**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

*EN BANC*

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| **COMMISSIONER OF INTERNAL REVENUE,** Petitioner, | **CTA EB NO. 1757** (CTA CASE NO. 8738) |
| | Present: |
| - versus- | Del Rosario, *P.J.*, Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena, *and* Modesto San Pedro, *JJ.* |
| **SUGAR CRAFTS, INC.,** Respondent. | Promulgated: |
| | SEP 10 2019 |

x------------------------------------------------------------------------- 3:53 p.m. ---------x

## RESOLUTION

*CASTAÑEDA, JR., J.:*

Submitted for resolution on July 23, 2019[1] is petitioner's Motion for Reconsideration[2] of the May 6, 2019 Decision with a Comment filed by respondent Sugar Crafts, Inc.[3]

The May 6, 2019 Decision upheld the appealed decision of the Third Division which cancelled and set aside the assessment against respondent based on the holding in *Commissioner of Internal Revenue v. Sony Philippines, Inc.*[4] The Court ruled that the reassignment of the audit and investigation of respondent taxpayer from RDO 41 to RDO 43A, under

[1] July 23, 2019 Minute Resolution, *Rollo*, p. 129.
[2] *Rollo*, pp. 106-114.
[3] *Rollo*, pp. 118-127.
[4] G.R. No. 178697, November 17, 2010, 649 Phil. 519.

different team of revenue officers (ROs),[5] on the strength of a Memorandum of Assignment signed by Revenue District Officer Florante R. Aninag (RDO Aninag) was outside the scope and authority granted by the LOA.

Counsel for petitioner cites Revenue Memorandum Order No. (RMO) 62-2010 and 69-2010 as authorizing the reassignment of the audit and investigation of respondent pursuant to a Memorandum of Assignment and states that there is no conflict between the RMOs and Section 13 of the National Internal Revenue Code of 1997, as amended (NIRC).[6]

The Court is not persuaded and, thus, resolves to deny petitioner's motion.

*First*, an LOA is the authority given to the appropriate revenue officer (RO) assigned to perform assessment functions.[7] The necessity of a valid LOA to authorize the audit and investigation of a taxpayer is not only an administrative but a statutory requirement found in Sections 10 and 13 of the NIRC. Accordingly, a valid LOA is essential to the validity of an audit, and consequently, of the assessment that may be issued thereafter.

*Second*, it is undisputed that the authority of ROs Sunga and Cabel of RDO No. 43A emanated, *not* from an LOA, issued by the Regional Director of Revenue Region No. 7 and which authorized *only* ROs Cruz and Amatorio of RDO No. 41, but from the Memorandum of Assignment issued by RDO Aninag of RDO No. 43A.

With respect to the practice of issuing a memorandum to allow an RO to continue the audit commenced by another,[8] in *Commissioner of Internal Revenue v. Composite Materials, Inc.*,[9] the Supreme Court held that an RO may only examine the taxpayer's books pursuant to an LOA issued by the Regional Director and emphasized that the Referral Memorandum issued by the RDO directing *another* RO to continue with the examination of the taxpayer's records is *not* equivalent to an LOA and, therefore, does not cure the RO's lack of authority:

> "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.

[5] Decision, *Rollo*, pp. 95-98; August 16, 2017 Decision, *Rollo*, pp. 44-47.
[6] Motion for Reconsideration, *Rollo*, pp. 109-113.
[7] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, November 17, 2010.
[8] Motion for Reconsideration, *Rollo*, pp. 110.
[9] Resolution, G.R. No. 238352, September 12, 2018.

> 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.
>
> <u>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</u>. 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." (*Underscoring supplied and citations omitted*)

*Third*, Section D(4) of RMO 43-90 expressly limited the authorized BIR officials who can issue and sign the LOA to *only* the following:

1. Regional Directors;
2. Deputy Commissioners;
3. Commissioner; and,
4. Other officials that may be authorized by the Commissioner for the exigencies of service.

A careful reading of RMO Nos. 69-2010 and 62-2010, cited by the petitioner, shows that nowhere do these administrative issuances expressly grant the RDO any authority to reassign the audit of a taxpayer to another RDO with a new team of ROs. Neither do these issuances allow the RDO to modify the scope and coverage of a validly issued LOA merely through a Memorandum of Assignment. Verily, any subsequent modification of the LOA, which was signed by the Regional Director, cannot be done *merely* through a Memorandum of Assignment, signed by a subordinate official such as the RDO in this case. As discussed in the assailed Decision, RDO Aninag is bereft of any power to authorize the examination of respondent taxpayer or to effect any amendment to the previously issued LOA.

In view of the foregoing, the Court finds no cogent reason to disturb the assailed Decision.

**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

**SO ORDERED.**

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

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

(On Leave)
**ERLINDA P. UY**
Associate Justice

**ESPERANZA R. FABON- VICTORINO**
Associate Justice

**CIELITO N. MINDARO-GRULLA**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice