CTA Form No. 8 (For DCC)

22-000195-0065

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10852

HELIX AGGREGATES, INC.
(formerly LAFARGEHOLCIM
AGGREGATES, INC.),
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL
REVENNUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. FELIX PAUL R. VELASCO III
ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. LARA NICOLE T. GONZALES
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Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

BANIQUED AND BELLO
Suite 803, 8th Floor, Jollibee Centre
San Miguel Avenue, Ortigas Center
1605 Pasig City

GREETINGS:

You are hereby notified by these presents that on **May 28, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 2, 2025.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

HELIX AGGREGATES, INC. (formerly LAFARGEHOLCIM AGGREGATES, INC.), Petitioner,	**CTA CASE NO. 10852**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson*, **BACORRO-VILLENA**, and **CUI-DAVID**, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 28 2025 1:15PM

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RESOLUTION

DEL ROSARIO, P.J.:

For the Court's resolution is respondent Commissioner of Internal Revenue's **Motion for Reconsideration (Re: Decision dated 26** *(sic)* **February 2025)** filed on March 24, 2025.

Respondent moves for the reconsideration of the Decision promulgated on February 27, 2025, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the present Petition for Review is **GRANTED**. Accordingly, the Formal Letter of Demand with Details of Discrepancies and Assessment Notices covering the deficiency income tax, withholding tax on compensation, expanded withholding tax, value-added tax, excise tax, documentary stamp tax, and the assessed compromise penalties, all dated May 31, 2021, and the Final Decision on Disputed Assessment of respondent Commissioner of Internal Revenue dated April 1, 2022, are **CANCELLED AND SET ASIDE** for being void *ab initio*.
>
> Respondent Commissioner of Internal Revenue, his representatives, agents or any person acting on his behalf are hereby **ENJOINED** from enforcing the collection of the disputed assessments

subject of the Formal Letter of Demand with Details of Discrepancies and Assessment Notices all dated May 31, 2021, and the Final Decision on Disputed Assessment dated April 1, 2022, assessing petitioner of deficiency income tax, withholding tax on compensation, expanded withholding tax, value-added tax, excise tax, documentary stamp tax, in the aggregate amount of ₱550,476,896.84, inclusive of surcharge, interest, and compromise penalties. This injunctive relief is **IMMEDIATELY EXECUTORY** consistent with Section 4, Rule 39 of the Rules of Court.

Respondent seeks reconsideration of the assailed Decision based on the following grounds:

a. The Court erred when it misapplied the cases of *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*,[1] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*,[2] and *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[3] which were based on an outdated Revenue Memorandum Order (RMO) No. 43-90,[4] an issuance that has been superseded due to subsequent amendments in tax regulations and applicable laws; and,

b. The Court erred when it cancelled and declared void *ab initio* the Formal Letter of Demand (FLD) and Final Decision on Disputed Assessment (FDDA) issued against petitioner, enjoining respondent from collecting deficiency tax assessments against it in the total amount of ₱550,476,896.84, inclusive of surcharge, interest, and compromise penalties.

THE COURT'S RULING

Respondent's motion for reconsideration is denied for being filed out of time.

Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals states:

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,

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[1] G.R. No. 242670, May 10, 2021.
[2] G.R. No. 222743, April 5, 2017.
[3] G.R. No. 178697, November 17, 2010.
[4] Re: Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

> resolution or order of the Court by filing **a motion for reconsideration** or new trial **within fifteen days from the date of receipt of notice of the decision,** resolution or order of the Court in question. (*Boldfacing supplied*)

It is a well-settled rule that if a party is represented by counsel, notices of all kinds, including court orders and decisions, must be served on said counsel, and notice to counsel is considered notice to client. Accordingly, when a party is represented by counsel, the reckoning point of the receipt of a judgment, final order or resolution shall be the date of receipt thereof by the party's counsel.[5] Thus, the fifteen (15)-day period to file a motion for reconsideration shall be counted from the receipt of the notice of the decision by herein respondent's counsel.

Relatedly, in *National Power Corporation vs. National Labor Relations Commission,*[6] the Supreme Court held that the Office of the Solicitor General (OSG) is the principal law officer and legal defender of the Government and that service to OSG should be the proper basis for computing the reglementary period to file an appeal, viz.:

> Pursuant to Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987, **the Office of the Solicitor General represents the government of the Philippines, its agencies and instrumentalities. Headed by the Solicitor General, the "principal law officer and legal defender of the Government," the OSG possesses the unequivocal mandate to appear for the Government in legal proceedings.** When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. Under number 8 of the same section, the OSG is empowered to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases."
>
> The fact that the OSG is petitioner's counsel is unchallenged, the former having entered its appearance on September 15, 1986. The lawyer deputized and designated as "special attorney-OSG" is a mere representative of the OSG and the latter retains supervision and control over the deputized lawyer. **The OSG continues to be the principal counsel for the National Power Corporation, and as such, the Solicitor General is the party entitled to be furnished copies of orders, notices and decisions.** The deputized special attorney has no legal authority to decide whether or not an appeal should be made.

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[5] Social Security System vs. Commission on Audit, G.R. No. 222217, July 24, 2021.
[6] G.R. Nos. 90933-61, May 29, 1997.

> As a consequence, copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter. **We have likewise consistently held that the proper basis for computing the reglementary period to file an appeal and for determining whether a decision had attained finality is service on the OSG.** In the present controversy, only the special attorney was served with a copy of the decision of the Labor Arbiter. Since service of said decision was never made on the OSG, the period to appeal the decision to the NLRC did not commence to run. Hence, the appeal memorandum filed by the OSG on July 17, 1989 was not filed belatedly.
>
> Although jurisprudence regarding mandatory service of orders and decision on the OSG and not merely to its deputized special attorneys, pertain to court cases involving land registration and naturalization, the same rule should be observed in cases before the Labor Arbiter and the NLRC. The underlying justification for compelling service of pleadings, orders, notices and decisions on the OSG as principal counsel is one and the same. **As the lawyer for the government or the government corporation involved, the OSG is entitled to the service of said pleadings and decisions, whether the case is before the courts or before a quasi-judicial agency such as respondent commission. Needless to say, a uniform rule for all cases handled by the OSG simplifies procedure, prevents confusion and thus facilitates the orderly administration of justice.** *(Boldfacing supplied)*

Respondent, through the Office of the Solicitor General (OSG), received the assailed Decision on **March 6, 2025**. Pursuant to *National Power Corporation*, respondent, therefore, had fifteen (15) days from the OSG's receipt or until **March 21, 2025** within which to file a motion for reconsideration. Respondent filed the present Motion for Reconsideration only on **March 24, 2025**, or three (3) days late.

Since respondent's Motion for Reconsideration was belatedly filed, the assailed Decision became final and executory.

To be sure, judgments or orders become final and executory by operation of law and not by judicial declaration. The finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or no motion for reconsideration or new trial is filed. The Court need not even pronounce the finality of judgments or orders as the same become final by operation of law.[7]

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[7] *Barrio Fiesta Restaurant vs. Beronia,* G.R. No. 206690, July 11, 2016.

Moreover, even if respondent's Motion for Reconsideration was filed on time, the Court notes that the arguments interposed by respondent are unmeritorious.

Respondent argues that RMO No. 43-90 dated September 20, 1990 is inapplicable to the subject assessment, which pertains to taxable year 2013. In view thereof, respondent asserts that the applicable issuances are RMO Nos. 8-2006 dated February 1, 2006[8] and 44-2010 dated May 12, 2010.[9]

Respondent is grossly mistaken.

In *McDonald's*, which involves an assessment pertaining to taxable year 2006, the Supreme Court categorically held that RMO No. 43-90 – expressly and specifically requiring the issuance of a new Letter of Authority (LOA) in cases of reassignment or transfer of revenue officer – remains applicable as it is not inconsistent with the provisions of the NIRC of 1997, notwithstanding the latter's subsequent enactment. Said the Supreme Court:

> Section D(5) of RMO No. 43-90 dated September 20, 1990 provides:
>
> > Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.
>
> **The above provision expressly and specifically requires the issuance of a new LOA if revenue officers are reassigned or transferred to other cases.** The provision involves the following two separate phrases: "reassignment/transfer of cases to another RO(s)", on the one hand, and "revalidation of L/As which have already expired", on the other hand. The occurrence of one, independently of the other, requires the issuance of a new LOA. The new LOA must then have a corresponding relevant notation, including the previous LOA number and date of issue of the said LOAs.
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> **The petitioner claims that RMO No. 43-90 dated September 20, 1990 is not the implementing rule for Section 13 of the NIRC. RMO No. 43-90 was promulgated on September 20, 1990, which is seven years prior to the law it supposedly**

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[8] SUBJECT: Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS).
[9] SUBJECT: Electronic Issuance of Letters of Authority.

> **implemented. Because of this, the petitioner implies that RMO No. 43-90 dated September 20, 1990 is not a valid legal basis in the position that a reassignment and transfer of cases requires the issuance of a new and separate LOA for the substitute revenue officer.**
>
> **The petitioner is mistaken.** Section 291 of the NIRC states:
>
> > SECTION 291. In General. – All laws, decrees, executive orders, rules and regulations or parts thereof which are contrary to or inconsistent with this Code are hereby repealed, amended or modified accordingly.
>
> **Section 5(D) of RMO No. 433-90 dated September 20, 1990 is not contrary to or inconsistent with the NIRC. In fact, the NIRC codifies the LOA requirement in RMO No. 43-90. While RMO No. 43-90 was issued under the old tax code, nothing in Section 5(D) of RMO No. 43-90 is repugnant to Sections 6(A), 10 and 13 of the NIRC. Hence, pursuant to Section 291 of the NIRC, RMO No. 43-90 remains effective and applicable.**
>
> Even the Operations Group of the BIR now recognizes that the practice of reassigning or transferring revenue officers originally named in the LOA and substituting them with new revenue officers to continue the audit or investigation without a separate LOA, is no longer tenable. Thus, in Operations Memorandum No. 2018-02-03 dated February 9, 2018, the Operations Group has decided that "the issuance of a MOA for reassignment of cases in the aforementioned instances [*i.e.*, the original revenue officer's transfer to another office, resignation, retirement, etc.] shall be discontinued." *(Boldfacing supplied.)*

Similarly, in *Commissioner of Internal Revenue vs. Manila Medical Services, Inc. (Manila Doctors Hospital)*[10] and *Commissioner of Internal Revenue vs. Robigie Corporation*,[11] the Supreme Court affirmed the necessity of issuing a new LOA in cases of reassignment or transfer of revenue officers, even though the taxable year involved in both cases was 2008, when RMO No. 8-2006 dated February 1, 2006 was already in effect.

Respondent likewise argues that RMO No. 8-2006 mandates the issuance of only a single LOA to the same taxpayer for the same tax type and period. Accordingly, respondent claims that the issuance of a new LOA to designate Group Supervisor (GS) Dominic Morales would violate the said RMO.

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[10] G.R. No. 255473, February 13, 2023.
[11] G.R. No. 260261, October 3, 2022.

Firstly, respondent fails to acknowledge that two LOAs were, in fact, issued in connection with the subject assessment. The first LOA, LOA No. 121-2018-00000035 (eLA201600038735)[12] dated September 26, 2018 designated Revenue Officers (ROs) Kathleen Santiago, Fremarie Aquino, Alexander Atienza, Leonila Manuel, and Saidamen Marohombsar, and GS Ronaldo Camba while LOA No. LOA-121-2019-00000109 (SN: eLA201700006130)[13] dated May 22, 2019 retained RO Santiago as the sole revenue officer and assigned Constante Jr. Reinante as the substitute GS. Thus, respondent's reliance on and invocation of the issuance of the "one LOA per taxable year" rule under RMO No. 8-2006 contradicts his position.

Secondly and more importantly, the Supreme Court already clarified in *Robigie* that RMO No. 8-2006 does not prohibit the issuance of a new LOA in cases of reassignment or transfer of revenue officers, to wit:

> Clearly, the "one LOA per taxable year" rule is not as ironclad as the Republic portrays it to be. Part IV.D., Item 2 of RMO No. 8-2006 authorizes the issuance of duplicate LOAs, subject to the CIR's discretion to determine which of the two LOAs shall prevail. Obviously, when a tax investigation is reassigned to a different RO pursuant to the mandatory "rotation" of assessment officers under Section 17 of the NIRC, or for any other legally justified reason, the CIR or his/her duly authorized representatives may issue a new LOA to the newly assigned RO, and such LOA can be made to prevail over the LOA issued to the previous investigating officer. Since the CIR's power to issue a LOA is delegable, the concomitant power to uphold the validity of a subsequently issued duplicate LOA is likewise delegable to the CIR's duly authorized representatives, as enumerated in RMO No. 43-90. **Stated differently, RMO No. 8-2006 does not prohibit the issuance of a new LOA within the same taxable period if such new LOA is necessitated by the reassignment, retirement, or other inability of the incumbent RO to continue an investigation.** The BIR official who will issue the new LOA also has the power to make it prevail over the old, previously issued LOA, subject of course to the control and regulation of the CIR as statutorily designated tax investigator. It must be noted that Section 13 of the NIRC, in providing for the LOA as the mode of delegation of the CIR's investigatory powers to the Ros, likewise gave the CIR the power to regulate and define the parameters for the issuance of LOAs. The "one LOA per taxable year" rule under RMO Nos. 8-2007 and 43-90 is an example of such regulation; and such regulation is only valid insofar as it is consistent with the provisions of the NIRC. *(Boldfacing supplied.)*

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[12] Pre-Trial Order, Docket Vol. III, pp. 1476-1477; Exhibits "P-8" and "R-1", BIR Records, p.1
[13] Exhibit "R-15", BIR Records, p. 317.

In sum, absent a compelling justification demonstrating the inapplicability of the clear and categorical ruling in *McDonald's* to the present case, the Court finds no cogent reason why the requirement for the issuance of a valid LOA should not be equally upheld in the present case.

In an attempt to justify his position that the issuance of a new LOA is unwarranted under the circumstances of the present case, respondent downplays the role of GS Morales as a mere reviewer of the work of RO Santiago. On this basis, respondent contends that the investigation was nonetheless conducted pursuant to a valid LOA, which authorized RO Santiago.

Quite the contrary, GS Morales did not merely review the work of RO Santiago; rather, he led, directed, and oversaw the conduct of the examination of petitioner's books of accounts and other accounting records. In accordance with Revenue Administrative Order No. 02-90[14] dated March 28, 1990, GS Morales bore responsibility for the work performance of his subordinate, including the supervision and review of her audit work. As evidence of his direct involvement and accountability in the audit, both he and RO Santiago affixed their signatures to the Memoranda dated February 15, 2021[15] and April 26, 2021,[16] recommending the issuance of the Notice of Discrepancy (NOD) and the Preliminary Assessment Notice (PAN), respectively.

By actively participating in and exercising oversight over the conduct of audit of petitioner's books of accounts and other accounting records, GS Morales – who was not named in either of the two LOAs issued – effectively continued the audit. As he was not named in the said LOAs, he was a mere substitute. In undertaking such acts as a substitute, including the subsequent recommendation for the issuance of the NOD and the PAN, he was nonetheless required to have been clothed with the requisite authority.

The practice of reassigning or transferring revenue officers originally named in the LOA and substituting 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 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 BIR

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[14] Subject: Assignment of All Revenue Officers Holding Supervisory Positions to Perform Actual Supervisory Functions.
[15] BIR Records, pp. 506-510.
[16] BIR Records, pp. 542-546.

rules and regulations, particularly RMO No. 43-90 dated September 20, 1990.[17]

If the revenue officers that were previously indicated in an LOA were reassigned or transferred to another case, and as such, a new revenue officer will handle the case that was previously assigned to them, the issuance of a new LOA in favor of the new handling revenue officer is required.[18]

As held in the assailed Decision, without a new and separate, or amended LOA authorizing GS Morales to perform and lead the examination and assessment of the tax liabilities of petitioner, the conduct of the audit was legally flawed. Consequently, the assessments issued against petitioner are inescapably void.

WHEREFORE, premises considered, respondents' **Motion for Reconsideration** is hereby **DENIED** for being filed out of time and for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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[17] *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corp.*, G.R. No. 242670, May 10, 2021.
[18] *Commissioner of Internal Revenue vs. Manila Medical Services, Inc. (Manila Doctors Hospital)*, G.R. No. 255473, February 13, 2023.