REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2279** (CTA Case No. 8485)
	Present:
-versus-	**DEL ROSARIO,** *P.J.* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** *JJ.*
AC CORPORATION, *Respondent.*	Promulgated: JUN 23 2022 2:50 pm

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RESOLUTION

MANAHAN, *J.*:

For this Court's resolution is petitioner's *Motion for Reconsideration (Re: Decision Promulgated February 28, 2022)* posted on March 17, 2022 and received by the Court on March 30, 2022 with respondent's *Comment/Opposition (Re: Motion for Reconsideration dated 16 March 2022)* filed on April 11, 2022.

Petitioner prays for the reversal of the Court's Decision dated February, 28, 2022, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review filed by the CIR is **DENIED.**
>
> Accordingly, the Decision dated January 6, 2020 and Resolution dated June 10, 2020 of the Second Division of this Court are **AFFIRMED.**

SO ORDERED."

Petitioner cites the sole ground that the subject tax assessments are valid because Revenue Examiner (RO) Luzviminda G. Sabile was duly authorized to conduct the audit of respondent's tax records for taxable year (TY) 2007 on the basis of the Memorandum of Assignment (MOA) issued pursuant to the procedures outlined in Revenue Memorandum Order (RMO) No. 8-2006. Petitioner would like to bring to the attention of the Court that Item D of RMO No 8-2006 only requires the issuance of one (1) Letter of Authority (LOA) for the same tax type and period and that there is no need to issue a subsequent LOA to clothe the succeeding ROs with the authority to continue the tax investigation/audit of a taxpayer's books of accounts and other accounting records. The reassignment of the audit/examination, according to petitioner, would only require a reassignment notice to the taxpayer and not the issuance of a new LOA as shown in Item F(2), IV Guidelines of RMO 8-2006. Petitioner contends that the original LOA does not become invalid just because the ROs named therein happened to be reassigned, transferred or retired and that the issuance of a single LOA is a lot more efficient and has been followed by the Bureau of Internal Revenue (BIR) for more than a decade.

In its Comment, respondent observes the repetitious nature of the arguments raised by petitioner which have already been passed upon and resolved by the Court in the assailed Decision. Nevertheless, respondent finds it apt to emphasize that the 1997 National Internal Revenue Code (NIRC), as amended, requires the issuance of an LOA to clothe the ROs named therein the authority to examine taxpayers and that any reassignment to any other officers would require the issuance of a new LOA and not by the issuance of a mere notice, contrary to the contention of petitioner. The latter practice, according to respondent, was not condoned by the Supreme Court in a number of cases, the more recent of which is the case of *CIR vs. Mcdonald's Philippines Realty Corporation,*[1] (*McDonald's* case) where it was reiterated that the practice of reassigning or transferring ROs named in the LOA and substituting them with a new set of ROs requires the issuance of a new LOA.

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[1] G.R. No. 242670 dated May 10, 2021.

RULING OF THE COURT

We shall first resolve the timeliness of the filing of petitioner's *Motion for Reconsideration* with the Court.

On February 28, 2022, the Court *En Banc* issued a Decision in the above-captioned case, affirming the decision of the Court in Division and setting aside the Final Decision on Disputed Assessment (FDDA) dated March 27, 2021 covering TY 2007.

A copy of the assailed Decision was received by petitioner on March 3, 2022.[2] Pursuant to Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), a party dissatisfied with a decision of the Court must file a motion for reconsideration or new trial within fifteen (15) days from receipt thereof, and we quote:

> **Rule 15**
> **Motion for Reconsideration or New Trial**
>
> **Section 1.** *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision , resolution or order of the Court by filing a motion for reconsideration or new trial for fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question.

Counted from petitioner's receipt of the decision, petitioner had until March 18, 2022 to file his Motion for Reconsideration. Records show that he posted his Motion for Reconsideration on March 17, 2022, hence the instant motion was timely filed.

As to the substantive contentions of petitioner on the authority of the ROs who continued the audit and examination of respondent's books of accounts and other accounting records for TY 2007, we find this to be without merit as astutely and exhaustively discussed in the assailed Decision.

Jurisprudence has consistently adopted that the use of a Memorandum of Assignment, Referral Memorandum or such equivalent document directing the continuation of an audit or investigation is not sufficient to clothe a new set of ROs not

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[2] Eb Docket, page 124.

named in the original RO, the authority to continue said audit or investigation.

In the instant case, an LOA was issued on July 29, 2008 authorizing the examination of petitioner's books of accounts and other accounting records for TY 2007. The case was then reassigned to RO Luzviminda G. Sabile (who was not one of those named in the original LOA) to continue the audit and who eventually recommended the issuance of a Preliminary Assessment Notice (PAN) against respondent. Records show that Ms. Sabile was directed to continue the audit on the basis of a Memorandum of Assignment dated October 21, 2010 and signed by Revenue District Officer, Mr. Gerry O. Dumayas. This, according to the assailed Decision, was not sufficient to arm Ms. Sabile with the requisite authority to continue with the audit and/or investigation for the same TY 2007 following the ruling of the Supreme Court in the *McDonald's* case, and we quote the pertinent portion, thus:

> "The practice of reassigning or transferring revenue officers originally named in the Letter of Authority (LOA) and substituting or replacing 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 Commissioner of Internal Revenue (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 Bureau of Internal Revenue (BIR) rules and regulations on the requirement of an LOA in the grant of authority by the CIR or his duly authorized representative to examine the taxpayer's books of accounts."

The Court does not intend to deviate from the wisdom of the High Court in disposing of a similar issue.

WHEREFORE, premises considered, the *Motion for Reconsideration (Re: Decision Promulgated February 28, 2022)* filed by the petitioner is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(Inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With due respect, I concur with result while reiterating my Separate Concurring and Dissenting Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(I maintain my position in the Decision dated Feb. 28, 2022)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice