REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- **versus** -

SECURITIES TRANSFER SERVICES, INC.,
Respondent.

CTA EB NO. 2057
(CTA Case No. 8961)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
FEB 03 2021 11:26 a.m.

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RESOLUTION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is petitioner Commissioner of Internal Revenue's (**petitioner's/CIR's**) "Motion for Reconsideration Re: Decision dated 03 September 2020" (**MR**) filed on 24 September 2020, with respondent Securities Transfer Services, Inc.'s (**respondent's/STSI's**) "Comment/Opposition (to [Petitioner's] Motion for Reconsideration)" (**Comment/Opposition**) filed on 21 October 2020, seeking the reversal of the Decision (**assailed Decision**) promulgated by the Court *En Banc* on 03 September 2020, the dispositive portion of which reads:

> ...
>
> **WHEREFORE**, the foregoing considered, the Petition for Review filed by the Commissioner of Internal Revenue dated 03 May 2019 is **DENIED** for lack of merit. Accordingly, the Decision dated 08

January 2019 and Resolution dated 05 April 2019, respectively, of the Second Division in CTA Case No. 8961, entitled *Securities Transfer Services, Inc. v. Commissioner of Internal Revenue,* are **AFFIRMED.**

SO ORDERED.

...

In his MR, petitioner insists that the Court in Division erred in applying Revenue Memorandum Order (**RMO**) 43-90[1], requiring another letter of authority (**LOA**) in cases of reassignment of revenue officers (**ROs**). According to petitioner, RMO 43-90 is no longer applicable since it was issued on 20 September 1990 or seven (7) years prior to the enactment of the National Internal Revenue Code (**NIRC**) of 1997, as amended, and that it is RMO 8-2006[2] which is more apt since it was issued more recently. Petitioner then turns to the Court in Division's recognition of an RMO being merely an internal issuance which must not have any effect on the taxpayer.

Petitioner also adds that the Court in Division erred when it cancelled the assessment on the sole ground that the Memorandum of Assignment (**MOA**) was signed by a division chief. Consequently, petitioner argues that the head of the investigating office is duly authorized to issue and sign an MOA pursuant to said RMO 8-2006 and Annex A of RMO 62-2010[3] containing the *pro-forma* MOA (with the authorized revenue official or head of investigating office as signatories thereof).

On the other hand, respondent counters that it is RMO 43-90, requiring the issuance of a new LOA in case of reassignment, that applies in this case and not RMO 8-2006; hence, RMO 43-90 should be strictly followed. Respondent agrees with the Court *En Banc*'s finding that RMO 43-90 has repeatedly been cited in several Supreme Court decisions which only means that said RMO is still in effect and both petitioner and respondent should abide thereto.

Moreover, respondent maintains that the assailed Decision did not solely rely on the provisions of RMO 43-90 but also on the laws

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[1] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

[2] Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System.

[3] Supplemental Guidelines on the Electronic Issuance of Letters of Authority and Related Audit Policies and Procedures.

and applicable jurisprudence requiring the issuance of an LOA, which must name and specify the ROs who may conduct the audit or investigation. In addition, the MOAs issued reassigning the matter is not compliant with the requirements of the law as the same were signed only by the OIC-Chief or the Chief of the Regular Large Taxpayers Regular Audit Division 1 (**LTS-RAD 1**) and not by the Regional Director, Deputy Commissioner or petitioner himself (as the CIR), pursuant to Sections 6[A][4] and 13[5] of the NIRC of 1997, as amended, in relation to RMO 43-90.

Lastly, respondent calls the attention of the Court on petitioner's inconsistent stand on the RMO. According to respondent, petitioner insists on the applicability of the RMOs only when he benefits from them but at the same time negates them when they appear favorable to the taxpayer.

We resolve.

A reading of the subject MR reveals that petitioner raised no new issues or arguments which have not yet been considered and passed upon by the Court in Division and sitting *En Banc*. Accordingly, there is no compelling reason for the Court *En Banc* to modify, much more, to reverse the assailed Decision.

Nonetheless, for emphasis, the Court *En Banc* shall briefly discuss and reiterate its reasons for the denial of petitioner's Petition for Review and the consequent affirmation of the Court in Division's Decision and Resolution dated 08 January 2019 and 05 April 2019, respectively.

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[4] **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, notwithstanding any law requiring the prior authorization of any government agency or instrumentality: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
...

[5] **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.

In this case, it was found that the ROs named under LOA No. 116-2010-00000087 dated 14 May 2010[6] were different from those who actually examined respondent's books of account and other accounting records for taxable year 2009. Petitioner, however, rests the authority of those who actually conducted the audit on MOA No. LOA-116-2011-427[7] and MOA No. LOA-116-2013-0227[8] which then OIC-Chief and Chief of LTS-RAD 1 issued, respectively.

As previously held, RMO 43-90, despite its issuance seven (7) years prior to the enactment of the NIRC of 1997, as amended, is still a valid administrative issuance. It was not impliedly repealed by the passage of NIRC of 1997, as amended, as there exists no irreconcilable inconsistency between their respective provisions, such that they cannot be reconciled or harmonized without nullifying one of them. As previously already noted, the NIRC of 1997, as amended, does not deal with the particulars on the issuance of an LOA which RMO 43-90 supplies.

The fact that RMO 43-90 is still a valid rule is further evident from the recent Supreme Court decisions[9] guided by RMO 43-90.

On another point, while We agree with petitioner that RMO 8-2006 authorizes the head of the investigating office to issue a memorandum in case of reassignment, still, We are not prepared to hold that said memorandum validly clothes the ROs authority to conduct the audit or investigation of respondent's books of account and other accounting records in the absence of an LOA, as required by law.

It bears to emphasize that RMO 8-2006 does not state that such memorandum would be a substitute for the LOA required under Section 13[10] of the NIRC of 1997, as amended. As aptly held in *Commissioner of Internal Revenue v. Composite Materials, Inc.*:[11]

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6 Exhibits "P-26" and "R-1", BIR Records, p. 4.
7 Exhibit "R-5", id., p. 392.
8 Exhibit "R-12", id., p. 461.
9 *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, 12 July 2017; *Commissioner of Internal Revenue v. De La Salle University, Inc.*, G.R. No. 196596, 09 November 2016; and, *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.
10 Supra at note 5.
11 G.R. No. 238352, 12 September 2018; Citations omitted and emphasis supplied.

> ...
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> **As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, ruling that in the absence of an LOA, the assessment or examination is a nullity.**
>
> Here, the CTA en banc found that the LOA issued in relation to the examination of CMI's book of accounts does not specifically mention the name of RO Cruz. Thus, the examination conducted by RO Cruz and the assessment issued against CMI was correctly declared null and void.
>
> **Moreover, the Court agrees with the CTA en banc that the Referral Memorandum issued by a Revenue District Officer directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority.** To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA.
>
> ...

Aside from the fact that no LOA was issued in favor of the ROs who actually conducted the audit, the MOAs subject of this case were only signed by the OIC-Chief and Chief of LTS-RAD 1, respectively, which is *not* compliant with the requirements of Sections 6(A)[12], 10(C)[13] and 13[14] of the NIRC of 1997, as amended, in relation to item D. 4. of RMO 43-90,[15]. The latter RMO effectively provides that only the Regional Directors, the Deputy Commissioners and petitioner (as the CIR) are authorized to issue LOAs.

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12 Supra at note 4.

13 **SEC. 10.** *Revenue Regional Director.* - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:

...

(c) Issue Letters of Authority for the examination of taxpayers within the region[.]

...

14 Supra at note 5.

15 D. Preparation and issuance of L/As.

...

4. For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.

WHEREFORE, with the foregoing, petitioner Commissioner of Internal Revenue's "Motion for Reconsideration Re: Decision dated 03 September 2020" filed on 24 September 2020 is **DENIED** for lack of merit. Accordingly, with the affirmance of the assailed Decision that set aside the Bureau of Internal Revenue's assessment of deficiency taxes against respondent, thus as a necessary consequence thereof, petitioner or any person duly acting on his behalf is **ENJOINED** from proceeding with the collection of the taxes assessed against respondent as found in the Final Decision on Disputed Assessment dated 02 December 2014 for the total amount of ₱3,987,930.20.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice