his person has been authorized by the Commissioner.[8] Respondent added that once an LOA is served, any duly authorized revenue officer may conduct the audit not because of, but pursuant to such LOA.[9] Respondent likewise postulates that a revenue officer's authority to conduct audit may be included in the LOA or in any other document issued by the Commissioner or his duly authorized representative.[10] Respondent

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[3] *Id.*, pp. 1333-1358.
[4] *Id.*, pp. 1362-1363.
[5] *Id.*, pp. 1363-1369.
[6] *Id.*, pp. 1369-1370.
[7] *Id.*, p. 1363.
[8] *Id.*, p. 1367.
[9] *Id.*
[10] *Id.*

also submits that there is no requirement in the law that revenue officers must be identified in the LOA to have authority.[11]

Lastly, respondent claims that it is an error for this Court to rule that the assessment is void because of violation of petitioner's due process rights. He posits that petitioner is estopped from denying receipt of the Preliminary Assessment Notice (PAN) and the Final Assessment Notice (FAN) considering that the latter admitted having received the Collection Letter dated December 15, 2016.[12]

In its *Comment,* petitioner maintains that it was not estopped for having received the LOA even though the same was served beyond 30 days from date of its issuance. According to petitioner, estoppel cannot be predicated on an illegal act, and furthermore, that estoppel cannot be sustained by mere argument or doubtful inference but must be clearly proven by clear and convincing evidence.[13]

Petitioner also asserts that the issuance of an LOA is an indispensable process to validate the authority of respondent or his agents to assess the taxpayer.[14] Petitioner adds that the issuance of an LOA is an essential part of the taxpayer's right to due process and without such, the assessment cannot stand and is null and void.[15]

Finally, petitioner contends that this Court did not err in ruling that the assessment is void because of violation of its right to due process. It maintains that it was not afforded the opportunity to protest the assessment.[16] Moreover, petitioner avers that its right to due process was likewise violated by the fact that the FAN was received 10 days earlier than the PAN, as duly admitted by respondent's own witness.[17]

After judicious evaluation of the arguments raised by the parties and the relevant facts gathered from the records *vis-à-vis* the applicable laws, rules and regulations, and jurisprudence on the matter, this Court finds no substantial matter much less compelling reason that would warrant the modification let alone the reversal of

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[11] *Id.*, p. 1368.
[12] *Id.*, p. 1369.
[13] *Id.*, pp. 1376-1377.
[14] *Id.*, pp. 1379-1380.
[15] *Id.*
[16] *Id.*, p. 1380.
[17] *Id.*, p. 1381.

the Assailed Decision. Verily, respondent's *Motion* is utterly devoid of any merit and thus should imperatively be denied.

This Court stands by its ruling that deficiency assessment in the present case should be cancelled and withdrawn because: (1) the LOA is invalid for having been served beyond 30 days from date of its issuance; (2) the assessment is void because the revenue officers who actually conducted the audit examination have no authority to do so; and (3) the assessment is void because of violation of petitioner's due process rights. The legal and factual reasons for such ruling were exhaustively discussed in the Assailed Decision and need not be repeated here.

This Court takes this occasion to correct some gross inaccuracies raised by respondent in his *Motion*. Contrary to respondent's contention, an LOA is, as lucidly explained by the Supreme Court, the authority given to the appropriate revenue officer assigned to perform assessment functions.[18] An LOA empowers or enables the 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.[19] In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[20] the Supreme Court emphatically pointed out that 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. Accordingly, unless authorized by the CIR himself or by his duly authorized representative through an LOA, an examination of the taxpayer cannot ordinarily be undertaken.[21]

The power of the revenue officers to conduct audit examination of taxpayers through an LOA, being a mere delegated power, must be exercised strictly in accordance with the terms of delegation. The delegate cannot go beyond the scope of the authority given. Thus, in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[22] the Supreme Court declared an assessment null and void when it was found out that the said assessment was arrived at based on records covering periods which were beyond the period covered by the LOA. In similar vein, an authority to conduct audit examination granted under an LOA which were exercised by revenue officers other than

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[18] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010, 635 SCRA 242; *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017, 822 SCRA 455.
[19] *Id.*
[20] G.R. No. 222743, April 5, 2017, 822 SCRA 455.
[21] *Id.*
[22] G.R. No. 178697, November 17, 2010, 635 SCRA 242.

those specifically named under such LOA is a nullity and any assessment made therefor must be deemed void.

This Court cannot agree with respondent that petitioner should be deemed estopped for the latter's receipt of the LOA beyond 30 days from date of its issuance. There is no basis to rule that estoppel exists in this particular matter.

Finally, this Court also finds no merit in respondent's contention that petitioner is estopped from denying receipt of the PAN and the FAN because petitioner allegedly admitted in the Joint Stipulation of Facts and Issues that it received the Collection Letter dated December 15, 2016. In this Court's view, such statement is simply illogical. It is *non sequitur*.

WHEREFORE, respondent's *Motion for Reconsideration (Decision dated 24 September 2019)* is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice