REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

SUN LIFE GREPA FINANCIAL, INC., *Petitioner,*	**CTA CASE NO. 10080** Members:
-versus-	**RINGPIS-LIBAN,** *Chairperson, and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 06 2023 8:15 a.m.

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RESOLUTION

MODESTO-SAN PEDRO, J.:

For the Court's resolution is respondent's "Motion for Reconsideration (Re: Decision dated 9 May 2023)" ("Motion"),[1] filed on 8 June 2023, with petitioner's "Comments on Respondent's Motion for Reconsideration (Re: Decision dated 9 May 2023)" ("Comment"),[2] filed on 17 July 2023.

In his Motion, respondent assails this Court's Decision,[3] dated 9 May 2023, which (a) set aside his assessment of petitioner's alleged percentage tax and documentary stamp tax ("DST") liabilities for being void, as the primary Revenue Officers ("RO") who examined petitioner's books of accounts were not authorized to do so; and (b) enjoined and prohibited respondent from collecting the amount assessed ("Disputed Amount").

Against (a), respondent argues that the ROs were, in fact, authorized to examine petitioner's books of accounts, as they did so pursuant to a valid Letter of Authority ("LOA").[4] He also claims that ***Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*** ("*McDonald's Case*"),[5] where the Supreme Court held that a Memorandum of Authority ("MOA") is insufficient to transfer the authority granted by a LOA to a different RO not

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[1] Records Vol. 2.
[2] *Ibid.*
[3] *Id.*, pp. 933-950.
[4] *See* Motion for Reconsideration (Re: Decision dated 9 May 2023), pp. 2-11, *id.*
[5] G.R. No. 242670, 10 May 2021.

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named in said LOA, is inapplicable to the case at bar as it institutes a new doctrine which should not be retroactively applied.[6]

Anent (b), respondent insists that a suspension order is unwarranted as petitioner failed to prove any grave or irreparable damage upon it, any clear right to be violated, or any jeopardy to its interest great enough to warrant such order.[7]

Petitioner, meanwhile, raises the following general arguments in its Comment:

(a) The disputed assessment is invalid due to respondent's failure to observe due process as a MOA is not a valid substitute for a valid LOA for the purpose of reassignment;[8]
(b) The offending Memoranda were issued by officers who were not authorized to issue proper LOAs;[9]
(c) It is not estopped from questioning the authority of the examining ROs even if it participated in the audit process;[10]
(d) The ***McDonald's Case*** is applicable here as the Supreme Court's interpretation of a law take effect when said law was originally enacted;[11]
(e) Petitioner's business requires the assets it has for its continuation; hence, the Court is justified in prohibiting respondent from collecting the Disputed Amount;[12]
(f) Respondent's right to assess petitioner for deficiency percentage tax and DST for the relevant calendar year has prescribed;[13] and
(g) In any case, the assessments are erroneous and lack legal or factual basis.[14]

The Motion lacks merit and must be denied.

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6 *See* Motion for Reconsideration (Re: Decision dated 9 May 2023), pp. 11-13, Records Vol. 2.
7 *See* Motion for Reconsideration (Re: Decision dated 9 May 2023), pp. 13-19, *id.*
8 *See* Comments on Respondent's Motion for Reconsideration (Re: Decision dated 9 May 2023), pp. 2-10, *id.*
9 *See* Comments on Respondent's Motion for Reconsideration (Re: Decision dated 9 May 2023), pp. 10-11, *id.*
10 *See* Comments on Respondent's Motion for Reconsideration (Re: Decision dated 9 May 2023), pp. 11-12, *id.*
11 *See* Comments on Respondent's Motion for Reconsideration (Re: Decision dated 9 May 2023), pp. 12-14, *id.*
12 *See* Comments on Respondent's Motion for Reconsideration (Re: Decision dated 9 May 2023), pp. 14-17, *id.*
13 *See* Comments on Respondent's Motion for Reconsideration (Re: Decision dated 9 May 2023), pp. 17-18, *id.*
14 *See* Comments on Respondent's Motion for Reconsideration (Re: Decision dated 9 May 2023), pp. 18-20, *id.*

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The *McDonalds Case* is not a new doctrine that overturns a previous one and can thus be retroactively applied.

The Court notes that the bulk of respondent's first argument is a mere rehash of one he raised in his Memorandum.[15] We have already passed over these points in the Assailed Decision, however, negating the need to discuss them here. What is new in respondent's Motion is his contention that the ***McDonald's Case*** is inapplicable here as new doctrines cannot be retroactively applied.[16]

The Court disagrees. It is the non-retroactivity of new doctrines that is inapplicable to the case at bar.

The Supreme Court's interpretation of a given law is treated as having took effect upon the original enactment of said law.

While not direct in their espousal, the Supreme Court has implicitly affirmed the retroactive applicability of the ***McDonald's Case***, using its interpretation of the LOA requirement even when the examination of a taxpayer's books of accounts predates said case. The recent case of ***Commissioner of Internal Revenue v. Wellington Investment & Manufacturing Corporation***[17] is an example of this:

> "We recently ruled in ***Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp.*** that (1) **the reassignment or transfer of an RO requires the issuance of a new or amended LOA for the substitute or replacement RO to continue the audit or investigation**; (2) **the use of a memorandum of assignment, referral memorandum, or such equivalent document, directing the continuation of audit or investigation by an unauthorized RO usurps the functions of the LOA**; and (3) Revenue Memorandum Order (RMO) No. 43-90 10 expressly and specifically requires the issuance of a new LOA if ROs are reassigned or transferred. x x x
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> x x x
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> **The RMOs cited by petitioner, namely RMO Nos. 08-2006 and 69-2010, merely provide additional regulations in case of reassignment of revenue officers and should not be interpreted to remove the requirement of an LOA**. Rather, the MOA, referral memorandum, or any equivalent document are issued for the purpose of reassignment and transfer

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15 Compare Memorandum, filed on 22 December 2020, pp. 13-22, Records Vol. 2, pp. 792-801, with Motion for Reconsideration (Re: Decision dated 9 May 2023), filed on 8 June 2023, pp. 3-11, *id.*

16 *Supra* note 6.

17 G.R. No. 249795, 29 November 2022.

"That the decision of the Municipal Council of Sibonga was issued before the decision in Festejo vs. Mayor of Nabua was rendered, would be, at the most, proof of good faith on the part of the police committee, but can not sustain the validity of their action. **It is elementary that the interpretation placed by this Court upon Republic Act 557 constitutes part of the law as of the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.**"
(Emphasis supplied.)

This was later discussed with more nuance in ***Columbia Pictures, Inc. et al. v. Court of Appeals, Sunshine Home Video, Inc. and Danilo A. Pelindario*** ("***Collumbia Pictures Case***"):[20]

"The reasoning behind *Senarillos v. Hermosisima* that judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect, is all too familiar. **Such judicial doctrine does not amount to the passage of a new law but consists merely of a construction or interpretation of a pre-existing one, and that is precisely the situation obtaining in this case.**

It is consequently clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed, subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication."
(Citations omitted; emphasis supplied.)

Just this year, the Supreme Court expounded on the ***Columbia Pictures Case***, clarifying that a reliance on the non-retroactivity of a *new* doctrine requires the identification of an overturned *old* doctrine in ***San Miguel Corporation v. Commissioner of Internal Revenue***:[21]

"Based on the foregoing, **unless *Filinvest* overturned a prior doctrine of the Court, its retroactive application would not be prejudicial to taxpayers.** To repeat, the Court's interpretation of a statute merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. **In this case, SMC failed to establish the existence of a ruling, prior to Filinvest, which declared that intercompany loans and advances through memos and vouchers do not constitute debt instruments subject to DST under Section 179 of the NIRC.**"
(Emphasis supplied.)

[20] G.R. No. 110318, 28 August 1996.
[21] G.R. Nos. 257697 & 259446, 12 April 2023.

1003

In brief, a doctrine is considered new and cannot be retroactively applied *only* when it overturns an older doctrine already expressed in a Supreme Court ruling, to protect those who followed the old doctrine in good faith. Consequently, for respondent's argument to prevail, he must prove that (a) there exists a previous Supreme Court ruling that expressly allowed the use of a MOA to transfer authority to a RO not named in a LOA; and (b) he followed the doctrine laid down in said ruling in good faith.

Unfortunately, respondent was unable to prove these in his Motion. He merely cites the *special* rule that new doctrines are not retroactively applicable, without accomplishing the requirements, as discussed above, for validly applying said rule. Without identifying a specific Supreme Court ruling that allowed the issuance of a MOA in lieu of a LOA for proper reassignment, he was unable to prove the existence of a previous doctrine overturned by the ***McDonald's*** case. Without proving the existence of a former doctrine, he was naturally unable to prove that he was following such a doctrine in good faith.

Neither can respondent claim that he impliedly derived the relevant doctrine from the Court of Tax Appeals cases he cites in his Motion. Said issuances were promulgated in 2018, whereas the offending Memoranda were issued in 2010 and 2013, respectively.[22] Given that one cannot follow a doctrine in good faith over half a decade before said doctrine is expressed, this line of argument cannot stand.

The Court is not unsympathetic to respondent's situation. It can be disheartening to act in a way one believes to be in consonance with the law, only to learn, over a decade later, that one was acting against it. However, given the above discussions, the Court must hold fast to Our use of the ***McDonald's Case***. The Supreme Court's interpretation of the ***NIRC*** is now an inseparable part of the law; We have no choice but to follow it.

In sum, this Court was not mistaken in Our application of the ***McDonald's Case*** to the present one.

Respondent is barred from collecting an amount based on a void assessment.

In his second argument, respondent balks at this Court's act of enjoying and prohibiting him from collecting the Disputed Amount. Injunctions in general, he claims, cannot be granted without proof of actually existing grave and irreparable damages, which petitioner did not adduce. Most relevant to this case, he presents ***Sec. 1, Rule 10 of the RRCTA***, which generally prohibits

[22] *See* Decision, dated 9 May 2023, pp. 2-3, Records Vol. 2, pp. 934-935.

1004

this Court from suspending any tax collection effort by respondent, to convince the Court that it was mistaken in acting so. He admits that ***Sec. 2*** of the same rule allows an exception when such collection may jeopardize the interests of a taxpayer or of the Government, but he adds that petitioner was also unable to prove that such is the case here.

The Court is not convinced.

No collection effort can be made when the same is based on a void assessment.

It must first be said that the assailed enjoinment and prohibition were included as a reminder and proactive deterrent to respondent and any over-zealous agent of his good Bureau. It should be uncontroversial to observe that they are barred from collecting any alleged tax liability based on an assessment already found to be void; this Court is merely making explicit what is implicit in our ruling that the disputed assessments were void. In other words, the enjoinment and prohibition explicitly state what is already mandated by that oft-repeated truism: *a void assessment bears no fruit.*

This saying was reaffirmed in ***People of the Philippines v. Italcar Pilipinas, Inc., Fernando T. Francisco, and Antonio B. Caringal***[23] and ***Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.,***[24] to name a few recent cases. The reasoning behind it was also stated in less metaphorical terms last year in ***Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue,***[25] where the High Court emphasized that "the BIR's right to collect deficiency taxes must flow from a valid assessment". However, most discussions of a void assessment's inability to bear proverbial fruit return to the influential case of ***Commissioner of Internal Revenue v. Azcuna T. Reyes*** ("***Reyes Case***"):[26]

> "*Fourth*, **petitioner violated the cardinal rule in administrative law that the taxpayer be accorded due process**. Not only was the law here disregarded, but no valid notice was sent, either. **A void assessment bears no valid fruit**.
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> **The law imposes a substantive, not merely a formal, requirement**. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. In the instant case, respondent has not been informed of the basis of the estate tax liability. **Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of**

[23] G.R. No. 222280, 18 January 2023.
[24] G.R. No. 223767, 24 April 2023.
[25] G.R. No. 249153, 12 September 2022.
[26] G.R. Nos. 159694 & 163581, 27 January 2006.

1005

The enjoinment and prohibition stem from a judgment of the case on the merits and are not a preliminary injunction.

Regarding respondent's contentions that petitioner was unable to satisfy the requisites for an injunction, the Court notes that the cases cited by respondent all cover *preliminary* injunctions prayed for by a litigant, whereas the assailed enjoinment and prohibition are an injunction arising from the judgment of a case on the merits. To quote ***Republic of the Philippines v. Salvador Silerio***,[27] one of the cases cited by respondent, a preliminary injunction's "sole objective is to preserve the *status quo* until the merits of the case can be heard fully". Given that the merits of this case have already been heard, the above is not the purpose of the present injunctions. Their purpose is rather to state, in clear and unequivocal terms, the unavoidable consequence of the judgment we rendered *apropos* the assessments.

This is to say nothing of the clear violation of petitioner's right to due process, and the concomitant damages to petitioner as an entity that should be accorded such rights, that would result from respondent collecting an amount his agents improperly assessed.

As such, respondent cannot take shelter within the requirements for a preliminary injunction to avoid having to reckon with the material consequences of this Court's judgment, on the merits, that the assessments are void.

Any collection effort made would jeopardize the interests of the Government.

Neither is the Court convinced that respondent can hide behind ***Sec. 1, Rule 10 of the RRCTA***, using it to leave open the possibility of collecting the Disputed Amount. In raising the point that the collection of taxes must be done in accordance with law, the ***Reyes Case*** cited ***Ferdinand R. Marcos II v. Court of Appeals, the Commissioner of the Bureau of Internal Revenue and Herminia D. De Guzman***,[28] which itself cited the opening paragraph of ***Commissioner of Internal Revenue v. Algue, Inc., and the Court of Tax Appeals***.[29] Said introductory spiel states, to wit:

> "Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, **such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself**. It is therefore necessary

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[27] G.R. No. 108869, 6 May 1997.

[28] G.R. No. 120880, 5 June 1997.

[29] G.R. No. L-28896, 17 February 1988.

1007

> to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved."
> (Emphasis supplied.)

From the foregoing, any collection by respondent that contradicts the law, such as a collection based on a void assessment, contradicts the purpose of the Government itself. Idealistic, to be sure, but the reasoning used is clear: taxes are collected by respondent primarily to "promote the common good". Any collection that goes against the "common good" by disregarding the law and the rights of a taxpayer is thus directly counter to the reason for appointing a Commissioner of Internal Revenue, for creating a Bureau of Internal Revenue, and even for establishing a government at all.

Accordingly, if respondent were to collect the Disputed Amount, which is based on a void assessment, he would be acting counter to "the common good" and "the very reason for government itself". Such collection would thus jeopardize the interests of the Government, and the ***RRCTA***'s prohibition on injunction would not apply.

To be clear, a taxpayer cannot merely allege a void assessment then insist that this Court grant it an injunction on that basis alone. That an assessment is void is a conclusion that must first be proven and then found by this Court. As such, a full-blown trial in which both parties are given the opportunity to thoroughly present their cases is necessary before the Court can bypass ***Sec. 1, Rule 10 of the RRCTA***. The burden is thus still on the taxpayer to prove that a given collection would jeopardize its interests or, the more difficult option, those of the Government.

Again, however, the Court has already found that respondent's assessments in this case were void due to the examining ROs' lack of authority. Respondent has failed to prove that this Court was mistaken and that the assessments were actually valid. By extension, he has also failed to prove that any attempt to collect the Disputed Amount would not jeopardize the interests of the Government, at minimum.

Furthermore, to collect the Disputed Amount would be to act as if the disputed assessment is valid, undermining this Court's judgment on the same. It would render this Court's adjudicative functions without force and effect on reality, as respondent would be able to collect any amount he sees fit, regardless of whether or not We find his assessments valid. It would also ignore the fact that appeal to both the Court of Tax Appeals *En Banc* and to the Supreme Court are still open to respondent. As such, any effort by respondent to collect the Disputed Amount would directly disregard the judiciary's decisions and jurisdiction, jeopardizing the interests of the Government.

1008

We end this discussion by quoting ***Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation***,[30] where the Supreme Court reiterated that any collection of tax must be done pursuant to a valid assessment and that the Courts can prevent the collection of tax by authorities who have disregarded due process:

> "Verily, pursuant to the lifeblood doctrine, the Court has allowed tax authorities ample discretion to avail themselves of the most expeditious way to collect the taxes, including summary processes, with as little interference as possible. **However, the Court, at the same time, has not hesitated to strike down these processes in cases wherein tax authorities disregarded due process. The BIR's power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of law. The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure.**
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> In the normal course of tax administration and enforcement, the BIR must first make an assessment then enforce the collection of the amounts so assessed. '**An assessment is not an action or proceeding for the collection of taxes. x x x It is a step preliminary, but essential to warrant distraint, if still feasible, and, also, to establish a cause for judicial action.' The BIR may summarily enforce collection only when it has accorded the taxpayer administrative due process, which vitally includes the issuance of a valid assessment**. A valid assessment sufficiently informs the taxpayer in writing of the legal and factual bases of the said assessment, thereby allowing the taxpayer to effectively protest the assessment and adduce supporting evidence in its behalf."
> (Citations omitted; emphasis supplied.)

This Court can thus enjoin and prohibit respondent from collecting the Disputed Amount in the present case.

All told, the Court sees no convincing reason to disturb its previous findings.

WHEREFORE, respondent's Motion for Reconsideration is hereby **DENIED**. The Decision, dated 9 May 2023, is hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

30 G.R. Nos. 197945 & 204119-20, 9 July 2018.

1009

I CONCUR:

Ma. Belen ...

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

1010